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No Reservations about Stopping Another Hotel Rwanda Case: The African Court on Human and Peoples' Rights[1]

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The genocide in Rwanda spurred the global community to action, leading to calls for a more permanent court to try such human rights abuse cases, instead of the ad hoc system that existed in the early 1990s. Now there is an International Criminal Court as well as a regional tribunal, the African Court on Human and Peoples' Rights (ACHPR). The ACHPR, which is located in the same Tanzanian city as the ad hoc tribunal that tried defendants accused of perpetrating massacres, may be even more critical for the cause of human rights than the ICC. This regional court enables citizens to accuse their government of abuse, in court. Research shows that countries which signed the protocol permitting such challenges are also more likely to provide civil liberties and political rights to their people, aiding the cause of freedom for Africa.

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Nearly 25 years ago, the world watched in horror as Rwanda became the site of perhaps the worst of the massacres of the 1990s. At the time, there was little more than an ad hoc tribunal system available to deal with the genocide, implemented after the atrocities were committed. Now, in the same city where the Rwanda tribunal operated in Arusha, Tanzania, an African Court on Human and Peoples' Rights (ACHPR) has emerged to protect the peoples of continent, often from the regimes that rule them. Evidence shows that the countries which have given the most power to allow individuals to bring cases before the court are among the more democratic countries in Africa, showing a nexus between respect for rights and international law in this regional court, perhaps supplanting the International Criminal Court (ICC) as an institution that can best handle African cases involving human rights.

Over three months in 1994, the world watched with horror as more than 800,000 Tutsis and moderate Hutu tribesmen were massacred by their own countrymen in Rwanda (National Public Radio 2014). Such abuses spurred not only the formation of the International Criminal Court (ICC), but a protocol to create a continental court as part of the African Charter, which became known as the African Court on Human and Peoples' Rights (ACHPR) just four years later (African Court on Human and Peoples' Rights 2016) in Tanzania.

The location of the court is not a random location. In the 2004 movie *Hotel Rwanda*, protagonist Paul Rusesabagina and his family flee to Tanzania, like so many refugees from the bloody ethnic cleansing. It is therefore not surprising that the ad hoc judiciary body set up to prosecute those who waged genocide would be headquartered in Arusha, Tanzania (with offices in Kigali, Rwanda). Labeled the International Criminal Tribunal for Rwanda by the United Nations, or UNICTR (2015), it served as an early predecessor, and perhaps a model, for the African Court on Human and Peoples' Rights, also based in Arusha. After the court came into force in 2004, nearly half of the continent signed the protocol accepting the ACHPR's jurisdiction.

Tanzania and Rwanda offer an interesting contrast. The former provides a fairly wide range of freedoms to its people while the latter does not, perhaps owing to the legacy of the brutal genocide. Yet both signed not only the protocol authorizing the court, but also a special declaration unprecedented in international tribunals: the ability of a country's citizens to challenge the state in court. The pair is typical of contemporary Africa, where part of the continent is forging a path to freedom while the rest of the region is ruled by leaders which seek to tighten their grip around the countries they dominate.

Are those countries pursuing democracy more likely to support the court and this special declaration designed to protect human rights, or is there no relationship between a country's treatment of its citizens and support for such a

tribunal? To determine this, an extensive review of the literature and cases concerning the ACHPR, the ICRT, and the ICC is conducted. The connection between the ACHPR protocol, approval of the special declaration of the ACHPR, and its potential link to democracy will also be examined. Data on the level of freedom for the members of the African Union is gathered, comparing those who have ratified the protocol on the African Court on Human and Peoples' Rights, as well as the special declaration on whether individuals and nongovernmental organizations (NGOs) can bring cases before the ACHPR and other African countries. After reporting on the findings, the positives and negatives of this new regional court are discussed, with an eye toward the future direction of the court, its member countries, and whether the development of such a court could be instrumental in holding those accountable for genocide in other regions (like Syria's Aleppo in the Middle East).

African Democracy

Unlike the genesis of the African Court on Human and Peoples' Rights, primarily a subject for international legal journals, Africa's history of democracy has been well covered. Just as others wrote about three waves of democracy on a global level (Diamond 2011), Africa experienced these waves and counterwaves across the region as well (Guseh and Oritsejafor 2005). While there was some early optimism of revolutionaries and reformers that their struggles would pay off in the form of a democratic regime, some of these cases were undermined after independence by a series of wars for postcolonial succession among the revolutionary leaders, or other groups. (Ihonvbere 1996). The struggles occurred not just for independence, but for who would rule the state thereafter.

Any confidence in institutional freedoms was also undone by the Cold War and the colonial legacies, where opportunistic militaries sought to take advantage of the new state chaos by overthrowing nascent regimes. Often times they would align themselves with the Western world, or Eastern bloc, or even playing one side off against the other during the Cold War era. (Ihonvbere 1996). The region became a battleground for a bipolar tug-of-war between the leading two superpowers, with democracy being the only guaranteed casualty. Of the 36 countries in Africa who won independence in the 1950s, 1960s, and 1970s, 33 became undemocratic countries (Lumumba-Kasongo 2007, 126). Lumumba-Kasongo (2007, 215) also wrote that there is more to the issue than foreign meddling. He pointed out that "although liberal democratic practices defined in the rituals of pluralistic elections have been expanding in Africa, this transition is being challenged by the presidential third-term syndrome." He calls this "political zombiism," where the incumbent stays in power through nearly supernatural powers (Lumumba-Kasongo 2007, 128).

For every Nelson Mandela of South Africa who swore off a third term, there has been a Robert Mugabe of Zimbabwe, or a Blaise Compaore of Burkina Faso, a Lansana Conte of Guinea (Conakry) or an Isaias Afewerki of Eritrea (Lumumba-Kasongo 2007, 129). Such leaders choose to rewrite the constitution, manipulate events, and employ patron-client networks, or use "belly politics" to trade food for support (Lumumba-Kasongo 2007, 130–32).

Moller and Skaaning (2013, 97) confirm the decline and dearth of democracy in sub-Saharan Africa before the end of the Cold War. The "big bang" of democracy in Africa (co-extensive with the fall of the Berlin Wall for East Europe) emerged in the early 1990s. "The democratization of the early 1990s transformed a region dominated by closed autocracies into one where almost half the countries had ostensibly democratic governments by the mid-1990s. A decline of democracy was evident in several countries, such as Madagascar, Central African Republic, Guinea-Bissau, and Mali. Conspicuously absent in sub-Saharan Africa were genuine instances of liberal democracy—only Cape Verde qualified—though there were a number of polyarchies" (Moller and Skaaning 2013, 97). Polyarchies are less than democratic in that they combine free elections with illiberal human and political rights.

As for North Africa, Moller and Skaaning (2013) claim that the third wave of democracy passed by the region (and the Middle East). Even the Arab Spring was met by reversals of success in the region (Egypt) as well chaotic civil war (Libya). Diamond (2011) agrees, saying that the Arab Spring would hardly represent a "fourth wave" of democracy.

Other troubling signs come from a focus on, and admiration of, China's growth combined with a desire for leaders to stay in power under the guise of "free and fair" elections. Byemelwa (2016) describes contemporary times as "Africa's 'democratic recession,'" where elected leaders refuse to cede power and rebels seek to take power for keeps.

But not all are pessimistic about the region. Diamond (2011) writes that democracy has persisted in several African countries, despite the presence of lower income status, showing wealth is not a necessary condition for freedom. And he adds that polls show people want democracy, not because the West wants it, "but because it provides political goods—personal freedom, voice, accountability, popular sovereignty, and rule of law—that authoritarian regimes cannot" (Diamond 2011, 307). And there are some results to cheer. "In sub-Saharan Africa, while only 2 countries were considered free in 1972, currently 11 are now classified as free," write Guseh and Oritsejafor (2005).

The question is whether international law can be the "game changer" this region needs to break this undemocratic deadlock. Or will international law serve as a different form of illiberalism, imposing judicial control over the will of the people?

African Human Rights

Universalism vs. Cultural Relativism

The subject of international law and human rights in Africa centers on a classic debate between those who feel that such rights apply to any and all situations, and those who claim it depends upon the context. The former camp is known as the universalist theory, while the latter group is called cultural relativism (Cobbah 1987; Ibhawoh 2000; Okere 1984; Thakur 2001, 367).

Among universalists like Jack Donnelly (1984, 403), the feeling is that humans are universal, so why not have human rights that are also universal? He finds plenty of international confirmation in the Universal Declaration on Human Rights and the covenants on civil and political rights and on economic, social and cultural rights. Donnelly (1984, 402–3) also claims that there is a First World, Second World, and Third World commitment to human rights. He tells his audience that nearly every culture has provisions against torture, as well as policies for due process (Donnelly 1984, 405).

Donnelly's arguments are contested by Cobbah (1987), who claims that African rights, which have been generally ignored by the scholarly literature, are more about communitarianism; these are about the rights of the group as opposed to the individual (310). The basic unit of society is the family. The extended family (not necessarily related to the individual) has roles and responsibilities to fulfill. This includes respecting communally held property, as well as accepting a hierarchical political structure (Cobbah 1987, 322–23). Additionally, the Afrocentric approach tends to favor economic rights over political rights (Cobbah 1987, 331).

Cultural relativists like Cobbah (1987, 330) reject the arguments for a universal application of human rights, claiming that Donnelly (1984) feels that international conceptions of human rights are Western, and that non-Western cultures should adopted this Western model. Pannikker (1982) even goes so far as to say that these human rights might be a "Trojan Horse" for Western domination.

Worth noting in this defense is that Donnelly (1984, 401) claimed, "I shall ultimately try to defend a weak cultural relativist position that permits limited deviations from 'universal' human rights standards," showing at least some acceptance of cultural impact. Furthermore, Donnelly strikes back at the cultural relativists, writing "Communitarian defenses of traditional practices usually cannot be extended to modern nation states and contemporary nationalist regimes" (Donnelly 1984, 411). His argument contends that leaders like Idi Amin of Uganda cannot justify his actions on African culture (Donnelly 1984, 413), something echoed by Thakur (2001, 369). Donnelly (2013, 78) is also critical of African traditions that value the person by group or community

membership, rather than their humanity, and claims that such recognition of human rights was not the tradition on the continent (Donnelly 2013, 79).

Also, Ibhawoh (2000, 841) contends that the decision to lump all African culture into one group is too monolithic. African cultures are diverse, and dynamic. In fact, Weeramanty (1997) claims that globalization is driving universalism in human rights, as people from Africa can view how other cultures live, and see the similarities in rights respected. "The polarized debate over the universality or cultural relativity of human rights seems to have given way in recent years to a broad consensus that there is indeed a set of core human rights to which all humanity aspired" (Ibhawoh 2000, 838).

African Charter: Strengths and Weaknesses

Is the African tradition really one of antipathy or acceptance of cross-cultural human rights? Earlier in the 1960s, the Organization of African Unity sought to affirm sovereignty for the new states as the key guiding principle, forbidding any violation of it (Welch 1981, 401). This came at the price of both maintaining traditional colonial boundaries of those states and also the right to insulate regimes that controlled the states, which often led to horrific abuses by protected governments. That is why in 1981, the Organization of African Unity banded together to craft the African Charter (Okere 1984, 141), also known as the Banjul Charter, based on their meeting place in The Gambia. African leaders were inspired to act because of the murders committed by Idi Amin in Uganda, Jean Bedel Bokassa in the Central African Republic, and leaders of Equatorial Guinea. Okere (1984, 144) wrote: "Despite the studied, if scandalous, silence of the O.A.U. over these grave and massive violations of human rates, which indeed render the member states guilty of complicity, international opinion could not help being revolted."

But though it sought an ideological balance between East and West, nondiscrimination toward all, and "African values" (Okere 1984, 145–46), the African Charter has not accomplished its lofty goals:

> 27 June 2011 marked the 30th anniversary of the adoption of the African Charter on Human and Peoples' Rights [known in this article and the literature as the African Charter]. The African Charter is Africa's most important regional human rights instrument for the promotion and protection of human rights. 30 years after the adoption of the African Charter, there are still gross and consistent violations of human rights in several African States parties to the African Charter as noted by the African Commission on Human and Peoples' Rights (African Commission) in its March 2011 resolutions on the 'human

> rights situation' in North Africa in particular in Algeria, Libyan Arab Jamahiliya and Tunisia. (Ssenyonjo and Nakitto 2012, 4).

Why is the African Charter not working as planned? Mutua (1999, 345) suggests that it is because the overwhelming number of states who devised the African Charter were non-democracies. Ibhawoh (2000, 854–55) believes that the male-dominated cultural relativists represent a problem for the African Charter. Ssenyonjo and Nakitto (2012, 102) argue that the rights promoted include the African conception of the "rights of collectives," community rights, group rights, or solidarity rights. Thornberry (1998, 149) claims that though this African Charter purports to support peoples, it does not apply to minorities. African nations see this as a "European" problem, a legacy left over from the colonial days. But that may be a function of the perceived precarious position of the postcolonial state. "Doubtful of their political legitimacy and apprehensive of their political stability, the leaders of one-party states are jittery and hypersensitive to criticism. All media of expression are appropriated as mouthpieces of the single political party … Freedom of association is limited to joining the only recognized political party" (Okere 1984, 146–47). Unfortunately, research by Hackenesch (2015) reveals that this trend persists today among African one-party systems or dominant party systems.

Freedom of assembly is not the only outstanding issue with the African Charter. Okere (1984, 154) points out that the Banjul Charter lacks a right of privacy and is hardly a strong document to enforce gender rights, leading to disputes over marriage and polygamy, and other gender issues (Ibhawoh 2000, 855).

Despite the African Charter's shortcomings, it is an important document for the region. It was perhaps meant to complement the Universal Declaration of Human Rights, showing African commitment to these rights with global appeal (Okere 1984, 142), improving on silence over abuses. Ssenyonjo and Nakitto (2012, 455) find that African countries have moved from authoritarian to democratic states since the writing of the African Charter. Perhaps the bulk of the problems are not with the African Charter itself, but with the organization initially charged with enforcing it (Mutua 1999, 343): the African Commission on Human and Peoples' Rights (or African Commission).

African Commission: A Disappointment

While human rights supporters find the African Charter was at least a good start with some need for improvement, there is little sympathy for the African Commission on Human and Peoples' Rights today and its attempts to implement the Banjul Charter (Ibhawoh 2000, 846). First of all, to serve on the African Commission, one did not have to be a lawyer or even to have legal experience

(Okere 1984, 150). As a result, African Commission rulings do not "reference jurisprudence from national and international tribunals" (Mutua 1999, 348).

The African Commission has been hampered in other ways, besides judicial inexperience. The rules work against this institution. For one, the African Commission can only interpret the African Charter if a state requests it; there are severe limits on the ability of individuals and NGOs to bring a complaint before the African Commission (Mutua 1999, 345–46) as well. There are also restrictions on African Commission communications, and the ability of the Commission to publish its findings, requiring permission from the Organization for African Unity's (OAU) Assembly of the Heads of State (Mutua 1999, 349). And international law often favors the state. Gidon Gottlieb was quoted as saying, "Laws are made to protect the state from the individual, and not the individual from the state (Kegley and Blanton 2014, 303). Sovereignty trumps interventions.

Most importantly, "neither the Charter nor the Commission provides for enforceable remedies of a mechanism for encouraging and tracking state compliance with decisions" (Mutua 1999, 349). Reports are made, but there is little thought about the goals of such reports, their breadth, and few helpful details (Mutua 1999, 350). Even when a report is made, there is no system by which the African Commission can enforce compliance, which leads few states to issue a compliance report (Mutua 1999, 351). Perhaps that is why there is so little reform or adherence to the African Charter in its early days.

Could a Court Solve the Case of the Ineffective Charter?

Mutua (1999, 342) contends that the African Charter does not work well because of a poor enforcement mechanism. The inability of the African Commission to implement the Banjul Charter effectively (Okere 1984, 151) may have helped contribute to tragedies like the Rwandan massacres of 1994 (Mutua 1999, 343). As Franceschi (2014, 89) states, "African human rights instruments often tend to be general, ambiguous, full of claw-back clauses, and to a certain point, uncommitted."

Stung by criticism over its poor response, the OAU took steps to remedy the situation by developing a court to provide the charter enforcement that was lacking. "The adoption in June 1998 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Human Rights Court) by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) is potentially an important step in the protection of human rights in the African continental system" (Mutua 1999, 342). It should be noted the original African Charter did not envision a court in its formation (Mutua 1999, 360).

But the Rwandan calamity did more than just awaken Africa to the weaknesses of its human rights commitment. "The 1994 genocide in Rwanda

awakened the international conscience and brought to question concepts and systems for the protection of human rights. The broader international community became aware of their duty to mediate and actually get involved whenever and wherever there was a systematic and widespread abuse of Human Rights; when a State was unable or reluctant to protect its own citizens from avoidable human rights catastrophes—mass murder, rape, starvation" (Franceschi 2014, 7). An International Criminal Tribunal was set up for Rwanda (Leithead 2015) the way it had been developed for the former Yugoslavia (Baros 2003, 58).

Four years after the Rwanda genocide, the United Nations did more than form ad hoc tribunals to solve such carnage on the African continent and elsewhere.

> The Rome Statute was adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (hereinafter: ICC). On the same day and in accordance with Article 125, the Statute was opened for signature in Rome until 17 October 1998 and then in New York, at the United Nations Headquarters, until 31 December 2000. The ICC was created by a treaty, which means that it has a different legal basis than the existing ad hoc international criminal tribunals (Baros 2003, 58).

Not only would the ICC have more power to deal with suspected war criminals in trials, but could deter future human rights abusers with stiffer sentences.

The Legacy of International Legal Tribunals in Africa

The problem is that African countries are generally skeptical about international law, for a variety of reasons. Polymenopoulou (2012) finds that this African ambivalence over international law stems from its use in justifying colonialism and denying rights. Being excluded from international lawmaking and adjudication bodies like the Permanent Court of International Justice (PCIJ), even to try cases, did not help (Yusuf 2015). This was exemplified by International Court of Justice (ICJ) Judge Gerald Fitzmaurice, who challenged the notion that nations have a legal right of self-determination. A "non-existent entity couldn't possess a legal right," Fitzmaurice concluded (Yusuf 2015). Even notions like "human rights" were seen as creations of Western governments, to be possibly used to justify foreign incursions (Polymenopoulou 2012).

Regional views slowly began to change with the United Nations General Assembly (UNGA) resolution against colonialism in December 1960, and a change in the ICJ's institutional composition after the Ethiopia and Liberia vs. South Africa case over Namibia in 1966 (Yusuf 2015). Self-determination was also recognized as a legal right in the 1970s cases (2015). With more optimism

over the power of international law, African states began to have cases tried in international courts, now seen as legitimate, in the 1970s, 1980s, and 1990s.

With the horrors of the Rwandan massacres of 1994, the hastily created United Nations International Criminal Tribunal in Rwanda (the UNICTR, which was established by the United Nations Security Council) resembled so many other ad hoc courts to try crimes against humanity, similar to the court handling such cases in the former Yugoslavia. Though the tribunal was only a temporary solution (AllAfrica.com 2012), the ability of the court to try suspects, as well as the confidence it showed in the new Rwandan regime to handle several cases itself, even extraditing suspects to the government in Kigali, showed the trust many in the international community began to show the African governments (BBC 2014).

Before the UNICTR's business was concluded at the end of 2015, it indicted 93 suspects, sentenced 62 of them, and turned 10 over to Rwanda for domestic prosecution (referring another three over to the Mechanism for International Criminal Tribunals (MICT) for prosecution). Of the remainder, 14 were acquitted, two died awaiting prosecution, and two had their indictments withdrawn before the trial began (UNICTR 2015).

Cognizant that many of these terrible slaughters were tried in temporary tribunals, similar to the ad hoc post–World War II cases, governments signed the Rome Treaty creating an International Criminal Court (ICC), one that would be permanent and show those who commit massacres that they would face justice. That initially appeared to be a far cry from the reactive nature of genocide cases, where such were crafted after the fighting concluded, too late to be of any deterrence. Fifteen years after the Rwanda cases, there were four separate crimes against humanity investigated by the ICC (*New African* 2009). Indeed, by 2016, 34 of the 54 members of the African Union had signed the Rome Treaty (Moses 2016).

But this preliminary widespread acceptance of the ICC began to sour, as those four African cases were the *only* cases the international court was investigating. Rwanda never signed the ICC (*The East African* 2015), preferring to work with the ICTR, though the relationship was not always amicable with this ad hoc tribunal (Human Rights Watch 2014). At the 23rd African Union (AU) Heads of State and Government Assembly in the Equatorial Guinea capital Malabo, the members began to criticize the ICC (*Africa Research Bulletin* 2014). Kenya was angered that the ICC blamed President Kenyatta and other government officials for the 2008 electoral violence that led to hundreds of deaths, prompting the country to claim that the ICC was "targeting Africa" (*The East African* 2013). Note that the indictments against Kenyatta and associates were dropped because key prosecution witnesses refused to testify (Bowcott 2014). Burundi expressed similar dismay after the ICC launched a probe of

postelection deaths after the country's president ran for an unprecedented third term in 2015, leading the country to join Kenya in threatening to quit the ICC (Moses 2016).

Others claimed that countries like Uganda, which supported the ICC, were doing so because they were using cases like the one against the domestic rebel group The Lord's Resistance Army (LRA) "as a way to eliminate local opponents" (*The East African* 2015). Even ICC supporters like South Africa and Uganda chose not to arrest Sudanese President Omar al-Bashir when he visited both countries, despite an outstanding ICC warrant for his arrest (Moses 2016).

Regional Court Potential Solution: The African Court on Human and Peoples' Rights

The ACHPR in Contrast to the ICC

In the *Christian Science Monitor* ("Global Newsstand" 2014), George Kegoro summed up the local sentiment toward international law, saying that leaders wanted "African solutions to African problems." That view showed why the region began showing so much support for the African Court on Human and Peoples' Rights (ACHPR). Indeed, local delegates to conferences began expressing views that they preferred the ACHPR to the ICC (*The East African* 2015). But what is the ACHPR, and where did this regional support come from?

Even as the Rome Treaty was being signed and the details of the ICC were being hashed out, African leaders were already developing their own court. The African Court on Human and Peoples' Rights (ACHPR) was created on June 10, 1998, in Ouagadougou, Burkina Faso (*International Journal of African Renaissance Studies* 2008) by the outgoing Organization of African Unity (OAU), before the creation of the new African Union (Kiebling 2014). The ACHPR eventually merged with the African Court of Justice, something called for by the AU (Ssenyonjo and Nakitto 2016). The African Union later expanded the mandate of the court to include an international criminal law section (Kiebling 2014), having more power than other courts and tribunals to investigate such cases (Ssenyonjo and Nakitto 2016).

The rationale behind this regional court was twofold. First, there was the belief that national courts could either be controlled by other African branches of government or be too timid to challenge these other institutions on grave matters of human rights violations (Byaruhanga 2004). Second, there were fears that the African Union's African Commission on Human and Peoples' Rights (hereafter referred to as the Commission) would lack the ability to prosecute cases and administer justice (Martorana 2008) and uphold the African Union's Charter on Human and Peoples' Rights (hereafter referred to as the Charter). Indeed, the Commission, which had existed since 1987 to uphold human rights

(Odinkalu 2013), had not achieved the fulfillment of the Charter. The creation of the ACHPR (Court) served to help the African Union's Commission achieve its mandate (Ebobrah 2011). It is also important to note that by adopting a "victim-centered approach," the ACHPR was similar in focus to the ICC, and even exceeded its European counterpart, the European Court of Human Rights (Antkowiak 2011).

The Theory of Transnational Courts and Their Importance in Promoting Freedom

But it is more than just a victim-centered approach, or even the expanded court mandate to prosecute international crime that makes the African Court on Human and Peoples' Rights (ACHPR) important for the region in general, and democracy in particular. And that is the special declaration to the protocol establishing the ACHPR that allows individuals and NGOs to bring cases before the court.

In their *International Organization* article, Robert Keohane, Andrew Moravcsik, and Ann-Marie Slaughter (2000) provided a distinction between interstate courts and transnational courts. In the case of the former, cases are brought by, and involve, only states. In the latter, individuals and NGOs can appear before the court. The differences "are significant for the politics of dispute settlement and legalization in world politics," for several reasons (Keohane, Moravcsik, and Slaughter 2000).

In interstate courts, states either implement or fail to implement decisions, according to Keohane, Moravcsik, and Slaughter. The chances of enforcing court decisions at the international level is considered less likely to occur than for domestic courts. Scholars on this subject contends that a contrast exists between international and domestic courts over "mechanisms of political control. Indeed, the distinction between international courts operating in anarchy and domestic courts, backed by the power of the state, is central to much of the writing in the field" (Ginsburg 2013, 486).

Adjudicators face state pressure in their rulings. If an individual wishes to bring a case, he or she must engage in costly legislative lobbying or navigate the government bureaucracy, another action that is hardly a low-cost endeavor, especially for the relatively limited rulings such courts tend to issue (Keohane, Moravcsik, and Slaughter 2000). Examples of such courts include the International Court of Justice (ICJ) as well as trade courts like GATT and the WTO ruling authority.

On the other hand, transnational courts do not give states the monopoly of control in cases. According to Keohane, Moravcsik, and Slaughter (2000), these courts generate more litigation; they establish precedent, as well as "jurisprudence autonomous of national interests." Such rulings from the court

produce new legal norms, as well as internal pressure for compliance (Keohane, Moravcsik, and Slaughter 2000).

An interesting dynamic emerges when the national courts align with the international courts when it comes to enforcement of decisions handed down from above, often in conflict with other branches of government (Keohane, Moravcsik, and Slaughter 2000). An international court can give domestic judges the political cover they need when locked in an intra-governmental dispute with the legislature or chief executive, especially if the state's court was initially barred or intimidated from properly disposing of the case. Even if the subject matter is not exactly the same, the international ruling can often be applied to a related domestic case (see Sloss and Van Alstine, 2015).

For transnational courts like the ACHPR, the latter distinction is the key, because such courts tend to be linked to the presence of democracy. "Liberal democracies are particularly respectful of the rule of law and most open to individual access to judicial systems; hence attempts to embed international law in domestic legal systems should be most effective among such regimes. In relations involving nondemocracies, we should observe a near total reliance on interstate dispute resolution. Even among liberal democracies, the trust placed in transnational dispute resolution may vary with the political independence of the domestic judiciary," write Keohane, Moravcsik, and Slaughter (2000).

Are democracies more likely to actually follow international legal norms on human rights? According to Joyner (2005), state behavior shows that leaders see international law as real enough and will frequently comply with it. Hill (2010, 1161) finds that while being a signatory to some international treaties may lead to poor regime behavior, being a party to other treaties boosts human rights compliance. Gleditsch (1993, 301) finds stronger evidence that democracies promote human rights better than their more authoritarian counterparts. Thakur (2001, 366) concurs, claiming "increasing democratization will lead simultaneously to an enhancement of human rights and a more peaceful world."

Additional research suggests that international law can also help foster democracy, even when there is domestic pressure on courts to refrain from relying on global standards. "International law was not rejected per se in all areas: In matters having no bearing on this [*sic*] foreign affairs, several national courts were willing to apply international law. National courts' reference to one another's decisions on human rights issues has proved a highly effective tool of cross-fertilization. Anne-Marie Slaughter suggested that '[c]ourts may well feel a particular common bond with one another in adjudicating human rights cases … because such cases engage a core judicial function in many countries around the world'" (Benvenisti 2008, 4; also Slaughter 1994, 103–6). Also, the courts can use such international law to alleviate stress of globalizing forces that seek to undermine democracy from abroad (Benvenisti 2008, 1).

Scheppele (2005) finds the judicial branch may be more apt to guarantee democracy than the legislative branch. Bellamy (2007) makes the case that courts, especially constitutional courts or special courts, may be "a necessary supplement to democracy." With regard to Africa, Widner (2001, 64) concludes "Empirically, in Africa, courts have played a range of roles. In some cases, they have figured prominently in the settlement of conflict and the move to multiparty systems."

Eric Neumayer argues in his article "Do International Human Rights Treaties Improve Respect for Human Rights?" that effective human rights treaties are more likely to be successful in countries with democratic governments and strong civil societies who participate in NGOs. Conversely, he also argues that when these same treaties occur in autocratic countries, it tends to lead to even more human rights violations (Neumayer 2005).

Neumayer applies this thinking directly to a study on African human rights, in which he makes an interesting point. He asserts, "Governments in African countries perceive a strong civil society as a challenge and contest of their mostly autocratic rule, to which they react with more violations of personal integrity rights" (Neumayer 2005). To further complicate things, he finds that "treaty ratification is the more beneficial the more democratic the country" (Neumayer 2005, 949). Therefore, it can be concluded that due to the mostly autocratic nature of regimes in Africa, it less likely it is that there will be a positive effect taken from the passage of human rights treaties on the continent. Overall, Neumayer's (2005) findings support the notion that human rights treaties are most likely to be in effective in democratic countries and not so effective in autocratic countries (where they will likely only make the situation worse).

The ACHPR and Democracy

Just as democracy is emerging in the continent of Africa, so too is the development of this regional court which goes further than most tribunals in the scope of its mission and who can bring a case before it, for those countries who signed the special declaration (Article 5(3) and Article 34). The theory is that respect for regional courts is linked to democratic behavior. This leads to the hypothesis of the theory of transnational courts and freedom.

> *The more freedom a country provides its people, the more likely it is to empower the African Court on Human and Peoples' Rights.*

As a result, the African countries that sign the protocol establishing the African Court on Human and Peoples' Rights will extend more freedom to their citizens than those that do not. Those African countries that also sign the special declaration to the court protocol, enabling its own citizens and NGOs to bring

such cases before the court, will provide even more freedom to their people than those countries that merely sign the ACHPR protocol and only allow the state to be involved in ACHPR cases.

Research Design

Variables

Independent Variable: African Court on Human and Peoples' Rights Empowerment

This variable designates how much power a country gives an individual or NGO to bring a case before the African Court on Human and Peoples' Rights, even against the member state. "Individuals and NGOs cannot bring a suit against a state unless two conditions are met. First, the Court will have discretion to grant or deny such access. Second, at the time of ratification of the Draft Protocol or thereafter, the state must have made a declaration accepting the jurisdiction of the Court to hear such cases" (Mutua 1999, 355).

Okere (1984, 158) tells us the importance of enabling an individual or group to challenge a state in an international tribunal, drawing a difference even between Africa's ACHPR and its counterparts in Europe and America. To determine this variable, the ACHPR site is utilized to distinguish this level of support. The following designation is employed:

Countries received a score of 1 indicate "African Union Member States Which Have Ratified the Protocol and Deposited the Special Declaration of the said Protocol." That means they have signed and deposited Article 5(3) and Article 34 of the ACHPR, enabling individuals and NGOs to challenge the state in court. A "2" means "African Union Member States Which Have Ratified the Protocol." Cases with a "3" are "African Union Member States Which Have Ratified the Protocol but Have Not Deposited the Instrument of Ratification (Meaning Not Yet a Party to the Protocol)." Those with a "4" are "African Union Member States Which Have Not Ratified the Protocol." Finally, the countries with a score of "5" are "Not a Member of the African Union." (ACHPR 2016). These are identified in Table 1.

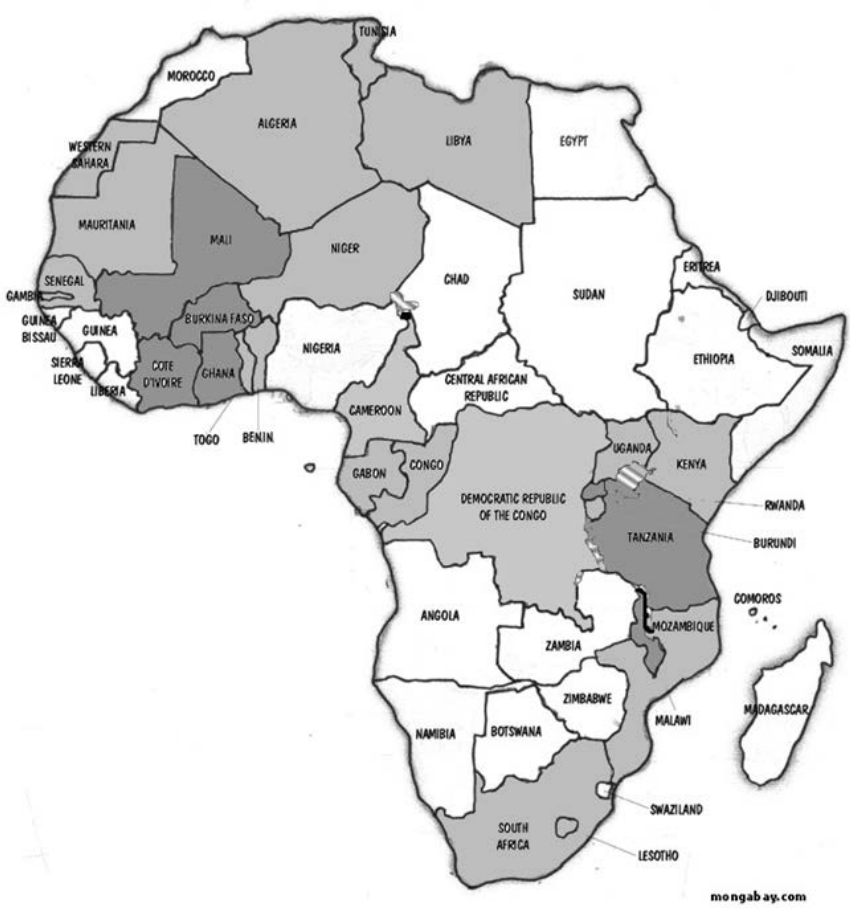
In addition, the countries that have fully enabled the African Court on Human and Peoples' Rights (ACHPR) to have individuals and nongovernmental organizations (NGOs) bring cases to the court (those with a score of 1, which signed and deposited the special declaration, listed in Table 2) are shown in dark gray in Map 1. Those recognizing the court as being able to hear cases with states as parties to the court are in medium gray. The two countries in the lightest gray with stars (the Democratic Republic of Congo and Cameroon) have ratified, but not deposited, their ratification, and received a score of 3.

Table 1: African Countries in Our Sample, and ACHPR Support

African Country	ACHPR
Burkina Faso	1
Ghana	1
Ivory Coast	1
Malawi	1
Mali	1
Rwanda	1
Tanzania	1
Algeria	2
Benin	2
Burundi	2
Comoros	2
Congo, Republic of	2
Gabon	2
Gambia	2
Kenya	2
Lesotho	2
Libya	2
Mauritania	2
Mauritius	2
Mozambique	2
Niger	2
Nigeria	2
Sahrawi Arab Democratic Republic	2
Senegal	2
South Africa	2
Togo	2
Tunisia	2
Uganda	2
Cameroon	3
Congo, Democratic Republic of	3
Angola	4
Botswana	4
Cape Verde	4
Central African Republic	4
Chad	4
Djibouti	4
Equatorial Guinea	4
Eritrea	4
Ethiopia	4
Guinea (Conakry)	4
Guinea-Bissau	4
Liberia	4
Madagascar	4
Namibia	4
Sao Tome and Principe	4
Seychelles	4
Sierra Leone	4
Somalia	4
South Sudan	4
Sudan	4
Swaziland	4
Zambia	4
Zimbabwe	4
Morocco	5[2]

[2] During the time of the analysis, Morocco was not part of the African Union. Morocco and the African Union have since patched up their three-decade-long set of differences, and the North African country is rejoining the AU (Mohamed 2017). However, this event took place in 2017, so it does not affect our analysis, which concluded in 2016.

Map 1: Support for the African Court on Human and Peoples' Rights, 2016[3]



[3] The map was provided by Mongabay.com. The author color-coded the countries based on data from the African Court on Human and Peoples' Rights (2016).

Table 2: Signatories of the Special Declaration of the African Court on Human and Peoples' Rights.

Country	Signed & Deposited Article 5(3) and Article 34 Protocol to the ACHPR
Burkina Faso	1998
Malawi	2008
Mali	2010
Tanzania	2010
Ghana	2011
Rwanda	2013
Cote d'Ivoire	2013

Table 3: Measures of Tendency for Support of the ACHPR

Statistics

African Court on Human and Peoples' Rights

N	Valid	369
	Missing	0
Mean		2.84
Median		2.00
Mode		4
Std. Deviation		1.157

Our analysis of all African countries from 2010 to 2016 produces 369 cases for us to analyze. For reasons why the specific years and countries were chosen, see the next section on the spatial-temporal domain. On the five-point scale for acceptance of ACHPR authority and provisions allowing citizens to challenge states, the mean is 2.84, while the median is 2, and the mode is 4, according to Table 3. This means the average African country is more likely to be split between ratifying the ACHPR and refusing to do so.

As Table 4 shows, a little more than 10 percent of all cases include a country that signed the special declaration (Articles 5(3) and 34), enabling citizens and NGOs to bring cases before the court. Roughly 40 percent of all cases include a country which has approved of the African Court on Human and Peoples' Rights, while a slightly larger percentage have not signed the protocol accepting the court's authority, as you can see in Table 4, and in column form in Figure 1. Two countries (the Democratic Republic of Congo and Cameroon) have not

Table 4: Frequency Distribution for Support of the ACHPR

African Court on Human and Peoples' Rights

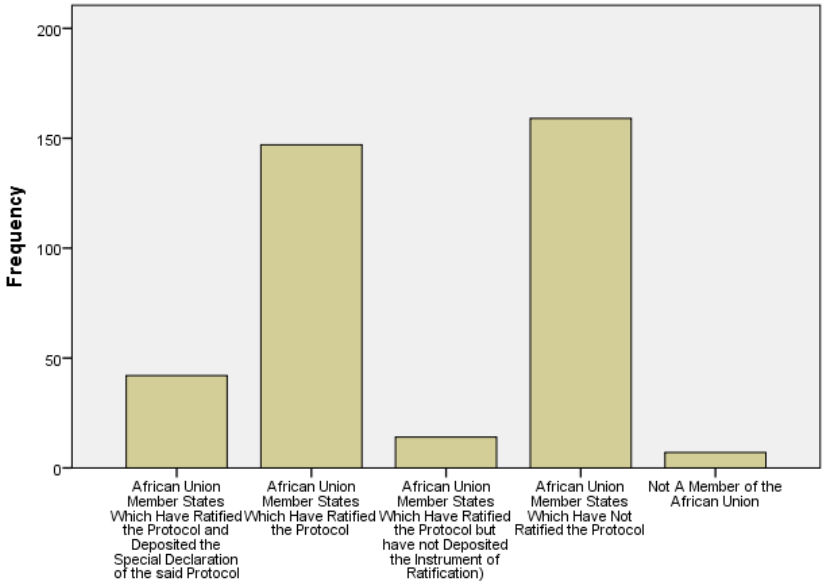
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	African Union Member States Which Have Ratified the Protocol and Deposited the Special Declaration of the said Protocol	42	11.4	11.4	11.4
	African Union Member States Which Have Ratified the Protocol	147	39.8	39.8	51.2
	African Union Member States Which Have Ratified the Protocol but have not Deposited the Instrument of Ratification	14	3.8	3.8	55.0
	African Union Member States Which Have Not Ratified the Protocol	159	43.1	43.1	98.1
	Not a Member of the African Union	7	1.9	1.9	100.0
	Total	369	100.0	100.0	

completed approval of the ACHPR protocol while one in the survey is not an African Union member or court signatory (Morocco), in our survey.

Dependent Variable: Freedom

In order to determine whether a country is experiencing freedom or not, the Freedom House dataset (2016) is employed. Their analysis, *Freedom in the World*, examines a country's political rights and civil liberties in a pair of seven-point scales, with more freedom closer to scores of one and less freedom closer to scores of seven. The measure for political rights examines three subcategories: (1) electoral processes, (2) political pluralism and participation, and (3) the functioning of government. The four civil liberties subcategories include (1) freedom of expression and belief, (2) association and organization rights, (3) rule of law, and (4) personal autonomy and individual rights.

Figure 1: African Court on Human and Peoples' Rights Signatories and Support



Then there is an overall rating. "The average of a country's or territory's political rights and civil liberties ratings" (the Freedom Rating), determines the states of Free (1.0 to 2.5), Partly Free (3.0 to 5.5) or Not Free (5.5 to 7.0)," (Freedom House 2016).[4]

As you can see in Map 2, the modal category for African countries is "not free" for 2016. The mean score for Africa's freedom measure (with freedom being a one, partial freedom being a two, and an unfree country getting a three) is 2.19, showing a definitive trend toward illiberalism.

This information is confirmed by the Freedom House data (2016), showing that 41 percent of all African countries were unfree for 2016 (see Figure 2). Another 40 percent were partly free, leaving only 19 percent of countries as meeting the "free" designation. These few free countries were in West Africa and southern Africa.

[4] More details about what the numbers 1, 2, 3, 4, 5, 6, or 7 mean can be found here: https://freedomhouse.org/report/freedom-world-2016/methodology.

Map 2: Freedom Scores for Africa for 2016

Source: Map from *Freedom of the World,* 2016, Africa.

Figure 2: African Court on Human and Peoples' Rights Signatories

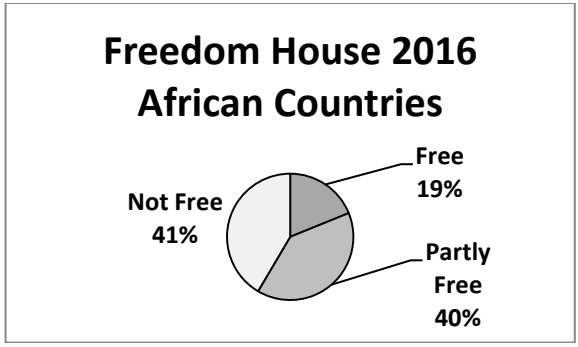


Table 5: Freedom, Political Rights and Civil Liberties in Africa, 2010–2016

Statistics

		Freedom Score, From Freedom House	Freedom House Political Rights Score (1 = Free, 7 = Not Free)	Freedom House Civil Liberties Score (1 = Free, 7 = Not Free)
N	Valid	369	369	369
	Missing	0	0	0
Mean		2.21	4.54	4.31
Median		2.00	5.00	4.00
Mode		2	6	5
Std. Deviation		.733	1.860	1.544

An examination of descriptive statistics shows that countries with lower scores (closer to one) on the ACHPR variable give more power to the regional court. Lower scores on the freedom measures (political rights, civil liberties, and overall freedom scores) mean more respect for the rights of the individual. In other words, a negative relationship indicates country support for the African court, and freedom for the people.

As Table 5 shows, the average political rights and civil liberties score is roughly in the middle of the Freedom House (2016) seven-point scale, with scores slightly leaning toward the less free designation (7). It is the same with the mean of the overall freedom score (2.21), which is closer to unfree (3) than free (1).

Table 5 also reveals that for political rights and civil liberties, the African countries in our survey lean slightly closer to a less free designation than more freedom. The median scores for both measures are actually "partly free," with African countries doing a slightly better job at providing some protection for civil liberties.

Results from Table 6 confirm that the modal category is partly free, though not free cases form Africa are a close second. Among our survey, less than 20 percent are considered free by Freedom House (2016). This confirms the literature cited, which indicates that while democracy in Africa is on the rise, the continent must go a long way before it can be considered to have experienced a democratic wave in recent years.

Table 6: Frequency Distribution for Freedom in Africa, 2010–2016

Freedom Score, From Freedom House

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Free	68	18.4	18.4	18.4
	Partly Free	155	42.0	42.0	60.4
	Not Free	146	39.6	39.6	100.0
	Total	369	100.0	100.0	

Table 7 shows that in the cases of political rights, more cases in our survey lean toward a score of seven, indicating regimes in Africa providing less respect for political rights. Given that sources (Guseh and Oritsejafor 2005) have written about the prior dearth of democracy in Africa, the results do give the reader some reason for optimism about the region.

Like the measure of political rights, Table 8 reveals that more countries in our survey deprive their people of civil rights, rather than enforce such protections. But just as respect for rights are on an upward trend, the same can be said for Freedom House's measure of civil liberties. In fact, the data reveal a slightly better record for protecting civil liberties than political rights.

Table 7: Frequency Distribution for Political Rights in Africa, 2010–2016

Freedom House Political Rights Score (1 = Free, 7 = Not Free)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	23	6.2	6.2	6.2
	2	38	10.3	10.3	16.5
	3	71	19.2	19.2	35.8
	4	32	8.7	8.7	44.4
	5	53	14.4	14.4	58.8
	6	94	25.5	25.5	84.3
	7	58	15.7	15.7	100.0
	Total	369	100.0	100.0	

Table 8: Frequency Distribution for Civil Liberties in Africa, 2010–2016

Freedom House Civil Liberties Score (1 = Free, 7 = Not Free)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	7	1.9	1.9	1.9
	2	52	14.1	14.1	16.0
	3	51	13.8	13.8	29.8
	4	85	23.0	23.0	52.8
	5	90	24.4	24.4	77.2
	6	51	13.8	13.8	91.1
	7	33	8.9	8.9	100.0
	Total	369	100.0	100.0	

Figures 3, 4, and 5 show a graphic representation of the frequency distributions, enabling the audience to see how the African countries in our survey provide or deprive the freedoms of their citizens.

Figure 3: Freedom House Scores for Africa, 2010–2016

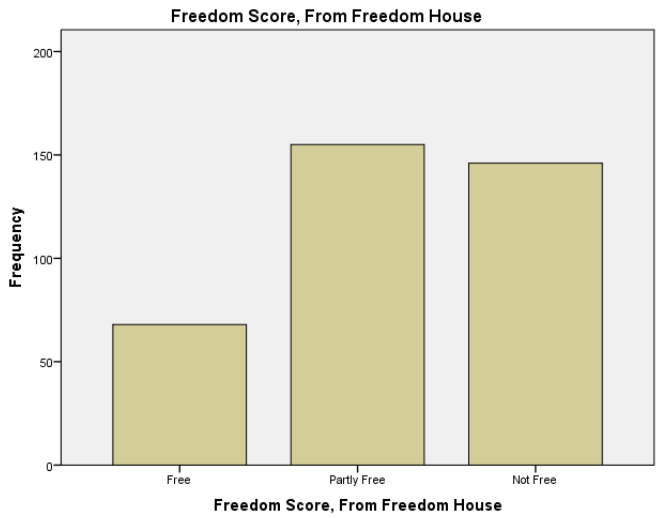


Figure 4: Political Rights Scores for Africa, 2010–2016

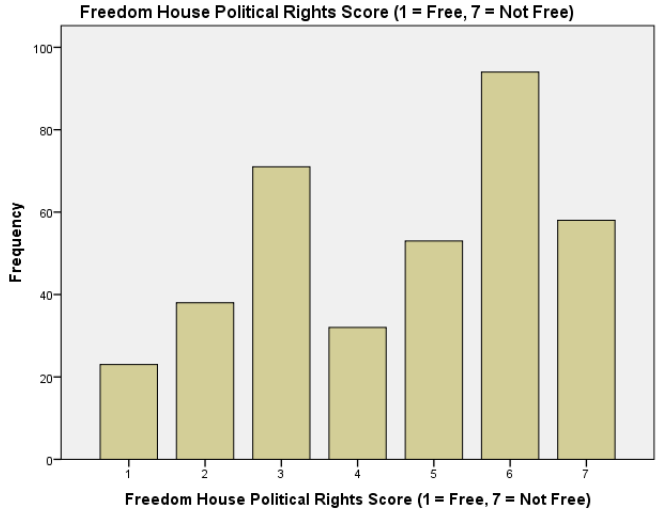
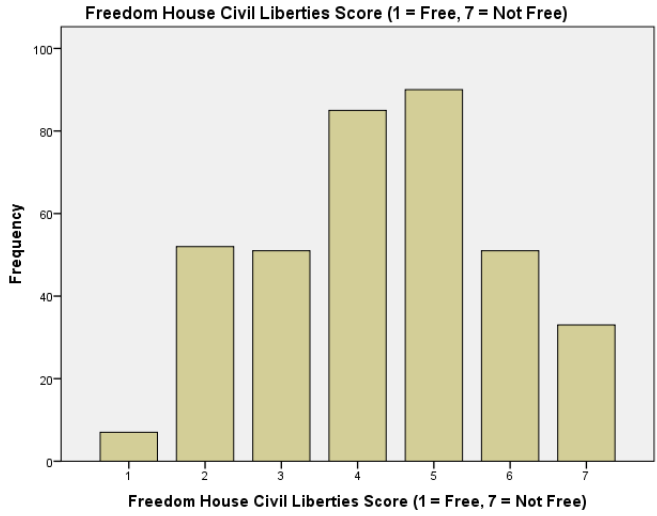


Figure 5: Civil Liberties Scores for Africa, 2010–2016



Spatial Temporal Domain

In order to examine the argument that signing on to the African Court on Human and Peoples' Rights can impact a country's freedom, all 55 African countries were analyzed from 2010 to 2016. Before 2010, only one country had signed on to the ACHPR, but that number grew in Africa, starting in 2010. The unit of analysis is therefore the country-year.

Analysis of the African Court on Human and Peoples' Rights and Freedom

This study evaluates the hypothesis that the more power that countries give the African Court on Human and Peoples' Rights to allow civilians their day before an international tribunal on domestic or foreign concerns, the more likely its government is to respect the freedoms of its people. It tests the idea that as African states not only ratify the ACHPR but empower it to allow people and nongovernment organizations to plead their cases before the court, the greater the chances the country will to protect the civil liberties of its citizens, as well as the political rights of these people. This section reveals the results of these tests.

Bivariate Correlations

As Table 9 indicates, the connection between the independent and dependent variables showed support for a positive relationship. Countries ranking stronger

Table 9: Bivariate Correlations, African Court on Human and Peoples' Rights and Freedom House Scores, 2010–2016

Correlations

		African Court of Human and Peoples' Rights	Freedom House Political Rights Score (1 = Free, 7 = Not Free)	Freedom House Civil Liberties Score (1 = Free, 7 = Not Free)	Freedom Score, From Freedom House
African Court of Human and Peoples' Rights	Pearson Correlation	1	.220**	.233**	.158**
	Sig. (2-tailed)		.000	.000	.002
	N	369	369	369	369
Freedom House Political Rights Score (1 = Free, 7 = Not Free)	Pearson Correlation	.220**	1	.899**	.909**
	Sig. (2-tailed)	.000		.000	.000
	N	369	369	369	369
Freedom House Civil Liberties Score (1 = Free, 7 = Not Free)	Pearson Correlation	.233**	.899**	1	.895**
	Sig. (2-tailed)	.000	.000		.000
	N	369	369	369	369
Freedom Score, From Freedom House	Pearson Correlation	.158**	.909**	.895**	1
	Sig. (2-tailed)	.002	.000	.000	
	N	369	369	369	369

**. Correlation is significant at the 0.01 level (2-tailed).

on giving the ACHPR more power to hear cases of individuals and NGOs against states fared better on the Freedom House measure, as well as subcategories for civil liberties and political rights, from 2010 to 2016. The relationships were significant at or near the .001 level, indicating a very strong likelihood that the results cannot be attributed to chance.

Additional tests on the relationship between support for the African Court on Human and Peoples' Rights and data from Freedom House also reveal a strong connection between the variables, as seen in Table 10. The findings show free and partly free states are more likely to sign the special declaration empowering individuals to take their cases before the ACHPR, while countries that are "not free" are less likely to do so. It is a similar story for signatories of the ACHPR protocol, though not as strong as the results for those that signed the protocol

Table 10: African Court on Human and Peoples' Rights (ACHPR) and Freedom, a Chi-Square Analysis

African Court of Human and Peoples' Rights * Freedom Score, From Freedom House Crosstabulation

			Freedom Score, From Freedom House			
			Free	Partly Free	Not Free	Total
African Court of Human and Peoples' Rights	African Union Member States Which Have Ratified the Protocol and Deposited the Special Declaration of the said Protocol	Count	8	29	5	42
		Expected Count	7.7	17.6	16.6	42.0
	African Union Member States Which Have Ratified the Protocol	Count	31	67	49	147
		Expected Count	27.1	61.7	58.2	147.0
	African Union Member States Which Have Ratified the Protocol but have not Deposited the Instrument of Ratification)	Count	0	0	14	14
		Expected Count	2.6	5.9	5.5	14.0
	African Union Member States Which Have Not Ratified the Protocol	Count	29	52	78	159
		Expected Count	29.3	66.8	62.9	159.0
	Not A Member of the African Union	Count	0	7	0	7
		Expected Count	1.3	2.9	2.8	7.0
Total		Count	68	155	146	369
		Expected Count	68.0	155.0	146.0	369.0

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	55.843[a]	8	.000
Likelihood Ratio	64.859	8	.000
Linear-by-Linear Association	9.173	1	.002
N of Valid Cases	369		

a. 4 cells (26.7%) have expected count less than 5. The minimum expected count is 1.29.

and special declaration. African countries which have not signed the protocol giving authority to the ACHPR are more likely to be unfree, and less likely to be free or even partly free. The results are significant at the .001 level, indicating that the chances that the null hypothesis of no relationship is accurate are slight, at best. This provides potential evidence of a strong connection between the ACHPR and freedom in the contemporary sample of African countries.[5]

A Special Note about Rwanda and Benin

It is worth noting that Rwanda has given its notice that it intends to leave the African Court on Human and Peoples' Rights (ACHPR) shortly, while Benin has indicated that it plans to ratify the special protocols enabling people and NGOs to bring cases to the court, even against their own regime (ACHPR 2016). Rwanda is a "not free" country in 2016, and Benin is recognized as free by Freedom House today. This should strengthen the relationship in the future between endowing the court with rights to hear certain cases involving citizens and NGOs, and freedoms that a country provides.

Conclusion

Lessons Learned

In this article, we looked at the global and regional debate over universalism or the applicability of human rights law in nearly all contexts, and cultural relativism, which means certain regions have different conceptions of rights or varying ideas of how to enforce them. The African Court on Human and Peoples' Rights (ACHPR) provides the balance between universalism and cultural relativism. It employs human rights law, derived in Africa from many peoples, based on international standards, with that "Afrocentrism" perhaps missing from international law and international courts (Cobbah 1987, 331). No longer can the leaders of African states legitimately claim "cultural relativism" anymore as a defense for acts that have nothing to do with the culture of any African country (Donnelly 1984, 411).

"The polarized debate over the universality or cultural relativity of human rights seems to have given way in recent years to a broad consensus that there is indeed a set of core human rights to which all humanity aspired," writes Ibhawoh (2000, 838). He adds that "Adaptation and integration must be done in

[5] It should be noted that similar chi-square analyses on the subcategories of respect for political rights, and respect for civil liberties, and ACHPR support, also yield statistically significant relationships, despite the additional degrees of freedom from the expanded categories (seven-point scales in each case).

a way that does not compromise the cultural integrity of peoples" (Ibhawoh 2000, 839). That is what the court can do: provide an African enforcement of universal charters which so many regional cultures believe in, keeping such enforcement from being seen as being an imposition from beyond the continent.

As for our analytical research, we have discovered that the African Court on Human and Peoples' Rights (ACHPR) can be a positive force for democracy in Africa. After decades of skepticism about international law as a force for neocolonialism, African countries saw the importance of prosecuting those who abuse the rights of their people, such as the massacre in Rwanda. But concerns about the International Criminal Court (ICC) only targeting African people has led countries to leave or express skepticism about whether their country should remain in the ICC. A solution is the ACHPR, which provides an "African solution" by having locals try cases involving regional rules being broken. While there is concern when a country like South Africa announces their intention to leave the ICC, there is an alternative on the continent that can pick up the slack. And its connection to fostering liberal democracy, not just elections, is the key finding of this research project.

As Lumumba-Kasongo (2007, 132) observes, "International organizations and agencies, foreign governments, human rights organizations, international and regional research institutes, and policy centers should continue to support genuine democracy and democratic practices by working through close-collaboration and partnerships with local and grassroots organizations." It is also clear that they should be working with effective institutions like the African Court on Human and Peoples' Rights in Tanzania, which clearly cultivate expression of freedom.

Future Directions

There is more research to be done on the ACHPR. First of all, it would be interesting to see if Article 5(3) and Article 34 cases result in the individual or the government prevailing. Also, what is the track record for enforcement by the ACHPR? How does it compare to the results of the UNICTR (2015)?

Certainly, other factors need to be analyzed to see if there is a connection to both ratifying the ACHPR and the country's rights record on economic and social variables. For example, we could look at a country's economic and human development to see if another pattern emerges. Links between the ACHPR and other measures of democracy that look at different factors, like elections (Vanhanen 1992) and institutional characteristics, like Polity data (McLaughlin et al. 1998).

Moreover, just as the African Union was motivated to create this special court based on the experience of regional tribunals in Europe and the Americas (Okere 1984, 158), so too could the African Court spur the formation of other

regional courts where such enforcement is lacking, like East Asia (Mutua 1999, 353) or the Middle East.

But this research project is more than just an exercise in gathering sources, data entry, and statistical analyses. It is to also determine whether such a court as the ACHPR is worth supporting or not. Western countries, with money to spend on democracy promotion, typically think of the state, rather than regimes and institutions that could help protect a country's fledgling or emerging republics. As the evidence shows, some of those millions might be better spent supporting a court instead of solely upon a country and its state. It may also encourage other countries to sign the treaty protocol for the court in the first place, or (if signed) ratify the special declaration (Articles 5(3) and 34) allowing people and subnational groups their chance at a balanced trial.

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