

From Litigation to Rights: The Case of the European Court of Human Rights *

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Do regional human rights courts influence respect for rights? Beyond providing remedy for individual human rights abuse, case outcomes help frame potential social mobilization by setting standards and raising the rights consciousness of civil society actors. The expectation of mobilization can increase the government's costs of flouting the court's rulings. We argue that an enabling domestic environment characterized by two features increases government expectation of mobilization following regional court litigation. First, a robust civil society creates strong horizontal ties between potential mobilizing groups. Second, a national human rights institution creates vertical ties that both transfer information down from the court to civil society; and transfer demands up from civil society to political elites in position to make stronger human rights policy. Using data for all Council of Europe countries from 1980 to 2012, we find European Court of Human Rights litigation associated with higher respect for rights in an enabling domestic environment characterized by strong civil society and the presence of a national human rights institution.

Key Words: Human Rights; International Law; Supranational Courts; Civil Society; National Human Rights Institutions; European Court of Human Rights

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1 Introduction

The growth of the international human rights regime in recent decades includes several United Nations human rights treaties and their monitoring bodies, various UN human rights organs (e.g. the UN Human Rights Council, Economic and Social Council, High Commissioner for Refugees), and several regional human rights arrangements – three of which establish human rights courts (Europe, the Americas, and Africa). Because these international human rights institutions vary considerably in their design, including membership (from inclusive UN bodies to restrictive regional bodies) and legalization (from monitoring bodies to human rights courts), human rights scholars have a unique opportunity to assess the impact of various types of international human rights institutions on state behavior. While an extensive literature on international human rights treaties exists (e.g. Simmons 2009; Hill 2010; Lupu 2015; Fariss 2018; Von Stein 2018; Conrad and Ritter 2019), we know less about the influence of regional human rights courts on state behavior. International human rights treaties and regional human rights courts share similar mandates – the promotion and protection of human rights within states. However, regional human rights courts’ more restrictive membership and ability to provide clear censure with judgements make them distinct legal bodies. Assessing supranational courts’ ability to curb human rights abuse can aid advocates, policymakers, and bureaucrats who wish to use resources efficiently on the most effective institutions.

Regional human rights courts share the same enforcement challenge other international human rights institutions face – they lack mechanisms to directly coerce compliance. The extensive literature exploring compliance with international human rights treaties highlights the importance of various domestic actors in ensuring compliance with international human rights law, including the judiciary (Powell and Staton 2009; Conrad and Ritter 2013), veto players (Lupu 2015), executive job security (Conrad and Ritter 2019), and civil society (Simmons 2009; Dai 2014).

Building on this established literature, we argue that regional human rights courts will be effective in the presence of an *enabling domestic environment*. Adverse judgments bring abuses to light, providing information to governmental officials about human rights policy failures. Adverse

regional human rights court judgments also provide pro-rights mobilization efforts with a transnational tie to an important international actor, which subsequently provides an important frame for mobilization efforts. We focus on both governmental and nongovernmental actors within the state, and the interactions among them in ensuring an effective regional human rights court. Court effectiveness requires the executive adopt and enforce policies that enhance human rights practices. The material and political costs, however, disincentivizes the executive from doing so.

But, the costs associated with mobilization against the government may outweigh the costs of policy implementation for the executive. An enabling domestic environment, consisting of three features, increases the executive's expectation of such mobilization. First, civil society actors must be able to operate unconstrained with limited governmental interference (horizontal ties).¹ Second, for civil society actors to successfully mobilize, they need information about the court judgment, including an understanding and interpretation of the ruling, as well as the extent to which state behavior conforms to the ruling (Dai 2014, 577-79). Importantly, this information must come from an actor that not only has access to this relatively privileged information, but also works with civil society actors (top-down vertical ties). Third, once mobilized, civil society actors must have access to political elites in order to voice their demands (bottom-up vertical ties). We argue that the presence of a particular institution - the national human rights institution (NHRI) - provides civil society actors with both top-down *and* bottom-up vertical ties. NHRIs are domestic institutions, created by the state, tasked with protecting and promoting human rights in that state.² Notably, NHRIs represent an important (top-down and bottom-up) vertical tie for civil

¹ We borrow the horizontal and vertical ties language from Chenoweth, Hunter, Moore et al. (2017), though we add the idea of directionality to vertical ties (bottom-up or top-down). Horizontal and vertical ties represent relationships among actors working toward a common cause, the protection of human rights. We do not map linkages among individual actors in a human rights network, but rather suggest the institutional structure within the state allows these ties to flourish or languish.

² Though a rich history of proto-NHRIs such as ombudspersons and government commissions exists (Cardenas 2014), the Paris Principles, adopted by the UN General Assembly in 1993, defined NHRIs. The number of NHRIs increased

society actors given their access to privileged information on regional human rights court litigation and state behavior, and their mandate to work with civil society actors (top-down vertical tie). Furthermore, NHRIs have direct access to political elites and use it to communicate civil society demands to governmental actors (bottom-up vertical ties). Importantly, the enabling domestic environment consisting of horizontal ties (among civil society actors) *and* vertical ties (among civil society actors and NHRIs) generate executive expectation of successful mobilization following an adverse regional human rights court decision.

We contribute to the study of international human rights law by examining the importance of actors on three levels of analysis. At the international level, we join a few recent scholars in directing attention towards regional human rights courts (Helfer and Slaughter 1997; Alter and Helfer 2010; Haglund 2019) adding support to the argument about the importance of domestic conditions and court compliance (Hillebrecht 2014; Haglund 2020b,a). Our argument, however, highlights the importance of an oft overlooked domestic institution – NHRIs. Of the few quantitative pieces that evaluate NHRIs’ ability to enhance rights (Cole and Ramirez 2013), only Welch (2017) does so in the context of international law. Whereas he shows NHRIs make treaty commitments more effective, we show they also play a role in making supranational courts more effective. Lastly at the societal level, we join a multitude of scholars concerned with civil society’s effects on human rights (e.g Franklin 2008; Bell, Clay, and Murdie 2012; Murdie and Bhasin 2011; Allendoerfer, Murdie, and Welch 2020). Unlike most of these studies, though, we highlight the ability for civil society to mobilize around court cases rather than their work naming and shaming or reaching out to the international regime (e.g Risse-Kappen, Ropp, and Sikkink 1999; Hafner-Burton 2008).

drastically after adoption of the Paris Principles (Koo and Ramirez 2009; Pegram 2010). For a detailed description of global NHRI adoption, see Cardenas (2014).

2 What is an Effective Regional Human Rights Court?

Although scholars recognize the broader mandate of the court (e.g. Cavallaro and Brewer 2008; Keller and Stone Sweet 2008), to date empirical research has focused largely on the rate of state compliance with regional court orders (Hawkins and Jacoby 2010; Hillebrecht 2014). Scholars debate the best manner to assess compliance with the ECtHR, with some examining whether and how long cases remain pending before they are closed (Hawkins and Jacoby 2010; von Staden 2018), while others focus on discrete recommendations from the Committee of Ministers (Hillebrecht 2014). Compliance varies considerably across states. For example, Hillebrecht (2014, 13) finds that the ECtHR has a 49 percent compliance rate, varying from high (i.e. Ireland, Netherlands, Sweden) to low (i.e. Italy, Russia, Turkey). Compliance variation exists not only across states, but across types of orders. For example, states are more likely to undertake measures such as issuing a formal public apology or paying damages than undertaking legislative changes or investigating violations (Hawkins and Jacoby 2010). But compliance need not affect real human rights change as Neyer and Wolf (2005, 41-42) point out nicely:

Compliance focuses neither on the effort to administer authoritatively public policy directives and the changes they undergo during this administrative process (implementation) nor on the efficacy of a given regulation to solve the political problem that preceded its formulation (effectiveness)...Assessing compliance is restricted to the description of the discrepancy between the (legal) text of the regulation and the actions and behaviors of its addressees. Perfect compliance, imperfect implementation and zero effectiveness therefore are not necessarily mutually exclusive.

Although some debate exists over how to best define and conceptualize effectiveness (Shany 2012), we take the simple stance that an effective court should influence state human rights practices generally. Effectiveness captures a broad mandate in which adverse court judgments influence overall state human rights behavior. An effective regional human rights court decreases human rights abuses by influencing the decisions of political actors to create and implement policy meant

to protect rights (Keller and Stone Sweet 2008).

3 Domestic Actors and Human Rights Policy

Like international law more generally, regional human rights courts possess few international enforcement mechanisms leading some to expect little influence on state behavior (e.g. Mearsheimer 1995; Posner 2014). However, those skeptics fail to account for the domestic context in which international human rights law operates. After all, domestic actors actually implement international legal obligations, including regional court orders. For example, domestic legislators can adopt, amend, or repeal legislation and domestic judges can conduct criminal proceedings to remedy rights abuses. The executive is responsible for carrying out specific court orders such as erecting a memorial, mandating training, or setting up a DNA database of victims. While the execution of such orders represent steps toward compliance, we focus not on implementation of specific orders, but rather on the adoption of comprehensive human rights policy – which includes the administration, monitoring, and enforcement of human rights policy – that can lead to more respect for human rights broadly (Haglund 2020b).

As the primary policy authority on respect for rights, the executive – including the leader and bureaucracy – produces and implements important policy designed to enhance human rights practices.³ Executive policies designed to enhance human rights practices involve the administration, monitoring, and enforcement of human rights protection. Administration involves dissemination of policy objectives to various state agents responsible for policy implementation, such as training programs. Monitoring might include inspections of detention facilities, to ensure state agents abide by stated policy. Enforcement involves punishment for those who do not (Haglund 2020b).

But, executives often lack incentives to protect human rights. The adoption of comprehensive

³ We recognize variation exists in leader beliefs that may influence the executive branch. Our main model holds executive leadership constant. However, when we estimate a robustness check with executive ideology that captures changes in the executive branch (Keefer 2012), The results remain the same.

human rights policy is costly, both materially and politically. For example, effective human rights training programs require wide geographical coverage over long time periods, perhaps indefinitely. Political costs derive from the executive's preference to reserve repressive policies as a response to challenges to the status quo (Poe 2004). New, more stringent human rights policies may remove the executive's ability to readily rely on certain repressive tactics. Without the appropriate executive incentives, regional human rights court litigation is unlikely to improve respect for rights.

The right domestic conditions can create pressure on the executive to adopt comprehensive human rights policy when faced with adverse regional court decisions. Following an adverse regional human rights court decision, the executive behaves in expectation of the potential pressure from civil society actors to make rights-related policy changes in response to a judgment. That pressure can come directly from civil society to the executive. Or the pressure can indirectly come from civil society through other branches of government. For example, when the regional court charges domestic judges with re-examination of a case, individuals and groups may shift public support (a valuable resource of powerful domestic judiciaries (Carrubba 2009)) away from the domestic court for failing to uphold the regional court's orders (Haglund 2020b). Or, civil society actors may place pressure on the legislature to make legislative changes in line with the regional court's orders, threatening the political survival of legislators that fail to do so. If judges and legislators implement regional court orders as a result of pressure by civil society actors, the executive must then implement those laws and orders or risk facing political costs up to losing power.⁴

⁴ Importantly, because the executive behaves in expectation of civil society mobilization, if the executive expects civil society mobilization, then the executive may not to commit abuses in the first place. If this were the case, adverse ECtHR judgments would rarely, if ever, occur because the executive would be deterred by the presence of the regional court. However, the executive does not have complete information about the likelihood of litigation. Incomplete information is a result of only a relatively small subset of abuses resulting in ECtHR litigation. Most ECtHR petitions do not make it past the admissibility stage. For example, in 2017, over 69,000 applications to the ECtHR did not make it to the judgment stage. As a result, the executive does not expect with certainty that petitions before the ECtHR will result in adverse judgments. Moreover, evidence of many types of rights abuses, particularly physical integrity abuses, is difficult to obtain, as abuses are often committed in secret with few witnesses (Lupu 2013). Many physical

4 Regional Court Litigation and Pro-Rights Mobilization

Regional human rights court litigation plays an important role in mobilization efforts by helping pro-rights groups frame their struggle. International human rights legal standards, established in various international treaties as well as international and regional court litigation, influence the perceptions and understandings of rights advocates regarding their claims to particular rights, as well as the enforceability of those claims (Hafner-Burton, LaVeck, and Victor 2016). International litigation helps social movements frame demands by “suggesting new ways for individuals to view their relationship with their government and with each other” (Simmons 2009, 141). When societal norms dictate that the oppression of certain groups within society is “justified, acceptable, or inevitable,” there is very little incentive to organize around rights claims for oppressed groups (Es-kridge 2001, 439). But, international litigation represents a focal point around which groups may begin to question accepted norms of oppression and provide “alternative frameworks by which the oppressed gain a sense of political identity, legitimacy, and efficacy” (Simmons 2009, 141). Framing also helps mobilize non-victims as allies for the oppressed (e.g Myers 2008). European Court litigation informs civil society demands, though, as we argue next, the likelihood of civil society mobilization varies based on the domestic political environment.

5 An Enabling Domestic Environment

Although regional human rights court litigation provides frames that encourage mobilization, the probability that civil society actors successfully build a pro-rights coalition around such litigation integrity abuses, then, are never observed or the amount of evidence presented is not sufficient in a court of law. While the executive may expect mobilization *following an adverse judgment*, the executive is less capable of anticipating an adverse judgment from the ECtHR.

tion is conditional on an enabling domestic mobilization environment. Domestic actors⁵ intimate familiarity with the local rights environment make them particularly important for ensuring implementation of regional human rights court decisions (Helfer and Slaughter 1997). In fact, Cavallaro and Brewer (2008, 775) argue that “supranational tribunals will generally have the greatest impact when their procedures and judgments are relevant to the actors working to advance specific human rights in these countries, including not only state agents but also human rights organizations, social movements, and the media.” Executive expectation of successful mobilization, then, depends on the domestic environment. Mobilization success increases with the existence of “horizontal ties” among civil society actors and “vertical ties” between civil society actors and governments. Horizontal ties connect individuals from different parts of society (e.g. Tripp 2000) and vertical ties provide access to important power structures (e.g. Akchurin and Lee 2013), both of which are necessary for mobilization success. The executive expects an increased probability of effective mobilization around regional court litigation in states with strong *horizontal ties* among civil society actors where they are able to freely pursue their goals and enjoy autonomy from the state, and who have access to the *vertical ties* provided by NHRIs, as NHRIs help translate legal rulings into more useful frames and provide access to political elites, allowing the coalition to lobby those actors that can affect change in the government.

5.1 Role of Horizontal Ties: Robust Civil Society

The human rights frames created by litigation increase the probability of mobilization among civil society actors thus increasing the “relative strength of domestic pro-compliance constituencies” (Dai 2013, 97). Frames create emotional responses that contribute to individuals overcoming collective action problems (McEntire, Leiby, and Krain 2015), which in turn leads to larger groups

⁵ Alter (2014, 21) calls these actors *compliance supporters* because they mobilize to induce governmental actors to adhere to a regional court ruling. Helfer and Slaughter (1997) refer to these domestic actors as the users and consumers of judicial rulings.

with more resources upon which to draw. The human rights frame in particular, considered a “master frame,” provides tried-and-true strategies and tools used by other successful groups (Snow and Benford 1992). Legal human rights frames also allow civil society groups to bolster their position by reaching out to international actors concerned with similar social problems (Risse-Kappen, Ropp, and Sikkink 1999).

Supranational court litigation also increases advocacy group participation in monitoring the enforcement of laws domestically (Cichowski and Stone Sweet 2003; Hillebrecht 2012). As rights become increasingly legalized and formalized through adverse regional human rights court decisions, the potential for greater participation among various domestic actors grows. Regional court litigation often creates the social space necessary to facilitate policy discussions that previously lacked domestic salience (Schneider and Ingram 1997). And “the extent to which new policy statements are constructed through litigation or legislative acts, even if they lack concrete policy instruments or enforceability [lead us to] expect increased opportunities for mobilizing action around these issues due to their increased saliency”(Cichowski 2007, 15). As a result, the size of domestic mobilization efforts often grows. Those mobilization efforts exert higher costs on the executive, particularly as they gain resources in the presence of strong horizontal ties. Where norms of higher civil society participation exist, dense civil society networks increase the likelihood of successful mobilization (Loveman 1998).

While dense civil society networks encourage mobilization, institutional factors play a key role in the *ability* of individuals to organize horizontally as well. Civil society organizations must be able to operate unconstrained from government interference in their formation or operation. When they do, they are free to criticize government policy, particularly state human rights abuses. While previous research largely focuses on either the strength of civil society (e.g. Dai 2005) or the role of domestic institutions, like freedom of speech (e.g. Conrad and Moore 2010) in constraining human rights abuses, we argue that in societies where there is a norm of participation in civil society organizations *and* the state does not inhibit their ability to mobilize, we expect individuals to be more likely to mobilize in response to adverse regional human rights court decisions. However,

regional court litigation and strong horizontal ties alone does not ensure successful mobilization. Civil society actors must have access to information about adverse regional human rights court judgments and information on the state's response. This information provides leverage to civil society actors in their rights demands. In addition to information, civil society actors must also have access to political elites in order to make rights demands. Civil society actors often cannot appeal directly to the government, but use channels through which to make their rights demands heard. In the following section, we turn to the role of NHRIs in providing an important vertical tie in an enabling domestic environment.

5.2 Role of Vertical Ties: NHRIs

While horizontal ties increase the probability of mobilization, vertical ties between activists and the political elite provide openings to power structures thus increasing mobilization and its success in the way of political change (Akchurin and Lee 2013; Fiske 2006). Because political actors have incentives not to implement adverse regional human rights court decisions, establishing vertical ties with them may be difficult for civil society. For example, civil society actors may lack the necessary information or understanding of regional court litigation to effectively pressure legislators to make legal changes. Moreover, political elites, like legislators are often constrained by the deliberative processes of the institution they inhabit, such as the presence of veto points (i.e. divisions in the legislature, supermajority voting rules, federal systems), as well as institutional constraints like electoral rules, that limit the ability and willingness of the legislature to respond to regional court litigation.⁶

⁶ While the legislature may adopt, amend, or repeal legislation in response to regional human rights court litigation, absent executive incentives to implement and enforce it, regional court litigation will likely lack effectiveness. To account for the likelihood of legislative changes post-judgment, we include a variable from the Polity IV dataset on executive constraints, which includes a component capturing the extent to which the legislature can initiate legislation in our empirical models.

Because of their direct connection to the national government and their mandate to promote and protect human rights, NHRIs represent a particularly important vertical tie for civil society actors to achieve human rights changes. Though states create their own NHRIs, they follow international guidelines called the Paris Principles which require particular design decisions for official accreditation of their NHRIs. Two of the most clear and important of these include NHRIs' ability to carry out their work independent of government interference and that the NHRI maintain a robust relationship with civil society actors.⁷ As a result, NHRIs occupy a unique space between the state apparatus and civil society – they are political elites with access to state actors, enjoy ties to civil society actors, and focus their efforts directly on human rights protection (rather than a plethora of issues) (Smith 2006). These vertical ties act to increase the probability of mobilization and its success by shunting information and demands between (both up and down) civil society and government elites.

5.2.1 Top-Down Ties

NHRIs move information down from political institutions to civil society. They perform activities that increase information in the social environment after litigation such that civil society groups will mobilize with greater probability. Consider, for example the Georgian government attempt to force a journalist, Lali Svaneti, to disclose a confidential source in 2006. The Georgian Public Defender's Office (Georgia's NHRI), cited a ECtHR ruling (*Goodwin v. United Kingdom*) as basis for opening an investigation against the Georgian government (Georgia Office of Public Defender 2008, 76-77), which in turn created the frames for mobilization explained in more detail above.

Supranational court litigation and the state response must be accessible to civil society ac-

⁷ Though variation exists in NHRI activity, a majority (69%) of NHRIs in Europe are graded fully compliant with the Paris Principles (which requires independence and working with NGOs), whereas only 4.5% are non-compliant. The rest (30.5%) are partially compliant. For this reason we operationalize NHRIs as dichotomous; they either exist or do not. However, we also operationalize vertical ties using NHRI grades as robustness checks. More on this in the research design described below.

tors. NHRIs investigate and monitor state behavior after courts hand down decisions and mandate changes to behaviors and laws. If they find deviations from the required behavior, NHRIs publicize and publish information about regional court litigation, thereby informing civil society actors of regional court rulings and human rights violations (European Network of National Human Rights Institutions 2017, 2019). Pro-rights movements require a certain degree of “legal literacy” to access the courts (Simmons 2009, 132-135), which NHRIs offer by informing civil society actors of their legal rights and helping them navigate the legal process (Carver 2012). For example, the National Commission for Human Rights (NCHR) in Greece (the Greek NHRI) whose activities include “issuing resolutions on human rights topics, submitting recommendations on issues such as Greece’s ratification of ECHR Protocols, implementation and dissemination of ECtHR judgments, and publishing an annual report” (Keller and Stone Sweet 2008, 504). The NCHR also assists in translating ECtHR judgments into the languages of those under the jurisdiction of the court.

NHRIs also provide information to civil society through workshops and annual reports (Welch 2017). For example, in Moldova, the Parliamentary Advocates (Moldova’s NHRI) hold consultations with NGOs regarding human rights concerns to help set future agendas for both sets of actors (Carver 2012, 206). All of these activities represent top-down vertical ties NHRIs provide. To be sure, other actors engage in this type of top-down behavior. However, NHRIs represent a special case of vertical ties due to their position *in the government*, rather than working as outsiders. Their unique position also allows them to act as bottom-up vertical ties as described next.

5.2.2 Bottom-Up Ties

Aside from acting as conduits from top to bottom, NHRIs also act as a vertical tie from bottom to top. Given their position as a government institution, they possess special access to the very government who must make changes for positive rights changes. When civil society groups attempt to directly lobby the government, they risk working inefficiently, always searching for sympathetic insiders (e.g. Haider-Markel and Meier 1996; Waylen 2017), or even risk cooptation (e.g. Foweraker 2001; Brown, Brown, and Desposato 2008). NHRIs’ position within the government allows

them to efficiently maintain relationships with those in government who may be allies and who have the power to change policy. In some ways, being a part of the government may also expose NHRIs to the risk of cooptation, but having anticipated this, the standards for NHRI design explicitly require independence from the government and suggestions for how to maintain that independence (de Beco and Murray 2014).

NHRIs use their unique access to translate civil society's demands to political elites with the power to make changes. In fact, the legal working group of the European Network of National Human Rights Institutions (ENNHRI) published a report offering guidance for individual NHRIs to support the implementation of ECtHR judgments. The report offers practical recommendations for NHRIs to influence the executive branch and the legislature while partnering with civil society.⁸ In Georgia, the National Council of Ethnic Minorities (an organization of around 80 civil society groups) makes good use of this access by helping to shape the Georgian NHRI's⁹ priorities, which they then take to state actors (Carver 2012, 207).

NHRIs can engage the executive and provide it with recommended legislation to send to the legislative branch in order to comply with regional court judgements. They can also engage the executive by highlighting weaknesses in human rights policy, including administration, monitoring, and enforcement. While most rely on dialogue and persuasion, some even have the ability to threaten legal sanction if they find members of the executive branch in breach of court rulings (Welch 2019). NHRIs also negotiate, review, and even sometimes help draft legislation with members and committees of legislatures (Carver 2004). In these ways, civil society can take advantage of the access the NHRIs' bottom-up vertical ties offer to political elites to affect real political and legal change.

To summarize, we argue that regional human rights court litigation provides an important frame for civil society actors. However, the presence of both horizontal ties among civil society actors and vertical ties (top-down and bottom-up) in society increase the chances that regional

⁸ http://ennhri.org/IMG/pdf/ennhri_guidelines-v2_a4_web.pdf

⁹ The Georgian Public Defender

human rights court litigation encourages the executive to make rights-related policy changes. Importantly, in an enabling domestic environment such as that described above, the executive *expects* to face pressure to make human rights policy changes following an adverse regional court decision and adopts comprehensive human rights policy in the face of regional court litigation which should lead to better protection for human rights. To provide evidence for our argument, we provide illustrative examples of the theoretical processes described above for Greece, Italy, and the Netherlands in the Supplementary Appendix and in what follows, we move to systematically test the following:

Hypothesis: Regional human rights court litigation that finds violations of human rights is more likely to improve respect for human rights in the presence of robust civil society and a National Human Rights Institution.

6 Research Design

6.1 Spatial-Temporal Domain

To test the hypothesis we turn to the ECtHR. The European Convention on Human Rights (ECHR) established the ECtHR in 1959 under the Council of Europe. The ECtHR hears cases involving violations of the ECHR. Following an adverse ECtHR judgment, the state is charged with conceiving and executing steps, including individual measures (e.g. paying reparations) and general measures (e.g. legislative changes) to achieve compliance with the court. A Committee of Ministers monitors the status of the execution of the judgment, asking states to report on measures taken, and making recommendations to encourage compliance when they deem state actions inadequate. The sample includes ECtHR judgments from 1980-2012 for all ECHR contracting parties.¹⁰

Although supranational courts exist in other regions, the ECtHR remains the most active by far. The Inter-American Court of Human Rights (IACtHR) delivered 17 judgments in 2015 and the

¹⁰The sample analyzed includes 46 of the 47 Council of Europe member states. Montenegro did not receive an adverse ECtHR decision related to physical integrity rights until 2014.

African Court on Human and People’s Rights, established in 2004, delivered its first judgment in 2009, and to date only 32 cases have been finalized and closed. In contrast, the ECtHR delivered 1,926 judgments in 2016 alone – a sample size large enough to discern general patterns within the data. While some might worry that the Western European countries responsible for the establishment of the Council of Europe (the constitutive body of the European Convention) were mostly liberal democracies with strong institutional commitments to the rule of law (Helfer and Slaughter 1997, 276), the members of the ECtHR exhibit sufficient political and social heterogeneity due to the addition of states over time – many of whom formerly belonged to the Soviet bloc. As a result, our sample provides a sufficient number of observations and variation in rights behavior, litigation, domestic institutions, and civil society from which to draw inferences.

7 Data

We built a data set with variables from different sources, which we present in greater detail below. For interested readers, we present summary statistics for each in the Appendix.

7.1 Outcome Variable: Respect for Human Rights

To measure the outcome of interest, ECtHR effectiveness, we used the measure of respect for physical integrity rights created by Fariss (2014).¹¹ The human rights measure comes from a “theoretically informed measurement model, which generates unbiased estimates of repression

¹¹ Although respect for physical integrity rights does not directly capture executive policy designed to ensure respect for rights, respect for rights represents a reasonable proxy (see Cingranelli and Filippov 2010, for a similar argument). Further, we expect any gap between policy and practice to result from principal-agent problems wherein bureaucrats shirk from the executive policy and administer it less faithfully. As a result, we likely estimate conservative effects. Moreover, we account for executive capacity to engage in policy change by studying a region of the world with relatively high capacity (Europe) and controlling for an indicator of capacity in the empirical analysis (GDP per capita).

using existing data” (Fariss 2014, 297). The Fariss (2014) measure is a dynamic ordered item response model that uses several existing human rights measures¹² as input to estimate latent state human rights practices. The variable ranges from -1.65 to 4.71 ($\mu = 1.73$; $SD = 1.29$) in the sample, with higher numbers representing greater respect for human rights. While Western and Northern Europe represents a region of the world with relatively high respect for rights, violations of physical integrity are also particularly prevalent in the 46 Council of Europe member states included in the analysis. For example, although the sample includes countries with traditionally strong rights protections, such as Luxembourg and Iceland, it also includes countries with worse records such as Russia, Turkey, and Ukraine.¹³

7.2 Explanatory Variables

Modeling the complex relationship between the regional court decisions, strength of civil society, and NHRIs best tests the argument presented above. Although the modeling strategy will lead to complicated results, not accounting for the interactions leaves our understanding of the institutional environment’s effects on human rights respect incomplete. Thus, we employ a three-way interaction term between our main explanatory variables in the model. Below we describe each of the constituent variables used to create the interaction.

¹² Taylor and Jodice (1983), Rummel (1994), Rummel (1995), Hathaway (2002), Harff (2003), Eck and Hultman (2007), Marshall, Gurr, and Harff (2009), Sundberg (2009), Wayman and Tago (2010), Gibney, Cornett, and Wood (2012), Conrad, Haglund, and Moore (2013), Cingranelli, Richards, and Clay (2014)

¹³ As robustness checks, we estimate the models using the CIRI physical integrity rights index as a dependent variable (Cingranelli, Richards, and Clay 2014). We also present results from an alternative specification in which the dependent variable represents a change in respect for rights from year to year. These results, presented in the Appendix, remain similar.

7.2.1 Adverse Rulings

The first of the constituent variables is the number of adverse judgments associated with physical integrity violations issued against a state in a year by the ECtHR. It ranges from 0 to 112, with $\mu = 2.06$ and $SD = 9.53$ (median = 0).¹⁴ The variable is a count of adverse judgments rendered by the ECtHR,¹⁵ which includes judgments and decisions published in the Court's official "Reports of Judgment and Decisions," as well as judgments of high, medium, and low importance.¹⁶ We include adverse judgments associated with Articles 2 (right to life), 3 (torture), 4 (slavery), and 5 (liberty and security) of the European Convention on Human Rights. Data on the number of adverse judgments were gathered from the HUDOC database,¹⁷ which contains information on all ECtHR cases, and retaining only those judgements involving violations of the relevant ECHR articles.

¹⁴ We estimated models excluding the states with the most adverse judgments, Turkey and Russia. The results from these models remained similar.

¹⁵ We choose to use a count of adverse judgements as each could increase the effect as the court continues to issue censures. Given the importance of human rights cases, though, one could argue that at least one case could create an environment where the executive becomes incentivized to make changes. For example, a single adverse judgment resulting from a strategically filed case can shed light on human rights policy failures, bring awareness to human rights deficiencies, provide NHRIs with new information, and provide civil society actors with leverage to mobilize. For this reason, we also estimated a model using a binary measure for rulings and the results remain the same. Further, we estimated models where the binary split occurs at the mean indicating a higher than normal environment of censure, and those results are also the same. We opt to use the measure that contains the most information, the count, for our main model.

¹⁶ We estimate an additional model in which the adverse judgments variable only includes key cases and those of high and medium importance (excluding judgments of low importance). The results remained similar.

¹⁷ See <http://hudoc.echr.coe.int> for more information.

7.2.2 Civil Society Index

The second constituent variable captures the potential for successful civil society mobilization. The variable, constructed as a continuous index from 0 to 1, provides “a measure of a robust civil society, understood as one that enjoys autonomy from the state and in which citizens freely and actively pursue their political and civic goals” (Coppedge, Gerring, Lindberg et al. 2016, 61). We are interested in the extent to which individuals may organize to pursue collective interests. The variable includes interest groups, labor unions, spiritual organizations (engaged in civic or political activities), social movements, professional associations, charities, and other nongovernmental organizations.¹⁸ The index aggregates expert ratings of countries’ regulation of civil society organization (CSO) entry/exit and repression of CSOs, as well as the extent to which citizens participate in CSOs using a Bayesian measurement model (Bernhard, Jung, Tzelgov et al. 2017).¹⁹ The average Civil Society Index score in Europe is 0.65 – high, but still near the middle of the index. For context, Yugoslavia’s score in 1998 is a 0.65. The range of the variable includes virtually the whole index, suggesting enough meaningful variation from which to draw inferences.

¹⁸ We also estimated a model with only human rights organizations (Murdie and Davis 2012). The results, presented in the Appendix, remain the same.

¹⁹ To assure the results were not driven by one of the constituents, especially the repression constituent, we estimated three alternative specifications, one for each constituent of the index. The results remain similar. We also estimated a model using another civil society index from V-Dem – Civil Society Participation index. The civil society participation index does not include whether the government represses civil society, but it does not map as well onto our theoretical argument. Its constituents include whether policy-makers consult CSOs, peoples’ involvement in CSOs, whether women are prevented from participating in CSOs, and whether legislative candidate nomination within party organization is decentralized or made through party primaries. The results for the model using this index remain similar.

7.2.3 NHRI presence

The last constituent variable captures NHRI presence. The dichotomous variable takes the value 1 for any year an NHRI exists in a given state, and 0 otherwise.²⁰ In order to create the variable, we consulted the Global Alliance of National Human Rights Institutions (GANHRI)²¹ to identify the officially recognized NHRIs. Then we used NHRI founding documents; annual reports; NHRI, government, and NGO websites; and academic pieces to identify when states established their NHRIs. Although Europe contains more NHRIs than other regions in the world, the adoption of NHRIs did not spike until the 1990s (Cardenas 2014, 35-36). Our temporal range begins in 1980. The NHRI variable exhibits sufficient variation as the mean and standard deviation suggest – 0.47 and 0.50, respectively.

²⁰ We recognize the heterogeneity of NHRI design and effectiveness (Cardenas 2014; Welch 2019). But in the absence of more fine-grained data on NHRI activities, we opt to use a fairly crude dichotomy to measure the presence or absence of an NHRI. To protect against this heterogeneity, we estimate a robustness check with country fixed effects. The results, presented in the Appendix, remain similar. We also estimated a robustness check with year fixed effects. The results, presented in the Appendix, remain the same. Finally, we estimated a robustness check that operationalized NHRIs using their GANHRI grade (obtained from the NHRI Data Collection Project (Welch, Conrad, and DeMeritt 2020).) meant to capture their compliance with the Paris Principles (which require independence and working with NGOs). The coefficient on the interaction term remains positive, though (at least partially due to a drop in observations), the p-value increases above standard significance thresholds (0.17). Given the majority of NHRIs are fully compliant (only 4.5% are non-compliant) and the coordination efforts of the ENNHRI among NHRIs, civil society, and states, we opt for the simpler dichotomous measure to retain as much data as possible.

²¹ Formerly the International Coordinating Committee on National Human Rights Institutions (ICC), this organization recently changed its name on 23 March 2016 (<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>).

7.3 Control Variables

We control for potential confounding factors that may influence executive behavior and changes in any of the constituent variables. First, we control for different domestic institutions likely to influence our estimates. Past research indicates judicial independence correlates to better rights respect (Powell and Staton 2009), NHRI effectiveness (Welch 2017), and civil society strength (Bakolias 2000).²² Alter and Helfer (2010) argue that the domestic judiciary affects the number of decisions made by international courts. In addition, strong domestic judiciaries may be more likely to implement adverse regional court orders, which influences executive incentives to enforce human rights policy (Haglund 2020b). We use Linzer and Staton (2015)'s latent variable that draws on information from eight different sources,²³ allowing for a unidimensional, bounded interval measure.

Next, democracy correlates strongly with respect for human rights (e.g. Poe and Tate 1994; Davenport 2004), and that relationship exists, at least in part, due to tautology between the concepts (Hill and Jones 2014; Hill 2016). Rather than democracy, then, we heed the advice of Hill and Jones (2014) and include a constituent of the Polity index that measures the institutional constraint of the executive (Marshall, Gurr, and Jagers 2012). When we include the entire Polity index, our main results remain similar. Executive constraints also likely influence executive incentives to enforce human rights policy, may affect NHRI design (Welch 2019), and are related to civil society (Risse-Kappen, Ropp, and Sikkink 1999).

Finally, we include a standard battery of controls commonly related to respect for rights – population, economic standing, and prior respect for rights. Population size correlates to human

²² We also estimated a robustness check including a Rule of Law measure from Freedom House (2015) and the results remain the same.

²³ Feld and Voigt (2003), Howard and Carey (2004), Cingranelli and Richards (2010), Marshall and Jagers (2010), Keith (2012), Johnson, Souva, and Smith (2013)

rights outcomes (Poe and Tate 1994) and civil society action (Murdie and Bhasin 2011). We include a variable capturing log-transformed population (World Bank 2013). States with higher levels of economic development exhibit better human rights respect (Poe and Tate 1994) and may be related to more civil society action (Murdie and Bhasin 2011); as well as lower likelihood of NHRI presence (Koo and Ramirez 2009).²⁴ Moreover, more developed states have greater capacity to ensure that executive policy is translated into practice. Finally, we include a lagged measure of respect for rights, given the propensity of abusive behavior to remain similar year-to-year (Poe and Tate 1994; Conrad and Moore 2010).

8 Statistical Methods

The sample includes 46 European countries for the years 1980-2012 with country-year unit of analysis. Given the continuous nature of the dependent variable, we estimate a linear regression model. To account for heteroskedasticity and autocorrelation, we cluster standard errors on country and include a lagged dependent variable (Beck and Katz 1995).

9 Results

Table 1 presents our main model (1) as well as three models that include two-way interactions for each combination of the three constituent variables (2 - 4). The results from the statistical models lend support to our hypothesis. The triple interaction term is positive and significant, indicating that in the presence of NHRIs *and* a vibrant civil society, adverse ECtHR judgments are associated with better human rights practices (Table 1). The coefficients on each of the two-way coefficients (Models 2 - 4) never reach statistical significance. These results reflect our expectation that an enabling domestic environment consisting of both horizontal ties and vertical ties makes ECtHR rulings more effective in reducing human rights abuse. Since the nature of interaction terms

²⁴ To account international human rights treaty influence, we also estimated a model taking into account the extent to which states are embedded in the international human rights regime. Results remain the same.

preclude us from interpreting the coefficient in a straight forward manner, we turn to presenting substantive results below (Brambor, Clark, and Golder 2006).²⁵ But first we note the control variables.

The control variables behave largely as expected. GDP and prior respect for rights²⁶ are both positively associated with rights respect, as are executive constraints (though this variables does not achieve standard levels of statistical significance). Population is negatively associated with respect for rights (though it does not achieve standard statistical significance). Interestingly, judicial independence is negatively associated with rights respect. The mean level of judicial independence in Europe is quite high— 0.79 on a scale ranging 0 to 1. While judicial independence has been shown to be important for independently securing greater respect for rights (Hill and Jones 2014), these results suggest the relationship may behave differently in Europe.

²⁵ Brambor, Clark, and Golder (2006) warn against interpreting constituent terms unconditionally. One could interpret each two-way interaction as the moderating effect of one constituent on the other constituent in the absence of the third variable. The NHRI*CivSoc variable is insignificant, as would be expected. However, two of the constituents are negative and significant suggesting that in the absence of one of the constituents, the moderating effect of one variable is negative. The fact that the two-way interactions in Models 2 - 4 show no significance suggests that if that negative effect exists it is at precise values rather than what we would expect to find generally. Further, these estimates do not refute our hypothesis as when NHRIs are present and civil society is strong, human rights are better respected. We admit the estimated effects in those specific scenarios are puzzling and suggest they present opportunities for future inquiry.

²⁶ The lagged dependent variable, though valuable as a control for past repression and to reduce concerns about auto-correlation, introduces another concern indicated by the value of its coefficient – a unit root in the data. However, Fisher-type unit root tests based on augmented Dickey-Fuller tests ($p = 0.00$) and Phillips-Peron tests ($p = 0.00$) reject the null hypothesis of a unit root and suggest at least one panel is stationary as opposed to all panels containing a unit root.

Table 1: ECtHR Linear Regression Results

	Model 1	Model 2	Model 3	Model 4
ECtHR*NHRI*CivSoc	0.034*** (0.008)	–	–	–
ECtHR*CivSoc	-0.032*** (0.008)	0.001 (0.001)	–	–
ECtHR*NHRI	-0.024*** (0.006)	–	-0.000 (0.000)	–
CivSoc*NHRI	-0.028 (0.067)	–	–	0.003 (0.061)
ECtHR	0.022*** (0.006)	-0.001 (0.001)	-0.000 (0.000)	-0.000 (0.000)
CivSoc	0.166*** (0.047)	0.144*** (0.050)	0.146** (0.049)	0.144** (0.045)
NHRI	0.025 (0.067)	0.005 (0.012)	0.005 (0.013)	0.002 (0.061)
Human Rights _{t-1}	0.976*** (0.009)	0.976*** (0.008)	0.976*** (0.008)	0.976*** (0.009)
Judicial Independence	-0.118* (0.070)	-0.116* (0.067)	-0.119* (0.066)	-0.119* (0.069)
Exec. Constraints	0.012 (0.010)	0.013 (0.010)	0.013 (0.010)	0.013 (0.010)
Population	-0.008 (0.005)	-0.008 (0.006)	-0.008 (0.006)	-0.008 (0.006)
GDP	0.016* (0.010)	0.016 (0.010)	0.016 (0.010)	0.016 (0.009)
R^2	0.989	0.989	0.989	0.989
n	946	946	946	946

NOTES: Table 1 displays coefficient estimates and standard errors in parentheses from models examining the influence of adverse ECtHR judgments (*ECtHR*), NHRI presence (*NHRI*), and civil society (*CivSoc*) on respect for rights. Statistical significance: *** $p < .01$, ** $p < .05$, * $p < .10$. Models estimated with clustered standard errors on country. Two-tailed significance tests reported.

9.1 Substantive Results for ECtHR

Despite the positive sign and statistical significance on the estimated coefficient for the interaction of interest in the model, interpreting these results requires further exploration. At this point, we can confidently say that the institutional and political landscape including regional court decisions, NHRI presence, and the strength of civil society positively relates to state human rights protection. We now illustrate the substantive results.

[Insert Figure 1 here.]

First, we conduct simulations²⁷ to compare three different scenarios to highlight the importance of an enabling environment (Figure 1). In the first scenario, there is no ruling, NHRI, or civil society. In this hypothetical, non-enabling state with no rulings from the Court, the predicted human rights respect score is 1.31 (95% CI: 1.22, 1.41). In scenario 2, the state still has a non-enabling domestic environment and the ECtHR has issued an adverse judgement. The predicted human rights score in this condition is virtually the same – 1.34 (95% CI: 1.24, 1.43). In scenario 3, the Court has issued a ruling in an enabling environment (NHRI present and civil society index at its highest value). These simulations predict a human rights respect score of 1.48 (95% CI: 1.46, 1.49). As expected, a ECtHR ruling made in the absence of an enabling environment does not increase human rights respect. When the ruling is made in an enabling environment, though, human rights respect increases. But, one may see the consistently significant independent effect of civil society in the regressions and wonder if NHRIs are necessary for an enabling domestic environment.

Figure 2 displays the predictive margins for states that received one or more adverse judgments, across values of civil society when a NHRI is present (top panel) and when a NHRI is absent (bottom panel).²⁸ The trend in the top panel of the figure is positive, indicating that in

²⁷ 1000 simulations with all control variables set to appropriate central tendencies.

²⁸ All other variables are set to their means.

the presence of adverse ECtHR judgments and a NHRI, the predicted level of respect for rights increases as levels of civil society strength increase. The predicted level of respect for rights is 0.18 higher at high levels of civil society strength than at low levels of civil society strength in the presence of adverse ECtHR judgments and a NHRI. Substantively, a 0.18 marginal increase in respect for rights is notable in European countries, where the average level of respect for rights is higher than other parts of the world providing a ceiling for some states.²⁹

The results in the bottom panel are insignificant, indicating the predicted level of respect for rights in the presence of adverse ECtHR judgments is not significantly higher at high levels of civil society than at low levels of civil society when there is no NHRI present. The predicted level of respect for rights is 0.04 higher at high levels of civil society than low levels of civil society in states with no NHRI and adverse ECtHR judgments. Though, the findings are not statistically significant, indicating that civil society has little effect on respect for rights in the presence of adverse ECtHR judgments in states with no NHRI. The findings displayed in Figure 2 lend additional support to the hypothesis. When vertical ties (top-down and bottom-up) are weak due to the absence of a NHRI, civil society has little influence on respect for rights post-judgment. That is, in the absence of a NHRI, the predicted level of respect for rights in the presence of one or more adverse ECtHR judgments is nearly the same at high and low levels of civil society strength. This figure suggests that when an NHRI is present, strengthening civil society increases the effect of the adverse ruling. Indeed, an enabling domestic environment requires both an NHRI and strong civil society. The significant results in Table 1, the simulations displayed in Figure 1, the predictive margins displayed in Figure 2, as well as the cases in the Appendix lend support to the hypothesis that an enabling domestic environment is important for ECtHR effectiveness.

[Insert Figure 2 here.]

²⁹ We also estimated the model on a sample that drops the most respectful states to account for the ceiling effects. The results remain the same.

10 Conclusion

To be effective, regional human rights courts should not only provide remedy for the individual human rights abuses in a particular case, but also protect human rights more generally by ensuring that similar violations do not take place in the future. We argue that for this to happen, the executive must decide to adopt, administer, monitor, and enforce human rights policy, despite incentives to the contrary. Pressure from domestic political and social actors following regional human rights court decisions increase the likelihood this happens. As such, we consider how various domestic actors utilize regional court litigation to ensure respect for rights. Focusing on domestic political actors at the expense of domestic social actors (or vice versa), risks failing to understand the complexity through which regional human rights courts influence human rights outcomes, and subsequently the important influence they are capable of wielding internationally. We agree with Helfer and Slaughter (1997, 312): “[a]ppreciation of the relationship between these social actors and the institutions of state government opens the door to deploying them as forces for expanding the power and influence of supranational tribunals.”

In this article, we explored the complexity of the interactions between domestic political and social actors in response to adverse ECtHR litigation. In doing so, we made a case for the importance of institutions on three different levels of analysis, regional court litigation on the international level, the NHRI on the national level, and the ability for civil society to mobilize on the societal level. We posited that the executive is more likely to adopt, administer, monitor, and enforce human rights policy that leads to better respect for human rights in expectation of mobilization. While ECtHR litigation increases the value placed on rights, mobilization does not occur with equal probability across states. An enabling domestic environment characterized by robust civil society and an NHRI more likely ensures successful mobilization, and in expectation of such mobilization, the executive creates and enforces human rights policy which leads to better respect for human rights.

We find support for our hypothesis in the European Court context. The results show the importance of political and social actors interacting to enhance ECtHR effectiveness. To further

illustrate the importance of all three actors interacting, estimating models with only two-way interactions (ECtHR*CivSoc, ECtHR*NHRI, or CivSoc*NHRI) return statistically insignificant interaction terms. This highlights the importance of a research design that corresponds with one's theoretical argument. These more parsimonious models might lead a researcher to conclude that interactions between any two of these constituents are not associated with respect for human rights. However, modeling the interaction of all three variables allows us to see the complex interactions that exist in the political and social world, at various levels of analysis, that we as researchers often have in mind when theorizing, but often do not model. In this way, our work takes seriously and lends support to O'Donnell (2006)'s arguments about a web of accountability – mechanisms that reinforce each other to improve state behavior – and directly address Moore and Welch (2015, 10)'s suggestion: “Just as scholars looked at the independent effects of institutions, and just recently started considering their interactions, it may be time for scholars to look at more complex interactions with three of more institutions.”

The gains from complexity are also directly associated with losses in simplicity of interpreting results. However, we take the combination of a statistically significant positive coefficient estimate, predicted values, predicted marginal effects, and the illustrative cases to give increasing leverage to the claim that adverse ECtHR judgments in the presence of NHRIs and robust civil society are associated³⁰ with better human rights outcomes. The complexity of the current project leaves opportunities to further probe the results. The number of combinations of explanatory variables lends itself well to identifying potential case studies. Future endeavors could strengthen the arguments made above, or shed light on even more complex relationships in need of testing. In this way, the

³⁰ Please note our deliberate choice of “associated” rather than “cause.” The current design may suffer from sample selection on any of the three explanatory variables used to create the interactions. As an empirical check, we pre-processed the data using propensity score matching, then re-estimated the model. The coefficient estimate on the triple interaction is considerably larger than our main results suggesting that if selection biases our results, it is making it harder for us to find the hypothesized relationship. For more on selection, see the Appendix.

present study represents a large-N analysis that can inform the causal processes taking place within countries in Europe (Collier, Brady, and Seawright 2004).

Our results have relevance for other regional human rights regimes, and for international human rights law more broadly. Domestic actors in the Americas and Africa, particularly the executive, likely face similar incentives as those in Europe. As a result, we might expect adverse Inter-American Court of Human Rights' and African Court of Human and People's Rights' decisions to have important effects on respect for rights, conditional on an enabling domestic environment, as well. On the other hand, perhaps the interactions among domestic actors in response to adverse regional court decisions vary by region, based on the legal culture, the legacy of mobilization success, level of democratic consolidation, or some other factor specific to particular regions. Perhaps other vertical ties exist in these regions that perform similar functions to NHRIs. Scholars might explore operationalizing vertical ties in different ways to see if the theory holds. Though, as we mention above, NHRIs may represent the most appropriate tie given their unique position between government and civil society.

Turning to international law more broadly, we expect that an enabling domestic environment characterized by NHRIs and robust civil society may be important in ensuring the effectiveness of regional and international human rights treaties. While most treaties do not establish courts, increases in Optional Protocols provide individual complaints mechanisms. If the complaint is found admissible, treaty bodies provide states with individual and general recommendations. An enabling domestic environment, characterized by NHRIs and robust civil society, likely generate an executive expectation of mobilization in response to treaty body decisions as well. While we continue to explore these questions, this article shows that, at least in the European context, the interplay between the regional court, NHRIs, and civil society is associated with better human rights outcomes.

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