

Domestic Implementation of Supranational Court Decisions: The Role of Domestic Politics in Respect for Human Rights

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Regional courts (specifically, the European Court of Human Rights and the Inter-American Court of Human Rights) charge domestic actors, including the executive, judges, legislators, and members of civil society with implementation of regional court decisions. While the regional court typically does not identify these actors by name, the tasks ordered for the state to carry out typically imply the involvement of various actors. As the final authority on human rights policy within the state, the executive plays a primary role in regional court implementation and effectiveness. The executive faces various incentives *not* to engage in implementation, largely as a result of direct material costs, potential loss of decision-making power, and potential loss of strategic political relationships. However, the executive also faces both direct and indirect incentives to respect rights. Direct implementation incentives include those associated with international and domestic audience costs directly attributed to the executive. Indirect implementation incentives involve the executive's expectation of implementation by other domestic actors (judges, legislators, members of civil society). When the executive expects implementation of regional court decisions by other domestic actors, the likelihood of executive implementation rises, and consequently, the executive chooses to carry out and enforce the implementation efforts of domestic judges and legislators. However, domestic judges, legislators, and members of civil society face various incentives *not* to engage in implementation as well. Domestic actors' non-implementation incentives rise when public support for implementation remains relatively low, procedural difficulties plague implementation efforts, and/or significant information asymmetries exist among the voting public and domestic actors, resulting in low shaming costs associated with evasion of regional court decisions by domestic actors. Nonetheless, domestic institutions, including powerful domestic judiciaries, legislative electoral rules, freedom of expression guarantees, and National Human Rights Institutions (NHRIs) generate incentives for domestic judges, legislators, and members of civil society to engage in implementation. These institutions attenuate the influence of non-implementation incentives by increasing public support for regional court implementation, overcoming procedural difficulties, and increasing transparency (thereby raising the shaming costs of non-implementation). The existence and strength of these institutions influence executive expectation of implementation by domestic actors, making executive implementation and respect for rights associated with regional court decisions more likely. Further, regional court judges behave in expectation of the behavior of domestic actors and concentrate their resources and efforts where they expect implementation.

Prepared for the 2013 Journeys in World Politics Workshop, Iowa City, IA, May 2-4. This paper is a preliminary part of a larger research project. Please note: The empirical section describes the first rough cut (OLS estimates) and though the results are suggestive, none of these findings should be seriously considered or cited. I am presently at work developing

multilevel models that model or otherwise minimize, the sundry econometric threats to inference existing in the OLS results contained here.

1 Introduction

To what extent do supranational human rights courts influence respect for rights? Despite the unprecedented growth in the activity of regional human rights courts, we know relatively little about their effectiveness. In this paper, I seek to explain variation in state response to regional court decisions. More specifically, I examine the role of domestic actors in regional court implementation and consequently, the effectiveness of regional courts in improving state human rights practices. By focusing on effectiveness of supranational litigation in making broad changes in human rights policy and practice, rather than focusing solely on compliance with specific regional court orders, I hope to explain the conditions under which these regional legal bodies have the most influence. Further, the theory presented and explored in this chapter focuses closely on the role of domestic actors within the state, specifically, their interests and incentives in engaging in implementation, as well as the role of interactions among domestic actors in decisions to implement. By focusing on the strategic decision-making processes of domestic actors, this theory moves beyond explanations of compliance and/or effectiveness that focus on the state as a single entity choosing to engage in implementation of regional court decisions.

In what follows, I argue that regional courts (specifically, the European Court of Human Rights and the Inter-American Court of Human Rights) charge domestic actors, including the executive, judges, legislators, and members of civil society with implementation of regional court decisions. While the regional court typically does not identify these actors by name, the tasks ordered for the state to carry out typically imply the involvement of various actors. As the final authority on human rights policy within the state, the executive plays a primary role in regional court implementation and effectiveness. The executive faces various incentives *not* to engage in implementation, largely as a result of direct material costs, potential loss of decision-making power, and potential loss of strategic political relationships. However, the executive also faces both direct and indirect incentives to respect rights. Direct implementation incentives include those associated with international and domestic audience costs directly attributed to the executive. Indirect implementation incentives involve the executive's expectation of implementation by other domestic actors (judges, legislators, members of civil society). When the executive expects implementation of

regional court decisions by other domestic actors, the likelihood of executive implementation rises, and consequently, the executive chooses to carry-out and enforce the implementation efforts of domestic judges and legislators. However, domestic judges, legislators, and members of civil society face various incentives *not* to engage in implementation as well. Domestic actors' non-implementation incentives rise when public support for implementation remains relatively low, procedural difficulties plague implementation efforts, and/or significant information asymmetries exist among the voting public and domestic actors, resulting in low shaming costs associated with evasion of regional court decisions by domestic actors. Nonetheless, domestic institutions, including powerful domestic judiciaries, legislative electoral rules, freedom of expression guarantees, and National Human Rights Institutions (NHRIs) generate incentives for domestic judges, legislators, and members of civil society to engage in implementation. These institutions attenuate the influence of non-implementation incentives by increasing public support for regional court implementation, overcoming procedural difficulties, and increasing transparency (thereby raising the shaming costs of non-implementation). The existence and strength of these institutions influence executive expectation of implementation by domestic actors, making executive implementation and respect for rights associated with regional court decisions more likely. Further, regional court judges behave in expectation of the behavior of domestic actors and concentrate their resources and efforts where they expect implementation. In this chapter, I elaborate on the incentives and behavior of each of these actors and the role of domestic institutions in regional court effectiveness.

2 Defining and Explaining Regional Court Effectiveness

Before delving into the theoretical framework, I first define and explain regional court effectiveness, and how it differs from compliance, because, while similar, these concepts cannot be used interchangeably. Much of the existing empirical work on regional human rights courts focuses on explaining compliance rates with supranational courts, rather than court effectiveness. Member states charge regional human rights courts with the promotion of human rights generally. For example, the American Convention on Human Rights charges the Inter-American Commission with the task of promoting respect for and defense of human rights (Article 41). Compliance is often conceptualized as conformity between behavior and a legal standard (Raustalia 2000). Effectiveness, in contrast, represents a much broader concept and highlights the degree to which a legal rule or standard induces the desired change in behavior (Hawkins and Jacoby

2010). Effectiveness goes beyond conformity between a specific legal rule and behavior, and better captures the domestic reception of norms generated by regional courts (Keller and Sweet 2008). Studies examining the reception of international court decisions examine the way Court decisions translate into the domestic system, including the way regional court decisions inform the decisions of all branches of government and whether the court decision was part of widespread media coverage and academia Keller and Sweet (2008, 24-26). Taylor and Kapisweski (2010) call this concept judicial impact, which they consider broader than compliance, because it moves beyond simply the actions or policy changes resulting from court decisions (12). Cavallaro and Brewer (2008) maintain that the role of international courts should not only involve issuing judgments in individual legal rulings, but also involve a real-world substantive impact, through interactions with the society over which it has jurisdiction, that is, courts should promote respect for human rights in the areas in which they operate (777).

Effectiveness describes the overall success of a treaty regime or supranational legal regime and member states charge regional human rights courts with the advancement of human rights. Some scholars even claim that whether or not human rights court rulings are complied with more often, improvement in respect for human rights represents a good indication of an effective court, all else being equal (Posner and Yoo 2005, 29). Explaining the effectiveness of regional courts proves interesting because effectiveness focuses on more than simple fulfillment by member states of a series of legal obligations laid out in a document. Instead, effectiveness highlights the broad goals of the regime, to further human rights efforts and improve human rights practices on the domestic level. Cavallaro and Brewer (2008) claim, “supranational courts should view individual cases that are emblematic of persistent or structural human rights problems as opportunities to stimulate broader change on the relevant issues (770).” Absent a broad focus, human rights courts serve as a lottery in which only a small group of individuals whose cases reach the court actually obtain the benefit, while the larger majority of individuals suffering the same types of human rights violations do not. Of course, for a supranational human rights court to function effectively, the state often must comply first, particularly with respect to orders to engage in policy change (amend, repeal, or adopt legislation) (Vanberg 2001, Kapiszweski and Taylor 2012). Implementation of the policy-related provisions of court judgments likely improve respect for human rights broadly. However, while compliance and effectiveness likely correlate highly and generally trend together, compliance remains neither a necessary nor a sufficient condition for a court to be effective. States may choose noncompliance with parts of the regional court judgment (recent research documents the relatively higher likelihood of observing partial compliance with court

judgments), but states may also choose to comply with a part of the judgment requiring policy changes that are instrumental in improving respect for human rights (making full compliance not a *necessary* condition for effectiveness) (Hawkins and Jacoby 2010). On the other hand, states may comply with the reparations orders that are easier to fulfill (i.e. apologizing, paying costs and expenses, moral damages), and choose not to comply with reparations orders that are more difficult to fulfill (i.e. investigating, publicizing, and punishing violators or amending, repealing, or adopting domestic laws) (Hawkins and Jacoby 2010). In other words, compliance does not necessarily represent a *sufficient* condition for effectiveness either.

Further, while direct litigation remains important for the advancement of human rights, it may not address systemic problems. Direct litigation often translates violations of human rights into cases, placing less emphasis on the structural problems (Barzilai 2003). Also, viewed independently of others, states do not address common causes of cases and this further divides those who are oppressed (Berkovitch and Gordon 2008). Examining the effectiveness of the entire regional human rights court regime, rather than compliance with individual cases, provides additional evidence for the importance of the regional court. In what follows, I explain the effectiveness of regional human rights court decisions, in the form of improved human rights practices.

3 The Regional Court

Regional court judges constitute key actors for ensuring the effectiveness of regional court decisions because they represent the final arbiter in cases brought against the state. Primary among their interests, regional court judges aim to maintain or enhance the legitimacy of the regional court (Voeten 2012). Absent a perception of regional court legitimacy, the regional court wields little to no power in domestic implementation of its decisions.¹ A legitimate court “commands acceptance and support from the community so as to render force unnecessary” (Cox 1976). Regional court judges hold a strong interest in maximizing their power (autonomy and effectiveness) in order to enhance the legitimacy of the court.² Regional judges concerned about the legitimacy and support for the institution within which they serve, seek to ensure their decisions are implemented domestically. More specifically, they aim to secure compliance with their rulings, particularly changes in state behavior in the form of instituting systemic and structural reforms domestically. The

¹Current scholarship highlights the importance of legitimacy for domestic implementation of international law. See Abbott and Snidal (2000), Franck (1990), Chayes and Chayes (1993), Simmons (1998).

²Judicial power is discussed in more detail below.

regional court gains legitimacy as an international actor when it possesses power, or asserts influence over the decisions of domestic actors. A powerful court is both autonomous and effective (Staton and Moore 2011). First, to be autonomous, regional court judges must ensure freedom from external political influence. Regional courts face external political influence when state governments influence regional court decision-making. One primary means of state influence involves the careers of judges (Voeten 2012, 17). State governments appoint regional court judges. This leaves open the potential for highly political appointment processes in which regional court judges represent the interests of their home country Posner and Figueiredo (2005). Further, empirical evidence indicates that regional court justices may fear reappointment concerns for dissenting opinions (Voeten 2009). However, regional courts can achieve autonomy from state influence through institutional design. First, founding documents charge regional courts with the appointment of international civil servants. For example, seven independent judges compose the IACtHR. The American Convention charges regional judges with international civil service; in other words, despite the fact that regional judges include nationals of OAS member states, they must not represent their home state (Pasqualucci 2003, 10). This institutional design feature does not always ensure autonomy, but the founder's original goal included ensuring the independence of the regional court from the undue influence of member states. Even if institutional design features, such as the judicial appointment process, only minimally constrain the actions of domestic judges, empirical evidence indicates that international court justices behave independently of states when they operate in the midst of a vibrant civil society (i.e. NGOs, advocacy networks) (Alter and Helfer 2010, Cichowski 2010).

The second characteristic of a powerful judiciary, effectiveness, requires regional court judges to be capable of compelling or enticing states to comply with adverse decisions (Helfer and Slaughter 1997).³ To achieve effectiveness, the regional court must secure domestic compliance by convincing domestic governmental actors to implement regional court decisions or convincing nonstate actors (domestic or international) to pressure the state to come into compliance. To reiterate, regional court judges' primary interest involves maximizing their power (autonomy and effectiveness) in order to enhance the legitimacy of the court. By enhancing legitimacy, concerns associated with enforcement of regional court decisions decline. That is, concerns regarding state acceptance and support of regional court judgments wane as regional court judges expect compliance and support of their decisions. Of course, achieving and maintaining the legitimacy or power of the regional court proves considerably difficult as the regional court faces significant limitations

³See Kornhauser (2002) for more on judicial autonomy and Helfer and Slaughter (1997) for more on judicial effectiveness.

in its ability to compel states into compliance and states have incentives to evade regional court decisions. Nonetheless, achieving and maintaining legitimacy proves to be exceptionally vital for regional courts to influence member state's broader human rights policy.

More specifically, the regional court faces limitations associated with the lack of enforcement capability, the location of the court (on the regional, rather than state, level), and resource limitations. First, the regional court lacks an enforcement capability; the regional court possesses no effective mechanism to enforce its judgments (Pasqualucci 2003). Instead, it must rely primarily upon states to implement its decisions. The regional court can order the state to pay reparations, to adopt, repeal or amend domestic law, to identify and punish perpetrators of rights violations, or to undertake symbolic actions, such as apologizing to victims or their families, among numerous other orders. States often engage in partial compliance, undertaking some of these orders, while ignoring others (Pasqualucci 2003, Hawkins and Jacoby 2010). The regional court possesses little recourse when its orders are not fulfilled on the domestic level; it does not enjoy concrete enforcement mechanisms. Instead, the regional body relies on state concerns for international reputation or the fear of bad international publicity when states fail to comply with an adverse regional court judgment. However, in cases where the state may not draw sufficient international attention necessary to ensure compliance or the state possesses other interests that trump compliance concerns, regional courts hold few options to ensure compliance. In these cases, continued evasion of regional court implementation damages the court's legitimacy internationally (Voeten 2012).

Second, regional judges suffer from a classic information asymmetry problem; their location places them in a physical and social position relatively far removed from the political and social context of the countries where they make recommendations and issue judgments. Cavallaro and Brewer (2008) highlight this problem by arguing, "this potential remoteness [of regional court justices], combined with the possibility of challenges to their authority, underscores the need for such tribunals to monitor the concrete factors working both for and against human rights in respondent states and to evaluate whether and how they can respond to these factors while maintaining their fundamental identity as impartial judicial bodies" (770). Regional court judges often render judgments and decisions against states with unfamiliar domestic legal and institutional structures. Further, regional justices often remain unfamiliar with the public sentiment associated with the regional court and human rights. As a result of this limitation, scholars point to the necessity of building support from the public and other substate actors (Cavallaro and Brewer 2008, Cichowski 2004, Alter and Helfer 2010).

Finally, the regional court often suffers from significant resource limitations and high costs of implementation. Specifically, the Organization of American States (OAS) represents the primary funding mechanism for the IACtHR, yet significant underfunding plagues the IACtHR, often resulting in a shortage of staff attorneys. To add to the problem, the number of legal staff needed in the Inter-American system fails to keep pace with rising caseloads (Pasqualucci 2003).⁴ Further, implementation of court decisions, particularly the systemic and structural changes required for effectiveness, carries substantial costs. Consider the case of *Myrna-Mack Chang v. Guatemala*, where the regional court ordered Guatemala to prosecute and punish the perpetrators responsible for the human rights violation. The IACtHR determined that the state of Guatemala failed to fulfill this order in part because it could not find the perpetrators, a task well beyond the resources of the state. The IACtHR lacks the resources necessary to ensure implementation of its decisions, and consequently, the broader effectiveness of the court. In sum, the simultaneity of regional court judge interest in maintaining the legitimacy of the court coupled with the significant limitations placed on the institution and the actors within the institution, cause regional court judges to behave strategically. In other words, regional judges utilize their (limited) resources where court resources prove relatively more likely to improve respect for human rights. How do regional court judges determine where their decisions will likely be most effective in changing state behavior with respect to human rights?

Domestic actors translate and implement regional court decisions and judgments domestically. Below, I argue that the state executive plays a primary role in the implementation of regional court decisions. The executive possesses the final authority over state policy regarding respect for rights. The executive also possesses incentives to engage in non-implementation of regional court decisions, chief among them being the high costs of implementation. However, the executive also possesses direct and indirect incentives to implement regional court decisions, and enhance the legitimacy and effectiveness of the regional court. Direct incentives include international and domestic audience costs. Indirect incentives involve the influence of other domestic actors and institutions. Implementation of regional court orders, and thereafter the effectiveness of the Court, involve various state actors. Three key actors of particular import for the implementation of regional court decisions include: domestic judges, legislators, and members of civil society. Previous research focuses extensively on compliance with regional court orders by the state in general, explaining compliance as a result of the political will of a single actor, the state (Helfer and Slaughter 1997, Cavallaro

⁴Most judges have full-time positions in their countries of residence and must travel to fill their seat on the regional court when needed (Pasqualucci 2003). Further, voluntary funding often results in conditions on its use, including requiring that the money finance specific projects, and not the ordinary expenses of the court, such as salaries and operations (Pasqualucci 2003, 347).

and Brewer 2008, Hawkins and Jacoby 2010, Hillebrecht 2012). However, regional courts charge multiple actors with domestic implementation of their decisions. While regional legal bodies do not task specific state actors with implementation, instead addressing the state as the implementor of their decisions, regional courts imply or infer the involvement of particular actors based on the order given. Take the IACtHR for example, which produces a list of specific steps that must be taken in order for the state to come into compliance. For example, the regional court may order the state to re-open a case, a task undertaken by the domestic judiciary, or the regional court may order the state to issue a formal apology or establish training programs in human rights for state officials, a task to be performed by the executive. Sometimes domestic actors have conflicting interests, which may be detrimental to the effectiveness of the Court.

In expectation of implementation by other domestic actors, the likelihood of executive implementation and respect rights rises.⁵ As a result, in states where domestic actors, including domestic judges, legislators, and members of civil society possess incentives to implement regional court decisions, I expect the executive to also be more likely to implement regional court decisions (respect rights), and consequently, the legitimacy of the regional court grows. I argue that domestic judges, legislators, and members of civil society often have incentives not to implement regional court decisions in the presence of particular domestic institutions. Below, I explore the incentives for implementation by domestic actors.

4 Executive Incentives to Implement Regional Court Decisions (Respect Rights)

4.1 Executive Implementation

The executive represents an actor of primary importance for the implementation of regional court decisions. The executive plays an important role in regional court implementation at two stages. First, the executive influences the effectiveness of the regional court through direct compliance with the regional court decision. The regional court may issue orders directly tasking the executive with implementation (direct executive implementation). For example, the IACtHR often issues injunctive orders charging the executive with taking action.⁶ Injunctive orders directed at the executive include “tasks as varied as issuing a formal state apology, erecting a memorial, requiring hundreds of state officials to attend courses on human rights and setting up

⁵I elaborate on executive expectations more below.

⁶Regional court orders make specific requests of the state, but they do not indicate which state actors are charged with fulfilling those requests, that is, they do not name the actor charged with implementation. However, given the content of any specific injunctive order, one can determine which state actor the court charges with implementation (Huneus 2012).

a DNA database to help identify victims.” (Huneus 2012, 124). Hawkins and Jacoby (2010) find that states comply most often with these types of injunctive orders when issued by the IACtHR. For example, of the 31 compliance orders for which the court charged states with issuing an apology, states complied 40% of the time, but only complied with orders to amend or adopt new legislation (generally tasked to the legislature) at a rate of 7% and complied at a rate of 19% with orders to investigate, identify, publicize, and punish perpetrators (generally tasked to the judiciary). Hawkins and Jacoby (2010) argue that higher rates of observed compliance with the injunctive orders tasked to the executive represent a consequence of the relatively low costs of compliance; they argue “it is probably easiest for the state to pay monetary damages or apologize and walk away...although the monetary cost for such damages can be higher than some of the other actions required of states, monetary costs probably do not require as many political capital expenses, coordination efforts, or reputational expenses as some of the other types of reparations.” (59). However, Huneus (2012) argues that injunctive orders given to the executive do not always entail “easy” tasks or tasks less difficult to implement than those given to other actors. The executive (and public ministry) may be charged with the exhumation of disappeared victims or training state agents in human rights. As a result, one cannot assume executive tasks to be inherently easier to implement, nor to assume that they manifest in lower levels of state human rights violations than orders tasked to other state actors.

Second, the executive also plays an indirect role in regional court effectiveness at the final stage of implementation (indirect executive implementation). The executive represents the final policy authority related to respect for human rights and respects rights largely through monitoring and sanctioning executive branch actors and state agents. The executive includes the leader and the various bureaucrats and state agents under his control. The leader, or principal, determines and sets forth the policy on rights, or the tactics to be used by agents under the executive employ. These policies typically result from the level of threat generated by the opposition and institutional constraints (Mitchell 2004). The principal’s primary motivation, political survival, drives the decision of the executive to engage in implementation. Mitchell (2004) argues, “Power is the principal’s goal, repression is a tool to achieve and maintain power, ratcheting up and down to counter the opposition’s moves...” (33). Indirect executive implementation involves executive decisions to set and carry-out a policy of respect for rights.

4.2 Executive Non-Implementation Incentives

Executive interests in maintaining power generate incentives not to implement regional court decisions. Incentives not to implement regional court decisions (directly or indirectly) include direct material costs, loss of decision-making power, and strategic political considerations. First, regional court orders tasked to the executive branch often entail extensive material costs. Injunctive orders may require extensive delegation to a large number of bureaucrats, including various state agencies across the political system. For example, IACtHR orders sometimes charge states responsible for extrajudicial executions to exhume victim's bodies, return them to the family, and pay for burial expenses (Pasqualucci 2003). In the case of *Villagran Morales et al. v. Guatemala* or more commonly termed *The Street Children Case*, Guatemalan state agents dumped the bodies of tortured victims in an uninhabited area of Guatemala. The Court ordered the State to return the body of tortured victim, Henry Giovanni Conteraras, to his mother, Ana Maria Conteraras at no cost to the family (Pasqualucci 2003). In one of the IACtHR compliance monitoring documents (2003), the state attempted to demonstrate compliance by conducting a symbolic burial ceremony for Henry Giovanni Conteraras "alleging that it would be very expensive to find and transfer his remains, owing to the time that had elapsed since they were deposited to a common grave."⁷ The IACtHR can also order the state to provide training in human rights to its police and military personnel. Programs may include training to help state agents identify and utilize appropriate interrogation techniques and educate law enforcement and security personnel on human rights standards. These programs may be costly to implement, and often require the extant support of NGOs, NHRIs, community-based organizations, and other human rights experts to fully implement (Delaplace and Pollard 2006). Further, state agents under executive branch control often possess their own incentives and objectives (i.e. wealth, survival) with respect to implementation of the policy delegated by the principal (Ferejohn 1986). Significant information asymmetries often plague the executive branch, as principals delegate policy to agents, who are charged to carry out policy in the field. Private motivations of state agents may result in human rights violations that are not a matter of policy. These difficulties might be overcome by increased monitoring and auditing by the principal, however, these programs likely entail high costs. In sum, implementation of regional court decisions often entails extensive material costs, including bureaucratic problems for the principal in terms of instituting policy change and ensuring that state agents comply with these reforms.

⁷See *Villagran Morales et al. v. Guatemala (The Street Children Case)* (Compliance with Judgment, Nov. 27, 2003), para. 3.

Second, regional court implementation may reduce the decision-making power of the executive. By implementing regional court decisions, the principal also removes the ability to readily rely on some of the repressive policies and tactics from his arsenal and may have to change long-held repressive policies. Methods of repression vary across states, with some states engaging in particular types of rights violations more than others. The executive often engages in repression in response to domestic threats, particularly internal dissent (Gurr 1988, Davenport 1995, Moore 2000). The executive values these tools as a means to maintain power or remain in office, so much so, that even the presence of particular democratic institutions have little effect on repressive policies when faced with violent internal dissent (Davenport, Moore and Armstrong 2007, Conrad and Moore 2010). In complying with regional court decisions, the executive removes the availability of particular tactics to deal with internal dissent and remain in power. Further, leaders may choose repressive tactics based on their costliness. The financial expenses related to different types of rights violations make some tactics more cost effective.⁸ As a result, leaders may choose repressive tactics that provide the highest utility, that is, the least costly method that allows the executive to obtain his goals. However, when a regional court rules against a state for a rights violation, the regional court essentially engages in a shaming tactic, shining a spotlight on the human rights abuse. Conrad and DeMeritt (2011, 10) argue that “international attention for one form of human rights abuse increases leaders’ costs for continuing that type of abuse, but does not affect the costs for other forms of repression,” and as a result, the leader may have to reduce (or eliminate) the use of some types of repressive tactics (often those that are less costly) when shamed by the regional court. A regional court ruling against a state often provides a good indication of much more systematic human rights violations. By implementing a regional court decision, the executive claims state responsibility for the human rights violation and by bringing to light the violation found by the regional court, the executive may remove his ability to engage in this type of violation (or repressive policy employing this type of violation) in the future. For example, in the case of *Trujillo Oroza v. Bolivia*, the Court ordered Bolivia to pass legislation to make forced disappearance a crime. This legislation presents an obstacle (and increases the cost) for the executive to use forced disappearance as a repressive policy tool in the future.

Finally, the executive may face losses of strategic political relationships as a result of regional court implementation, including “alienating key political allies, removing policy options from their toolbox, and

⁸Conrad and DeMeritt (2011) argue that the costs associated with repressive tactics vary. It may be expensive to imprison individuals, which requires food, water, manpower to guard cells, etc. On the other hand, extrajudicial killing may be less expensive, requiring only an individual, gun, and bullet.

changing course on their human rights policies” (Hillebrecht 2012, 969).⁹ The executive may pay indirect costs associated with implementation carried out by his own office or by other domestic actors, including the legislature and the judiciary. Executive implementation potentially has the effect of implicating particular actors whom the executive (or other governmental actors) might prefer to protect or insulate from responsibility for human rights violations (Huneus 2012, Tan 2006). By accepting responsibility and engaging in regional court implementation, the executive might implicate agents under executive control. The degree of control the executive maintains over the executive bureaucracy varies across states (Mitchell 2004). The executive interest in non-implementation rises where the amount of control exercised by the executive over state agents will be questioned. That is, by implementing regional court orders, the executive accepts responsibility for the human rights violation and other domestic actors are likely to inquire as to whether the executive engaged in a policy of repression or whether there was a significant informational asymmetry present, which led those charged with carrying out executive policy (state agents) to engage in repression absent the knowledge or monitoring of the executive.¹⁰ For example, in Peru, President Alan Garcia voiced his lack of support for the IACtHR taking cases involving human rights violations committed during his first term. Specifically, in June 1986, state agents summarily executed 118 prisoners in El Fronton, a maximum security island prison off the coast of Lima by naval forces. The executions took place during the first term of President Alan Garcia, who held office again from 2006-2011. In 2000, the IACtHR found the state in violation of the ACHR. When legal charges were brought against Peruvian officials in 2007, those accused claimed that the statute of limitations expired in 2006. The IACtHR urged the Peruvian state to reopen the case in 2007, ruling that the statute of limitations did not apply, as the crimes committed represented crimes against humanity. The IACtHR also urged a reopening of the investigation into the “intellectual authors” of the crime - President Garcia and other state officials. However, in May 2007, the Attorney General’s Office threw the case out arguing insufficient evidence to prove any responsibility (Paez 2008). In the case, the executive engaged in evasion of the regional court order by pressuring the state (in this case the judiciary) to not reopen the case, primarily because the current administration would be held responsible for past human rights abuses.

⁹I noted the influence of removing policy options from the toolbox of the executive above.

¹⁰This is termed “moral hazard” by Mitchell (2004), or the unobserved actions of the agents.

4.3 Direct Executive Implementation Incentives

Given that implementation of regional court orders may be costly and the executive maintains incentives not to implement regional court decisions, how can the executive be incentivized or enticed to implement regional court decisions? The executive faces both direct and indirect incentives to engage in implementation of regional court decisions (both direct and indirect executive implementation). Direct incentives involve the primary motivation of the executive, political survival. The executive faces two direct incentives to implement regional court decisions, international pressure and domestic audience costs. First, in the international realm, the executive represents the primary actor charged with conducting foreign policy, and as such, appears before the regional court on matters involving compliance. The executive “has a direct interest in showing both to the world and the voters that the government, and the president in particular, respect human rights” (Huneus 2012, 129). The executive may pay a higher shaming cost than other domestic political actors as a result of the position of this institution on the world stage. As a result, the executive reaps reputational benefits by fulfilling court orders and engaging in behavioral changes associated with regional court orders (Hillebrecht 2012). When are these incentives most likely to be at play? That is, under what conditions does the executive likely pay the highest international shaming cost for the failure to implement regional court orders?

The executive often pays a high cost for international shaming when material or economic benefits are at stake. Lebovic and Voeten (2009) find UN Commission for Human Rights (UNCHR) condemnations of human rights violations produce a reduction in foreign aid, particularly from the World Bank. This argument can be extended to shaming by a regional human rights court. The executive might use domestic implementation of court decisions as a signal of the intent of the state to respect human rights in the future (Hillebrecht 2012). States receiving aid from international lending agencies, such as the World Bank, likely find the need to send a signal of their intent to respect human rights to be particularly important. As a result, I posit:

***Hypothesis 1:** As multilateral aid allocations increase, supranational court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

Second, the executive also responds to a domestic audience, which constitutes an audience arguably just as important as the audience in the international realm for the executive in decisions to implement regional

court decisions Hillebrecht (2012). The domestic constituents of the executive are likely to demand respect for human rights as they “find support for human rights to be critical for democracy...and identify national governments as the duty-bearers of human rights” (Hillebrecht 2012, 969). To reiterate, the executive’s primary motivation entails political survival and office retention (Bueno de Mesquita et al. 2005). As a result, an environment conducive to voters holding the executive accountable for human rights violations, including evasion of regional human rights court implementation, also represents an environment in which the executive signals a commitment to human rights to his or her domestic audience. Under what conditions do voters hold the executive accountable for human rights violations? Citizens can hold the executive accountable when they can credibly threaten removal from office; this occurs when the size of the winning coalition (W), relative to the selectorate (S) - and thus, the W/S ratio - are relatively large (Bueno de Mesquita et al. 2005).¹¹ In order to survive in office, as W/S increases, members of W benefit less from private patronage and the leader must provide substantial public goods in order to retain the support of his winning coalition. Hillebrecht (2012, 969) asserts the importance of domestic support and executive office retention in stating, “regular coverage of the Inter-American human rights tribunals in local newspapers and the engagement of domestic civil society groups with the Commission and Court suggest that audiences at home are paying attention to how their elected officials respond to the tribunal’s rulings.”¹² Because voters value respect for human rights as well as the legitimacy of the regional court, executive evasion of regional court decisions becomes costlier as the size of W/S increases. The executive can signal a commitment to respect human rights by engaging in regional court implementation directly and ensuring that injunctive orders tasked to the executive are fulfilled. The executive can also signal a commitment to human rights indirectly by engaging in respect for rights as a matter of policy. Given the direct executive incentives associated with domestic audience costs, I expect:

Hypothesis 2: As the size of W/S increases, supranational court decisions that find human rights violations are more likely to improve domestic respect for human rights.

¹¹Bueno de Mesquita et al. (2005) identify the selectorate as those with a government-granted voice in the selection of leaders (42) and the winning coalition as a subset of the selectorate providing the leadership with the political power over the remainder of the selectorate, as well as the rest of society (51).

¹²Hillebrecht (2012) further argues that when executives do not signal a commitment to human rights by responding to IACtHR decisions, voters have responded by expressing dissatisfaction in the voting booth.

4.4 Indirect Executive Implementation Incentives

However, the executive also faces various indirect incentives to implement regional court decisions. Indirect incentives likely influence indirect executive implementation, or the daily decisions of the executive to respect rights or engage in a rights-respecting policy. Indirect incentives stem from the decisions of other actors to implement regional court decisions. Various actors engage in regional court implementation. The executive carefully monitors the extent to which other governmental actors engage in implementation. For example, when the regional court orders the domestic legislature to adopt legislation related to a specific human rights violation and the legislature adopts the legislation, the executive must enforce the new legislation by facilitating the day-to-day implementation of the legislation. Or, when the regional court charges the domestic judiciary with reopening and re-trying accused individuals in a case, the executive branch remains in charge of enforcing similar cases of human rights violations down the line. For the regional court to be effective, the executive must follow-through on respect for rights. Cardenas (2007) claims, “which actor wins a domestic battle over state compliance may in the end have more to do with who has the greatest institutional power than who is committed most firmly to an international norm” (13). I argue that without the appropriate executive incentives, whether direct or indirect, the regional court is unlikely to be effective (improve respect for rights).

When the executive expects implementation of regional court decisions from other actors, the executive faces greater incentives to respect rights. Why do the actions of other governmental actors influence the executive’s decision to respect rights? As I argued previously, the executive plays a prominent role on the world stage, particularly when it comes to respecting rights. As a result, the executive faces potential damage to his reputation if domestic judges and/or legislators engage in implementation of regional court decisions, but the executive fails to follow-through. Further, the executive faces a potential loss of legitimacy domestically, and ultimately a loss of support from her domestic audience for the failure to carry-out respect for rights following implementation by other domestic actors, including judges and legislators.¹³ Indirect executive incentives hinge on the *expectation* of implementation by other domestic actors. In other words, executive expectation of the extent to which other domestic actors engage in implementation influences the direct incentives of the executive (international pressure and domestic audience costs) to engage in implementation. Consider, for example, a regional court case where the executive expects the domestic

¹³I elaborate further below on the potential loss of public support for domestic failure to implement regional court-ordered policy.

judiciary to engage in implementation by re-opening and investigating a case and also expects the legislature to implement a regional court decision through the passage of legislation ordered by the regional court. The executive must then decide whether to respect rights by enforcing the actions taken by the domestic judiciary and legislature to implement the regional court decision and carry-out a policy of respect for the rights found to be in violation by the regional court. In choosing not to implement the regional court decision, the executive faces international shaming costs for failing to follow-through on implementation, despite extensive implementation efforts by other domestic actors. Further, the executive faces potential domestic audience costs for the implementation failure in the face of implementation by other domestic actors because voters value respect for rights and the separation of powers. Following implementation by other domestic actors, the executive faces fewer international shaming costs and domestic audience costs in choosing to respect rights (indirect executive implementation). I argue that examining the incentives of other domestic actors (judges, legislators, and members of civil society) to engage in implementation proves necessary in determining whether the executive (the final arbiter on human rights policy) will engage in implementation and respect rights. What incentives, then, do domestic actors face to implement regional court decisions?

5 Domestic Actor Interests

Executive expectation of regional court implementation largely depends on implementation by three key domestic actors: domestic judges, legislators, and members of civil society. These actors face particular incentives to implement regional court decisions. As stated earlier, although the regional court charges states to come into compliance with orders, regional courts indirectly charge multiple actors with domestic implementation based on the specific tasks assigned.

First, domestic judges influence the implementation of regional court decisions. In the European context, respondent states must remedy and make reparations when found in violation by the regional court. National officials play a crucial role in monitoring and enforcing ECtHR judgments. Given that the ECtHR charges the state with conceiving and executing steps to come into compliance with the court (enforcing the ECtHR finding of a violation), the national judiciary plays an important role in the effectiveness of the ECtHR.¹⁴ National courts often represent the final step of national remedial systems and provide the link

¹⁴Some scholars go so far as to argue that national judiciaries should be charged not only with conceiving steps to come into compliance, but also with determining the content of reparations and just satisfaction to be paid by the state because national authorities are more familiar with the context in which the judgment will be carried out Mahoney (2007).

between the ECtHR and the domestic legal system. In fact, “of all national officials, judges are the most systematically exposed to the direct supervision of the ECtHR” (Keller and Sweet 2008, 687). Implementation of regional court decisions comes in many forms. Often, cases may be reopened domestically. Other times, following the finding of a violation, domestic courts “harmonize the substance of their jurisprudence to relevant judgements of the ECtHR”(Keller and Sweet 2008, 688). Domestic courts often look to regional court case law, even when violations are found against countries other than their own. For example, the Federal Supreme Court in Switzerland commonly uses the ECHR and ECtHR case law in making decisions and “makes no differentiation whether a judgement of the Court concerns Switzerland or any other country” (Keller and Sweet 2008, 367).

The domestic judiciary plays a crucial role in the implementation of litigation in the Inter-American system as well. In fact, Huneeus (2012) finds that “of the 114 contentious cases in which the Inter-American Court issued remedies from its first case in 1979 to December 2009, it issued equitable orders that require action by a national judiciary in 78” (114). The IACtHR charges the state with remedying the consequences of a violation, which often involves punishing those responsible for the violation, in order to combat impunity by the state and ensure that the state does not engage in these types of human rights violations in the future.¹⁵ The IACtHR defers much less to the state in remedying human rights violations than does the ECtHR. The IACtHR provides a checklist of remedies that must be fulfilled for the state to come into compliance with the regional court decision.¹⁶ While the IACtHR does not specifically charge the domestic judiciary (by name) with implementation, regional court orders typically include in the compliance order, demands that some sort of prosecutorial or judicial action take place domestically (investigations, hearings, trials) (Hawkins and Jacoby 2010, Huneeus 2012). The regional court may order the domestic judiciary to investigate, identify, publicize, and punish human rights violators or hold a new trial if a victim’s right to due process has been violated (Hawkins and Jacoby 2010, Pasqualucci 2003). The regional court may also order the domestic court to repeal a domestic judgment or re-open a specific case. For example, in the *Hilaire, Constantine, and Benjamin et.al Case*, the Inter-American Court ordered Trinidad and Tobago to re-try 31 petitioners who were on death row (Pasqualucci 2003, 252). In any case, the domestic judiciary plays a crucial role in the reception of regional court judgments into the national legal order, and therefore, influences the overall effectiveness of the regional court.

¹⁵The IACtHR defines impunity as the “total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected in the American Convention.”(Pasqualucci 2003, 244).

¹⁶See Hawkins and Jacoby (2010) for a more detailed description and analysis of remedial orders issued by the IACtHR.

Second, domestic legislators also represent important actors for the implementation of regional court decisions. As noted above, the regional court may order the state to amend, adopt, or repeal domestic laws found incompatible with international obligations under the convention or treaty associated with the court. These orders are particularly important for the effectiveness of the regional court because they likely stimulate lasting structural changes domestically. Reforms in legislation typically fall to the domestic legislature to carry out.¹⁷ Take, for example, the *Trujillo Oroza Case*, in which the IACtHR ordered Bolivia to pass legislation to make forced disappearances a crime (Pasqualucci 2003, 246). Further, the IACmHR declared states' amnesty laws to be incompatible with the American Convention in several cases.¹⁸

Third, civil society represents the final key actor for the implementation of regional court decisions. Cavallaro and Brewer (2008) claim that the regional court should act as an advocacy tool for those working to stimulate broader change on human rights issues on the ground. Human rights litigation represents not only a tool to bring justice for those involved in a specific violation, but an important tool to be used for the general interest of society as a whole, a tool to publicize a cause (Vose 1958). Simmons (2009) argues that "Litigation is a *political* strategy, with the power to inspire rule revision and further to mobilize political movements (132)." Supranational litigation can serve as a catalyst for social mobilization by defining rights in ways that strengthen the movement (Keck and Sikkink 1998, Cichowski 2007, Hill 2012). Human rights litigation can influence respect for human rights by changing the conception, argument, and discussions being had by social movements (Hunt 1990). Regional human rights litigation grounds the demands of the pro-rights movement in the legitimacy of law. It also raises awareness and empowers domestic movements by legally establishing the rights governments have pledged to respect and publicly shaming governments for violations.

Civil society groups use the regional court as an advocacy tool by influencing the cases brought to the regional court as well as disseminating information and increasing awareness of regional court decisions to encourage public pressure on the state to change behavior. With respect to influencing cases brought to the regional court, civil society groups often work toward placing cases on the regional court docket that are likely to be most influential on the ground. Take, for example, the influential role of civil society in Poland on the ECtHR's caseload. The Warsaw Helsinki Foundation of Human Rights as well as human rights lawyers

¹⁷The case of *Almonacid v. Chile* provides an example of the disagreement of the assignment of this task. In this case, the IACtHR ruled the state's Amnesty Decree must not interfere with the prosecution. The president of the Supreme Court of Chile claimed that the courts do not intervene on matters related to the laws and the Supreme Court did not have the power to repeal the Amnesty Law, which was the responsibility of the legislature (Huneus 2010).

¹⁸See *Barrios Altos v. Peru* for an example of the IACmHR declaration related to amnesty.

established a Strategic Litigation Programme in 2004, which strives towards obtaining breakthrough verdicts that will result in the greatest potential for a real contribution to human rights protection in Poland (Keller and Sweet 2008, 593). A vibrant civil society also fosters relationships with the regional court, enhancing the influence of regional court decisions by assisting in the diffusion of information throughout the region. Huneeus (2012) highlights important activities of the IACtHR in establishing connections with local legal communities; specifically, the court holds meetings twice a year in different member countries and meets with local judges, bar associations, legal academics and other actors, as well as promotes joint activities (investigation, education, etc.) with other actors (150). In the ECtHR context, the Austrian Human Rights Institute publishes a newsletter on human rights offering information on decisions of the ECtHR, translates case conclusions into German, publishes information on developments in case law and legislation related to case law, and offers legal advice to individuals and courts (Keller and Sweet 2008, 379). Increased awareness also enhances regional court effectiveness by increasing citizen awareness of their rights and access to a regional legal forum available for rights-claims in future cases. As individuals become aware of their rights through regional litigation, they engage in more litigation of their own, which further enhances awareness and the likelihood of domestic policy change. Cichowski (2007) claims, "As judicial institutions with a wider scope of review powers increase in accessibility to private parties who possess the resources and expertise to litigate, we would expect increased opportunities for participation through law enforcement, rights claiming, and expanded protection" (56). Expanded participation in the regional human rights system likely influences state decisions to change behavior related to human rights following a regional court ruling. The finding of a violation by the regional court provides pro-rights mobilization efforts with additional leverage to pressure governments into changing policy associated with their cause.

The civil rights movement provides an example of litigation as a tool for pro-rights advocates. For example, Glennon (1991) argues that litigation determined the success of the Montgomery Bus Boycott, by grounding the movement in legal doctrine and providing civil rights advocates with new hope for their cause (81). As an example of a regional court case acting as an advocacy tool, take for example, *Ximenes Lopes v. Brazil*, a case in the IACtHR involving a killing in a psychiatric clinic. The case generated a domestic interest, particularly from a state human rights commission, human rights organizations, psychiatric professionals, and the media. Efforts by domestic interest groups fostered "an ongoing shift from an internment model of mental health care to a system focused on outpatient care and increasing respect for patient's rights" (Cavallaro and Brewer 2008, 790). This shift occurred alongside the case in the IACtHR and the

regional court finding of a violation stimulated debate about public healthcare in Brazil, providing increased leverage for domestic interests to pressure the government to engage in policy change.¹⁹

5.1 Domestic Interests (Not) to Implement Regional Court Decisions

As I argue above, the executive often engages in domestic implementation of regional court decisions as a result of indirect implementation incentives or, in expectation of the extent of implementation by other domestic actors. However, domestic actors face various incentives to evade implementation of regional court decisions, particularly where implementation entails high costs. The three primary incentives to evade implementation include limited public support, procedural difficulties, and information asymmetries associated with evasion.

First, limited public support for the institutions in which domestic actors work limits the effectiveness of these domestic institutions and dampens the will of domestic actors to engage in implementation. For example, public support for the domestic court often wanes in states with weak domestic judiciaries. As a result, domestic judges may not be able to effectively implement regional court decisions, either as a result of the lack of technical capacity and resources or because of a lack of power to hold legislators accountable for evasion of domestic court decisions. Vanberg (2005) refers to public support for the institution as “diffuse support” or support for the court distinct from the policy output of the court and based on the idea that courts represent institutions inherently different from the other highly political institutions because they are “supposed to act as impartial, apolitical referees that are required to advance legal arguments in defense of their decisions” (52).²⁰ However, in cases where other political actors influence domestic judges or the court as a whole behaves in an overtly political manner in its decision-making, relatively low public support plagues the institution, meaning that the domestic court is not likely to be very effective in compelling domestic actors to implement its decisions.

Further, where the domestic judiciary is relatively weak, legislators may face fewer incentives to engage in regional court implementation. Domestic and international audiences generally value respect for

¹⁹Keller and Sweet (2008) argue that civil society, particularly human rights NGOs, played a role in the reception of ECtHR case law, but their case studies show that they have not “exercised decisive influence on important outcomes” (689). However, Cichowski (2012) argues that these interest and advocacy groups directly influence ECtHR decisions and while the total number of cases involving these groups in the European context is relatively small, the cases with which they are involved typically represent highly significant cases and these groups are often strategic about the cases with which they will become involved. They are strategic in the sense that they choose cases likely to bring the greatest domestic reforms and compliance.

²⁰This differs from what Vanberg (2005) refers to as “specific support” which is based on approval of the policy outputs generated by the Court. Many argue that these two concepts overlap because specific support may be an important determinant of individual’s level of diffuse support for the court.

rights. Further, citizens value judicial independence and respect for regional or domestic judicial decisions (Vanberg 2005, Carrubba 2005, Staton 2006, Carrubba 2009).²¹ A number of reasons have been offered as to why the public is likely to back the court. Weingast (1997) argues that the public will support the rule of law, and therefore the court, in an effort to prevent exploitation by the state. Others argue that the public is likely to back the court when the policy preferences of the public align closer to the court than to the elected government Stephenson (2004). Carrubba (2009) argues that the public comes to recognize the importance of checks and balances in government, given that the public's preferences are not necessarily correlated perfectly with the government. The public uses the court as a cue for bad government behavior, and a tool to increase its ability to monitor and sanction bad behavior. In states where the domestic judiciary is weak, citizens are less likely to rely on the domestic judiciary as a cue for bad government behavior. Further, when the domestic judiciary enjoys limited public support (citizen valuation of the domestic judiciary is relatively low) and legislators fail to implement judicial decisions, *legislators* face limited loss of public support. Where it is in the interest of legislators to evade implementation of a regional court judgment and they can do so successfully with little electoral cost, legislators will choose to avoid policy change. Also, members of civil society are less likely to pressure elected officials to implement regional court decisions where there is a low probability of successful mobilization (Simmons 2009). In countries where the domestic judiciary enjoys little public support and/or legislators easily evade implementation, the likelihood of successful mobilization remains low and members of civil society likely concentrate their efforts elsewhere.

While limited public support negatively influences the incentives of domestic judges, legislators, and members of civil society to engage in implementation of regional court decisions, limited public support for these institutions also results in severe resource constraints. The state often suffers from resource limitations in implementing regional court judgments and in the face of large resource limitations, the voting public provides little public support for such institutions. Regional orders to identify, investigate, and punish perpetrators represent costly reparations, particularly in the context of large-scale human rights violations. The IACtHR often hears cases involving groups of victims and egregious human rights violations (Baluarte and DeVos 2010, Huneeus 2012). Domestic judiciaries suffering from low capacity or the lack of resources do not necessarily result in completely incompetent courts, but these courts must be selective in deciding how to expend resources. Investigation of cases often involve large use of state resources. Compliance

²¹While most scholars highlight citizen support for the domestic judiciary, the reasons offered for this support can be extended to the regional court as well.

orders tasked to the domestic judiciary often encompass particularly high costs, as identifying perpetrators of human rights abuses and conducting investigations require the financial support of the state. Consider the case of *Jeremias Osorio Rivera y Otros v Peru*, which involved the forced disappearance of Osorio Rivera by the Peruvian Army in 1991. The IACtHR received the case in June of 2012 because the Inter-American Commission found the State to be noncompliant with its recommendations. The IACmHR originally issued recommendations to the state to conduct a full investigation into the whereabouts of the victim, and if not found alive, should return his remains to his family. The IACmHR also ordered the state to discharge criminal proceedings with respect to the case and to “fully clear up the incident, identify all the guilty, and impose the corresponding penalties; to provide adequate redress for the human rights violations established in the report...”(Pasqualucci 2003). The rights violations in this case occurred more than twenty years after the case was given to the IACtHR. As a result, the IACtHR order to find the disappeared and all of those responsible presents a significant task for the domestic court, particularly if the state does not provide adequate financing for investigations by the domestic court.

Second, procedural difficulties make implementation by domestic actors substantially costly. Formal rules governing the interaction between supranational and domestic courts do not exist and the domestic reception of regional court judgments is conditional on “‘judges’ expertise, access to the Court’s case law, trust in the court to perform its tasks in good faith, and self-understanding as regulators of Government action and rights protectors” (Keller and Sweet 2008, 706).²² Powerful domestic courts (those that are autonomous and effective) are better suited to implement regional court decisions. Because domestic judges interact with non-judicial actors, including those in other branches of government, who may have different incentives than those of the regional court, implementation of regional court decisions often represents an inherently difficult task (Ginsburg 2003, Finkel 2008, Pozas-Loyo and Rios-Figueroa 2010). Domestic prosecutions might “implicate actors that those in power prefer to protect, including those serving political office, members of the military, and others connected to powerful social networks that assure impunity” (Huneeus 2012, 125). The executive or other state agents found to be the party responsible for human rights violations likely have incentives to ignore regional court decisions for fear of loss of legitimacy or loss of public support. In states where domestic judges are not highly independent from other branches of government, judge’s incentives to evade or ignore implementation of regional court decisions increase. In countries where courts

²²However, the lack of clearly defined procedures for implementation may also enhance the ability of the domestic judiciary to implement regional orders because it may allow domestic judges more discretion in the act of implementation.

are highly politicized, or the court has little independence and autonomy from other political actors, judges often face conflicting incentives in implementing regional court decisions. Consider the Venezuelan high courts, which represent courts highly dependent on executive influence. The executive often purges judges from these courts when they render decisions inconsistent with the government's policies. In the 2008 case of *Apitz v. Venezuela*, the IACtHR ruled that the removal of some judges by the Chavez regime represented a violation of due process guarantees. The Venezuelan Supreme Court ruled that the IACtHR ruling contradicted Venezuelan constitutional law and called on the executive to withdraw from the ACHR (Huneeus 2010). The lack of autonomy by domestic judges plays a crucial role in regional court implementation. Given that no formal rules governing domestic reception of IACtHR rulings exist, domestic courts may face conflicting incentives, often rooted in domestic politics, related to implementing these decisions.

The domestic judiciary suffers from various other procedural difficulties in its ability to implement a regional court decision domestically. The domestic judiciary often faces a loss of legitimacy in re-opening cases domestically. Regional courts require all domestic remedies be exhausted before the case can even reach the regional court, which means that the regional court finding of a violation likely contradicts a previous domestic ruling. For an Inter-American judicial body to even take a case, it confirms the national judicial ruling to be wrong and "high [national] courts may object to having their status as final instance usurped" (Huneeus 2012). The domestic judiciary not only faces a potential loss of legitimacy, but also faces obstacles associated with domestic criminal procedure, including statutes of limitations, double jeopardy, and amnesties (Huneeus 2012, Kristicevic 2007). Most states do not specify through domestic legislation how regional court decisions will be implemented domestically, let alone how to handle national law that conflicts with regional court orders.²³ For example, the IACtHR ordered Peru in *Castill Paez v. Peru* to investigate and punish perpetrators of human rights violations despite the existence of amnesty laws. This decision led to the repeal of amnesty laws in some states in the region (Baluarte and DeVos 2010). As another example, consider *Bueno Alvez v. Argentina*, in which federal police illegally detained and tortured Bueno Alvez. The domestic criminal investigation dragged on for an extended period of time and eventually the statute of limitations ran out on the case. The case reached the IACtHR and the regional court ordered the state to reopen the investigation and the case. The Argentine Supreme Court subsequently ruled that the case did not constitute a crime against humanity and because the statute of limitations had run out, the case had to

²³Peru and Colombia are important exceptions, as both states have passed legislation which establishes the specific steps that should be taken to implement certain supranational court orders (Baluarte and DeVos 2010). See Kristicevic (2009) for further discussion of how legislatures might rewrite laws so that domestic criminal procedures do not impede compliance.

be closed. The Argentine Supreme Court established itself as the final arbiter in interpreting the American Declaration and constitutional law (Naddeo 2007, Levit 1999). These procedural difficulties, as well as the potential harm to domestic court legitimacy provide incentives for domestic judges to ignore regional court decisions that are in opposition to their previous rulings. Other procedural difficulties involve the clarity of regional court orders. Chayes and Chayes (1993) highlight the important role of managerial problems, including ambiguity in the language of the treaty, in ensuring compliance. This argument is easily extended to regional court decisions as “the clarity of IACtHR remedies influences reactions of state governments to these remedies” (Staton and Romero 2012).

Procedural difficulties also plague the ability of the legislature to carry-out regional court implementation, particularly where the regional court order to adopt, repeal, or amend domestic law entails substantial costs, or where procedures render reform unlikely through the normal political channels as a result of deadlock, operational or budgetary concerns in changing legislation, among other costs. Implementation of regional court orders by the domestic legislature involve inherently difficult tasks. The empirical evidence indicates that compliance amounts to only 7% when the IACtHR orders the state to amend, repeal or adopt domestic laws or judgments (Hawkins and Jacoby 2010). Implementation by the domestic legislature involves substantial costs for a number of reasons, primary among them being procedural difficulties. The difficulty of implementation stems from the “nature of the actor,” rather than the action involved in implementation (Huneus 2010, 125). More specifically, “it is not difficult to re-write the legislation pursuant to the Inter-American Court’s demands, or to sit in a parliament and vote for it...the challenge is getting different actors from competing parties to agree to do so” (Huneus 2010, 125). While executive branch institutional design grants the executive the authority to carry-out orders through top-down action, democratic procedures characterize legislative institutional design, including deliberation and voting. Democratic procedures make policy change much more difficult because of the number of actors involved in the process.

With respect to legislative deadlock, consider, for example, the case of *Almonacid v. Chile* in which Arellano Almonacid fell victim to forced disappearance during the Pinochet regime. The state investigation failed to determine the whereabouts of the victim. However, the Chilean Supreme Court affirmed a ruling that granted amnesty to the perpetrators of the offense in 1998. In 2005, the IACtHR found the Chilean Amnesty Decree in violation of the ACHR and ordered the state of Chile to repeal the 1978 Amnesty Decree among other orders. The state of Chile remains non-compliant with the order to rescind the Amnesty Decree to date. In 2007, the legislature received a bill ordering the domestic courts to refrain from applying the

Amnesty Decree. However, the legislation failed to advance in the legislature, primarily because right-wing parties continue to block congressional reform efforts to overturn the amnesty decree and even with the election of a strong center-left coalition of Christian democrats and Socialists since Pinochet stepped down in 1990, legislators remain reluctant to back the legislation (Huneus 2010, Rohter 2006). In sum, evasion by legislators remains likely as a result of the costliness of procedural difficulties.

Finally, information asymmetries often plague the ability of voters to effectively monitor implementation of regional court decisions. Domestic judges and legislators possess a particular informational advantage over voters regarding responsibility for evasion of regional court decisions. These actors typically remain further insulated from international audiences than the executive and procedures within these institutions often limit the ability of voters to monitor the extent of regional court implementation. As a result, domestic judges and legislators face relatively lower shaming costs than other actors, which may result in a lower incentive to implement regional court decisions. First, the state typically does not charge domestic judges with conducting the state's foreign policy and therefore, they do not appear before the Inter-American Court when faced with accusations of non-implementation or the failure to comply with regional court orders (Huneus 2012). This places the judiciary in a unique position, where domestic judges may not be held accountable for the failure to comply. As a result, while the state, particularly the executive, may suffer a high shaming cost internationally, the domestic judiciary may be somewhat insulated from this cost, given the domestic court's minimal visibility on the international stage. Take the resistance from national courts in the nearly 115 cases involving human rights violations in Chechnya, Russia as an example. The state paid monetary damages in almost all cases (an order often undertaken by the executive), but court orders to conduct public investigations and prosecutions (regional court orders involving the domestic judiciary) remain pending (Baluarte and DeVos 2010, 16). Further, compliance in the IACtHR is telling, as "in all of the cases in which the Inter-American Court has issued an order to investigate or punish, only one has been fully implemented (Baluarte and DeVos 2010, 20).²⁴

Information asymmetries not only provide insulation from international and domestic audiences, but they can also reduce transparency, making it difficult for voters to determine the party responsible for re-

²⁴Evidence that incentives of domestic court judges to evade regional court decisions drive non-implementation, particularly as a result of the insulation from the international community, can be observed in the recent confrontation by the Presidential Commission for Coordinating Executive Policy on Human Rights (the Guatemalan state agency that appears before the IACtHR) and the IACtHR. The Guatemalan Commission argued that IACtHR orders could not be fully implemented because the state institutions charged with implementation were not supporting the IACtHR orders. The IACtHR ordered Guatemala to identify the state agents that would be charged with implementing specific aspects of the IACtHR's orders.

gional court evasion. For example, veto players are “individual or collective decisionmakers whose agreement is required for the change of the status quo” (Tsebelis 2000). Larger numbers of legislative veto players may make it much more difficult for the public to determine who is responsible for potential legislative evasion of regional court decisions, and as a result, who voters should hold responsible and punish at the ballot box. Legislators may blame one another for the failure to implement regional court decisions and change policy. In the presence of a larger number of veto players, voters face the potential for costly monitoring and may not seek out relevant political facts (Downs 1957, Lupia and McCubbins 1998). Further, as Cox (1987) argues, parties converge to the median voter in electoral competition for a single seat, regardless of the electoral system. This is potentially problematic for voters in holding their representatives accountable for evasion of court decisions because they may not be able to determine which legislators to hold accountable. In some cases, continued legislative evasion of court decisions may lead to government dissolution or government instability, but the prevalence of regional court judgments remains low in comparison to domestic court judgments, and so voters may attempt to identify and monitor those specifically responsible for failure to implement regional court decisions rather than push for dissolution of parliament or regime change. Relatively larger numbers of veto players render identification and monitoring increasingly difficult and the ability of voters to identify and hold specific government actors accountable declines. Information asymmetries between various domestic political actors and voters reduce the shaming costs associated with evasion because the voting public suffers from an inability to identify those responsible for evasion.

5.2 Generating Incentives for Domestic Implementation

Domestic political institutions create incentives for domestic actors to engage in regional court implementation because they constrain the ability of domestic actors to act on their interests to engage in non-implementation. Domestic institutions generate incentives by attenuating the influence of the non-implementation incentives discussed earlier. In other words, institutions create incentives for domestic actors to implement regional court decisions by limiting the influence of non-implementation incentives in the decision-making process of the actors charged with domestic implementation. Domestic institutions generate incentives to implement regional court decisions in three ways. First, they increase the role of public support in domestic actors’ utility functions. Particular domestic institutions enhance accountability as domestic actors face a potential loss of power for failing to respond to the implementation demands of the voting public. Further, the presence and strength of particular institutions lends legitimacy to actions taken by actors within

the institution. As a result, domestic institutions are likely to cultivate widespread support from the voting public, which further enhances implementation efforts. Second, institutions can overcome procedural difficulties through design. Domestic institutions may be designed to bypass particular procedural difficulties such as conflicting domestic laws or legislative deadlock. Finally, specific domestic institutions increase transparency not only in the decision-making process, but also in the specific actions taken by domestic actors to engage in implementation. Transparency counters the influence of information asymmetries and raises the shaming costs for domestic actors by providing additional monitoring and auditing of domestic actions. Below I examine the role of domestic judicial power, legislative electoral rules, freedom of expression, and National Human Rights Institutions in constraining the ability of domestic actors to act on their interests to evade regional court decisions. Specifically, I examine the role these institutions play in generating incentives to implement regional court decisions by enhancing the role of the voting public, overcoming procedural difficulties, and increasing transparency associated with the action of domestic actors.

5.2.1 Domestic Judicial Power

First, domestic judicial power represents an institution capable of constraining the ability of domestic judges to evade implementation of regional court decisions. Powerful domestic judiciaries make it difficult for domestic judges to ignore regional court orders to carry-out tasks such as reopening and investigating cases. A powerful domestic court generates incentives for implementation by enhancing the role of public support for the domestic judiciary. A powerful judiciary is defined as an autonomous and effective court. Domestic judges possess greater incentive and capability to implement regional court decisions when the domestic judiciary possesses some degree of autonomy. The likelihood of enforcement of supranational litigation by domestic courts increases when domestic courts are free from external political influence, particularly the influence of state agents responsible for violations.²⁵ Freedom from external political influence enhances public support for the institution as the court functions more effectively as a check on the behavior of other governmental actors.

However, in addition to freedom from external political influence, a powerful judiciary should also be effective, that is, have the ability to compel domestic actors to implement and comply with its decisions.²⁶

²⁵Simmons (2000) further highlights the importance of judicial independence in enforcing human rights, noting “For courts to play an important enforcement role, they must be at least somewhat independent from political control. The government or one of its agencies, representatives or allies is likely to be the defendant in rights cases, and unless local courts have the necessary insulation from politics, they are unlikely to agree to hear and even less likely to rule against their political benefactors (22).”

²⁶See (Staton and Moore 2011) for further discussion of the concept of judicial power as encompassing autonomy and effectiveness.

The domestic judiciary does not independently implement its own decisions, but instead, must be able to induce a response from national authorities, most notably the legislature, to implement its decisions (Rodriguez-Garavito 2011, Gauri and Brinks 2008, Vanberg 2005, Carrubba 2005). Once the domestic court hands down a decision, other domestic actors, including the legislature, executive, and various state agents, assume the responsibility of implementing the decision. However, domestic courts encounter a potential implementation problem, in that they possess the formal power to rule against other institutions, but the substantive effect of these decisions often depends on the way other political actors implement the decision (Vanberg 2005). As Vanberg (2005) argues, “implementation usually requires the cooperation of many other actors - on many occasions, even the cooperation of the very institutions whose acts the court has just struck down (6).” Effectiveness also enhances public support for the domestic court, which increases the ability of the court to hold other domestic actors accountable for implementation of domestic court decisions. The ability of the domestic court to represent the final arbiter in making decisions demonstrates the independence and effectiveness, or power, of the court. The role of final arbiter plays a key role in effectiveness where the domestic judiciary may be enforcing decisions that are unpopular with other domestic institutions. In addition to being free from external political influence, the national judiciary must be able to induce national authorities to implement decisions, it must be independent and effective, and therefore, possess some degree of power domestically.

Further, states likely allocate relatively more state resources for the purpose of domestic implementation, to powerful domestic judiciaries, or domestic judiciaries with extensive public support. Public backing for the national court makes it more difficult for the state to withhold the resources necessary for implementation of regional court decisions. Citizens value judicial independence as an effective check on state power, and as such, citizens likely pressure the state to provide the appropriate resources and support necessary for the domestic court to carry out regional court orders, particularly those involving fact-finding and investigating. A powerful domestic judiciary, or an autonomous and effective judiciary, possesses these resources as a result of public pressure to maintain the legitimacy of the domestic court. The public likely provides less institutional support for a domestic court that is not independent, making it more difficult for the court to obtain the resources that would be required to implement regional court decisions.

Also, domestic judicial power provides incentives for domestic judges to implement regional court decisions even in the presence of procedural difficulties, such as conflicting laws (amnesty, statute of limitations, etc.). Scholars argue that domestic judicial independence has conflicting effects in the face of

some procedural difficulties. On the one hand, domestic judicial independence potentially allows judges to evade implementation in the face of regional court findings that counter a prior ruling or in the face of regional court orders that conflict significantly with domestic legislation. An *independent* domestic judiciary may be in a better position to reject regional court orders when they conflict with the incentives of national judges. Conflicting incentives often result when a regional court decision overturns the prior ruling of the domestic court (Huneus 2012). On the other hand, an *independent* judiciary possesses the ability to bypass or circumvent procedural difficulties where they exist, given the sufficient isolation from other government actors. Further, while domestic judicial independence may have conflicting effects, judicial power also encompasses effectiveness. In order to overcome procedural difficulties, an effective domestic court is necessary, particularly in the case of legislation that conflicts with regional court implementation. The domestic court must be able to compel other domestic actors to enact, repeal, or amend legislation in order to implement the regional court ruling.

Finally, domestic judicial power increases transparency and raises the shaming costs associated with evasion of regional court decisions. Domestic and international actors can more easily observe evasion by an autonomous and effective domestic judiciary. In countries where other political actors have sufficient influence over the domestic judiciary, it remains difficult for citizens and international audiences to determine which actor(s) is responsible for evasion. However, where the domestic judiciary is sufficiently insulated from other political actors, evasion by the domestic judiciary is much more easily observed by international audiences. The ability of citizens and international audiences to observe evasion increases the costs of shaming for domestic judges because public support for the domestic court declines in the face of evasion, which can damage the legitimacy of the domestic court.

Where a domestic judiciary functions with autonomy and effectiveness, the institution creates incentives for domestic judges to implement regional court decisions, despite the incentives they may possess to evade decisions of the regional court. Further, the executive chooses to respect rights in expectation of implementation by the domestic judiciary. Finally, regional court judges, in expectation of domestic implementation, find states with powerful domestic judiciaries to be in violation relatively more often. As a result,

I posit:

***Hypothesis 3:** As domestic judicial power rises, supranational court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

5.2.2 Legislative Electoral Rules

Domestic legislative electoral rules also play an important role in generating public support for implementation, overcoming procedural difficulties, and increasing transparency in the decision-making process (raising shaming costs for lack of implementation). Legislators' primary motivation concerns political survival and their primary goal involves retaining office. As a result, legislators rely extensively on public support in order to retain office. Legislative accountability for policy failure provides incentives to engage in policy change, rather than risk losing office (Plumper and Neumayer 2009, Bueno de Mesquita et al. 2003). Particular political arrangements create incentives for legislators to institute policy change. Legislative elections give voters an opportunity to hold legislators accountable, particularly when legislators take action on policies valued by voters. As stated earlier, voters value respect for human rights and the legitimacy of the regional court as an effective check on state power. As a result, voters hold legislators accountable for evading implementation of regional court decisions. States providing citizens the opportunity to vote legislators into office generate higher accountability in the policymaking process through the threat of removal, which results in more effective implementation of regional court decisions. In other words, when voters possess the opportunity to hold elected officials accountable for the failure to implement regional court decisions, voters enjoy the opportunity to engage in collective action when the government fails to implement decisions.²⁷

Popular elections create opportunities for the public to hold their legislators accountable for respecting human rights and implementing regional court decisions.²⁸ Given these institutional incentives for legisla-

²⁷To reiterate, voters generally value respect for human rights and judicial independence. Judicial independence allows the court to act as a check on bad government behavior. As such, voters are likely to hold legislators accountable when they fail to implement domestic (or regional) court decisions.

²⁸Arguably, voters may be less concerned with human rights than with other issues in legislative elections; however, the presence of elections provides an opportunity for the voting public to hold legislators accountable, an opportunity that does not exist in states where popular elections do not take place.

tors, I posit:

Hypothesis 4: *Supranational court decisions that find human rights violations have a positive impact on respect for human rights in the presence of competitive legislative elections.*

Of course, countries vary in terms of their electoral rules; some electoral rules are better designed to hold elected officials accountable (i.e. plurality), while others are more equipped to represent various groups of voters (i.e. proportional representation) (Powell 2000, Persson and Tabellini 2003). Elected officials' incentives to protect human rights and implement the decisions of human rights courts differ as a result of different electoral rules. Legislators are likely to strategically select the level of effort they will use to engage in human rights protections (Plumper and Neumayer 2009). Cingranelli and Filippov (2010) echo this argument in stating, "Politicians may not be motivated to put the highest level of effort into implementing policies when they are supported by most voters...Instead, in differently designed democracies, politicians' strategic priorities as dictated by the logic of political competition can lead to practices that violate or protect human rights" (3). What type of institutional arrangement, then, motivates or incentivizes elected officials (here, legislators) to implement regional court decisions?

Electoral rules can be designed to enhance transparency associated with regional court implementation. Politicians supply human rights protections based on the demand made by their constituencies. Demand for human rights protection varies among constituencies based on the cost of lobbying policymakers and the ease at which a particular lobby can overcome the collective action problem and take advantage of cheaper lobbying. The cheaper it is to lobby for (or against) human rights protection, the higher (or lower) the demand for human rights protection, and the more (less) likely it is that politicians will supply greater respect for human rights.²⁹ Ehrlich (2007) presents a theory highlighting the importance of access points as they relate to domestic institutions and trade policy. Specifically, he argues that the more access points, which are policymakers susceptible to lobbying, the lower the price of lobbying each access point. An access point includes "any *relevant* policymaker who is either *independent* or serves a *distinct* political constituency" (Ehrlich 2007, 577).³⁰ As a result, as the number of access points increases, the likelihood that a lobbyist will find an access point receptive to his/her demands increases, and the cost of lobbying

²⁹In the same way, the cheaper it is to lobby for implementation of regional court decisions, the higher the demand for implementation, and the more likely it will be that politicians will engage in implementation.

³⁰Ehrlich (2007) defines relevant policymakers as those who have "actual or potential power over the policy in question." Independent policymakers are those that have the "capacity to exercise their relevance based on their own preferences (578)."

declines. Focusing on access points, as opposed to large institutional differences (i.e. plurality vs. PR electoral systems), provides increased leverage over the role of legislators in regional court implementation because it captures many disaggregated institutional democratic differences between states' implementation of regional court decisions and the corresponding decision to respect human rights.

Regional courts find many violations of physical integrity rights, as well as civil and political rights.³¹ A domestic pro-physical integrity rights lobby advocates the eradication of torture, disappearance, political imprisonment, and extrajudicial killing. Given that voters generally value respect for human rights, the likelihood of observing an anti-physical integrity rights lobby generally remains low.³² The lobby in favor of better respect for human rights resembles a transnational movement, including governments, nongovernmental organizations, and the news media (Keck and Sikkink 1998). Transnational networks often name and shame governments for their human rights practices by gathering information, issuing public condemnations of violations, and sometimes applying material sanctions (Franklin 2008). The pro-rights lobby includes a large and well organized group.³³ The pro-rights lobby more easily takes advantage of increased access points than the opposition lobby, resulting in better respect for rights. The benefits of state respect for rights and domestic implementation of regional court decisions are widely dispersed in society, but given the relatively small visible opposition lobby, benefits for the opposition remain small and concentrated. As a result, the pro-physical integrity rights lobby benefits from increased access points.

Given the arguments above, I expect that as the number of access points increases, the likelihood of the public holding legislators accountable increases. As a result, the likelihood of legislators implementing regional court decisions increases and consequently, respect for human rights improves. Following Ehrlich (2007), I argue that differences in access points can be captured by examining institutional features in the state, particularly the number of electoral districts, the number of parties in government, the level of party discipline, and bicameralism.³⁴ Further, the executive acts (respects rights) in expectation of legislative

³¹See Voeten (2008) for further examination of the types of rights violated in the European system. See Hawkins and Jacoby (2010) for data on the types of rights violated in both regional legal bodies.

³²This is not to argue that in the absence of a visible anti-physical integrity rights lobby, physical integrity rights violations do not occur or are not advocated by some actors. Those supporting the use of torture, disappearance, etc. are generally officials in the executive branch, who use these human rights violations as a policy to maintain control. On average, citizens and voters value respect for rights and the legitimacy of the regional court, as I argued above.

³³Consider the boomerang model presented by Keck and Sikkink (1998) to demonstrate the pattern of influence for transnational advocacy networks, where domestic human rights NGOs, facing a nonresponsive government, appeal to international NGOs, which gather information and bring human rights violations in the first state to the fore as well as pressure their own states to pressure the offending state. These organized networks work with lobbying efforts domestically to pressure policymakers to engage in policy change.

³⁴Cingranelli and Filippov (2010) also highlight the importance of many of these institutions as well. However, they point to the role of politician responsiveness to voter demands as a result of the greater personal connection felt by voters in relatively smaller

implementation and the presence of particular electoral institutions generate executive incentives. Finally, regional court judges also choose to render judgments in expectation of implementation by all domestic actors. Based on these arguments, I posit the following:

***Hypothesis 5:** As the number of access points increases, supranational court decisions that find human rights violations are more likely to improve domestic respect for human rights .*

5.2.3 Veto Players

The number of legislative veto points potentially creates institutional procedural difficulties in implementing regional court decisions.³⁵ Tsebelis finds that as the number of veto players increases, it becomes increasingly difficult to change the status quo policy. Policy changes must be approved by all veto players, and as a result, it becomes more difficult to achieve these changes the larger the number of veto players and the greater the ideological distance between them (Tsebelis 1999). Given that regional court decisions often require some type of policy change, examining the ease at which policy can be changed in the domestic legislature captures the institutional constraints associated with regional court implementation. Tsebelis (1999) finds that an increasing number of veto players (as well as their ideological distance) results in relatively less significant legislation passed and produces a legislative focus on incremental legislation. As the number of veto players increases, the likelihood of legislative evasion of regional court decisions increases because veto players influence policy stability.³⁶ In countries where the number of veto players inhibits policy change ordered by the regional court, the effectiveness of regional court declines (the regional court does little to influence on respect for rights). The *Almonacid v. Chile* case elaborated on above provides a nice illustration of the influence of veto players, particularly divided government. Members of the legislature submitted proposals in an effort to fulfill regional court orders, specifically calling for the Amnesty Decree to be repealed, nullified, or modified. However, the right-wing opposition worked tirelessly to stop any type of policy change, claiming they would challenge any policy change in the domestic court (Rohrter 2006). Further, the number of legislative veto points also potentially influences transparency related

electoral districts and districts where voters vote for candidates as opposed to parties.

³⁵As stated earlier, veto players are “individual or collective decisionmakers whose agreement is required for the change of the status quo” (Tsebelis 2000).

³⁶Simmons (2009) makes a similar argument regarding ratification of international human rights treaties. Specifically, she argues that as the number of legislative veto players increases, the likelihood of ratification declines because an increase in the number of veto players increases the probability that an internationally negotiated treaty will run into domestic opposition.

to regional court implementation, and as a result, influences the ability of the public to observe legislative evasion, as well as shaming costs associated with evasion. Larger numbers of legislative veto players may make it increasingly difficult for the public to determine the policymakers responsible for legislative evasion of regional court decisions, and as a result, which policymakers voters should punish at the ballot box. In countries with relatively larger numbers of veto players, the difficulty of identification and monitoring increase and the ability of voters to identify and hold specific government actors accountable declines.

Given these arguments regarding veto players, I posit:

***Hypothesis 6:** As the number of veto players rises, the likelihood that supranational court decisions that find human rights violations will be effective in improving respect for human rights declines.*

5.2.4 Freedom of Expression

Despite strong interests in evasion of regional court decisions, domestic judges and legislators can be incentivized to implement regional court decisions when particular domestic institutions exist, including freedom of speech, press, and assembly. To reiterate, legislators face incentives to implement regional court decisions when they expect the public to hold them accountable for evasion. Specifically, because voters value an independent and effective regional and domestic court, in countries where voters observe evasion of implementation with little difficulty, legislators find it in their interest to implement regional court decisions. As an extension of this argument, I also expect that domestic judges can be enticed to implement regional court decisions where voters more easily observe and monitor evasion. Given that citizens value domestic judicial independence and effectiveness, domestic judges hold an interest in maintaining a positive public perception of the domestic court. If domestic judges are found to be evading implementation of *regional* court decisions, public support for *domestic* judicial rulings likely declines. The domestic judiciary remains highly dependent on public support in order to maintain its power and effectiveness domestically.³⁷ In states where domestic courts evade regional court decisions, voter support for the court as an adequate check on the behavior of other political actors domestically declines, undermining the power, and therefore, legitimacy of the domestic court. Domestic judges may face conflicting incentives, but when they expect to be

³⁷The domestic court depends heavily on public support because the domestic court must rely on the legislature to implement its domestic rulings. Legislators may face incentives to evade domestic court rulings, however, legislators are likely to be held accountable electorally by voters who value the domestic court.

caught evading implementation of regional court decisions (high cost of getting caught), they likely avoid evasion in order to maintain public support, and as a result, legitimacy in the domestic context. When are these domestic actors likely to be caught evading regional court decisions?

Transparency is important for the public to hold their legislators accountable and increase the costs of shaming for evasion of regional court decisions. The public must be aware of legislative attempts to evade a regional (and/or) domestic court decision (Vanberg 2005). Most citizens acquire their knowledge about politics from the media, television, and newspapers (Benjamin Page 1987, Zaller 1992). Several domestic institutions ensure public awareness of not only the regional court decision, but also potential evasion by judges, legislators, or the executive with respect to regional court implementation. In an environment characterized by censorship or restriction placed on freedom of speech, press, or expression, public awareness of regional court decisions remains low. In an environment in which citizens can express their views without sanction, the public garners significantly greater knowledge of regional court decisions and possible legislative, executive, or judicial evasion of such decisions than in an institutional environment characterized by significant censor. A press free from government restriction publicizes information associated with regional case outcomes and human rights violations more generally. More importantly, a media free from government censor finds itself in a better position to hold the legislature, executive, and judiciary accountable for failing to implement regional court decisions. The IACtHR recognizes the importance of the free exchange of information and often orders states to publish and publicize the judgment in nationwide newspapers or something equivalent. The IACtHR undertakes these measures in an effort to generate and increase public awareness of the case and create and increase domestic pressure on the state to implement the judgment (Hawkins and Jacoby 2010, 62). Take, for example, the case of *Loayza Tamayo v. Peru* in which state agents held Professor Loayza Tamayo in incommunicado detention. Loayza Tamayo was subsequently tortured and sentenced to prison for terrorism as a result of her association with the Shining Path insurgent group. The IACtHR found Peru in violation of the American Convention and ordered the victim be released (Cavallaro and Brewer 2008, 789). Cavallaro and Brewer (2008) claim with respect to this case that “even though Peru (then under Fujimori) routinely resisted the Court during this period, the government released Loayza Tamayo within a month” largely as a result of the widespread popular support and media attention that the case received (789).

However, in countries unable to generate widespread media support for regional court cases, or in countries where the government largely restricts the media in terms of content, the likelihood of regional court

cases improving respect for human rights is low, and consequently, domestic actors charged with implementation engage in relatively more evasion. Consider Russia in the European Human Rights legal system. Cases generally do not reach the general public through media coverage. Keller and Sweet (2008) echo this sentiment in stating, “reports in the most widespread media can be said to be biased against the Court...the Court is reproached for not being neutral, for trying to condemn Russia whenever possible...victims are conveyed as trying to draw on the financial advantages of human rights violations...judicial information on the work of the Court and the decisions is imprecise or even incorrect” (664). Censorship on free speech and press results in widespread noncompliance with ECtHR decisions from the Russian state, which has the third highest number of pending cases before the ECtHR (only behind Italy and Turkey) (Hawkins and Jacoby 2010, 70). For example, in the case *Ilascu v. Moldova and Russia*, state agents convicted, detained, and tortured four political activists. The ECtHR held the states of Moldova and Russia responsible for arbitrary detention and torture. The ECtHR ordered Russia to release the claimants, but Russia instead argued that the release was not in its competence or power as a result of Moldovan sovereignty (Hawkins and Jacoby 2010, 83). In states where the state places restrictions on the media, regional court case law generally does not reach the general public, which in turn makes it difficult for the voting public to hold public officials accountable. In countries where information flows relatively freely, the executive expects significantly higher implementation by domestic judges and legislators and the executive is more likely to engage in implementation. Further, regional court judges are more likely to render judgments in expectation of implementation by the executive (as well as domestic judges and legislators). Given these arguments, I posit the following:

***Hypothesis 7:** As freedom of expression rises, the likelihood that supranational human rights court decisions that find human rights violations will be effective in improving respect for human rights increases.*

Domestic transparency also creates incentives for members of civil society to increase the costs of shaming by placing pressure on domestic legislators and judges to implement regional court decisions. Simmons (2009) argues that international law enhances the likelihood that individuals will mobilize to claim rights enshrined in international law.³⁸ International law raises the expected value of mobilizing by

³⁸Simmons (2009) refers specifically to the influence of international human rights treaty ratification on domestic mobilization, however, her argument likely holds with respect to human rights court litigation as well. Human rights litigation allows individuals to make claims to rights enshrined in international law, and may even provide a stronger appeal to the legal legitimacy of their claims than rights contained in international treaties.

changing the value individuals place on succeeding as well as the probability of success (Simmons 2009). Regional human rights litigation raises the value of succeeding by providing new information regarding human rights violations in the state and granting legitimacy to domestic rights advocates. International human rights litigation also increases the probability of success by potentially increasing the size of the coalition,³⁹ enhancing intangible resources,⁴⁰ and expanding the range of strategies to be used by pro-rights movements (Simmons 2009).⁴¹ The strength and size of the human rights advocacy coalition often increases in the presence of litigation as group participation related to monitoring and enforcement of human rights laws increases (Shapiro 1981, Cichowski and Sweet 2003).

The extent of domestic rights mobilization provides a good indication of an environment likely to hold political actors accountable for evasion of court decisions. Domestic human rights advocates help create a transparent domestic environment for voters by providing information regarding possible evasion of regional court decisions. In other words, domestic human rights movements provide the necessary tools (information and monitoring) for voters to hold legislators and the executive accountable electorally and judges accountable through public support. However, members of civil society likely behave strategically in their decisions to hold legislators and judges accountable. A transparent domestic environment enhances the role of civil society by providing the opportunity for civil society members to pressure domestic actors to implement decisions. In other words, a transparent domestic environment increases the ability of pro-rights movements to raise public awareness with respect to the regional court decision, as well as their cause. Simmons (2009) argues, "All the accoutrements of freedom - a free press, free assembly, free speech and expression - increase the likelihood that a demand will be given fair hearing...thus, the probability is relatively high that potential demanders will succeed in their rights claims" (151). In countries characterized by significant government censor of the press or few freedom of speech or assembly guarantees, the cost of collective action increases and the likelihood of effective mobilization declines. The ability of pro-rights movements and human rights activists to use regional court litigation as an advocacy tool for broader change may be severely compromised by the lack of freedom of expression guarantees. In an environment lacking transparency, human rights NGOs face difficulty in determining the extent and causes of noncompliance with regional court rulings. Media coverage of human rights abuses often generates public interest and attention, which results in

³⁹International human rights litigation may spark increased domestic legal interest, including legal interest groups and legal professionals.

⁴⁰Simmons (2009) argues that the most notable intangible resource is legitimacy, which is likely to enhance support for the movement.

⁴¹Regional court litigation may offer the movement the possibility of entry into domestic courts to pursue other rights-based claims.

substantial interest from pro-rights advocacy groups (Keck and Sikkink 1998, Hill, Moore and Mukherjee 2012). Given that human rights NGOs and other activists generally dedicate their resources toward cases likely to bring about substantial domestic change in rights protections, human rights NGOs tend to select cases in transparent environments, where the media engages in the dissemination of accurate case information. As a result, activists are unlikely to dedicate significant resources toward holding political actors accountable or pressuring them to implement regional court decisions in environments lacking transparency.

Civil society groups play an important role in holding actors, including legislators and the executive, accountable for implementation. Regional court litigation encourages societal participation in domestic implementation of regional court decisions. Which pro-rights actors make evasion by the domestic judiciary and legislature more costly? International and domestic human rights nongovernmental organizations (HROs) represent groups important in making evasion of regional court decisions more costly. HROs devote most of their resources to improving human rights policies and practices in states (Feldman 1997, Keck and Sikkink 1998, Risse, Ropp and Sikkink 1999, Murdie and Davis 2012). One strategy used by HROs to improve respect for human rights domestically involves "naming and shaming" or calling the state out for human rights violations in an effort to produce negative effects on the state, including lowering international aid and influencing international trade, among others (Cingranelli and Richards 1999, Franklin 2008, Richards, Gelleny and Sacko 2001). HROs use regional human rights litigation in their shaming efforts as an advocacy tool to mobilize other actors. NGOs engage in public education efforts related to rights contained in international treaties, including highlighting rights outcomes of regional court decisions. These organizations actively engage in raising rights consciousness, legal literacy education, and instituting broader change. Helfer and Slaughter (1997) argue that "Individuals and their lawyers, voluntary associations, and *nongovernmental organizations* are ultimately the users and consumers of judicial rulings to redress a particular wrong or advance a particular cause or set of interests (312)." In a domestic environment with active HROs, public awareness of regional court cases grows, and as a result, domestic judges' and legislators' interests in evasion of regional court decisions declines. As a result of expected implementation by domestic judges and legislators, the executive is more likely to engage in implementation and respect rights. Consequently, regional judges behave in expectation of implementation by all of the aforementioned domestic actors, and render judgments more often in transparent domestic environments, where implementation is

relatively more likely. Given these arguments, I posit:

***Hypothesis 7a:** The likelihood that supranational court decisions that find human rights violations will be effective in improving respect for human rights increases with HRO presence, but this relationship becomes weaker as freedom of expression declines.*

Legal experts represent a second group of important pro-rights advocates (Cross 1999, Simmons 2009). These individuals possess the legal literacy necessary to observe government evasion of a regional court judgment. Vanberg (2005) argues that transparency makes monitoring evasion by domestic political actors problematic when the policy area is inherently complex (47). Policy associated with human rights violations is relatively transparent in comparison to other policy areas. Consider, for instance, a regional court judgment ordering the adoption of legislation to abolish the death penalty. Voters can monitor the implementation of this decision fairly easily based on whether executions continue to take place. In the *Barrios Altos Case*, the IACtHR found Peru's amnesty laws inconsistent with the American Convention on Human Rights because they granted immunity to individuals who had committed human rights violations. The IACtHR ordered Peru to adopt amnesty legislation compatible with the American Convention.⁴² However, not all regional court orders entail such transparency, particularly regarding the steps need to be taken to come into compliance.⁴³ Take, for example, the *Street Children Case* where the IACtHR found that Guatemala needed to implement "legislative, administrative or whatever other measures were necessary to conform its domestic law to protect the rights of the child, as set forth in Article 19 of the American Convention" (Pasqualucci 2003, 248). In this case, the IACtHR charged the state with determining which measures would be most appropriate to bring domestic law into conformity with the American Convention. In cases where the regional court issues judgments lacking clarity (either those not clearly stated or left up to the state) associated with the steps necessary for compliance, voters find it increasingly difficult to determine whether the domestic judiciary, legislature, or executive ignored the regional court orders.⁴⁴

⁴²The IACtHR clearly stated the responsibility of the state in its judgment. It specifically ordered Peru to "abrogate or annul Law No. 26479 that conceded 'amnesty to military, police and civilian personnel for various reasons' and Law 26492 that "defines the interpretation and scope of the amnesty granted by Law No. 26479," among other reparations orders.

⁴³Staton and Romero (2012) suggest that regional court judges behave strategically in terms of the clarity they provide in their judgments. Specifically, regional judges may find the state to be in a better position to determine the means to remedy a violation. Regional judges may express concern for publicly observed non-compliance, as it potentially undermines the legitimacy of the regional court. As a result, regional judges sometimes choose to be more vague in describing the steps that need to be taken to come into compliance.

⁴⁴This is particularly pertinent to the ECtHR, which engages in "delegative compliance," where the Court identifies and makes a determination with respect to a violation, but does "not make orders on how to end the violation, compensate for its effects, or prevent future infringements" (Hawkins and Jacoby 2010, 37). Compliance is delegated to the state and monitored by a Committee

Legal experts possess the legal literacy to determine how well domestic law conforms to international law, making them particularly adept in determining the extent to which the states comply with supranational litigation. Simmons (2009) attributes the growth of “cause lawyering” to the increased effectiveness of human rights litigation. Cause lawyering is “directed at altering some aspect of the social, economic, and political status quo” (Sarat and Scheingold 1998). Cause lawyers often become involved in social movements and they can be used as “forces for expanding the power and influence of supranational tribunals” (Helfer and Slaughter 1997, 312). Legal expertise arguably influences the effectiveness of regional court decisions and domestic lawyers enhance the effectiveness of the regional court when they possess greater knowledge of the regional legal system (including regional conventions, processes, procedures, and case decisions). For example, the Council of Europe Information Office in Warsaw disseminated information about the European Convention among lawyers in Poland and trained over 160 lawyers in the substantive and procedural aspects of the ECtHR. Further, many lawyers participating in this training represent applicants in cases brought before the ECtHR and use their knowledge and experience to train other lawyers in similar courses (Keller and Sweet 2008, 590). Enhanced legal expertise allows legal professionals to not only better navigate the regional legal system, but also relay and translate accurate information associated with case conclusions and judgments. The domestic judiciary and legislature engage in relatively less evasion of regional court decisions because of the role of legal experts in ensuring transparency. The executive, in expectation of implementation by other domestic actors, engages in implementation and chooses to respect rights in an environment characterized by enhanced legal expertise and freedom of expression guarantees. Finally, as a result of increased transparency, regional court judges take cases in expectation of implementation by domestic actors. Given these arguments, I posit:

***Hypothesis 7b:** The likelihood that supranational court decisions that find human rights violations will be effective in improving respect for human rights increases with domestic legal expertise, but this relationship becomes weaker as freedom of expression declines.*

of Ministers associated with the European Court.

5.2.5 National Human Rights Institutions

National Human Rights Institutions (NHRIs) play a unique role in the space they occupy between international actors, government, and civil society.⁴⁵ States create NHRIs, often in association with NGOs. However, as domestic institutions, states charge NHRIs to monitor state behavior associated with respect for human rights, and as such, NHRIs do not function solely as puppets of the state. NHRIs play a number of important roles in making regional court decisions effective, including enhancing transparency and public support for regional court decisions.

First, NHRIs increase transparency associated with implementation, as well as the shaming costs for non-implementation by constraining the the actions of public officials and holding them accountable for non-implementation. NHRIs engage in both horizontal and vertical accountability of public officials. NHRIs evoke Horizontal accountability with other governmental institutions by “impartially investigating the conduct of public administration; recommending changes to law, policy, or practice when illegal or improper administration is uncovered; reporting to the legislature and the public; and, in some institutions, exercising stronger powers such as court action” (Reif 2004, 60). NHRIs often possess various horizontal accountability mechanisms, including review of other governmental institutions, judicial review, inspection, investigation, and public reporting. These horizontal accountability mechanisms allow NHRIs to highlight specific efforts or attempts by other governmental actors to evade regional court decisions. Many states delegate quasi-judicial competence to NHRIs, including the power to investigate and “the ability to demand the production of written documentation, to compel answers to questions, to threaten court proceedings if a person or organization is not cooperative, to publicize the outcome of the investigation, and to access prisons and places of detention” (Smith 2006, 914). NHRIs often work extensively with regional human rights bodies. In fact, Reif (2004) even states “the Inter-American human rights system is accessible to domestic ombudsmen and both the Inter-American Commission and Inter-American Court are increasingly relying on human rights reports and evidence provided by ombudsman” (213). NHRIs often work closely with the Court following Court decisions that find violations of human rights. NHRIs assist in the domestic implementation of IACtHR orders (Reif 2004). The IACmHR and the IACtHR often examine and use as

⁴⁵NHRIs evolved from domestic ombudsmen offices, which encouraged individuals to file grievances regarding maladministration by government officials in Europe in the early 19th century (Cheng 1968). The 1980s experienced significant growth of ombudsmen offices with a specific human rights focus, so much so that in 1991, states drafted the Paris Principles, defining standards for NHRIs. The UN Human Rights Commission adopted the Paris Principles in 1992 and the UN General Assembly ratified them in 1993. NHRIs experienced substantial growth following the creation and adoption of the Paris Principles as well (Smith 2006, Koo and Ramirez 2008, Carver 2010).

evidence *amicus curiae* briefs or other reports and documents issued by NHRIs and sometimes even use human rights commissioners and ombudsman as expert witnesses (Reif 2004). These institutions maintain an informational advantage over regional courts, including an intimate familiarity with domestic human rights practices. As a result, NHRIs not only assist the regional court in conducting their investigation, but provide a particularly important resource for the domestic implementation of regional court judgments. Specifically, the state empowers the human rights ombudsman in Peru (*Defensor del Pueblo*) to “initiate the drafting of legislation...including intervening in the process when bills are presented to Congress, becoming involved in the drafting of the legal text, issuing a report on the draft law which is submitted during legislative debate or, based on his mandate, proposing new laws that will improve human rights protection” (Reif 2004, 202). Participation in legislation drafting places the NHRI in an important position to monitor potential evasion by the legislature and other governmental actors as well. Perhaps just as important as the quasi-judicial competence of many NHRIs in ensuring horizontal accountability between governmental institutions, these horizontal accountability mechanisms also allow the NHRI to publicize and publish information in order to stimulate vertical accountability of public officials.

NHRIs also enhance the role of public support in holding political actors accountable for non-implementation. More specifically, NHRIs inform the public of regional court rulings and human rights violations, evoking vertical accountability by the voting public. A certain degree of “legal literacy” is required for the public to access the courts (Simmons 2009, 132-135). The Paris Principles specifically charge NHRIs with a mandate to educate and inform in the field of human rights, including the mandate to prepare and publicize reports on any human rights matter and make use of all press organs (Kjaerum 2003). The Paris Principles also highlight the importance of NHRIs in ending discrimination, particularly by raising public awareness (Kjaerum 2003). In order for the public to hold officials accountable, there must be “due process in administrative decision-making which provides the interested public with access to information, protection or privacy, notice of decisions that will significantly affect them, opportunities for hearings and reasoned decisions from public officials” (Owen 2001, 3-4). Ombudsmen and human rights commissioners work to ensure public accountability of domestic political actors (Owen 2001). When NHRIs publish their findings, they not only raise awareness of the human rights violation, but also potentially bring compliance and implementation of the regional court ruling to the attention of pro-rights advocates and those working for the promotion of human rights domestically. NHRI support lowers the cost of advocacy and consequently triggers vertical accountability of public officials by members of civil society by increasing the probability of the success

of mobilization. For example, the case of *Ximenes Lopes v. Brazil* (mentioned earlier), generated a great deal of domestic interest, particularly from a state human rights commission, human rights organizations, psychiatric professionals, and the media (Cavallaro and Brewer 2008, 790). The case in the IACtHR and the regional court finding of a violation encouraged debate about public healthcare in Brazil and provided increased leverage for domestic interests to pressure the government to engage in policy change. The NHRI played an important role in raising awareness and publicizing the progress and outcome of the case itself. With respect to the European Court, Greece's National Commission for Human Rights (NCHR) plays an important coordinating role among domestic law in Greece and the regional human rights system. The NCHR is charged with the implementation and dissemination of ECtHR judgments, as well as the task of submitting recommendations to the government based on ECtHR case law, and assisting in the drafting of legislation based on ECtHR findings (Keller and Sweet 2008, 504).

While NHRIs possess varying levels of independence from state influence,⁴⁶ the state generally charges NHRIs with holding states accountable for human rights violations and disseminating this information to the public. As a result, NHRIs substantially increase public awareness of violations of human rights. The International Coordinating Committee on NHRIs (ICC), an international network of NHRIs, grants these institutions an accreditation status, which assesses the extent to which an NHRI complies with the Paris Principles. NHRI compliance with the Paris Principles increases the likelihood of regional court effectiveness because the Paris Principles charge NHRIs with protecting and promoting human rights, as well as requiring these institutions to meet six criteria, including possessing a mandate and competence, autonomy from government, independence, pluralism, adequate resources, and adequate powers of investigation. NHRIs granted a higher accreditation status by the ICC likely play a greater role in the effectiveness of regional court decisions.⁴⁷ The role of NHRIs in increasing transparency and invoking horizontal and vertical accountability increases the likelihood of implementation by domestic judges and legislators. The exec-

⁴⁶Some argue that because NHRIs represent government-funded, government-sponsored organizations, they cannot operate independently of state influence. The credibility, legitimacy, and effectiveness of NHRIs depend on the ability of these institutions to balance their multiple accountabilities. The Paris Principles make numerous recommendations regarding NRHI effectiveness in the state. Current research also highlights steps NHRIs can take to ensure their effectiveness. For example, research indicates that governments should ensure that NHRIs are established under a clear legal foundation, transparent and consultative processes should be used in appointing commissioners and staff, and NHRIs should be financially secure with budgetary oversight exercised by parliament and not the executive, among numerous other recommendations (Smith 2006). While NHRIs are not always fully independent of state control, evidence indicates that independence is not an unrealistic goal for these institutions. A recent survey of NHRIs, conducted by the UN OHCHR indicates that "over 70% of respondents considered their institution to be very independent in practical terms" (UNOHCHR 2009, 51).

⁴⁷Data on accreditation status has not yet been collected on a country-year level, making it difficult to assess variation in the effectiveness of NHRIs.

utive, in expectation of implementation, also engages in implementation and respect for rights. Further, regional court judges, in expectation of implementation by these domestic actors, likely focuses its efforts more extensively in countries with NHRIs. Given these arguments, I posit the following:

***Hypothesis 8:** The likelihood that states found guilty of human rights violations in supranational courts will improve their respect for human rights increases in the presence of National Human Rights Institutions.*

6 Research Design

NOTE:This draft describes the first rough cut (OLS estimates) and though the results are suggestive, none of these findings should be seriously considered or cited. I am presently at work developing multilevel models that model or otherwise minimize, the sundry econometric threats to inference existing in the OLS results contained here.

6.1 Spatial-Temporal Domain

In this section, I examine two supranational human rights courts, the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR). I examine these two courts because their activity has reached unprecedented levels over the past two decades.⁴⁸ European Court activity reached such high levels in the 1990s, that the Court undertook major reforms to streamline their procedures and increase the efficiency of the Court. The number of judgments issued by the ECtHR nearly doubled from 2000 to 2006 (from 695 in 2000 to 1,560 in 2006). The European Convention on Human Rights (ECHR) established the ECtHR. The ECHR came into being in 1959 under the Council of Europe and 47 member states are parties to the convention.⁴⁹ The ECtHR hears cases involving violations of the ECHR by contracting parties. Cases can be brought to the ECtHR by individuals, groups of individuals, law firms, NGOs, among others specified in the convention, against states that have ratified ECHR. Upon exhaustion of all domestic remedies, plaintiffs bring cases to the ECtHR. Once the ECtHR finds an adverse judgment against

⁴⁸The African Court on Human and People's Rights, established in 2004, delivered its first judgment in 2009, finding an application against Senegal inadmissible before the Court. African Court activity continues to increase, however, the AfCtHRPR, to date has only finalized and closed 13 cases, making analysis of this Court's activity inherently difficult.

⁴⁹The European Union did not establish the ECtHR. All (27) members of the EU are members of the Council of Europe, but not vice versa. However, member states acceded to Protocol 14 in 2010 which provides for the European Union to accede and become party to the European Convention.

a state, the state is charged with conceiving and executing steps to come into compliance with the Court. A Committee of Ministers, comprising states parties' Ministers of Foreign Affairs, monitors compliance with ECtHR rulings. The Committee asks states to report on measures taken to come into compliance and can offer suggestions to the state to encourage implementation of the judgment (Hawkins and Jacoby 2010). I examine ECtHR judgments from 1981-2006 for all ECHR contracting parties.⁵⁰

The Organization of American States (OAS) established the IACtHR in 1979 with the goal of enforcing and interpreting the provisions of the American Convention on Human Rights (ACHR). In contrast to the ECtHR, adverse judgments found by the Court against states result in "compliance orders" or a list of specific steps the state must take to come into compliance with Court decisions. The Court monitors compliance with its judgments and relies on victims' representatives, the Inter-American Commission on Human Rights, and the state to submit reports on compliance (Hawkins and Jacoby 2010). The OAS currently consists of 35 members with 24 parties to the ACHR. To date, 21 states accept the compulsory jurisdiction of the Inter-American Court (Pasqualucci 2003).⁵¹ I examine IACtHR judgments only for those states under the compulsory jurisdiction of the IACtHR for the years 1989-2010.⁵²

I examine each supranational court in separate models, rather than combining both samples into a single model, for a number of reasons. First, the temporal domain associated with each regional court differs and the samples analyzed for each court are both truncated on different ends of the temporal domain.⁵³ As a result, the influence of ECtHR decisions likely drive results in the earlier years of the analysis, while IACtHR decisions likely drive results in later years. More importantly, these human rights legal bodies differ substantially in their procedures for selecting cases, the mechanisms used for monitoring and securing state compliance with Court judgments, and the political and social context in which the court operates. With respect to the procedures for selecting cases in the ECtHR, individual persons, groups of individuals, or NGOs, among other relevant organizations submit cases to the Court. The ECtHR's registry, which is the legal and administrative support body for the ECtHR, processes the case. Members of the ECtHR registry prepare applications for further examination by judges. The ECtHR consists of 47 judges, one for each

⁵⁰Court activity increased substantially in the 1990s, particularly after the adoption of Protocol 11 in 1998, which abolished the European Commission on Human Rights and made the Court a full-time body.

⁵¹These states currently include Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. Trinidad and Tobago denounced the ACHR and the IACtHR. The ACHR has also not been ratified by Canada or the United States. Venezuela recently decided to denounce the ACHR and pull out the IACtHR.

⁵²Data availability limits the ability to examine IACtHR rulings prior to 1989.

⁵³In a combined sample, data on the European Court after 2006 is missing, while data on the Inter-American Court is missing prior to 1989 in a combined sample.

member state of the Court. Prior to the adoption of Protocol 14 in 2010, the election of judges occurred for six-year terms with the option of renewal.⁵⁴ The Parliamentary Assembly of the Council of Europe elects judges from three candidates submitted by each contracting state of the ECHR. A group of three judges are required to rule a case inadmissible.⁵⁵ For a case to be found admissible before the ECtHR, it must meet a number of requirements. The case must exhaust all domestic remedies, a period no longer than six-months since the date of the final domestic judicial decision cannot pass, the complaint has to be founded in the European Convention, and the applicant must have suffered a significant disadvantage. A three-judge committee may rule on the admissibility of a case or rule on the merits of a case, both of which typically occur for well-founded cases or those established in case law.⁵⁶ Once the ECtHR finds a state in violation of the ECHR, the Court submits the case to a Committee of Ministers and the state then undertakes steps to bring itself into compliance with the Court. Finally, the Committee of Ministers examines the execution of the ECtHR judgment.

The IACtHR procedures for the selection of cases, as well as the mechanisms used to monitor state compliance with IACtHR rulings differ greatly from the ECtHR. Member states of the IACtHR include those that have ratified the American Convention on Human Rights, as well as accepted the optional jurisdiction of the Court.⁵⁷ Unlike the ECtHR, individuals cannot take cases directly to the IACtHR; instead, cases must first be vetted through the Inter-American Commission on Human Rights (IACmHR). Individuals (or other organizations) first submit cases to the IACmHR. The IACmHR rules on the admissibility of the case. Once the Commission deems the case admissible, it issues a list of recommendations that the state must undertake to remedy the violation. If the state fails to abide by these recommendations or the Commission finds the case of particular import, the IACmHR refers the case to the Court. As a result of the the limited number of states under the jurisdiction of the Court, as well as the Commission procedures, substantially fewer cases reach the IACtHR relative to the ECtHR. More specifically, of the thousands of cases before the IACmHR, the IACmHR submitted between 5-15 cases to the IACtHR each year from 2001-2009. The IACtHR consists of 7 judges from the member states. The General Assembly of the Organization of American States elects each judge to a six-year term with the option of (one-term) renewal. In cases where the IACtHR finds the state

⁵⁴Under Protocol 14, judges are elected for nine year, non-renewable terms.

⁵⁵Recent reforms of Protocol 14 allow a single judge to find a case inadmissible and submit questions of admissibility to a committee of judges.

⁵⁶Prior to the adoption of Protocol 14 in 2010, the three-judge committee could not rule on the merits of the case. Decisions on the merits of a case could only be undertaken by a chamber of seven judges or the Grand Chamber.

⁵⁷To date, 21 states fulfill both of these requirements.

in violation, it issues a judgment against the offending state, as well as a list of specific steps (compliance orders) that must be fulfilled to come into compliance. The Court examines observations submitted by the state and the IACmHR to determine compliance with particular orders.

Further, the social and political environment associated with the establishment of the European and Inter-American Courts differ substantially. Formed in 1950 following the atrocities and massive human rights violations of the Second World War, the European Court represented an institution necessary for international human rights guarantees. The Western European countries responsible for the establishment of the Council of Europe (the constitutive body of the European Convention) included established liberal democracies with strong domestic institutional commitments to the rule of law (Helfer and Slaughter 1997, 276). Scholars often attribute the success of the ECtHR throughout the early 1990s to the homogeneity among Western European states (Cavallaro and Brewer 2008, 772). States in the Council of Europe committed to implementing ECtHR decisions domestically and did so in both law and practice (Cavallaro and Brewer 2008, 772). Helfer and Slaughter (1997) maintain that that political and structural conditions present in most member states largely explained the overall success of and high compliance with the European Court through the 1990s. Specifically, they argue “the existence of domestic government institutions committed to the rule of law, responsive to the claims of individual citizens, and able to formulate and pursue their interests independently from other government institutions, is a strongly favorable precondition for effective supranational adjudication” (Helfer and Slaughter 1997, 333-334). The ECtHR success in the 1990s demonstrates that domestic democratic institutions committed to the rule of law and separation of powers remain most receptive to supranational adjudication.

As a result of the institutional homogeneity of Western European countries involved in the establishment of the ECtHR, most violations early on involved only “minor and unintentional violations” of the European Convention, requiring few concessions from offending states (Kamminga 1994). The early European system primarily confronted isolated cases of human rights abuse, typically involving arrest and detention, as well as the fair administration of justice (Pasqualucci 2003, 5). Despite this initial success, in the early 1990s, the addition of various new members, including many former Soviet bloc states changed the social and political context in which the ECtHR operates.⁵⁸ The new member states are not only char-

⁵⁸Member states as of 2012 include: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Macedonia, Turkey, Ukraine, and the United Kingdom.

acterized by weaker democratic institutions than the founding members, but the rights violations in these new member states involve larger violations, rather than the minor or unintentional violations of the earlier years. Instead, many of these new member states exhibit gross and systematic violations of human rights, requiring systemic structural and institutional remedies. Further, compliance levels with the ECtHR rulings differ from earlier years, as Turkey, Italy, Bulgaria, and Romania together contribute half of the long term pending cases (more than 2 years) before the Committee of Ministers (Hawkins and Jacoby 2010, 70).

The establishment of the Inter-American Court took place in a much different social and political environment. Formed in 1979, the IACtHR faced a region characterized by primarily authoritarian regimes enmeshed in systematic and violent human rights violations, including widespread extrajudicial killings, political imprisonment, torture, and forced disappearances committed by state agents with impunity. Military dictatorships governed most of Central and South America, leaving Costa Rica, Venezuela, Colombia, and Peru as the only countries willing to let the Inter-American Commission become an effective body for the protection of human rights (Buergenthal 2005).⁵⁹ However, most states in the Americas strongly opposed the establishment of a regional institution working for the protection of human rights. As the activity of the IACtHR increased in the 1980s, the political landscape in the Americas also changed, as democratic states began to replace authoritarian regimes. However, the IACtHR faced different challenges than the ECtHR in its early years, as adjudication usually involved systematic human rights violations in countries where human rights did not represent entrenched norms within the state. The effectiveness of the IACtHR hinged on its ability to navigate these difficult challenges, specifically, “the political and economic realities of the Americas, where non-democratic regimes and large-scale poverty persist, make enforcement of human rights in this region much more difficult than in Western Europe”(Buergenthal 1980, 156). High economic inequalities, including extreme poverty and extreme wealth largely characterize the Inter-American system. This inequality contributed to political instability, and social and economic oppression contributed to the rise in political oppression and human rights violations on a society-wide scale (Pasqualucci 2003, 5). While early ECtHR success can, in part, be attributed to the “minor and unintentional violations” of state agents, the IACtHR faced systemic, institution-wide problems in many states in the Americas.⁶⁰ The need

⁵⁹The United States, Canada, and many Commonwealth Caribbean states have not yet ratified the American Convention on Human Rights. The Charter of the Organization of American States (OAS) established the Inter-American Commission on Human Rights. The American Declaration of the Rights and Duties of Man (ADRDM) entered into force alongside the OAS Charter, and while not legally binding, the Inter-American Commission and Court use the ADRDM as a source of international obligation for countries not party to the ACHR. Enforcement of the ADRDM occurs when offending states that have not ratified the American Convention on Human Rights (such as the United States, Canada, and Cuba) violate rights.

⁶⁰Buergenthal (2005, 275) alludes to this difference in his discussion of his time served on the Inter-American Court. He claims

to implement more institution-level changes generated widespread noncompliance with IACtHR decisions. Posner and Yoo (2005) find that states rarely exhibit full compliance with IACtHR decisions. In fact, they find compliance with IACtHR decisions to be approximately 5 percent and compliance with the IACmHR to be around 4 percent (Posner and Yoo 2005, 43). Upon examination of the IACHR (Commission and Court) compliance documents, scholars find that states routinely ignore decisions requiring punishment of offenders or changing of laws, but states have often paid financial compensation (Posner and Yoo 2005, ?). Similarly, states exhibit significantly higher levels of partial than full or no compliance. Hawkins and Jacoby (2010) find that state compliance with about 50 percent of compliance orders issued by the Inter-American Court, often only after repeated requests.⁶¹ However, when it comes to institutional reparations, state compliance remains unlikely. In fact, scholars find that states comply with IACtHR judgments requiring the amendment, repeal, or adoption of domestic laws or judgments around 7 percent of the time they are issued (Hawkins and Jacoby 2010, 58). The differences in the social and political context in which the European and Inter-American human rights systems operate suggests that these regional judicial bodies may differ in effectiveness. Given the different challenges faced by these human rights bodies, directly analyzing comparative violations found by these two bodies, as well as analyzing their effectiveness remains difficult.

These differences between regional human rights legal bodies do not preclude analysis of a single sample (of both Courts). In fact, I include a single sample of regional court rulings in which I examine ECtHR and IACtHR violations in a combined analysis. In these combined analyses, I include a dummy variable indicating the regional body in which the case was examined. However, given the vastly different domestic environments in which each court hands down decisions, scholars expect different levels of compliance with regional court decisions. Consider, for example, the difference in selection of cases. The ECtHR examines *any* case submitted by individuals, groups of individuals, or other organizations, while the IACtHR only examines cases in which states knowingly decided not to comply with IACmHR recommendations. As a result, one might expect IACtHR judgments to yield lower levels of compliance. Perhaps cases reaching the IACtHR represent cases in which states express a substantial reluctance to implement judgments domestically (maybe as a result of costliness to implement). However, the compliance orders issued by the Inter-American Court system are more transparent and clear than the delegative compliance mechanism

that while observing a European Court hearing concerning the legality under the European Convention of corporal punishment in British schools, a colleague leaned over and whispered, “if this issue ever comes to our Court [the IACtHR], we will know that we’ve solved the human rights problems of our region.”

⁶¹Hawkins and Jacoby (2010) use a different indicator of compliance, allowing for partial compliance with court orders. Posner and Yoo (2005) only report cases in which states complied with every aspect of the Court’s rulings.

used in the European system. Lack of compliance with an IACtHR remedial order may represent a more deliberate, intentional failure to comply than is the case in the European human rights legal system, making noncompliance with IACtHR judgments more damaging to a country's reputation internationally. Further, differences in the social and political context in which these regional legal bodies operate suggest that not only will selection of cases differ, but the costs of compliance may differ for states in these systems as well. Of course, the influence of these differences on the effectiveness of regional legal bodies remain speculative, as these research questions have yet to be examined. Differences in selection of cases, compliance, and the social and political context in Europe and the Americas, represent questions beyond the scope of this dissertation, but they lend themselves as justifications for examining these legal bodies separately.

6.2 Model Choice

To test the aforementioned hypotheses, I employ a linear regression model using time-series cross-sectional (TSCS) data.⁶² The unit of analysis is the country-year.

6.3 Dependent Variable: Physical Integrity Rights

The key dependent variable is effectiveness of the regional court. I am specifically interested in whether the regional court finding of a violation is associated with human rights practices within the state. Regional court effectiveness is best conceptualized as the difference between respect for rights following a court case and respect for rights at the time a human rights violation was committed. The stylized timeline below shows the process from the occurrence of a human rights violation through the regional court case, and the subsequent effectiveness of that court case.

$$\begin{aligned}
 & HumanRightsViolation_{t0} \rightarrow RegionalCourtCase_{t1} \rightarrow RegionalCourtRuling_{t2} \rightarrow \\
 & Compliance_{t3} \rightarrow RespectforRights_{t4} \rightarrow Effectiveness = Respect_{t4} - Respect_{t0}
 \end{aligned}$$

A primary challenge in determining the effectiveness of a regional court finding of a violation involves determining when $t4$ should be assessed. In other words, how much time should the regional court give the state to implement a court ruling ($t2$) or when should effectiveness (the difference in respect for rights following the court ruling and at the time of the human rights violation) be assessed? To measure effec-

⁶²The use of linear models represents an initial analysis, as more advanced models will be examined later.

tiveness, I assess respect for rights 2 years after the regional court issues a judgment. Hawkins and Jacoby (2010) claim that the IACtHR typically provide states with six months to one year from the date they issue reparations, to comply with the Court's judgment.⁶³ Further, the Committee of Ministers in the ECtHR label cases "pending," until full compliance is achieved and the case is officially closed (Hawkins and Jacoby 2010). The Committee of Ministers assesses compliance through the examination of documents submitted by applicants, NGOs, and NHRIs during the quarterly Committee Human Rights meetings. The Committee continues to monitor the case until the adoption of a final resolution, indicating full compliance by the respondent state.⁶⁴ Data indicate that 54 percent of ECtHR leading (non-repetitive) cases remain pending for two years or less, while 35 percent of leading cases remain pending between 2-5 years (Hawkins and Jacoby 2010, 69). In other words, the ECtHR closes the majority of leading cases within 2 years, because the Committee finds the respondent state in compliance with the ECtHR judgment, and the ECtHR closes the vast majority of leading ECtHR cases before 5 years have passed. Hawkins and Jacoby (2010) claim that these data provide evidence that "general measures - including complex legal and administrative changes - might take a year or two under the best of circumstances" (69).

I argue that effectiveness is best conceptualized as the broad success of the treaty regime, specifically, the improvement of human rights as a result of regional court activity. Following compliance with a regional court ruling, some period of time must pass before I can assess the effectiveness of regional court decisions. Given that it typically takes one to two years to come into compliance following the issuing of a reparations order (court judgment), I suggest that by assessing effectiveness two years after a regional court ruling, I observe the influence of the regional court on respect for rights.⁶⁵

I examine respect for physical integrity rights using the physical integrity rights index from the CIRI human rights dataset (Cingranelli and Richards 2010b). Physical integrity rights include four types of rights violations: torture, disappearance, political imprisonment, and extrajudicial killing. The physical integrity

⁶³Hawkins and Jacoby (2010) base their assessment of typical court behavior on their reading all of the Court's judgments in their study.

⁶⁴Hawkins and Jacoby (2010) argue that cases are closed when "the state has remedied, where possible, the consequences of the violation for the applicant (by adopting individual measures and the payment of just satisfaction) and sought to prevent new similar violations from occurring (by adopting general measures)" (67).

⁶⁵Hawkins and Jacoby (2010) argue that states are more resistant to orders to adopt, amend, or repeal legislation, or investigate, identify, publicize, or punish violators, but states are more willing to undertake symbolic measures, such as apologizing or paying material or moral damages (58). It may be more appropriate to assess *t4* respect for rights more than two years following the regional court ruling given that the reparations orders for which states are most resistant (and likely to delay in implementing) are those most likely to improve respect for rights. Further, as a corollary of each of the hypotheses, in cases where the regional court finds the state to not be in violation of the ECHR or the ACHR, I would expect no change in respect for rights following the regional court finding of a violation.

rights index is an additive index constructed from these four rights indicators. This variable ranges from 0 to 8, where a 0 represents no government respect for these four rights and an 8 indicates full government respect for these rights.

6.4 Independent Variables

6.4.1 Regional Court Ruling

The key independent variables examined include the presence of a regional court ruling (**Regional Court**), the presence or strength of various domestic institutions and the interaction of these variables. I examine ECtHR and IACtHR findings of human rights violations related to physical integrity rights. The primary variable of interest is a binary variable, in which a 1 indicates a ECtHR or IACtHR finding condemning the government for violations of physical integrity in a given country-year and a 0 otherwise (either the court found no violation in any cases brought to it in a given country-year or no cases were brought before the regional court during that country-year). Violations of physical integrity rights include violations of Article 2 (right to life), Article 3 (prohibition of torture), and Article 5 (right to liberty and security) of the European Convention on Human Rights and violations of Article 4 (right to life), Article 5 (right to humane treatment), and Article 7 (right to personal integrity) of the American Convention on Human Rights (ACHR). I use data on ECtHR decisions from Voeten (2007) on ECHR case conclusions and case information. Data on the IACtHR come from Hawkins and Jacoby (2010), who collected information on IACtHR case conclusions as well as the extent to which the state fulfilled compliance orders.

6.4.2 Examining Direct Executive Implementation

The executive faces incentives to engage in direct implementation of regional court decisions. I argue that the executive faces shaming costs from both an international and domestic audience. Internationally, the executive faces high shaming costs when economic benefits are at stake (H1). As Lebovic and Voeten (2009) argue, multilateral aid institutions likely reduce aid in the presence of signals from the international community that certain state actions make them politically acceptable targets. Non-compliance with supranational court decisions signals the absence of state intention to respect rights. In order to examine this hypothesis, I follow Lebovic and Voeten (2009) and examine the role of multilateral aid institutions, including the World Bank, as “the World Bank was peculiarly attentive to the international standing of a country with respect to

its human rights practices, given the Bank's well-documented liberal bias, attention to the domestic practices of recipient governments, and the desire to avoid contentious decisions" (Lebovic and Voeten 2009, 84). In countries where an executive faces a potential loss of foreign aid as a result of the failure to comply with supranational court decisions, the executive possesses an interest in compliance. In order to examine H1, I use an indicator of net official development assistance (**Aid**) received by countries in current US dollars taken from the *World Development Indicators*. This variable represents disbursements of loans to countries by agencies of the Development Assistance Committee (DAC), multilateral agencies, and non-DAC countries to promote the economic development and welfare in countries and territories. To reiterate, I expect that as the level of development assistance increases in the presence of a regional court finding of a violation against a state, the executive faces incentives to implement regional court decisions, which results in a subsequent improvement in human rights practices.

I also argue that the executive responds not only to an international audience, but to a domestic audience. As executive dependence on domestic constituents grows, respect for rights increases because the executive faces higher incentives to implement regional court decisions (H2). In states where voters can credibly threaten removal from office, the executive responds to voter demands to implement regional court decisions. I utilize a variable developed by Bueno de Mesquita et al. (2005), which measures the ratio of the winning coalition (W) to the selectorate (S).⁶⁶ This ratio (W/S), termed the loyalty norm, represents the likelihood with which the incumbent's winning coalition remains loyal to the incumbent. When the loyalty norm is large (W is large relative to S), the loyalty of members of the winning coalition to the leader declines because the chance of inclusion in a challenger's winning coalition remains relatively high. As a result, the leader faces a high threat of removal from office and the leader must provide public goods so W will remain loyal. The provision of private goods remains costly because the size of the winning coalition is relatively large. In states where the loyalty norm is small (W is small, relative to S), members of the winning coalition remain loyal because their chance of inclusion in a challenger's winning coalition remains relatively low. As such, the leader provides private goods to his constituents. I expect that as the loyalty norm rises, the likelihood of executive implementation of regional court decisions increases because members of the winning coalition pose a relatively larger threat to incumbent survival.

⁶⁶Bueno de Mesquita et al. (2005) code these data from 1946-1999. However, given the increased activity of both the IACtHR and the ECtHR beyond 2000, I find it necessary to include years beyond 1999 in the analysis. I reconstruct the W/S ratio for all countries in my sample using the Polity IV indicators: competitiveness of executive recruitment ($xrcomp$), openness of executive recruitment ($xropen$), and competitiveness of political participation ($parcomp$), as well as Arthur Banks regime type data ($regtype$) to construct W and updated legislative selection data ($legselec$) taken from Cheibub, Gandhi and Vreeland (2010) to construct S .

6.4.3 Examining Indirect Executive Incentives

I hypothesize that the executive also faces indirect incentives based on the expectation of implementation by other key domestic actors. I interact each of the following institutional variables with the finding of a violation by the regional court. First, I argue that powerful domestic judiciaries generate incentives for domestic judges to implement regional court decisions (H3). Specifically, I argue that an independent domestic judiciary possessing autonomy and the power to induce a response from other actors charged with implementation increases the likelihood of observing regional court effectiveness. Various measures of judicial independence and effectiveness have been utilized in the literature.⁶⁷ Measures operationalizing only judicial independence do not capture the concept of interest, particularly because it is possible to observe an ineffective court that appears independent and effective because judges select cases in an effort to avoid conflict with other political actors (Ginsburg 2003). As a result, examining judicial behavior can be problematic. Linzer and Staton (2011) provide a useful new approach to measuring judicial power. They consider a judge to be powerful if “her decisions reflect her evaluation of the legal regard (autonomous decision-making)” and her decisions “are respected by government officials who disagree with them (effective decision-making)” (12).⁶⁸ Linzer and Staton (2011) claim that judicial independence is a latent concept that cannot be directly observed and as such, they employ a latent variable measurement model using eight indicators to measure *de facto* judicial independence and they provide estimates of the level of judicial independence for all countries from 1960-2009.⁶⁹ The Linzer and Staton (2011) measure of judicial power provides significant leverage over choosing a single indicator of judicial power (**Judiciary**). Most notably, each indicator on its own “might be a less reliable indicator of the underlying concept, however, as the underlying concept is latent and very much related to the non-judicial independence features of these measures, their inclusion is highly reasonable” (Linzer and Staton 2011, 14).⁷⁰ As robustness checks, I also conduct analyses using some of the other individual measures of judicial effectiveness.

I also posit that various legislative electoral rules influence regional court effectiveness. First, I argue

⁶⁷ See Ríos-Figueroa and Staton (2008) for further discussion of the existing measures of judicial independence.

⁶⁸ While Linzer and Staton (2011) refer to this concept as “judicial independence,” it closely resembles the concept of judicial power I describe earlier, as encompassing autonomy and effectiveness.

⁶⁹ These indicators include Tate and Keith (2009), Howard and Carey (2004), Cingranelli and Richards (2010a), Marshall and Jaggers (2009), Clague et al. (1999), Feld and Voigt (2003), the PRS Law and Order Measure as described in Ríos-Figueroa and Staton (2008), and the Fraser Institute’s measure of legal structure and security of property rights as also described in Ríos-Figueroa and Staton (2008).

⁷⁰ For example, the XCONST measure used by Marshall and Jaggers (2009), Fraser and the PRS measure are all hybrid measures that capture expert opinions on the judiciary as well as other features of the legal system (i.e. law and order).

that voter's ability to participate in the electoral process and hold their legislators accountable at the ballot box influence regional court effectiveness (H4). I use a binary variable based on data provided by Alvarez et al. (1996) and Cheibub and Gandhi (2004) on legislative elections (**Leg Elections**). A "0" indicates a country where no legislature exists or the legislature is not elected, including cases where the selection of legislators is done by the effective executive or on the basis of heredity or ascription. A "1" indicates a country with elected legislators, or where members of the lower house in a bicameral system are selected by means of either direct or indirect popular election. Second, I posit that as the number of access points increases, the cost of lobbying elected officials declines and voters are increasingly likely to hold their elected officials accountable (H5). I utilize a series of indicators to capture the influence of access points, including the mean district magnitude of the legislative chambers (**DistMag**), the presence of a proportional representation (**PR**) electoral system (coded 1 when a PR system is present and 0 otherwise), and the total vote share of all opposition parties (**OppParty**). These three variables are taken from the World Bank's *Database of Political Institutions*.

I argue above that as the number of veto players rises, particularly those that are likely to delay or inhibit policy change, regional court effectiveness declines (H6). Additional veto players may draw out or stall the process of regional court implementation. Larger numbers of veto players also make it more difficult for voters to monitor evasion of regional court implementation by legislators. I use two variables to capture the number of veto players (**Veto**). First, I examine a measure of checks and balances taken from the World Bank's *Database of Political Institutions*. This variable increments by one for each of the following conditions: the presence of a chief executive, competitive election of the chief executive, and opposition control of the legislature. In presidential systems, an additional point is awarded for each chamber of the legislature and for each party allied with the president's party, *but* with an ideological orientation closer to the main opposition party than the president's party. In parliamentary systems, this variable is incremented by 1 for every party in the government coalition (as long as the parties are needed to maintain a majority) and for every party in the government coalition that has a position on economic issues closer to the largest opposition party than to the party of the executive.⁷¹ I also examine a measure of political polarization, which captures the maximum polarization between the executive party and the four principle parties of the legislature. I also take polarization data from the World Bank's *Database of Political Institutions*.

Further, I argue that freedom of expression influences domestic actor's incentives to implement of re-

⁷¹For more detailed coding rules on the checks measure, see the Keefer (2005).

gional court decisions (H7). Freedom of expression (**Expression**) is conceptualized as the extent to which citizens can express their views and opinions without government sanction or censure. Freedom of speech, press, and assembly represent important domestic institutional guarantees because they allow individuals to identify and publicize regional court cases, including speaking out against the actors responsible for human rights violations found by regional courts. I utilize the CIRI measure of freedom of speech (**Speech**), which indicates the extent to which freedoms of speech and press are affected by government censorship, including ownership of media outlets. This variable is coded on a 3-point scale where a “0” indicates complete government censorship of the media, a “1” indicates some censorship, and a “2” indicates no censorship (this does not imply absolute freedom, but instead means that there are freedoms to speak freely and print opposing views without fear) (Cingranelli and Richards 2010a).⁷² Further, I examine the Cingranelli and Richards (2010a) freedom of assembly and association variable, which evaluates the extent to which the right of citizens to freely associate with other persons in political parties, trade unions, cultural organizations, or other groups are subject to actual governmental limitations or restrictions. This variable is coded on a three-point scale where a “0” represents country-years where rights to assembly and association are severely restricted or denied completely to all citizens, a “1” indicates that these rights are limited for all citizens or severely restricted or denied for select groups, and a “2” represents country-years where these rights are virtually unrestricted and freely enjoyed by all. I dichotomize both of these variables to simplify interpretation by coding countries with complete government censorship (0) and those with some censorship (1) as a “0” and countries with no censorship (2) as a “1”.

I also argue that members of civil society positively influence regional court implementation when freedom of speech guarantees exist (H7a). In order to examine this hypothesis, I interact freedom of expression with HRO presence and the finding of a violation by the regional court. I use a measure of HRO presence (**HRO**) that captures the presence of at least one HRO secretariat location in a given country-year. Secretariat locations represent permanent office locations within a state and are based on organizational listings in the *Yearbook of International Organizations* (Murdie and Bhasin 2011). I also utilize a variable that captures legal expertise (**Legal Expertise**) within a state (H7b). I use two proxy measures to capture the extent of legal expertise, specifically, whether the country operates under a common law legal system and whether the International Bar Association’s Human Rights Institute (ABAHRI) operates in a given country-

⁷²I also conduct robustness checks using *de jure* indicators of freedom of expression, that is, constitutional protection of freedom of expression (Keith 2002, Keith, Tate and Poe 2009).

year. Scholars argue that civil law systems represent inquisitorial systems, in which judges investigate and gather evidence, while common law systems represent an adversarial legal tradition, in which judges represent neutral arbiters between opposing parties (Carey 2002, Mitchell and Spellman 2013). The adversarial tradition of common law legal systems strengthens the position of lawyers in the legal system, and according to Mitchell and Spellman (2013), “lawyers are more powerful and proactive in common law systems relative to other legal systems due to the adversarial nature of litigation” (1). Data on common law systems is taken from Powell and Mitchell (2007), and they code a “1” for countries with a common law legal tradition and a “0” otherwise.⁷³ The IBAHRI works to promote human rights and judicial independence, as well as the right and *ability* of judges and lawyers to be able to practice freely. Members of the IBAHRI work to disseminate information related to human rights and the rule of law. I argue that in states where the IBAHRI works, legal expertise associated with human rights is relatively higher. Country-years are coded a “1” where the IBAHRI is active and a “0” otherwise.⁷⁴

Finally, I argue that NHRIs (**NHRI**) play an important role in the effectiveness of regional court decisions (H8). NHRIs examined here include classical ombudsman offices, human rights commissions, and human rights ombudsman offices. Data on the presence of NHRIs is taken from Koo and Ramirez (2008) who collected data on the presence of national human rights institutions from the International Ombudsman Institute, an organization for ombudsman offices worldwide.⁷⁵ Koo and Ramirez (2008) examined the list of NHRIs provided by the UN Office of the High Commissioner for Human Rights. They determined the adoption years of the institution by examining the web pages of the individual organizations. For sites that excluded adoption dates, Koo and Ramirez (2008) examined the relevant laws empowering each NHRI and based the adoption year on the timing of the passage of legislation. This variable is coded a “1” for country-years in which an NHRI is present, and a “0” otherwise.⁷⁶ However, NHRIs exhibit significant variation in effectiveness and as a result, I also account for their accreditation status as granted by the International Coordinating Committee (ICC) of National Human Rights Institutions. Established in 1993, the ICC works to promote and strengthen NHRIs to incorporate and comply with the Paris Principles. NHRI accreditation is granted on three levels. I code NHRI accreditation status as a binary variable, in which a “1” indicates

⁷³I interact both the HRO and legal expertise variable with the finding of a violation and the presence of freedom of expression guarantees.

⁷⁴These data are taken from the IBAHRI website. For more information, see <http://www.ibanet.org/IBAHRI.aspx>.

⁷⁵More information on the International Ombudsman Institute can be found at <http://www.law.ualberta.ca/centres/ioi/>.

⁷⁶I also plan to examine the newly collected National Human Rights Institutions Dataset for additional data on accreditation, independence, and accountability of NHRIs as the data is released Conrad, DeMeritt and Moore (2012).

an “A” accreditation level, which includes NHRIs in full compliance with the Paris Principles or a “B” level of accreditation, which includes NHRIs not in *full* compliance with the Paris Principles. A “0” indicates an NHRI with a “C” level of accreditation, which includes NHRIs *not* in compliance with the Paris Principles or countries in which no NHRI exists.

6.5 Control Variables

I utilize a set of control variables commonly used in studies of state respect for human rights. Factors that improve human rights practices include democracy and economic development; factors that hinder good human rights practices include a large population, internal conflict, and prior experience with repression (Davenport and Armstrong 2004).⁷⁷ Democracy (**Democracy**) is operationalized based on Przeworski et al. (2000), in which a regime is classified as a nondemocracy during a particular year if one of the following conditions holds: the chief executive is not elected, the legislature is not elected, there is no more than one party, and alternation does not occur (which applies only to regimes that have passed the previous three rules). Democracy is a binary variable, in which a “1” represents a democracy as meeting these criteria and “0” represents a non-democracy. In order to account for economic development, I utilize a measure of GDP per capita (**GDP**) taken from the World Bank’s *World Development Indicators*. The total population (**Population**) is also taken from the World Bank’s *World Development Indicators*. Data on the occurrence of civil conflict (**Civil War**) are obtained from the Uppsala armed conflict data project (Nils Gleditsch and Strand 2002, Harbom and Wallensteen 2005). Finally, I include a lagged dependent variable (**Physint (t-2)**) to account for temporal dependence or prior levels of repression (Beck and Katz 1995).

7 Results

7.1 Examining Direct Executive Implementation Incentives

Table 1 represents an initial test of H1, which examines the influence of direct executive incentives on regional human rights court effectiveness. As the amount of foreign aid increases, the ECtHR finding of a violation is associated with higher respect for rights two years after the court finds a violation. This provides support for H1, indicating that the executive responds to international pressure to implement regional court

⁷⁷Scholars also find interstate conflict to be associated with repression, however, there are few interstate conflicts in the time series covered in my analysis, so, I only control for the occurrence of civil war.

decisions. However, the parameter estimates on the interaction terms indicate a small substantive effect on respect for rights. In other words, while foreign has a positive and statistically significant effect, it likely does not have a large effect on executive decisions to implement regional court decisions.

Table 1: Influence of Regional Court Judgment of Foreign Aid on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*Aid (t-2, ten millions)	0.004** (0.002)	-0.004 (0.004)
Regional Court (t-2)	-0.057 (0.096)	-0.229 (0.227)
Aid (t-2, ten millions)	-0.001 (0.001)	0.006* (0.002)
Physint (t-2)	0.464*** (0.047)	0.414*** (0.051)
GDP	0.000*** (0.000)	0.000** (0.000)
Democracy	0.751** (0.296)	0.268 (0.394)
Population	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.582*** (0.352)	-2.098*** (0.283)
Constant	2.457*** (0.383)	2.521*** (0.467)
r2	0.628	0.614
N	728.000	372.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated with robust standard errors. One-tailed significance tests reported.

Table 2 reports results from an initial examination of H2. Like H1, Hypothesis 2 also examines the influence of direct executive incentives to implement regional court decisions, however, instead of examining the role of international pressure to implement regional court decisions, H2 examines the role of domestic pressure. Table 2 shows the role of executive selection institutions, the ratio of the size of the winning coalition to the selectorate, in executive incentives to implement regional court decisions.⁷⁸ While the ECtHR model indicates that as the size of the winning coalition increases, regional court findings of violation are associated with higher respect for rights two years following the finding of a violation and the IACtHR predicts a negative influence, neither the ECtHR or the IACtHR models indicate that the size of the winning coalition has a statistically significant effect on respect for rights two years following the finding of a violation.

⁷⁸Rather than including a control variable for democracy, I follow Bueno de Mesquita et al. (2005) and create a variable to assess the independent influence of democracy on the dependent variable (respect for rights) by regressing W and S on Democracy and then saving the residuals (137).

Table 2: Influence of Regional Court Judgment and W/S on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Reported	
	ECtHR	IACtHR
Regional Court*W/S (t-2)	0.539 (0.863)	-0.637 (1.379)
Regional Court (t-2)	-0.530 (0.825)	0.049 (1.288)
W/S (t-2)	2.195** (0.791)	2.578** (0.860)
Physint (t-2)	0.390*** (0.052)	0.426*** (0.055)
GDP	0.000*** (0.000)	-0.000** (0.000)
Democracy (Resid)	2.421* (0.945)	-0.618 (0.937)
Population	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.601*** (0.372)	-1.862*** (0.282)
Constant	1.718** (0.650)	1.251* (0.557)
r ²	0.656	0.678
N	621.000	285.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated with robust standard errors. One-tailed significance tests reported.

Tables 1 and 2 provide little to no support for H1 and H2. One reason for this finding might be that direct executive incentives to implement regional court decisions result in direct actions taken by the executive to implement decisions. In other words, the executive may engage in symbolic actions directly attributable to the executive by international and domestic audiences (i.e. formal apology, erecting a memorial). Arguably, these actions likely have little influence on respect for rights in the long-term, as they are generally rooted in aspects of each individual case and as Hawkins and Jacoby (2010) find, states comply most often with these types of injunctive orders because they represent “easier” or “less costly” forms of compliance with the regional court. Perhaps in response to these direct implementation incentives, the executive relies primarily on less costly actions that can be directly attributed to the executive, but less likely to have an influence on respect for rights across time and space.

Further, perhaps indirect executive implementation incentives are costlier for the executive to ignore. Specifically, lack of implementation by the executive in the face of implementation by other domestic actors becomes directly attributable to the executive. If the executive fails to carry-out a policy of respect for rights when other domestic actors engaged in implementation, the executive potentially faces international and domestic audience costs, as these audiences can specifically observe executive decisions to evade regional

court implementation.

7.2 Examining Indirect Executive Implementation Incentives

Table 3 presents results from an initial examination of H3. Hypothesis 3 argues that *in expectation* of domestic judicial implementation of regional court decisions, the executive engages in implementation of regional court decisions. I argue that the domestic judiciary engages in implementation of regional court decisions when faced with institutional incentives. Specifically, domestic judicial power generates incentives for domestic judges to implement regional court decisions. Table 3 indicates that as domestic judicial power rises, the finding of a violation by the regional court is associated with higher respect for rights two years following the finding of a violation by both the ECtHR and IACtHR. Specifically, two years following the finding of an ECtHR violation, physical integrity rights increase by .77 on average when the domestic judiciary is relatively powerful. Two years following the finding of a violation by the IACtHR, physical integrity rights improve by 1.98 points on average where the domestic judiciary is relatively powerful. Further, the constituent terms in the model indicate the independent influence of the finding of regional court violations. Findings of violation by both courts are associated with lower respect for rights on average, two years following the finding of a violation when the domestic judiciary is not powerful, however, as domestic judicial power rises, this relationship becomes positive.

Table 4 presents the results from a preliminary test of H4, which examines the influence of executive implementation of regional court decisions in expectation of legislative implementation. Specifically, I argue that legislators face incentives to implement regional court decisions when they are likely to be held accountable through competitive legislative elections. The results for H4 remain mixed, as two years following the finding of a violation by the ECtHR, respect for physical integrity rights improves by .235 points on average, however, the presence of competitive legislative elections has a negative influence on respect for rights two years following the finding of a violation by the IACtHR.⁷⁹

Tables 5, 6, and 7 present initial results for H5, which posits that regional court effectiveness is conditional on greater numbers of access points, or policymakers susceptible to lobbying. In other words, as the number of individuals to which pro-rights advocates can appeal and lobby for domestic implementation of regional court decisions increases, respect for rights also likely improves. Table 5 examines the influence

⁷⁹This result is likely due to the lack of variation in the legislative selection variable. As a result of the small sample size in the IACtHR models, almost all values on the legislative election variable represent competitive legislative elections.

Table 3: Influence of Regional Court Judgment and Powerful Judiciary on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Reported	
	ECtHR	IACtHR
Regional Court*Judiciary (t-2)	0.774* (0.587)	1.980* (1.724)
Regional Court (t-2)	-0.670* (0.503)	-1.143* (0.848)
Judiciary (t-2)	0.334 (0.456)	1.984*** (0.576)
Physint (t-2)	0.438*** (0.048)	0.390*** (0.052)
GDP	0.000*** (0.000)	-0.000 (0.000)
Democracy	0.660** (0.325)	-0.214 (0.383)
Population	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.641*** (0.368)	-2.019*** (0.311)
Constant	2.532*** (0.397)	2.623*** (0.393)
r2	0.633	0.646
N	730.000	354.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated with robust standard errors. One-tailed significance tests reported.

of the regional court across values of mean district magnitude of both the legislative chambers on respect for rights. The results indicate that larger average district magnitude of the legislature is associated with higher respect for physical integrity rights, two years following the finding of a violation by the ECtHR. The IACtHR finding of a violation is negatively associated with respect for rights two years following the finding of a violation as mean district magnitude of the upper chamber increases. However, this relationship is positive (though not statistically significant) with respect to mean district magnitude of the lower chamber. These results indicate that increased representatives per district have mixed influence on the lobbying efforts of pro-rights advocates, specifically, the effect is greater in the European Human Rights system than in the Inter-American human rights system.

Table 6 tests H5 by examining the role of proportional representation (PR) electoral systems on respect for rights following a regional court violation. The ECtHR finding of a violation is positively associated with respect for rights in PR systems. In fact, on average, physical integrity rights improve by .4 points two years following the finding of a violation by the ECtHR. This may be an indication that PR systems allow for greater access to representatives than do plurality electoral systems. However, the IACtHR finding of a violation has little effect on respect for rights in the presence of a PR electoral system.

Table 4: Influence of Regional Court Judgment and Legislative Elections on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Reported	
	ECtHR	IACtHR
Regional Court*Leg Elections (t-2)	0.235* (0.160)	-0.157* (0.104)
Regional Court (t-2)	-0.514** (0.303)	omitted ()
Leg Elections (t-2)	-0.240* (0.152)	-1.502*** (0.102)
Physint (t-2)	0.463*** (0.047)	0.572*** (0.041)
GDP	0.000*** (0.000)	0.000 (0.000)
Democracy	0.804*** (0.296)	-0.186 (0.241)
Population	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.580*** (0.357)	-1.344*** (0.252)
Constant	2.883*** (0.359)	5.561*** (0.252)
r ²	0.628	0.679
N	724.000	336.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. One-tailed significance tests reported.

Finally, Table 7 examines the role of opposition party vote share on respect for physical integrity rights. Two years following the finding of a violation by both the ECtHR and the IACtHR, respect for physical integrity rights increases as the total vote share of all opposition parties increases. The presence of opposing political views influences legislator incentives to implement regional court decisions. Further, the executive, in expectation of domestic legislative implementation of regional court decisions in the presence of significant opposition party (or parties) influence, chooses to respect rights. Perhaps relatively higher opposition party vote share represents a significant threat to the political survival of the executive, as executive evasion of regional court implementation provides the opposition with evidence of policy failure to be used by challengers of executive political office.

Table 8 shows an initial examination of H6. Hypothesis 6 posits that as the number of veto players increases, regional court decisions become less effective (rights are less likely to improve). Contrary to my expectation, the empirical analyses show that as the number of veto players increases, the regional court becomes *more* effective in improving respect for rights. Column 2 of Table 8 shows that as the number of veto players increases, physical integrity rights improve by .331 points on average two years following the finding of a violation by the IACtHR. Further, as the polarization between the executive's party and the four

Table 5: Influence of Regional Court Judgment and District Magnitude on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	District Magnitude Upper		District Magnitude Lower	
	1	2	3	4
	ECtHR	IACtHR	ECtHR	IACtHR
Regional Court*DistMag (t-2)	0.019 (0.025)	-0.010* (0.007)	0.005*** (0.341)	0.004 (0.615)
Regional Court (t-2)	-0.000 (0.209)	0.143 (0.535)	-0.147* (0.100)	-0.307* (0.257)
DistMag (t-2)	-0.002 (0.016)	0.005 (0.005)	0.000 (0.000)	0.005 (0.006)
Physint (t-2)	0.234*** (0.087)	0.597*** (0.061)	0.456*** (0.046)	0.404*** (0.052)
GDP	0.000*** (0.000)	0.000 (0.000)	0.000*** (0.000)	0.000** (0.000)
Democracy	1.903*** (0.354)	-0.131 (0.364)	1.183*** (0.340)	0.536 (0.484)
Population	-0.000*** (0.000)	-0.000*** (0.000)	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	0.296** (0.149)	-1.512*** (0.492)	-0.478* (0.363)	-2.097*** (0.320)
Constant	3.189*** (0.792)	2.064*** (0.530)	2.068*** (0.400)	2.491*** (0.501)
r2	0.406	0.659	0.589	0.614
N	165.000	166.000	704.000	335.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated with robust standard errors. One-tailed significance tests reported.

principle parties of the legislature increases, physical integrity rights improve by .5 points on average two years following the finding of a violation by the IACtHR. These results do not hold for the ECtHR, as checks are not statistically significant and the parameter estimate on the polarization and regional court interaction is negative and fails to achieve statistical significance.

Perhaps one reason for the unexpected positive influence of veto players on regional court effectiveness involves strategic interactions between legislators and the executive. The checks variable largely captures checks on executive power by parties in the legislature. Further, the polarization variable captures polarization between the executive party and the parties in the legislature. As executive opposition grows, the threat to executive political survival also likely rises. Executive failure to implement regional court decisions gives the opposition significant leverage in challenging the executive in future elections. The presence of significant opposition to the executive increases the costs of evading regional court decisions. As a result, the executive recognizes the increased likelihood of being held accountable for policy failure or the failure to implement the actions of legislators (follow-through on implementation by respecting rights). Further, perhaps clarity in implementation is much more difficult to determine in the European human rights system,

Table 6: Influence of Regional Court Judgment and Proportional Representation on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Reported	
	ECtHR	IACtHR
Regional Court*PR (t-2)	0.440* (0.341)	-0.063 (0.615)
Regional Court (t-2)	-0.427* (0.330)	-0.196 (0.559)
PR (t-2)	-0.270 (0.266)	0.165 (0.310)
Physint (t-2)	0.472*** (0.045)	0.415*** (0.050)
GDP	0.000*** (0.000)	0.000** (0.000)
Democracy	0.978** (0.342)	0.214 (0.385)
Population	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.597*** (0.380)	-2.085*** (0.293)
Constant	2.384*** (0.505)	2.687*** (0.595)
r ²	0.633	0.609
N	718.000	372.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated with robust standard errors. One-tailed significance tests reported.

as the ECtHR engages in delegative, rather than checklist, compliance. As a result, action needed to be undertaken in response to an adverse court decision is more clear-cut in the IACtHR context, making evasion easier to observe by voters. If the legislature passes legislation as ordered by the IACtHR and respect for rights fails to improve, executive opposition readily points to the executive failure to implement the legislation. However, if the executive faces little opposition in the legislature, perhaps the legislature engages in less shaming of the executive when executive evasion occurs. Of course, these interactions are likely to have their largest effect when the environment is relatively transparent, that is, when the regional court clearly lays out expectations for compliance, rather than allowing the state to determine the means of compliance (as is the case in the European human rights system).⁸⁰

Table 9 presents an initial analysis of H7, which assesses the influence of freedom of expression on regional court effectiveness. The results show that ECtHR rulings against the state are associated with a .318 average increase in respect for physical integrity rights in states with freedom of speech guarantees (column 1). However, this result does not hold in the IACtHR context, as the influence of IACtHR deci-

⁸⁰I recognize that there is substantial variation within the Inter-American system regarding the clarity of injunctive orders (Staton and Romero 2012), however, on average, these orders are arguably, more clear in terms of the action needed to be taken to come into compliance with the court ruling than they are in the European system.

Table 7: Influence of Regional Court Judgment and Opposition Party Vote Share on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	ECtHR	
	ECtHR	IACtHR
Regional Court*OppParty (t-2)	0.010* (0.007)	0.009* (0.008)
Regional Court (t-2)	-0.472** (0.293)	-0.553** (0.274)
OppParty (t-2)	0.001 (0.003)	0.001 (0.003)
Physint (t-2)	0.466*** (0.046)	0.403*** (0.052)
GDP	0.000*** (0.000)	0.000** (0.000)
Democracy	0.888** (0.327)	0.237 (0.400)
Population	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.535*** (0.359)	-2.090*** (0.287)
Constant	2.273*** (0.414)	2.868*** (0.415)
r2	0.633	0.610
N	722.000	372.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated with robust standard errors. One-tailed significance tests reported.

sions on respect for rights is in the wrong direction and not statistically significant where freedom of speech guarantees are present (column 2). The results are similar in the presence of freedom of association guarantees, however, the significant results for the ECtHR disappear in the presence of freedom of association guarantees.

Table 10 provides little support for H7a, which posits that regional court effectiveness increases in the presence of Human Rights Organizations (HROs) as well as freedom of speech guarantees. In the European human rights system, the regional court exudes little influence when both HROs *and* freedom of expression guarantees exist simultaneously. Interestingly, the ECtHR is associated with an average 1.163 increase in respect for rights when there are freedom of speech guarantees and no HRO present and the ECtHR is associated with a .412 average increase in respect for rights when an HRO is present, but there are severely restricted freedom of expression guarantees or no freedom of expression guarantees. However, the parameter estimate on the triple interaction variable presents a puzzling result. Why is the simultaneous presence of freedom of speech guarantees and HROs associated with relatively lower effectiveness of the regional court (lower respect for rights)? Scholars argue that HROs often behave strategically, concentrating their efforts where they believe them most likely to be successful. Many HROs desire to obtain reliable and

Table 8: Influence of Regional Court Judgment and Veto Players on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Checks		Polarization	
	1	2	3	4
	ECtHR	IACtHR	ECtHR	IACtHR
Regional Court*Veto (t-2)	0.003 (0.068)	0.331* (0.221)	-0.074 (0.116)	0.515** (0.280)
Regional Court (t-2)	-0.056 (0.300)	-1.356** (0.815)	0.061 (0.191)	-0.547* (0.352)
Veto (t-2)	0.074** (0.032)	-0.131** (0.058)	0.127** (0.054)	-0.077 (0.085)
Physint (t-2)	0.454*** (0.049)	0.411*** (0.051)	0.473*** (0.053)	0.394*** (0.059)
GDP	0.000*** (0.000)	0.000** (0.000)	0.000*** (0.000)	0.000** (0.000)
Democracy	0.967** (0.339)	0.475 (0.431)	1.285** (0.433)	0.315 (0.410)
Population	-0.000*** (0.000)	-0.000*** (0.000)	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.473*** (0.359)	-2.165*** (0.288)	-1.946*** (0.416)	-2.116*** (0.327)
Constant	2.040*** (0.429)	3.055*** (0.419)	1.795*** (0.478)	2.945*** (0.429)
r2	0.641	0.615	0.629	0.585
N	715.000	368.000	631.000	340.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

accurate information because their influence largely depends on their credibility (Keck and Sikkink 1998). However, HROs also have incentives to raise donations, which may lead to exaggerated reports of human rights abuses (Keck and Sikkink 1998). In countries where freedom of expression guarantees are restricted, informational quality likely remains low, however, the regional court finding of a violation enhances the quality of information by providing legitimacy to demands made for rights (Simmons 2009). HROs utilize the regional court ruling as an important source of information, particularly where it might be representative of larger systemic problems associated with human rights abuse. As a result, the regional court finding of a violation increases the probability of success for HROs, regardless of the presence of freedom of expression guarantees.⁸¹ It is arguably the case, that HROs, backed by the legitimacy of the regional court ruling, target countries for further naming and shaming where freedom of expression guarantees are restricted.⁸²

Table 11 tests H7b, which argues that regional court effectiveness increases (improving respect for

⁸¹Arguably, countries where restrictions are placed on freedom of expression are those most in need of HRO activity, but where quality information is lower.

⁸²The data provide some evidence of these arguments, as HROs and freedom of speech guarantees exist in only 3 country-years in which there was an ECtHR ruling. HROs have a greater presence in countries with no (or restricted) freedom of speech guarantees (8) and fewer HROs are present when there are freedom of speech guarantees (74).

Table 9: Influence of Regional Court Judgment and Freedom of Expression on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Speech		Association	
	1	2	3	4
	ECtHR	IACtHR	ECtHR	IACtHR
Regional Court*Expression (t-2)	0.318** (0.182)	-0.106 (0.482)	0.206 (0.194)	-0.379 (0.467)
Regional Court (t-2)	-0.163 (0.148)	-0.211 (0.281) (0.160)	-0.169 (0.375)	0.021
Expression (t-2)	0.291*** (0.089)	0.078 (0.145)	0.305** (0.103)	0.315** (0.182)
Physint (t-2)	0.439*** (0.046)	0.409*** (0.051)	0.438*** (0.046)	0.394*** (0.051)
GDP	0.000*** (0.000)	0.000** (0.000)	0.000*** (0.000)	0.000** (0.000)
Democracy	0.744** (0.297)	0.224 (0.404)	0.845** (0.284)	0.203 (0.403)
Population	-0.000*** (0.000)	-0.000*** (0.000)	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.573*** (0.348)	-2.074*** (0.293)	-1.585*** (0.347)	-2.115*** (0.287)
Constant	2.543*** (0.378)	2.851*** (0.417)	2.355*** (0.367)	2.766*** (0.427)
r2	0.642	0.608	0.639	0.611
N	724.000	372.000	724.000	372.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

rights) in countries with freedom of expression guarantees and legal expertise. The empirical results do not support this hypothesis, as the common law legal tradition has a negative and nonsignificant influence on respect for rights two years following the finding of a violation by both the ECtHR and the IACtHR.

Table 12 shows results from an initial analysis of H8, which posits that regional court effectiveness increases in the presence of an NHRI. Columns 1 and 2 present estimates associated with the presence of any NHRI within the state, while columns 3 and 4 present estimates associated with the presence of NHRIs accredited by the ICC. The results indicate that the ECtHR is associated with an average 0.2 increase in physical integrity rights two years following the finding of a violation when an NHRI is present. The ECtHR has a negative influence on respect for rights in the absence of an NHRI (around 0.2 decline in physical integrity rights), indicating that the NHRI likely plays a role in generating incentives for domestic actors to respect rights. The presence of NHRIs in the Inter-American system generate little significant influence on respect for rights two years following the finding of a violation. Perhaps the challenges associated with weak political institutions make the work of NHRIs more difficult in the Inter-American human rights system.

Table 10: Influence of Regional Court Judgment in the Presence of Freedom of Speech Guarantees and HRO on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Reported	
	ECtHR	IACtHR
Regional Court*Speech*HRO (t-2)	-1.002** (0.512)	0.818 (0.922)
Regional Court*Speech	1.163** (0.471)	-0.544 (0.683)
Regional Court*HRO	0.412* (0.335)	0.194 (0.498)
Speech*HRO	0.054 (0.181)	0.196 (0.303)
Regional Court (t-2)	-0.493** (0.290)	-0.361 (0.328)
Speech (t-2)	0.242** (0.140)	-0.070 (.250)
HRO (t-2)	0.085 (0.157)	-0.173 (0.233)
Physint (t-2)	0.431*** (0.045)	0.407*** (0.051)
GDP	0.000*** (0.000)	0.000** (0.000)
Democracy	0.812** (0.303)	0.228 (0.407)
Population	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.533*** (0.343)	-2.059*** (0.295)
Constant	2.490*** (0.645)	2.972*** (0.473)
r2	0.645	0.611
N	724.000	372.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

8 Discussion

These initial analyses indicate that domestic implementation of regional court decisions remains largely conditional on the incentives of domestic actors. While direct executive incentives to implement regional court decisions, including international and domestic audience costs appear to exhibit little influence on executive incentives to implement regional court decisions, indirect executive incentives to implement regional court decisions play a much larger role. In other words, the executive largely behaves in expectation of the behavior of other domestic political actors. I find that executive incentives to implement regional court decisions, or respect rights, depend largely on whether the executive expects the domestic judiciary to implement regional court decisions. Domestic judges are much more likely to implement regional court

Table 11: Influence of Regional Court Judgment in the Presence of Freedom of Speech Guarantees and Legal Expertise on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Common Law Legal Tradition		IBAHRI Active	
	1	2	3	4
	ECtHR	IACtHR	ECtHR	IACtHR
Regional Court*Speech*Legal Expertise (t-2)	-0.594 (0.748)	-0.530 (0.625)	0.100 (0.506)	0.009 (1.263)
Regional Court*Speech	0.405** (0.183)	-0.007 (0.536)	0.182 (0.239)	-0.035 (0.606)
Regional Court*Legal Expertise	0.311 (0.662)	omitted (.)	-0.323 (0.381)	0.639 (0.563)
Speech*Legal Expertise	-0.554** (0.261)	-0.252 (0.832)	0.367* (0.308)	1.448** (0.459)
Regional Court (t-2)	-0.184 (0.148)	-0.206 (0.283)	-0.107 (0.190)	-0.460* (0.335)
Speech (t-2)	0.361*** (0.097)	0.097 (0.146)	0.455*** (0.119)	-0.409** (0.208)
Legal Expertise (t-2)	0.427** (0.190)	-0.001 (0.714)	-0.109 (0.258)	-0.347 (0.293)
Physint (t-2)	0.432*** (0.046)	0.414*** (0.050)	0.390*** (0.050)	0.433*** (0.061)
GDP	0.000*** (0.000)	0.000** (0.000)	0.000*** (0.000)	0.000** (0.000)
Democracy	0.753** (0.290)	0.204 (0.371)	0.558** (0.306)	0.687 (0.677)
Population	-0.000*** (0.000)	-0.000*** (0.000)	-0.000*** (0.000)	-0.000*** (0.000)
Civil War	-1.593*** (0.350)	-2.055*** (0.298)	-1.738*** (0.485)	-2.191*** (0.404)
Constant	2.546*** (0.375)	2.804*** (0.436)	2.889*** (0.390)	2.405*** (0.770)
r2	0.647	0.609	0.695	0.606
N	724.000	372.000	447.000	272.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Robust standard errors reported. One-tailed significance tests reported. Legal expertise is operationalized as the existence of a common law tradition (columns 1 and 2) or the activity of the International Bar Association's Human Rights Institute - IBAHRI (columns 3 and 4).

decisions when the institution of the domestic judiciary is powerful, or autonomous and effective. Further, legislative electoral rules, including competitive legislative elections and access points generate incentives for domestic implementation in ECtHR rulings. Relatively larger numbers of veto players enhance the effectiveness of the IACtHR by generating incentives for the executive to implement decisions. Freedom of expression and NHRIs also enhance the influence of the ECtHR by generating implementation incentives.

Table 12: Influence of Regional Court Judgment and NHRI Presence on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	Any NHRI Present		Accredited NHRI Present	
	1	2	3	4
	ECtHR	IACtHR	ECtHR	IACtHR
Regional Court*NHRI (t-2)	0.253*	-0.089	0.200	-0.107
	(0.215)	(0.534)	(0.194)	(0.533)
Regional Court (t-2)	-0.117	-0.103	-0.199*	-0.083
	(0.109)	(0.469)	(0.161)	(0.467)
NHRI (t-2)	-0.141**	-0.254**	0.061	-0.235
	(0.080)	(0.137)	(0.086)	(0.139)
Physint (t-2)	0.466***	0.425***	0.464***	0.422***
	(0.047)	(0.051)	(0.046)	(0.052)
GDP	0.000***	0.000**	0.000***	0.000*
	(0.000)	(0.000)	(0.000)	(0.000)
Democracy	0.762**	0.186	0.801**	0.209
	(0.291)	(0.394)	(0.291)	(0.408)
Population	-0.000***	-0.000***	-0.000***	-0.000***
	(0.000)	(0.000)	(0.000)	(0.000)
Civil War	-1.583***	-2.017***	-1.530***	-2.014***
	(0.357)	(0.289)	(0.350)	(0.286)
Constant	2.474***	2.970***	2.364***	2.947***
	(0.385)	(0.418)	(0.378)	(0.432)
r2	0.632	0.612	0.632	0.611
N	730.000	372.000	731.000	372.000

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated with robust standard errors. One-tailed significance tests reported. Columns 1 and 2 examine the influence of the presence of any NHRI within the state. Columns 3 and 4 estimate the influence of NHRIs accredited by the International Coordinating Committee on NHRIs. This variable is binary, where a 1 represents an A or B accreditation status and a 0 represents a C or no accreditation.

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