EU-ACP PTAs And Their Impact On Human Rights Compliance: A Qualitative Approach
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1. Introduction

In the very first article of the Treaty of the European Union, the EU takes up the cause of fostering democracy and human rights. Since the 1990s, the European Union has been using its market power to implement so-called "essential elements" in its trade agreements with third countries. One of these essential elements is the human rights conditionality, which states that if human rights are violated, trade sanctions may be imposed on the trading partner as well as suspensions of aid may be implemented. Since then it has been debated, if this conditionality actually affects human rights compliance.

This question is relevant for decision makers, especially in the European Union, but also for other trading powers such as the U.S., who also include human rights clauses in their treaties. In addition, countries that may be faced with the consequences do criticize the effectiveness and relevance of such clauses. The decision of the European Union in 1995 to include essential elements concerning human rights, democracy, the rule of law and good governance in all its coming treaties has been controversial. Debates increased particularly when a trade agreement with Australia and New Zealand could not be concluded due to the essential element clauses.

Therefore, the aim of this thesis is to examine, if essential elements clauses in PTAs actually do have a positive impact on human rights compliance and which factors might diminish the impact of the PTA or clause. In detail, this thesis will investigate how human rights conditionality in the Cotonou Agreement (Council of the European Union 2000) between the European Union and the African, Caribbean and Pacific (ACP) states developed, in which cases the human rights clause is applied and if it does affect human rights compliance in these states. Since most of the past and current studies on this topic have been conducted with an European Union bias,

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1 Australia and New Zealand decided not to include such clauses in any of their agreements for political reasons.
this study includes the view of ACP states in an empirical method as well as in a questionnaire of both European Union and ACP associates. Hence, this study will combine both data sets and qualitative analysis to minimize validation and generalization problems of both methods.

The following chapter 2. “Improvement cycle of trade, PTAs and human rights” will provide the theoretical background underlying this thesis. Chapter 3. “Hypothesis, Data sets and Questionnaires” explains the hypothesis derived from the theory, the data sets and the questionnaires resp. interviews used in this study. Thereafter, the development of the essential element clause will be depicted including an analysis of why the essential element clause has been established as it stands today (chapter 4. Evolution of the human rights clause). Chapter 5. “Application of the human rights clause” analyses the first main hypothesis “The EU has no coherent process as to when it sanctions human rights violations” and examines in which situations the EU applies the human rights clause of the Cotonou Agreement. In chapter 6. “Sanctions and their impact” factors that increase or decrease the impact of human rights clauses are explored under the second main hypotheses: “Overall, Art. 96 sanctions do have a positive impact on human rights compliance”. An outlook and criticism on the human rights clause are provided in chapter 7. “Criticism and future work”. The results and implications of the chapters mentioned before will be summarized in the conclusion in chapter 8.
2. Improvement cycle of trade, PTAs and human rights

How and why do PTAs influence human rights compliance? A Preferential Trade Agreement is an institution between two or more parties to facilitate trade. Through this unilateral trade preferences the WTO allows developed countries to grant preferential tariffs to imports from developing countries (World Trade Organization 2017). They were designed to resolve collective action dilemmas and internalize externalities that cross state borders (Hafner-Burton 2005: 604–605). They were not intended to change behaviour concerning human rights compliance. It is an ongoing debate between researches, if PTAs are a suitable tool to change human rights compliance for the better. Whereas one strand stresses the positive aspects trade agreements may bring on human rights, another set of authors argues against trade agreements due to negative impacts on the overall situation of developing countries.

Before diving into this debate, the effect of institutions on human rights compliance in general will be examined. Institutions are created to overcome collective action dilemmas, such as the well-known prisoner’s dilemma that can be solved through arrangements between the parties. These institutions are especially effective if they are enforceable and hence can be used as coercion tools. Such measures may change the rational calculations of gains from a state that is tempted to violate human rights for temporary benefits.

As members of institutions, states are regularly observed to comply with international rules. Every action they set against human rights will be noticed and reacted upon. Hence, some authors argue that institutions may also work if they do not have enforceable rules but soft laws that stipulate desired behaviours.

Institutions also facilitate the sanctioning of non-complying countries through agreed measures and constraints that can be imposed on parties that violate terms of institutions. It provides justification and legitimizes the sanctioning party’s actions and facilitates the acceptance of the measures in the international field.
According to Hafner-Burton (2005) there are two possibilities as to how institutions might influence human rights compliance in particular: persuasion and coercion. In figure 1 an overview as to how these two instruments work is shown. Through persuasion, an actor’s preference might be changed in favour for human rights. However, this might take direct and repeated access to a violator during a long period of time. Coercion, on the other hand, increases the costs of violations through lost benefits of a PTA. Coercion tools take effect in a short time span and may influence not only one actor through repeated direct contacts, but many actors without persistent interactions.

This thesis argues that PTAs as institutions work in both ways, persuasive and by force. However, it is difficult to evaluate the effect of PTAs on human rights by these two measures only. There are more than those two possibilities, as to how PTAs might influence human rights compliance. The most obvious effect is through increased trade that derives from PTAs and might foster human rights. Increased trade might increase dependency, the need for legitimization and good reputation of a country’s elite, and the need for secure trading conditions. All of these effects improve human rights compliance. Increased trade might as well increase the usage
of PTAs and therefore the clauses in PTAs to assure that trading conditions improve. Improved trading conditions and increased usage of PTAs then again foster human rights through coercion and persuasion. Enhanced human rights situations then again might improve trading conditions and therefore trade in general. This means, an improvement cycle might be initiated through increased trade and PTAs. This cycle is depicted in figure 2.

2.1. Increase in trade

Several authors already explored how trade might increase human rights compliance. Harrelson-Stephens and Callaway (2003) suggest that countries with liberalized trade policies are less likely to exhibit security rights violations because trade fosters human rights. To this end, they used variables of trade openness and levels of liberalization of a country as well as trade to measure their effect on personal integrity abuse in a pooled cross-sections time series design. Accordingly, develop-
ing countries that engage in trade receive international aid, acquire foreign investment as well as gain new export markets, capital, and technology required for economic development. In example, the international market diffuses wealth, technology, values, investment, and capital – therefore, living conditions – and with them also human rights conditions – improve as a “spillover” result of international trade.

The same happens with foreign direct investments (FDI). Studies find that FDIs support trade, which indirectly supports human rights compliance (Apodaca 2001: 596; Richards et al. 2001: 219). The additional supply of capital increase the demand for labour and increases wages. This, so Apodaca (2001) argues, improves the distribution of income, health and education throughout the society. Technology transfers furthermore break the cycle of underdevelopment – however, she specifies that the FDI has to take place in the manufacturing sector. Apodaca used a pooled times-series OLS regression to examine a data set of developing countries of Eastern Europe and the former Soviet Union, from 1990 to 1996. Whereas human rights violations were measured by the frequently used Political Terror Scale (described in chapter 3.2.), state characteristics such as welfare spending was measured solely by expenditures for education and conflict was measured as a binary variable. However, social spending is compromised by more than educational spending and there may be states that are on the brink of conflict or suffered a conflict not long ago. Additional variables for welfare spending and an ordinal scale for the conflict variable could take these situations better into account (Apodaca 2001).

Richards et al. (2001) examined the relationship between foreign economic capital and the level of government respect for two types of human rights in developing countries with an ordered logit analysis on a cross-national sample of forty-three developing countries from 1981 to 1995. The authors found a correlation between foreign economic penetration and government respect for physical integrity rights, political rights and civil liberties (Richards et al. 2001: 219). This may be due to the need of a stable macroeconomic and political environment that long-term invest-
ments require. Stability may be increased through the existence of a legal and regulatory framework to help ensure property rights and efficient functioning of a market economy. This includes the reliable rule of law, transparent market entry regulations, and the free mobility of production factors in a country. All these prerequisites for FDI foster political rights of citizens as well. Additionally, efficient administrative abilities and less corruption also do increase FDI. At the slightest sign of risk, however, FDI is quickly withdrawn to be used in more stable countries. This is why FDIs might not be the most effective trading tool to foster human rights.

Nevertheless, it seems that trade in general rather improves human rights compliance.

2.2. Increase in PTAs (with conditionality)

Several authors focus on trade agreements that impose a conditionality concerning human rights and detect a positive influence on human rights compliance through trade agreements. This is due to the market power (Horng 2003) that the European Union and the U.S. impose on third parties, who would rather not sign treaties with hard human rights clauses but are forced to in order to get access to these important markets (Hafner-Burton 2005; Hafner-Burton 2013). Furthermore, PTAs with enforceable human rights laws are able to reward and punish members’ behaviour; thus, a conditional supply of goods wanted by target repressors may change the behaviour of political elites without the requirement of changing deeply held preferences for human rights compliance. In these studies, an ordered logit and an ordinary least squares model were used. Human rights were measured with the CIRI Human Rights Data Project and the PTS (describe in chapter 3.2.). Furthermore, the number of Human Rights Organizations in a country served as an instrument variable. However, Hafner-Burton is not clear about which human rights she is looking

\footnotesize{hard human rights clauses in this case means actual enforceable human rights clauses through e.g. suspensions of trade agreements in case of human rights violations}
at (Peksen 2010). Furthermore, she does not take the importance of norms and ideas into account. Neither does she go into detail about how trade agreements should be comprised to foster human rights (Betts and Hafner-Burton 2011). Harrelson-Stephens and Callaway (2003) also criticize the measurement of the trade variable: These are measured, as is common in most studies, as the total of exports and imports as a share of gross domestic product. However, there may be a difference between two states with the same level of exports and imports. Therefore, Harrelson-Stephens and Callaway measure trade openness with a ranking of the countries on a scale of one to four based on their level of imports and for their level of exports. These two rankings together produce an ordinal variable ranging from two to eight. Unfortunately, this method is used only by these authors and in no other study presented here.

Furthermore, there are some studies that argue that PTAs might have a negative impact on the human rights compliance. Concerning the trade agreements of specifically the European Union, studies argue that agreements are not effective in fostering human rights compliance due to incoherent usage of the essential element clauses. This is due to turf wars between the institutions and member states within the EU. Accordingly, the tensions between these actors weaken the EU’s agency (Mckenzie and Meissner 2016; Meunier and Nicolaïdis 2006). In addition, Meyn (2008) suggests that the outcomes of the most recent EPAs have been non-satisfactory for the involved ACP states (African, Caribbean, and Pacific states) due to the asymmetry of power and a push through method of the EU. Not only are the outcomes based on threats, so Meyn argues, moreover the EU market has become less attractive for ACP products (Meyn 2008: 526). This may also be a reason why threats or imposed sanctions may not cause countries to reduce human rights abuses.

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3 For example, state A may share 70% exports and 30% imports and state B derives its trade of 30% exports and 70% imports. State A may be less dependent on imports and having a less open market than state B. However, in the statistics, they will have the same amount of trade.

4 For list of members of the ACP group see chapter 10.
Schultz and Ball (2007) state that economic sanctions are not human rights neutral and may be a reason for human rights violations rather than compliance. This may be the case for the right of life, the right to freedom of inhuman treatment, to life an adequate standard of living, food, clothing, housing or medical care (Schultz and Ball 2007: 72–79).

However, these arguments suggest that not the PTAs themselves are the cause for a deterioration of human rights compliance but the incoherent usage of the clauses within the PTAs and the push-through method the EU might have used to get the ACP countries to sign the new EPAs or the Cotonou Agreement.

Representatives of the new institutionalism studies also conclude, that trade and supranational institutions foster human rights. In theory, institutions are independent actors who generate, change and shape values, norms, and politics of interaction (Holland 2002: 241–242). On these grounds, they are able to influence domestic policies rather than being mere instruments of states. Most of the new institutionalism literature argues for a positive influence of trade on human rights. This may be through acculturation that influences state behaviour (Goodman and Jinks 2004: 703), shaming of parties that violate human rights (Murdie and Davis 2012: 1), or actions of international governmental organizations (IGOs) that commit themselves on human rights enhancements (Boehmer et al. 2005). Moreover, trade networks seem to have as much an effect on human rights compliance as democracy, if indirect effects of trade networks are taken into account (Dorussen and Ward 2010). Besides trade and economic development, also democracy, British colonial history, smaller population size and non-military regimes lead to somewhat less human rights abuse. Reasons may be that a consolidated democracy is linked to political freedoms and a military that is under civilian control as well as normative arguments and wealth development. The population size may matter because a higher population may increase scarcity as well as opportunities for repression and diffusion of human rights violations. British colonial history may be beneficent compared to French colonies because of the more open political culture former British
colonies tend to have. The willingness to use repression may be less likely in such an environment. Military regimes have direct control over instruments of coercion and therefore face fewer barriers to use repression to implement their perceptions (Poe et al. 1999: 291; Davenport and Armstrong 2004; Murdie and Davis 2012: 7). These arguments back up the notion, that PTAs might foster human rights not only through coercion but also through persuasion and soft power. Reputation or legitimisation losses are more harmful for countries that are part of PTAs, part of a network and part of the international trading system than for actors that are isolated or mostly independent.

Trade agreements also may not be effective, if countries that violate human rights use indirect trade channels through intermediary states to benefit from the international system without having to bear the domestic policy costs of human rights compliance (Chyzh 2016). However, this stands in contrast to Dorussen and Ward (2010), who find that indirect trade ties have become increasingly important to peace because of communication effects.

Therefore, this thesis argues, that PTAs and trade in general improve human rights compliance only, if there are coherent processes as to when a coercion tool in a PTA is being applied and if all actors agree on the details of the PTA such as the conditions, when a human rights clause is activated. Furthermore, PTAs are more effective when a trading partner is dependent on the sanctioning party and integral part of the international (trading) community.

**2.3. Increase in human rights compliance**

The “Improvement cycle of trade, PTAs and human rights” claims that human rights themselves foster trade, the usage of PTAs and therefore again human rights. Blanton supports this notion. He evaluated the influence of human rights on trade. In his case, an increase in human rights compliance also fostered international trade (Blanton and Blanton 2007a: 102; Blanton and Blanton 2007b: 149). To this effect,
cross-sectional time-series research designs and OLS regressions were used to examine dyadic trade between OECD members and developing countries. Reasons are that states with high human rights compliance may be seen as better trading partners due to an environment that fosters human capital, and higher stability of the political situation in the country.

Spilker and Böhmelt (2013) replicated the study of Hafner-Burton and came to a different conclusion than her. In their analysis, they show with a genetic matching technique and newly compiled information on 249 PTAs between 1976 and 2009 in 174 countries that only countries that are already willing to comply to human rights may sign trade agreements that include human rights conditionality. Hence, agreements do not foster human rights compliance but are instruments to enforce law (Spilker and Böhmelt 2013). This supports the argument, that human rights may foster the generation of PTAs and trade. However, it could be criticized that countries like Vietnam, Columbia, Singapore, South Korea or Uzbekistan not necessarily were willing to comply with human rights when they signed a trade agreement with the EU, especially when taking into account human rights violations like death penalties, gender discrimination, forced labour, or child labour. Nevertheless, this does not mean that PTAs are worse for human rights compliance.

Summing up, the “Improvement cycle of trade, PTAs and human rights” argues that trade, PTAs and human rights rather improve than deteriorate each other. If trade in general is on the rise, if there are coherent processes and actors agree on the details of PTAs and if there is a network of dependent trading partners in an international trading community, human rights may be fostered. Intact human rights themselves will again improve trading conditions, the signing of PTAs and other treaties containing human rights issues and human rights compliance.
2.4. A quantitative and qualitative approach

The “Improvement cycle of trade, PTAs and human rights” implies that quantitative analysis that try to examine the relationship between trade, PTAs and human rights do include an endogeneity bias. All three variables are correlated, therefore it is next to impossible to exclude the effect of PTAs on human rights. However, there have been few studies about the impact of past trade agreements on human rights compliance that involves both, a quantitative and more detailed qualitative analysis of special cases of trade agreements. Therefore, this thesis tries to fill this gap by analysing the trade agreements between the European Union and the ACP states, more specifically the impacts of the Cotonou Agreement on human rights compliance in the ACP states with a qualitative and a quantitative method. The Cotonou Agreement between the EU and the ACP countries is the ideal case for this study. There is enough quantitative data available for a quantitative analysis, whereas it is still a manageable amount of countries for a qualitative analysis. In addition, through the Cotonou Agreement 79 mostly developing countries were part of the same PTA. All countries are subject to the same set of rules – therefore all countries could be treated equally. However, as will be seen in the analysis they are not treated in the same way. This gives the opportunity to extract the reasons for a different treatment of similar occurrences of human rights violations.

To date, studies that concentrate on the Cotonou Agreement or the European Partnership Agreements (EPAs) tend to include a European Union bias due to the paucity of data, especially in least-developed countries. As described above, most of the past studies included only a quantitative analysis whereas this study will also take a qualitative approach. Most of the quantitative analysis inherit the problem of endogeneity. Endogeneity derives from omitted variables, simultaneity or measurement errors and renders drawing conclusions about the causality between trade agreements and human rights compliance impossible. A qualitative approach will not alone reduce this difficulty; it will also shed a different light on the topic through the perspective of ACP countries.
In a preliminary study, an OLS regression similar to the regression of Hafner-Burton (2013) was conducted by the author of this thesis. The study is attached in the Appendix. It used two different models, one fixed effects model and one difference in differences model. The results were ambivalent. In general, effects that could be measured were very weak and presumably biased due to endogeneity. It could not be shown if decision makers actually may be coerced or persuaded to change their behaviour due to enforceable human rights clauses in trade agreements. The results suggested that human rights conditionality may not have a significant impact at all. There were hints that human rights clauses may rather improve human rights compliance than worsen them, however, effects were not clear and no causality mechanism could be shown. The difference in differences analysis attempted to show the distinction between countries that do not have hard human rights law implied in its trade agreements and the Cotonou countries who have implemented these hard laws. The analysis showed that Cotonou countries do have a significant better rating in the two indices (CIRI and PTS); however, it was still not clear if the human rights conditionality was the cause of this result. Another difficulty with the regressions was that human rights may change over a very long time period. This further exacerbates the measurement of the effect of a certain treatment on human rights. For human rights conditionality to work, it seemed to be important that the targeted country is democratic and dependent on international relationships. The more democratic a country, the more sanctions actually affect the elite and decision makers for politicians have to fear their re-election and personal consequences. The more a country is dependent on trade, foreign aid, direct investment etc., the more it will be anxious to ignore the international rules, which imply human rights compliance. As the study did not come to clear results, the current thesis uses a different qualitative approach to test the cautious theses made in this prior study and the overall literature. With this approach it shall be examined if the theory of the “Improvement cycle of trade, PTAs and human rights” proves itself in practice or not.
3. Hypothesis, Data sets and Questionnaires

Derived from the chapter above and the “Improvement cycle of trade, PTAs and human rights” there remain two main questions that will be analysed in this thesis. As noted above, PTAs should have a positive impact on human rights conditions. However, if there is no coherent processes as to when a coercion tool in a PTA is being applied, the impact could be diminished. This leads to the first hypothesis as to why the EU PTA may not be as effective in practice as in theory:

Hypothesis 1: The EU has no coherent process as to when it sanctions human rights violations.

As this hypothesis is quite complex and inherits further questions as to when the EU sanctions and sanctions not, it is divided into three sub-hypothesis. There are several reasons described in the literature, why the EU might sanction some countries while it does not sanction other countries for similar human rights abuses. The first sub-hypothesis is derived from criticisms of authors, who claim that the EU only sanctions countries, if they are not important to the EU as trading partners (Freigang 2015; Portela 2010; Hazelzet 2005, 2001; McKenzie and Meissner 2016). Their arguments will be explored further in chapter 5.1.

1.1 The EU only sanctions countries if it does not suffer from economic consequences due to the sanction.

The second sub-hypothesis goes into studies that claim that not all deteriorations of human rights compliance are rated in the same way. Authors argue that the relative change of human rights compliance seems to matter more than its absolute level in a country (Laakso et al. 2007; Hazelzet 2005; Portela 2005; Freigang 2015; Mbangu 2005).

1.2 The EU only sanctions if human rights compliances changed relatively within a country. It does not take into account the absolute level of human rights compliance.
The third sub-hypothesis sees a reason for different treatment and therefore diminished effectiveness of sanctions and PTAs as human rights compliance tools in different interests of former colonial powers (Mbangu 2005; Hazelzet 2005).

1.3 Former colonies of Great Britain and France are sanctioned more because these former colonial powers still have interests in their former colonies.

These three sub-hypothesis concerning the application of the essential elements clause might explain, why PTAs are not as effective as human rights tools as they should be in theory. The methods used to analyse this hypothesis are bivariate analysis combined with qualitative interviews and questionnaires described below. The methods used for each hypothesis will be described in detail in chapter 5 to minimize confusion.

The second remaining question is, if PTAs with essential elements are indeed not as effective as they should be in theory and if so, why. As the Improvement Cycle-theory from above suggests, that the positive effects should outweigh the negative effects, the second main hypothesis reads as follows:

**Hypotheses 2: Overall, Art. 96 sanctions do have a positive impact on human rights compliance**

As this is a generalized hypothesis, this hypothesis is divided into six further sub-hypothesis. They mainly examine the reasons, why PTAs are not as effective as they should be in theory. Therefore, for each chapter there have been extracted reasons from the literature, as to what could hinder the success of PTAs and its sanctions concerning human rights compliance (Hazelzet 2001, 2005; Boisvert 2013; Freigang 2015; Portela 2010; Smith 2003; Mbangu 2005). These reasons then are explored further with bivariate analysis of the data set and completed with qualitative interviews with ACP countries – all described in this chapter below. The bivariate anal-
ysis allows for an overview of the impact of a certain treatment, the qualitative analysis provides a detailed analysis of certain cases to compensate for the biases that are unavoidable in a quantitative analysis in this field of studies. These are the six sub-hypothesis that are described in detail in chapter 6. Also the method used for each hypothesis will be described in chapter 6 for the sake of clarity.

2.1. Sanctions do have an impact but it would be stronger, if a coherent process as to when sanctions are implied would exist.

2.2. Human rights conditionality rather improves than deteriorates human rights compliance.

2.3. Internal disagreement within the EU does impair the effectiveness of human rights conditionality.

2.4. Willingness for cooperation does increase the impact of human rights conditionality.

2.5. The unity of the international community at sanctions of human rights violations increases the impact of measures against human rights violations.

2.6. The more dependent a country is on the EU, the higher the impact of sanctions.

All hypothesis will be examined with bivariate regression analysis, combined with qualitative questionnaires and interviews of ACP countries. It could be criticized that a multivariate regression analysis could have been constructed instead of bivariate analysis. However, a multivariate regression analysis can be found in the Appendix. Furthermore, the bivariate method allows the better inclusion of the results of the qualitative analysis and interviews because each variable is reviewed separately. This is also the reason, why control variables such as education levels, population sizes, economic development etc. are not included here. For such variables it is difficult to add qualitative findings. However, control variables that could be included may also be found in the multivariate regression analysis that is attached in the Appendix.

This chapter now presents and describes the underlying definitions, data sets and methods of the thesis in detail.
3.1. Definitions

This thesis deals with conditionality in preferential trade agreements between the EU and the ACP countries. More precisely it analyses the human rights clause as an essential element in the Cotonou Agreement (Council of the European Union 2000) between the EU and the ACP countries. However, these and other terms need to be specified.

The definition of conditionality refers to Gammage (2014) who defines this term as “a process of giving trade preferences on the basis that the beneficiary country complies with certain political and social standards” (Gammage 2014: 781). Zimelis (2011) who cited Killick (1998) on the other hand speaks of “a mutual arrangement by which a government takes, or promises to take, certain policy actions, in support of which an international financial institution or other agency will provide specified amounts of financial assistance” (Killick 1998: 6). In other words, conditionality is an incentive for countries that receive aid to comply with agreed standards of the donor country or institution.

An essential element in the words of Zimelis (2011) is “a legally binding commitment whose non-observance affects the validity of the agreement signed between the parties to it and can ultimately lead to its suspension” (Zimelis 2011: 389). Put differently, if an essential element of an agreement is breached, the underlying preferential trade agreement can legally be put on hold and aid may be suspended. Essential elements in the Cotonou Agreements are the respect for human rights, democratic principles and the rule of law.

In a study of the European Parliament, the “essential elements” are defined as follows:

“Modern human rights clauses share the same basic structure. They begin with an obligation to comply with human rights, which is set out in an ‘essential elements’ clause, typically located as one of the first articles of the agreement. This obligation is then enforced by a ‘non-execution’ (or ‘nonfulfilment’) clause
permitting one party to take ‘appropriate measures’ if the other party violates the essential elements clause. [...] The standard ‘essential elements’ states as follows: Respect for democratic principles and fundamental human rights, as laid down in the [1948] Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement” (European Parliament 2014: 8–9).

A definition of human rights is more complex. The UN defines human rights as “rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination” (United Nations 2018). This definition, which includes the term “and many more” already shows, how complex the term human rights is. For this analysis, the term is reduced to the physical integrity rights as well as freedom of political violence and terror. Naturally, this limits the analysis substantially. However, it also allows the analysis to work with certain indices that measure these specific types of human rights (see chapter 3.2. Data set) and hence may increase the validity of the results. Therefore, this limitation is considered as an acceptable compromise.

3.2. Data set

The data for the different analysis below is conceived from different recognized sources.

The data set of Jonathan M Powell and Clayton L Thyne (2011) provides data about coups d’état that happened between 1950 and the present, in this case 2017. It describes the country affected and whether the coup was successful or not.
The Uppsala Conflict Data Program (UCDP) provides data of armed conflicts that happened within or between countries of the world since 1946. The data is conducted by the department of Peace and Conflict Research from the Uppsala University and the Centre for the Study of Civil War at the Peace Research Institute Oslo (PRIO). In this case, the data includes information on armed conflicts where at least one part is the government of a state in the period from 1946 to 2016 (Allansson et al. 2017; Gleditsch et al. 2002). The year of the conflict start and end are included in the data set.

Concerning sanctions the available documents of the Council of the European Union about Art. 96 Consultations of the Cotonou Agreement from 2000 to present have been examined individually to evaluate sanctions that had been invoked until today. Altogether, 201 documents provided information about the country, year, consultation starting and ending date, sanction status, severity of sanctions, date of the end of sanctions, reasons for consultations stated by the EU, cooperation willingness of the country in question, support of the international community for the EU or the country in question, requests for aid, past consultations and their reasons, commitments taken and the unity of member states concerning the actions against countries in question.

A country’s dependence on EU aid is calculated from a comparison of the total amount of aid a country receives and the total amount of aid the country receives from the EU; in other words, the relative rate of EU aid for a country. Included is an overview of aid that is provided by EU member states in addition to the EU aid. This overview reveals if certain member states have special interests in some countries. Furthermore, it can be identified if member states did not reduce their aid for certain countries despite the EU did. This may point out different interests of member states concerning certain countries. Overall, a high dependency on European aid may bolster the soft power of the EU over a country that does not act according to the rules provided for in the Cotonou Agreement. The data for these calculations
is derived from the OECD International Development Statistics data set (OECD 2018).

To measure the amount of trade between the EU and the ACP countries two different data sets of the imports and exports of the EU from and to ACP countries are considered. The first is generated from the trade data of Eurostat, the statistical office of the European Union. Reporter countries are the 28 member states of the European Union (the UK is included because it was a member from 2000 until today). It includes the statistics of international trade in goods from the EU member states to all countries in the world measured in Euros. The second included data set is from WITS (World Integrated Trade Solution) conducted by the World Bank in collaboration with United Nations Conference on Trade and Development (UNCTAD). More precisely, the data used in this case was provided from the UNSD Commodity Trade (UN Comtrade) database. It contains merchandise trade exports and imports by detailed commodity and partner country data. Values are recorded in US dollars through reports to the UN. Unfortunately, the reports of the ACP countries are incomplete and contain a lot of missing values. To know the exports from an ACP country to the EU, the recorded imports of the EU origination from this ACP country are used in both data sets. The same is used vice versa for ACP imports originating from the EU that are resembled by exports of the EU to the ACP countries. This is not ideal; however, this data has almost no missing values. Again, this was considered as an acceptable compromise.

Furthermore included in the data set is information about former colonial powers’ activity in an ACP country. This contains a list of the last former colonizer in a country.

To evaluate changes in the human rights compliance two indices are used: the Political Terror Scale (PTS) and the CIRI index. The CIRI index does only measure the physical integrity rights, therefore it measures only a specific part of human rights

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5 http://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database
on a scale from zero (no government respect for human rights) to eight (full government respect for human rights). Human rights in this sense include torture, extrajudicial killing, political imprisonment, and disappearance indicators (Cingranelli et al. 2014). The PTS (Mark et al. 2017) measures levels of political violence and terror. Three sources rate the countries independently on a scale from one to five, whereas level one indicates a secure rule of law, freedom of speech, no torture and no political murders. At level five the whole population is being terrorized and leaders do not limit themselves to any means to reach their goals and interests. This study takes the mean of the three ratings. The sources are Amnesty International, the U.S. State Department Country Reports on Human Rights Practices, and Human Rights Watch. Again, this measurement of human rights compliance does only take certain human rights into account such as the violations of basic human rights to the physical integrity of the person by agents of the state within the territorial boundaries of the state. For better readability and easier interpretation of the results of the study, the PTS scale is reversed. This means that a lower level (e.g. 1) signifies a high rate of political terror and a high PTS level (e.g. 5) indicates a low level of political terror.

For certain evaluations the average CIRI index and the average PTS during five years before a coup d’état or a start of a conflict are calculated as well as the average CIRI index and PTS during five years after the conflict or coup d’état are calculated. In case of a conflict, the average CIRI and PTS level during the years of the conflict are calculated as well. If the conflict or coup has ended in 2016, the values of this year are used. With this scales, changes in human rights compliance from sanctioned and non-sanctioned countries with conflict situations may be compared.

This data set allows for quantitative bivariate regression analysis of ACP countries with conflicts or coups that were sanctioned or not sanctioned. It is used to examine the hypothesis from above, which were derived from theses and conclusions of the past studies on the topic (see chapter 2.).
3.3. Questionnaires and Interviews

The data sets above are not always complete and missing values as well as measuring difficulties and the spuriousness of the data may bias the outcomes of a study. To not be fully dependent on data sets alone, this thesis also uses a questionnaire and interviews as a method to validate its outcomes.

Three questionnaires have been set up for this study. One for members of the European Union and especially members of the European Parliament, one for countries of the ACP group and one additional questionnaire for countries that were sanctioned by suspension of aid through the EU.

This study has a focus on the view of ACP states on human rights clauses and conditionality. Therefore, the ACP countries received two questionnaires. However, to avoid a one-sided and therefore biased analysis the EU also was taken into account and received one questionnaire.

The questionnaires all were translated into French and sent out via E-Mail in both languages to approximately 450 ACP- and 260 EU-Mail-accounts. The E-Mail-addresses for the ACP contained mainly contacts of ambassadors situated in Brussels or – if no contact could be found – another EU member state like Great Britain or France. Furthermore, ambassadors to the UN and the WTO, mostly situated in Geneva were contacted. In addition, African groups like the Africa Union, the ACP group, the EAC, the IRC, the SADC, and the CEMAC groups among others received the questionnaire. When successfully received responses, these contacts were asked to forward the questionnaire to further ambassadors or experts on the field which some of the contacts did. In addition to that, all political parties from the 79 ACP countries that did provide E-Mail-Addresses on the internet did receive an invitation to contribute to the study. Unfortunately, many websites were not up to date and about fifty E-Mails were returned as undeliverable.

Concerning the European Union, all members including the substitute members of the Development Committee (DEVE), the Foreign Affairs Committee (AFET) with
its subcommittee on Human Rights (DROI) and the Committee on International Trade (INTA) were sent an E-Mail. Additionally, the DG DEVCO, the European Policy Center and the Cabinet of Commissioner Neven Mimica (International Co-operation and Development) received an invitation. The E-Mails were sent out six times in a time span of two months. The content of the E-Mails may be found in the Appendix (see Appendix 14.1.2.). In the E-Mails it was left open whether the experts would like to answer the questionnaire or prefer an interview via phone or skype. Unfortunately, only one personal interview with open questions over skype with an ambassador of an ACP country who wants to stay anonymous could be conducted. Another ambassador of an ACP country answered more detailed questions through a written interview via E-Mail. The questionnaire for the ACP states was answered fully three times and partially two times. The questionnaire for sanctioned countries did not receive any responses. The questionnaire for the EU was completed once. Answers in French were translated into English.

The questionnaires may be found in the Appendix (see Appendix 14.1.1.). When looking at the questionnaires in more detail, one can see that they are long and take some time, approximately 15 to 20 minutes, to complete. The questionnaire was intentionally this exhaustive and detailed to cover as much information as possible from the questioned people. To simplify and fasten the answering process most of the questions are multiple choice questions and questions could be skipped. However, this still may have been too time consuming for ambassadors and members of the parliament. In future studies, the questionnaires could cover less topics and be limited to one of the overarching topics. In this case, it would have been more fruitful if the questionnaire would not have covered the topics “Negotiation process”, “Application of the clause”, “Activation of the human rights clause as an essential element”, “Impact of the human rights clause as an essential element” and “Discussions of the Cotonou Framework” but limited itself on “Activation of the human rights clause as an essential element” and “Impact of the human rights clause as an essential element”.
essential element”. This may have led to more responses from the contacted persons.

Since the questionnaire was answered only sparsely but the answers showed some similarity, the insights of the questionnaires will be added to the analysis of the data if suitable. At other times, the statements will be compared to propositions found in the literature.
4. Evolution of the human rights clause

To examine if PTAs as human rights tools are or were effective in the case of the Cotonou Agreement between the EU and the ACP countries it is important to know the context, in which the agreement was conducted. Furthermore, one has to know, which difficulties, disagreements and challenges had to be addresses during the negotiations and the implementation of the agreement respectively the essential element clause. This chapter therefore provides an overview and an explanation, how and why human rights infiltrated the PTAs between the EU and the ACP countries.

4.1. From Yaoundé to Lomé, Cotonou and EPA

The first multilateral PTA the European Union conducted with African states was the Yaoundé Convention concluded in 1963. It included the recognition of national sovereignty and PTAs for Associated Africans States and Madagascar (EAMA)\(^6\) (Holland 2002: 27–28).

In 1969 Yaoundé 2 followed with the amendment of the Convention towards a more comprehensive nature. It included regulations concerning financial aid, technical assistance and training, trade preferences, investment and capital movements. Furthermore, three joint institutions were established\(^7\) (Holland 2002). However, the economic benefits of the convention were marginal due to non-existing tariffs on most of the products (Holland 2002: 28).

Yaoundé made way for the Lomé Convention I in 1976. Great Britain, who became a member of the European Union in 1973 changed the external relations of the Union significantly as it pursued its interests for the Commonwealth. This can also be noted in the then newly formed Lomé Convention (Holland 2002: 32). For example,

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\(^6\) States included were: Burundi, Cameroon, Central African Republic, Chad, Congo, Dahomey, Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo, Upper Volta and Zaire.

\(^7\) the ACP-EC Council of Ministers, the Committee of Ambassadors and the Joint Consultative Assembly
the Commonwealth guaranteed sugar prizes posed a problem by not complying with non-reciprocal arrangements. Agricultural preferences were limited to exports from the ACP to the EU because of the Common Agricultural Policy’s protection for European producers (Zimelis 2011: 391). Therefore, the reciprocity was dropped and EU exports were treated as favourable as exports from other developed countries, though the economic effect of this arrangement was marginal. Furthermore an export stabilization scheme was established which covered funds to protect ACP states against production shortfalls and price fluctuations for specific agricultural products exported to Europe. This served as an insurance policy for ACP states that where dependent on a small, mainly agriculture, product line. However, the aid through this measurements was criticized as unevenly spread (Holland 2002: 37).

Of great importance concerning the Lomé Convention was the development of the ACP group prior the negotiations. For the first time 46 states from Africa, the Pacific and the Caribbean pooled their interests and acted through a single voice. This changed the power-ratio between the then nine EU member states and these ACP states significantly. The parties committed themselves to an equal relationship, though the views of developing countries still were treated as of secondary importance (Holland 2002: 33–34). The main objectives did not include the development of human rights but focused on a non-conditional approach and the inclusion of the ACP states into the world market (Holland 2002: 38–39). As demanded by the ACP states the Commission even rejected any notion that the Convention would include political considerations, it was solely confined to economic purposes (T. M. C. Asser Instituut 1998: 54–55). However, effects for the balance of trade were marginal and the dependence of ACP states on raw materials was preserved (Holland 2002: 39).

A milestone for the development of human rights clauses in PTAs constitute the Uganda crisis in 1977 when the human rights violations during the brutal dictatorship of military leader Idi Amin reached its climax and his actions were condemned by the world community. With this crisis, the EU faced the problem that continuing
foreign aid for regimes that abused human rights could be seen as indifference towards or approval of the vile practices of some regimes. Therefore, Great Britain pressured the EU to formulate a statement that came to be known as the “Uganda Guidelines”. The Council herein deplored that “any assistance given by the Community to Uganda does not in any way have as its effect a reinforcement or prolongation of the denial of basic human rights to its people” (T. M. C. Asser Instituut 1998: 55). However, there was no legal basis for a suspension of aid. This and similar events as the military coup in Equatorial Guinea in 1979 and further crisis in the Central African Republic and Liberia (Hafner-Burton 2013: 101) set the starting point of attempts to foster and protect human rights through conditionality in PTAs. Main actor hereby was the European Parliament, as described below. However, attempts to include conditionality in Lomé II, which was signed in 1979, was met by the ACP states with strong resistance. Not only was the definition of human rights strongly disputed, but also the “Western-style” human rights were seen as too costly and working against political leaders of the time (Zimelis 2011: 391–392; T. M. C. Asser Instituut 1998: 59). Furthermore, the EU member states’ were divided over this issue8 (Bartels 2005: 12).

With the first direct election of the European Parliament (EP), the power balance in the European Union changed again. As the European Parliament’s recognition and legitimation within the European Union was strengthened but still lacked political power, the Parliament sought to introduce political dimensions to the Community’s external relations. However, up until then the Commission worked hard to exclude such moral instances from its foreign relations. Nevertheless, human rights proved to be an attractive issue for the Parliament to attract attention and establish its role as the protector of democratic values. The EP therefore played an active role in promoting human rights, especially within countries that held strong economic ties to the Union. It established a Working Group on Human Rights and conducted reports

8 The British and Dutch Governments wanted to include an explicit reference to human rights, the other Member States and the Commission were against such a notion “ T. M. C. Asser Instituut (1998: 56)
on human rights in the world after the Council rejected to submit such reports. In 1983, the European Parliament conducted a Resolution on human rights in the world. One reason for such commitments of the EP could be that the Party of European Socialists (PES), who was known to be sceptical towards the effects of market integration and to fight for enforceable human rights, emerged as the largest and most cohesive fraction of the EP (Hafner-Burton 2013: 79). Besides these actions of the European Parliament several new Human Rights Charters were issued in the 80s, one of them the African Charter of Human Rights and People’s Rights adopted in 1981 (T. M. C. Asser Instituut 1998: 56–59; Bartels 2005: 13).

These developments led to a slight change in the Lomé III Convention in 1984. The new objectives of the treaty were not reduced to the promotion of the economic development, but also included the cultural and social development (Holland 2002: 40–41). However, the EP indeed enjoyed a new legitimacy but it lacked the power to enforce its claim to include human rights in PTAs. This is why the Lomé III Convention does not more than mentioning human rights as a high priority in the preamble and in Article 4 with the notion to achieve development with respect to dignity. It may also be the reason why Surinam’s government was not sanctioned by the EU when it executed fifteen opposition leaders in 1982; whereas the Netherlands immediately suspended development funds (Hafner-Burton 2013: 51). The same applies to requests of the EP to suspend aid to the Central African Republic for human rights violations or the non-sanctioned violations of Zaire at that time (Hafner-Burton 2013: 51).

Nonetheless, the increased activity in the human rights sector generally attracted more and more attention and could no longer be denied from governments. In 1985, the Cooperation Agreement with the Central American countries recited the United Nations Charter, in 1986 the preamble of the European Single Act mentioned democracy and human rights and the increased believe in human rights treaties also encouraged the believe that parties who already committed to respect human rights
would also do so. In addition, the Single European Act gave the European Parliament a veto in agreements with third countries. (Holland 2002: 120). The EP immediately signalled that parliamentary support for certain agreements would only be granted if greater efforts to protect human rights through trade relations were pursued. It acted on its threats when the EP postponed a trade agreement with Turkey in 1987 and with Israel in 1988 due to human rights violations (Hafner-Burton 2013: 105). This gave way to the inclusion of a-political content in treaties of the EU.

This is reflected in the Lomé IV Convention, signed in 1989, which for the first time included a reference to respect human rights in an international agreement (Art. 5) (Bartels 2005: 14; Holland 2002: 45). Lomé IV was much more comprehensive than its predecessors were. A first form of conditionality was set through economic and political aid that was explicitly remarked for Structural Adjustment Support. The objectives of Lomé IV were more comprehensive as well: it reached from increased productivity and economic diversification to social and economic well-being (Holland 2002: 44). The bargaining position of the ACP states who still opposed the intermingling of economic and political issues within the treaty was simply too weak to prevent this development.

Further events such as the South America return to democracy in the 80s, the collapse of communism in 1989 and the end of apartheid 1990 were accompanied by more and more human rights declarations. This shifted the attention from the EU away from the ACP states towards the East and South America. In 1990, the treaty between the EU and Argentina included the first effective human rights clause. Surprisingly, it was Argentina who insisted on including an effective, respectively an enforceable, human rights clause. The treaties with Chile, Uruguay, Paraguay, Macao and Mongolia that followed in the coming three years all included a basis human rights clauses (Bartels 2005: 14–16).

In 1991, a coup happened in Haiti. The EU and the ACP states suspended financial and technical cooperation with Haiti but had no legal ground for further actions. Simultaneously the war in Yugoslavia highlighted again the need for a clause that
allowed the suspension of financial aid in times of human rights violations through the government. On these grounds, the Commission issued a “Communication on Human Rights, Democracy and Development Cooperation Policy” (Bartels 2005: 17–19). In the agreements with the Baltic countries and Albania “essential elements” were mentioned for the first time, which functioned as a trigger for a suspension clause. This came to be common practice in future treaties (Bartels 2005: 25). In 1992, the Treaty on the European Union (TEU, or Maastricht Treaty) declared for the first time a commitment and clearer legal basis to pursue to the principles of liberty, democracy, and respect for human rights (Article 6). With an internal commitment to human rights the EU increased the credibility to foster human rights abroad (Hafner-Burton 2013: 109).

The foundation stone of the essential elements that are still present until today was the “Communication from the Commission on the Inclusion of respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries” issued by the Commission in 1995 (European Commission 1995). The communication stated that all future agreements with third countries should include a human rights clause such as a reference to respect "human rights and democratic principles", to the Universal Declaration on Human Rights and to respect the rule of law and good governance. Hafner-Burton explains this rather drastic commitment by the majority of Socialist or Labour parties in the governments of the EU member states of this time (France, Ireland, the Netherlands, and Portugal as well as the then new members Austria, Finland, and Sweden) (Hafner-Burton 2013: 79).

This self-commitment was brought to the test when treaties with Australia and New Zealand failed due to the human rights clause, as these countries had decided themselves to strictly separate economic and political issues, especially in trade agreements. Mexico tried to oppose the human rights clause too but could be won over by the European Union (Bartels 2005: 32). This shows how important the power ratio is when it comes to force trading parties to make obligations they oppose.
As the importance of the ACP states diminished through the 90s, the European Union had the power to dictate the agenda for the next Convention with the ACP states, the Cotonou Agreement (Holland 2002: 42). In a Green Paper of the European Commission on the future of Lomé the European Union identified missing microeconomic and macroeconomic policies and good governance as the main obstacles for economic and political development of ACP states (European Commission 1996; Zimelis 2011: 394). To acknowledge the differences of the countries within the ACP group the European Union furthermore used a differentiation rather than a uniform approach that was common in the Lomé treaties (Holland 2002: 200). Article 9 of the Cotonou Agreement (Council of the European Union 2000), which followed the Lomé IV Convention in 2000, incorporated the three ‘essential elements’ (respect for human rights, democratic principles and the rule of law) and one fundamental right (good governance) for the first time (Zimelis 2011: 394). It allowed the EU to enforce sanctions against countries that did not comply with these essential elements (Art. 96) (Gammage 2014: 783).

It was based on the four principles: “equality of partners; political participation; dialogue and mutual obligations, including human rights obligations; and differentiation, based on the idea that each country is unique” (Aaronson 2011: 453). However, Cotonou regulations such as consultations within 60 days before taking measures in normal cases and 60 days after measures taken in special urgency have not been adopted to any future treaties of the European Union with third states (Bartels 2005: 29–30). Chapter 6.1. provides further details of the regulations concerning human rights in the Cotonou Agreement. In the revisions of the agreement in 2005 and 2010 the principles of these regulations were not changed (Zimelis 2011: 395).

However, the preferential treatment of some countries and products in the Cotonou Agreement was possible solely due to a WTO waiver permitting an exception for the agreement until 2009 (Curran et al. 2008: 529). Due to this limited effective period, the Cotonou Agreement already included a notion that Economic Partnership
Agreements (EPAs) should be negotiated with different ACP regions. The parties already agreed on the adoption of Cotonou components into the new agreements. The objectives of the treaties remain more or less the same: to eradicate poverty, integrate the ACP into the global economy and inclusion of conditionality (Gammage 2014: 782). However, linkage from trade and development aid changed significantly. The Aid for Trade element is not included in the EPAs anymore but has to be granted from the EU separately on a voluntary basis (Gammage 2014: 784).

As the EPAs are negotiated with eight separate regions (see table 1) instead of the one ACP group, the negotiation power for some regions respectively countries has decreased.

Especially Nigeria and Namibia refused to sign the West Africa EPA, respectively the EPA with the Southern African Development Community (SADC) for fear of destabilizing effects for local and regional markets, risks of deindustrialization and evermore dependence on the European market (Gammage 2014: 785; Maes 2010).

Paradoxically the differentiation approach of the Cotonou Agreement will be revised with the new EPAs because the EPA treats all countries in the region as economic and political equal (Gammage 2014: 786).
EU-ACP PTAs And Their Impact On Human Rights Compliance: A Qualitative Approach
Evolution of the human rights clause

<table>
<thead>
<tr>
<th>Region</th>
<th>Countries</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Africa</td>
<td>Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau,</td>
<td>provisional application since</td>
</tr>
<tr>
<td></td>
<td>Ivory Coast, Liberia, Mauritania, Mali, Niger, Nigeria, Senegal, Sierra</td>
<td>Sept. 2016</td>
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<tr>
<td></td>
<td>Leone and Togo</td>
<td>ratification ongoing</td>
</tr>
<tr>
<td>Central Africa</td>
<td>Cameroun, the Central African Republic, Chad, Congo, the Democratic</td>
<td>negotiation</td>
</tr>
<tr>
<td></td>
<td>Republic of Congo, Equatorial Guinea, Gabon, Sao Tome and Principe.</td>
<td>implementing</td>
</tr>
<tr>
<td>Eastern and Southern Africa</td>
<td>Djibouti, Eritrea, Ethiopia and Sudan, Malawi, Zambia, Comoros</td>
<td>negotiation</td>
</tr>
<tr>
<td>(ESA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern and Southern Africa</td>
<td>Madagascar, Mauritius, the Seychelles, and Zimbabwe</td>
<td>signed Aug. 2009</td>
</tr>
<tr>
<td>(ESA)</td>
<td></td>
<td>implemented</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ratification ongoing</td>
</tr>
<tr>
<td>Southern African Development</td>
<td>Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland</td>
<td>signed Jun. 2016, ratified</td>
</tr>
<tr>
<td>Community (SADC)</td>
<td>Angola with option to join SADC agreement</td>
<td>applied provisionally, Mozambique</td>
</tr>
<tr>
<td></td>
<td></td>
<td>joined in 2018</td>
</tr>
<tr>
<td>Caribbean</td>
<td>Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada,</td>
<td>signed Oct. 2008</td>
</tr>
<tr>
<td></td>
<td>Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines,</td>
<td>applied</td>
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<tr>
<td></td>
<td>Saint Kitts and Nevis, Surinam, Trinidad, Tobago, and the Dominican</td>
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<td></td>
<td>Republic</td>
<td></td>
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<tr>
<td>Pacific</td>
<td>Papua New Guinea, Fiji</td>
<td>ratified May 2011/July 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>provisionally applied</td>
</tr>
</tbody>
</table>

Table 1: EPA groups and status of the EPA negotiations

4.2. Enabling the conditionality

Since the beginning of the intend on including essential elements, they have been mostly combated by ACP countries. This may be seen in the early attempt of the European Union in the 70s after the Uganda Crisis to include such measures and the late success at the Lomé IV review in 1995, where a provision for appropriate measures was added to counter violations of human rights and democracy. Not until the Cotonou Agreement in 2000 essential elements had been included in an ACP treaty.

As noted above, ACP countries opposed the intermingling of economic and political policies in trade agreements. This view was common when the Yaoundé und the first Lomé agreements were set in place. In fact, the Lomé Convention was praised
for its non-political approach, though this changed throughout the years in the European perspective as may be seen in the chapter above. However, the question remains as to why ACP countries did sign treaties with content they opposed.

The most obvious reason is the market power of the European Union. Especially in the 90s, ACP countries were struck by economic, natural and civil crisis. As mentioned before, the end of the cold war set the European focus away from African countries towards the East, Middle East and Asia. Whereas the importance of the ACP group diminished for the European Union, the EU still posed as an important trading partner for ACP countries. This led to an unbalanced power structure between the EU and the ACP group. As the latter was still dependent on the former, the EU was able to dictate certain regulations that the ACP group simply had to accept (Gammage 2014: 782). As for the Cotonou Agreement, it improved the situation on the previous Lomé IV convention for the ACP states with the inclusion of more detailed regulations as to the process of how measures were taken. This left the EU a less free rein to initiate sanctions, though it still had plenty of scope to manoeuvre (Zimelis 2011: 393).

Besides this explanation, Hafner-Burton (2013: 48) extracted several reasons in which cases leaders of ACP countries may have given their consent to human rights clauses: “when regulations help to solve other political problems […], to win the support of bootlegger interest groups that can help them amass more money, power, or influence [… and …] when they can use moral language to sell the policy, regardless of whether they share the moral convictions about the value of protecting people’s human rights” (Hafner-Burton 2013: 48).

Furthermore, Aaronson (2011: 445) argues that political leaders realized that failure to protect human rights may affect the countries own economy as well as foreign direct investment and market conditions. Therefore, it is also in the interest of an ACP country to comply with human rights.

In addition, they ACP countries also may have benefited from the formal process of Art. 96. Before 1996, suspensions of aid were handled informally. It was no more
than a letter of a Commissioner without a need for approval of the Council. This happened for example in Equatorial Guinea in 1992. This informality included that no publication in the Official Journal of the EU was needed and such measures cannot be tracked except through interviews up until now (Hazelzet 2005: 2–4). Now a formal process specifies the path of the activation of suspensions. This has led to a more proactive and transparent EU policy (Hazelzet 2005: 3). However, there is still no coherent procedure as to when sanctions are imposed.

As noted above, the European Union relied mainly on its market power and asymmetric power relations when negotiating the Lomé IV and Cotonou Agreement. This approach backfired, though. When the negotiations for the EPAs started in the late 2000, a strong opposition already formed. The EU did not advertise its conditionality to the ACP countries as mutual beneficial, but forced ACP countries into a treaty they did not support but were depended on. However, the situation of the ACP countries since then has changed.

Not only does the EU suffer from internal division that may be caused among other reasons by the many extensions of the Union, its influence is also displaced by the increased interest of the emerging super power China but also the United Arab Emirates or India. This is also due to ever-increasing food safety standards that are sometimes hard for ACP countries to comply with and therefore render exports to the EU less attractive. Though still dependent on the EU market, the dependency of ACP countries seems to decrease and make them more confident when going into negotiations (Meyn 2008: 526).

This also emerges in the interviews with the ACP countries.

“We are not still dependent on the EU market. For a certain extend yes […] but we export to everywhere else in the world […] so we are not dominantly relying on exports to the EU. […] To be less dependent […] certainly helps because it equals more competitions now. The EU does not like it but that competition is good for us […]” (anonymous A 2018).
“[The country of the interviewee] is an important trading partner of the EU […] But today [another African country] remains our first trading partner, not forgetting the role of China and other emerging countries like Turkey […] Our diversification towards other partners gives us room for manoeuvre and surely mitigates the temptations of pressure […].” (anonymous B 2018)

This is aggravated by the fact that the past negotiations that sedated by coercion diminished the trust of ACP countries into the beneficial motives of the European Union. Indeed the EU emphasized its intentions to negotiate a comprehensive EPA on a par with the ACP states, yet the ACP states are sceptical and mistrust the efforts of the EU (Meyn 2008: 516). Furthermore, the legitimacy of the EU is compromised as long as subsidies for the European agriculture sector remain in place (Meunier and Nicolaïdis 2006: 923).

Nevertheless, the EU’s market power is still strong enough to coerce ACPs states into signing agreements that include clauses they would rather abolish. The interviews confirm this:

“We still need the EU market. Post Cotonou will always come with those conditions of governance, human rights, democracy etc. There won’t be any choice by the EU. That is an imposition, and because you are poor, you don’t have much to say” (anonymous A 2018).

“The two countries have a different status, donors and recipients. There are trends to behave differently, but we are especially careful to ensure that development is well organized through the EDF […]” (anonymous B 2018).

Up until now, the ACP dependence on the EU is still strong and diminish the negotiating capacity to walk away from the EU. (Gammage 2014: 787). In addition, NGOs and civil society organisations are on the topic and will rather intensify their actions than reducing them. This means, the norms of a balanced partnership and human
rights compliance have been established and will not be abandoned in the near future. However, this might change due to the rise of other players on the market and a new confidence of ACP countries that derives from this new situation.

4.3. Hindrances to the inclusion of the human rights clause

There are several obstructions for an inclusion of the human rights clause in a preferential trade agreement. The following paragraphs discuss some of the major deviations for the inclusion of a human rights clause in the Cotonou Agreement.

An underlying problem of all negotiations between the EU and the ACP group have been different interpretations of the following: human rights, development, good governance, democracy, rule of law, appropriate measures and situations that constitute special measures (Zimelis 2011: 396). As long as the interpretation is not clear, no mutual satisfying agreement will be reached.

This is reflected in the interviews and the questionnaires. Firstly, countries with a low development index and who are considered to experience human rights violations consider themselves as “doing okay” or “respecting the human rights” when it comes to human rights compliance (anonymous A 2018; anonymous B 2018). The EU, on the other hand, views these countries on a lower level of human rights compliance.

Second, the interviewees from the ACP countries see the major challenges in terms of respect for human rights in the “different stakeholders’ conception of the very notion of human rights, particularly between Western countries and the ACP” (anonymous B 2018). In particular, several countries mention homosexuality as an example for a difference in the definition of human rights. And they criticize the

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9 “For example, there are different opinions on certain notions or concepts on sexual orientation” anonymous B (2018).
EU and other Western parties for “imposing their designs” (anonymous B 2018) on them.

“It is not fair to impose on us sanctions [...] and concepts that the western developed over hundreds of years. And suddenly you want a poor African country to just get a blue print of the European model and say: Here it is, this is what you must do as we tell you to do because this is the best for your country. What proves that this is the best for the countries? Our traditions and value and culture are not to be discarded by some blue print of Europe” (anonymous A 2018).

Another example mentioned is the freedom of speech or the use of the internet. Some countries have been criticized for turning off the internet during or before elections. However, the reason for such measures are supposed to be the protection of shop owners and people in general against riots.

“People with no good intention [...] would know if there are some riots [...] that they can perhaps knock the windows of shops and start looting whatever they can get their hands on. [...] The country may not be ready yet for such things [...] because of our poverty level. [...]” (anonymous A 2018).

The definition of human rights, thus, is seen as a major challenge for ACP countries when it comes to human rights compliance. This argument goes hand in hand with the criticism of the EU for its imbalanced approach towards the ACP countries. Whereas one country formulates this diplomatically as “essentially imbalanced” (anonymous B 2018) another country phrases it more directly:

“It is very paternalistic. The EU is not at all acting on an eye-level or as a partner” (anonymous A 2018).

The results of the questionnaire regarding the goals of the parties who wanted to include the human rights clause as an essential element in the Cotonou Agreement hint into the same direction as may be seen in graph 1, where “exert one’s own
power over others” and “diffuse one’s own values/culture/norms” have been ticked off as being a goal for the parties who wanted to include the clause.

In this context, it should also be mentioned that the ACP countries asked in this thesis were not completely against the inclusion of a human rights clause in a preferential element. Only one country mentioned specifically that it would rather not have included the human rights clause:

“A trade agreement must remain so and avoid weighing it down with political or human rights clauses” (anonymous B 2018).

The questionnaire (graph 2) of the ACP countries on the other hand shows that not only the questioned countries but also the majority of the ACP countries may not have been against the inclusion of the clause in general. In any case, no country in the questionnaire sensed that the majority of the ACP countries were against the inclusion of the clause. However, as mentioned above the literature is quite homogeneous in its belief that ACP countries opposed the clause in general. In addition, the questionnaire of a member of the European Parliament sees that the majority of the ACP countries opposed the inclusion of a human rights clause. Contingently ACP countries did oppose the clause more than they mention now in hindsight, however,
it may also be that the countries were against the clause in general because of the lack of an agreement on what human rights imply.

Another reason why the ACP countries may have opposed the clause although they may not have opposed the idea of the inclusion of a human rights clause in general could be the perception of the EU as a neo-colonial, paternalistic entity. Formulated diplomatically:

“There are […] historical links that are real and cannot be overlooked, but their influence has significantly decreased with the appearance of new partners […]” (anonymous B 2018).

Put differently:

*I absolutely see the human rights clause as a remnant of the colonization. It is a very paternalistic view* (anonymous A 2018).

The questionnaire of the ACP countries paints a similar picture (graph 3). Beforehand the negotiations of the Cotonou Agreement, the ACP countries feared the loss of sovereignty and paternalism, but must of all the dominance of another party/country (and a hidden import protection). This may be interpreted as a fear
of the dominance of the EU, which may be translated as anxiety towards paternalistic behaviour of the EU. Even the EU-parliamentarian agrees on this fact:

“It is necessary to rethink EU ACP relations because the current configuration gives a postcolonial perception. In the context of the post-Cotonou negotiations, a new dynamic and renewed mutual interest must be created” (Answer to question G1 “Optional: Further comments on the topic” in the EU questionnaire).

The Council of the European Union and the EU commission are aware of this notion. In a recommendation of the Commission on sanctioning Zimbabwe to the Council the Commission suggests:

“The potential downside of opening consultations, with the implied threat of sanctions, should not be overlooked. The issue of neo-colonialism and anti-white sentiment could figure more prominently in the elections” (Council of the European Union 2001: 3)

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10 the item “other” included the following comment: “The impact of limited access to trade development technical assistance support due to the lack of compliance to dictatorial regimes and potential impact this will have on the private sector development and poverty reduction.”
Summing up, ACP countries seem to be rather against the *definition* of human rights than against the general inclusion of a human rights clause in a preferential element. This may also be seen in the belief of the ACP countries that the human rights clause mostly has been established to actually foster human rights (graph 1). Unfortunately, the lack of trust between the ACP countries and the EU may have let the ACP countries to oppose the human rights clause in general. However, as long as the EU is able to use its market power to impose its values and norms on the ACP countries, a common definition of human rights will not be easily achieved. In addition, this usage of its power will not lessen the perception of the EU as paternalistic and a neo-colonial force. In contrast, it will continue to hinder the formation of trust between the ACP countries and the EU. Furthermore, it is difficult to define the limits and borders of culture and norms. Where does culture end and human rights violation start? This is a huge debate that is discussed primarily in Gender and discrimination studies and is beyond the scope of this thesis.

4.4. *Unity of the ACP countries*

What improved the bargaining position of the ACP countries during the Cotonou negotiations was the unification of the 79 countries in the ACP group. Through negotiating not only on the behalf of one but 79 countries, the ACP group could gain some leverage. This becomes also quite clear in the ACP questionnaire (graph 4). Three countries state that the gained leverage through the unity of the ACP states. One interview concluded the same and pointed out where the ACP countries could enforce their will:

“*What we managed to not have mentioned in [the Cotonou Agreement] was for instance the same sex issue … so homosexuality is not part of the clause. Africa objected to that*” (anonymous A 2018).
However, at the negotiations of the EPAs this unity could not be maintained – to the regret of some countries:

“It was a problem that the ACP states did not negotiate as one group in the EPAs anymore but as several groups and therefore lacked of leverage. It is a typical tactic by the EU: it is called divide and rule […] so we negotiated first as ACP group, then they said […] that’s not possible, then they divided us into three regional groups: African, Caribbean, Pacific. And then […] they split us even in more groups – five groups on the African continent. We did not want that. It was imposed by the EU. So that is what happened. So the EU forced us again. You don’t have a choice basically. […] It certainly hurt the unity, there is no doubt about it” (anonymous A 2018).

For the reasons on why the EU divided the groups into several groups, the interviewees disagree. On the one hand, an interviewee argues as the EU, that it was necessary due to the WTO rules and the different states of the African groups:

“A global negotiation would have been very difficult given precisely the level of developments of the different states and their specificities […]. In addition it was necessary for negotiation needs to associate the Regional Economic Communities
(RECs) better placed to know the economic situations of the Countries including the REC […] As the negotiations have not been successful everywhere and have created different regimes in the same region, it must be recognized that somewhere the ACP group is no longer homogeneous for this specific area and this also makes it possible to slow down integration, but this was unavoidable given the different levels of development of ACP countries” (anonymous B 2018).

On the other hand, the other interviewee argues that the EU simply wanted to weaken the bargaining power of the ACP countries:

“Why they did not want us to negotiate as a group? They said for practical reasons. But as a group of 79 you are much stronger, and that is why they did not want [it] … so they always come and divide us when it comes to difficult things that they don’t want or want to impose on us” (anonymous A 2018)

When asked the ACP countries of the most challenging aspects of the negotiations (graph 5), they claim again the relative dominance of the EU which goes hand in hand with the dependence on the EU aid and the EU Market as well as the incompatibility of with WTO rules and disunity between ACP states.

![Graph 5: Answers to question B4 in the questionnaire of the ACP countries](image-url)
It will be the most likely that the truth lies in the middle of these two contradicting views. On the one hand, there may have been external factors that forced the ACP countries into smaller groups and practical reasons such as differences in the regions that made it more logical to divide the group into smaller regions. On the other hand, the EU may have found it easier to negotiate with smaller groups due to an imbalance of power and because it is easier to agree on certain clauses with less actors involved. However, it is undisputed that the ACP group is less united and strong now after the EPA negotiations than before the Cotonou Agreement.

This also may be a reason why the Cotonou framework is rarely discussed in ACP countries\(^{11}\).

### 4.5. Summary of the chapter

Summing up this chapter, the European Union has started in the 1970s to export its human rights values due to a general boost of human rights issues and treaties, the empowerment of the European Parliament that took up the issue, and occurring cases of human rights violations where the EU did not have a legal instrument to reduce its aid and trade towards a country.

The market power and the dependence on EU aid of the ACP countries enabled the EU to force the ACP countries to agree to the inclusion of human rights clauses as an essential element in the Cotonou Agreement.

The ACP countries may have opposed the inclusion in general – not because they generally opposed the inclusion but because they did not agree with the EU definition of human rights and its values and norms. Another reason may be the general mistrust of ACP countries towards a behaviour of the EU that could be assessed as paternalistic or neo-colonial.

\(^{11}\) see ACP questions in sector F: Discussions of the Cotonou framework in the Appendix 14.2.
In general, the negotiations were imbalanced and not on a par with the EU – unlike the EU claims. The one tool that enabled the ACP countries to gain bargaining power was the unity of the ACP countries in certain issues. This unity, though, could not continue during the EPA negotiations and weakened the position of the ACP countries, especially the poorer ones.

Interesting in this case is that the ACP countries seem to be quite satisfied with the included human rights clause of the Cotonou Agreement. When asked if they are satisfied with the clause (graph 6), two countries answered “somewhat satisfied” (3 of 5 points on the scale) whereas one country even claimed to be “very satisfied”. However, when asked if the negotiations met the countries’ overall interests (graph 7), two ACP countries answered “hardly” (2 of 5 points) and one “somewhat” (3 of 5 points). It seems that the inclusion of the clause in itself is more or less accepted, however, the negotiation procedures and the details of the clause are more disputed.
Did the negotiations meet your interests?

- no
- hardly
- somewhat
- mostly
- yes

Graph 7: Answers to question B4 in the questionnaire of the ACP countries
5. Application of the human rights clause

This chapter deals with the question as to when the European Union sanctions a human rights violation such as a conflict within a country where at least one actor is the government or a coup d’état. Three sub-hypothesis in the literature about this issue may be extracted:

1. The EU only sanctions countries if it does not suffer from economic consequences due to the sanction.

2. The EU only sanctions if human rights compliances changed relatively within a country. It does not take into account the absolute level of human rights compliance.

3. Former colonies of Great Britain and France are sanctioned more because these former colonial powers still have interests in their former colonies.

These three sub-hypothesis are checked with the data set as well as with the answers of the ACP countries and the EU described in chapter 3.

5.1. EU sanctions and economic consequences for the EU

There are several authors who argue that the European Union only sanctions states if they are not economically important for the EU. Freigang (2015) explains that usually poor states with marginal economic or security interest for the EU are sanctioned. For her, this explains why so many sub-Saharan African and South-East-Asian states have been sanctioned from 1980 until 2010 (Freigang 2015: 426–427).

This hypothesis is also supported by Portela’s (2010) observation. For example, most of the times fishery is not affected if sanctions are applied to a country. However,

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sanctioning the fishery sector of a coastal country would threaten the country more than a suspension of aid (Portela 2010: 132). For example, when Madagascar was sanctioned in 2009 for its constitution repeal and breach of democracy and Mauritania was sanctioned in 2008 for a coup d’état and a constitution repeal the fishery sector was not included in the sanctions.

Hazelzet (2005: 11) argues in a contrary manner. She states that respect for liberal norms matters more than economic or security interests in a country’s likelihood of being punished or rewarded. However, also in her studies, a worsening in human rights situations did not evoke immediate reactions. Nevertheless, mixed measures were eventually taken, regardless of economic or security importance. Her main finding of the analysis is that norms tended to trump interests in the period under investigation. However, unimportant trading partners were often sanctioned more severely (Hazelzet 2005: 11). She summarizes that countries that are allies, democracies and in peace are not sanctioned whereas adversarial dictatorships, regardless of their strategic or economic importance get sanctioned (Hazelzet 2001: 173).

An example on how countries that are not very important to the European Union get sanctioned is Haiti, one of the poorest countries in the western hemisphere. Whereas Haiti is heavily dependent on foreign aid that comes mostly from the U.S., it is less dependent on support from the EU. Haiti is also not important at all for the European Market. In this case, the EU sanctioned Haiti, because it was encouraged by the U.S. alongside the Organisation of American States and the UN to use Art. 96 Consultations after fraud legislative elections in May 2000. Another example of non-imposed sanctions is Nigeria because some EU member states have a special trade interest with this country (Portela 2010: 143) as may also be seen in the analysis below.

Portela has a different explanation on why the European Union sanctions Sub-Saharan African countries quite often. She concludes that the EU appears to pursue a specific sanctions policy in each geographic area (Portela 2005: 100) and it acts as a regionally-conscious security actor (Portela 2005: 105). However, also Southern
Mediterranean neighbourhood and especially former socialist countries in Eastern Europe were sanctioned in the past (Portela 2005: 99). This means not only African countries are targets of sanctions but also closer neighbours that might be more important markets for the EU. Her studies also revealed that dependency on resource and energy of the EU, especially on Southern Mediterranean states, could explain a hesitance to sanction a country (Portela 2005: 104). Another example where the EU discarded conditionality in favour of an important trading partner is the preferential trade agreement with Singapore. There the EU acknowledged in a side letter the Singapore’s human rights practices at the time of signing the agreement (Mckenzie and Meissner 2016: 13). Therefore, Mckenzie and Meissner (2016: 4) argue for a middle ground of these two lines of arguments. They cite Zimmermann (2008) who presents an analysing tool for the degree of values the EU promotes in its foreign trade policy. When the human rights situation and the economic interest in a country are incompatible, turf battles between EU decision-makers decide on whether the EU sanctions a country. This may be a reason why the application of the human rights clause as an essential element is not coherent (Mckenzie and Meissner 2016: 4).

To add clarity to this matter, the following graphs analyses the trade between the EU and the ACP countries that experienced a coups d’état or a conflict in the past. Unfortunately, trade statistics from ACP countries tend to contain a lot of missing data. Therefore, two different data sets are used in the following analysis. The first is generated from the trade data of Eurostat, the statistical office of the European Union. Reporter country is always the combination of the 28 member states of the European Union (the UK is included because it has been a member from 2000 until today).

The graph 8 shows the exports in 1,000,000.00 EUR from the EU to ACP countries, respectively the import of the ACP countries from the European Union. There are four outliers, all of them representing conflicts or coups of Nigeria (see table 2) – a country that has the most amount of trade of all countries with conflicts and coups and never been sanctioned. This may be a hint that the EU did not sanction Nigeria
for its human rights abuses due to economic consequences. When ignoring the outliers (graph 9), it is notable that the box of non-sanctioned countries reaches for higher than the plot with the sanctioned countries. The same can be seen when looking at the median (line within the box) and the mean (saturated red dots) of the trade amount. Sanctioned countries tend to have less trade with the European Union than non-sanctioned countries. However, there is one sanctioned coup of a country that has significantly more trade with the European Union than the rest of the sanctioned countries. This is the military coup in Guinea-Bissau in 2010 that was sanctioned in 2011. Besides this outlier, the overall view that countries that are important for the EU as a trading partner, in this case as a market for its products, supports the thesis that the EU tends to sanction partners who are not as important for itself.

graph 8: Imports to the ACP countries from the EU and sanctions of conflicts & coups – with outliers

graph 9: Imports to the ACP countries from the EU and sanctions of conflicts & coups – without outliers
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<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>EU export to country</th>
<th>EU import from country</th>
<th>Conflict/Coup</th>
<th>Sanction Status</th>
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</thead>
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<tr>
<td>Nigeria</td>
<td>2015</td>
<td>223979234457,00</td>
<td>369506648209,00</td>
<td>conflict</td>
<td>not sanctioned</td>
</tr>
<tr>
<td>Nigeria</td>
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<td>257635341384,00</td>
<td>conflict</td>
<td>not sanctioned</td>
</tr>
<tr>
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<td>146234273851,00</td>
<td>218045995424,00</td>
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<td>not sanctioned</td>
</tr>
<tr>
<td>Djibouti</td>
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<td>52633673560,00</td>
<td>51274915113,00</td>
<td>conflict</td>
<td>not sanctioned</td>
</tr>
</tbody>
</table>

Table 2: EU exports to ACP country (= imports of the ACP country from the EU)

The same analysis with the data of the WITS data set shows similar results, though the difference in the median and mean for sanctioned and non-sanctioned countries is less clear. The outliers are again the trade amount with Nigeria followed by Djibouti.

When looking at the exports of the ACP countries (graph 12 and graph 13) to the European Union (EU Imports) the Eurostat data shows again major outliers in the non-sanctioned category that again derive from trade with Nigeria (2015, 2009, 2004). However, there are several more outliers in the export case that are listed in table 3. The first coup or conflict sanctioned appears only at the 11th rank of export to the EU. When ignoring the outliers, the box of non-sanctioned countries as well
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as the median and the mean of trade is quite similar to the box of the sanctioned countries. Nevertheless, when taking into account the whole export picture, the thesis that the EU tends to sanction less important trading partners more is again carefully supported. Interestingly, the ACP countries as markets for European exports seem to have more effect on the sanction status than the raw materials, agricultural and other products imported by the EU from the ACP countries.

<table>
<thead>
<tr>
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<td>not sanctioned</td>
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<tr>
<td>Sudan</td>
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<td>coup</td>
<td>not sanctioned</td>
</tr>
<tr>
<td>Niger</td>
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<td>10791616806</td>
<td>14505451740</td>
<td>conflict</td>
<td>sanctioned</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>2010</td>
<td>27293447758</td>
<td>14306303212</td>
<td>conflict</td>
<td>sanctioned</td>
</tr>
</tbody>
</table>

Table 3: EU imports from ACP country (= exports of the ACP country to the EU)

The same analysis with the WITS data set (graph 14 and graph 15) shows again quite similar results, though the outliers are less drastic in the WITS boxplots. However, it is still Nigeria who tops the table, though the first sanctioned country can only be found at rank 19.

As only three of 37 conflicts but 10 of 34 coups d’état were sanctioned, the relation between trade and sanction status is examined again, but this time only with coups. In graph 16 and graph 17 the outliers are not as significant as before, therefore, only graphs with outliers are shown in this analysis. Generally, the EU seems to rather sanction coups in countries with less trade importance than in countries that are important trading partners. However, the median and mean in both graphs are on the same level for imports of the ACP countries from the EU. Nevertheless, the market for European businesses again seems to be more important than the import of
resources from the ACP countries to the EU for the variation of non-sanctioned imports is higher than of non-sanctioned exports.

**Graph 12:** Exports from the ACP countries to the EU and sanctions of conflicts & coups – with outliers

**Graph 13:** Exports from the ACP countries to the EU and sanctions of conflicts & coups – without outliers

**Graph 14:** Exports from the ACP countries to the EU and sanctions of conflicts & coups – with outliers – WITS data set

**Graph 15:** Exports from the ACP countries to the EU and sanctions of conflicts & coups – without outliers – WITS data set
All in all trade between the ACP countries and the European Union seem to have the expected effect, as the EU tends to more likely sanction countries that are less important as trading partners. Nonetheless, the ACP countries as markets for European products seem to be more vital than the literature acknowledged until now. In future work it would be interesting to construe if strong lobbying of European businesses could be an explanation for this phenomenon or if the EU simply is not as dependent on African materials and products.

One of the interviews taken with representatives of ACP countries also shows that the EU may not condemn or sanction countries that are more important to its economy. One country reports that it was condemned for a certain breach of human rights that another important African trading partner also had at the same time. According to the interviewee, whereas the country in question was condemned and on the brink of sanctions, the more important trading partner did not suffer the EU’s negative attention. Unfortunately, the incident cannot be described further here without exposing the interviewee and its country. However, the interviewee concludes after describing the case:
“Apparently, the EU does not sanction countries where its economic interest is high. We have experienced this and it was very unfair (anonymous A 2018).”

The questionnaire of the ACP countries shows diversified answers to the question as to when the EU imposes sanctions. One country stated that the clause has not been applied more often due to the economic importance of a country (graph 18). The member of the EU parliament mentioned the following reasons: due to the economic importance of a country, due to the strategic importance of a country, because the EU is reluctant to use the clause due to the colonizing history of some member states.

![Image](graph 18: Answers to question D1 in the questionnaire of the ACP countries)

Asked about who is sanctioned the most within the Cotonou context, ACP countries (graph 19) indicate among other reasons that countries that are less economically important to the EU might be sanctioned more often as well. Again, the member of the EU-parliament states the same alongside ACP countries, developing countries, countries with an instable government and authoritarian countries. Asked if the criticism of the EU for preferring economic and security relevant considerations over political or human rights considerations is justified, the parliamentarian ticked off yes.
Thus, there is a hint that the EU does sanction countries more if they are not economically important. ACP countries as a market for European products may be more important than acknowledged until today. However, economical importance may not be the only indices as to when a country is sanctioned by the EU.

5.2. Relative vs. absolute change of human rights compliances

Some studies show that deterioration of human rights compliance seems to matter more than its absolute level (Laakso et al. 2007; Portela 2010: 143). Therefore, it could happen that a country with a better rating in human rights compliance in absolute terms is sanctioned because of a deterioration of the human rights compliance in relation to its past; whereas a country with a worse rating in absolute terms, but stable rating in human rights compliance may not face sanctions at all. In other words, the European Union reacts to changes in the level of human rights compliance rather than to a general poor level of compliance.
Hazelzet hypothesizes that “norms (the degree of human rights violations), institutions (was there a formal agreement in place) or interests (whether the country concerned was a former colony of one of the EU Member States, the magnitude of its trade relations and its strategic importance to the EU)” (Hazelzet 2005: 1), triggered or mitigated an EU reaction. Portela states that the EU often imposes sanctions in conflict-related or post-conflict situations and not in peace time (Portela 2005: 97). This is also shown in reasons, why sanctions were imposed: Most often consultations were invoked when democratic governance was obstructed, mostly this have been flawed elections or an illegal reform of the constitution. Human rights violations alone, however, were never the only motive for holding consultations. The majority of sanctions of the ACP states followed coups d’état (Portela 2010: 142).

Freigang agrees with the reasons why Art. 96 Consultations have been invoked: she itemizes preaches of international election standards, violence against civilians and opposition members and human rights violations in general (Freigang 2015: 425). Mbangus’ statistics also show that a coup d’état is the most frequently invoked reason for the EU to open a consultation procedure (Mbangu 2005: 15). Portela reasons that coups d’état as a trigger are so common for coups generally obtain more support among member states that aid should be suspended or sanctions imposed (Portela 2010: 143). Mbangu argues that the EU has a desire to avoid being seen as resorting to "unilateral", "punitive" preventative action. Therefore, it invokes Art. 96 of the Cotonou Agreement only when severe human rights violations are reported, as is most often the case when a coup d’état happens (Mbangu 2005: 15). This inherits the ongoing struggle of the European Union to avoid being seen as paternalistic and a hidden colonizer that wants to impose its values and norms on other countries. This could be the reason why the EU hesitates to act if the situation in a country has been stable and no serious negative changes could be ascertained.

An example where the EU might have hesitated to act early or even before human rights violations occurred constitutes the case of the Central African Republic. Consultations only started at the third attempt of a coup d’état in 2003, because this
attempt had been successful. During this time, the country already suffered from a financial and economic crisis. If the ousted government would have received budgetary help, this coup might have been avoided. The EU therefore is criticized to have only acted because the coup d’état was too obvious to be ignored (Mbangu 2005: 6–10). However, one could argue that the European Union was reserved to react for not wanting to give the impression of a neo-colonial power.

This can be seen in the case of Togo in 2003. In this case, the ACP group made efforts to get consultations started and Togo engaged them voluntarily. The presence of the African Union and African regional organisations helped the EU to show that its actions were no colonial attempt and to prove that no unilateral EU action was being taken. This might be a reason why Art. 96 consultations are often initiated late and only after obvious human rights violations (Mbangu 2005: 11). However, the questionnaire of the member of the European Parliament stated, that the EU is also reluctant to impose sanctions because it is a measure of last resort and not activated hastily.

The Ivory Coast was sanctioned after a military coup in December 1999. This was the first time aid was suspended before consultations had been held. In 2000 the consultations were held but another flawed presidential election lead to further consultations in February 2001. The dialogue between the parties was intensified and in January 2000, after two successful elections, cooperation fully resumed. In 2004 the Commission proposed consultations because of intensified fighting in the north of the country. However, the Council rejected the proposal because it deemed consultations ineffective. Nevertheless, mandatory sanctions by UNSC Res 1572 (2004) and 1643 (2005) an arms embargo, a visa ban, a freezing of assets and an import ban on diamonds followed (Portela 2010: 136–137). This case shows that democratic violations triggered consultations whereas armed conflict did not.

According to the data sets described in chapter 3.2, thirteen coups or conflicts were sanctioned in the years between 2000 and 2016, whereas 58 were not, that is approximately a fifth of all conflicts or coups. Confirming the above, more coups d’état
were sanctioned than conflicts, in relative and absolute terms. From 37 conflicts within the time span from 2000 to 2016 only three conflicts were sanctioned, however, ten of 34 coups were sanctioned.

Concerning the absolute level of human rights compliance, graph 20 shows the absolute CIRI level of countries during a conflict or in the year of the coups d’état (the higher the Index, the better the compliance). One can see that there are several conflicts or coups in countries with the lowest CIRI level (1) that were not sanctioned by Art. 96. In detail, twelve countries with the CIRI Index 1 were not sanctioned and only one was sanctioned. At the Index 2 no country was sanctioned whereas eleven were not sanctioned. The levels 3, 5 and 6 were sanctioned the most with sanction rates of approximately 43, 66 and 50 percent. The graph shows that countries with the lowest absolute CIRI levels are not sanctioned the most. Conversely, countries with moderate CIRI levels tend to be sanctioned the most. The same analysis with the PTS level (graph 21) is even more drastic. Countries with PTS level 1 were not sanctioned at all, whereas most sanctions were called for countries with PTS level 2 and 3 (approximately a fourth of the coups and conflicts on these levels were sanctioned). The highest and lowest PTS level were not sanctioned, again the countries with a moderate PTS level were sanctioned the most. A reason why countries with CIRI level 3, 5 and 6 or PTS level 2 and 3 were sanctioned more than countries with other levels could be that the EU sanctions only if it believes the sanctions will have an actual impact. If compliance levels are too low the country may be in such a bad state that further sanctions do not worsen the situation of the political elite more and therefore are no threat to the decision makers. If countries generally have a better compliance rate they may also be more developed than countries with lower levels of human rights compliance. In this case, a sanction of the European Union would hurt the political elite or the situation of a country less and therefore the EU would have less leverage. This speaks for the theory that the absolute levels of human rights compliance are not factors that determine whether the EU sanctions a country or not.
The relative change of the CIRI index respectively the PTS level in a country and the sanction status of conflicts and coups are illustrated in graph 22 and graph 23. For this equation, the average CIRI and PTS levels in the five years before the conflict were subtracted from the average CIRI and PTS levels during the conflict, respectively the year of the coup. An equation with a subtraction from the year before the conflict or the year before the coup was discarded due to missing values.

As mentioned above, several authors theorize that the relative change may be more important to the EU when it comes to sanctioning a country than the absolute change. Therefore, in theory, a decline of three points of the CIRI level in the graph 22 should show only sanctioned countries (colour blue). However, only one of four conflicts/coups in a country whose CIRI level declined by three points was actually sanctioned. At a decline of two CIRI levels two of five coups/conflicts were sanctioned. The most sanctions could be seen when there was no relative change of the CIRI level. At a zero change, nearly half of the coups/conflicts (eight from seventeen) were sanctioned. However, when there was a change to a more positive CIRI level no country was sanctioned.
This findings can be seen, though less strong, when it comes to the same analysis with the PTS level (graph 23). The most conflicts/coups were sanctioned when there was no relative change of the PTS level. However, there is only one incident when the PTS level changed three points to the negative and this case was also sanctioned. The two observations with a change of two PTS levels to the negative were partly sanctioned, partly not. There was even one case that was sanctioned although the PTS level increased one level. In contrast, however, there are twelve cases with a change of one PTS level to the positive that were not sanctioned.

Ultimately, if the CIRI or PTS level changed for the better, the EU rather did not sanction, however, if it changed for the worse, the EU hesitated to sanction as well. It was more intended to sanction countries, when there was no relative change at all. This means, the theory above cannot be supported. What may be concluded is that the EU tends to not sanction coups and conflicts when the human rights situation does increase in spite of a coup or conflict.

Summing up, this paragraph indicates that the European Union does not seem to pay much attention to the absolute or relative level of human rights compliance in
a country when it comes to deciding on suspensions of aid. However, if the human rights situation in a country changes for the better despite a coup d’état it tends to not sanction this coup.

5.3. The interests of former colonizers in former colonies

Related to the interests of former colonizers in their relations to former colonies is the question of how former colonizers treat their past colonies in general. France is of particular interest regarding this question, as authors do not agree if former France colonies are treated with harsher or softer sanctions than other countries. Hazelzet (2005) finds that concerning the question if sanctions were imposed, it was of no significance whether a country was a former colony or not. However, “certain former colonial powers managed to shield their former protectorates more than others” (Hazelzet 2005: 1). She emphasizes that former colonies of France and Great Britain have been treated harsher than other colonies. Nevertheless, she relativized that former colonies also tended to be less democratic and therefore this might have led to an omitted variable bias. According to her, whereas former British and French colonies have not been more or less likely to be sanctioned but more severely, former colonies of Belgium, Netherlands and Portugal have been sanctioned more often but not as harsh (Hazelzet 2005: 9).

However, a different treatment of former colonies might be explained by the sensitivity with which the European Union operates in former protectorates for wanting to avoid being seen as neo-colonial. The European Union is especially careful to appear as a partner rather than a colonial power that wants to impose its values and norms on ACP countries. This might be the reason why Art. 96 consultations tend to be more successful if neighbours of the sanctioned countries and international organisations such as the ACP secretary or the African Union approve of the measures taken by the EU (Mbangu 2005: 17). It also might explain why the European Union prefers to sanction countries after severe breaches of human rights violations that are clearly visible and comprehensible have occurred.
When taking into account the former colonizers one can see at graph 24 that especially former colonies of France, Belgium, the UK and Portugal were sanctioned for coups and conflicts.

![Graph 24: Count of conflicts and coups of ACP countries grouped by their former colonizers.](image)

However, is this due to a general worse state of human rights in these former colonies and did this have effect on the sanction impact? To evaluate these questions, further boxplots of the coups and conflicts from these former colonies follow.

When observing the absolute CIRI value of countries during a conflict or the year of the coup (graph 25) one notes that the most countries with conflicts/coups had a CIRI level of 2, which is quite low. However, all these incidents were not sanctioned. On the contrary, the most sanctioned incidents were in countries with a CIRI level of five, which is quite high. Even one was sanctioned with level 6. Therefore, it can-
not be stated that former colonies of France, the United Kingdom, Belgium or Portugal were sanctioned more often because they suffered from especially bad human rights situations.

As for an effect on the impact of sanctions on the CIRI or PTS level, respectively the human rights situation, graph 26 gives insights. Countries with coups/conflicts that were not sanctioned seem to have especially low CIRI levels. This is also true compared to CIRI levels of all conflicts/coups in graph 24 and graph 26. In general, when a country was sanctioned because of a coup or conflict that was a former colony of France, the United Kingdom, Belgium or Portugal these countries performed significantly better in terms of the CIRI index than countries that were not sanctioned. This effect is not as strong when taking into account the coups and conflicts of all countries regardless of the former colonizer. However, the sanction itself did not improve the situation after the conflict or coup. It merely prevented a drop of the CIRI level during the conflict respectively in the year of the coup.
The graph 27 shows the same analysis with the PTS level. The results paint a similar picture. Overall sanctioned countries that were former colonies of France, Great Britain, Belgium or Portugal had better PTS levels than non-sanctioned countries. Sanctions did not change the PTS level after the conflict/coup in relation to the PTS level before the incident.

All in all, the former colonies of France, Great Britain, Belgium and Portugal were sanctioned more than ACP countries with other former colonies. However, this is not due to a possibly lower human rights compliance of these colonies and it is not due to a higher chance of improving the human rights compliance in these countries.

The interviewees of the ACP countries already stated that the power of the EU and its former colonial powers decreases with the appearance of new players in Africa.
in chapter 4.3. However, one of the interviewees hinted that France and Great Britain still have a big interest in what is going on in Africa. For example, the BREXIT is accompanied by an increase in number of visits by UK companies and ministers whereas leaders of countries that have no good relationship with its former colonizer France may suffer more sanctions than well disposed leaders. However, these remarks are open to speculations and will not be surveyed further in this thesis.

This means, the role of former colonies still is ambivalent and hard to track down. A qualitative study of colonies of France and Great Britain, which takes into account the relationship between the former colonizers and the country leaders at times of conflict or coups d’état could provide more detailed information on this matter.
5.4. Summary of the chapter

When does the European Union sanction a human rights violation? This chapter came to the following results answering this question.

The importance of a country as a trading partner may have an impact on whether a country will be sanctioned or not. However, in this analysis, the impact was not as severe as assumed by the literature. The EU may indeed sanction countries more if they are not economically important. Surprisingly, the ACP countries as markets for European goods seem to have a larger impact on a decision if a country is sanctioned than acknowledged until now.

The relative and absolute level of human rights compliance in a country was not as relevant in this study as assumed in the literature. In contrast, the EU seems to pay less attention to the absolute or relative level of human rights compliance in a country when it comes to deciding on suspensions of aid. What could be noted was that the EU tends to not sanction a country if the human rights compliance increases despite a coup d’état or conflict.

The role of the interests of former colonizers in their former colonies is still ambivalent. It seems that the bargaining power and role of former colonies further diminish with time and other actors that emerge on the African market.

Future work could analyse the role of former colonies further in detailed case studies of singular ACP countries. Furthermore, the role of lobbies of European businesses could be examined to explore how important African countries are for the exports of the EU and how dependent the EU is on natural resources of the ACP countries.
6. Sanctions and their impact

The use of economic sanctions or suspensions of aid as coercion tools is highly disputed. It is still not clear how effective such sanctions are. Firstly, it is difficult to distinguish between the effects of sanctions and other environmental factors that happen parallel to the sanctions. In example, countries that are sanctioned for human rights violations will have greater human right violations during and likely after the sanctions have been set. This may lead to a mutual influence of the two variables. The question remains, if the human rights violations would have been more or less intense with or without the sanctions. The causality cannot be made clear. Furthermore, human rights are known to change slowly. This makes the measurement of any impacts difficult (Peksen 2009). To ease this problem, an instrument variable could be used. Unfortunately, no instrument variable could be found that influences trade only, without influencing the human rights situation.

Therefore, the following section combines the results of the literature, quantitative data of different sources as well as the answers to the questionnaires of the ACP countries and the EU and the transcripts of the interviews with two ACP countries (see chapter 3.) to evaluate hypothesis extracted from the literature to tackle the following main hypotheses: “Overall, Art. 96 sanctions do have a positive impact on human rights compliance.”

6.1. Coherent processes of sanction applications and their effectiveness

This paragraph is based on the hypothesis 2.1: “Sanctions do have an impact but it would be stronger, if a coherent process as to when sanctions are implied would exist.” To examine this hypothesis, one has to know, if the European Unions’ sanctioning process is incoherent or not. Under the Cotonou Agreement the relevant articles for suspensions of aid and other sanctions are Article 8, 96 and 97. However, Article 8 is meant as a first exchange of views and a political dialogue in general. Against fears of ACP states, over all it has not been used to discuss sanctions.
Nevertheless, the implications of this article is still discussed. Whereas some actors see it as a prelude of Art. 96 consultations, most see it as a platform of general dialogue to discuss all kinds of issues between state and non-state actors. Article 8 certainly has been used, for example in 2001 in Kenya, Zimbabwe and Mozambique. (Hazelzet 2005: 3)

For the Consultations of Art. 96 there is a clear process set out in the Cotonou Agreement. Before Art. 96 may be applied, intensified political dialogue according to Art. 9 has to be exhausted. If this precondition is fulfilled, one party has to invite the other. In case of the European Union inviting another party, the Council has to send an invitation letter to formally invite the concerned government. Consultations then have to start within 30 days. Consultations may start immediately in cases of special urgency, persistent lack of compliance and failure to engage in a dialogue in good faith as in the case of Zimbabwe 2001. They then take place on governmental level whereas the EU sends representatives from the presidency of the Council and the Commission. Friendly countries of the country in question, regional organisation (often the African Union) and members of the ACP secretary may be invited too. The duration of the consultations cannot be longer than 120 days.

The aim of the consultations is to define a roadmap with detailed steps on how to achieve set goals. If this cannot be achieved, “appropriate measures” may be taken that are proportional to the violation in question and directed against those responsible for the violations. Measures are the partial or full suspension of development assistance and adopted by a Council. The Council informs the European Parliament, which is not directly involved in the decision-making process (Council of the European Union 2018; Hazelzet 2005: 6–7). Details what violations triggers which sanctions are not defined.

EU-intern, Council working parties, such as the Africa Working Party of the EU Common Foreign and Security Policy (CFSP), discuss the situation in a country with the input of the European Development Fund Committee (EDF). However, this
committee sometimes refuses to give an opinion and causes delays in the disbursement of assistance. Nevertheless, if the Working Party considers a suspension of aid, the issue is discussed in the ACP working party. Usually, the Commission then initiates the start of consultations. However, in the case of Zimbabwe the Council explicitly requested the Commission to take initiative. The ACP working party then discusses the proposal, drafts a letter and prepares for a decision in the COREPER (Committee of Permanent Representatives), which then prepares a decision for the Council. The Council could vote with a qualified majority for consultations or suspensions but practically it votes unanimously (Hazelzet 2005: 6).

If the European Union decided to consider sanctioning a country, the process is quite clear. However, the criteria when the EU starts consultation or sanctions are diverse and may be seen as incoherent.

In general, the Foreign Relations Counsellors Working Group (FRCWG) of the European Council is responsible for the daily work on sanctions. The working group is supported by the sanctions team at the Commission’s Directorate-Generale for External Relations (DG RELEX). The member states send out their national representatives with clear instructions to negotiate in its interests. In the FRCWG there are members of the council, the commission and the DG RELEX present. Additional national experts from certain ministries of the member states formulate, negotiate, monitor and evaluate measures. However, so far a clear coherent mechanism to evaluate and monitor does not exist. Furthermore, the FCRWG only meets about six times a year. That leaves little time to discuss important issues concerning sanctions (Eriksson 2011: 174).

Up until now, Art. 96 was invoked mostly when coups d’état happened and democratic principles were obstructed. Flawed elections are a very common reason for the European Union to start consultations, even if no human rights violations occur. Contrary, human rights violations alone never triggered Art. 96 (Portela 2010: 142).

There are several occasions, where it is criticized that the European Union could have imposed sanctions but did not. These countries in conflict include Uganda,
Angola, Burkina Faso and Rwanda. Whereas other countries in similar situations, such as Sudan and Zimbabwe, faced harsh sanctions (Boisvert 2013: 187).

Not only ACP countries have been treated differently but also countries in the whole world. Examples would be the Chechnya war of Russia in 1999, where sanctions were criticized to be merely symbolic because of the importance of Russia as a partner (Freigang 2015: 301–302). Another case is Israel, where human rights violations such as the settlement policies and the treatment of Arabic minorities or the imprisonment of terror suspects would be reason enough to suspend aid. However, several reasons could hinder the EU to take action. With sanctioning Israel, a precedent for other countries import for the EU could be set. This could breach economic interests but also worsen relations to the U.S, who sees Israel as strategically important. The western powers need the cooperation of Israel to be able to influence the Middle East peace process. With the European past, it is also particularly delicate how the EU treats Jewish states. Here lies a comparability to the ACP states, where the EU has to be careful to not appear as a neo-colonizer (Freigang 2015: 303–304).

Except for the fact that the EU reacts most of the times to coups d’état and violations of democratic principles or processes, the literature is not clear about what triggers EU sanctions or suspensions of aid in ACP countries.

Hazelzet finds that “countries that are allies, democracies and in peace” get away with violating human rights, whereas “dictatorships, regardless of their strategic or economic importance” are being sanctioned (Hazelzet 2001: 173). However, Hazelzet also finds that “respect for liberal norms matters more than economic or security interests in a country’s likelihood of being punished or rewarded” (Hazelzet 2001: 174). This is contrary to other studies (see above). Nevertheless, the EU seems to use the “carrots”-approach more than the “stick” which means that it tries to reward rather than sanction (Hazelzet 2001: 175). Portela cites Smith who accuses the EU of being inconsistent and that “third countries are treated differently, even though their Human Rights (and democratic) records are similar” (Smith 2003: 116).
Furthermore, Portela finds that the European Union treats regions differently and treats neighbouring countries differently than other countries further afield (Portela 2005: 85).

That consistency may help the effectiveness of sanctions, suspensions of aid or just consultations show the Art. 96 Consultations of the Cotonou Agreements. EU officials quote that the highly institutionalized framework or the clear, consistent and detailed process of consultations that are captured in Art. 96 are the reason for the relative success of these consultations (Freigang 2015: 299; Portela 2010: 146).

Most of the questioned ACP countries in this study did not respond to the question if it is comprehensible for them, in which situations the clause is applied or if there are coherent triggers for the application of the clause (graph 28 and graph 29). The graphs and the interviewees of the ACP countries indicate that it may be quite clear as to when the application of the clause is being applied. Both interviewees, though, criticize the application:

“All the clauses are easy to apply, but if you do not conceive the same thing at the beginning, if you have a different notion, it will be difficult to get along” (anonymous B 2018).

“They don’t wait for response after a violation; they listen to NGOs and we know that these NGOs are payed for by European and Western countries. They are
basically an extension of the European values and traditions” (anonymous A 2018).

As seen in the quote above, NGOs are not seen as objective partners concerning monitoring of human rights compliance. In addition, the second interviewee mentioned their politicization and lack of objectivity without the interviewer asking about NGOs specifically:

“Concerning the assessments made by some NGOs, I do not agree with them particularly due to their lack of seriousness, their politicization and especially the confusion of many things. It is easier to accuse the ACP countries or the third world while some states are worse and are not condemned because they are protected by some major powers hence the lack of objectivity. [It is] easier to accuse the less powerful” (anonymous B 2018).

However, when asked who monitors the compliance with human rights, ACP countries as well as the European Parliamentarian mention NGOs as one of the five most common monitoring entities (graph 30). Again, it might be the lack of trust and the EU perceived as a neo-colonial power that may lessen the effectiveness of sanctions.
rather than the lack of a coherent process to impose sanctions. Nevertheless, a coherent and enshrined process that has been discussed with the ACP countries could increase the recognition and inclusion of the ACP countries and therefore decrease opposition of the clause. The EU would gain a less paternalistic or neo-colonial perception. This can also be seen in the answers to the question as to how the clause could be more effective (graph 31).

graph 31: Answers to question E3 in the questionnaire of the ACP countries.

6.2. EU sanctions’ impact on human rights compliance

As mentioned several times above, there is an ongoing dispute in the scientific literature, whether sanctions or suspensions of aid improve or worsen human rights compliance. Therefore, the following analysis explores the human rights indices before, during and after conflicts or coups of sanctioned and non-sanctioned countries. The underlying hypothesis is: “Human rights conditionality rather improves than deteriorates human rights compliance.”

According to the data set of Jonathan M Powell and Clayton L Thyne (2011), 34 coups d’état happened in the time span from 2000 to 2016 in 20 ACP13 countries. In

looking at the CIRI index during the five years before the coup, the year of the coup and five years after the coup (or if the coup happened after 2011 the years from the coup to 2016) one can see that firstly, not all coups have been sanctioned. In fact, the EU has not sanctioned the majority of 24 from 34 coups with Art. 96.

The higher the CIRI index, the better the human rights compliance. One can see in the first boxplot graph (graph 32) that the countries with a coup that was not sanctioned had a slightly worse average of human rights compliance and the ratio of the CIRI index was a little larger than the sanctioned countries. The median was quite the same level. More interesting is the year of the coup, where the average and especially the Median of the not sanctioned countries is one index-point lower than the sanctioned countries. This could have two implications: that the EU does not take into account the human rights compliance level when deciding over imposing sanctions or that the intervention of the Union had an immediate direct effect on the human rights compliance level. However, as human rights compliance tends to change slowly and this would be an immediate effect in times of confusion and conflict, the latter seems to be unlikely. This may also be shown in the average CIRI five years after the coup that depicts median and average CIRI levels at nearly the same rank. Only the variation is a little higher at non-sanctioned countries. However, this could be due to more cases of non-sanctioned coups. The same boxplots (graph 33) with the PTS level (in this study, as described in chapter 3, reversed so that the higher the PTS the better the human rights compliance) show a similar picture. Only the PTS level of non-sanctioned countries seems to be slightly higher in the year of the coup in the PTS graph compared to the CIRI graph.

However, over all the findings seem to be consistent concerning the two different indices. This leads to the careful conclusion that the level of the relative change of human rights compliance does not seem to be an important determinant if the European Union sanctions or not. This is counterintuitive to the goals the EU has set

(1), Madagascar (2), Mali (1), Mauritania (3), Niger (1), Papua New Guinea (1), Sao Tome and Principe (1), Sudan (1), Togo (1)
with the conditionality in its PTAs, where its goal was to increase human rights compliance, democracy and the rule of law through incentives such as market access and development aid.

As described above, multiple authors assumed that for the most part the European Union sanctions coups d’état. This can be confirmed with this study. From 37 conflicts within the time span from 2000 to 2016 only three conflicts were sanctioned. Again, the CIRI and PTS index before, during and after the conflict seem to be no determinant for European sanctions (graph 34 and graph 35). The non-sanctioned conflicts have worse CIRI and PTS indices before the conflict than the sanctioned ones. In addition, the CIRI and PTS indices during the conflict are quite similar. Striking is, that the average CIRI and PTS of sanctioned countries after the conflict seem to be significantly higher than the indices of the non-sanctioned countries. This could be a sign that sanctions such as the Art. 96 aid suspension actually work to improve a human rights situation after a conflict. However, one has to be careful with conclusions drawn from these graphs because there are only three sanctioned countries. To draw conclusions from such a low number of cases is difficult and
may be seen as illegitimate. Nevertheless, this finding may be inspiration for future studies in this direction.

However, in this study sanctions from the European Union appear to have rather a positive than a negative impact on the human rights situation in an ACP country. Surprisingly, the ACP countries seem to believe in the human rights clause to achieve its purpose as well. This is shown in several answers to the questionnaire of the ACP countries. They answered (graph 36) that the clause may be applied to prevent a coup d’état, to ensure the stability of a country and to improve the human rights compliance. Furthermore, they believed strongly that the clause might be useful at occurrences of threats to human rights in a country. According to some countries, it also may help after a coup d’état or civil war happened in a country, at breaches of democracy, flawed elections, illegal amendments of the constitution,
and threats to the national security in neighbouring countries (graph 37). One country even conceded a “large impact” of the application of the human rights clause on an actual human rights situation (Question E2\textsuperscript{14}).

This further promotes the consideration in chapter 4.3. that the ACP countries do not question the inclusion of the human rights clause in itself, but the definition and negotiation of the clause, because even the countries who oppose the clause think they have a positive influence. Reasons for the positive influence could be that norms and values are held high through provisions of human rights in trade agreements\textsuperscript{15}. To investigate the importance of norms and values in this context further, an analysis of the human rights clause and the ACP countries with a constructivist view would be an interesting topic for future work.

\textsuperscript{14} Question E2: What impact do you think does the application of the clause have on an actual human rights situation? 1 = large impact, 2 = significant impact, 3 = some impact, 4 = almost no impact, 5 = no impact at all

\textsuperscript{15} An interviewee supports this argument: “To a certain degree the clause has a positive influence because they keep holding things up and say this is how we have to do it. They are trying to attain a higher standard. The only thing that I am disagreeing with is where it touches on our culture and values and our own ideas […]” anonymous A (2018).
6.3. EU internal agreement and its impact on sanction effectiveness

Hypothesis 2.3 claims that internal disagreement within the EU does impair the effectiveness of human rights conditionality. It is no secret that there are power struggles within the European Union, not only between the institutions but also between the member states. Concerning the ACP states, the former colonizers have a special interest in retaining the relations to its former colonies. Debates about how to react to human rights violations in these former colonies are bound to occur and member states might have different views. A total suspension of aid requires unanimity in the council, partial suspension only qualified majority. However, as in most political fields, decisions are rendered unanimously in practice (Hazelzet 2005: 6; Portela 2010: 130; Freigang 2015: 427)

Especially France has been accused to pursue neo-colonial strategies through the European Union. Boisvert (2013: 185) sees France as mainly responsible for the EU foreign affairs related to Africa. The author recognizes neo-colonial behaviour of France, in example in Togo 2005 where France was eager to sustain its good relations to the family of the presidency. Germany opposed this policy. However, Boisvert emphasizes that France is only able to execute its interests because other mem-
ber states are not very interested in African foreign policy and that France has Europeanized its policies. Smith (2003) agrees as she states that the ACP countries have been replaced by the Eastern European neighbours as the priority of European foreign relations in the 1980s. Therefore, other member states might just be not that interested in the ACP group anymore.

However, dominant countries as Germany and the United Kingdom did pursue their own agenda too. Examples are the case of Zimbabwe, with ongoing tensions between the United Kingdom and Zimbabwe, and the debates about the NATO no-fly-zone for Libya in 2011\(^{16}\) where Germany opposed the strategy of the other member states (Boisvert 2013: 185).

Furthermore member states may not only influence the strategy of the European Union, they themselves may compromise EU efforts by maintaining financial aid flows on a national level to countries that are already sanctioned by the European Union (Portela 2010: 132). This might reduce the pressure on the sanctioned government. Therefore, it is hypothesized that sanctions only work if member states agree about how to treat a countries breach of human rights and act consistently as one voice.

How did the EU Institutions and the EU member states react to conflicts or coups within an ACP country? Did they reduce or increase aid? Who increased, who decreased aid and are there significant drops or rises of aid for specific countries? To answer these questions the aid given from the EU Institutions, the total received aid from all donors in the world, the total received aid from the individual EU member states and the aid given from each individual EU member state are derived from the OECD International Development Statistics data set (OECD 2018). Hereafter, the change of the amount of official development aid in the year when a coup or conflict happened is compared with the amount of aid received in the year after the incident happened or began.

\(^{16}\) Please note that Libya is not a member of the ACP group.
\[
\text{relative change}_\text{aid} = \frac{(\text{aid after incident} - \text{aid incident})}{\text{aid incident} \times 100}
\]

relative_change_aid = relative change of development aid received by donor

aid_incident = development aid received in the year of the coup or the start of the conflict

aid_after_incident = development aid received one year after the incident happened (aid_incident + 1)

At a first overview, one can see that the EU Institutions and the different member states did not often increase or decrease their aid at the same time. In other words, when the EU did increase or decrease its aid, the member states often did not follow the EU’s action (see table 4 in the Appendix).

When looking at the sanctioned observations alone (see table 5 in the appendix), the first surprising insight is that the European Union did not necessarily reduce its aid towards a country although it was sanctioned with a suspension of aid. This is true for the conflict in Niger 2007 as well as the coups in Guinea 2008 and Niger 2010.

At every incident at least one EU member state did not follow the EU’s lead and did not reduce its aid towards the sanctioned country although the EU did reduce its aid. As France, Germany and Great Britain were the major powers within the European Union during the time span 2000-2016, the following analysis sets a special focus on these three donor countries.

There were several occasions when the three donors did agree with the European Union and acted as the Union did (Burundi 2000, Fiji 2000, Guinea 2000, Guinea 2008, Burundi 2015). However, France did go against the other two and the EU in the cases of conflicts and coups from the Central African Republic 2003, Mauritania 2005, Fiji 2006 and Niger 2007. Germany did not follow the course in the incidents Niger 2007, Mauritania 2008 and Guinea-Bissau 2010. France and Germany both did not reduce the aid for Fiji 2006 and Madagascar 2009 whereas Great Britain did reduce its aid. These incidents could point to conflicts between these member states.
and therefore a hindrance for the success of EU sanctions. This may be especially true for those conflicts/coups, where the total aid of the EU member states succeed the aid of the EU institutions. This is the case for Central African Republic 2003, Mauritania 2005, Fiji 2006 and Niger 2007 – all cases where France did act against the European Union. On the one hand, this may underpin that France is very active and interested in its former colonies. On the other hand, this could be a reason why these sanctions were not as effective as others. Especially interesting in this case is Fiji, which has been sanctioned since 2007 until today and therefore is seen as a case where sanctions failed. As the tables show, this was a case, where the discrepancies between the countries seemed to be notably high.

Surprisingly, Great Britain most often acts according to the EU. A reason could be that Great Britain is able to put across its policies on the EU arena better than other actors or it may simply be less interested in the affairs of its former colonies. When looking at the amount of aid France and Great Britain spend on aid for their former colonies, France seems to have a greater interest in ACP states than the latter.

Summing up, the main players in the EU do not always agree on sanctioning a country. Especially France seems to have a great interest in maintaining its relationships to former colonies and acting against the EU. This could be one reason, why some sanctions are not as effective as others (e.g. Fiji 2007).

6.4. Sanctions effectiveness and willingness for cooperation

The Cotonou Agreement and its Article 96 Consultations strongly rely on the cooperation of the political elite of the sanctioned country. Consultations can only be fruitful if all parties involved are willing to at least negotiate and debate. Therefore, it is not surprising that several authors find that sanctions and consultations are most successful, if the sanctioned government is willing to cooperate. This is summarized in hypothesis 2.4: “Willingness for cooperation does increase the impact of human rights conditionality.”
There are several examples on how a willing government could be persuaded to comply again with human rights. One is the sanctioning of Guinea-Bissau which is independent since 1974, experienced a coup d’état in 1980 and an army rebellion in 1998. 2001 and 2002 two coup-attempts followed the presidential election of Kumba Yala. In 2003, a coup d’état was successful and not followed by a civil war (Mbangu 2005: 2). After the coup, the EU urged Guinea-Bissau to hold official elections and to re-establish the rule of law. The new government authorities were willing to cooperate and committed to making concrete efforts to re-establish the rule of law. Therefore, EU cooperation was not suspended. Less than three months after the consultations had started, Guinea-Bissau held relatively free and fair elections from 28 to 30. March 2004 (Mbangu 2005: 3). Mbangu (2005) argued that this case was a success because, among other factors, the coup d’état was “good” in the sense of stopping the autocratic regime of President Yala and because of the cooperative attitude of the new ruling elite.

Another case is Togo, who experienced several flawed electoral processes and therefore was partially sanctioned. After another disputed election in June 2003, Consultations again were imposed – not by the EU itself but by Togo and the ACP group. Although the European Union reacted quite flexible to Togolese development, Togo’s willingness, so Mbangu (2005: 13) argues, is questionable. Furthermore, the parties did not agree on the definition of the situation and worked with differing analysis. Therefore, cooperation was hindered. This might be one reason why the Togolese case was not as successful as the Guinea-Bissau’s (Mbangu 2005: 13). Furthermore, after the announcement to hold elections in 2005, President Eyadema died and violent presidential elections followed. The commission validated the elections but the EP contested them. Therefore, the EU extended the application of appropriate measures before fully resuming aid (Council of the EU 2006c) (Portela 2010: 134–136).
A different case is the Comoros suspension after a military coup in May 1999, which triggered consultations in July 1999. The new government was committed to prepare a new constitution and to organise elections. The EU gradually resumed the cooperation and set positive measures. The new government was cooperative and held elections that were satisfactory to the EU, so cooperation could be resumed fully in 2000 and the consultations could be called a success (Portela 2010: 132–133).

In December 1999, a military coup happened in Ivory Coast. For the first time restrictive measures were imposed before consultations had been held. The EU did not suspend already granted aid but did refrain from any new commitments except humanitarian or direct aid for poorest. At the Consultations in February 2000, a timetable for elections was set and several more measures demanded. An EU package supported the transition to democracy. In 2000, flawed presidential elections and unfulfilled commitments led to grave human rights violations. Again, consultations were held in February 2001 and it was promised to investigate the atrocities perpetrated during the military regime. The EU engaged in intensive rounds of dialogues. In July 2001 consultations were closed, in January 2002 cooperation could be fully resumed. However, in 2004 consultations were engaged concerning human rights violations because of the fighting in the north of the country that had begun in 2002 but the Council rejected the proposal. Sanctions then were imposed by the mandatory UNSC Resolutions 1572 (2004) and 1643 (2005) which included an arms embargo, a visa ban, a freezing of assets and an import ban on diamonds (Portela 2010: 136–137). This case shows again that the government was not too cooperative in the beginning. When the dialogues were intensified in 2001 the government seemed to cooperate, however it did not last too long because of internal conflicts in the country. This might imply that cooperation alone is not sufficient.
Hazelzet (2005: 12–13) also saw the reasons for successful consultations in a “constructive attitude of the ACP state” as in Niger and initially in Cote d’Ivoire. Zimbabwe and Haiti, however, were less keen on cooperating as well as partially Fiji in which cases the EU imposed appropriate measures (Hazelzet 2005: 12–13). She particularly sees the interest in cooperation with the EU as the key to success. She recommends careful preparation of consultations and informal discussion along with setting clear benchmarks and a proper and independent monitoring mechanism (Hazelzet 2005: 13). However, she did not find indices that countries in transition were significantly more willing to accept conditions to cooperate with the E.U. or the U.S. than other countries (Hazelzet 2001: 174).

Portela (2010: 145) agrees that suspension works if leaders are willing to cooperate. In her view this is due to the public that holds the new elite responsible and because the EU may be able to create an area of security and volatility in uncertain times (Portela 2010: 145).

The data used in this analysis slightly supports the notion that sanctions actually improve the human rights situation in a country if the governing elite is willing to cooperate with the European Union. Especially the graph of the CIRI index shows clear results (graph 38). Not only did countries that were somewhat willing to work with the European Union achieve higher CIRI levels in general, but these countries could also preserve their high ranks during and after the coups or conflicts. In contrast, countries that were not cooperative started with the lowest CIRI level and worsened even more. Surprisingly, countries that cooperated fully with the EU did perform worse than countries that cooperated somewhat. However, they still performed better than non-cooperating countries.

The same analysis with the PTS level (graph 39) shows even clearer results. The reversed PTS level for sanctioned non-cooperating countries started at a low level

17 Gammage (2014: 791) agrees with the argument that Zimbabwe showed no willingness to cooperate due to President Mugabe not actively seeking to build a relationship with the EU.
and dropped dramatically during the coup or conflict. However, it recovered to the same level as countries who cooperated somewhat. Countries that cooperated fully could retain their PTS level, whereas countries who cooperated somewhat started at a higher PTS level, did not drop as drastically as non-cooperating countries and recovered at the same level as non-cooperating countries after the incident.

Summing up, countries that showed a limited willingness to cooperation received better human rights levels than countries that were not cooperating at all. Unfortunately, this analysis is subject to a limited number of 18 cases. Of these, nine were not cooperative, 15 were cooperative and six were somewhat cooperative. This implies that the ability to generalize these findings may be doubted. Nevertheless, the results are consistent with the findings of the literature.

6.5. Unity of international donor community and sanctions’ impact

This chapter is based on hypothesis 2.5: “The unity of the international community at sanctions of human rights violations increases the impact of measures against human rights violations.” Several successful sanction cases had in common a united
reaction of the international community. Guinea-Bissau has already been mentioned as a success because of the cooperative attitude of the new ruling elite. However, it also did not suffer a civil war and had a cooperative attitude because of the consensus among its neighbour states\textsuperscript{18}, the international donor community, as well as international organisations\textsuperscript{19} and the ACP group (Mbangu 2005: 2).

In Togo’s case of 2003, especially the ACP Group made efforts to get consultations started. Other than these parties, no significant reactions form international institutions followed (Mbangu 2005: 11). However, the African Union, the ECOWAS and the West African Economic and Monetary Union (WAEMU) were invited to the consultations. This may have been one of the reasons why the consultations seemed to be effective at first sight yet failed nonetheless.

At the consultations and sanctions imposed on the Ivory Coast because of the military coup in December 1999 and the 2000 flawed presidential elections it is again evident that the international community, in this case the UN, was needed to clearly achieve change in the behaviour of the Ivory Coast. (Portela 2010: 136–137).

On the other hand, several sanction cases that did not have the international community on its side failed. The Central African Republic is one of the poorest and most instable countries in the world since its independence in 1960. After many coups d’état, such as in May 2001, in October 2002 and a military coup in 2003, General Bozizé proclaimed himself president. He breached several democratic principles by suspending the constitution, dissolving the parliament and postponing democratic presidential elections to 2005. Furthermore serious violence against the population occurred (Mbangu 2005: 5). Therefore, Article 96 Consultations started in 2003, especially in the interest of former colonizer France. However, this time, the international community was not consistent in its approach to the country. Whereas

\textsuperscript{18} such as Ghana, Senegal, Nigeria, Guinea, Cape Verde and Gambia) Mbangu (2005: 2).

\textsuperscript{19} such as the UN Economic and Social Council (ECOSOC), the UNDP, the Comunidade dos Países de Língua Portuguesa (CPLP), the IMF and the World Bank
the ACP group, the African Union and the ACP-EU Joint Parliamentary Assembly condemned the coup, the neighbouring countries showed few and diverse reactions. Solely the President of Gabon (Omar Bongo) and Colonel Gaddafi, leader of the Community of Sahel and Saharan States (CENSAD) opposed the coup clearly, because they were an ally to the overthrown president. The role of the UN was also very small (Mbangu 2005: 10).

Zimbabwe is one of the few cases where Art. 96 sanctions and CFSP sanctions were imposed at the same time. Despite an improvement of the freedom of participation at the political process, the agrarian reform of President Mugabe fostered a crisis in 2000. Mugabe expropriated land from white farmers to gain support for the next elections. This was followed by political violence and intimidation of opposition. In January 2002 consultations started after the entry to the country was refused to EU electoral observers and the opposition harassed. The Consultations were very short and followed by an arms embargo, a visa ban, a freezing of assets and one of longest black list ever edited at this time. The situation was worsened by economic crisis, mismanagement, and world’s fastest shrinking economy with the highest inflation rate and unemployment up to 70 % as well as a drought. The Consultations and sanctions were not very fruitful, among other reasons because the neighbouring countries supported Mugabe and provided energy. Furthermore, the Southern African Development Community (SAFDC) did not support the EU. Nigeria and South Africa acted against the EU directly and against the EU in the UN Commission on Human Rights. Only when the SADC pressured Zimbabwe to comply to electoral standards, parliamentary elections in April 2008 were held and the opposition won. However, it needed the involvement of the SADC to make an agreement between Mugabe and the opposition. Sanctions of the European Union and the U.S. without the help of the African neighbours and institutions could not persuade the leaders to change their behaviour. Even if the sanctions may have divided the party because of the personal financial situations (Portela 2010: 139–141).
Guinea-Conakry is the second of the few cases where CFSP and Art. 96 sanctions were imposed at the same time. Guinea-Conakry was already under suspension in 2009 because of flawed presidential elections in 2003 and violations of political rights. After a coup d’état in 2009 the constitution as well as political and trade unions were suspended and a provisional government installed. Nigeria and the US condemned the coup. The country was suspended from the African Union, the Economic Community of West African States and the Organisation Internationale de la Francophonie. Consultations opened in April 2009 and election dates were set in October and December. However, a crackdown already happened in September 2009. This led to an arms embargo and a visa ban on military junta (Portela 2010: 141–142). Although the international and African organizations as well as a neighbouring state supported the measurements, the consultations have not been fruitful.

The graph 40 and graph 41 show the sanctioned cases and if international support was specifically mentioned in the EU documents about Cotonou Art. 96. When looking at the CIRI or PTS levels it seems that the cases without international support did perform better than the cases with international support. However, the data is difficult to read, because only three cases where not explicitly supported by the international community including the UN, the AU, ECOWAS, etc. Therefore, this result should not be taken too seriously.

One could conclude that the support of other institutions than the EU and neighbouring countries are an essential but not sufficient condition for successful sanctions or suspensions of aid. According to Portela (2010: 146) this might be due to the coordinated policies of the donor community and the snowball effect of sanctioning. If a country is sanctioned, it most often is not sanctioned by one country alone. This leads to less funds, less private investment, weaker economic performance and no new infrastructure projects that again lead to a negative business environment and no more foreign investment. Enough reasons for political elites to think twice about provoking a member of the donor community.
6.6. Dependency on EU aid and sanctions’ effectiveness

This paragraph examines hypothesis 2.6: “The more dependent a country is on the EU, the higher the impact of sanctions.” As the case of Haiti shows, suspensions of aid or sanctions are not very effective if the targeted country does not rely on financial aid or the European market. Haiti’s most important donor is the U.S. and as long as relations with the U.S. are not breached, Haiti is not forced to comply with European standards.

However, if countries do rely on the EU, they might be coerced too. This may be seen in the case of Fiji. Although this country is not very dependent on European aid, Fijis’ special access to the European sugar market is highly important for the countries’ exports. When a military coup occurred in May 2000 the Union set mild measures because it saw the progress the country made at elections and the appointment of a legitimate government. In November 2001 there was a mild drawback when several elected Indo-Fijian MPs had been excluded from parliament, so partial suspension were kept in place until in November 2003 the ministers were nominated. In this case, the EU was able to coerce the country to comply.
However, in December 2006 another coup d’état happened after the elections. Commander Bainimarama seized power, announced state of emergency and dissolved the parliament. This was universally condemned. When consultations started in January 2007, the EP called to cease all non-humanitarian aid. Nevertheless, the commission and the council agreed to leave the support of the sugar industry in place. It is no wonder then, that no elections were held in May 2009, as agreed on in the consultations. Sanctioning the sugar industry would have been a significant coercing tool to change the elite’ behaviour but this tool was not used and the elites did not fear too harsh consequences through non-compliance. A sugar ban however would have had significant costs on the domestic economy “including severe economic contradiction, loss of government revenues, dislocation of households from rural to urban areas and a worsening in the balance of payments position with consequences for the sustainability of the fixed exchange rate regime” (Portela 2010: 137–139).

Graph 42 shows calculations with the OECD International Development Statistics data set (OECD 2018) on official development aid. It shows a boxplot of the sanction status of coups/conflicts and the share of EU development assistance in the overall development assistance in the year of the coup or conflict. In general, sanctioned countries with coups or conflicts seem to be more dependent on EU aid than non-sanctioned countries. Fifty per cent of the sanctioned observations have an EU aid share ranging from twelve to 29 % whereas non-sanctioned observations only have a share of EU aid ranging from seven to 15 %. Furthermore, the median and the average share of EU aid on the total aid a country received are lower for non-sanctioned incidences. Please note that the case of Fiji in 2000 is not accounted in this graph because the development aid of the EU in this case is deposited with -7 Mio USD. As it is not clear as to why the aid is negative, this case was deleted from the graph. However, to show that the findings remain the same, the graph with the outlier of the Fiji 2000 case may be found in the appendix (Appendix 14.4.)
Given the above, the thesis that countries who are more dependent on aid may be sanctioned more is supported. This may be due to the increased leverage of the European Union due to the dependence of a country on EU goodwill. This supports Portelas’ notion that the EU invokes Art. 96 “whenever it believes that it stands a reasonable chance of influencing the leaderships concerned” (Portela 2010: 144).

6.7. Summary of the chapter

This chapter focused on the effectiveness and impact of Art. 96 sanctions of the Cotonou Agreement. Factors that are believed to influence the effectiveness were reviewed in detail and compared with case studies, answers to questionnaires and interviews as well as data sources.

The results indicated that the process as to when the EU sanctions, is not completely unintelligibly, yet a coherent and enshrined process that has been discussed with the ACP countries could increase the effectiveness of EU suspensions of aid through a less paternalistic perception of the EU. It also could facilitate the imposing of sanctions due to a legitimization through a coherent process.
Anyhow, if sanctions are implied, they seem to have a more positive effect than they are accounted for. Even the ACP countries seem to believe in the human rights clause to achieve its purpose. However, as many factors influence human rights compliance, these results have to be treated with caution.

A factor that may hinder the success of a sanction could be internal disagreement of EU member states. Especially France seems to have a special interest in its former colonies and sometimes boycotts EU action whereas Great Britain most of the time acted on the EU’s behalf.

In contrast, the willingness to cooperation of ACP countries positively influences the impact of sanctions. Countries that showed a limited willingness to cooperation received better human rights levels than countries that were not cooperating at all. Whilst this result is in line with the literature, missing values decrease the viability of this analysis.

International support for sanctions seems to play a role as well. Support of other institutions than the EU and neighbouring countries may be an essential but not sufficient condition for successful sanctions or suspensions of aid.

Finally yet importantly, dependency on EU aid of ACP countries may not only increase the chance of being sanctioned but also may have a positive effect on the sanction impact.
7. Criticism and future work

This thesis examined if the essential elements clause in the Cotonou Agreement between the EU and the ACP countries actually had a positive impact on human rights compliance and which factors deteriorated the impact. It combined several bivariate analysis of certain variables with detailed qualitative analysis through questionnaires and interviews. Two main hypothesis were analysed. It was only partially confirmed, that the EU has no coherent process as to when it sanctions human rights violations. There are certain factors that might hinder the sanctioning of a country, however, these factors work in the same direction for every country. For example, if a country is an important import market for EU goods, it might not get sanctioned as quickly as less important countries. The second hypotheses states that overall, Art. 96 sanctions do have a positive impact on human rights compliance. This hypothesis could be carefully confirmed for the positive effects of PTAs with essential elements seemed to outweigh the negative ones. However, several questions remain concerning the Cotonou Agreement but also the future of the relationship of the ACP countries and the EU. As already mentioned, the EPA have been criticized immensely for dividing the ACP countries while abolishing the differentiate approach for countries with different development levels.

The EU has been accused to having geopolitical double standards, breaching against sovereignty (Holland 2002: 121), defining human rights with only Western norms, values and culture in mind, the abolishment of a general principle or common EU framework for the ACP countries, reacting too slowly to breaches of human rights and having vague and incoherent procedures (Bartels 2005: 38–40; Holland 2002: 165; anonymous A 2018; anonymous B 2018; Zimelis 2011: 402–404).

Furthermore, it seems that the EU does not have a coherent security deliberation for ACP countries. Portela (2005) adjudicates the EU to be a regionally-conscious security actor (Portela 2005: 105). Supporting this thesis is also the fact, that non-democratic states in North Africa and the Middle East had not been sanctioned until the
Arabic spring in 2011 despite repressions and human rights violations. Governments of these states were seen as securing the relative stability in the regions concerned. Furthermore, they decreased illegal immigration to the European Union but also supplied natural resources. In these cases, political interests trumped ethical ones (Freigang 2015: 426–427). This might explain why the EU applied different sanctions policy towards neighbouring countries than to ACP states (Portela 2005: 85). Furthermore, Portela finds in her studies that EU sanctions have been consistently applied in the pursuit of both direct and indirect security objectives (Portela 2005: 95). She also finds continuity in the security objectives of the European Union with elements of both norm-based and strategically-relevant policies (Portela 2005: 97; Smith 2003).

Whereas the European Union overall used sanctions for both directly security-relevant purposes such as fight against terrorism and indirectly security-relevant purposes such as promoting democracy and human rights on an overall view, the Union focuses on development of democracy and human rights in sub-Saharan Africa. Portela explains this by the geographical distance to Europe. In the Congo and in Sudan the sanctions also have been wielded as a conflict management tool. However, the sub-Saharan region of Africa is not as important to the EU as it used to be in the 80s. Therefore, the EU is preoccupied with sanctions of countries in its vicinity, such as Russia (Portela 2005: 100–102).

An interviewee of the ACP countries confirms that the European Union’s focus does not lie with the ACP countries anymore.

“The ACP group’s importance is dwindling because the EU has one big problem, and that is migration. So the only thing that the EU wants is to stem migration. [...] The focus now is on North Africa and not on ACP countries” (anonymous A 2018).

Authors agree that the EU strategy towards the ACP states is security dominated. However, it is not clear what this strategy entails in detail. Boisvert (2013) argues
that bringing peace and stability to the region is the cornerstone of EU’s strategy towards the ACP states. The EU wants to achieve this via trade agreements (Boisvert 2013: 187). However, he criticizes that democracies are not rewarded for their efforts and questions if it would be more helpful to supply the tools to democratize rather than imposing security on the states (Boisvert 2013: 193).

Nevertheless, there is no clear strategic paper for the ACP states or even sub-Saharan Africa. Eriksson (2011) did only find “Basic Principles on the Use of Restrictive Measures (Sanctions)” and “Guidelines on Implementation and Evaluation of Restrictive Measures” from the Council of the EU. In these documents, best practices are described (Eriksson 2011: 173). Even the individual common positions that are the legal basis when sanctions are imposed speak more of the motivations why sanctions were imposed rather than which goals are pursued; an overall goal is certainly not evident (Portela 2005: 90).

The EU follows a security strategy when imposing its sanctions towards the ACP states; however, this strategy is not specified in detail and not coherent. This might be another reason, why sanctions are not able to exploit their potential when it comes to increasing human rights compliance in ACP states. It especially aggravates establishing a positive and coherent relationship with the ACP countries in the future.

Another general critique on sanctions is that they are not able to target the right people to actually change the behaviour of a decision maker. The naïve sanctions theory states that sanctions lower the means of the targeted people and therefore these people lose the means to support influential groups. In consequence, the elites lose the influence on these groups and therefore loose power. This gives the opposition the opportunity to rise. (Peksen 2009: 61).

However, Peksen (2009) lists four arguments why the naïve sanctions theory is obsolete. First, elites have the control over a country’s resources. If economic sanctions are imposed, the elites give less to the poor and they themselves escape economic
pressure. Furthermore smuggling and corruption may increase. Contrary to the naïve sanctions theory this might increase the reliance of influential groups on the current government (Peksen mentions the Irak as an example). Second unintended consequences such as poverty, unemployment, less development of civil society and education or poor health might lead to more instability, more repression and a worse situation for the poor. Third, leaders might blame sanctions as external threats and the reason for the repression. They also might use them as a distraction from internal problems. Therefore, sanctions might legitimate and justify the repression against anti-regime movements, as in the case of Cuba. Fourth, sanctions might isolate countries from global networks and political influence. However, several authors depict economic integration as essential in promoting government respect for human rights (Peksen 2009: 62–63).

The ACP countries asked in this study agree that there might be situations where the application of the human rights clause is harmful for a sanctioned country. They especially see the stopping of planned projects and a decrease of the economy as harmful but also mention unintended consequence like increased poverty or they further destabilize the country.

graph 44: Answers to question C6 in the questionnaire of the ACP countries
However, the EU is well aware of the fact that sanctions may affect the poor population of a country the most. Therefore, the EU tries to not hit the poor people with its sanctions. Humanitarian aid has never been affected of any sanctions. It is financing of infrastructural projects that are affected the most. However, one could argue that also not completed infrastructure projects hit the population of a country and not political elites (Portela 2010: 131). To keep the harm of the population minimal, Portela (2010) finds that the EU invokes Art. 96 only if it believes that sanctions have a chance to actually influence targeted governments. For her this is the reason for the relative success of Cotonou Consultations (Portela 2010: 144–145).

However, sanctions are not human rights neutral and may cause violations, even if they are good intended (Lim 2001). They might trigger consequences that were not intended from the council (Eriksson 2011: 175). This is why it is criticized that sanctions might not work because the elites are not effected or unintended consequences are worse than the intended effects.

Another point of critique is that the human rights clause cannot prevent human rights violations but are only a reaction to abuses that already happened. However, human rights clauses may prevent violations through other means. Through the Cotonou Agreement there certainly has been more dialogue between the ACP countries and the EU. The clause provides a platform, networks and more transparency on the issue. In addition, the norms that are upheld with the inclusion of such clauses may have an effect on actual human rights compliance. As mentioned before, a study of norms, values and culture would be an interesting field for further investigations.

What is criticized the most from the interviewees regarding the human rights clause again is the neo-colonial seeming approach of the EU and the lack of an understanding of the ACP country’s needs, values, norms and culture.

To improve the human rights situations in the ACP countries they need more than just development aid.
“Improving people’s lives, meeting their basic health, education and nutrition needs would facilitate the application of human rights principles, as the state often has to make choices to solve certain problems. The increase of the standard of living is primordial, the good ideas, the good intentions do not nourish the man ...” (anonymous B 2018).

Instead, they would like to be less dependent on aid and increase fair trade:

> What we always said was that we want trade instead of aid. Because we believe that if [the country] can do fair trade we are more helped, like having investments […]. The trade with the EU is not fair. It is unfair that they want to buy all our raw material for next to nothing. […] All the added value is being made by European countries […]. We really need to start adding value ourselves to our products. [The EU could help with] more FDI, but also investment with joint ventures […] technical transfer of knowledge and management skills […] So we would like to see a lot more investments in the private sector, not the government sector” (anonymous A 2018).

Summing up, there is still a lot of potential for improvement of the human rights clause in future agreements between the ACP countries. Especially when it comes to the different interpretations of norms and values and their formation as well as the differences between the Western world and the ACP countries. There are several research directions, particularly in the constructivist area, that can be explored further and in more detail.
8. Conclusion

This study aims to analyse the evolution, application and impact of the human rights clause in the Cotonou Agreement between the ACP group and the European Union in the years from 2000 to 2016. It aims to examine, if essential elements clauses in PTAs actually do have a positive impact on human rights compliance and which factors might diminish the impact of these institutions.

For this analysis, the literature on the topic has been included as well as quantitative data from different sources through bivariate analysis and qualitative methods through questionnaires and open interviews. Two main hypothesis with several sub-hypothesis have been examined: “The EU has no coherent process as to when it sanctions human rights violations” and “Overall, Art. 96 sanctions do have a positive impact on human rights compliance”.

Since the 1970s the EU has been searching for instruments to suspend its aid or trade in cases of human rights violations. Due to an increase in human rights treaties, the empowerment of the European Parliament and occurring cases of human rights violations the EU was able to bit-by-bit establish clauses that experienced its climax in 1995. At this time, the EU declared to include human rights clauses as essential elements in all its future treaties. The market power and the dependence on EU aid of the ACP countries enabled the EU to force the ACP countries to agree to the inclusion of human rights clauses as an essential element in the Cotonou Agreement.

Unlike the literature claims, though, the ACP countries may not have opposed the inclusion of a human rights clause per se, but did not agree with the EU definition of human rights and its values and norms. Furthermore, the mistrust in the EU’s perceived neo-colonial behaviour made the ACP countries cautious towards the clause. The general imbalance of the negotiations did not help to lessen the anxiety of the ACP group towards the clause. There was only one tool the ACP group could use against the overpowering EU: its unity. This unity, though, could not continue
during the EPA negotiations and weakened the position of the ACP countries, especially the poorer ones. Consequently, the ACP countries still are not satisfied with the details of the included clause but seem to have accepted the inclusion of the clause per se.

Concerning the application of the clause, this study comes to the following results. The importance of a country as a trading partner may not have as much of an impact on whether the EU sanctions a country or not. This is in contrast to the assumptions of the literature. Whereas the EU may indeed sanction countries more if they are not economically important, it seems that the ACP countries as markets for European exports are more important than the imports of natural goods. Future work could investigate the role of lobbies of European businesses to explore how important African countries are for the exports of the EU and how dependent the EU is on natural resources of the ACP countries.

In slight contrast to the literature, the relative level of human rights compliance in a country was not as relevant in this study as assumed in the literature when it comes to the application of the clause. However, also the absolute level of human rights seemed not to determine whether sanctions are imposed on a country. What could be discovered was that the EU tended not to sanction a country if the human rights compliance increased despite a coup d’état or conflict.

As to the role of the interests of former colonizers when discussing the sanctioning of their former colonies the results were still ambivalent – this is reflected in the literature. It seems that the bargaining power and role of former colonies further diminish with time and the appearance of other actors on the African market. However, future studies could examine these relationships further in case studies of single countries of interest. The case of Fiji since its sanction in 2007 could be one of the interesting cases.

Concerning the effectiveness and impact of Art. 96 sanctions of the Cotonou Agreement it has to be noted that the following statements have to be treated with caution due to missing values or few observations. Nevertheless, the results indicated that
the process as to when the EU sanctions is not completely unintelligibly, though a coherent process that has been discussed with the ACP countries could increase the effectiveness of EU suspensions of aid through a less paternalistic perception of the EU. If sanctions are implied, they seem to have a more positive effect than they are accounted for. Even the ACP countries seem to believe in the human rights clause and their ability to serve their purpose.

A hindrance to this fulfilment factor could be internal disagreement of EU member states. Especially France seems to have a special interest in its former colonies and sometimes boycott EU action whereas Great Britain most of the time acted on the EUs’ behalf. As noted above, though, these results should be checked with detailed case studies on the relations between the former colonizers and colonies.

A positive influence on the impact of the human rights clause may come from the willingness of a sanctioned country to cooperate. Countries that showed a limited willingness to cooperation received better human rights levels than countries that were not cooperating at all. This result is in line with the literature, but missing values decrease the viability of this result as well.

International support for sanctions seems to play a role as well. Support of other institutions than the EU and neighbouring countries may increase the positive impact of human rights clauses on conditionality.

The dependency on EU aid of ACP countries showed signs that dependency might increase the chance of being sanctioned due to increased leverage of the EU and a higher chance of a positive effect on the sanction impact.

Interesting for future work would be further detailed analysis and impact assessments of the Cotonou Agreement for each ACP country to truly be able to assess conditional factors for a positive or negative influence of the human rights clauses on human rights compliance.

Summing up, the theoretical “Improvement cycle of trade, PTAs and human rights” is actually supported by this thesis. In theory, PTAs with essential elements could
lead to increased human rights compliance. However, in practice, several factors decrease the impact of these institutions. Nevertheless, the sanctioning process of the EU could be less arbitrary than expected. A coherent and jointly negotiated process, though, could increase the credibility of the EU as well as the actual impact of the clause on human rights compliance. In addition, a start of negotiations as to what exactly human rights include and what should be left out due to cultural differences would increase the trust between the ACP countries and the EU and would show ACP countries that their concerns, wishes and requests are actually heard and taken into consideration. This would promote actual negotiations on an eye-level and less rejections of the human rights clause - a development that would bring benefits to all stakeholders.
9. References


10. List of Acronyms

**ACP group**


**AFET**

Foreign Affairs Committee of the European Parliament

**AU**

African Union

**CEMAC**

Central African Economic and Monetary Community

**CENSAD**

Community of Sahel and Saharan States

**CFSP**

Common Foreign and Security Policy

**CIRI Index**

Cingranelli-Richards Human Rights Data Project

**COREPER**

Committee of Permanent Representatives

**DEVE**

Development Committee of the European Parliament

**DG DEVCO**

Commission's Directorate-General for International Cooperation and Development

**DG RELEX**

Commission's Directorate-General for External Relations

**DROI**

the subcommittee on Human Rights of the AFET

**EAC**

East African Community

**EAMA**

Associated Africans States and Madagascar

**ECOWAS**

Economic Community of West African States

**EDF**

European Development Fund

**EP**

European Parliament

**EPA**

European Partnership Agreement

**ESA**

Eastern and Southern Africa
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tr>
<td>ESA</td>
<td>Eastern and Southern Africa</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FDI</td>
<td>foreign direct investment</td>
</tr>
<tr>
<td>FRCWG</td>
<td>Foreign Relations Counsellors Working Group</td>
</tr>
<tr>
<td>IGO</td>
<td>international governmental organization</td>
</tr>
<tr>
<td>INTA</td>
<td>Committee on International Trade of the European Parliament</td>
</tr>
<tr>
<td>IRC</td>
<td>International Rescue Committee</td>
</tr>
<tr>
<td>NGO</td>
<td>non-governmental organization</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>PES</td>
<td>Party of European Socialists</td>
</tr>
<tr>
<td>PRIO</td>
<td>Peace Research Institute Oslo</td>
</tr>
<tr>
<td>PTS</td>
<td>Political Terror Scale</td>
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<td>RECs</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<tr>
<td>SAFDC</td>
<td>Southern African Development Community</td>
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<tr>
<td>TEU</td>
<td>Treaty on the European Union (Maastricht Treaty)</td>
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<td>U.S.</td>
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<td>UCDP</td>
<td>Uppsala Conflict Data Program</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNSD UN Comtrade</td>
<td>United Nations Statistics Division - Commodity Trade</td>
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<td>WAEMU</td>
<td>West African Economic and Monetary Union</td>
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<td>WITS</td>
<td>World Integrated Trade Solution</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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14. Appendix

14.1. Questionnaires and texts to chapter 3.3.

14.1.1. Questionnaires

14.1.1.1. ACP

The purpose of this scientific study is to shed light on the development, implementation and actual impact of human rights clauses as an essential element in preferential trade agreements between the European Union and the ACP states. We kindly thank you for assisting us in better understanding the impact of these clauses. In case you do not want to answer a specific question, please feel free to skip this question. If you have any questions concerning the survey, please feel free to contact us at verena.kinetzschmann@icrc.at.

As described below, the survey generally ensures anonymity. However, the first question of the survey will be to enter your name, function, country and e-mail address. You can then be asked if you want to stay anonymous in the study. This means, you will not be cited with your name, function or country in the study. However, it is necessary for the author of the study to know in which country the survey participant is answering.

A note on privacy

This survey is anonymous.

The record of your survey responses does not contain any identifying information about you, unless a specific survey question explicitly asks for it. If you used an identifying token to access this survey, please rest assured that this token will be stored together with your responses. It is managed in a separate database and will only be updated to indicate whether you did (or did not) complete this survey. There is no way of matching identification tokens with survey responses.
Negotiation process

In your opinion, who was interested in including a human rights clause as an essential element in the preferential trade agreement (such as Art. 9/6 of the Cotonou Agreement) with the EU.

- My country has had a genuine interest in including a human rights clause as an essential element in the preferential trade agreement with the EU.
- My country has had a faint interest in including human rights clause as an essential element in the preferential trade agreement with the EU.
- My country opposed the inclusion of a human rights clause as an essential element in the preferential trade agreement with the EU.
- My country did not have any preferences regarding the inclusion of a human rights clause as an essential element in the preferential trade agreement with the EU.
- The majority of the ACP countries (African, Caribbean, Pacific Group of states) has had a genuine interest in including a human rights clause as an essential element in the preferential trade agreement with the EU.
- The majority of the ACP countries has had a faint interest in including a human rights clause as an essential element in the preferential trade agreement with the EU.
- The majority of the ACP countries opposed the inclusion of a human rights clause as an essential element in the preferential trade agreement with the EU.
- It was the main interest of the EU to include a human rights clause as an essential element.
- Other: 

More than one option may be chosen.

From your point of view, what did the parties who wanted to include the human rights clause as an essential element, want to achieve? They wanted ...

- to include a tool to suspend development funds
- to include a tool to coerce a country/political entity to a certain behaviour
- to foster democracy
- to foster human rights
- to protect one’s own industry/business
- to diffuse one’s own values/culture/norms
- to exert one’s own power over others
- Other: 

More than one option may be chosen.
### What did parties who were against including the human rights clause as an essential element fear?

- □ the dominance of another party/country
- □ a hidden import protection
- □ a decrease in imports
- □ a decrease in exports
- □ paternalism
- □ the loss of sovereignty
- □ Other: ____________  

*More than one option may be chosen.*

### Which aspects of the negotiation process have been most challenging for your country?

- □ the relative dominance of the European Union
- □ the dependence on the European Market
- □ the dependence on aid from the EU
- □ disunity between ACP states
- □ the incompatibility with WTO rules
- □ changes of negotiation partners
- □ negotiations, that were not on a par with the EU
- □ Other: ____________  

*More than one option may be chosen.*

### How satisfied are you with the included clause?

- □ 1  □ 2  □ 3  □ 4  □ 5  □ No answer

*1 = very satisfied, 5 = not satisfied at all*

### Did the negotiations meet your interests?

- □ 1  □ 2  □ 3  □ 4  □ 5  □ No answer

*1 = completely met interests
2 = met interests for the most part
3 = somewhat met interests
4 = did not meet interests for the most part
5 = did not meet interests at all*
### How did you apply your interests during the negotiations; respectively how did your country gain leverage?

- [ ] through unity of ACP states
- [ ] with the help of neighbouring countries
- [ ] with the help of ACP states other than the neighbouring countries
- [ ] due to the economic importance of my country to the EU
- [ ] due to security interests of the EU towards my country
- [ ] due to EU dependence on energy from my country
- [ ] due to EU dependence on rare-earth metals
- [ ] due to EU dependence on oil/gas
- [ ] due to EU dependence on diamonds
- [ ] due to EU dependence on other natural resources
- [ ] due to EU dependence on other exports of my country
- [ ] Other: 

   - [ ] More than one option may be chosen.

### Which of your interests were not considered?

- [ ] the request to increase the development aid
- [ ] the request to increase the aid for trade
- [ ] the request to move aid for trade beyond simple capacity building and technical assistance
- [ ] the request to the EU to import guaranteed agreed quantities of certain products to the EU
- [ ] the request to the EU for guaranteed prices for exports of certain products to the EU
- [ ] the request to the EU to serve as a buyer of last resort in the event that there is no commercial buyer for certain products
- [ ] the request for tariff concessions
- [ ] the request for other guarantees regarding preferential trade agreement policies for certain products
- [ ] the request for the protection of intellectual property rights
- [ ] the request for the differentiation among members of the ACP Group
- [ ] the request for special treatment of developing countries
- [ ] the request for more support from the EU during negotiations with the WTO (e.g., regarding compliance with WTO rules, MFN)
- [ ] the request to restrict contents of the Cotonou Agreement/EPAs solely to direct trade issues
- [ ] all of my country’s relevant interests were considered
- [ ] Other: 

   - [ ] More than one option may be chosen.
Application of the clause

Is there a way for your country to apply the human rights clause (Art. 96 Comonou) to enforce your interests?

Yes  No  No answer

Has your country ever suggested to apply the clause to indicate human rights abuses in another country?

Yes  No  No answer

Has the clause been used to discuss violations in other/neighbouring countries or regions?

Yes  No  No answer

Please rank, who is most and least likely to report human rights violations in your country?

Double-click or drag-and-drop items in the left list to move them to the right - your highest ranking item should be on the top right, moving through to your lowest ranking item.

Your choices
neighbouring countries
other ACP countries
the country’s own population/civil society
United Nations
African Union
European Union
other IGOs
Human Rights Watch
Amnesty International
Doctors Without Borders (Médecins Sans Frontières)
other International NGOs
international election observers
local NGOs
media
other

Your ranking
### In which situations may the clause be useful?

- at the presence of a threat to the national security due to conflicts in neighbouring countries/regions
- at occurrences of threats to human rights in a country
- at possible threats to human rights in a country
- at incidences of illegal amendments of the constitution in a country
- at occurrences of flawed elections in a country
- at incidences of breaches of other democratic principles in a country
- after a coup d'état in a country
- before a possible civil war in a country
- before a possible coup d'état in a country
- during a civil war in a country
- after a civil war in a country
- before a possible war between countries
- during a war between countries
- after a war between countries
- Other: [ ]

*More than one option may be chosen.*

### In which situations may the clause be harmful for human rights or your country?

- If it further destabilizes a country
- If the civilians already suffer
- If the sanctions hit the already poor
- If sanctions do not target the elites who are responsible for the violations
- If it leads to further cleavages between parties/countries
- If it leads to a decrease of the economy
- If it leads to shortages of certain products
- If planned projects have to be stopped
- If it leads to deteriorated infrastructure
- If it leads to decreased spending for education
- If it leads to decreased spending for health
- If it leads to decreased welfare spending
- If poverty is increased
- If human rights violations by the government increase
- If human rights compliance by the government decreases
- If the international reputation of the sanctioned country decreases
- If regional coherence decreases
- Other: [ ]

*More than one option may be chosen.*
### To what cause may the clause be applied?

- [ ] to improve human rights compliance
- [ ] to ensure the stability of a country
- [ ] to prevent armed conflict
- [ ] to prevent civil war
- [ ] to prevent a coup d'état
- [ ] to end civil war
- [ ] to end armed conflict
- [ ] to secure one's own country from threats of neighbouring countries
- [ ] to achieve economic benefits in relation to other countries
- [ ] Other: 

   More than one option may be chosen.

### Please rank, against whom is the clause most and least often applied?

Double-click or drag-and-drop items in the left list to move them to the right - your highest ranking item should be on the top right, moving through to your lowest ranking item.

<table>
<thead>
<tr>
<th>Your choices</th>
<th>Your ranking</th>
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<tr>
<td>ACP countries</td>
<td></td>
</tr>
<tr>
<td>EU member status</td>
<td></td>
</tr>
<tr>
<td>least developed countries</td>
<td></td>
</tr>
<tr>
<td>developing countries</td>
<td></td>
</tr>
<tr>
<td>developed countries</td>
<td></td>
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<tr>
<td>countries with a stable government</td>
<td></td>
</tr>
<tr>
<td>countries with an unstable government</td>
<td></td>
</tr>
<tr>
<td>autocratic countries</td>
<td></td>
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<tr>
<td>authoritarian countries</td>
<td></td>
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<tr>
<td>democratic countries</td>
<td></td>
</tr>
<tr>
<td>countries that are less economically important to the EU</td>
<td></td>
</tr>
<tr>
<td>countries that are less strategically important to the EU</td>
<td></td>
</tr>
<tr>
<td>countries that are less important to the EU with regards to security deliberations</td>
<td></td>
</tr>
</tbody>
</table>
Activation of the human rights clause as an essential element (e.g. Art. 96 Cotonou Agreement)

Why has the clause not been applied more often?

☐ due to difficulties to perceive human rights violations
☐ due to difficulties to prove human rights violations
☐ due to estimations that sanctions would not improve the human rights compliance
☐ due to the economic importance of a country
☐ due to the strategic importance of a country
☐ due to the leverage of a country
☐ due to possible reputation losses of the reporting country
☐ due to complicated procedures to activate the clause
☐ because the clause is seen as a last resort
☐ because the EU is reluctant to use the clause due to the colonizing history of some member states
☐ due to reluctance to intervene in national processes
☐ due to the breach of sovereignty that an intervention entails
☐ because countries oppose the clause in general
☐ because the relative change of human rights compliance was minimal
☐ due to potential unintended consequences
☐ Other: [ ]

More than one option may be chosen.

Do you know incidents when a country/party threatened another country/party to apply the clause to enforce its interests?

☐ Yes
☐ No
☐ No answer

Please enter your comment here:

[ ]

Optional: Please specify the specific incident in the comment box.
Impact of the human rights clause as an essential element

Has the clause been used as a coercion tool?

- Yes
- No
- No answer

What impact do you think does the application of the clause have on an actual human rights situation?

- 1 = large impact
- 2 = significant impact
- 3 = some impact
- 4 = almost no impact
- 5 = no impact at all

No answer

How could the clause be more effective?

- If clear requirements are formulated regarding in which cases a country is to be sanctioned
- If a clear procedure is developed concerning in which situations sanctions will be imposed
- If a coherent sanctionary process is developed
- If sanctions are more flexible
- If more assistance is granted to fulfill the imposed conditions
- If regular contacts are increased
- If informal discussions are increased
- If an independent monitor mechanism is set up
- If regular reviews of the situation of a country are compiled
- Other: 

More than one option may be chosen.
Discussions of the Cotonou Framework

How often are the ACP-EU - Cotonou frameworks discussed in parliament?

- frequently, once a week
- often, once a month
- sometimes, once every six months
- rarely, once a year
- never
- other

You may use the comment boxes to specify your answer.
More than one option may be chosen.

How often are the ACP-EU - Cotonou frameworks discussed in parliamentary committees?

- frequently, once a week
- often, once a month
- sometimes, once every six months
- rarely, once a year
- never
- Other:

You may use the comment boxes to specify your answer.
More than one option may be chosen.
How often are the ACP/EU - Cotonou frameworks discussed in the media?

☐ frequently, once a week
☐ often, once a month
☐ sometimes, once every six months
☐ rarely, once a year
☐ never
☐ Other:

Comment only when you choose an answer.

You may use the comment boxes to specify your answer.
More than one option may be chosen.

How often are the ACP/EU - Cotonou frameworks discussed in the political parties of your country?

☐ frequently, once a week
☐ often, once a month
☐ sometimes, once every six months
☐ rarely, once a year
☐ never
☐ Other:

Comment only when you choose an answer.

You may use the comment boxes to specify your answer.
More than one option may be chosen.
EU-ACP PTAs And Their Impact On Human Rights Compliance: A Qualitative Approach

Appendix

Further comments

Optional: Further comments on the topic:

Would you like to receive the completed study?

- Yes
- No
- No answer

Please enter your comment here:

If you choose yes, please be sure you have entered your e-mail address at the beginning of the survey. If you have not done so please enter it in the comment box.

Thank you very much for your input and your time. It is appreciated very much and will help to improve the understanding of the human rights clause as an essential element in all aspects.
14.1.1.2. Sanctions

Sanctions - PTAs and Human Rights

The purpose of this scientific study is to shed light on the development, implementation and actual impact of human rights clauses as an essential element in preferential trade agreements between the European Union and the ACP states. We kindly thank you for assisting us in better understanding the impact of these clauses. In case you do not want to answer a specific question, please feel free to skip this question. If you have any questions concerning the survey, please feel free to contact us at verena.kretzschmar@iicr.at.

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Next
Activation of consultations/sanctions/suspension of aid

In your perspective: Why and how have the consultations/sanctions/suspensions of aid against your country started?

- coup d'état in your country
- possible coup d'état in the near future of your country
- civil war
- illegal change of the constitution
- flawed elections
- breach of other democratic values
- possible civil war in the near future
- war between countries
- possible war between countries
- human rights violations
- relative change in human rights compliance in your country
- lower absolute level of human rights compliance to other ACP countries
- economic advantages for the EU
- economic advantages for another country/party
- threat to security to a neighbouring country
- threat to security to EU
- strategical reasons of the EU
- Other:

More than one option may be chosen.

What were the reasons stated by the European Union?

- coup d'état in your country
- possible coup d'état in the near future of your country
- civil war
- illegal change of the constitution
- flawed elections
- breach of other democratic values
- possible civil war in the near future
- war between countries
- possible war between countries
- human rights violations
- relative change in human rights compliance in your country
- lower absolute level of human rights compliance compared to other ACP countries
- economic advantages for the EU
- economic advantages for another country/party
- threat to security of a neighbouring country
- threat to security of the EU
- strategical reasons of the EU
- Other:

More than one option may be chosen.
What were the reasons stated by the European Union?

- coup d'état in your country
- possible coup d'état in the near future of your country
- civil war
- illegal change of the constitution
- flawed elections
- breach of other democratic values
- possible civil war in the near future
- war between countries
- possible war between countries
- human rights violations
- relative change in human rights compliance in your country
- lower absolute level of human rights compliance compared to other ACP countries
- economic advantages for the EU
- economic advantages for another country/party
- threat to security of a neighbouring country
- threat to security of the EU
- strategic reasons of the EU
- Other: 

More than one option may be chosen.

Could there have been other/better means to handle the situation?

- increased political dialogue
- increased informal discussions
- more flexibility
- more time to fulfill concessions
- increased aid to fulfill concessions
- more willingness to cooperate
- more willingness to empathize with the other party
- handle negotiations through a third country
Could there have been other/better means to handle the situation?

- Increased political dialogue
- Increased informal discussions
- More flexibility
- More time to fulfill concessions
- Increased aid to fulfill concessions
- More willingness to cooperate
- More willingness to empathize with the other party
- Handle process through a third party
- Setting up an independent monitor mechanism
- Other: [Blank]

*More than one option may be chosen.*
EU-ACP PTAs And Their Impact On Human Rights Compliance: A Qualitative Approach
Appendix
Have you been treated fairly throughout the consultations?

- 1 = yes
- 2 = mostly
- 3 = somewhat
- 4 = slightly
- 5 = no
- No answer

Please enter your comment here:

Optional: If 2-5, please specify what did not meet your expectations in the comment box.

Have there been misunderstandings or misinterpretations throughout the consultations?

- 1 = yes
- 2 = mostly
- 3 = on an acceptable level
- 4 = only a few
- 5 = no
- No answer

Please enter your comment here:

Optional: If 2-5, please specify what was misunderstood in the comment box.

If there have been misunderstandings, what did cause them?

- cultural differences
- political differences
- problems with communication
- lack of understanding the other party
- Other: [ ]

More than one option may be chosen.

Optional: What was the most challenging aspect during the consultations?
Optional: How could the consultations be improved?
Effects of the consultations/sanctions/suspension of aid

Which suspension of aid or sanctions were imposed against you?

- freezing of financial support for ongoing infrastructure projects
- freezing of financial support for ongoing educational projects
- freezing of financial support for ongoing elections
- freezing of financial support for ongoing other democratic projects
- freezing of financial support for planned infrastructure projects
- freezing of financial support for planned educational projects
- freezing of financial support for planned elections
- freezing of financial support for other planned democratic projects
- threat of freezing of financial support for future projects
- holding off EDF (European Development Fund) allocation
- conditional EDF (European Development Fund) allocation
- conditional EDF (European Development Fund) negotiation
- freezing of foreign accounts of decision makers/political and economic elites
- entry bans of decision makers, respectively political and economic elites
- gradual resuming of cooperation conditional on progress of fulfilling commitments
- Other: 

More than one option may be chosen.

Do you think the imposed sanctions were justified?

- Yes
- No
- No answer

Please enter your comment here:

Optional: Please specify in the comment box what was not justified.
### What effect did the consultations and sanctions have on your country?

- ☐ decrease of the economy
- ☐ shortages of certain products
- ☐ planned projects had to be stopped
- ☐ infrastructure deteriorated
- ☐ spending for education decreased
- ☐ spending for health decreased
- ☐ other welfare spending decreased
- ☐ poverty increased
- ☐ human rights violations by the government increased
- ☐ human rights compliance by the government decreased
- ☐ the change of the government's policies
- ☐ international reputation decreased
- ☐ regional coherence decreased
- ☐ regional coherence increased
- ☐ the country was further destabilized
- ☐ sanctions did not target the elites who are responsible for the violations
- ☐ further cleavages between parties/countries
- ☐ Other: [ ]

*More than one option may be chosen.*

### Do you think the overall process rather improved or worsened the situation in your country?

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>No answer</th>
</tr>
</thead>
</table>

- ☐ 1 = Improved
- ☐ 2 = Mostly improved
- ☐ 3 = No major changes
- ☐ 4 = Mostly worsened
- ☐ 5 = Worsened
What was the most challenging aspect for your country when the sanctions/suspensions were in place?

- decrease of the economy
- shortages of certain products
- planned projects had to be stopped
- infrastructure deteriorated
- spending for education decreased
- spending for health decreased
- other welfare spending decreased
- poverty increased
- human rights violations by the government increased
- human rights compliance by the government decreased
- the change of the government’s policies
- international reputation decreased
- regional coherence decreased
- regional coherence increased
- the country was further destabilized
- sanctions did not target the elites who are responsible for the violations
- further cleavages between parties/countries
- Other: 

More than one option may be chosen.
Suggestions for improvement

What would you change about the human rights clause as an essential element?

Are there tools that would improve the human rights situation in your country more than these essential elements and sanctions?

- Yes
- No
- No answer

Please enter your comment here:

Optional: Please specify in the comment box which tools could improve the human rights situation in your country.

Do you have further suggestions for the European Union to help improve the human rights situation in ACP countries?

- formulate clear requirements on when a country is to be sanctioned
- develop a clear procedure on when a sanction will be imposed
- develop a coherent sanction-process
- more flexibility for sanctions
- more assistance in fulfilling conditions
- increased regular contacts
- more informal discussions
- setting up an independent monitor mechanism
- regular reviews of the situation of a country
- Others:

Optional: More than one option may be chosen.
Appendix
14.1.1.3. EU

EU PTAs and Human Rights

The purpose of this scientific study is to shed light on the development, implementation and actual impact of human rights clauses as an essential element in preferential trade agreements between the European Union and the ACP states. We kindly thank you for assisting us in better understanding the impact of these clauses. In case you do not want to answer a specific question, please feel free to skip this question. If you have any questions concerning the survey, please feel free to contact us at verena.kretzschmar@iwrz.at.

As described below, the survey generally ensures anonymity. However, the first question of the survey will be to enter your name, function, country/institution and e-mail address. You then will be asked if you want to stay anonymous in the study. This means, you will not be cited with your name, function or country/institution in the study. However, it is necessary for the author of the study to know in which name/country/institution the survey taken is answering.

A note on privacy

This survey is anonymous. The record of your survey responses does not contain any identifying information about you, unless a specific survey question explicitly asked for it. If you used an identifying token to access this survey, please rest assured that this token will not be stored together with your responses. It is managed in a separate database and will only be updated to indicate whether you did (or did not) complete this survey. There is no way of matching identification tokens with survey responses.
Negotiation process

In your opinion, who was in favour and against including a human rights clause as an essential element in the preferential trade agreement (such as Art. 9/96 of the Cotonou Agreement) between the ACP states and the EU.

- The majority of the ACP countries (African, Caribbean, Pacific Group of states) has had a genuine interest in including a human rights clause as an essential element in the preferential trade agreement with the EU.
- The majority of the ACP countries has had a faint interest in including a human rights clause as an essential element in the preferential trade agreement with the EU.
- The majority of the ACP countries opposed the inclusion of a human rights clause as an essential element in the preferential trade agreement with the EU.
- It was the main interest of the EU to include a human rights clause as an essential element.
- Several interest groups/lobbies have had a genuine interest in including a human rights clause as an essential element.
- Several interest groups/lobbies opposed including a human rights clause.
- Other:

  [Comment only when you choose an answer.]

More than one option may be chosen.
Optional: You may specify your answer in the comment boxes.

From your point of view, what did the parties who wanted to include the human rights clause as an essential element, want to achieve? They wanted ...

- to include a tool to suspend development funds
- to include a tool to coerce a country/political elites to a certain behaviour
- to foster democracy
- to foster human rights
- to protect one’s own industry/business
- to diffuse one’s own values/culture/norms
- to exert one’s own power over others
- Other:

  [Comment only when you choose an answer.]

More than one option may be chosen.
What did parties who were against including the human rights clause as an essential element fear?

- the dominance of another party/country
- a hidden import protection
- a decrease in imports
- a decrease in exports
- paternalism
- the loss of sovereignty
- Other: [ ]

*More than one option may be chosen.*

Which aspects of the negotiation process have been most challenging for the European Union?

- to convince the ACP states to implement the human rights clause as an essential element
- the unity of ACP states
- the economic importance of ACP countries to the EU
- the security interests of the EU towards ACP countries
- the EU dependence on energy
- the EU dependence on rare-earth metals
- the EU dependence on oil/gas
- the EU dependence on diamonds
- the EU dependence on other natural resources
- the EU dependence on other exports of ACP countries
- Other: [ ]

*More than one option may be chosen.*

How satisfied are you with the included clause?

- [ ] 1
- [ ] 2
- [ ] 3
- [ ] 4
- [ ] 5
- [ ] No answer

*1 = very satisfied, 5 = not satisfied at all*

Did the negotiations meet your interests?

- [ ] 1
- [ ] 2
- [ ] 3
- [ ] 4
- [ ] 5
- [ ] No answer

*1 = completely met interests
2 = met interests for the most part
3 = somewhat met interests
4 = did not meet interests for the most part
5 = did not meet interests at all*
How did you apply your interests during the negotiations; respectively, how did the European Union gain leverage?

- by means of the relative dominance of the European Union
- by means of the dependence of ACP states on the European Market
- by means of the dependence of ACP states on aid from the EU
- due to disparity between ACP states
- due to incompatibility with WTO rules
- due to international support for EU actions
- due to similar approaches of other institutions/states towards the ACP countries (e.g., the US)
- Other: 

More than one option may be chosen.

Which of the EU’s interests were not considered?

- the decrease in development aid
- the decrease in aid for trade
- the decreased import of guaranteed agreed quantities of certain products to the EU
- the decrease of guaranteed prices for exports of certain products to the EU
- the decrease of tariff concessions
- the decrease of other guarantees regarding preferential trade agreement policies for certain products
- the protection of international property rights
- equality treatment among members of the ACP Group
- differentiation among members of the ACP Group
- the decrease of special treatment of developing countries
- the request not to restrict contents of the Cotonou Agreement/EPAs solely to direct trade issues
- all of the EU’s relevant interests were considered
- Other: 

More than one option may be chosen.

Optional: Further aspects of the negotiation worth mentioning:
Activation of the human rights clause as an essential element (e.g. Art. 96 Cotonou Agreement)

Please rank: Who is most and least likely to report human rights violations in the ACP-countries to the European Union?

Double-click or drag-and-drop items in the left list to move them to the right - your highest ranking item should be on the top right, moving through to your lowest ranking item.

Your choices | Your ranking
---|---
neighbouring countries | 
other ACP countries | 
the country’s own population | 
United Nations | 
African Union | 
European Union | 
other NGOs | 
Human Rights Watch | 
Amnesty International | 
Doctors Without Borders (Médecins Sans Frontières) | 
other international NGOs | 
national election observers | 
local NGOs | 
media | 
other | 

Please rank: Who monitors human rights compliance most and least often?

Double-click or drag-and-drop items in the left list to move them to the right - your highest ranking item should be on the top right, moving through to your lowest ranking item.

Your choices | Your ranking
---|---
the country itself | 
the country’s population/civil society | 
neighbouring countries | 
other ACP countries | 
United Nations | 
African Union | 
European Union | 
other NGOs | 
Human Rights Watch | 
Amnesty International | 
Doctors Without Borders (Médecins Sans Frontières) | 
other international NGOs | 
national election observers | 
local NGOs | 
media | 
other |
In your perspective, what could be the reason why the European Union does not act immediately or more often when human rights are violated?

- difficulties to perceive human rights violations
- difficulties to prove human rights violations
- It was estimated that sanctions would not improve human rights compliance
- due to the economic importance of a country
- due to the strategic importance of a country
- due to the leverage of a country
- due to possible reputations losses of the reporting country
- due to complicated procedures to activate the clause
- because the clause is seen as a last resort
- because the EU is reluctant to use the clause due to the colonizing history of some member states
- due to reluctance to intervene in national processes
- due to the breach of sovereignty that an intervention entails
- because countries oppose the clause in general
- because the relative change of human rights compliance was minimal
- due to potential unintended consequences
- Other: ________

*More than one option may be chosen.

Do you know incidents when a country/party threatened another country/party to apply the clause to achieve its interests?

- Yes
- No
- No answer

Is it comprehensible for you in which situations the clauses/consultations/sanctions are applied and in which they are not activated?

- 1
- 2
- 3
- 4
- 5
- No answer

1 = yes
2 = most of the time
3 = sometimes
4 = rarely
5 = no
EU-ACP PTAs And Their Impact On Human Rights Compliance: A Qualitative Approach

Appendix

Application of the clause and coherence

Please rank, against whom is the clause most and least often applied?

Double-click or drag-and-drop items in the left list to move them to the right - your highest ranking item should be on the top right, moving through to your lowest ranking item.

Your choices

ACP countries
EU member states
least developed countries
developing countries
developed countries
countries with a stable government
countries with an unstable government
autocratic countries
authoritarian countries
democratic countries
countries that are less economically important to the EU
countries that are less strategically important to the EU
countries that are less important to the EU with regards to security deliberations

Your ranking

The European Union is sometimes criticized for being incoherent when applying the clause due to different interests of its member states - Did member states state different interests throughout the negotiations to apply the human rights clause against an ACP country?

☐ 1  2  3  4  5  No answer

1 = yes
2 = most of the time
3 = sometimes
4 = rarely
5 = no

Did former colonial powers have special interests concerning their former colonies?

☐ 1  2  3  4  5  No answer

1 = yes
2 = most of the time
3 = sometimes
4 = rarely
5 = no
The EU is criticized for preferring economic and security relevant considerations over political or human rights considerations. In your view, is this criticism justified?

- Comment only when you choose an answer.

☐ Yes
☐ No

Optional: Please specify why or why not in the comment boxes. Can you name examples?

The EU is criticized for sanctioning relative deteriorations of human rights compliance but not taking into account the absolute level of human rights violations. In your view, is this criticism justified?

- Comment only when you choose an answer.

☐ Yes
☐ No

Optional: Please specify why or why not in the comment boxes. Can you name examples?

The European Union has been criticized to act only when coups d'état happen and to act too late when human rights violations occur. Is this criticism justified?

- Comment only when you choose an answer.

☐ Yes
☐ No

Optional: Please specify why or why not in the comment boxes.
Impact of the human rights clause as an essential element

What impact do you think does the appliance of the clause have on an actual human rights situation?

- 1 = large impact
- 2 = significant impact
- 3 = some impact
- 4 = almost no impact
- 5 = no impact at all

To what cause may the clause be applied?

- to improve human rights compliance
- to prevent human rights violations
- to condemn human rights violations
- to ensure the stability of a country
- to condemn an illegal change of the constitution
- to condemn flawed elections
- to condemn a breach of other democratic principles
- to prevent an armed conflict
- to prevent a civil war
- to prevent a coup d'état
- to condemn a coup d'état
- to end a civil war
- to end an armed conflict
- Other: [text field]

- More than one option may be chosen.
### How could the clause be more effective?

- [ ] If clear requirements are formulated regarding in which cases a country is to be sanctioned
- [ ] If a clear procedure is developed concerning in which situations sanctions will be imposed
- [ ] If a coherent sanction-process is developed
- [ ] If sanctions are more flexible
- [ ] If more assistance is granted to fulfill the imposed conditions
- [ ] If regular contacts are increased
- [ ] If informal discussions are increased
- [ ] If an independent monitor mechanism is set up
- [ ] If regular reviews of the situation of a country are compiled
- [Other: ]

*More than one option may be chosen.*

### Optional: Do you have further suggestions to help improve the human rights situation in ACP countries or to improve the implementation of the human rights clause?

...
Discussions of the Cotonou Framework

How often are the ACP/EU - Cotonou frameworks discussed in the European Parliament?

- frequently, once a week
- often, once a month
- sometimes, once every six months
- rarely, once a year
- never
- Other:

Comment only when you choose an answer.

You may use the comment boxes to specify your answer.
More than one option may be chosen.

How often are the ACP/EU - Cotonou frameworks discussed in parliamentary committees?

- frequently, once a week
- often, once a month
- sometimes, once every six months
- rarely, once a year
- never
- Optional: (frequency of) other political institutions where the Cotonou framework is discussed
- Other:

Comment only when you choose an answer.

You may use the comment boxes to specify your answer, e.g. in which parliamentary committees the issue is discussed.
More than one option may be chosen.
Further comments

Optional: Further comments on the topic:

Would you like to receive the completed study?

- Yes
- No
- No answer

Please enter your comment here:

If you choose yes, please be sure you have entered your e-mail address at the beginning of the survey. If you have not done so please enter it in the comment box.

Thank you very much for your input and your time. It is appreciated very much and will help to improve the understanding of the human rights clause as an essential element in all aspects.

Print your answers.
14.1.2. Text of E-Mails to chapter 3.3.

14.1.2.1. ACP

Study of the human rights clauses (essential elements) in EU-ACP preferential trade agreements - FR: Étude des clauses relatives aux droits de l'homme (éléments essentiels) dans les accords commerciaux préférentiels UE-ACP

Veuillez trouver la version française ci-dessous.

Excellency,

I would like to invite you to be part of a scientific project conducted jointly by the Universities of Innsbruck and Salzburg.

The purpose of this project is to shed light on the development, implementation and actual impact of human rights clauses as an essential element in preferential trade agreements between the European Union and the ACP states, respectively your country.

While the preferences as well as the negotiation positions of the European Union vis-à-vis such human rights clauses in preferential trade agreements have already been studied extensively, we currently lack a thorough scientific understanding of both the preferences and the negotiation positions of ACP states. Therefore, this study focuses on interviewing crucial experts of the ACP states. In your role as an expert, your opinion on this matter would be greatly appreciated. We would be honored if you had time for an interview (over skype or phone) or if you would be so kind as to answer the questions in the following survey, whatever is more convenient for you.


If your country has been involved in consultations, sanctions or suspensions of aid, the additional answering of the following survey would be most welcome:


We would highly appreciate if you were to send this survey also to other experts in this field.

Thank you very much in advance for your help in shedding light on the ACP-view on this important matter.

Yours sincerely,

Verena Kretzschmar  Prof. Dr. Andreas Maurer  Assoc.-Prof. Dr. Gabriele Spilker
University of Innsbruck  University of Salzburg
Votre excellence,

Je voudrais vous inviter à participer à un projet scientifique mené par les universités d’Innsbruck et de Salzbourg.

L’objectif de ce projet est d’éclairer le développement, l’implémentation et l’impact réel des clauses des droits de l’homme en tant qu’élément essentiel des accords commerciaux préférentiels entre l’Union Européenne et les états ACP, en particulier votre pays.

Tandis que les préférences et les positions de négociation de l’Union Européenne par rapport à ces clauses des droits de l’homme ont été étudiées de manière approfondie, il nous manque actuellement une compréhension scientifique approfondie des préférences et des positions de négociation des états ACP. C’est pourquoi cette enquête est intéressée à questionner les experts cruciaux des états ACP. En tant qu’expert votre opinion sur ce sujet sera très appréciée. Nous serions honorés si vous aviez le temps pour un entretien (par Skype ou par téléphone) ou si vous aviez l’obligance de répondre aux questions dans le sondage suivant.


Si votre pays était concerné par des consultations, sanctions ou suspensions d’aides, nous vous prions de répondre aussi au sondage suivant.


Nous vous serions extrêmement reconnaissants si vous aviez l’obligance de faire suivre ce sondage aussi à d’autres experts de ce sujet.

Nous vous remercions profondément à l’avance de nous aider à éclairer ce sujet important.

Meilleures salutations,
Veuillez trouver la lettre d’accompagnement signée ci-jointe.

HERMES
HUMAN RIGHTS
ECONOMY AND TRADE
RIGHTS COMPLIANCE
MEASUREMENT
EVOLVEMENT
STUDIES

14.1.2.2. EU

Study of the human rights clauses (essential elements) in EU-ACP preferential trade agreements - FR: Étude des clauses relatives aux droits de l’homme (éléments essentiels) dans les accords commerciaux préférentiels UE-ACP

Veuillez trouver la version française ci-dessous.

Excellency,

I would like to invite you to be part of a scientific project conducted jointly by the Universities of Innsbruck and Salzburg.

The purpose of this project is to shed light on the development, implementation and actual impact of human rights clauses as an essential element in preferential trade agreements between the European Union and the ACP states.

While there have been several statistical analyses of the topic, there are few detailed, in-depth attempts to analyze the unique situations of the individual ACP states. We therefore currently lack a thorough scientific understanding of both the preferences and the negotiation positions of ACP states and the impact of consultations, sanctions or suspension of aid on these states.

While the study focuses on ACP countries, the view of the European Union should not be neglected. Therefore, this study focuses on interviewing crucial experts in the European Union and the ACP states. In your role as an expert, your opinion on this matter would be greatly appreciated. We would be honored if you had time for an interview (over skype or phone) or if you would be so kind as to answer the questions in the following survey:


We would highly appreciate if you were to send this survey also to other experts in this field.
Thank you very much in advance for your help in shedding light on this important matter.

Yours sincerely,

Verena Kretzschmar  
Prof. Dr. Andreas Maurer  
Assoc.-Prof. Dr. Gabriele Spilker

University of Innsbruck  
University of Salzburg

Please find the signed cover letter attached.


Votre excellence,

Je voudrais vous inviter à participer à un projet scientifique mené par les universités d’Innsbruck et de Salzbourg.

L’objectif de ce projet est d’éclairer le développement, l’implémentation et l’impact réel des clauses des droits de l’homme en tant qu’élément essentiel des accords commerciaux préférentiels entre l’Union Européenne et les états ACP.

Tandis qu’il existe quelques analyses statistiques de ce sujet, il y a peu de tentatives détaillées et approfondies consacrées à analyser les situations uniques des états ACP individuels. Pour cette raison il nous manque actuellement une compréhension scientifique approfondie des préférences et des positions de négociation des états ACP d’un côté et de l’impact de consultations, sanctions ou suspensions d’aides sur ces états de l’autre.

Tandis que l’enquête se concentre sur les pays ACP, l’opinion de l’Union Européenne ne sera pas négligée. C’est pourquoi cette enquête est intéressée à questionner les experts cruciaux de l’Union Européenne et des états ACP. En tant qu’expert votre opinion sera très appréciée. Nous serions honorés si vous aviez le temps pour un entretien (par Skype ou par téléphone) ou si vous aviez l’obligeance de répondre aux questions dans le sondage suivant.


Nous vous serions extrêmement reconnaissants si vous aviez l’obligeance de faire suivre ce sondage aussi à d’autres experts de ce sujet.

Merci beaucoup à l’avance de nous aider à éclairer ce sujet important.
Meilleures salutations,

Verena Kretzschmar  Prof. Dr. Andreas Maurer  Assoc.-Prof. Dr. Gabriele Spilker
Université d’Innsbruck  Université du Salzburg

Veuillez trouver la lettre d’accompagnement signée ci-jointe.

HERMES
HUMAN RIGHTS ECONOMY AND TRADE RIGHTS COMPLIANCE MEASUREMENT EVOLUTION STUDIES
14.2. Graphs to chapter 4.4.
### 14.3. Tables to chapter 6.3.

<p>| country          | year | conflict | coup | coup | sanct. | TOTREC | TOT | AUT | BEL | CZE | DNK | FIN | FRA | GER | GRE | HUN | IRE | ITA | LUX | NED | POL | PRT | SVK | SLO | ESP | SWE | GBR |
|------------------|------|----------|------|------|--------|--------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Angola           | 2000 | no       |      |      |        | 1      | 1   | 1   | 1   | 1   | 1   | 1   | 1   | 1   | 1   | 3   | 1   | 3   | 1   | 3   | 1   | 1   | 1   | 3   |     |     |     |     |
| Burundi          | 2000 | yes      |      |      |        | 0     | 0   | 2   | 0   | -   | -   | -   | 0   | 0   | 0   | 2   | 2   | 0   | 0   | 0   | -   | -   | -   | 2   | 0   | 0   |     |     |     |
| Chad             | 2000 | no       |      |      |        | 2     | 2   | -   | 0   | -   | -   | -   | -   | 2   | 0   | -   | -   | -   | -   | -   | -   | -   | -   | -   | 2   | 0   |     |     |
| Comoros          | 2000 | no       |      |      |        | 1     | 1   | -   | 3   | -   | -   | -   | 1   | 1   | -   | -   | -   | -   | -   | -   | -   | -   | -   | -   | -   | 3   |     |     |     |
| Congo, Dem. Rep. | 2000 | no       |      |      |        | 0     | 0   | 0   | 0   | -   | -   | -   | 2   | 2   | 0   | 2   | 0   | 0   | 0   | -   | -   | -   | 2   | 2   | 0   |     |     |     |     |
| Cote d'Ivoire   | 2000 | no       |      |      |        | 1     | 1   | 3   | 3   | -   | -   | -   | 1   | 1   | 3   | -   | 3   | -   | 3   | -   | -   | -   | 1   | 1   | 1   |     |     |     |     |
| Djibouti         | 2000 | no       |      |      |        | 1     | 1   | -   | 1   | -   | -   | -   | 1   | 1   | -   | -   | 3   | -   | -   | 3   | -   | -   | -   | -   | -   | -   | -   | -   |     |
| Eritrea          | 2000 | no       |      |      |        | 3     | 3   | 3   | 3   | -   | -   | 3   | 1   | 3   | 3   | 3   | 3   | -   | 3   | -   | 3   | -   | -   | 3   | 3   | 3   |     |     |     |     |
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| Fiji             | 2000 | yes      |      |      |        | 1     | 1   | -   | -   | -   | -   | -   | 1   | 1   | -   | -   | -   | -   | 1   | -   | -   | 1   | -   | -   | -   | -   | -   | -   |     |     |     |
| Guinea-Bissau    | 2000 | no       |      |      |        | 0     | 0   | 2   | 0   | -   | -   | -   | 0   | 0   | 0   | -   | 2   | -   | 0   | 0   | -   | -   | 0   | 2   | 0   |     |     |     |     |
| Guinea           | 2000 | yes      |      |      |        | 1     | 1   | 3   | 3   | -   | -   | 3   | 1   | 1   | 1   | 3   | 3   | 1   | 1   | 1   | 3   | 3   | 1   | 1   | 1   | 3   | 1   |     |     |     |     |
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| Rwanda           | 2000 | no       |      |      |        | 2     | 0   | 0   | 2   | -   | -   | -   | 2   | 2   | 2   | 2   | 2   | 0   | 0   | 2   | -   | -   | -   | 0   | 0   | 0   |     |     |     |     |
|----------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Senegal        | con-| conflict | no | 1  | 1 | 3 | 1 | - | 1 | 1 | 1 | 1 | - | - | 1 | 3 | 3 | 3 | 1 | 3 | - | - | 1 | 3 | 3 |
| Sierra Leone   | con-| conflict | no | 0 | 0 | 0 | 0 | - | 0 | 2 | 0 | 2 | - | - | 0 | 0 | 2 | 0 | 2 | - | - | - | - | - | 0 | 0 |
| Sudan          | con-| conflict | no | 1 | 3 | 1 | 1 | - | 3 | 1 | 3 | 1 | 1 | - | 1 | 3 | 1 | 3 | 1 | - | - | - | - | 1 | 3 | 1 |
| Uganda         | con-| conflict | no | 3 | 3 | 1 | 3 | - | 3 | 1 | 3 | 1 | 3 | - | 3 | 3 | - | 3 | - | - | - | - | - | 1 | 3 | 3 |
| Burundi        | coup | no | 2001 | 0 | 0 | 2 | 0 | - | 2 | 2 | 0 | 0 | - | 0 | 0 | 2 | 0 | - | - | - | - | - | 0 | 2 | 2 |
| Central African Republic | con-| conflict | no | 0 | 0 | 0 | 2 | - | - | - | 0 | 2 | 0 | - | - | 2 | - | - | - | 0 | - | - | - | 0 | - | - |
| Cote d'Ivoire  | coup | no | 2001 | 2 | 2 | 2 | 2 | - | - | 2 | 0 | 2 | - | - | 0 | 0 | 2 | - | - | - | - | - | 2 | 2 | 0 |
| Somalia        | con-| conflict | no | 0 | 0 | 0 | - | - | 2 | 0 | 2 | 2 | - | - | 0 | 0 | - | 0 | - | - | - | - | - | 0 | 0 |
| Angola         | con-| conflict | no | 0 | 0 | 0 | 2 | - | 2 | 0 | 0 | 0 | - | - | 0 | 2 | 0 | 0 | - | 0 | - | - | - | 0 | 0 |
| Congo, Rep.    | con-| conflict | no | 2 | 0 | 2 | 0 | - | - | 0 | 0 | 0 | 0 | - | - | 0 | 0 | 2 | 0 | - | - | - | - | 0 | - | - |
| Cote d'Ivoire  | coup | &amp; con-| conflict | no | 3 | 3 | 3 | 3 | - | 3 | 3 | 3 | 1 | - | - | 3 | 3 | - | 3 | - | - | - | 3 | 3 | 3 |
| Central African Republic | 2003 | coup | yes | 1 | 3 | 1 | 1 | - | - | - | 3 | 1 | - | - | 1 | 3 | - | - | - | - | - | - | 3 | 1 | - |
| Eritrea        | con-| conflict | no | 0 | 2 | 2 | 2 | - | 0 | 0 | 2 | 0 | - | - | 0 | 0 | - | 2 | - | - | - | - | 0 | 2 | 0 |
| Guinea-Bissau  | coup | no | 2003 | 3 | 3 | 3 | 1 | - | 1 | - | 1 | 1 | - | - | 3 | - | 3 | 3 | 3 | - | - | - | 3 | 3 | - |</p>
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Table 4: Accordance with EU action.
0 = EU Member State and EU Institutions both did not reduce aid;
1 = EU Member State and EU Institutions did both reduce aid;
2 = only the Member State did reduce aid;
3 = only the EU did reduce aid.
### Table 5: Accordance with EU action, sanctioned incidents only

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</table>

0 = EU Member State and EU Institutions both did not reduce aid; 1 = EU Member State and EU Institutions did both reduce aid; 2 = only the Member State did reduce aid; 3 = only the EU did reduce aid.

Boxplot of the sanction status of coups/conflicts and the share of EU development assistance in the overall development assistance in the year of the coup or conflict including the Fiji 2000 case.

![Boxplot of EU aid share and sanction status](image-url)
The impact of human rights conditionality in trade agreements between the European Union and the ACP states on human rights compliance
# Contents

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1 Introduction

The European Union takes up the cause of fostering democracy and human rights\textsuperscript{1}. Since the 1990s the European Union has been using its market power to implement so called ”essential elements” in its trade agreements with third countries. One of these essential elements is the human rights conditionality, which states that if human rights are violated, trade sanctions may be imposed on the trading partner. Since then it has been debated, if this conditionality actually impacts human rights compliance. This question is relevant for decision makers, especially in the European Union, but also for other trading powers such as the U.S., who also includes human rights clauses in its treaties. The decision of the European Union in 1995 to include such clauses in all its coming treaties has been controversial. Debates increased particularly when a trade agreement with Australia and New Zealand could not be concluded due to the essential element clause\textsuperscript{2}. Therefore, the aim of this paper is to examine, if it is of worth, to include such clauses. In detail, this paper will investigate if human rights conditionality in trade agreements between the European Union and the African, Caribbean and Pacific (ACP) states does affect human rights compliance in these states. This study will use an empirical analysis to investigate this question further. The following chapter \textsuperscript{2} will show the state of the literature in this field of studies. Chapter 3 explains trade relations between the European Union and the ACP states. Thereafter, the development of the essential element clause (chapter 4) will be depicted and followed by the analysis of how the essential element clause has been established (chapter 5). Chapter 6 includes the empirical analysis where the methods and data used, the models and the results with its problems are described. A fixed effects model 6.3.1 will come to no clear results as to what effects the conditionality has. A difference in differences model 6.3.2 will imply that conditionality may not have major impacts.

\textsuperscript{1}see Treaty of the European Union, Article 1
\textsuperscript{2}Australia and New Zealand decided to not include such clauses in any of their agreements for political reasons.
The results and implications of the chapters mentioned before will be summarized in the conclusion (chapter 7).

2 Recent Literature

The academic literature about human rights and trade is composed of two main strands: the liberal and the institutionalist theory.

The liberalist strand is the most established strand in the field. As the liberal theory suggests, in these studies states are the main actors on the international field, who act according to their agency. The states act in a rational behavior. The main argument is that a liberalization of the markets does not only foster growth and thus development including human rights compliance; it furthermore connects actors on various stages. Hence, they are increasingly dependent on each other. This prevents conflicts with the included partners. Economic liberalization therefore leads to political liberalization and freedom – which fosters human rights compliance. Generally, Harrelson-Stephens & Callaway (2003) argue that countries with liberalized trade policies are less likely to exhibit security rights violations. They undermine this argument with a pooled cross-section time series design and data of 110 countries from 1976 to 1996 as well as the Political Terror Scale and measures of trade openness and human rights violations (such as democracy, economic standing, the end of the cold war, civil war, and international war). However, this study looked at no other categories of human rights except security rights. Furthermore, foreign aid was not included in the study. Another substrand emphasizes the importance of trade unions when it comes to human rights compliance (Curran et al. 2008a, Evans 2015). One direction of this discourse points to foreign direct investments (FDI) and their impact on human rights. Studies find that FDI support trade which indirectly support human rights compliance. Apodaca uses a pooled times-series OLS regression with panel-corrected standard errors for the quantitative analysis. The data set includes 152 developing coun-
tries of Eastern Europe and the former Soviet Union, from 1990 to 1996. Human rights violations are again measured by the Political Terror Scale (Apodaca 2001, 596). State characteristics are measured by democracy, conflict and social welfare spending – however, social welfare spending is measured solely by expenditures for education. Conflict is measured as a binary variable yet there may be states that are on the brink of conflict or suffered a conflict not long ago (Apodaca 2001, 595). An ordinal scale could take these situations better into account. Blanton provides a view from another perspective and evaluates the influence of human rights on trade. In this case, the correlation between trade and human rights is also positive (Blanton & Blanton 2007a,b). Some authors focus on trade agreements that impose a conditionality concerning human rights and find a positive influence on human rights compliance through trade agreements. This is due to the market power (Horng 2003) that the European Union and the U.S. impose on third parties, who would rather not sign treaties with hard human rights clauses but are forced to in order to get access to these important markets (Hafner-Burton 2005, 2013). In these studies an ordered logit and an ordinary least squares model is used. Data to measure human rights is derived from an ordinary variable with nine levels, created by Cingranelli & Richards (1999) also known as the CIRI Human Rights Data Project. It includes the period from 1981 to 2003. Furthermore, data of Poe & Tate (1994) for the period 1976 to 2003 is used as a robustness check. She also included the number of Human Rights Organizations in a country as an instrument variable. However, Hafner-Burton is not clear about which human rights she is looking at (Peksen 2010). Furthermore, she does not take the importance of norms and ideas into account. Neither does she go into detail about how trade agreements should be comprised to foster human rights (Betts & Hafner-Burton 2011). As Harrelson-Stephens & Callaway (2003) criticize, also the measurement of the trade variable may be problematic: These are measured, as in most studies, as the total of exports and imports as a share of gross domestic product. However, there may be a difference between two states with the same
level of exports and imports. For example, state A may share 70% exports and 30%
imports and state B derives its trade of 30% exports and 70% imports. State
A may be less dependent on imports and having a less open market than state A.
However, in the statistics, they will have the same amount of trade. Therefore,
(Harrelson-Stephens & Callaway 2003) measure trade openness with a ranking of
the countries on a scale of one to four based on their level of imports and for their
level of exports. These two rankings are then added together producing an ordinal
variable ranging from two to eight. Unfortunately, this method is used only by
these authors and in no other study presented here. Spilker & Böhmelt (2013)
replicated Hafner-Burton’s study with the same problematic method– however, no
further quantitative studies in this specific field could be found regarding trade
agreements and human rights compliance. With different variables and methods
to measure human rights compliance, this field could be explored further.

The second strand is an institutionalist view on human rights compliance. As the
literature concentrates on new institutionalism and network theory this subcate-
gories shall be examined in more detail. New institutionalism studies the role of
supranational institutions in the international arena. In theory, institutions are
independent actors who generate, change and shape values, norms, and politics
of interaction (Holland 2002, 241-242). On these grounds, they are able to in-
fluence domestic policies rather than being mere instruments of states. Most of
the literature argues for a positive influence of trade on human rights. This may
be through acculturation that influences state behavior (Goodman & Jinks 2004,
703), or shaming of parties that violate human rights (Murdie & Davis 2012). The
methods used in the latter study were an ordinary least squares regression with
Newey–West standard errors and a probit generalized estimating equation model
with an autoregressive lag. Data is derived from a new data set of the presence
and the shaming activities of more than 400 HROs toward governments between
the years 1992-2004 (Murdie & Davis 2012, 6-7). However, the authors recognize
shortcomings of the use of events data, such as missing out events that were not
on the news – they controlled for the total number of events concerning the country through Reuters, though. Additionally, regional events may have not been captured (Murdie & Davis 2012, 6). Another reason posed in a study were the actions of international governmental organizations (IGOs) that commit themselves on human rights enhancements (Boehmer et al. 2005). This study used a pooled time-series cross-national data with a unit of analysis of non-directed dyad-years (Boehmer et al. 2005, 17). Moreover, trade networks seem to have as much of an effect as democracy on human rights compliance, if indirect effects of trade networks are taken into account (Dorussen & Ward 2010). However, several more recent studies find evidence for a negative or no effect of trade on human rights compliance. First, only countries that are already willing to comply to human rights may sign trade agreements that include human rights conditionalities. Agreements, thus, are only instruments to enforce law (Spilker & Böhmelt 2013). This study uses genetic matching techniques as a method and existing data on human rights compliance from Poe & Tate (1994) and the Political Terror Scale as well as newly compiled information on PTAs between 1976 and 2009. The time-series cross-section includes data for 174 countries with 249 PTAs. Second, countries that violate human rights may use indirect trade channels through intermediary states to benefit from the international system without having to bear the domestic policy costs of human rights compliance (Chyzh 2016). The study includes a co-evolutionary actor-oriented longitudinal-network model (Chyzh 2016, 409). Data is obtained from the Correlates of War Trade Data (Barbieri et al. 2009) and the again the CIRI Human Rights Data Project in a newer version (Cingranelli & Richards 2010).

Several studies support the argument that trade agreements of the European Union are not effective in fostering human rights compliance. However, these studies derive from different theories. Two studies argue that the European Union is not coherent regarding the conditionality of its trade agreements. This is due to turf wars between the institutions and member states within the EU. Accordingly, the
tensions between these actors weaken the EU’s agency \cite{Mckenzie2016,Abass2004,Meunier2006}. Furthermore, Meyn suggests that the outcomes of the most recent EPAs have been non-satisfactory for the involved ACP states (African, Caribbean, and Pacific states) due to the asymmetry of power and a push through method of the EU. Not only are the outcomes based on threads, moreover the EU market has become less attractive for ACP products \cite{Meyn2008}. Schultz states that economic sanctions are not human rights neutral and may be a cause of human rights violations rather than compliance \cite{Schultz2007, Ball2007, 72}.

As the literature review implies, there is an ongoing discourse whether trade is beneficial for human rights compliance or rather counter-productive. However, there have been few studies about the impact of past trade agreements on human rights compliance that involves a quantitative analysis of special cases of trade agreements. Therefore, this paper tries to fill this gap by analyzing the trade agreements between the European Union and the ACP states, more specifically the impacts of the Cotonou agreement on human rights compliance in the ACP states.

In all the studies the endogeneity problem is omnipresent, thus it may never be erased completely. Solely Hafner-Burton \cite{Hafner-Burton2005, Hafner-Burton2013} used an instrument variable to reduce this problem – however, the instrument variable used may be biased too. To reduce the bias as much as possible, this study will try to use most of the variables of the quantitative studies above to form a comprehensive and wide spread quantitative analysis of the linkage between human rights and trade agreements.

3 Trade between the EU and Africa

The European Union has a long trading history with African countries. Its relationship with ACP states has its roots in the colonialism of its member states \cite{Hurt2012, 497}. A first agreement called the Yaoundé Agreement between the
EU and former colonies was conducted in 1963. After that, the Lomé agreement with its four revisions followed. In 2000 the Cotonou agreement took the place of the Lomé agreements. In the agreement it was already concluded, that separate regional trade agreements called Economic Partnership Agreements (EPAs) with regionally specific rights and obligations will be negotiated. Basically, since 1975 access to European markets of the Eastern and Southern Africa (ESA) countries is mostly duty free and non-reciprocal except for special market access for certain products (Curran et al. 2008, 529–532). In addition, the European Development Fund offered development aid for these countries (Gammage 2014, 782). Furthermore, the EU committed to import a set quota of certain goods, such as sugar, from ACP states at a guaranteed price (Hurt 2012, 497). However, in the 1980s popular neoliberalist thinking was being introduced into the European Union. Therefore, after the first Lomé agreement, the EU adopted neoclassical development thinking (Hurt 2012, 497). This meant, that enhancing free global markets was more emphasized than aid. Furthermore, the EU sees its trade agreements not only as a tool for development, but also as a vehicle “to export its own standards of law and democracy to other countries” (Gammage 2014, 780). Particularly, the regulation of human rights through trade using conditionality is seen as a tool that enhances Human Rights because these rules can be enforced. Conditionality means that trade preferences are being upheld only, if the beneficiary country complies with certain political and social standards. This strategy has been implemented since 1995, when Human Rights became an essential element clause in trade agreements of the European Union (Gammage 2014, 781). The negotiation of EPAs with the African, Caribbean and Pacific (ACP) group of states started in 2003. Currently there are seven regional groupings of countries that are shown in table 1. The EPA with the Caribbean states, also known as CARIFORUM, was the first EPA to be concluded. It includes several references to human rights, democratic

3Please note that the Eastern and Southern Africa (ESA) group is divided into two groups because some members already signed the agreement whereas other countries did not.
principles and the rule of law as essential elements and “good governance” as a fundamental element (Aaronson 2011, 454).

Another example of an EPA is the Eastern South Africa (ESA) group containing six countries. In 2009, the countries of Madagascar, Mauritius, Seychelles and Zimbabwe signed the agreement. It has been applied since May 14, 2012 (European Commission 2016). Since then these countries acquired duty-free, quota-free access to the EU market. At the same time the agreement includes a gradual liberalization of 80 % of EU imports by 2022 (European Union Delegation to the Republic of Zimbabwe 2016).

The EPA negotiations have been surrounded by much speculation and critique. Main points of critique have been that negotiations have not been held between equals but the EU forced its market power on the developing countries (Gammage 2014, Hurt 2012, Curran et al. 2008a, Borrmann et al. 2007, Mbithi et al. 2015, Sanders 2015). Additionally, critics see EPAs as an attempt to foster mainly the EU’s own interests and the opening of vulnerable markets which may decrease regional trade (Curran et al. 2008b, 530). Often the import of subsidized food from the European Union is mentioned as an example on how the trade agreements may hinder local market development (Ramessur-Seenarain 2009, Gammage 2014). This harm can be especially seen through the austerity, stabilization, and recovery policies the IMF imposed on countries in the 80s, which had severe negative impacts on living conditions (Horning 2008, 423-424). Section 6.4 will examine the critique of EPAs and the Cotonou agreement in more detail.

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4 references may be found in Art. 3, 5, 32; Chapter 5, Art. 191, 193 195; Chapter 6, Art. 196, 197

5 Zambia and Comoros did not sign the agreement.
Table 1: EPA

<table>
<thead>
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<th>Region</th>
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<td>West Africa</td>
<td>Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau</td>
<td>provisional application</td>
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<tr>
<td></td>
<td>Ivory Coast, Liberia, Mauritania, Mali, Niger, Nigeria, Senegal, Sierra</td>
<td>since Sept. 2016</td>
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<td>Leone and Togo, Cameroon, the Central African Republic, Chad, Equatorial</td>
<td>ratification</td>
</tr>
<tr>
<td></td>
<td>Guinea, Gabon, Sao Tome and Principe.</td>
<td>ongoing</td>
</tr>
<tr>
<td>Central Africa</td>
<td>Congo, the Democratic Republic of Congo, Equatorial Guinea, Gabon, Sao</td>
<td>negotiation</td>
</tr>
<tr>
<td></td>
<td>Tome and Principe.</td>
<td>implementing</td>
</tr>
<tr>
<td>Eastern and Southern Africa (ESA)</td>
<td>Djibouti, Eritrea, Ethiopia and Sudan, Malawi, Zambia, Comoros</td>
<td>negotiation</td>
</tr>
<tr>
<td>(negotiation ongoing)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern and Southern Africa (ESA)</td>
<td>Madagascar, Mauritius, the Seychelles, and Zimbabwe</td>
<td>signed Aug. 2009</td>
</tr>
<tr>
<td>(signed)</td>
<td></td>
<td>implemented</td>
</tr>
<tr>
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<td>ratification</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ongoing</td>
</tr>
<tr>
<td>Southern African Development Community</td>
<td>Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland</td>
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<td>provisionally</td>
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<tr>
<td></td>
<td>Guyana, Jamaica,</td>
<td></td>
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<tr>
<td>Caribbean</td>
<td>Saint Lucia, Saint Vincent and the Grenadines,</td>
<td>signed Oct. 2008</td>
</tr>
<tr>
<td></td>
<td>Saint Kitts and Nevis, Surinam, Trinidad, Tobago and the Dominican</td>
<td>applied</td>
</tr>
<tr>
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<td>Republic</td>
<td></td>
</tr>
<tr>
<td>Pacific</td>
<td>Papua New Guinea, Fiji</td>
<td>ratified May 2011/</td>
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<td>July 2014</td>
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<td>provisionally</td>
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Table 2: EPA groups and status of the EPA negotiations.
4 Essential Element Clause Development in European Trade Agreements

Including Human Rights into trade agreements is a relatively new phenomenon. How did the European Union engage in including human rights into trade agreements? A first initialization was made in 1977, when severe human rights violations occurred in Uganda. In that time, the European Union wanted to terminate development funding. However, this was technically not possible under the Lomé Convention \cite{Bartels2013}. The situation was solved informally through the Uganda Guidelines established by the European Union, which allowed to terminate nearly all of the payments. A similar, if not as significant situation occurred in Equatorial Guinea at that time. This was the reason, why it was considered to include human rights in a renewal of the Lomé Convention. The negotiations began in July 1978. However, a division in member states and strong opposition of some ACP states led to no mentioning of human rights in the treaty \cite[Bartels2005, 12]{Bartels2005}.

The situation changed five years later when Lomé III was negotiated. Several circumstances had changed. Firstly, the European Parliament held its first direct election in 1979. That made the institution stronger and more confident within the framework of European Union. On the grounds of public opinion towards human rights, the Parliament took an active role to advance this issue through the “European Parliament Resolution on human rights in the world” in 1983. Secondly, human rights were on the march in general. For instance, the African Charter of Human Rights and People’s Rights was adopted in 1981 \cite[Bartels2005, 13]{Bartels2005}. Despite these actions, Lomé III could only show meagre progress. Lomé III did not more than mentioning human rights in its preamble, where it is stated that the parties have faith in fundamental human rights. In addition, Article 4 mentions to achieve development with respect to dignity.

A next step towards human rights clauses was made 1989 in the Lomé IV, where the parties included a reference to respect human rights, hence human rights were
mentioned in an international agreement for the first time. Some ACP countries still opposed the mentioning of human rights in the treaty, but they were in a weak bargaining position and human rights were still on the rise. When signed, the reference itself encouraged the believe that parties already committed to respect human rights. (Bartels 2005, 14-15).

After this, human rights were included in several treaties and highlighted on several occasions. In the Cooperation Agreement with Central American countries in 1985, the United Nations Charter was mentioned. The preamble of the European Single Act in 1986 mentioned democracy and human rights. South America returned to democracy in the 80s, communism ended in 1989 as did the apartheid regime in 1990. This was accompanied by more and more human rights declarations (Bartels 2005, 16).

A landmark in human rights clauses was marked in the trade agreement between Argentina and the European Union in 1990, where Argentina insisted in including a human rights clause. In the next three years clauses in treaties with Chile, Uruguay, Paraguay, Macao and Mongolia followed (Bartels 2005, 16).

In 1991 the Commission issued a ”Communication on Human Rights, Democracy and Development Cooperation Policy” (Bartels 2005, 17). This was achieved due to the coup in Haiti and the war in Yugoslavia, that again highlighted the need for a clause to be able to suspend financial aid in times of human rights violations through the government (Bartels 2005, 19). The resolution formed the basis of the human rights clause but still was not put into action effectively. This was achieved in the agreements with the Baltic countries and Albania, where for the first time an essential element clause that triggered a suspension clause was introduced (Bartels 2005, 25).

In 1995 the Commission issued the ”Communication on the Inclusion of respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries”. This meant that all agreements concluded after
1995 should include human rights clauses (European Commission 1995). Since then the essential element clause has been including references to the respect of "human rights and democratic principles", to the Universal Declaration on Human Rights and to the respect for the rule of law and good governance. In addition, the Cotonou Agreement includes an anomaly. There it is stated that parties are required to hold consultations 60 days before taking measures in normal cases and 60 days after taking measures in special urgency. The measures are entitled as a last resort. These provisions are not included in any later agreement (Bartels 2005, 29-30).

Why did the European Union establish human rights conditionality in its trade agreements? As the crisis in Uruguay, Ethiopia, Haiti and Yugoslavia showed, there are few options to force to change behaviour of leaders of other countries. There are even fewer options to sanction human right violations. Market access to the European Union is one instrument that may achieve a change of behaviour (Aaronson 2011, 445). There are three ways this instrument could work. At the one hand, it may work as an incentive to foster human rights to obtain market access. Where Europe’s market power is strong enough, countries may be forced to sign a treaty that includes human rights clauses, even if the government is not in favour of the clause. On the other hand, a clause may function as a coercion tool – the thread of the possibility that market access may be restricted and other sanctions provided in the treaty may be triggered may be enough to let oppressive governments think twice before they violate human rights. Thirdly, when sanctions come into action it may actually change the behaviour of the sanctioned countries. However, this is debated and criticized because sanctions most often do not target political elites but especially poor people. This is why some authors claim, that sanctions to foster human rights may actually worsen human rights and conditions for the poor (see chapter 6.4).

Nevertheless, the European Union believes in its human rights conditions. An
aspect of why the Union included such clauses could also be that the failure to protect human rights may affect market access conditions for their own businesses (Aaronson 2011, 445). Another positive impact on human rights through the clause is the setting up of mechanisms for dialogue that allow civil society to monitor compliance. It is also a sign to the parties that human rights are a part of the trade relationship (Aaronson 2011, 448). Furthermore, the trade agreement itself may produce positive spillovers through the exchange of ideas, technologies, processes, and cultural norms and goods. People may become aware of conditions elsewhere and demand them for themselves (Aaronson 2011, 447).

However, the European Union is criticized to not really engage in fostering human rights but to pursue national commercial interests, not global interests (Aaronson 2011, 445). The essential elements clause could be interpreted as a trade action to protect another member’s security or to protect the citizens of another member. Or it could be used to impose trade barriers that are not allowed under WTO rules (Aaronson 2011, 447). This argument is undermined by the few actual imposed sanctions that have been triggered by human rights violations (see table 6 in chapter 6.4). Up until now only the poorest of the African countries have actually been sanctioned, usually due to military coups (Bartels 2005, 37). There is no clear mechanism as to when the European Union will sanction a country. Furthermore, there is no body that actually monitors if human rights violations occur. This is well known and may be the reason, why the clauses are seen as a toothless tiger. Bartels (2005) concludes that ”the reason for the selective application of human rights clauses is essentially geopolitical” and that it “increases the visibility of the EU’s double standards” (Bartels 2005, 40).
5 How Trade Agreement Conditionality May Affect Human Rights

Few of these claims above have been examined empirically. This paper therefore will test some of these points of critique in a fixed effects and a difference in differences model. Therefore, two hypothesis are generated with the liberal theory in mind. The liberal theory is based on a rational actor that acts according to his or her own preferences that are based on an assessment of costs and benefits. If everyone acts rationally as an individual the whole society will gain. Every country should specialize in the products where they are most efficient and have a comparative advantage and trade for the other goods. This will lead to mutual benefits for all included trading partners. Liberal models state that the welfare of a country will increase if it specializes according to their comparative advantage and engage into trade. Protectionism is seen as inefficient as it reduces competition and increases monopoly power. On the other hand, free trade increases available goods and lowers prices, which will again enhance welfare. Trade is seen as an engine of growth (O’Brien & Williams 2016, 104–105). Furthermore, trade establishes dependencies between countries that make a conflict between two dependent countries less likely and therefore enhance peace and freedom. Knowledge diffusion which comes with trade enlarges know-how and education, which again fosters trade, economic growth, political stability as well as welfare and lowers the probability of human rights violations. Opening a country for trade makes it more likely to engage in international organizations. This makes it harder for oppressive regimes to act secretly or engage in human rights violations. With liberalized trade – so the theory – political and social areas may be liberalized and human rights violations reduced.

Trade may also increase foreign direct investment that increases the employment rate. With more people employed consumption and welfare rises. More consumption increases production. With more products available, competition increases,
businesses become more efficient, prices decrease and again people are able to increase their welfare with consumption. Especially trade agreements are seen as a tool that may include hard laws against human rights violations and therefore are able to actually impose sanctions on an oppressive state or an act against human rights violations. Whereas human rights treaties generally lack this enforceability, trade agreements may be able to actually change behaviour. Therefore it is expected that not only trade itself increases human rights compliance, but also human rights conditionality. The effect of human rights law in trading agreements therefore should be strongly positive on human rights compliance. This leads to the first hypothesis.

- Hypothesis 1: The hard human rights law in the Cotonou agreement did foster human rights compliance in the ACP states.

Hypothesis 2 will go into more detail and look into the effect of conditionality in Cotonou agreements compared to countries without hard human rights law in trade agreements to better see the effect of the conditionality itself rather than the effect of trade in general.

- Hypothesis 2: Compared to countries without any hard human rights clause, the Cotonou countries improved their human rights compliance due to the Cotonou agreement and its hard human rights law.

The following section will now try to test these hypothesis.

6 Empirical Analysis

This section will describe the method, the data set, the models and the results of the empirical analysis. Two models will be used which are described in the next section.
6.1 Method

To test the two hypothesis two methods will be used. First, a fixed effects model will be implemented. This panel data model is underlying this analysis. Fixed effects are also known for controlling for all time-invariant effects, irrespective whether observed or not. The model used in this case is:

$$HR_{it} = \beta_0 + \beta_1 hardHR_{it} + \beta_2 \log(trade_{it}) + \beta_3 \log(dens_{it}) + \beta_4 \log(EDU_{it})$$
$$+ \beta_5 \log(FDI_{it}) + \beta_6 \log(GDP_{it}) + \beta_7 dem_{it} + \epsilon_{it}$$

- $HR$ = human rights compliance, calculated from two different indices: the political terror scale (PTS) and the CIRI index, described in the data section
- $hard HR$ = hard human rights clause in a trade agreement
- $trade$ = trade measured as % of GDP
- $EDU$ = expenses for education measured as % of total government expenditures
- $FDI$ = foreign direct investment measured as % of GDP
- $GDP$ = gross domestic product
- $dem$ = measure for democracy in a country, measured in two different indices: the freedom house index (FHI) and the polityIV index (polity)

In a second regression the variable EDU will be dropped due to lack of data.

To test the second hypothesis a difference in differences model will be used:

$$HR_{it} = \beta_0 + \beta_1 Treat_{it} + \beta_2 Control_{it} + \beta_3 (Treat \ast Control)_{it} + \epsilon_{it}$$

This method allows to compare a treatment group with a control group. Ideally the treatment group and the control group should be exactly the same except for
the treatment. However, this is not possible in this study. Therefore, treat is the
treatment, in this case the hard human rights law that came into effect with the
Cotonou agreement in 2000. The treatment group are the countries that signed
the Cotonou agreement and the control group are all countries that do not have a
hard human rights law up until now in any of their trade agreements.

6.2 Data

This study includes most variables that might influence Human Rights Compliance
that have been considered in several quantitative studies of the impact of trade
agreements on human rights compliance ((Apodaca 2001, Harrelson-Stephens &
Davis 2012). Data is mainly derived from the World Bank, but also from some
known Indices and existing studies.

Human Rights Compliance is the interesting variable and regressand in all the
equations. It is measured with two different variables, the Political Terror Scale
(PTS) and the CIRI index. The CIRI index does only measure the physical in-
tegrity rights, therefore it measures only a specific part of human rights on a scale
from zero (no government respect for human rights) to eight (full government re-
spect for human rights). Human rights in this sense include torture, extrajudicial
killing, political imprisonment, and disappearance indicators (Cingranelli et al.
2014). The PTS (Mark et al. 2017) measures levels of political violence and terror
Three sources rate the countries independently on a scale from one to five, whereas
level one indicates a secure rule of law, freedom of speech, no torture and no polit-
ical murders. At level five the whole population is being terrorized and leaders do
not limit themselves to any means to reach their goals and interests. This study
takes the mean of the three ratings. The sources are Amnesty International, the
U.S. State Department Country Reports on Human Rights Practices, and Human
Rights Watch. Again this measurement of human rights compliance does take only
into account certain human rights such as the violations of basic human rights to the physical integrity of the person by agents of the state within the territorial boundaries of the state.

Population density has been a significant variable in some of the studies mentioned above to diminish human rights compliance. Therefore, this variable is included. Data is taken from the World Bank (World Bank 2017). In the equations this variable is logged.

Democracy is considered as positively influencing human rights compliance. It is measured with two different indices. One is the polity2 item of the PolityIV index which is a revised combined polity score to measure how democratic a system is. It ranges from -10 (strongly autocratic) to +10 (strongly democratic). (Marshall et al. 2016). The second measure is the Freedom House Index (FHI) It measures political rights (PR) such as the electoral process, the political pluralism and participation, the funding of government and additional discretionary political rights in a scale from zero to 40. In addition it measures civil rights (CL) such as freedom of expression and belief, associational and organizational rights, rule of law and personal autonomy and individual rights on a scale from zero to 60. The best rating therefore is 100, the worst zero. However, the ratings are only available for a period between 2006 and 2016. Therefore, this variable is simply used as a robustness check (Freedom House 2017).

Education has been mentioned to foster human rights compliance. Data is derived from the World Bank (World Bank 2017a). Education is measured as education spendings as a percentage of total government spendings. In the equations this variable is logged.

Memberships in IGOs As suggested in some of the studies mentioned above, memberships in International Governmental Organisations are considered to have a positive influence on human rights compliance. However, the CIOB-item of the PolityIV index did not provide enough data to be able to calculate with it. There-
fore, this variable had to be dropped \cite{Marshall2016}. This might add to an omitted variable bias (see chapter \ref{chap:6.4}).

**FDI** The influence of foreign direct investment on human rights compliance is not yet clear. Some authors argue that more FDI does not provide for more compliance whereas the theory suggests that more trade, openness and therefore also more FDI will lead to more human rights compliance. Data for this variable is provided by the World Bank \cite{WorldBank2017b} with the item ”FDI net inflow \% of GDP”.

**GDP**: The general economic standing of a country is operationalized with its gross domestic product per capita (GDP) in US$. Data comes from the World Bank \cite{WorldBank2017c}. This variable is logged.

**Trade** as the difference between imports and exports are measured as the item ”Trade (\% of GDP)” of the World Bank \cite{WorldBank2017e}. The above suggested ranking was not implemented because of too much loss of data. Again, this variable is logged in the equations.

**Hard Human Rights Provisions** in Trade Agreements, meaning human rights clauses in trade agreements, that are actually enforceable and include the possibility of economic sanctions have been derived from the Study of Spilker & Böhmelt \cite{Spilker2013}. If hard laws have been implemented in a country at a specific time, the dummy variable changes from 0 to 1.

As no study without a perfect experiment is able to, this study is not able either to report causal effects. One cannot be sure, that no omitted variable bias may occur. For this reason, instrument variables should be used to measure the true effect of one variable on the other. Unfortunately, no instrument variable could be found that influences trade only, without influencing the human rights situation. An instrumental variable would have been an appropriate method to reduce the problems mentioned in chapter \ref{chap:6.4}.

\footnote{Special thanks to Gabriele Spilker for providing the data.}
6.3 Results

As mentioned above, two different methods are used in this study. To answer the first hypothesis, that hard human rights law in the Cotonou agreement has been significant in fostering human rights compliance, the fixed effects model is used. The second section addresses the hypothesis that the hard law in the Cotonou agreement fostered human rights compliance in comparison to countries that still do not have any hard human rights law in trade agreements, with a difference in difference model.

6.3.1 Fixed Effects Model

Table 3 shows the results of the fixed effects regression. The first two columns show the estimated effect of hard human rights law in trade agreements on the political terror scale (PTS in column 1) and the CIRI-index (column 2). The estimation includes ACP countries only and the time period used is between 1985 and 2014. According to the estimation, hard human rights law in the trade agreements with the Cotonou countries did not have a significant impact. In addition the effect on PTS and CIRI show different signs. It was hypothesized that hard human rights law increases human rights compliance. Therefore, the estimated sign for PTS should be negative (the lower the number, the higher compliance) whereas CIRI should be positive (the higher the number, the better compliance). However, the PTS sign is positive. Nevertheless, the significant variables trade, density and GDP show the right signs. Density is meant to decrease compliance, therefore the sign in the PTS column should be negative whereas it should be positive in the CIRI column. This is true in the estimation. Trade, GDP, and polity, the estimator for democracy, show the expected signs that these variables may increase human rights compliance. For example if trade increases by 1 %, PTS decreases by 0.6 points whereas CIRI increases by 1.7 points. Please note, that this implies no causality. FDI does not show the expected sign.
Table 3: Fixed Effects Model with hard HR

<table>
<thead>
<tr>
<th></th>
<th>PTS</th>
<th></th>
<th>PTS</th>
<th></th>
<th>CIRI</th>
<th></th>
<th>CIRI</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td></td>
<td>(2)</td>
<td></td>
<td>(3)</td>
<td></td>
<td>(4)</td>
<td></td>
</tr>
<tr>
<td>hard_HR</td>
<td>0.153</td>
<td></td>
<td>0.224</td>
<td></td>
<td>−0.027</td>
<td></td>
<td>−0.001</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.180)</td>
<td></td>
<td>(0.350)</td>
<td></td>
<td>(0.073)</td>
<td></td>
<td>(0.158)</td>
<td></td>
</tr>
<tr>
<td>log(trade)</td>
<td>−0.592***</td>
<td></td>
<td>1.697***</td>
<td></td>
<td>−0.422***</td>
<td></td>
<td>1.029***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.214)</td>
<td></td>
<td>(0.427)</td>
<td></td>
<td>(0.091)</td>
<td></td>
<td>(0.198)</td>
<td></td>
</tr>
<tr>
<td>log(density)</td>
<td>1.343***</td>
<td></td>
<td>−2.614***</td>
<td></td>
<td>1.300***</td>
<td></td>
<td>−1.871***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.481)</td>
<td></td>
<td>(0.946)</td>
<td></td>
<td>(0.193)</td>
<td></td>
<td>(0.412)</td>
<td></td>
</tr>
<tr>
<td>log(EDU)</td>
<td>0.262</td>
<td></td>
<td>0.064</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.164)</td>
<td></td>
<td>(0.325)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FDI</td>
<td>0.021**</td>
<td></td>
<td>−0.004</td>
<td></td>
<td>0.008*</td>
<td></td>
<td>−0.014</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.010)</td>
<td></td>
<td>(0.019)</td>
<td></td>
<td>(0.004)</td>
<td></td>
<td>(0.009)</td>
<td></td>
</tr>
<tr>
<td>log(GDP)</td>
<td>−0.312**</td>
<td></td>
<td>0.296</td>
<td></td>
<td>−0.227***</td>
<td></td>
<td>0.160</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.127)</td>
<td></td>
<td>(0.248)</td>
<td></td>
<td>(0.066)</td>
<td></td>
<td>(0.141)</td>
<td></td>
</tr>
<tr>
<td>polity</td>
<td>−0.026*</td>
<td></td>
<td>0.068**</td>
<td></td>
<td>−0.015**</td>
<td></td>
<td>0.070***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.014)</td>
<td></td>
<td>(0.028)</td>
<td></td>
<td>(0.006)</td>
<td></td>
<td>(0.013)</td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>338</td>
<td></td>
<td>331</td>
<td></td>
<td>1,047</td>
<td></td>
<td>1,019</td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>0.093</td>
<td></td>
<td>0.084</td>
<td></td>
<td>0.075</td>
<td></td>
<td>0.067</td>
<td></td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>−0.057</td>
<td></td>
<td>−0.072</td>
<td></td>
<td>0.026</td>
<td></td>
<td>0.017</td>
<td></td>
</tr>
<tr>
<td>F Statistic</td>
<td>4.257*** (df = 7; 289)</td>
<td></td>
<td>3.686*** (df = 7; 282)</td>
<td></td>
<td>13.376*** (df = 6; 994)</td>
<td></td>
<td>11.533*** (df = 6; 966)</td>
<td></td>
</tr>
</tbody>
</table>

Note: *p<0.1; **p<0.05; ***p<0.01
According to liberal theory it should foster human rights compliance, however, the estimation implies the opposite. However, as will be described later, the equation implies serious problems, one of them the omitted variable bias. Furthermore the R²-variable is low. Therefore, results should not be taken too seriously.

As one can see in the first two columns of table 3, observations are reduced to less than 340. Therefore, the education variable is being dropped in the columns 3 and 4 in table 3 which may again add to the omitted variable bias. Nevertheless, it also leads to an increase in observations to more than 1000. The estimators for hard human rights law in trade agreements are still not significant. However, now the indicator in the CIRI column has a negative sign, which is counter intuitive. However, the FDI sign now is right, as are all the other significant variables.

Unfortunately the Breusch Pagan Test for the regressions in table 3 show heteroskedasticity. If the hard human rights law variable is dropped, the Breusch Pagan Test shows no more heteroskedasticity for regressions with the FHI index. Therefore another regression with the freedom house index (columns 1 and 2) and the polityIV index (columns 3 and 4) as a measure of democracy but without the hard human rights law variable are included in table 4. The variable has to be dropped because the FHI index starts with the year 2006 and therefore all Cotonou countries do have hard human rights law implied in this second regression.

Again both democracy measures are significant for the change in human rights compliance and show the expected signs. An increase in trade is only significant when democracy is measured with the polityIV index. However, all columns show the expected signs for trade. The other variables point to mixed and unclear effects. Please note again, that homoskedasticity according to the Breusch Pagan Test is only true for columns 1 and 2. Again, the number of observations is small because of missing data for education. However, if this variable is dropped, no regression achieves homoskedasticity. The results again show serious problems and mixed effects, therefore they should not be taken too seriously. Other problems that could occur with this regressions will be described in chapter 6.4. Nevertheless
there are hints that human rights conditionality does not have a relevant impact at all on human rights compliance. Therefore, hypothesis 1 may be not true.

6.3.2 Difference in Differences

The fixed effects model did not generate reliable or consistent results. Therefore, another approach is used in this section. The difference in differences method is used to look for a difference in two groups, the treatment and the control group. Unfortunately it is seldom possible to create a real experiment with a treatment and control group that are exactly the same and the treatment being the only difference between the two groups. As this scenario is not possible for the current research question, the analysis checks for all countries that have no free trade agreements with hard human rights up until the year 2014 and posits this group as the control group. The Cotonou countries, which did not have hard human rights law in free trade agreements up until the year 2000, are the treatment group. This means, the countries are not assigned randomly, which may bias the estimation. The time of the treatment event is the year 2000, when the Cotonou agreement came into force.

Columns 1 and 2 of table show the results of the treatment. Being a Cotonou country is highly significant in changing both the PTS and the CIRI measurement of human rights compliance in the predicted directions. However, the difference in differences effect, which is shown in the row cotonou:time does not show the predicted sign with the PTS index. Furthermore, the treatment time did not have a significant effect.

7The countries in this group are: Peru, Brazil, Bolivia, Paraguay, Argentina, Uruguay, Switzerland, Albania, Macedonia, Croatia, Cyprus, Moldova, Russia, Ukraine, Belarus, Armenia, Georgia, Azerbaijan, Norway, Iran, Turkey, Syria, Jordan, Israel, Saudi Arabia, Kuwait, Bahrain, UAE, Oman, Turkmenistan, Tajikistan, Kyrgyzstan, Uzbekistan, Kazakhstan, China, Mongolia, South Korea, Japan, India, Bhutan, Pakistan, Bangladesh, Sri Lanka, Nepal, Thailand, Cambodia, Laos, Malaysia, Philippines, Indonesia, Australia, Papua New Guinea, New Zealand, Fiji
Table 4: Fixed Effects Model without hard HR

<table>
<thead>
<tr>
<th>Dependent variable:</th>
<th>PTS (1)</th>
<th>CIRI (2)</th>
<th>PTS (3)</th>
<th>CIRI (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>log(trade)</td>
<td>$-0.180$</td>
<td>$0.579$</td>
<td>$-0.677^{***}$</td>
<td>$1.377^{***}$</td>
</tr>
<tr>
<td></td>
<td>$(0.247)$</td>
<td>$(0.531)$</td>
<td>$(0.177)$</td>
<td>$(0.367)$</td>
</tr>
<tr>
<td>log(density)</td>
<td>$-0.711$</td>
<td>$-4.600^{***}$</td>
<td>$1.086^{***}$</td>
<td>$-2.812^{***}$</td>
</tr>
<tr>
<td></td>
<td>$(0.680)$</td>
<td>$(1.581)$</td>
<td>$(0.333)$</td>
<td>$(0.710)$</td>
</tr>
<tr>
<td>log(EDU)</td>
<td>$0.104$</td>
<td>$-0.092$</td>
<td>$0.265^{**}$</td>
<td>$-0.185$</td>
</tr>
<tr>
<td></td>
<td>$(0.142)$</td>
<td>$(0.292)$</td>
<td>$(0.130)$</td>
<td>$(0.271)$</td>
</tr>
<tr>
<td>FDI</td>
<td>$0.008$</td>
<td>$-0.002$</td>
<td>$0.013^*$</td>
<td>$-0.008$</td>
</tr>
<tr>
<td></td>
<td>$(0.007)$</td>
<td>$(0.016)$</td>
<td>$(0.007)$</td>
<td>$(0.015)$</td>
</tr>
<tr>
<td>log(GDP)</td>
<td>$0.018$</td>
<td>$0.329$</td>
<td>$-0.282^{***}$</td>
<td>$0.370^*$</td>
</tr>
<tr>
<td></td>
<td>$(0.189)$</td>
<td>$(0.399)$</td>
<td>$(0.101)$</td>
<td>$(0.207)$</td>
</tr>
<tr>
<td>FHI</td>
<td>$-0.023^{***}$</td>
<td>$0.028^{**}$</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$(0.005)$</td>
<td>$(0.013)$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>polity</td>
<td></td>
<td></td>
<td>$-0.023^*$</td>
<td>$0.081^{***}$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$(0.012)$</td>
<td>$(0.025)$</td>
</tr>
<tr>
<td>Observations</td>
<td>$363$</td>
<td>$301$</td>
<td>$500$</td>
<td>$423$</td>
</tr>
<tr>
<td>R²</td>
<td>$0.072$</td>
<td>$0.099$</td>
<td>$0.063$</td>
<td>$0.080$</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>$-0.123$</td>
<td>$-0.155$</td>
<td>$-0.053$</td>
<td>$-0.055$</td>
</tr>
<tr>
<td>F Statistic</td>
<td>$3.874^{***}$ (df = 6; 299)</td>
<td>$4.276^{***}$ (df = 6; 234)</td>
<td>$4.973^{***}$ (df = 6; 444)</td>
<td>$5.305^{***}$ (df = 6; 368)</td>
</tr>
</tbody>
</table>

*Note:* $^*$p<0.1; $^{**}$p<0.05; $^{***}$p<0.01
To see the effect of both, the being member of the Cotonou agreement and the treatment, one has to add up the numbers of the first and the third row. This means, that the treatment and being a Cotonou member changed the PTS by -0.035 points, whereas it changed the CIRI index by 0.855 points. These are the expected signs for both indices. One may note, that Australia and New Zealand are in the control group because they do not have human rights conditionality in any of their trade agreements for political reasons. However, these two countries are not seen as developing countries, that are more of an interest in this study. If these two countries are not taken into account in the regression, the numbers increase slightly For example the estimator for cotonou rises from -0.295 to -0.376 for PTS and from 0.285 to 0.423 for the CIRI index (see Annex). The results of the difference in differences model hint at the possibility that hypothesis 2 may be true. In other words, the treatment with human rights conditionality may actually have very slightly improved human rights conditionality.

As already mentioned, this difference in differences regression was not made on the basis of a perfect experiment, therefore, the results should be interpreted with caution. To control if the treatment had a real effect, another difference in differences regression has been made with an earlier point of time for the treatment. This was set ten years earlier than the actual treatment in 1990. Again the estimator for membership in the Cotonou countries is highly significant and estimators have increased strongly. The difference in differences effect is only significant when human rights compliance are measured with the PTS and show the wrong sign for the CIRI index. This means that the treatment in itself may not be the cause for the increase in human rights compliance but being one of the Cotonou countries may be more important. What Cotonou countries have in common that being one of them makes it more likely that human rights compliance is improved, is open to speculation. What can be read of this regression, which again shows many problems in its calculations, is that the human rights conditionality may not have a very significant effect at all.
Table 5: Difference in Differences

<table>
<thead>
<tr>
<th></th>
<th>PTS (1)</th>
<th>CIRI (2)</th>
<th>PTS (3)</th>
<th>CIRI (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>cotonou</td>
<td>−0.295***</td>
<td>0.285***</td>
<td>−0.403***</td>
<td>0.653***</td>
</tr>
<tr>
<td></td>
<td>(0.042)</td>
<td>(0.101)</td>
<td>(0.059)</td>
<td>(0.157)</td>
</tr>
<tr>
<td>time</td>
<td>−0.012</td>
<td>−0.112</td>
<td>0.034</td>
<td>−0.086</td>
</tr>
<tr>
<td></td>
<td>(0.050)</td>
<td>(0.114)</td>
<td>(0.054)</td>
<td>(0.131)</td>
</tr>
<tr>
<td>cotonou:time</td>
<td>0.260***</td>
<td>0.570***</td>
<td>0.314***</td>
<td>−0.156</td>
</tr>
<tr>
<td></td>
<td>(0.066)</td>
<td>(0.156)</td>
<td>(0.070)</td>
<td>(0.180)</td>
</tr>
<tr>
<td>Constant</td>
<td>2.661***</td>
<td>4.337***</td>
<td>2.631***</td>
<td>4.359***</td>
</tr>
<tr>
<td></td>
<td>(0.032)</td>
<td>(0.071)</td>
<td>(0.046)</td>
<td>(0.115)</td>
</tr>
</tbody>
</table>

Observations: 4,419  3,401  4,419  3,401  
R²: 0.015  0.020  0.021  0.015  
Adjusted R²: 0.015  0.019  0.021  0.014  
Residual Std. Error: 1.063 (df = 4415)  2.239 (df = 3397)  1.060 (df = 4415)  2.244 (df = 3397)  
F Statistic: 22.848*** (df = 3; 4415)  22.731*** (df = 3; 3397)  32.147*** (df = 3; 4415)  17.635*** (df = 3; 3397)  

*p<0.1; **p<0.05; ***p<0.01
6.4 Problems of the Analysis

As mentioned several times above, the regressions in this paper should not be taken too seriously. The main difficulty with the regressions is the endogeneity problem which may derive from omitted variables, simultaneity or measurement error. Endogeneity implies that regressors are correlated with the error terms.

As trade, democracy, GDP, FDI etc. are all interlinked and interdependent it is impossible to filter the exact impact of trade agreement conditionality on human rights compliance. Trade may increase GDP or FDI, that may increase the overall welfare of a country and therefore increase human rights compliance. However, it is not clear if the conditionality in the trade agreement is responsible for an increase in human rights compliance or if the increase in trade that derived of the agreement is accountable. Furthermore, signing a trade agreement as a state may be a general sign of more openness towards the international world which may in itself show a willingness to apply international human rights standards. This would mean that trade agreements are not the cause for better human rights but a side effect of an opening and therefore improvement of human rights. This was evaluated by Spilker & Böhmelt (2013) with the results that this blame might be true. As there is no instrumental variable that has an impact on only trade agreements and no other of the interlinked variables, a single causal effect cannot be calculated. The regressions above may merely give a hint as to which direction the effects of the variables used (hard HR, GDP, FDI, etc.) may point. However, as the regression is clearly biased, no reliable conclusions can be drawn.

Another problem with the analysis is the question of whom is interested in first establishing an agreement and second to what conditions. The conditionality is not enough to foster human rights, as several human rights treaties that have been signed but are not enforceable. The advantage of conditionality is that they may be enforced and arbitrators of the treaty may actually be sanctioned. However, as has been noted (Gammage 2014, 790-791) there is no clear mechanism that imposes
sanctions of parties that do not comply with the human rights conditionality. As has been remarked by [Holland 2002: 133] the European Union does not often truly sanction violations and may only act if it is in the interest of the Union rather than in the interest of humans who’s rights are violated. As there is no clear mechanism and the European Union is reluctant to actually impose sanctions, the threat of sanctions and therefore the incentive to comply to the conditionalities may even be more decreased. A list of actually imposed sanctions on the grounds of human rights or democracy violations regarding ACP countries is shown in table 6. One can see that only very poor and only five different countries have been sanctioned.

Furthermore, the question remains who sanctions may hit the most. Several studies ([Gibbons & Garfield 1999, Lim 2001, Peksen 2009, Peksen & Drury 2010, Schultz & Ball 2007: 72] undermine that most sanctions hit especially the poor and rarely the political elite. Why should the political decision makers change their behaviour because of sanctions that do not concern them directly? In some cases it could even help oppressive regimes to suppress their citizens by being in control of the

### Table 6: EU sanctions imposed on ACP states

<table>
<thead>
<tr>
<th>Country</th>
<th>Time</th>
<th>Objectives</th>
<th>Context</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democratic Republic of the Congo (Zaire)</td>
<td>1993-2003</td>
<td>Democracy</td>
<td>Obstruction of the democratic process</td>
</tr>
<tr>
<td>Nigeria</td>
<td>1993-1995</td>
<td>Democracy</td>
<td>Obstruction of the democratic process</td>
</tr>
<tr>
<td>Nigeria</td>
<td>1995-1999</td>
<td>Human Rights, Democracy</td>
<td>Obstruction of the democratic process</td>
</tr>
<tr>
<td>Sudan</td>
<td>1994-2003</td>
<td>None given</td>
<td>Ongoing conflict</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>2002-2003</td>
<td>Human Rights, Democracy</td>
<td>Other</td>
</tr>
<tr>
<td>Democratic Republic of the Congo</td>
<td>2005</td>
<td>Promotion of democracy and human rights</td>
<td>Violation of democracy</td>
</tr>
<tr>
<td>Democratic Republic of the Congo</td>
<td>2010</td>
<td>Promotion of democracy and human rights</td>
<td>Violation of human rights</td>
</tr>
</tbody>
</table>

Note: Sources for this table are [Portela 2005] and [Hörbelt 2017].
little resources that remain after sanctions have come into effect. Therefore, in contradiction to the implied effect, sanctions could worsen the situation of the poor even more instead of fostering their human rights.

This paper does not imply, that trade may or may not foster human rights compliance. It simply states that the conditionality of the European Union trade agreements with ACP countries may be well intentioned but still not very effective in fostering human rights compliance. However, they may not hinder the compliance as well. This paper shows, that quantitative analysis on how human rights conditionality effects human rights compliance may not be a suited tool to answer if trade agreements may foster human rights. Therefore, this paper suggest a qualitative analysis of certain country case studies to get an overall picture as to what worsened or fostered human rights compliance in a country.

7 Conclusion

This paper wants to answer if human rights conditionality in trade agreements between the European Union and the ACP states improve human rights compliance in these states. The method used is an empirical analysis with two different models, one fixed effects model and one difference in differences model. The results are ambivalent. In general, effects that could be measured are very weak and presumably biased due to endogeneity. This means, there may be omitted variables and other problems in the data (see chapter 6.4). As the variables are interlinked, this study could not measure the impact of hard human rights clauses in trade agreements on human rights compliance. It could not be shown if decision makers actually may be coerced or persuaded to changer their behaviour due to enforceable human rights clauses in trade agreements. It could be the case that the threat of sanctions, the loss of credibility and popularity that may come with sanctions and with it less trade or foreign direct investments may let decision makers think twice if they act against their own people. However, there is also the possibility
that these clauses are used to foster a dictator’s position by blaming the outward world for the people’s misery. This study suggests that human rights conditionality may not have a significant impact at all. There are hints that human rights clauses may rather improve human rights compliance than worsen them, however, effects are not clear and no causality mechanism can be shown here (see chapter 6.3.1). It is not clear, what would have happened to the PTS and CIRI indices, if no such conditionality would have been implemented in the Cotonou agreement of the year 2000. The difference in differences analysis attempted to show the difference between countries that do not have hard human rights law implied in its trade agreements and the Cotonou countries who have implemented these hard laws. The analysis showed that Cotonou countries do have a significant better rating in the two indices, however, it is still not clear if the human rights conditionality was the cause of this result (see chapter 6.3.2). Another underlying difficulty with this regression is that human rights may change over a very long time period. This further exacerbates the measurement of the effect of a certain treatment on human rights. For human rights conditionality to work, it seems to be important that the targeted country is democratic and dependent on international relationships. The more democratic a country, the more sanctions actually affect the elite and decision makers for politicians have to fear their re-election and personal consequences. The more a country is dependent on trade, foreign aid, direct investment etc., the more it will be anxious to apply to the international rules which imply human rights compliance. However, this cannot be shown with a quantitative analysis. Future work may engage in qualitative analysis of special cases to investigate in more detail, if human rights clauses had an effect in certain countries, considering all other events that happened in this countries during and after the time of implementation of human rights hard law. This quantitative study comes to no clear results. It concludes, that human rights conditionality may be well intentioned but not very well executed and therefore not carry much impact on human rights compliance.
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A Appendix

Result of the difference in differences analysis without the countries Australia and New Zealand:
Table 7

<table>
<thead>
<tr>
<th></th>
<th>PTS (1)</th>
<th>CIRI (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>cotonou</td>
<td>-0.376***</td>
<td>0.423***</td>
</tr>
<tr>
<td></td>
<td>(0.042)</td>
<td>(0.101)</td>
</tr>
<tr>
<td>time</td>
<td>-0.031</td>
<td>-0.080</td>
</tr>
<tr>
<td></td>
<td>(0.051)</td>
<td>(0.115)</td>
</tr>
<tr>
<td>cotonou:time</td>
<td>0.279***</td>
<td>0.537***</td>
</tr>
<tr>
<td></td>
<td>(0.066)</td>
<td>(0.156)</td>
</tr>
<tr>
<td>Constant</td>
<td>2.742***</td>
<td>4.199***</td>
</tr>
<tr>
<td></td>
<td>(0.033)</td>
<td>(0.072)</td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Observations</td>
<td>4,339</td>
<td>3,339</td>
</tr>
<tr>
<td>R^2</td>
<td>0.023</td>
<td>0.027</td>
</tr>
<tr>
<td>Adjusted R^2</td>
<td>0.022</td>
<td>0.026</td>
</tr>
<tr>
<td>Residual Std. Error</td>
<td>1.049 (df = 4335)</td>
<td>2.215 (df = 3335)</td>
</tr>
<tr>
<td>F Statistic</td>
<td>33.804*** (df = 3; 4335)</td>
<td>31.250*** (df = 3; 3335)</td>
</tr>
</tbody>
</table>

*Note:*

\*p < 0.1; \**p < 0.05; \***p < 0.01