
Implementing Decisions of International Human Rights Institutions – Evidence from the United Nations Human Rights Committee

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Abstract

In recent years, there has been an increasing amount of research about the implementation of international law. However, there has been almost no empirical research about implementing decisions of international human rights institutions. The decisions of those institutions are usually regarded as soft law, and states do not have a clear legal obligation to implement them. In this article, I bring original empirical data about how and when states implement decisions of the United Nations Human Rights Committee (HRC) in individual communications. I hypothesize that the following factors influence the readiness of states to implement the views of the HRC: (i) the level of democracy and human rights protection in the state; (ii) internal capacity; (iii) strength of civil society; (iv) type of remedy; (v) representation on the HRC; (6) subject matter of the communication. I find that the most important factor for implementing remedies granted by the Committee is the high human rights score of the state. The internal capacity of the state is also significant but to a lesser extent than found in previous studies. Also, I find a certain connection between the state being represented on the HRC and its willingness to implement the remedies.

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1 Introduction

Louis Henkin famously stated that ‘almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time’.¹ This largely reflects the traditional assumption of international law scholarship that compliance with international law exists. However, even now, when there is more empirical scholarship about compliance, scholars find it hard to agree on a coherent theory as to why and when states choose to implement international law.² The scholarship is even less coherent when it attempts to explain compliance of states with international human rights law. One of the main reasons for the puzzle is that human rights law is something that addresses occurrences inside the state and does not have immediate or obvious effect in the international sphere. Therefore, the international legal system has less motivation or tools to promote implementation of international human rights norms, and states can more easily ignore it.³

This article seeks to shed some light on the question of why and when states choose to cooperate with international human rights institutions and implement their decisions. Such institutions include, among others, the United Nations Human Rights Council, the Inter-American Commission for Human Rights, the African Commission for Human and Peoples Rights, and the United Nations treaty bodies (the study deliberately excludes international human rights courts). The question is even more interesting since the decisions of those institutions are often regarded as ‘soft law’ – quasi-legal norms that do not have a completely binding force.⁴ On the one hand, states voluntarily establish and join those institutions, but, on the other hand, they are not legally bound by their decisions. As will be discussed in the next parts, previous empirical literature tested in general which states choose to join human rights treaties and whether joining a certain human rights treaty improved the human rights situation in a state. However, there is very little literature that explores specific steps taken by states to implement decisions and recommendations of international human rights institutions. This article uses state implementation of the decisions of the United Nations Human Rights Committee (HRC) as a case study of the above.

I research the question of state cooperation with the HRC by coding and analysing original empirical data about patterns of state implementation of the decisions of the HRC under the individual communications procedure. Under this procedure, individuals are allowed to file with the HRC communications arguing that at least one of the rights granted to them under the International Covenant on Civil and Political Rights (ICCPR)⁵ has been violated by a state member to the First Optional Protocol (OP) to the

¹ L. Henkin, *How Nations Behave* (2nd edn, 1979), at 47.

² Guzman, ‘A Compliance-Based Theory of International Law’, 90 *California Law Review* (CLR) (2002) 1823, at 1826–1827.

³ Guzman and Linos, ‘Human Rights Backsliding’, 102 *CLR* 603 (2014), at 611.

⁴ See Broude and Shershevsky, ‘Explaining the Practical Purchase of Soft Law: Competing and Complementary Behavioral Hypotheses’, in H.G. Cohen and T. Meyer (eds), *International Law as Behavior* (forthcoming).

⁵ International Covenant on Civil and Political Rights (ICCPR) 1966, 999 UNTS 171.

ICCPR.⁶ Although joining the OP system (as well as the ICCPR) is completely voluntary for states, many times states that have decided to join the OP do not implement the remedies granted by the HRC to individual petitioners. Therefore, there is an interesting dynamic of voluntarily granting the HRC power to review the human rights practices of the state, only to refuse to fully implement the decisions when the time has come. Moreover, since the decisions of the HRC are seen by many as quasi-legal soft law, it would be interesting to see whether the patterns of implementing the views of the HRC under the OP are different from the patterns found by other studies for implementing sources of international law that are widely regarded as binding.

In this article, I explore how and whether the following factors influence the readiness of states to implement the views of the HRC: (i) the level of democracy and human rights protection in the state; (ii) the internal capacity of states (such as gross domestic product (GDP) and independent political and social institutions); (iii) strength of civil society; (iv) type of remedy; (v) the state being represented on the HRC; and (vi) the subject matter of the communication. I find that the most important factor for implementing remedies granted by the HRC is a state's high human rights score. The internal capacity of the state was also significant but to a lesser extent than found in previous studies. Also, I find a certain connection between the state being represented on the HRC and its willingness to implement the remedies.

The article proceeds as follows. The second part of the article discusses the previous literature about the implementation of international law and the implementation of decisions of international courts. The third part introduces the individual communication procedure under the ICCPR and discusses possible challenges to state implementation. The fourth part performs the empirical analysis of the level of implementation of the decisions of the HRC by member states. The fifth part discusses which inferences could be drawn from the results presented.

2 Why and When Do States Comply with International (Human Rights) Law?

A Theories about Compliance with International and Human Rights Law

Prominent scholars of international law, such as Abram and Antonia Chayes and Thomas Franck, assume that, in general, states tend to implement international law.⁷ The most commonly mentioned reasons for doing so are self-interest, reciprocity, the prospect of coercion, reputation, acculturation, participation in the transnational legal process, collateral effects of a breach and the costs and benefits of compliance.⁸

⁶ Optional Protocol to the International Covenant on Civil and Political Rights (Optional Protocol) 1976, 999 UNTS 302.

⁷ Guzman and Linos, *supra* note 3, at 644–645.

⁸ Ryan, 'Discerning the Compliance Calculus: Why States Comply with International Investment Law', 38 *Georgia Journal of International and Comparative Law* (2009) 63, at 81; Koh, 'Why Do Nations Obey International Law?', 106 *Yale Law Journal* (1997) 2599, at 2569; Goodliffe and Hawkins, 'Explaining Commitment: States and the Convention against Torture', 68 *Journal of Politics* (2006) 358, at 359; Goodman and Jinks, 'Incomplete Internalization and Compliance with Human Rights Law', 19 *European Journal of International Law (EJIL)* (2008) 725, at 725–726.

Moreover, scholars suggest that the high levels of compliance with international law should be attributed to the fact that most treaties require states to make only very small changes to their practices.⁹ Scholars also suggest that states should not be treated merely as ‘black boxes’ for the purpose of understanding compliance with international law. Rather, the complex internal political processes inside a state should be taken into account because they play an important role in its decision to comply.¹⁰ It has been argued that democratic states with effective and independent institutions, free press and an active civil society are more likely to comply with international law.¹¹

Things become even more complicated when we come to the question of why states join and implement international human rights law and cooperate with the respective international institutions. As mentioned, most of the compliance theories above do not work well with international human rights because the effect of human rights law is almost always internal¹² and does not involve reciprocal compliance.¹³ Moreover, other states are unlikely to invest resources to enforce human rights abroad, especially when they have mutual trade and security relations with the targeted state.¹⁴ This explains why compliance is quite weak and enforcement is rare in the area of human rights.¹⁵ Therefore, states are free to join human rights treaties without a real intention to implement them.¹⁶

It seems that in recent years there have been two main theories attempting to explain why states comply with international human rights. The first is reputation; in the post World War II era, human rights play an important role in the international reputation of states, and, therefore, states, acting as rational self-interested entities, prefer to comply with them. This is of special importance in the ‘naming and shaming’ scheme – a tactic that non-governmental organizations (NGOs) often use in order to compel states to comply with their international human rights obligations.¹⁷ The second theory involves the internal processes inside states. This theory is very prominent in the context of the liberal theory of international relations. The liberal theory explains

⁹ Downs, Rocke and Barsoom, ‘Is the Good News about Compliance Good News about Cooperation?’, 50 *International Organization* (1996) 379, at 380; see also Hathaway, ‘The Cost of Commitment’, 55 *Stanford Law Review* (2003) 1821, at 1833; Cole, ‘Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966–1999’, 70 *American Sociological Review* (2005) 472, at 475.

¹⁰ Trachtman, ‘International Law and Domestic Political Coalitions: The Grand Theory of Compliance with International Law’, 11 *Chicago Journal of International Law* (2010) 127.

¹¹ Jay, ‘Keeping Rights at Home: British Conceptions of Rights and Compliance with the European Court of Human Rights’, 19 *British Journal of Politics and International Relations* (2017) 842, at 844.

¹² Grewal and Voeten, ‘Are New Democracies Better Human Rights Compliers?’, *International Organization* (IO) (2015) 497; Guzman and Linos, *supra* note 7, at 611; A. Guzman, *How International Law Works: A Rational Choice Theory* (2008), at 33–48.

¹³ B.A. Simmons, *Mobilizing for Human Rights* (2009), at 123.

¹⁴ Hathaway, *supra* note 15, at 2020; Simmons, *supra* note 13, at 122.

¹⁵ Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’, 49 *Journal of Conflict Resolution* (2005) 925, at 926; Hathaway, ‘Do Human Rights Treaties Make a Difference?’, 111 *Yale Law Journal* (2002) 1935, at 1999.

¹⁶ Chayes and Chayes, ‘On Compliance’, 47 *IO* (1993) 175, at 187.

¹⁷ Guzman, *supra* note 2, at 1826; Geisinger and Stein, ‘Rational Choice, Reputation, and Human Rights Treaties’, 106 *Michigan Law Review* (2008) 1129, at 1130.

compliance with international law by referring to the dynamics and preferences of interest groups and institutions inside a state (as well as transnational networks).¹⁸ As Beth Simmons argued in her groundbreaking book, international human rights law creates a 'rights gap' that is used by national political actors, courts and civil society in order to demand the implementation of those rights on the domestic level.¹⁹ Such a 'mobilization' of human rights, of course, is more likely to happen in democratic states with effective and independent institutions and a strong civil society.²⁰ In autocratic states, on the other hand, internal institutions do not have the capacity and political freedom to promote human rights on the internal level. Therefore, it is much harder to incentivize autocratic states to implement human rights.

Scholars indeed found empirical evidence that democracies are less likely to violate human rights.²¹ On the other hand, there is no systematic evidence that democratic and human rights-abiding states are more likely to join international human rights treaties.²² Neither is there any systematic evidence to suggest that the ratification of global human rights treaties improves the human rights situation in a state.²³ Eric Neumayer does suggest that in order for a human rights treaty to be effective, it has to be signed by a democratic state with a strong civil society.²⁴

Quite interestingly, some articles found that the patterns of joining the OP (which allows for the filing of individual communications) are somewhat different from the patterns of joining general human rights treaties. On the one hand, Wade Cole finds that states with favourable human rights practices are more likely to join the OP.²⁵ On the other hand, Oona Hathaway finds that non-democratic states are more likely to join the OP and that states with more NGOs and a stronger rule of law are less likely to join the OP.²⁶ This can be explained by the fact that non-democratic states are not expected to pay a real price for joining an individual communications mechanism because the views of the HRC are not likely to be implemented on the national level. On the other hand, states with a strong civil society and independent courts are expected to pay a higher price if they join the OP, and, therefore, they are more cautious about

¹⁸ Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics', 51 *IO* (1997) 513; Slaughter, 'International Law in a World of Liberal States', 6 *EJIL* (1995) 503.

¹⁹ Simmons, *supra* note 13, at 136, 148; Neumar, *supra* note 15, at 929; Avdeyeva, 'When Do States Comply with International Treaties? Policies on Violence against Women in Post-Communist Countries', 51 *International Studies Quarterly* (2007) 877, at 878; Hafner-Burton and Tsutsui, 'Human Rights in a Globalizing World: The Paradox of Empty Promises', 110 *American Journal of Sociology* (2005) 1373, at 1401.

²⁰ Simmons, *supra* note 13, at 136.

²¹ Hathaway, 'Why Do Countries Commit to Human Rights Treaties?', 51 *Journal of Conflict Resolution* (2007) 588, at 593.

²² See, e.g., Cole, *supra* note 9, at 490; Hathaway, *supra* note 9; Hathaway, *supra* note 15, at 1999.

²³ Hafner-Burton and Tsutsui, *supra* note 19, at 1401; Trachtman, *supra* note 10, at 881; Keith, 'The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?', 36 *Journal of Peace Research* (1999) 95; Hathaway, *supra* note 15, at 1999.

²⁴ Neumayer, *supra* note 15.

²⁵ Cole, *supra* note 9, at 485; Hathaway, *supra* note 9, at 1856.

²⁶ Hathaway, *supra* note 9, at 1853; Hathaway, *supra* note 21, at 612.

doing so. Finally, Hathaway finds that non-compliance with human rights treaties is less common among states that have joined the OP.²⁷

B Compliance with Decisions of International and Human Rights Courts

When the international community started establishing international courts, some believed that the decisions of these courts would be perceived as less politically biased than decisions of other international institutions. Moreover, unlike many other international institutions in which the chief actors are politicians and diplomats, the decision-makers appointed to international courts are jurists who are supposed to be independent and impartial.²⁸ Therefore, it was assumed that those characteristics could lead to better compliance by member states.²⁹ Moreover, since international courts issue concrete decisions against states, they might play a stronger part in the naming-and-shaming process.³⁰ Yet, in reality, the implementation of the decisions of international tribunals is obviously not perfect.³¹ Eric Posner and John Yoo find that the general average compliance rate with the decisions of the International Court of Justice is 61.9 per cent,³² and William Davey finds that the compliance with the decisions of the World Trade Organization panels stands at 83 per cent.³³

In the regional human rights systems, the compliance seems to vary – whereas 56 per cent of the decisions of the European Court of Human Rights (ECtHR) are fully implemented,³⁴ only 20 per cent of the decisions of the Inter-American Court of Human Rights (IACtHR) are fully implemented,³⁵ and in the African system the compliance rate is around 14 per cent.³⁶ Also, different courts grant different remedies. For instance, whereas the ECtHR leaves a very substantial margin for the states to decide how to remedy the violation (indicating usually only the sum of the reparation to be paid), the IACtHR grants very detailed remedies.³⁷ In the case of these two regional

²⁷ Hathaway *supra* note 15, at 1999; see also a critique of the findings of this study in T. Landman, *Issues and Methods in Comparative Politics* (3rd edn, 2002), at 244–248.

²⁸ Alter, 'Agents or Trustees? International Courts in Their Political Context', 14 *European Journal of International Relations* (2008) 33, at 34.

²⁹ Raustiala and Slaughter, 'International Law, International Relations and Compliance', in W. Carlsnaes, T. Risse and B. Simmons (eds), *The Handbook of International Relations* (2002) 538, at 541.

³⁰ Hillebrecht, 'Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights', 13 *Human Rights Review* (2012) 279, at 281.

³¹ See, e.g., Posner and Yoo, 'Judicial Independence in International Tribunals', 93 *CLR* (2005) 1, at 37.

³² *Ibid.*, at 81.

³³ Davey, 'Compliance Problems in WTO Dispute Settlement', 42 *Cornell International Law Journal* (2009) 119.

³⁴ Anagnostou and Mungiu-Pippidi, 'Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter', 25 *EJIL* (2014) 205, at 215.

³⁵ Baluarte, 'Strategizing for Compliance: The Evolution of a Compliance Phase of Inter-American Court Litigation and the Strategic Imperative for Victims' Representatives', 27 *American University Law Review* (2012) 263, at 290.

³⁶ Abebe, 'Does International Human Rights Law in African Courts Make a Difference?', 56 *Virginia Journal of International Law* (2017) 527.

³⁷ Goodman and Jinks, 'International Law and State Socialization: Conceptual, Empirical, and Normative Challenges', 54 *Duke Law Journal* (2005) 983, at 1026; Hillebrecht, *supra* note 30, at 283; Hillebrecht, 'Rethinking Compliance: the Challenges and Prospects of Measuring Compliance with International Human Rights Tribunals', 1 *Journal of Human Rights Practice* (2009) 362, at 365.

human rights courts, it seems that partial compliance is the most common form of compliance.³⁸ Additionally, states are more likely to pay reparations than implement any other remedy (especially those requiring structural changes).³⁹

Besides the nature of the remedies granted by the court, research indicates a few other variables that influence the probability of state implementation. The most important one of them is government effectiveness. Previous research has found that states with a strong rule of law, national wealth and effective governmental institutions are more likely to implement judgments.⁴⁰ Additionally, the regime type – namely, the existence of democracy – was also found to be an important factor for implementation, although somewhat less than government effectiveness.⁴¹ Finally, in recent years, it has been suggested that the identities of the judges appointed to the courts influence the legitimacy of the courts in the eyes of the relevant states and the international community. This, in turn, can influence the willingness of states to implement the decisions of those courts.⁴² Traditionally, judges in international courts disproportionately come from Western and developed states. This has been raised as an impediment to the legitimacy of international institutions in the eyes of non-Western states.⁴³ According to this argument, states are more likely to implement decisions if they think that they are adequately represented on the court. This claim was especially prominent in the context of the International Criminal Court (ICC), where it was pointed out that, whereas African judges were not sufficiently represented among the decision-makers on the court, all of the defendants before the court came from the African continent.⁴⁴ Therefore, many African countries saw the Court as a new form of Western colonialism and reduced their cooperation.⁴⁵

3 The Individual Communications System under the OP of the ICCPR

The ICCPR protects the most basic civil and political rights of individuals. Such rights include the right to life, the right not to be tortured, freedom of speech and

³⁸ Goodman and Jinks, *supra* note 37, at 1019–1120.

³⁹ *Ibid.*, at 1067.

⁴⁰ *Ibid.*, at 990; LeBlanc, Huibregtse and Meister, 'Compliance with the Reporting Requirements of Human Rights Conventions', 14 *International Journal of Human Rights* (2010) 789, at 795; Hathaway, *supra* note 21, at 592; Helfer and Slaughter, 'Toward a Theory of Effective Supranational Adjudication', 107 *Yale Law Journal* (1997) 273, at 336.

⁴¹ Anagnostou and Mungiu-Pippidi, *supra* note 34; Goodman and Jinks, *supra* note 37, at 990; Hillebrecht, *supra* note 37, at 280.

⁴² Helfer and Slaughter, *supra* note 40, at 336; Grossman, 'Legitimacy and International Adjudicative Bodies', 41 *George Washington International Law Review* (2009) 107.

⁴³ D. Terris *et al.*, *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases* (2007), at 17.

⁴⁴ Van der Wilt, 'Universal Jurisdiction under Attack: An Assessment of African Misgivings towards International Criminal Justice as Administered by Western States', 9 *Journal of International Criminal Justice* (2011) 1043; Chandrachud, 'Diversity and the International Criminal Court: Does Geographic Background Impact Decision Making?', 38 *Brooklyn Journal of International Law* (2013) 487, at 511–513.

⁴⁵ Der Wilt, 'Universal Jurisdiction under Attack: An Assessment of African Misgivings towards International Criminal Justice as Administered by Western States', 9 *Journal of International Criminal Justice* (2011) 1043.

the right for equal treatment before the law.⁴⁶ Currently, 172 states have joined the Covenant.⁴⁷ The HRC was established under Part IV of the ICCPR in order to monitor the implementation of the various rights by the member states. The HRC consists of 18 committee members (CMs), elected by states that are members to the ICCPR.⁴⁸ As in many other international institutions, CMs coming from Western and developed states have tended to be appointed more frequently to the HRC than CMs from other states.⁴⁹ The OP grants individuals the right to bring individual communications against member states to the HRC.⁵⁰ Currently, 116 states are parties to the OP.⁵¹ By joining the OP, the state grants individuals under its jurisdiction the ability to bring communications to the HRC. In the communications, the petitioners should argue that at least one of the rights granted to them in the ICCPR has been violated by the member state. After conducting an adversarial procedure in writing, the HRC renders a decision called ‘views’. Those views indicate whether the ICCPR has been violated and, if so, what the proper remedies are. Currently, the common practice of the HRC is to indicate both a specific remedy for the applicant in the communication and general measures that the state needs to undertake in order to ensure that the violation does not occur again.⁵²

Among the remedies that the HRC has given in recent years are both a general ‘effective remedy’ and more specific remedies such as adequate compensation,⁵³ public apology,⁵⁴ commutation of the death sentence,⁵⁵ retrial,⁵⁶ effective investigation⁵⁷ and prosecution of individuals.⁵⁸ The HRC never indicates the amount of the compensation that should be paid to the applicant but leaves it *de facto* to the state itself to determine.⁵⁹ The original intention of the member states was probably that the views of the HRC under the OP would be regarded as general non-binding recommendations. However, in recent years, the HRC itself has been active in promoting its decisions

⁴⁶ ICCPR, *supra* note 5, Arts 6, 7, 19, 26.

⁴⁷ ICCPR: Status of Ratification, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en.

⁴⁸ ICCPR, *supra* note 5, Part IV.

⁴⁹ Shikhelman, ‘Diversity and Decision-Making in International Judicial Institutions’, 36 *Berkeley Journal of International Law* (2018) 60, at 87–88.

⁵⁰ Optional Protocol, *supra* note 6.

⁵¹ Optional Protocol: Status of Ratification, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=_en.

⁵² Y. Tyagi, *The UN Human Rights Committee* (2011), at 556.

⁵³ Human Rights Committee (HRC), *Shchetkov v. Belarus*, Case 1009/2001, ICCPR CCPR/C/87/D/1009/2001, 8 August 2006.

⁵⁴ HRC, *Lecraft v. Spain*, Case 1493/2006, ICCPR CCPR/C/96/D/1493/2006, 30 July 2009.

⁵⁵ HRC, *Chisanga v. Zambia*, Case 1132/2002, ICCPR CCPR/C/85/D/1132/2002, 3 November 2005.

⁵⁶ HRC, *Kurbonov v. Tajikistan*, Case 1208/2003, ICCPR CCPR/C/86/D/1208/2003, 16 March 2006.

⁵⁷ HRC, *Medjounne v. Algeria*, Case 1297/2004, ICCPR CCPR/C/87/D/1297/2004, 9 August 2006.

⁵⁸ HRC, *Madoui v. Algeria*, Case 992/2001, CCPR/C/94/D/1495/2006, 1 December 2008.

⁵⁹ Tyagi, *supra* note 52, at 556.

under the OP to have a higher normative status.⁶⁰ In General Comment 33 (GC 33), issued by the HRC, the HRC promoted its position that the views under the OP should be seen as more binding by member states.⁶¹ In order to support its position, the HRC asserted that the views issued by it ‘exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members’.⁶² Moreover, the HRC writes that the views represent an authoritative determination of the organ entrusted with interpreting the ICCPR⁶³ and that states should implement those views as an important part of their good faith implementation of the OP.⁶⁴ In total, 21 states filed objections and comments to GC 33, even though not all of those comments openly and directly disagreed with the HRC (some provided only general observations about the possible consequences of the new interpretation of the ICCPR presented in the draft of GC 33).⁶⁵ Interestingly, most of the explicit objections to GC 33 came from highly democratic states, such as Canada, France, Sweden and Australia.⁶⁶ Even the USA (which is not a member of the OP), filed an objection to GC 33.⁶⁷ A possible explanation for the fact that mainly democratic states have filed objections to GC 33 is that, because of strong internal mechanisms, those states would be especially affected by such an interpretation.

In 1997, the HRC appointed a special rapporteur for the ‘follow-up of views’, who monitors the compliance of states with decisions under the OP. State compliance is also reported in the annual report of the HRC to the General Assembly.⁶⁸ According to the follow-up procedures, 180 days after the views in the communications have been sent to the member state, the Secretariat of the Office of the High Commissioner for Human Rights sends a letter requesting information about the implementation of the communication by the member state. After (and if) a state writes a reply, it is sent to the applicant for his or her comments. When the rapporteur obtains this information, he or she writes a report grading the compliance of the respondent state with each and every remedy granted in the communication. Since 2014, the assessment criteria have included the following:

⁶⁰ Open Society Justice Initiative, *From Judgment to Justice: Implementing International and Regional Human Rights Decision* (2011), at 125–126, available at www.opensocietyfoundations.org/reports/judgment-justice-implementing-international-and-regional-human-rights-decisions; see also Fox-Principi, ‘Implementation of Decisions under UN Treaty Body Complaint Procedures: How Do States Comply? A Categorized Study Based on 268 Cases of “Satisfactory” Implementation under the Follow-Up Procedure, Mainly Regarding the UN Human Rights Committee’, 37 *Human Rights Law Journal* (2018) 1, at 9–10.

⁶¹ HRC, General Comment 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights (GC 33), Doc. CCPR/C/GC/33, 5 November 2008.

⁶² *Ibid.*, para. 11.

⁶³ *Ibid.*, para. 12.

⁶⁴ *Ibid.*, para. 15.

⁶⁵ Office of High Commissioner for Human Rights, *General Call for Written Comments Submissions Received from State Parties* (2008), available at www.ohchr.org/EN/HRBodies/CCPR/Pages/GC33-ObligationsofStatesParties.aspx.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, paras 15–17; ICCPR, Rules of Procedure of the Human Rights Committee, Doc. CCPR/C/3/Rev.10, 11 January 2012, Rule 101.

Reply/action satisfactory

A Reply/action largely satisfactory

Reply/action partially satisfactory

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional information required

Reply/action not satisfactory

C1 Reply received, but actions taken do not implement the recommendation

C2 Reply received but not relevant to the recommendation

No cooperation with the HRC

D1 No reply received within the deadline or no reply to any specific question in the report

D2 No reply received after reminder(s)

The measures taken are contrary to the recommendations of the HRC

E The reply indicates that the measures taken go against the recommendations of the HRC

Additionally, when the state does not provide information about implementing a certain remedy, it is graded as ‘no information’. For instance, in Communication no. 2243/2013, *Husseini v. Denmark*, the HRC assessed the implementation of the remedies by Denmark as follows:

- (i) Effective remedy, including review of the decision to expel him, with a permanent re-entry ban: B1
- (ii) Publication of Views: A
- (iii) Non-repetition: B1⁶⁹

There are two main problems with the follow-up process. First of all, the Secretariat is understaffed, and, therefore, states do not always receive letters reminding them to report the status of implementation. Second, states do not always report back whether, and to which extent, they actually implemented the decision in the communication. The lack of reporting sometimes occurs because the state indeed did not implement the decision, but, many times, it also occurs because the representatives of the state are too busy with other duties – for instance, many states have reporting responsibilities to several other treaty bodies. Sometimes, the states report only when their periodical reviews are due to the HRC (usually once in four years). Unlike the ECtHR, which has the Committee of Ministers to monitor compliance with its decisions,⁷⁰ the HRC does not have the capacity to oversee whether the remedies have been implemented. Therefore, the HRC can only rely on the reports of the state parties. I was unable to receive information on the response rate to the requests for updates. Finally, although the normative status of the views is somewhat under debate, only twice during the time of the research did a state party write in a follow-up response that it did not regard the views as binding.⁷¹

⁶⁹ HRC, Follow-Up Progress Report on Individual Communications, Doc. CCPR/C/115/3, 15 February 2017, at 16.

⁷⁰ Anagnostou and Mungiu-Pippidi, *supra* note 34, at 208–209.

⁷¹ HRC, *Martínez Fernández v. Spain*, Case 1104/2002, CCPR/C/83/D/1104/2002, 29 March 2005; HRC, *A.H.G. v. Canada*, Case 2091/2011, CCPR/C/118/3, 25 March 2015.

Because of the shortcomings mentioned above, it is quite hard to fully assess the implementation of recommendations by member states. A report from 2012 by Open Society finds that only 12.37 per cent of the views of the HRC under the OP are fully implemented.⁷² Kate Fox-Principi also provides some examples of when a decision of the HRC has been fully implemented.⁷³ However, as will be discussed in detail below, it seems that partial implementation of the views by member states is much more common.

4 Hypotheses, Data and Hypotheses Testing

A Hypotheses

In light of the previous literature, I hypothesize that the following factors might influence the level of state implementation of the views of the HRC:

1 Democracy and Human Rights Protection in the State

Democratic states and states that comply with human rights are more likely to comply with the views of the HRC in individual communications.⁷⁴ On the other hand, it is expected that less democratic states, and states that do not protect human rights, would be less likely to cooperate and implement remedies given by the HRC. The human rights scores used for this article have been constructed by Christopher Farris using human rights state reports published annually by the US Department of State and Amnesty International. It should be noted that these reports barely ever take into account implementing decisions in individual communications. Therefore, this might be a very important indicator for whether general respect (or disrespect) for human rights influences also state behaviour in implementing international decisions against a state's interpretation of its human rights obligations in a specific case. Perhaps, contrary to the expected, states with a good human rights record would be less likely to implement international decisions since their domestic institutions are regarded as democratic enough to reach the right decisions without guidance from international institutions. On the other hand, autocratic states might be more likely to implement specific decisions in order to improve their international reputation, while continuing to violate human rights in general.

2 Internal Capacity of the States

States are more likely to implement the views of the HRC when they have the internal resources (such as the GDP), capacity and institutions (both political and social) to

⁷² Open Society Justice Initiative, *supra* note 60, at 27.

⁷³ Fox-Principi, *supra* note 60, at 3.

⁷⁴ Data taken from Polity IV Project, available at www.systemicpeace.org/polityproject.html (for democracy scores); C. Farris, *Latent Human Rights Protection Scores*, Version 2 (2014), available at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/24872> (for human rights).

shift the preferences of the government towards doing so. As mentioned above, many studies have found that the internal capacity of a state is crucial for a state to be able and willing to implement international human rights law. Therefore, states with a higher governmental effectiveness,⁷⁵ GDP per capita,⁷⁶ rule of law,⁷⁷ and judicial independence⁷⁸ are more likely to implement remedies. Respectively, states that have less internal capacity are less likely to have the proper mechanisms for implementation.

3 *Strength of Civil Society*

Strong civil society can assist in political pressure and litigation before national courts in order to implement the remedies. Also, it can use the ‘naming-and-shaming’ tactic in order to pressure the government. On the other hand, in states with a weaker civil society, there might be less capacity to pressure the political institutions to comply with the decisions of the HRC. To operationalize this variable, I use the number of NGOs in a state per capita.⁷⁹

4 *Type of Remedy*

As demonstrated in the research about regional human rights courts, states might be more likely to implement remedies that are specific to the applicant, and, therefore, can be implemented at a low financial and political cost. Such remedies include not only paying reparations but also release from imprisonment, rehabilitation and retrial. On the other hand, states are less likely to conduct larger reforms that require political will and power, such as changing practices, legislation or even effective investigations.

5 *Representation on the HRC*

States might be more likely to cooperate with the HRC and implement decisions if they currently have, or have had in the past, their nationals serving as CMs. This is because, in such a case, the state might be more likely to see the HRC as legitimate, given that its point of view and interests are also represented overall on the HRC. On the other hand, if states have not been represented, the governments might feel estranged (or even hostile towards the HRC, as happened in the African case with the ICC).

6 *Subject Matter of the Communication*

States are less likely to implement views on subject matters that are close to state sovereignty or that are seen as politically and culturally sensitive. Previous research has

⁷⁵ ‘Data on Government Effectiveness’, *World Bank*, available at <http://info.worldbank.org/governance/wgi/index.aspx#home>.

⁷⁶ ‘IMF Data’, *International Monetary Fund*, available at www.imf.org/external/data.htm.

⁷⁷ ‘Data on the Rule of Law’, *World Bank*, available at <http://info.worldbank.org/governance/wgi/index.aspx#home>.

⁷⁸ Cingranelli, Richards and Clay, ‘CIRI Project’, *Google Drive*, available at <https://drive.google.com/file/d/0BxDpF6GQ-6fbY25CYVR1OTJ2MHM/edit>.

⁷⁹ Hafner-Burton and Tsutsui, ‘Human Rights in a Globalizing World: The Paradox of Empty Promises’, 110 *American Journal of Sociology* (2005) 1373.

indicated that states are less likely to delegate certain matters, such as decisions in the security area, to international institutions.⁸⁰ Therefore, I expect that states are less likely to implement the views of the HRC on the subjects of immigration (significant implications on state sovereignty), lesbian, gay, bisexual and transgender (LGBT) rights (an issue that is sensitive culturally and religiously in most societies), political rights cases and cases of enforced disappearances (both involve the political situation in the same state that should implement those decisions).

B Data and Selection Effects

In order to test my hypotheses, I coded all of the reports of the special rapporteur for follow up on communications between the years of 2014 and 2016 (Sessions 110–118). I chose these years because the specific system of grading the compliance with the communications mentioned above started only in 2014. During this time, the rapporteur graded the compliance with different remedies granted in 76 communications. The unit of analysis in the article is the implementation rate of each remedy, and, therefore, the number of observations is 300. It must be noted that, given the relatively short time frame of the research, it cannot show changes in complying with remedies over time. During this period of time, the level of implementation was assessed for communications brought against 28 states (see [Table 1](#)). The countries against which most communications were brought are Bosnia and Herzegovina (10), Cameroon (6), Nepal (6), Denmark (5) and Canada (5).

There are two possible selection effects that might influence the results of this research. The first possible selection effect is that different types of communications are brought against different types of states, and the type of the communication might make it harder (or easier) for a state to implement the remedies on the national level. For instance, one might assume that cases of political rights are more likely to be brought against non-democratic states. It should be also assumed that the remedies in those cases might require taking measures such as changing the legislation (or even the constitution), and therefore are very hard to implement. In the current article, I address this problem using three methods. The first method is controlling for the types of cases in the statistical analysis (I control for women's rights cases, immigration, LGBT, minority rights, due process, enforced disappearances and political cases). Second, the unit of analysis is the compliance with the remedy (and not with the decision as a whole). Finally, as explained in detail above, I also control in the regressions for whether the remedy was an individual remedy that includes only remedies regarding the applicant (such as paying reparations, release from imprisonment, rehabilitation and retrial) or whether the remedy required broader actions. It should be noted that the hypotheses above can indicate both why states comply, and why they do not comply. This is because the regression coefficients can be both positive and negative. For instance, if the regression coefficient for democracy is negative – that means that autocratic states are less likely to comply and vice versa.

⁸⁰ Koremenos, 'When, What, and Why do States Choose to Delegate?', 71 *Law and Contemporary Problems* (2008) 151, at 179.

Table 1: Descriptive statistics

States	Number of communications reviewed	Reservations to GC 33 regarding the normative status	Human rights score
Australia	3	Yes	1.89
Austria	1	No	1.66
Bosnia and Herzegovina	10	No	1.61
Cameroon	6	No	0.031
Canada	5	Yes	2.074
Colombia	3	No	-1.53
Denmark	5	No	2.51
Ecuador	1	No	0.58
France	4	Yes	1.77
Greece	3	No	0.87
Kazakhstan	2	No	0.15
Kyrgyzstan	2	No	-0.14
Latvia	1	No	1.43
Libya	1	No	-0.17
Lithuania	1	No	1.84
Mauritius	1	No	1.22
Nepal	6	No	-0.95
Netherlands	1	No	3
Paraguay	2	No	0.59
Peru	1	No	0.57
Republic of Korea	1	No	0.61
Russian Federation	4	Yes	-1.15
Spain	3	No	1.48
Sweden	2	Yes	2.49
Turkey	1	No	-0.42
Ukraine	2	No	0.03
Uruguay	2	No	2.32
Uzbekistan	2	No	-0.01

The second selection effect might be related to the process of obtaining information about the implementation of the remedies by the member states. As explained above, because of its workload, the Secretariat does not always send letters to the respondent states requesting information regarding the implementation status. Moreover, not all states send a response to the HRC, and it might be the case that more democratic (or less democratic) states are more (or less) likely to respond. If the difference between the states sending reports and the states not sending reports is not random but systematic, there might be a selection effect biasing the results. Therefore, I compared the polity scores and human rights scores of states in my current dataset that I use for this article (the 'new dataset') with the scores of states in a previous dataset that I had containing all of the views given during Sessions 59–109 (the 'old dataset'). Using a two tailed t-test for independent samples, the results indicated that there was no

statistically significant difference between the two groups (for polity score – old dataset M(4.79), SD(6.53) and new dataset M(5.44), SD(5.46), $t(596) = -0.81$, $p = 0.41$; for human rights score – old dataset M(0.57, SD(1.28) and new dataset M(0.79), SD(0.14), $t(599) = -1.44$, $p = 0.15$). Therefore, we have no evidence that the difference between the reporting and non-reporting states is systematic.

C Descriptive Statistics

In this part, I will provide some descriptive statistics for the reader to get an understanding of the raw data. Figure 1 presents the frequencies of the different grades given by the rapporteur in the report about implementation of the views.

As can be seen, the most common grade that is given is C1 – ‘Reply received, but actions taken do not implement the recommendation’. This accounts for 23.33 per cent of the grades. However, the second most common grade is A – ‘Reply/action largely satisfactory’, which accounts for 17.67 per cent of the grades. For 44 remedies (14.67 per cent), the rapporteur graded the implementation of the remedy as ‘no information’. From conversations with United Nations officials, I understood that this does not necessarily mean that the remedy was not implemented, but sometimes states forget to report the implementation of certain remedies. When I looked into what kind of remedies states do not usually include in their implementation reports, 33 of the 45 instances of ‘no information’ (73.33 per cent) were for the remedy of publishing the views of the HRC in the communication. Interestingly, the grade D2 has never been given (and once only the grade D was given, reflecting the new practice according to which after two reminders without replies the state gets a D).

The next step is to see which remedies are granted most often and which remedies are usually graded as A.

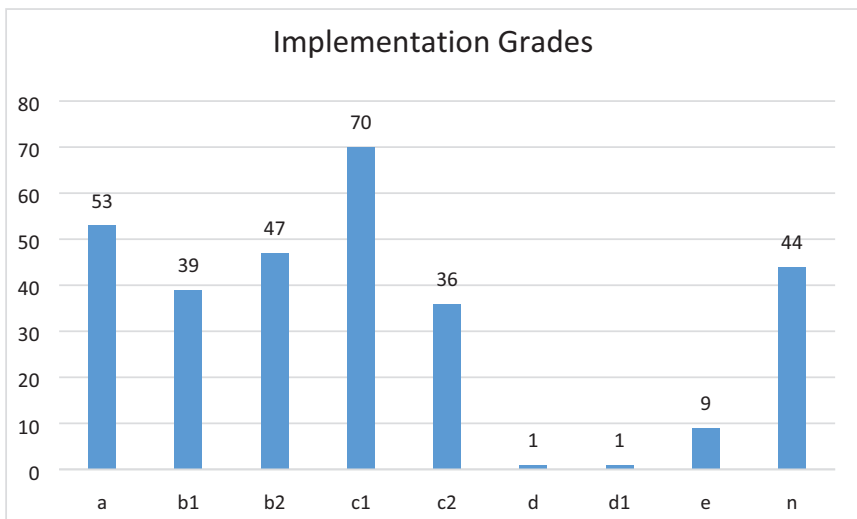


Figure 1: Frequency of Implementation Grades

As can be seen from [Figure 2](#), no remedy is consistently (even in more than half of the cases) implemented on an A level. The most implemented remedy is retrial, which was implemented on an A level in 50 per cent of the cases in which it was given. The second and third places are release from imprisonment (33.33 per cent) and publication of views (32.85 per cent). As expected, states are more likely to implement remedies that are easier and are related to the author of the communication himself/herself. This stands in contradiction to remedies that are of a more general nature such as non-repetition (9.61 per cent) and changing legislation/practice (16.66 per cent). Perhaps the most surprising finding is that, unlike the results in research about regional human rights courts, states have been very reluctant to pay reparations in the context of the HRC; this remedy was graded as A only 7.31 per cent of the time. However, it should be noted that, beside the three compensation remedies graded as A, there have been 10 other instances in which the respondent state did pay a certain compensation (or offered to pay compensation), but the HRC refused to give it the highest grade since the author of the communications claimed that the sum was insufficient.

Another important question is whether the subject matter of the communication influences the probability of implementing a remedy. For this purpose, I attached numbers to the letters of the grades (A being coded as 8 and E as 1).

As can be seen from [Figure 2](#), in general, the subject matter of the communication is not of special importance, although it seems that remedies in women's rights and LGBT rights communications tend to be slightly more implemented. However, a closer look suggests that this might not be very representative. This is because in the dataset there were only three communications regarding LGBT rights and only one case regarding women's rights. Therefore, I prefer to be cautious and conclude that the study did not make significant findings on this issue.

D Results

The next step is to test the hypotheses using a multivariate regression. Doing so is important because it enables us to control simultaneously for multiple independent variables that could affect the dependent variable. In my analysis, the dependent variable (the variable of interest) is the extent to which the state has implemented the remedy. As explained above, in order to analyse the level of implementation, I converted the grades given by the rapporteur to an ordinal scale – A being coded as 8 and E as 1. Also, to account for the fact that certain remedies had been granted in the framework of the same communication, I cluster the standard errors by communication. In my analysis, I use an ordinal logistical regression.

There are two major challenges to the statistical analysis. The first challenge is that 45 of the 300 observations have been graded by the rapporteur as 'no information'. There are two possible strategies to tackle this problem. The first strategy is to exclude these observations and analyse only 255 observations. Another strategy would be to assign those observations the median value of 4.5. The second strategy might make more sense in our case, since 73.3 per cent of the 'no information' observations are remedies of publishing views, and, according to [Figure 2](#), those remedies tend to be implemented more than others.

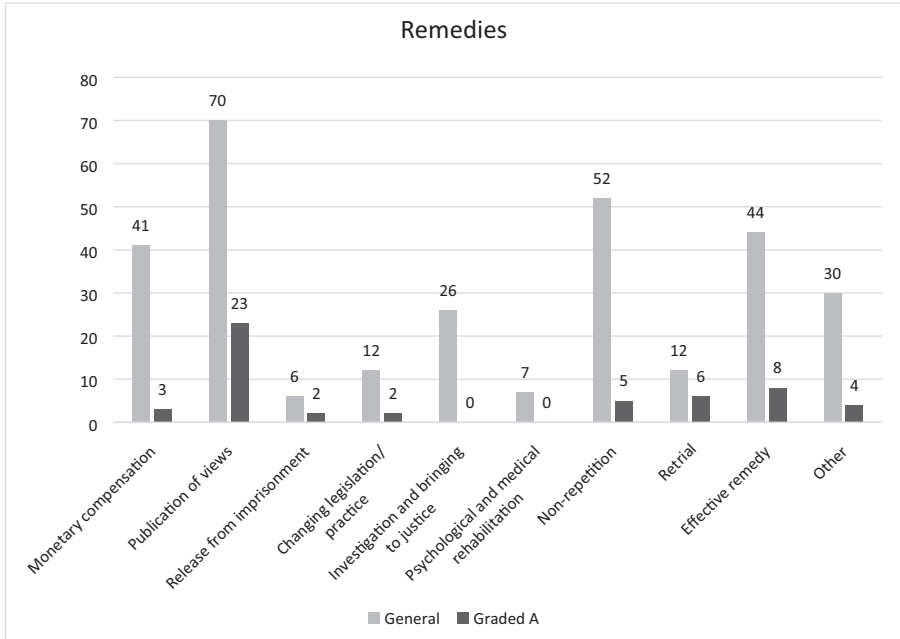


Figure 2: Frequency by type of remedy and frequency of remedies graded as A

Therefore, simply excluding these 45 observations might bias our analysis. Moreover, according to interviews I conducted, there is a certain probability that states do not report about this remedy simply because they are not sure that it should be reported. On the other hand, artificially assigning a grade to a remedy might also be seen as problematic. Since both of the strategies have advantages as well as disadvantages, I analysed the data both excluding the ‘no information’ observations and assuming that their grade is the median.

The second challenge to the statistical analysis is the problem of multicollinearity. Some of the independent variables that I use are highly correlated with each other. For instance, democratic states are also more likely to have high scores of human rights, GDPs and rule of law. Multicollinearity is a problem because it undermines the statistical significance of an independent variable.⁸¹ Therefore, I did not include in the same regression variables with a correlation higher than 0.7 (Pearson’s *r*). Additionally, I included in the regression several control variables that might be relevant to the implementation of the remedies. First, I controlled for the time that has passed since the views in the communication had been issued because one might assume that the likelihood of implementation rises with time. Also, I controlled for whether the state has filed a reservation to GC 33, regarding the normative status of the communications.⁸²

⁸¹ M.P. Allen, *Understanding Regression Analysis* (1997), at 176.

⁸² ‘GC 33: Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights General Call for Written Comments Submissions Received from State Parties’, *Office of the High Commissioner for Human Rights*, available at www.ohchr.org/EN/HRBodies/CCPR/Pages/GC33-ObligationsOfStatesParties.aspx.

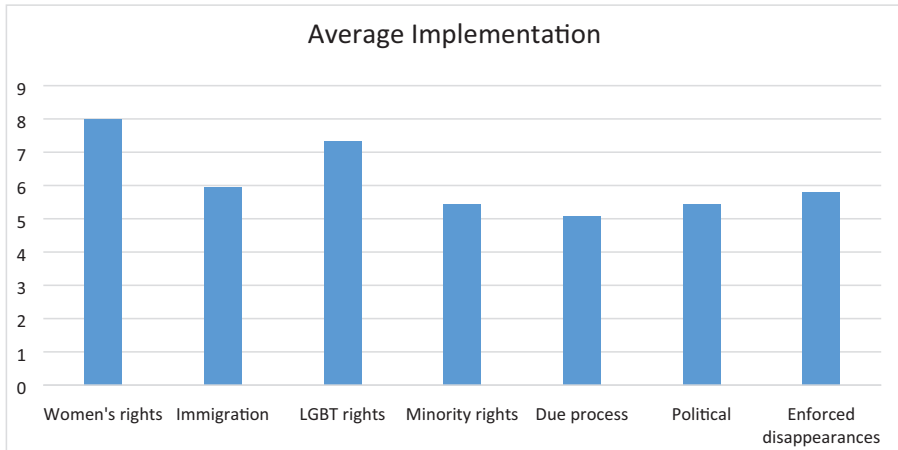


Figure 3: Average implementation rate by remedy

States that opposed GC 33 are less likely to implement the remedies. Finally, as mentioned above, I also controlled in the regression for the subject matter of the communications. The results of the ordinal logit regressions with no information as median score can be seen in [Table 2](#). The results of the ordinal logit regressions with no information observations excluded can be seen in [Table 3](#).

For a better understanding of the results, I should note that, when the regression coefficient (the number that is not in brackets in the tables) is positive, it means that there is a positive correlation between the coefficient of the variable and the chances of implementing a remedy given by the HRC. On the other hand, when the coefficient is negative, then there is a negative correlation between the variable and the chances of implementation. However, only when the p-value of the coefficient is less than 0.1 (or even less than 0.05), are the results regarded as having statistical significance.

The most consistent findings from the regression specifications are that the coefficients of the human rights score of the state and its GDP per capita are positive and statistically significant ($p < 0.01$ and $p < 0.05$ respectively) – meaning that states with a higher human rights score and a higher GDP per capita are more likely to implement decisions of the HRC. Also, as predicted, states that submitted reservations to GC 33 are less likely to implement the remedies ($p < 0.01$ in most of the specifications). Additionally, states are more likely to implement decisions on women's rights and LGBT rights ($p < 0.01$). Finally, there is some evidence that having a CM on the HRC has a positive influence on the level of implementation of the remedy by the state, but it is not extremely strong ($p < 0.05$ and $p < 0.1$ in some of the regressions).

However, there were also some important differences between the two types of specifications (with the 'no information' observations and without them). The most notable difference between the specifications can be seen in the coefficients of government effectiveness, polity score, NGOs per capita and independence of the judiciary. In [Table 2](#), which includes the analysis of the full dataset, the coefficients of these variables

Table 2: Ordinal logit regressions with no information as median score

	(1)	(2)	(3)	(4)	(5)	(6)
Polity	0.0418* (0.0238)	-0.00520 (0.0356)				
Government effectiveness		0.746** (0.311)		0.569*** (0.216)		
GDP (log)			0.386*** (0.141)			
Rule of law				-0.0354 (0.130)		
NGO population				1.300 (1.058)	1.835* (1.085)	
Independence of judiciary					0.520** (0.234)	
Human rights						0.408** (0.162)
Individual remedy	-0.306 (0.238)	-0.246 (0.246)	-0.263 (0.238)	-0.317 (0.249)	-0.290 (0.242)	-0.253 (0.241)
CM	1.113* (0.670)	0.345 (0.645)	1.052* (0.628)	0.247 (0.721)	0.438 (0.652)	0.956 (0.624)
Time	-0.0470 (0.0296)	-0.0340 (0.0341)	-0.0512* (0.0280)	-0.0213 (0.0336)	-0.0177 (0.0363)	-0.0487* (0.0274)
GC 33	-3.435*** (0.860)	-3.471*** (0.830)	-3.572*** (0.832)	-2.974*** (0.967)	-2.863*** (0.992)	-3.328*** (0.877)
Women's rights	15.21*** (1.230)	15.90*** (1.275)	15.24*** (1.235)	16.04*** (1.366)		15.48*** (1.250)
Immigration	0.460 (0.639)	0.158 (0.679)	0.285 (0.637)	0.199 (0.661)	0.276 (0.620)	0.280 (0.607)
LGBT	4.906*** (1.320)	4.854*** (1.319)	4.874*** (1.406)	4.666*** (1.389)	4.822*** (1.365)	4.935*** (1.256)
Minority	0.119 (0.352)	-0.0365 (0.407)	0.0937 (0.357)	-0.262 (0.492)	-0.216 (0.492)	0.281 (0.422)
Due process	-0.788 (0.798)	-0.779 (0.718)	-0.819 (0.736)	-0.758 (0.739)	-0.644 (0.714)	-0.656 (0.688)
Political	-0.493* (0.256)	-0.147 (0.320)	-0.129 (0.306)	-0.0963 (0.328)	-0.198 (0.300)	-0.108 (0.325)
Disappearance	0.256 (0.335)	0.560 (0.373)	0.526 (0.375)	0.580 (0.369)	0.214 (0.326)	0.407 (0.359)
Observations	300	300	300	295	298	300

Robust standard errors in parentheses

*** p < 0.01, ** p < 0.05, * p < 0.1

are positive and statistically significant, meaning that higher values of those variables increase the levels of implementation by member states. On the other hand, in [Table 3](#), which does not include the 'no information' observations, the coefficients of those variables are not statistically significant (though the coefficients remain positive).

Table 3: Ordinal logit regressions with no information observations excluded

	(1)	(2)	(3)	(4)	(5)	(6)
Polity	0.0218 (0.0253)	−0.0153 (0.0406)				
Government effectiveness		0.581 (0.383)		0.311 (0.225)		
GDP (log)			0.369*** (0.137)			
Rule of law				−0.139 (0.137)		
NGO population				1.450 (1.216)	1.821 (1.229)	
Independence of judiciary					0.306 (0.234)	
Human rights						0.421** (0.203)
Individual remedy	−0.893*** (0.229)	−0.822*** (0.246)	−0.842*** (0.232)	−0.899*** (0.243)	−0.887*** (0.234)	−0.855*** (0.240)
CM	1.515** (0.716)	0.845 (0.803)	1.308* (0.669)	0.789 (0.886)	0.890 (0.790)	1.077 (0.734)
Time	0.0288 (0.0600)	0.0402 (0.0677)	0.0349 (0.0592)	0.0701 (0.0604)	0.0588 (0.0638)	0.0398 (0.0559)
GC 33	−3.324*** (1.131)	−3.275*** (1.133)	−3.436*** (1.102)	−2.581** (1.283)	−2.662** (1.332)	−3.115** (1.216)
Women's rights	13.19*** (1.330)	13.99*** (1.510)	13.48*** (1.341)	14.48*** (1.500)		13.96*** (1.393)
Immigration	0.291 (0.756)	0.105 (0.794)	0.213 (0.754)	0.258 (0.793)	0.157 (0.755)	0.243 (0.737)
LGBT	4.522*** (1.489)	4.421*** (1.509)	4.464*** (1.554)	4.138** (1.626)	4.306*** (1.569)	4.502*** (1.479)
Minority	−0.133 (0.622)	−0.229 (0.692)	−0.160 (0.645)	−0.506 (0.839)	−0.567 (0.825)	0.0654 (0.716)
Due process	−0.978 (0.789)	−0.930 (0.726)	−0.931 (0.749)	−0.914 (0.721)	−0.863 (0.726)	−0.770 (0.721)
Political	−0.667** (0.296)	−0.347 (0.412)	−0.320 (0.317)	−0.237 (0.371)	−0.430 (0.309)	−0.228 (0.375)
Disappearance	0.0914 (0.387)	0.352 (0.417)	0.432 (0.422)	0.416 (0.421)	0.124 (0.356)	0.303 (0.406)
Observations	255	255	255	251	253	255

Robust standard errors in parentheses

*** $p < 0.01$. ** $p < 0.05$. * $p < 0.1$

Moreover, in Table 3, the coefficient of individual remedy changes its sign to be negative and becomes statistically significant ($p < 0.01$), meaning that states are actually less likely to implement the remedies that I defined as individual.

Finally, I also chose to run an ordinal logistic regression for different types of remedies and see if individual remedies are indeed more likely to be implemented. I tested

whether the remedies of monetary compensation, publication, change of legislation, non-repetition and effective investigation are more (or less) likely to be implemented. Additionally, I controlled for the human rights situation in the state, reservations to GC 33 and the time that passed since views were given. Here, I also analysed the data in two versions: with the ‘no information’ observations and without them. Finally, the standard errors were clustered for communications. The results of these regressions are presented in Table 4.

As can be seen from Table 4, the results were not very statistically significant. In the specification of the regression with all of the observations, none of the remedy type coefficients were statistically significant. In the second specification, contrary to the hypothesis, it seemed that states were slightly less likely to implement monetary remedies ($p < 0.1$). On the other hand, states were more likely to publish the views of the HRC ($p < 0.01$). It is evident that the human rights score of the state, which was inserted as a control variable, is the most important predictor of the level of the remedy implementation ($p < 0.01$). Therefore, it seems that regardless of the easiness of the remedy, the most important factor is the general human rights record of the state. As a robustness check, I decided to cluster in the regressions the standard errors for states (rather than for communications as before). This was important because the identity of the specific state might have also mattered – some states might have had a general tendency to implement (or to not implement) communications regardless of the wider

Table 4: Implementation of remedies

	(1)	(2)
	All observations	Without ‘no information’
Monetary	-0.323 (0.299)	-0.569* (0.327)
Publication of views	0.210 (0.372)	2.591*** (0.535)
Change legislation/practice	0.379 (0.429)	0.333 (0.470)
Non-repetition	-0.302 (0.253)	-0.375 (0.293)
Investigation	-0.0562 (0.266)	-0.0792 (0.314)
GC 33	-2.032*** (0.745)	-2.114** (0.856)
Time	-0.0385 (0.0356)	0.0510 (0.0585)
Human rights	0.506*** (0.126)	0.648*** (0.136)
Observations	300	255

Robust standard errors in parentheses

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

characteristics of the states or the communications. However, doing so did not change the statistical results almost at all.

5 Discussion

The main aim of this article was to see how different characteristics of states, communications and remedies influence the level on which states implement remedies in individual communications under the OP. As mentioned above, the previous literature about the implementation of international law and decisions of international courts found a correlation between democracy, internal capacity of states and the human rights scores, with the level of implementation of human rights treaties and court decisions by states. Also, the literature found that states were more likely to pay reparations than implement any other remedy granted by a regional human rights court.

In certain regards, the current research follows the findings of the previous research on the implementation of international law, but, in other regards, it somewhat differs. It seems that the variable that is most consistently positively correlated with the implementation of remedies is the human rights score of the state – the more compliant the state is in general with human rights law, the more likely it is to implement remedies given by the HRC in individual communications. A possible explanation to this finding is that officials of states with high human rights scores might have more respect for international human rights institutions as authorities in the field of human rights. Also, they might have a more genuine intention to implement international human rights law according to agreed international standards. As mentioned above, one could have argued that democratic states might be less likely to change the decisions of their authorities, which eventually leads the individual to file a communication. This is because in those states there might be a general trust in how national authorities apply international human rights law. However, it seems that even when there is a disagreement between a human rights compliant state and an international institution (like the HRC) regarding the application of human rights standards to specific circumstances, there will be a tendency to defer to the decision of the international institution. Therefore, even if prior to the decision in the communication the state assumed that its actions complied with international standards, there is a general willingness to reconsider state actions if the HRC disagrees with the states' application of the ICCPR in the concrete case.

On the other hand, somewhat contrary to the previous literature about international law, the variables related to the internal capacity of the state are less significant when it comes to implementing the views of the HRC. Moreover, in all of the specifications, the variables of rule of law and NGOs were not (or only very slightly) statistically significant, and the democracy rate of the regime did not seem to have a significant impact either. However, interestingly, the resources of the state – namely, its GDP per capita – were very positively correlated with the implementation of remedies. Finally, the type of remedy was almost not significant at all for the level of implementation.

This stands in stark contrast to the partial implementation of decisions of regional human rights regimes by paying reparations.

The fact that the internal capacity of states and the regime type are less significant in the context of individual communications might be explained by the fact that the views of the HRC are generally perceived by states as soft law. Therefore, perhaps different processes drive the decisions of states to implement (or to not implement) the remedies in individual communications under the OP. First of all, the number of decisions issued by the HRC is not high when compared to the European and Inter-American human rights systems, and it probably does not require as much institutional capacity to implement them. Hence, probably the implementation of the HRC views is much more dependent on the overall willingness of the state to cooperate with the HRC, and the capacity of its national institutions is of lesser significance. This can also explain why reparations are not necessarily implemented more than other remedies. Given that the states view the implementation as voluntary, to some degree, if they already choose to implement the views, there should not be a substantial difference between different types of remedies. This stands in contradiction to the situation in the regional human rights courts. In these courts, the normative status of the decisions is not challenged, and, therefore, states might be more willing to at least pay reparations and not bear the diplomatic consequences of completely disregarding the decision of the court.

The debated normative status of the views of the HRC in individual communications could also explain why the number of NGOs is not significant to the implementation rate in this study. Since NGOs have limited resources, perhaps they prefer to focus their efforts on lobbying for implementation of decisions that are binding according to international law. This might also suggest that the authority of the HRC is not high enough for it to be used for an effective naming-and-shaming campaign. It should be added that states that submitted reservations to GC 33 were indeed less likely to implement the remedies granted by the HRC. On the one hand, for obvious reasons, this finding is unsurprising. On the other hand, as mentioned above, those reservations have been submitted mainly by democratic and human rights-abiding states. Exactly those states might face strong internal political pressure if the communications are regarded as binding. This might suggest that, in order to establish a more effective international human rights regime with regard to democratic states (but not only), there should be insistence that the status of the decisions of the institution should be binding and not merely general recommendations. Also, perhaps this suggests that international human rights institutions should work more in cooperation with states rather than making one-sided decisions to which some strong states oppose. Moreover, if such a unilateral decision decreases the willingness of high-profile democratic states to cooperate with the institution, this can even provide legitimacy for less democratic states to follow those footsteps and do the same, eventually harming the legitimacy of the institution as a whole.

Another interesting finding is that the subject matter of the communication is not of great importance to the level of implementation. The regressions do show that the communications that concerned women's or LGBT rights were more likely to be

implemented. However, as mentioned above, there were only four cases of this type, so these results should be treated with caution. It seems that if a state has a general willingness to implement the remedy, the subject matter of the communication (as well as the type of remedy) does not matter very much.

An additional aspect that this article wanted to look into was the connection between the representation of the state on the HRC and the probability of implementing remedies. As far as I am aware, this aspect was not tested in any previous research regarding international institutions. This article seems to find some connection between representation and implementation of remedies, which can be a first step in investigating the larger phenomena of the interconnection between representation, legitimacy and state cooperation with international institutions. On the one hand, since the views of the HRC are generally regarded as soft law, the findings of this study might not be automatically applicable to international courts (the decisions of which are binding). On the other hand, there are also many other international institutions, the decisions of which are regarded as soft law, and perhaps the findings of this study could be of special importance to them. There are many normative reasons to have more diverse international institutions even without empirical support for the hypothesis that the diversity of the institution influences the cooperation of states with it.⁸³ However, if the international community needs yet another incentive to break the pattern of over-representation of Western experts on international institutions, this study provides it to some degree. Moreover, appointing a diverse panel of experts might be of special significance in the context of international human rights institutions (such as the HRC) because of the general difficulty of incentivizing states to cooperate with international human rights law and international human rights institutions.

The findings of this study are especially relevant to international (and regional) institutions and their decisions, which are regarded as soft law. This is especially true for those institutions that, on the one hand, have mechanisms of individual complaints but, on the other hand, whose decisions are not binding. As mentioned above, such institutions include the United Nations Human Rights Council, the Inter-American Commission for Human Rights, the African Commission for Human and People's Rights and other United Nations treaty bodies. However, in my opinion, the article is less able to shed light on the bigger question of when states implement international human rights law mainly because the most statistically significant variable was simply the human rights score of the respondent state.

6 Some Thoughts for Conclusion

This article has focused on the implementation of the views of the HRC in individual communications. However, there is also a significant amount of international

⁸³ See generally Grossman, 'The Normative Legitimacy of International Courts', 86 *Temple Law Review* (2013) 61.

law literature arguing that compliance with international law is very hard to measure⁸⁴ and that international law affects the behaviour of states in more ways than just simple compliance with norms.⁸⁵ These arguments might be of special importance in the context of the OP. Currently, 116 states have chosen to grant the HRC jurisdiction to decide individual communications. It can be reasonably assumed that, had the decisions of the HRC under the OP been binding, far fewer states would have joined the system. Therefore, perhaps in the case of the HRC, we should remember that there is also significance to merely having a dialogue with a state over a certain issue, especially with states that tend to violate human rights. Moreover, the views under the OP help to clarify to all member states of the ICCPR which way the different provisions of the ICCPR should be interpreted.⁸⁶ Thus, the effect of the OP might be much more significant than just the implementation of a specific remedy. However, given that the current research was designed in order to explore patterns of implementation, it might miss the wider influence that the OP potentially has on the conduct of states.

⁸⁴ Kingsbury, 'The Concept of Compliance as a Function of Competing Conceptions of International Law', 19 *Michigan Journal of International Law* (1997) 345; Hillebrecht, 'Rethinking Compliance: the Challenges and Prospects of Measuring Compliance with International Human Rights Tribunals', 1 *Journal of Human Rights Practice* (2009) 362, at 377.

⁸⁵ Howse and Teitel, 'Beyond Compliance: Rethinking Why International Law Really Matters', 1 *Global Policy* (2010) 127.

⁸⁶ See Byrnes, 'An Effective Complaint Procedure in the Context of International Human Rights Law', in A.F. Bayefsky (eds), *The UN Human Rights Treaty System in the 21st Century* (2000) 139, at 142.