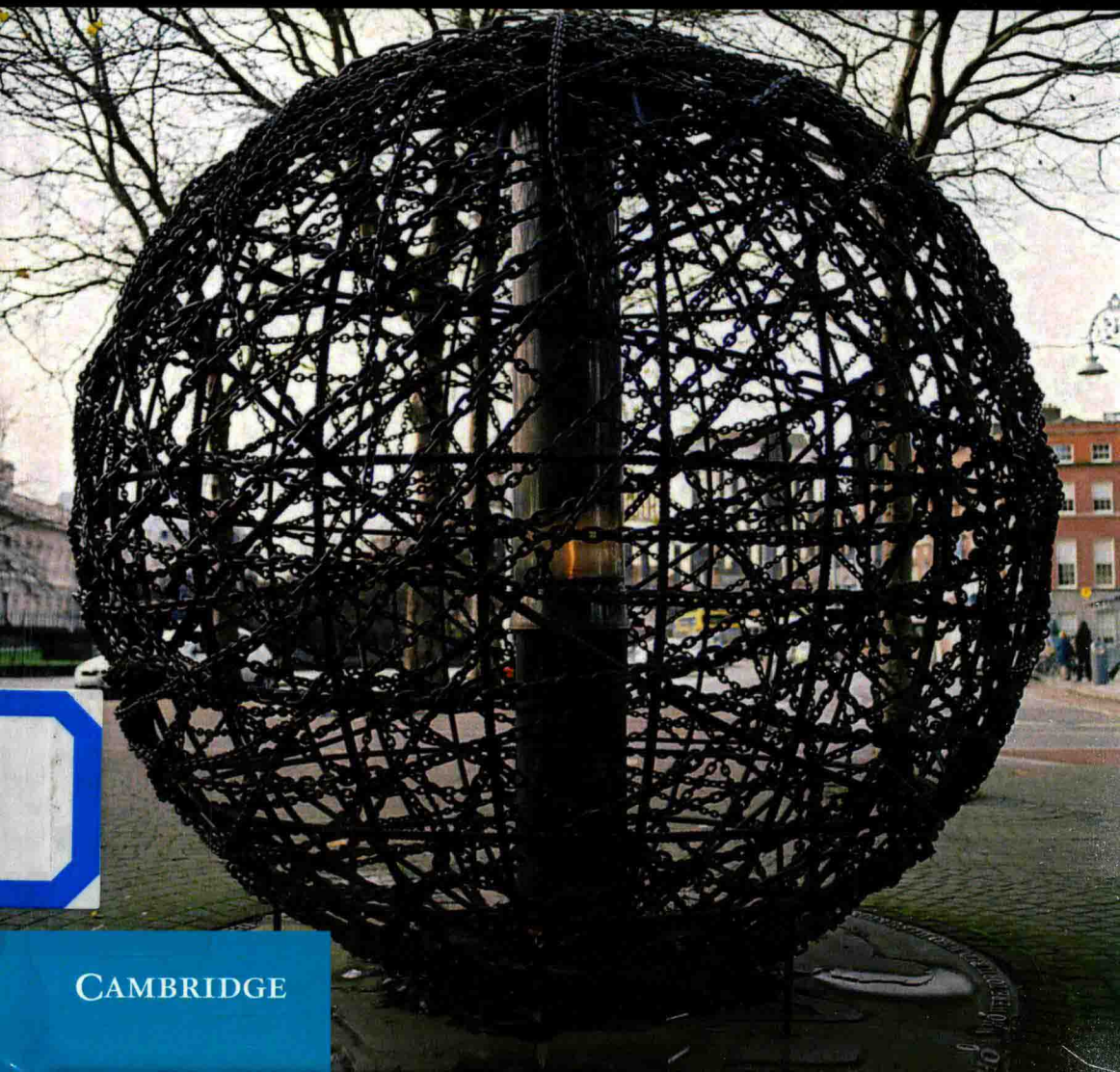


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Domestic Politics and International Human Rights Tribunals

The Problem of Compliance

COURTNEY HILLEBRECHT



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University of Nebraska–Lincoln



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DOMESTIC POLITICS AND INTERNATIONAL HUMAN RIGHTS TRIBUNALS

International politics has become increasingly legalized over the past fifty years, restructuring the way that states interact with each other, with international institutions, and even with their own constituents. Perhaps the area subjected to the most intense restructuring has been human rights. The rise of the international legalization of human rights now makes it possible for individual constituents to make human rights claims against their governments at international courts such as the European and Inter-American Courts of Human Rights. This book brings together theories of compliance from international law, human rights, and international relations to explain the increasingly important phenomenon of states' compliance with human rights tribunals' rulings. The central argument of the book is that compliance with international human rights tribunals' rulings is an inherently domestic affair. It posits three overarching questions: first, why do states comply with human rights tribunals' rulings? Second, how does the compliance process unfold, and what are the domestic political considerations around compliance? Third, what effect does compliance have on the protection of human rights? This book answers these questions through a combination of quantitative analyses and in-depth case studies from Argentina, Brazil, Colombia, Italy, Portugal, Russia, and the United Kingdom.

Dr. Courtney Hillebrecht is an assistant professor in the Department of Political Science at the University of Nebraska–Lincoln. Her research focuses on human rights, international relations, and international law. Hillebrecht's work has been published in *Human Rights Quarterly*, *Human Rights Review*, *The Journal of Human Rights Practice*, and *Foreign Policy Analysis*. She is the editor of a forthcoming volume on states' responses to human security crises and is beginning work on a new project on the effect of international criminal accountability on ongoing violence.

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For Carrick, Nola, and Willa

Acronyms

ACmHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of South East Asian Nations
AU	African Union
AUC	United Auto-Defense Forces of Colombia
CAR	Central African Republic
CDS-PP	Conservative Centrist Democratic-Popular Party
CEJIL	Center for Justice and International Law
CHRT Dataset	Compliance with Human Rights Tribunals Dataset
CM	Committee of Ministers
COE	Council of Europe
DRC	Democratic Republic of the Congo
ECtHR	European Court of Human Rights
EU	European Union
FARC	Revolutionary Armed Forces of Colombia
FREPASO	Front for a Country in Solidarity
FTA	Free Trade Agreement
GDP	Gross Domestic Product
GEE	Generalized Estimating Equation
HRA	Human Rights Act
HRTs	Human Rights Tribunals
HRW	Human Rights Watch

IACmHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
IRSIG-CNR	Research Institute on Judicial Systems, National Research Council
JCHR	Joint Committee on Human Rights
JPL	Justice and Peace Law
MP	Member of Parliament
NGO	Nongovernmental Organization
OAS	Organization of American States
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner for Human Rights
PJ	Peronist Justice Party (Partida de Justica)
PSD	Social Democratic Party
TPIMs	Terrorism Prevention and Investigation Measures
UCR	Radical Civic Party
USAID	United States Agency for International Development

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Human Rights Tribunals and the Challenge of Compliance

I. TWO ANECDOTES FROM THE AMERICAS

In 2003, the Brazilian legislature passed a new domestic violence law. The law is named after a Brazilian woman, Maria da Penha, whose husband tried to kill her twice – once by electrocuting her while she was in the bathtub and once by shooting her. His assaults left da Penha paralyzed, but the Brazilian judicial system was unable and unwilling to hold him accountable for his abuse. In 1998, Maria da Penha brought a petition to the Inter-American Commission on Human Rights (IACmHR) against the state of Brazil for sitting idly by while she was repeatedly assaulted.

More than four years after da Penha's petition reached the Inter-American Commission, Brazil began to take action. During the Commission's annual session in 2002, the government of Brazil announced that da Penha's ex-husband was finally on trial. The following year, the Brazilian legislature began considering a new bill that would increase the penalties for domestic violence and create special courts to deal with domestic violence cases. Although the bill faced strong opposition in the legislature and some dissension within the judiciary's ranks, it had the support of the administration, and, increasingly, the judiciary. The bill has since been passed and is known as the "Maria da Penha Law." Since the bill's passage in 2006, the National Council of Justice of Brazil reports that Brazil has seen 331,000 prosecutions and 110,000 final judgments related to domestic violence. The Service Center for Women has received more than 2 million calls regarding domestic abuse.¹

¹ UN Women, "Maria da Penha Law: A Name That Changed Society," August 30, 2011, <http://www.unwomen.org/2011/08/cspanol-ley-maria-da-penha/>.

In 1992, then-President of Peru, Alberto Fujimori, authorized a military strike on the Castro Castro Prison in Lima, which housed suspected and convicted members of the Sendero Luminoso and Tupac Amaru terrorist groups. The military strike resulted in nearly forty deaths, and those who survived were transferred to another prison where they were beaten, raped, and tortured. The victims of the assault pursued justice, first in Peru and then at the IACmHR and Inter-American Court of Human Rights (IACtHR).

The IACtHR handed down its ruling on the case in 2005, claiming that Peru had an obligation to compensate the victims for their hardships, find and prosecute those responsible for the abuses, and engage in a series of public acknowledgments of its responsibility for the abuses that took place at the Castro Castro Prison. The president at the time, Alan García, claimed that he was absolutely outraged by the ruling, and the minister of the interior said that the ruling would be a blow to the morale of the armed forces. The head of the Peruvian Council of Ministers claimed that, although the Council of Ministers would consider Peru's international legal obligations, it was unfeasible for the state to go against public opinion. The very thought of siding with Sendero or Tupac Amaru would be tantamount to political suicide.

The Peruvian government claims that it has already paid some of the victims a portion of their promised compensation, and it has asked the Court for a reinterpretation of the ruling. The IACmHR, which has been monitoring Peru's compliance with the Court's decision, argues otherwise, stating concern that, years after the ruling, the government still has not secured compliance with any of the Court's orders.² In fact, not only has Peru not complied with the Court's rulings, but the government of Peru also has an international arrest warrant out for the lawyer and activist who brought the petition to the Inter-American human rights institutions in the first place. However, in the years since the IACtHR handed down the Castro Castro ruling, the Special Criminal Court of the Peruvian Supreme Court sentenced Fujimori to twenty-five years in prison for human rights abuses committed under his administration, thus marking an important but insufficient step toward justice in Peru.³

These anecdotes generate a number of questions that this book seeks to answer: why did Brazil comply with the IACmHR's recommendations whereas Peru shirked its international legal responsibilities? What does this mean for the domestic implementation of international law and for the effect of international human rights tribunals on the protection and promotion of human rights?

² Case of the *Miguel Castro Castro Prison v. Peru* (Interpretation of the Judgment on Merits, Reparations, and Costs) (Inter-American Court of Human Rights 2008).

³ Jo-Marie Burt, "Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations," *The International Journal of Transitional Justice* 3 (2009): 384-405.

II. INTRODUCTION TO THE BOOK

International politics has become increasingly legalized over the past fifty years, restructuring the way that states interact with each other, with international institutions, and even with their own constituents.⁴ Although this trend of legalization and institutionalization has intensified states' international participation and created international spaces for policy making and adjudication, it also has restructured the incentives that political elites have for using and usurping international law in domestic politics. Human rights has been perhaps the area subjected to the most intense restructuring. Unlike international trade or security law, human rights law governs the vertical relationship between states and constituents, not the horizontal relationship between states. The rise of the international legalization of human rights now makes it possible for individual constituents to sue their governments at international courts like the European Court of Human Rights (ECtHR) and the IACtHR. Although this process exacts high costs on the states – financially, reputationally, and politically – political elites also can benefit from their interactions with international human rights courts.

This book asks three questions: why do states comply with international human rights tribunals' (HRTs) rulings? How does the compliance process unfold domestically? And, what effect does compliance with human rights tribunals' rulings have on the protection of human rights? The central argument of this book is that compliance with international human rights tribunals' rulings is an inherently domestic affair. Pro-compliance partnerships, comprising executives, judges, legislatures, and civil society actors, facilitate compliance on the domestic level. These domestic political institutions take responsibility for the compliance process and hold governments accountable for their international legal commitments. This is not to say that compliance with the tribunals' rulings is magnanimous. Rather, executives and other domestic actors use compliance to advance their policy goals. Governments can use compliance with international human rights tribunals for a variety of domestic political purposes, including (1) signaling a commitment to human rights, (2) advancing and legitimizing domestic human rights reform, and (3) providing political cover for contentious or politically divisive policies. Although compliance is a difficult and often messy process, the outcome can be impressive: the improved protection of human rights. Indeed, this book argues that the most important way that international human rights tribunals affects changes in human rights is through states' compliance with their rulings.

⁴ Judith Goldstein et al., "Introduction: Legalization and World Politics," *International Organization* 54, no. 3 (2000): 385–399.