

# Balance of the financing of the IACHR and the Inter-American Court

2009-2021

Opacities and influences in  
a conditional financing



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# Proemio galeato

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*Quis custodiet ipsos custodes?*  
IUVENALIS

**Human rights** are promoted and protected through respecting and observing **declarations, treaties and conventions**, and **not through their violation**. This diaphanous truth seems to have been put in check in recent years, in which the **bodies** created by the countries to protect and promote human rights, on the one hand, have committed numerous **abuses, excesses and violations of the very treaties** that gave them origin and meaning, and on the other, they have **suffered from non-transparent and partial accountability processes**. This reality has had the consequence that those who should supervise compliance with the obligations assumed by the States are, on occasion, financially committed to those who violate the treaties or, at least, to those responsible for the distortion of an authentic interpretation of human rights.

Thus, not only is said supervision hindered, but the possible beneficial results of this task are conditioned. In turn, whoever participates in the financing of an institution places himself in a position that allows him to exercise a certain type of control over it. **Whoever has financial power also has factual power**. This maxim, typical of economic and business spheres, is also applicable at the level of international human rights law.

The direct relationship between power and money becomes more delicate when it comes to **judicial or quasi-judicial institutions**, which **should decide cases from a position free of conflicts of interest** and focused so-

lently on the facts and legal arguments presented. For this reason, it is consistent that, in a nation governed by the rule of law, the judicial powers are financed with resources from the general budget of the national administration, which, in turn, is nourished by the taxes paid by all citizens, and not from contributions of the parties of a specific judicial process. Moreover, if the judicial body of a State received contributions or donations from private persons —whether natural or legal, public or private—, it would be seriously **compromising the impartiality of its decisions**. In the international arena, institutions should be especially cautious when establishing how to obtain their operating resources, the management of their finances, and the commitments they assume to obtain said resources..

The **Inter-American Human Rights System (“IAHRS”)** is no stranger to this **relationship between the granting of funds and the exercise of factual power**. In its origins, it was foreseen that, in order to guarantee an impartial protection of human rights (*i.e.* avoid conflicts of interest at the time of solving cases), the funds of the two main organizations dedicated to this task, the Inter-American Commission on Human Rights (“IACHR”) and the Inter-American Court of Human Rights (“IACtHR” or the “Inter-American Court”), should be granted directly by the Organization of American States (OAS), charged to the general budget, so that these entities would not immediately depend on direct contributions from the supervised States. The **constant claims** made for several years by the organs of the system **demanding a larger budget** has had little echo in the OAS Member States. For some, this is due to a lack of interest of the countries in the protection and promotion of human rights; for others, this lack of commitment is clearly linked to the **poor functioning and the repeated abuses, excesses and violations** carried out by the **Commission and the Court** in the exercise of their functions.

To improve the functioning and financing of the IAHRS, it would be necessary to seriously undertake a **reform and strengthening project based on transparency, respect for the treaties, and independence**. Bearing in mind that the organs of the system find it difficult to carry out constructive self-criticism, and usually choose to exculpate themselves, blaming

the Member States for their lack of commitment, the purpose of this report is to contribute to beforementioned project, analyzing, exposing and questioning specific aspects of the financing of the system in its last years of existence<sup>1</sup>.

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<sup>1</sup> For this document, the reports of the last 13 years of the Inter-American Court and the last 9 years of the IACHR have been analyzed.

# Introduction

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## *Mixed financing*

**The IAHRs has various sources of financing.** Just as it was originally planned that the **funds** of the two main bodies (IACHR and IACtHR) should be granted **directly by the OAS** from the general budget to **avoid conflicts of interest when resolving cases**, it also made it possible to develop a greater **predictability and a better organized projection of those resources**.

The **American Convention** states in its article 72 that **the Court will prepare its own draft budget** and will submit it for the approval of the General Assembly, through the General Secretariat, indicating that the latter may not make changes to it. In the **Statute of the Inter-American Court** it is only added that **it is the Court itself that manages its budget**. The rules of procedure of the IACHR provides that the Executive Secretary is the one who has the power to “to prepare, in consultation with the President, the draft program-budget of the Commission, which shall be governed by the budgetary provisions in force for the OAS (...)” (Art. 12.1.b).

**The financing of the IAHRs is mixed**, which means that it is composed by the **contributions made by the OAS**, known as the **regular fund**, and by the **contributions made by the member states of the IAHRs, extra-continental countries, private companies, and NGOs**, which are known as **specific funds** in the IACHR and **extraordinary contributions** in the Inter-American Court.

## Budget of the IAHRIS

### Regular Fund

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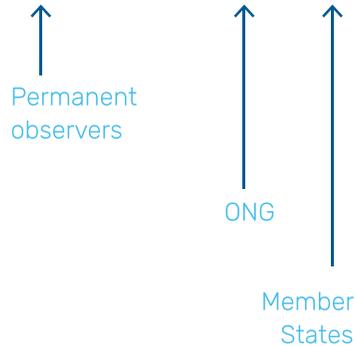
The regular fund is made up mainly of installments paid by member states collected by the OAS; it also includes contributions from other funds for technical management and administrative support services provided by the General Secretariat. Resources received for unspecified purposes will be considered as miscellaneous income of the Regular Fund.



### Specific Funds / Extraordinary Contributions

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Extraordinary contributions or specific funds come from voluntary contributions paid by the States, international cooperation projects, and voluntary contributions from other institutions.



## *Inter-American Commission on Human Rights*

The IACHR is the body of the IAHRs that **took the longest to begin efforts to disclose information about its financing**. It was not until 2013 that clear figures and numbers about its finances were made available to the public through its annual report. The IACHR **reports prior to 2013** only list the contributing countries, **without giving details of the amounts or the projects carried out with such contributions**. In the IACHR, **mixed financing is very notorious** and the amount corresponding to **specific funds** is the one that **has grown the most in recent years**, with the exception of the period corresponding to the years 2018 and 2019.

In 2011, with the “Strategic Plan 2011-2015”, **the IACHR called on countries outside the OAS to obtain financing**. An example of this is expressed in its 2013 annual report:

“Through its Projects Office, the DIDAA facilitated an increase of 33% to its external donations over last year (US\$1,325,700 more) resulting from an aggressive fundraising outreach campaign to governmental and non-governmental entities throughout Europe, and continued collaboration with existing donors. This effort continues, as we reach out to foundations and universities to provide support by sponsoring visiting professionals to the Commission”<sup>2</sup>

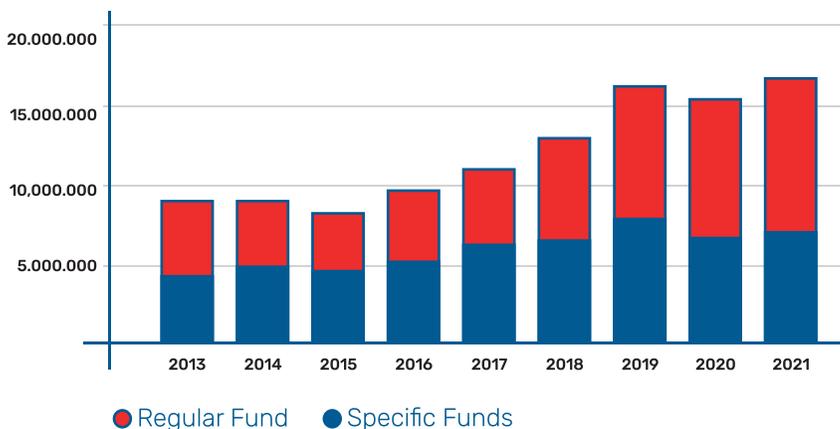
In 2013, a **political and credibility crisis shook the IAHRs and led to an unprecedented financial crisis** that erupted in 2016. This crisis led to the suspension of hearings and the threat of dismissal of almost half of the staff employed. In September of the same year, **some states pledged funds to prevent the collapse of the system**. But afterwards, in June, 2017, the IACHR emerged favored from these attacks, getting the **OAS General As-**

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2 IACHR, Annual Report, 2013, paragraph 21, available at: <https://www.oas.org/en/iachr/docs/annual/2013/docs-en/AnnualReport-Chap6.pdf>

sembly to make the decision to **double the resources of the Regular Fund** that are allocated to the organs of the system. A gradual increase of 33% was then agreed upon to each organ per year, which meant **doubling the regular budget** granted by the OAS at the end of three years, an increase that has been verified almost in its entirety<sup>3</sup>. This increase can be seen in the following graph, in orange.

*Annual Budget of the IACHR  
(in US Dollars)<sup>4</sup>*



### *Inter-American Court of Human Rights*

The information published by the Inter-American Court provides a better visibility on how the composition of the contributions it receives has evolved. Unlike the IACHR, whose transparency problems are evident, the

3 [https://www.oas.org/en/iachr/media\\_center/PReleases/2017/083.asp](https://www.oas.org/en/iachr/media_center/PReleases/2017/083.asp)

4 Prepared by the authors based on the annual reports of the IACHR for the years 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020.

Court has been publishing its budget in detail for several years in its annual report. As previously stated, its budget is also mixed, and the extraordinary contributions have always been very important for the functioning of the Court. On numerous occasions they have allowed the basic development of the Court's functions, and on several occasions, the Court has been in a situation of total dependence of said contributions, according to a report published by the Court itself:

“Regarding international cooperation projects, these come from States that are Permanent Observers of the Organization, that is, **countries that do not belong to the region (Spain and Norway)**. Contributions from both projects contribute annually to the Court's budget an average of US\$1,350,000, which represents **36% of the ordinary expenses of the Court.**”<sup>5</sup>

This means that, in 2011, **more than a third of the body's expenses depended on just two European countries**. The aforementioned paragraph comes from the report presented at the working meeting convened by the Court on June 8, 2011, where the OAS Member States, Permanent Observers and various cooperation agencies were invited to attend the presentation of their report called Guidelines 2011-2015: Strengthening Inter-American Justice, through predictable and harmonious financing (“*Lineamientos 2011-2015: Fortaleciendo la Justicia Interamericana, a través de un financiamiento previsible y armónico*”). Parallel to the 2011-2015 Strategic Plan of the IACHR, this project sought to obtain a more regular funds from the OAS and a greater participation of the Member States and Observers. The impact of this plan on the Court can be seen in the following graph.

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5 Inter-American Court of Human Rights, “*Lineamientos 2011-2015: Fortaleciendo la Justicia Interamericana, a través de un financiamiento previsible y armónico*”, p. 14, available at: <http://scm.oas.org/pdfs/2011/cp27341s1.pdf>

## Annual Budget of the Inter-American Court of Human Rights (in US Dollars)<sup>6</sup>



As for the **regular fund**, although it has been increasing slightly each year, it was in 2017 when it obtained a strong increase, as a result of the claims promoted largely by the IACHR in 2016 and the consensus obtained in 2017 for its progressive increase (see above).<sup>7</sup>

Regardless of the advances or setbacks that the IAHRs may suffer with respect to its sources of financing, **it is worrying that a dependency on international organizations and countries that are not members of the system or that have not even recognized the contentious jurisdiction of the Court has been consolidated.**

<sup>6</sup> Elaboración propia en base a los informes anuales de la Corte IDH de los años 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 y 2020.

<sup>7</sup> <https://www.oas.org/es/cidh/prensa/comunicados/2017/083.asp>

# 1. The power of external actors over the IAHRs

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The Inter-American system is partially **financed by extra-continental countries, private companies, and transnational NGOs**, whose contributions make up the extraordinary contributions. This participation was promoted and encouraged by the IAHRs, justifying it, on the one hand, in a supposed lack of resources allocated to the Inter-American Commission and Court by the OAS and, on the other, in a lack of contributions by the member States.

The **growth of extraordinary contributions** is a fact recognized by these bodies, having expressed it in their own annual reports and press releases.<sup>8</sup> **The IACHR and the Inter-American Court have encouraged countries outside the system, NGOs, and multinational companies** to finance some of their activities. Furthermore, the decision of the IACHR to accept donations from natural persons can be seen in its 2016 annual report. This opened the possibility for donations to be received by various means such as checks, bank transfers, and even credit cards. In the same report, the Commission stated that it works with the Trust for the Americas for this purpose.<sup>9</sup>

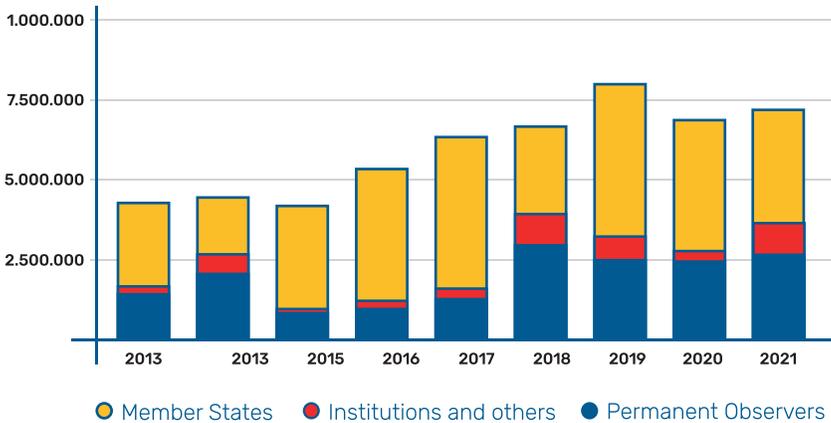
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8 By way of example, the following is an extract from the press release of the IACHR of March 14, 2019: “The year 2019 has brought the IACHR financial challenges because the decision to double its budget within a three-year period will only have the desired effect if the level of voluntary contributions is maintained. In this regard, notwithstanding the fact that these contributions achieved a historical record as a result of the support of observer countries, non-State donors and International organizations, the total amount sent by OAS Member States was reduced, a matter that is of concern for the IACHR”. (Emphasis added), available at: [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/067.asp](https://www.oas.org/en/iachr/media_center/PReleases/2019/067.asp)

9 Annual Report of the IACHR, 2016, page 981, paragraph 21, available at: <https://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016-Cap.6-EN.pdf>

In 2013, the specific funds of the IACHR were distributed as follows:

*Composition of the IACHR's  
Specific Fund (in U.S. Dollars)<sup>10</sup>*



In the IACHR, among numerous contributors, some countries have been **funders for several years**, as can be deduced from the body's annual reports, such as the case of **Spain, Norway, Finland, the Netherlands, Sweden, Switzerland, the United Kingdom, Holland and Italy**. The **European Union** also contributes funds. On the side of **NGOs and companies**, there are many that contribute financially every year, such as **Fundación Arcus, Save the Children, Cammina and Fundación Avina**. Others more recently joined to make a regular contribution. These are **Freedom House, Google, Ford Foundation, Oxfam, Wellspring and Trust for the Americas**, among others. We also find among them NGOs such as the **National Endowment for Democracy (NED)** or the **Open Society Foundations**.<sup>11</sup>

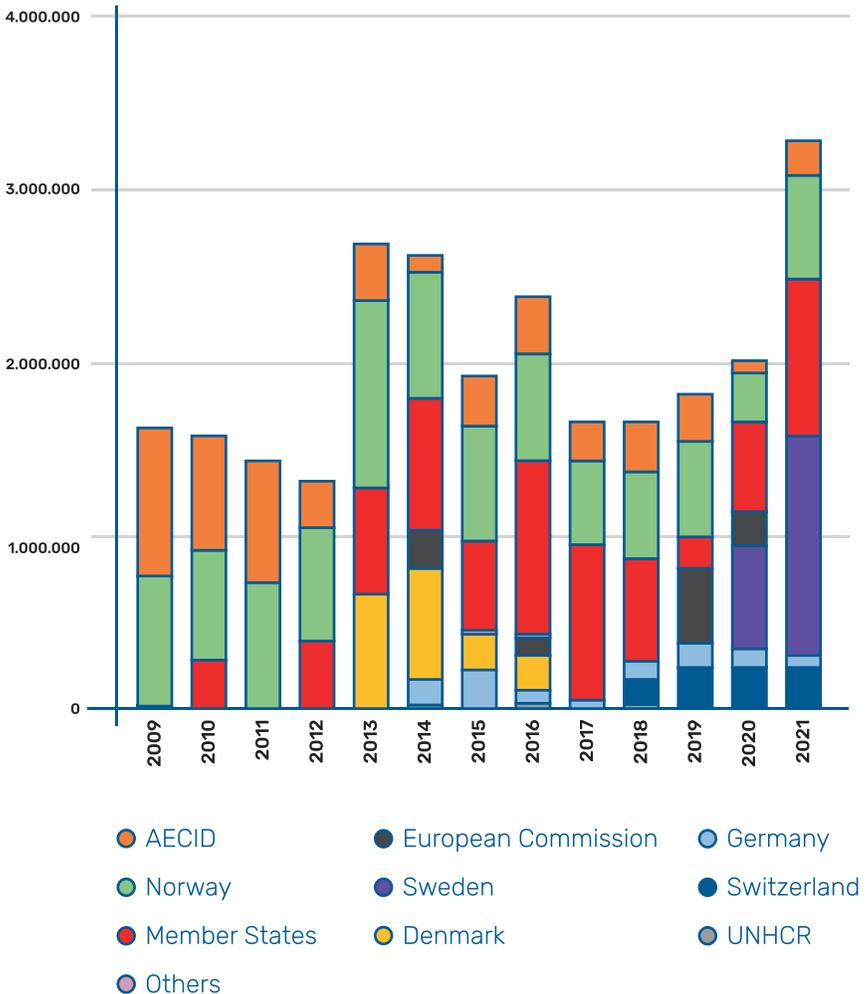
<sup>10</sup> Prepared by the authors based on the annual reports of the IACHR for the years 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020.

<sup>11</sup> IACHR, Annual Report 2016, Chapter VI, available at: <https://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016-Cap.6-EN.pdf>

In the **Inter-American Court of Human Rights**, there is also a large **presence of NGOs and countries outside the system** among the contributors.

The following graph shows the portion of funds granted by countries that are not members of the IAHRs, compared to the funds granted by Member States. In 2017, the voluminous donation made by the Member States for the functioning of the Court stands out, but the enthusiasm (provoked in part by a specific need) did not last long. **Extracontinental countries and various organizations** continue to have a **preponderant presence within the extraordinary contributions of the Inter-American Court of Human Rights**. Among the countries that have contributed the most are **Norway and Spain**. The latter, through its **Spanish Agency for International Development Cooperation** (“AECID”, by its acronym in Spanish), which, we will see later, has a specific agenda of conditions for the bodies of the system.

*Distribution of the extraordinary contributions of the Inter-American Court<sup>12</sup>*



12 Prepared by the authors based on the annual reports of the IACtHR for the years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020.

The **main problem** with the **financial participation of NGOs or countries outside the IAHRs** is that it is carried out **with direct reference to the destination of those funds**. Observer states and transnational NGOs could contribute funds without defining their destination, in which case they would be allocated to the work of the IAHRs in general. But that is not the case: the financing scheme of the SIDH allows contributing countries and NGOs to specifically define the matters to which the granted funds are going to be allocated, even influencing the content of SIDH's bodies decisions. In this way, **the IAHRs is not free to allocate the funds to the activity that most requires them according to its own criteria, but must direct them to the projects or activities indicated by the corresponding contributor**. Devoting funds to the promotion of specific projects means, in practice, **strongly influencing the IAHRs agenda** and the impact it has on the Member States.

## 2. Examples of funding

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The impact that the countries and NGOs that participate in the financing of the IAHRs have can be corroborated by carefully observing the choice of financed projects. It is striking then that, although many programs are in line with the provisions of international human rights law, many other projects include **elements that contradict these standards and oppose the object and purpose for which the Member States partially recognized the IAHRs jurisdiction.**

Several of the **contributing organizations** have a **strong agenda of claims**, which can be observed by the promotion and funding they do on such topics. Although the work of NGOs to protect certain interests is evident, **the presence they have managed to have in the IAHRs is striking.** This raises legitimate questions about the independence of the system, in particular its ability to set and pursue an agenda of its own, in part due to the absence of a stable budget.

Specifically, **we have identified examples of the influence that these actors have had on the IAHRs's activity**, which also has an impact on the so-called human rights standards. In particular, we identified the following documents and resolutions issued by the bodies of the system. They have received influence from Observer States or external organizations, and we classify them as follows: A- Rulings of the Inter-American Court of Human Rights; B- Advisory opinions; C- Reports of the IACHR and D- Various projects.

## A. Rulings of the Inter-American Court of Human Rights

Since 2009, the **Spanish Agency for International Development Cooperation (AECID)** has allocated **USD 4,737,478** to the Inter-American Court of Human Rights, designated for various projects. Being one of its oldest donors, it is also its most faithful. Over the years, the Spanish body has financed projects that allowed the Inter-American Court to finance part of its activity in general, as it did until 2016, but also **promoted a specific political agenda**. In this manner, the Spanish agency financially supported projects with **very defined objectives**. In 2016, this Spanish state agency contributed funds to the Inter-American Court with the aim of carrying out a project named “*Protection of victims and members of vulnerable groups by means of provisional measures and deciding contentious cases involving alleged discrimination on the basis of sexual orientation and guarantees of due process*”.<sup>13</sup> It is understandably striking that the Court receives contributions for the “**resolution of contentious cases**” on a **specific issue**, since, in other words, it corresponds to financing granted by Spain **for the production of rulings against member countries of the IAHRs**.

Concurrently, on February 26, 2016, the Inter-American Court of Human Rights issued its first ruling of the year in the case of *Duque vs. Colombia*,<sup>14</sup> one of the most emblematic precedents on the promotion of pension recognition for same-sex couples, in which a “**breach of non-existent obligations in the treaties about the so-called “sexual orientation and gender identity” was alleged**”, condemning the Republic of Colombia to all its effects. Six months after that ruling, the Inter-American Court issued another sentence, *Flor Freire vs. Ecuador*,<sup>15</sup> condemning the country

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13 Annual Report of the IACtHR for the year 2016, page 158, available at: [https://www.corteidh.or.cr/sitios/informes/docs/ENG/eng\\_2016.pdf](https://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2016.pdf)

The abstract of the ruling is available at: [https://iachr.ils.edu/sites/default/files/iachr/Cases/Duque\\_v\\_Colombia/duque\\_v\\_colombia.pdf](https://iachr.ils.edu/sites/default/files/iachr/Cases/Duque_v_Colombia/duque_v_colombia.pdf) (English) or [https://www.corteidh.or.cr/docs/casos/articulos/resumen\\_310\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/resumen_310_esp.pdf) (Spanish)

15 The abstract of the ruling is available at [https://www.corteidh.or.cr/docs/casos/articulos/se-riec\\_315\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/se-riec_315_ing.pdf) (English) or [https://www.corteidh.or.cr/docs/casos/articulos/resumen\\_315\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/resumen_315_esp.pdf) (Spanish)

for having requested the military discharge of a lieutenant who had homosexual relations with a soldier, taking advantage of his drunken state. In a highly controversial case, **Ecuador was sentenced for failing to comply with, once again, non-existent obligations** based on alleged discrimination against Freire because of his “sexual orientation”.

Both rulings are considered to be among the most emblematic in terms of the imposition of **new obligations to Member States in favor of persons with same-sex attraction**, and **the Inter-American Court, together with the IACHR, have sought to enforce their compliance**, not only against the condemned countries, but all the countries that have accepted the contentious jurisdiction of the Court, by virtue of an **alleged obligation** of those precedents for all these States, **which not only does not arise from the Convention but also explicitly contravenes it**.

### *B. Advisory Opinions*

The **coincidence between the contribution of the AECID and the resolutions on new obligations for Member States to people with same-sex attractions in 2016**, are not the only concomitance that casts doubt on the influence that organizations outside the IAHRs manage to have on the Inter-American Court. In the financial report for 2018, the same agency signed, through the **Spanish State, an agreement with the Court for a total amount of USD 313,350**. This figure was allocated to a project called *“Upholding the capacities of the Inter-American Court to decide cases and provide advisory opinions that contribute to the protection of vulnerable groups, by issuing standards on the **environment, indigenous peoples’ rights, the special obligations of protection for children, asylum, sexual violence, and non-discrimination based on sexual orientation and gender identity, and also to disseminate hearings of cases and advisory opinions.**”*<sup>16</sup>

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16 Annual Report of the Inter-American Court of Human Rights, year 2018, page 134, available at: [https://www.corteidh.or.cr/sitios/informes/docs/ENG/eng\\_2018.pdf](https://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2018.pdf)

That project had a start date of March 29, 2017, culminating on March 28, 2018. **Three advisory opinions were published** immediately after the start of this project, which are:

- Advisory Opinion OC-23/17 of November 15, 2017: ***The Environment and Human Rights***.<sup>17</sup>
- Advisory Opinion OC-24/17 of November 25, 2017: ***Gender Identity, and Equality and Non-discrimination of Same Sex Couples***.<sup>18</sup>
- Advisory Opinion OC-25/18 of May 30, 2018: ***The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection***.<sup>19</sup>

Therefore, according to what emerges from the IAHRs's bodies own reports, documents and agreements that are available to the public, what is **particularly serious and worrying**, in addition to the already highlighted economic contributions with a specific agenda destination, is the **orientation of content, language, and specific terminology** of the decisions of the Court — which are later **called “human rights standards”**—, which are not always part of the lexicon agreed upon by the countries that conform the OAS, even less what is agreed upon in the corresponding treaties. This committed financing, to which we have referred previously, **intends to unilaterally impose the standards** proposed and pursued by the donors. The Inter-American Court has issued 9 advisory opinions in the last 16 years. In total, the Inter-American Court has issued 29 advisory opinions since 1981, and **the issuance of three advisory opinions in less than a year is a total unprecedented event**.<sup>20</sup>

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17 Available at: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf)

18 Available at: [https://www.corteidh.or.cr/docs/opiniones/resumen\\_seriea\\_24\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/resumen_seriea_24_esp.pdf)

19 Available at: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_25\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_25_esp.pdf)

The advisory opinions are available at the webpage of the Inter-American Court of Human Rights: [https://www.corteidh.or.cr/opiniones\\_consultivas.cfm?lang=en](https://www.corteidh.or.cr/opiniones_consultivas.cfm?lang=en)

### C. Reports of the IAHRs

Reports are a tool that the IACHR uses to analyze certain issues from its perspective, and it can make **non-binding recommendations** to Member States if it considers that these would help them to comply with the human rights commitments they have undertaken.

In 2015, a **report named *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*** was published with a **particular gratitude** to the financial support of **Chile, Denmark, USA, Arcus Foundation, UNAIDS, the Netherlands, and the United Kingdom**, between 2011 and 2015.<sup>21</sup>

In 2019, the IACHR published another report, this time on “advances and challenges” in the recognition of **the rights of lesbian, gay, bisexual, trans and intersex persons in the Americas**, called *Recognition of the Rights of LGBTI Persons*.<sup>22</sup> In the press release corresponding to that publication,<sup>23</sup> the **IACHR stated that it was especially grateful** for the “support of **Wellspring Philanthropic Fund, Trust for the Americas, and Arcus Foundation** in finalizing the report.”

Later, in August 2020, the Report on *Trans and Gender Diverse People and their Economic, Social, Cultural and Environmental Rights* was published, which thanked for “**the financial support provided by the Trust for the Americas, Wellspring, Arcus Foundation and the Government of the Netherlands**”.<sup>24</sup>

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21 Report available at: <http://www.oas.org/en/iachr/reports/pdfs/violence-lgbtipersons.pdf>  
Acknowledgment of appreciation is on page 3.

22 Report available at: <https://www.oas.org/en/iachr/reports/pdfs/lgbti-recognitionrights2019.pdf>

23 IACHR, Press Release No. 126/19. Available at: [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/126.asp](https://www.oas.org/en/iachr/media_center/PReleases/2019/126.asp)

24 Report available at: <https://www.oas.org/en/iachr/reports/pdfs/TransDESCA-en.pdf>. Mention of the appreciation is found on page 17, paragraph 24.

In 2019, the IACHR's Rapporteurship for Freedom of Expression published a report entitled *Protest and Human Rights*, which mentions that it was funded, in part, through a **grant from the Open Society Foundation**.<sup>25</sup> The report, which promotes a view of human rights that undermines the inalienable right to social peace, focused on **defending particularly violent and destructive protests** and has served as a tool of defense for numerous perpetrators of acts of vandalism that, in 2019 and 2020, **caused deaths and destruction of public and private property** in various demonstrations in **South American** countries.

Several reports containing recommendations in favor of further **liberalization of abortion** in the region were published, **thanking countries and organizations outside the continent**:

- The report *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, published in 2011, states, “Document published **thanks to the technical and financial support of the United Nations Population Fund (UNFPA) and the Spanish Agency for International Development Cooperation (AECID)**”<sup>26</sup>
- The report *Legal Standards Linked to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application*, published in 2011, reads: “Document published thanks to the financial support of Canada”<sup>27</sup>
- The report *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, published in 2019, also states: “Report prepared thanks to the **financial support of Canada**”<sup>28</sup>

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25 Report available at: <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>. On page 3 it is stated that the report was supported, in part, through a grant from the Open Society Foundations.

26 Report available at: [https://www.oas.org/en/iachr/women/docs/pdf/women\\_mesoamerica\\_eng.pdf](https://www.oas.org/en/iachr/women/docs/pdf/women_mesoamerica_eng.pdf) Acknowledgment of appreciation is on page 2.

27 Report available at: <http://www.oas.org/en/iachr/women/docs/pdf/REGIONALst.pdf>. Acknowledgment of appreciation is on page 5.

28 Report available at: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceWomenGirls.pdf>.

It is important to note that, **in all of these reports, the IACHR has made a regressive and restrictive interpretation of the protection of the right to life of the American Convention on Human Rights,<sup>29</sup> reformulating *contrario sensu* what the countries agreed.<sup>30</sup>**

It is worth clarifying that some actors not only **finance the development of such recommendations**, which oppose the States' commitments, but also **pay for the promotion of their compliance**, as we can see with the project paid for by Canada in 2020 to **"Promoting compliance with recommendations and decisions on the rights of women and girls by the IACHR in the member states of Latin America and the Caribbean"**.<sup>31</sup>

It should be noted that **Canada** has a **very particular interest** in the Court conducting and publishing different works equivalent to Inter-American human rights standards, but that Canada **has never wanted to be subject to the jurisdiction of the IACHR**. Indeed, Canada has never recognized the jurisdiction of the Inter-American Court, which means that, unlike the countries of Latin America, it is totally independent of the Court in which it invests so much money and effort.

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Acknowledgment of appreciation is on page 3.pdf La mención del agradecimiento se encuentra en la página 3.

29 Promoting abortion liberalization in the region.

30 "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception (...)" Article 4 of the American Convention on Human Rights.

31 IACHR Annual Report, 2020, p. 1113, available at: <http://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.6-en.pdf>

## D. Various Projects

### Year 2019<sup>32</sup>

- **Arcus Foundation:** USD 100,000 for the project “Protection and promotion of the Rights of **Lesbian, Gay, Bisexual, Trans and Intersex Persons**”.
- **Trust for the Americas:** USD 250,000 for “Support for the work of the IACHR Rapporteurship on the **Rights of LGBTI Persons**”.
- **Arcus Foundation:** USD 100,000 for “support to the Rapporteurship on the rights of **LGTBI persons**, for the period 2019-2020”.

### Year 2018<sup>33</sup>

- **Wellspring**, through **Trust for The Americas:** USD 250,000 to support the Project to Support IACHR Rapporteurship on the Rights of LGBTI Persons – Phase II.
- Preparing the proposal to support the **LGBTI Rapporteurship to USAID through the PADF on local capacity building to monitor violence and promote the investigation of hate crimes against LGBTI persons**.
- Preparing the proposal to support the **LGBTI Rapporteurship with the OAS Secretariat on Access to Rights to promote social inclusion of LGBTI persons and non-discrimination**.

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32 IACHR Annual Report, 2019, pages 815 and 818, available at: <http://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap.6-en.pdf>

33 IACHR Annual Report, 2018, page 315, available at: <http://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.6-en.pdf>

### Year 2017<sup>34</sup>

- **Trust for the Americas:** USD 250,000, to support to the work of the LGBTI Rapporteurship, IACHR
- Project *Protection and promotion of the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons*, by the **Arcus Foundation**, for USD 100,000.

### Year 2016<sup>35</sup>

- **Wellspring advisors** through **Trust for the Americas:** USD 250,000 to “Support to the Office of the *Rapporteur for LGBTI persons*”.

### Year 2014<sup>36</sup>

- **Arcus Foundation:** USD 45,000 to finance a fellow to support the *LGBTI Persons Unit*.

## *E. Potential conflicts of interest*

From the investigation of institutional and financial links, it emerges that some of the **international organizations** that support the IACHR or the IACtHR also **fund the petitioning parties in strategic litigation cases in the system**. This situation poses a major problem, as the fact that the

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34 IACHR Annual Report, 2017, pages 893 and 894, available at: <http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.6-en.pdf>

35 Annual Report of the IACHR, 2016, page 978, paragraph 18, available at: <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016-Cap.6-EN.pdf>

36 IACHR Annual Report, 2014, page 763, available at: <https://www.oas.org/es/cidh/docs/anual/2014/docs-es/Anual2014-Cap-6.pdf>

same organizations fund **both judges and parties** seriously affects the independence of these bodies. An **eloquent case** in point is **Manuela et al. v. El Salvador**. The **Ford Foundation**, which regularly contributes to the IACHR, has funded *Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugenésico*, which is one of the **petitioning organizations in the “Manuela” case**. This was acknowledged by two of the organizations representing the petitioning party.<sup>37</sup>

On the other side, the **German Heinrich Böll Foundation** has funded various projects of the Court, contributing since 2017 a **sum representing a total of USD 40,077.12**. **At the same time that this entity co-organizes a course on Human Rights with the IACtHR, it also officially supports the Citizens’ Group for the Decriminalization of Therapeutic, Ethical and Eugenic Abortion, and publishes its infographics on the foundation’s official website.**<sup>38</sup> Although the financial support of the Böll Foundation to the *Agrupación Ciudadana* cannot be verified, in the absence of a mechanism of passive transparency on the distribution of funds attributed to it on its website, its militant support was evident, both for this case and for the imposition of the liberalization of abortion in the region.

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37 News article “NGO confirms funds are for pro-abortion project,” accessed at <https://historico.elsalvador.com/historico/133291/ong-confirma-que-fondos-son-para-proyecto-pro-aborto.html> on October 11, 2021.

38 <https://sv.boell.org/es/2021/03/09/caso-manuela-y-familiares-vs-el-salvador-llega-la-corte-interamericana-de-derechos> Accessed on September 17, 2022.

### 3. Cultural colonization, Inter-American standards and the impact of financing

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For some years now, the **IACHR and the Inter-American Court** have been proposing to the Member States, often under penalty for non-compliance with international obligations, **practices and criteria that have come to be known as Inter-American standards**. These standards are intended to serve as a guide for Member States to comply with their obligations. They are intended to support Member States in fulfilling their human rights commitments, **but they are by no means binding**. They are the result of efforts to implement human rights standards, but **they are not human rights standards**. No normative text to which states have adhered provides for such binding force. **The intended binding nature of these standards is a clear demonstration of the abuses and overreach of the bodies of the system and their desire to achieve their objectives by using counter-majoritarian means, with minimal democratic legitimacy.**

In the **financing** of some of the reports and advisory opinions that comprise these **standards**, as previously stated, we find numerous **countries outside the system and transnational NGOs**. In some cases, anew, **they provide funds to the IAHRs for projects with specific objectives**. Although the link is not explicit, the influence of the economic participation of these actors in the creation of standards should be more than a suspicion and should motivate a call for greater transparency and accountability.

The **IACHR and the IACtHR have repeatedly stated that they are not up to the task of exercising their role** as envisaged by the treaties and

conventions that created them: “The Court is not sufficient for it to properly dispatch the different and growing matters that come to its attention”.<sup>39</sup>. This complaint stemmed from **the desire for member countries to make a greater financial contribution** to both bodies. According to it, both the IACHR and the Inter-American Court need a significant increase in their budgets in order to provide an adequate response to the region’s challenges in terms of human rights protection.

It is noteworthy that, despite this situation, the system’s bodies **are in a position to carry out projects on different issues outside their mandate** -or at least with a diffuse relationship-, which are financed **by NGOs and countries that do not belong to the OAS**; projects that they later seek to impose on the countries of the Americas through **standards** and through an *erga omnes* **application of the IACtHR resolutions, contrary to what is provided in the American Convention**. This implies a **doubly irregular situation**. On the one hand, **the inability of the bodies to fulfill their mandate**; on the other, **the capacity to overreach their duties**. This can be clearly seen when analyzing the much-talked-about procedural backlog, which remains at truly critical and dramatic levels. However, instead of focusing and allocating resources on the reason for its existence and what the countries peacefully agreed, it insists on **counter-majoritarian agendas, non-agreed language and axiological impositions that are alien to Latin American cultural and legal tradition**. With these maneuvers, the IACHR and the Inter-American Court are jeopardizing their role as arbitrators and judges in human rights conflicts, **becoming proselytizers of minority agendas, hardly representative but highly financed**. In case any doubts remain about the vehemently proposed changes, the aforementioned report states:

Societies in the Americas are dominated by underpinning principles of **heteronormativity, cisnormativity, sex hierarchy, sex and gender binary systems, and misogyny**. (...) States have the obliga-

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39 Inter-American Court of Human Rights, “Necesidades Financieras (corto, mediano y largo plazo)”, May 12, 2010, p. 7. Available at: <http://scm.oas.org/pdfs/2010/CP24463.pdf>

tion to design and implement projects that pursue cultural changes in order to guarantee respect and acceptance for people whose sexual orientation, gender identity or whose gender characteristics differ from the patterns most widely accepted by society.<sup>40</sup>

Needless to add, such statements are directly contrary to the **Vienna Declaration on the Interpretation of Treaties**, which provides in paragraph 5 that “While the **significance of national and regional particularities** and various **historical, cultural and religious backgrounds** must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.

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40 Report on Recognition of the Rights of LGBTI persons, paragraphs 55 and 40, available at: <https://www.oas.org/en/iachr/reports/pdfs/lgbti-recognitionrights2019.pdf>

## 4. Towards transparent accountability and greater impartiality

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**The conditioning of funds increasingly replaces the regular functioning of the Inter-American Human Rights System.** Many Member States agree that the IAHRS should rely less on extraordinary contributions and more on allocations from the OAS Regular Fund. An example of this was the expression of the **Brazilian** delegation in 2011, when it stated that: “**Excessive dependence, which the IACHR and the Inter-American Court of Human Rights face today, on resources offered on a voluntary and discontinuous basis, is detrimental to the proper functioning of both bodies**”<sup>41</sup>

However, despite the efforts made by the bodies of the IAHRS and the OAS to raise more funds from the Member States, certain circumstances such as the COVID crisis or the economic crisis that is shaking the continent, make it difficult to increase the contributions of the States. In this scenario, the contribution of external countries, or even organizations, may appear to be a solution for the survival of the system. However, there is the problem of **compromising the independence of the IACHR and the IACtHR**, as these bodies should comprise a system designed to protect and promote human rights and not a **structure influenced by the political agendas and ideological interests of their funders.**

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41 Presentations by the Delegation of Brazil. WG/SIDH/INF. 30/11, November 3, 2011. Cited in Murcia, T. (2018). The funding crisis of the Inter-American Human Rights system: A threat to the protection of Human Rights in the Americas. *Revista Verba Iuris*, 13(39), pp. 49-66.

This problem, *i.e.* the impact on the independence of the IAHRs' bodies work, is not new. It had already been pointed out by the delegation of **Ecuador** in the year **2011**:

As long as the funding of the IAHRs bodies is not covered by the Organization's own resources, **it is proposed that the bodies of the Inter-American Human Rights System establish as a policy, without exception, that the voluntary contributions they receive may not be conditioned or directed to specific projects, in order to preserve the independence, objectivity, non-selectivity and non-politicization of the treatment of the sensitive issues that they are responsible for.** The Inter-American Commission on Human Rights (IACHR) should correct the imbalance of economic and human resources available to its Rappoteurships, so that the rights that each Rappoteurship is called upon to watch over and safeguard can be attended on equal terms, both in terms of human and financial resources, in accordance with the characteristics of **universality, equality and interdependence of human rights.**<sup>42</sup>

The **problem of the origin of the funds** and the impact on the independence of the IAHRs that this implies is not the only problem to be considered by the heads of the organs of the Inter-American Human Rights System. Indeed, several problems can be identified with regard to **accountability**, particularly in the annual reports of the Commission and the Court. Not only is there often a **lack of a clear explanation of the destination of funds** allocated to particular projects, but on several occasions, **errors can be observed in the amounts declared for these projects.** A very recent example is the annual report of the Inter-American Court for the year 2021, where the sum of the extraordinary contributions, when done manually, gives a different result to the sum announced in the previous paragraph of the annual report. In turn, we have found **errors and inaccuracies** in various documents, especially in the **annual reports of the IACHR Court for 2010, 2011, 2012, 2014 and 2015.**

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42 Proposals of the delegation of Ecuador on the issues of "financing", "universality", "procedural matters" and "annual report of the IACHR". WG/IHRS/INE. 46/11, December 5, 2011. Cited in Murcia, T. (2018). The funding crisis of the Inter-American Human Rights system: A threat to the protection of Human Rights in the Americas. *Revista Verba Iuris*, 13(39), p.49-66.

It is striking that the **reporting for some projects is more confusing and imprecise than for others that are clearly and precisely explained.** An example of this is the project *Government of the Kingdom of Denmark. Central America Regional Human Rights Project – Proderechos, 2013-2015*, which amounts to USD 640.624,51. This is mentioned in the Court’s annual report for 2014. The same document does not state whether the total corresponding to the project was received by the Court in the same year or whether it was received progressively. Nor do the 2013 and 2015 annual reports, despite mentioning the project, make it possible to know precisely how much was received for the first two years of its development. In the same year, the Inter-American Court reported a project as follows:

*Project Strengthening the Judicial Capacities of the Inter-American Court of Human Rights as well as the Dissemination of its Work 2013-2015, Program CAM 2665, CAM 12/0005, the amount of which is US\$733,112.94 corresponding to the 2014 budget, deposited as follows: US\$342,259.34 in November 2013, US\$366,631.67 in June 2014 and US\$24,221.93 in September 2014. For the 2015 budget, US\$394,280.17 was received in December 2014.*

The Inter-American Court demonstrates, through the reporting of this latest work, that it is able to be transparent about the amounts received and their timing for some projects. The fact that this methodology is not applied to all projects in the same year is noteworthy and demonstrates **the need for the organization to improve its transparency and accountability**<sup>43</sup>.

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43 IACtHR Annual Report, 2014, page 82, available at: [https://www.corteidh.or.cr/sitios/informes/docs/ENG/eng\\_2014.pdf](https://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2014.pdf)

## Conclusion

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The **proposal** we make, taking into account what has been set out in this report, is that, in the first place, **the extraordinary contributions can continue to exist, but without conditioning the IACHR or the IACtHR to use them on specific projects, as such bodies already made a prior commitment to the Member States.** As the delegation of Ecuador requested years ago, it is necessary to safeguard the **independence, objectivity, non-selectivity, and non-politicization** of the issues addressed by the bodies of the IAHRs. It is also necessary for these bodies **to be more accountable and improve access to information** for citizens who want to find out about the work carried out.

Secondly, **the member countries of the Inter-American Human Rights System should have the power to request a forensic audit** that focuses on **compliance with ethical and deontological standards**, that would be conducted by a **external and independent body or agency** from the IAHRs. The OAS itself, which constitutes the framework for action of the human rights bodies of the Inter-American System, is also constrained by difficulties regarding the bodies transparency. As recognized in a recent presentation by the OAS' own Committee on Administrative and Budgetary Affairs ("CAAP" by its acronym in Spanish), the need to work on improving its transparency, in order to obtain certifications, was stressed, which would allow the Organization, among other things, to "increase the confidence of other donors, as accountability and transparency will be reinforced".<sup>44</sup> **With these necessary changes, it will be possible to continue**

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44 Meeting held on March 3, 2022, "*Fondos específicos y movilización de recursos de la OEA*". Power Point presentation available at: <http://scm.oas.org/pdfs/2022/CP45609SCAAP.pptx>

**advancing towards an Inter-American Human Rights System that safeguards the institutionalism, independence and, above all, the mandates that the states entrusted to it and on which its credibility rests.**