

# HOW DO HUMAN RIGHTS PROSECUTIONS IMPROVE HUMAN RIGHTS AFTER TRANSITION?

Hun Joon Kim and Kathryn Sikkink\*

*Human rights prosecutions are one of the main policy innovations transitional regimes use to address past human rights violations and to prevent future ones. In this article, the authors found that not only those prosecutions that resulted in conviction, but also broader prosecution processes themselves, are associated with improvements in future human rights conditions.<sup>1</sup> The authors found that human rights prosecutions are especially effective in deterring future torture cases and that even those prosecutions that ended in acquittals correlate with a lower incidence of torture. The authors also found that prosecutions and convictions of high-level state officials appear to have a stronger deterrent effect than prosecutions and convictions of low-level officials. In addition, high-level prosecutions and convictions are associated with improvements in a wider range of physical integrity rights. This study shows that high-level prosecutions correlate with a lower incidence of extrajudicial killing as well as the use of torture.*

**Keywords:** human rights prosecution, transitional justice, deterrence effect, conviction, acquittal

## I. INTRODUCTION

**H**uman rights prosecutions are one of the main policy innovations transitional regimes use to address past human rights violations and to prevent future ones. Since the 1980s, there has been a dramatic increase in the demand for individual criminal accountability of state officials for past human rights violations—a phenomenon that Lutz and Sikkink term “the Justice Cascade.”<sup>2</sup> However, recent empirical studies have not been able to resolve fully a decade-long debate over the effects

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<sup>2</sup> Kathryn Sikkink, *THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS* (2011); Ellen Lutz & Kathryn Sikkink, *The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America*, 2 *CHI. J. INT'L L.* 1 (2001).

of human rights prosecutions on improving human rights practices.<sup>3</sup> Many scholars argue that human rights prosecutions prevent future violations while others believe that such prosecutions will not deter future violations and that, in some circumstances, they only exacerbate the situation by provoking still powerful old elites. Two state-of-the-field essays confirm the unsatisfactory level of accumulated knowledge. Mendeloff has examined claims concerning the positive and negative effects of transitional justice but has found relatively little evidence to support these claims.<sup>4</sup> In addition, Thoms, Ron, and Paris have concluded, after a review of one hundred empirical studies, that “[e]mpirical evidence of positive or negative effects is still insufficient to support strong claims.”<sup>5</sup>

A study by Kim and Sikkink examined whether human rights prosecutions deter future violations of human rights in transitional countries.<sup>6</sup> Using data on human rights prosecutions in transitional countries, in the aftermath of both authoritarian regimes and civil wars between 1980 and 2004, Kim and Sikkink tested various hypotheses linking human rights prosecutions to repression. They found that transitional countries with human rights prosecutions are less repressive than countries without such prosecutions and that countries with more cumulative prosecutions are less repressive than countries with fewer prosecutions. With regard to the theoretical mechanisms through which prosecutions exert such influences, Kim and Sikkink argued that both normative pressures and material punishment are at work in the process of preventing future human rights violations, and the combination of the two, as in the case of prosecution combined with truth commissions, is more effective than either pure punishment or pure normative pressure.<sup>7</sup>

In this article, the authors explore this important question further by studying the causal mechanisms through which human rights prosecutions affect repression. The authors test various hypotheses derived from deterrence theory and norms and socialization theory by using more refined and enhanced data. In particular, the authors advance the analysis in four specific ways. First, the authors include five additional years of prosecution data by adding the new data from 2005 to 2009. Second, the authors test these hypotheses by comparing the impact of prosecutions that result in

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<sup>3</sup> See Tricia D. Olsen et al., *TRANSITIONAL JUSTICE IN BALANCE: COMPARING PROCESSES, WEIGHT EFFICACY* (2010); Hugo Van Der Merwe et al., *ASSESSING THE IMPACT OF TRANSITIONAL JUSTICE: CHALLENGES FOR EMPIRICAL RESEARCH* (2009); Hun Joon Kim & Kathryn Sikkink, *Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries*, 54 *INT'L STUD. Q.* 939 (2010); James Meernik et al., *The Impact of International Tribunals and Domestic Trials on Peace and Human Rights After Civil War*, 11 *INT'L STUD. PERSP.* 309 (2010); Kathryn Sikkink & Carrie Walling, *The Justice Cascade and the Impact of Human Rights Trials in Latin America*, 44 *J. PEACE RES.* 427 (2007); Jack Snyder & Leslie Vinjamuri, *Trial and Errors: Principle and Pragmatism in Strategies of International Justice*, 28 *INT'L SECURITY* 5 (2003/2004).

<sup>4</sup> David Mendeloff, *Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?* 6 *INT'L STUD. REV.* 358 (2004).

<sup>5</sup> Oskar Thoms et al., *State-Level Effects of Transitional Justice: What Do We Know?*, 4 *INT'L J. TRANSITIONAL J.* 329 (2010).

<sup>6</sup> See Kim & Sikkink, *supra* note 3.

<sup>7</sup> *Id.*, at 957.

convictions to the impact of a different measure that records the entire process of prosecution, including both prosecutions that resulted in convictions as well as those that ended in dismissals or acquittals. The authors will refer to this as the data on “the process of prosecution,” or the existence of prosecution, to distinguish it from the data on prosecutions that resulted in verdicts. Third, the authors examine the possible divergent effects of human rights prosecutions of high-ranking state officials compared to those of lower level officials. Finally, the authors examine whether human rights prosecutions have a varying effect on different types of human rights violations. The authors’ previous research only examines the impact on a combined measure of repression. In this article, the authors also separately examine the impact of prosecutions on summary executions, torture, disappearances, and political imprisonment.

The authors found that not only those prosecutions that resulted in conviction, but also broader prosecution processes themselves (which may or may not result in convictions), are associated with improvements in respect for human rights in the future. The authors found that the process of human rights prosecutions appears to be especially effective in deterring future torture cases and that even those prosecutions that ended in acquittals correlate with a lower incidence of torture in the future. The authors also found that prosecution processes and convictions of high-level state officials appear to have a stronger deterrent effect when compared to prosecutions and convictions of low-level officials. In addition, high-level prosecutions and convictions are associated with improvements in a wider range of physical integrity rights. This study shows that high-level prosecutions correlate with a lower incidence of extrajudicial killings as well as the use of torture.

In the first section of this article, the authors review and discuss the various arguments in the transitional justice, compliance, and deterrence literatures that link human rights prosecutions with human rights practices and present the hypotheses to be tested. In the second section, the authors explain our dependent and independent variables and discuss the sample, which is defined as all countries with democratic transitions between 1980 and 2009. In the third section, the statistical evidence examining the causal link between prosecutions and human rights protection is examined. The article concludes with a summary and suggestions for future research.

## **II. HOW DO HUMAN RIGHTS PROSECUTIONS IMPROVE HUMAN RIGHTS?**

### **A. The Deterrence Hypothesis**

The most common hypothesis on the impact of human rights prosecutions involves the belief in the deterrent effect of criminal prosecutions.<sup>8</sup>

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<sup>8</sup> Juan Mendez, *In Defense of Transitional Justice*, in A. James McAdams (ed.), *TRANSITIONAL JUSTICE AND THE RULE OF LAW IN NEW DEMOCRACIES* (1997); Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Atrocities?* 95 *AM. J. INT’L L.*

For this approach, the main mechanism through which prosecutions lead to improvements in human rights practices is by increasing the costs of repression for state officials. This debate over transitional justice is related to an important literature on deterrence in domestic systems, which focuses on how prosecution and punishment inhibit individual criminal activity.<sup>9</sup> Reviews of the deterrence literature from domestic legal systems now conclude that there is much firmer evidence for a substantial deterrent effect than there was two decades ago.<sup>10</sup> Of particular relevance to our article is the finding that an increase in the likelihood of arrest and punishment has a greater deterrent effect than an increase in the severity of punishment.<sup>11</sup>

Human rights prosecutions impose costs and sanctions on former state officials and carry the possibility of punishment. Prosecutions lead to sanctions of various sorts (arrest, detention, incarceration, or loss of income or prestige) that may increase the perceived costs of repression. Some scholars originally only counted human rights prosecutions that resulted in verdicts, presumably because they believed that these would be more likely to have an effect.<sup>12</sup> However, the authors of this article believe the entire “process of prosecution,” including indictments, extradition, preventive detention, and trials, impose costs on the accused, even if the prosecutions have not yet resulted in verdicts or convictions. For example, the prosecutions of Augusto Pinochet in the United Kingdom and in Chile and the prosecution of Slobodan Milosevic in the International Criminal Tribunal for the Former Yugoslavia (ICTY) did not result in convictions because both defendants died before the completion of their trials. Although neither was convicted, the defendants’ indictments, detentions, and trials were very costly to them.

The first data set on prosecutions thus records judicial activity that forms this process of human rights prosecutions. In order to respond to scholars who stress the importance of verdicts, however, the authors have now collected additional information for the entire database to record those prosecutions that resulted in convictions. The authors anticipate that the entire process of prosecution can produce deterrent effects but that actual convictions impose the greatest costs on perpetrators. If deterrence theory is correct that a greater likelihood of punishment deters future crimes, this leads to the following predictions:

**Hypothesis 1:** Countries that have held human rights prosecu-

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7 (2001); Diane Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violation of a Prior Regime*, 100 YALE L.J. 2537 (1995).

<sup>9</sup> Ross Matsueda et al., *Deterring Delinquents: A Rational Choice Model of Theft and Violence*, 71 AM. SOC. REV. 95 (2006).

<sup>10</sup> Daniel Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, 23 CRIME & JUST. 1 (1998).

<sup>11</sup> Gary Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968); Lawrence Cohen & Bruce Bueno de Mesquita, *Self-Interest, Equity and Crime Control: A Game Theoretic Analysis of Criminal Decisions*, 33 CRIMINOLOGY 483 (1995); Bill McCarthy, *New Economics of Sociological Criminology*, 28 ANN. REV. SOC. 417 (2002).

<sup>12</sup> See Olsen et al., *supra* note 3.

tions will see greater improvements in human rights practices than those countries that have not held human rights prosecutions.

**Hypothesis 2:** Countries that have held human rights prosecutions that ended in convictions will see greater improvements in human rights practices than those countries that have not held such human rights prosecutions or those countries in which prosecutions have not resulted in convictions.

### B. Norms and Socialization Hypothesis

The alternative to the deterrence hypothesis is the argument that sometimes compliance occurs for normative or managerial reasons even in the absence of strong enforcement.<sup>13</sup> Since issues of state and individual reputation, esteem, and legitimacy are at stake in human rights debates, the processes of the mobilization of shame through advocacy networks and international organizations could lead to behavioral change without stronger enforcement.<sup>14</sup> In this approach, human rights prosecutions are part of a process of socialization through which the norms of domestic and international society are communicated and reinforced, not only for the former or current state officials, but also for broader publics. Norm theories stress that state officials also care about the social costs imposed by trials and are attentive to the general norms of society and the role of institutions, including judicial institutions, in communicating those norms.

It is important to note that the norms literature does not say that stronger enforcement is counterproductive for compliance, just that strong enforcement may not be necessary in all circumstances and that behavioral change is possible in the absence of strong enforcement mechanisms. Many legal scholars and political science norms theorists who write on human rights believe that human rights change is usually the result of both normative and coercive factors, such as aid cut-offs or other sanctions.<sup>15</sup> Thus, they tend to agree that the greater enforcement of human rights norms through prosecutions would complement and enhance the processes of “naming and shaming” that have long been a staple of the human rights movement.<sup>16</sup>

One possible way to test the norm and socialization hypothesis is to contrast the impact of prosecutions of high-level officials with that of low-level officials. High-level prosecutions do not necessarily involve stronger enforcement or punishment. On the contrary, high-level prosecutions, often symbolic and performative, frequently lead to acquittal or dismissal of the case. In some cases, prosecutions proceed *in absentia* (for example, in

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<sup>13</sup> See Abram Chayes & Antonia Chayes, *On Compliance*, 47 INT'L ORG. 175 (1993).

<sup>14</sup> See Thomas Risse, et al., *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* (1999).

<sup>15</sup> See Sonia Cardenas, *CONFLICT AND COMPLIANCE: STATE RESPONSES TO INTERNATIONAL HUMAN RIGHTS PRESSURES* (2007); Akhavan, *supra* note 8; Risse, *supra* note 14; David Weissbrodt & Maria Luisa Bartolomei, *The Effectiveness of International Human Rights Pressures: The Case of Argentina 1976-1983*, 75 MINN. L. REV. 1009 (1991).

<sup>16</sup> *Id.*

Ethiopia or Bolivia), which also diminishes the punitive effect of these high-profile cases, because even if the accused is convicted, he or she will not be punished. It is also true that the high-level prosecutions are highly political and thus uncertain in nature. Many trials of high-level officials ended in dismissal for medical reasons (for example, in South Africa, Argentina, and Chile) or rather luxurious in-house confinement (for example, in Chile or Nicaragua).<sup>17</sup> However, human rights prosecutions of high-profile state officials certainly draw more social and media attention to their processes and outcomes than do prosecutions of lower-level officials such as police officers and prison guards.<sup>18</sup> Thus, if human rights prosecutions exercise influence primarily through processes of social communications of norms, one would expect to see that high-level prosecutions have a greater impact than low-level prosecutions. This leads to the following prediction:

**Hypothesis 3:** Countries that have held high-level human rights prosecutions will see greater improvements in human rights practices than those countries that have held low-level human rights prosecutions.

The authors further collected the data for human rights prosecutions that ended in acquittals. If only enforcement or punishment mattered, one would not expect to see any deterrent effect due to those human rights prosecutions that ended in acquittals. On the contrary, if the very process of prosecution itself matters, even those prosecutions that ended in acquittals could be associated with effects on the future conditions of human rights. The key premise here is that the idea of individual accountability and norms of human rights are disseminated, communicated, and enforced through the prosecution process itself, regardless of its result. This would lead to the following hypothesis:

**Hypothesis 4:** Countries that have had human rights prosecutions that ended in acquittals will also see greater improvements in human rights practices than those countries that have not held human rights prosecutions.

### III. RESEARCH DESIGN

To test these hypotheses, the authors used a new dataset on human rights prosecutions in 78 countries that had undergone democratization between 1980 and 2009. Democratization refers to a situation in which a state changes from a repressive and closed regime, such as a military, one-party, authoritarian, dictatorial, or communist regime, to an open and decentralized government. Usually, the evident indicator of democratic transition is a free, fair, and direct national election, through secret ballot, for

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<sup>17</sup> Ellen Lutz & Caitlin Reiger (eds.), *PROSECUTING HEADS OF THE STATE* 52, 65, 87, 89 (2009).

<sup>18</sup> *Id.*

major government offices, including the head of state.<sup>19</sup> The authors determined transitional countries using the dataset from the Polity IV Project following the established practice in the field.<sup>20</sup>

Scholars of transitional justice often combine two different types of transition in their research: democratic transition from authoritarian regimes and transitions from civil, and even international, war. Transitional justice was first used to refer to trials and truth commissions associated with transitions from authoritarian regimes or communist regimes in the 1980s and early 1990s. However, beginning in the mid-1990s, the parameter of transition broadened into areas scholars traditionally referred to as conflict resolution. This spillover was actually the result of changing practices in world politics. In the face of new ethnic and civil conflicts in the former Yugoslavia, Rwanda, and El Salvador, diplomats, peace negotiators, and international organizations considered and actually adopted trials and truth commissions, before, during, and after conflict resolution. However, the authors find these two types of transitions have different characteristics, and the findings from one situation do not naturally apply to the other situation. Although scholars discuss seemingly identical trial processes, the context and politics are different. Kim and Sikkink studied countries experiencing both kinds of transitions and found evidence of the positive effects of prosecutions on human rights even in situations of civil war.<sup>21</sup> For the reasons discussed above, however, the authors instead limit this analysis to countries that have experienced democratic transitions from authoritarianism. This still involves a large group of countries in which many victims and human rights activists have long argued that transitional justice mechanisms are most likely to have a transformative effect. The authors' research thus allows this article to probe and refine these claims further.

### A. The Dependent Variable

The authors explore the impact that human rights prosecutions have on a core set of human rights violations, namely: summary execution, torture, disappearances, and political imprisonment (which this article refers to as repression) following established practice in the quantitative literature.<sup>22</sup> Human rights prosecutions mainly address these types of human rights violations, so the authors looked for impact on a dependent variable that is a measure of these physical integrity rights. The authors operationalized it using the physical integrity rights index from the Cingranelli-Richards human rights database (CIRI), and for their own research, the authors reversed the original index into a 9-point scale on which "8" indicates the highest level of repression and "0" indicates an absence of repres-

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<sup>19</sup> Samuel Huntington, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* 7 (1991).

<sup>20</sup> See Olsen et al., *supra* note 3. See also David Epstein et al., *Democratic Transition*, 50 AM. J. POL. SCI. 551 (2006); Edward Mansfield & Jack Snyder, *Democratic Transition, Institutional Strength, and War*, 56 INT'L ORG. 297 (2002).

<sup>21</sup> See Kim & Sikkink, *supra* note 3.

<sup>22</sup> Steven Poe et al., *Repression of the Human Right to Personal Integrity Revisited: A Global Cross National Study Covering the Years 1976–1993*, 43 INT'L STUD. Q. 291 (1999).

sion.<sup>23</sup> In addition to the composite index of the CIRI physical integrity rights, the authors also used the CIRI's disaggregated indicators separately measuring the level of extrajudicial killing, torture, disappearance, and political imprisonment. The authors again reversed the original index into a 3-point scale on which "0" indicates no such violations and "2" indicates the frequent practice of such violations.

**Figure 1. Change in the Average Score of Repression over Time**

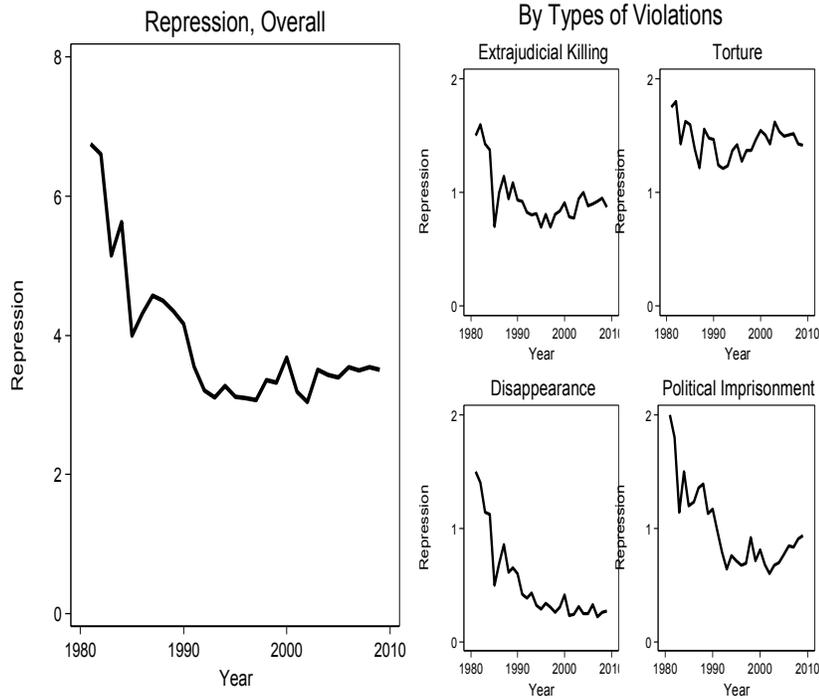


Figure 1 summarizes the changes in the average score of repression over time in transitional countries. The graph on the left panel represents the mean score of the reversed CIRI physical integrity rights index. Overall, the level of repression fell sharply in the early 1980s and remains relatively stable throughout the 1990s and 2000s, despite a slight rise in the late 1990s. Each type of human rights violations shows a similar pattern, with more dramatic decrease in the cases of disappearance and political imprisonment. However, unlike other three types of violations, torture overall has not decreased over time and even shows a relapse since the mid-1990s. Thus, it is clear that torture remains as one of the most serious and prevalent physical integrity issues in the 21st century.

<sup>23</sup> See THE CINGRANELLI-RICHARDS (CIRI) HUMAN RIGHTS DATABASE CODER MANUAL (2004).

The physical integrity rights index and human rights prosecution data are coded from different sections of the U.S. Department of State Country Reports on Human Rights Practices, and the authors could not find any evidence that prosecution activities were used in coding any of the four elements of the physical integrity rights index.<sup>24</sup> In addition, the authors checked their findings using two alternative measures. First, the authors used the political terror scale, which was coded from both the Amnesty International annual human rights country reports and State Department reports.<sup>25</sup> Second, the authors used the Freedom House indexes of political rights and civil liberty. The authors could not find differences in results using these alternative measures.

### **B. Independent Variables**

A human rights prosecution is the criminal prosecution of former state officials for human rights violations that occurred while the officials were in office. Domestic human rights prosecutions are those conducted in a single country for human rights abuses committed in that country. While information is readily available on the relatively small number of international trials, the data on domestic prosecutions is dispersed and difficult to quantify. To address this problem, the authors created a new database of human rights prosecutions by coding from the State Department reports, which are generally considered to be a reliable source of information on states' human rights practices. To be included in the dataset, the prosecution activity discussed in the report must inflict costs on a government agent accused of having individual criminal responsibility for human rights violations. When the data sources mention prosecutions that met the criteria, a country is coded "1" for having human rights prosecutions in a given year (a country prosecution year). If there is no mention of a trial, a country is coded "0" for that year.

In order to test this article's hypotheses regarding the mechanisms of human rights prosecutions, the authors created three additional variables to measure the differences in the prosecution process. First, the authors collected information from the database on whether the prosecution led to a conviction in the court of law in the country, using the State Department's human rights report. A country is coded "1" if the perpetrator is convicted and "0" if not convicted or if there is no mention of a conviction. Second, the authors also collected information on whether the prosecution ended in an acquittal. Similar to the conviction variable, a country is coded "1" for having acquittals in a given year and "0" for having no acquittals or having no mention of acquittals. Third, the authors created variables that measured the level of state officials accused of human rights violations, defined by the rank. Prosecutions are high-level if the accused falls under any of the following categories: presidents or other heads of state, generals, admirals, ministers, and heads/directors of security and intelligence agencies. Based on this information, the authors created ordinal variables

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<sup>24</sup> *Id.*

<sup>25</sup> See Mark Gibney, POLITICAL TERROR SCALE (2004).

measuring the level of ranking of the accused on each independent variable (human rights prosecution, convictions, and acquittals). A country is coded “0” if the perpetrator is not prosecuted or if there is no mention of a prosecution, “1” if a low-ranking public official is prosecuted, and “2” if a high-ranking official is prosecuted. Variables measuring the level of convictions and acquittals were also created in a similar manner. Thus, these variables not only measure the impact of the prosecution process itself but also measure the level of publicity and media attention paid to these processes.

### C. Models

The basic structure of the data is an unbalanced time-series cross-sectional data. In line with the authors’ previous work, the authors used pooled ordinary least squares (OLS) regression with panel corrected standard errors (PCSE) and a lagged dependent variable.<sup>26</sup> The basic PCSE model is:

$$Y_{i,t} = \beta_0 + \beta_1 Y_{i,t-1} + \beta_2 X_{i,t} + \gamma Z_{i,t} + e_{i,t}$$

First,  $Y_{i,t}$  represents our measure of repression;  $Y_{i,t-1}$  is a one year lag of the dependent variable;  $X_{i,t}$  is the respective measure of prosecution;  $Z_{i,t}$  is a vector of control variables; and  $e_{i,t}$  is an error term.<sup>27</sup> Second, due to the ordinal character of the disaggregated dependent variables, such as extrajudicial killing, torture, disappearance, and political imprisonment (using a 3-point scale), the authors additionally used ordered probit models with a lagged variable.<sup>28</sup>

A set of control variables is included to isolate the net effect of human rights prosecutions from all other factors that might affect the level of repression. Guided by previous studies, eight control variables were included: democracy, international wars, civil wars, treaty ratification, economic standing, economic growth, population size, and population growth. The authors anticipate that factors that were proven to be important in the previous studies will continue to be important. Additionally, the authors included four regional dummy variables and a linear time variable to control

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<sup>26</sup> See Poe, et al., *supra* note 22; See also Nathaniel Beck & Jonathan Katz, *What to Do (and Not to Do) with Time-Series Cross-Section Data*, 89 AM. POL. SCI. REV. 634 (1995).

<sup>27</sup> Some show concerns regarding using a lagged dependent variable in time-series cross-sectional data. The authors additionally estimated our models using Prais-Winsten regression with panel corrected standard errors assuming a first-order autoregressive error process and the results are the same. See Christopher Achen, WHY LAGGED DEPENDENT VARIABLES CAN SUPPRESS THE EXPLANATORY POWER OF OTHER INDEPENDENT VARIABLES (2000); Luke Keele & Nathan Kelly, *Dynamic Models for Dynamic Theories: The Ins and Outs of Lagged Dependent Variables*, 14 POL. ANALYSIS 186 (2006).

<sup>28</sup> See Robert Walker, DEMOCRACY AND HUMAN RIGHTS TO PERSONAL INTEGRITY: HISTORY MATTERS (2006); Emilie Hafner-Burton, *Trading Human Rights: How Preferential Trade Agreements Influence Government Repression*, 59 INT’L ORG. 593 (2005). The authors estimated the ordered probit models with both a lagged dependent variable and a Markov transition and found no difference in the results.

for spatial and temporal discrepancies.<sup>29</sup>

To address the possibility of reverse causation, the authors employed a two-stage probit least squares (2SPLS) model in their previous study.<sup>30</sup> The same model was used in this paper to get unbiased coefficient estimates. The result is identical in the authors' new sample, and the authors find the impact of human rights prosecutions is robust when controlled for a possible endogeneity issue. The authors further considered spurious relationships between human rights prosecutions and repression by focusing on selection bias.<sup>31</sup> Other factors besides democracy may affect both the likelihood of human rights prosecution in the country and improvement in human rights. In order to address this issue, the authors further specified the sample selection mechanism and employed the Heckman selection model. The following factors were additionally considered in the model: the types of democratic transition, domestic human rights advocacy, international pressure, democracy and its consolidation, commitment to international human rights treaties, the type of legal system and tradition, past level of repression, past and current level of political instability, truth commissions, economic development, and economic growth.<sup>32</sup> The positive and statistically significant effect of human rights prosecution in decreasing future repression was robust even when the authors considered possible bi-directional effects of these factors on both human rights prosecutions and improvement of human rights.<sup>33</sup>

### III. FINDINGS

Table 1. Impact of Human Rights Prosecution on Repression

	Model 1	Model 2	Model 3
<b>Prosecution</b>			
Human rights prosecution	-0.180** (0.086)		
Conviction		-0.267** (0.108)	
Acquittal			-0.084 (0.156)
<b>Controls</b>			
Repression (lagged)	0.529*** (0.024)	0.529*** (0.024)	0.529*** (0.024)
Democracy	-0.055***	-0.054***	-0.055***

<sup>29</sup> The regional dummy variables were created using the UN regional division of the world: Africa, Asia, Europe, and Latin America (as an omitted base category).

<sup>30</sup> See Michael Alvarez & Garrett Glasgow, *Two-Stage Estimation of Nonrecursive Choice Model*, 8 POL. ANALYSIS 147 (1999).

<sup>31</sup> See James Heckman, *Sample Selection Bias As A Specific Error*, 47 ECONOMETRICA 153 (1979).

<sup>32</sup> See Hun Joon Kim, *Structural Determinants of Human Rights Prosecution After Democratization*, 49 J. PEACE RES. 305 (2012).

<sup>33</sup> The Heckman selection model yields the regression estimates of prosecution variable of = -0.192 (SE = 0.090  $p = 0.034$ ).

	(0.009)	(0.009)	(0.009)
International conflict	0.619***	0.625***	0.612***
	(0.224)	(0.223)	(0.223)
Civil conflict	1.011***	1.021***	1.009***
	(0.107)	(0.107)	(0.107)
Commitment to human rights treaties	-0.009	-0.014	-0.014
	(0.047)	(0.047)	(0.047)
GDP per capita (logged)	-0.158***	-0.157***	-0.161***
	(0.038)	(0.038)	(0.038)
Annual GDP growth rate (%)	-0.008	-0.007	-0.008
	(0.006)	(0.006)	(0.006)
Population (logged)	0.264***	0.263***	0.261***
	(0.029)	(0.029)	(0.029)
Population change (%)	-0.084*	-0.088*	-0.088*
	(0.047)	(0.047)	(0.047)
Africa	-0.470***	-0.457***	-0.428***
	(0.128)	(0.127)	(0.127)
Asia	-0.193*	-0.185*	-0.146*
	(0.106)	(0.104)	(0.104)
Europe	-0.749***	-0.743***	-0.718***
	(0.121)	(0.121)	(0.121)
Year	0.017***	0.017***	0.017***
	(0.006)	(0.006)	(0.006)
Constant	-1.248***	-1.244***	-1.217***
	(0.454)	(0.454)	(0.454)
Observations	1321	1321	1321
Number of states	77	77	77
R square	0.73	0.73	0.73
Chi square	4496	4505	4486

Note: Table entries are OLS regression estimates corrected for panel-specific autocorrelation using Stata 11.1/SE. Panel corrected standard errors are included in the parentheses. \*  $p < 0.10$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$

Table 1 reports the results of estimating the effect of human rights prosecutions using PCSE models. Model 1 is a replication of the previous model to the new sample. Although the authors adjusted the sample to countries with democratic transitions and expanded for a longer period (1980-2009), the findings are consistent with a previous study but move significantly beyond it.<sup>34</sup> Democracy, international and civil war, economic standing, population size, population growth, and past level of repression

<sup>34</sup> Hun Joon Kim & Kathryn Sikkink, *Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries*, 54 INT'L STUD. Q. 939 (2010) [hereinafter Kim & Sikkink ED].

turn out to be relevant factors affecting the level of repression. Human rights prosecutions have a strong and statistically significant impact on decreasing the level of repression.<sup>35</sup> When controlled for all other relevant factors, the level of repression in countries with prosecutions is lower than that of countries without prosecutions. On average, human rights prosecution decreases the level of repression in the country by 0.18 points on a 9-points repression scale. However, the coefficients of the prosecution variables represent the short-term effect. Due to the inclusion of the lagged dependent variable, the total effects are also dynamically distributed across time. The long-term effects are those that accrue over time through the operation of the lagged dependent variable. These long-term effects are permanent effects that become realized after several years.<sup>36</sup> If a country starts to have a prosecution, the repression score would decrease by 0.18 points in the immediate year and about 0.38 points in the long run.

Model 2 reports the result of estimating the effect of human rights prosecutions that ended in convictions. As expected, the variable measuring conviction is statistically significant.<sup>37</sup> The result from Model 1 and 2, however, strongly supports our assumption that not only human rights prosecutions that ended in convictions (Model 2) but also the process of prosecution, including trials that did not lead to convictions (Model 1), are associated with improvements in future respect for human rights.

This, in part, supports the general findings from the deterrence literature. Both the certainty of punishment (i.e. convictions) and the likelihood of punishment in the course of the entire process of prosecution have a deterrent effect on future violations. However, the difference in the magnitude of the prosecution variable in Model 1 and that of the conviction variable in Model 2 suggests that the deterrent effect is stronger for those prosecutions ending in convictions.<sup>38</sup> Initiating human rights prosecutions decreases the level of repression by 0.18 points on a 9-point scale, while convictions decrease the level by 0.27 points. In the long term, conviction decreases the level of repression by 0.57 points, while prosecution decreases it by 0.38 points. In sum, the results from both Model 1 and 2 support the deterrence hypothesis. While the process of prosecution contributes to improvements in human rights practices, when such prosecutions result in convictions, they have a greater impact. This suggests that the process of prosecution itself may have a deterrent effect because people anticipate the process will lead to a conviction.

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<sup>35</sup> There are bivariate relations between prosecutions and repression. The regression estimates of prosecution variables for Model 1a is  $-0.210$  (SE = 0.091  $p=0.021$ ).

<sup>36</sup> The long-term effects are calculated by  $\beta/(1-\alpha)$ , where  $\beta$  is the coefficient on the prosecution variables and  $\alpha$  is the coefficient on the lagged dependent variable.

<sup>37</sup> There are bivariate relations between conviction and repression. The regression estimates of conviction variables for Model 2 is  $-0.292$  (SE = 0.117  $p=0.012$ ).

<sup>38</sup> In order to test this, the authors further created an ordinal variable measuring the level of enforcement or punishment. A country is coded "0" if the perpetrator was not prosecuted or if there is no mention of a prosecution, "1" if a public official was prosecuted, and "2" if the official was prosecuted and convicted. The regression estimate of this variable is  $-0.128$  (SE = 0.052  $p=0.013$ ).

Table 2. Impact of Human Rights Prosecutions on Repression by Types of Repression

	Killing	Torture	Disappearance	Imprisonment
<b>Prosecution</b>				
Human Rights Prosecution	-0.201 (0.138)	-0.273*** (0.093)	-0.175 (0.141)	0.098 (0.102)
Observations	1272	1272	1268	1271
Number of states	77	78	77	77
Log Likelihood	-823	-819	-541	-826
Chi squared	488	364	540	584
<hr/>				
	Killing	Torture	Disappearance	Imprisonment
<b>Prosecution</b>				
Conviction	-0.224 (0.157)	-0.365*** (0.091)	-0.124 (0.172)	0.013 (0.115)
Observations	1272	1272	1268	1271
Number of states	77	77	77	77
Log Likelihood	-823	-818	-542	-827
Chi squared	468	368	541	569
<hr/>				
	Killing	Torture	Disappearance	Imprisonment
<b>Prosecution</b>				
Acquittal	-0.036 (0.234)	-0.503*** (0.154)	0.272 (0.286)	0.134 (0.177)
Observations	1272	1272	1268	1271
Number of states	77	77	77	77
log Likelihood	-825	-819	-542	-827
Chi squared	436	355	571	575

Note: Table entries are ordered probit regression estimates corrected for panel autocorrelation using Stata 11.1/SE. Panel corrected standard errors are included in the parentheses. To conserve space, the authors do not report the control variables or constant terms for the regressions. \*  $p < 0.10$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.1$

Model 3 reports the result of estimating the effect of human rights prosecutions that ended in acquittals. In the first look, prosecutions that ended in acquittals turned out to be not statistically significant, thus supporting the deterrence hypothesis. However, a closer look into specific types of human rights tells a somewhat different story. Table 2 reports the

impact of human rights prosecutions on different types of physical integrity rights: extrajudicial killing, torture, disappearance, and political imprisonment. The result suggests that human rights prosecutions may be effective in deterring future torture cases. Human rights prosecutions in general and those cases that end in conviction are highly correlated with lower levels of torture. Surprisingly, this even extends to cases that end in acquittals. In case of torture, even prosecutions that end in acquittals have a strong effect. This finding in part suggests the effect of the process of a human rights prosecution itself. Although (the possibility of) conviction may strengthen the deterrent effect, our finding suggests that the effects of prosecutions do not depend solely on convictions. Furthermore, this finding supports the norm and socialization hypothesis. Even if prosecution does not end in conviction, human rights prosecutions may exert an influence through the education or messaging effect of trials.

It is not certain exactly why the process of human rights prosecutions is associated in particular with a decline in the use of torture. One possible explanation is that torture is the most decentralized and most secretive of the human rights violations considered here. Unlike some human rights violations, which require centralized coordination, torture can happen in any police station or prison cell. Torturers may thus feel they have more invisibility and, thus, impunity. Studies have suggested that decentralized human rights violations are among the most difficult to stop merely by ratifying human rights treaties.<sup>39</sup> Thus, it is possible that prosecution adds an additional and necessary level of enforcement that challenges the torturers' sense of secrecy and immunity, leading them to alter their behavior.

Table 3. Impact of High Level Human Rights Prosecution on Repression

	Model 4	Model 5	Model 6
<b>Prosecution</b>			
High level prosecution	-0.102* (0.054)		
High level conviction		-0.196*** (0.073)	
High level acquittal			-0.132 (0.114)
<b>Controls</b>			
Repression (lagged)	0.529*** (0.024)	0.528*** (0.024)	0.529*** (0.024)
Democracy	-0.055*** (0.009)	-0.054*** (0.009)	-0.055*** (0.009)
International conflict	0.622***	0.634***	0.611***

<sup>39</sup> See Beth Simmons, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009); Kathryn Sikkink & Ellen Lutz, *International Human Rights Law and Practice in Latin America*, 54 INT'L ORG. 633 (2000).

	(0.224)	(0.223)	(0.223)
Civil conflict	1.008***	1.025***	1.010***
	(0.107)	(0.107)	(0.107)
Commitment to human rights treaties	-0.008	-0.015	-0.015
	(0.047)	(0.047)	(0.047)
GDP per capita (logged)	-0.159***	-0.159***	-0.162***
	(0.038)	(0.038)	(0.038)
Annual GDP growth rate (%)	-0.008	-0.007	-0.008
	(0.006)	(0.006)	(0.006)
Population (logged)	0.264***	0.264***	0.262***
	(0.029)	(0.029)	(0.029)
Population change (%)	-0.086*	-0.091*	-0.088*
	(0.047)	(0.047)	(0.047)
Africa	-0.463***	-0.460***	-0.432***
	(0.128)	(0.127)	(0.127)
Asia	-0.190*	-0.192*	-0.149
	(0.106)	(0.104)	(0.104)
Europe	-0.743***	-0.756***	-0.719***
	(0.122)	(0.121)	(0.121)
Year	0.017***	0.017***	0.017***
	(0.006)	(0.006)	(0.006)
Constant	-1.257***	-1.247***	-1.217***
	(0.455)	(0.454)	(0.454)
Observations	1321	1321	1321
Number of states	77	77	77
R square	0.73	0.73	0.73
Chi square	4495	4505	4488

Note: Table entries are OLS regression estimates corrected for panel-specific autocorrelation using Stata 11.1/SE. Panel corrected standard errors are included in the parentheses. \*  $p < 0.10$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$

Table 3 reports the result of estimating the effect of the different levels of human rights prosecutions. Models 4 and 5 show that, in addition to the independent effect of the prosecution process and conviction itself, the level of the accused in the prosecution has an impact on decreasing the level of future human rights violations.<sup>40</sup> Having human rights prosecutions of a low-level official decreases the level of repression by 0.1 points in

<sup>40</sup> There are bivariate relations between prosecution/conviction and repression. The regression estimate of human rights prosecution variables for Model 4 is  $\beta = -0.119$  (SE = 0.056  $p = 0.034$ ) and the regression estimate of conviction variable for Model 5 is  $\beta = -0.177$  (SE = 0.079  $p = 0.027$ ).

a 9-point scale, while prosecutions ending in a conviction decrease the level by 0.2 points. In the long term, convictions of low-level officials decrease the level of repression by 0.42 points, while the process of prosecution decreases it by 0.22 points. Models 4 and 5 predict that in the case of high-level officials, both short-term and long-term effects double. This finding supports the norm and socialization hypothesis by showing that human rights prosecutions may prevent further repression by communicating norms of individual accountability through publicity and media attention. Our research suggests that prosecution processes of high-level officials have a greater impact on future human rights, perhaps because they generate a higher level of publicity and media attention.

Table 4. Impact of High Level Prosecutions on Repression by Types of Repression

	Killing	Torture	Disappearance	Imprisonment
<b>Prosecution</b>				
High level prosecution	-0.158*	-0.144**	-0.105	0.072
	(0.086)	(0.056)	(0.082)	(0.058)
Observations	1302	1272	1268	1271
Number of states	78	77	77	77
Log Likelihood	-943	-820	-542	-826
Chi squared	321	343	553	578
	Killing	Torture	Disappearance	Imprisonment
<b>Prosecution</b>				
High level conviction	-0.163*	-0.239***	-0.137	-0.012
	(0.089)	(0.061)	(0.089)	(0.076)
Observations	1272	1272	1268	1271
Number of states	77	77	77	77
Log Likelihood	-823	-818	-542	-827
Chi squared	469	346	524	571

	Killing	Torture	Disappearance	Imprisonment
<b>Prosecution</b>				
High level acquittal	-0.031 (0.179)	-0.335*** (0.118)	0.110 (0.156)	-0.032 (0.138)
Observations	1272	1272	1268	1271
Number of states	77	77	77	77
log Likelihood	-825	-819	-542	-827
Chi squared	442	344	567	576

Note: Table entries are ordered probit regression estimates corrected for panel autocorrelation using Stata 11.1/SE. Panel corrected standard errors are included in the parentheses. To conserve space, we do not report the control variables or constant terms for the regressions. \*  $p < 0.10$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$

The norm and socialization hypothesis is further supported by comparing Tables 2 and 4. Table 4 reports the result of estimating the effect of prosecutions and convictions on different types of human rights violations. The result shows that high profile human rights prosecutions are specifically associated with improvements in human rights practices with respect to extrajudicial killing and torture. This result suggests that prosecutions and convictions of high-level state officials may have a deterrent effect over a wider range of human rights crimes. Whereas general prosecutions and convictions had a specific effect on deterring future torture cases, high-level cases turned out to have an additional deterrent effect on the extrajudicial killing cases. This finding is interesting because although most extrajudicial killings are carried out by low-level state officials, such as police officers, secret service agents, prison guards, and foot soldiers, the orders come from higher-level state officials. Thus, our study indicates that although low-level officials can be prosecuted for murder charges, the effect of these prosecutions may not be visible until higher-level officials are prosecuted.

In addition, this provides support for the deterrence hypothesis because most human rights prosecutions involve charges of murder and torture. There are very few cases in the database in which state officials are prosecuted for ordering political imprisonment. There are a number of examples of prosecutions for disappearances, but most of the disappearance prosecutions involve individuals who were first “disappeared” (kidnapped and imprisoned clandestinely) and were subsequently executed, and the prosecutions are primarily for murder rather than for disappearance. The research thus suggests not only that human rights prosecutions have an impact on improving human rights practices, but that they improve exactly those human rights practices—murder and torture—that are the main crimes for which the accused are being tried. This is especially interesting because torture has been one of the human rights issues in which the least improvement has been seen. It is also the issue on which

scholars have shown that merely ratifying treaties is least likely to produce a positive effect. This further reinforces the idea that some targeted form of individual enforcement of human rights law may be necessary to bring about changes in behavior.

#### IV. CONCLUSIONS

The results of the analysis presented here support the findings of earlier research<sup>41</sup> but also move beyond it in important ways. This study provides more evidence for conclusions by including a longer time period. It also offers additional theoretical and policy insights that are not present in other work. The authors argue that while the whole “process of prosecution” is likely to be associated with improvements in the human rights situation, those prosecutions that result in convictions appear to have a greater effect than those that do not. We believe that the fact that some prosecutions result in dismissals or acquittals for lack of evidence will not necessarily undermine a deterrent effect, but a sustained failure to convict could diminish the belief in the likelihood of punishment.

Additionally, human rights prosecutions are associated with improvements in respect for the right to freedom from torture, even if these prosecutions do not reach convictions or if they end in acquittal. This has an important practical and theoretical implication. First, as mentioned, torture remains one of the most prevalent human right violations. This study suggests that, regardless of the result, prosecuting torturers could be an effective tool to diminish torture. Oftentimes, human rights victims or human rights lawyers are disappointed or frustrated with any acquittal of suspected perpetrators, but this study suggests that even those processes may not be in vain. Both through the prosecution process (e.g. arrest, detention, trials) and through public education and media exposure, prosecutions appear to improve human rights practices.

Theoretically, the authors find equal support for a rational choice deterrence argument and the normative communication or expressive argument. Although the entire process of prosecution, not just conviction, is associated with improvements in respect for human rights, prosecutions that result in convictions have a stronger effect. This could imply that the process of prosecution has an impact because people anticipate that it will result in a conviction and adjust their behavior accordingly. We also see that while the prosecution of low-level officials is associated with some improvement in the human rights situation, the prosecution of high-level state officials has a greater and much wider effect on improving human rights. In addition, even those prosecutions that end in acquittal have a deterrent effect. This suggests that it is not merely punishment or the possibility of punishment that matters—norms and socialization also matter.

Because trials are complex phenomena, we cannot yet fully explain the processes through which they work, but this research confirms that both the likelihood and the certainty of punishment appear to be important

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<sup>41</sup> Kathryn Sikink, *THE JUSTICE CASCADE*, *supra* note 2. See Kim & Sikink ED, *supra* note 34.

parts of the explanation for improving the human rights situation in transitional countries using prosecutions. In terms of policy implications, such research may imply that observers are able to distinguish “sincere” prosecutions from insincere ones. If, however, human rights prosecutions reveal a higher probability of conviction, accountability norms are reinforced, and the anticipation of the likelihood of punishment could prevent future human rights violations.

**Appendix 1****Summary Statistics**

<b>Variable</b>	<b>N</b>	<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
<b>Dependent variables</b>					
Repression, overall	1381	3.47	2.19	0	8
Extrajudicial killing	1384	0.87	0.78	0	2
Torture	1384	1.44	0.64	0	2
Disappearance	1382	0.34	0.63	0	2
Political imprisonment	1383	0.82	0.81	0	2
<b>Independent variables</b>					
Human rights prosecutions	1406	0.17	0.37	0	1
Conviction	1406	0.09	0.29	0	1
Acquittal	1406	0.03	0.18	0	1
High level human rights prosecutions	1406	0.26	0.61	0	2
High level conviction	1406	0.13	0.44	0	2
High level acquittal	1406	0.04	0.25	0	2
<b>Control Variables</b>					
Repression (lagged)	1363	3.50	2.19	0	8
Democracy	1400	5.49	4.44	-8	10
International conflict	1406	0.03	0.17	0	1
Civil conflict	1406	0.19	0.39	0	1
Human rights treaty ratification	1388	2.35	0.90	0	3
GDP per capita ( <i>ln</i> )	1400	7.21	1.30	4.59	10.7
Economic growth (%)	1406	3.22	6.09	-44.9	34.5
Population ( <i>ln</i> )	1406	16.4	1.29	13.9	19.3
Population change (%)	1406	1.32	1.29	-2.85	4.48
Africa	1406	0.28	0.45	0	1
Asia	1406	0.22	0.41	0	1
Europe	1406	0.25	0.43	0	1
Year (since 1980)	1406	19.35	6.60	0	29

**Data Source**

<b>Variables</b>	<b>Data Source</b>
Human rights prosecutions, including conviction, acquittal, and high level cases	Human rights prosecutions dataset
Repression, including extrajudicial killing, torture, disappearance, and political imprisonment	CIRI Human Rights Database
Democracy	Polity IV Project
International and civil conflict	PRIO/Uppsala Armed Conflict Dataset
Human rights treaty ratification	UN OHCHR
GDP per capita, GDP growth rate, Population, Population growth rate	UN Common Database (For Taiwan, we used the National Statistics data of Taiwan)