THE COMPLIANCE BLACK BOX:

ANALYZING THE IMPACT OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM IN DOMESTIC POLICIES

By

Tamar Colodenco

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Author's Declaration

I, the undersigned, Tamar Colodenco, hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language.

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ABSTRACT

This thesis explores the impact of the Inter-American Human Rights Protection Systems on domestic human rights policies from member states. While the regional human rights regime in the Americas is equipped with a vast array of monitoring and enforcement mechanisms, compliance varies significantly across countries and periods. What explains the ability, or rather inability, of the system to bring about compliance and to determine changes in domestic human rights policies? This thesis delves into the factors that explain disparities in the relationship between states and the regional body. This research suggests that, in Latin America, economic growth can hinder compliance. This hypothesis, although counterintuitive, will be supported by two case studies from Brazil and Argentina. Findings show that the particular pattern of growth and resource accumulation in the region creates tensions over protection of human rights and make governments wary of supranational protection mechanisms.

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List of Abbreviations

ACHR	American Convention on Human Rights
CSO	Civil Society Organization
IACHR	Inter-American Commission on Human Rights Protection Systems
IACoHR	Inter-American Court of Human Rights Protection Systems
IAHRS	Inter-American Human Rights System
NGO	Non-Governmental Organization
OAS	Organization of American States
TAC	Transnational Advocacy Networks

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Introduction

What explains state compliance with regional human rights treaties? What is the impact of regional human rights regimes in domestic human rights policies? Why do some countries comply while others do not? What factors can predict this variation? And what institutional mechanisms can prove more effective for human rights enforcement? This thesis explores these puzzling questions by looking at specific policy episodes where, despite a similar economic and political context, compliance patterns differed. The research focuses on the Inter-American Human Rights Protection System (IAHRPS) which consists of the Inter-American Court of Human Rights (IACoHR) and the Inter-American Commission on Human Rights. This supranational structure, which is part of the Organization of the American States (OAS), is a puzzle in itself. This is because the scope and reach of its work often goes beyond the borders of its mandate.

Created in 1969, as a mirror of the European human rights institutional architecture, the Inter-American Commission on Human Rights quickly began to monitor and denounce authoritarian practices from the very governments that created it in the first place. The institution had rapidly gained autonomy and seemed to operate without political constraints within the highly politicized OAS. Tom Farer, who was a commissioner during the 70s, remembers that repressive regimes (which were abundant in the region at that time) and popular resistance movements were equally surprised by this anomaly (Farer, 1997). The power to investigate but also to issue reports on human rights violations converted the institution into an "accusatory agency, a kind of 'Hemispheric Grand Jury', storming around Latin America to vacuum up evidence of high crimes and misdemeanors and marshaling it into bills of indictment for delivery to the political organs of the OAS and the court of public opinion" (Farer 1997, p. 512). When the Inter-American Court of Human Rights (IACoHR) was

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established, in 1979, it followed the same pattern: it was marked by jealously guarded autonomy and decisions that profoundly defied the authority of the states which initially gave life to the institution.

Both the Commission and the Court had similar competencies to those held by other regional bodies like the Council of Europe or the African Court of Human Rights. However, the Inter-American system remained unique in that its monitoring and adjudicatory functions often went beyond human rights violations to enter into the realm of policy making.

The IACoHR, for example, has been known for ordering far-reaching, creative verdicts that demand action not only at the national, but also at the local level (Huneeus, 2011). The breadth and depth of the IACoHR's sentences are often considerable and widely recognized for the innovative use of non-monetary remedies and compensations (Simmons 2006; Huneeus 2011; Antkowiak 2008). In some cases, judicial redress mechanisms include explicit obligations for states parties in issues like allocation of resources, law reform, symbolic compensations, and policy planning. In this context, the IACHR is often perceived as a powerful supranational actor that is fulfilling functions which states are unwilling or unable to accomplish themselves.

Like the Court, the Commission also has engaged in policy making by performing both its monitoring and promoting functions. Promoting human rights often involves moving from the condemnation of individual human rights violations and handling of individual petitions to the analysis of structural problems that hinder a state's ability to protect basic rights or to prevent violations. The commission uses a broad spectrum of tools to address these complex issues: *in loco* visits (visits to a country suspected of serious violations), country-specific or theme-specific reports, hearings or the issuance of precautionary measures, among others.

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Furthermore, in 2015, the Commission created a special section devoted to undertaking public policy studies with a human rights-based approach.

The Court and Commission's activism has recently faced criticism from various governments. These governments perceived the system as a threat to their prerogative of making sovereign decisions on policy issues, especially those related to economic development. In this context, member states initiated a “strengthening process” for the Commission in 2012 with the objective to reform its structure and mandate. Many civil society organizations and academics questioned the real motives behind this process and argued that some states were actually trying to weaken the supranational body rather than strengthen it. The process is still undergoing and it is hard to predict the overall outcome. The crisis in itself, however, is a strong symptom of the state of human rights in the region.

The turn of the 20th century in Latin America saw young democracies that experienced fast economic growth and a strong pro-human rights public discourse. But in parallel, severe violations to fundamental rights continued. Simultaneously, integration processes in the region grew in number and complexity. If once the OAS was the major and more relevant supranational body, now the MERCOSUR, UNASUR, ALBA, CELAC and other sub-regional institutions are competing in the same global arena. This is why studying the relationship between the Inter-American System and the states is relevant. From a top-down approach, this thesis allows us to analyze the limits of the regional integration processes that have the human rights agenda at their core, and to reflect on whether the Inter-America System can assert itself successfully in this volatile environment. From a bottom-up approach, it can shed light on the incentives behind state behavior when it comes to compliance with supranational regimes whose legitimacy is increasingly contested.

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To explore the impact of the Inter-American Human Rights System on domestic policies, two case studies were selected that illustrate differing compliance patterns in similar political and economic contexts. The analytical framework draws on the "spiral model" of Risse and Sikkink (1999) which tries to capture the process of domestic socialization of international norms. The "spiral model" was confronted with the two case studies with the purpose of testing and expanding the theory. This resulted in the identification of new variables that are important in the Latin American context and were not present in the original model.

Justification and policy relevance

Although much has been written on the role of regional human rights regimes (Mugwanya 1999; Petersen 2011; Provost and Sheppard, 2012), there is a gap in the literature when it comes to understanding the impact of the Inter-American Human Rights System in domestic policymaking. Studies of judicial activism often focus on domestic supreme or constitutional courts (see, for example: Rodriguez-Garavito 2010; Sathe 2002; Holland 1991; Wright 1968). At the supranational level, there has been abundant research on the European Court of Human Rights (Helfer & Voeten 2011; Staton & Moore 2011; Stone Sweet 2009). Scholars who researched the Inter-American system often focused on the Court and on legal procedures and jurisprudence (see, for example, Antkowiak 2008 on remedial mechanisms; or Pasqualucci 2009, Lazaro 2011 on jurisprudence). This research contributes to the remarkable work of existing scholarship in the field by combining a legal perspective with a policy approach.

In addition to the theoretical contribution, this thesis contributes to a current and pressing policy debate. This work raises the question of how to bridge the gap between commitment and compliance in regional contexts and tries to identify the incentives and power

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structures that hinder the protection and promotion of rights. Hopefully, the findings of this thesis can inform future discussions on the "strengthening" process of the Inter-American Commission. With this objective, the conclusion identifies the main implications of the findings for the work of the Inter-American System.

Structure of the Thesis

The first chapter provides an account of the most salient characteristics of the Inter-American System. It does so by reflecting on the "strengthening process" that took place between 2011 and 2013 with the objective of reviewing and redefining the IACHR structure. The second chapter introduces a review of relevant literature for this research and explains the analytical framework that informs the case studies. The third chapter gives a detailed account of the research design strategy, while addressing the limitations and challenges. The fourth chapter contains an in-depth analysis of the two cases, or policy episodes, that present differing compliance patterns. Finally, the conclusion summarizes the findings and implications of this study.

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Chapter 1 - Context: The Inter-American Human Rights System at the Crossroads

The Inter-American Human Rights Protection System (IAHRS) is part of the Organization of the American States (OAS) and is composed of a set of regional human rights instruments and two main organs: The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACoHR). Their mandates arose from the American Convention on Human Rights (ACHR), also known as the Pact of San José de Costa Rica, signed in 1969. Although the Court and the Commission have different roles and attributions, they both share court-like functions and handle individual petitions and cases on different stages.

It is the role of the Court and the Commission to interpret and apply all conventions, declarations, protocols and charters that member countries have signed and ratified. The main instruments, besides the ACHR, are the Inter-American Convention to Prevent and Punish Torture (1985), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (signed in 1988), the Protocol to Abolish the Death Penalty (1990), the Inter-American Convention on Forced Disappearance of Persons (1994), the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994) and the Democratic Charter (2001). A quick glance at this extensive corpus reveals a broad understanding of the duties of states regarding the protection of human rights. Civil and political rights have the same status as economic and social rights, and democracy appears as an indispensable element for the enjoyment of all rights (OAS, 2011).

These regional treaties act as a beacon for the Court and the Commission's work. It is their task to interpret the letter and spirit of this soft law corpus, and in doing so, the system is

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constantly expanding the borders of the human rights protection framework. But there is a built-in catch-22 feature in the system. The states created and sustain the regime but they are, at the same time, both the beneficiaries and the targets. They benefit from a system that brings about stability and peace, while promoting good governance and the rule of law. But they are also directly responsible for human rights violations in the region. In this sense, they are the target of the Commission and Court's prosecutorial efforts. This situation creates ongoing tension between the states and the system. The Commission is in a particularly difficult situation because its mandate combines promotion and protection functions. On one side, it is supposed to work hand in hand with the states in promoting the Inter-American Human Rights standards. This task takes many forms – hearings, reports, special activities- and it is usually more dialogic and less controversial. On the other hand, the protection function implies a more contentious and adversarial position from the IACHR who has to decide on cases where states are accused, shamed and denounced.

1.1. The Commission

The Commission was originally created in 1959 and it begun its operations with country visits in 1961. The functions and duties of the Commission are outlined in Article 41 of the American Convention:

> The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:
>
> a. to develop an awareness of human rights among the peoples of America;
>
> b. to make recommendations to the governments (...) for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
>
> c. to prepare such studies or reports as it considers advisable in the performance of its duties;

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> d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
>
> e. to respond (...) to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
>
> f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
>
> g. to submit an annual report to the General Assembly of the Organization of American States
>
> (OAS, 1969)

The IACHR has jurisdiction over the 35 states that have signed and ratified of the OAS Charter[1]. Those states that are not party to the American Convention, most notably the United Sates and Canada, are still under the jurisdiction of the Commission. The three main pillars of the IACHR's work are the individual petition and case system, the monitoring functions, and the priority thematic areas which are often dealt with through special rapporteurships.

Regarding individual petitions, the Commission acts as gatekeeper before the Court. Individual petitions must be submitted to the IACHR, which evaluates the case and decides on the admissibility and merits of each individual case. Once the case is admitted, the Commission issues a report to the accused state with recommendations to redress the situation. If the state does not comply with the recommendations, the IACHR can issue a second report or can submit the case directly to the Court.

The monitoring functions include on-site observations and ordinary and extraordinary hearings where states and concerned parties discuss specific issues. Hearings can be held with

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[1] The members of the OAS are: Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica (Commonwealth of), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, St. Kitts & Nevis, Suriname, The Bahamas (Commonwealth of), Trinidad and Tobago, United States of America, Uruguay, and Venezuela (Bolivarian Republic of).

the purpose "of receiving information from the parties with respect to a petition or case being processed before the Commission, follow-up to recommendations, precautionary measures, or general or particular information related to human rights in one or more Members States of the OAS" (OAS, 2009). The issuance of precautionary measures is also at the core of the Commission's mandate. Measures can be related or not with a petition and "(...) shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the Inter-American system" (ibid.). The precautionary measures are one of the most controversial mechanisms of the Commission. They are often regarded with contempt by states while they are widely requested by civil society organizations which engage in public interest litigation before the regional system. The publication and divulgation of reports is also part of the monitoring activities. The annual report contains an overview of all the work conducted by the IACHR during the year.

Chapter IV of the report is another source of friction between the states and the Commission since it offers a detailed account of the countries of the region who have serious problems with human rights[2]. It is one of the most powerful shaming mechanisms available to the Commission, along with the precautionary measures. On a permanent basis, the IACHR also publishes shorter thematic and geographical reports that contain both an overview of the human rights situation in specific areas or countries, and a compilation of relevant Inter-American standards.

The third pillar is the special mechanisms for priority thematic areas which correspond to rapporteurships and special units. Most rapporteurship offices are handled by commissioners who are not permanently based on the IACHR headquarters. The Rapporteurship for Freedom of Expression is the only office which has a special non-commissioner rapporteur with a full-

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[2] Cuba, Venezuela and Guatemala were the countries present in chapter IV in the 2015 report.

time appointment. It also enjoys the benefits of more resources and permanent staff. There are also country rapporteurs assigned to each member state. The first rapporteurships were created in the 1990 and their objective is to "devote attention to certain groups, communities, and peoples that are particularly at risk of human rights violations due to their state of vulnerability and the discrimination they have faced historically" (OAS, 2016).

1.2. The Court

Unlike the Commission, the Court only has jurisdiction over those countries that have explicitly accepted it. At the time this thesis was written, 22 countries were under the jurisdiction of the Court. The tribunal is composed by seven judges who do not represent their home countries and are elected on the basis of their moral authority and highest qualifications and competence in the field of human rights (OAS, 1979). Their mandate is for six years with the possibility of one renewal period. The main purpose of the Court is the "application and interpretation of the American Convention on Human Rights" (ibid.) and all the other relevant Inter-American instruments.

The Court has two main functions. The adjudicatory function is triggered once the Commission or the states submit individual cases. The Court can decide whether a violation of rights has been committed, what is the proper redress mechanism and when, due to the gravity of a situation, it is necessary to adopt provisional measures before the final ruling. The advisory function, on the other hand, allows states "to consult the Court regarding the interpretation of [the American] Convention or of other treaties concerning the protection of human rights in the American states" (OAS, 1969) or to request the Court to provide "opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments" (ibid.). The advisory opinions are part of the jurisprudence corpus of the Court along with judgments

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and decisions, provisional measures and the Court's follow-up reports on compliance with judgments.

Limited funding is a permanent constraint for both the Court and the Commission. The Court operates on a part-time non-permanent basis. Judges meet a handful of times per year (that often translates into four ordinary sessions and two extraordinary ones) and usually have other full-time positions in their home countries (Pasqualucci, 2012). Since it started its operations in 1980, the Court has resolved a little more than 200 cases and the procedural delay is significant in both the Court and the Commission.

Court sentences are binding and they create doctrinal interpretation and jurisprudence that has to be applied to all the countries in the region that are under the Court's jurisdiction. The Court has a follow-up mechanism that includes hearings and requests of information where states have to present all the measures adopted to comply with the ruling.

1.3. The strengthening process

In 2011, the Permanent Council of the OAS created a special working group with the mandate to reflect on the activities of the Commission in order to strengthen the institution. The working group was commissioned with the task of identifying good practices, problems and challenges in several areas:

1. Appointment of The Executive Secretary of The IACHR: Establishment of a process to facilitate identification of the most qualified individual for the post.
2. Friendly Settlement Mechanism: To identify the requirements and conditions to give this mechanism the priority stated by the member countries.
3. Precautionary Measures: To agree on the parameters wherein the IACHR may request a state to adopt precautionary measures and steps to implement

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the request, in order to create a framework of predictability in the implementation of such measures.

4. Promotion of Human Rights: To create a process to promote the observance of human rights, with IACHR advisory services.
5. Procedural Matters: To explain specific matters of procedure in the processing of individual cases.
6. Strengthening of The Financial System: To devise a plan of action to secure funds to address the various needs of the Court and the Commission.

(0AS, 2011)

The strengthening process took place in a context of ever growing tensions between the IACHR and the states. Shortly before the launching of the process, the IACHR had issued a precautionary measure against Brazil for the construction of the Belo Monte hydroelectric power plant which triggered a violent reaction from the country and a heated debate in the region. Brazil, and many states that supported the country's position, emphatically argue that the mandate of the IACHR excluded it from engaging in sovereign decisions regarding economic development. The Brazilian case will be further explained in the next chapters as it is one of the two policy episodes that will be analyzed through the "spiral model" framework. It is sufficient to say, in this chapter, that Brazil's reaction marked a period of general hostility between some states (particularly Brazil, Colombia, Venezuela, Ecuador, and most recently, Mexico) and the Commission.

The working group came up with a report in late 2011. The final brief contained an assessment of the IACHR's work and recommendations for the restructuring of the institution. Many of the recommendations pointed towards prioritizing and expanding the promotion functions of the IACHR which, as mentioned before, are less contentious and more dialogic in their nature. In a context of financial constraints, this also meant reducing the allocation of resources for the protection functions (petition, cases and precautionary measures).

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In this context, civil society organizations soon expressed their concerns as the process seemed to be steering the boat towards weakening the IACHR rather than strengthening it. In a press release issued in 2012, some of the most active CSO[3] before the Inter-American System warned "(…) that several of the report's recommendations could trigger a process of weakening the inter-American human rights system (IAHRS)" (Instituto de Defensa Legal et al., 2012). The coalition of NGO pointed out the fact that almost all recommendations were addressed at the IACHR while "(…) not a single recommendation calls on states to ensure effective compliance with and implementation of the decisions of the bodies of the inter-American human rights system. (ibid.). The recommendations mostly aimed at revising the methodology behind the preparation of chapter IV, reviewing the procedure for the issuance of precautionary measures (and mostly, making it more difficult for the Commission to issue them) and reducing the protagonism of the Special Rapporteur for the Freedom of Expression which, unlike the other rapporteurs, prepares its own annual report and has more resources. In the view of civil society, all these requirements had the objective of stripping the IACHR out of its more direct and effective monitoring and enforcement mechanisms. The Commission is currently working on implementing the recommendations, but the debate between the System, the states and the civil society is ongoing.

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[3] The civil society organizations that issued the position statement are: Instituto de Defensa Legal (IDL), Centro de Estudios Legales y Sociales (CELS), Due Process of Law Foundation (DPLF), Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia), Conectas Direitos Humanos, Fundación Construir

Chapter 2 – Literature Review and Analytical Framework

2.1 Literature review

There are two main strands of literature that are highly relevant for this research. Theories of compliance with treaties and norms try to understand how and why countries that enter into international agreements decide to either abide by them or to ignore them. Realist and normative theories are the two opposite ends of the spectrum. The former puts a stress on the states as rational actors that will likely embark on utility-maximizing behavior when it comes to compliance. The latter, on the other hand, explains compliance by the persuasive power of principles and ideas and portrays the state as an actor that is constrained by the international community and its institutions (Zaelke, 2015).

On the other side, studies of judicial activism or judicial politics try to understand how court rulings can impact public policies beyond individual cases. In this top-down approach, judicial activism theories are especially useful to understand how legal processes can trigger intended and unintended consequences in the public sphere, and can engage a vast array of actors in a debate about contested issues.

For this thesis, compliance theories will inform the analytical framework. The "spiral model" of norm socialization (Risse and Sikkin, 1999) predicts compliance when "pressure from above" and "pressure from below" are applied simultaneously to the norm-violating state. The theory will be tested on two case studies. On the other hand, judicial activism will be analyzed as an intervening variable that can shed light on the behavior and performance of the Inter-American System to better understand how this body with adjudicatory functions can have far-reaching effects beyond individual cases.

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2.1.2. Judicial activism

A recurrent joke that circulates on many websites for lawyers defines judicial activism as a label for a court's decision you just don't like. In the scholarly literature, the term judicial activism is often charged with a negative connotation. For this line of thought, judicial activism can be seen as "(i) any serious legal error, (ii) any controversial or undesirable result, (iii) any decision that nullifies a statute, or (iv) a smorgasbord of these and other factors" (Green, 2009). In other words, judicial activism is seen as inherently wrong, and as a decision that illegally trespasses the sacred zone of policymaking and lawmaking.

Furthermore, critical scholars warn against 'power hungry' courts that are often "too assertive and excessively entangled with moral and political decision-making" (Hirschl, 2004). The legitimacy of judges in this type of decision-making processes is also called into question. This is because the judiciary is the only branch of power that is not elected through popular vote. For this argument, judges would lack the accountability that comes with periodical elections and therefore judicial activism would be a severe constraint on popular will (Yoo 2013; Walzer 1981).

On the other hand, scholars recognize that courts are often burdened with irreconcilable duties. They are expected to remain unbiased in their judgments while addressing social issues that are highly politicized (Stone Sweet, 2000). In this sense, judicial review can actually become a safeguard against popular tyranny as the constitution does –and should- place limits on the power of the majorities (Sherry, 2013). In this more positive light, judicial activism is seen as a guarantee for the judiciary to have "the same opportunity as the other two branches to prevent the government from acting unconstitutionally" (Sherry 2013, p. 2). Domestic courts of countries under the Inter-American jurisdiction have yet another task besides judicial

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review. The conventionality control mandates local judges to review and nullify legislation that is against the principles of the American Convention. This mechanism is not only a "duty put on the shoulders of national judges to adapt its decisions to IACHR criteria" (Carnota 2012, p. 23) but also a powerful tool in the hands of the Inter-American Court to assert the supremacy of the American Convention and to enroll domestic judges as "potential enforcers" (p. 30).

2.1.2.a Judicial activism as a dialogic process

Cesar Rodriguez-Garavito identifies a particular kind of judicial activism which, he argues, is frequently present in Latin America. Court decisions which address structural issues rather than strictly individual cases, have the potential to trigger a process with significant material and symbolic impact in societies:

> "I characterize these cases as judicial proceedings that (1) affect a large number of people who allege a violation of their rights, either directly or through organizations that litigate the cause; (2) implicate multiple government agencies found to be responsible for pervasive public policy failures that contribute to such rights violations; and (3) involve structural injunctive remedies, i.e., enforcement orders whereby courts instruct various government agencies to take coordinated actions to protect the entire affected population and not just the specific complainants in the case" (Rodriguez-Garavito 2010, p. 1671)

Rodriguez-Garavito employs a constructivist approach that allows him to capture both direct and indirect effects of judicial decisions. He defines dialogic activism as rulings that "set broad goals and clear implementation paths through deadlines and progress reports, while leaving substantive decisions and detailed outcomes to government agencies" (p. 1676). Dialogic activism is also comprised of participatory follow-up mechanisms. A dialogic process can fuel deliberative democracy, but only if broad civil society coalitions get to participate. This requirement is not easily fulfilled in processes that are triggered by supranational institutions. CSO face many constraints when it comes to participation in the Inter-American

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System. Only those who can obtain and allocate resources for lobbying activities in Washington can be truly engaged in the dialogue. In Latin America, there are only a handful of CSO that are truly active in the system. However, the Inter-American Court is known for the structural approach to the cases and for the implementation of robust follow-up mechanisms.

In contrast with realist theories that concentrate on material effects, Rodriguez-Garavito argues that judicial activism can certainly have positive impacts on society even if the enforcement of the ruling is defective. This is because the symbolic effects are also worth considering. Table 1 illustrates all the combinations of direct effects (those directly mandated by the Court), indirect effects (not explicitly included in the ruling), material effects (tangible changes in behavior of groups or individuals) and symbolic effects (changes in perceptions and ideas).

Figure 1. Types and Examples of Effects of Judicial Decisions.

	Direct	**Indirect**
Material	Designing public policy, as ordered by the ruling	Forming coalitions of activists to influence the issue under consideration
Symbolic	Defining and perceiving the problem as a rights violation	Transforming public opinion about the problem's urgency and gravity

Source: Rodriguez-Garavito 2010, p. 1679

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When studying the impact of the Inter-American System in domestic policies, the Rodriguez-Garavito matrix is a useful tool for assessing not just the impacts that are evidently in the surface, but also those which are harder to measure or capture, but are nevertheless still important. Interviews with relevant actors in the Inter-American System were conducted with this purpose.

2.1.2. Norm socialization and compliance

Many scholars study the puzzling questions of what prompts state compliance with human rights treaties. Theories of compliance vary significantly. Hathaway (2002) divides compliance theories into those which follow a rational actor model and those which can be grouped under normative theories.

The first branch includes neorealist scholars that argue that compliance occurs when it is "coincident with the path dictated by self-interest" (ibid, p. 1946). Institutionalists, on the other hand, incorporate institutions and systems as an explanatory factor and posit that compliance also facilitates transactions and helps states maximizes utilities by means of cooperation. Liberalism scholars share the rational actor framework, but diverge from neorealists and institutionalists in that the state is not viewed as a homogeneous agent but rather as a disaggregate unit. This perspective allows researchers to study actors and coalitions within states. The liberalist approach argues that liberal states, where the rule of law applies and domestic social movements can exert political pressure, are more likely to comply with international norms.

Normative theories, that are on the other side of the spectrum, criticize rational actor approaches for failing to acknowledge "the persuasive power of legitimate legal obligations" (ibid. p. 2002). The "managerial model" developed by Abram and Antonia Chayes states that

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there is a “general propensity for states to comply with their treaty obligation” (Chayes & Chayes 1993, p. 178). Non-compliance is therefore a deviant behavior that is more related to lack of information or state capacity than with a deliberate decision based on a cost-benefit analysis. The “fairness model” places the focus on the “perceived fairness of the legal obligations” (Hathaway 2002, p. 1959). If states consider norms to be substantively and procedurally fair, then compliance is likely to happen. Finally, a third normative approach described by Hathaway is the “transnational legal process model” of Harold Koh. This perspective rests on the idea that norm-internalization “occurs via transnational actors-usually foreign policy personnel of the governments involved, private norm entrepreneurs, and nongovernmental organizations, which form an "epistemic community" to address a legal issue” (ibid., p. 1961). For Koh, this process is triggered by iterated interaction among states and other transnational actors; that interaction produces accepted interpretations of norms which are, in turn, internalized by states.

It is fairly easy to find cases that can fit either the normative or the realist approach. That is why compliance is still a heavily debated issue amongst scholars and it has become a sort of black box. No one can accurately describe what goes on inside. Compliance in the context of the Inter-American System is no less of an enigma. Some countries, like Argentina, Uruguay or Chile, do seem really respectful of the normative power of the American Convention. Other countries like Brazil, Venezuela or Ecuador seem to be acting from a utility-maximizing standpoint when they rebel against decisions that might undermine their economic development policies. In all these cases, however, it is also possible to find outliers, cases where compliance happens even when there is no rational benefit for the country and cases where non-compliance occurs in countries that have a strong pro-human rights discourse and practices.

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2.2. Analytical Framework

In the next chapter, the analysis of two policy episodes will be informed by theories of judicial activism and compliance. As an analytical framework, I will employ Risse and Sikkink's (1999) "spiral model" to identify the stages of norm internalization and offer a more detail-rich account of the process. The authors develop a model that explains the behavior of civil society, state and transnational/international networks through a process that goes from repression (or non-compliance) to rule-consistent behavior. By disaggregating the norm socialization process, the model seeks to "specify the causal mechanism by which international norms affect domestic structural change" (p. 19). The novelty and value of this model is that it combines both principle-based and interest-base arguments to explain the behavior of states and other actors throughout the process.

Phase 1 is called "repression and activation of network". Repressive states are initially outside the agenda of the transnational advocacy networks (TAC). But when this transnational network establishes links with domestic opposition groups and manages to gather relevant information on human rights violations, the international pressure will likely move the process towards phase 2 which is "denial". This phase triggers more active behavior from the transnational network which will collect and disseminate information and will lobby western states and human rights organizations to engage in shaming campaigns. Targeted states are likely to deny the validity of human rights international norms "as interference in internal affairs" (p. 23). The strength of the transnational advocacy networks and the vulnerability of the state in resisting international pressure might bring about a transition to the third phase. The "tactical concessions" phase occurs when international pressure escalates and "the norm-violating state seeks cosmetic changes to pacify international criticism" (p. 25). The main effect of this change of behavior is the empowerment of local opposition groups that are legitimized and strengthened by the transnational networks. States that yield to international pressure start

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to talk the “human rights talk” and by doing so, they engage in a dialogue that leaves them with reduced options: either they choose to reinforce repression –which is a risky decision given the attention from the international actors and the empowered position of domestic opposition or they move towards “prescriptive status”. This fourth phase is characterized by states who are willing to partake, at least formally, in the international human rights community. States will ratify treaties and will even develop internal mechanism to protect or promote rights. But prescriptive status is different from “rule-consistent behavior” (phase 5). In this phase, states can discursively acknowledge the validity of human rights norms while serious violations still exist. In Risse and Sikkink’s model, phase 5 usually arises “when national governments are continuously pushed to live up to their claims and when the pressure "from below" and "from above" continues” (p. 33). Figure 1 summarizes the norm socialization process.

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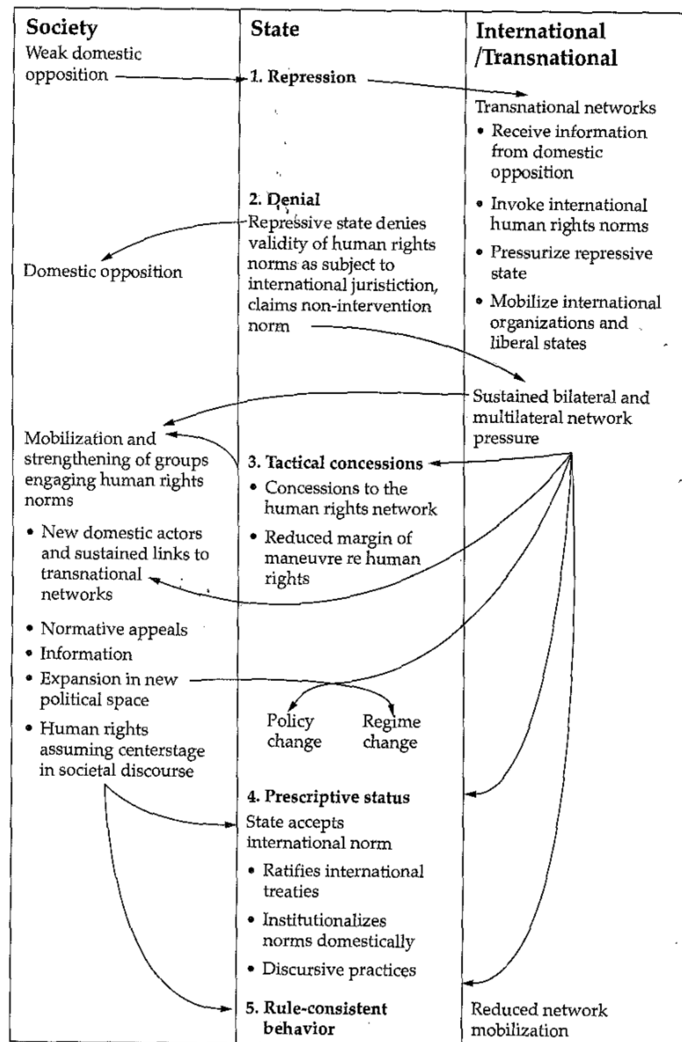
Figure 2. Risse and Sikink's "Spiral Model" of Human Rights Change.



Source: Risse and Sikkink 1999, p. 20.

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As this work examines differing compliance patterns from countries that already ratified Inter-American human rights instruments, the focus will be on the fourth and fifth phases of the model, although some elements of the first three phases are also present in the case studies. Our puzzle is why some states move smoothly from prescriptive status to rule-consistent behavior while others do not. And, moreover, why in some cases a state reaches rule-consistent behavior for some rights while remaining in the prescriptive status phase for other rights. In Latin America, we often see the fourth and fifth phases coexisting in different

combinations. The case studies will try to offer some insight into the black box that comes between commitment and compliance.

Risse and Sikkink identify TAC, domestic groups and states as the main actors that are present in each phase and affect compliance patterns. The analysis in the next chapter will seek to describe how each of these actors played a role in our selected cases. For that purpose, the following variables will be analyzed:

- *Actions of Transnational Advocacy Networks:* Risse and Sikkink describe TAC as "transnationally operating non-state actors on state policies" (p. 4). For the authors, these networks are the key element for change in the human rights area as they manage to put norm-violating states in the international agenda and they empower domestic opposition groups. The model predicts that if pressure from TAC is sustained (especially when the country is already at the prescriptive status and international attention often fades) the state can transition to rule-consistent behavior.
- *Actions of Domestic Groups:* the authors refer interchangeably to organized opposition groups, social movements and NGOs. They have a fundamental role in norm internalization process by shaming and pressuring the government. Nonetheless, they are somehow dependent on the transnational networks that operate to legitimize, strengthen and protect the local actors. The model predicts that domestic groups are limited in their ability to bring about change in the earlier phases, but a strong internal opposition combined with international pressure will be fundamental to the later stages.
- *Actions of States*: the theory does not delve deeply in the variety that exists between and within states. There is a rather dichotomous and simplified characterization of

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states as either norm-violating or liberal states. The model predicts that weaker and pressure-vulnerable states are more likely to comply.

A fourth element will be added for this research: *Actions of the Inter-American System*. There is deliberate intention to place this actor outside the transnational advocacy networks. This is for two reasons: (1) the IAHRS is a non-state actor but, at the same time, its mandate and legitimacy comes from the states themselves, (2) the IAHRS could not openly engage in lobbying western states or international NGO, as expected by Risse and Sikkink from actors that are part of a TAC. Its mandate constraints make the Court and Commission a different kind of animal. At the same time, as theories of judicial activism would predict, the actions of the Court and the Commission often have a considerable symbolic impact that goes beyond a particular case and extends to the whole region.

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Chapter 3 – Methodology and Case Selection

Two cases were selected to explore patterns of compliance within the Inter-American System. The case selection was done with purposive selection procedures (Gerring, 2008) and with the objective of providing "insight into a broader phenomenon" (p. 648). Cases do not necessarily coincide with legal cases. In this sense, the cases are treated like policy episodes where the aim is to understand the "multitude of forces, events, documents and decisions involved in producing (a certain) change" (Jones 2011, p.7). In doing so, the analysis constructs a "narrative about what led to the policy change in question" (p. 7).

Due to time and space constraints, only two case studies were selected for this research. Although this limited focus allows for a more in-depth inquiry on each of these cases, further research could benefit from the inclusion of a larger sample. This is because a larger sample could offer new insights in testing the hypothesis presented in this study. Is Venezuela or Ecuador's non-compliance patterns similar to the Brazilian one? What about the defiant attitude of the U.S and Canada, which are not under the Court's jurisdiction but still have to respond to before the Commission? Do other successful compliance processes resemble the Argentine case? If not, why? This questions could be further explored with a larger sample. Furthermore, the inclusion of cases from other human rights regimes, like the African or the European System, could shed light on the important question of whether non-compliance is a regional or universal trend.

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3.1 Data Collection

The main data consists of a set of 10 interviews that were conducted with different stakeholders during April 2016. Most of the interviewees were fellows or permanent staff

members at the Inter-American Commission. Interviews were also conducted with representatives of civil society organizations (CSO) that participate regularly in the Commission's activities. Finally, a member of one of the permanent mission to the OAS (a representative of one of the member states) also agreed to an anonymous interview.

The interviews were unstructured and used as an exploratory tool. The interviewees were regarded as key informants who, as a result of their positions, were able "to provide more information and a deeper insight into what is going on around them" (Marshall 1996, p. 92). Interviewees were requested their opinion on the policymaking functions of the Inter-American System and were invited to reflect, based on their current position and previous experience, on the impact of the Court and Commission's activities on domestic policies. Special emphasis was placed on compliance challenges, enforcement mechanisms, and the role of civil society in the regional system. The interviews also dealt with the recent creation of a new public policy area inside the Commission, and their thoughts of how it should work and the challenges it would face. The data from the interviews was complemented with official documents from the OAS and with statements from CSO and governments that were retrieved from their own publications or the media.

Data gathering was a challenge. Public documents from the Court and Commission are available and easily accessible, but the "voice" of other actors was hard to find. States rarely issue declarations and press releases regarding cases in the Inter-America System. Most of the dialogue between States and the IAHRS is done by diplomats behind closed doors. Local media also has limited coverage of events related to the supranational body. Civil society organizations are usually more vocal, but there is only a handful of powerful and well known CSO that are active within the system. They are usually supported by major international donors and some are even based in Washington D.C. It is hard to find the position of more

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locally-based organization or grassroots movements. In this context, the interviews were an added value, as they provided information that was not readily available elsewhere.

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Chapter 4 - Analysis

Following the "spiral model", this chapter analyzes the two case studies in the transition -or lack thereof- from phase 4 (prescriptive status) to phase 5 (rule-consistent behavior). The analysis looks at all the elements that, according to Risse and Sikkink, predict compliance.

4.1. The Cases

4.1.1. "Kimel" and the Right to Freedom of Opinion and Expression

The "Kimel" case is often cited as an emblematic case in the Inter-American jurisprudence for the changes it brought about in public policies in Argentina (see for example: Aguzin 2012, Monterisi 2012). Eduardo Kimel, an Argentine journalist, published a book in 1989 called "La Masacre de San Patricio" (Saint Patrick's massacre) where he reported the findings of his investigative endeavor on the assassination of five clergymen during Argentina's last dictatorship. He specifically denounced the malpractice of the judicial system and pointed at one specific judge for the poor handling of the case. That judge initiated criminal proceedings against Kimel that resulted in a one-year prison sentence and a fine for damages of 20.000 USD. After exhausting internal judicial mechanisms, Kimel filed a petition before the Inter-American Commission on the grounds that the state was violating his right of freedom of expression and opinion by criminalizing public interest speech. The IAHCR granted admissibility and the case reached the Inter-American Court in 2007. The Court ordered the revocation of Kimel's criminal and civil sentence but it also went beyond the individual case and ordered the state to reform or repeal all legislation on criminal defamation. Furthermore, the decision created a regional precedent that forces other countries under the Court's jurisdiction to adapt their internal legislation as well (Bertoni, 2009).

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The case had a direct effect in domestic policies. The state had to acknowledge their international responsibility in violating article 13 of the American Convention (Freedom of Thought and Expression), had to pay compensations to the claimant for pecuniary and non-pecuniary damages and, most importantly, had to bring domestic laws into conformity with the Inter-American standards. This last order triggered an internal process that engage all branches of power and civil society actors into a discussion that ultimately led to the repeal of the criminal defamation laws and to a broader deliberation on media policies.

4.1.2. "Belo Monte" and the Right of Indigenous People to Prior Consultation

The Belo Monte hydropower plant in Brazil was first devised in the 1970s. The initial technical and feasibility studies took place during the 1980s. The project, however, did not gained political momentum until 2011, where the Institute of Environment and Renewable Natural Resources (IBAMA) granted a license to a state-owned company to begin construction activities. The large-scale dam runs along the coast of the Xingu River in the state of Pará. That rainforest area, located in the basin, is home to many indigenous communities, some of them living in voluntary isolation. The dam was meant to be the third largest in the world and, according to experts, the construction –which is still undergoing- will necessarily implied the devastation of around 500 km2 and the forced displacement of between 20.000 and 40.000 people (Amazon Watch, 2012).

A petition for a precautionary measure was filed before the Commission in 2011 by a coalition of indigenous groups[4]. The main claim was that "the life and physical integrity of the beneficiaries (was) at risk due to the impact of the construction" (CIDH, 2011) and the state of

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[4] See PM 382/10 - Indigenous Communities of the Xingu River Basin, Pará, Brazil

Brazil had not fulfilled its international obligations regarding the rights of indigenous people to free, prior and informed consent and consultation. Although that right is not explicitly present in the American Convention, the Inter-American Court has set clear and binding precedents in the matter[5]. The Commission granted the petition and ordered the immediate suspension of the project. Brazil reacted violently and completely disregarded the order. The conflict quickly escalated, the country withdrew its ambassador before the OAS and stopped paying financial contributions to the Commission. The construction of the dam continued.

4.2. Actions of Transnational Advocacy Networks

The "spiral model" of Risse and Sikkink (1999) highlights the importance of TAC for human rights change. They have a fundamental role in earlier stages of repression, when domestic groups can hardly raise their voices, and they are also important for later stages when states start paying lip service to the human rights cause but compliance is still a challenge. The authors argue that if TAC withdraw monitoring and shaming mechanism too early, states may end up lingering in this limbo where the treaties are signed and ratified but this formality does not bring about compliance. It is interesting to see how the case studies do not strictly conform to this model.

In the Kimel case there was no Transnational Advocacy Network leading the campaign for the reform of the defamation laws in Argentina. It was mostly a domestic endeavor. CELS, the biggest and most important NGO in the country, represented the journalist before the Commission and the Court[6]. CEJIL, a regional NGO with headquarters in Washington D.C., was also part of the legal counseling team, but it was the domestic group who led the case from

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[5] See, for example: Case of the Kichwa Indigenous People of Sarayaku v. Ecuador.
[6] CELS stands for "Centro de Estudios Legales y Sociales" (Center for Social and Legal Studies).

the beginning[7]. The issue was acknowledged by international human rights organizations (see for example, Human Rights Watch 2009) but it was hardly a priority in the agenda. Overall, Argentina was seen internationally as a country that respected freedom of expression, with only minor issues of concern in that area[8].

Conversely, in the Belo Monte case, TAC were very active. Amazon Watch, Global Justice, the Inter-American Association for Environmental Defense (AIDA), and Amnesty were among the most vocal international organizations. They were also fundamental in terms of framing the issue as the outcome of unresolved tension between economic development and the protection of rights. In a press release, Amnesty stated that "continuing with the construction of the Belo Monte Dam before ensuring the rights of indigenous communities are protected is equivalent to sacrificing human rights for development" (Amnesty, 2011). The issue also reached the agenda of the UN. In 2015, the United Nations Working Group on Business and Human Rights visited the country and the the Belo Monte project was identified as one of the most problematic and complex disputes since it included a large number of directly or indirectly affected people, a broad range of unprotected rights, and a multiplicity of stake-holders in a highly asymmetric context. The Group reported frequent "human rights abuses which have come to be associated with large-scale development" and reminded Brazil of its international obligations regarding full and prior informed consent (OHCHR, 2015).

This brief overview of the actions of TAC in both cases shows some interesting findings. In the Kimel case, compliance occurred without the "pressure from above" of international civil society groups. The pressure from domestic groups and the actions of the Inter-American System seemed to be sufficient to bring about the change in media and freedom

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[7] CEJIL stands for "Centro por la Justicia y el Derecho Internacional" (Center for Justice and International Law).
[8] At that time, the most salient issue in the media policy domestic agenda was the draft of a new media bill that aimed at democratizing the ownership of audiovisual media.

of expression policies. Contrarily, in the Belo Monte case, the "pressure from above" was strong and sustained. The issue had broad coverage from the most important media outlets worldwide, renowned international organizations and even the UN got actively involved, and yet Brazil's government decided to stay on the norm-violating path.

4.3. Actions of Domestic Groups

Regarding the actions of domestic groups, the Kimel case presents a clear protagonism of local civil society. As it was mentioned before, the local NGO CELS was the legal representative of the journalist but it also ran a strong domestic campaign with frequent press releases, media coverage and social media presence. The CELS is know for having a good relationship with the government that was in office at that time, and dialogue with the executive branch was also frequent. When the state committed itself to the reform of defamation laws and initiated the parliamentary debate, the CELS also engaged in lobbying activities within the Congress.

The Belo Monte case also had a strong presence of local groups. Conectas, a human rights NGO based in São Paulo, covered the case extensively and denounced the government's predatory model of development and its disregard for "the importance of the regional human rights system as well as its obligations under that system" (Conectas, 2011). Other NGO like the Pará Society for the Defense of Human Rights[9] were also, and still are, engaged in the shaming campaign. Moreover, the "pressure from below" was also exercised by grassroots movements from the Amazon, the directly affected area. A coalition of traditional indigenous

[9] The original name in Portuguese: Sociedade Paraense de Defesa dos Direitos Humanos.

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communities led the strategy both domestically and abroad, at the Inter-American headquarters[10].

In both cases, it is possible to see a strong network of local NGO advancing and promoting the human rights agenda. Rather than having transnational advocacy networks that legitimize and empower domestic opposition, it is the local groups that are leading the strategy and enrolling the international non-governmental actors. In the Argentine case, this locally-led strategy yielded positive results. In the Brazilian case, it did not. All opposition actors involved cited the vested economic interests as the main obstacle behind change in Brazil. One of the interviewees explicitly referred to the case as a "dispute between sovereign development projects and the protection of human rights" (C1). In another interview, a representative of a regional CSO, argued that "Brazil's action irreparably damaged the Inter-American System and it was mainly about power and money, Brazil was trying to assert itself as an economic power regardless of the consequences" (B2). It seems that the kind of rights that are being disputed makes a difference in what domestic groups can actually achieve.

4.4 Actions of States

The "spiral model" places emphasis on the vulnerability of states as a key factor in human rights change. Risse and Sikkink argue that states are vulnerable to international pressure because of foreign aid dependency, prior normative commitments or a "desire to maintain good standing in valued international groupings" (1999, p. 24). These factors played out differently in the two case studies.

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[10] The Movimiento Xingú Vivo Para Siempre (MXVPS), Coordinación de Organizaciones Indígenas de la Amazonía Brasileña (COIAB), and the Prelazia del Xingú were the local movements that filed the petition for precautionary measures before the IACHR.

The Argentinean government did not have to deal with considerable international pressure since the shortcomings in freedom of expression rights were hardly on the international agenda. However, when acknowledging the state's responsibility in the case and initiating a reform process, the government did try to capitalize on the situation by presenting itself as a human rights champion. In a public homage to Kimel, the then president of Argentina, Cristina F. de Kirchner said that "we now live in an Argentina with a historically unprecedented freedom of the press. Never in history there was such a freedom (…) where anyone can write whatever they want" (Pagina12, 2010). The behavior does appear to be motivated by the desire to maintain a good standing in the international community.

Brazil, on the other hand, was the target of sustained international pressure from international organizations, local NGO and even the UN. Prior normative commitments or their regard for their public image in the international arena did not seem to affect the country's position. The country also has a very low aid dependency (Hailu and Shiferaw, 2012), so the threat of diminishing aid would hardly work as a deterrent.

To avoid international pressure, the government of the then president Dilma Rousseff had a two-fold strategy. First, it tried to frame the issue as a sovereign economic development matter (Timo, 2013). In that narrative, no international organization, not even the Inter-American Commission had any legitimate standing in domestic affairs. Second, there was a deliberate effort to weaken the Inter-American system (Brazil stopped supporting it financially and verbally attacked its legitimacy) and to strengthen alternative regional arrangements like the MERCOSUR or UNASUR where there are no independent human rights enforcement mechanisms. Most of the interviewees reported that Brazil is not alone in these weakening efforts. As the petition and case system in the Inter-American regime is primarily adversarial, states often respond in an aggressive and defensive manner. In the view of one of the interviewees, "these rebellious states think that a strong human rights monitoring system only

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makes sense in times of dictatorship, they do not value the contribution it can make in democratic times, they believe the IACHR should not mess with the internal policies" (B1).

These cases show that international pressure is often unlikely to generate changes in the targeted states. This is specially the case when norm-violating states are economically strong, have low aid dependency and are powerful enough to build alternative supranational agreements and institutions as they do not respect the existing ones. Brazil, as a fast rising economy and as a strong regional power, was well positioned to challenge international norms.

4.5 Actions of the Inter-American System

Finally, it is important to describe the actions of the Inter-American Human Rights System in each of the cases. In doing so, it is possible to evaluate what institutional mechanisms were more effective and why.

The Kimel case reached the Inter-American Court in 2006. The actions that were being judged happened during the 90s. Although the state as a whole is always responsible for violations to the American Convention, in this case the Argentine judicial system was the one being exposed by its shortcomings and failures. After all, the case was initiated by a federal judge who felt dishonored by Kimmel's book; and it was the Supreme Court who ended up confirming the harsh sentence against the journalist. The Congress was also directly responsible by having passed defamation laws that allowed for the criminalization of public speech. The president Cristina Kirchner had little to loose by acknowledging the state's responsibility in this case. It was another government and other branches of power that were being truly shamed in the process.

The Brazilian case was significantly different. A precautionary measure, by its own definition, is always a mechanism against the current government. Furthermore, in this case it

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was the main actors in the executive branch who were being accused with the responsibility of neglecting the integrity and wellbeing of indigenous communities. President Rousseff herself had to respond to the charges that were being brought against her.

Interviewees reflected on the different mechanisms that the Inter-American System employs for the protection and promotion of rights. A staffer from the IACHR said that "the problem with the petition and case system is that you are dealing with [human rights] violations that occurred in the past, and you are not focusing on how to prevent them to happen in the future. The system is designed to be more effective at the protection of rights but perhaps less effective at the promotion of them" (A5). In the Kimel case, the System indeed focused on past wrongdoings and the government could emerge untainted from the process. Conversely, by resorting to a precautionary measure in the Brazilian case, the Commission triggered a heavily adversarial process and, as the interviewee pointed out, "no state likes to be told that they are a human rights violator" (A5). Table 3 summarizes the role and actions of each actor in the case studies.

Figure 3. Summary of Findings.

	Kimel	**Belo Monte**
Actions of Transnational Advocacy Networks	Not seen as a priority in the international community.	High to moderated pressure from the international community.
Actions of Domestic Groups	Present and very active.	Present and very active.
Actions of Sates	Compliance.	Denial. Not vulnerable to international pressure.
Actions of the IAHS	Court and Commission judging the judiciary and legislative branch and past actions.	Commission judging the executive branch and present actions.

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The analysis of the cases in the light of the “spiral model” shows that the transition between phase 4 (prescriptive status) and phase 5 (rule-consistent behavior) is not a smooth road. Risse and Sikkink acknowledge this but still predict that if both “pressure from below” and “pressure from above” are intense and sustained, change is likely to happen. The cases show that there are many factors that can hinder this kind of pincer movement approach. Firstly, the type of right that is being violated is one of the most important factors that, perhaps, is slightly overlooked in the “spiral model”. When the protection of some rights collide with economic development projects, governments are less likely to comply. The distinction is not necessarily between economic and social rights, on one hand, and civil and political rights on the other hand. As we can see from the Brazilian case, the right to prior consent –which can be interpreted as part of the civil right to participate in public affairs- was seen as an obstacle for development by the government. Secondly, where local groups are strong and safe in the targeted country, they are more likely to led the strategies themselves rather than act under the protection and initiative of a transnational advocacy networks. Thirdly, although TAC are a key factor in human rights change, their effectiveness is limited when governments are powerful enough to challenge the legitimacy of supranational institutions while promoting alternative international arrangements.

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Conclusion

The compliance black box is difficult to unravel. This study has shown how many factors play out differently in different contexts. By employing Risse and Sikkink's "spiral model" as an analytical framework, the thesis attempted to expand the theory in two ways. First, it tried to highlight the limitations of the model, specifically in the process that explains transition from prescriptive status to rule-consistent behavior. Secondly, it tried to account for more variables that can qualify this process.

Risse and Sikkink expect the "prescriptive status phase to be followed over time by the ultimate phase of our socialization model, rule-consistent behavior" (p. 30). They argue that "prescriptive status of international human rights norms implies that governments make a sustained effort to improve the human rights conditions" (p. 30). However, in highlighting theoretical shortcomings, the findings show that this transition can be stalled in many ways.

First, unlike the predictions of Risse and Sikkink, transnational advocacy networks have limited effectiveness in exerting pressure when targeted countries are economically strong and politically powerful in the international arena. The "pressure from above" is resisted with different tactics. For example, countries can challenge the legitimacy of international institutions and organizations. They can dismiss international intervention as a trespassing on their sovereign prerogatives. They can also try to reframe the issue so as not to acknowledge the existence of a human rights violation. Finally, they can promote alternative international institutions that are less likely to confront them.

Second, domestic groups can be powerful forces driving change when they have a strong and stable presence in the country. In Latin America in particular, and especially in countries like Brazil, Argentina, Mexico or Colombia, civil society has been known for their

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leading efforts in human rights change and transitional justice. In this sense, the "spiral model" with its emphasis on the transnational networks might be best suited for analyzing norm-violating countries with a weaker civil society.

Third, countries are less likely to comply with international rules when they collide with their economic development policies. The kind of right at question matters, and this issue is overlooked in the "spiral model". As Latin America has embarked in a path of economic growth that is commodity-dependent and relies heavily on extractive industries, this tensions are likely to increase. In many countries of the region, this pattern of economic development is linked to a system in which the concentration of resources lies in the hands of the few, and there is an escalation of conflict between corporations and local communities (Rodriguez-Garavito, 2011). If the protection of a specific right is likely to obstruct the chosen development path, compliance will be more challenging.

Finally, the type of mechanisms employed by international institutions also matters. Both legal cases and precautionary measures are adversarial processes. However, cases make statements about past wrongdoings while precautionary measures focus on the present. The Inter-American Court works on a considerable procedural delay and it can actually take decades for a case to reach the Court. In this regard, sentences are less shameful for governments that are currently in office. Precautionary measures, conversely, applied to ongoing violations. Countries will react differently to different instruments. This does not imply in any sense that the Inter-American System should limit the issuance of precautionary measures should it wish to increase compliance. Precautionary measures are the most effective instrument to address serious violations in an urgent manner. The Commission, however, should anticipate and prepare for a harsh reaction from states.

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By analyzing the role of all these actors in the process of norm internalization, it is possible to see how many factors that were not included in the "spiral model" play an important role. To summarize, the four main elements whose addition could expand and enrich the spiral model are: (1) the power and position of the state in the international agora, (2) the robustness of civil society in the targeted country, (3) the types of rights at stake, and (4) the kind of monitoring and enforcement mechanisms employed by international institutions.

Implications for the Strengthening of the Inter-American System

These findings could inform the strengthening process of the Inter-American System in many ways. First, in a context where states are contesting the legitimacy of the institution, it is important to promote an engage in a broad dialogue with all the actors of the system. It is the task of the Court and Commission to clearly spell out the importance of their activities in times of democracy. The Inter-American system has to be perceived as an ally and a resource to build effective and sustainable public policies domestically. If the system is only viewed as an adversary, the tension will escalate further. Second, civil society has an important role in the promotion and protection of human rights regionally, and that role has to be acknowledge and strengthen. Only a handful of NGO have currently the means and resources to participate in hearings in Washington D.C. or sessions in Costa Rica. Empowering domestic civil society should also be a goal of the system. Third, there is pressing need for a regional debate on economic development and rights. That should become one of the main thematic priorities of the Inter-American system. It should also be in the agenda of local NGO and transnational advocacy networks. There is an urgent need for building a counter-narrative that opposes to the idea that economic growth can come at the expense of basic rights.

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This thesis tried to explain why compliance patterns differ considerably in the Inter-American System, in doing so, it identified new elements that hinder compliance and that are sometimes overlooked in previous studies. Future research could follow this trail by focusing on each one of these elements. That exploration could identify best practices to overcome obstacles in the protection and promotion of human rights. In times of democracy, Latin America has yet to live up to its international obligations in human rights matters. Hopefully, opening up the compliance black box might make a contribution towards that goal.

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Appendix A – Interviews

All interviewees chose to remain anonymous. Interview were conducted in Washington D.C. during April 2016.

Organization	**Unit/ program**	**Code**
IACHR	Special Unit	A1
IACHR	Special Unit	A2
IACHR	Rapporteurship	A3
IACHR	Rapporteurship	A4
IACHR	Rapporteurship	A5
IACHR	Special Unit	A6
IACHR	Executive Secretary	A7
NGO	Program	B1
NGO	Program	B2
STATE	Permanent Mission to the OAS	C1

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