# Settle or Litigate? Consequences of Institutional Design in the Inter-American System of Human Rights Protection

---


### Abstract

Why do states engage in settlements with victims of human rights violations? Although the friendly settlement procedure has been on the books at the Inter-American Commission on Human Rights since 1992, states did not begin utilizing the procedure in earnest until nearly ten years later – why? I argue that state behavior – the choice to settle or litigate – at the Inter-American Commission is driven in part by two features of the institution's design: (1) optional jurisdiction of the Inter-American Court and (2) a 2001 rule change that reduced the level of discretion over submission of cases to the court. Using an original dataset of petitions at the Inter-American Commission, I show that states engaged in more settlements in response to the increased cost of litigation, but that these changes are limited to states under the Inter-American Court's jurisdiction. Moreover, as a positive, perhaps unintended, consequence, states' levels of compliance with the Commission's non-binding recommendations also increased after the rule change. My findings indicate that it is possible for institutions to achieve more desirable or efficient outcomes by changing the rules of the game.

## 1. Introduction

Why do states engage in settlements with victims of human rights violations? While some scholarly work has been done on states' decisions to negotiate or litigate at institutions like the International Court of Justice (Gilligan, Johns and Rosendorff, 2010) and World Trade Organization (Guzman and Simmons, 2002; Ahn, Lee and Park, 2013; Gray and Potter, 2020), there has been relatively little work done on the strategic incentives of states to engage in settlements with individual petitioners (as opposed to other states). Although many human rights institutions exist in which individuals can bring allegations of abuses against their own state, few of these institutions have an established mechanism for facilitating friendly settlements. Since 1992, the Inter-American Commission on Human Rights has had the authority to facilitate friendly settlements between petitioners and the accused state. However, the procedure was not commonly initiated until 2001, and even then, only by certain states. What explains this variation?

I argue that states' decisions to settle or litigate are driven, at least in part, by the institution's design. Settlement decisions are always made in the shadow of a tribunal; in other words, with the knowledge, on the part of both parties, that failure to settle will result in a tribunal evaluating the claims of both sides and determining which party prevails (Bebchuk, 1984). Unlike many domestic courts, however, international courts do not always exercise their jurisdiction, and as such may decide not to rule on the merits of a case (Conti, 2008; Gilligan, Johns and Rosendorff, 2010). This creates some uncertainty on the part of the negotiating parties about how long the tribunal's shadow extends. Thus, one institutional design feature that states and/or institutions can change is the set of rules over how and which cases are submitted to the tribunal for judgment.

Two features of the Inter-American system's design help explain variation in states' decisions to engage in the friendly settlement procedure. The first is the fact that the Inter-American Court's jurisdiction is optional, not compulsory. As I explain in Section 2, the

Inter-American system is comprised of two institutions: the Inter-American Commission, which has compulsory jurisdiction over all states in the Organization of American States (OAS) but cannot issue legally binding rulings, and the Inter-American Court, which has optional jurisdiction over OAS states that ratify the American Convention on Human Rights and accept its jurisdiction, but can issue legally binding judgments. The shadow of a court looms much larger when states are under the Court's jurisdiction; in other words, not all states are negotiating under the shadow of a tribunal.

The second feature is the Inter-American Commission's level of discretion over submitting cases to the Court, which was restricted by a Rules of Procedure change in 2001. Since then, the probability of a case being taken up by the Court increased dramatically for states under the Court's jurisdiction (Cavallaro and Brewer, 2008). This in turn decreased the expected value of continued litigation to the state, making settlement more attractive. Because the probability and cost of losing at the Court are so high, the expected value of litigation was already low, but states could rationally opt to continue through the process because there was a good chance of avoiding a legally binding ruling on the merits. Once this chance was substantially reduced, however, litigation became less valuable than settlement, and states adjusted their behavior accordingly. The percentage of petitions resulting in friendly settlement nearly doubled, from 15% to 27%.

Additionally, the procedural change reducing the Commission's discretion over submission had the positive, possibly unintended, consequence of increasing compliance with the Commission's non-binding recommendations in cases that were not submitted to the Court. Because non-compliance with the Commission's recommendations became grounds for submission to the Court, the Commission had more power to obtain some level of compliance from the state, if the state wanted to avoid the Court's judgment. Thus, even rules meant to create only a more efficient process may also result in more socially desirable outcomes through the incentives that they create.

More broadly, this work suggests that institutional rules do matter. Institutional design

theories suggest as much (Voeten, 2019), but it is often difficult to show how and why rules matter, given that most rules are sticky and unlikely to change over time. By examining the specific instance in which rules *did* change, and assessing the impact of that change on subsequent state behavior, this work grants us an opportunity to assess just how consequential an institution's rules can be.

This paper proceeds as follows. In Section 2, I introduce the two institutions of the Inter-American system in greater detail. In Section 3, I lay out the incentives for the petitioner and state to settle and how institutional design might affect these incentives. In Section 4, I illustrate the effect of institutional design changes on petition outcomes using an original dataset of petitions from 1992 to 2018. I also address several alternative explanations for these patterns. The final section concludes.

## 2. The Inter-American System's Design

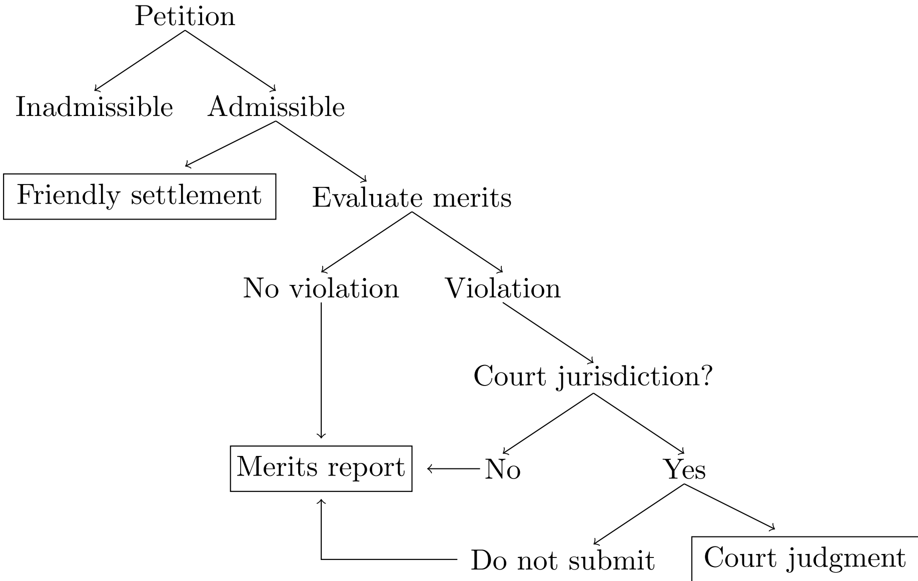
The Inter-American Commission and Inter-American Court of Human Rights were created in 1959 and 1979, respectively, and together form the Inter-American system of human rights protection. The relationship between the two institutions looks like that of the European Commission and Court of Human Rights prior to 1998, with the Commission acting as gatekeeper to the Court. This means that individuals are not able to petition the Inter-American Court directly, but must initiate all complaints at the Commission. As such, the Commission functions both as a court of first instance and also as a petitioner (Zschirnt, 2017). Although both institutions also promote human rights through non-adjudicative means, like thematic reports and on-site visits (Commission) and advisory opinions (Court), for the purposes of this paper, I will focus on the roles the institutions play in the individual petition process.[1]

The Commission has jurisdiction over all 35 states in the Organization of American States (OAS). It is empowered to hear alleged violations of the American Declaration on the

[1] See Shelton (2015) for more information about the non-adjudicative activities of the Inter-American Commission.

Rights and Duties of Man and the American Convention on Human Rights. The substantive content of these rules is the same, but they differ in their legal authority. As a treaty, the American Convention on Human Rights is legally binding; as a declaration, the American Declaration on the Rights and Duties of Man is not. In the language of Abbott and Snidal's legalization (delegation, obligation, and precision), the American Convention requires greater obligation and allows for greater delegation via the creation of the Inter-American Court of Human Rights.[2] The Court presently has jurisdiction over 21 OAS states that have ratified the American Convention and recognized the Court's competence to hear alleged violations.[3]

**Figure 1:** Illustration of Case Progression in the Inter-American System




***Note:*** The three possible outcomes of petitions are indicated by rectangles.

The progression of petitions in the Inter-American system is illustrated by Figure 1. Petitions are received from individuals alleging violations of their rights under the American

[2]See Abbott and Snidal (2000) for a further discussion of the dimensions of hard and soft law.

[3]Dominica, Grenada, and Jamaica are examples of states that have ratified the American Convention, but remain outside of the Court's jurisdiction. As such, they have undertaken the higher obligation, but not higher delegation. Venezuela denounced the American Convention in 2012 and left the Court's jurisdiction in 2013, but rejoined the American Convention in July 2019.

Declaration or American Convention, depending on whether the state that violated their rights has ratified the latter. Once the Commission receives the petition, it evaluates whether the complaint meets the standards for admissibility. For a petition to be admissible, the individual must have exhausted all domestic remedies, submitted the petition within six months of the exhaustion of domestic remedies, and not have the same case pending before another international body.[4]

After the petition has been processed, the Commission places itself at the disposal of the petitioner and state to facilitate a friendly settlement agreement. This is the only opportunity for settlement in the petition process.[5] Although the friendly settlement procedure was mentioned in the American Convention, the Commission did not actively facilitate settlements until a procedural rule change in 1992.[6] In a friendly settlement agreement, the state admits to violating rights under international law and agrees to a set of remedies. Once a friendly settlement is signed and approved by the Commission, the litigation process ends. As such, petitioners give up any claim to future recourse under the Inter-American system. In other words, once a friendly settlement is in place, it is no longer possible to receive a judgment on the merits of the case from the Commission or the Court.[7]

If the state and petitioner(s) cannot reach an agreement, the case will proceed to the litigation stage. Here the Commission will evaluate evidence from the state and petitioner and reach a finding on the merits. If the Commission finds that the petitioner's rights have

[4]Admissibility criteria are set forth in Articles 26-36 of the Rules of Procedure of the Inter-American Commission on Human Rights, revised 2013.

[5]I do not consider compliance agreements, which are sometimes signed by the state and petitioner after the Commission issues a merits report, to be the same as settlements as they seek to clarify only the nature of the remedies, and come after the determination of state responsibility.

[6]Prior to 1992, the Inter-American Court interpreted Article 49 of the American Convention, which provides for friendly settlements, to mean that the Commission *may* provide for a friendly settlement proceeding, but is not legally required to (Standaert, 1999). This made sense when the institutions were young and states rarely responded to the Commission's request for information. In 1992, the Commission's new regulations provided that the Commission *shall* make itself available for friendly settlement proceedings. See Regulations of the Inter-American Commission on Human Rights, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 103 (1992).

[7]This is not explicitly stated in the American Convention, but cases can only be referred to the Court if procedures in Articles 48 and 50 have been fulfilled; Article 50 assumes that a settlement has not been reached.

been violated, it issues a set of recommendations. The Commission's recommendations tend to include both individual remedies (e.g., monetary reparations) and tangible guarantees of non-repetition (for example, changing domestic laws to prevent future violations of a similar kind). Note that the language here – recommendations – reflects the lower level of obligation as these are not legally binding orders. The Commission then transmits the report to the state and offers it a chance to respond and implement the recommendations.

After receiving the state's response (or if the time to respond elapses without a reply), the Commission must decide whether to publish the merits report, thus terminating the litigation process at the Commission, or to submit the case to the Inter-American Court. For states outside of the Court's jurisdiction, the only option is to publish the merits report. If the state is under the Court's jurisdiction, the Commissioners decide whether to submit the case to the Court, taking into account the petitioners' wishes on the matter and to what extent the state has fulfilled its recommendations. The state can affect the probability of the case reaching the Court by complying with the Commission's recommendations. If the Commission decides not to send the case to the Court, it publishes the merits report and takes it upon itself to monitor compliance with the recommendations. If the Commission sends the case to the Court, it has ceded these responsibilities to the Court.[8]

Although the Court's proceedings come chronologically after the Commission's, it is important to understand the Court is *not* an appellate body. Rather, the process of adjudication begins anew. Unless the state fully accepts responsibility for the violation, the Court issues its own, separate ruling on the merits of the case and, if it finds a violation, issues a set of legally binding orders. Again, these are substantively similar to the Commission's recommendations, but carry a higher level of obligation on the part of the state. Given that the merits of the case have already been reviewed by the Commission, it is not surprising that the Court rarely finds in favor of the state.[9] All Court decisions are final, so the litigation

[8]There is one exception, which is that if the Court rejects the case on jurisdictional grounds, the Commission resumes its responsibilities, as happened in *Alfonso Martín del Campo Dodd v. Mexico*.

[9]If the decision goes in favor of the state, it tends to be because the Court accepted one or more of the state's preliminary objections, which preclude jurisdiction.

process ends with the Court's judgment.

It is important to note that, on the whole, the Inter-American system is designed to resolve cases before they reach the Court. Friendly settlements encourage negotiated ends to disputes and ensure quicker access to justice for victims. The Commission's merits reports clarify the state's legal obligations, make declarative statements about whether a violation has occurred, and offer suggestions for how the state can remedy the violation, if appropriate. At each step in the process, the state can choose to end litigation through either settlement or compliance. Yet, many cases end up at the Court. This is not necessarily because states are "off the equilibrium path" but because the institution's rules create incentives for states to behave in certain ways.

## 3. Theoretical Expectations

Although the Commission facilitates friendly settlements, the decision to settle is ultimately one taken by the state and petitioner(s). Petitioners may prefer settlement because it means faster access to justice: the state admits responsibility for the violation and pledges to take measures to remedy the violation. Throughout the adjudicative process, states seek to minimize costs to themselves, be they financial or reputational, present or future. Settlement may resolve a case faster, which can benefit states when dealing with controversial issues they would rather keep out of the press. However, it could also encourage other petitioners to submit petitions for the same kind of violation, thus requiring the state to pay out more in the future. All of these are issues to consider as the state considers its position on settlement.

In addition to the desires of the petitioner and state, aspects of an international institution's design can also affect decisions to settle. For example, states might choose settlement if the terms of such an agreement are kept secret, as in international investment dispute settlement (Hafner-Burton, Steinert-Threlkeld and Victor, 2016; Hafner-Burton and Victor, 2016).[10] Likewise, states' settlement decisions might be affected by the presence of third

[10] Many have criticized this lack of transparency; see Fiss (1984)'s strongly titled "Against Settlement" and

parties to the dispute (Busch and Reinhardt, 2006; Johns and Pelc, 2014). Perhaps most consequentially, the presence of an international tribunal to adjudicate the dispute if settlement negotiations fail can affect the likelihood of settlement (Gilligan, Johns and Rosendorff, 2010; Johns, 2015).

While there are similarities, there are also a few meaningful differences between human rights settlement negotiations and those in other areas. First, the settlements are not secret. The Inter-American Commission, for example, publishes full texts of settlement agreements once they have been approved. Settlements facilitated by the European Court of Human Rights are likewise made public and published as case reports.[11] Thus, any political incentive to engage in settlement to avoid publicly admitting fault is negated. Second, while some courts, like the International Court of Justice, allow for additional bargaining after the initial judicial decision, neither the Inter-American nor the European Court allows this.[12] As such, parties only have one settlement opportunity, increasing the importance of pre-trial negotiations.[13] This also means that once the petition is beyond the settlement phase, the petitioners cannot influence how the case proceeds.

Additionally, the shadow of a tribunal is crucial to models of settlement. This creates a clear alternative to settlement (litigation) and a default procedure if the parties cannot agree on a solution.[14] However, international tribunals – including human rights courts – may not necessarily receive the case just because a settlement is not reached. Even where an international court with adjudicative powers exists and can receive a petition, it might

---

the equally clear directive of Hafner-Burton, Puig and Victor (2017)'s "Against Secrecy." Likewise, Kucik and Pelc (2016) argue that private negotiations during settlement of World Trade Organization disputes create negative externalities for other members.

[11]For a detailed discussion of friendly settlements at the European Court, see Keller, Forowicz and Engi (2010).

[12]The Inter-American Commission has a procedure for "compliance agreements" to merits reports. However, these are negotiations only over remedies, in line with the Commission's original recommendations; there has still been a judgment against the state, which keeps compliance agreements as extensions of merits reports.

[13]In this way, human rights courts play the role of "decider", rather than information revealer or coordinator (Johns, 2012).

[14]In the parlance of Figure 1, settlement refers to the left direction, resulting in the "Friendly settlement" node, while litigation refers to everything after the "Evaluate merits" node.

refuse to rule on the merits of the case (Johns, 2015). Thus, there may be some uncertainty over how long the shadow of the tribunal extends.

As described in Section 2, the Inter-American system has two tribunals that evaluate merits of petitions, resulting in two kinds of litigation outcomes. When the Commission is the sole arbitrator of the merits, the result is a *merits report*. When the Court evaluates the merits as well, litigation results in a *Court judgment*.[15] All else equal, a merits report is less costly than a Court judgment for two reasons. First, the legal obligation to comply with the Court's orders is higher than the obligation to comply with the Commission's recommendations. This may mobilize domestic advocacy groups to campaign for compliance in a way that the Commission's non-binding recommendations do not (Haglund, 2019). For whatever that increased legal obligation is worth (and it may vary by state), the obligation is stronger at the Court than at the Commission. Second, in terms of monetary compensation, which is ordered in nearly every case, the awards from the Inter-American Court are orders of magnitude higher than those awarded by the Commission.

Why, then, do states keep litigating once the Commission finds a violation? It must be the case that the state believes the Court will either not find a violation or that the case will not reach the Court. The first of these notions can be disabused right away: the Court ruled against the state in 98.1% of cases between 1989 and 2018.[16] In contrast, it is not unreasonable for the state to question whether the Court would actually evaluate the merits of the case. Two sets of institutional rules determine whether the Court will have the chance to rule on the merits. First, the jurisdictional requirements for Court adjudication must be met: the state must have ratified the American Convention on Human Rights and must have recognized the Court's jurisdiction to hear cases against it. This excludes three sets of cases: those from states that have not ratified the American Convention; those from states that

[15]In these cases, the Commission has also written a preliminary merits report finding a violation. However, the report is not published as such. Rather, it becomes part of the submission to the Court for judgment. Thus, I treat merits reports and Court judgments as mutually exclusive outcomes.

[16]This is even worse than the rate at the Commission, in which (only) 95% of rulings went against the state. All calculations of win percentage come from the author's original data on petitions.

have ratified the American Convention but not accepted the Court's jurisdiction; and those from states that are currently under the Court's jurisdiction, but in which the violation took place prior to the acceptance of jurisdiction.[17]

The second set of institutional rules governs the process by which Commissioners refer cases to the Court. The probability of the Court ruling on the merits of the case decreases as the discretion of Commissioners to refer a case increases. In the earlier years of the Commission, the Commissioners had "full discretionary control over whether to submit matters to the Court" and "employed that discretion in few instances" (Cavallaro and Brewer, 2008, pg. 780). This discretionary authority did not result in clear articulations of what separated the few cases that went to the Court from those that did not: the Commission rarely articulated a rationale for non-referral of a case. In other words, whatever criteria by which the Commission made its decisions were probably not knowable or observable to outside actors, including the state. Since there was no standard rule determining whether a case was sent to the Court, states could only base their calculations upon the Commission's practice. Doing so, states could attach a low probability to unsettled petitions ever reaching the Court: of the 159 petitions between 1992 and 2000 that did not result in a friendly settlement, nearly 84% of them resulted in published merits reports.

When the state could reasonably expect litigation to result only in a non-binding merits report, its decision about whether to settle or allow the Commission to evaluate the merits is driven by the relative costliness of settlement to a merits report. For most states, it is probably the case that merits reports are less costly than settlement agreements. Recall that merits reports in general are not that costly to the state because the recommendations are non-binding, therefore decreasing the likelihood of effective mobilization around compliance with them (Haglund, 2019). Given the low cost of the merits report, any source of increased

[17]In this case, the Court would lack competence *rationae temporis*. Several states ratified the American Convention in the 1970s and 1980s but did not recognize the Court's competence to hear cases until the 1990s. In these instances, the petitioner may allege a violation of the American Convention on Human Rights for an incident that took place after the state's ratification of the treaty, but may not be able to take the case to the Court if the incident took place before the recognition of jurisdiction.

cost from a friendly settlement would make settlement the costlier option. Friendly settlements require states to accept responsibility for the violation, whereas merits reports do not. Even if the Commission finds a violation in the merits report, the state could continue contesting the finding. Additionally, as noted previously, settlements and their specific provisions are made public, so the state would not be able to avoid scrutiny over its compliance with terms of a settlement. Any possible domestic mobilization around merits reports could also occur for settlements because both outcomes are publicized the same way. Thus, if the probability of the Court evaluating the merits is sufficiently low, states will avoid settling because doing so is costlier than the litigation outcome of a merits report. This logic implies, however, that if the probability of the Court evaluating the merits increased, the state might change its behavior.

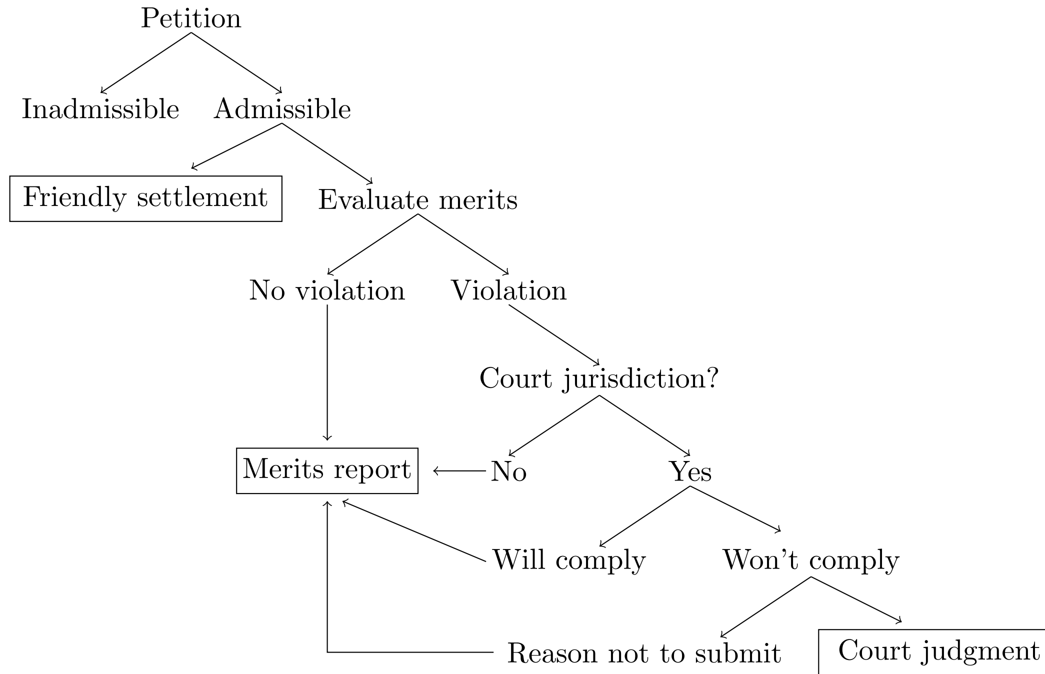
This probability in fact did change with the adoption of a new Rules of Procedure in 2000, to take effect in 2001. The procedural change provided that:

> the cases of those member States that have accepted the contentious jurisdiction of the Inter-American Court and have failed to implement the recommendations in the report approved by the Commission in accordance with Article 50 of that instrument *shall be* submitted to that organ, except where a well-founded decision to the contrary is adopted by an absolute majority of its members *based upon prescribed criteria*, including the position of the petitioner, the nature and gravity of the violation, the need to develop or clarify the case law of the system, the possible effect of the decision on the legal systems of member States, and the quality of the evidence available... (emphasis mine)[18]

The rule change affected referral in two ways, as illustrated by Figure 2. First, by stating that the Commission shall send cases to the Court, it effectively made the default procedure to be referral in cases of non-compliance (Cavallaro and Brewer, 2008; González, 2009). If the Commission determines that the state will comply with its recommendations, it can publish the merits report and end the litigation process. Second, the rule change clarified the circumstances under which cases might not be referred by specifying particular

[18]Inter-American Commission on Human Rights, 2000 Annual Report, Chapter II, para. 26.

**Figure 2:** Illustration of the Effect of Procedural Rule Change, 2001




criteria for non-referral. This removed much of the uncertainty around whether a case would be taken up by the Court by curtailing the Commissioners' discretion.

Although friendly settlements are costlier than merits reports, they are probably less costly than Court judgments. The legal authority of the Court might make contesting the legitimacy of its judgments less credible. Moreover, if the state knows it will be required to comply, it ought to prefer negotiating a settlement because it will have some say over the remedies it pledges to undertake. Unlike at the European Court of Human Rights, the Inter-American Court does not grant the state any discretion over how to implement its ordered remedies. In other words, the Court does not tell the state to "guarantee non-repetition" but spells out specific orders like "provide training in human rights to the police" and "distribute information about due process rights to prisoners" aimed at achieving the more general goal of non-repetition, often without regard for domestic or political barriers to implementation. This means that fulfilling the terms of a friendly settlement agreement may be less costly than complying with the orders in a Court judgment. Thus, I expect

that as the probability of the Court evaluating the merits increases, the expected value of litigation decreases, making settlement more attractive to the state.

## 4. Empirical Analysis

To illustrate how institutional design affected states' behavior at the Commission, I constructed an original dataset of all friendly settlements, merits reports, and submissions to the Court from 1992 to 2018.[19] Table 1 summarizes the observed outcomes of petitions from 1992 to 2018, for states under the Court's jurisdiction and outside of the Court's jurisdiction.

**Table 1:** Outcomes of Petitions by Court Jurisdiction, 1992–2018

| | Under Court's jurisdiction | Outside Court's jurisdiction |
|---|---|---|
| Friendly settlement | 137 | 0 |
| Merits report | 179 | 61 |
| Court judgment | 270 | — |

***Note:*** Trinidad and Tobago and Venezuela are counted as under the Court's jurisdiction even though they denounced the American Convention in 1998 and 2012, respectively. The Court maintains jurisdiction over them for crimes that took place prior to the year the denunciation entered into force. The vast majority of cases from both states address crimes that are still under the Court's temporal jurisdiction.

Table 1 illustrates the importance of the first institutional design rule on petition outcomes, namely whether the jurisdictional requirements for Court adjudication are met. Comparing across the two columns, it is clear that states outside of the Court's jurisdiction never settle: all 137 settlements between 1992 and 2018 came from states under the Court's jurisdiction. Given that the probability of a case from a state outside of the Court's jurisdiction reaching the Court is exactly zero, it is unsurprising that these states never settle. Again, for most states, settlement is costlier than the merits report, but cheaper than a Court judgment. Thus, if the choice is between friendly settlement and merits report only, they

[19] I use submissions to the Court and Court judgments interchangeably because the Court does not refuse any submissions. The uncertainty is over whether the Commission will submit the case to the Court, not whether the Court will evaluate the merits, conditional on submission.

will opt for the latter. The fact that, through 2018, no state outside the Court's jurisdiction has ever settled is striking in this regard.

To illustrate the effect of the second institutional design rule, I divided the petitions by year of the initial merits report.[20] If the 2001 rule change affected behavior, there should be a noticeable change in petition outcomes in the two periods. Because states outside of the Court's jurisdiction were unaffected by this change, their petitions are excluded. As Table 2 shows, there is a clear difference in terms of outcomes for states under the Court's jurisdiction. From 1992 to 2000, merits reports were by far the most frequent outcome, with the same number of petitions resulting in friendly settlement or referral to the Court. After the rule change, however, merits reports become the least frequently observed outcome. In other words, (1) the frequency of settlements increased and (2) litigation outcomes shifted from merits reports to Court judgments. Note that these numbers are not the result of the latter period merely covering more years: between 1992 and 2000, the settlement rate was three per year; between 2001 and 2018, the rate was six agreements per year.

**Table 2:** Outcomes of Petitions for States under the Court's Jurisdiction, 1992–2018

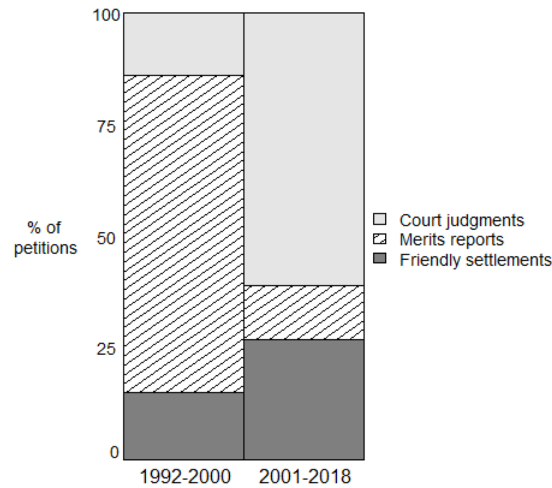
| | 1992–2000 | 2001–2018 |
|---|---|---|
| Friendly settlement | 29 | 108 |
| Merits report | 133 | 46 |
| Court judgment | 26 | 244 |

***Note:*** These are petitions from states under the Court's jurisdiction only (see the first column of Table 1).

Figure 3 illustrates the relative frequency of the three outcomes. Between 1992 and 2000, over 70% of petitions resulted in merits reports. This indicates that both settlement and submission to the Court (Court judgment) were relatively rare. After the rule change, the frequency of Court judgments and friendly settlements increased, particularly the former.

[20] This is the year that the preliminary report was sent to the state and petitioners. It is not necessarily the same year as the year in which the merits report was published. On Figure 2, this is represented by the "Violation" and "No violation" nodes, as this is the information communicated to the state.

**Figure 3:** Change in Petition Outcomes from Before and After the 2001 Rule Change




***Note:*** Only petitions from states under the Court's jurisdiction are included in these calculations.

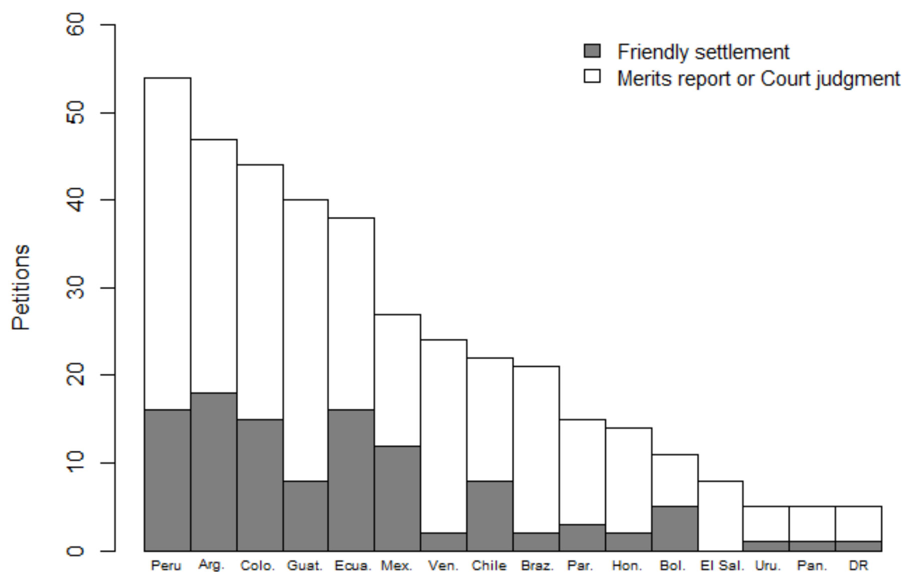
This illustrates the shift in litigation outcomes from merits reports to Court judgments. In turn, the fact that litigation was costlier – in that it was likely to result in a Court judgment instead of a merits reports – increased the value of settlement.

### 4.1. *Alternative Explanations*

While the patterns of petition outcomes are suggestive, in the absence of clear causal evidence of the rule change driving the changes, it is important to consider and exclude several alternative explanations as sources of the behavioral change. First, perhaps states believed they were more likely to get a favorable ruling from the Court after 2001, thus justifying further litigation. Technically, they were not wrong: states lost every one of the 26 cases between 1992 and 2000, but prevailed in five of the 244 cases between 2001 and 2018. However, the increase in winning percentage from 0% to 2% is insufficient to explain the dramatic increase in Court judgments relative to merits reports, especially given that the likelihood of victory was still extremely low after the rule change.

Second, if certain states have more petitions before the Commission and also are more

**Figure 4:** Many States Engaged in Settlements After 2001 Rule Change

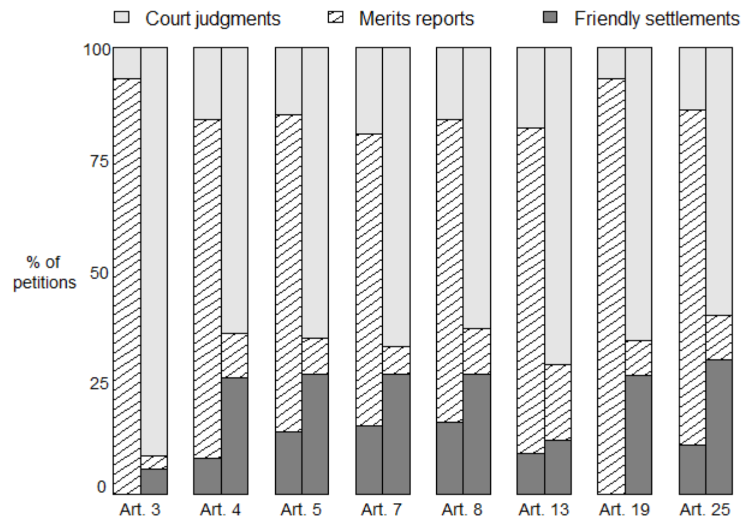



***Note:*** Only petitions from the 2001–2018 period are included. States that had fewer than five petitions are excluded for legibility.

likely to choose settlement, this could explain the rise in friendly settlements relative to merits reports. Particular states may be better able to continue litigating because they have the administrative capacity to do so (Kim, 2008) or are more experienced at being the respondent (Conti, 2010). However, as Figure 4 shows, many states engaged in friendly settlements after the 2001 rule change: the practice was not unique to one state. More importantly, the increase in settlements after 2001 was not driven by one state with dozens of petitions always choosing settlement. Of the 16 states with at least five petitions, 15 of them engaged in at least one settlement agreement.

Third, the change in outcomes may be driven by a change in the types of violations alleged in the petitions filed in the two periods, if those violations were also more likely to result in settlement. For example, if cases involving a violation of the right to life (Article 4) were more likely to result in settlement and there were more Article 4 cases after the rule change, this could explain the apparent pattern. To see if the changes in friendly settlements, Court judgments, and merits reports were driven by petitions of any one type,

**Figure 5:** State Behavior Does Not Change Depending on Which Article is Violated




***Note:*** Articles include physical integrity rights (Article 4: right to life; Article 5: right to humane treatment; Article 7: right to personal liberty); civil and political rights (Article 3: right to juridical personality; Article 8: right to a fair trial; Article 13: freedom of thought and expression; Article 25: right to judicial protection) and rights for a protected class (Article 19: rights of the child). Petitions can fall into more than one category if more than one article is violated.

I disaggregated the cases by violation(s) alleged. If states' behavior in terms of settlement or litigation (or whether litigation takes place at the Commission or Court) depends on the nature of the case, the patterns depicted in the barplots in Figure 5 ought to differ depending on which article was violated. However, the patterns of change are remarkably consistent across the articles and in line with Figure 3: no matter the type of violation, the percentage of merits reports declines after the rule change, while the percentage of friendly settlements and Court judgments both increase. Additionally, as shown in Table 3, most of these changes are statistically significant. All of the increases in Court judgments and decreases in merits reports are statistically significant at conventional levels; in other words, it is highly unlikely to observe these changes by chance. Some of the changes in friendly settlements, specifically those cases involving Articles 3 and 13, are not significant at conventional levels. However, this could be a problem of small sample sizes: there are only two settlements involving an Article 3 violation and only five involving Article 13.

**Table 3:** t-test Statistics for Differences in Petition Outcomes

| | Friendly settlement | Merits report | Court judgment |
|---|---|---|---|
| Article 3 | 1.43 | 15.85 | 12.41 |
| Article 4 | 4.06 | 13.80 | 9.37 |
| Article 5 | 3.07 | 13.88 | 11.11 |
| Article 7 | 2.38 | 11.83 | 8.81 |
| Article 8 | 2.74 | 13.26 | 11.34 |
| Article 13 | 0.30 | 3.64 | 3.71 |
| Article 19 | 4.78 | 11.44 | 6.58 |
| Article 25 | 5.36 | 16.68 | 11.73 |

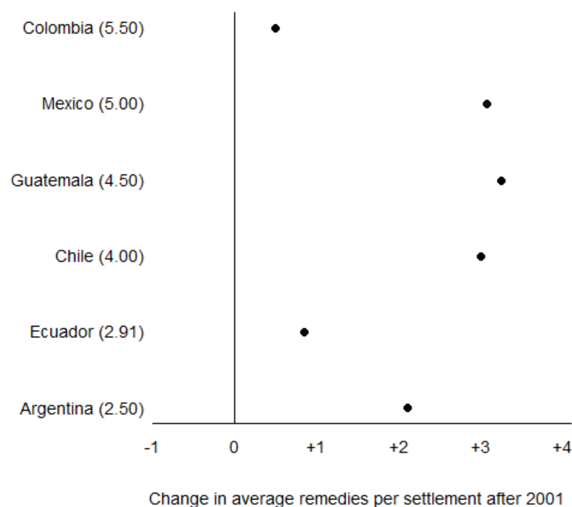
***Note:*** Values are t-test statistics for difference in proportion of petitions resulting in each outcome before and after 2001. For ease of presentation, these are all absolute values of the test statistics. All but three test statistics are significant at the $\alpha \leq 0.01$ level or better. The t-test for Article 7 friendly settlements has a p-value of 0.02. The t-test statistics for Articles 3 and 13 friendly settlements are not significant.

Fourth, the increase in friendly settlements could be attributed to a change in the nature of settlement terms after 2001: perhaps settlements were cheaper for the state in the 2001–2018 period compared to 1992–2000. It turns out, however, that the opposite is the case. The cost of friendly settlements to the state actually increased after 2001. The average number of agreed upon remedies per case increased from 3.6 between 1992 and 2000 to 5.5 after 2001. This increase is common across all states, as shown in Figure 6. To avoid outliers, only states that engaged in at least two settlements in both periods are included.

A second way of measuring cost to the state is in terms of the actual monetary award granted to the victim. This is harder to measure because most friendly settlements redact the monetary award to protect the petitioner when the reports are published. However, as a suggestive test of this question, I examined the average monetary award per person in Ecuador's settlements.[21] Between 1992 and 2000, Ecuador's average monetary award per victim per case was $34,091. After 2001, the average monetary award per victim per case

[21]Ecuador is the only state for which I had monetary award values for all settlements. Ecuador also engaged in many settlements in both periods, which helps avoid dragging the average award up or down due to extremes or outliers.

**Figure 6:** Increase in Remedies is Common Across Settling States




***Note:*** Only states that engaged in at least two settlements in both periods are included. The number in parentheses is the average number of remedies in friendly settlements for that state between 1992 and 2000.

more than doubled, to $83,852.[22] Note that this is not just a function of Ecuador becoming richer after 2001. The average award per victim per case between 1992 and 2000 was 22 times greater than Ecuador's GDP per capita; after 2001, it was 31 times greater.

It could also be the case that the content of friendly settlements varied across the periods in a way that was not reflected by monetary costs. To investigate whether this was the case, I assessed the percentage of settlements in each period that included a particular substantive content provision, such as reform of laws or rules; commemoration of the victim; or providing a public apology. I also conducted a t-test to assess whether differences across each content area were statistically significant (Table 4). For four of the content areas, the difference between the two periods was not statistically significant. For six of the remaining seven, a provision from that content area was more likely to be included in a settlement from the 2001–2018 period than included in a settlement negotiated between 1992 and 2000. Only provisions from one content area – accountability measures – were less likely to be included

[22]These numbers represent the average award per victim for each case. The majority of cases involve a single victim. For the few cases with multiple victims, I took the total award in that case divided by the number of victims in that case.

**Table 4:** Content of Settlements Over Time

| Content | 1992–2000 | 2001–2018 | t-test | p-value | Merits reports change |
|---|---|---|---|---|---|
| Improve living situation | 15% | 18% | 0.427 | 0.672 | |
| Reform laws or rules | 22% | 27% | 0.549 | 0.586 | |
| Monetary compensation | 67% | 76% | 0.960 | 0.343 | |
| Commemoration | 7% | 15% | 1.299 | 0.200 | |
| Reimbursement of costs | 4% | 12% | 1.682 | 0.097 | n.s. |
| Upward mobility | 11% | 24% | 1.696 | 0.096 | n.s. |
| Accountability | 63% | 42% | 1.998 | 0.053 | Yes |
| Medical care | 11% | 27% | 2.156 | 0.036 | n.s. |
| Public apology | 7% | 53% | 6.458 | 0.000 | Yes |
| Reinstate in job | 0% | 16% | 4.618 | 0.000 | n.s. |
| Human rights training | 0% | 13% | 3.987 | 0.000 | Yes |

***Note:*** Percentage represents the percentage of settlements conducted in the relevant period that included at least one provision related to the content area.

in the later period.

At first, this may seem problematic, as accountability measures are surely quite costly to the state and are less likely to be included after the rule change. However, it could also be the case that this change was not unique to settlements and occurred in merits reports as well. To assess this, I tested whether the percentage of merits reports containing provisions from each of the content areas with significant changes varied across the two periods as well. For three of them, including accountability measures, the same variation was seen in merits reports across the two periods. For example, 85% of merits reports between 1992–2000 included a provision related to accountability, compared to 62% between 2001 and 2018, matching the decrease in the inclusion of this provision in settlements. Thus, the evidence from Table 4 does not indicate that settlements were less costly in terms of their substantive provisions after the rule change, and possibly were more costly in some areas.

The fact that petitioners were able to get more from the state after 2001 reflects their improved bargaining position. Because states were more motivated to settle after the rule change, petitioners could demand more from the state in terms of remedies. However,

demanding more of the state may also backfire, if it makes agreeing to terms less likely. In other words, if petitioners demand too much of the state, the cost of settlement increases, making litigation look relatively more attractive. Indeed, although the settlements agreed upon were more favorable to the petitioner, there were also more bargaining failures after 2001.[23] Between 1992 and 2000, at least one side indicated it wanted to negotiate a friendly settlement in 37 cases; of these, both sides tried to settle about 19% of the time (7 of 37).[24] Between 2001 and 2018, at least one side wanted to settle in 20 cases, with both sides trying and failing to reach a friendly settlement agreement in 30% of these instances (6 of 20).[25]

### 4.2. *Positive Externality: Increased Compliance*

Thus far I have shown that clarifying rules around how cases would be submitted to the Court affected the probability of friendly settlement. This analysis has side-stepped the question of what happens in those petitions that do not reach the Court. Although Table 2 and Figure 3 illustrate that most petitions resulted in either friendly settlements or Court judgments after 2001, there were still 46 merits reports after the rule change from states under the Court's jurisdiction.

First, it is important to note that these merits reports do not indicate that the Commission had full discretion over what cases move onto the Court; in fact, the rationale for non-referral illustrates just how limited the discretion was. In six of the cases, the Commission found no violations of the American Convention on Human Rights; in other words, it found in favor of the state. In another 20 cases, the state substantially complied with the Commission's recommendations (11) or signed a compliance agreement with the petitioners (9). In the remaining 20 cases, the Commission's rationale for not submitting the case to

[23]By bargaining failure I mean instances in which both sides expressed a willingness to settle, but a settlement could not be reached.

[24]In other words, there were seven instances where the petitioner and state both indicated a willingness to settle, but a settlement could not be reached. In the other 30 instances, only one side indicated a willingness to settle, so no negotiations took place.

[25]Notably, there were also more instances in which at least one side wanted to settle after 2001 (20 of 46 cases, or 43%, compared to 37 of 133 cases, or 28%).

the Court is clearly articulated, which centered around a reasonable belief that the Court would not hear the case (12 cases)[26] or indications by the petitioners that they were unable or unwilling to pursue the case further (8 cases).[27]

Second, it is significant that the Commission observed some willingness on the part of the state to comply in half of the merits reports that found violations by the state. I would argue that this, too, is a consequence of the change in rules of referral. As described in Section 2, states under the Court's jurisdiction can end the litigation process either at the Court or at the Commission.[28] To the extent that Court judgments are costly and states wish to avoid them, the Commission has power over the level of compliance it can demand with its recommendations prior to publication of the merits report. Although the rule change was intended only to clarify the procedure for referral, one (possibly unintended) consequence of the clarification was that it gave the Commissioners more power to demand a higher level of compliance from states prior to publication of merits reports. Between 1992 and 2000, the probability of submission of a case to the Court was so low that the threat of non-compliance resulting in referral could not be credible. However, after 2001, Commissioners could utilize the fact that the rules now stated that instances of non-compliance *shall* be referred to hold out for greater compliance before publishing a merits report.

There are several indications of the Commission's increased power to insist on compliance before publishing a merits report. First, the average number of years between the initial merits report, in which the state is first made aware of the violation and necessary

[26]In nine of these cases, the violation occurred prior to the state's ratification of the American Convention and/or acceptance of the Court's jurisdiction. In one case, the Court accepted the state's preliminary objections on temporal jurisdiction, so the Commission took up the case again. In another case, the Commission felt there was insufficient evidence for the Court to find a violation; in the last case, the state had already revoked the relevant domestic law.

[27]In some cases, the Commission could not locate the petitioners, and so decided to keep the case at the Commission. In other cases, the petitioners could be found, but did not wish for the Court to take up the case.

[28]Once the merits report from a case has been published at the Commission, the matter cannot be referred to the Court even if the state has failed to comply with the Commission's recommendations. The fact that a case will not be reconsidered even if states do not fulfill the recommendations is significant because it creates an opportunity for states to "game" the system by promising compliance to get the merits report published, and then refusing to comply later once the threat of referral to the Court has subsided.

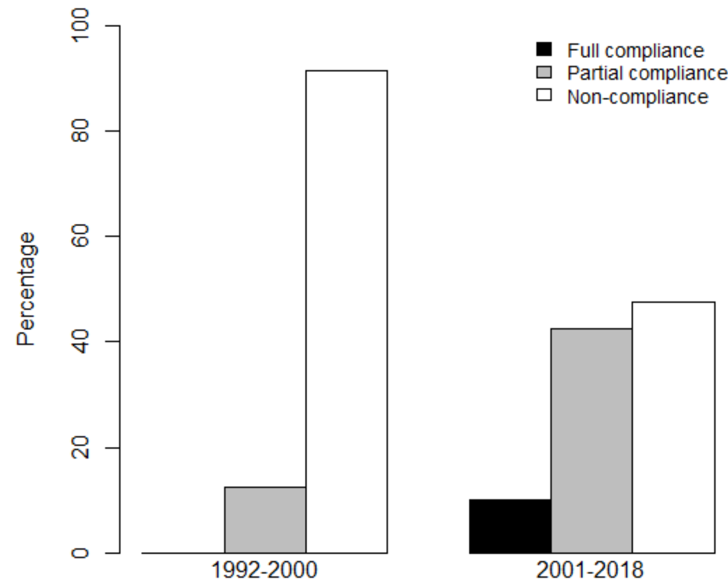
recommendations to remedy it, and publication of a merits report increased from 0.86 in the 1992-2000 period to 1.98 in the 2001-2018 period. The fact that the Commission took, on average, an additional year before deciding to publish a merits reports is indicative of its desire to ensure that the cases that did not move onto the Court were truly the ones in which the state would comply (barring any other principled reason to keep the case from the Court). As a comparison, the average number of years between initial merits reports and published merits reports for states outside of the Court's jurisdiction is 0.5.

Second, there was a clear increase in both partial and full compliance with merits reports recommendations prior to publication after the 2001 rule change. Figure 7 illustrates the level of compliance observed at the time of publication of the merits report. From 1992 to 2000, non-compliance was by far the most common outcome at the time of publication, with partial compliance observed in about 12% of cases and full compliance not observed at all. From 2001 to 2018, non-compliance was also the most frequent outcome, but occurred in only 48% of cases, down from 88%. It is worth noting that some form of compliance – either full (10%) or partial (over 40%) – occurred in the majority of cases.[29]

Third, there is the suggestive evidence of the way that states outside of the Court's jurisdiction respond to merits reports. Here I focus on Jamaica and Grenada, two states with high obligation, having ratified the American Convention on Human Rights, but low delegation, as they remain outside of the Court's jurisdiction. There were 14 merits reports against Jamaica and Grenada, collectively, between 1992 and 2018. The Commission reported non-compliance at the time of the publication of the merits report in all 14 cases. In fact, Jamaica and Grenada failed to even acknowledge the Commission's initial merits report in 13 of the 14 cases, an incredibly low bar. In one particular case, the Commission noted in 2019 that "Grenada has not submitted information on the measures taken to comply with

[29]Note that these percentages do not exactly match up to the 20 cases that remained at the Commission because of substantial compliance or a compliance agreement. Even if there is a reason for a case to remain at the Commission, like the petitioners' unwillingness or inability to move forward to the Court, states might still choose to implement some of the Commission's recommendations, especially if they anticipate a case might move forward if non-compliance is observed.

**Figure 7:** Increased Compliance with Commission's Recommendations after 2001




the recommendations issued in Merits Report No. 47/01 since its publication in 2001."[30] This low level of engagement with the Commission is only possible for states outside of the Court's jurisdiction. Whenever a state under the Court's jurisdiction fails to respond to the initial merits report, the case is always referred to the Court. Thus, the increased compliance with the Commission's recommendations observed after 2001 only applies to states that have opted into the Court's jurisdiction.

## 5. Conclusion

My analysis of the patterns of friendly settlements and compliance with the Commission's recommendations reveals the importance of changes in institutional design on state behavior. When the Inter-American Commission changed its Rules of Procedure in 2001 to clarify the process by which cases would be submitted to the Inter-American Court — increasing the probability of litigation — states responded accordingly and began opting for more settlements. Petitioners also were able to get better terms in settlements because states

[30] See Inter-American Commission on Human Rights, "Follow-up Factsheet of Report No. 47/01, Case 12.028, Donnason Knights."

were more motivated to settle, although there were also more bargaining failures after 2001. The probability of litigation at the Court remained constant at zero for states outside of the Court's jurisdiction, so this change only affected states negotiating in the shadow of the tribunal. Accordingly, to date, no state outside of the Court's jurisdiction has opted for settlement instead of a merits report.

The rule change affected incidences not only of friendly settlement, but also of compliance with the Commission's recommendations. The change removed the Commissioners' discretion over whether to send a case onto the Court and created a clear decision rule. This encouraged greater compliance at the merits report stage because all cases of non-compliance would be sent onto the Court if the case fell under the Court's jurisdiction. Both the increase in friendly settlements and in compliance with the Commission's recommendations allow for cases to be resolved sooner for petitioners. Rather than having to wait for the Court's final judgment, they can enter into a negotiated agreement or can receive a report on the merits with which the state is more likely to comply. By encouraging settlements and compliance earlier, this procedural change increased access to justice for victims of human rights abuses. In this way, the rule change created both more efficient and more socially desirable outcomes.

Are there any downsides to the increase in friendly settlements? One could imagine that the impact of the Commission's rule change might have downstream effects on the Court and its jurisprudence. There are at least two ways in which settlements could negatively affect the Court, arguably neither of which are (yet) present. First, the Commission might screen out the easy cases: problems that are not difficult for the state to resolve will either be settled before any litigation begins, or the state will comply with the Commission's recommendations in the merits report. This would leave only the cases with the lowest potential for compliance at the Court. It is true that the Commission's gate-keeping function screens out cases with easy fixes. However, the rule change did not substantially affect compliance at the Court. States complied with 38% of the Court's compliance orders within five years from cases referred between 1992 and 2000, compared to 41% of such orders for cases referred between

2001 and 2013.[31]

Second, it could be the case that the increase in settlements at the Commission might decrease the relative importance of the Court and its judgments. While an increase in friendly settlements does decrease the number of cases that could reach the Court, I would argue that this does not diminish the Court's broader role. First, the Inter-American system operates with very limited resources. An increase in friendly settlements actually better enables the Court to issue high-impact judgments because it keeps more cases off of the Court's docket. Second, the Court's judgments were always going to be limited in number, even without the rule change, because the Commission faces a huge backlog of petitions. If the Commission is able to shift some of those petitions to friendly settlements, it would subsequently have more time to focus on litigation that could eventually reach the Court. Third, the Court's pivotal role in promoting human rights in the region is not limited to its judgments in contentious cases. The Court has issued several important advisory opinions, including a recent one on the legalization of same-sex marriage in the Americas. Moreover, the Court's judgments establish principles that apply to all member-states, not just the state against which the judgment is made.

Several questions remain unresolved that could be addressed by future research. First, did the rule change have any effect on the probability of long-term compliance? Thus far, I have noted that there is an increase in compliance at the time the merits report is published. Does this mean, however, that states are also more likely to subsequently comply with the outstanding recommendations after publication? Second, given that the litigation process is so costly and highly unlikely to result in a favorable judgment to the state, why do so many cases still end up at the Court? Shifting away from a conceptualization of the state as a unitary actor could be helpful here, as the time horizons of individual leaders are generally shorter than those of the state as a whole. It could be the case that states continue litigating

[31] I limit the compliance window to five years here to ensure the state has an adequate chance to comply, and also to restrict the possibility that compliance is more likely in older cases simply because the state has had more time to implement the Court's rulings. Data from the author.

because the individual leader who faces the choice between negotiating a friendly settlement or litigating will not be in office by the time the Court's costly judgment is issued. Thus, it is rational for the individual leader to avoid paying any cost of a settlement by continuing the litigation process, thereby pushing those costs onto a future leader, even if it does not appear rational for the state as such.

Overall, my findings indicate that if institutions want to see states using the institution differently, they ought to change the rules. These results suggest, for example, that if the Commission wanted states outside of the Court's jurisdiction to engage in friendly settlements, it should increase the cost of litigation by strengthening its recommendations in the merits reports. In some ways, the Commission is rather limited by the fact that it is a quasi-judicial body that cannot enforce compliance. However, if the Commission made a concerted effort to increase the cost of merits reports for states outside of the Court's jurisdiction – perhaps by engaging in more naming and shaming of states that fail to implement its recommendations – it might be able to decrease the expected value of litigation sufficiently for states outside of the Court's jurisdiction to start opting for friendly settlements.

Additionally, further institutional reform may improve the Inter-American system's efficiency, a frequent criticism of the system. The fact that both the Commission and the Court consider the merits of a case for states under the Court's jurisdiction is a glaring inefficiency within the current rules (Shelton, 2015). Because of issues with temporal jurisdiction, it may not be the case that all litigation could be transferred directly to the Court; however, the Commission might be able to process more cases if it focused only on facilitating friendly settlements and judging the merits of cases that do not fall under the Court's jurisdiction. This would include cases from states that are not members of the Court, as well as cases from the Court's members that are outside of its temporal jurisdiction. By streamlining the litigation process and removing any trace of uncertainty over whether the Court would receive the case, states might opt to engage in even more settlements. Cases in which petitioners disappear or do not want to pursue the case at the Court because doing

so would further delay justice would also be much less likely if the Commission did not act as court of first instance in cases that could reach the Inter-American Court.

Changing the rules will not always induce states to behave in the way the institution intends. Rule changes may sometimes have unintended *negative* consequences. However, the evidence from the Inter-American Commission is generally positive. In particular, the increase of friendly settlements after 2001 suggests that if human rights institutions can adequately change states' incentives to settle, they may be able to arrive at more efficient outcomes – and may even further their ultimate goal of compliance.

## References

Abbott, Kenneth W. and Duncan Snidal. 2000. "Hard and Soft Law in International Governance." *International Organization* 54(3):421–456.

Ahn, Dukgeun, Jihong Lee and Jee-Hyeong Park. 2013. "Understanding Non-Litigated Disputes in the WTO Dispute Settlement System." *Journal of World Trade* 47(5):985–1012.

Bebchuk, Lucian Arye. 1984. "Litigation and Settlement Under Imperfect Information." *The RAND Journal of Economics* pp. 404–415.

Busch, Marc L and Eric Reinhardt. 2006. "Three's a Crowd: Third Parties and WTO Dispute Settlement." *World Politics* 58(3):446–477.

Cavallaro, James L. and Stephanie Erin Brewer. 2008. "Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court." *American Journal of International Law* 102(4):768–827.

Conti, Joseph A. 2008. "The Good case: Decisions to Litigate at the World Trade Organization." *Law & Society Review* 42(1):145–182.

Conti, Joseph A. 2010. "Learning to Dispute: Repeat Participation, Expertise, and Reputation at the World Trade Organization." *Law & Social Inquiry* 35(3):625–662.

Fiss, Owen M. 1984. "Against Settlement." *The Yale Law Journal* 93(6):1073–1090.

Gilligan, Michael, Leslie Johns and B. Peter Rosendorff. 2010. "Strengthening International Courts and the Early Settlement of Disputes." *Journal of Conflict Resolution* 54(1):5–38.

González, Felipe. 2009. "The Experience of the Inter-American Human Rights System." *Victoria University of Wellington Law Review* 40:103–126.

Gray, Julia and Philip Potter. 2020. "Diplomacy and the settlement of international trade disputes." *Journal of Conflict Resolution* .

Guzman, Andrew and Beth A. Simmons. 2002. "To Settle or Empanel? An Empirical Analysis of Litigation and Settlement at the World Trade Organization." *The Journal of Legal Studies* 31(S1):S205–S235.

Hafner-Burton, Emilie M. and David G Victor. 2016. "Secrecy in International Investment Arbitration: An Empirical Analysis." *Journal of International Dispute Settlement* 7(1):161–182.

Hafner-Burton, Emilie M., Sergio Puig and David G Victor. 2017. "Against Secrecy: The Social Cost of International Dispute Settlement." *Yale Journal of International Law* 42:279–344.

Hafner-Burton, Emilie M., Zachary C. Steinert-Threlkeld and David G Victor. 2016. "Predictability Versus Flexibility: Secrecy in International Investment Arbitration." *World Politics* 68(3):413–453.

Haglund, Jillienne. 2019. "International Institutional Design and Human Rights: The Case of the Inter-American Human Rights System." *Conflict Management and Peace Science* 36(6):608–625.

Johns, Leslie. 2012. "Courts as Coordinators: Endogenous Enforcement and Jurisdiction in International Adjudication." *Journal of Conflict Resolution* 56(2):257–289.

Johns, Leslie. 2015. *Strengthening International Courts: The Hidden Costs of Legalization.* University of Michigan Press.

Johns, Leslie and Krzysztof J Pelc. 2014. "Who Gets to be in the Room? Manipulating Participation in WTO Disputes." *International Organization* 68(3):663–699.

Keller, Helen, Magdalena Forowicz and Lorenz Engi. 2010. *Friendly Settlements Before the European Court of Human Rights: Theory and Practice.* Oxford University Press.

Kim, Moonhawk. 2008. "Costly Procedures: Divergent Effects of Legalization in the GATT/WTO Dispute Settlement Procedures." *International Studies Quarterly* 52(3):657–686.

Kucik, Jeffrey and Krzysztof J Pelc. 2016. "Measuring the Cost of Privacy: A Look at the Distributional Effects of Private Bargaining." *British Journal of Political Science* 46(4):861–889.

Shelton, Dinah. 2015. "The Rules and Reality of Petition Procedures in the Inter-American Human Rights System." *Notre Dame Journal of International and Comparative Law* 5:1–28.

Standaert, Patricia E. 1999. "The Friendly Settlements of Human Rights Abuses in the Americas." *Duke Journal of Comparative and International Law* 9:519–542.

Voeten, Erik. 2019. "Making Sense of the Design of International Institutions." *Annual Review of Political Science* 22:147–163.

Zschirnt, Simon. 2017. "Is the Inter-American Human Rights System Biased? A Quantitative Analysis of Regional Human Rights Litigation in the Americas." *International and Comparative Law Review* 17(1):51–81.