Unintended Positive Complementarity: Why International Criminal Court Investigations Increase Domestic Human Rights Prosecutions*

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Abstract

Research on the International Criminal Court (ICC) has focused primarily on the short-term negative consequences of its interventions. However, this article provides evidence that ICC involvement in countries significantly increases domestic human rights prosecutions in the intermediate term, a potentially beneficial outcome that can be observed even when controlling for a number of other factors. It theorizes that this relationship results from a conflictual interaction between ruling coalitions attempting to feign commitment to human rights norms and reformer coalitions, who use the onset of ICC investigations as an opportunity to expose government corruption and lack of willingness to comply with international standards. Specifically, ICC investigation inspires three reformist behaviors—demands for judicial reform, capacity-building, and gap-filling litigation—that all result in more rights violators being taken to trial for their actions. In demonstrating these impacts, this article is the first to theorize and present systematic evidence of "positive complementarity," though it is of a sort initially unintended by the Court.

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1 Introduction

Only a dozen years after it began operations, the International Criminal Court (ICC) finds itself in a legitimacy crisis. An ongoing dispute between the Court and the African Union over its faulty "geography of justice," or the ICC's exclusive prosecution of African leaders, has led to yet-unfulfilled threats that African states will withdraw from the Rome Statute en masse. Participants at a 2014 "high-level seminar meeting" in Addis Ababa issued a number of incendiary statements about the Court, arguing that "the ICC has become the greatest threat to Africa's sovereignty, peace and stability," and that "the ICC is a colonial institution under the guise of international justice."[1] This dispute is perhaps evidence of a greater problem: international courts face terrific obstacles in building "diffuse support" because these institutions have to appeal to a much wider and more diverse audience than do national judiciaries.[2] The ICC must please many masters, very few of whom are going to be satisfied with its activities.

The ongoing row with African leaders is not the only challenge to ICC legitimacy, however. Another comes from scholars and experts, who have produced a number of articles highly critical of ICC action. For example, conflict experts blame untimely ICC indictments against perpetrators of rights violations, like Ugandan rebel leader Joseph Kony and Sudan's President Omar al-Bashir, for ruining peace negotiations that might have ended civil wars.[3] Some even surmise that Libyan President Muammar Gaddafi would have accepted exile were it not for his indictment by the ICC on February 26, 2011; instead, he dug in his heels and fought a bloody war against rebels.[4] Critics also complain that the ICC lacks anything resembling true deterrent capabilities, meaning that its decisions will do almost nothing to promote peace or prevent generalized violations of international human rights and humanitarian law.[5]

Nevermind that the factual accuracy of some of these criticisms is questionable; case

[1] Fabricius 2014, 10 Apr.
[2] Lupu 2013*b*, 440-3.
[3] Branch 2007.
[4] Jackson Diehl, "After the Dictators Fall." *Washington Post*, 5 Jun 2011 and Philippe Sands, "The ICC Arrest Warrant Will Make Colonel Gaddafi Dig in His Heels." *The Guardian*, 4 May 2011.
[5] Snyder and Vinjamuri 2003/4; Ku and Nzelibe 2006; Cronin-Furman 2013.

in point, Gaddafi rejected an offer of exile *before* he was indicted by the prosecutor's office.[6] Many critical arguments reveal a proclivity among academics and journalists to report on short-term "negative unintended consequences." This should not be a surprise. After all, warning that well-intentioned progressive action unexpectedly leads to perverse outcomes is one of the primary and most useful contributions of social science.[7] Much to form, social scientists began publishing about an ICC "backlash" even before the Court officially formed on July 1, 2002, and they have continued publishing similar arguments ever since[8]

Mindful of myriad pessimistic expectations surrounding the ICC's actions, this article argues that the Court may be having unanticipated beneficial consequences in some African countries in which it is involved. This is an area of interest because Court employees and proponents tend to justify their interventions on the basis that they should do good in the long term, which is harder to observe than short-term missteps and backlashes. However, now that the ICC has been active for over 10 years, scholars can begin to understand what impact it might have beyond the immediate short term.

One way in which the ICC may be creating change down the road is through a mechanism we refer to as unintended positive complementarity. This should be constrasted with the established concept of positive complementarity–which signifies the coordinated attempt by the ICC to promote legitimate domestic proceedings for perpetrators of atrocity crimes, which erase the need for further international involvement.[9] *Unintended* positive complementarity refers to more general causal effects that the ICC might have on judicial activity, like increasing legal prosecutions of state agents for all human rights crimes, not just trials of state and rebel leaders that have committed atrocity crimes. This article

[6]Gaddafi appears to have been offered exile before February 23, which is the date that he gave the infamous 'cockroach' speech in which he threatened to massacre opponents. The ICC indictment came down after this speech, on February 26. See Kareem Fahim and David D. Kirkpatrick, "Qaddafi's Grip on the Capital Tightens as Revolt Grows." *New York Times*, 22 Feb 2011 and David Smith, "Where could Colonel Muammar Gaddafi go if he were exiled?" *The Guardian*, 21 Feb 2011.

[7]Hirschman 1991.

[8]Rieff 1998; Krasner 2001; Tucker 2001.

[9]Atrocity crimes "describe particularly heinous crimes suitable for criminal prosecution before international tribunals and special national courts for which leaders of nations, armies, and rebel groups must be held responsible." These include acts that may qualify as genocide, war crimes, crimes against humanity, and crimes of aggression. See Scheffer 2012, 429.

finds that countries under investigation by the ICC try roughly three times as many state agents per year for physical integrity abuses like torture and sexual violence, compared to averages in other conflicted states in Africa. For a number of reasons, more domestic human rights prosecutions could be seen as a sign of progress, however minor: where observed in other parts of the world, domestic rights trials portend unfolding long-term trends like enhanced concern for rule of law, and improved human rights protections.[10]

The form of positive complementarity documented here is unintended because the ICC has not openly promoted general domestic accountability in states targeted for intervention; instead, it has tended to focus on a specific set of high-profile crimes. It is also unintended for another reason: the increase in domestic prosecutions does not result from state cooperation but from latent political struggles between ruling coalitions and reformer coalitions that are exacerbated by ICC involvement. The current literature has overlooked these linkages because it has understandably keyed in on the outcomes of ICC trials, like number of guilty verdicts handed down and their potential symbolic and deterrent impacts. This article's theory focuses more on the *process* of ICC intervention.

The argument is as follows: the ICC's full, active involvement in a country, which is marked by the beginning of official prosecutorial investigations, creates a "willingness game" between domestic ruling coalitions and reformer coalitions. The former attempt to demonstrate their willingness to comply with human rights norms, while the latter try and expose their hypocrisy. In the wake of investigations, reformers engage in demand-making, capacity-building, and gap-filling litigation—each contributing to an increase domestic human rights prosecutions. Importantly, this theory is not based on the naïve assumption that state leaders are motivated by the desire to behave cooperatively toward the Court. Moreover, it poses a challenge to standard models that assume the ICC attempts to coerce states into positive change. If this were the case, the ICC should have more influence in the earlier preliminary examination stages of its involvement, when the threat of future investigation should inspire leaders into action to avoid penalty. This paper argues, however, that the onset of an ICC *investigation* is politically catalytic: it

[10] Kim and Sikkink 2010; Sikkink 2011.

sets in motion strategic interactions among members of ruling groups, domestic courts, and local civil society organizations. The next section (Section 2) sets out to explain this process-focused theory, starting with a description of the ICC's built-in complementary compromise, and then moving to referral, examination and investigation stages of the ICC involvement.

Section 3 of this paper reviews both positive and negative assessments of ICC operation, all of which have passed over the potentially productive characteristics of the ICC process of involvement. Section 4 offers a theory linking that process, specifically ICC investigation, to an increase in domestic prosecutions for human rights offenders, and Section 5 structures a test of this theory based on a newly available macro-data. Part of the challenge in testing these relationships is selecting appropriate cases to compare and controlling for other explanations, which we do by creating a dataset specifically tailored for this article. Section 6 presents illustrative qualitative evidence from Democratic Republic of Congo, Uganda, Cote d'Ivoire, Central African Republic and Kenya to demonstrate the mechanisms linking ICC investigation to domestic prosecutions. Finally, the paper concludes with implications of this research for the legitimacy of the ICC.

2 The ICC Process

2.1 The Complementarity Compromise

The Rome Statute establishing the International Criminal Court entered into force on July 1, 2002, after 10 countries, two of which were African, simultaneously filed instruments of ratification at UN headquarters in New York, pushing the number of ratifying states over the necessary threshold of 60. This international treaty did not introduce the concept of individual criminal accountability (ICA), wherein the subject is an individual perpetrator, who faces a prison sentence if found guilty.[11] The Nuremberg Trials, the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR) each punished individual state agents for grave

[11] Sikkink 2011.

human rights abuses they committed. What sets the Rome Statute apart from previous ad hoc efforts is not only its permanent nature, but also the principle of complementarity.[12] The complementarity principle holds that the Court should be a last resort for justice when states are "unwilling or unable" to genuinely carry out an investigation or prosecution.[13] In this complementarity model, the ICC can act only after it has determined state parties to be reluctant or incapable; thus, the Court provides the last layer of jurisdiction for cases in which states fail to exercise their own jurisdiction.

Although projects for a permanent international criminal tribunal had been around for decades, diplomatic debate at the UN turned serious in the early 1990s. One of the toughest points of negotiation was the level of independence the Court would have. The Security Council had just created the two ad hoc tribunals—the ICTY and the ICTR—that had primacy over national states. But that this new court would be permanent, and it would not require the affirmative vote of the UN Security Council to take up a new case situation. This made the prospect of primacy highly unattractive for the permanent five members because it would provide too much power for the Court. The original solution was to invert the ad hoc model and to establish a Court in which only states initiate complaints. However, the like-minded state delegations in favor of the ICC, together with a network of NGOs lobbying for the most independent court possible, were intensely opposed to that option.[14]

The stalemate was resolved by the "complementarity compromise," which introduced a complex strategy of involvement. When crimes are committed but states do not prosecute them, those cases can be deemed admissible by the ICC. However, if states clearly

[12]The full name of this treaty is Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment G.A. res. 39/46 [annex 39 U.N. GAOR Supp. (No. 51) at 197 U.N. Doc. A/39/51 (1984)] entered into force June 26, 1987. Other treaties that contain international criminal accountability provisions are the Convention on the Prevention and Punishment of the Crime of Genocide 78 U.N.T.S. 277 entered into force Jan. 12 1951; the Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976; and the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. A/RES/57/199, adopted Dec. 18, 2002 [reprinted in 42 I.L.M. 26 (2003)]. See Dancy and Sikkink 2012.

[13]Rome Statute of the International Criminal Court, U.N. Doc. 2187 U.N.T.S. 90, entered into force July 1, 2002, Article 17.

[14]Glasius 2005.

demonstrate the ability and willingness to themselves move forward with appropriate legal action, then the ICC's jurisdiction will not be triggered. The whole system is built under the notion that national procedures are preferred; it follows that the ICC has strategic reasons to still encourage states to take action because this prevents the Court from having to expend its limited resources conducting a lengthy investigation. Thus, once it becomes initially involved, the question is "how could the ICC work itself out of the job?"[15] Upon taking office in 2003 Chief Prosecutor Luis Moreno-Ocampo issued a statement often misunderstood by observers, where he acknowledged the interest of the ICC to erase the need for its own involvement over time: "As a consequence of complementarity, the number of cases that reach the Court should not be a measure of its efficiency," he argued. "On the contrary, the absence of trials before this Court, as a consequence of the regular functioning of national institutions, would be a major success."[16]

2.2 Preliminary Examination and Investigation

ICC intervention unfolds in multiple, and at times non-linear, stages. It starts with a preliminary examination in which the admissibility of a "situation" is determined. The criteria include whether the situation falls under the jurisdiction of the Court and if the alleged crimes are appropriate subject material, whether it qualifies based on complementarity and gravity, and whether the case suits the interest of justice. Only after the extensive consideration of evidence can a preliminary examination advance to a full investigation. To date, 19 situations have been subject to preliminary examination, eight of which have proceeded to the next stage (3 did not, and 8 are ongoing).[17]

The Office of the Prosecutor (OTP) can start a preliminary examination in three different ways: a member state can refer a situation to the Prosecutor regarding crimes committed by a national of a member state or in its territory[18]; the Prosecutor can be asked by the UN Security Council to look into a situation (in this case the target

[15] Ryngaert 2009, 149.
[16] Luis Moreno-Ocampo. "Ceremony for the solemn undertaking of the Chief Prosecutor of the International Criminal Court." 16 Jun, 2003.
[17] See "Structure of the Court" at http://icc-cpi.int/en_menus/icc.
[18] Articles 13-14, Rome Statute.

country need not to be an ICC party)[19]; and the Prosecutor can decide independently, using propio motu powers, to conduct a preliminary examination in the absence of any referral.[20] If the OTP acts on its findings, then it must request authorization from a Pre-Trial Chamber to later open an official investigation.

After the preliminary examination stage follows a formal investigation, in which the Prosecution is empowered to present cases and request arrest warrants from the Judges or to summon individuals to appear voluntarily. Since the ICC does not allow for prosecutions in absentia, once arrest warrants or summons to appear are issued, either openly or under seal, suspects need to be arrested and surrendered to the Court by the custodial state or they must present themselves voluntarily. Only then the process can advance to the confirmation of charges stage, in which a panel of three judges agrees on all or some of the charges presented by the Prosecution. After these steps are taken, a trial can finally take place.

2.3 Positive Complementarity

By 2009 the Office of the Prosecutor of the ICC officially based its prosecutorial strategy on what it calls "positive complementarity," defined as "a proactive policy of cooperation aimed at promoting national proceedings."[21] This means that the OTP would start encouraging national reforms and proceedings after the referral stage and during the preliminary examination stage, which it would make public. The idea behind publicizing preliminary examinations would be to put states on notice so that they would step up their efforts to pursue their own national proceedings. "The anticipated reaction from a State under ICC scrutiny is that it will 'aggressively and fairly pursue domestic prosecu-

[19] Article 13, Rome Statute. This opens up the reach of the Court to all UN members by relaxing the jurisdictional requirements; the country where the crimes had been committed or the country of those allegedly responsible do not need to be ICC parties. This is how the ICC became involved with the conflict in Darfur and the civil war in Libya, both of which took place in states that are not members of the Rome Statute.

[20] The OTP has staff monitoring the Court's entire jurisdiction, and it also receives petitions from civil society, composed of both individuals and NGOs, who can write directly to the OTP and provide information about alleged crimes.

[21] Prosecutorial Strategy, 2009–2012, 1 February 2010, The Hague, 4. Available at http://www.icc-cpi.int/NR/rdonlyres/66A8DCDC-3650-4514-AA62-D229D1128F65/281506/OTPProsecutorialStrategy20092013.pdf.

tions of international crimes so as not to trigger the jurisdiction of the ICC over the case and invite the glare of the eyes of the international community upon it.'"[22] Thus, official OTP policy morphed from encouraging referrals to avoiding full investigations. "Positive complementarity turned increasingly from an instrument to strengthen the Court into a tool to strengthen domestic jurisdiction."[23] This newer conception found its way into official policy documents and into the agenda of the Rome Statute review conference of 2010, showing that both the Court and State Parties were interested in fostering national proceedings.

3 What is Known About Positive Complementarity?

Is positive complementarity a reality? Despite the endorsement of positive complementarity by the Court, and even though scholarly work on the ICC is extensive, little systematic research has focused on the relationship between ICC involvement and domestic proceedings for human rights crimes. Anecdotal evidence supports the idea that pressure from the outside, including the exercise of extraterritorial jurisdiction by other states under universal or passive nationality jurisdiction, inspires domestic trials in response. This is especially effective when domestic legal institutions show iscant ability or willingness to reform on their own volition. Spanish prosecutions of Latin American military officials, for example, are thought to have invigorated further territorial trials in some cases, the most famous example being Pinochet's arrest in London after a Spanish arrest warrant and the momentum it generated for trials in Chile.[24] It is possible that a similar effect is caused by the exercise of extra-territorial jurisdiction on the part of the International Criminal Court, but this is an under-theorized and little-understood prospect.

Three literatures address the empirical question of whether ICC involvement should produce more national proceedings for human rights crimes, but only indirectly. First, a number of studies in International Relations theorize a strong linkage between the ratification of various multilateral human rights treaties and compliance or non-compliance

[22] Bjork and Goebertus 2011, 208.
[23] Stahn 2011, 262.
[24] Lutz and Sikkink 2001; Pion-Berlin 2004; Roht-Arriaza 2007.

with those treaties, which is measured by changing patterns in rights protections.[25] Most ratification studies, though, treat domestic courts and litigation as fixed rather than changing, or as untested theoretical mechanisms linking independent legal treaties to outcomes.[26] So, while this empirical literature would expect domestic ratification of the Rome Statute establishing the ICC to affect human rights practices in the ratifying countries with stronger judiciaries, insufficient attention has been paid to the possibility that a country's direct dealings with the ICC could *change* its judicial practices.

A second literature addresses the issue of why state leaders conduct domestic proceedings for human rights abuses. Various factors have been highlighted to account for this phenomenon. For example, countries that undergo a clean break from a highly repressive government to a new democratic regime are likely to use prosecutions[27], as are states that possess institutions that allow for private citizens to bring criminal prosecutions against state agents.[28] However, region-specific patterns make global generalizations difficult, especially given that such "transitional justice" efforts appear to diffuse across culturally similar clusters of countries.[29] This is important because any study of the ICC must necessarily analyze Africa, and current theories have mainly focused on Latin America and subregions of Europe. Missing from the transitional justice literature, it seems, is an adequate empirical account for why rights trials happen in some African countries but not in others.

Finally, a third descriptive literature on the ICC sheds light on the legal and political dynamics created by the interaction of the Court and African state leaders. Research, for example, has focused on the degree to which emergent practices at the OTP, like the acceptance of state self-referral by the Democratic Republic of the Congo and Uganda,

[25] Hathaway 2002; Hafner-Burton and Tsutsui 2005; Vreeland 2008; Simmons 2009; Hill 2010; Simmons and Danner 2010; Hollyer and Rosendorff 2012; Conrad and Ritter 2013; Lupu 2013*a*.

[26] Staton and Moore 2011. One exception is Dancy and Sikkink 2012, who show that states which ratify more treaties with individual criminal accountability provisions, including the Rome Statute, are more likely initiate human rights prosecutions in any given year. Still, this research is unable tease out what mechanism is operative. Is this effect due to the catalytic effect of ratification, or the actual operation of the international institutions like the ICC?

[27] Elster 2004; Olsen, Payne and Reiter 2010.

[28] Michel and Sikkink 2013.

[29] Kim 2008.

diverged from the intentions of the drafters of the Rome Statute.[30] It has also examined the legal and normative grounds on which the Prosecutor may actively encourage national proceedings.[31] Most important to our enterprise, though, is a growing body of research that examines whether and how the endorsement of positive complementarity has made an impact on African states. Some are hopeful, arguing that ICC resources, like access to legal information, have the potential to help severely challenged domestic judiciaries.[32] Other observers are far more skeptical, arguing that domestic courts have been willing to cooperate, but that they have received little actual support from the ICC, or that whatever increased domestic efforts to try war criminals may result from capacity-building programs outside of the ICC.[33]

The empirical work most relevant to this research is Sarah Nouwen's extensively researched *Complementarity In the Line of Fire*, a legal-anthropological account of the ICC's influence in Sudan and Uganda.[34] Nouwen contends that while ICC intervention has led to activation of the judicial sector in Uganda, as well as invigorated debate around legal justice, the actual operation of the courts has remained limited. Ugandan courts have not effectively pursued high-profile prosecutions of those responsible for atrocity crimes. The reason for this is less lack of institutional strength and more problems of political will: "Neither ICC intervention nor complementarity reduces the often insuperable loyalty costs that domestic proceedings would incur."[35] While Nouwen's account is no doubt accurate, and the most authoritative treatment on the subject, it stops short of examining the possibility that ICC intervention has more diffuse and unintended legal effects.

No studies have theorized whether or why ICC investigations into a country would lead to an increase in general rights-based litigation, and none have gone about systematically analyzing whether ICC intervention does in fact increase domestic prosecutions. Most of the work on positive complementarity, like Nouwen's, has focused on whether there is a

[30] Schabas 2008.
[31] Burke-White 2008.
[32] Bergsmo, Bekou and Jones 2010.
[33] Clark 2008; Mattioli and van Woudenberg 2008.
[34] Nouwen 2014.
[35] Ibid. 12.

direct connection between ICC involvement and state-led proceedings, through leveraging or through the sharing of evidence, for those crimes specifically under ICC jurisdiction.[36] The possibility remains that a more unintended positive effect of ICC investigation exists, which manifests in the prosecution of lower-level perpetrators for human rights crimes other than those strictly regulated by the Rome Statute.

Outside the work of Nouwen and a few others, interactions between the ICC and domestic legal institutions have fallen off the radar because emerging theories have devoted more attention to the fraught role of the ICC in interacting with state executives, specifically in conflict zones. Observers presuppose that the role of the ICC should be to compel states into compliance with international norms of peace and security; theorists then go on to find, unsurprisingly, that the Court lacks the power to coerce state leaders to cease fighting civil wars.[37] This weakness is evident, but two points must be made. First, scholars have focused disproportionately on the ability of the ICC to terminate civil war, which is not only a very hard test for judicial intervention, but also may obscure other effects that the Court is having. One such effect is encouraging combatants to scale back human rights violations in *future* conflict activity.[38]

Second, theory about the ICC's lack of strategic bargaining power in conflict scenarios has approached the process of interaction as being between two actors: the Court and the singular state leader, i.e. the executive. Left out is the potentially influential role of other domestic actors.[39] The preference toward thinking of the 'target' state as a unitary actor makes sense mostly in two situations in which the ICC has become involved: Sudan and Libya. In both, institutionally unchecked dictators found themselves in the crosshairs of the ICC. Sudan's Omar al-Bashir sought to subvert the Court by cynically proving that local institutions have the capacity to try perpetrators for war crimes. In the case of Sudan, al-Bashir established the Special Criminal Court on the Events in Darfur

[36] Bjork and Goebertus 2011.
[37] Rodman 2008; Cronin-Furman 2013; Mendeloff 2014.
[38] Jo and Simmons 2014.
[39] The elision of domestic civil society from research is odd given that many post-colonial and critical scholars themselves tend to argue that international institutions ignore local actors or contexts. Scholars, it seems, are often guilty of the same thing they are criticizing.

(SCCED).[40] Libya's Muammar Qaddafi had less time to engage in such overtures. He decided to fight before the ICC made its move, and in a matter of months his regime fell to rebel fighters assisted by NATO airstrikes. These referrals were brought amidst other actions that were simultaneously being pursued by the UN and Western allies, which means that the impacts of ICC involvement are even more difficult to isolate.

Sudan and Libya are indeed important cases, especially for humbling the international community in its strategic use of the Court, but the impulse to conceive of ICC intervention as involving a simple two-actor game between the ICC and the executive is too narrow. The launching of an ICC investigation also involves domestic courts, NGOs, and other members of civil society. As is theorized in the next section, ICC investigation generates productive interactions between ruling coalitions and reformer coalitions. Specifically, an ICC investigation initiates what could be called a "willingness game" between the government defenders and activists promoting change.

4 Theory: Unintended Positive Consequences

We theorize that ICC investigations into a country's situation increase domestic prosecutions for all human rights crimes at home—and the effect of investigations will be larger than the impact of a state's official commitment to the Rome Statue or the Prosecutor's decision to begin a preliminary examination. The reason is not necessarily that the ICC has developed a coherent strategy to influence states to reform during the investigation stage, nor that state leaders are particularly cooperative with the Prosecutor. Instead, domestic prosecutions happen because ICC investigation generates unintended interactions between local actors. Specifically, ruling coalitions within states attempt to demonstrate their willingness to comply with international legal norms, while reformer coalitions try to expose state non-willingness. Though this article stops short of modeling this as a highly structured, parameterized interaction, it used the language of a *game*

[40]The SCCED came into being on June 7, 2005, one single day after ICC Prosecutor Luis Moreno-Ocampo announced that he was beginning an official investigation into atrocities committed in Darfur.

because both groups are behaving strategically in an effort to enhance their positions relative to the other. The remainder of this section details how this unfolds.

4.1 The ICC Investigates

An official ICC investigation means the almost certain prosecution of a country's nationals for atrocity crimes, a prospect that releases a wave of debates, discussions, and articles within the global policy community. The sudden interest in a country can serve as a kind of exogenous shock to a country's ruling coalition, which is composed of the executive and the network that keeps that executive in power, including conservative members of the judiciary, defense and security ministries, and the legislature. An ICC investigation is a high-profile public event that involves the public face of a nation-state, and the decision that the ICC has jurisdiction will necessarily enhance scrutiny and serve as a crucible for the ruling coalition's devotion to international human rights norms. Amidst this situation, the ruling coalition attempts to avoid reputational loss, or blows to its "recognitional legitimacy."[41]

Of all the stages of ICC involvement, the official investigation is the most critical from a reputational point of view. Preliminary examinations do not carry high costs for states since the Court is not empowered to do much more than to collect information. During an investigation, however, the Prosecutor becomes empowered to request arrest warrants. This has a few political implications. First, individuals are singled out as alleged criminals, making official the existence of extreme human rights violations in the country. At this point, state agents can be put on the "wanted by the ICC" list, which serves as a symbolic marker for investors, diplomats and other international audiences. This could also be politically troublesome for the ruling coalition, which must cooperate in the punishment of state agents that are part of its own ranks.

An ICC investigation also implies judgment from members of diplomatic society belong to international institutions.[42] For a warrant to be issued, a Pre-trial chamber composed of three international judges must agree with the preliminary case presented

[41] Buchanan 2004.
[42] Johnston 2001.

by the Prosecutor. Recent ICC history suggests that the Judges are much harder to portray as politically motivated than the Prosecutor, who has been accused of an anti-African bias by some and of being too lenient to governments by others.[43] This means that states under investigation fall under fairly objective scrutiny from international institutions. Investigations also create other diplomatic complications. The issuance of arrest warrants by necessity introduces the issue of state cooperation for the arrest of indictees. This has proven to be a thorny issue not only for states directly under investigation but to other surrounding states as well, especially when the suspect is a high-ranking official. For example, every time an African ICC member is hosting a summit, concern arises over Sudan's Omar al-Bashir's attendance because he is the subject of an outstanding ICC arrest warrant. Thus, due to the reputational and politically charged nature of the investigation phase, one may expect that targeted states begin strategically engaging the Court during the preliminary examination phase, if only because such examinations have the potential to become full investigations, with all of the scrutiny that entails.

4.2 The Ruling Coalition Feigns Willingness

The ruling coalition's dominant strategy following the onset of ICC preliminary examination is to at least feign willingness to comply with human rights legal norms while avoiding sovereignty costs.[44] Thus begins the willingness game it plays with domestic reformers, in front of an international audience. The government has an interest in making it seem as if lack of compliance with human rights and humanitarian norms of enforcement prior to ICC involvement is not directly attributable to the absence of ruling coalition willingness, but to other factors limiting its opportunity, like the difficulties posed by civil war. If a country's conservative rulers were to initiate rights-based enforcement mechanisms amidst ICC preliminary examination, then it would become clear that the government had always possessed the capability to pursue greater human rights enforcement, but was never willing to introduce reforms in earnest until it faced external pressure. The rulers' actions would thus belie their own ex ante non-compliant intentions. By waiting out the

[43] Human Rights Watch 2005; Bikundo 2012.
[44] Moravcsik 2000.

ICC preliminary examination, the ruling coalition leaves open the possibility that it will not be the Prosecutor will not advance to the investigation stage, meaning the shock of ICC intervention subsides. If and when the Prosecutor proceeds to investigation, the ruling coalition simply stays the course, as if it had always been consented to international involvement.

The concern of states to appear willing to adhere to human rights laws becomes especially evident when the ruling coalition brings its own situation to the OTP for investigation—a phenomenon known as self-referral. Ruling coalitions who decide on self-referral, as Democratic Republic of Congo Uganda, Central African Republic, and Mali have done, are surrendering the notion of absolute control over their states, which is a puzzling move. One reason they engage in this behavior is for political expediency. Ugandan President Yoweri Museveni, with his self-referral, sought international assistance with the de-legitimation and apprehension of rebel leader Joseph Kony in 2004. Malian Minister of Justice Malick Coulibaly, acting as an instrument of the president, was probably attempting to mobilize international support against Northern Malian rebels with his letter of referral. But state governments are also more influenced by worries over international reputation than most assume. Uganda's Museveni referred the LRA situation to the ICC very shortly after Prosecutor Luis Moreno-Ocampo announced his intent to get authorization to investigate the Ituri province in DRC. Realizing that ICC investigations in the region were a *fait accompli*, President Museveni made the first move to self-refer, which was followed shortly after by Joseph Kabila in the DRC.[45] By referring, these leaders took the responsibility for setting the process in motion—likely to make a show of their supposed willingness to comply with international norms.[46]

4.3 The Reformer Coalition Seizes the Opportunity

At the same time that those aligned with the government are trying to demonstrate their willingness to enforce rights laws, the reformer coalition in the country attempt to use the newfound attention surrounding ICC investigation to unmask the endemic

[45] Akhavan 2005.
[46] Friman 2004.

abuse of local rule of law. Reformer coalitions include activists and attorneys linked in with transnational NGO, along with their allies inside the system, including progressive legislators, ministers, and judges within the judiciary—all of whom are eager to strengthen democratic rule of law in their home countries. Part of the reformers' efforts involve exposing the ruse of government leaders feigning cooperation with the Court. This is the second stage of the domestic willingness game. Reformers issue statements about the reticence of government officials to support local human rights responses, along with a number of calls for more domestic judicial empowerment. Speaking in the wake of recent disruption in the Central African Republic, and staking out an anti-interventionist position, former Tanzanian President Benjamin Mkapa argued that African courts should be empowered to handle atrocity crimes. He asked, "Rather than refer cases to the International Criminal Court at the Hague, why not enable our Courts to handle these cases?"[47]

During ICC investigations, reformers engage in three actions: demand-making, capacity-building, and gap-filling litigation. After ICC investigations are initiated, groups begin mobilizing the public around demands for reform. They wait for investigations to begin demand-making both because they are given some protective cover by an international presence, and because they do not want to inspire cheap concessions from the ruling coaltion prior to investigation. Such concessions could be incorrectly interpreted by the Court as state efforts to fulfill rights obligations, which would potentially prevent the Court from triggering international jurisdiction.

Post-investigation demand-making occurs alongside reformers' direct cooperation with transnational activists in an attempt to build local capacity, in hopes that doing so will build momentum for a strengthened rule of law. Capacity-building means participating in legal conferences, training programs, and human rights education initiatives. Making demands and building capacity, though, do not themselves mobilize domestic courts. For this, groups desirous of change pursue gap-filling litigation. Reformer organizations realize quickly that not all human rights violations rise to the level of atrocity, meaning

[47] "Former Tanzanian President Asks for Regional Fair Justice." *East African Business Week (Kampala)*, 22 Apr 2014.

that many lower-level cases are left untouched by the ICC. One response from local actors might be to themselves go after those cases outside international jurisdiction. Because they do this in a moment that ruling coalition is sensitive to international attention, the chances they are likely to succeed at pressuring the courts to pursue criminal cases without fear of reprisal increases.

4.4 Theoretical Expectations

Based on this theory, positive complementarity does not necessarily transpire the way that ICC architects intended for it to. Because ruling coalitions have an incentive simultaneously to mislead the international public about their willingness to abide by human rights norms and to avoid sovereignty costs, they promise to enforce human rights laws while locally challenging the Court. Those who study international policies expect this kind of reaction because sovereign control is coveted, and outside interventions of any type are thoroughly resisted by those in power. ICC interventions are thus attacked by local leaders for being neo-colonial even when it is invited to investigate a country through self-referral; its efforts at capacity-building are frowned upon for being inadequate and insensitive to the local environment; and its investigations are charged for being selective and insufficient in scope.

Despite all of this, the ICC's investigative interventions might still prove to have a "catalytic" effect on local efforts to pursue justice.[48] The reason is that slippery state promises inspire legal reformers to call bluffs concerning leaders' rights-compliant intentions. This effect is heightened when transnationally human rights organizations are assisting and projecting the criticism of local reformers through global information networks. The resultant willingness game is played out on the international scene; the government must give into some reforms or it will publicly lay bare its obstructionist or repressive preferences. Paradoxically, at these moment state leaders' and legal reformers' interests converge on the need to pursue domestic human rights prosecution, although the ruling coalition would prefer much weaker efforts than reformers. The result is that

[48] For catalytic, see Nouwen 2014.

momentum builds for domestic initiatives by judicial reformers to hold state agents accountable for human rights crimes. The next sections tests whether this expectation is grounded in quantitative evidence.

5 Quantitative Evidence

The main hypothesis produced by this process-based theory is that ICC investigations into a country's situation will increase domestic human rights prosecutions, which are defined as "the use of formal domestic courts of law to initiate a criminal proceeding—including preliminary trial processes, trial hearings, or verdict and sentencing—for one or more state agent perpetrators of human rights violations."[49] The prosecution of state agents, including members of military and police forces, is a hard test for the theory; ruling coalitions are little willing to see their own forces targeted for trial, though they are more than willing to punish opposition forces and rebel groups. Therefore, if state agents are going to trial, it means that something other than "victor's justice" is taking place. Ruling groups have long sought to prosecute captured rebel leaders and other enemies of the state for a variety of crimes, but they have not long pursued much punishment against state agents of violence for human rights violations.

For this study, human rights violations are abuses to physical integrity, including torture, political imprisonment, disappearance, unlawful killing, and sexual abuse. Importantly, human rights prosecutions is chosen as the outcome variable, rather than trials for the specific crimes under the jurisdiction of the ICC. Therefore, we choose trials of all state agents for abuses to physical integrity–not just those trials that target high-level officials or rebel leaders for atrocity crimes–as the dependent variable.[50] The reason is that the unintended impact of ICC intervention should not be limited to trials for specific types of human rights crimes. According to the theory, domestic actors will be emboldened to pursue prosecution for a variety of different human rights violations. We are also interested in the number of guilty verdicts issued in criminal trials. Thus, we study

[49] Dancy et al. 2014.
[50] For atrocity crimes, see footnote 9.

two data series, yearly counts of human rights prosecutions and yearly counts of guilty verdicts produced in those prosecutions. Both are taken from the Transitional Justice Research Collaborative, which has gathered events history data on human rights trials using a variety of sources.[51]

A total of six African countries—Uganda, the Democratic Republic of Congo (DRC), the Central African Republic, Kenya, Cote d'Ivoire, and Sudan—have been investigated by the ICC. For the models, two different stages of ICC intervention are considered: preliminary examination and investigation. Included is a variable measuring the duration of the preliminary examination (ICC-PE), and also a variable that takes on a value of "1" in every year following the onset of an investigation (ICC-INV).[52] In years where a preliminary examination terminates and an investigation begins, that year is coded "1" for preliminary examination, and the investigation variable does not become "1" until the next year.[53]

[51] See www.transitionaljusticedata.com.

[52] These data are available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/Pages/situations%20index.aspx.

[53] In this way, ICC-INV is coded as a lagged variable.

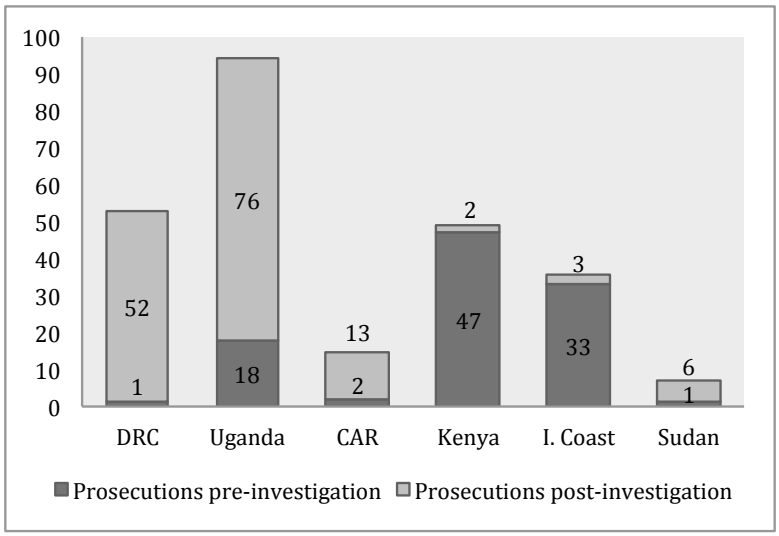


Figure 1: Prosecutions before and after ICC investigation

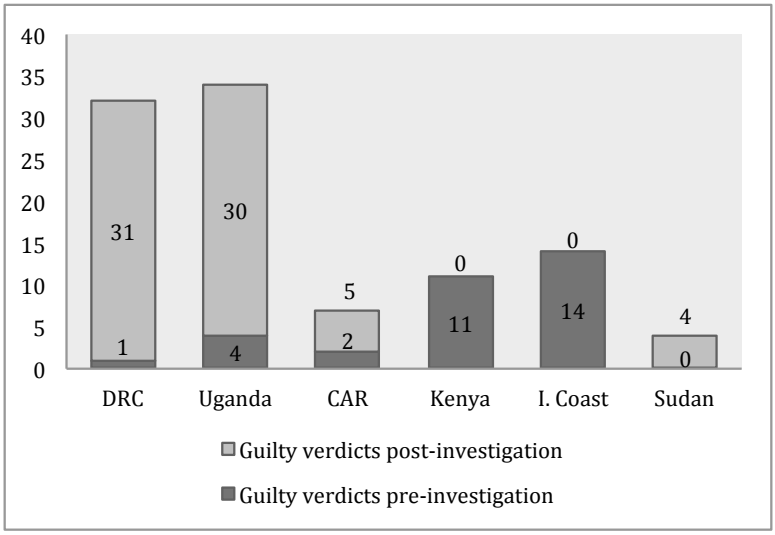


Figure 2: Guilty Verdicts before and after ICC investigation

Figures 1 and 2 depict a raw count of human rights prosecutions that were initiated in each country before and after ICC intervention. Two of these cases, Uganda and the DRC, have shown a drastic increase in the number of human rights prosecutions and guilty verdicts following ICC investigation. Two others, Central African Republic and Sudan, have shown a moderate increase. The final two, Cote d'Ivoire and Kenya, have become the subject of investigation so recently that it is difficult to assess temporal trends. Given this data, there are two significant challenges to assessing the causal significance of an ICC investigation. The first challenge is that relatively few cases exist, and they must be compared to region-wide trends toward increased accountability for human rights crimes. The second challenge is that a number of other causal factors must be weighed when considering the casual significance of one single variable.

In order to address the first challenge, a cross-national, time series analysis of 46 African states is performed starting in 1999—the first full year that the Rome Statute was open for ratification—and going through 2011, the last year for which reliable data on human rights prosecutions is available. Only cases that since 1999 have had at least one period of civil war or systematic repressive violence are selected.[54] Thus, countries enter the dataset only after they have experienced any form of mass violence involving the government. The sample extends back to the year 1999 instead of 2002, the year in which the ICC began its work, because it is necessary to assess the differential effects of Rome Statute ratification, which could have exerted influence as early as 1999, from ICC intervention. Comparing the pool of six cases to 40 other countries is useful because a general trend toward more human rights trials and guilty verdicts is present across the entire African region over the period from 1990-2011 (See Figure 3).

Two of the six countries that have been subject to full investigation, Uganda and DRC, are atop the list of 25 African countries with the most human rights prosecutions from 1970-2010 (See Table 7 in Appendix). The other countries rank 7th, 11th, 13th, and 20th. That Uganda and DRC have had so many trials, most of which happened after the

[54]Civil war period is defined using PRIO's Onset of Intrastate Armed Conflict, 1946-2011 Dataset, which the authors updated through 2012 using the UCDP/PRIO Armed Conflict Dataset v.4 (Gleditsch et al., 2002; Themnér and Wallensteen, 2014). Widespread repressive violence is defined as the attainment of a score of "4" or higher on the Political Terror Scale (Gibney et al., 2013).

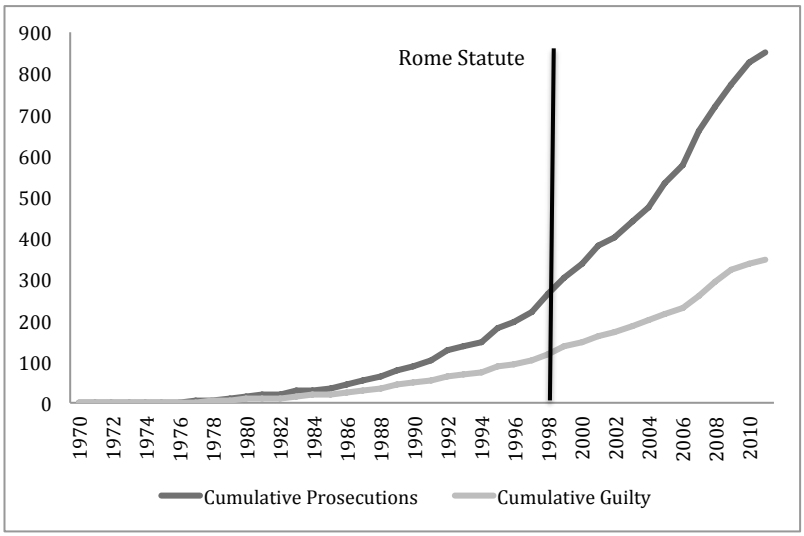


Figure 3: Cumulative Count of African Prosecutions Over Time

ICC began its investigations, is good preliminary evidence for our theory. But these basic statistics are not enough to know that ICC investigation is causal, and if so, what is the magnitude of that casual relationship. To determine causality, one must analyze whether investigation precedes increases in prosecutions, and examine how strong the relationship between investigation and prosecutions is when compared to other important factors.

To first assess whether any relationship exists between ICC investigation and human rights prosecutions, models were estimated using regular and fixed-effects negative binomial regressions with multiple imputation to address the problem of missing values in the covariate matrix.[55] The negative binomial model fits best to the count data used as the dependent variable because it accounts for overdispersion,[56] and adding a fixed-effects parameter allows the model to account for unobserved differences across countries that may explain the presence or absence of human rights prosecutions.[57] The most ba-

[55]The dependent count variables have no missing values, and are therefore not imputed. Imputation algorithms are used to generate values for three variables: HRNGOs, Judicial Independence, and OECD Aid. Imputations are created with a Bayesian iterative Markov chain Monte Carlo (MCMC) procedure in Stata, which assumes a multivariate normal model. Twenty iterations were performed, and these variables were assumed to be a function of time in years, level of repression, civil war, population, and GDP. The imputation procedure was also performed using Amelia II software, and no significant differences appeared.

[56]This simply means that the conditional variance is larger than the conditional mean.

[57]The fixed-effects negative binomial is estimated with the inclusion of country-specific over-dispersion parameters. Because the negative binomial is a non-linear, conditional maximum likelihood model, fixed-effects techniques are not as reliable as they are with linear regressions; therefore, fixed-effects negative binomials should be approached with caution. They are used here simply to demonstrate robustness. See Paul Allison "Beware of Software for Fixed Effects Negative Binomial Regression." *Statistical Horizons*, 8 Jun 2012.

sic model considers the effects of investigation, controlling for the effects of preliminary examinations and two other factors that are most likely to increase demand for human rights prosecutions: lagged levels of repression (PTS) and lagged presence of a civil war (Ongoing Civil War). Because justiciable human rights violations occur during periods of excessive government coercion and civil war,[58] demands for justice will be most prevalent directly following civil wars or years with high repressive violence. Also included is a Time variable measured by year to control for the possibility that the ICC-INV dummy is capturing the effects of the justice cascade, or the higher likelihood for states to hold human rights prosecutions with the passage of world time.[59] A list of variables and summary statistics is available in Table 5 of the Appendix.

Table 1 presents the results of the base models. The coefficient for ICC-INV is statistically significant at the 0.01 level, where ICC-PE is only significant at the .10 level. In regards to magnitude, the effect of an investigation is robust, increasing the count of prosecutions by 321%. In other words, a country subject to an ICC investigation will have roughly three times more trials per year than other African countries without ICC involvement. Level of repression also has a statistically and substantively significant effect; for each one-level increase in the systematicity of violent repression in the country (on a 5-point scale), the count of prosecutions will increase by 50%. Civil wars abuses do not appear to inspire prosecution. One possible reason is that our PTS variable is capturing variation explained by extremity of violence during civil wars, which is more likely to have a greater impact than merely the presence of any civil war. It should be noted that ICC-INV is the only statistically significant variable in the fixed-effects model, and previous repression is no longer a significant predictor of prosecutions. This means that ICC investigations explain changes in number of prosecutions within countries, whereas level of repression only explains difference between countries.

[58] Davenport 2007.
[59] Sikkink 2011.

Table 1: Determinants of Prosecutions

DV:Prosecutions	Regular b/se	Fixed Effects b/se
ICC-PE	0.586	0.701*
	(0.519)	(0.348)
ICC-INV	1.466***	1.186***
	(0.374)	(0.317)
PTS	0.399***	0.0682
	(0.119)	(0.120)
Ongoing Civil War	-0.141	0.0969
	(0.237)	(0.223)
Time	-0.00624	0.0114
	(0.0255)	(0.0215)
Constant	10.92	-23.35
	(51.16)	(43.17)
Observations	588	492
Countries		41

***p<.01 **p<.05. PTS and Civil War lagged one year. Observations decrease in fixed effects models because panels with all zero values on dependent variable are excluded.

Table 2: Determinants of ICC Intervention

DV: ICC-PE	Logit b/se	Fixed F/X Logit b/se
Prosections	0.0795	0.0435
	(0.102)	(0.133)
PTS	1.536***	0.915
	(0.252)	(0.593)
Ongoing Civil War	-1.590**	-1.673
	(0.724)	(1.164)
HRNGOs	0.0121	-0.0168
	(0.0295)	(0.0608)
Constant	-9.592***	
	(1.472)	
Observations	581	96
Countries		8

***p<.01 **p<.05. All variables lagged one year. Observations decrease in fixed effects models because panels with all zero values on dependent variable are excluded.

Is it certain that the effect of ICC involvement is in fact causal, rather than simply correlative? One possible check is test for reverse causality, or whether the lagged count of prosecutions predicts the onset of an ICC Preliminary Examination. Performing such a test allows for assessment of whether trials were already increasing in countries before the ICC became involved. Table 2 presents the results of logits assessing the effects of Prosecutions(t-1) on the initiation of a preliminary examination, which marks the move from referral to serious consideration of the country's situation. As before, this models controls for level of repression and civil war because the ICC is more likely to involve itself in states with extreme levels of violence. The coefficient on the Prosecutions variable is insignificant, which indicates that it is not a predictor of ICC involvement. In other words, the increase in domestic prosecutions we are observing does not take place *prior* to ICC involvement. If anything, what predicts ICC involvement is the previous level of repressive violence that a country exhibits. To further examine whether our causal inference is justified in this case, we also performed difference-in-differences models, which are reported in the Appendix. These models strongly indicate that ICC investigation is causal.

The possibility remains that the causal effect is in actuality attributable to other confounding factors. The list of these possible confounders is long, but from a review of the appropriate literature, four additional factors should be controlled for to ensure robustness. First, as discussed in Section 3, International Relations scholars have argued that ratification of treaties is likely to spur moves toward compliance in the form of judicial reform and mobilization.[60] In a more negative bent, some scholars worry that the region-wide move toward individual criminal accountability simply indicates that domestic actors are mindlessly applying "international legal frameworks" to their own situations. State differently, "domestic processes are simply become more isomorphic," the products of "replication and dissemination of liberal legalist modalities of justice."[61] If this were true, and countries were simply mimicking the legalist trappings of the world community, then all countries that have ratified the Rome Statute should make moves

[60] Simmons 2009; Dancy and Sikkink 2012.
[61] Drumbl 2011, 215-6.

toward individual criminal accountability. Therefore, included is a control that is coded as "1" in the year that a country ratifies the Rome Statute, and every year after.

Second, other scholars have questioned the notion that ICC intervention itself has any independent causal impact on local movements toward accountability. Africanist Phil Clark attributes the increase in judicial activity in the DRC to an influx of aid from external sources. "Since July 2003," Clark writes, "the EU's Ituri-focused investment of more than US$40m. towards reforming the Congolese judiciary has seen considerable progress in local capacity."[62] This argument must be accounted for if one is to claim that ICC intervention has an independent impact. Thus, also included is a measure of bilateral and institutional aid from OECD countries, specifically earmarked for civil society and capacity-building profjects. This data is more specific than most aid data, which is aggregated across non-applicable issue areas. The variable OECD Aid, which is measured in billions of 2010 US dollars, was taken from the OECD's Query for International Development Statistics (QWIDS).[63]

Finally, transitional justice scholars have shown convincingly that countries undergoing democratic institutional transformation are likely to prosecute formerly abusive state agents. This is controlled for with a variable, Democratic Transition, which registers whether a country underwent at least one democratic transition since its entry into the dataset. Also controlled for is Judicial Independence, a factor crucial to rule of law that may enable actors to pursue litigation. Judicial independence is measured using a 1-100 index derived from a Bayesian statistical analysis of a battery of data series purporting to measure judicial institutions.[64] The higher the country's score in any given year, the greater the latent independence of its judiciary. Based on the theory presented in this article, it should also be the case that countries with a larger number of active human rights NGOs will have more human rights prosecutions, because these organizations assist the reformer coalition is articulating demands and pushing for litigation. This is controlled for with the variable HRNGOs, which is a yearly count of operative human

[62] Clark 2008, 40.
[63] Available at http://stats.oecd.org/qwids/.
[64] Linzer and Staton 2012.

rights organizations in the country.[65]

The results of the four full models are reported in Table 3. The first two use prosecution counts as the dependent variable, and the second two examine guilty verdicts. For each dependent variable, a regular and a fixed-effects negative binomial model are performed. As before, the coefficient on ICC-INV is highly statistically significant, regardless of model specification, while ICC-PE is not. What this indicates is that when controlling for confounding factors, preliminary examinations do not seem to increase prosecutions, but investigations do. Three other variables are also positive and statistically significant predictors of human rights prosecutions in African countries: HRNGOs, Judicial Independence, and PTS. However, these variables are only significant in the models not utilizing fixed effects. As before, this suggests that the only variable causing a change *within* countries, rather than between countries, is the onset of an ICC investigation. The other variables are only significant when all observations are pooled together.

A fair criticism of these findings would be that the initiation of more prosecutions alone is not evidence of a move toward accountability, and that what should be observed is whether state agents are being held guilty for their actions. Here, the models predicting count of guilty verdicts becomes relevant. Again, ICC-INV, HRNGOs, Judicial Independence, and PTS are statistically significant in the regular models. Based on this, one may conclude that not only are ICC interventions a major causal determinant of prosecutions, but also the meting out of some justice for victims of human rights abuse. Moreover, it is the most significant factor when changes within states are examined. It seems that ICC investigation is the most powerful explanation for why some African states would suddenly feature a number of human rights prosecutions for state agents.

[65] These data are available from Murdie and Bhasin 2011 for the period 1990-2004. Missing values are accounted for through multiple imputation.

Table 3: Full Model of Determinants of Prosecutions and Guilty Verdicts

	Prosecutions b/se	Pros. Fixed b/se	Guilty b/se	Guilty Fixed b/se
ICC-PE	0.154	0.647*	-0.649	0.215
	(0.342)	(0.355)	(0.653)	(0.724)
ICC-INV	1.127***	1.149***	1.586***	1.246**
	(0.402)	(0.334)	(0.550)	(0.494)
Rome Ratification	0.0832	-0.238	-0.367	-0.522
	(0.248)	(0.263)	(0.377)	(0.404)
OECD Aid (billions)	0.285*	0.0650	0.257	0.0589
	(0.160)	(0.0659)	(0.202)	(0.212)
Judicial Independence	0.0210***	0.0161*	0.0196**	0.0289**
	(0.00760)	(0.00881)	(0.00876)	(0.0139)
HR NGOs	0.0276**	0.00831	0.0361***	0.00843
	(0.0110)	(0.0110)	(0.0115)	(0.0177)
Democratic Transition	0.331	0.738**	0.306	0.802
	(0.286)	(0.346)	(0.402)	(0.513)
PTS	0.527***	0.144	0.560***	0.284
	(0.146)	(0.130)	(0.184)	(0.196)
Ongoing Civil War	0.00599	0.171	-0.175	-0.0286
	(0.240)	(0.242)	(0.324)	(0.360)
Time	0.0113	0.0136	0.0478	0.0196
	(0.0377)	(0.0266)	(0.0385)	(0.0410)
Constant	-26.78	-29.38	-101.0	-42.10
	(75.61)	(53.49)	(77.19)	(82.34)
Observations	580	480	580	372
Countries		40		31

***p<.01 **p<.05. All independent variables except for Time are lagged one year. Observations decrease in fixed effects models because panels with all zero values on dependent variable are automatically excluded.

Table 4: Magnitude of Change in Covariates

	Prosecutions	Guilty Verdicts
ICC Investigation	27.2	39.7
PTS (Repression)	38.0	36.0
HRNGOs	96.3	115.7
Judicial Independence	42.7	31.7
OECD Aid	9.4	4.5

Note: Percent change in expected count of outcome with a one-standard deviation change in each factor. Figures calculated from negative binomial models using means values from 20 imputations.

Still, the theories from prior research have some relevance. On average, enhanced judicial capacity does seem to predict increases in human rights prosecutions, as does a prior legacy of repressive violence. It is also the case that the presence of an active NGO sector increase the count of prosecutions and guilty verdicts in a country. This supports the theoretical expectations detailed in Section 4.4. How strong is the influence of ICC investigation compared to the other variables? In order to answer this question, diagnostics were performed on the models without fixed effects. A move from no investigation to a full investigation by OTP increases the count of trials by 203%, which is by far the largest effect of a one-unit change in any variable in the model. But because the variables are scaled differently, it is most useful to compare the percent change caused by a one standard deviation change. Table 4 records how much a one-SD change in the statistically significant independent variables alters the count of prosecutions and guilty verdicts in the negative binomial models without fixed effects. One can see that previous levels of repression have roughly the same effect as an ICC investigation, which is intuitive because without government violence, it would prove unnecessary to hold state agents accountable. Judicial independence also increases the count of prosecutions by 41%. But the strongest predictor by far is the presence of human rights NGOs in a country. Each additional NGO increases the expected count by 6.1%, but a one-standard-deviation change increases the expected count of prosecutions by close to 100%.

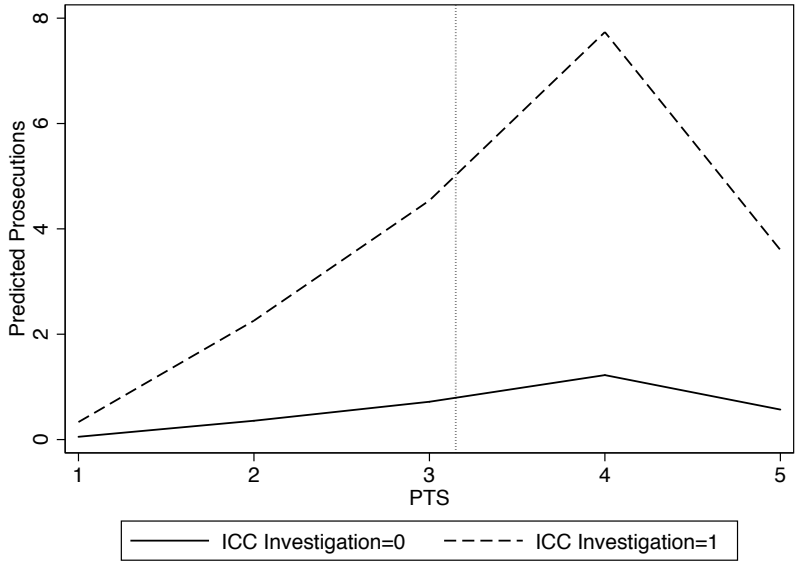
Some might interpret these results in the following way: NGOs are the primary determinant of prosecutions, not the ICC. While the effect of NGO presence is strong, these

results should be approached with caution. Of the variables included in the model, HRNGOs possessed the most missing values, much of which occur in the period 2005-2011. As a result, this variable is unreliable and best interpreted as a control.[66] Rather than overwhelming the effect of ICC investigation, the presence of HRNGOs is better understood as a scope condition for the theory. That is, in countries with little NGO or civil society activity, ICC intervention will probably not have much impact.

Other scope conditions are likely also present. For instance, one should expect countries with higher levels of repression to be more likely to initiate prosecutions. To test the effects of scope conditions, interactive effects were modeled and examined. Figure 4 shows that countries subject to ICC investigation have a much higher expected count of human rights prosecutions than those without, at each level of repression. Likewise, Figure 5 demonstrates that while higher numbers of HRNGOs are associated with higher predicted counts of prosecutions, the presence of an ICC investigation significantly enhances the effect. Figure 6 shows the marginal effects of ICC investigations, *conditional* on other factors. While the interactive effects of judicial independence and OECD aid on ICC investigations are negligible, the conditional effects of NGOs on ICC involvement is clearly observable. The greater the number of HRNGOs in a country, the stronger the effect of ICC investigation will be on the number of human rights prosecutions and guilty verdicts. This finding supports the theory because NGOs play an integral role in the reformer coalition keen on enhancing accountability amidst ICC investigation.

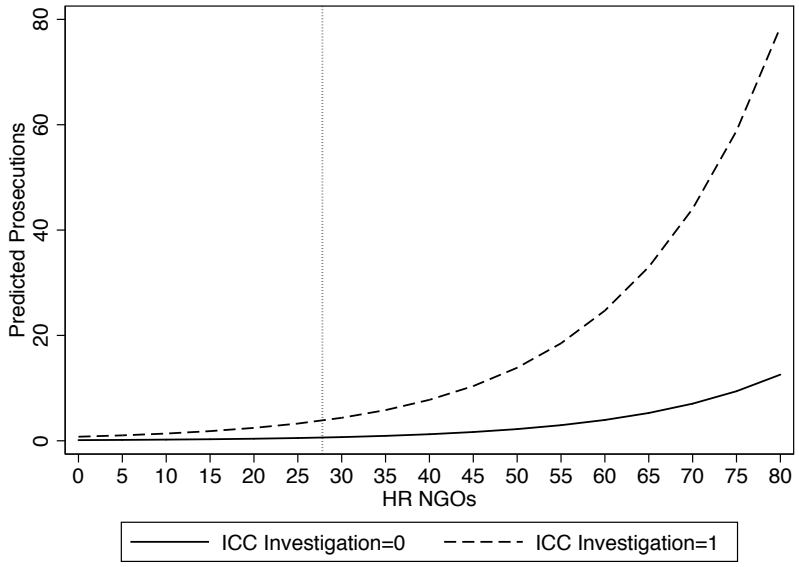
[66] Originally, HRNGOs was excluded from the models for this reason, but was included following from reviewer suggestions. Until better NGO data are produced, we cannot know for sure what the true effects of NGO involvement is.

Figure 4: Effect of ICC Investigation on Predicted Prosecutions, by Level of Repression



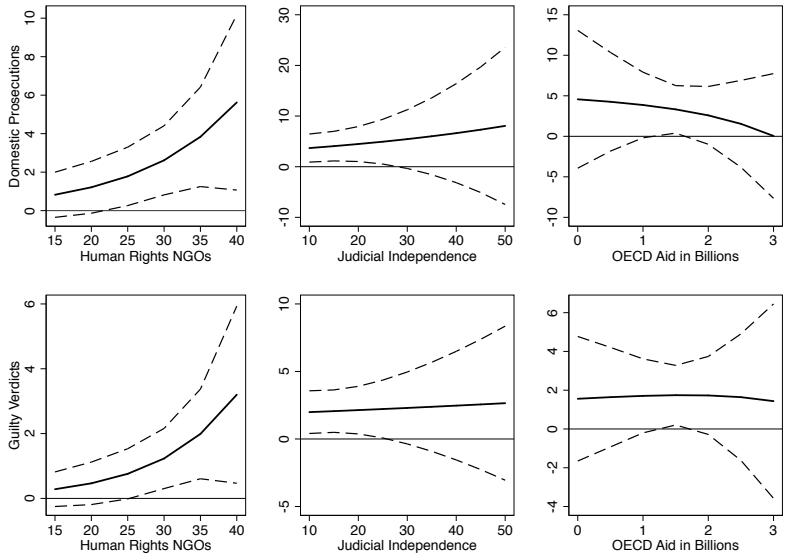
Note: Vertical line represents average PTS score for the sample of African countries.

Figure 5: Effect of ICC Investigation on Predicted Prosecutions, by Number of NGOs



Note: Vertical line represents average number of NGOs for the sample of African countries.

Figure 6: Conditional Marginal Effects of ICC Investigations



6 Qualitative Evidence

Quantitative evidence cannot serve to demonstrate the operation of causal mechanisms. Even if there is a relationship between ICC investigations and domestic human rights prosecutions, one could not know based on increased prosecution counts whether ruling coalitions and reformer coalitions are acting strategically in response to ICC involvement in their countries. The ideal evidence to validate the argument would be open declarations by rulers and reformers in one or more countries clarifying their motivations at each step in the process, but that evidence is very difficult to obtain. Short of perfect information on motivations, this section presents a collection of observable behaviors from different countries involved with the ICC. While not a controlled comparison, these examples provide some indication that ruling coalitions feign willingness, while reformer coalitions issue demands, build capacity, and pursue gap-filling litigation in the wake of ICC investigations.

6.1 Feigned Willingness

Amidst investigation, ruling coalitions have pretended to be wholly devoted to ICC involvement. In March 2004, three months after Uganda submitted its official referral letter to the ICC, Museveni stated, "I am ready to be investigated for war crimes... and if any of our people were involved in any crimes, we will give him up to be tried by the ICC... And in any case, if such ceases are brought to our attention, we will try them ourselves."[67] Museveni's intentions were to create the image that his government was willing to pursue enforcement for human rights, but that it was simply unable to "succeed in arresting those members of the LRA leadership and other most responsible for... crimes."[68] But states must couple feigned willingness with efforts to avoid sovereignty costs. Museveni took the additional step of arguing that domestic institutions were in fact robust and capable of trying war criminals. The December 2003 letter of referral states, "The Ugandan judicial system is widely recognized as one of the most independent, impartial, and competent

[67] Akhavan 2005, 411.
[68] See "Referral of the Situation Concerning the Lord's Resistance Army" 16 Dec 2003, at 14.

on the African continent... Contentious political issues are regularly submitted to the Ugandan judiciary and vigorously litigated."[69]

Though he had before been called a "true believer" in human rights, evidence suggests that Museveni was prevaricating in this circumstance: he had little willingness to cooperate with international or domestic human rights enforcement if it meant loss of his own strength, and he also had little trust in Uganda's judiciary.[70] When the Juba Talks (2006-8) were showing some promise, President Museveni threatened to take back his referral of the case to the ICC in favor of dealing with the Lord's Resistance Army. By that time, he had already showed his lack of confidence in local judicial institutions. In June 2004, Museveni claimed that the Constitutional Court had "usurped the power of the people" by ruling unconstitutional a referendum restricting political party opposition, and in 2005 his government publicly deployed its Joint Anti-Terror Team (JATT) to march into the High Court with guns, disrupt bail hearings for members of the People's Redemption Army (PRA), and arrest members of the opposition group.[71] The challenge to the Constitutional Court and the armed invasion of the High court were understood locally to be executive intrusions into the judiciary by an overreaching President, but these events stayed local. At the international level, Museveni appeared a valuable partner in the effort to build the strength of the ICC through cooperation with target states.

While shows of willingness to comply with human rights norms are obviously not backed with credible intentions, and are performed to earn cheap international victories, these promises are sometimes taken seriously by other members of ruling coalitions. Executive cooperation with the ICC is not always transparent, and it can inspire some groups to resist. In the DRC, executive cooperation with the ICC rankled with other elites not privy to the ruling coalition's strategy: "Of course this referral has a background in domestic Congolese politics and there may well have been different views within the transitional DRC government as to whether it should have been made at all."[72] Military leaders were

[69]Ibid 13-14.
[70]For true believer, see Risse and Sikkink 1999, 16.
[71]The official name is the Referedum (Political Systems) Act of 2000, International Bar Association 2007.
[72]Friman 2004, 21.

not keen on the prospect of becoming subject of an investigation, and prideful high court judges could take the self-referral to be an insult from the executive. Conservative members of the legal community are openly critical of ICC investigations for inviting outside interference. In reference to the Kenyan elections in 2013 that brought two ICC-indicted men to power, African legal expert Professor Mahmood Mamdani blamed the international Court for "enforcing impunity for the big forces and their cronies" and argued that the solution for African states lay in homespun judicial-led action.[73]

6.2 Demanding Reform

When the ICC was in the preliminary examination stage in Kenya, from 2008 to 2010, Kenyan NGOs did not mobilize for criminal reform. One reason is that they welcomed ICC investigation in Kenya because they had lost faith in the ability of domestic actors to fight corruption. If they had succeeded in promoting reform during the preliminary investigation stage, then the ICC might have ruled the Kenyan case inadmissible on the grounds that newly reformed national courts were capable of hearing cases related to election violence. Thus, NGOs delayed, and supported the ICC intervention with the hope that it would provide a "'window of opportunity' to restructure the state, reduce poverty, and produce development and stability."[74]

During that 2008-2010 period, over 60% of the Kenyan public supported ICC intervention.[75] After the investigation was initiated in March 2010, the percentage of the public favoring the ICC would begin a steady decline (it is now 39%), and the percentage of those favoring local solutions has increased (it is now 32%).[76] One reason for this may be that grassroots NGOs shifted their strategies post-investigation away from garnering public support for ICC intervention to altering public support for reform. As Bjork and Goebertus argue, "the ICC has contributed to a process in which NGOs are working to empower communities in their quest to demand accountability."[77] It remains to be seen

[73] Dannis Odunga, "Courts will not dare overturn president election," *Daily Nation (Kenya)*, 14 Feb 2014.
[74] Bjork and Goebertus 2011, 226.
[75] Ibid.
[76] "Half of Kenyans worse off under Uhuru Kenyatta regime." *BBC Monitoring Africa*, 10 July 2013..
[77] Bjork and Goebertus 2011, 228.

whether this kind of activity will lead to reforms and ultimately to an increase in local human rights criminal proceedings over the longer term. NGOs faced a major setback when ICC indictees were narrowly elected to the presidency in 2013. Some reformers in Kenya, though, used the conflict between the ICC and the crimes against humanity indictee, and newly elected president Uhuru Kenyatta, as a springboard for discussing the divide between the interests of corrupt elites and the actual desires of the Kenyan people. In a 2011 bulletin, Kenyans for Peace Truth and Justice proclaimed, "While there have been spirited efforts by the Government of Kenya challenging admissibility of the cases before the ICC and demanding that they be referred back to Kenya, there has been no credible action showing that the government is serious about pursuing the main perpetrators of post-election violence. Nor has there been action to secure accountability for middle and lower-level culprits. The government must therefore establish a credible local mechanism to exact accountability for these crimes."[78] If local groups succeed in maintaining public outrage and support for judicial reform while narrowing support for the current presidency, then progress may feasibly be ushered in by future alternation in leadership.

6.3 Capacity Building

The Kenyan Supreme Court is currently engaged in capacity-building, though it is caught between the country's acting President Uhuru Kenyatta; the ICC, which has indicted that President; and a public that is split down the middle over the desirability of international war crimes proceedings.[79] Stuck in this position, the Kenyan judiciary has proceeded with caution. In May of 2014, the High Court of Kenya issued an arrest warrant for a journalist, Walter Barasa, a minor player wanted by the ICC for interfering with witnesses in the

[78]"The ICC and Kenya: Understanding the Confirmation of Charges Hearings." KPJT Bulletin, September 2013. http://africog.org/new/wp-content/uploads/KPTJ_Confirmation_of_Charges_Hearings.pdf.

[79]As of July 2013, "39 per cent want the cases facing President Kenyatta, his deputy William Ruto and former radio presenter Joshua arap Sang at the International Criminal Court [ICC] to proceed, 32 per cent want the trial brought closer home while 29 per cent want the Hague process stopped." *supra note* 76.

international trial of Deputy President William Ruto.[80] This low-cost show of support for the ICC has come at a time when the ICC Outreach Program has been cooperating with the Kenya School of Law and the Law Society of Kenya to educate local actors in the specifics of international criminal law.[81] These modest activities are initial steps toward reform of the judiciary, which is still rife with corruption and is facing open defiance from members of the government, along with threats from pro-government armed groups.[82] Still, there are signs that the Kenyan Supreme Court is using the attention surrounding the ICC intervention to take a stand against a history of strong-arming and intimidation on the part of the executive and its "cabal of retrogrades."[83]

Uganda is the primary case that demonstrates the longer-term potential for capacity-building in the wake of ICC investigation, which can develop even in the absence of executive will and with limited ICC outreach efforts. Following the beginning of the ICC investigation in Uganda, hesitation prevailed among Ugandan legal actors. Even after arrest warrants against five LRA commanders had been issued in October 2005, many Ugandans lawyers and judges favored a "peace" strategy including The Juba Talks in combination with traditional forms of reconciliation like *matu oput*. The argument was that avoiding criminal justice would promise a peaceful end to the longstanding conflict that did not risk further torment for the Acholi and other Northern Ugandans.[84]

However, legal reformers within the judiciary eventually used persistent involvement of the ICC to strengthen local efforts. According to Sarah Nouwen, "government actors have allowed transitional justice norm entrepreneurs to operate in Uganda because they have something to offer: training with 'sitting allowances,' study tours abroad and needs assessments."[85] Furthermore, "The search for an alternative to the ICC has also created a role for the Ugandan legal sector in an area Ugandan lawyers and officials of law enforcement agencies previously shunned."[86] A War Crimes Division was added to the Ugandan

[80]"Kenya high court issues arrest warrant for journalist wanted by ICC." *Legal Monitor Worldwide*, 16 May 2014.
[81]"Lawyers being trained to work with ICC." *Legal Monitor Worldwide*, 12 May 2014.
[82]*supra note* 73.
[83]"Kenya's Willy Mutunga 'threatened' over Kenyatta case." *BBC News Africa*, 20 Feb, 2013.
[84]Baines and Bradbury 2007; Branch 2007.
[85]Nouwen 2014, 167.
[86]Ibid, 179.

High Court, and in 2010, the ICC Act, outlining the terms of Uganda's cooperation with the Court, was passed to "domesticate crimes under the Rome Statue."[87] Only in 2011, six years after Ugandan reformer networks began to develop their own approaches, did the ICC endorse an official cooperative strategy with domestic courts. "The strategy for complementarity in Uganda is settled. The High Court, and specifically the War Crimes Division (WCD), will be responsible for trying international crimes. The international community will focus on the needs of the WCD, and donors are undertaking measures to ensure that capacity needs are well defined."[88]

Major players in this effort to demand reform at the local level are NGOs with transnational partners, not the ICC itself. These NGOs include the Public International Law and Policy Group (PILPG), the Institute for International Criminal Investigations (IICI) and No Peace Without Justice (NPWJ), which have assisted in training local investigators, and facilitating interactions between the Directorate of Public Prosecutions, the ICC, and the public. The ICC has led from behind on these developments, adapting its approach to positive complementarity in response to changes already afoot at the local level. Outside of arguing for change and building capacity, judicial reformers also engage in a final form of action: gap-filling litigation.

6.4 Gap-Filling Litigation

More than likely, demand-making and capacity-building efforts alone cannot, and will not, do enough to provide support reformers pushing for domestic proceedings, at least not in the near term. For instance, when the ICC began officially investigating 2010 election violence in Côte d'Ivoire, a collection of NGOs known as the Convention de la Société Civile Ivoirienne demanded that the OTP do more, namely, to investigate all abuses dating back to 2002, rather than starting in 2010.[89] NGOs often perceive a gap to exist between the promises made by the Court and its limited deliverables.

The Democratic Republic of the Congo offers another instructive example. Civil

[87] Open Society Foundations 2011.
[88] Ibid, 80.
[89] Fulgence Zamblé, "Disagreements Over Scope of ICC Investigation." *IPS Terravia*, 15 July, 2011.

society groups have voiced disappointment with the ICC because it has not pursued prosecution against state agents, and it has set its sight on a woefully small number of elite suspects in a few conflict countries.[90] One response to this is for transnational organizations to seek remedies by reforming and mobilizing local institutions. *Avocats Sans Frontières*, an organization with funding from Belgium, the UK Department for International Development and USAID, has been present in DRC since 2002, carrying out different projects in the area of access to justice. From 2005 onwards, it has focused on justice for international crimes, with a strong component of sexual and gender-based violence (SGBV). The American Bar Association (ABA), with extensive funding from the US and Dutch governments, is another organization with a strong presence in DRC. Together these NGOs have trained magistrates and other local NGOs; provided mobile courts and legal advice and assistance; and offered legal representation for victims and defendants of international crimes. Much of the focus has been on SGBV crimes, which is not surprising if one considers that according to 2007 figures, "(a)pproximately 1.69 to 1.80 million women aged 15 to 49 years had a history of being raped."[91]

The extremity of violence in DRC, combined with a high-profile but insufficient ICC intervention, has led to a robust efforts at gap-filling litigation. Intriguingly, this has created a situation where "complex functions of domestic governance, such as the production of high quality judicial decisions by domestic courts, are able to persist, even flourish, in an area where the state is characterized by extreme fragility and weakness."[92] Congolese domestic courts were the first ones in the world to invoke the Rome Statute in the conviction of seven soldiers for war crimes and crimes against humanity in 2006. Since then, numerous decisions and judgments have been rendered combining the national civil, criminal and military law together with international human rights protections, including the Rome Statute and the ICC's rules of procedure and evidence. The potential for a spillover effect from military to non-military criminal courts is something to consider as well since magistrates have been increasingly hearing cases of rape. From 2004 to 2007,

[90] Phil Clark, "The ICC is Only a Small Piece in the Justice Puzzle of Africa's Conflicts." *All Africa*, 11 Apr 2011.
[91] Peterman et al. 2011.
[92] Lake forthcoming.

the DRC's judicial system went through extensive reform: war crimes and crimes against humanity, including provisions on sexual violence, were included in both the Congolese Penal Code and Congolese Military Code. Interestingly, what proved valuable in the implementation process was not so much the inclusion of the four statutory crimes but the accompanying elements of the crime and rules of procedure and evidence. Before the elements of the crime made its way into Congolese law, there was no definition of rape to be invoked in normal criminal cases.

Between 2008 and 2012 ABA participated in 55 mobile court hearings involving 813 cases in which 459 convictions were secured for SGBV crimes and 121 for other offenses.[93] Also, newly reformed courts in the Ituri province have heard a number of cases of atrocity crimes committed by both rebel and government actors. What we are left with is a situation where "the courts have produced remarkable (and rapid) results...,"[94] but NGOs continue to surge forward, unsatisfied: "Congolese courts had attempted to take up the challenges of complementarity and increased the prospects for the domestic prosecution of international crimes by applying the Rome Statute of the International Criminal Court directly... there are chronic structural challenges facing the fight against impunity in the DRC that can't be met through a handful of prosecutions."[95]

7 Conclusion

While most politically minded observers of the ICC see negative short-term consequences in the Court's dealings with Africa, this article presents the first systematic evidence that ICC involvement in a country has a potentially beneficial intermediate side-effect: it increases domestic prosecutions and convictions of human rights violators. This increase is not the result of a direct line of support between the ICC and local institutions, nor is it simply a spillover of atrocity crimes cases that are transferred from international to

[93] Not all of these prosecutions are included in the TJRC data used in this article, for two reasons. First, the TJRC only focuses on state perpetrators, and second, the data are based on State Department Human Rights Reports. Thus, the counts reflect the sample of state agent cases reported in that source material over time.

[94] *supra note* 90.

[95] Avocats Sans Frontières 2009, 93.

domestic jurisdiction. Instead, ICC intervention increases prosecutions of state agents because reformer coalitions inside and outside the judiciary use the opportunities created by international involvement to demand legal reforms, to build local capacity, and to litigate human rights cases. These actions are taken in part because governments make commitments to legal justice that they may not be willing to keep, and activists call them out by taking action. Afraid of damaging their international reputations, state leaders allow limited reforms to go through, even if they would prefer to stop them.

The willingness game between governments and reformers is triggered by the onset of an ICC investigation: prior to the opening of an investigation, states face few reputational or political costs, and they do not make any maneuvers; likewise, reformers hold back until an investigation begins, because only with an investigation can they bring pressure on the government to change. When the official prosecutorial investigation begins, so do government contrivances and activists' pressures. The result is a significant increase in domestic human rights prosecutions—an unintended byproduct of ICC investigations that does not look like the positive complementarity that ICC strategists originally envisioned.

This article uses a new dataset to demonstrate that ICC investigations are a powerful predictor of domestic prosecutions, controlling for a number of other factors. This finding comes a few important caveats. First, one should not expect ICC involvement to be very meaningful in political contexts where civil society is not operative. States lacking in reformist elements will not fit our theory well. Future research should examine the interactions between the NGO campaigning, foreign aid, and judicial reforms following ICC involvement. This could help address certain empirical discrepancies, like why the DRC has pursued a great deal more human rights prosecutions than the Central African Republic, though these countries share many characteristics. Second, the mechanisms outlined in our theory might not always work in unison to produce positive results, especially if the government is insulated from reputational concerns and opts for a repressive strategy. Case study research should further investigate the relationship between demands for reform, capacity-building, and gap-filling litigation–and government reactions in various contexts. Third, our results are driven by a small number of cases, which

means our findings might be spurious and our causal theory questionable. That said, the findings are strong, and very little distinguishes the collection of count models we have employed from time series analyses that generalize based on structural breaks in data series within specific cases.

The findings also have important policy implications that reach beyond the cases examined. First, observers should lower expectations for investigations initiated by UN Security Council referrals. The Office of the Prosecutor has an informational advantage over the UNSC; it knows more about the local situation and the potential local response. That said, the UNSC is the only body able to bring cases against non-ratifiers of the Rome Statute, making it a potentially valuable resource for future involvement. Still, UNSC referrals to date, in Sudan and Libya, have been enacted as a sort of add-on among other proposed actions to address very difficult cases. This is not necessarily a recipe for success. A second implication is that the Court should pay attention to local activists, and help empower them when it does not compromise the neutrality of the Court. Currently, preliminary examinations are underway for Honduras, South Korea, Comoros, Central African Republic, Ukraine, Iraq, Afghanistan, Colombia, Georgia, Guinea, and Nigeria. As these cases move into the investigation phase, observers should follow the responses of local actors. Seldom are local anti-impunity groups given much press because it makes for a more interesting story to highlight, for example, the embittered conflict between the African Union and the ICC. But the AU does not represent all Africans. In fact, it mainly represents African leaders, many of whom are avidly opposed by local actors that desire progress around human rights litigation.[96] Third, it is possible that the impact of ICC investigations on domestic prosecutions will spill over into neighboring countries that learn lessons from the experience of political actors close in proximity. If the political mechanisms we observe are in place, then nearby countries could begin to move forward with their own proceedings in the hopes of avoiding ICC entanglements. This should be followed closely.

The fourth, and perhaps the most important, implication of this work is that produc-

[96]See, for instance, "Liberian NGO, 18 Others Reject Impunity for Leaders," *The Inquirer (Monrovia)*, 20 May 2014.

tive reforms can occur amidst government opportunism, and that changes are normally accompanied by complaints of hypocrisy, concerns over ICC effectiveness, and open criticism from both ruling and reformist groups within the target country. This means that ICC involvement will from the initial stages be awash in controversy, and will be associated with posturing and rhetoric. Social scientists should be careful not to get swayed by these fast-changing political vicissitudes. Oftentimes analysis takes short-term backlashes or vitriolic outbursts by extremists as evidence that policies are doomed to failure. While it is no doubt important to follow events and track negative unintended consequences, we should also make sure those consequences are sustained, and we should weigh them against positive unintended consequences.

That said, this article should not be taken as a victorious trumpet blow for the ICC. The institution is still plagued by growing pains, problems of miscalculation, a shortfall of resources, and continual concerns over legitimacy. Moreover, the domestic prosecutions across African countries are not the answer to all of society's ills. As Sarah Nouwen documents, the prosecutions that do take place, including the ones we analyze, do not target enough high-level offenders responsible for serious human rights crimes. Countries like Uganda, the DRC and Central African Republic are still troubled by cultures of impunity, civil war economies, cross-border tensions, sexual violence, rapacious leadership, and the dominance of patronage networks. Finally, while this article discovers a direct relationship between ongoing ICC investigations and domestic prosecutions, whether the momentum generated by this process can be sustained and converted into long-lasting reform is yet unknowable. Still, amidst all of this, human rights groups are working for change, and they are assisted by the attention that they get from international donors and supporters. ICC investigations are one way to generate concern for accountability and justice in war torn and underdeveloped states. The long-term goal, as always, should be to nourish that concern.

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8 Appendix

Table 5: Variable Description

Variable	Mean	Stand. Dev.	Min	Max
Prosecutions	0.95	2.03	0	16
Guilty Verdicts	0.37	1.07	0	9
ICC_PRE	0.18	0.13	0	1
ICC_INV	0.06	0.25	0	1
Ongoing Civil War	0.18	0.39	0	1
PTS	3.14	0.95	1	5
Judicial Independence	31.2	2.04	-0.48	98.67
HRNGOs	24.42	13.11	0	69.47
Democratic Transition	0.61	0.49	0	1
Rome Ratification	0.55	0.50	0	1
OECD Aid (in bil)	0.67	0.93	-1.99	11.43
Population (ln)	15.81	1.51	11.29	18.92
GDP (ln)	22.55	1.52	19.62	26.43
Time in Years	2007	2.84	1999	2011

Table 6 presents the results of two models to further address problems of causal inference in this study. The ideal model for this purpose is a difference-in-differences (DiD) model, which compares the change over time in a treatment group (in this case those countries eventually subject to ICC investigation) to change over time a control group (all other countries). To implement a DiD model, one must incude a treatment dummy if the observation is in the treatment group, a temporal dummy marking the initiation of the treatment period, and an interaction between the two. Ideally for the theory of this article, the treatment dummy would be defined by the initiation of preliminary examination, and the temporal dummy would be "1" in all years following an investigation. However, the model would not converge in this formulation because the interaction variable was collinear with the temporal treatment dummy.

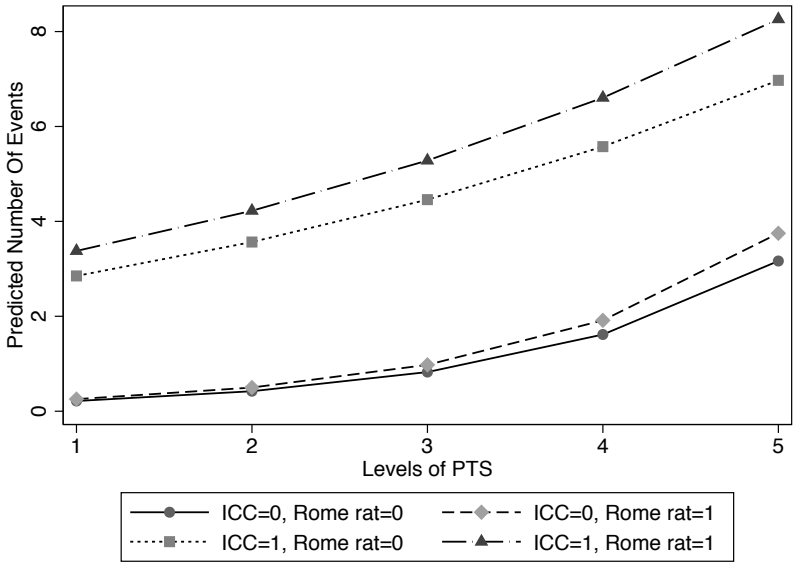
Thus, we adopted two alternative strategies. First, we treated Rome Statute ratification as qualifying a country for the "treatment group," and then defined the temporal dummy as the initiation of an investigation. In this model, investigation is highly significant. Figure 7 shows that countries with an ICC investigation are far more likely than other Rome ratifiers–and Rome non-ratifiers–to initiate domestic prosecutions. Our second strategy was to include a dummy variable that is "1" starting in the year that a preliminary examination begins, and "1" every year through the remainder of the panel (PE Sample). A treatment dummy for ICC investigation was also included. This would allow the model to estimate the effects of preliminary examination net the effects of ICC investigation. In this model, the PE Sample variable is insignificant, while ICC investigation remains highly significant. Taken together, and added to the evidence presented in the main article, these additional assessments of causal inference seem to point clearly to the independent causal effect of ICC investigation.

Table 6: Difference in Differences

DV: Prosecutions	DiD b/se	Treatment Control b/se
ICC-PE	0.163	
	(0.338)	
PE Sample		0.165
		(0.338)
ICC-INV	-0.332	1.043***
	(0.721)	(0.341)
Rome Ratification	-0.0120	
	(0.239)	
Rome DiD	1.777**	
	(0.731)	
OECD Aid (billions)	0.266*	0.265*
	(0.151)	(0.147)
Judicial Independence	0.0213***	0.0215***
	(0.00772)	(0.00742)
HR NGOs	0.0299***	0.0301***
	(0.0109)	(0.0110)
Democratic Transition	0.352	0.350
	(0.285)	(0.305)
PTS	0.508***	0.505***
	(0.146)	(0.152)
Ongoing Civil War	-0.00784	0.0156
	(0.243)	(0.243)
Time	0.0216	0.0194
	(0.0384)	(0.0384)
Constant	-47.39	-42.99
	(76.99)	(77.11)
Observations	580	580

***p<.01 **p<.05

Figure 7: Differences in Difference, Plotted by Level of Repression



Note: .

Table 7: ICC in Africa Variables

Country	**Pros.**	**Guilty**	**ICC-PRE**	**ICC-INV**	**Rome Rat.**	**Dem. Tr.**	**Civil War**	**Mean PTS**
Algeria	6	4	0	0	0	1	1	4.1
Angola	0	0	0	0	0	0	1	4
Benin	2	1	0	0	1	1	0	2.3
Botswana	7	2	0	0	1	0	0	1.7
Burkina Faso	10	5	0	0	1	1	0	2.4
Burundi	24	10	0	0	1	1	1	4.4
Cameroon	9	5	0	0	0	0	0	3.6
Central Af Rep	11	5	1	1	1	1	1	3.8
Chad	2	0	0	0	1	0	1	4
Comoros	0	0	0	0	1	1	0	1.8
Congo (Brazzaville)	5	3	0	0	1	1	1	3.3
Cote d'Ivoire	25	8	1	1	0	1	1	3.9
DR Congo	52	30	1	1	1	1	1	5
Djibouti	0	0	0	0	1	1	1	2.4
Egypt	40	25	0	0	0	0	0	3.8

*Pros. and Guilty are cumulative values, and PTS is a mean. The rest are maximum values for the panel.

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Table 7 – continued from previous page

Country	Pros.	Guilty	ICC-PRE	ICC-INV	Rome Rat.	Dem. Tr.	Civil War	Mean PTS
Equ. Guinea	6	1	0	0	0	0	0	3.1
Eritrea	0	0	0	0	0	0	1	3.6
Ethiopia	24	16	0	0	0	1	1	4.1
Gabon	0	0	0	0	1	1	0	2.4
Gambia	1	1	0	0	1	0	0	2.6
Ghana	22	2	0	0	1	1	0	2.8
Guinea	1	0	1	0	1	0	1	3.3
Guinea-Bissau	2	0	0	0	0	1	1	2.6
Kenya	27	6	1	1	1	1	0	3.7
Lesotho	1	0	0	0	1	1	0	2.1
Liberia	6	2	0	0	1	1	1	3.8
Libya	0	0	0	0	0	0	0	3.1
Madagascar	5	3	0	0	1	1	0	2.3
Malawi	15	7	0	0	1	1	0	2.7
Mali	6	3	0	0	1	1	1	2
Mauritania	0	0	0	0	0	1	1	2.9

*Pros. and Guilty are cumulative values, and PTS is a mean. The rest are maximum values for the panel.

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Table 7 – continued from previous page

Country	Pros.	Guilty	ICC-PRE	ICC-INV	Rome Rat.	Dem. Tr.	Civil War	Mean PTS
Mauritius	3	0	0	0	1	0	0	1.8
Morocco	6	4	0	0	0	0	0	2.8
Mozambique	13	7	0	0	0	1	0	3
Namibia	25	3	0	0	1	1	0	2.4
Niger	5	5	0	0	1	1	1	2.8
Nigeria	29	0	1	0	1	1	1	4
Rwanda	27	9	0	0	0	0	1	3.6
Senegal	2	0	0	0	1	1	1	2.8
Seychelles	3	1	0	0	1	0		1.4
Sierra Leone	10	3	0	0	1	1	1	3.4
Somalia	1	1	0	0	0	0	1	4.3
South Africa	30	16	0	0	1	1	0	3.2
South Sudan	0	0	0	0	0	0		
Sudan	7	4	1	1	0	1	1	5
Swaziland	2	0	0	0	0	0	0	2.5
Tanzania	11	0	0	0	1	0	0	2.9

*Pros. and Guilty are cumulative values, and PTS is a mean. The rest are maximum values for the panel.

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Country	Pros.	Guilty	ICC-PRE	ICC-INV	Rome Rat.	Dem. Tr.	Civil War	Mean PTS
Togo	0	0	0	0	0	0	0	3.1
Uganda	78	31	1	1	1	1	1	4.1
Zambia	17	3	0	0	1	1	0	3
Zimbabwe	4	1	0	0	0	1	0	4