

University of Pennsylvania Carey Law School

Penn Carey Law: Legal Scholarship Repository

Faculty Scholarship at Penn Carey Law

2019

Do Self-Reporting Regimes Matter? Evidence From the Convention Against Torture

Beth A. Simmons

University of Pennsylvania Carey Law School

Cosette D. Creamer

University of Minnesota

Follow this and additional works at: https://scholarship.law.upenn.edu/faculty_scholarship



Part of the [Human Rights Law Commons](#), [International Law Commons](#), [International Relations Commons](#), [Law and Politics Commons](#), [Law and Society Commons](#), and the [Transnational Law Commons](#)

Repository Citation

Simmons, Beth A. and Creamer, Cosette D., "Do Self-Reporting Regimes Matter? Evidence From the Convention Against Torture" (2019). *Faculty Scholarship at Penn Carey Law*. 2057.
https://scholarship.law.upenn.edu/faculty_scholarship/2057

This Article is brought to you for free and open access by Penn Carey Law: Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship at Penn Carey Law by an authorized administrator of Penn Carey Law: Legal Scholarship Repository. For more information, please contact PennlawIR@law.upenn.edu.

**DO SELF-REPORTING REGIMES MATTER?
EVIDENCE FROM THE CONVENTION AGAINST TORTURE***

Cosette D. Creamer & Beth A. Simmons

ABSTRACT

International regulatory agreements depend largely on self-reporting for implementation, yet we know almost nothing about whether or how such mechanisms work. We theorize that self-reporting processes provide information for domestic constituencies, with the potential to create pressure for better compliance. Using original data on state reports submitted to the Committee Against Torture, we demonstrate the influence of this process on the pervasiveness of torture and inhumane treatment. We illustrate the power of self-reporting regimes to mobilize domestic politics through evidence of civil society participation in shadow reporting, media attention, and legislative activity around anti-torture law and practice. This is the first study to evaluate systematically the effects of self-reporting in the context of a treaty regime on human rights outcomes. Since many international agreements rely predominantly on self-reporting, the results have broad significance for compliance with international regulatory regimes globally.

Draft date: Jan. 11, 2019. 12,673 words

* For helpful feedback, the authors would like to thank Christian Davenport, Christopher Fariss, Tyler Giannini, Emily Hafner-Burton, Courtney Hillebrecht, Michael Ignatieff, Katerina Linos, Yonatan Lupu, Samuel Moyn, Gerald Neuman, Gino Pauselli, Tonya Lee Putnam, Luis Moreno Ocampo, Kathryn Sikkink, Anton Strezhnev, Geir Ulfstein, Erik Voeten, and participants in the Harvard Carr Center Human Rights Colloquium; the WCFIA-HLS International Law-International Relations Workshop, Harvard; the Conference on the Domestic Politics of International Human Rights Agreements held at the Niehaus Center for Globalization and Governance, Princeton University; the Human Rights and Constitutionalism thematic working group at the University of Oslo, Faculty of Law and Norwegian Centre for Human Rights, The Agreements, Law, and International Politics workshop held at Rice University, and UCLA Burkle Center for International Relations. The authors also thank Diana Li, Andrea Ortiz, Anton Strezhnev, Malina Toza and Maria Sanchez for providing invaluable research assistance, and the Weatherhead Center for International Affairs and the University of Minnesota Human Rights Initiative for providing generous funding to support this research.

I. Introduction

One of the central debates in international and comparative politics concerns the role of international legal norms in influencing state behavior. Skeptics believe international law is weak and epiphenomenal to state preferences. Other scholars claim it has been important in moving states towards compliance with international norms. Nowhere has the debate been more strongly articulated than in the area of international human rights, where the effect of international law has been found to be highly conditional.

The international human rights regime rests at least in part on a compliance mechanism common to domestic regulation: *self-reporting*. In fact, self-reporting is central to the maintenance of most major international agreements (Dai 2002:405). The human rights regime exemplifies this heavy (though non-exclusive) dependence on self-supplied information: every major international human rights treaty requires states to submit reports to treaty monitoring bodies. Despite this, the theoretical and empirical work linking this self-reporting process with states' actual human rights practices is quite underdeveloped. Case studies exist, but to date are few in number, limited in geographic scope, and do not advance a general framework for understanding the mechanisms that link self-reporting and rights outcomes (McQuigg 2011). While an extensive literature explores self-reporting in domestic regulatory schemes (Kaplow and Shavell 1994), there is almost no comparable research internationally.

We argue that state self-reporting to external bodies can contribute to improved implementation of and compliance with international obligations, largely by improving the domestic informational environment, which in turn stimulates the mobilization of domestic constituencies. Certainly, this is not a completely novel claim. Chayes and Chayes (1995:109-30)

pointed out years ago that treaty commitments raise expectations of compliance which in turn could be managed through encouragement and information. We emphasize that information is especially central for domestic stakeholders' ability to mobilize and hold governments accountable for compliance with international human rights treaties. Indeed, the historical record shows that the utility of self-reporting was raised as a means to raise domestic accountability during the discussions surrounding the Convention against Torture in the early 1980s.¹

We provide evidence that connects the international review process to domestic implementation through three related and reinforcing informational conduits: (1) civil society mobilization around the review process to collect and disseminate alternative sources of information; (2) media coverage providing information on the status of state implementation, which raises citizens' expectations for compliance; and (3) legislative deliberation over information supplied by the treaty body on implementation deficiencies. Our theory thus elucidates the structured pathways available to challenge potentially biased state-supplied information and to enable mobilization and deliberation among domestic stakeholders. We argue that international processes that stimulate these local accountability dynamics can facilitate human rights improvements on the ground.²

For evidence, we draw from original data on reports submitted to the Committee against Torture (CmAT), which is charged with monitoring the Convention against Torture (CAT). We investigate the contribution this reporting-and-review process makes to reducing torture prevalence. Cumulative interaction with the CmAT is important because it exposes continuing

¹ While some states argued for extensive jurisdiction for the Committee against Torture, on the basis that "self-policing by states has not been entirely successful," others resisted the idea that any implementation committee should have "extensive jurisdiction." Commission on Human Rights, *Report of the Working Group on a Draft Convention against Torture*, U.N. Doc. E/CN.4/1982/L.40, paras 53 *et seq.*

² Much research stresses the importance of information, transparency, and accountability as determinants of government performance (Besley and Burgess 2002, Adsera et. al. 2003, Hollyer et.al. 2014).

shortcomings, elicits contradictory evidence, and re-sets domestic goals and expectations iteratively.³ We find positive, systematic evidence that repeat engagement in the report-and-review process has produced modest human rights improvements on the ground. Evidence of civil society activation, media attention, and legislative activity suggests that domestic constituencies do in fact become aware of and are mobilized by the self-reporting process, setting the stage to demand, debate, and implement improvements over time.

This article proceeds as follows. Section II theorizes the use of torture and the role that self-reporting and periodic review play in influencing torture practices on the ground. Section III presents evidence on the average effect of a country's history of engagement with the treaty monitoring body on torture practices around the world. Section IV documents three arenas of relevant political activity that illustrate our domestic informational theory, using primary civil society, media, and legislative evidence for a sample of Latin American countries. The final section concludes with broad implications of our findings and a research agenda for the future.

II. Self-reporting, Torture and International Review in Domestic Politics

Self-reporting in the international human rights regime

The legal regime for international human rights was designed to provide accountability through the collection and public dissemination of information about governments' treaty implementation. Almost every major human rights convention establishes an oversight

³ This process resembles the recursivity described by the literature on "experimentalist governance," although our account does not necessarily involve the revision of collective goals, standards, or rules at the *international* level. See the discussion in Sabel and Zeitlin (2010: 4).

committee, comprised of independent experts nominated and elected by states parties. States parties must submit periodic reports to such committees on measures adopted to give effect to their human rights obligations. The CAT requires states parties to submit an initial report within one year of ratification or accession, and subsequent periodic reports at least every four years thereafter.⁴ These reports are expected to, and often do, provide information about torture allegations. They also describe policy measures the state has adopted—from limiting pretrial detentions to prison reform to police training—deemed by the international community to help reduce the occurrence of torture or cruel, inhumane, and degrading treatment. The treaty monitoring body then considers states’ reports in the presence of government representatives. Through a “constructive dialogue” the committee questions representatives, acknowledges progress made, and identifies areas for improvement, after which it issues a set of observations containing recommendations for any further reforms (O’Flaherty 2006:36). This entire process is known as “periodic review,” with all state reports and committee recommendations made public.

Periodic review was intended to play a central role in encouraging treaty implementation and compliance (Keller and Ulfstein 2012:2). However, the system is often criticized as inadequate, ineffective, and even “in crisis” (Alston and Crawford 2000:1-12, Bayefsky 2001:3-10). Some point to the professional inadequacies of the “expert” committees, while others note that even resource rich, democratic states do not do what they are told to do by said experts (McQuigg 2011:827). Hafner-Burton articulates an informal (though untested) consensus among commentators, that “the reports often don’t seem to lead to results that matter” (Hafner-Burton 2013:100). Moreover, there is a growing sense among critics that as treaties proliferate, the reporting system as a whole is breaking under its own unwieldy weight (Posner 2014:Ch.2.2).

⁴ Convention Against Torture, Article 19(1).

One result may be widespread late- and non-reporting (Hampson 2007:12-14, Schöpp-Schilling 2007:202-05). For example, of the 162 states parties to CAT by the end of 2017, twenty-five (15.4%) had still not submitted their *initial* report (Somalia's initial report was the latest at twenty-six years) and an additional thirty-seven countries (22.8%) had at least one subsequent periodic report overdue.⁵ Moreover, the quality of reports submitted to the CmAT vary considerably across countries and over time (Creamer and Simmons 2015:598-607). But these criticisms often overlook how reporting provides domestic actors with new empirical and normative information, which in turn facilitates domestic mobilization and offers a crucial platform for human rights accountability.

Torture and Inhumane Treatment: The Role of Information

Torture is a tough practice to influence. It is hard to detect (Rejali 2007:1-15), it is committed in a decentralized fashion (Lutz and Sikkink 2000:639), and its use involves a series of principal-agent relationships that complicate policy impacts (Hollyer and Rosendorff 2011). Those who inflict or order inhumane treatment often believe it can be a useful tool of political and social control (Hajjar 2009:313-15). The benefits of torture tend to outweigh its costs under three conditions: (1) when no one in a position to impose consequences knows that it is happening; or (2) when few think it is wrong; or (3) when there is confidence about its utility. If any of these conditions prevail, governments or their agents are likely to torture when they think

⁵ The number of parties with overdue reports includes those with officially revised due dates, a deviation from strict periodicity that helps the CmAT manage its heavy workload. For countries delinquent on their initial reports, the CmAT has begun reviewing states in the absence of a report.

it will be useful, and especially then they face violent threats to government stability or national security (Conrad and Moore 2010:473-74).

Policymakers themselves do not always determine torture outcomes, since leaders cannot control all decentralized state agents who may be tempted to commit physical or psychological abuses (Conrad and Moore 2010:461-63). Conversely, central policy makers may not be able to inflict torture strategically if societal norms are strong enough; agent resistance is also possible. While stopping torture completely has proven elusive in nearly every society, *reducing* it may be possible, at least in theory.

We theorize that a key variable in reducing practices of torture and other forms of inhumane treatment is availability of information to domestic stakeholders. Two types of information are central: *normative* (what is considered right and wrong, appropriate and inappropriate) and *empirical* (what states are doing in practice). International conventions are central in generating and disseminating both kinds of information. Normatively, treaties are authoritative public statements of values. Even though they are sometimes signed cynically,⁶ they have been shown to shape understandings of what is and is not acceptable human rights behavior.⁷ Treaties have become focal normative instruments in the sense that they are (nearly universally ratified) statements of the international community's values relating to human rights. Their formality enhances their ability to influence normative understandings and expectations (Morrow 2014:17). The major human rights agreements are not only obligatory as a matter of

⁶ There is a significant literature on treaty ratification which does not refer to their normative pull, emphasizing instead compliance costs (Hathaway 2007); low cost concession to political opposition (Vreeland 2008); or indicative of a willingness to violate rights, even if the international reputational costs are high (Hollyer and Rosendorff 2011).

⁷ A growing body of experimental research points in this direction (Chilton 2015, Kreps and Wallace 2016).

international law. More importantly for our purposes, they are normatively informative documents.

Reporting to international monitoring bodies underscores the normative message of treaty commitments. Report submission tacitly acknowledges an obligation to implement an international agreement and communicates this understanding internationally and domestically. The expectation to report mounts when other states within a country's region do so, suggesting that self-reporting communicates social expectations among peers in particular (Creamer and Simmons 2015:596-97). When states participate in the report-and-review process, they at a minimum acknowledge their putative normative commitments to the CAT.

The report-and-review process itself reveals and disseminates very specific normative information. The entire exercise is an extended revelation of what the treaty requires, and indeed what torture *is*. Nowhere could this be clearer than in the CmAT's 2006 concluding observations on the United States' practices: torture was not to be construed as "limited to 'prolonged mental harm' as set out in [the United States'] understandings...but constitutes a wider category of acts, which cause severe mental suffering, irrespective of their prolongation or its duration."⁸ By publicizing such information, the CmAT members are not simply lecturing U.S. representatives on their obligations; they are informing a broader audience about anti-torture norms more generally and what normatively defines torture and cruel, inhumane, and degrading treatment.

In addition to normative information, the self-reporting process reveals empirical information as well. States are required to supply data on laws that are passed, statistics on allegations of torture and other physical integrity abuses, and details about investigations and

⁸ Committee against Torture, *Concluding observations of the Committee against Torture: United States*, U.N. Doc. CAT/C/USA/CO/2 (25 July 2006), para. 13. Provision of such normative information is by no means the exception, it is in fact typical of the CmAT's concluding observations since 1990.

prosecutions of these reported allegations. For example, Argentina’s 2002 report documents “[i]nvestigation of occurrences, acts or omissions that may entail disciplinary responsibility” broken down by province, process, and status/disposition.⁹ Empirical material on criminal statutes, amnesties, sentencing, statutes of limitations, criminal procedures, and conditions of pre-trial detention are described. Prison conditions—from the food provided to the size of prison cells—are frequently detailed. Importantly, information provision is not the role of state alone. Committee members compare and contrast empirical information to other sources of information from non-governmental organizations and various UN special rapporteurs. The process of self-reporting sets off an empirical discussion of practices, accomplishments, and continued shortcomings among state representatives, civil society organizations, and international experts.

Why (not) Report?

We therefore conceptualize self-reporting as an information generating and disclosing process in which civil society organizations, politicians, government officials, the media, and private citizens are able to participate. Clearly, governments vary in their willingness to disclose practices about many things, including state-sponsored rights violations. Political leaders must balance the expectations raised by reporting with its possible political consequences. Many leaders strike the balance by turning in reports that are biased or unrevealing. Even democracies sometimes have incentives to spin or hide information from voters, although this is much harder given democratic norms and institutions supporting transparency (Magee and Doces 2015:223-24).

⁹ Committee against Torture, *Fourth Periodic Report: Argentina*, U.N. Doc. CAT/C/55/Add.7 (2 August 2002), paras 151 *et seq.*

Although regime type does not predict the likelihood of reporting to the CmAT, it does predict the *quality* of reports submitted. Democracies generally submit reports that identify implementation and compliance shortcomings and that respond to concerns of the treaty monitoring body; autocracies, much less so. When “transparency reveals to the mass public that the leadership is underperforming and ensures that this perception is widely shared,” collective action and mobilization is more likely (Hollyer, et al. 2015:765).

The behavior of newly transitioned democracies is especially illustrative of this act of balancing reporting expectations with risky information disclosure. Such states often face active domestic civil societies that are more likely to scrutinize the reporting process than citizens in autocracies (who expect whitewash and may not even be aware of the process) or possibly even in democracies (where information is plentiful and therefore has a taken-for-granted quality). Consistent with this interpretation of the reporting dilemma, new democracies are much less likely to report than other regime types, but the quality of their reports tends to be exceptionally high (Creamer and Simmons 2015:606-07). This pattern hints at an interesting political balancing act: autocracies report, but often whitewash; democracies report with quality information; transitioning democracies don’t report until they are better prepared to engage the political consequences of human rights transparency. Understood in this way, the decision to self-report on implementation of international human rights norms is an integral aspect of the domestic process of mobilization, dialogue, and commitment-making. Importantly, however, reporting itself is not correlated with preexisting rights performance, suggesting it is not the case that only good performers are willing to participate.

Reporting, information and domestic reform

While there are good reasons to be skeptical of the balance and veracity of all state reports, the informational environment is enriched by alternative assessments. The Committee and civil society use the event of report submission as an opportunity to press the government to provide more empirical information and contend with alternative accounts of the rights situation on the ground. The Committee itself also provides ‘expert’ normative information through its concluding observations and recommendations. The information flowing from the reporting process is distinct from the ambient level of human rights criticism from a plethora of rights organizations and political critics. State reports are read and discussed by recognized and independent experts, they are not just the shaming exercises states expect from NGOs who may be perceived as anti-government or having a western bias. Additionally, the information available from the reporting process is periodic but not incessant, rendering it more salient than the general information flowing from NGOs and media alone. All this information is publicly available, which facilitates collective action and mobilization around areas of underperformance. We argue therefore that the reporting *process* has consequences independent of whether the report itself is evasive or inaccurate.

For several reasons we expect the impact of reporting-and-review cycles (which includes shadow reports submitted by civil society organizations) to be cumulative rather than a simple one-shot effect. First, repeat report-and-review cycles reinforce a state’s treaty obligations in a very public way, raising the cost of backsliding or reneging. Second, quadrennial review entails substantive ratchet effects: succeeding Committee recommendations contain increasingly detailed, concrete reform proposals that provide a basis for policy debates. Third, Committee

feedback, informed by prior discussions of difficulties in specific national contexts, leads to demonstrably more responsive reports and ultimately better policy implementation, which tends to cumulate with the number of reporting cycles. The cumulative and recursive nature of these interactions helps to raise domestic expectations of government compliance.

Our arguments have limitations and scope conditions. We do not claim that mobilization is the only consequence of reporting; bureaucratic learning and socialization without a broader public response are also possible. We also do not claim that reporting is the only domestic stimulus. Rather, the process encourages mobilization on the margins. Self-reporting is important not because it completely reorients human rights, but rather because it sets in motion processes that cumulatively nudge implementation and practice in the right direction.

Finally, we acknowledge that such nudges are going to be more effective in some types of regimes than in others. The risk of repression tends to overwhelm the benefits of mobilization in stable autocracies (Simmons 2009:144-54). After testing for the effects of cumulative participation for all CAT ratifiers in Section III, reasonable scope conditions lead us to investigate detailed evidence for mobilization processes in Latin America, where the mechanism we describe is plausibly operative.

III. Evidence: Cumulative Effects of Reporting and Review on Torture

Does self-reporting contribute to better rights practices in states that are party to human rights agreements? This section examines empirically how the history of a government's engagement with the report-and-review process affects subsequent practices.

Dependent Variable: Torture and Cruel and Inhumane Treatment

The first issue is to select an appropriate dependent variable. Ideally, we would like a fine-grained measure that detects the many inhumane practices—from physical degrading treatment to psychological abuse, from cruel prison conditions to disappearances—that are regulated by the CAT. Existing data on human rights practices are highly aggregated, making change quite difficult to detect statistically. In addition, a measure that is responsive to the problem of changing data availability over time is desirable. The Latent Human Rights Protection Scores (which we refer to below as “Protection Scores”) produced by Fariss (2014) are the most appropriate among the available options, of which none are perfect. We prefer this measure to the best-known alternative, the torture scores in the CIRI Human Rights Dataset (Cingranelli and Richards 2008), for two reasons. First, we prefer a measure that adjusts for the possibility of changing standards of accountability. The Protection Scores are based on a dynamic modeling process to account for temporal biases in the underlying data. Second, they are based on a range of abuses with which the CAT is concerned and are regularly discussed by the Committee, such as extrajudicial killings, enforced disappearances, and arbitrary detention.¹⁰ Admittedly, these scores have some disadvantages, including difficulties in substantive interpretation of effects (the score represents the number of standard deviations a given observation is away from 0, which represents the average level of human rights protection within all observations over time). Despite this difficulty, the Protection Scores are the most appropriate choice available for our

¹⁰ See, e.g. Committee against Torture, *Communication No. 456/2011: Decision adopted by the Committee at its fifty-fourth session*, U.N. Doc. CAT/C/54/D/456/2011 (15 May 2015), para. 6.5.

purposes at this time. We do, however, provide alternative analyses using the CIRI torture score as the outcome variable in Appendix A.¹¹

Because the act of treaty ratification itself generates the expectation of report submission, we focus on states parties to the Convention Against Torture. We collected panel data on CAT report submission by 154 states parties between 1988-2014. Of these, fifty-three states have participated in three or more full report-and-review cycles. Figure 1 compares trends in the moving global average of the Protection Scores across three categories of CAT parties: those that have never reported; those that have completed one to two reporting cycles; and those with three or more complete reporting cycles. All groups appear to improve. States that have engaged most frequently in reporting cycles by 2014 evince greater and more consistent improvements in human rights protections, while the non-reporters—despite starting out with better protection levels—are overtaken by those who have engaged at least moderately with the CmAT (Figure 1).

¹¹ Following the suggestion by Fariss (2014: Appendix K), we also provide alternative analyses using the CIRI torture score as the outcome variable and adjust for temporal bias by including the lagged Protection Score variable from the dynamic standard model. See Appendix B.



Figure 1: Trends in Protection Scores by Reporting Group. Figure plots the average Protection Scores in a given year for: (1) countries that had ratified the CAT but not submitted any reports by 2014; (2) countries that had submitted 1-2 reports by 2014; and (3) countries that submitted 3+ reports by 2014. Score below 0 indicates a country falls below the average human rights protections provided, scores above 0 indicate above-average human rights protections.

Research Design and Estimation Strategy

Our empirical problem is a subtle one. Torture practices are multi-causal, tied to deep cultural practices and governing dysfunctions, are often committed by decentralized agents, and are therefore difficult to influence under any circumstances. Furthermore, self-reporting and review was never expected to affect rights practices through a single report submission, as we have emphasized. Modeling the effects of a single-shot treatment alone would miss the dynamic and cumulative nature of periodic review, since both the act of reporting and the cumulative nature of the review process represent treatment variables. Additionally, because time-varying

factors can be both pre-treatment confounders in one period and post-treatment variables in another, including them in a conventional regression model induces post-treatment bias, but failing to include them results in omitted variable bias.¹² To attempt to adjust for these confounders, we fit a marginal structural model, using an inverse probability of treatment weighting estimator, which adjusts for intermediate confounders while avoiding bias from conditioning on a post-treatment variable (Robins, et al. 2000, Blackwell 2013).

This approach entails two steps. First, we estimate a model for treatment in each time period, conditional on time-varying confounders and past reporting history. We estimate the *probability of undergoing review* with a logit model and the parameter vector for the model with a pooled logistic regression, with country-year as the unit of analysis. This permits us first to estimate the probability, in each period, that the state party would receive the treatment history that it in fact did. Then, we fit a regression model for the outcome, *Protection Score*, given treatment and treatment history, by weighting each observation with the inverse of its treatment probabilities calculated in the first step. This weighting scheme effectively adjusts for confounding by observed and time-varying confounders (Robins, et al. 2000). The parameters of this weighted regression model yield more accurate estimates than traditional regression, but we want to be clear that it does not completely overcome issues that may arise due to selection into the self-reporting process based on unobservable factors. Examination of the trends in Figure 1 suggest, however, that selection into the reporting process may not in itself seriously undermine our results.

The weighting models used to estimate the *probability of undergoing review* at time t include covariates expected to influence both the decision to undergo periodic review and rights

¹² For conventional regression model estimates, see Appendix A, Table A6.

practices. We give special attention to the fact that difficult to observe factors such as state capacity and a polity's values affect willingness to both report and to improve rights practices. Institutional capacity (measured by the existence of a National Human Rights Institution (*NHRI*)), a stronger normative commitment to the CAT regime (an *Article 22 declaration* accepting the jurisdiction of the CmAT to receive individual complaints), and *regional reporting density* all substantially increase a government's probability of reporting. We further tap capacity to report and effect real changes in torture practices by including *logged GDP per capita* and *logged population* (from the World Bank), as well as *Transparency Index* scores developed by Hollyer, Rosendorf and Vreeland.¹³ A government's diffuse normative commitment to robust human rights protections is proxied by the percentage of core international *human rights treaties ratified*; whether a country is party to a *regional human rights* mechanism, its *Polity IV* score; and its *lagged Protection Scores*. Finally, we control for a country's long-term liberal experience with a set of binary variables indicating whether, since World War II or post-war independence, a country never scored a 5 or above on the Polity scale (*never democratic*); whether the country is undergoing or underwent a *democratic transition* (moving from below an 8 to an 8 or above on the Polity scale); and whether a country had undergone a *democratizing transition* (a yearly increase of 3 or more units on the Polity scale) during either of the two previous years. All time-varying covariates are lagged one year. In effect, we have taken every reasonable precaution to capture capacities, institutions, and values that are themselves likely to reduce torture, including many that would reduce a government's (admittedly unobservable) "will" to do so.

¹³ The Hollyer, Rosendorff and Vreeland index models transparency as the government's collection and public dissemination of aggregate economic data, based on a Bayesian item response model predicting the (non-) reporting of data in the World Bank's World Development Indicators data series. The authors contend that this measure captures both a government's *willingness* and its *capacity* to collect and distribute data (Hollyer, et al. 2014:416). We also run all analyses excluding the transparency index (see Appendix A).

In addition to these confounders, the weighting includes each state's *history* with CmAT periodic review. This permits us to estimate the average treatment effect of both the single-shot treatment of undergoing review and the history of a country's engagement with the review process. These *treatment history* variables include: the total number of in-person CmAT reviews undertaken by a country by time t ; whether the country had undergone review in the previous year; and the number of years since the last review.¹⁴ All weighting models include year fixed effects (see Table 1 for a list of all covariates included in both steps of the model).

In a second step, we use the weights generated in the first step to fit an inverse-probability weighted model to estimate the effects of the key treatments: *CmAT review* and the *review process* on Protection Scores at year $t+2$. Recognizing that a government's human rights legislation and practices often cannot change instantaneously, we model rights outcomes two years following review by the expert committee.¹⁵ All models include a linear time trend. Confidence intervals were obtained using a cluster bootstrap procedure for the entire two-stage weighting and fitting procedure, clustering on country.¹⁶

¹⁴ Following Blackwell (2013) and Cole and Hernan (2008), we conducted a preliminary model check based on the final distributions of the stabilized weights for each year. The stabilized weights' means at each point in time are all close to one, with their upper bounds relatively low, indicating we have estimated a set of fairly well-behaved weights. See Appendix A, Table A1 for regression coefficients for the weighting models.

¹⁵ Unreported models estimating review and review process effects on the Protection Scores for years $t+3$, and $t+4$ do not change the main thrust of our findings, although the substantive effect for some treatment history variables is slightly larger. We report the more modest results for two years following review, given how attenuated the direct impact of the review process is likely to be on policy outcomes and practices the further removed in time from domestic attention it becomes.

¹⁶ We ran 20,000 iterations and took the 2.5th and 97.5th percentiles of the bootstrapped distribution for the marginal structural model parameter estimates.

Table 1. Covariates included in Inverse Probability of Treatment Weighting Model (step 1) and Marginal Structural Model (step 2).

<p>Step 1: Weighting Model (predicting CmAT Review. Appendix A, Table A1)</p> <ul style="list-style-type: none"> • CAPACITY <ul style="list-style-type: none"> ○ GDP <i>per capita</i> (logged) ○ Population (logged) ○ National Human Rights Institution ○ Transparency Index • DOMESTIC INSTITUTIONS <ul style="list-style-type: none"> ○ Polity IV Score ○ Never Democratic ○ Transition to Democracy ○ Democratizing transition • INTERNATIONAL VALUES: <ul style="list-style-type: none"> ○ Latent Human Rights Protection Score (Protection Score) ○ % Core Human Rights Treaties Ratified ○ CAT Article 22 Acceptance ○ CAT Regional Reporting Density ○ Regional human rights membership • TREATMENT HISTORY <ul style="list-style-type: none"> ○ Number of previous CmAT Reviews ○ CmAT Review in the previous year ○ Number of years since last CmAT Review
<p>Step 2: Marginal Structural Model (predicting <i>Protection Scores</i> at $t+2$. Appendix A, Table A2)</p> <ul style="list-style-type: none"> • Stabilized Inverse Probability of Treatment Weights • Never Democratic • CmAT Review • CmAT Review in the previous year • Number of years since last CmAT Review • Number of previous CmAT Reviews

Figure 2 plots the estimated effects of the review process along with bootstrapped 95% confidence intervals. The effect of a single report-and-review cycle is barely statistically

distinguishable from 0, with a small effect size of 0.149.¹⁷ However, there is a significant (at $p < 0.01$) effect of review *history* on human rights practices at time $t+2$. We estimate that a country that goes through one additional reporting-and-review cycle will, on average, have a Protection Score that is approximately 0.234 units greater than a country that did not undergo an additional review. This is an important improvement. It is only slightly less, for instance, than the 0.267 unit improvement in Argentina’s Protection Score between 2004 and 2005, a period during which newly-elected President Nestor Kirchner took steps to purge the country’s military and police leadership of authoritarian elements and reform the Federal Police.¹⁸

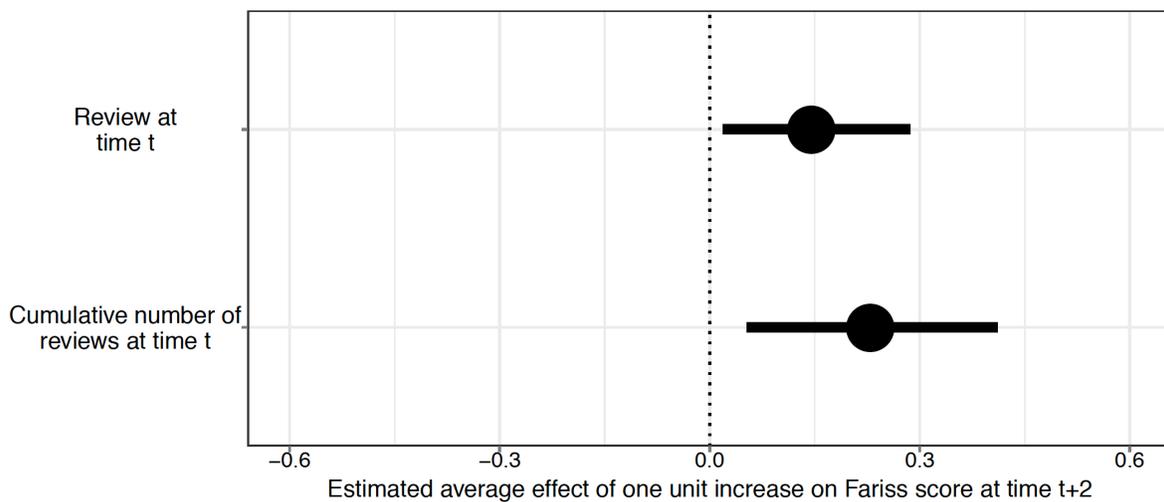


Figure 2: Estimated CmAT review treatment and treatment history effects. Circles represent estimated effect of undergoing a single review (compared to not undergoing review) at time t and undergoing one additional review at time t , on Protection Scores at $t+2$. Lines denote 95% cluster-bootstrapped confidence intervals (20,000 iterations, clustering on country). See Appendix A, Tables A2 and A4 for all outcome model coefficients and respective bootstrapped confidence intervals.

¹⁷ In alternative model specifications, the effect of a single report-and-review cycle becomes statistically indistinguishable from zero. See Appendix A, Table A3.

¹⁸ Argentina’s Protection Score was 0.437 in 2004, 0.704 in 2005, and 1.066 by 2013.

Similarly, this estimated effect represents an improvement comparable to the immediate impact of a democratizing transition. By way of comparison, Ukraine's Protection Score improved 0.185 units between 2004 and 2005, following the Orange Revolution and the election of opposition candidate Viktor Yushchenko, which initially appeared to lay the groundwork for further democratization.¹⁹ While modest in size, this finding does suggest that governments that engage in more dialogue with the CmAT are somewhat less likely to engage in frequent rights violations over time. The review process may provide an opening for incremental improvements over time, even if the quality of initial reporting is not especially high.

How sensitive are these results to the possibility of *unobserved* confounding factors for which we have not successfully controlled? Figure 3 presents results of a sensitivity analysis (Blackwell 2013: 516-8). Suppose states that participate in CmAT review are truly better human rights performers for reasons we cannot observe (and therefore have not addressed within our models) than states that do not participate. This parameter, denoted by α , represents the "unexplained" difference between treated and untreated countries in the underlying propensity to respect physical integrity rights. Positive values of α denote situations where treated countries have better human rights records than the control group, while negative values of α assume treated countries have worse human rights records. $\alpha = 0$ denotes the original effect estimate. Sensitivity analysis varies α across a range of values and re-estimates the treatment history effect after adjusting for the assumed amount of unobserved confounding, allowing us to estimate how much confounding it would take to lose confidence in the finding that review history improves physical integrity rights.

¹⁹ Ukraine's Protection Score was 0.058 in 2004 and 0.243 in 2005.

The sensitivity analysis demonstrates that the estimated effect of undergoing an additional CmAT review retains significance at conventional levels ($p < 0.05$) until $\alpha = 0.1$ (a bit under one-third the treatment effect size). The results also hold for greater amounts of confounding with 90% confidence intervals. For example, when $\alpha = 0.16$, a little over half of the treatment effect size, the estimated positive effect of review history remains statistically significant at $p < 0.10$. In short, we find support for the conclusion that the constructive dialogue with the CmAT as an *ongoing process* on average improves rights practices on the ground.

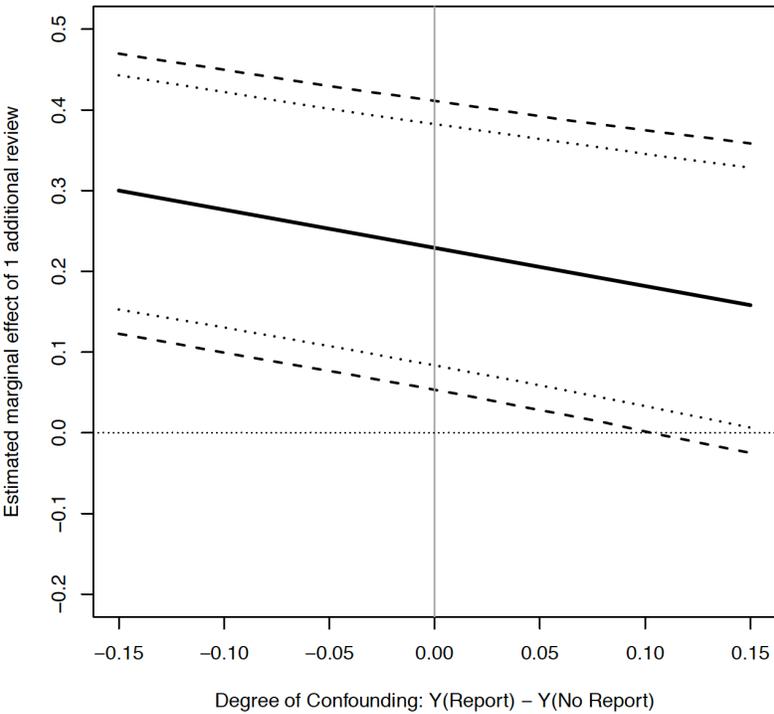


Figure 3: Sensitivity analysis for review history effect. Dotted and dashed lines denote 90% and 95% cluster-bootstrapped confidence intervals respectively (20,000 iterations, clustering on country).

IV. Three Illustrations: Mobilizing for Human Rights around Reporting

These findings provide evidence that repeated self-reporting and review generates positive incremental improvements. In this section, we explore evidence suggesting that domestic mobilization may be at work in contributing to these rights improvements. We focus on Latin American because it exemplifies our scope conditions. Furthermore, torture has historically been a serious issue in the region and reporting to the CmAT has varied across countries and over time. Combined with its history of relatively democratic institutions, active civil society, and meaningful press freedom, Latin America is a plausible candidate to investigate the potential for the periodic review process to acquire some level of publicity and to focus public attention on torture practices.

If the review process provides information that sparks and facilitates domestic mobilization, we would expect it to be publicly visible (Kälin 2012:41). Specifically, we look for three observable implications: (1) mobilization of *domestic* civil society in the form of shadow reports submitted for all CAT states parties; (2) discussion of the report and review process in *local media* across Latin America; and (3) evidence that *legislators* take note of Committee recommendations in their deliberations. If the international reporting process helps to stimulate domestic policy change, traces should appear in civil society activities, public discussions, and legislative debates.

Civil Society Mobilization: Shadow Reporting

Many who criticize self-reporting under the human rights treaty system assume that governments are generally unwilling to be very self-critical. Fortunately, self-reporting is

embedded in broader processes that stimulate societal attention by and information from a range of non-state actors. For many years, civil society organizations have been permitted and in fact encouraged to provide reports that supplement and in some cases correct the information states themselves provide—so-called ‘shadow reports.’²⁰ These reports are clear markers of civil society activation and mobilization. Shadow reports are circulated to the CmAT and are made public online.²¹ CmAT members refer to civil society information when questioning government representatives in-person and often rely on this alternative information when making their formal recommendations.

Figure 4 displays the average number of shadow reports submitted for the forty-nine reporting cycles reviewed between 2007-2014.²² The CmAT typically receives more than five alternative accounts of how the treaty is being implemented for each state report received. Global NGOs (such as Human Rights Watch and Amnesty International) provide many of these alternative accounts, but in every year save two, the CmAT received more shadow reports from domestic or locally-based organizations than from their international counterparts. Moreover, the number of reports submitted by domestic organizations under-represents the extent of local mobilization, as most are compiled and submitted by broad coalitions of local organizations.

²⁰ For a description, see: <http://www.ohchr.org/EN/HRBodies/CAT/Pages/NGOsNHRIs.aspx> (last visited 21 October 2017).

²¹ Available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx (last visited 21 October 2017).

²² The CmAT only began systematically posting shadow reports in 2007, so we have reliable data for 2007-2014.

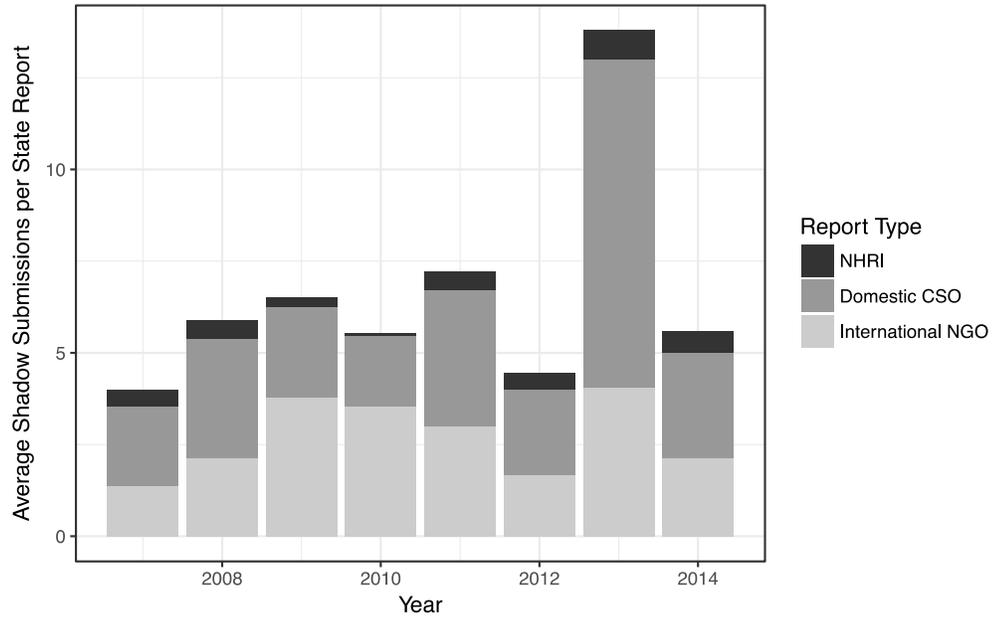


Figure 4: Average number of shadow submissions per State Report per year, categorized by source of shadow report. A shadow report is coded as local or domestic if the civil society organization is based in-country and took primary responsibility for compiling the report, even if assisted by an international non-governmental organization. A report is coded as international if submitted by an NGO not based in-country and operating on a (near-) global scale. NHRI refers to an alternative report submitted by a country’s designated National Human Rights Institution (in most cases these are independent of the government).

The worse a government’s record of torture, the greater the extent of shadow reporting around its periodic review.²³ Organizations expended hardly any effort to provide alternative information where torture is minimal. When governments engage in torture more regularly, however, this tends to stimulate around 2 to 3 alternative local reports.²⁴ For example, Ecuador’s 2009 report elicited a shadow report from the local Foundation for Integral Rehabilitation of Victims of Violence, detailing ill-treatment in places of detention inconsistent with the

²³ While there is a positive correlation between the government’s torture score and shadow reporting, there is practically no relationship between the quality of the report and incidence of shadow reporting. This suggests that civil society organizations tend to prepare their reports in response to government practices, rather than as a retort to a whitewashed report.

²⁴ See Appendix C, Figure C1.

government's account.²⁵ These inconsistencies were in turn echoed in the CmAT's concluding observations.²⁶ Local organizations regularly expose instances where protections governments claim are in place are not applied in practice, as was the case with respect to ill-treatment against institutionalized persons with disabilities in Mexico.²⁷ For understandable reasons, local groups are much more reluctant than international NGOs to offer shadow reports on governments that torture systematically, a pattern consistent with models that emphasize transnational NGO "boomerangs" and domestic mobilization (Keck and Sikkink 1998:Ch.1).

This descriptive evidence suggests that shadow reporting is (1) common, (2) commonly mobilizes local organizations, and (3) tends to target governments whose torture practices are significant but not among the most repressive. This supports the plausibility of the claim that the reporting process has become an opportunity for civil society to organize with new information and to demand change.

Information Dissemination: Self-reporting in the Local Media

Broad societal mobilization depends at least initially on publicly available information that self-reporting has taken place and the issues on which it has focused. To establish the plausibility of this pathway, we identified the top three national newspapers by circulation²⁸ in

²⁵ Committee against Torture, *Summary Record of the 966th meeting, forty-fifth session: Consideration of reports submitted by States parties under article 19 of the Convention*, U.N. Doc. CAT/C/SR.966 (16 November 2010), para. 65.

²⁶ Committee against Torture, *Concluding observations of the Committee against Torture: Ecuador*, U.N. Doc. CAT/C/ECU/CO/4-6 (7 December 2010), para. 16 (noting very different information from shadow reports compared to the government report).

²⁷ Committee against Torture, *Summary Record of the 1098th meeting, forty-ninth session: Consideration of reports submitted by States parties under article 19 of the Convention*, U.N. Doc. CAT/C/SR.1098 (26 April 2013), paras. 7, 16.

²⁸ We used www.pressreference.com, supplemented with queries to regional and country experts or citizens.

fifteen Latin American countries, and for each paper searched as many years as possible between CAT ratification and the present. We collected all news articles mentioning the CAT, the CmAT, and/or the periodic review process²⁹ published by a newspaper within and about the state party, regardless of whether or not a state had in fact met its reporting obligation(s). Each relevant article was then coded for whether it mentioned the focal state's CAT obligations, its relations with the CmAT, and/or the review process and CmAT recommendations specifically. If the 'constructive dialogue' with the CmAT matters to domestic constituencies, we should see a spike in press references, followed by a somewhat higher degree of attention to torture, CAT, and the CmAT during and after the review year.

Domestic media evidence does indeed suggest that the reporting process reverberates locally throughout much—though certainly not all—of the region. Figure 5 demonstrates a spike in local press attention to the review process during the year of CmAT review (year 0) for all Latin American countries searched. Moreover, media attention to the CmAT *continues after the formal review concludes*. In the year following review, the press continues to report on the recommendations issued by the Committee, but also provides greater coverage of CAT obligations generally compared with the years prior to review. Time and space preclude a detailed discussion of each of the fifteen national media profiles, but additional discussion and figures by country can be found in Appendix D.

²⁹ Search terms in Spanish and Portuguese were translated equivalents of: 'convention against torture,' 'committee against torture', 'committee' + 'torture', 'convention' + 'torture', and 'torture'.

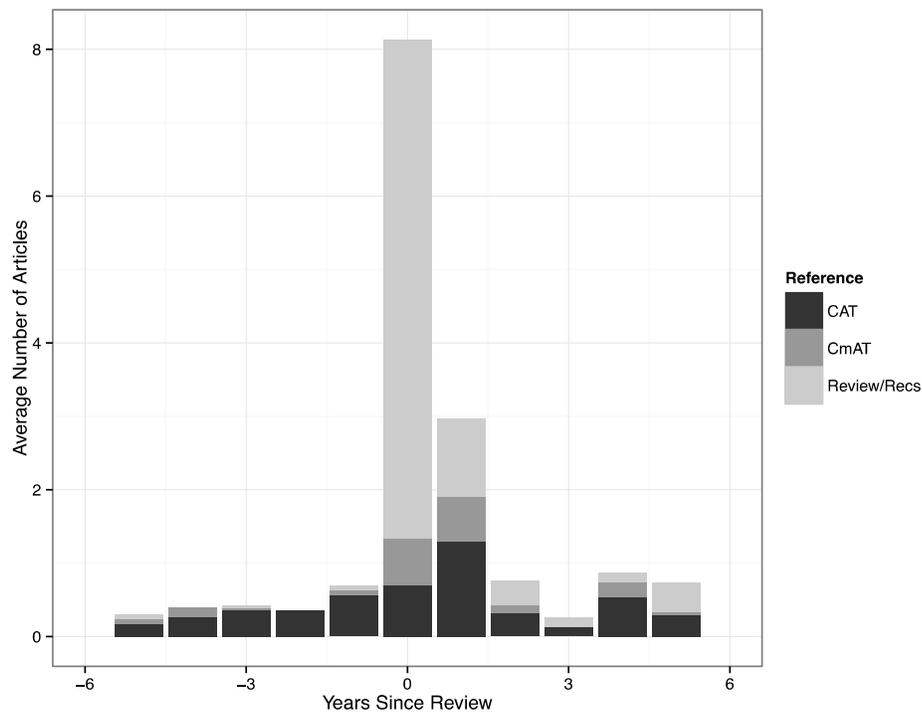


Figure 5: Domestic Media Coverage of the Torture Convention in Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela. Figure indicates the number of domestic newspaper articles that reference the CAT, the CmAT, or the in-person periodic review and/or the concluding observations and recommendations issued by the CmAT (Review/Recs). Total articles within each country’s searchable time period were summed and averaged. Articles are centered around the year of review (0).

Mexico and Venezuela top the totals with more than thirty articles in their respective national presses the year of their CAT review. Media attention in Mexico has focused on the CmAT’s response to the government’s reports in detail and spans the political leanings of newspapers. Since 2005, when systematic electronic search became possible for the major Mexican papers, Mexico’s moderate left paper (*El Universal*) has published twenty-one articles that referenced the CAT in some way, with eight specifically about the periodic review process or CmAT recommendations. Slightly to the political right and aimed more squarely at an elite business audience (though still decidedly independent), *La Reforma* in Mexico has published

thirty-one articles referencing the CAT since 1995, with eleven specifically on the periodic review process or CmAT recommendations. Many were critical of the government or explicitly highlighted the differences between the government's submission and shadow reports.³⁰

Mexico's *La Prensa*—with a wider circulation but a reputation for sensationalism—published fifteen articles since 2011 referencing the CAT, fourteen of which commented on the periodic review process and/or CmAT recommendations. Strengthening the plausibility of reporting spurring public information dissemination to support mobilization, media coverage clusters in time around the CmAT's list of recommendations.

Because Venezuela's reporting has been spotty, the CmAT and the periodic review process remained virtually invisible in domestic media until twenty-five articles reported on the 2014 review of Venezuela's combined third and fourth reports. The pages of both *El Universal* (a somewhat conservative, business-oriented newspaper) and *El Nacional* (slightly more to the left) were saturated with news of the proceedings, reporting on claims and counter-claims.³¹

Press reports in Colombia exhibit a spike in attention to torture the year of review, strong attention the following year, and then moderate sustained attention that exceeds pre-review levels thereafter. The centrist *El Tiempo* has a prolific history of publicizing the reporting and response process over the last twenty years. It has published eighteen articles on the CAT, fourteen of which made specific mention of CmAT recommendations for Columbia, criticizing the state for out-of-control security forces,³² practices by the military that amount to torture,³³

³⁰ See, for example, *La Reforma*, "Denuncian que persiste la tortura en Mexico," 28 April 1997.

³¹ *El Universal*, "Naciones Unidas evaluará al país por lucha contra tortura," 29 September 2014; "Presentarán casos de tortura y trato cruel ante comisión de la ONU," 3 November 2014; *El Universal*, "Gobierno y activistas debatirán sobre la tortura en la ONU," 6 November 2014; "Tortura ante la ONU," 9 November 2014; *El Nacional*, "Comité contra la Tortura exigió explicaciones sobre los colectivos," 7 November 2014; *Últimas Noticias*, "Comité de la ONU: Situación del sistema penitenciario venezolano es 'una tragedia'," 28 November 2014.

³² *El Tiempo*, "Combatir mas la tortura le pide naciones unidas a Colombia," 14 December 1995.

³³ *El Tiempo*, "A la ONU le preocupan medidas del president," 28 November 2003.

and the failing judicial system.³⁴ When dialogue over Colombia's fourth report became quite drawn out between 2008 and 2012, media references to the CAT became much more common.

Several other states demonstrate similar patterns to those graphed in Figure 5. In Argentina, some fifteen articles appeared in well-respected and widely circulating publications, the timing of which is consistent with the mobilizing power of review and dialogue: they are clustered in years just after Argentina's reports are discussed at the CmAT and approximately when recommendations were issued (1997/98, 2004/05, and 2010). The Chilean press has also reported consistently on the periodic review process, often mere days after Chile's reports were examined by the CmAT. In May 2009—two days after CmAT's review of Chile's report—the center-right *La Tercera* reported on an exchange between the International Federation of Human Rights and the government about Chile's compliance with international standards and obligations under the CAT.³⁵ In 2010, CmAT recommendations that Chile reform its anti-terrorism law were noted in the center-right *El Mercurio*.³⁶ Paraguayan media provided fairly significant coverage (nine articles) of the 2011 review, some predominantly praising the government's policies with others notably more critical,³⁷ representing dense media coverage concentrated right around the time of CmAT review. Countries with far less press coverage of the CmAT review process include Brazil, Ecuador, Peru, and Bolivia, largely because these states underwent reporting and review much less frequently.

Overall, press records for Latin America demonstrate a spike in reporting within local news media around the time the CmAT reviews government reports and issues its recommendations

³⁴ *El Tiempo*, "Debate por efecto de extradición de ex jefes 'paras' a E.U. en ley de Justicia y Paz," 26 November 2009.

³⁵ *La Tercera*, "Federación de DDHH acusa 'rebajas en exceso' de penas a crímenes de lesa humanidad en Chile," 7 May 2009; "Ministerio de Justicia refuta dichos de federación de DDHH sobre tortura en Chile," 7 May 2009.

³⁶ *El Mercurio*, "Relator de la ONU reitera llamado para reforma a Ley Antiterrorista," 25 September 2010.

³⁷ For example, *La Nación*, "Paraguay presentó Informe sobre derechos humanos," 4 November 2011; *ABC Color*, "Valoran iniciativas a favor de los DD.HH.," 6 November 2011.

for improvement.³⁸ Latin American newspapers have broadly disseminated information about the process of review and CmAT recommendations, contributing grist for public discussions of how (and whether) to implement the CAT.

Political Attention: Self-Reporting in Legislative Debates

The review process is ultimately about implementing treaty obligations that lead to incremental improvements in physical integrity practices on the ground. Much of the action must necessarily take place in law- and policy-making settings. The vast majority of CAT obligations cannot be implemented without legislative action. For instance, states parties must criminalize torture, make local law consistent with the treaty's definition of torture, and "make these offences punishable by appropriate penalties which take into account their grave nature."³⁹ The CmAT views changes to criminal procedure codes dealing with detention, interrogation, rights to redress, and due process rights as key reforms to align a country's domestic laws with CAT obligations. As the reporting process iterates, recommendations gain legislative attention. We thus expect legislative discussion about the strength of criminal laws and policies to be one pathway through which the information generated by the report-and-review process facilitates mobilization by politicians and affects rights outcomes on the ground.

To investigate the plausibility of this claim, we collected transcripts of legislative debates from the official online records for three Latin American states parties—Chile, Argentina, and

³⁸ We found little coverage of CmAT dialogue in the smaller states in Latin America, but were limited by minimal electronic access to news databases. See Appendix D for notes on Guyana, Panama, Costa Rica, El Salvador, Honduras and Guatemala.

³⁹ CAT, Article 4. CAT, Article 2(1) also requires states parties to "...take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."

Mexico—and traced discussion and legislation linked to the specific issues emphasized by CmAT recommendations.⁴⁰ We do not expect legislators to refer to all of the Committee recommendations; we do expect that following CmAT review, legislators will refer to recommendations that either aligned with their policy preferences, sparked public interest, or were the subject of constituency mobilization. Moreover, iteration brings clarity and raises expectations that at least some of the more salient recommendations will be implemented. However, in countries with slow legislative processes, we might not see any calls to address CmAT recommendations for years.

Evidence from Chile’s legislative records suggests significant albeit variable legislative activity relating to the CAT and the review process between 2004 and 2016 (see Figure 6).

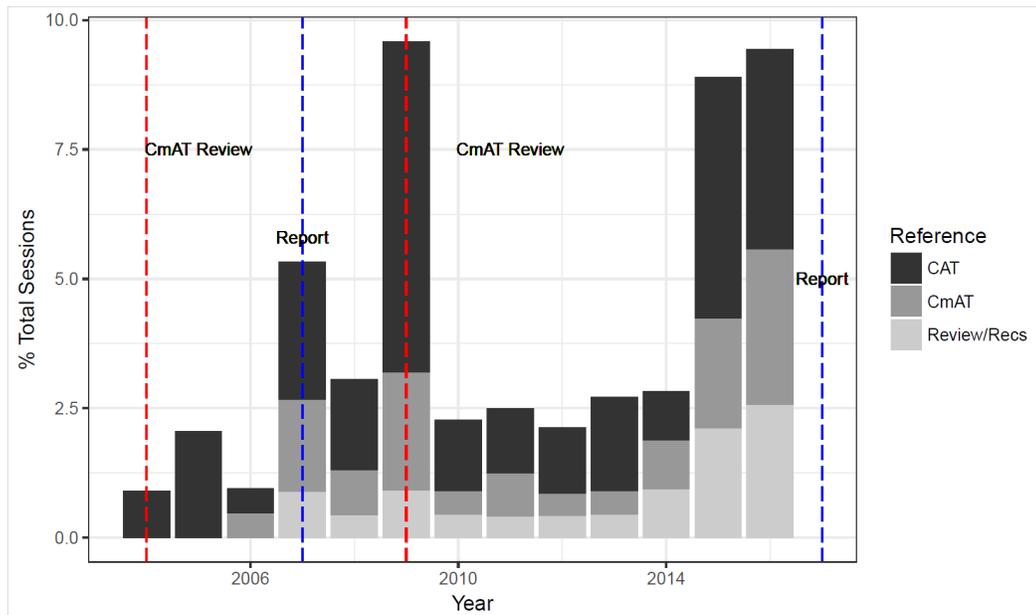


Figure 6. References to the CAT regime within Chile’s legislature (2004-2016). Figure displays the percentage of all sessions held by the Senate and Chamber of Deputies in a given year in which at least one legislator referenced the CAT regime, categorized by reference type: the treaty itself (CAT); the

⁴⁰ We first filtered on debates that include reference to “tortura,” followed by a refined search for references to the CAT, the CmAT, and/or the reporting process and recommendations.

CmAT; or the periodic review process/recommendations. Horizontal dashed lines represent years in which Chile either submitted a Report or the CmAT issued its concluding observations (Review).

There is good evidence that these references are specifically linked to legislative debates about CmAT recommendations. CmAT review of Chile in 2004 coincided with greater domestic attention to the issue of reparations for torture victims. During its review, the Committee requested that Chile create a system to provide “adequate and fair reparation to victims of torture, including rehabilitative measures and compensation.”⁴¹ Later that same year, leftist Deputies argued on numerous occasions that Chile had to provide such reparations to comply with its obligations including those under CAT, although CmAT recommendations were not explicitly referenced.⁴² In this instance, the CmAT added its voice to domestic and international calls for Chile to enhance reparations for torture victims, calls eventually heeded in a bill approved relatively quickly by the Senate.⁴³

Chilean legislators also responded to the CmAT’s concluding observations of May 2009. Topping the Committee’s recommendations was that Chile needed to make its domestic definition of torture consistent with that found within the CAT, an issue also brought to the Committee’s attention by mobilized Chilean civil society organizations.⁴⁴ By September of that same year, President Bachelet presented a draft law to do just that, explicitly mentioning her

⁴¹ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Chile*, U.N. Doc. CAT/C/CR/32/5 (14 June 2004), para. 7(1).

⁴² República de Chile, Cámara de Diputados, *Redacción de Sesiones*, Legislatura 352^a, Extraordinaria, Sesión 31^a (15 Diciembre 2004), pp. 43-44.

⁴³ República de Chile, *Promulga el Acuerdo entre el gobierno de la República de Chile y la Organización de las Naciones Unidas*, Decreto Núm. 156. Santiago, 31 Agosto 2007.

⁴⁴ Report of the Chilean Civil Society to the United Nations Committee against Torture (April 2009), available at: <http://tbinternet.ohchr.org/>; Committee against Torture, *Summary Record of the 877th Meeting: Consideration of reports submitted by States parties under article 19 of the Convention*, U.N. Doc. CAT/C/SR.877 (17 June 2009), para. 23; Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Chile*, U.N. Doc. CAT/C/CHL/CO/5 (23 June 2009), paras 10-11.

intent to comply with the 2009 recommendations. Although this bill never made it out of the Chamber of Deputies, a new bill was introduced in September 2014 to incorporate a definition of torture into Chilean domestic law in line with its CAT obligations. The group of ten leftist deputies introducing the bill declared it to be an explicit effort to comply with the Committee's recommendations, and the Chamber's Human Rights Committee explicitly noted that certain articles had been modified for the purpose of complying with these recommendations. The next week, when the Chamber approved the draft bill for passage to the Senate, a number of leftist legislators repeatedly referenced CAT and the 2009 recommendations.⁴⁵ When the bill arrived on the Senate floor in 2016, its momentum stalled over an article codifying the inviolability of the prohibition against torture. In support of this article, socialist senators vehemently argued that making torture a crime not subject to amnesty, pardon, or statutes of limitations was necessary to bring Chile into compliance with international law. However, these voices were drowned out by concerns raised by both right- and left-wing senators that doing so would contradict other parts of the Penal Code, which allows the application of statutes of limitations, amnesties, or pardons to torture and crimes against humanity.⁴⁶ Though the bill passed and was eventually signed into law, the article mandating inviolability was ultimately scrapped.⁴⁷

These cases constitute clear evidence that Chile's legislative activity has interacted seriously with the CmAT. It would be naïve, however, to suggest comprehensive legislative uptake. Despite growing attention to the Committee's recommendations, the Chilean Congress has

⁴⁵The above discussion draws from República de Chile, Cámara de Diputados, *Redacción de Sesiones*, Legislatura 357^a, Sesión 76^a (8 septiembre 2009), p. 63; Legislatura 362^a, Sesión 70^a (23 septiembre 2014); Legislatura 363^a, Sesión 102^a (9 diciembre 2015); and Legislatura 363^a, Sesión 104^a (15 diciembre 2015).

⁴⁶ República de Chile, Senado, *Diario de Sesiones*, Legislatura 364^a, Sesión 45^a (6 septiembre 2016), pp. 40-66; and Legislatura 364^a, Sesión 51^a (28 septiembre 2016).

⁴⁷ República de Chile, Ley No. 20.968 (22 November 2016).

debated but not repealed its ultra-sensitive amnesty laws or lifted the statute of limitations on torture, both issues emphasized by the Committee.

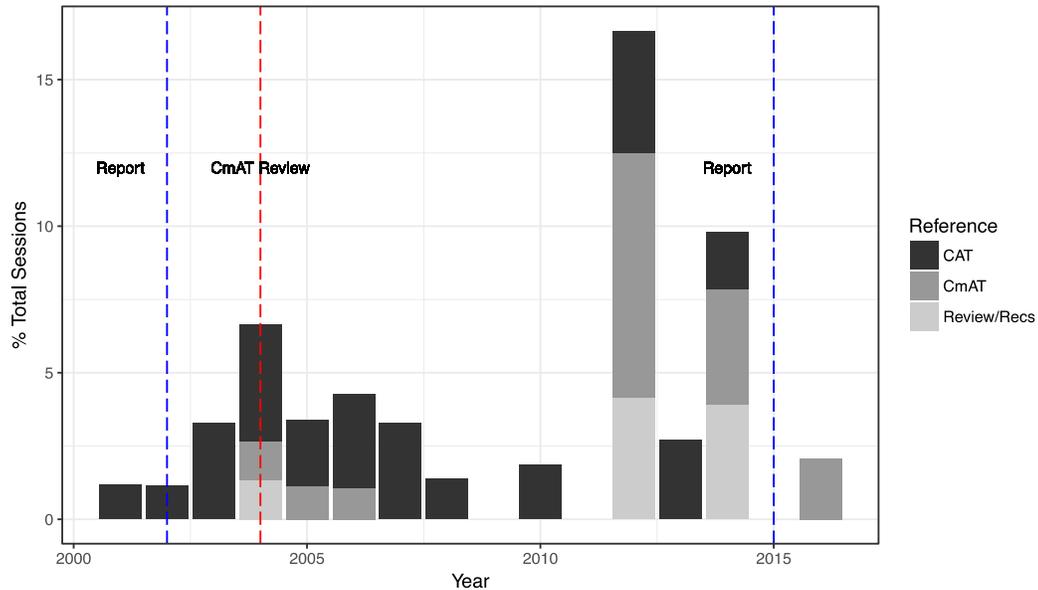


Figure 7. References to the CAT regime within Argentina’s legislature (2001-2016). Figure displays the percentage of all sessions held by the Senate and Chamber of Deputies in a given year in which at least one legislator referenced the CAT regime, categorized by reference type: the treaty itself (CAT); the CmAT; or the periodic review process/recommendations. Horizontal dashed lines represent years in which Argentina either submitted a Report or the CmAT issued its concluding observations (Review).

Argentina has taken much longer to respond to the CmAT than has Chile (see Figure 7). For example, in 2004 CmAT recommended that Argentina establish a national torture prevention mechanism with the authority to conduct prison inspections and investigate alleged instances of torture.⁴⁸ Legislative activity to create such an institution lagged for eight years until a CmAT Sub-Committee visit in the summer of 2012 directly spurred passage of a preliminary draft law. Senator Artaza of the Radical Civil Union (UCR) supported the bill, explaining that “representatives from CmAT will come again, and due to this we insist that this project is

⁴⁸ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Argentina*, U.N. Doc. CAT/C/CR/33/1 (10 November 2004), para. 7(o).

incorporated into law in the fastest way possible...for this reason we ask that this matter is handled urgently.”⁴⁹ Senator Pichetto of the Justicialista Party noted that the CmAT had criticized Argentina for not maintaining a registry to record torture cases in the past, and admonished his colleagues to do so.⁵⁰ The bill passed the Senate, with modifications approved by the Chamber, officially creating a national torture prevention mechanism.⁵¹ The prod of the CAT reporting regime after years of initial delay seems especially evident in legislative debates and activity in this case.

More generally, CmAT recommendations represent an additional opportunity for legislators to advocate for attention to policies they and their constituents favor. The CmAT has repeatedly criticized Argentina’s antiquated prison system. Their recommendations for prison reform have been echoed by legislators from across the political spectrum and publicized by Argentina’s local press when covering the need for prison reform.⁵² To be clear, we do not claim that the CmAT has “caused” legislative uptake, but rather that the report-and-review process provides a focal set of recommendations for political and legislative attention to the issue. We think of the process as an *opportunity*, or an *opening* for legislative discussions. For instance, during a 2014 debate on updating the Penal Code, Deputy Torroba of the UCR warned “about the shameful Argentine prison system, of medieval character, in which human rights are systematically violated. On this topic, I refer to the last report from the UN Human Rights

⁴⁹ República Argentina, Cámara de Senadores de la Nación, *Versión Taquigráfica*, Período 130º, 12º Reunión, 8º Sesión ordinaria (15 agosto 2012), p. 16.

⁵⁰ *Ibid.*, Período 130º, 20º Reunión, 24º Sesión ordinaria (14 noviembre 2012), pp. 40-42.

⁵¹ República Argentina, Cámara de Diputados de la Nación, *Dirección de Taquígrafos*, Período 130, 21a. Reunión, 18a. Sesión ordinaria (28 noviembre 2012).

⁵² “Cárceles: dos de cada tres muertes son por violencia,” *La Nación*, 21 June 2005; “Indagan a Rosatti y a Beliz por las cárceles,” *La Nación*, 9 September 2005; “Cárceles, los nuevos centros de tortura,” *La Nación*, 28 June 2006; “Alerta de la ONU sobre la tortura,” *Clarín*, 29 November 2004; “La violencia en las cárceles argentinas es cada vez mayor,” *Clarín*, 13 February 2005.

Committee and CmAT.”⁵³ Referencing CmAT recommendations is of course not necessary for legislators to advocate for prison reform, but to do so emphasizes the gravity and urgency of an issue, particularly one that draws significant public attention.

In contrast to Argentina, the reporting process has evoked concentrated legislative attention in Mexico over time (Figure 8). Opposition legislators have referred to the CmAT on several occasions over the years to highlight their criticisms of torture in Mexico. In 1992, after Mexico’s second periodic review, the Party of the Democratic Revolution—one of the three major parties and social democratic in orientation—referred to CmAT findings to critique police techniques that expedite investigations but may amount to torture.⁵⁴ The same review was used to highlight impunity for torture and the failure to satisfactorily compensate victims.⁵⁵ The Committee’s 2006 recommendations about arbitrary detention have been aired extensively in the Chamber, eventually eliciting new rules against arbitrary arrests, requiring preliminary investigations, and instituting training for law enforcement.⁵⁶

The Committee’s 2012 recommendations focused heavily on weaknesses within Mexico’s legal framework to prevent, investigate, and adequately punish acts of torture.⁵⁷ These critiques were echoed by civil society actors and covered in the Mexican press.⁵⁸ Subsequent to this review, legislators made a concerted effort to reform this legal framework, often pointing to

⁵³ República Argentina, Cámara de Diputados de la Nación, *Dirección de Taquígrafos*, Periodo 132, 51a. Reunión, 1a. Sesión ordinaria de prórroga (especial) (4 diciembre 2014), p. 74.

⁵⁴ La Cámara de Diputados del Congreso de los Estados Unidos Mexicanos, *Diario de los Debates*, Legislatura LV, Año II, Período Ordinario, Número de Diario 18 (11 diciembre 1992).

⁵⁵ La Cámara de Diputados del Congreso de los Estados Unidos Mexicanos, *Diario de los Debates*, Legislatura LV, Año II, Período Extraordinario, Número de Diario 4 (19 agosto 1993).

⁵⁶ La Cámara de Diputados del Congreso de los Estados Unidos Mexicanos, *Diario de los Debates*, Legislatura LX, Año I, Período Ordinario, Número de Diario 6 (1 febrero 2007).

⁵⁷ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Mexico*, U.N. Doc. CAT/C/MEX/CO/5-6 (11 December 2012), paras 8-11.

⁵⁸ “Espera Mexico dictamen del CAT,” *Reforma*, 26 October 2012; “Mexico se compromete a erradicar la tortura,” *Reforma*, 10 December 2012.

CmAT recommendations in support of specific reforms to the 1991 Federal Act for the Prevention and Punishment of Torture.⁵⁹ This eventually culminated in the passage of an entirely new law in June 2017 that considerably strengthened Mexico’s legal framework to prevent, investigate, and punish acts of torture.⁶⁰

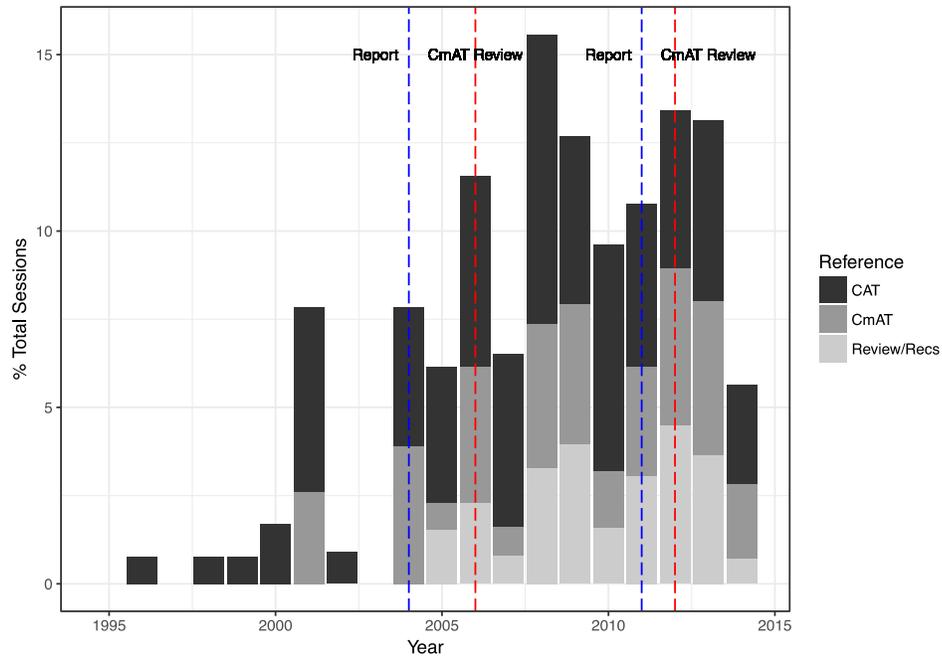


Figure 8. References to the CAT regime within Mexico’s legislature (1995-2014). Figure displays the percentage of all sessions held by the Mexican Senate and Chamber of Deputies in a given year in which at least one legislator referenced the CAT regime, categorized by reference type: the treaty itself (CAT); the CmAT; or the periodic review process/recommendations. Horizontal dashed lines represent years in which Mexico either submitted a Report or the CmAT issued its concluding observations (Review).

⁵⁹ See, e.g., La Cámara de Diputados del Congreso de los Estados Unidos Mexicanos, *Diario de los Debates*, Legislatura LXII, Año II, Período Ordinario, Sesión No. 25 (22 octubre 2013).

⁶⁰ Estados Unidos Mexicanos, *Ley General Para Prevenir, Investigar y Sancionar la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes*, Nueva Ley DOF 26-06-2017.

V. Conclusion

Self-reporting is a common mechanism—and often the only regularized official mechanism the international community has—to encourage implementation of international agreements. It is essential in many areas of international law, where external actors only episodically are able and willing to collect information about the status of treaty implementation. Regularized reporting constitutes an occasion that generates information around which civil society can mobilize to demand progress. It also generates recommendations from external human rights experts, which government officials can actively consider when debating legislative and policy changes. This article has advanced a theory of domestic mobilization to explain why the report-and-review process is useful, demonstrating its links with measurable though modest progress in implementing international human rights obligations.

Critiques of the reporting and review process undertaken by the human rights treaty bodies are far more common than rigorous assessments of their actual consequences. While we do not dispute that there are weaknesses in the reporting system, the evidence presented suggests that dialogue between state representatives and international experts—often referring to new information collected by civil society and written up in shadow reports—may indeed disseminate new perspectives, advice, and potentially produce pressure for change in practice. Committee recommendations have made their way into important legislative changes, often by giving opposition politicians a credible platform from which to advocate change. The dialogue engendered through cumulative self-reporting has contributed to local improvements that reduced the pervasiveness of torture in a number of countries (indeed, on average). As anyone

would expect, the size of that improvement is not massive, but it is all the more believable for its modest size.

This study has given careful attention to the obvious objection that states who report want to improve their rights practices anyway, and so the consequences of the process are mere selection effects. We have modeled reporting and rights improvements in two stages, taking into account a wide range of proxies for unobservable qualities, such as capacities, values, and political will. There may still be unobservable factors that we cannot measure with precision, but sensitivity analysis suggests that these are unlikely to greatly disturb our positive findings.

It is also important to stress what we did *not* find. We found evidence that interactive *histories* are important to such improvements; but modeling one-shot effects provided much weaker evidence. The frequency and density of the reporting-and-dialogue process appear to be related to rights improvements. This suggests that *iterative* and *interactive* histories are key. Reporting *per se* does not produce the same results that a more intense and cumulative back-and-forth between governments and the Committee appears to produce. This implies some potential for constructive engagement to contribute to improving human rights practices around the world. But we hasten to add that the reporting regime is not a comprehensive solution to the world's worst human rights abuses. We have only examined states that have ratified the CAT; even among states parties it has proved impossible to coerce a meaningful conversation out of unwilling states. That said, the results suggest that the reporting and review system should be supported rather than disparaged. We agree with the critics who point out the problems of stretched resources and redundant processes. But a look at the evidence suggests that self-reporting has played an important role in starting conversations that reverberate domestically and open possibilities for change.

The importance of these findings for international law and cooperation are profound. Empirically, a majority of international agreements in a broad range of issue areas rely on little more than self-reported information to be effective. A little over half of a random sample of treaties deposited with the United Nations create *some form* of monitoring, whether self-monitoring, third party surveillance, or a combination of both (Koremenos 2015:261). A recent comprehensive study of all arms control agreements found that a significant plurality—or some 86 of 224 agreements in history—provide for self-reporting as the *most intrusive* form of monitoring in the agreement (Vaynman 2014). Self-reporting is also a central pillar in international environmental agreements. For example, the G20 Fossil Fuel Subsidy Agreement depends almost exclusively on self-reporting by states parties (Aldy 2017:99). A regularized review system within the World Trade Organization—the Trade Policy Review Mechanism—combines centralized policy reviews with government self-reports (Mavroidis 1992:380-93).

To what extent is the theory of information production and domestic reverberation stimulated by self-reporting generalizable? At a minimum, it is almost certainly applicable to other areas of international human rights. We see near identical reporting requirements and processes within every major multilateral human rights treaty. We would expect a similar information and mobilization mechanism to operate wherever civil society has systematic access to interactions between their government representatives and authoritative human rights experts with a mandate to review practices and make recommendations. Indeed, similar results through an analogous mechanism appear to be at work in the area of **women's rights**.

Whether the issue area is human rights, the environment, trade, or arms control, the mechanism theorized here depends on the existence of a process that involves transparent interactions with an authoritative regulatory body on an ongoing basis. More critically, it

depends on the presence of domestic stakeholders willing and able to reformulate their expectations of and demands for their own governments based on new information. We acknowledge that any link in this argument could fail: governments might refuse to engage the self-reporting process; international experts could be corrupt or engage in malfeasance; fake news could drown out factual information; domestic mobilization could fail to materialize if the issue is not salient or if civil society faces serious repercussions for doing so. We also realize that some issues do not engage broad publics, and implementation in these areas may be shaped more by bilateral government reputations (arms control) or narrow organized interests (trade policy). But the basic structure of the argument—that self-reporting can spark processes that lead to greater transparency when compared to little or no oversight—has tremendous significance for theories of international law compliance, which ultimately depends on political forms of enforcement.

Systematic investigation into international report and review systems is highly warranted, but we have only scratched the surface here. Self-reporting has long been a staple of domestic regulatory governance, and abundant research has documented both its promise and its limitations at the national level. Research on creative modes of governance that capitalize on information, domestic mobilization, and recursive feedback is of growing importance in a world in which traditional modes of international governance are being questioned (see generally Zürn 2004). Processes of “global experimentalist governance,” while fundamentally different from human rights reporting in many ways, depend on participatory processes that respect local contexts and knowledge and call for the imbrication of collectively defined international norms with local democratic deliberation regarding implementation (Sabel and Zeitlin 2010:13, De Búrca, et al. 2014:477-78). Informational nudges in the form of “global performance

assessments” that attract public attention and nudge states to consider policy reforms in sensitive areas is another area of research that similarly highlights subtle influences on policy (Kelley and Simmons forthcoming). Self-reporting regimes are among the possibilities for governance in areas in which traditional enforcement approaches are unavailable or ineffective. As part of a broader agenda for research on global governance, it is crucial that scholars try to understand whether and how one of the main pillars for international regulatory cooperation—information dissemination and mobilization processes initiated largely by self-reporting procedures—actually works.

References:

- Adsera, Alicia, Carles Boix, and Mark Payne. 2003. "Are You Being Served? Political Accountability and Quality of Government." *The Journal of Law, Economics, and Organization* 19:(2): 445-90.
- Aldy, Joseph E. 2017. "Policy Surveillance in the G-20 Fossil Fuel Subsidies Agreement: Lessons for Climate Policy." *Climatic Change* 144:(1): 97-110.
- Alston, Philip, and James Crawford. 2000. *The Future of Un Human Rights Treaty Monitoring*. Cambridge ; New York: Cambridge University Press.
- Bayefsky, Anne F. 2001. *The Un Human Rights Treaty System : Universality at the Crossroads*. The Hague ; New York: Kluwer Law International.
- Besley, Timothy, and Robin Burgess. 2002. "The Political Economy of Government Responsiveness: Theory and Evidence from India." *The Quarterly Journal of Economics* 117:(4): 1415-51.
- Blackwell, Matthew. 2013. "A Framework for Dynamic Causal Inference in Political Science." *American Journal of Political Science* 57:(2): 504-20.
- Chayes, Abram, and Antonia Handler Chayes. 1995. *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge MA: Harvard University Press.
- Chilton, Adam S. 2015. "The Laws of War and Public Opinion: An Experimental Study." *Journal of Institutional and Theoretical Economics JITE* 171:(1): 181-201.
- Cingranelli, David L, and David L Richards. 2008. "The Cingranelli-Richards (Ciri) Human Rights Dataset." <http://ciri.binghamton.edu/>. January 27, 2009.
- Cole, Stephen R, and Miguel A Hernán. 2008. "Constructing Inverse Probability Weights for Marginal Structural Models." *American journal of epidemiology* 168:(6): 656-64.
- Conrad, Courtenay Ryals, and Will H Moore. 2010. "What Stops the Torture?". *American Journal of Political Science* 54:(2): 459-76.
- Creamer, Cosette, and Beth A Simmons. 2015. "Ratification, Reporting and Rights: Quality of Participation in the Convention against Torture." *Human Rights Quarterly* 37:(3).
- Dai, Xinyuan. 2002. "Information Systems in Treaty Regimes." *World Politics* 54:(04): 405-36.
- De Búrca, Gráinne, Robert O. Keohane, and Charles Sabel. 2014. "Global Experimentalist Governance." *British Journal of Political Science* 44:(03): 477-86.
- Fariss, Christopher J. 2014. "Respect for Human Rights Has Improved over Time: Modeling the Changing Standard of Accountability." *American Political Science Review* 108:(02): 297-318.
- Hafner-Burton, Emilie. 2013. "Making Human Rights a Reality." Princeton, New Jersey: Princeton University Press. xvi, 276 pages.
- Hajjar, Lisa. 2009. "Does Torture Work? A Sociolegal Assessment of the Practice in Historical and Global Perspective." *Annual Review of Law and Social Science* 5311-45.
- Hampson, Françoise J. 2007. "An Overview of the Reform of the Un Human Rights Machinery." *Human Rights Law Review*.
- Hathaway, Oona. 2007. "Why Do Countries Commit to Human Rights Treaties?". *Journal of Conflict Resolution* 51:(4): 588-621.
- Hollyer, James R, B Peter Rosendorff, and James Raymond Vreeland. 2014. "Measuring Transparency." *Political Analysis* 22:(4): 413-34.

- . 2015. "Transparency, Protest, and Autocratic Instability." *American Political Science Review* 109:(4): 764-84.
- Hollyer, James R, and B. Peter Rosendorff. 2011. "Why Do Authoritarian Regimes Sign the Convention against Torture? Signaling, Domestic Politics, and Non-Compliance." *Quarterly Journal of Political Science* 6275–327.
- Kälin, Walter. 2012. "Examination of State Reports." In *Un Human Rights Treaty Bodies : Law and Legitimacy*, eds. Helen Keller and Geir Ulfstein. Cambridge: Cambridge University Press. 16-72.
- Kaplow, Louis, and Steven Shavell. 1994. "Optimal Law Enforcement with Self-Reporting of Behavior." *Journal of Political Economy* 102:(3): 583-606.
- Keck, Margaret E., and Kathryn Sikkink. 1998. *Activists Beyond Borders : Advocacy Networks in International Politics*. Ithaca, N.Y.: Cornell University Press.
- Keller, Helen, and Geir Ulfstein, eds. 2012. *Un Human Rights Treaty Bodies : Law and Legitimacy*. Cambridge: Cambridge University Press.
- Kelley, Judith G, and Beth A Simmons. forthcoming. "Introduction: The Power of Global Performance Indicators." *International Organization*.
- Koremenos, Barbara. 2015. *The Continent of International Law: Explaining Agreement Design*.
- Kreps, Sarah E, and Geoffrey PR Wallace. 2016. "International Law, Military Effectiveness, and Public Support for Drone Strikes." *Journal of Peace Research*.
- Lutz, Ellen, and Kathryn Sikkink. 2000. "International Human Rights Law and Practice in Latin America." *International Organization* 54:(3): 633-59.
- Magee, Christopher SP, and John A Doces. 2015. "Reconsidering Regime Type and Growth: Lies, Dictatorships, and Statistics." *International Studies Quarterly* 59:(2): 223-37.
- Mavroidis, Petros. 1992. "Surveillance Schemes: The Gatt's New Trade Policy Review Mechanism." *Michigan Journal of International Law* 13:(2): 374-414.
- McQuigg, Ronagh. 2011. "How Effective Is the United Nations Committee against Torture?." *European Journal of International Law* 22:(3): 813-28.
- Morrow, James D. 2014. *Order within Anarchy: The Laws of War as an International Institution*. NEW YORK: CAMBRIDGE UNIV PRESS.
- O'Flaherty, Michael. 2006. "The Concluding Observations of United Nations Human Rights Treaty Bodies." *Human Rights Law Review* 6:(1): 27-52.
- Posner, Eric A. 2014. *The Twilight of Human Rights Law*. New York: Oxford University Press.
- Rejali, Darius M. 2007. *Torture and Democracy*. Princeton: Princeton University Press.
- Robins, James M, Miguel Angel Hernan, and Babette Brumback. 2000. "Marginal Structural Models and Causal Inference in Epidemiology." LWW.
- Sabel, Charles F, and Jonathan Zeitlin. 2010. *Experimentalist Governance in the European Union: Towards a New Architecture*: Oxford University Press.
- Schöpp-Schilling, Hanna Beate. 2007. "Treaty Body Reform: The Case of the Committee on the Elimination of Discrimination against Women." *Human Rights Law Review*.
- Simmons, Beth A. 2009. *Mobilizing for Human Rights : International Law in Domestic Politics*. New York: Cambridge University Press.
- Vaynman, Jane Eugenia. "Enemies in Agreement: Domestic Politics, Uncertainty, and Cooperation between Adversaries." 2014.

- Vreeland, James Raymond. 2008. "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture." *International Organization* 62:(1): 65-101.
- Zürn, Michael. 2004. "Global Governance and Legitimacy Problems." *Government and Opposition* 39:(2): 260-87.