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## Introduction

In 1980, following a military coup in Bolivia, the Estrada brothers, Renato and Hugo, were detained near a control gate by a Bolivian military patrol while on their way to visit their sick grandfather. State officials proceeded to remove their belongings and beat and torture them. Following the beating, they were transferred by security forces to a military post, and then to a special security office (Scharrer, 2014a). After being sent to the security office, Renato disappeared. Reflecting on the incident, Hugo claims, “Since we entered the [security office], since then, I have never seen my brother again” (Amnesty International, 2014). To no avail, family members appealed to state authorities, requesting information, calling for an investigation, and filing several formal complaints throughout the 1980s. Finally, in 2003, Hugo requested that the Human Rights Commission in Bolivia investigate the disappearance, and in 2004, the Ombudsman of Bolivia filed a petition in the Inter-American Human Rights System on behalf of Renato (Scharrer, 2014a).

After 22 years of repeated state failures to adequately investigate and prosecute those responsible for the torture and disappearance of Renato, the case reached the Inter-American Court of Human Rights. In 2008, the Inter-American Court delivered a judgment, finding that Bolivia had violated several articles of the American Convention on Human Rights, including the right to life and the right to be free from torture.<sup>1</sup> Following the judgment, the state took several positive steps designed to remedy the rights abuse, including increasing resources for the Interinstitutional Council for the Clarification

<sup>1</sup> The articles violated included Article 4(1), Article 5(2), and Article 7, among several other articles. *Ticona Estrada v. Bolivia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 191, 45(Nov. 27, 2008).

of Forced Disappearances (CIEDEF),<sup>2</sup> a necessity for the CIEDEF to carry out its mandate.<sup>3</sup>

Notably, following the Inter-American Court's judgment, physical integrity rights practices improved in Bolivia. The left panel of Figure 1.1 displays Bolivia's physical integrity rights practices before and after the 2008 adverse judgment. Physical integrity rights include freedom from torture, disappearance, political imprisonment, and extrajudicial killing. These data largely represent allegations of physical integrity abuse made in US State Department and Amnesty International human rights reports. Higher values indicate greater respect for rights, and lower values indicate worse respect for rights (Fariss, 2014). As shown in the left panel of Figure 1.1, respect for physical integrity rights was higher in the 4 years following the Inter-American Court judgment than in the 4 years prior, an indication that the adverse judgment deterred the future abuse of rights in Bolivia.

However, adverse regional human rights court judgments do not always deter future human rights abuses. In August 1974, Rosendo Radilla Pacheco, a musician and political and social activist from Guerrero, Mexico, was traveling with his 11-year-old son by bus from Atoyac de Álvarez to Chilpancingo, Guerrero. The bus underwent a search at a military checkpoint. All passengers were evacuated and only allowed to reboard after the search was completed. However, Rosendo was not allowed back on the bus and was arrested for his possession of *corridos*, traditional Mexican songs telling stories about oppression and the life of peasants (Khananashvili, 2014). Rosendo stated that his possession of the songs was not a crime, to which a soldier replied, "for the meantime, you're screwed" (Khananashvili, 2014, 1790). After his arrest, Rosendo was taken to the military barracks of Atoyac de Álvarez, where he was blindfolded and beaten. His family made repeated efforts to find him. Due to the repressive environment in Mexico, however, relatives and friends who worked for the state warned the family that they could face arrest by state officials if they attempted to pursue or formally file a criminal complaint.

It was not until 1992 that Rosendo's daughter filed the first criminal complaint, which was dismissed for lack of evidence. Subsequent complaints were filed every year from 1999 to 2001. After a series of failed investigations

<sup>2</sup> The Consejo Interinstitucional para el Esclarecimiento de Desapariciones Forzadas, or CIEDEF, is an institution designed to investigate and search for the remains of victims of enforced disappearances that occurred during the dictatorships of 1967 to 1982.

<sup>3</sup> See *Ticona Estrada v. Bolivia*, Monitoring Compliance with Judgment Inter-Am Ct. H.R., (February 23, 2011).

from 2005 to 2009, Rosendo was not located, nor was justice delivered for Rosendo or his family (Khananashvili, 2014). The case was submitted to the Inter-American Court of Human Rights, and in November 2009, the Court found the state to be in violation of several articles of the American Convention on Human Rights, including the articles guaranteeing the right to life and the right to be free from torture.<sup>4</sup>

Although the torture and disappearance in the case of *Radilla Pacheco v. Mexico* took place in the 1970s, like many cases before the Inter-American Court, the rights abuses addressed in the case were still occurring at the time of the 2009 judgment.<sup>5</sup> In fact, when asked about the relevance of the case to current human rights practices, the legal director of the Mexican Commission for the Defence and Promotion of Human Rights claims, “The Army has a history which has not been addressed ... and this omission is the source of the human rights violations being committed by the military today” (Peace Brigades International, 2010).

There is little evidence that the judgment influenced human rights practices in Mexico. The Mexican legislature paid lip service to the judgment by proposing a reform to the military justice system stipulating that the military should no longer have jurisdiction in cases related to forced disappearance, torture, and rape committed by soldiers against civilians. However, the Inter-American Court stated that the legislative reform did not go far enough. The Court demanded that the military justice system should only be granted jurisdiction over crimes committed by members of the military against members of the military.<sup>6</sup>

Consistent with the observations of the Inter-American Court, the evidence presented in Figure 1.1 shows that physical integrity rights in Mexico did not improve following the *Radilla Pacheco v. Mexico* judgment. In fact, physical integrity rights practices declined in Mexico in the 4 years following the

<sup>4</sup> The Inter-American Court found Mexico had violated Article 5(1), 5(20), Article 3, and Article 4(10), among several others. *Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209, (Nov. 23, 2009).

<sup>5</sup> One preliminary objection to the case lodged by the state of Mexico involved the Inter-American Court’s jurisdiction: the state alleged that the Inter-American Court did not have jurisdiction in the case because the crime had taken place before Mexico accepted the jurisdiction of the Inter-American Court. The Inter-American Court found that disappearances were an ongoing human rights abuse in Mexico, and dismissed the state’s objection. Furthermore, the Inter-American Court drew a distinction between instantaneous acts and continuous acts, or abuses that are ongoing, finding that forced disappearances represent a continuous act.

<sup>6</sup> See *Radilla Pacheco v. Mexico*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., (May 14, 2013).

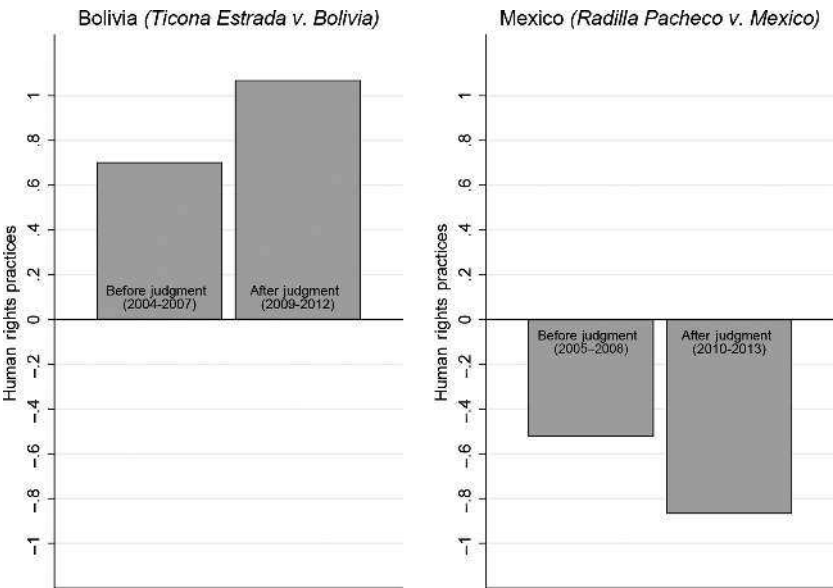


FIGURE 1.1. Average respect for physical integrity rights before and after adverse Inter-American Court judgments

Notes: Figure 1.1 displays the average level of physical integrity rights practices before and after the 2008 adverse Inter-American Court of Human Rights judgment in Bolivia in the left panel and before and after the 2009 adverse Inter-American Court of Human Rights judgment in Mexico in the right panel. Data on physical integrity rights are taken from Fariss (2014) and range from about  $-2$  to  $+3$  in the Americas.

adverse judgment. Moreover, in the year of the judgment (2009), disappearances were only occasionally taking place, but they increased in the years after the judgment (Cingranelli, Richards, and Clay, 2014).

The disparity in human rights practices following the adverse judgments in Bolivia and Mexico is puzzling and raises an important question: *Do adverse judgments rendered by regional human rights courts deter future abuses?* I argue that yes, adverse judgments rendered against a country can deter future human rights abuses, but only when the chief executive has the capacity and willingness to respond to the adverse judgment with human rights policy changes.

This book examines the conditions under which regional human rights courts improve human rights practices. Regional human rights courts render judgments in individual cases of human rights abuse, often because individuals and their families seek justice for a specific human rights violation. However, regional courts have a much broader mandate: Adverse judgments should discourage the commission of future human rights abuses by instilling fear

of the consequences of continued abuse, that is, regional courts seek to deter further abuses. In fact, the European and Inter-American Courts of Human rights often require states to undertake measures of nonrepetition, including changes to laws, procedures, and administrative practices, designed to ensure that similar violations do not occur in the future (Hillebrecht, 2014).

A major contribution of this book is the focus on regional court *deterrence*. While many studies focus on compliance with regional human rights court orders (e.g., Hawkins and Jacoby, 2010; Hillebrecht, 2014), in this book, I examine regional court deterrence, or the effectiveness of regional courts. Studying deterrence provides better insight into the broad influence of regional human rights courts on future state human rights practices, as opposed to state compliance with a list of court orders. As I discuss in Chapter 2, there are two types of deterrence, general and specific. With general deterrence, states are deterred when they observe the consequences faced by other human rights-abusing states. Specific deterrence focuses on the rights-violating state; adverse judgments rendered against a rights-abusing state discourage that state from violating rights in the future. In other words, general deterrence captures the influence of the presence and activity of regional courts more generally on state human rights practices, while specific deterrence captures the influence of specific adverse judgments on the adverse judgment recipient's human rights practices. As I argue in more detail in Chapter 2, specific regional court deterrence is more likely to be effective than general deterrence because adverse judgments directly influence the recipient state's expectation of future adverse judgments and the costs thereof.

Despite the important deterrent mandate of regional human rights courts, like the European or Inter-American Courts of Human Rights, they face real and tangible enforcement challenges. States are sovereign, and as a result, there is no authority above the state to ensure enforcement of regional court judgments. The enforcement problem is even greater with respect to international or regional human rights law because international human rights agreements do not govern interactions among states, which often generate mutual cooperative benefits (e.g., trade benefits). Rather, international human rights law governs the state's relationship with its own citizens, and states do not receive the same type of cooperative benefits when they join an international (or regional) human rights agreement. That is, a trade agreement provides trade benefits for member states (e.g., tariff reduction, free trade). States recognize that to receive such trade benefits, cooperation in the trade regime is necessary, as states that fail to cooperate will lose access to such benefits. On the other hand, international human rights law is unique in that states agree to cooperate on policy that is largely domestic – the treatment of their

own citizens. The decision by a state to withdraw or threaten to withdraw from the international human rights regime and engage in human rights abuses often has little influence on other member states. As a result, there are fewer mechanisms by which to enforce international human rights law than other types of international law.

As a result of these enforcement challenges, I argue that the chief executive plays a key role in the enforcement of adverse regional court judgments. As head of state, executive responsibility includes ensuring human rights policy changes following adverse regional human rights court judgments. In response to an adverse judgment, the executive adopts, administers, monitors, and enforces human rights policy, all of which are necessary for ensuring greater human rights protections.

That said, I argue that the executive may not make important human rights policy changes following an adverse judgment for at least two reasons. First, human rights policy change is *costly*, as it generates both material and political costs. For example, putting programs in place to monitor the behavior of state agents, like the police, may entail significant material costs (e.g., body cameras). Second, the executive may have *incentives* to maintain repressive policies. The executive often finds repressive policy to be a useful strategy for quelling the opposition, particularly when executive survival in office is threatened. Given the high costs of improving human rights practices and the incentives that executives have to repress, regional human rights courts face clear and tangible challenges to their ability to deter future human rights abuses. I argue that the executive is more likely to make human rights policy changes following an adverse judgment only when the executive has the *capacity* and *willingness* to make such changes.

Because policy change is costly, the executive must have the *capacity* to adopt, administer, monitor, and enforce human rights policy. So, *when does the executive have the capacity to respond to adverse judgments with human rights policy change?* I argue that the executive has greater capacity to protect some types of rights more than others. That is, the protection of civil and political rights is more feasible because it is more directly under the executive's control. Improving civil and political rights does not require the same amount of resource expenditure as improving other types of rights, like physical integrity rights. By analyzing data on adverse regional human rights court judgments involving different types of rights violations (i.e., civil and political rights violations and physical integrity rights violations), I demonstrate that the feasibility of human rights policy change directly influences the executive's capacity to respond to adverse regional court judgments. I further explain that the executive has a greater capacity to respond to adverse

judgments with human rights policy change when the state has access to outside resources (e.g., international capital). When the executive has the confidence of creditors, fiscal flexibility to engage in human rights policy change grows. Examining data on state creditworthiness, which represents fiscal flexibility, I demonstrate that the ability to call on outside resources provides the executive with greater capacity to make human rights policy changes in response to adverse regional court judgments.

Moreover, because the executive has incentives to utilize repression, the executive must be *willing* to improve human rights, but *when will the executive be willing to respond to adverse judgments with human rights policy change?* I argue that executive willingness to undertake human rights policy change following adverse regional court judgments depends on pressure from the mass public, foreign economic elites, and domestic political elites. With respect to mass public pressure, the executive is more likely to make human rights policy changes following an adverse judgment when the executive is insecure in office and less likely to do so when the state faces threats to the political and social order. Leveraging evidence from data on election timing and executive vote share, I find that the mass public can generate pressure on the executive to respond to adverse judgments with human rights policy change. Furthermore, analyzing data on political stability and the absence of violence and terrorism shows that the mass public can also generate pressure on the executive to not undertake human rights policy change following an adverse judgment.

As for elite pressure, foreign elites push the executive to engage in human rights policy change following an adverse judgment when they condition access to economic resources on human rights practices. Using data on foreign direct investment, I show empirically that when the executive faces a potential loss of economic benefits, the executive is more likely to respond to adverse judgments with human rights policy change. Similar to foreign economic elites, domestic political elites such as domestic judges and legislators are also capable of generating pressure on the executive to prioritize human rights policy following an adverse judgment. Using data on national judicial power and the number of legislative veto players, I show evidence that under certain conditions, domestic political elites pressure the executive to change human rights policy in response to an adverse judgment. Taken together, focusing on executive capacity and willingness to respond to adverse regional court judgments provides important insights into the puzzle of when adverse judgments deter future human rights abuses.

The theoretical argument in this book stipulates that adverse regional human rights court judgments can deter future human rights abuses, but their deterrent influence depends on executive capacity and willingness to make

human rights policy changes. While executive capacity and willingness are important for ensuring regional court deterrence, regional courts are unique institutions with a distinct influence on executive behavior. Although there are many types of international human rights law, regional human rights courts are particularly well suited to deter future human rights abuses. In the next section, I discuss several unique features of regional human rights courts and the important influence regional courts exhibit on state human rights practices.

### 1.1 WHY ARE REGIONAL HUMAN RIGHTS COURTS IMPORTANT FOR RIGHTS PROTECTION?

As part of the international human rights regime, regional human rights courts play a vital role in ensuring human rights protections. Whereas international human rights law generally plays an important role in setting international standards and encouraging domestic mobilization (Simmons, 2009), regional human rights courts have several unique features that make them particularly important for the protection of rights in the regions in which they render judgments. Regional human rights courts are the only supranational (operate above the level of the state) judicial bodies designed to hold states accountable for human rights abuses by rendering adverse judgments against states.<sup>7</sup> Because regional human rights courts have a truly unique responsibility and function, treating them as though they are roughly equivalent to other international human rights institutions means that scholars and practitioners miss the unique influence of these regional courts on state human rights practices. In this section, I discuss how regional courts fit into the larger international human rights regime as well as the key institutional design features that make regional courts uniquely suited to influence state human rights practices.

Despite the critical role that regional courts play in protecting human rights, like international human rights law more generally, they are unable to do so without domestic actors. International law suffers from an enforcement problem as there is no central authority to enforce legal commitments made by states. Enforcement of international *human rights* law is arguably even more problematic because whereas most international law governs relationships among states, international human rights law governs state-society relations. Enforcement mechanisms like reciprocity and retaliation help ensure enforcement of international law generally because states often receive positive

<sup>7</sup> The International Criminal Court represents an international court designed to hold *individuals* accountable.



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benefits from their cooperation with other states. For example, membership in an international trade agreement or alliance provides economic or security benefits for both states involved. International human rights law, on the other hand, does not ensure such positive benefits. Rather, international human rights law is unique in that state cooperation involves agreeing to regulate behavior that is largely domestic, or the relationship between the state and society. Given significant enforcement challenges, the impact of international human rights law has been met with skepticism.

International human rights law presents a unique enforcement issue, and I argue that regional human rights courts are particularly well suited to address the enforcement challenge. Regional (or supranational) human rights courts represent international legal bodies charged with the promotion and protection of human rights. Regional human rights courts are *international* in nature, and when states accept their jurisdiction, regional courts have the authority and legal backing necessary to interpret international law (Alter, 2014). That is, regional courts are judicial bodies and have the authority to judge whether state behavior aligns with international law. Regional human rights courts are unique in this regard, as most international human rights treaties do not have corresponding courts with the power to interpret the law. Regional human rights courts are designed to ensure state accountability for human rights abuses. In this way, they are not designed to hold individuals criminally accountable, but rather, they hold states accountable by rendering adverse judgments against states and monitoring state human rights behavior postjudgment. By rendering adverse judgments, regional human rights courts are designed to deter future human rights abuses by the state.

Although there is some evidence that individuals are deterred as a result of domestic and foreign prosecutions (Sikkink, 2011) and as a result of the activity of the International Criminal Court (Jo and Simmons, 2016), the deterrent effect of regional human rights courts has not yet been explored. Regional human rights treaties, and the courts they establish, have been grouped alongside many United Nations treaties and treaty bodies as part of the state accountability model, whereby they represent institutions designed to hold the state, rather than individuals, accountable for human rights violations. Even though regional human rights courts share some similar features with international human rights treaties, regional human rights courts were designed to operate as distinct legal entities. As such, there is reason to expect that, unlike other international human rights treaties, regional human rights courts can deter future human rights abuses in the states where they render adverse judgments.

I argue that there are three key institutional design features that make regional human rights courts particularly effective in deterring future human rights abuses. Three key differences include (1) exclusive membership, (2) mechanism of influence (judgments rather than recommendations), and (3) institutional independence. First, membership in regional human rights treaties that establish regional human rights courts is more exclusive than membership in international human rights treaties. Exclusive membership means that membership is restricted to a subset of states that meet particular membership criteria. By their very nature, membership in regional human rights treaties (and their associated courts) is limited to a specific region. Like committees of experts that monitor compliance with international human rights treaties, regional court justices are relatively removed from the political and social context of countries where they make recommendations or render judgments (Cavallaro and Brewer, 2008). Arguably, however, regional courts are relatively less removed from the states with which they interact than are the committees of experts that comprise international human rights treaty bodies. Inter-American Court of Human Rights justices are nationals of states with membership in the Organization of American States (OAS), for example.<sup>8</sup> As a result, regional court justices have greater familiarity with the domestic legal and institutional structures of the states in which they render adverse judgments, including the public sentiment associated with particular cases and the domestic reception of adverse regional human rights court decisions by the public. Restricting membership to a regional subset of states ensures that regional court judges are more fully aware of interstate nuances and domestic political differences across states and are thus able to take these factors into consideration when evaluating state responses to regional courts.

Second, regional human rights courts have a unique mechanism of influence in that they render *judgments*, which distinguishes them from other international legal bodies like international human rights treaty bodies, which utilize *recommendations* to influence state human rights behavior. Unlike international human rights treaties, regional human rights courts (established by regional human rights treaties), render decisions against the state for specific human rights abuses. That is, regional human rights courts provide clear censure for human rights violations. Legal interpretation by a supranational judicial body, like a regional court, is arguably more difficult for the state to ignore than a series of recommendations from an international treaty body. For a regional court to render an adverse judgment, an individual petition must

<sup>8</sup> Though they are nationals of OAS member states, they are charged with international civil service.