International Journal of Law in Context (2023), **19**, 352–366
doi:10.1017/S1744552323000046

ARTICLE

The African Court on Human and Peoples' Rights: forging a jurisdictional frontier in post-colonial human rights

Maria A. Sanchez*

Assistant Professor of Political Science, Colorado College, Department of Political Science, Colorado Springs, USA
*Corresponding author. Email: marsanchez@coloradocollege.edu

Abstract
The African Court on Human and Peoples' Rights (ACtHPR) was finally established in 2004 after decades of negotiations. Despite forty years of resistance from governments who were reluctant to sacrifice sovereignty to a supranational body, the African Charter on Human and Peoples' Rights and its Protocol grant the ACtHPR far-reaching authority relative to other regional human rights courts. How did the ACtHPR end up with an expansive jurisdiction that is unprecedented among regional courts? This analysis proposes that legal experts' ability to capture control over vital stages in the drafting of the African Charter and Protocol, thus limiting the influence of political advisors, yielded an institutional design that facilitated the ACtHPR's unique mandate. Furthermore, colonial legacies in newly-independent states pushed the founders of the African human rights system to envision an innovative, post-colonial human rights framework that integrated a wide-reaching spectrum of civil, political, economic, social and cultural rights.

1 Introduction

Regional human rights systems are increasingly recognised as the vanguards of international human rights law. Through regional courts' power to issue legally-binding judgements, regional human rights systems have become more deeply embedded in domestic law than the global United Nations-based system (Huneeus and Madsen 2018, p. 137). Divergences across the European Convention on Human Rights, American Convention on Human Rights, and African Charter on Human and Peoples' Rights have consequential implications for the conditions under which states can be held accountable for human rights violations. The African Charter (the youngest of the three treaties) includes a broad range of economic, social, and cultural rights which are absent from the European and American Conventions. Furthermore, the Protocol to the African Charter, which established the African Court on Human and Peoples' Rights (ACtHPR), contains remarkably few limitations on the Court's jurisdiction. For example, while the European and American Conventions impose constraints on their regional courts' temporal jurisdictions (the time period during which an alleged rights violation must have occurred for the court to admit the complaint), the African Charter and Protocol include no such constraints. Moreover, the Protocol extends the jurisdiction of the ACtHPR beyond alleged violations of the African Charter to include disputes concerning *any other human rights instrument* ratified by the state in question, including UN treaties. No other regional court has this authority. The ACtHPR's expansive mandate is especially puzzling given pervasive reluctance among post-colonial African governments in the mid-late 20th century to sacrifice their hard-won sovereignty to international institutions. How did the ACtHPR end up with an expansive jurisdiction that is unprecedented among regional courts?

The question of why states agree to delegate power to international institutions has been extensively addressed by existing scholarship. Most explanations emphasise the incentives that states have to join such agreements, which can outweigh the 'sovereignty costs' incurred by accession. These incentives

for states include signalling credible commitments to their domestic publics and/or to other states, pooling resources to resolve collective action problems, and providing political cover for domestically-unpopular policies. However, explanations centred on state incentives are inadequate to understand the expansive power delegated to the ACtHPR through the African Charter and Protocol. Governments exhibited remarkable disinterest in participating in the drafting of those documents, with most contributing little to no substantive feedback until towards the end of negotiations. Additionally, while state-centric theories of delegation may help explain why certain states made the decision to ratify the African Charter and/or the Protocol, these theories cannot tell us much about why those treaties included specific rights obligations and jurisdictional criteria that gave the ACtHPR its expansive formal authority.

In order to understand those outcomes, we need to analyse two variables that are afforded insufficient attention in the delegation literature: 1) the level of involvement of legal professionals relative to political advisors in negotiations to draft international treaties, and 2) the prevalence and recency of colonial occupation among participating member states. First, we need to take a closer look at the actors who play important roles in drafting international treaties. I propose that governments' disinterest and/or lack of resources to participate in the negotiations to draft the African Charter and Protocol allowed legal professionals to capture control over vital stages in those drafting processes. The limited role of politicians and political advisors relative to legal professionals in the drafting negotiations resulted in agreements that imbued the ACtHPR with a distinctly far-reaching authority. Second, the recent colonial history of most of the African human rights system's founding member states left scars that pushed the founders to re-think what human rights look like. The formidable list of economic, social, and cultural rights, as well as civil and political rights codified in the African Charter is the result of deliberate efforts by African jurists, lawyers, and politicians to pioneer a post-colonial human rights framework. The traumatic legacy of colonialism also contributed to African governments' reluctance to delegate powers to a regional human rights system in the mid-late 20th century. This reluctance is observable in the drawn-out, decades long process to adopt the African Charter and Protocol, as well as 'claw-back provisions' written into the African Charter that limit the scope of some of its rights protections. Attention to the unique histories of founding member states and the relative influence of various actors in drafting international treaties can shed crucial light on why states agree to delegate more or less authority to international institutions.

This paper will first review the literature on delegation to international institutions and make a case for why scholars should afford greater attention to the role of legal bureaucrats in international negotiations. Next, through historical analysis of the processes of drafting the African Charter and Protocol, I will seek to explain the driving roles of legal professionals and post-colonial narratives in moulding the innovative institutional framework of the African human rights system. Our ability to infer the interests of the individual actors who created that system is limited by the lack of surviving *travaux préparatoires* detailing the conferences at which the African Charter and Protocol were drafted. Still, available conference records and analysis of critical turning points in the negotiations provide important insight into the factors that facilitated the African human rights system's extraordinary mandate. The final section concludes.

2 Delegation to international institutions

International agreements (and the institutions that enforce those agreements) are first and foremost created to serve state interests. The powers that founding member state governments ex ante delegate to an international institution form a menu of options that constrain that institution's authority. The literature on delegation to international organisations (IOs) provides explanations for why states agree to be bound by international obligations and transfer certain powers to external authorities. Beginning from the assumption that states are rational, self-interested actors, the delegation literature predominately asserts that states only sacrifice their sovereignty to IOs when doing so benefits national interests. This is most clearly articulated in principal-agent (P-A) theories, in which states are conceptualised as 'principal' actors who create IOs to serve as 'agents' for the fulfilment of collective objectives. IOs help

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

states achieve common goals by lowering the transaction costs associated with policy-making, assuaging information asymmetries between state and non-state actors, and providing forums in which states can make credible commitments to one another (Pollack 2007, Guzman 2008). Principals generally seek to constrain agents' exercise of independent discretion in order to ensure that agents act in accordance with principals' preferences. Through codifying rules and procedures that direct IO operations and incentivising adherence to those rules, states can ex ante constrain IOs' actions, at least to some extent (McCubbins *et al.*, 1987).

States must weigh the benefits of delegating authority to an IO against the costs of weakened policy autonomy. P-A theories assume that, when mechanisms of state control over an IO's autonomy are strong, the commitment embodied by delegation to that IO will be less credible, and vice versa (Voeten, 2013). Following from this logic, if the barriers for commitment between member states are high, those states will delegate more authority to the IO to enhance the credibility of their collective commitments. In other words, when states suspect that others will cheat on agreements, or when uncertainty abounds about future developments, states will derive greater benefits from delegating authority to an IO to make enforcement of an agreement more likely. If the barriers to commitment between member states are lower, meaning that founding member states expect that they will generally uphold their commitments to one another, those states will prefer to keep the IO's decision-making powers limited in favour of preserving their own sovereignty (Abbot and Snidal, 2000; Mansfield and Pevehouse, 2006; Stone Sweet and Brunell, 2013). States use delegation to IOs not only to make credible commitments to other states, but to their own domestic publics as well. For example, Milner (2006) finds that democracies are more likely to delegate the distribution of foreign aid to IOs when voters lack trust in their government to distribute aid according to public preferences.

There is evidence that regime type influences the barriers to commitment between states and consequently drives the level of state delegation to IOs. For example, Koremenos (2008) finds that established democracies are less inclined to delegate power to IOs. She suggests that states with more tumultuous recent political histories may face internal commitment problems that make it difficult for them to credibly commit to future cooperation, and thus more open to delegating authority to an IO (154). This logic is supported in Simmons and Danner's (2010) study of state delegation to the International Criminal Court (ICC), in which the authors find that the least democratic states with the weakest reputations for respecting the rule of law were the most likely to ratify the Rome Statute (the constitutive document of the ICC) the quickest, despite the Statute's high 'sovereignty costs'. The authors propose that the states that most severely lack dependable domestic mechanisms for holding officials accountable are the most likely to seek out ways to commit to alternative mechanisms for doing so.

Transitional democracies might be particularly eager to commit to supranational accountability mechanisms. There is evidence that transitional democracies are more likely to seek membership in international human rights organizations than both autocracies and established democracies (Moravcsik, 2000), and furthermore that transitional democracies are particularly likely to seek membership in international human rights courts (Hafner-Burton *et al.*, 2015). This phenomenon may be a result of the relatively high sovereignty costs that these ICs are theorised to impose on member states, which signals a credible commitment to improving human rights protections (2).

These findings indicate that the regime type composition of an IO's founding member states likely influences the level of delegation to that IO. However, theories of delegation that hinge on credible commitment signalling cannot tell us anything about why states seek to impose specific substantive or procedural boundaries on an IO's authority during the institutional design process. To address that issue, we must move beyond P-A theory to better understand why states delegate certain levels of authority to international actors.

3 De-constructing 'the state' to explain delegation to IOs

Two significant limitations of P-A theories of delegation are that 1) these theories 'black box' both state principals and IO agents, ignoring internal characteristics of the various actors who comprise

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

states and IOs and 2) these theories lack attention to third-party interventions in the principal-actor relationship, for example, the roles of NGOs or other non-state actors in negotiating international agreements (Pollack 2007). Third parties can provide exclusive information to principals which structure the alternatives that principals choose between when deciding whether and how to delegate power to an agent. Third parties often also engage in activism to interject new policy incentives into the principal-agent relationship. For example, 'transnational advocacy networks' comprised of NGOs and international and domestic activists serve as consequential sources of pressure on states and IOs to uphold the interests of marginalised constituencies (Keck and Sikkink, 1998; Zippel, 2004; Novak, 2020).

P-A theories' simplifying assumptions are helpful in that they allow scholars to construct generalizable, mid-level theoretical models of delegation. However, these assumptions render P-A theories insufficient to generate complete explanations of particular delegation behaviours and the mechanisms linking those behaviours to specific legal and political outcomes. For example, domestic obstacles to committing to respect human rights may compel a state to join an international human rights agreement to enhance the credibility of that commitment. While informative, this explanation tells us little about why states agree to be bound by specific rights obligations. Nor can it explain how the institutions that are created to enforce those agreements, (for example, international courts) are designed. Drafting an international agreement and designing an institution to enforce that agreement require the participation of legal advisors who have specific expertise in international law. Given their professional backgrounds, these legal advisors may or may not be particularly concerned with accommodating state political interests. Legal professionals occupy a unique position of power mediating the principal-agent relationship that cannot be accounted for in theories that assume that states, as unitary actors, delegate authority to international institutions. This paper addresses the delegation literature's disproportionate state-centrism by incorporating analysis of the various sub-state and non-state actors who participated in negotiations to draft the African Charter and establish the ACtHPR.

Deitelhoff's (2009) study of the negotiations to draft the Rome Statute productively melds a rationalist logic of delegation with constructivist attention to diverse actor attributes and normative incentive structures. Deitelhoff describes a process in which the interests of the most powerful of the ICC negotiating states were eventually subverted through normative appeals made by small and middling powers, assisted by NGOs, to delegate greater authority to the Court. Due to the level of legal expertise required to draft the Rome Statute, the majority of delegates that states sent to the ICC negotiations were legal advisors, while political advisors made up the minority in most delegations (54–5). Initially, the negotiations were dominated by a major power coalition that favoured strong requirements for state consent to jurisdiction and extensive Security Council oversight of the Court. However, Dietelhoff identifies a turning point when a lesser power coalition rapidly gained support by consolidating a narrative that framed the ICC negotiations as an unprecedented opportunity to create a court capable of overriding dominant power interests. In spite of contradictory pressure applied by the US, the lesser power coalition persuaded a sufficient number of previously uncommitted states, and the majority of the coalition's demands were incorporated into the final Rome Statute. This previously uncommitted group primarily comprised transitional states in Africa, Latin America, and Central and Eastern Europe. Those states' delegations lacked the resources to be fully present during the drafting conferences and consequently had low rates of participation in the earlier stages of negotiations before they were targeted for greater involvement by the lesser-power coalition (50–55).

Dietelhoff's study indicates that the final level of authority delegated to the ICC was not merely a function of barriers to commitment between states of diverse regime types, or a result of unstable regimes seeking to signal enhanced commitments to human rights for the purpose of bolstering their reputations. Rather, the high level of delegation incorporated into the ICC's institutional design came about because particular actors, mostly legal advisors in delegations from less-powerful states, sought to create a highly legalised regime whose authority could transcend the influence of dominant state political interests.

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

The legal professionals who participate in drafting international agreements and designing international courts can be considered 'international bureaucrats', a group of actors whose participation in global politics has emerged as an important but understudied area in the field of international relations. International bureaucrats are distinguished from political actors who represent states in diplomatic settings by the fact that international bureaucrats derive their legitimacy not from their ability to execute state interests but from their technical expertise and independence from political forces. Several scholars have argued that international bureaucrats play an integral role in IO design and development that is often more independent from state interests than rationalist theories of international delegation predict (Barnett and Finnemore, 1999; Reinalda and Verbeek, 2004; Vaubel, 2006). Tana Johnson (2014) documents how international bureaucrats working in pre-existing IOs often use the institutional design process to insulate new IOs from states' interference. This has resulted in international bureaucrats' increasing influence in IOs since the mid-20th century. Johnson notes that this phenomenon may not extend to IO design negotiations that involve a highly capable group of states that do not face technical challenges, a lack of resources, or severe collective action problems. In other words, negotiation delegations from technically capable, wealthier states are less likely to lose control over the negotiations and cede negotiating power to international bureaucrats (13). Aforementioned scholarship has argued that high delegation to IOs amongst transitional states is driven by those states' political desire to signal a credible commitment to the international community. Dietelhoff and Johnson's findings suggest another explanation: transitional states may tend to delegate greater power to IOs because legal bureaucrats can use openings created by those states' lack of resources and internal disorganization to capture control over the process of founding IOs and negotiating state accession.

Building on this suggestion, I propose that legal bureaucrats have greater opportunity to capture control over delegations from transitional states whose political advisors lack the resources, organizational capacity, or perhaps simply the political will to fully participate in negotiations to draft international agreements. By virtue of their professional backgrounds and expertise in international law, legal bureaucrats who participate in establishing international institutions are likely more inclined than state executives and political advisors to favour creating institutions with broad legal authority over member states. Thus, the written mandates of international courts whose founding membership consists primarily of transitional states will be relatively more expansive compared to the written mandates of courts whose founding membership consists primarily of established democracies. While the following analysis focuses on evaluating this argument with regard to the African Court on Human and Peoples' Rights, extending it to the creation of other international agreements represents a promising avenue for future research. In particular, this article's conclusions may help explain the wider-reaching scope of the American Convention on Human Rights (and corresponding jurisdiction of the Inter-American Court), which was established by a diverse mix of regimes including a significant proportion of transitional and unstable states, relative to the narrower mandate of the European Court of Human Rights as outlined in the European Convention, whose founding membership consisted primarily of established democracies. The American Convention protects twenty-three distinct rights, compared to the thirteen rights protected by the original European Convention.[1]

4 Drafting the African Charter on Human and Peoples' Rights

The first proposal for an African human rights treaty and corresponding court emerged during the 1961 African Conference on the Rule of Law in Lagos, organised by the International Commission

[1]The protection of property, codified in the original American Convention, was not codified in the original European Convention but incorporated through Protocol 1 shortly afterwards, in 1952. The freedom of movement, similarly included in the American Convention but not the original European Convention, was incorporated in the European Convention through Protocol 4 in 1963. These amendments to the European Convention narrowed the substantive rights differential between the two systems to 23–15 at the time of the Inter-American Court's founding.

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

of Jurists. The conference was attended by 194 judges, lawyers, and legal scholars from 23 African countries and nine other states. The 'Law of Lagos' Declaration adopted at the conference implored African governments to adopt a regional agreement on human rights and create a human rights court (GICJ 1961, p. 11). Most of the African lawyers who first envisioned a regional human rights system hailed from nations that had only recently achieved independence from their European colonisers.[2] These lawyers were acutely aware of the challenges that the continent's colonial legacy posed for creating a human rights system. Proposing that governments abdicate any level of newly-won sovereignty to a supranational organization was deeply controversial (Ouguergouz, 2003, pp. 82–83). Still, the post-independence era was marked by eagerness on the part of African lawyers and statesmen to join the international legal community on their own terms.

Discussions at the African Conference centred around how to enter this community while navigating the 'juxtaposition of an indigenous and a European law of persons' (Chitepo, 1961, p. 71). Conference attendees asserted the imperative for African countries to reform their inherited colonial legal systems to incorporate local legal traditions and achieve representative democracy (Wade, 1961, pp. 56–68). However, conference attendees did not advocate abandoning these inherited systems as colonial relics. Rather, these lawyers emphasised the philosophical compatibility of so-called Western 'rule of law' values with 'African ideas of law and justice' (Elias, 1961, p. 54). The central debates of the conference focused on how to foster a coherent conceptualization of the rule of law, rooted in individual human rights protections, that could be translated across the diverse legal systems and local political structures of African states. Those debates indicate support for a proposal that would draw from the general frameworks of the European and Inter-American models to create an African treaty on human rights and a corresponding human rights court (LaLive, 1961, pp. 5–6).

The founding of the Organization of African Unity (OAU) by thirty-two states in 1963 created an opening to establish a regional human rights system under the auspices of that organization. However, OAU governments showed little interest in a such a project. Rather, discussions on creating an African human rights regime continued to be primarily instigated by the UN, international NGOs, and African jurists. At a 1966 UN-sponsored conference in Dakar primarily attended by African judges, members of ministries of justice, law professors, and legal advocacy groups, participants proposed creating a two-tier human rights system within the OAU mirroring the European Commission and Court of Human Rights (United Nations, 1966, pp. 239–241).[3] Conference records indicate a consensus supporting this proposal in theory. However, several participants voiced scepticism about the feasibility of establishing such institutions, emphasising that African governments, 'so recently freed from the colonial yoke, were particularly jealous of their sovereignty' (*ibid.*, para. 241).

This conversation continued at a second UN conference in Cairo in 1969. Participation at the Cairo conference was more evenly split between African jurists and low-level government diplomats (United Nations 1969).[4] The general idea of an African human rights commission enjoyed broad support among conference attendees, who concluded that such an institution 'could greatly enhance Africa's international and moral image' (*ibid.*, para. 39). However, attendees disagreed regarding the specific responsibilities that states should delegate to the commission. Most attendees agreed that the commission should perform educational outreach, conduct research studies, and offer advisory opinions to states as to how to promote human rights. In addition, several attendees argued that it was 'essential' that the commission possess authority to investigate the facts of specific cases of alleged human rights violations and issue decisions on such cases. However, others objected that fact-finding and dispute-resolution powers encroached on national sovereignty and risked making African governments even more fearful of outside intervention. A compromise was proposed wherein fact-finding and dispute resolution powers could be written into the commission's constitutive document as

[2]In fact, Nigeria, the state in which the conference took place, officially achieved independence only three months before the conference!

[3]See pages 1–6 for a full list of conference participants.

[4]See pages 20–25 for a full list of conference participants.

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

optional provisions (*ibid.*, paras. 19–37). This proposal was consistent with the European and Inter-American systems at the time, in which states could opt-in to allowing individual citizens to submit petitions to their respective Commissions. However, conference attendees were unable to come to an agreement on this matter, rendering further discussion of a regional court out of the question. The Cairo conference ended with few concrete results aside from vague pledges to appeal to OAU governments to support a regional human rights commission (*ibid.*, para. 65). Those appeals fell on deaf ears, and the fledgling human rights project stalled for almost a decade.

In response to growing pressure from African and international human rights organisations stemming from unchecked rights abuses in the region, the OAU convened a 'meeting of experts' in Dakar to compose a preliminary draft of an African human rights treaty in 1979 (Heyns, 2004, 685). This meeting was primarily attended by African legal experts, with limited participation from government diplomats (OAU Secretary-General, 1981). While the legal experts charged with drafting the treaty sought inspiration from the European and Inter-American Conventions, meeting records indicate a collective sentiment that the European and American models were insufficient for the African context. This sentiment was particularly strong in reference to the framework of the European Convention on Human Rights. The hubris of Europeans purporting to pioneer the concept of global human rights in the 1940–50s while still holding African colonies featured prominently among discussions at the Dakar conference. In his address opening the Dakar conference, Senegalese president Leopold Sedar Senghor recounted his personal experience with the hypocrisy of the European human rights project. Senghor had been a member of the French parliament when the European Convention on Human Rights was drafted and adopted. Senghor recalled advocating for the automatic application of the Convention to European states' colonial territories, only to be met with rejection by his French colleagues (Senghor, 1979, 78–79). Thus, from the very first words uttered at the Dakar conference, the African human rights charter was framed as an explicit rejection of the European model that had historically denied the humanity of Africans.

Still, Senghor was careful not to exclusively blame European colonialism for the ongoing repression of human rights in the region: 'Unfortunately, independent Africa can hardly teach a thing or two on human rights. Let us admit our weakness. It is the best method of getting over it' (*ibid.*). Senghor set the stage for a conference that would prioritise the unique needs of OAU member states while incorporating elements of the two existing regional human rights systems:

> 'You have therefore to be careful that your Charter may not be a Charter of the right of the "African Man" … There is neither frontier, nor race when the freedoms and the rights attached to the human beings are to be protected. That does not mean that we have to give up thinking by ourselves and for ourselves. Europe and America built up their system of rights and freedoms by referring to a common civilization: to their respective peoples and to specific aspirations… As Africans we shall neither copy, nor strive for originality, for the sake of originality… We could get inspirations from our beautiful and positive traditions. Therefore, you must keep constantly in mind our values of civilization and the real needs of Africa.' (*Ibid.*)

The African Charter on Human and Peoples' Rights is an unprecedented instrument of international law in that it not only codifies 'rights' that governments must guarantee to people within their territory, but also 'duties' that individuals have to their families, communities, and nations. Senghor's speech indicates that this innovation was the result of reflection on how the African human rights system could be grounded in local traditions and philosophies:

> 'In Europe, human rights are considered as a body of principles and rules placed in the hands of the individual, as a weapon, thus enabling him to defend himself against the group or entity representing it. In Africa, the individual and his rights are wrapped in the protection the family and other communities ensure everyone… Therefore, contrary to what has been done so far in other regions of the world, provision must be made for a system of "Duties of Individuals," adding harmoniously to the rights recognized in them by the society to which they belong and by other men.' (*Ibid.*)

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

The Dakar conference institutionalised a conceptualisation of human rights as shared responsibilities, in contrast to a 'Western' view of human rights as a contract between the state and individuals. This contribution marks a major development within regional human rights law, illustrating the possibilities for alternative, post-colonial human rights frameworks.

A central innovation of the African Charter is that the drafters managed to craft an agreement that includes an unprecedentedly broad range of civil and political as well as social, economic, and cultural rights provisions. The Europeans had largely rejected the inclusion of social, economic, and cultural rights in their Convention. Such rights featured prominently in early drafts of the Inter-American Convention, but were ultimately watered-down substantially to make the agreement more palatable for governments (Cabranes, 1968, 897–899). The drafters of the African Charter thus accomplished what the Americans attempted but could not quite pull off: an agreement that placed civil, political, social, economic, and cultural rights under a single monitoring and enforcement system. It is this focus on economic, social, and cultural rights that motivated the drafters to include the phrase 'Peoples' Rights' in the title of the Charter. Here again, President Senghor's words are illuminative: 'We simply meant … to show our attachment to economic, social and cultural rights, to collective rights, in general, rights which have a particular importance in our situation of a developing country … Our overall conception of human rights is marked by the right to development.' (Senghor, 1979, 78). Particularly given that negotiations to adopt an international treaty on the right to development at the UN level have been ongoing since the 1970s without any finalised agreement, it is remarkable that the drafters of the African Charter were able to successfully foreground this right in 1979.[5]

Unfortunately, no *travaux préparatoires* of the African Charter exist (Akinyemi, 1985, 223). As such, it is impossible to know the compositions, interests, and contributions of specific states' delegations to the Charter drafting conference. The Dakar draft of the Charter was taken up during discussion at the OAU Ministerial Meeting in Banjul in 1980. The draft was finalised at Banjul with only minor language amendments (Heyns, 2002, 94–105). The African Charter on Human and Peoples' Rights was formally adopted by the OAU Assembly in 1981 in Nairobi, Kenya. The adopted Charter felt short of aspirations to establish an African human rights court.

The Charter did provide for the establishment of an African Commission on Human and Peoples' Rights, which had a vague mandate to 'promote human and peoples' rights … collect documents, undertake studies. organise seminars, symposia, and conferences … to formulae and lay down, principles and rules aimed at solving legal problems related to human and peoples' rights … and interpret all the provisions of the present Charter at the request of a State Party, and institution of the OAU or an African Organisation recognised by the OAU' (Art. 45).

Without the *travaux*, it is impossible to know why either the drafters at Dakar or the ministers at Banjul did not choose to establish a human rights court, as had been proposed at previous conferences. Christof Heyns, a predominant historian of the African human rights system, notes two potential explanations for the lack of a regional court in the finalised African Charter. First, an 'idealistic explanation' rooted in 'traditional' African conceptualisations of dispute resolution as best achieved through mediation and conciliation, as opposed to through adversarial legal processes. Second, there was a perception that, bearing the scars of colonialisation, OAU member states were fiercely protective of their sovereignty and not prepared to subject that sovereignty to a supranational court (Heyns, 2004, p. 686). The African Charter finally came into force in 1986. The African Commission on Human and Peoples' Rights was established shortly thereafter.

5 Establishing the African Court on Human and Peoples' Rights

Proposals for the creation of a court to complement the work of the African Commission languished for over a decade after the adoption of the African Charter. Finally, a post-1989 wave of

[5]See the most recent UN draft convention on the Right to Development, from May 2020. Available at https://www.ohchr.org/sites/default/files/Documents/Issues/Development/Session21/3_A_HRC_WG.2_21_2_AdvanceEditedVersion.pdf.

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

democratisation and increasing international attention to human rights concerns in the region contributed to the revival of the court project in the early 1990s. In 1994, the Assembly of the Heads of State and Government of the OAU adopted Resolution 230, which called for the convocation of a Meeting of Experts to once again explore the possibility of a regional human rights court. The resolution text indicates that the primary factors motivating renewed interest in the court project were a collective awareness of the institutional weaknesses of the African Commission and deteriorating human rights conditions in OAU member states.[6] The International Commission of Jurists, which had submitted the first proposal for an African regional court back in 1961, renewed its efforts in the early 1990s to campaign for state approval of the court project. The International Commission of Jurists worked closely with the African Commission and human rights NGOs to build a coalition of actors who could pressure OAU governments to support the court project (Ouguergouz, 2003, p. 85).

In accordance with Resolution 230, government legal experts met in Cape Town in September 1995 to deliberate the draft text of a protocol to the African Charter that would establish a regional human rights court. This draft protocol had been composed in collaboration with the International Commission of Jurists, the African Commission, and the OAU Secretary-General. The Cape Town conference was attended by fifty-six legal experts from twenty-three OAU member states, along with observers from various NGOs and international organisations (Ouguergouz, 2003, p. 85). The draft protocol adopted by the legal experts at Cape Town was then submitted to OAU member states, with the intention that governments would submit comments that could be discussed at a June 1996 Assembly meeting. By June, however, only three states (Burkina Faso, Lesotho and Mauritius) had responded to the request for comments. Consequently, the OAU Council of Ministers decided to defer the discussion and re-circulate the draft to member governments in the hope of receiving more feedback. This cycle repeated again with minimal responses (*Ibid.*, p. 86). Finally, it was agreed that a second meeting of legal experts should take place in April 1997 in Mauritania to discuss the draft protocol. The revised draft that resulted from this meeting, named the 'Nouakchott Protocol', was then circulated to governments for commentary. Once again, the OAU Council of Ministers deferred discussion of the draft due to a lack of government response or enthusiasm. At that point, only 20 of the OAU's then fifty-four member states had provided comments on the draft Protocol (*ibid.*, p. 87). Given the proliferation of democratic transitions across the continent in the early 1990s, it is possible that domestic preoccupations and stretched-thin resources precluded sufficient member state involvement in the negotiations to establish an African court. Perhaps, as the question of the court had been debated within various OAU bodies for over thirty years at that point with no court actually being created, governments did not feel that it was worth investing diplomatic resources to either support or oppose a project that looked unlikely to come to fruition.

The OAU Council of Ministers eventually deduced that governments had to be directly looped into the drafting process in order to secure any substantive state engagement with the proposed protocol. To that end, the Ministers arranged for a third meeting in Addis Ababa in December 1997. The Addis Ababa meeting marked the first time since the revival of the court project in 1994 that government diplomats were invited to participate in negotiations regarding the draft protocol. Delegates from forty-five of the OAU's fifty-four member states attended the Addis Ababa conference, marking an unprecedented level of government participation (OAU Secretary-General, 1998, p. 287).

Only twelve OAU governments (Namibia, South Africa, Egypt, Senegal, Burkina Faso, Swaziland, The Gambia, Tanzania, Algeria, Burundi, Niger and Togo) submitted prepared commentary on the Nouakchott Protocol for discussion at the conference. I have only been able to find the texts of the comments from seven of those governments.[7] These seven governments all vocalised general support for the establishment of the court. There were three central points of debate among their proposed amendments: 1) the need to formalise case processing procedures, particularly to ensure that the Commission and Court would not interfere with each other's mandates, 2) the Court's power to

[6]AHG/Res.230 (XXX), 2.

[7]I have not been able to locate records of the submitted comments from Senegal, Algeria, Burundi, Niger and Togo.

issue legally-binding judgements and reparations orders and 3) the issue of which actors could submit petitions directly to the Court. Five governments supported a two-level system similar to those in Europe and the Americas, where the Commission would receive all petitions first and only refer cases to the Court when governments did not adequately address instances of probable rights violations. Egypt argued that states should be able to refer petitions directly to the Court without first going through the Commission (OAU Secretary-General, 1997, p. 275). Egypt also raised concerns that there was no provision in the Nouakchott Protocol that clarified the Court's authority to declare binding judgements and mandate the dispensation of reparations to injured parties. South Africa, which submitted only a brief comment indicating cautious support for the Court, took no position on either of these matters in its prepared comments.

The Nouakchott Protocol draft included provisions permitting individuals and NGOs direct access to petition the Court in cases of 'urgent, serious, systematic, or massive violations of human rights' (El-Sheikh, 1997, p. 947). In its comments submitted for consideration at Addis Ababa, Tanzania endorsed this approach (OAU Secretary-General, 1997, p. 278). Namibia advocated for the right of individual petition in all cases: 'Since states do not suffer from inhuman treatment, human beings should have been granted ordinary access to the Court. Let us hope that the Commission shall effectively take individuals' cases to the Court' (*ibid.*, p. 272). Burkina Faso stopped short of endorsing direct access for individuals, instead proposing that NGOs be able to submit petitions to the Court on individuals' behalf. Swaziland and The Gambia argued that both individuals and NGOS should be permitted to directly petition the Court. Egypt and South Africa took no position on individual access to the Court in their prepared commentaries.

Due to the lack of *travaux préparatoires*, it is not possible to infer the positions of the various legal experts and diplomats at the Addis Ababa conference beyond what was articulated in the comments submitted by the aforementioned seven governments. Nor is it possible to know the identities of all of the delegates who attended the conference and how their professional backgrounds may have influenced their participation in the negotiations. Based on what information is available, however, there does not appear to have been significant debate or pushback against the draft protocol from the forty-five member states represented at Addis Ababa. The following recommendation was adopted at the end of the conference:

> 'The meeting noted the work undertaken by the Legal Experts and the African Commission from Cape Town to Nouakchott and finally to Addis Ababa and expressed its total satisfaction with the Draft Protocol as presently formulated. It, therefore, unanimously recommended the Draft Protocol for adoption by the Conference of Ministers of Justice/Attorneys-General.' (OAU Secretary-General, 1998, p. 287)

Shortly thereafter, the OAU Council of Ministers adopted the draft Protocol without any objections. Finally, in June 1998, the OAU Assembly, '*without any discussion*', formally approved the Protocol on the Establishment of an African Court of Human and Peoples' Rights (Ouguergouz, 2003, p. 88). On that very day, thirty OAU member states signed the Protocol (ICJ, 1998).

It is quite remarkable that governments would so quickly agree to establish and accede to an international court with little debate or pushback, especially considering their lack of involvement in drafting the Court's constitutive documents. While it is possible that governments were simply all on board with the court project, the chronic disinterest governments exhibited throughout the decades-long process to create the African human rights system suggests otherwise. Most governments did not prioritise diplomatic resources towards drafting the African Charter and Protocol. Furthermore, when given the chance to submit feedback on drafts, most governments repeatedly declined. It is this repeated lack of governmental participation during phases of the negotiations in which such participation was expected and planned for that suggests that legal bureaucrats were able to leverage government disinterest to exert disproportionate influence in crafting the terms of the African Charter and Protocol. While it is common for legal experts to play central roles in the initial stages of drafting

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

international agreements, their influence in this case surpassed a level attributable to standard bureaucratic processes. For example, the 1997 meeting of legal experts in Mauritania to refine the draft Protocol was an initially-unplanned conference that the OAU Council of Ministers only convened in response to a lack of government feedback on the proposal for a regional court. A significant proportion of OAU governments failed to take the human rights project seriously, perhaps driven by scepticism that a regional court could amass sufficient authority to threaten domestic sovereignty.

The Protocol to the African Charter eventually came into force in January 2004, following its requisite ratification by fifteen member states (Ouguergouz, 2003, pp. 88–9). In 2002, between the adoption and the entry into force of the Protocol, the OAU was re-constituted as the African Union (AU), the name under which the organisation operates today. Over forty years after the first proposal for a regional court, the ACtHPR officially began operations at its temporary headquarters in Addis Ababa in November 2006. In August 2007, the Court moved to its permanent headquarters in Arusha, Tanzania, where the Court remains today. In December 2020, the Democratic Republic of the Congo became the 31st state to ratify the Protocol accepting the Court's jurisdiction.

6 Substantive jurisdiction of the Court

Several unique features of the ACtHPR's design contribute to the Court's wide-ranging substantive jurisdiction. First, according to the Protocol, 'the jurisdiction of the court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the [African] Charter, this protocol, and any other relevant Human Rights instrument ratified by the States concerned' (Art. 3). This is an extraordinary provision that indefinitely extends the authority of the ACtHPR by allowing the Court to rule on the compatibility of state practice not only with the African Charter, but also with *any other relevant human rights instrument*, regional or global. This feature also provides an opening for the Court to directly incorporate legal interpretations developed by other human rights regimes into its own case law.

Second, the ACtHPR's jurisdiction covers a wide range of civil, political, social, economic, and cultural rights, as well as state and individual duties. The following rights guaranteed by the African Charter are not included in the American or European Conventions:

- The right to work 'under equitable and satisfactory conditions', including 'equal pay for equal work' (Art. 15).
- The right to 'enjoy the best attainable state of physical and mental health', which obligates state parties to 'take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick' (Art. 16).
- The right to an education, which includes a controversial provision that 'The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State' (Art. 17).
- The right of the 'aged and disabled' to 'special measures of protection in keeping with their physical or moral needs' (Art. 18(4)).
- The 'right to existence', which encompasses 'the unquestionable and inalienable right to self-determination' (Art. 20(1)).
- The right of all people to 'their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. States shall have the duty, individually or collectively, to ensure the exercise of the right to development' (Art. 22).[8]

[8]The American Convention includes a right to 'progressive development' (Art. 26) but frames this provision as a duty imposed on states to legislate development, rather than an individual right to development.

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

Here, the 'right to self-determination' is particularly worthy of discussion. This right is rooted in the OAU/AU's post-colonial founding mandate to promote pan-African cooperation while defending national and cultural groups' right to self-governance. The right to self-determination is more fully developed in the African Charter relative to any other international agreement.[9] Furthermore, Article 20's vague language creates opportunities for the ACtHPR to engage in uniquely expansive interpretations of the Court's authority. For example, Article 20 states that 'Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.' The Charter does not indicate what might constitute sufficient international recognition in such circumstances. Combined with the decision not to specify legally-legitimate mechanisms for liberation, this potentially leaves the door open for the ACtHPR to endorse the use of force by groups seeking self-determination. Additionally, the Charter states that 'All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural' (Art. 20(3)). This clause could be interpreted to indicate legal justification for foreign intervention to assist peoples seeking self-determination. Placing adjudication of this right within the jurisdiction of the ACtHPR imbues the court with the authority to intervene in particularly sensitive issues of domestic security, a power not shared by the Inter-American or European human rights courts.

There are a few curious omissions in the African Charter of substantive rights guaranteed by the other two regional systems. The African Charter does not codify the right to compensation in the event of miscarriage of justice or the right of reply (protection of honour and reputation), both of which are found in the American Convention (but not in the European Convention). Somewhat bizarrely, there is no mention of an individual's right to privacy in the African Charter, despite the fact that this right is included in the European and American Conventions and has been widely-recognised as a fundamental human right since the mid-20th century. However, the ACtHPR is still empowered to rule on alleged violations of the right to privacy by virtue of its authority to hold member states accountable to any human rights agreements they have ratified, even those outside of the African system. For example, ACtHPR judges have on multiple occasions asserted authority to rule on violations of the International Covenant on Civil and Political Rights[10], which does codify a right to privacy.

While the African Charter guarantees a broader range of rights than the other regional Conventions, the authority of the ACtHPR is arguably diluted by 'claw-back clauses' littered throughout the Charter. These claw-back clauses impose limitations on the exercise of specific rights, limiting the scope of those rights to what is permissible under domestic law. It is common among international human rights instruments for certain rights, particularly the rights of association, assembly, and expression, to be subject to limitations for the sake of national security and/or public safety. However, the claw-back clauses in the African Charter permit limitations on a wider range of rights and do not specify that those limitations can only be applied in emergent circumstances. For example, the Charter states that 'every individual shall have the right to express and disseminate his opinions *within the law*', leaving the door open for legal government censorship of the right to expression even in the absence of emergency conditions (Art. 9(2)). Further examples include provisions that 'Every individual shall have the right to free association *provided that he abides by the law*' (Art. 10 (1)), 'Every individual shall have the right to freedom of movement and residence within the borders of a state *provided he abides by the law*' (Art. 12(1)) and 'Every citizen shall have the right to participate freely in the government of his country … *in accordance with the provisions of the law*' (Art. 13 (1)). These claw-back clauses represent constraints on the ACtHPR's authority by potentially subjecting several international rights protections to the primacy of domestic law.

[9]See Ch. 1 of the UN Charter and Art. 1 of the UN Covenant on Civil and Political Rights.

[10]See, for example, *Lohé Issa Konaté v. Republic of Burkina Faso* (App. no. 004/2013), Judgment of 2 June 2016, ACtHPR; *Houngue Eric Noudehouenou v. Republic of Benin* (App. No. 003/2020), Judgment of 4 December 2020, ACtHPR.

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

The African Charter is unique among international human rights agreements in that it not only codifies rights that states are obligated to guarantee to individuals and certain collective groups, but also duties that states and individuals have to one another. The Charter specifies several duties imposed on individuals, including 'duties towards his family and society, the State, and other legally recognized communities', 'the duty to respect and consider his fellow beings without discrimination', 'to preserve the harmonious development of the family', 'to respect his parents at all times', 'to serve his national community by placing his physical and intellectual abilities at its service', 'to preserve and strengthen positive African cultural values' and several others.[11] These duties have deeply personal implications, representing an unprecedented attempt to regulate individual conduct through international human rights law.

7 Temporal jurisdiction of the Court

Incredibly, the African Charter and its Protocol impose no temporal limitations on the ACtHPR's jurisdiction. Unlike in the American and European Conventions, there are no provisions within the African Charter or Protocol that stipulate that the ACtHPR can only admit cases in which the alleged violation occurred after the relevant state party's accession to the Court. This brings up obvious concerns regarding the principle of non-retroactivity within international law. The European and American Conventions both stipulate that petitions alleging human rights violations must be submitted within six months of the exhaustion of domestic remedies for the violation. The African Charter only states that petitions must be received by the Commission 'within a reasonable period from the time local remedies are exhausted' (Art. 56(6)). The Protocol is entirely silent on the matter of temporal jurisdiction. Complainants thus do not have a specified time limit by which they must submit petitions to the African Commission or the ACtHPR. It is puzzling that governments would ratify an agreement that contained no specification of the time period during which they could be held legally liable for their human rights obligations. Lacking formalised boundaries on temporal jurisdiction, the ACtHPR could theoretically hold governments accountable for right violations that occurred long before those governments came to power. The lack of temporal jurisdiction provisions in the African Charter and Protocol bucks international legal standards. While it is impossible to know exactly why certain governments agreed to these terms, it appears that they simply may not have been paying attention to the fine print.

8 Conclusion

The story of the ACtHPR's founding is full of fascinating innovations and contradictions. In many ways, the African Charter and its Protocol are radically progressive documents that extend the scope of the rights protected under the African system well beyond what the architects of the American and European systems ever envisioned. On the other hand, claw-back provisions potentially dilute the *de jure* authority of the Court. Retellings of the OAU's history constantly point to a pervasive norm of non-intervention among African governments, stemming from the trauma of colonisation. Perhaps the more deferential elements of the Charter can be traced back to this historical resistance to encroachment on national sovereignty. Still, this group of governments that scholars are often quick to characterise as resistant to international governance, or fixated on 'traditional' methods of dispute resolution, ultimately created a functioning international court and imposed stunningly few limits on its legal authority.

One of the biggest questions that emerges from the founding of the ACtHPR is why this group of governments would agree to create a court with an expansive substantive jurisdiction and virtually no limits on its temporal jurisdiction. Unfortunately, due to the lack of adequate record-keeping during the drafting of the Charter and Protocol, it is more difficult to get a sense of particular drafters' and

[11]See Arts. 27–29 of the African Charter for the full list of duties.

https://doi.org/10.1017/S1744552323000046 Published online by Cambridge University Press

state parties' interests in the African case compared to the European and American cases. What we do know, however, is that it was legal experts, and not politicians, who launched the first proposals for an African human rights treaty and regional court. And it was legal experts from within and outside of Africa who were responsible for continuously attempting to revive the court project from the 1960s through the 1990s, even in the face of decades of government intransigence. Recall that states continually failed to provide requested feedback on the court project throughout the 1990s, and that government diplomats were only involved in the eleventh hour of the drafting of the Protocol, at the Addis Ababa conference. And recall that, following the completion of a draft at that conference, the OAU Assembly adopted the Protocol as it was presented and *without discussion*. The tumultuous wave of democratisation that swept the continent in the early 1990s may have preoccupied governments whose resources were stretched thin and for whom international affairs were not a top priority. Or, perhaps underestimating the potential authority of a regional court, governments did not think it was worth their energy to squabble over legal jurisdictional issues. In any case, African jurists and legal experts accomplished an incredible feat, pioneering a distinctly post-colonial vision of human rights and imbuing the ACtHPR with an unprecedented mandate to hold governments accountable.

Acknowledgements. I would like to thank Dr. Tanisha Fazal, Dr. Cosette Creamer and anonymous referees for their thoughtful and invaluable feedback during the development of this manuscript.

Conflict of interest declaration. None.

References

Abbott KW and Snidal D (2000) Hard and Soft Law in International Governance. *International Organization* **54**(3), 421–456.

Akinyemi AB (1985) The African Charter on Human and Peoples' Rights: An Overview. *Indian Journal of Political Science* **46**(2), 207–238.

Barnett MN and Finnemore M (1999) The Politics, Power, and Pathologies of International Organizations. *International Organization* **53**(4), 699–732.

Cabranes JA (1968) The Protection of Human Rights by the Organization of American States. *American Journal of International Law* **62**(4), 889–908.

Chitepo HW (1961) Introductory Report to the Third Committee-The Responsibility of the Judiciary and of the Bar for the Protection of the Rights of the Individual in Society. In *African Conference on the Rule of Law, Lagos* (*Nigeria*), 3–7 *January* 1961 - *Report on the Work of the Conference*, 69–81.

Deitelhoff N (2009) The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case. *International Organization* **63**(1), 33–65.

Elias TO (1961) General Report. In *African Conference on the Rule of Law, Lagos* (*Nigeria*), 3–7 *January* 1961 - *Report on the Work of the Conference*, 42–55.

El-Sheikh IAB (1997) Draft Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and Peoples' Rights - Introductory Note African Legal Materials. *African Journal of International and Comparative Law* **9**(4), 943–952.

Geneva International Commission of Jurists (GICJ) (1961) Law of Lagos. In *African Conference on the Rule of Law, Lagos* (*Nigeria*), 3–7 *January* 1961 - *Report on the Work of the Conference*, **11**.

Guzman AT (2008) International Tribunals: A Rational Choice Analysis. *University of Pennsylvania Law Review* **157**, 171–235.

Hafner-Burton EM, Mansfield ED and Pevehouse JCW (2015) Human Rights Institutions, Sovereignty Costs and Democratization. *British Journal of Political Science* **45**(1), 1–27.

Heyns C (2002) *Human Rights Law in Africa 1999.* Martinus Nijhoff Publishers.

Heyns C (2004) The African Regional Human Rights System: The African Charter. *Penn State Law Review* **108**(3), 679–702.

Huneeus A and Rask Madsen M (2018) Between Universalism and Regional Law and Politics: A Comparative History of the American, European, and African Human Rights Systems. *International Journal of Constitutional Law* **16**(1), 136–60.

International Commission of Jurists (ICJ) (1998) *African States Establish Supranational Human Rights Court*. Press Release, 12 June 1998.

Johnson T (2014) *Organizational Progeny: Why Governments Are Losing Control Over the Proliferating Structures of Global Governance*. Oxford University Press.

Keck ME and Sikkink K (1998) *Activists beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.

Koremenos B (2008) When, What, and Why Do States Choose to Delegate. *Law and Contemporary Problems* **71**(1), 151–92.
LaLive J-F (1961) Foreward. In *African Conference on the Rule of Law, Lagos* (*Nigeria*), 3–7 *January* 1961 - *Report on the Work of the Conference*, 5–7.
Mansfield ED and Pevehouse JC (2006) Democratization and International Organizations. *International Organization* **60** (1), 137–67.
McCubbins MD, Noll RG and Weingast BR (1987) Administrative Procedures as Instruments of Political Control. *Journal of Law, Economics, & Organization* **3**(2), 243–277.
Milner H (2006) Why multilateralism? Foreign aid and domestic principal-agent problems. In Hawkins D, Nielson DD, and Tierney M (eds) *Delegation and Agency in International Organizations*. Cambridge University Press, 107–139.
Moravcsik A (2000) The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. *International Organization* **54**(2), 217–252.
Novak A (2020) Applying the Lens of Transnational Advocacy Networks to Human Rights Litigation. In Novak A (ed) *Transnational Human Rights Litigation: Challenging the Death Penalty and Criminalization of Homosexuality in the Commonwealth*. Cham: Springer International Publishing, 11–35.
Organization of African Unity (OAU) Secretary-General (1981) Report of the Secretary-General on the Draft African Charter on Human and Peoples' Rights. Reprinted in Heyns C (ed), *Human Rights Law in Africa 1999*. Martinus Nihoff Publishers (2002) 92–105.
OAU Secretary-General (1997) Comments and Observations Received From Member States on the Draft Protocol on the Establishment of An African Court on Human and Peoples' Rights. Reprinted in Heyns C (ed) *Human Rights Law in Africa 1999*. Martinus Nihoff Publishers (2002), 271–278.
OAU Secretary-General (1998) Report of the Secretary-General on the Conference of Ministries of Justice and Attorneys-General on the Draft Protocol on the Establishment of an African Court on Human and Peoples' Rights: Third Government Legal Experts Meeting (Enlarged to Include Diplomats). Reprinted in Heyns C (ed) *Human Rights Law in Africa 1999*. Martinus Nihoff Publishers (2002), 285–292.
Ouguergouz F (2003) The Establishment of an African Court of Human and Peoples' Rights: A Judicial Premiere for the African Union. *African Yearbook of International Law Online* **11**(1), 79–141.
Pollack MA (2007) Principal-Agent Analysis and International Delegation: Red Herrings, Theoretical Clarifications and Empirical Disputes. *SSRN Electronic Journal*.
Reinalda B and Verbeek B (2004) *Decision Making Within International Organisations*. Routledge.
Senghor LS (1979) Address delivered by Leopold Sedar Senghor, President of the Republic of Senegal, Meeting of African Experts preparing the draft African Charter in Dakar, Senegal, 28 November to 8 December 1979. Reprinted in Heyns C (ed) *Human Rights Law in Africa 1999*. Martinus Nihoff Publishers (2002), 78–80.
Simmons BA and Danner A (2010) Credible Commitments and the International Criminal Court. *International Organization* **64**(02), 225–256.
Stone Sweet A and Brunell TL (2013) Trustee Courts and the Judicialization of International Regimes: The Politics of Majoritarian Activism in the European Convention on Human Rights, the European Union, and the World Trade Organization. *Journal of Law and Courts* **1**(1), 61–88.
United Nations (1966) *Seminar on Human Rights in Developing Countries*, Dakar (Senegal), 8 to 22 February 1966, UNDOC ST/TAO/HR/25.
United Nations (1969) *Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa*, Cairo (Egypt), 2 to 15 September 1969, UNDOC ST/TAO/HE/38.
Vaubel R (2006) Principal-Agent Problems in International Organizations. *The Review of International Organizations* **1**(2), 125–138.
Voeten E (2013) Public Opinion and the Legitimacy of International Courts. *Theoretical Inquiries in Law* **14**(2), 411–436.
Wade A (1961) Introductory Report to the First Committee - Human Rights and Government Security - The Legislature, Executive, and Judiciary' Society. In *African Conference on the Rule of Law, Lagos* (*Nigeria*), 3–7 *January* 1961 - *Report on the Work of the Conference*, 56–68.
Zippel K (2004) Transnational Advocacy Networks and Policy Cycles in the European Union: The Case of Sexual Harassment. *Social Politics: International Studies in Gender, State & Society* **11**(1), 57–85.

Cite this article: Sanchez MA (2023). The African Court on Human and Peoples' Rights: forging a jurisdictional frontier in post-colonial human rights. *International Journal of Law in Context* **19**, 352–366. https://doi.org/10.1017/S1744552323000046