

NETWORKS, INSTITUTIONS, AND HUMAN SECURITY IN AFRICA

by

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(Under the direction of Amanda Murdie)

ABSTRACT

The primary questions this dissertation focus on the African Court of Human and Peoples' Rights. Why do states choose to join the court? Is the court successful in its reason for being? How does the court impact individual perceptions of domestic institutional patterns? Regarding ratification patterns, this dissertation shows Africa does not represent a special case. States accede to the African Court as a means to lock-in recent democratic gains against future backsliding. These findings are contingent, however, upon the degree of risk for judicial sovereignty loss and the length of the leader's time horizon for continued rule. This dissertation also investigates the interactive pressure from membership in the African Court and a higher density of non-governmental human rights organizations (HRO) upon human rights outcomes. The analysis shows member states with a higher density of HROs experience increased respect for civil liberties and political rights. Finally, this dissertation develops the theoretic concept of a juridical advocacy network (JAN) that consists of domestic and international judicial institutions and HROs. The findings indicate that individuals residing in states with denser JANs are more likely to perceive of their president as following laws and the relative freedom of HROs to operate without repression.

INDEX WORDS: African Court, Human Rights, International Institutions, Regional Human Rights Courts, Executive Constraint, Lock-in

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DEDICATION

To my family

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While the dissertation represents a singular accomplishment for scholars, it is not an individual pursuit. The patience and dedication of my advisor and committee were essential in the translation of my set of questions and thoughts into a coherent work. I fear I will never be able to repay their collective work on my behalf. I also owe debts of gratitude to my colleagues for helping clarify my thoughts and methods. In particular, Naji Bsisu, Aaron Hitefield, Mariliz Kastberg-Leonard, Matthew Rains, Rachel Schoner, and Neil Williams provided critical advice.

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CONTENTS

	Page
ACKNOWLEDGMENTS	v
LIST OF FIGURES	viii
LIST OF TABLES	ix
CHAPTER	
1 INTRODUCTION	1
1.1 PURPOSE AND OBJECTIVES	1
1.2 STRUCTURE OF DISSERTATION	5
2 RATIFICATION AND TIME HORIZONS: AN ANALYSIS OF THE AFRICAN COURT	7
2.1 ABSTRACT	8
2.2 INTRODUCTION	8
2.3 METHODS	25
2.4 FINDINGS	31
2.5 CONCLUSION AND IMPLICATIONS	36
3 CONSTRAIN AND JUDGE: DOES THE ACTHPR DETER HUMAN RIGHTS VIOLATIONS?	38
3.1 ABSTRACT	39
3.2 INTRODUCTION	39
3.3 INFLUENCE OF INTERNATIONAL HUMAN RIGHTS REGIMES	43
3.4 THEORETICAL ARGUMENT	51
3.5 DESIGN	53

3.6	EMPIRICAL ANALYSIS	65
3.7	CONCLUSION	69
4	AUTHORITY AND SPACE: THE IMPACT OF THE AFRICAN JURIDICAL ADVOCACY NETWORK UPON INDIVIDUAL PERCEPTIONS	72
4.1	ABSTRACT	73
4.2	INTRODUCTION	73
4.3	JURIDICAL ADVOCACY NETWORKS	76
4.4	PRESSURE AND PERCEPTIONS	79
4.5	DATA AND METHODS	90
4.6	EMPIRICAL ANALYSIS	95
4.7	CONCLUSION	99
5	CONCLUSION	104
5.1	SUMMARY OF MAIN FINDINGS	104
5.2	SUGGESTIONS FOR FUTURE RESEARCH	106
APPENDIX		
A	CHAPTER 2 SUPPLEMENTARY INFORMATION	124
A.1	COURT MEMBERSHIP	124
A.2	COX PROPORTIONAL HAZARDS MODEL ROBUSTNESS TESTS	126
B	CHAPTER 3 SUPPLEMENTARY INFORMATION	127
B.1	WOMEN'S INGO ROBUSTNESS TEST	127
C	CHAPTER 4 SUPPLEMENTARY INFORMATION	130
C.1	EXECUTIVE CONSTRAINT ROBUSTNESS TESTS	130
C.2	ACTHPR TIME MODEL	130

LIST OF FIGURES

2.1	Marginal Effects of Regime Type ² upon the likelihood of ACtHPR Ratification	33
3.1	Relative Differences between Africa and the Rest of the World for Civil Liberties and Political Rights, Physical Integrity Rights, and Regime Type . . .	42
3.2	Histogram of relative country-year density of HRO Count (left) and ACtHPR Ratification (right)	58
3.3	Marginal Effects of ACtHPR Membership as HRO Density Varies upon Civil and Political Rights	66
4.1	Theoretic interaction of a juridical advocacy network (JAN) with an African state	77
4.2	<i>Executive Constraint</i> model predicted probabilities [95% CI] of individual perceptions from the “how often the president ignores laws?” question (Q39B)	96
4.3	<i>Judicial Trust</i> model predicted probabilities [95% CI] of individual perceptions from the “how much do you trust courts of law?” question (Q43I)	98
4.4	<i>HRO Space</i> model predicted probabilities [95% CI] of individual perceptions from the “freedom of NGOs to speak and act as better or worse?” question (Q19D)	99

LIST OF TABLES

2.1	Differences Between ACtHPR Members and Non-Members	29
2.2	Determinants of ACtHPR Accession (1998-2013)	32
3.1	Differences Between ACtHPR Members and Non-Members	61
3.2	Impact of the African Court and HROs (1998-2017) on Civil and Political Rights (Civil Liberties and Political Rights Interval Measure - OLS)	67
3.3	Impact of the African Court and HROs (1998-2017) on Civil and Political Rights (Civil Liberties and Political Rights Interval Measure - Coarsened Exact Matching)	68
3.4	Impact of the African Court and HROs (1998-2017)	69
3.5	Impact of the African Court and HROs (1998-2017) Coarsened Exact Matching	70
4.1	Multilevel analysis of individual perceptions of domestic institutional norms and judicial advocacy network influence	101
4.2	Marginal predicted means of believing the president ignores laws (<i>Executive Constraint</i> model)	102
4.3	Marginal predicted means of believing the president ignores laws (<i>Executive Constraint</i> model) with <i>HRO Count</i> held at minimum and maximum values	102
4.4	Marginal predicted means of trusting courts of law (<i>Judicial Trust</i> model) .	103
4.5	Marginal predicted means of believing NGOs have relative freedom from repression (<i>HRO Space</i> model)	103
A.1	African state ACtHPR and ICC membership	124
A.2	African state ACtHPR and ICC membership (continued)	125
A.3	Determinants of ACtHPR Accession (1998-2013) Cox Proportional Hazards Models	126

B.1	Impact of the African Court and HROs (1998-2017) on Civil and Political Rights (Civil Liberties and Political Rights Interval Measure - Coarsened Exact Matching (<i>WINGO Count</i>))	128
B.2	Impact of the African Court and HROs (1998-2017) Coarsened Exact Matching (<i>WINGO Count</i>)	129
C.1	Multilevel analysis of individual perceptions of judicial control (Executive Constraint and State Agent Constraint)	131
C.2	Multilevel analysis of individual perceptions of domestic institutional norms and judicial advocacy network influence (ACtHPR Time Model)	132

CHAPTER 1

INTRODUCTION

1.1 PURPOSE AND OBJECTIVES

Human rights courts represent a set of international institutions that have attracted intense interest from international legal scholars (e.g., Bassiouni 2001; Dickinson 2003) and secondary theoretical (e.g., Keck and Sikkink 1998) and empirical (e.g., Helfner and Voeten 2014) interest from political scientists. The state of investigations into regional human rights courts exhibits, with important caveats, the dearth of empirical investigation of international courts noted by Hafner-Burton (2012). Studies of human rights courts nest within the broader milieu of international human rights treaties.

International human rights treaties remain an interesting and difficult empirical puzzle for scholars. For example, analyses of the efficacy of the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention Against Torture (CAT) form a generally pessimistic literature. Studies find (Keith 1999; Hathaway 2002; Hill 2016) ICCPR membership does not correlate with improvements in state respect for human rights, or only for civil liberties and political rights (Lupu 2013a). Similarly, studies (Hathaway 2002; Hill 2016) provide findings that indicate the CAT fails to correlate with increased human rights protections. A normative hope for regional human rights courts is that the increased delegation and precision (Staton and Moore 2011) of the institutions would limit the appeal of repression tactics by leaders. The inherent delegation and precision of international courts provides an interesting empirical opportunity to explore the impact upon state policy decisions and institutional norms.

A foundational question researchers approach to gain an understanding of the interaction between international institutions and their member states is why states choose to join the institutions (e.g., Abbott and Snidal 1998). Fundamental to the act of joining an international institution, like a regional human rights court, is the voluntary ceding of a degree of state sovereignty. Given the robust literature on the appropriate framing of international institutions (e.g., Mearsheimer 1994; Keohane and Martin 1995), and on why states join (Downs, Rocke, and Barsoom 1996; Von Stein 2005), state accession and compliance decisions remain an important – if not contingent – area of study.

The literature on international courts include state calculus for joining that includes state joining because they already expect to comply (Chapman and Chaudoin 2013), because they do not intend to comply but wish to gain the reputation benefits from joining (Mansfield and Pevehouse 2006; Moravcsik 2000), and because they hope to “lock-in” recent democratic gains (Moravcsik 2000; Hill 2016). The “lock-in” hypothesis indicates states join international human rights treaties with high levels of delegation (Hill 2016) to send a credible signal of intent and lock in recent democratic gains against future backsliding (Moravcsik 2000; Hill 2016). Studies (Moravcsik 2000; Hill 2016) have shown support for the “lock-in” hypothesis in analyses of ratification patterns of the European Court of Human Rights (Moravcsik 2000; Hill 2016) and the Inter-American Court of Human Rights (Hill 2016), although no previous research has explored whether the pattern carries to the Africa Case. Of note, studies on accession patterns to the International Criminal Court (Simmons and Danner 2010; Chapman and Chaudoin 2013) have treated sub-Saharan Africa as a special case that fails to conform to broader theoretic propositions.

The objective of the analysis of accession patterns for the ACtHPR includes the clarification of multiple theoretic and empirical propositions. Further, the propositions require the exploration of novel arguments. An exploration of whether ACtHPR ratification patterns mirror other regions – or if they diverge – will serve to clarify whether Africa represents a special case in international human rights treaty ratification. The development of arguments

and models that incorporate the complexity of a leader's decision environment, such as their time horizon for continued rule (Wright 2008) and threat of sovereignty loss, will provide novel information about the sources of "lock-in" logic.

It is well established in the literature on compliance with international treaties that states often do not comply with the the agreements they sign (e.g. Chayes and Chayes 1993; Downs et al. 1996). Interestingly, relatively few investigations address in direct terms whether regional human rights courts are successful in altering state repression behaviors, and the African court represents an understudied regional human rights court. Recent analyses of the International Criminal Court (Jo and Simmons 2016; Appel 2018) find member states tend to commit fewer human rights abuses due to combination of domestic and international costs from court attention (Appel 2018) and legitimacy concerns (Jo and Simmons 2016). At the regional human rights court level, studies (Binder 2012; Helfer and Voeten 2014) find that regional courts can serve as a legitimizing force for domestic policy changes that face opposition. The literature on state compliance with regional human rights courts finds that court power may grow, but ultimate compliance depends on domestic political institutions and the costs for non-compliance (Cavallaro and Brewer 2008a; Hillebrecht 2012a; Hillebrecht 2012b; Hillebrecht 2014).

In addition to investigations of direct impact of court decisions upon state behavior, studies integrate additional domestic and international actors to understand variation in the impact of human rights treaties. HROs represent a primary set of international actors in the literature that can impact state policy decisions. HROs can employ naming and shaming strategies (DeMeritt 2012; Krain 2012; Murdie and Davis 2012) to alter state repression decisions through the amplification and focus of pressure from international and domestic sources. This pressure can lead to decreased cooperation with third party states (Lebovic and Voeten 2009) and alter perceptions of the target state. As HRO actors engage in the provision of legal assistance in information (Hopgood 2006; Mihr and Schmitz 2007) they

serve in a juridical role and can attract higher perceptions of legitimacy (Pruce and Budabin 2016).

The objective of the investigation of the impact of the ACtHPR upon state policy decisions to gain an understanding of what makes a state more likely to comply with the court's reason for being, and whether improvements in respect for human rights is contingent upon HRO pressure. This analysis will serve to provide the first empirical analysis of the impact of the ACtHPR upon state policy decisions to repress human rights. Also, the analysis nests within the HRO and non-governmental organization literature to conduct a novel test of whether an interaction with a regional court can allow for direct impact upon state policy decisions.

Individual perceptions of institutional norms and policy decisions in a state represent another important area of investigation for scholars. Studies find information from contentious international sources can add credibility to unpopular policy decisions (Chapman 2009; Hayes and Guardino 2011). Also, framing of policy as being congruent with international law can increase individual perceptions of whether it is appropriate (Kreps and Wallace 2016; Lupu and Wallace 2019). Individuals also assess the human rights situation in a state as congruent with expert opinions (Carlson and Listhaug 2007) and with their local experience with violence (Barton, Hillebrecht, and Wals 2017). Studies that incorporate naming and shaming by HROs find the practice alters individual perceptions of the human rights practices of their government (Davis, Murdie, and Steinmetz 2012; Ausderan 2014). In short, the literature indicates that transnational advocacy networks (Keck and Sikkink 1998) that marshal resources against a target alter individual perceptions of the target's policies and legitimacy (Carlson and Listhaug 2007; Lebovic and Voeten 2009; Ausderan 2014). The literature is deficient, however, in accounting for the interactive impact of international judicial institutions and transnational advocacy networks.

To fill this gap in the literature, an objective of the analysis into individual perceptions of state institutional norms includes the development of a novel theoretic framework. Specif-

ically, this dissertation develops the concept of a juridical advocacy network (JAN) as a specified transnational advocacy network (e.g., Keck and Sikkink 1998) that has embedded international judicial institutions. The JAN concept integrates the delegation and precision (Staton and Moore 2011) of a regional human rights court into the transnational advocacy norm of providing information, ideas, strategies (Keck and Sikkink 1998). This novel framework provides a means to conceptualize the potential impact of a regional human rights court and HROs.

An objective that leverages the development of the JAN concept is an empirical test of whether – and when – the African JAN impacts individual perceptions of state institutional norms. To date, no studies have investigated the impact of the ACtHPR upon individual perceptions. Accordingly, this dissertation provides a novel test of the impact. The integration of the JAN concept allows for further novel empirical analysis of its impact upon state institutional norms. The test and development of the JAN theoretic framework also creates an opportunity for future tests of policy outcomes in Africa – as well as external validity tests in other regions and with other types of courts.

In sum, the principal purpose of this study is to gain a better understanding of the African Court of Human and Peoples’ Rights within its complex strategic environment. The components of the strategic environment this dissertation explores include state leaders, international and domestic HROs, domestic institutions, and individuals. The objectives of this dissertation and novel contributions to the literature noted above provide an indication of the new knowledge this dissertation provides to the field.

1.2 STRUCTURE OF DISSERTATION

Chapter 2 proceeds by developing the argument that the ACtHPR does not represent a special case in international human rights court accession patterns (e.g., Chapman and Chaudoin 2013), and that ratification patterns conform with the “lock-in” hypothesis. The analysis in Chapter 2 also provides an empirical analysis of the leader decision environment and the

impact of their time horizon for continued rule, the human rights record of the state, and the functioning of judicial institutions.

Following the analysis of why African states choose to accede to the ACtHPR, Chapter 3 explores whether the African Court is successful in improving the human rights under its purview. This dissertation retains a skeptical view that the ACtHPR provides a significant independent impact upon state decisions to repress individuals and groups. When combined with the influence of domestic and international human rights organizations (HROs), however, this study expects an impact at the margins. Specifically, Chapter 3 explores whether ACtHPR membership and a higher density of HROs leads to greater respect for civil liberties and political rights. The theoretic framework developed in Chapter 3 predicts that physical integrity rights will not match the improvement in civil liberties and political rights, as leaders will tend to retain physical integrity rights repression as a tactic to overcome their most significant challenges.

The analyses in Chapter 2 and Chapter 3 explore the decision making process of accession to a regional court and of domestic repression by state leaders. Chapter 4 incorporates an additional level of analysis by analyzing individual perceptions of these processes in African states. Chapter 4 builds upon the previous chapters in the development of the juridical advocacy network (JAN) theoretic concept to frame how the African Court can impact policy outcomes and individual perceptions of domestic institutions. The analysis relies on data coded for this dissertation and data from the Afrobarometer 7th Round of surveys across 31 African states. The analysis in Chapter 4 develops and measures whether denser JANs impact individual perceptions of the degree presidents are subject to the laws of their country, the relative level of trust in judicial institutions, and the freedom of human rights organizations from state repression.

CHAPTER 2

RATIFICATION AND TIME HORIZONS: AN ANALYSIS OF THE AFRICAN COURT¹

¹Kopp, M. Submitted to *Foreign Policy Analysis*, 02/21/20

2.1 ABSTRACT

This chapter analyzes the ratification patterns of African States of the protocol for the African Court of Human and Peoples Rights (ACtHPR). Ratification of treaties for international courts provides an opportunity to understand why states choose to relinquish part of their sovereignty, judicial sovereignty in this case, to an international organization. Previous research on regional human rights court ratification patterns center on “lock-in” explanations for transitioning states, or codifying democratic gains in international institutions to limit the agency of future leaders to “claw back” such gains. I argue African states exhibit similar ratification patterns as other regions, in that domestic political institutions inform ratification decisions. I argue further the factors that place states at higher risk for judicial sovereignty loss influence the likelihood states will join the ACtHPR. Finally, I argue variation in a leader’s “time horizon” for continued rule impacts rational decisions about African Court ratification.

2.2 INTRODUCTION

A female merchant in Bamako, Mali sold a monkey to Boussourou Coulibaly in January, 2014. The gentleman that purchased the monkey returned a day later, indicating his mother did not approve of cohabiting with a semi-domesticated monkey. He demanded a refund, which the merchant refused. After a series of verbal altercations, the man went to a friend’s house, borrowed a machete, and caused grave bodily injury to the merchant. Subsequently, the attacker received a sentence of one year in prison and a requirement to pay damages to the merchant, as the Malian court found the defendant had committed simple assault. The merchant and Mr. Coulibaly both continued to work through the Malian judicial system. The merchant tried to change the severity of the assault charge. Mr. Coulibaly claimed dementia and asked for leniency. The judicial outcome was the dropping of damages but the upholding the one-year sentence. The merchant eventually petitioned the African Court

of Human and Peoples' Rights (ACtHPR) to take up the case on grounds that her human rights were violated and that the Malian judicial system failed in its responsibility to protect her rights ACtHPR 2019b. What started as a quirky simian transaction and grave assault on an unarmed female, turned into a case that challenged the competence and sovereignty of a state's judicial institutions. The African Court ruled in March, 2018 that it had jurisdiction over the case, but that the complainant failed to exhaust local remedies.² The ACtHPR found a delay in an appeal of over two years was due to Malian courts waiting on medical evidence. The ability of Malian judicial institutions to demonstrate an ongoing series of legal actions during the appeal period led to a verdict that allowed the state to retain judicial sovereignty. The case highlights the complexity of interactions between a regional court, states, and complainants – and contingent explanations for actor behavior.

Mali acceded to the ACtHPR as a voluntary act in 2000, just two years after the adoption of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights that established the African Court (ACtHPR 2019a). The decision of a state with a poor human rights record to subject itself to international criticism for human rights practices and risk the loss of judicial sovereignty can be counter-intuitive. In the case of Mali, the state had its first democratic election in 1992 with the election of Alpha Oumar Konaré. President Konaré won his second five-year term in 1997 and became the only Malian president to depart office in accordance with the constitution. Given the history of non-democratic rule in Mali, and the 1991 “March Revolution” that preceded the election of President Konaré (Pringle 2006), it is likely that democratic norms were not an embedded feature of Malian politics during his rule. The Malian president acceded to the ACtHPR in 2000, in the middle of his final five-year term in office, that he left without issue in 2002. Accordingly, the accession of Mali occurred in the context of a leader with a moderate time horizon for continuation in power and a requirement to “lock-in” democratic gains before leaving office (e.g., Moravcsik 2000).

²ACtHPR and African Court appear interchangeably to indicate the African Court on Human and Peoples' Rights. Similarly, ICC and the Court serve as interchangeable references to the International Criminal Court.

President Konaré was a proponent of regional economic integration, he joined the ICC in 2000, and he served as the Chairperson of the Commission of the African Union after leaving the presidency (Pringle 2006). Accordingly, he demonstrated that he found some utility in joining regional and international treaties.

As the Bamako vignette highlights, human rights courts provide an interesting empirical space to test how international institutions interact with state institutions and why states choose to cede sovereignty. Further, regional courts represent a functional manifestation of the international human rights regime that, if they do alter actor incentives, can work within regional social and cultural contexts to deepen universal human rights norms. Given the preponderance of ICC cases against African leaders and the demonstrative regional frustration with targeting, the region has a complicated relationship with international legal institutions.³ Just as with other international and regional court ratification rationale (e.g., Simmons and Danner 2010, Hill 2016), the value African states receive from ratification may come from benefits incidental to the court's charter like locking-in democratic gains. A focus on Africa permits an assessment of what the ratification motivations for a regional court is in the region and whether Africa represents a special case.

This study seeks to build upon previous findings (e.g., Hill 2016) that ratification patterns of weakly democratic and transitional states of the European Court of Human Rights (ECtHR) and Inter-American Court of Human Rights (IACtHR) are best explained as a signalling credible commitment or “lock-in” mechanism. This argument follows Mansfield and Pevehouse (2006) and Hill (2016) work that build upon Moravcsik (2000). They argue that weakly democratic and transitional states constrain future agency of democratic back-sliding (Alter 2008) and send a credible signal of the intent through ratifying an agreement that cedes state sovereignty to an international institution. I argue African states do

³Of the ten African ICC cases in the “situations under consideration” phase, five (Central African Republic I and II, Democratic Republic of Congo, Mali, and Uganda) were referred by the governments, one (Ivory Coast) accepted jurisdiction, two (Libya and Sudan) resulted from UN Security Council referral, and two (Kenya and Burundi) were referred by ICC prosecutors (ICC 2019).

not represent a special case in ratification patterns, and weakly democratic and transitional states should ratify the African Court charter at higher rates than strongly autocratic and democratic states, all else equal. An additional feature of the lock-in hypothesis that receives scant attention in studies of why states accede to regional courts is how variation in a leader's time horizon (Wright 2008) for continued rule might impact the likelihood of acceding. This chapter accounts for leader time horizon to capture the context of leader decision making incentives in a manner that broad conceptions of regime type and conflict fail to do.

Further, this chapter argues that a secondary calculation of whether to accede to regional human rights courts is the risk of judicial sovereignty loss from poor rule of law institutions and lack of institutionalized support for the human rights under the primary purview of the court. A focus on mechanisms that place a state at risk of ceding judicial sovereignty to a regional court provides a more efficient causal argument than accounting for risk through broad conceptions of physical integrity rights - and the associated personal threat of leader prosecution. The next section reviews research on ratification patterns for international courts to illustrate why states choose to give up sovereignty to an international court. I follow the analysis with an overview of regional human rights courts to build a case for signalling credible commitment and "lock-in" as a primary motive for African Court ratification.

GOING INTERNATIONAL

An interesting facet of international courts for international relations scholars is that their coercive power comes from a voluntary ceding of sovereignty by states. As noted by Abbot and Snidal (2000), states weigh the symbolic and material "sovereignty costs" of agreements based on the enumerated limits on their autonomy. International courts represent "harder" agreements with an enumerated ceding of autonomy, whereas treaties without inherent limits on state autonomy represent "softer" agreements (Abbott and Snidal 2000; Cole 2009; Cole 2012). In the case of international courts, states agree to a set of international rules that

may not be embedded in their legal and social systems.⁴ At the same time, they cede some jurisdiction and agency over decisions to prosecute violations of these same external and potentially-unembedded legal norms.

Research on why states choose to voluntarily cede autonomy to international institutions with positive legal obligations has as a foundation rational actor models. Abbott and Snidal (1998) and (2000) synthesize and expand upon previous work on credible commitment problems. In strategic interactions with other actors, the viable choices for a behavior are contingent upon a credible commitment, or assurance, of future behavior by other actors (Abbott and Snidal 1998; Abbott and Snidal 2000). Inherent to credible commitment logic is the signal of future commitment states send by agreeing to international treaties. The audience for state signaling can be domestic, in that leaders may judge domestic political institutions as susceptible to future changes, so they sign agreements to “lock-in” democratic gains (Moravcsik 2000). In this view, leaders “lock-in” democratic institutions when the level of future political uncertainty outweighs the sovereignty costs of an agreement. Agreeing to international institutions with positive legal obligations limits the agency of domestic challengers now and future challengers to democratic gains (Goldstein 1996; Moravcsik 1997). Signing international agreements also can provide information to international actors that signatories have a credible commitment to abide by the tenants of the agreement.

The ICC exists at a level of analysis above regional courts, but there is a growing literature on ratification patterns. Most studies on the ICC come from international legal scholars and focus on the jurisdiction of the Court and whether it is complementary to domestic courts or takes primacy (Brown 1998; Kirsch and Holmes 1999; Bassiouni 2001; Dickinson 2003). From the mid-2000s, a series of empirical studies began to analyze why states join the ICC. Regime type serves as a key explanatory variable many of the most influential

⁴Scholars such as Raustiala and Slaughter (2002) and Koh (2004) note a top-down process of domestic embeddedness of international law (Raustiala and Slaughter 2002; Koh 2004). The current analysis accepts the idea of growing embeddedness and focuses instead on the impact of initial disparities between international treaties (Moravcsik 1997; Hill 2016), domestic legal traditions, and democratic institutions.

studies of why states participate in the ICC. Kelley (2007), Simmons and Danner (2010), and Chapman and Chaudoin (2013) all found democratic states that already respect human rights are most likely to ratify the Rome Statute. Simmons and Danner (2010) build on credible commitment theory (e.g., Fearon 1997, Abbott and Snidal 1998, 2000) and argue the ICC is a mechanism to make a leader's commitment to reduce illegitimate political violence credible by submitting themselves to international court prosecution. These studies note credibility comes from a combination of domestic political institutions, legitimate rule-of-law institutions, and domestic political violence records (Simmons and Danner 2010). Chapman and Chaudoin (2013) respond to Simmons and Danner (2010) to show states that ratified the Rome Statute had significantly less civil violence in the 1990s than states that did not ratify. Unlike Simmons and Danner (2010), they found non-democratic regimes with past civil conflict were not more likely to ratify the Rome Statute. The literature on the primary motive for international ratification leaves space for studies that analyze both credible commitment and the proximate risk of court action. In the following section I consider ratification patterns of regional courts antecedent to the African Court and their impact upon state autonomy.

REGIONAL COURTS HUMAN RIGHTS COURTS

Human rights courts, like the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACHR), predated the ICC.⁵ Influential studies (e.g., Sikkink 1993) highlight the relevance of the international human rights regime through international courts and their impact upon conceptions of sovereignty. There is a growing body of associated empirical studies on the influence of regional human rights courts upon state behavior that help define their collective impact upon state agency and expectations for punishment (e.g., Voeten 2007, Binder 2012, Helfer and Voeten 2014). The following develops

⁵The IACtHR established in 1979 and the Inter-American Commission on Human Rights first met in 1960 (OAS 2009). The ECtHR had its first meeting in 1959 and became a permanent standing body in 1988 (ECHR 2019).

the argument that regional human rights courts can impact states then reviews the literature on why states ratify regional human rights courts.

Procedural specifications for regional courts generally lack explicit direction on the development and use of precedent (Helfer and Voeten 2014). As noted by Helfer and Voeten (2014), however, regional courts have a tendency to treat similar legal issues in the same way and represent a *de facto* use of precedent. Helfer and Voeten (2014) showed in their analysis of ECtHR judgments in lesbian, gay, bisexual, and transgender (LGBT) cases the spillover effects of *de facto* precedent. They found international court judgements, in the case of the European Court of Human Rights, can act upon domestic political dynamics and lead to policy outcomes not viable before ECtHR rulings in other states (Helfer and Voeten 2014). Finally, Voeten (2007) argues that as the ECtHR became a more secure institution, it gained more autonomy. Empirical findings that show domestic impact of a regional court in an integrated Europe are interesting, but Latin America provides an example of a regional court lacking the synchronous institutional support of the European Union.

The IACtHR provides another example of domestic impacts of international court rulings. After transition back to democracy in the early 1990s, Argentina and Uruguay worked with the Inter-American Commission for an “advisory opinion” on their respective domestic amnesty laws stemming from past military regimes. The commission found the domestic laws were contrary to the regional human rights agreements, but the opinion failed to provide enough leverage to allow domestic reform politicians to overcome domestic resistance to changing the laws. The Peruvian government enacted an amnesty law in 1995 to shield President Alberto Fujimori and associated military leaders for their acts a few years before. The Inter-American Court of Human Rights found the 1995 Peruvian Amnesty laws impeded the court’s ability to investigate and prosecute perpetrators of human rights abuses in a series of cases (Binder 2012). The direct impact of the IACtHR ruling on Peru was the prosecution of Alberto Fujimori for gross violations of human rights. After the ruling, Argentina and Uruguay passed judicial and policy changes to render their amnesty laws obsolete. In

these cases, and a similar case in Chile, the earlier concerns for domestic prosecution by human rights violators proved justified, but the ability of domestic rule of law institutions to proceed was contingent upon the influence of an international or regional court. Lutz and Sikkink (2001) note the growing prominence to the IACtHR and other international courts form a “justice cascade,” where human rights norms become embedded in society and state intuitions.

The limited examples above from the ECtHR and IACtHR support the idea that regional human rights courts provide an impact beyond individual cases and can affect state policy choices (Sikkink and Lutz 2017). The courts serve to bolster regional agreements on human rights while holding domestic leadership and rule of law institutions to a standard that is visible to other states. The empirical studies noted above on regional human rights courts indicate courts can impact the agency of domestic leaders to make policy decisions and their ability to avoid state institutional responsibility for violation of human rights norms. Additionally, regional human rights courts serve to help develop and define the level of competence of domestic courts and their ability retain judicial sovereignty in human rights cases. The analysis next addresses the puzzle of why states choose to cede sovereignty to a regional court if it will impact policy and judicial sovereignty.

Moravcsik (2000) and Hill (2016) represent the two primary studies investigating why states ratify regional human rights courts. Moravcsik (2000) argues ratification of the additional protocols of the ECtHR cannot be explained by the influence of power disparities in the region or the embeddedness of human rights norms in states. Rather, ratification patterns follow a logic where transitioning democracies use the ceding of sovereignty to a regional court to “lock-in” democratic gains (Moravcsik 2000). This outsourcing of monitoring and enforcement to a regional court raises the costs of non-democratic challengers to claw back against democratic gains. Hill (2016) follows up Moravcsik (2000) with an empirical analysis that incorporates the ICCPR, ECtHR, and IACtHR, using the same theoretic framework, but the novel application of statistical models. Hill (2016) finds weak democ-

racies and transitioning states are more likely to ratify the sovereignty-ceding additional protocols of regional human rights courts.⁶ These findings confirm Morasvcik (2000), in that governments choose to cede sovereignty to regional courts (e.g., ECtHR and IACtHR) to signal their credible commitment to lock in democratic political institutions. An important secondary finding in Hill (2016) is that ICCPR ratification patterns do not conform with the regional court regime-type findings. The low-delegation nature of the ICCPR indicates it lacks the functional features that allow for the internationalization of the costs for backsliding on democratic gains. Additionally, the Hill (2016) ICCPR findings confirm Hathaway (2007) finding that less democratic human rights treaty signatories weigh the “collateral consequences” of low-delegation agreements as minimal but they do not carry to the higher-delegation regional human rights courts. These findings support the argument that regional courts, with ceded-monitoring and enforcement, represent a unique opportunity to understand state interactions with international organizations. Next, we consider whether these findings explain ratification patterns of the African Court.

AFRICAN CONTEXT

The African Union finalized the process towards building a regional human rights court in 1998 through adoption of the African Court charter and the court later entering into force in 2004 (ACtHPR 2019b). The adoption of this and other African formal regional human rights institutions took years of negotiations to realize. As noted by Murray (2004), the 1981 adoption of the Banjul Charter or African Charter on Human and Peoples’ Rights, after years of lobbying by International nongovernmental organizations and the United Nations, represented a codification of the essential linkage between democracy and human rights (Murray 2004; Evans and Murray 2008). Negotiations for the African Charter were robust and contentious, however, and included concerns about state sovereignty loss (Evans and

⁶I use variations of the term anocracy to describe states that exist in the middle-range of the authoritarian-to-democratic state spectrum. The term also connotes mixed regimes and transitional democracies. I use the term transitional democracy, or transitioning state, when highlighting the dynamic domestic institutional status of these states.

Murray 2008). The institutions that grew from the initial wording of the Banjul Charter were limited in their enforcement and monitoring power due to limitations in text of the charter negotiated for by regional leaders (Gittleman 1981; Ankumah 1996; Umozurike 1983). The Banjul Charter included no provision for the creation of a regional human rights court. Public debate of reasons for the lack of a court indicated leaders felt African traditions and values of negotiation and compromise were incompatible with a formal court (Evans and Murray 2008). Umozurike (1983) and Ankumah (1996) argue the underlying concern was that leaders did not want to risk subordination of sovereignty to an international court. Regardless of the reasons behind limiting the effectiveness of the African Commission, the result was a regional human rights commission limited coercive power to threaten directly African elites. Gittleman (1981) notes the commission parameters provided no external restraint on state power to pass domestic laws against the African Charter or act against the Charter itself. Steiner et. al (2008) claim the African Commission, and later the African Court, is the least developed and least effective regional human rights monitoring and enforcement institution when compared to the Inter-American and European human rights courts (Steiner, Alston, and Goodman 2008). The policy preferences demonstrated by African leaders to protect state sovereignty by weakening the African Commission indicates an understanding of the risk an autonomous human rights court, with monitoring and enforcement powers, might present.

The Organization of African Unity - later African Union - adopted the African Court Protocol under general authorities of Article 1 of the African Charter at its 1998 summit in Burkina Faso (Kane et al. 1989; ACtHPR 2019b). Thirty states have ratified the African Court Protocol from 1998 to present day. The charter of the African Court has an additional requirement in Article 34 that requires recognition of the court's jurisdiction over cases brought by NGOs and individuals (Mutua 1999; Murray and Long 2015). To date only nine countries have recognized the African Court's "competence" for jurisdiction over cases brought by nongovernmental organizations and individuals (ACtHPR 2019a). While the

African Court lacks full implementation of requirements in Article 34, the establishment of the court represents the implementation of additional coercive powers absent in the African Commission on Human and Peoples' Rights.

The African Court can receive cases from individuals and NGOs in cases where states ratified Article 34. The African Commission also amended its procedures in 2010 to allow submission to the African Court if states ignore its "recommendation" or if a case constitutes a grave violation of human rights (Murray and Long 2015). Accordingly, the African Court can act as a coercive regional mechanism in cases where states choose not to comply with African Commission on Human and Peoples' Rights rulings, and in a growing number of cases from complainants within states or NGOs. As of March 2018, the court received 202 applications with 92% coming from individuals. The remaining cases include 12 from NGOs and three submissions from the African Commission (ACtHPR 2019a). Despite the jurisdiction of the court, claims of a high degree of impact and efficacy would be premature.

An example of a state's judicial and political leadership being confronted by the court comes from a case brought by the African Commission against the Republic of Kenya (application No 006/2012). The African Commission brought a case against Kenya along with two NGOs, the Centre for Minority Rights Development (CEMIRIDE) and Minority Rights Group International (MRGI), on behalf of the Ogiek Community of the Mau Forest. The Kenyan government gave the Ogiek Community a 30-day eviction notice on the grounds that their ancestral lands were in a key watershed area. The complaint indicated the political, social, and economic survival of the Ogiek were at stake and that irreparable harm had occurred. Due to a lack of response from the Government of Kenya, the African Commission submitted an application to the African Court in 2012. Kenya first contended the African Court should have gone to the African Union and submitted the matter to the heads of state, but the court found it had jurisdiction, not the heads of state. Kenya also argued the applicants had not exhausted the domestic legal system, but the court found existing cases had drug on for ten to 17 years as a result of purposeful judicial avoidance. Additionally, the

court found claims of sovereignty and use of public lands were insufficient in light of human rights agreements. The court's May 26, 2017 judgement found in favor of the Ogiek on all counts, but delayed restitution determination for a follow-on procedure.

The case of the Ogiek is interesting in that the sovereignty of a relatively-powerful state in East Africa was before the court, and the court found against the state on all procedural arguments. The cases noted above highlight the source of risk to African leaders from ACHPR cases. Unlike international courts, the ACHPR places a risk on judicial sovereignty without posing a direct threat to political elites. The African Court still does not serve in the capacity as some framers and international observers hoped. Given the court's early cases, however, it exhibits institutional patterns congruent with Abbott et. al (2000) high indicators of obligation, precision, and delegation.

2.2.1 CONCEPTUALIZING WHY STATES RATIFY THE AFRICAN COURT

Previous findings on international court ratification (Simmons and Danner 2010; Chapman and Chaudoin 2013) treat Africa as a unique case, but the question remains whether this expectation carries forward to regional human rights court ratification patterns. This paper contends that Africa, despite its unique regional characteristics, conforms with the theoretic arguments previous studies (Moravcsik 2000) and that states cede sovereignty to the African Court to "lock-in" democratic gains and limit the available policy choices of domestic actors that might attempt "claw back" (Evans and Murray 2008) against changes. Further, I argue the "lock-in" hypothesis is necessary but insufficient as an explanatory tool for state accession to the ACtHPR, as it accounts for one dimension of domestic political institutions, while ignoring other institutional features that inform the risk of future judicial sovereignty loss.

The theoretic framework below builds upon additional factors that frame a more-complete causal story for why transitioning democracies accede to a regional court. First, strategic decisions to accede to a regional court include not only the pay-off of credible commitment

signalling (Simmons 2000; Mansfield and Pevehouse 2006) or avoiding democratic backsliding, but a risk component as well. While previous studies account for the extent to which states already abide by, or have violated physical integrity rights under the the primary jurisdictional areas of the court (Simmons and Danner 2010; Chapman and Chaudoin 2013), studies on regional courts (Moravcsik 2000) treat the general physical integrity rights record of a state as a factor to control for in regression analysis and not a causal mechanism. Further, studies on regional human rights court accession (Hill 2016) provide only a broad accounting for domestic institutional patterns of protections for the human rights under the courts' jurisdiction.

There is ample room for skeptical arguments against a “lock-in” or credible commitment theories in the ACtHPR case. Africa has relatively-fewer stable highly-democratic regimes than in Latin America and Europe and there are relatively-higher levels of violence than these other regions. Further, there is a possibility that African states were appeasing or trying to improve their profile with European and North Atlantic states and NGOs when they chose to establish the African Court. Powell and Stanton (2009) frame arguments for “lock-in” as appearing shallow in isolation, as ratification that is not followed by compliance leads to confusions about what “claw back” leaders protected against.

An associated theoretic counter follows Abbott and Snidal (1998) and Koremenos et. al (2001) argument that states take advantage of the “centralization” and “independence” of an international organization to accomplish policy goals they cannot meet as individual states. This functional argument for regional courts rests on a demonstrated policy preference or necessity to outsource human rights monitoring and enforcement. If we treat the African Court as a “...rational, negotiated response” (Koremenos, Lipson, and Snidal 2001) to the challenge of human rights repression on the continent, why would states chose to cede sovereignty? Here, the rational calculation of a leader would have to give primacy to human rights protection over other policy areas - with an acknowledgement the state lacks the will or capacity to conduct monitoring and enforcement. While possible, the functional

argument includes assumptions of leader preferences that center on a policy of human rights protections over regime stability and the continuation of their rule.

Why then would a state outsource the monitoring and enforcement of human rights agreements to a third party? Mansfield and Pevehouse (2006) argue states that lack a tradition of democracy and democratic changes in state leadership lack the ability to demonstrate the long-term durability of democratic institutions. At the same time, leaders in states with weak democracy, or that are transitioning to democracy, have a rational expectation that gains made in democratization are transitory and subject to rapid change based on the policy preferences of later leaders.⁷ Ratification of regional courts provides these leaders with a dual benefit. First, ratification sends a credible signal to other actors that the state is committed to deepen or “lock-in” democracy and extend the time horizon for expectations of democratic governance. Second, ratification of a regional human rights court provides a credible signal to the populace the state has the willingness and intent to conform with the requirements of human rights treaties (e.g., Moravcsik 2000). Leaders do not exist, however, in simple strategic environments. There is a likely diminishing return on accession to a regional court if the state judicial system systemically fails to abide by its own laws and if state rule of law institutions provide unequal and arbitrary support to the rights under the jurisdiction of the court. The following hypotheses set up a framework to test the efficacy of the “lock-in” hypothesis in the African Court case and whether the risk of judicial sovereignty loss informs the likelihood a state will accede.

The first hypothesis provides a basic test of the “lock-in” theory (e.g., Moravcsik 2000, Hill 2016). States lacking robust democratic political institutions, or that are transitioning from recent periods of domestic political instability, “lock-in” recent democratic gains to limit

⁷Regan and Henderson (2002) found anocracies have the highest levels of physical integrity rights repression. They found an “inverted U relationship” between regime type and repression, with those states in the middle of the autocracy-to-democracy spectrum experience higher levels of repression. Marshall et. al (2014) note Polity IV scores correspond with: the bottom quartile, with a score of -10 to -6 represents autocracies. The middle two quartiles with Polity IV scores of -5 to 5 represent “anocracies.” Democracies fall in the upper quartile with scores of 6 to 10 (Marshall, Jagers, and Gurr 2014a). I use anocracy, mid-range regime and weak-democracy interchangeably.

the ability of current challengers to “claw back” at gains as well as lengthen the democratic time horizon against future backsliding.

Hypothesis 1 *Transitional democracies are more likely to accede to the ACtHPR.*

The second set of hypotheses explores the impact of the risk of judicial sovereignty loss upon decisions to accede to the court. Given the primacy of civil and political rights in regional human rights courts (Cavallaro and Brewer 2008a), and the overlapping of these rights with definitions and measures of democracy, there is a set of practical concerns of desegregating causal mechanisms that include such rights. The challenge posed by the convergence of potential causal mechanisms and broad conceptualizations of democracy is to achieve a theoretically-parsimonious framework. The ACtHPR assumes judicial precedent over a state’s judicial institutions if all domestic legal processes have been exhausted or if the state engages in systematic unequal treatment or unreasonable delays (Murray and Long 2015). Buscaglia (1996 and 2001) argues in the context of economic development that judicial corruption has an inherently destabilizing impact upon institutional efficiency secondary to a lack of stability and predictability in enforcement of the law. The freedom to exercise individual political and civil rights has little meaning without a judicial system to protect the rights (Buscaglia and Ulen 1997). The lack of efficiency, access, and public trust that stem from judicial corruption creates incentives for complainants to seek recourse through means other than official state institutions.

Powell and Stanton (2009) provide a possible counterpoint to the argument above that states with corrupt and ineffective judiciaries will avoid ceding judicial sovereignty to an international institution. The authors argue the Convention Against Torture (CAT) relies on domestic judiciaries as the primary enforcement mechanism, so states with highly-effective judiciaries are less likely to sign the CAT treaty. The inherent rationale of this argument is the threat to leaders is a function of being held to account by domestic judiciaries supported by an international human rights treaty. In the case of a regional human rights court with a built-in enforcement mechanism, however, the judicial threat to a leader comes directly from the

regional court. The impact of judicial corruption when there is a risk of judicial sovereignty loss stems from either the exhaustion of local remedies or the existence of unreasonable delays. In the case of judicial corruption, there are two primary contributors to risk of judicial sovereignty loss. First, there is a higher probability that individuals unwilling to pay bribes will have their cases and appeals languish in the bureaucratic process. Second, rulings will fail to abide by international legal-procedural norms and decisions will fail to align-logically with the evidence of a case. In both cases, the African Court has the standing to assert jurisdiction. Accordingly, in the case of regional human rights courts, judicial corruption informs both the risk of losing judicial sovereignty and the size of the potential pool of applicants to a regional court.

Hypothesis 2a *States with more corrupt judicial systems are less likely to accede to the ACtHPR.*

An associated causal mechanism of interest is the extent to which state rule of law institutions arbitrarily infringe upon the civil and political rights of its citizens. The logic is that states that infringe upon such rights in an arbitrary or capricious manner, are more likely to have an excess demand for international justice through regional courts with jurisdiction over the human rights being violated. Given variation in the difficulty of evidence in cases that involve state violation of civil and political rights (Lupu 2013a), a set of violations that involves contracts with individual, corporate, and state entities provides a viable set of potential cases with written evidence. The violation of personal property rights provides an example of this dynamic. The extent to which a state respects private property rights provides context to the propensity of state rule of law institutions and bureaucracy to respect codified agreements and induce trust in state judicial institutions.

Private property rights in Africa serve as an often-analyzed driver of rural development (Musembi 2007) and source of inequality (Chimhowu and Woodhouse 2006). Property rights and customary tenure of property remain salient challenges in rural Africa as state institutions attempt to manage competition between land holders under customary law and

domestic and foreign investors (Peters 2013). The increasingly-urbanized African states experience similar private property friction in cities. The ability of obtain and hold personal property, as in the case of housing or a business, allows individuals and families to extend their personal time horizons (Collier and Venables 2014). The protection of private property provides the means and incentive for investment in the future, while remaining resilient to periods of privation. Previous studies on civil conflict (Fjelde and De Soysa 2009) use the “integrative capacity of government”, or quality of governance, as mechanisms for state credible commitment to protect political and civil rights over the long term. The isolation of respect for private property rights provides a framework to account for perceptions and norms of respect for the rights under the jurisdiction of the ACtHPR. In states without institutions that respect codified contracts and property rights, the greater ease of obtaining evidence (Lupu 2013a) for civil and political rights cases, creates an underlying risk of judicial sovereignty loss.

Hypothesis 2b *States with better respect for private property rights are more likely to accede to the ACtHPR.*

The third hypothesis accounts for the impact of variation in the time horizon of leaders. As noted by Wright (2008), not all leaders of a similar regime type exist in the same strategic environment. Wright (2008) argues the likelihood of leaders to invest in public goods, like private property rights noted in *hypothesis 2b*, depends on their individual time horizon - or predicted probability of regime failure. Anocracies, or regime-types that fall between authoritarian and democratic regimes, exhibit broad variation in institutional characteristics (Goldstone et al. 2010) and the rational decision set of leaders (Wright 2008). While the relative-importance of membership in a regional human rights court as a public good does not compare to more-costly investment in citizens, it does serve as an overt action by leaders. According to the time-horizon logic, leaders with relatively longer time horizons in transitional democracies should be more-likely to accede to the ACtHPR. The efficacy of the “lock-in” hypothesis relies on the assumption that leaders perceive a proximate risk of

democratic “claw back” secondary to regime change. This study assumes it is unlikely that leaders with imminent threats to regime overthrow will find as much utility in locking-in democratic gains as leaders in similarly-transitioning democracies with longer time horizons. Accordingly, a significant finding that shows leaders with longer time horizons are also more likely to accede to the ACtHPR would indicate support for the interplay between a credible commitment signaling mechanism and the “lock-in” explanation for ratification patterns.

Hypothesis 3 *Leaders with longer time horizons for regime change are more likely to accede to the ACtHPR than leaders with less-certain political transitions.*

2.3 METHODS

Of the 55 African Union members, 30 ratified basic membership provisions of the African Court from 1998 to present. Given data constraints, the analysis contains ratification patterns through 2013. The analysis includes a possible pool of 887 observations across 54 African states from 1998-2013, with variation between models due to data availability.⁸ The goal of this work is to understand why African states choose to cede their judicial sovereignty and ratify the African Court. Given the interaction of a dichotomous dependent variable, and temporal variation in independent variables that impact an African state’s probability of ratifying the African Court, there is a limit in appropriate models to analyze interactions. To account for un-theorized temporal influence, the analysis includes a standard logistic regression model with an accounting of time through the use of time, time², and time³ controls in accordance with Carter and Signorino (2010) and as implemented by Hill (2016).⁹

⁸Morocco re-entered the African Union on January 30, 2017 after a 33-year absence and is not included in the analysis. Accordingly, the data includes only 54 African states. Some analyses include fewer observations and states due to data limitations.

⁹The use of a hazard model assumes time impacts the variables of interest in a direct way, rather than an un-theorized factor inherent to the error term. Although previous research (Simmons and Danner 2010) utilizes hazard models in studies of agreeing to international agreements and protocols, the possibility remains that there is a significant un-theorized stochastic element of state decisions to accede to regional courts. While the primary analysis leverages Carter and Signorino (2010), the appendix provides a robustness check through a Cox proportional hazard model.

DEPENDENT VARIABLE

The primary dependent variable of the current study is a dichotomous measure of whether a state agreed to provisions of the African Court of Human and Peoples Rights (*ACtHPR Ratification*). The African Union created the African Court in 1998 and it entered into force in 2004. The process of ratification began with Senegal in 1998 and continues, with Chad representing the last state in the sample to ratify in 2010. Twenty-six states ratified the African Court through 2013 and four additional states ratified the court from 2014 to 2018. Africa provides broad variation in regime type and human rights protections within and between cases. There is no compulsory component to joining the African Court for standing in the African Union. I code *ACtHPR Ratification* as 1 for the year a state agreed to provisions of the court or to retain an earlier agreement and 0 for years a state was not a signatory.

INDEPENDENT VARIABLES

Regime type informs many theories and studies on the interaction of states with international institutions (e.g. Simmons and Danner 2010) as a key independent variable. A challenge in the operationalization of regime type when considering relative distances on autocracy-to-democracy scales is the validity of degrees of variation between anocracies - or transitional democracies - in the middle of the scale and autocracies and democracies at the extremes. Treier and Jackman (2008) found excluding the “considerable” measurement error of Polity IV can change statistical findings (Treier and Jackman 2008). To guard against the authors warning of being overly “sanguine,” I use Pemsteing, Meserve, and Melton (2010) Unified Democracy Scores (UDS) as a measure of regime type. The UDS measure is continuous and provides a higher degree of certainty of the relative distance between regime types than Polity IV (Pemstein, Meserve, and Melton 2010). In order to capture the states that fall in the middle ranges of the regime-type measure, I include the standard *UDSmean*. I also include

a transformed UDSmean variable by squaring the term ($UDSmean^2$) to create a curvilinear measure and allow for isolation of the middle-range values. A positive or insignificant UDSmean value combined with a negative coefficient and significant value for $UDSmean^2$ in a logistic regression would indicate mid-range regime types are more likely to ratify the ACHPR. This non-monotonic relationship between regime type and acceding to the court would provide support to the “lock-in” portion of the hypotheses.

The risk of sovereignty loss for African states from ACHPR stems from the court’s complementary principal. Jurisdiction of the court supersedes domestic courts when they fail to provide protections of human rights stipulated in the Banjul Charter (ACtHPR 2019b). The interaction between domestic and international courts indicates the importance of credible and independent domestic courts for mitigating potential court infringement of state sovereignty. While *hypotheses 2a* and *2b* disaggregate rule of law measures to isolate causal mechanisms for decisions to accede to the ACtHPR, the first model includes a broad measure to capture the status of a state’s rule-of-law institutions. The (*RLEST*) variable comes from the the World Bank’s World Wide Governance (WGI) dataset indicator for rule of law (Kaufmann et al. 2006). The WGI rule of law indicator attempts to measure perceptions that agents follow the rules of society, to include judicial institutions, private property rights, security institutions, and the likelihood of crime. While the *RLEST* variable provides limited clarity given the breadth of the measure, it can give an indication of the broad impact of perceptions of a rule of law institutional framework and the likelihood of a state to accede to the court.

The primary independent variable to test judicial sovereignty loss risk from judicial corruption (*hypothesis 2a*) is the varieties of democracy (VDEM) judicial corruption measure. The base question for the measure is how often individuals and businesses pay a form of bribe to impact a judicial decision. The responses range from 0 to 4, with a “0” indicating interactions with a state’s judicial institutions always involve bribery, to a score of “4” that indicates bribery never impacts judicial decisions (Pemstein, Meserve, and Melton 2010).

The judicial corruption variable indicates less judicial corruption as the value of the base ordinal scale increases from 0 to 4. The VDEM “*judcorr*” variable project manager converts the ordinal scale to an interval measure (Pemstein, Meserve, and Melton 2010). Accordingly, a positive coefficient and significant finding for judicial corruption would indicate states with less corrupt judiciaries are more likely to accede to the ACtHPR, all else equal.

To test the extent to which states arbitrarily infringe upon the property rights of citizens in *hypothesis 2b*, the Heritage Foundation Index of Economic Freedom provides a measure of whether a state has laws that protect property rights and enforces them with the most complete coverage of cases under consideration. The measurement ranges from 0 to 100, with a score of “0” representing no protection of private property rights and a score of “100” representing maximum protection of private property rights (Heritage 2019). A positive coefficient with a statistically-significant finding would indicate states with higher protection of property rights are more likely to accede to the ACtHPR.

While there is some overlap in the conceptual framework of the measures noted above for regime type (UDS), judicial corruption, and private property rights, none of the measures correlate above the 0.50 level. Further, the study includes post-estimation tests to ensure multicollinearity is not a prohibitive issue in the models.

To account for variation in leader time horizons and the associated impact upon the efficacy of acceding to the ACtHPR for “lock-in” purposes, the analysis includes a measure of chief executive recruitment *hypothesis 3*. The executive recruitment variable captures the extent to which domestic political power transitions occur through regulated means, like hereditary transfer or elections, or unregulated means like coups and seizures of power (Marshall, Jaggers, and Gurr 2014a). The measure comes from the Polity IV Project, and it provides an ordinal measure from 1 to 3. A score of “1” indicates that power transfers occur through forceful seizures of power and a score of “3” indicates an expectation of regulated power transition (Marshall, Jaggers, and Gurr 2014a). Accordingly, a positive coefficient

and statistically-significant finding would indicate that leaders with longer time horizons are more likely to accede to the ACtHPR.

Table 2.1: Differences Between ACtHPR Members and Non-Members

Variable	Obs	Mean	Std. Dev.	Min	Max
ACHPR Ratification	887	.3191	.4664	0	1
UDSmean	887				
Members	283	-.0123	.4817	-1.2899	1.4001
Non-Members	604	-.2181	.5434	-1.2188	1.2611
UDSmean ²	887				
Members	283	.2314	.3814	.00001	1.9622
Non-Members	604	.3423	.3567	.00004	1.5904
Property Rights	757				
Members	274	36.4416	12.4264	10	70
Non-Members	483	36.6150	17.4779	5	75
Judicial Corruption	872				
Members	283	1.6784	.4605	.7711	3.1197
Non-Members	589	1.7194	.7151	.6557	3.3987
Executive Recruitment	772				
Members	266	2.2932	.5533	1	3
Non-Members	506	2.0415	.5453	1	3
Rule of Law Est.	887				
Members	283	-.5175	.5026	-1.5274	1.077
Non-Members	604	-.7987	.7178	-2.6064	1.0548
FarissMean	887				
Members	283	.2352	.8083	-1.8360	2.0445
Non-Members	604	-.04666	1.1515	-2.7031	3.2979
Common Law Heritage	887				
Members	283	.1696	.3759	0	1
Non-Members	604	.1738	.3793	0	1
Civil Conf. in Last 5 Years	887				
Members	283	.2934	.4561	0	1
Non-Members	604	.4387	.4966	0	1
ICC Ratification	887				
Members	283	.6360	.4819	0	1
Non-Members	604	.2881	.4532	0	1
GDP per Capita(ln)	865				
Members	283	6.9372	1.1272	4.7261	9.5747
Non-Members	582	6.6482	1.1589	4.6313	10.0319

POSSIBLE CONFOUNDERS

The academic literature on international court ratification includes a standard set of confounding variables the stem from structural and institutional factors impacting both the

likelihood to ratify agreements and the key explanatory variables. In an attempt to keep the models as parsimonious as possible, while accounting for confounders, I include the following controls. The findings of Goodliffe et al. (2012) indicate the relative lack of wealth in Africa combined with the desire of wealthier European states for ICC ratification induced African states to ratify the Rome Statute for economic reasons. Additionally, poor states associate with weak political institutions and domestic political violence (Goodliffe et al. 2012). Accordingly, I use the natural log of gross domestic product per capita (*GDP per Capita (ln)*) to control for the confounding effects of wealth. I control for the impact of legal tradition, given the demonstrated impact of common law legal heritage (Powell and Mitchell 2007). I utilize replication data from Mitchell, Ring, and Spellman (2013) to create a dichotomous measure for common law legal heritage, with 1 indicating a common law heritage and 0 indicating a civil, Islamic, or mixed tradition (Mitchell, Ring, and Spellman 2013). To account for the potential impact of Rome Statute ratification upon ratification likelihood of a regional human rights court, I include a dichotomous variable for ICC ratification. I code the variable a 1 if the state is in a ratification status for a year and a 0 for years a state has not ratified the Rome Statute.

To calculate risk of prosecution by the ICC, scholars (e.g. Simmons and Danner 2010, Chapman and Chaudoin 2013) utilize variables that measure levels of past civil war violence. Although the specific impact of past civil war violence is not the area of primacy of the ACHPR over domestic courts given the parameters of its charter, I include a dichotomous control variable for civil war within any of the past five years for every country year entry. To ensure a conservative accounting of the impact of civil violence upon actor incentives, I use the definition of civil war from the Uppsala Conflict Data Program (UDCP) at the Department of Peace and Conflict Research PRIO dataset (Gleditsch et al. 2002). The definition from version 18.1 of the UDCP/PRIO codebook notes for a conflict to enter the dataset it must include the use of armed force between two parties, one of which must be a government, and pass a threshold of 25 battle deaths in a discrete calendar year (Pettersson

and Eck 2018). I include cases where the civil conflict occurred within a state’s borders and when a neighboring state participated in a civil conflict with their own government forces to account for conflict spillover effects and secondary domestic challenges. The models account for human rights record through the “Fariss” Latent Human Rights Protection Scores (version 2). The Fariss physical integrity rights variable represents a latent physical integrity rights measure that uses Bayesian modeling to account for the evolution of human rights accountability over time. The measure relies on 13 indicators of repression and covers the time frame of the current study through 2013. The measure provides an additional benefit in its ability to provide human rights protection scores for all country years under consideration through its aggregation and transformation of data from 13 indicators, many of which suffer from non-random missingness in the case of states with extreme breakdowns of rule of law (Fariss 2014).

The summary statistics table (*Table 2.1*) shows the data spread of the variables of interest for ACtHPR member and non-member state country years. Given the continuous variables (Rule of Law Estimate, Fariss Physical Integrity Rights, and UDS Regime Type) that span zero, the means, standard deviation, minimum values, and maximum values support face value validation of the data spread. Similarly, the dichotomous measures for ACtHPR Ratification, Common Law Heritage, Civil Conflict in the last five years, and ICC Ratification appear to manifest similar face validity.

2.4 FINDINGS

The logistic regressions for each of the six models, displayed in *Table 2.2*, support expectations in *hypothesis 1*, *hypothesis 2b*, and *hypothesis 3*. The findings of *hypothesis 2a* provide an estimate of statistical significance in the opposite direction of the hypothesized relationship.

The significant and negative coefficient of the squared UDSmean regime-type measure, coupled with the non-significant finding of the UDSmean regime-type variable, indicates support for the “lock-in” argument. These findings exhibit the expected non-monotonic

Table 2.2: Determinants of ACtHPR Accession (1998-2013)

	(1)	(2)	(3)	(4)	(5)
	General	Complete	Jud. Corr.	PrivProp	Time Hor.
<i>DV: ACtHPR Ratification</i>					
Regime Type	-0.0812	0.505	0.976*	0.385	0.350
Regime Type ²	-1.430*	-1.312*	-1.257*	-1.109*	-1.312*
Rule of Law	1.313*				
Judicial corruption		-0.709*	-0.687*		
Property Rights		0.0255*		0.0167*	
Executive Recruit		0.313			0.474*
Phys.Int. Rights	-0.307*	0.0385	-0.0842	-0.180	0.121
Civil War Past 5	-0.142	0.273	-0.130	0.0539	-0.0313
Common Law	-0.843*	-0.466	-0.603*	-0.532*	-0.638*
ICC Ratification	0.671*	0.415	0.627*	0.638*	0.519*
GDP per Capita(ln)	-0.168	0.110	0.222*	0.0395	0.0821
Year	0.210*	0.213*	0.166*	0.187*	0.173*
Year ²	(omitted)				
Year ³	(omitted)				
Constant	-420.6*	-428.5*	-333.2*	-376.3*	-348.5*
Observations	865	695	850	755	769

Note. Table 2 displays parameter estimates from the *ACtHPR Ratification* logit model

* $p < .05$

relationship between regime type and state decisions to accede to the ACHPR. Each of the six models provide support for the general “lock-in” hypothesis with statistical significance that exceeds the $p > 0.05$ threshold. This indicates states in the middle-range of the regime-type spectrum are more likely, *ceteris paribus*, to ratify the ACHPR than the most democratic and most autocratic regimes at the extremes of regime-type measures. These findings provide support for *hypothesis 1* that the “lock-in” pattern for regional court accession in Europe (Moravcsik 2000; Hill 2016) and the Americas (Hill 2016) also carries to the Africa case. *Figure 2.1* provides a representation of the non-monotonic relationship between regime type and ratification patterns through the marginal effects of the regime type² measure upon the likelihood a state accedes to the African Court.

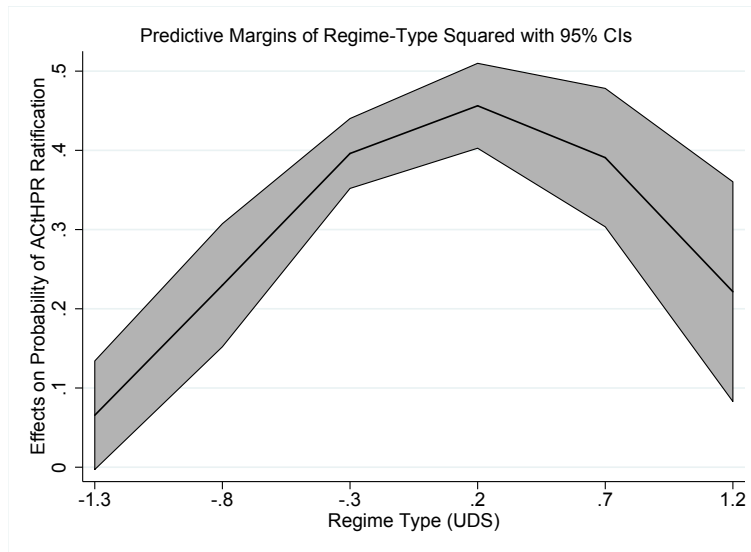


Figure 2.1: Marginal Effects of Regime Type² upon the likelihood of ACtHPR Ratification

Model 1 includes a broad proxy for rule of law, in the WGI rule of law estimate that encompasses perceptions that state agents follow the legal norms of a society, protections of civil and political rights, the status of security institutions, and the likelihood a citizen will be a victim of crime (Kaufmann et al. 2006). The positive coefficient and statistically-significant finding provides limited validation for any of the hypotheses under consideration, but the finding does indicate states exhibiting higher standards in civil liberties and political rights are likely to accede to the ACtHPR. The hypothesized mechanisms that predict states that are more likely accede to the ACtHPR are resident in models 3, 4, and 5, as noted below.

The findings on judicial corruption (model 3) not only lack significance in the expected direction, but they exhibit significance in the opposite direction predicted in *hypothesis 2a*. These findings provide some support for the external validity of Powell and Stanton (2009) study that finds states with more effective judiciaries are less likely to sign the CAT. Counter to the theoretic expectations of the current study, it appears there is a possibility that the

likelihood domestic courts will implement the findings of a regional human rights court informs leader “lock-in” strategic decisions.

Model 4 indicates that states with better protections of private property rights are more likely to accede to the ACtHPR, all else equal. The statistical significance of this finding indicates accession decisions by states comes, in part, from the size of the pool of potential complainants in issue areas under the jurisdiction of the court that have accessible (Lupu 2013a) and documented evidence. These findings support the validity of *hypothesis 2b* and provide justification for analysis that focuses on the *de facto* jurisdictional areas of the court. The lack of statistical significance of physical integrity rights and a recent record of civil war also provides greater justification to focus primarily on causal mechanisms inherent to a regional court’s purview, rather than only relying on underlying predictors of broad repression.

The leader horizon model (Model 5) indicates support for *hypothesis 3* and support for the external validity of Wright (2008) work on authoritarian regime aid efficacy. The positive and statistically significant finding for executive recruitment, or the relative norm of orderly leader transition, indicates leaders with longer time horizons are more likely to accede to the ACtHPR. Substantively, the findings in Model 5 indicate leaders of transitional democracies are more likely to pursue a “lock-in” accession if their personal time horizons are relatively-longer. Alternatively, this finding supports the argument that for leaders of transitional states to protect against democratic “claw back,” there is a necessary antecedent condition of a baseline of democratic gains and stability. In short, these findings suggest the ACtHPR represents a public good for leaders with longer time horizons. These findings also provide support for calls to contextualize regime types beyond their placement on measures of democracy (Goldstone et al. 2010).

The remaining variables of interest provide some interesting results. As expected, states that ratify the Rome Statute (ICC) are more likely to ratify the ACtHPR, as the act of ceding sovereignty should make following similar acts more likely, all else equal. The relative

wealth of a country, measured as the \ln of GDP per capita, lacks statistical significance in all but the judicial corruption (3) model.

The negative coefficient and statistical significance of the control variable for a common law heritage provides a finding in the opposite direction of expectations. As indicated by procedures of the ACtHPR, the African Court strove to build itself as a mixed judicial institutions, but it retains the framework of a common law court (ACtHPR 2019b). Of the 54 states under consideration, only nine are classified by Mitchell, Ring, and Spellman (2013) as having a common law tradition. Ghana, Lesotho, Malawi, Tanzania, and Uganda represent the states that acceded to the ACtHPR with a common law heritage. Liberia, Sierra Leon, Zambia, and Zimbabwe are the remaining common law heritage states that did not accede to the African Court during the time frame of consideration. Further, anglophone states such as Ethiopia (civil), Kenya (mixed), and Nigeria (Islamic), fail to abide by colonial historical expectations for legal system typology. There is statistical support for mixed and Islamic regimes acceding to the court at higher relative rates than common or civil law heritage states. Accordingly, interpretation of the findings for legal heritage warrants caution and the need for contextualization.

The goodness of fit tests for the Rule of Law model and Human Rights model indicate the observed values of *ACtHPR Ratification* match the expected binary outcomes for data groups. I use the Hosmer-Lemeshow test instead of the Pearson test, as the number of “covariate patterns” is relatively-close to the total observations in the sample (Hosmer, Lemeshow, and Sturdivant 2013). The insignificant Hosmer-Lemeshow p-values serve as a signal, but not proof, that the models consist of good predictors. I test multicollinearity in all models by conducting a variance inflation test of the linear regression outcomes of the variables in each logistic model. Use of a linear regression is appropriate in the case of a variance inflation test, as it analyzes the covariates in relationship to each other, and not the outcome variable. The reciprocal values ($1/VIF$) of the variance inflation test for all

variables are greater than 0.20 (Mehmetoglu and Jakobsen 2016), except for the derivative Carter and Signorino (2010) time² and time³ controls.

2.5 CONCLUSION AND IMPLICATIONS

The contributions of this study include a confirmation of the “lock-in” theory and the development of theoretically-sound predictors of regional human rights courts accession. The confirmation of the “lock-in” hypothesis, whereby weakly democratic and transitional states cede sovereignty to a regional court to lock in democratic gains, informs the literature beyond ratification patterns. The voluntary ceding of sovereignty to an international or regional court provides an opportunity to understand empirically the impact upon states of high-delegation international organizations. A finding of support for “lock-in” hypothesis in the Africa case also serves to confront notion the continent represents a special case (e.g., Chapman and Chaudoin 2013) in international relations, all else equal.

Further, the broad use of physical integrity rights or past atrocities as a predictor of state and institutional behavior in areas not linked directly to such rights requires a reassessment. If the risk of political and military elite prosecution, as in the case of the ICC, is the primary risk to state sovereignty, the use of physical integrity rights or variation in battle deaths appears appropriate. When the risk to state sovereignty does not fall on political and military elites, however, the development of who and what is at risk is appropriate.

In the case of the complementary principal of regional human rights courts, the results of this chapter provide mixed results. When states have a norm of protecting private property rights but with judicial institutions that incorporate bribes into jurisprudence, leaders are more likely to accede to the ACtHPR. The inherent logic of this contradiction is that leaders assess both the risk of judicial sovereignty loss and the risk that their domestic judicial institutions will enforce regional court rulings.

The final substantive finding of this chapter is that leaders that “lock-in” democratic gains have to have democratic gains to protect and a baseline expectation of a long time

horizon of continued rule. This finding indicates the need for caution in broad application of the “lock-in” hypothesis without accounting for the likelihood of orderly leader transition.

CHAPTER 3

CONSTRAIN AND JUDGE: DOES THE ACTHPR DETER HUMAN RIGHTS VIOLATIONS?¹

¹Kopp, M. Submitted to *International Studies Quarterly*, 02/05/20.

3.1 ABSTRACT

Do regional human rights courts, such as the African Court of Human and Peoples' Rights (ACtHPR), influence state behavior? This paper argues that membership in the ACtHPR has little independent impact upon state respect for human rights, after accounting for selection effects for court membership. Instead, improvement in human rights practices results from an interactive impact of African Court membership and the domestic and international pressures from human rights international non-governmental organizations (HRO) within the member state. Using data on human rights outcomes and HRO presence in African states from 1998 to 2017, this paper tests these propositions and finds support for the arguments. The findings indicate states that accede to the ACtHPR and have a higher density of HROs improve their respect for certain civil liberties and political rights but not physical integrity rights. This research provides the first quantitative analysis of the impact of the ACtHPR upon state respect for human rights.

3.2 INTRODUCTION

In a close presidential election first round in March 2016, Benin selected Patrice Talon with 24-percent of the vote as one of two top candidates for a second round. Sebastien Germain Ajavon received 23-percent of the vote and ended the race in third position, thus failing to proceed to the second round of elections. Mr. Ajavon is a politician and business person with a number of businesses. Also in 2016, Beninese authorities found 18 kilograms of cocaine in a container arriving from Brazil that had a final destination of one of Mr. Ajavon's companies. The Beninese judicial system first acquitted Mr. Ajavon, but later convicted him in absentia to 20 years of prison (Court 2019). Mr. Ajavon remained in exile in France, with support from the French Office for Protection of Refugees and Stateless Persons. President Talon took an authoritarian turn after winning his office, drawing the condemnation of international human rights organizations (Le Figaro 2019). Within this backdrop, Mr. Ajavon and his Parisian

legal counsel, Marc Bensimhon, petitioned the ACtHPR (Le Figaro 2019). The African Court ruled on case 013/2017 in March 2019. The court ruled that Mr. Ajavon had not exhausted local remedies, but his role as a public figure constituted a special case. Further, the African Court ruled Benin had violated several of the complainant’s civil liberties and political rights to include equal protection, the right to be tried by a competent court, a presumption of innocence, the right to counsel, and the right to personal property. The ACtHPR required Benin to annul the judgement against Mr. Ajavon (Court 2019). In case 013/2017, international human rights groups, an international human rights lawyer, and the African Court worked in concert to highlight a relative decrease in civil liberties and political rights in Benin under the rule of President Talon. This caveat from Benin begins to frame how a regional human rights court might impact state respect for human rights.

Much of the literature on the impact of human rights agreements and institutions upon the likelihood states will improve their respect for human rights is highly contingent (e.g., Hafner-Burton and Tsusui 2005; Lupu 2013). Studies on the impact of the legalization of human rights through regional and international courts (Helfer and Voeten 2014; Jo and Simmons 2016; Appel 2018) provide a similarly contingent or mixed picture. This study seeks to add to the literature through a focused-investigation on the impact of the African Court of Human and Peoples’ Rights (ACtHPR) upon human rights outcomes.² Specifically, the question of interest is whether the African Court influences the likelihood states will improve their respect for human rights when supported by human rights international non-governmental organizations (HRO).³

²This study uses “ACtHPR” and “African Court” to note the African Court of Human and Peoples’ Rights. This study also uses “ICC” and “the Court” to indicate the International Criminal Court.

³The definition of HRO/INGO for this research relies upon the *Yearbook of International Organizations Yearbook (1959-2003)* definition. The components of the definition are that an organization has a non-profit status, overt transparency, a legally-documented establishment and organization, and has a presence in multiple states. This study screens for HRO/INGO with an organizational motive that includes human rights protections and improvement from Smith and West (2012).

The challenge facing the ACtHPR is a difficult one, and normative hopes that the African Court can correct the relative “impotence” of the African Commission of Human and Peoples’ Rights (Mutua 1999) remain in question. The African Court exists in an environment with member states dealing with ongoing civil conflict, violent regime change, and the systemic violation of human rights. Other states in Africa have robust democratic institutions and provide public goods that support the protection of human rights. The variation in human rights protections between states in Africa does not obscure, however, that the region has some tough neighborhoods with a lack of institutionalized human rights protection. According to the Freedom House “Freedom of the World 2018” report, 45-percent of countries rated as “free” in consideration of civil liberties and political rights and 30-percent were partially free with the remaining 25-percent rated as not free in 2018. In Africa, 19-percent rated as free, 40-percent as partially free, and 42-percent as not free (House 2019). To provide a focused example, the Polity IV measure of executive recruitment, or the level of institutionalized transfer of chief executive power, indicates a set relatively-dynamic domestic political environments. African states represent 53-percent of states in 2012 noted as “designational” or “transitional,” with political elites choosing leaders without formal competition (Marshall, Jaggers, and Gurr 2014b). Also in 2012, Africa had one (Rwanda) of two states with a norm of unregulated forceful seizures of power and four of seven states with an interruption, breakdown, or transitional period of governance. However, 13 African states also had domestic political norms of regulated power transitions through competitive elections or hereditary succession (House 2019). *Figure 3.1* provides graphical representation of the gross (re-scaled) differences between Africa and the rest of the world in relative-respect for human rights and democratic institutions. International and regional human rights institutions have a tough, but not unique, challenge in promoting and protecting human rights in Africa. A finding of a significant impact of the ACtHPR, in the context of these difficult governance and human rights challenges in the region, would serve to confront arguments that Africa represents a

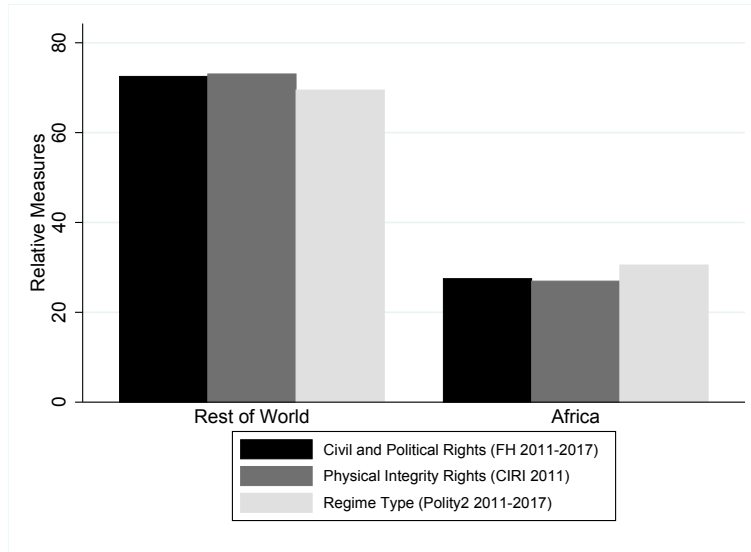


Figure 3.1: Relative Differences between Africa and the Rest of the World for Civil Liberties and Political Rights, Physical Integrity Rights, and Regime Type

special case for human rights or that regional human rights courts represent only window dressing.⁴

This study analyzes the impact of the ACtHPR upon respect for human rights by African states. The principal viewpoint of this study is skeptical, in that once accounting for factors that screen out states from ratifying the protocol for the ACtHPR, there is a minimal likelihood of a significant independent impact by the African Court. When combined with higher domestic and international audience costs (Appel 2018), however, there is a likely interactive impact upon human rights outcomes and domestic institutional patterns at the margins. HROs serve as a functional mechanism in this analysis that can facilitate human rights court penetration (e.g., Helfer 2008) beyond the rhetorical level to impact human rights outcomes (e.g., Sikkink and Walling 2007). This chapter finds that HRO-enhanced international and domestic audience costs (Appel 2018) help to improve respect for certain

⁴The term “window dressing” in this context represents a proxy for empty promises – or lack of will or intent to comply with human rights mechanisms – in the literature (Keith 2002; Hafner-Burton and Tsutsui 2005).

civil liberties and political rights. These findings add to the literature on the impact of human rights institutions upon state respect for human rights. Further, this study provides a novel test of whether and when the African Court is effective in its core mission of protecting and promoting human rights. Given the dearth of empirical studies on the efficacy of regional human rights courts, this study begins with a review of approaches to assessing the impact of international human rights institutions, before narrowing the analysis to the African Court.

3.3 INFLUENCE OF INTERNATIONAL HUMAN RIGHTS REGIMES

Studies that investigate the impact or influence of international human rights regimes form a diverse and contingent literature. The ability of human rights treaties to influence state likelihood of improving human rights practices remains a challenging puzzle for scholars. As noted by Bayefski (2001) and Hafner-Burton and Tsusui (2005), the lack of monitoring and enforcement mechanisms in many human rights treaties can lead to a “decoupling” of the intent of agreements from the actual protection of human rights. A further difficulty for the international institutions that embody human rights treaties is that they deal with internal policy decisions with mostly-domestic impacts, unlike treaties on trade, the environment, and security (Moravcsik 2000). Accordingly, the overt acknowledgement of universal human rights norms co-exists with domestic political environments where competing policy concerns can take precedence.

The International Covenant on Civil and Political Rights (ICCPR) and Convention Against Torture (CAT) represent two common subjects for studies of the efficacy of international human rights institutions. The literature on the ICCPR and CAT forms a contingent or pessimistic picture for the protection of human rights. Keith (1999), Hathaway (2002), Hill (2010), and Simth-Cannoy (2012) find ratification of the ICCPR correlates with decreased protection of human rights. Lupu (2013) finds that ICCPR ratification has no relationship with physical integrity rights but does correlate with increased respect for political and civil rights. Hathaway (2002), Hill (2010), and Smith-Cannoy (2012) find congruent patterns for

ratification of the CAT, a convention that directly intends to support the physical integrity right of freedom from torture. Hathaway (2002) provides a broader set of pessimistic findings for the genocide convention and regional treaties like the American torture convention. The theoretic explanations for these mixed and null findings provide a useful set of frameworks to approach the challenging puzzle of the impact of international human rights institutions. The explanations for a lack of efficacy in physical integrity rights agreements include the high cost of complying (Hathaway 2002; Hill 2010), the higher standard of proof and high cost of evidence (Lupu 2013), and the impact on leader vulnerability (Conrad and Ritter 2013). Lupu (2013) argues political and civil rights align more closely with domestic courts – due to their relatively low standards of proof and cost of evidence. The lack of a standing enforcement mechanism inherent to the treaties indicates a possible additional impact of human rights court membership.

INTERNATIONAL COURTS

In contrast to institutions that promote compliance with the relative-absence of a centralized compliance mechanism, international courts provide a higher degree of coercion (Abbott et al. 2000). Given the “sparse” status of the empirical literature on international (Hafner-Burton 2012) and regional human rights courts, the following review provides brief coverage of the evolution of studies about the ICC before addressing regional courts. Studies of the ICC have begun to form a more coherent picture of the impact of an international human rights court, but there is still ample space to analyze the fundamental question of whether and when the court succeeds in its reason for being – deterring grave violations of human rights.⁵ Given the relative youth of the ICC, with a 2002 entering into force date and a 2003 initial operational capacity date (ICC 2018), studies on the efficacy of the court include a set of studies through the mid-2000s that rely on theoretic analysis (e.g., Gilligan 2006) and

⁵The Rome Statute of the ICC includes a mandate to deter the gravest violations of human rights, to include genocide, crimes against humanity, war crimes, and the crime of aggression. The Rome Statute defines the “crime of aggression” as the use of armed force by a state against another state in violation of the Charter of the United Nations (ICC 2018).

mature through the life of the court to include increasing sophistication in empirical analyses (e.g., Simmons and Danner 2010; Chapman and Chodoin 2013; Jo and Simmons 2016; Appel 2018).

One group of studies on the ICC explores whether the Court changes repressive leader incentives to remain in power (Gilligan 2006), acquiescence to U.S. bi-lateral agreements for custody transfers (Kelley 2007; Nooruddin and Payton 2010), and cooperate with pre-trial requests (Hillebrecht and Straus 2017). The findings of these studies generally indicate the ICC alters leader decision calculus for policy choices. In response to concerns that the threat of extradition by third party states to the ICC could prolong the tenure of repressive leaders (Scharf 1999), Gilligan (2006) theorizes leaders that are likely ICC targets, and most likely to be deposed, have an incentive to turn themselves into the court. Studies on the ICC also analyze the impact of Court membership on the likelihood states will agree to subvert the power of the court by signing bi-lateral non-extradition agreements with the U.S. These studies find the likelihood a state will sign such agreements is contingent upon weak rule of law institutions and the lack of domestic pressure to comply with the ICC (Kelley 2007) and the susceptibility of states to pressure from a major power (Nooruddin and Payton 2010). Another line of inquiry explores the domestic and international factors that make states more likely to cooperate with ICC indictments and other pre-trial requests (Hillebrecht and Straus 2017). The authors posit that leaders that have to consider broader international connections are likely to provide at least a minimal level of cooperation – if the international partner expects good standing with international human rights institutions.

A second group of empirical studies of the ICC has begun to approach the central question of this study, the efficacy of the Court in decreasing – or deterring – human rights violations. Recent studies begin to test ICC impact and highly-contingent findings of whether the Court deters atrocities. Jo and Simmons (2016) provide the first substantive systematic assessment of the efficacy of the ICC in deterring human rights abuses by states and rebel groups. The authors find the prosecution-deterrence of the ICC impacts both governments and rebels

with secessionist goals. The authors also find that a greater density of human rights NGOs in an ICC-member state amplifies the impact of the Court. Although Appel (2018) does not respond directly to Jo and Simmons (2016), the work represents an important advance in the understanding of the impact of the ICC. The author argues that the deterrence mechanism of the Court against physical integrity rights abuse is the changing of leader perceptions about the possible benefits of repression. The progression of the literature on the ICC provides a possible set of approaches to utilize in an analysis of the efficacy of regional human rights courts, like the African Court.

REGIONAL COURTS

Studies of regional courts allow for a focused analysis of the regional and domestic political factors that predict when states will change their human rights behaviors. While there are influential studies on the impact of regional human rights courts (e.g., Helfer and Voeten 2014), the literature still mirrors the sparseness noted by Hafner-Burton (2012). There is a lack of large-n empirical studies that analyze the efficacy of regional human rights courts in their reason for being, the protection and improvement of human rights. As noted by Cavallaro and Brewer (2008), the mere existence of a regional court does not lead to a parsimonious outcome of better human rights protections. Studies on the efficacy of regional human rights courts include analysis of direct compliance with court findings (e.g., Hillebrecht 2012 and 2014) and whether there are impacts upon other states in the domestic codification of findings into law (e.g., Helfer and Voeten 2014).

The first group of studies on regional human rights courts generally fall under the rubric of judicial compliance. Cavallaro and Brewer (2008) argue states that lack respect for human rights are unlikely to comply with court rulings, especially when the court demands actions that require significant policy changes. The authors note the possible impact of the IACtHR upon the ability of HROs and civil society to exert pressure on leaders (Cavallaro and Brewer

2008b). C. Hillebrecht provides a broader set of studies on regional courts that include in-depth case studies (Hillebrecht 2012a; Hillebrecht 2012b) and large-n analysis (Hillebrecht 2014) of compliance mechanisms of the ECtHR and IACtHR. The causal mechanisms for compliance include strong and democratic domestic institutions combined with domestic and international audience costs (Hillebrecht 2012a; Hillebrecht 2014), the executive's will and ability to build a coalition (Hillebrecht 2012b), and executive constraints (Hillebrecht 2014). A synthesis of this literature on compliance with regional human rights courts indicates that court judicial power may grow, but the compliance of individual states is contingent upon domestic political institutions and the associated costs of non-compliance.⁶

Another set of studies analyze the impact of court judgements upon future behavior of a broader set of member states. Helfer and Voeten (2014) provide a compelling framework for understanding the concept of *erga omnes*, or the diffusion of a judgement impact beyond the litigants, in an analysis of LGBT rights and the ECtHR. The causal story for the diffusion of court rulings includes the provision of a legitimate legal instrument to justify changing a domestic law, an increase in issue salience, and an ability to energize and embolden international organizations (Helfer and Voeten 2014). Binder (2012) provides a comparative legal analysis of the diffusion of IACtHR rulings on former military regime amnesty laws into states that are not a party in cases. IACtHR rulings that prohibited domestic courts from using amnesty laws as a legal instrument in decisions in Peru and Chile resulted in a "spillover" impact in Argentina and Colombia (Binder 2012). The causal argument is that states that have a desire to consolidate democracy can use the regional court ruling as a justification to break from legal instruments designed to protect human rights abusers (Binder 2012). Given the sparsity of empirical analysis of the impact of regional human rights courts, and the theoretic link of efficacy to transnational human rights advocacy (Sikkink and Walling

⁶A recent work (Stiansen 2019) argues that a lack of compliance may represent a short-term delay, not actual non-compliance. Delays that stem from the requirement for domestic political and legislative reforms take longer to enact and incur a greater requirement to deal with veto players (Stiansen 2019).

2007), the next section provides a framing of the interaction between HROs and regional courts.

DOMESTIC AND INTERNATIONAL COSTS: BRINGING IN HROs

The literature on the impact of HROs (e.g., Risse et al. 1999 and Welch 2001) indicates three general impacts upon states pursuing policies of human rights repression. First, HROs help domestic advocacy groups in their efforts to influence states to improve their respect for human rights (e.g., Risse and Sikkink 1999). Second, HROs increase issue salience for domestic and international groups (Keck and Sikkink 1998). Third, they help make domestic human rights issues international issues to increase pressure on repressive regimes (Keck and Sikkink 1998; Simmons 2009).

From a domestic perspective, HROs assist individuals with legal assistance and information about opportunities to redress grievances (Hopgood 2006; Mihr and Schmitz 2007) and aid domestic groups in their effort to impact government human rights practices (Keck and Sikkink 1999; Risse-Kappen et al. 1999). This pressure “from below” (Brysk 1993) represents the interaction of HROs with domestic actors to increase domestic costs for leaders. An example that helps illustrate this dynamic comes from a high density of cases from the Tanzanian prison population. Of the 100 cases submitted from Tanzania to the ACtHPR with case summaries available on the African Court website, 95 come from incarcerated individuals (Registrar 2019). Additionally, 61 of these cases received direct or ancillary support from an HRO or an international legal aid society.⁷ Starting with case (005/2013), in the complaint of Alex Thomas versus Tanzania (Registrar 2019), the African Court asserted jurisdiction over cases that stem from incarcerated individuals claims of human rights violations. Case (005/2013) stems from a claim of a lack of a fair trial that resulted in a guilty verdict for armed robbery and a 30-year sentence. The primary finding against the state, in this case, falls under legal-procedural violations of defendants’ rights, in the failure to provide counsel

⁷Coding for all cases on the ACtHPR website through June 2019 is per the coding rules utilized by Hillebrecht (2016) *Compliance with Human Rights Tribunals ECtHR Dataset*.

and access to evidence against them.⁸ In case (005/2013), Mr. Thomas received legal support from the Pan African Legal Union (PALU) in the preparation of his court documents, submission to the African Court, and representation before the court.⁹ The direct costs to leaders in the Tanzania case include the functional requirement to represent the state at court and provide counsel for prisoners. Secondary costs include a requirement to provide counsel to newly-accused individuals, to avoid poor pre-trial treatment, to pay higher administrative costs for death penalty verdicts and lengthy prison sentences, and to allow accused individuals access to witnesses and evidence against them. The ACtHPR appears to serve as an outlet in Tanzania for HROs seeking change in civil rights generally and specific policy issues like the death penalty.

International costs represent the second dimension of pressure upon leaders to improve state respect for human rights. The pressure “from above” (Keck and Sikkink 1998; Risse-Kappen et al. 1999) comes from an interconnected set of advocacy groups, HROs, IGOs, private capital, and governments. Early studies in the impact of HROs upon human rights practices found little support for an independent impact of international shaming (Hafner-Burton 2008) or support contingent upon reliance upon foreign direct investment (Franklin 2008). Krain (2012) follows-up Hafner-Burton (2008) to find support for an impact of HRO shaming upon the intensity of genocides and politicides. Demeritt (2012) builds a principal-agent theory and find empirical support for the impact of HRO international “naming and shaming” upon limiting one sided killings. Of note, Demeritt (2012) finds that HROs do a better job at preventing the onset of killing than reversing ongoing episodes of violence. As

⁸The ACtHPR found in case (005/2013) that the state violated Article 7(1) a, (c) and (d) of the African Charter on Human and Peoples’ Rights and Article 14(3)(a) of the ICCPR (Registrar 2019).

⁹One sub-specialty of the PALU involves death penalty cases with a lack of due process. Of the cases from Tanzania before the ACtHPR, 25 involved inmates with a death penalty (Registrar 2019) and 17 of those cases received provisional injunctions from the African Court. Of note, the Cornell Center on the Death Penalty reports Tanzania had 496 inmates on death row in 2017 (Cornell 2019).

HROs provide information and increase the salience of human rights practices in a state,¹⁰ third party states and international actors have fewer incentives to cooperate with the state (Lebovic and Voeten 2009).

Beginning with Murdie and Davis (2012), studies began to integrate pressure “from above” and “from below” in one conceptual framework for the impact of HROs upon human rights outcomes. The work leverages Keck and Sikkink (1998) and Risse et al. (1999) models and highlight HROs within a state serve to increase domestic and international pressure against leaders that chose repressive policies. Hendrix and Wong (2013) explore the impact of domestic political institutions and HRO naming and shaming and argue the combination is more effective in autocratic states as they lack domestic sources of information on repression. Pruce and Cosima-Budabin (2016) explore the “information politics” role of advocacy networks noted by Keck and Sikkink (1998). The work notes HROs fill the gap between the goals of the international human rights regime and an at-risk individual in a distant land. When HROs fill the “juridical mode,” their actions become imbued with higher baseline expectations of procedural rigor and informational validity (Pruce and Budabin 2016).

An illustrative example comes from case (004/2013), in the case of Lohé Issa Konaté versus Burkina Faso. The complaint stems from a conviction of 12 months prison, a fine, and closure of the complainant’s newspaper for six months due to several negative articles written about a prosecutor. The list of HROs involved through *amici curiae* or directly include: the Centre for Human Rights, *Comite Pour la Protection des Journalistes*, Pan African Human Rights Defenders Network, and the PALU. Additionally, a number of media and news organizations provided *amicus* briefs (Registrar 2019). The court found that Burkina Faso violated various legal-procedural, civil, and political rights and directed the state to amend its defamation legislation (Registrar 2019). When we consider the implications of the

¹⁰Levin and Trager (2019) provide an empirical analysis of likely variation in the domestic impact of signaling by leaders. The authors investigate “American Bias” through analysis of a citizen’s knowledge about a series of intergovernmental organizations (IGO) that include the ICC. One interesting finding was that less than 50-percent of U.S. respondents could identify the IGOs, whereas more than 65-percent of sub-Saharan Africans could(Levin and Trager 2019).

broad inclusion of HROs and the finding of the ACtHPR for rational international actors, the case provides information of a relative lack of civil rights and weak rule of law institutions in Burkina Faso. While scholars conversant in the political context of Burkina Faso will find no surprise with this assertion, the focus on state institutions and practices by the African Court and HROs serves to provide relatively-legitimate information to international actors that make decisions on cooperating with the state.

3.4 THEORETICAL ARGUMENT

The heuristic of a leader in a dynamic decision environment supports the underlying assumptions of the causal argument. This study assumes the leader is a rational actor with a primary decision motive of retaining power to accomplish a set of goals (Mesquita Bruce et al. 2003). A further assumption is the leader decision environment includes direct and indirect sources of power contention from domestic and international sources (Conrad and Ritter 2013; Jo and Simmons 2016; Appel 2018). Within the framework of these assumptions, this work posits regional human rights courts serve as a mutually-supportive mechanism to enhance the ability of HROs to increase the salience of human rights practices and to increase the pressure upon leaders from domestic and international actors.

Borrowing from the theoretic work on the impact of HROs and international courts, the following represents a slight modification of the “justice cascade” (Sikkink and Walling 2007) to incorporate the role of regional human rights courts.¹¹ When states have poor human rights practices and lack sufficient institutional means for domestic actors to redress grievances, HROs seek justice through regional human rights courts. The formalization and externalization of the human rights grievance through a standing body that instantiates international human rights norms diminishes the ability of the regime to obfuscate or avoid dealing with the human rights violation claimed by the complainant (Simmons 2009; Kim

¹¹The decision to frame the theoretical argument through a “justice cascade” framework rather than the “boomerang” or “spiral” model (Keck and Sikkink 1998; Risse-Kappen et al. 1999) is for the sake of parsimony and conceptual alignment.

and Sikkink 2010). Similarly, the inclusion of HROs in the legal process of the regional human rights court decreases the legal literacy and political power imbalance between the aggrieved complainant and the state (Hopgood 2006; German, Schoneveld, and Mwangi 2013). The inclusion of HROs in court filings can also serve to diminish the utility of state tactics that question the legitimacy of claims of human rights violations (Pruce and Budabin 2016). The limiting of extra-judicial efforts due to the inclusion of HROs then supports the regional human rights court in retaining a primary focus on the merits of the case. This mutually-supportive cycle between domestic groups, HROs, and the regional human rights court provides information to leaders that repressive policies will have a higher cost over the long-term. Leaders that fail to improve human rights practices face the risk of incurring an international “spotlight” (Hopgood 2006). The leader risks the realization of reputation costs to elite interest like foreign direct investment and foreign aid (Simmons 2009; Conrad and Ritter 2013; Appel 2018).

With the growing cooperation and formation of a transnational-regional advocacy network (Keck and Sikkink 1999) consisting of the regional human rights court, HROs, and domestic actors, calls from domestic actors for HROs assistance (Keck and Sikkink 1998) experience increased efficiency and efficacy. As the relative salience of the transnational-regional advocacy network increases focus upon leader policy decisions, the expected costs for repression increase while the expected benefits decrease (e.g., Conrad and Ritter 2013). The first improvements in state respect for human rights should be those rights that have lower costs of compliance (Hill 2010) and only indirect connections to leader vulnerability (Conrad and Ritter 2013). The establishment of the African Court from the Banjul Charter emerged from a contentious environment where African leaders sought to limit the court’s enforcement and monitoring power, especially in the areas that might threaten leaders directly, like gross violations of physical integrity rights (Gittleman 1981; Umozurike 1983; Evans and Murray 2008). Accordingly, short-term improvements in human rights practices should occur in civil liberties and political rights and not physical integrity rights.

Hypothesis 1a *When ACtHPR membership coincides with a higher density of HROs in a state, states should improve their respect for civil liberties and political rights.*

Hypothesis 1b *When ACtHPR membership coincides with a higher density of HROs in a state, states should see little improvement in their respect for physical integrity rights.*

3.5 DESIGN

The primary focus of this study is to understand whether and under what conditions the African Court improves respect for human rights. The relative-youth of the ACtHPR indicates some utility in extending the temporal range of this study to the maximum extent possible. Given data limitations on the key human rights outcome variables, the analysis ends with the 2017 country year and utilizes data sources that provide maximal coverage. The temporal range for this study is from 1998 to 2017 for the primary models with a total possible pool of 1019 country years. The analysis includes country years from the 1998 adoption of the ACtHPR through Article 1 of the African Charter on Human and Peoples' Rights that established the African Court. While the court did not enter into force until 2004 and began ruling on a high density of cases after 2010, states began acceding to the African Court in 1998 (Court 2019; Registrar 2019). Accordingly, analysis of the impact of the African Court's existence involves empirical and theoretical trade-offs. The primary analysis will begin with the first states agreeing to accede to the African Court in 1998 as a parsimonious way to account for the full range of court status.

Given the broad swath of rights in the African Charter on Human and Peoples' Rights, this study uses a combination of measurements for physical integrity, civil rights, and political rights to test the hypotheses. To capture the likely lag in impact of explanatory variables upon the outcome variables of interest, all models carry forward the dependent variable at DV_{t+1} or apply a lag of one for the covariates.

To capture the maximal country years and account for variation in standards of accountability for physical integrity rights repression, this study utilizes the Fariss Latent Human

Rights Protection Score (version 3). The physical integrity rights *PIR* variable uses Bayesian modeling to account for variation in human rights accountability measures over time. The measure uses 13 indicators of repression and provides a means of overcoming missingness through statistical modeling, as the human rights measures can suffer from non-random missingness as in the case of state failure (Fariss 2014). The resultant continuous variable provides measurements for all country years through 2017 (Fariss 2019).

Analysis of civil liberties and political rights outcomes with factors that correlate with higher measures of democracy remains a challenge. The impact of international institutions and advocacy groups that have the goal of improving civil liberties and political rights, however, remains an important question. In the absence of complete and discrete measures of civil liberties and political rights, this study utilizes standard measures, while attempting to apply methodological techniques to account for conceptual overlap and endogeneity. Accordingly, this study first uses the Freedom House indices for civil and political rights as a measure that provides maximum country-year data (House 2019). This study follows Busse (2004) transformation of the measures to an interval from 0 to 1 through the formula $\frac{14 - (\text{Civil Liberties} + \text{Political Rights})}{12}$. The resultant interval indicates as scores approach “1,” a state has a higher respect for civil liberties and political rights. The literature has established a correlation – or stickiness – between measures of regime type, civil liberties and political rights (Bollen and Paxton 2000). Accordingly, the models utilizing the Busse (2004) *Civil-Political Rights* measure test correlation with and without measures for regime type. Despite the theoretic interest in the broad propensity of a state to improve civil and political rights, a series of discrete variables follow that attempt to capture the possible impact of the ACtHPR and HROs along conceptual lines, while addressing endogeneity concerns.

A challenge in any analysis that includes broad measures for civil and political rights is the inherent endogeneity with measures of regime type and democracy (Busse 2004). The tautological logic that democracy predicts improvements in political rights and civil liberties, and those that improvements strengthen democracy, indicates the need for specificity in

the operationalization of concepts. Accordingly, this study attempts to disaggregate specific components of civil liberties and political rights to better-isolate causation. The goal is to isolate causation while measuring a change in a phenomenon that serves as a proxy for both socio-cultural and institutional change. To capture the confluence of socio-cultural traditions, institutional norms, and potentially-salient issues (Oloka-Onyango 2002; Simmons 2009; McCrudden 2018), this study utilizes measures for freedom of religion (*Religion*) and women political empowerment (*Gender*). Of note, the operationalization of civil liberties and political rights through freedom of religion and women political empowerment has support from the human rights literature. Studies that investigate the impact of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) provide explicit focus on the impact of the international human rights treaty upon gender-specific human rights outcomes (e.g., Simmons 2009 and Hill 2010). Additionally, works such as Simmons (2009) and McCrudden (2018) explore the impact of international human rights treaties upon respect for religious freedom.

The measure for *Gender* comes from the Varieties of Democracy (VDEM) Dataset Version 8 and provides an interval measure from 0 to 1, with higher scores representing greater relative capacity and agency for women to participate in and impact civil and political society. A score of “0” on the women political empowerment index would indicate a state with absolute gender inequality and exclusion of women from political interactions, whereas a score of “1” would indicate absolute equality (Coppedge et al. 2018; Pemstein et al. 2019).

The measure *Religion* also comes from the VDEM Dataset and provides a continuous measure of relative freedom of religion. The measure ranges from -4 to 4 with higher scores representing greater religious freedom. The dimensions of religious freedom measured include the freedom to choose, change, practice, and proselytize a religion in private and in public without repression (Coppedge et al. 2018).

The second set of civil liberties and political rights variables attempt to capture the impact of ACtHPR membership and HRO presence upon state institutional patterns. There

is a relative norm of legal illiteracy and exclusion for large numbers of citizens of African states (German, Schoneveld, and Mwangi 2013). In addition to the institutional patterns that exclude individuals from achieving equal access to justice, corrupt institutional norms of broader rule of law institutions can impact the justice ecosystem. As noted by Sylla (2014), the invasive forms of corruption in Africa include the elite capture of state wealth and the practice of civil servants profiting from their daily interactions with citizens. The dual institutional patterns of embedded public corruption at all levels of society and lack of *de facto* access to justice can limit civil liberties and political rights. In cases where an aggrieved individual lacks the societal standing and fiscal resources to make the system of justice work for them, there is little likelihood of judicial success. Given the framework of the African Court in the Protocol to the African Charter on Human and Peoples' Rights to establish the court, there is a dual mandate to “promote” and “protect” human rights (Court 2019). The African Court can determine if complainants exhausted local legal remedies and whether local bureaucratic ineptitude or delays unduly impacted the progress of local remedies. To capture a possible impact upon domestic institutions, this study utilizes measures for access to justice (*Justice Access*) and public corruption (*Corruption*) from the VDEM Dataset.

The VDEM Dataset measure *Justice Access* is an interval measure intends to capture whether citizens have “secure and effective” access to justice (Coppedge et al. 2018). The dimensions of the *Justice Access* variable include the ability of citizens to bring cases without risk, receive fair trials, and receive counsel, defense, and access to appeals. A measure of “0” would indicate an absolute lack of access to justice and judicial institutions and a measure of “1” would indicate absolute access to justice.

The final focused operationalization of civil and political rights is the VDEM Dataset measure of public corruption (*Corruption*). The VDEM measure for public corruption captures the extent that public officials grant favors in exchange for bribes and kickbacks and their propensity to appropriate government funds for personal use (Coppedge et al. 2018). The interval measure goes in the opposite direction of most VDEM measures, as a “0” indi-

cates an absolute lack of public corruption and a “1” indicates absolute public corruption. Accordingly, significant negative coefficients in regression results would indicate an improvement in the prevalence of public corruption.

3.5.1 EXPLANATORY VARIABLES

As noted in the theoretical argument above, the primary explanatory variables of this study are whether a state acceded to the ACtHPR and the density of human rights NGOs that operate in the state. The act of acceding to the ACtHPR signifies the granting of relative jurisdiction to the African Court of the set of human rights under the court’s purview. The measure of ACtHPR membership (*ACtHPR Ratification*) is a binary variable, with a “0” indicating a country year that a state was not a member, and a “1” indicating a country year a state was a member. The data come from the ACtHPR website and indicate that 30 of 55 African states have acceded to the court to date (Court 2019). The temporal range of 1998 to 2017 includes 1013 country year observations for the standard regression models and 761 country year observations for the coarsened exact matched samples.

The second explanatory variable of interest is the density of human rights INGOs in a given state for a country year. The data come from the Transnational Social Movement Organization (TSMO) Dataset 1953-2003 (Smith and Wiest 2012). Given data availability, the *HRO Count* variable requires some transformation. First, the TSMO data for human rights NGO count in a country are available in for 1993, 1995, 1997, 1999, 2000, and 2003. To overcome the challenge of data missingness, I conduct imputation to gain estimates of the years 1994, 1996, 1998, 2001, and 2002. Second, this study holds post-2003 human rights NGO count data constant through the remaining temporal range of the study. While it is possible a second imputation technique to gain coverage could capture growth in human rights NGO counts in countries after 2003, the technique would assume a constant growth curve given the lack of additional data points to adjust growth trends after 2003. Imputation of the post-2003 country years risks over-counting human rights NGOs over time and result

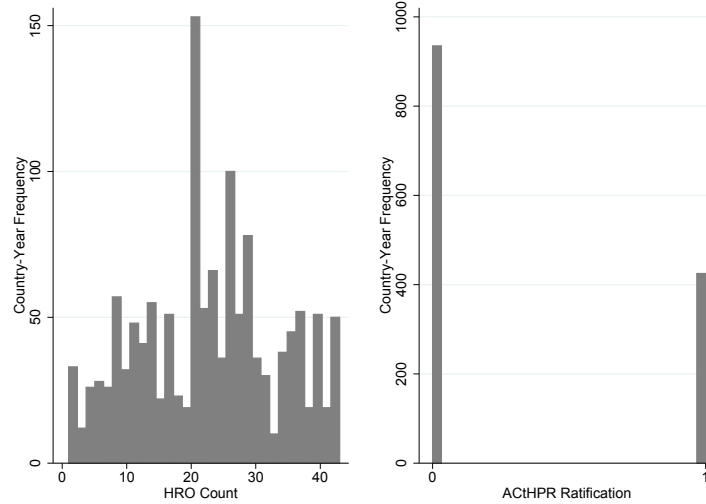


Figure 3.2: Histogram of relative country-year density of HRO Count (left) and ACtHPR Ratification (right)

in an over-estimation of the impact of human rights NGOs. Accordingly, this study takes a conservative approach and carries forward human rights NGO counts from 2003 as static counts. While not ideal, significant findings with this more-conservative measure will provide for more-credible causal inference.

Given the theorized interaction between ACtHPR membership and the density of human rights NGOs in a state, the primary explanatory variable is an interaction $ACtHPR*HRO$ that incorporates both the *ACtHPR Ratification* and *NGO Count* variables. *Figure 3.2* provides a graphical representation of the country-year frequency for *HRO Count* and *ACtHPR Ratification*. The a significant findings of the $ACtHPR*HRO$ variable in a model that includes its constitutive terms (Brambor, Clark, and Golder 2006) would indicate a conditional impact of ACtHPR membership and human rights NGO density in a state.

3.5.2 CONTROL VARIABLES

Poe and Tate (1994) often represents a starting point for controls in much of the human rights literature. Studies (e.g., Hill and Jones 2014) have analyzed the relative-impact of the standard set of variables in the human rights literature, and this study attempts to balance parsimony with the standard set of controls and insights of works like Poe and Tate (1994) and Hill and Jones (2014). Accordingly, the first set of controls account for the impacts of relative wealth, population, and conflict. Poor states associate with weak political institutions and domestic political violence (Poe and Tate 1994; Poe, Tate, and Keith 1999; Dreher, Gassebner, and Siemers 2012). This study uses the natural log of gross domestic product (GDP) per capita ($GDPpCAP(ln)$) to control for the confounding effects of wealth. Studies on repression find states with large populations experience worse records of human rights abuse (Poe, Tate, and Keith 1999; Dreher, Gassebner, and Siemers 2012). To account for the impact of large populations in states, this study utilizes the natural log of population ($Population(ln)$). Both the ($GDPpCAP(ln)$) and ($Population(ln)$) data come from the World Bank Open Data resource (World Bank 2019). There are several observations with missing data in the World Bank ($GDPpCAP(ln)$) measure that are likely not missing at random. Given the associated risk of biased inference from listwise deletion, this study follows Hill (2010) and Lupu (2013) in imputing missing values. To control for the impact of regime type (Poe and Tate 1994; Poe, Tate, and Keith 1999; Dreher, Gassebner, and Siemers 2012), and achieve maximal coverage over the temporal range of interest, this study utilizes the Polity2 measure for regime type ($Regime Type$) that ranges from -10 to 10, with higher scores representing relatively-higher measures of democratic regime characteristics (Marshall, Jaggers, and Gurr 2014b).

This study controls for the impact of common law heritage (Powell and Mitchell 2007) through replication data from Mitchell, Ring, and Spellman (2013) to create a dichotomous measure ($Common Law$) for common law legal heritage. A measure of “1” indicates a common law heritage and “0” indicates a civil, Islamic, or mixed tradition (Mitchell, Ring, and

Spellman 2013). To account for the potential impact of ICC membership upon human rights practices and the explanatory variables of interest (Jo and Simmons 2016; Appel 2018), this study controls for Court membership (*ICC Ratification*). A measure of “1” indicates a country year a state ratified the Rome Statute for Court membership and “0” indicates otherwise (ICC 2018). Simmons and Danner (2010) and Chapman and Chaudoin (2013) vary in findings on the relationship between conflict, the risk of ICC prosecution, and the likelihood of joining the Court. Studies on the impact of international treaties like the ICCPR (Lupu 2013b) and the ICC (Jo and Simmons 2016; Appel 2018) also account for the impact of conflict upon human rights outcomes (Hill and Jones 2014). Accordingly, the analysis includes a dichotomous control variable (*Conflict*) for civil war that occurred within a state’s borders and in neighboring states to account for conflict spillover effects (Collier and World Bank 2003) from the Uppsala Conflict Data Program (UDCP) at the Department of Peace and Conflict Research PRIO dataset (Gleditsch et al. 2002). The definition indicates a civil war includes the use of armed force between two parties, one of which must be a government, with at least 25 battle deaths in a discrete calendar year (Pettersson and Eck 2018). To control for the impact of domestic legal institutions (Hill and Jones 2014) upon the variables of interest this study uses the VDEM measure of high court judicial independence (*Judicial Independence*) from government political desires (Pemstein et al. 2019). A judiciary that has independence from the policy desires of political elites indicates lower levels of risk to fail African Court complementary rules that include a requirement to exhaust local legal remedies (Court 2019). Finally, the empirical analysis includes a lagged dependent variable (DV_{t-1}) in all models that do not correct for serial correlation (Beck and Katz 2004). Table 1 includes summary statistics for the variables of interest, bifurcated by eventual ACtHPR membership. *Table 3.1* provides summary statistics for the variables of interest, bifurcated by ACtHPR membership status.

Table 3.1: Differences Between ACtHPR Members and Non-Members

Variable	Obs	Mean	Std. Dev.	Min	Max
Civil-Political Rights					
Members	580	0.464	0.250	0	1
Non-Members	453	0.396	0.290	0	1
Physical Integrity Rights					
Members	580	-0.274	.935	-2.522	2.276
Non-Members	467	-0.376	1.439	-3.237	3.335
Women Political Empowerment					
Members	608	0.706	0.139	0.232	0.918
Non-Members	491	0.609	0.182	0.215	0.909
Religious Freedom					
Members	608	0.913	1.191	-3.098	2.586
Non-Members	491	0.641	1.321	-3.237	3.335
Justice Access					
Members	608	0.632	0.202	0.134	0.965
Non-Members	491	0.465	0.266	0.034	0.904
Public Corruption					
Members	608	0.674	0.187	0.116	0.979
Non-Members	491	0.685	0.254	0.164	0.960
HRO Count					
Members	609	27.278	9.349	2	43
Non-Members	604	21.542	10.801	1	42
GDP per Capita (ln)					
Members	609	7.372	0.857	5.837	10.577
Non-Members	462	7.504	1.169	5.293	13.416
Population (ln)					
Members	580	16.138	1.235	13.153	19.068
Non-Members	452	15.285	1.832	11.275	18.469
Regime Type (Polity2)					
Members	580	1.959	5.068	-7	10
Non-Members	426	0.948	5.318	-9	10
ICC Ratification					
Members	609	0.573	0.495	0	1
Non-Members	491	0.373	0.484	0	1
Conflict					
Members	609	0.232	0.422	0	1
Non-Members	491	0.246	0.431	0	1
Judicial Independence					
Members	608	-0.062	1.097	-2.518	2.285
Non-Members	491	-0.290	1.159	-2.979	1.903

3.5.3 MODEL SPECIFICATION

The continuous measures of the outcome variables of interest indicate the utilization of ordinary least squares models. The outcome of tests for serial auto-correlation in the panel data show a requirement to account for the issue.¹² Given the significant serial auto-correlation challenge of the panel data, the preliminary analysis utilizes Newey and West standard errors and a lag of one. The preliminary statistical models are:

$$DV_{i,t} = \alpha + \beta_1 ACtHPR\ Ratification_{i,t-1} * HRO\ Density_{i,t-1} + \beta_2 ACtHPR\ Ratification_{i,t-1} + \beta_3 HRO\ Density_{i,t-1} + \beta_4 Z_{i,t-1} + \varepsilon_{i,t}$$

In the preliminary model noted above, the prediction of each outcome variable of interest comes from the interaction of *ACtHPR Ratification* and *HRO Count (ACtHPR*HRO)* in a state and the constitutive terms (Brambor, Clark, and Golder 2006) with a lag of one (Wooldridge 2002). Additionally, the vector of additional covariates lagged by one ($Z_{i,t-1}$) includes measures for *GDPpCAP(ln)*, *Population(ln)*, *Regime Type*, *Common Law*, *ICC Ratification*, *Conflict*, and *Judicial Independence*.

A primary concern for any investigation into the impact of a treaty or other international agreement is the risk of selection effects (Downs, Rocke, and Barsoom 1996). The challenge for empirical investigation into agreements, like those for the African Court, is that states that possess inherent factors that make them likely to accede also may exhibit characteristics that will make them abide by the agreement. Studies utilize a number of methods to account for selection effects for treaty agreement, and scholars have multiple tools for the task. The goal of any method selection parameter in this study is to isolate the act of treaty agreement from the follow-on stage of compliance.

Models that apply the interaction of an instrumental variable represent one option for overcoming selection bias. The use of an instrumental variable indicates the selection of a variable that predicts treaty commitment and not whether a state will abide by the treaty

¹²The test comes from Wooldridge (2002) and it finds prohibitive auto-correlation in all models. The Stata command “xtserial” provides the functional command for the test.

(Simmons 2009). In the case of a human rights court, this study takes a pessimistic view that factors that predict whether a state would relinquish judicial sovereignty over certain human rights would vary sufficiently from the likelihood states choose repressive policies in the future (e.g., Hill 2010 and Lupu 2013).

Scholars increasingly use a difference in differences (DiD) approach (e.g., Appel 2018). DiD estimations do allow for an accounting of un-theorized omitted variables that predict differences between treatment and non-treatment groups. As noted by Bertrand et al. (2003) the DiD estimations perform best in TSCS data when covering relatively-long time periods, due to serial correlation challenges with fewer time periods. The approach rests on key assumptions, one being parallel trends in outcomes if no treatment existed. The caveats on employing a DiD approach are not prohibitive in isolation. However, the primary explanatory variable in this study is an interactive term between *ACtHPR Ratification* and *HRO Density*. Given the interaction in DiD estimations between the treatment (ACtHPR Ratification) and time, the use of an interactive explanatory term with a constitutive element of the treatment creates additional model complexity. With the relative-youth of the African Court, the difficulty in selecting an adequate instrumental variable, and the use of an interaction term for the explanatory variable, this study follows studies (e.g., Lupu 2013) that utilize matching techniques.

King and Nielson (2016) provide an emphatic warning against the growing use of propensity score matching in the field, highlighting the risk of model dependence, bias, and inefficiency. The framework for propensity score matching would start with the identification the factors that predict acceding to a treaty then matching states by these factors with states that did and did not accede. The theoretic benefit is that the remaining sample serves as a proxy for random assignment of the treatment variable (Ho et al. 2007). Iacus, King, and Porro (2018) recommend coarsened exact matching (CEM) as a means to avoid many of the traps of propensity score matching while addressing the underlying problems, such as selection bias. The monotonic imbalance bounding method inherent to CEM allows the scholar

to adjust the degree of treatment-to-control group imbalance before conducting statistical analysis (Iacus, King, and Porro 2012) . Studies have found (Iacus, King, and Porro 2011; Iacus, King, and Porro 2012) the resultant pre-processed data is more efficient, has less bias, and is less-susceptible to model-dependence than standard propensity score matching. The CEM weights from the pre-processing stage allow for the inclusion of the output into a broad set of statistical models.

The CEM pre-processing stage begins with the binning of country-year observations into a number of strata from an interaction of variables that predict the treatment variable. Previous research should define specifications for the CEM pre-processing stage and avoid significant overlap with the outcome or explanatory variables. Given the use of HRO density as a constitutive term of the explanatory variables and the use of measures for physical integrity rights, civil liberties, and political rights, this study relies on a truncated set of covariates for strata binning. As highlighted by King and Nielsen (2016), CEM provides an efficient means to overcome initial imbalance, while limiting pruning due to matching on larger numbers of covariates. Accordingly, this study attempts to balance the selection of sufficient pre-processing variables and limit the pruning of unmatched observations.

Hill (2016) found a non-monotonic relationship between regime type and accession to the ICCPR, ECtHR, and IACtHR. Accordingly, the model utilizes both the polity2 regime type measure and a transformed polity2² variable to capture a possible non-monotonic relationship between regime type and international court accession. I also control for the impact of legal heritage by controlling for a common law system (Powell and Mitchell 2007). To account for the impact of a propensity to accede to international judicial bodies, the pre-processing stage also includes a dichotomous measure for ratification of the ICC Rome Statute. The outcome of the pre-processing step provides 30 matched strata. 89-percent of non-treatment country years and 73-percent of treated country years have a match for a total of 883 matched country years. The multivariate $L1$ distance serves much the same utility as R^2 in an OLS model, as it is informative relative to other model specifications. The range of $L1$ is from

“0,” or complete balance, to “1,” or complete imbalance. The $L1$ score for the pre-processing stage noted above is 0.0517, an indication that the matched sample is relatively-balanced when compared to models that include pre-processing matching based on GDP per capita and population levels that exhibit imbalance and $L1$ scores above 0.400.

The CEM weights stem from theoretically and empirically informed factors and provide a means to weight - or adjust - regression analysis to a proxy for a random assignment baseline estimate. The regression equation of the sample with CEM weights is:

$$DV_{i,t+1} = \alpha + \beta_1 ACtHPR\ Ratification * HRO\ Density + \beta_2 ACtHPR\ Ratification + \beta_3 HRO\ Density + \beta_4 Z + \varepsilon_{i,t} \ [CEM\ weight]$$

As in the preliminary model, the prediction of each outcome variable of interest $DV_{i,t+1}$ comes from the interaction of *ACtHPR Ratification* and *HRO Count* in a state and the constitutive terms (Brambor, Clark, and Golder 2006). Additionally, the vector of additional covariates ($Z_{i,t}$) includes the same measures for *GDPpCAP(ln)*, *Population(ln)*, *Regime Type*, *Common Law*, *ICC Ratification*, *Conflict*, and *Judicial Independence*. The vector of additional covariates also includes a lagged dependent variable $DV_{i,t-1}$ to account for possible auto-correlation (Keele and Kelly 2006). The integration of the pre-processing stage of CEM comes from the addition of the [*CEM weight*] in the regression. The CEM models include robust standard errors clustered by country. In all models, each outcome variable of interest is carried forward ($DV_{i,t+1}$) to capture the theorized delayed impact of explanatory variables. Accordingly, the relative level of HROs and ACtHPR membership in 2006 would impact the human rights outcomes in a state in 2007.

3.6 EMPIRICAL ANALYSIS

The results of the multiple regression analysis are in *Tables 3.2* through *3.5*. The results provide contingent - or mixed - support for the impact of membership in the ACtHPR and HRO pressure upon a state on respect for human rights.

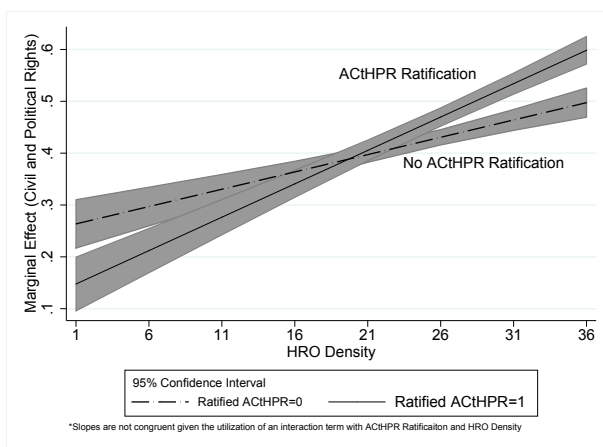


Figure 3.3: Marginal Effects of ACtHPR Membership as HRO Density Varies upon Civil and Political Rights

Table 3.2 provides the parameter estimates for the civil liberties and political rights general OLS model with Newey and West standard errors. Model 1 provides an analysis with the Polity2 *Regime Type* measure, and Model 2 excludes the *Regime Type* measure. The regression of the transformed civil liberties and political rights interval measure intends to provide an indication of the systemic impact of ACtHPR ratification and HRO density. Both models indicate that the combination of membership in the ACtHPR and a higher density of HROs in a state correlates with improved respect for civil liberties and political rights, all else equal. The significance and sign of the variables of interest result from relatively-conservative Newey and West standard errors.

Table 3.3 gives the parameter estimates for the impact of ACtHPR membership and HRO density upon civil liberties and political rights with CEM weighting. As in the standard OLS model noted above, *Table 3.3* CEM Model 1 includes the Polity2 *Regime Type* measure and Model 2 excludes regime type. As expected, states in the model that ratify the ACtHPR and have a higher relative density of HROs experience significant improvement in civil liberties and political rights. Given the utilization of a multiplicative term in the otherwise linear-additive model, interpretation of the constitutive terms *ACtHPR Ratification* and *HRO*

Table 3.2: Impact of the African Court and HROs (1998-2017) on Civil and Political Rights (Civil Liberties and Political Rights Interval Measure - OLS)

	(1)	(2)
	Model 1	Model 2
ACtHPR Ratification (treated)	0.038** (0.015)	0.003 (0.019)
HRO Count	0.006*** (0.001)	0.008*** (0.001)
ACtHPR*HRO	0.001** (0.000)	0.002*** (0.001)
GDPpCAP(ln)	-0.001 (0.008)	-0.031*** (0.009)
Population(ln)	-0.055*** (0.006)	-0.074*** (0.008)
Regime Type	0.029*** (0.002)	
Common Law	0.007 (0.017)	-0.036‡ (0.021)
ICC Ratification	-0.010 (0.016)	0.061*** (0.018)
Conflict	-0.053*** (0.014)	-0.050*** (0.017)
Judicial Independence	0.058*** (0.007)	0.137*** (0.008)
Constant	1.088*** (0.121)	1.616** (0.134)
Observations	978	1019
F statistic	198.18***	104.76***

Notes. Levels of confidence: ‡p < .10; **p < .05; ***p < .01.
Parameter estimates derived using ordinary least squares with Newey and West standard errors (in parentheses) with a lag of one.

Count does not provide an average effect of either variable upon the outcome variable of interest (Brambor, Clark, and Golder 2006). Instead, the coefficients provide an average effect of the constitutive term in question when the other is held at a theoretic zero. *Figure 3.3* provides a representation of the impact of the relative HRO density for states that ratify the ACtHPR and those that do not. Given the inclusion of an interaction term in the model, the two slopes overlap. The positive and significant coefficient in the regression estimate shows in *Figure 3.3* as a steeper and positive slope for the states that ratify the ACtHPR as HRO density increases.

The second set of tables (*Table 3.4* and *Table 3.5*) provides the respective parameter estimates for OLS models with Newey and West standard errors and coarsened exact matching for the focused explanatory variables of interest. As noted above, the use of theoretically-informed focused variables intends to capture the underlying drivers of change to civil liberties and political rights, while avoiding some of the methodological tangle of measures of regime type and civil liberties and political rights. The first set of models in Table 4 provides parameter estimates of OLS regressions with Newey and West standard errors. The models

Table 3.3: Impact of the African Court and HROs (1998-2017) on Civil and Political Rights (Civil Liberties and Political Rights Interval Measure - Coarsened Exact Matching)

	(1)	(2)
	Model 1	Model 2
ACtHPR Ratification (CEM tx)	-0.037 (0.029)	-0.031 (0.028)
HRO Count	0.000 (0.001)	0.000 (0.001)
ACtHPR*HRO	0.003** (0.001)	0.003** (0.001)
GDPpCAP(ln)	0.000 (0.006)	0.000 (0.006)
Population(ln)	-0.021*** (0.007)	-0.019*** (0.007)
Regime Type	-0.002 (0.002)	
Common Law	0.013 (0.018)	0.016 (0.019)
ICC Ratification	-0.004 (0.010)	-0.010 (0.011)
Conflict	0.009 (0.0122)	0.007 (0.011)
Judicial Independence	0.035** (0.014)	0.034** (0.014)
DVt - 1	0.840*** (0.049)	0.823*** (0.060)
Constant	0.379** (0.143)	0.351** (0.136)
Observations	723	762
F statistic	387.20***	378.82***

Notes. Levels of confidence: †p < .10; **p < .05; ***p < .01.

Parameter estimates derived using coarsened exact matching (CEM) weighted ordinary least squares models and robust standard errors clustered by country (in parentheses).

give an indication of a significant impact of ACtHPR ratification and a higher density of HROs upon women political empowerment (*Gender*), equal access to justice (*Justice Access*), and public corruption (*Corruption*) at the 99-percent certainty level or above and upon religious freedom (*Religion*) at the 90-percent certainty level, all else equal. The parameter estimates for physical integrity rights conform to the hypothesized-expectation and fail to provide an indication of significance for the conditional impact of *ACtHPR Ratification* and *HRO Count*. Of note, the positive and significant coefficient for *ACtHPR Ratification* in the *PIR* model in *Table 3.4* indicates an impact of *ACtHPR Ratification* if the *HRO Count* in a state is held at a theoretic zero. Accordingly, the coefficient provides little substantive analytical value.

The results in *Table 3.5* provide parameter estimates for the OLS regression of the CEM samples. The focused civil liberties and political rights variable of interest that meet the 95-percent certainty threshold are women political empowerment (*Gender*) and public cor-

Table 3.4: Impact of the African Court and HROs (1998-2017)

	(1)	(2)	(3)	(4)	(5)
	PIR	Gender	Religion	Justice Access	Corruption
ACtHPR Ratification	0.467*** (0.171)	-0.023 (0.034)	-0.724** (0.320)	-0.066 (0.048)	0.055‡ (0.031)
HRO Count	0.005 (0.004)	0.004*** (0.001)	0.041*** (0.007)	0.001 (0.001)	-0.0003*** (0.001)
ACtHPR*HRO	-0.005 (0.006)	0.004*** (0.001)	0.020‡ (0.010)	0.006*** (0.001)	-0.003*** (0.001)
GDPpCAP(ln)	0.046 (0.035)	-0.008 (0.006)	-0.259*** (0.044)	0.016‡ (0.009)	-0.032*** (0.007)
Population(ln)	-0.378*** (0.035)	-0.027*** (0.006)	0.202*** (0.042)	-0.025*** (0.008)	0.063*** (0.008)
Regime Type	0.050*** (0.008)	0.009*** (0.001)	0.032*** (0.010)	0.006*** (0.001)	-0.011*** (0.001)
Common Law	0.005 (0.086)	0.037*** (0.014)	0.200** (0.080)	-0.002 (0.022)	0.001 (0.019)
ICC Ratification	-0.025 (0.072)	-0.014 (0.011)	0.167‡ (0.100)	-0.0015 (0.018)	0.023 (0.018)
Conflict	-0.776*** (0.088)	-0.024‡ (0.014)	0.064 (0.095)	-0.035 (0.022)	-0.074*** (0.021)
Judicial Independence	0.123*** (0.040)	0.023*** (0.006)	0.213*** (0.052)	0.086*** (0.009)	-0.057*** (0.007)
Constant	5.166*** (0.639)	1.014*** (0.112)	5.035*** (0.779)	0.780*** (0.149)	0.063 (0.162)
Observations	899	899	899	899	899
F statistic	96.92***	47.97***	39.24***	39.08***	41.10***

Notes. Levels of confidence: ‡p < .10; **p < .05; ***p < .01. Parameter estimates derived using ordinary least squares with Newey and West standard errors (in parentheses) with a lag of one.

ruption (*Corruption*), all else equal.¹³ The measures for religious freedom (*Religion*) and access to justice (*Justice Access*) provided some indication (89-percent certainty) of a conditional impact of ACtHPR membership and HRO density, but they do not meet the threshold for significance, and thus fail to provide the necessary support for an affirmative hypothesis test outcome. Finally, the *PIR* model conforms with expectations and indicates a lack of a conditional impact of ACtHPR membership and HRO pressure upon the improvement of physical integrity rights, all else equal.

3.7 CONCLUSION

Does the African Court influence state behavior? This study provides a counterpoint to the argument that human rights institutions in Africa remain a “three-legged stool” (Mutua 1999), and it begins to frame the African Court as representing more than “window dressing.” Whether the full justice cascade (Sikkink and Walling 2007) will occur remains a question. This study provides the first empirically-supported indication, however, that an

¹³The VDEM public corruption measure diverges from the other outcome variables, as lower measures indicate lower corruption. Accordingly, a negative and significant coefficient indicates lower corruption.

Table 3.5: Impact of the African Court and HROs (1998-2017) Coarsened Exact Matching

	(1)	(2)	(3)	(4)	(5)
	PIR	Gender	Religion	Justice Access	Corruption
ACtHPR Ratification	-0.132 (0.126)	-0.021 (0.017)	-0.046 (0.049)	-0.017 (0.015)	0.035*** (0.012)
HRO Count	0.001 (0.004)	0.000 (0.000)	-0.001 (0.002)	0.000 (0.000)	0.001** (0.000)
ACtHPR*HRO	0.010 (0.006)	0.001** (0.000)	0.003 (0.002)	0.001 (0.000)	-0.002*** (0.000)
GDPpCAP(ln)	0.009 (0.027)	0.002 (0.003)	-0.021** (0.010)	0.004 (0.002)	-0.001 (0.003)
Population(ln)	-0.139*** (0.049)	-0.007** (0.004)	-0.026*** (0.008)	-0.002 (0.003)	0.002 (0.003)
Regime Type	-0.013 (0.011)	-0.001 (0.001)	-0.005 (0.005)	-0.001 (0.001)	0.002** (0.001)
Common Law	0.125 (0.096)	0.022‡ (0.012)	0.047 (0.037)	0.017 (0.014)	0.003 (0.010)
ICC Ratification	-0.075 (0.050)	0.002 (0.005)	-0.031‡ (0.017)	0.000 (0.005)	-0.001 (0.005)
Conflict	0.109‡ (0.056)	0.013‡ (0.007)	0.019 (0.023)	0.013‡ (0.008)	0.001 (0.006)
Judicial Independence	0.110‡ (0.062)	0.010‡ (0.005)	0.039*** (0.017)	0.012** (0.005)	-0.013*** (0.005)
DVt - 1	0.849*** (0.054)	0.864*** (0.029)	0.975*** (0.012)	0.943*** (0.019)	0.968*** (0.016)
Constant	2.054*** (0.839)	0.186** (0.074)	0.591*** (0.159)	0.041 (0.046)	-0.023 (0.044)
Observations	723	761	761	761	761
F statistic	517.73***	645.72***	2581.16***	1317.76***	1337.58***

Notes. Levels of confidence: ‡p < .10; **p < .05; ***p < .01. Parameter estimates derived using coarsened exact matching (CEM) weighted ordinary least squares models with robust standard errors clustered by country (in parentheses).

impact occurs at the margins. While the general civil liberties and political rights analyses provide interesting findings, the focused-analyses highlight a possible impact upon deeply embedded socio-cultural and institutional norms in Africa. These findings may open additional areas for study into the interaction of international and domestic institutions and norms in Africa. It appears the challenge remains for investigations into substantive impacts of international human rights treaties and improvement in physical integrity rights.

Substantively, this study provides an indication that HROs and the African Court work in a mutually-supportive fashion in cases where the rights in question do not confront leaders directly and where the cost of evidence, and the resultant decision, are relatively-low. Analyses of the impact of international human rights treaties and regional human rights courts remain an empirical challenge. With the theoretic integration of pressure from above and below (e.g., Murdie and Davis 2012), cost of compliance (Hill 2010), and connections to leader vulnerability (Conrad and Ritter 2013), scholars can account for a significant amount of variation in state repression decisions. Future studies into the ICCPR and regional human rights courts might benefit from this multi-dimensional theoretic integration.

The results raise the question of whether there are other impacts of the interactive impact of HROs and regional human rights court not captured in the current study. The findings on women's political empowerment and public corruption provide potential leverage for future studies. Two interesting avenues are whether bureaucracies begin to improve service to citizens and whether deeply-embedded social norms change as a result of the interaction of HRO pressure and membership in a regional court. Finally, future studies on regional and international human rights institutions should include the African Court to further investigate whether Africa represents a special case.

From a policy perspective, this study highlights the conditionality of regional human rights court efficacy, contingent on the relative-pressure that HROs provide from above and from below. Changes to human rights institutions, without first considering the interaction with HROs, risk limiting the ability of the institutions to impact state behavior. Accordingly, leaders considering policies to improve respect for human rights might consider embracing the complexity of these interactions and enhancing their ability to operate in a mutually-supportive manner. An additional benefit to enhancing this mutual support likely includes a decrease in resources required to achieve their desired ends.

CHAPTER 4

AUTHORITY AND SPACE: THE IMPACT OF THE AFRICAN JURIDICAL ADVOCACY NETWORK UPON INDIVIDUAL PERCEPTIONS¹

¹Kopp, M. Submitted to *The Journal of Global Security Studies*, 02/25/20.

4.1 ABSTRACT

Does the African Court of Human and Peoples' Rights (ACtHPR) impact individual perceptions of domestic judicial institutions? This paper argues the ACtHPR and international non-governmental human rights organizations (HRO) interact within a juridical advocacy network (JAN), and that states that have denser JANs will experience greater improvements in individual perceptions of the functioning of domestic judicial institutions and the space for HROs to operate freely. I define a JAN as a transnational advocacy network that has embedded international judicial institutions. The theoretic argument indicates that HRO pressure “from above” and “from below” works in a mutually-supportive manner with regional human rights courts to break through the surface level of state institutions and foment a “justice cascade” to impact individual perceptions of state judicial institutions and of the standing of HROs in a state. This study tests these propositions through an analysis of micro-level perceptions from the Afrobarometer 7th Round 2018 surveys of the impact of the African JAN upon elite accountability, trust in judicial institutions, and HRO freedom. The findings provide support for the proposition that African Court and HRO inclusion in a juridical advocacy network makes it more likely individuals will perceive greater judicial checks on leaders and greater space for HROs to operate freely. This study provides the first analysis of the impact of the ACtHPR upon individual perceptions of judicial institutions.

4.2 INTRODUCTION

Mali began a process in 1998 to bring individual rights and the rights of families in line with regional and international human rights agreements. Human rights organizations and a “broad section” of civil society supported the Malian National Assembly when it approved the “Family Code” in 2009 (ACtHPR 2019b). In the wake of legislative approval, Malian Islamic groups fomented protests, resulting in the law failing to enter into effect. In 2011, the Malian National Assembly approved an amended “Family Code” that incorporated Islamic legal and

local cultural norms. The new law included provisions that allowed for child marriage, failed to require a determination of dual consent for marriage, and allowed for unequal inheritance based on gender. The Institute for Human Rights and Development in Africa (IHRDA) and *Association pour le progrès et la défense des droits des femmes maliennes* (APDF) filed a complaint with the ACtHPR² in 2016 to challenge the new “Family Code.” In August 2018, the African Court found against Mali citing human rights agreements, to include articles of the African Charter on the Rights and Welfare of the Child and the Convention on the Elimination of all Forms of Discrimination against Women. The ACtHPR ordered Mali to amend the law to “harmonize” it with international human rights agreements and take positive action to end ongoing violations of the rights noted above (ACtHPR 2019b). Further, the court asked Mali to pass information on the new law to the segments of Malian society that violate these rights.

In consideration of how the activities of the African Court and HROs might impact individual perceptions of domestic judicial institutions, the Malian case helps frame a possible causal mechanism. The “Family Code” exhibits a high degree of salience for Malian civil society given the work of HROs in the 2009 “Family Code” effort, and widespread protests based on religious identity that resulted in acquiescence by the state to protest demands.³ Further, HROs worked through the ACtHPR to challenge the new law after the state responded to domestic discord by acquiescing to Islamic-group demands. The result was a requirement for the state to defend its decision in a regional human rights court. Finally, the court found in favor of some of the same HROs that serve to pass the information on the finding to individuals in the state and that report on state compliance with human rights treaties. From the perspective of individual citizens in Mali, it is unlikely that perceptions

²This study uses ACtHPR and African Court to signify the African Court of Human and Peoples’ Rights. Similarly, the ICC and the Court indicate the International Criminal Court.

³On 9 August 2009, hundreds of Islamic religious leaders and village elders met to discuss opposition to the law in the largest mosque in Bamako. The Mosque is 100 meters from the national assembly and calls for violence and “arson” emanated from the mosque to the national assembly (IRIN News 2009).

of the functioning of judicial institutions, the status of HROs, and the level of elite agency to eschew judicial findings would remain unchanged in this contentious environment. The Malian case also highlights the need for prudence in claims that go beyond relative impact upon perceptions, given the continued individual agency of elites.

This study holds a pessimistic view of a significant independent impact of the African Court upon individual perceptions of domestic judicial institutions. In consideration of what mechanism might serve to break through the “surface level” of state institutions (Helfer 2008), however, the contingent impact of HROs and international judicial institutions provides a potential answer. The primary theoretic argument highlights the mutual support of a regional human rights court and HROs in forming a reinforcing advocacy network that allows the provision of tangible international public goods that go beyond disparate islands of “feel good” organizations (Bob 2012). I develop this concept as a juridical advocacy network (JAN). A JAN represents a specified transnational advocacy network (e.g., Keck and Sikkink 1998) that incorporates international judicial institutions in the advocacy network.

The specific areas of interest in the current study are the impacts upon individual perceptions of domestic judicial ability to hold elites to account, trust in judicial institutions, and the freedom of HROs from state backlash. This paper argues the reinforcing “cascade” effect of African Court membership and HRO density in states can impact individual perceptions of judicial institutional norms and the space for HROs to operate with relative freedom. The utilization of micro-level data allows for a focused understanding of the impact of the ACtHPR and HROs upon these propositions. This study adds to the theoretic literature on the impact of regional human rights courts and of transnational advocacy networks, from an analysis of the Africa case and the development of the JAN concept. Further, this study provides a novel test of the implications of the “justice cascade” (e.g., Sikkink 2011) for individual perceptions of domestic judicial institutions. In functional terms, the African JAN goes beyond the “back-up” or “last resort” role of other international courts (Sikkink 2011) through the ongoing interaction at the regional level in human rights issue areas that inform

daily political interactions, such as political rights and legal-procedural rights. While the theory does not predict a form of perfect justice, it does posit a shift in accountability and institutional patterns over time.

This study proceeds by briefly framing JANs before reviewing literature on the impact sources of information upon perceptions of human rights status and policy decisions. Each section then builds upon the findings to incorporate the mutually-reinforcing support between the African Court and HROs in juridical advocacy networks to explain impacts upon individual perceptions of judicial control of the executive, trust in the judiciary, and the relative freedom of HROs from government repression.

4.3 JURIDICAL ADVOCACY NETWORKS

This study contends that HROs and regional human rights courts coexist in a juridical advocacy network for human rights. I define a juridical advocacy network as a specialized transnational advocacy network (Keck and Sikkink 2014) that includes standing international judicial institutions and that seeks justice ends through judicial means. A JAN shares the focus on issue areas with normative value content and informational uncertainty with broader transnational advocacy networks (Keck and Sikkink 1999). In the African JAN case under consideration, the issue area is human rights and human rights outcomes and perceptions in member states serve as the uncertain information. A JAN varies from transnational advocacy networks in the focus on international to domestic legal exchanges and judicial support or contention. The TAN concept does not exclude the role of international courts, but it retains a broad focus on the provision of information within the network (Keck and Sikkink 2014). In this view, the embedding of courts in a JAN allows for an amplification of the existent transnational advocacy network power through the provision of “information, ideas, and strategies” (Keck and Sikkink 1998, 16) by adding a greater degree of the precision and delegation (Staton and Moore 2011) afforded by domestic and international judicial institutions. Juridical advocacy networks also vary from “global community of law” (e.g.,

Slaughter 2003) or “global judicial networks” (e.g., Flanagan and Ahern 2011) in the inclusion of broader transnational advocacy network actors with domestic and international nodes, such as HROs.

A simplified conceptualization of a JAN is in *Figure 4.1* to focus on the basic concept, while excluding additional domestic and international actors. States that suffer from “horizontal power” imbalances (Bartels and Kramon 2020) face significant hurdles in improving the lack of relative parity between branches of government. The combined focus, provision of information, and institutions in a JAN link domestic and international efforts in one network with a shared baseline purpose of improving human rights conditions (e.g., Keck and Sikkink 1998). I argue the explicit juridical focus of the network can help change the “horizontal power” imbalance for judicial institutions at the margins.

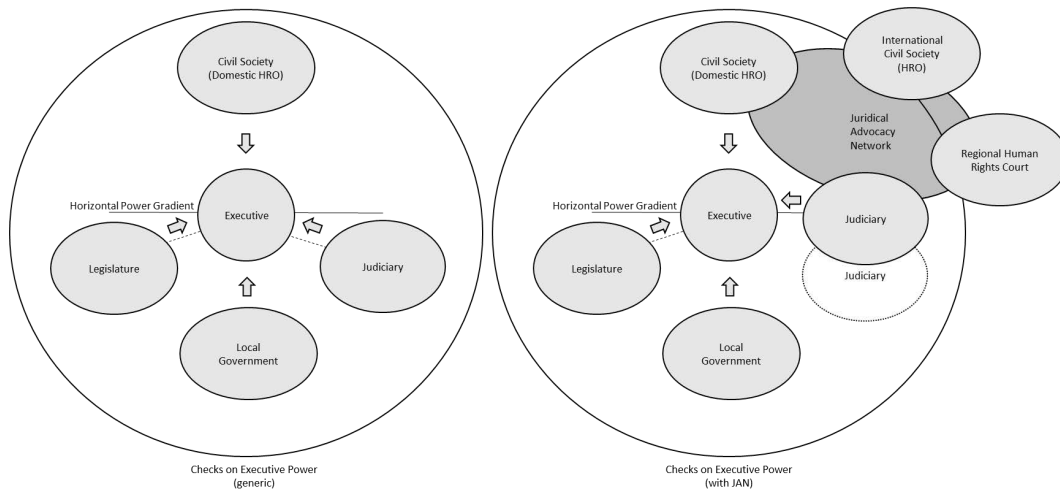


Figure 4.1: Theoretic interaction of a juridical advocacy network (JAN) with an African state

The standard conception of the international judicial networks includes a framing as having individual judges as its constituent nodes (Slaughter 2003). Others argue “global judicial networks” are “instrumental” in increasing the legitimacy and judicial power for courts (Garoupa and Ginsburg 2015). Seminal studies (e.g., Epstein et al. 2001) argue courts are attentive to external actors and anticipate and react to their preferences. Explanations for

the impact of international judicial networks include arguments of efficacy due to individual judge's desire for esteem in international and domestic settings (e.g., Baum 2006; Brett 2018). Helmke and Stanton (2011) establish a countervailing argument that rational choice by judiciaries can explain counter-executive behavior, rather than ideational affinity to international judicial networks actors or a desire for esteem.

While accounts of judicial behavior vary within a robust literature, the current focus remains on the human rights milieu as a means to gain better understanding of broader institutional patterns. The literature on global judicial networks includes findings that support variation in network impact between human rights and other issue areas. Black and Epstein (2007) frame global judicial community as exhibiting more significance in particular classes of recent decisions such as human rights. Flanagan and Ahern (2011) survey of judges to capture influence of the global judicial network finds most influence in the human rights field. Finally, Brett (2018) finds domestic judges risk backlash from the executive because of a desire for esteem in the global judicial network in human rights issue areas.

These judicial-centric frameworks do not explicitly account for additional actors in the international and domestic juridical space. As constituent elements of a juridical advocacy network, the African Court and HROs possess potential collective means to hold states to account for a range of human rights violations through simultaneous pressure "from above" and "from below" (e.g., Murdie and Davis 2012) and the network has the means to hold states to account for certain human rights violations in courts. Previous studies (e.g., Huneus 2016) argue regional human rights court impact domestic judicial proceedings and outcomes through a network of legal practitioners that that can form alliances with political elites. The concept of JAN expands the scope beyond legal practitioners and elites to incorporate broader domestic and international actors that share a set of normative policy goals in an issue area, like human rights. The existence of legal practitioners in the juridical advocacy network provides a degree of rationalization and embeds judicial norms in the network. The inclusion of HROs providing pressure from multiple levels differentiates JAN from global

judicial networks as the explicit inclusion of international courts as critical nodes in the networks indicate JAN as a specific branch for transnational advocacy networks (e.g., Keck and Sikkink 1998).

4.4 PRESSURE AND PERCEPTIONS

Studies on the impact of actions by international organizations upon views of domestic policy decisions provide an indication that international actors can impact individual perceptions. As found by Chapman (2009), overt support for a domestic policy decision by the United Nations Security Council (UNSC) increases public support for the policy, especially when states that are not aligned ideologically with the target state support the policy. Similarly, Hayes and Guardina (2011) show the views of foreign elites can impact public opinion, through an analysis of the 2003 U.S. invasion of Iraq. In the cases of the United Nations Security Council and foreign elites, the studies (Chapman 2009; Hayes and Guardino 2011) highlight two potential components for impact upon individual perceptions of a policy. First, variation in the baseline level of institutional credibility, whether from institutional stature or status, appears to impact how individuals perceive the information. Second, a degree of tension or independence between the signal sender (e.g., UNSC) with the target state, appears to provide further credibility to the provided information on the state policy decision. Legal explanations based on policy alignment with international law also appear to support perceptions of institutional credibility (Kreps and Wallace 2016; Lupu and Wallace 2019).

Studies that analyze the impact of the provision of localized information upon perceptions of a state's human rights practices increasingly find alignment with perceptions and measures of state respect for human rights. In an investigation of whether individual perceptions and human rights experts tend to align in their perceptions of the human rights situation in a state, Carlson and Listhaug (2007) find that the actual number of human rights violations in a state correlate with individual perceptions. Of note, highly educated people, perhaps resultant from a lower likelihood of being touched by repression, assess human rights

situations as better than the experts and less-educated citizens (Carlson and Listhaug 2007). Barton et al. (2017) find congruent patterns in sub-national investigation of Mexico, in that local violence levels, whether or not to fight organized crime, decrease perceptions of the local human rights situation. Further, scholars that investigate the impact of naming and shaming by international actors find the process adversely impacts public opinion of the human rights status in the target state (Davis, Murdie, and Steinmetz 2012; Ausderan 2014).

Individual perceptions of support for forms of dissent and the appropriateness of government response to dissent also stem from actual experience in a state. Countries with episodes of nonviolent protest exhibit higher levels of support for freedom of expression, but countries with a history of forms of violent dissent exhibit a lower levels of support for freedom of expression (Murdie and Purser 2017). Also, as Lupu and Wallace (2019) find, the public tends to support state repression in response to violent dissent, but there is a lower likelihood of support in response to non-violent dissent. As in the case of human rights perceptions (e.g., Carlson and Listhaug 2007), the literature indicates individual perceptions of the appropriateness of tactics of dissent and state response stem, in part, from the actual interaction of individuals and state institutions.

As an international human rights court, part of the reason for being of the African Court is to alter perceptions that states can act with impunity and violate human rights (Sikkink 2011), even if domestic institutions lack the capacity or will to do so. The interconnected human rights eco-system, noted by Keck and Sikkink (1998), has constituent professionals, groups, and institutions that share a baseline focus on human rights protections. While the transnational networks that constitute the broader human rights eco-system vary in focus, resources, and effectiveness, the networks represent constituent units of a dense transnational human rights advocacy (Keck and Sikkink 2014) web within the international system that facilitates the embedding of advocacy-area norms in civil society, states, and international organizations. One of the outcomes from advocacy networks marshalling resources to affect policy outcomes is the alteration of individual actor perceptions of state policy decisions

(e.g., Carlson and Listhaug 2007; Lebovic and Voeten 2009; Ausderan 2014). The findings on the correlation between individual perceptions and reality and the legitimizing impact of international legal instruments inform the development of the following arguments.

4.4.1 JUDICIAL CHECK ON EXECUTIVE POWER

The history of domestic judicial institutions in Africa helps frame the challenge for courts to achieve greater power to compel elite compliance. In the transition from colonial subjugation, the institutional norm of power accumulation in the executive persisted. Other institutions, like the judiciary, continued to serve in many cases as an extension of the political will of the incumbent leader (Mbaku 2008). As noted by Prempeh (2008), a growing number of African states have a formal – or constitutional – “juridical balance” between the president and legislature, but presidents still enjoy an imbalance of resource control and *de facto* power. This imbalance limits the ability of African legislature to check presidential power in an effective and sustained manner.⁴ Accordingly, the task of challenging presidential power often falls to the courts (Kwasi Prempeh 2008). Some judiciaries have ruled against presidents attempting to ignore critical constitutional law, like term limits, and the record is uneven within and between states (Posner and Young 2007).⁵ A challenge in the Africa case remains the relative norm of political elite control of the courts (Mbaku 1996; Kwasi Prempeh 2008; Vondoepp and Ellett 2011) and the lack of lack the institutional capacity to check corrupt tendencies of political elites (Ayittey 2005; Mbaku 2008). As in the case of *de facto* imbalances between presidents and legislatures, judicial institutions suffer institutional weakness secondary to lack of budgetary control and executive appointment of judges (Kwasi Prempeh

⁴A growing body of research finds legislatures in Africa represent more than window dressing and that they do provide an increasing impact upon executive agency (e.g., Barkan 2009). Further, this study does not intend to frame Africa as a collection of like states, rather a region with shared structural constraints and institutional patterns in a defined geographic space – with significant variation across states.

⁵Posner and Young (2007) find that in the early 2000s African leaders converged with the rest of the world in the rate of leaving office by “irregular means”.

2008).⁶ With this brief treatment of domestic judicial institutions in Africa, the theoretical and empirical literature helps frame the impact of courts upon balancing elite power.

Stanton and Moore (2011) provide a synthesis of varying concepts of judicial power as the ability of a judicial institution to compel its desired outcome through legitimate judicial action. One source of overt evidence of judicial power is the ability of a court to gain elite compliance with its desired outcome (Hall 2011). Judicial institutions serve as a means to further policy goals to the extent they can impose “meaningful restraints” on political elites in the policy area (Peerenboom 2002; Yeh 2011). As framed by Conrad and Ritter (2019), courts do not impact governments in a direct way, but they can change individual expectations of likely responses. International human rights institutions, like the African Court, also can increase expectations of upholding international standards, even if the court rarely uses international human rights law in rulings (Conrad and Ritter 2019). The ability of a court to gain elite compliance aligns with the concept of “horizontal power”, while “vertical power” represents broader judicial power over a polity (Bartels and Kramon 2020).

The case of presidents attempting to extend their time in office beyond constitutional limits provides an illustrative example of how judicial power might impact an executive. Posner and Young (2007) argue the three factors that inform a leader’s decision to remain in power are public opinion of the leader, the expected benefits of remaining and office, and the cost of changing the constitution. Vondoepp (2005) also finds the decision environment of judges impacts whether they chose to enforce constitutional limits on presidential terms, as a higher likelihood of opposition groups taking power in the medium term provides additional incentives for judges to check presidential power. In consideration of a judiciary that lacks sufficient horizontal power, the ability of the court to impact leader calculus is a challenge in isolation. A court with high levels relative power can serve to alter the expected benefits

⁶The norm of presidential meddling in judiciaries has led some critics remain wary of strengthening rule-of-law institutions through top-down approaches in Africa, as the strengthened institutions can become more efficient tools of repression (Peerenboom 2002).

and cost to the leader of changing the constitution, that also likely impact resultant public opinion of the president if he persists (e.g., Posner and Young 2007).

As framed above, the theoretic argument of this paper rests on the integrated JAN network in Africa to alter the perception and reality of executive control of the judiciary. The JAN can apply pressure from above and below and development a “justice cascade” (Sikkink 2011), whereby JAN effects build to limit the set of viable decisions for potential repressors. The complementary principle of the African Court indicates domestic courts impacted by JAN have greater incentives to follow through with legitimate procedural activities to ensure the retention of jurisdiction in cases. Further, they have incentive to align decisions and processes with international legal and human rights norms, whether for esteem (Brett 2018) or rational reasons (Helmke and Staton 2011). As leaders are being named and shamed by HROs in a JAN, the regional judicial body can serve as a source of legitimacy and place pressure upon executive. The JAN varies from state-to-state, depending on factors such as regime type and the density of human rights advocacy network. The domestic and international constituencies built into the JAN can increase costs for of political elites to retain control over courts. In cases where courts wish to exhibit some agency against elites, they also have a JAN to support rulings. Accordingly, the theory predicts an increased ability of courts to check the executive at the margins and create broader perceptions that the president is subject to the laws of the land.

Not all executives will react to the pressure in an acquiescent manner. For example, President Magufuli of Tanzania pushed back as the African Court and HROs amplified pressure upon his administration and state institutions. Of the 70 cases with final decisions in 2019, 40 involve Tanzania and a high percentage of pending cases involve the state (ACtHPR 2019b; Jazeera 2020). Of the 21 cases with legal and procedural findings against a state, Tanzania is the named party in 12 of them. An indicative case is *Mango versus Tanzania* (005-2015), where the incarcerated complainant claimed his conviction of 30 years for armed robbery violated his civil and legal-procedural rights under international human rights treaties. Like

88-percent of cases from incarcerated individuals in Tanzania with case files available, there is evidence of HRO support in filing the legal claim against the state (ACtHPR 2019b).⁷ The African Court found in favor of the complainant and that Tanzania violated his human rights under Article 7(1)(c) of the African Charter of Human and Peoples' Rights by failing to provide legal counsel and access to evidence against him. In the midst of this growing pressure for Tanzanian judicial institutions to change their norms by providing a broad set of legal services and by changing investigative techniques, President Magufuli announced in early 2020 that he was withdrawing Tanzania from the additional protocol of the African Court treaty that allows NGOs to bring cases before the court (Jazeera 2020). The Tanzania case highlights the pressure JANs can place upon a president with relative control over the judiciary. Of course, it also highlights that the president felt compelled – and able – to limit the growing impact of the African JAN. This study argues that, all else equal, individual perceptions of judicial restraint upon executives will be higher as the density of JAN increases.

The ability of domestic judiciaries in Africa to serve as an effective check on executive power faces constraints from a lack of horizontal power parity between the judiciary and the executive. Also, the ability of singular international institutions to break through the surface of the state to impact significant change is not likely. With a dense juridical advocacy network, however, this study predicts the judiciary will be more likely to achieve relative horizontal power parity and provide a check on executive power. A primary manifestation of improvements in the ability of the judiciary to check elite power comes from the impression of the polity of the ability of the executive to ignore national laws.

Hypothesis 1 *Individuals residing in states that are members of the African Court and have a higher density of HROs are more likely perceive judicial institutions as providing a check on executive power.*

⁷I conduct novel coding of cases submitted to the ACtHPR. My coding rules derive from Hillebrecht (2016).

4.4.2 TRUST AND CONFIDENCE IN COURTS

A concept closely related to judicial power (e.g., Stanton and Moore 2011) is the concept of trust in judicial institutions. The relationship between trust in courts and democratic consolidation continues to inform studies on the impact of judicial institutions. Studies stress the role of trusted domestic courts through instrumental outcomes such as possessing sufficient legitimacy to resolve political disputes through judicial means (e.g., Larkins 1996 and Widner 2001). The general lenses scholars use to investigate judicial trust are the impact of trust upon institutions (e.g., Cristensen and Laegreid 2005), the impact of trust upon individual perceptions (e.g., Barton et al. 2017), and the sources of trust (e.g., Benesh 2006),

Studies on the broad impact of trust in courts upon institutional patterns provide a framework to understand the potential importance of the concept for democratic consolidation. From a broad perspective, Christensen and Laegreid (2005) argue trust in courts and other visible public authorities can lead to a sympathetic reaction in other state institutions. Similarly, trust in courts has been shown to correlate with greater individual engagement in democratic processes, acquiescence to court requests, and the likelihood of using legal means to resolve disputes (Boateng and Makin 2016). A second set of studies on judicial trust investigate the impact of trust in courts upon individual perceptions. For example, Barton et al. (2017) find that trust in courts and state agents correlates to a higher view of a state's human rights record.

The sources of individual trust in courts remains a robust area of inquiry. While the difficulty of isolating causation between the institution and trust in the institution remains a challenge, there are a number of demonstrated relationships. As Benesh (2006) argues, in an analysis of public confidence in US lower courts, trust in judicial institutions stems from a combination of actual experiences and perceptions of fair procedures (Benesh 2006). In an analysis of domestic courts in Europe, Rousey and Deffains (2012) find a relationship between trust in courts and judicial capacity and the amount of legal aid available to potential litigants. Trust in international legal instruments can also impact domestic measures of trust.

In a survey experiment, Kreps and Wallace (2016) find public support for drone strikes is greater when based on legal explanations of international law more than arguments based on effectiveness. Lupu and Wallace (2019) find variation, based on the domestic context, of the impact of information that a state is out of alignment with international law upon public opinion. Studies that explore trust in judicial institutions in Africa form a contingent subset of this literature

As Widner (2001) develops, the challenge of African judiciaries as generally being dominated by political elites that powerful sub-national factions and that this domination leads to a sustained trust deficit in judicial institutions. Boateng and Adjorlolo (2019) explore the macro and micro contributors to trust in courts in Africa. The authors find democratic institutions generally correlate with higher trust in courts, but institutional corruption and the actual crime levels in a state decrease trust in court (Boateng and Adjorlolo 2019). The impact of a history of external political control of courts by political elites (Elechi 2006) with the continuation of colonial jurisprudence norms, argues Abul-Ethem (2002), leads to lower levels of legitimacy, and a limited ability to protect human rights. In the case of Namibian courts, VonDoepp (2008) finds the influence of political elites can vary, depending on the specific salience of court cases for their group interests. In a Zambia survey, Kerr and Wahman (2016) find that when courts rule against the party of ruling political elites, they garner greater levels of trust, versus findings to nullify opposition party elections, where they draw lower levels of trust.

In consideration of the impact and sources of judicial trust and the potential legitimizing power of international legal instruments, the logic for the impact of the African JAN nests with the framework in *Hypothesis 1* and the findings noted above. The justice cascade (e.g., Sikkink 2011) fomented by the African JAN provides a potential pressure from domestic judicial institutions to align with international legal instruments. This process, in combination with check on elite power, may lead to higher levels of trust. A theoretic challenge is individuals are likely to interact with judicial institutions and share information within

their familial and community networks on a continual basis, unless they live in areas without courts. Accordingly, the information received by individuals about judicial institutions may include substantially more personal experience than views of the executive. Also, trust has shown to be a difficult phenomenon to increase (Ishiyama and Laoye 2016) in African judicial institutions. The second hypothesis, then, serves as a proxy to test if trust in judicial institutions is related to judicial power (e.g., Larkins 1996 and Widner 2001) and non-proximate information, or if it more directly relates personal interaction with the court (e.g., Benesh 2006).

Hypothesis 2 *Individuals residing in states that are members of the African Court and have a higher density of HROs are more likely to perceive judicial institutions as trustworthy.*

4.4.3 SPACE FOR HROs

The legal freedom of HROs to operate in a state, and the associated perceptions by citizens of this freedom, represents the concept of HRO space in this study. The Africa case is an interesting challenge for HROs, as there remain significant human rights and other development challenges and a number of states that actively repress NGO⁸ freedom of action (Dupuy, Ron, and Prakash 2014). In the last 15 years, 12 African states have enacted laws that restrict the activities of NGOs that receive foreign funding or that focus on human rights and democratization. Another six states had laws under consideration in 2019 (Musila 2019).⁹

The friction over the Kenyan “PBO Act” serves as an example of the contentious interaction between Presidents, HROs, and courts in Africa. The act provided greater standing

⁸HROs represent a subset of NGOs. Due to theoretical and empirical overlap between the two descriptors - and in an attempt to bring in relevant literature and actual phenomenon in states, this study attempts to apply the appropriate acronym based on the definition in the law, report, or study.

⁹The countries that have anti-NGO laws in effect include Algeria, Burundi, Egypt, Ethiopia, Rwanda, Sierra Leone, South Sudan, Sudan, Tanzania, Tunisia, Uganda, and Zambia. The countries considering such laws are Egypt, Malawi, Mozambique, Rwanda, Sudan, and Zambia. Of note, executives, legislatures, or courts in Angola, Congo, Kenya, Malawi, Nigeria, and Zimbabwe have struck down anti-NGO laws (Musila 2019).

for NGOs in Kenya, but when President Kenyatta entered office in 2013, he made multiple attempts to nullify it. With the combined effort of domestic and international HROs and civil society groups, like the Civil Society Reference Group, the Kenyan high court ruled in favor the HROs. President Kenyatta persists, however, in his efforts against HROs through other means (Musila 2019). The Kenya vignette indicates the freedom of HROs to operate remains under pressure, and networks of human rights groups and courts can serve to provide a degree of protection.

There is a growing literature on how HROs apply pressure and the associated policy outcomes. Explanations for how HROs impact leader decisions generally include the provision of pressure “from above” and “from below,” indicating the application of pressure from international and domestic actors (Brysk 1993). The literature on naming and shaming (e.g., Auserdan 2014) or shaming and blaming (Murdie and Davis 2012) generally incorporates the concept of multi-level pressure upon states with naming and shaming serving as the method of applying pressure through providing information about human rights practices in a state. Consistent with the theoretic contention of this project, findings indicate HROs can use naming and shaming to induce states to improve human rights practices, given the existence of sufficient domestic HROs and the inclusion of international third parties (DeMeritt 2012; Murdie and Davis 2012). HRO naming and shaming has also been shown to apply pressure upon the decision environment of political elites in multiple domains. For example, the process can increase the likelihood of an international intervention (Murdie and Peksen 2014) and sanctions (Murdie and Peksen 2013), negatively impact exports (Pettersson and Eck 2018), and likelihood of receiving International Monetary Fund support (Woo and Murdie 2017). Given the demonstrated impact of HRO activities, states do not always find it in their interest to acquiesce to HRO demands and to allow the same organizations to operate with full legal freedoms.

Despite the contingent support for HRO pressure upon states for policy outcomes, there remains a subset of states that react to HRO activities by restricting their space to operate.

Carothers and Brechenmacher (2014) note the spread of new laws limiting NGO work, including newly democratic states like Kenya that previously embraced democratization and NGOs. In an investigation of why states restrict NGO space, Dupuy et al. (2014) find government restrictions stem from perceptions of political and economic risk from NGO activities. The authors argue foreign aid flows and the proximity of national elections predict when states are more likely to restrict NGO space (Dupuy, Ron, and Prakash 2014). A further risk for “briefcase” NGOs working with international money in sensitive issues – like human rights – that create friction with some executive, is the risk of their organizational legitimacy (Dupuy, Ron, and Prakash 2014). The challenge for HROs is the lack of foreign funding may limit operational capacity, but it can also impact grass roots credibility and help avoid government repression.

The strategic environment for HROs remains complex, but public perception, support, and trust do appear to inform outcomes for their ability to operate. Carothers (2006) argues favorable public perceptions of HROs can help limit state backlash against HROs. Public trust of local HROs (Ron and Crow 2015) and domestic support (Ron 2017) can impact the ability of HROs to gain traction with local communities and complete their desired ends. As Ron (2017) frames, if at risk individuals in states do not believe in the mission of local NGOs, they will not trust them to provide information and support that may lead to human rights litigation. In the case of the Russia “Foreign Agent” law, where there appears to be minimal domestic push-back against NGO restrictions, Malkova (2020) finds survey respondents lacked familiarity with HROs. The closure of international advocacy networks as in the Russia case, combined with a lack of routine interaction with HROs in communities, further distances individuals and the governments from transnational advocacy networks.

The logic for the third hypothesis builds from the concept of the African JAN and the literature noted above. Consistent with the literature, I assume HROs can impact state policy options. Studies show the inclusion of or impact upon international actors with HRO activities (e.g., Murdie and Peksen 2014) can serve as a contingent requirement for impact

upon state policies. In consideration of the impact of these interactions upon the status of HROs in a state, it stands to reason that isolated local organizations risk state repression if leaders perceive of their activities as being against the interests of political elites.

The existence of a dense juridical advocacy network in a state, if the justice cascade (Sikkink 2011) theory carries to the African Court, should lead to increased standing of the constituent parts of the network over time. HROs represent a visible manifestation of the JAN through the provision of information in their pressure campaigns from above and below. The theory contends states with unrestrained executives during pressure campaigns have greater incentives to repress HROs that lack the support of a dense JAN. Further, HROs that exist in a denser JAN enjoy more relative protection against repression. Accordingly, citizens in states with denser JANs should perceive HROs as having greater freedom to operate. If the African JAN has an impact, I predict a manifestation in perceptions of greater relative autonomy or space for HROs in Africa, as a region with several states confronting the autonomy of HROs.

Hypothesis 3 *Individuals residing in states that are members of the African Court and have a higher density of HROs are more likely perceive a greater degree of freedom for NGOs to act in their state.*

4.5 DATA AND METHODS

To test these hypotheses, this study uses data from the Afrobarometer Round 7 2018 survey. The questions include a range of individual respondent-level demographic information as well as individual views on a range of items. The interviews occurred in a face-to-face format in the language of the respondent. Afrobarometer establishes the parameters of a nationally-representative sample and employs a gender quota before employing random selection techniques. The sample includes 45,823 respondents from 34 countries. Given data limitations on covariates, this study includes a sample of 31 countries. The unit of analysis of this study is individuals clustered by country.

The first outcome of interest is the perception of individuals that judicial institutions serve as a legitimate check on the agency of elites to pursue policies that go against established law. The ordinal measure for the *Elite Constraint* model comes from survey question 39b. The question asks “how often the president ignores laws?” The responses include “never,” “rarely,” “often,” and “always” and range from 0 to 3. The analysis reverses the measure so higher ordinal measures indicate greater *Elite Constraint*. Accordingly, a positive and significant coefficient for the explanatory variable of interest in regression analysis would indicate higher perceptions of a president operating within legal constraints.

The second outcome of interest is the trust of individuals in judicial institutions. The ordinal measure for the *Judicial Trust* model comes from survey question 43i. The question asks respondents the extent they “trust courts of law.” The responses include “not at all,” “just a little,” “somewhat,” and “a lot,” with scores ranging from 0 to 3. A positive and significant coefficient would indicate higher levels of trust with courts of law.

The final outcome variable of is the perception of NGO freedom from state repression. The ordinal measure for the *HRO Space* variable comes from survey question 19d. The question asks respondents about whether they perceive of the freedom of NGOs to speak and act as being better or worse. The responses include “much less,” “somewhat less,” “the same,” “somewhat more,” and “much more.” A positive and significant coefficient in regression analysis would indicate would indicate higher relative perceptions of the freedom of NGOs to operate.

4.5.1 EXPLANATORY VARIABLES

As noted in the theoretic framework, the explanatory variable of interest in this study is the interaction of state membership in the African Court and the density of HROs that are active in the state, or the density of the African JAN in a state. Given the interview year of 2018, the *ACTHPR Member* variable is a binary measure of whether a state ratified the treaty articles for the African Court in 2018. This binary variable has a measure of “0” if a state

is not a member of the African Court in 2018 and a measure of “1” if it is a member of the African Court. The data come from the ACtHPR website. In 2018 the court had membership commitments from 30 of 55 African states and no states had withdrawn membership since initial accession to the court.

The second constituent component of the explanatory variable is the density of HROs in a state (*HRO Count*) in the survey year. The data come from the Transnational Social Movement Organization (TSMO) Dataset (Smith and Wiest 2012). The TSMO data are available for 1993, 1995, 1997, 1999, 2000, and 2003. After conducting imputation to gain estimates for the missing years between 1993 and 2003, this study carries forward HRO levels from 2003. The conservative step of assuming a steady state, rather than assuming a constant growth curve of HRO density, facilitates causal inference.

The interaction between the variables *ACtHPR Member* and *HRO Count* form the primary explanatory *African JAN* variable. All models include the interactive term and the constitutive elements (e.g., Brambor et al. 2006). A significant finding of the interaction term *JAN Density* in models with the constitutive elements would indicate a conditional impact of African Court membership and HRO density in a state upon the outcome variables of interest.

4.5.2 CONTROL VARIABLES

The analysis includes a set of individual – or micro-level – controls to account for respondent-level differences that might influence the likelihood that an individual’s perceptions might vary from other respondents. The micro-level controls come from the Afrobarometer round 7 survey. To account for the impact of a respondent’s age, the control *Age* captures the self-reported age of individual respondents. The values for the *Age* variable range from 18 to 106 years with a mean reported age of 37.14 years. The variable *Female* controls for the possible impact of gender upon individual responses. The *Female* variable is a dichotomous measure that takes the value of “1” if the respondent self-identifies as female and “0” otherwise.

The *Education* variable ranges from 0 to 3 and includes responses for no formal education (0), primary education (1), secondary education (2), and post-secondary education (3). The *Religion* variable includes measures for Christian (1), Muslim (2), and Other (3).

The second set of controls are at the state, or macro-level, to account for confounding factors that might impact both *JAN Density* and individual perceptions of *Executive Constraint*, *Judicial Trust*, and *HRO Space*. The controls include a temporal lag of one. Studies (e.g. Poe and Tate 1994, Poe et al. 1999, and Dreher et al. 2012) find poor states tend to experience greater levels of domestic political violence and have weaker political institutions. To account for the potential confounding influence of wealth, this study uses the natural log (Davenport 2007) of gross domestic product per capita *GDP per Capita(ln)*. The data come from the World Bank Open Data repository (World Bank 2019) and include several observations with missing data, that are likely not missing at random. As noted by Hill (2010), the imputation of missing values in these cases provide a method to limit the risk of biased inference from standard list-wise deletion of missing data. Accordingly, this study imputes missing values (e.g., Hill 2010 and Lupu 2013). Studies (Poe, Tate, and Keith 1999) also find the pressures of large populations in states, on average, correlate with higher levels of repression of human rights. To account for the impact of large populations in states upon the likelihood of human rights repression (Poe, Tate, and Keith 1999; Dreher, Gassebner, and Siemers 2012), this study uses the natural log (*Population(ln)*) from the World Bank Open Data resource (World Bank 2019). To control for the impact of variation in domestic political institutions and regime type (Poe and Tate 1994; Poe, Tate, and Keith 1999; Dreher, Gassebner, and Siemers 2012; Hill and Jones 2014), this study employs the Polity2 regime type measure. The *Polity2* variable is an interval measurement that ranges from the least democratic states at “-10” to the most democratic states at a measure of “10” (Marshall, Jaggers, and Gurr 2014a).

The final two macro-level controls intend to account for the level of repression in a state. To account for the potential confounding impact of physical integrity rights abuse in a state,

I utilize the Fariss Latent Human Rights Protection Score (version 3) (Fariss 2019). The physical integrity rights *PIR* (Fariss) variable uses 13 indicators of repression and provides a means of overcoming missingness through Bayesian modeling. This approach attempts to overcome the challenge that human rights measures suffer from non-random missingness as in the case of state failure (Fariss 2014; Fariss 2019). The continuous variable *PIR* (Fariss) provides measurements for all countries in the sample. To account for the potential impact of ongoing state repression of HROs, this study controls for the practice through the Varieties of Democracy *CSO Repression* variable. The *CSO Repression* control measures repression of civil society organizations in a state. The continuous measure ranges from severe repression at the lowest range to absolute freedom at the highest levels (Bernhard et al. 2015; Coppedge et al. 2019).¹⁰

4.5.3 MODEL SPECIFICATION

The Afrobarometer round 7 survey data are hierarchical, in that they provide survey information on individuals nested within countries. Accordingly, this paper utilizes multi-level models to test the theories noted above. The use of multi-level models provides a simultaneous interaction of individual and country factors (Gelman and Hill 2007). As the outcome variables of interest are individual survey responses codified in ordinal measures, the primary analysis utilizes a mixed effects ordinal logistic regression model. In functional terms, the simultaneous fitting of the individual and country-level components indicates the application of an ordinal logistical regression of the individual-level responses that vary by country and a regression with 31 county data points that predict country intercepts (Gelman and Hill 2007).

The generic specification for all multi-level models is:

$$DV_{i,j} = \alpha + \beta_1 ACtHPR \text{ Ratification} * HRO \text{ Density} + \beta_2 ACtHPR \text{ Ratification} \\ + \beta_3 HRO \text{ Density} + \beta_4 (Individual) + \beta_5 (Country) + \varepsilon_{i,j}$$

¹⁰Of note, the correlation between the *CSO Repression* control and the *HRO Space* (Q19D) response is 0.153 across 41,496 observations.

The model specified above indicates the outcome variable of interest (*DV*) for respondent *i* in country *j*. As the explanatory mechanism of interest is the interaction between ACtHPR Ratification and HRO Count in a state, the model includes the interaction term and the constitutive variables (Brambor, Clark, and Golder 2006). The list of additional covariate controls ($B_4(Individual)$) for the individual respondent level, or level-one, of the model includes *Age*, *Female*, *Education*, and *Religion*. At the country-level, or level-two, of the multi-level model, the list of additional covariate controls ($B_5(Country)$) includes *GDP per Capita(ln)*, *Population(ln)*, *Polity2*, *PIR(Fariss)*, and *CSO Repression*.

4.6 EMPIRICAL ANALYSIS

Table 4.1 reports results from the multilevel models of individual perceptions for *Executive Constraint*, *Judicial Trust*, and *HRO Space*.¹¹ As predicted in the *JAN Density* theory, the *Executive Constraint* model indicates that the density of the African JAN impacts individual perceptions of the ability of state executives to ignore their national laws. The significant and negative coefficient for the *JAN Density* variable in the *Executive Constraint* model means in substantive terms that, all else equal, people perceive that presidents have less agency to ignore judicial institutions as the density of the African JAN increases. The *HRO Space* model also provides support for proposition that a denser African JAN can impact individual perceptions of the repression of HROs by the executive. This finding is interesting, as it indicates a JAN can mitigate the expected backlash against HROs, as a constituent part of a JAN, as their numbers grow in a state.

The *Judicial Trust* model fails to provide support to the proposition that a denser African JAN can enhance a polity's trust in judicial institutions. It is likely that trust remains a

¹¹Calculations of the variance inflation factor for the *Executive Constraint*, *Judicial Trust*, and *HRO Space* models indicate that multicollinearity is not a prohibitive concern. The interclass correlation coefficient (ICC) for each model $\rho = \frac{\sigma_{u_{oj}}^2}{\sigma_{u_{oj}}^2 + \sigma_{e_{ij}}^2}$, where the variance component $\sigma_{u_{oj}}^2$ is the intercept estimate and $\sigma_{e_{ij}}^2$ is the residual estimate (Gelman and Hill 2007). The ICC for each model is *Executive Constraint* = 0.797, *Judicial Trust* = 0.799, and *HRO Space* = 0.791.

difficult indicator the improve in the short-term, and that higher levels of trust are likely contingent upon a demonstrated track record of legitimate activities over time. Further, *Judicial Trust* might be impacted more by personal interactions with rule of law institutions than more distant concepts informed by other forms of information.

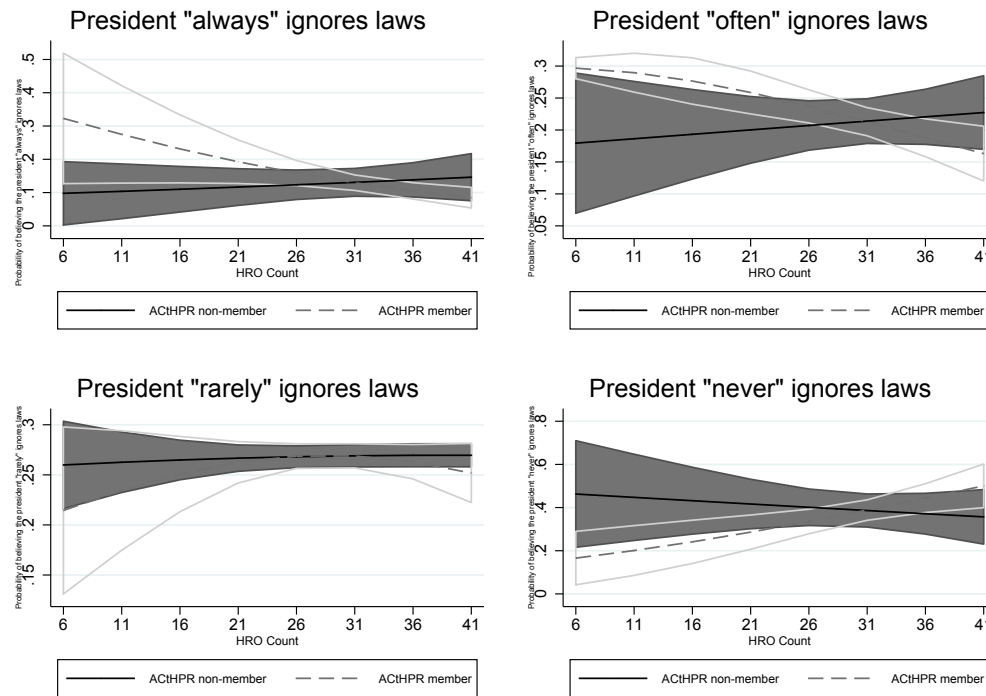


Figure 4.2: *Executive Constraint* model predicted probabilities [95% CI] of individual perceptions from the “how often the president ignores laws?” question (Q39B)

The individual-level controls provide an indication less educated (*Education*) respondents from rural areas (*Rural*) perceive of greater judicial control of the executive. This pattern holds for individual views of the trustworthiness of the judiciary in the *Judicial Trust* model. These findings might provide some support for an argument that the provision of information by the African JAN may impact perceptions most when individuals do not personally interact with state institutions on a regular basis.

The coefficients provide an indication of hypothesis test outcomes noted above, but ordinal responses are understood better through an analysis of the predicted probability of

each response question. The graphs in *Figure 4.2*, *Figure 4.3*, and *Figure 4.4* provide a visualization of the predicted probability of individual perceptions. Of note, the use of an interaction term *African JAN* indicates a focus on the relative change of the curves and not the intersection of the two functions in the figures.

The figures (*Figure 4.2*, *Figure 4.3*, and *Figure 4.4*) provide the relative impact of the *African JAN* upon individual perceptions as African Court membership varies across the range of HRO density. In the case of the *Executive Constraint* model in *Figure 4.2*, the graphs show a general increase in individual perceptions of the president following laws in states that are African Court members and that have a higher density of HROs. The contrast in marginal predicted means in *Table 4.2* indicates the potential that HRO density is the major driver in the interaction term *African JAN*, given the lack of variation between the two groups when split by African Court membership.¹² The output in *Table 4.3* represents a contrast in predictive margins with the *HRO Count* variable held at the minimum and maximum values to capture variation in the impact. The analysis provides some indication that at the theoretically-lowest values for *HRO Density*, individuals perceive that presidents ignore the laws at a greater rate than at the theoretically-highest levels.

The analysis of the *Judicial Trust* model in *Table 4.4* and *Figure 4.3* provides an indication that the lack of significance in the generalized model findings carry forward to each of the survey question responses. As noted above, the impact of institutional changes upon individual trust remains a complex phenomenon. What appears clear for this analysis, however, is that information models appear to lack sufficient independent impact upon individual perceptions to create trust in judicial institutions.

The outputs in *Table 4.5* and *Figure 4.4* provide an indication that a denser *African JAN* impacts individual perceptions of *HRO Space* as predicted across the ordinal responses. In substantive terms, states with the least dense *African JAN*, meaning ACtHPR non-member

¹²As noted in the appendix, the multilevel ordinal logit with the constitutive elements of the interaction term (*African JAN*), but without the interaction, returns a lack of independent significance for both the *ACtHPR Member* and *HRO Count* variables.

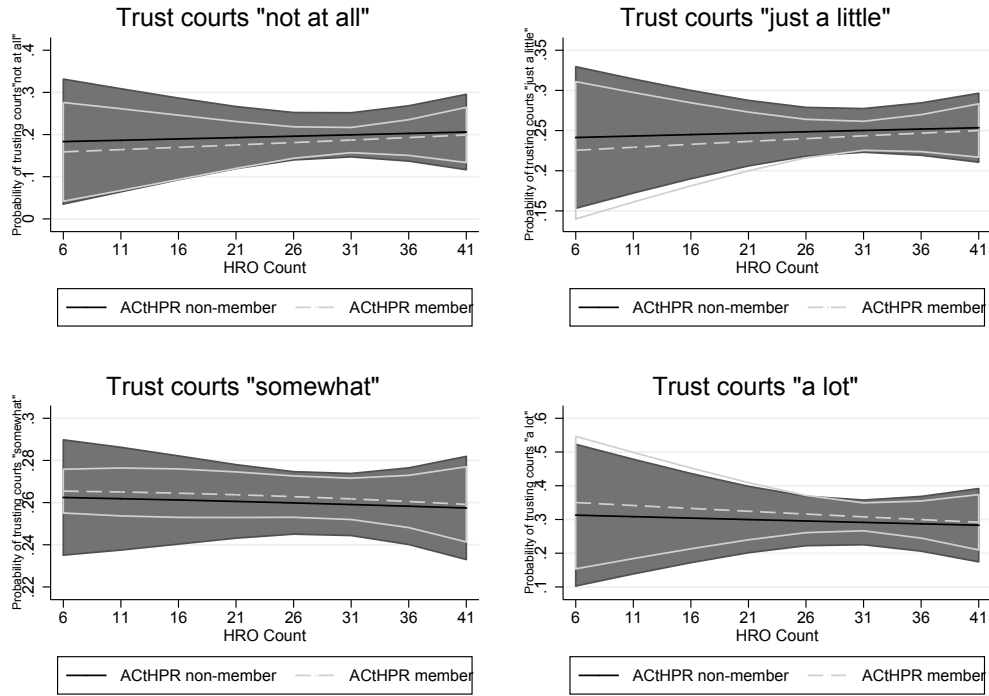


Figure 4.3: *Judicial Trust* model predicted probabilities [95% CI] of individual perceptions from the “how much do you trust courts of law?” question (Q43I)

states with a low density of HROs, are more likely to have individual perceptions of greater HRO repression. Conversely, individuals residing in states with a denser *African JAN* are more likely to have individual perceptions of greater HRO freedom from repression, all else equal.

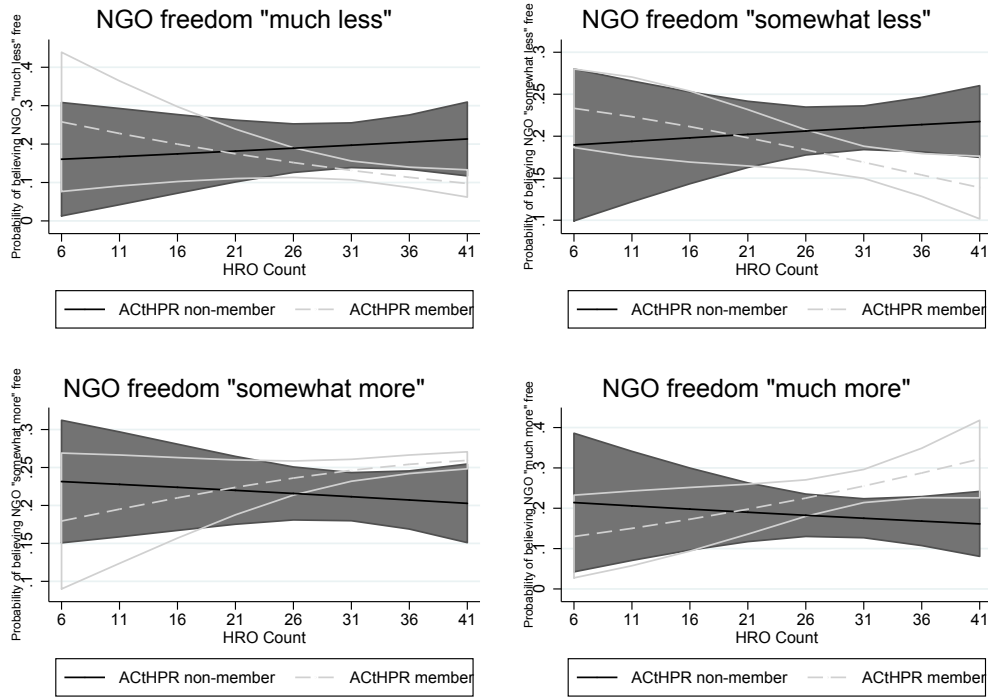


Figure 4.4: *HRO Space* model predicted probabilities [95% CI] of individual perceptions from the “freedom of NGOs to speak and act as better or worse?” question (Q19D)

4.7 CONCLUSION

The preceding analysis provides contingent support for the impact of a dense JAN upon individual perceptions. While it is true that the African Court and disparate HROs do not loom over every aspect of daily life for most Africans, this analysis does provide support for an ongoing and pervasive impact at the margins. The indication of a diffuse, or secondary, impact of denser JANs upon perceptions of executive control by the judiciary and the protection of HROs in a state provides an interesting foundation of further analysis. Studies that consider the impact of information from advocacy networks might consider variation between the impacts of information from direct observations versus the diffusion information from JANs.

The interesting findings of this study come with a number of important caveats. First, the question of the freedom of NGOs to operate indicates a potentially broad set of organizations that provide public foods from food to healthcare. Second, there is a risk in survey response data that answers capture other phenomena that are endogenous to a broader – or narrower – set of variables. Given the use of analytic techniques and the availability of data from 31 countries and over 35,000 respondents for each model, these concerns are partially-addressed. Scholars considering the findings of this study, however, should retain a consideration of these caveats when considering broader implications.

This study provides important contributions to the scholarly literature. First, the development of the JAN concept, from the Keck and Sikkink (1998) transnational advocacy networks, provides a specified theoretic frame to analyze networks with standing judicial bodies. Second, this study provides the first analysis of the impact of the African Court on individual perceptions. Finally, this study provides further support for future investigations that might explore the impact of networks with international and domestic nodes upon leader decision making and individual perceptions.

Table 4.1: Multilevel analysis of individual perceptions of domestic institutional norms and judicial advocacy network influence

	Executive Constraint	Judicial Trust	HRO Space
ACtHPR Member	-1.961*** (0.738)	0.204 (0.688)	-0.911 (0.708)
HRO Count	-0.014 (0.022)	-0.004 (0.021)	-0.011 (0.023)
African JAN	0.064*** (0.023)	-0.004 (0.022)	0.046** (0.023)
<i>Level I (individual)</i>			
Age	0.003*** (0.001)	0.002** (0.001)	0.003*** (0.001)
Female	0.079*** (0.020)	0.029 (0.018)	-0.008 (0.018)
Education	-0.048*** (0.012)	-0.141*** (0.011)	-0.004 (0.011)
Religion	0.036** (0.016)	0.055*** (0.015)	0.034** (0.014)
Rural	0.106*** (0.022)	0.284*** (0.020)	0.043** (0.020)
<i>Level II (country)</i>			
PIR (Fariss) _{t-1}	0.550** (0.232)	0.706*** (0.215)	0.027 (0.230)
CSO Repression _{t-1}	-0.374‡ (0.199)	-0.409** (0.192)	0.042 (0.206)
GDP per Capita(ln) _{t-1}	-0.153 (0.017)	0.160 (0.114)	0.231‡ (0.121)
Population(ln) _{t-1}	-0.001 (0.165)	0.275‡ (0.159)	-0.234 (0.170)
Polity2 _{t-1}	0.099** (0.039)	0.061 (0.038)	0.049 (0.041)
Constant	0.235*** (0.061)	0.218*** (0.038)	0.249*** (0.064)
Wald χ^2	145.95	595.49	68.54
Countries	31	31	31
Individuals	35,848	39,898	37,984

Levels of confidence: ‡p < .10; **p < .05; ***p < .01

Standard errors in parentheses, clustered by country

Table 4.2: Marginal predicted means of believing the president ignores laws (*Executive Constraint* model)

	Always	Often	Rarely	Never
ACtHPR non-member	0.132 [0.084,0.175] n=1,401	0.213 [0.179,0.247] n=2,504	0.268 [0.255,0.279] n=3,075	0.388 [0.313,0.463] n=5,039
ACtHPR member	0.133 [0.109,0.157] n=3,354	0.213 [0.191,0.234] n=5,218	0.267 [0.255,0.278] n=7,027	0.388 [0.341,0.424] n=10,478
Contrast of predictive margins (member vs non-member)	0.001 [-0.048,0.049]	-0.001 [-0.041,0.039]	-0.001 [-0.009,0.008]	-0.001 [-0.090,0.089]

Covariates held at observed values
[95% confidence interval] in brackets

Table 4.3: Marginal predicted means of believing the president ignores laws (*Executive Constraint* model) with *HRO Count* held at minimum and maximum values

(HRO Count=min)	Always	Often	Rarely	Never
Contrast of predictive margins (member vs non-member)	0.227 [0.047,0.405]	0.128 [0.017,0.239]	-0.052 [-0.173,0.069]	-0.001 [-0.533,-0.071]
(HRO Count=max)	Always	Often	Rarely	Never
Contrast of predictive margins (member vs non-member)	-0.069 [-0.151,0.011]	-0.082 [-0.162,-0.003]	-0.026 [-0.062,0.011]	0.179 [0.007,0.349]

Non-interaction term covariates held at means
[95% confidence interval] in brackets

Table 4.4: Marginal predicted means of trusting courts of law (*Judicial Trust* model)

	Not at All	Just a Little	Somewhat	A Lot
ACtHPR non-member	0.199 [0.146,0.251] n=2,769	0.250 [0.223,0.277] n=3,506	0.259 [0.244,0.274] n=3,758	0.292 [0.226,0.357] n=3,788
ACtHPR member	0.187 [0.157,0.216] n=5,372	0.243 [0.225,0.261] n=7,115	0.262 [0.252,0.271] n=7,327	0.308 [0.67,0.349] n=8,974
Contrast of predictive margins (member vs non-member)	-0.013 [-0.073,0.048]	-0.007 [-0.039,0.025]	0.003 [-0.011,0.016]	0.017 [-0.062,0.096]

Covariates held at observed values
[95% confidence interval] in brackets

Table 4.5: Marginal predicted means of believing NGOs have relative freedom from repression (*HRO Space* model)

	Much Less	Somewhat Less	The Same	Somewhat More	Much More
ACtHPR non-member	0.198 [0.139,0.258] n=2,057	0.208 [0.184,0.233] n=2,494	0.204 [0.193,0.216] n=3,198	0.211 [0.179,0.243] n=2,724	0.178 [0.131,0.224] n=2,477
ACtHPR member	0.132 [0.107,0.157] n=3,832	0.169 [0.151,0.189] n=4,857	0.199 [0.189,0.210] n=5,228	0.247 [0.234,0.261] n=6,839	0.251 [0.213,0.291] n=6,839
Contrast of predictive margins (member vs non-member)	-0.066 [-0.129,-0.003]	-0.039 [-0.070,-0.007]	-0.005 [-0.015,0.006]	0.037 [0.004,0.069]	0.075 [0.011,0.136]

Covariates held at observed values
[95% confidence interval] in brackets

CHAPTER 5

CONCLUSION

5.1 SUMMARY OF MAIN FINDINGS

The findings in Chapter 2 provide support for the proposition that the “lock-in” hypothesis carries to the African Court of Human and Peoples’ Rights and that Africa does not represent a special case in terms of ratification patterns. While the primary findings of Chapter 2 provide a novel test of whether there is a non-monotonic relationship between regime type and accession decisions, the secondary analyses illuminate a broader set of propositions. In consideration of the risk of sovereignty loss, Chapter 2 provides support for the proposition that analyses of accession patterns should account for the specific issue areas that place a state at risk for becoming a target of a regional human rights court.

In cases where a court does not pose a direct risk to leaders for prosecution, an accounting of the the potential reasons a state may lose domestic control of legal complaints is essential. The complementary principal indicates states with legitimate and functioning rule of law institutions have lower risks of losing jurisdiction over cases to a regional court. The findings in Chapter 2 provide general support for the proposition that states with higher standards of rule of law are more likely to accede to the ACtHPR. Conversely, and against the expectations of the chapter, states with more effective judiciaries are less likely to accede to the court. In the case of effective courts, it appears leaders assess the probability that domestic courts will enforce the rulings of the ACtHPR (e.g., Powell and Stanton 2009), and the avoid acceding if they assess domestic courts will constrain their agency to ignore rulings.

The final substantive finding of Chapter 2 is that the time horizon (Wright 2008) for a leader’s continued time in office impacts their decision making. A leader that sees little hope

of remaining in office has fewer incentives to employ strategies that might lock-in recent institutional changes. Put another way, the “lock-in” hypothesis assumes there is something to “claw back” against, and a leader with a short time horizon has to focus on decreasing proximate threats.

Chapter 3 assesses the impact of the African Court upon human rights outcomes in member states and whether there is a manifestation of the “justice cascade” (Sikkink 2011). The findings indicate in substantive terms that HROs and the African Court provide mutual support to push improvement in human rights areas that do not directly impact a leader’s continued rule. Specifically, Chapter 3 finds the interactive impact of HROs and the African Court does not alter state respect for physical integrity rights, but it does for civil liberties and political rights. It appears leaders retain the coercive benefits of physical integrity rights abuse in dynamic environments and that improvements in areas that do not serve as important tactics can occur. Examples of the areas of improvement include women political empowerment and public corruption.

The findings in Chapter 3 align with previous findings on the impact of pressure from above and from below (e.g., Murdie and Davis 2012) upon the policy decisions of states. The findings on the impact upon women’s political empowerment and public corruption are interesting. Both represent a manifestation of embedded social and cultural norms. The mutually-supportive impact of the ACtHPR and HROs upon these norms provides an indication that pressure, when combined with institutions that have formal standing in a state, can affect change in difficult issue areas.

The final chapter codifies the mutual support of HROs and a regional human rights court as a juridical advocacy network (JAN). The analysis in Chapter 4 analyzes the relative impact of denser JANs upon individual perceptions of state institutional patterns. The survey response data analysis finds that states with denser JANs, or ACtHPR members with more HROs, are more likely to perceive of their president as not flouting the laws. In substantive

terms, this means that a denser JAN makes constraint of the chief executive against illegal behavior more likely.

Chapter 4 also finds that denser JAN networks make it less likely that states will repress HROs. This finding is interesting given the propensity of states to respect the freedom of such groups as their impact upon state policy decisions increase. The lower likelihood of HRO repression as their density – and potential impact – increases due to a denser JAN provides a novel finding and support for the “justice cascade” argument.

5.2 SUGGESTIONS FOR FUTURE RESEARCH

The realization of the novel findings noted above provides a possible set of directions for future research. Chapter 2 findings highlight a path to test the external validity of conceptualizing the risk of sovereignty loss more-closely to the jurisdictional areas of an international court. The most obvious targets for testing this proposition are the ECtHR and IACtHR. The leader time horizon findings provide a similar path for reassessing established international treaty ratification patterns. The findings in Chapter 2 also highlight a need to reassess previous findings (e.g., Chapman and Chaudoin 2013) that treat Africa as a collective set of cases that fail to conform with otherwise significant findings.

Chapter 3 provides an indication of several avenues for future research. Future studies of the impact of regional or international institutions might include a closer analysis of the types of ceded authorities and actions taken when measuring impact. An example from this dissertation is focusing on the human rights under the *de fact* purview of the court rather than the convenient, or traditional, use of physical integrity rights measures. Next, when assessing the impact of NGOs and HROs, future research can incorporate additional actors in their networks. The development of the JAN concept in Chapter 4 provides a means to frame this integration as well as a framework to study the impact of other international judicial institutions.

The findings on the growth of executive constraint and the self-reinforcing impact upon HRO freedom in Chapter 4 provide additional theme for future study. For example, investigations can explore whether other JAN contexts provide similar impacts upon individual perceptions of executive constraint and HRO freedom. An associated investigation can also explore the extent that impacts upon individual perceptions correlate with the actual changes in the phenomenon in a state.

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APPENDIX A

CHAPTER 2 SUPPLEMENTARY INFORMATION

A.1 COURT MEMBERSHIP

Table A.1: African state ACtHPR and ICC membership

	Ratify ACtHPR	Ratify ICC	Legal Trad.
Algeria	2003		Islamic
Angola ¹			Civil
Benin ²	2014	2002	Civil
Botswana		2000	Mixed
Burkina Faso ²	1998	2004	Civil
Burundi	2003	2004*	Civil
Cabo Verde		2011	Civil
Cameroon	2014		Mixed
Central African Republic ¹		2001	Civil
Chad	2016	2007	Civil
Comoros	2003	2006	Islamic
Congo	2010	2004	Civil
Côte d'Ivoire ²	2003	2013	Civil
Democratic Republic of Congo ¹		2002	Civil
Djibouti ¹		2002	Civil
Egypt ¹			Islamic
Equatorial Guinea ¹			Civil
Eritrea			Mixed
Ethiopia ¹			Civil
Gabon	2000	2000	Civil
The Gambia	1999	2002	Islamic
Ghana ²	2004	1999	Common
Guinea ¹		2003	Civil
Guinea-Bissau ¹			Civil
Kenya	2004	2005	Mixed
Lesotho	2003	2000	Common
Liberia ¹		2004	Common
Libya	2003		Islamic

Table A.2: African state ACtHPR and ICC membership (continued)

	Ratify ACtHPR	Ratify ICC	Legal Trad.
Madagascar ¹		2008	Civil
Malawi ²	2008	2002	Common
Mali ²	2000	2000	Civil
Mauritania	2005		Islamic
Mauritius	2003	2002	Civil
Morocco			Mixed
Mozambique	2004		Civil
Namibia ¹		2002	Islamic
Niger	2004	2002	Mixed
Nigeria	2004	2001	Islamic
Rwanda ^{2*}	2003		Mixed
Sahrawi Arab Democratic Republic	2013		Islamic
São Tomé and Príncipe ¹			Civil
Senegal	1998	1999	Mixed
Seychelles ¹		2010	Mixed
Sierra Leone ¹		2000	Common
Somalia ¹			Mixed
South Africa	2002	2000	Mixed
South Sudan			Mixed
Sudan ¹			Islamic
Swaziland ¹			Civil
Tanzania ²	2006	2002	Common
Togo	2003		Civil
Tunisia ²	2003	2011	Islamic
Uganda	2001	2002	Common
Zambia ¹		2002	Common
Zimbabwe ¹			Common

¹ Signed ACtHPR protocol without ratification.

² Approved special declaration allowing NGOs to bring cases.

* Later withdrew from protocol.

A.2 COX PROPORTIONAL HAZARDS MODEL ROBUSTNESS TESTS

Table A.3: Determinants of ACtHPR Accession (1998-2013) Cox Proportional Hazards Models

	(1) General	(2) Complete	(3) Jud. Corr.	(4) PrivProp	(5) Time Hor.
Regime Type	-0.011 (0.188)	0.123 (0.192)	0.906* (0.175)	-0.003 (0.175)	0.574* (0.173)
Regime Type ²	-0.978* (0.245)	-1.014* (0.289)	-0.742* (0.222)	-0.935* (0.285)	-0.735* (0.247)
Rule of Law	1.268* (0.156)				
Judicial corruption		-0.596* (0.119)	-0.485* (0.107)		
Property Rights		0.056* (0.007)		0.048* (0.007)	
Executive Recruit		0.116 (0.148)			0.092 (0.138)
Phys. Int. Rights	-0.162* (0.078)	-0.013 (0.087)	0.007 (0.066)	-0.135 (0.074)	0.134 (0.076)
Civil War Past 5	0.271 (0.142)	0.596* (0.139)	0.246 (0.142)	0.464* (0.142)	0.310* (0.137)
Common Law	-0.507* (0.158)	-0.249 (0.161)	-0.427* (0.164)	-0.190 (0.154)	-0.412* (0.162)
ICC Ratification	-0.093 (0.126)	-0.269* (0.137)	-0.072 (0.121)	-0.128 (0.131)	-0.171 (0.128)
GDP per Capita(ln)	-0.325* (0.075)	-0.199* (0.079)	-0.073 (0.065)	-0.238* (0.077)	-0.138 (0.073)
LR chi ²	85.58*	97.29*	59.90*	65.02*	48.95*
Log Likelihood	-1520.781	-1336.530	-1540.635	-1451.704	-1422.994
Observations	865	695	850	755	769

Note. Table 5 displays estimates from the *ACtHPR Ratification* Cox proportional hazard model. The failure event is ACtHPR ratification, 1998-2013. Exponentiation of the coefficients with standard errors (in parentheses) would provide hazard ratios.

*p < .05

APPENDIX B

CHAPTER 3 SUPPLEMENTARY INFORMATION

B.1 WOMEN'S INGO ROBUSTNESS TEST

The women's INGO (*WINGO Count*) tables below provide a robustness check through the Hughes et al. (2017) Women's International Nongovernmental Organizations, 1950-2013 dataset. The *WINGO Count* data include pre-imputed data for 1998, 2003, 2008, and 2013. This robustness check imputes the data for the missing years and carries forward 2013 values to 2018 to maximize country-year observations. The *WINGO Count* measure correlates with the HRO Count variable at 0.94 for the country years the two data sets have in common. A constraint for the robustness check is a higher rate of missing country values in the *WINGO Count* data than in the *HRO Count* data. For example, the *WINGO Count* data do not have measurements for Cape Verde, Comoros, Djibouti, Equatorial Guinea, Sao Tome and Principe, and Seychelles. None of these states has ratified the ACtHPR. Accordingly, the results of this set of robustness checks may under-measure the negative impact of failing to join the African Court and having fewer HROs.

With the limitations of the *WINGO Count* data, the robustness tests do support the primary analysis in a lack of an interactive impact of ACtCHPR ratification and HRO Count (*WINGO Count*) upon physical integrity rights (*PIR*). Further, this robustness test supports the findings in the primary analysis for improvements in public corruption (*Corruption*), as a negative and significant coefficient indicates relative improvement given the scale of the VDEM public corruption variable. The models for freedom of religion (*Religion*) and equal access to justice (*Justice Access*) also conform with the primary analysis with a lack of significant findings.

Table B.1: Impact of the African Court and HROs (1998-2017) on Civil and Political Rights (Civil Liberties and Political Rights Interval Measure - Coarsened Exact Matching (*WINGO Count*))

	Model 1	Model 2
ACtHPR Ratification (CEM tx)	0.024 (0.023)	0.029 (0.024)
WINGO Count	0.001 (0.001)	0.001 (0.001)
ACtHPR*WINGO	0.000 (0.001)	0.000 (0.001)
GDPpCAP(ln)	-0.008 (0.009)	-0.008 (0.009)
Population(ln)	-0.032** (0.013)	-0.032** (0.014)
Regime Type	-0.002 (0.002)	
Common Law	-0.004 (0.019)	-0.004 (0.019)
ICC Ratification	0.001 (0.011)	-0.005 (0.012)
Conflict	0.008 (0.013)	0.007 (0.013)
Judicial Independence	0.033** (0.014)	0.032** (0.013)
DVt-1	0.830*** (0.049)	0.808*** (0.061)
Constant	0.581** (0.255)	0.595** (0.264)
Observations	661	662
F statistic	289.33***	313.30***

Notes. Levels of confidence: †p < .10; **p < .05; ***p < .01.

Parameter estimates derived using coarsened exact matching (CEM) weighted ordinary least squares models and robust standard errors clustered by country (in parentheses).

The *WINGO Count* robustness checks for the civil liberties and political rights interval measure (*Civil-Political Rights*) and women’s political empowerment (*Gender*) fail to conform with findings in the primary analysis. The lack of significance in these findings may stem from data missing from the six countries noted above, as they represent 13-percent of the sample with full data coverage in the *HRO Count* models and all have not acceded to the ACtHPR.

Table B.2: Impact of the African Court and HROs (1998-2017) Coarsened Exact Matching (*WINGO Count*)

	PIR	Gender	Religion	Justice Access	Corruption
ACtHPR Ratification	0.083 (0.122)	0.004 (0.014)	-0.002 (0.035)	0.009 (0.011)	0.010 (0.008)
WINGO Count	0.004 (0.004)	0.000 (0.000)	0.000 (0.001)	0.000 (0.000)	0.000 (0.000)
ACtHPR*Wingo	0.001 (0.003)	0.000 (0.000)	0.001 (0.001)	0.000 (0.000)	-0.001*** (0.000)
GDPpCAP(ln)	-0.018 (0.041)	-0.001 (0.004)	-0.029** (0.012)	0.002 (0.003)	0.000 (0.003)
Population(ln)	-0.179** (0.073)	-0.012** (0.006)	-0.038** (0.015)	-0.006 (0.005)	0.003 (0.004)
Regime Type	-0.013 (0.011)	-0.001 (0.001)	-0.005 (0.005)	-0.001 (0.001)	0.003** (0.001)
Common Law	0.058 (0.096)	0.015 (0.011)	0.030 (0.039)	0.011 (0.012)	0.006 (0.010)
ICC Ratification	-0.072 (0.055)	0.004 (0.005)	-0.034‡ (0.017)	0.000 (0.005)	0.000 (0.005)
Conflict	0.119‡ (0.063)	0.014‡ (0.007)	0.021 (0.026)	0.015‡ (0.008)	0.001 (0.006)
Judicial Independence	0.105‡ (0.061)	0.009‡ (0.005)	0.043** (0.018)	0.013** (0.005)	-0.013*** (0.005)
DVt-1	0.856*** (0.054)	0.869*** (0.031)	0.973*** (0.012)	0.943*** (0.019)	0.974*** (0.017)
Constant	2.795** (1.286)	0.260** (0.118)	0.827** (0.275)	0.100 (0.084)	-0.043 (0.074)
Observations	661	696	696	696	696
F statistic	553.32***	459.07***	1904.61***	1462.32***	1046.87***

Notes. Levels of confidence: ‡ $p < .10$; ** $p < .05$; *** $p < .01$. Parameter estimates derived using coarsened exact matching (CEM) weighted ordinary least squares models with robust standard errors clustered by country (in parentheses).

APPENDIX C

CHAPTER 4 SUPPLEMENTARY INFORMATION

C.1 EXECUTIVE CONSTRAINT ROBUSTNESS TESTS

The analysis table below includes a robustness check for the *Executive Constraint* hypothesis with question 42e, that asks respondents “how often officials go unpunished?” Question 42e attempts to capture broader perceptions of the relative impunity of state agents (*State Agent Constraint*). The analysis reverses the relative measures for the responses to ensure higher ordinal values correspond to higher perceptions of constraint. The *Executive Constraint* robustness check table also includes a *No Interaction* output for the base model to highlight the impact of the variation term *African JAN*.

The analysis of the *State Agent Constraint* model only provides support for the proposition at the 10-percent level of certainty. This indicates, a potential impact of denser *African JAN* upon perceptions that state agents have a tendency to follow laws.

The analysis also includes an alternative variable for the dichotomous *ACTHPR Member* to account for possible temporal impacts since acceding to the court. The *ACTHPR Time* variable retains a measure of “0” for non-member states and takes a measure of “1” through “20,” depending on the year a member acceded from 1998 to 2018. The outcomes of the analyses provide some indication, at the 10-percent confidence level, that a time-contingent interaction term conforms to the primary analysis of this study.

C.2 ACTHPR TIME MODEL

Table C.1: Multilevel analysis of individual perceptions of judicial control (Executive Constraint and State Agent Constraint)

	Executive Constraint	No Interaction	State Agent Constraint
ACtHPR Member	-1.961*** (0.688)	-0.144 (0.234)	-1.084** (0.509)
HRO Count	-0.014 (0.022)	0.025 (0.019)	-0.007 (0.016)
African JAN	0.064*** (0.020)	– –	0.030‡ (0.016)
<i>Level I (individual)</i>			
Age	0.003*** (0.001)	0.003*** (0.001)	0.000 (0.000)
Female	0.079*** (0.020)	0.079*** (0.020)	0.072*** (0.019))
Education	-0.048*** (0.012)	-0.048*** (0.012)	-0.106*** (0.011)
Religion	0.036** (0.016)	0.036** (0.016)	0.037** (0.015)
Rural	0.106*** (0.022)	0.106*** (0.022)	0.164*** (0.020)
<i>Level II (country)</i>			
PIR (Fariss) _{t-1}	0.550** (0.232)	0.624** (0.248)	0.370** (0.166)
CSO Repression _{t-1}	-0.374‡ (0.199)	-0.333 (0.222)	-0.349** (0.148)
GDP per Capita(ln) _{t-1}	-0.153 (0.117)	-0.067 (0.127)	-0.024 (0.087)
Population(ln) _{t-1}	-0.001 (0.165)	0.065 (0.183)	-0.045 (0.123)
Polity2 _{t-1}	0.099** (0.039)	0.085 (0.044)	0.062** (0.029)
Constant	0.235*** (0.061)	0.294*** (0.076)	0.128*** (0.033)
Wald χ^2	145.95	134.44	286.71
Countries	31	31	31
Individuals	35,848	35,848	39,217

Levels of confidence: ‡p < .10; **p < .05; ***p < .01
Standard errors in parentheses, clustered by country

Table C.2: Multilevel analysis of individual perceptions of domestic institutional norms and judicial advocacy network influence (ACtHPR Time Model)

	Executive Constraint	Judicial Trust	HRO Space
ACtHPR Time	-0.079‡ (0.044)	0.010 (0.019)	-0.044 (0.043)
HRO Count	0.005 (0.022)	-0.006 (0.019)	-0.001 (0.021)
African JAN	0.002‡ (0.001)	0.000 (0.001)	0.002‡ (0.001)
<i>Level I (individual)</i>			
Age	0.003*** (0.001)	0.002*** (0.001)	0.004*** (0.000)
Female	0.079*** (0.020)	0.029‡ (0.018)	-0.008 (0.018)
Education	-0.048*** (0.012)	-0.141*** (0.011)	-0.004 (0.011)
Religion	0.036** (0.016)	0.055*** (0.015)	0.034** (0.015)
Rural	0.106*** (0.022)	0.284*** (0.020)	0.043** (0.020)
<i>Level II (country)</i>			
PIR (Fariss) _{t-1}	0.525** (0.247)	0.728*** (0.219)	0.033 (0.241)
CSO Repression _{t-1}	-0.334 (0.213)	-0.418** (0.190)	0.064 (0.209)
GDP per Capita(ln) _{t-1}	-0.118 (0.124)	0.153 (0.110)	-0.199‡ (0.121)
Population(ln) _{t-1}	-0.016 (0.176)	0.276‡ (0.157)	-0.204 (0.173)
Polity2 _{t-1}	0.086** (0.043)	0.059 (0.038)	0.033 (0.042)
Constant	0.269*** (0.069)	0.214*** (0.055)	0.259*** (0.067)
Wald χ^2	138.59	596.21	66.82
Countries	31	31	31
Individuals	35,848	39,898	37,984

Levels of confidence: ‡p < .10; **p < .05; ***p < .01

Standard errors in parentheses, clustered by country