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Part B2
***Beyond Compliance*: Rethinking the Effectiveness of Regional Human Rights Regimes**
BEYONDCOMPLIANCE

Section a. State-of-the-art and objectives

Introduction

Like the broader international legal system, regional human rights regimes are based on states' consent to be bound by pre-agreed norms laid out in treaties. **The European, African and inter-American human rights regimes** are advanced regional systems, with own courts issuing binding judgments against States violating their respective treaties. Yet, these regimes **seem not to be effective when it comes to non-democratic states**, which either quit altogether (Venezuela, Rwanda, Tanzania, Cote d'Ivoire, Benin) or, when they stay, may formally execute individual rulings while systematically continuing to violate the norms underpinning them (El Salvador, Turkey, Peru and, until recently, Russia). Certainly, liberal democracies can also refuse to comply with specific judgments, threaten to withdraw from human rights regimes or try to curb their powers from within – as the United Kingdom has done in the European regime for over decades (Madsen, 2016). Still, **there are crucial differences between liberal democracies and non-democracies.** First, conflicts with the former often arise from disputes between domestic and international courts over the interpretation of human rights norms. They are deeply rooted in the inherent tension between democratic accountability of national decision makers and the counter-majoritarian nature of international judicial review (Waldron, 1999). Second, abuses in liberal democracies do not reach the systemic levels that are widespread in authoritarian regimes and observed to some degree also in backsliding democracies. For instance, liberal democratic regimes do not disappear or extra-judicially execute individuals, prosecute dissidents without due process and convict them to long sentences, or dismiss and prosecute judges who disagree with government policies. Third, in cases where public officials do deviate from the law, one can justifiably assume that they are held accountable by independent courts. At the end of the day**, the governing laws, institutions and officials of liberal democracies have an intrinsic commitment to human rights**. What distinguishes authoritarian regimes is their resort to widespread, severe and systematic abuses, and their lack of judicial systems that are willing and capable of penalizing the arbitrary exercise of executive power (Krygier, 2019). In other words, **in authoritarian regimes, individuals face a very high risk of serious violations, and have little or no access to justice at home.**

This implies a distinct function and responsibility for human rights regimes in non-democratic contexts. Whereas a declaratory judgment establishing a violation can often be sufficient to correct state behavior in the case of liberal democracies, regional courts need to fulfil an altogether different, much more interventionist function vis-à-vis authoritarian regimes. Therein lies a fundamental problem regarding the enforcement of international human rights law. The functioning of regional courts rests on a division of powers between the national and international legal systems, embodied in the principle of exhaustion of domestic remedies. Accordingly, before bringing a complaint to the regional court in question, victims must first use all judicial or administrative complaint procedures available in national legal systems. This admissibility criterion rests on the assumption that domestic courts adhere to human rights norms and regional courts merely monitor national implementation and supervision. In authoritarian and, increasingly, backsliding regimes, this basic assumption does not hold. **In authoritarian contexts and in the absence of adequate domestic protection of human rights through the legal system, regional courts need to be more than a corrective mechanism, and effectively have to function as a substitute for domestic courts.**

Conventional theories, mostly based on the case of the European Court of Human Rights (ECtHR), have equated the effectiveness of regional courts with state compliance. This perspective does not account well for the empirical record with regard to authoritarian states and backsliding democracies. In other words, **judgment compliance as a basic notion seems insufficient and we need an extended set of indicators of effectiveness that is also appropriate for non-democratic contexts**. Emerging scholarship on the Global South suggests that the experiences of the inter-American Court of Human

Rights (IACtHR) and the African Court of Human and Peoples' Rights (ACtHPR) are underexplored sources to enhance our understanding of effectiveness in illiberal contexts. They harbour a great potential for drawing lessons for the European system, which has increasingly been challenged by illiberal regimes such as Turkey, Hungary, Poland and Russia – until its expulsion from the Council of Europe (CoE) in 2023.

Objectives and Research Questions

The overarching research question of this project, is:

What are the historical, institutional, and legal-jurisprudential conditions for the effectiveness of regional human rights regimes in non-democratic contexts?

The project aims to answer this question by **developing a novel, empirically-grounded, comprehensive and comparative theory of the effectiveness of regional human rights regimes**. It seeks to achieve this objective by answering the following sub-questions (SQ):

SQ1: What are the socio-political and historical contexts in which each of the three human rights regimes emerged and evolved? How have these contexts shaped their founding goals, which are possible benchmarks for effectiveness?

SQ2: How have the political, judicial and quasi-judicial bodies of these regimes enforced their founding norms against states engaged in systematic human rights and rule of law violations?

SQ3: How do the practitioners of these regimes perceive their effectiveness vis-à-vis authoritarian regimes, and how can, or should, it be enhanced? What are the views of human rights lawyers on these issues? To what extent do these top-down and bottom-up views align with the state of scientific knowledge on the effectiveness of regional human rights regimes?

SQ4: How can we use the knowledge acquired through these historical and comparative analyses to develop a theory of effectiveness and offer practical normative guidance to judicial, political and quasi-judicial officials of regional human rights regimes?

Timeliness and Relevance

The key necessity of this project is that **we need to adjust our conceptual and theoretical frames in light of the authoritarian challenge to human rights regimes**, which has become more pressing in recent years for at least four reasons. **The first challenge is the sheer rise in the number of authoritarian states, also in Europe**. There has been a continuing global decline in rule of law, democracy and human rights (Freedom House, 2023; World Justice Project, 2022), with over half of the world's population now living under hybrid or authoritarian regimes (The Economist, 2022). Over the past decade, countries within the jurisdiction of the three regimes studied in this project are among those that have seen the largest declines worldwide: e.g., Hungary and Turkey in Europe; Nicaragua and El Salvador in the Americas; and Tanzania and Burkina Faso in Africa (Freedom House, 2023: 12). The focus on authoritarian regimes in this project is therefore timely.

The **second challenge,** closely related to the first, **concerns the shrinking space for legal mobilization globally.** This is all the more serious in authoritarian states, which engage in multi-faceted legal repression against human rights advocates, criminalizing their activities, closing down their organizations, and using non-criminal laws (e.g. tax laws) to render them unable to operate. These policies adversely affect advocates' ability to engage in legal mobilization, undermining the operation of human rights regimes which depend on domestic actors – particularly in authoritarian contexts (Kahraman, 2023; Viljoen, 2019; Engstrom and Low, 2019; Haddad, 2018). *BeyondCompliance* tackles this challenge by focusing on the unique obstacles to legal mobilization in non-democratic contexts and exploring how regional regimes can empower civil societies.

The **third challenge concerns the rising and increasingly assertive state contestations to human rights courts**. Conceptual studies have developed models ranging from resistance to individual rulings to backlash against the entire human rights system, albeit without differentiating between threats emanating from non-democratic and democratic states (Stiansen and Voeten, 2020; Madsen, Cebulak and Wiebusch, 2018; Alter, Gathii and Helfer, 2016; Madsen, 2016). Authoritarian resistance to human

rights courts pursues multiple strategies, some of which are overt and easily detectable, others more subtle (Kos, 2023; Trochev, 2009). *BeyondCompliance* addresses this challenge through a conceptual and empirical focus on resistance strategies by non-democratic states, such as the creation of new remedies to achieve the transfer of sensitive cases pending before regional courts to domestic courts controlled or influenced by the executive ('captured courts'). It will achieve this by analyzing not only judgments where courts determine whether there has been a violation, but also inadmissibility decisions where they reject cases on grounds of the non-exhaustion of domestic remedies, which are much too often inexistent or ineffective in authoritarian contexts.

The **fourth challenge concerns regional human rights courts' increasing exercise of self-restraint, which itself is an outcome of their increased caseload due to rising authoritarianism and state resistance** (Contesse, 2019; Madsen, Cebulak and Wiebusch, 2018; Daly and Wiebush, 2018). At the same time, the fact that all three courts receive higher number of petitions against non-democratic states shows that there is a real social demand for their activism in these contexts. In other words, there is a growing tension between human rights courts' interactions with states, which seek to diminish or end their oversight, and societies, which demand their greater oversight of domestic issues. *BeyondCompliance* addresses this challenge by synthesizing top-down and bottom-up approaches to effectiveness.

Insights from and Limits of Existing Research

a. Defining and assessing effectiveness

Due to an empirical focus on the European system dominated by liberal democracies which are committed to human rights norms, early scholarship has defined effectiveness as compliance (Helfer and Slaughter, 1997), resulting in the ECtHR's depiction as the world's most effective human rights court (Keller and Stone Sweet, 2008; Helfer and Slaughter, 1997). Scholarship has endorsed this view, despite the lack of consensus on how to define compliance (Huneeus, 2014; Hawkins and Jacoby, 2010) and the difficulty of assessing it due to the lack of reliable data (Posner and Yoo, 2005; Janis, 2000), and the impossibility of meaningfully comparing compliance rates of human rights courts (Fikfak, 2018; Antkowiak, 2008). Moreover, in Europe, there has been an overall decline in states' execution of measures set by the Committee of Ministers (CoM), the CoE's organ tasked with monitoring compliance with ECtHR rulings (Madsen, 2016). Quantitative analyses show that partial compliance is increasingly becoming a norm – also in liberal democratic states (Ibid). Therefore, even in terms of judgment compliance alone, the European regime is not as effective as it is thought to be.

Moreover, while not questioning the 'very high compliance rate' argument, existing work on effectiveness has pointed out the elephant in the room: high rates of compliance with individual judgments do not *ipso facto* mean high levels of *norm* compliance (Shany, 2014). Indeed, at the same time as the ECtHR was praised with superlatives (Goldhaber, 2009), Turkey and Russia were engaging in systemic atrocities despite repetitive ECtHR judgments establishing violations in similar cases (Mälksoo and Benedek, 2018; Kurban and Gülalp, 2013). In recent years, Poland and Hungary have joined their ranks, at least as far as suppressing dissent through captured courts is concerned (Ploszka, 2023; Kos, 2023; Scheppele, 2018). This latter point highlights another aspect of effectiveness; the ECtHR's deference to domestic courts without sufficient scrutiny of whether they uphold human rights in practice (Kurban, 2020). While the ECtHR seems to be changing this stance vis-à-vis Poland (ECtHR, 2022c; ECtHR, 2021), it still acts under the assumption that Hungary and Turkey have effective legal systems (Kos, 2023; Kurban, 2023; Kurban, 2016). The CoE's other founding norms of peaceful inter-state relations did not stand the test of time either, as evident in Russia's occupations of Georgia and Ukraine, and the protracted war between Armenia and Azerbaijan. The problem in traditional research is not limited to non-compliance. The 'ECtHR as a victim of its own success' view attributes effectiveness to this court also due to its attractiveness for victims (Helfer, 2008; Helfer and Slaughter, 1997). Yet, in considering caseload quantity as an indicator, this view does not pay attention to the outcome of these applications, around ninety percent of which are dismissed on grounds of inadmissibility, settlements or unilateral declarations (ECtHR, 2022a).

Yet, **scholars continue to consider the ECtHR to be the representative case for effectiveness** (Shany, 2014). This **despite the democratizing role of the inter-American regime in the Southern Cone** (Warner and Davis, 2007; Tittemore, 2006; Mendez and Vivanco, 1990), **and the African regime's experiences with anti-democratic states and systemic rights abuses** (Gathii, 2020; Gathii and Wangui Mwangi, 2020; Zschirnt, 2018). In the words of a scholar of the African regime, "equating its comparatively young age with inexperience, ineffectiveness and irrelevance", ECtHR scholars have not followed the jurisprudence of this system, presuming "that the European system is transferable and applicable in a variety of situations" (Murray, 2006: 195; see also Gathii, 2020). **Scholars of the Global South have contested such Euro-centrism on at least four grounds.** First, traditional theories (focused on compliance or not) are based on a court predominantly operating in a liberal-democratic context and thus not applicable to regions characterized largely by authoritarian regimes, transitional democracies and conflict-ridden states (Cavallaro and Brewer, 2008). Second, the ECtHR's depiction as a court founded by and for liberal democracies ignores that Turkey, an authoritarian regime, was part of the European regime from the outset (Kurban, 2020). Third, "compliance-centrism" does not capture the variable ways in which human rights regimes have broader societal impact in non-democratic contexts (Okafor, 2004: 414). Research on the inter-American and African contexts has shown how, even where compliance is low, courts and commissions can have profound impact by empowering pro-rights constituencies, bringing about ideational change and inspiring reforms (Gathii ed., 2020; Engstrom, ed. 2019; Cavallaro and Brewer, 2008; Okafor, 2004). Fourth, the methodological bias in ECtHR scholarship undermines the validity of effectiveness theories treating it as the ideal case. Where judgments comprise a mere nine percent of the case law (ECtHR, 2022a), an exclusive focus on judgment-jurisprudence leads to incomplete empirical data and inaccurate theoretical conclusions on the ECtHR's impact (Fikfak, 2022; Kurban, 2020; Glas, 2018; Hampson, Martin and Viljoen, 2018).

b. Legal mobilization

Socio-legal scholars have long studied how social movements resort to courts to bring about change. Starting in the United States (Anderson, 2005; McCann 1994; Burstein, 1991), this scholarship eventually turned its lenses to Europe to understand why and how social movements and individuals litigate at its human rights and economic integration courts (Fokas, 2015; der Vet, 2012; Hodson, 2011; Cichowski, 2007; Cichowski, 2006; Börzel, 2006; Conant, 2002). Adapting an "optimistic faith in courts" (Lovell, McCann and Taylor, 2016: 63), scholars characterized the ECtHR as a social movement ally due to its flexibility on procedural issues and expansion of substantive rights (Anagnostou, 2014; Cichowski, 2011; Hodson, 2011).

While building on this bottom-up approach, research on the Global South has at the same time raised several critiques. First, theoretical frameworks draw on liberal-democratic contexts, which offer generous legal mobilization opportunities – such as independent courts, and executives complying with court rulings. Where the rule of law is absent, lawyers may face government retaliation for seeking justice abroad. And when they succeed to have the ear of a supranational court, they struggle to meet its evidentiary standards in the face of states' denial of the atrocities and the absence of facts established by domestic courts (Kurban, 2023; van der Vet, 2018; Lemaitre and Sandvik, 2015; Chua and Gilbert, 2015; Chua, 2014; Sundstrom, 2014). Second, in non-democratic contexts, there is often a two-way relationship between domestic advocates and regional courts. While activists seek help from courts in their pursuit of human rights, democracy and the rule of law, courts rely on the former to expand their jurisprudence, institutional capacity, and impact amidst states' resistance to their authority (Kahraman, 2023; Gathii and Wangui Mwangi, 2020; Viljoen, 2019; Engstrom and Low, 2019; Haddad, 2018). Third, in the European context, while considering the right of individual petition as an opportunity structure, legal mobilization scholars tend to limit their analyses to cases the ECtHR addressed on their merits, neglecting those it decided not to hear. Among those rejected in the thousands are serious cases concerning torture and right to life violations (Fikfak, 2022; Jomarjidze and Leach, 2019; Glas, 2018; Keller et al., 2010). Thus, the exclusive focus on judgments inevitably leads to positively biased conclusions regarding the ECtHR's response to legal mobilization (Kurban, 2020).

c. Bridging top-down and bottom-up approaches

There are at least **two bodies of scholarly work** which have **sought to bring together top-down and bottom-up approaches** to the study of international courts more generally, and regional human rights courts specifically. **First,** a group of legal and social science scholars, building on the insights of both compliance- and impact-based approaches, have looked into domestic legal, social and political factors determining the *de facto,* or actual, authority of international courts, including regional courts. In conceptualizing such authority, this body of work has inquired whether, and if so to what extent, key national constituencies such as governments, legal experts and civil society actors accept the rulings of international courts as binding and take "meaningful action" to give full effect to them (Alter, Helfer and Madsen, 2016: 7). While framing its inquiry in terms of the authority, rather than the effectiveness, of international courts, this scholarship has produced theoretical frameworks and empirical findings relevant for *BeyondCompliance*. At the theoretical level, rather than categorizing authority in black and white terms, it has developed a typology, ranging from zero to full authority. More importantly, cognizant of international courts' varying authority not just between member states, but also within the same domestic contexts, its theoretical framework can account for variations in the reception of the same court in the same country, in different issue areas and over time, depending on changes in domestic and regional contexts (Alter, Helfer and Madsen, 2016). Secondly, as part of its bottom-up approach, this literature zooms in on social movement mobilization around international courts. While thus providing a comprehensive and contextual analysis, **empirical studies have limited their bottom-up analyses to international courts' *reception* by civil societies, and have not looked into their *response* to domestic justice struggles**. This one-directional focus stems from the lack of a systematic theoretical distinction between liberal democratic and non-democratic domestic contexts, a distinction that surfaces in the empirical studies on the IACtHR (Huneeus, 2016) and the East African Court of Justice, a sub-regional economic integration court (Gathii, 2016).

The **second** body of scholarship bridges the earlier discussed works on effectiveness and legal mobilization, focusing on the societal impact of human rights regimes beyond Europe and, particularly, in non-democratic contexts. Scholars of the Global South have shown that the effectiveness of regional regimes in such settings may in no small part depend on their willingness to support the long-term struggles of domestic activists (Gathii, Introduction, 2020; Gathii and Wangui Mwangi, 2020; Kurban, 2023; Viljoen, 2019; Engstrom and Low, 2019; Engstrom, ed., 2019; van der Vet, 2018; Cavallaro and Brewer, 2008; Okafor, 2004). For instance, the African Commission on Human and Peoples' Rights' (AComHPR) "modest yet significant" influence on judicial, legislative and executive decision makers in Nigeria during periods of military regimes was possible "largely because it allowed itself to be mobilised and deployed" by domestic groups in their struggles for justice and democracy (Okafor, 2004: 431). While much less accessible for victims in comparison to its inter-American and European counterparts, the ACtHPR sought, within its narrow jurisdictional universe, to make itself available to as many victims as possible by enhancing their litigation capacity. It referred indigent litigants to lawyers' associations to receive free legal assistance, very generously interpreted its admissibility rules by accepting cases where domestic remedies did not exist or were unattainable, and made its pre-trial procedures inexpensive, expedient and user-friendly (Gathii and Wangui Mwangi, 2020). While thus providing a much-needed bottom-up approach to effectiveness, this scholarship, **however, does not really offer a theory of effectiveness in non-democratic contexts and does not extend its empirical analysis to the European context** to identify the limitations and possibilities for regional human rights regimes to be effective everywhere.

How *Beyond Compliance* will Advance Scientific Knowledge

The project fills significant theoretical and empirical gaps in scholarship. Theoretically, there has been **insufficient conceptualization of the effectiveness of human rights regimes based on the types of political regimes they oversee.** Empirically, first, **we lack a systematic comparative analysis** of the three regimes in terms of their effectiveness. Existing work is limited to small-scale studies comparing the case law of two or all three courts (and, sometimes, the two commissions), on specific issue areas (Yildiz, 2020; Çalı, Madsen and Viljoen, 2018; Hampson, Martin and Viljoen, 2018; Huneeus and Madsen, 2018; Çalı, 2018; Herrera and Viljoens, 2014; Johnson, 2013; Contreras, 2012). Second, **research on effectiveness** largely focuses on *compliance* with judgments and, in that realm, **has only partly addressed the *substance* of these judgments** to inquire whether human rights courts have

sought to do everything within their powers. Third**,** there is **very little empirical research and no theory on these courts' responsiveness to legal mobilization in non-democratic contexts.**

The ultimate measure of effectiveness is the degree to which human rights regimes change states' behaviour for the better, in the form of the cessation of violations. Ideally, one would measure effectiveness in terms of the frequency and severity of violations preceding and proceeding human rights courts' judgments. However, in practice, this is very difficult for several reasons**.** First, we lack systematic quantitative data on the amount and severity of violations and on measures adopted by governments to implement judgments establishing these violations (Posner and Yoo, 2005; Janis, 2000). Second, the degree to which violations are brought to the attention of regional courts can partly be a result of their past success; positive responses to prior violations may make it more likely for advocates to bring new cases in the future (Helfer, 2008; Helfer and Slaughter, 1997). Third, and most importantly, it is extremely difficult, if not impossible, to establish causality between supranational oversight and changes in state behaviour, which are contingent on various extraneous independent variables. **Because of the attendant difficulty of establishing a direct causal connection between human rights regimes and violations, I therefore focus on three more easily identifiable channels through which effectiveness can be measured and achieved**.

BeyondCompliance* starts from the working hypothesis**, derived from my work on the ECtHR-Turkey case (Kurban, 2020), that **human rights regimes can be effective in non-democratic contexts only if they:** 1) ensure the execution of court judgments **(*compliance); 2) make full use of all powers, tools and resources available to them for political, judicial and quasi-judicial oversight **(*exhaustiveness*); *and*** 3) empower domestic advocates in their social struggles by being and remaining open to their legal mobilization **(*responsiveness*).** The project assesses these criteria in view of the historical backdrop against which these regimes have evolved. While all three regimes are the products of the-post World War II global order, they emerged in considerably different regional political contexts, with variable timelines, institutional designs and mandates. In assessing effectiveness, *BeyondCompliance* will inquire how these distinct backgrounds have shaped the goals that each regime has set for itself and the way in which it has interpreted universal human rights norms. With these considerations in mind, **the project tests its working hypothesis with a comprehensive, historical and comparative analysis of how the CoE, the Organization of American States (OAS) and the African Union (AU) have enforced their norms against non-democratic states.**

a. Compliance

States' compliance with judgments does not necessarily translate into norm compliance. A case in point is Turkey, which complied with ECtHR judgments with respect to remedies limited to monetary compensation and with CoM resolutions with respect to general measures such as giving human rights training to judicial officials and introducing safeguards to prevent torture in detention (Kurban, 2020). Yet, Turkey has never ceased engaging in the types of violations that resulted in these judgments. In as late as 2015, the Turkish military bombed and razed densely populated Kurdish towns, without regard to the presence of civilians, resulting in the death of 1,200 civilians, displacement of over 355,000, and the disappearance and torture of numerous others (OHCHR, 2017: 10). The reverse situation, where human rights regimes are able to "cast a larger legal shadow" over domestic law and politics even in the absence of full compliance with their rulings, can also hold true (Alter, Helfer and Madsen, 2016: 10). Colombia, while being a democracy with a strong and rights- oriented constitutional court, has a long history of serious and widespread human rights abuses. The majority of IACtHR violation judgments against this country concern state-sponsored violence and the impunity of its perpetrators. While Colombia has never fully complied with these judgments, it has issued an official apology to the victims and made significant progress in domestic criminal investigations. Moreover, the IACtHR's effectiveness has displayed itself in indirect ways. For instance, although IACtHR had not ruled against Colombia in this area, the Constitutional Court developed a jurisprudence on indigenous rights on its own initiative and through references to IACtHR judgments against other countries (Huneeus, 2016).

b. Exhaustiveness

Thus, judgment compliance in and of itself, while necessary, is insufficient to bring norm non-compliance. Whether human rights courts and commissions are effective depends, also, on the substance of their rulings and decisions: **do these courts and commissions *exhaust* their powers, tools and resources in adjudicating systemic and serious violations?** In layperson's terms, are they doing their best? Exhaustiveness entails, for example, engaging in inductive reasoning to reach a general conclusion based on specific cases showing a pattern of violations; ordering effective remedies capable of bringing policy change; or adjusting the admissibility rules to the nature of the domestic legal system in question. For instance, in its first judgment ever, and based on one case, the IACtHR found a state practice of disappearances in Honduras (IACtHR, 1988). It reached this conclusion by using circumstantial evidence, shifting the burden of proof to the government once the applicants made a *prima facie* case, holding fact-finding hearings to collect testimonies from victims and witnesses, and using logical inference. In the context of the end of the Cold War and the fall of dictatorships in Latin America, this ruling "contributed to the end of the systematic state practices of disappearances" in the region (Grossman, 2008: 1271). In contrast, the ECtHR has consistently declined to address claims of an administrative practice of gross violations in the Kurdish region, despite its numerous violation judgments in such cases (e.g. ECtHR, 1998), conclusions to the contrary by the CoE's non-judicial bodies (Kurban, 2020), and precedent set by the IACtHR. Similarly, despite having repeatedly ruled that village guards (a paramilitary force armed and paid by the state) engaged in gross violations against Kurdish civilians, the ECtHR has never called for their abolishment (Kurban, 2022). This notwithstanding that it has the power, under Article 46, ECHR, to indicate specific measures necessary to end a systemic situation. **Exhaustiveness also concerns the political organs of human rights regimes**, **tasked with ensuring compliance with court and commission rulings,** and/or imposing sanctions against states engaged in systemic judgment and norm violations. *BeyondCompliance* will identify, among others, the ideal benchmarks for compliance, the most effective strategies in disciplining recalcitrance, and at what point, if ever, political organs should resort to sanctions against systemic norm violations.

c. Responsiveness

The reality that human rights regimes, on their own, may never get authoritarian states cease violations requires a conceptualization of effectiveness that take into account the broader societal dimension. The third element, *responsiveness*, complements the focus on states and regional regimes by introducing another key actor: domestic advocates. In authoritarian contexts, lawyers resort to supranational justice not necessarily to change state policies, but to galvanize domestic and international support for their causes (Kurban, 2020; Gathii, 2016). *BeyondCompliance* is interested in **how human rights courts and commissions respond to such bottom-up mobilization; do they empower activists in their fight for justice, democracy and the rule of law?** Among indicators in assessing the presence and the degree of responsiveness are: the prioritization of critical cases whose speedy resolution is essential for democracy and the rule of law; flexibility in interpreting procedural rules governing admissibility, evidence, third party interventions etc.; and openness to hold fact-finding hearings to give voice to victims and to establish the facts that domestic courts had failed to do.

States' ratification of human rights treaties enhance the political mobilization of domestic social movements (Simmons, 2009). Similarly, favourable international court judgments reinforce further legal mobilization by domestic activists (Cichowski, 2011). But, what happens when the winning party is the government, or when the regional court does not act quickly? **What are the domestic implications of a lost case or a belated violation judgment for social movements?** While an unfavourable court ruling does not necessarily hinder, and may even energize, legal mobilization in liberal democracies (Fokas, 2015; McCann, 1994), the stakes are much higher in authoritarian contexts where activists do not have opportunity structures to continue the fight at the domestic level (Kurban, 2023). The ECtHR has failed to empower civil activists during critical moments of their struggles by, for instance, not prioritizing cases concerning systemic legal repression and rule of violations. It took the ECtHR nine years to rule against Russia's Foreign Agent Law. At the time the first cases were filed in 2013, the initial applicants, a small group of leading human rights NGOs, were only *potential* victims. As the ECtHR waited, the law's oppressive reach extended to other social groups, bringing the number of applicants to around sixty (ECtHR, 2022b). By the time the ECtHR issued its judgment, a domestic

court had closed Russia's oldest human rights group, Memorial International (The Guardian, 2021). The inter-American and African regimes show more leniency towards victims by, for instance, accepting politically sensitive cases concerning rule of law violations and legal repression even where applicants have not exhausted domestic remedies (Gathii and Wangui, 2020; Huneeus, 2016).

Synthesis

From a narrow judgment-compliance perspective, non-European regimes have been hardly effective over non-democratic states. The IACtHR, while achieving compliance with symbolic reparation orders such as building a memorial to honour victims of atrocities, have faced resistance in the execution of more onerous remedies such as punishing the perpetrators of violations (Antkowiak and Gonza, 2018). The ACtHPR is yet to establish full jurisdiction over all fifty-four AU member states, of which only ten have allowed victims and NGOs direct access to it. Of those, Rwanda, Tanzania, Cote d'Ivoire, Benin withdrew their consent in response to ACtHPR rulings allegedly interfering with their sovereignty (De Silva and Plagis, 2020). The AComHPR has achieved very low compliance with its recommendations (Viljoen and Louw, 2007). **On the other hand, if we take human rights regimes' impact on social struggles as an additional indicator of effectiveness and look into human rights advocacy and enforcement processes driven by non-state actors, then the experience of these two regimes may lead to a different verdict**. The inter-American regime's jurisprudence against amnesty laws galvanized Peruvian rights groups in the fight against impunity, leading to the conviction of former President Alberto Fujimori by domestic courts (Burt, 2009; Contesse, 2017). Over the years, many issues have been resolved domestically, when advocates successfully mobilized national courts to enforce standards laid out by the inter-American Commission on Human Rights (IAComHR) and the IACtHR (Engstrom, 2019). Favourable IACtHR rulings enabled rights groups to galvanize the international community to put pressure on the Rwandan government to end repressing dissent (Gathii and Wangui Mwangi, 2020). While the ECtHR issued landmark judgments concerning state violence against Kurdish civilians in Turkey, it has not made justice and accountability a central tenet of this jurisprudence. To the contrary, despite its established case law that an effective remedy for gross violations must entail the prosecution of perpetrators, it endorsed a Turkish law limited to monetary compensation, rejecting 1,500 cases on grounds of the non-exhaustion of this remedy (Kurban, 2022).

In other words, none of the three regimes has been effective in terms of compelling judgment and norm compliance by non-democratic states, while the inter-American and the African regimes seem to have been more effective in terms of contributing to long-term domestic social struggles. **Certainly, there is a delicate balance between the three elements of effectiveness**. Where courts make minimal use of their powers, they can achieve judgment compliance, but without meaningful policy change. In contrast, judgments concerning sensitive issues may result in noncompliance, but may also provide a safety shield for activists against further repression. Yet, when courts push too hard, their activism can backfire. Successful litigation by political opponents led the governments of Rwanda, Cote d'Ivoire, Tanzania and Benin to withdraw their consent to individuals' access to the IACtHR (Gathii and Wangui Mwangi, 2020; De Silva and Plagis, 2020) and Venezuela to withdraw from the inter-American regime (Contesse, 2019). The level of backlash to the IACtHR has reached such a degree that it may soon have an empty docket. At the same time, it is questionable whether the ECtHR's restraint in making full use of its powers has been successful in disciplining recalcitrant states. It has never achieved Russia's and Turkey's full compliance with its rulings, and has faced increasing defiance of its authority not only by them, but also by Poland, where the rule of law has been backsliding since 2010. **These tensions between the three elements leave regional courts at a conundrum** – the more they exhaust their powers and respond to domestic activists, the least they may be able to compel judgment compliance. In synthesizing the top-down and bottom-up aspects of effectiveness, ***BeyondCompliance*** **will develop a theory addressing how regimes can address and resolve these tensions.**

Novelty and Originality:

The project **offers four novel contributions** to the study and practice of human rights: 1) ***theoretical,*** by developing an empirically-grounded theory on effectiveness in non-democratic contexts; 2) ***historical,*** by studying the origins and development of the three regimes in their distinct regional contexts; 3) ***socio-legal,*** by documenting how these regimes have enforced their norms against non-

democratic states and evolved their responses with changing contexts, and how key actors in these regimes assess effectiveness; 4) ***normative,*** by developing policy proposals as to how these regimes can enhance their effectiveness. The project's **originality lies in** its: 1) ***inter-disciplinary*** approach combining historical, legal and social research; 2) ***comprehensive comparative*** analysis of the three human rights regimes; and 3) ***policy-oriented*** approach drawing on empirical analysis to build scientifically informed and feasible recommendations.