

**The London School of Economics and Political Science**

*The Design of National Human Rights Institutions: Global Patterns of  
Institutional Diffusion and Strength*

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## **Declaration**

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

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## Abstract

“The Design of National Human Rights Institutions: Global Patterns of Diffusion and Strength” explores patterns of institutional design in the case of national human rights institutions (i.e. ombudsman, national human rights commission), seeking to understand why countries establish these bodies and give them certain mandated powers as reflected in their institutional design. The project answers two main questions about the global variation of institutional strength as a function of the design of these institutions: (1) What are the main global patterns of the institutional design of national human rights institutions? and (2) What explains variation in the institutional strength of national human rights institutions across borders?

The project makes two main contributions to the scholarship on international organisation and cross-border diffusion: the dataset of institutional design features, which operationalizes and measures six different dimensions of an institutional design index on the basis of report-based and survey data, is the first global dataset of its kind. Institutional strength is the original dependent variable that represents an index of six design features, as a synthesis of main mandated functions: 1) de jure legal independence; 2) nature of the mandate; 3) autonomy from government control; 4) predominant de facto duties; 5) pluralism of representation; and 6) staff and financial resources. Institutional strength is a ranked categorical variable with three values (weak, medium, strong).

An additional contribution is the explanatory framework, which derives a number of hypotheses about global and regional determinants of institutional design from four main mechanisms that draw respectively on domestic and international, as well as material and social, factors (socialisation, incentive-setting, cost & benefit calculations and domestic identity). The global analysis has found statistically significant evidence that participation in the United Nations-led peer-review process for national human rights institutions accreditation makes countries more likely to have stronger institutions. This is in line with recent work about the role of UN-led peer review processes and provides support for socialisation and acculturation explanations that are facilitated by a global network. At the regional level, social learning and acculturation across borders takes place in regions with high density of strong such human rights institutions (i.e. Europe and the Americas) and where more ‘early adopting’ countries are located. Countries with strong democratic identities, which established their human rights institutions prior to 1990, are both more likely to have strong institutions themselves and to motivate other governments to follow their lead. The analysis of global trends finds also that incentive-setting plays a role both at the global and the regional levels, as countries that receive higher amounts of Overseas Development Assistance from the United States or states that are subjected to EU membership conditionality are more likely to have stronger human rights institutions.

The project follows a nested multi-method research design, which begins with a quantitative analysis of global trends as a backdrop for a qualitative comparative analysis (QCA) focused on Europe, complemented by illustrative country institutional case studies. QCA finds two paths that are sufficient for European countries to establish strong institutions. Thirteen case studies present illustrative evidence of the QCA findings at the country/institution level.

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## Abbreviations

APF	Asia Pacific Forum
Adopt	early adopting country (independent variable)
CAT	Convention Against Torture
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CERD	The Convention on the Elimination of All Racial Discrimination
CoE	Council of Europe
CRC	Committee on the Rights of the Child
csQCA	crisp set QCA
EC	European Commission
ENNHRI	European Network for National Human Rights Institutions
EQUINET	European Network of Equality bodies
EU	European Union
EUcond	European Union accession conditionality (independent variable)
fsQCA	fuzzy set QCA
GDP	gross domestic product
ICC	International Coordination Committee (UN OHCHR)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
INCL/PRI	Inclusiveness/Proportional Reduction in Inconsistency
Large n	statistical research
NATLEX	database of national labour, social security and related human rights legislation, co-ordinated by the ILO
NewDem	new democracy
NGO	non-governmental organisation
NHRI	National Human Rights Institution
OAS	Organisation of American States
ODA	Overseas Development Assistance
OECD	Organisation for Economic Co-operation and Development
OUT	Outcome (QCA)
OSCE	Organisation for Security and Co-operation in Europe
OWIDS	Query Wizard International Development Statistics, co-ordinated by OECD

PTA	Preferential Trade Agreement
QCA	Qualitative Comparative Analysis
Small n	qualitative research
UN	United Nations
UNAC/UNAcc	United Nations accreditation (variable name)
UNHRC	United Nations Human Rights Commission
UNHRC	United Nations Human Rights Council
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States
USAID	United States Agency for International Development

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# **Chapter 1: Introduction**

## **1.1. Brief history of national institutions for the promotion and protection of human rights**

An historic institution in Europe, where Sweden's first Justice Ombudsman was established in 1809, domestic human rights institutions for the promotion and protection of human rights have since become a constant presence in virtually all states of the world. Although not designed to carry out an explicit human rights mandate prior to the formation of a global human rights regime in the aftermath of World War II, the predominant model of the classic ombudsman was an independent institution broadly mandated with citizen complaint-handling that came to be complemented by a new institutional design intended to ensure the protection and the promotion of human rights at the domestic level. The first international move encourage governments to establish national bodies with a human rights-related mandate took place in 1946, when the Economic and Social Council suggested that "information groups or local human rights committees" be formed to help states participate in international fora and cooperate with the United Nations Commission on Human Rights (Pohjolainen 2006; Kim 2013a), but these ideals did not gain salience until decades later. In 1978, a conference in Geneva developed the first broad set of standards for the creation of such institutions on the basis of the existing classical ombudsman model but with an explicit mandate to promote and protect human rights. At the time, however, the definition of an

institutional model for national human rights institutions was still vague (Carver 2010).

An important moment in the diffusion of human rights bodies that protect and promote human rights is the first International Workshop on National Institutions for the Promotion and Protection of Human Rights on 7<sup>th</sup>-9<sup>th</sup> October 1991. The international meeting generated a set of general guidelines regarding the design and effectiveness of these domestic bodies, entitled the Paris Principles. In 1992, the United Nations Human Rights Commission (UNHRC) adopted the Paris Principles by Resolution 1992/54 of the UN ('E/CN.4/RES/1993/55 National Institutions for the Promotion and Protection of Human Rights' 1993), followed by the United Nations General Assembly's Resolution 48/134 in 1993 ('E/CN.4/RES/1993/55 National Institutions for the Promotion and Protection of Human Rights' 1993). With this recognition came also the creation of an accreditation process through an independent peer-review process, which countries choose to enter. The international accreditation body for the NHRIs is the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) through its Sub-Committee on Accreditation. Although it functions in coordination with the UNHCR, the accreditation process is carried out independently. The ICC provides a list of over 100 NHRIs with different accreditation statuses based on a four-point scale of compliance with the *Paris Principles* ('National Human Rights Institutions Forum' 2013). The accreditation process results in three broad possible levels of compliance with the Paris Principles, with A representing a fully compliant institution, A(R) being an

institution that is likely to be granted A status upon receipt of complete documentation, B as a level for institutions that, upon having gone through the accreditation process, are found not to be fully in compliance with Paris Principles, and finally C being assigned to institution that do not meet the institutional criteria set up by the Paris Principles.

As stated by the Paris Principles, national human rights institutions are vested with competence to perform advisory work for the national governments. Their duties are also to facilitate cooperation between domestic state bodies and international organisations, to maintain close ties with the United Nations and organizations in its system as well as similar regional and national institutions charged with the promotion and protection of human rights. Their responsibility to promote and protect human rights can be equated broadly with activity meant to ensure the harmonization of national legislation and practices with international human rights instruments of which the country is a member. Building on Pegram's synthesis of the main characteristics of the NHRIs (Pegram 2010), their functions based on the Paris Principles are as follows:

- Established in the national constitution or by law;
- Their role is clearly specified, and the mandate is as broad as possible, addressing human rights protection and promotion
- Pluralism in governing structures is reflected in representation of different social and professional communities (i.e. university experts, NGOs, trade unions, trends in religious or philosophical thought, etc.);

- Independence from government agencies and representatives in appointment procedures and decision-making processes;
- Infrastructure commensurate to functions, with particular importance attached to the need for adequate funding;
- Ability to perform a monitoring, advisory and recommendation function on various matters relating to human rights;
- Each national institution relates to regional and international organizations;
- Requirement to promote public awareness, teaching and research on human rights;
- The possibility that NHRIs possess quasi-judicial functions, e.g. the handling of individual complaints or petitions on human rights grounds (E/CN.4/RES/1993/55, 1993; Pegram 2010).

The main institutional functions of protection and promotion provide a broad scope of legal mandate for a set of institutions with great structural diversity. The literature on national human rights institutions is not in agreement over one definition of the NHRIs. The concept commonly refers to *government-sponsored* bodies whose functions are specifically defined in terms of the promotion and protection of human rights (Koo and Ramirez 2009), but the scope of the definition is broad and encompasses varying institutional designs in different national and regional contexts. Alternatively, NHRIs are considered “organizations, or permanent bodies established by states to implement internationally recognized norms in their domestic jurisdictions (Cardenas and Flippert 2005).” Country constitutions or

national statutory law guarantee the jurisdiction of national human rights institutions (Reif 2004). Although NHRIs share a great deal of structural and mandate similarities as autonomous bodies within the state responsible for the promotion and protection of human rights (Carver 2010; Goodman and Pogram 2012), individual states usually reconfigure their model to meet local needs and also to suit domestic priorities (Cardenas and Flibbert 2005).

The broader role of the NHRIs as the implementer of human rights law at the domestic level has been defined more clearly in the past years. This has coincided with a significant increase in their number and also an extension of their shared responsibilities. NHRIs have come to be recognized as important actors in the processes of transmission of human rights norms from the international to the domestic level and of national compliance with global regulations (Goodman and Pogram 2012). In the case of the Optional Protocol to the Torture Convention and the Convention on the Rights of Persons with Disabilities, NHRIs have been assigned an unprecedented role in monitoring and implementing multilateral treaty obligations (Carver 2010). When working as a unified coalition, NHRIs have been able to participate in negotiation processes and shape international human rights norms, like the Disability Rights Convention and the UN Declaration on the Rights of Indigenous People (Goodman and Pogram 2012). They hold a formal seat at the UN Human Rights Council, thus participating in global decision-making and have also drive change at the regional level through participation in regional associations (Goodman and Pogram 2012).

Ombudsmen and human rights commissions play also an important role at the regional level in Europe. They are the only independent domestic bodies charged with the implementation of international and regional human rights treaties ratified by governments. They have existed for over fifteen years as a regional network affiliated with the Council of Europe, called the European Group of National Human Rights Institutions. The regional network has assisted with the accreditation process and has been active in promoting and protecting human rights in wider region. The national institutions have also been involved in the enlargement process, as the main independent domestic institutions mandated to assist governments with the harmonization of legislation and the implementation of regional human rights treaties. The European Commission includes ombudsmen and human rights commissions in all annual country progress reports on states that are membership candidates. The institution is central to countries' efforts to address adequately a range of rights-related issues such as the respect of human rights more broadly, the protection and promotion of fundamental rights, social and political rights, as well as economic rights. The European Commission's recommendations target both the broader human rights mandate and the more specific scope of their mandates which varies from country to country, addressing particular relevant issues; for instance, property rights in cases of denationalization and land restitution in Croatia or Montenegro, the prevention of torture and ill-treatment by police forces in Albania, Croatia, Macedonia, Serbia, and Montenegro.

## 1.2. Research questions and relevance of puzzle

A lot of variation occurs, however, in institutional mandates and the activities the institutions perform. This thesis seeks to explore the reasons for this variation in the design of national human rights institutions around the world. Independent national institutions created to promote and protect human rights are commonplace in the post-Cold War world, with more than 140 countries that have a human rights commission or an ombudsman endowed with different degrees of strength to carry out their mandate. Institutions around the world have a number of similar general characteristics in as much as they are meant to be independent bodies charged with rights protection and promotion, and usually have the power to handle individual complaints about rights violations. These differences are usually the result of governments' efforts to adjust the institutional models to respond to domestic realities. In the case of several countries that adopted classical ombudsmen early, governments decided to enlarge the institutional mandate to address human rights more broadly. In an attempt to align with the behaviour of other countries, some governments also seek to strengthen the design of their ombudsmen by securing their *de jure* independence and their autonomy from government.

The body of academic scholarship on national human rights institutions is relatively small but has increased significantly in the past five years. Most research to date on these national bodies has focused on the diffusion (Koo and Ramirez 2009; Pegram 2010; Goodman and Pegram 2012) and the effectiveness with which (Linos and Pegram 2016) institutions with official status of national human rights

institution (NHRI) carry out their mandate and improve domestic human rights records. Institutions are granted NHRI status through accreditation by the International Coordinating Committee housed at the United Nations Office of the High Commissioner for Human Rights.

“The Design of National Human Rights Institutions: Global Patterns of Diffusion and Strength” explores patterns of institutional design in the case of national human rights institutions seeking to understand why countries establish these bodies and give them certain mandated powers as reflected in their institutional design. The project aims to answer two main questions about the global variation of institutional strength as a function of the design of these institutions: (1) What are the main global patterns of the institutional design of national human rights institutions? and (2) What explains variation in the institutional strength of national human rights institutions across borders? An institution’s strength is a function of its design. In other words, strength is defined in terms of an institution’s mandated features and main types of activities. However, strength does not take into account the effectiveness of the institution in carrying out its mandate.

The project makes two main contributions to the scholarship on international organisation and cross-border diffusion: the dataset of institutional design features, which operationalizes and measures six different dimensions of an institutional design index on the basis of report-based and survey data, is the first global dataset of its kind. Institutional strength is the original dependent variable that represents an index of six design features, as a synthesis of main mandated functions (Meagher 2004; International Coordinating Committee of NHRIs 2016): 1)

extent of de jure independence; 2) nature of mandate; 3) degree of autonomy from government; 4) promotion and protection powers; 5) degree of pluralism; and 6) adequate resources. Institutional strength is a ranked categorical variable with three values (weak, medium, strong). Numeric data is generated through content analysis and coding of institutional reports and publicly available documents.

An additional contribution is the explanatory framework, which derives a number of hypotheses about global and regional determinants of institutional design from four main mechanisms - socialisation, incentive-setting, cost-benefit calculations and domestic identity - that draw respectively on domestic and international, as well as material and social, factors. The analysis tests a number of hypotheses for each mechanism. Hypotheses that test for global and regional effects of socialization or acculturation are measured through the effect of having undergone the UN-led accreditation process or by being located in a region with a high density of strong institutions. In addition, two main hypotheses test for the effects of incentives on institutional strength – countries that receive Overseas Development Assistance from the United States are more likely to have institutions with a stronger design. Similarly impactful on institutional design are the incentives that the European Union offers states that are candidates for membership.

The model tests also a hypothesis about the effect of a strong human rights identity on the choices of governments to establish strong institutions. Countries with strong human rights identities have longstanding traditions of liberal democratic values as evidenced by establishing their ombudsman institutions earlier than the consolidation of the Paris Principles as a regulatory framework and

the global institutional network linked to it. Europe is the region with the most early adopting countries. A fourth mechanism tested by the model is linked to domestic cost-benefit calculations by governments in newly democratized states, which are intended to secure the establishment of liberal democratic institutions as a safeguard against potential democratic backsliding during the tenure of future governments.

The remainder of the introductory chapter will proceed as follows: it presents a brief overview of the history of national institutions for the promotion and protection of human rights, highlighting key moments in their diffusion around the world. It continues with a discussion of institutional strength, as the dependent variable of the study, presenting briefly the conceptual scheme used for its operationalization and the main causal mechanisms for which it seeks to find evidence. The following sections of the introduction presents a summary of the analytical framework, the theoretical debates to which it speaks, and the main independent variables included in the analysis, succeeded by a review of the methods employed in the project and of the project's research design it. The final section of the introductory chapter gives an overview of the structure of the thesis and the content of each chapter.

### **1.3. What is institutional strength?**

I define institutional strength as a function of institutional design features, which consists of the aggregation of six different structural characteristics: legal *de jure*

independent status, autonomy from government, broad mandate to promote and protect human rights, powers of investigation, pluralism of representation and adequate resources. These dimensions of strength represent a synthesis of the main functions performed by national human rights institutions, as presented in institutional mandates, country constitutions and national law. Institutional strength is understood in terms of formal attributes of institutional design and is distinct from institutional effectiveness or impact. The strength of national human rights institutions can have an impact on states' human rights outcomes, alongside other domestic and international determinants of human rights performance. However, the formal design attributes of national human rights institutions are distinct from institutional effectiveness understood as human rights outcomes.

I will introduce these dimensions briefly here, and the first chapter of the thesis presents these design dimensions in greater detail. Autonomy from government is measured with the help of four different indicators: financial independence, appointment structure, government representation and reporting structure. Adequate powers of investigation are measured as both mandated strength or predominant performed functions, with two broad categories of functions – human rights promotion and human rights protection. A national institution can be mandated to perform either set of functions, or can be vested with both sets of powers, thus being both in charge of promotion and protection. The fourth dimension refers to pluralism of representation of as many strata of a country's society as possible and is operationalized as a measure of civil society representation in decision-making. Finally, the dimension that captures whether

institutions have adequate resources is defined in terms of finances and staff, based on an assessment of publicly available information regarding each institution. The evaluation of whether financial and staff resources are sufficient is made on the basis of explicit statements about the adequacy of resources made in official annual reports or documents included on institutional websites. A relatively small number of institutions make their annual budgets available online through inclusion in annual reports of activity, thus I could not calculate numerical values for different levels of resources across all countries in the dataset.

On the basis of the data collected on the design categories presented above, I compiled an original global dataset of design features for national human rights institutions in 194 countries and reduced it to 187 countries in the analysis due to missing data on a number of independent variables included in the model. The scope of the dataset is larger than existing datasets, such as the one NHRI Data Collection Project (Conrad, DeMeritt, and Moore 2016) and the recent dataset proposed by Pegram and Linos (Linos and Pegram 2016), which focus only on approximately 100 institutions that have undergone the UN-coordinated accreditation process. The dataset that this project proposes differs from existing databases occur also in relation to the sources of data collection and the conceptual scheme used to operationalize the dependent variable. The analysis dataset includes the aggregated data on the dependent variable, in the form of the institutional strength index and also data on 9 independent variables and one control variable (GDP/per capita).

#### **1.4. The analytical framework**

The analytic framework builds on three main bodies of academic literature – institutional design, cross-border diffusion and Europeanization. The multi-disciplinary literature on institutional design theory provides the conceptual foundation for the definition of the dependent variable introduced above and sets the stage for the analytic approach to the complex sets factors that shape institutional design at the national level. The analytical framework of the thesis proposes four primary explanations and hypotheses that test the effect of two sets of complementary factors on the strength of institutions created to promote and protect human rights at the national level – on the one hand, both international and domestic factors account for the effects of cross-border and national determinants on governments' decisions to set up and sustain strong independent bodies on their territories. Additionally, the nature of these factors can be either material or ideational idealist, speaking to main International Relations debates that contrast the traditions of rationalist or constructivist scholarship.

Each factor and the hypothesis testing its effect on institutional design will be discussed in detail in a separate chapter. As a cursory introduction, I will discuss each of the four explanations here. A state's national identity that is grounded in a longstanding tradition of support for liberal values such as human rights provides a domestic environment that would be more favourable to establishing and maintaining strong national human rights institutions. Countries with such strong democratic traditions are among the states that adopted classical ombudsmen

earlier than most other states around the world, such as Finland, Sweden or New Zealand. When such a national identity does not exist, the political and material costs of establishing and maintaining a strong such institution may be too high. Alternatively, in transitional states where liberal democracy is in its infancy and does not have a solid foundation of strong institutions, governments may wish to lock in such democratic bodies and give them a strong design as a measure of defence against potential detrimental interference by subsequent governments with different political interests.

In the international sphere, actors such as the European Union, the United Nations or the United States can offer ideational and material incentives as incentives for national governments to support sustainable and strong independent human rights institutions. Membership conditionality is a powerful regional tool that the European Union employs to determine candidate states to harmonize their legislation and institutions with European standards required for full accession. Since the 2004 wave of accession, the European Commission has included fully independent, functional and effective ombudsmen and human rights commissions as commonplace recommendations in their yearly country reports that monitor progress of candidate countries. In addition, countries such as the United States and multilateral organizations like the European Union include in their foreign policy foreign aid for the support and the improvement of national human rights records that include strong institutions. A number of Preferential Trade Agreements also have harder human rights conditionality that could reflect on the strength of the

independent bodies charged with human rights promotion and protection nationally.

Moreover, global networks can also create environments in which socialization and learning can occur through peer interaction and collaboration. The accreditation process supported by the International Coordinating Committee at the United Nations' Office of the High Commissioner for Human Rights is founded on a process of peer-review that results in an assessment of and, when needed, a set of recommendations meant to improve institutional performance and effectiveness.

The explanatory framework for institutional design builds on the scholarship on cross-border diffusion, which lends a mechanism-based perspective to understanding processes of policy and institutional transfer across borders. Complementing the analysis is the literature of Europeanization, which provides an insightful regional perspective to the understanding of human rights institutions – with a longstanding liberal democratic tradition and its membership conditionality programmes, the European Union has been a steady promoter of independent national bodies charged to promote and protect human rights. Europe is the region with the highest number of such bodies with a strong design and also with the most countries that adopted their classical ombudsmen earlier than most other states around the world.

The academic interest in diffusion originated in the natural sciences and investigated, in general abstract terms, the transmission of characteristics or elements from one unit to another in the natural world. In the social sciences, however, the interest in diffusion processes jelled in the past three decades, with a

stronger push toward a theorization of such scholarship occurring only in the past decade. Dissemination processes that occur at the individual level make up the first set of diffusion phenomena to be investigated more in depth by social scientists, like studies of the spread of innovations. In the past couple of decades, scholars of international relations and political science have manifested an increasing interest in explaining the triggers and conditions that determine the relationship between institutional change and policy adoption in one country and another country's decision to establish the same institution and opt for the same policy choice. This doctoral project focuses not simply on governments' decisions to adopt a certain institution for the protection and promotion of human rights, but also links the patterns of institutional creation with varying levels of institutional strength as a function of institutional design.

Diffusion scholarship presents a high degree of variation in terms of empirical applications and the identified mechanisms that account for institutional transfer. The conceptual nature of diffusion itself is also partly facilitating such empirical diversity, as scholars have formulated definitions of diffusion that are general and often also following individual arguments and different academic fields' conventions. Recent years have seen a certain convergence of different analytic tools and a very recent broad consensus over general categories of diffusion phenomena and scholarly approaches. Although diffusion is a consequence of interdependence (Gilardi 2013), whether manifesting itself among individuals, within a country, or across borders, for the analytic purposes of the fields of comparative politics and international relations, the diffusion story is also about

internationalization as the determination of a country's institutional and policy decision-making on another country's prior choices.

This thesis builds its argument on the contention that both domestic and international factors – be they global or regional – determine the design of national human rights institutions. A common view in international relations scholarship on diffusion is that cross-border factors are the main elements that can have an impact on a state's choice to adopt a new type of institution or policy (Elkins and Simmons 2005). Domestic factors, however, have been proven to play a role in a government's decision to adopt an institution mandated with the promotion and protection of human rights, with factors such as civil society activity and different government's political leaning as important determinants of institutional diffusion across borders (Simmons 2002). Additionally, diffusion processes can happen inter-regionally and/or can be region-driven, leading to policy clustering in one region (Meseguer 2006). One such example is provided by the study of policy diffusion driven by the European Union is often referred to in the literature as the process of Europeanization (Green Cowles, Caporaso, and Risse-Kappen 2001; Featherstone and Radaelli 2003; Schimmelfennig and Sedelmeier 2005; Graziano, Vink 2007). The analysis of the design of national human rights institutions presented below provides statistically significant evidence of the effect of all three types of determinants on government decisions to establish and maintain strong independent bodies that promote and protect human rights on their territories.

In the context of this project's explanatory framework, the literature on Europeanization is particularly helpful when seeking to test the effect of European

Union-led incentives on countries that have had membership candidate status at some point since the 2004 wave of accession. Broadly defined as either the “influence of the EU” or the “domestic impact of the EU,” Europeanization is a highly debated concept with a relatively recent research agenda that began at the end of the 1990s (Sedelmeier 2006). Most studies on Europeanization concern themselves with the impact and effectiveness of European integration new on member states of the EU measured as compliance with EU policies (Goetz and Meyer-Sahling 2008; Ladrech 2009; Schimmelfennig 2012). Regional mechanisms that operate with different degrees of effectiveness at the regional level manifests in policies such as through membership conditionality programs for candidate states, harmonization strategies for new member states, bilateral policy agreements within the, ENP and foreign aid ties in foreign relations with states outside its immediate zone of influence (Schimmelfennig and Sedelmeier 2004). The European Commission issues yearly country reports that assess the progress of candidate states make in some main policy areas of interest – for instance, economic stability and health, corruption control, judicial reform, and, importantly, respect for human rights through institutional capacity building and legal harmonization. Ombudsmen and human rights institutions represent key actors in these reports, as they are charged with the important policy tasks that ensure state institutions’ respect for human rights, government accountability and transparency as well as the implementation of international human rights law in domestic environments.

Empirical studies of cross-border institutional transfer often result in the identification of mechanisms that help to explain triggers and scope conditions

driving the establishment of an institution or the adoption of a certain policy by virtue of a relationship with another state. Certain diffusion mechanisms, like competition, are investigated extensively through both conceptual and applied research, while other mechanisms, like learning, have been over-conceptualized but not operationalized in equal amounts (Meseguer 2005). As a result of inconsistent focus on empirics and the lack of an overarching theory of global diffusion, the number of such mechanisms of diffusion identified by the literature is large, often context-specific and data driven, and rarely fit for generalization. Only recently there has been a move toward integration of such diffusion mechanisms into broader categories that allow for more systematic theory building (Shipan and Volden 2006; Simmons, Dobbin, and Garrett 2008; Gilardi 2013).

### **1.5. Institutional Design**

In organizational theory, design is a commonplace term that refers primarily to a process aimed at producing prescriptions, organizational charts and plans, and adaptive rules for coping with unforeseen circumstances (Nystrom and Starbuck 1981; Brunsson and Olsen 1993). In this sense, design involves an interest in how institutions might be, and ought to be, constructed, in order to meet human purposes best, function well, and create improvement (Simon 1970). Political and sociological studies of institutions investigate design with a focus on institutional behaviour or structure where reform only leads to demand for more reform and change only occurs once institutional change has already occurred (March and Olsen

1976; March and Olsen 1983; March and Olsen 1984; March and Olsen 1989; Brunsson and Olsen 1993; Olsen 1997). To organizational sociologists, the discretion and choice of institutional designers are constrained by environments that can provide them with “templates” or “scripts.” Moreover, participants assign meaning to organizational structures making institutional change more difficult (Powell and DiMaggio 1991; Scott and Meyer 1994; Scott 2008).

The above perspectives on institutional design, however, underrate the role of intention that ensures the purposeful connections among different elements of design (Olsen 1997, p. 206). Directly relevant for the argument proposed in this thesis is the view that in fact “design signifies purposeful and deliberate intervention that succeeds in establishing new institutional structures and processes, or rearranging existing ones, thereby achieving intended outcomes and improvements. That is, design is understood in terms of a chain of effects from human purpose to desired results” (Olsen 1997, p. 205). When institutions are studied in a political context, it becomes apparent that political and public support for specific designs or institutional design cannot be taken as a given. In electoral and public-opinion systems, like democratic governance, conflicting preferences in the population, or causal and moral beliefs grounded in traditional perceptions inform the openness toward providing support for certain types of institutional design. Importantly, also, the same properties of democratic polities which create a space for design, can also constrain the possibilities for exploiting that space (Olsen 1997).

Additionally, the conceptualisation of the dependent variable speaks to a body of more recent International Relations scholarship that engages with the institutional design of international organisations (Finnemore 1993; Finnemore and Sikkink 1998; Koremenos, Lipson, and Snidal 2001; Koremenos and Snidal 2003; Jupille, Caporaso, and Checkel 2003; Checkel 2005). As domestic actors charged with the implementation of human rights law, national human rights institutions reflect both the interests of national governments deciding to establish an institution on their territories and of the other states and organisations that coordinate the global and regional support systems in place (i.e. UN-based peer-review system for accreditation, or the Council of Europe, or the European Commission and the regional networks like the Asia-Pacific Forum and the European Network of National Human Rights Institutions). Given the nature of mandates and of the positions of intermediaries between domestic governments, other states, and international organisations, no single set of factors can give a sufficient account of institutional strength. Rather, the interplay of ideational and material factors explains best the design of national human rights ombudsmen and commissions.

## **1.6. Research design and methods**

The project follows a nested multi-method research design (Creswell 2003; Creswell 2009), which begins with a quantitative analysis of global trends as a backdrop for qualitative investigations at the regional level in Europe. The fourth chapter of the

thesis seeks to understand the interplay of sufficient factors for institutional strength in Europe and makes use of Qualitative Comparative Analysis (QCA), following it with a brief illustrative discussion of the country cases selected by the analysis.

The first level of analysis is global and aims to trace patterns of institutional strength and its determinants around the world. The quantitative global dataset is cross-sectional and covers data reported in 2013 (most report data collected in 2013 reflects information about 2012). The dataset covers data on 187 countries, excluding overseas and autonomous territories as well as institutions in sub-national regions (such as Scotland, Northern Ireland and Puerto Rico) due to missing data on these countries on many of the independent variables. In addition to the quantitative analysis at the global level, the thesis proposes also a qualitative comparative analysis at the regional level, exploring further the sufficient conditions for occurrence of strong institutions in Europe. The QCA-based findings sketch out a research agenda for the study of institutional design to be explored further beyond this thesis.

With the largest number of strong national human rights institutions and the most countries that have adopted their ombudsman bodies prior to the 'boom' in interest for the establishment of these independent liberal democratic institutions in the early 1990s, Europe presents a very interesting case that offers a view on the regional workings of factors that sufficient for certain types of institutional design. The qualitative regional data is in the form of a crisp-set Qualitative Comparative Analysis and analyses data on 36 countries from 2013, and case studies present

historical data and information on changes that may have happened since 2013. We include one model with two different outcomes, testing the impact of four factors on two main definitions of the outcomes – on the one hand, we have the outcome that measures the occurrence of strong versus not strong (i.e. medium and weak) institutional design and, on the other hand, the outcome that measures the incidence of weak versus not weak (i.e. strong and medium) design.

The second level of analysis also includes a section that presents case study discussions of the interplay of the relevant regional factors at the national level in the relevant cases found by the QCA. The case studies are merely for illustrative purposes giving a brief account of the history of each institution and the factors that shape it. The case discussions are not full-fledged case studies in this version of the analysis. The same four major analytical explanations are tested at both the global and regional level. The number of factors included in the QCA model is limited to four due to both the computational limitations of the QCA as a method and the lack of comparable data at the regional level. Future research could explore further both the regional dimension in other contexts outside of Europe and also the domestic contexts through in-country qualitative interview and ethnographic research.

### **1.7. Summary of main findings**

The global analysis finds evidence that the combination of a number of significant ideational and material factors, which operate both across borders and domestically, has a significant effect on institutional strength. Socialization

processes facilitated by institutional network participation explain a stronger institutional design both at the global and regional levels. Participation in the UN led peer-review process for national human rights institutions accreditation makes countries more likely to have stronger institutions. In other words, the accreditation process based on peer-review and the benefits of belonging to the global community of NHRIs create the necessary environment for governments to learn from each other how to strengthen the design of their institutions. Through peer-review, members of governments in countries with strong NHRIs provide feedback to the country seeking accreditation or re-accreditation. This targeted feedback is in the form of recommendations about necessary measures for an institution to be fully in compliance with the Paris Principles.

Socialisation can also explain variation in strength at the regional level. Social learning and acculturation across borders take place in regions with high density of strong such human rights institutions. Europe and the Americas have the most national human rights institutions with a strong design. The analysis finds that social learning can take place if countries are located in regions with a high density of strong NHRIs in their proximity. The strongest such effect is evident in Europe, which the region with the most early adopting countries. For instance, the Scandinavian countries are the countries that have the longest history of the ombudsman institution. Sweden created its earliest version, in the form of the Parliamentary Ombudsman, in the early 19<sup>th</sup> century. Around the world, all institutions make reference to the Swedish ombudsman as the historical institutional model they aim to follow. Finland was the second earliest adopter, and

Sweden is the country to have set the model for it as well. When the first version of a parliamentary ombudsman was established in Finland, the country was part of Sweden. Later in the 20<sup>th</sup> century, the institution's mandate was expanded to include also more explicit human rights duties as required by the Sub-Committee for Accreditation and the European Commission.

Countries with strong democratic identities, which established their human rights institutions prior to 1980, are both more likely to have strong institutions themselves. The analysis of global trends finds also that incentive-setting plays a role both at the global and the regional levels, as countries that receive higher amounts of Overseas Development Assistance from the United States are more likely to have stronger human rights institutions. One such example is Afghanistan which in the past ten years has received the highest amount of financial development support from the United States. The Afghani Independent Human Rights Commission has a strong design and is financed primarily through international development funds donated to the institution directly.

States that have been subjected to membership conditionality by the European Union are also more likely to have stronger institutions. Since the 2004 wave of enlargement, Brussels has instituted a monitoring and assistance framework of conditionality intended to offer guidance and incentives for newly democratized countries in Central and Eastern Europe to align their legislation and institutions with norms and practices in the old members states in Western Europe. In the country monitoring reports that the European Commission issues annually, national ombudsmen and human rights commissions figure prominently as the

main independent institutions charged with the domestic implementation of regional human rights treaties. The European Commission regards these bodies as key domestic actors that can offer support and advice to national governments in their efforts to harmonize legislation, consolidate liberal democratic institutions, and improve the human rights situation in the country. The significant role that they play in the context of accession to the European Union is evident as the strongest regional effects visible in the global analysis.

### **1.8. Structure of the thesis**

The thesis is organised in four major chapters. The first chapter introduces the dependent variable, presenting the main conceptual scheme for the operationalization of all six dimensions of institutional strength, and the descriptive statistics of the global variation across the indicators included in the dataset. The second chapter presents the explanatory framework for the analysis, grounding them in the scholarship on cross-border diffusion, Europeanisation, and institutional design. Moreover, this chapter positions the ideal types proposed for testing in the main theoretical debates in International Relations and Comparative Political work on Europe.

The third chapter elaborates on quantitative model selected for the global analysis, presents descriptive statistics on the main independent variables, and presents the results of the *logit* model. The second part of the chapter discusses more in detail the findings of the analysis in view of the hypotheses that were tested

as well as their theoretical and analytical implications. The fourth chapter sets forth a qualitative comparative analysis of national human rights institutional design in Europe. First, it presents briefly QCA as a method and its appropriateness for the regional analysis of institutional strength. It reviews the main four analytical explanations and the corresponding hypotheses testing factors that are relevant for understanding sufficient conditions that specific to the institutional strength in Europe. The second half of the fourth chapter presents brief case studies of all cases identified by QCA as meeting the conditions of sufficiency in the regional analysis, focusing in particular on strong versus not strong institutions. Concluding remarks round up the main findings of the thesis and proposes avenues for further research.

## **Chapter 2: The Dependent Variable: The Conceptualisation and Measurement of Institutional Strength**

### **2.1. Introduction**

This chapter introduces the dependent variable of the doctoral thesis – institutional strength. The thesis conceptualises institutional strength as a function of an institution’s design, which consists of a set of formal characteristics that shape its capacity to perform its mandated duties. Although structural features have a clear impact on an institution’s capacity to implement its mandate, the distinction between design and effectiveness or performance is key in the context of this thesis. Institutional strength does not capture any dimension of effectiveness nor the extent to which national institutions succeed in influencing successfully government policy-making in their countries or contribute to improving human rights records domestically. Effectiveness aspects are beyond the scope of this thesis. Institutional strength is a composite variable made up of thirteen indicators organised along these six main dimensions of institutional design. The conceptual scheme employed for the operationalization of the dependent variable is made up of six main categories of design – broad human rights mandate, de jure independence, autonomy from government, promotional and protection activities, pluralism of representation, and adequate resources.

The dataset of institutional design features is global in scope and contains data on 194 national institutions. Due to limitations of data on some of the key

independent variables, the analysis dataset is reduced to 187 country/institutions. I collected data for the operationalisation of the thirteen indicators from annual reports, country constitutions and other legal documentation that present institutional mandates, as well as other information that is available publicly on the national human rights institutions' webpages or in Internet-based archives of documents in their websites. Textual data is coded with the help of manual content analysis using a three-point scale for each indicator. I aggregate the data for all thirteen indicators into one index with three categories of institutional strength (1 for weak; 2 for medium; 3 for strong). This scale is similar to the three-point assessment system that the Sub-Committee on Accreditation at the International Coordination Committee of NHRIs uses. The analysis of annual reports proposes very similar results as the UN-based body for the institutions that had undergone accreditation in 2013 – with the exception of a few countries, both assessments score accredited countries in generally similar ways. The institutional design dataset, however, goes beyond the scope of the accreditation process and includes over 40 countries that have never sought accreditation with the UN body. Data on these institutions was collected from two main sources – official documents such as annual reports and legislation, when available, and a survey instrument administered globally via email and post.

The chapter begins with a section that introduces the dependent variable – institutional strength – and the conceptual scheme that underlies the six dimensions of institutional design captured by the categorical variable. The definition of the six dimensions is followed by a discussion of their operationalization and the thirteen

individual indicators that form it. The chapter continues with a discussion of the data collection methods – textual and survey-based – presenting in detail the types of sources used for manual content analysis. After discussing the differences and similarities between the original dataset collected for this thesis with the scoring given by the Sub-Accreditation committee to institutions that seek accreditation with the UN, the chapter offers more detail on the formal characteristics of existing institutions that have not undergone the UN-led accreditation process. The third section of the chapter gives a closer view of each measure of institutional design with the help of descriptive statistics that represent patterns in the global dataset. The chapter concludes with remarks about the contributions the originality of the data and the contribution this dataset can make to the field as well as avenues to improve and expand on it.

## **2.2.The strength of national human rights institutions**

The conceptual scheme of institutional power builds on an understanding that institutions are not all alike and that, despite a degree of policy convergence across the globe, different domestic and international factors shape institutional strength differently around the globe. In the case of the strength of national independent institutions mandated to promote and protect human rights, six dimensions of institutional represent, in aggregated form, a convergence toward global similarity in the institutional model that countries prefer to adopt. This conceptual framework

is unique and operationalizes formal attributes that can be observed in national institutions mandated to promote and protect human rights across the globe. These dimensions provide a synthesis of the main mandated functions of independent human rights bodies at the national level, drawn from their national legal frameworks, official mandates and yearly reports. They represent also a systematization of the main functions linked to institutional design that the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights recommend for the assessment of compliance with Paris Principles in the accreditation process. In the Sub-Committee for Accreditation's recommendations for peer-reviewers, constitutive elements of these six dimensions overlap and are necessarily inter-dependent – a broad human rights mandate would not be effectively implemented if the institution were not autonomous from government intervention, or if it lacked adequate resources to carry out its activities. Similarly, de jure independent status would not result in a strong design or an effective institution if government representatives had significant power of decision regarding the institution's activity.

Institutional strength is understood in terms of formal attributes of institutional design and is distinct from institutional effectiveness or impact. National human rights institutions around the globe have different design attributes depending on the nature of their mandate, the degree of independence, autonomy from government, the predominant activities, as well as the inclusion of civil society and resources. These formal design characteristics vary across institutions, and each attribute is present in varying degrees in each institution. To that end, the

dependent variable, institutional strength, measures variation in formal design attributes in terms of degree and as distinct from the effectiveness or impact of institutional design.

In the case of national human rights institutions, effectiveness is primarily equated with the institutional impact on human rights records at the national level. When a national human rights institution has also an international mandate of human rights promotion, such as the Danish Institute for Human Rights, the effectiveness of an institution results in an impact on human rights outcomes across borders. Accredited NHRIs, for instance, have been found to act as intermediaries between the United Nations and national governments (Pegram, 2015). They seek to influence states' human rights performance both directly in multilateral forums, through persuading government officials of the appropriateness of human rights-compliant behaviour, and indirectly, by enhancing the influence of the United Nations as an orchestrator through information sharing on compliance gaps to UN monitoring mechanisms and fortifying their own independent status and activities within UN procedures (Pegram, 2015).

As such, institutional strength can be one of the determinants of human rights outcomes alongside many factors that can have an impact on human rights records. But the relationship between institutional strength and institutional effectiveness is not one of equivalence. In other words, a country that has a national human rights institution ranked as 'strong' in this dataset does not necessarily have a strong human rights record (see, for instance, the case of Russia). Similarly, a country with a very good human rights record, such as Sweden, does not have a

strong national human rights institution. Understanding the correlation between institutional strength as a function of institutional design and human rights outcomes is beyond the scope of this research project.

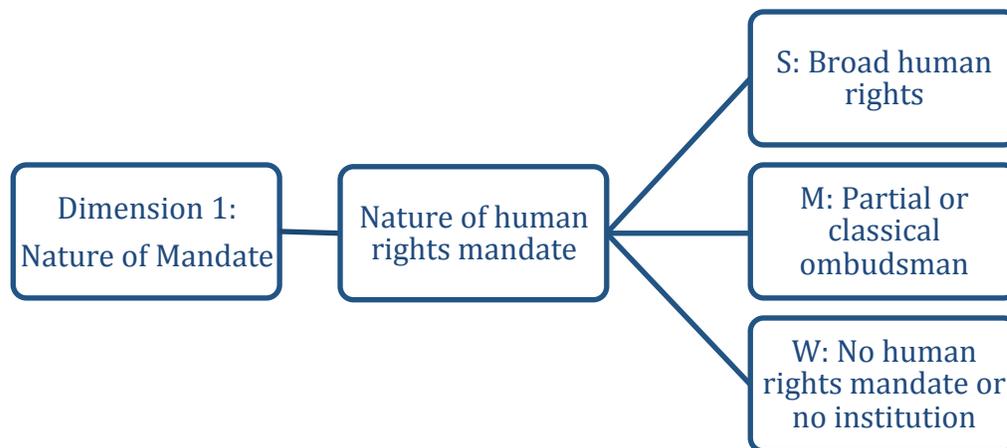
**Table 2.1 Dimensions of institutional strength**

<b>Six dimensions of institutional strength</b>
Nature of human rights mandate
Extent of de jure independence
Degree of autonomy from government
Promotion and protection powers
Degree of pluralism
Adequate resources

**2.2.1. A broad human rights mandate** is one of the main recommendations of the Sub-Accreditation Committee of the International Coordinating Committee at United Nations OHCHR for institutions that are effective (Sub-Committee on Accreditation 2013). The scope of the mandate ensures that no category of human rights is left outside of the institution’s competence and the national human rights body would be able to address all cases of human rights violation that are seeking the assistance of the independent institution’s staff members. The call for a broader mandate for human rights promotion and protection can be linked historically to the establishment of the human rights commission. In the mid-1990s the number of human rights commissions founded around the world registered a sharp increase. In addition, a number of countries with existing ombudsmen expanded on their

institutional mandates either to include a broad spectrum of human rights in their mandate or to make their human rights promotional and protective duties explicit. The mandate that is inclusive of all human rights became also a central criterion to the assessment of good institutional performance in the peer-review process established in the mid-1990s by the United Nations OHCHR as part of the accreditation process.

**Figure 2.1. Nature of institutional mandate**



I code all institutions in the dataset according to the following coding scheme: if an institution does not have a broad human rights mandate, it is not coded as a ‘strong’ institution. Countries with institutions that have a partial human rights mandate are coded as having ‘medium’ strength unless other design dimensions position them in the ‘weak’ category. A partial human rights mandate can cover only certain categories of rights, such as women’s rights and gender equality, as is the case of the Swiss Commission of Women’s Issues or the Swedish Equality Ombudsman or be a classical ombudsman institution that is not explicitly

mandated to promote or protect human rights but can handle human rights violation cases between individuals and members of the official administration as well as human rights cases when no other independent human rights mandated authority in the country handles it. Such an example of a classical ombudsman is the Romanian People's Advocate, which has a limited human rights mandate as it is primarily set up to investigate cases of violations committed by state officials against citizens. Countries show a great deal of uniformity in this category with all strong institutions have a broad human rights mandate. In this category, Ukraine presents an interesting case of an institution that is de jure given a broad human rights mandate, but whose range of activities included in annual reports is in fact more limited. Sweden's Equality Ombudsmen, who works to combat discrimination on grounds of sex, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation or age. Its mandate is not broadly inclusive of human rights issues focusing on rights linked to social equality. One other institutional feature that confirms a 'medium' strength design in the case of the Swedish Equality Ombudsman is the institution's de jure status as a government agency rather than an independent institution linked to the Parliament (Diskriminerings Ombudsmannen 2016). The UN-based Sub-Committee for Accreditation granted the institution B status in 2011, when the Ombudsman sought accreditation for the first time. Switzerland provides an example of a country with weak ombudsman institutions due to their limited mandate focused on the promotion and protection of one type of rights and their lack of independence as

government agencies. The Federal Commission for Feminine Issues (Commission fédérale pour les questions féminines) and the Federal Commission Against Racism.

**2.2.2. De jure independence** is a key dimension of a strong institution. I operationalize de jure independence with the help of two indicators – type of institution (a body with independent status granted through law, government agency, or NGO) and the type of law establishing it and its powers. The confirmation of independent status by inclusion in country constitution and national law is regarded as a safeguard against potential threats on the part of the Executive to the institution’s independence or permanency (Sub-Committee on Accreditation 2013). As recommended by the United Nations-based International Coordinating Committee, institutional establishment through inclusion in a constitutional or legislative text that makes explicit its independent status is vital to its successful performance without interference from political interests that can fluctuate with changes in government. The significance of independent status for national institutions has gained salience since the end of World War II, with the promotion of liberal democratic institutions around the world. The United Nations and foreign policy agendas of the United States and Europe have regarded de jure independence through inclusion in as a guarantee for institutional longevity – human rights institutions alongside other bodies, such as anticorruption agencies and central banks are broadly charged with the promotion and protection of citizens’ rights as well as transparency and accountability of government (World Bank. 2000; International Council on Human Rights Policy., United Nations., and Office of the

High Commissioner for Human Rights. 2005; OECD 2007; USAID 2006; Bini Smaghi 2007; ENNHRI 2014).

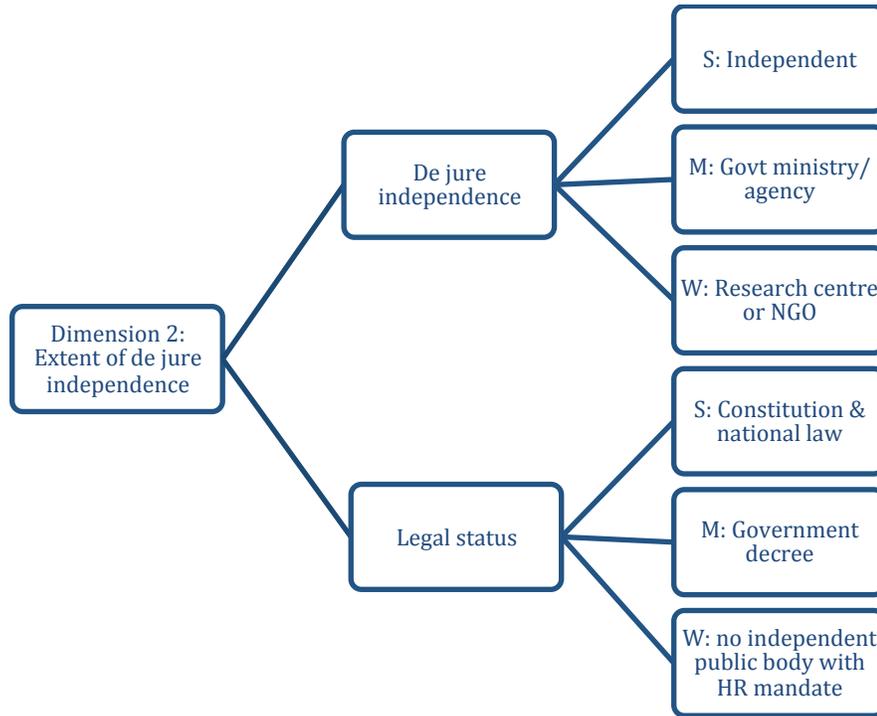
In the academic realm, scholarship on central banks has focused more extensively on understanding and measuring institutional independence, speaking of institutional independence as a pre-condition to good monetary policymaking and a fundamental of insuring the maintenance of low inflation policy and low unemployment (Cukierman, Webb, and Neyapti 1992; Cukierman and Webb 1995; Franzese 1999; Stiglitz 1998; Bernhard, Broz, and Roberts Clark 2002; McNamara 2002; de Haan, Masciandaro, and Quintyn 2008). Independence is perhaps the most contentious issue informing the design of NHRIs (A. Smith 2006). A very small number of studies about NHRIs examine closely their independence, discussing the breadth of the concept and the different design elements that could be considered constitutive of institutional independence (Carver 2014; Linos and Pegram 2015). According to Carver (2014: 22), NHRI independence incorporates nine factors: 'statutory basis, appointment process, criteria for membership, term of office, conflict of interest provisions, remuneration, immunities enjoyed by institution members, whether or not they can receive direct instruction from the government, and the procedure for removal of a member'. To the best of my knowledge, no study to date offers a numeric measure of independence in the case of national human rights institutions.

A measure of *de jure* independence ought to capture the extent to which the legal stability of an institution's independence is granted through law and constitution seen as a safeguard against potential government intervention that

could weaken its powers. The two factors that make up the independence – legal status and de jure independence – operate at different moments of an institution's existence. Namely, de jure independence is a factor tied to the establishment of the institution, at the constitutional moment, while legal status is linked to the operation of an institution. However, both indicators have an effect on the operation of the institution.

I code all institutions in the dataset according to the following coding scheme: if the national human rights institution is a public body whose legal independent status is guaranteed through country constitution and national law, it is ranked as 'strong'. If a country's institution is established as a ministerial office directly subordinated to the Executive and its legal status is not guaranteed through national law or country constitution (i.e. only through government decree), the institution is that country's institution is ranked as 'medium.' Countries without an independent public body designated specifically to promote and protect human rights through country constitution and primary legislation are ranked as 'weak.' Italy provides such an example of a country that has a network of regional ombudsmen established through regional and local statutory law but no single national ombudsman founded through inclusion in the Constitution or a legal background for its establishment. According to the Italian Constitution, towns are granted autonomy and can therefore provide the legal basis for a local or regional Ombudsman on the basis of provisions in their local constitutions (International Ombudsman Institute 2010).

**Figure 2.2. Extent of de jure independence**



**2.2.3. Autonomy from government** intervention is a third dimension of institutional design I operationalize for bodies charged with the promotion and protection of human rights at the national level. Autonomy from government intervention and independence are two closely linked dimensions of design – in the context of this thesis, it is important to differentiate between the two, as the former is a de facto characteristic that captures the legal framework for the type of body the national human rights institutions are. While a necessary condition for the separation between institutional activity and the Executive, de jure independence through inclusion in national law or constitution does not always translate into real autonomy from government intervention. I operationalize autonomy from government intervention with the help of four indicators that capture the extent to

which representatives of the Executive are involved in the leadership of the institution or the management of its annual budget: financial autonomy, appointment structure, government involvement in decision-making, and reporting system.

The appointment mechanism in place for the leadership of the institution is a measure of autonomy from the Executive and other types of interference with decision-making, based on the assessment of the appointment system for each institution – when the Parliament is the instance that makes decisions on appointing leaders of the institution, its autonomy is likely to be greater than when the Executive is involved in appointing the institutional Board, the Ombudsman, or the Chief Commissioner. When the Parliament appoints or is the final instance to approve the Ombudsman or the Chief Commissioner, the institution is ranked as ‘strong’. If the Government appoints the head of the institution, the national human rights institution is considered of ‘medium’ strength. If the institution is a non-governmental organisation with leadership appointed by an NHRI board or a committee alone, without any accountability or oversight mechanism, or if an institution has no clearly defined appointment structure, the institution is ranked as ‘weak’. The decision to rank NHRIs with NGO status as ‘weak’ rests on the assumption that the accountability system in which elected officials are the main deciding instance in the processes of leadership appointment is likely to be an effective safeguard against threats to the autonomy of NHRIs and, more broadly, to its strength.

An institutional budget included in the state annual budget represents a greater commitment to guarantee the constant annual provision of funds to the human rights body, while reliance on a mix of funds by the Executive and donations from external organizations presents less of a guarantee of financial independence and successful activity. The official source of funding is stated in the documents that frame the legal activity of the national institution. Additionally, the system of institutional reporting is an indicator of the primary audience and intended recipient of the institutions' annual reports and, when appropriate, also human rights reports. Reporting entails a degree of institutional accountability to social and political actors and, to the extent that the Executive is the unique target of its reporting, is also a measure of degree of autonomy from government intervention.

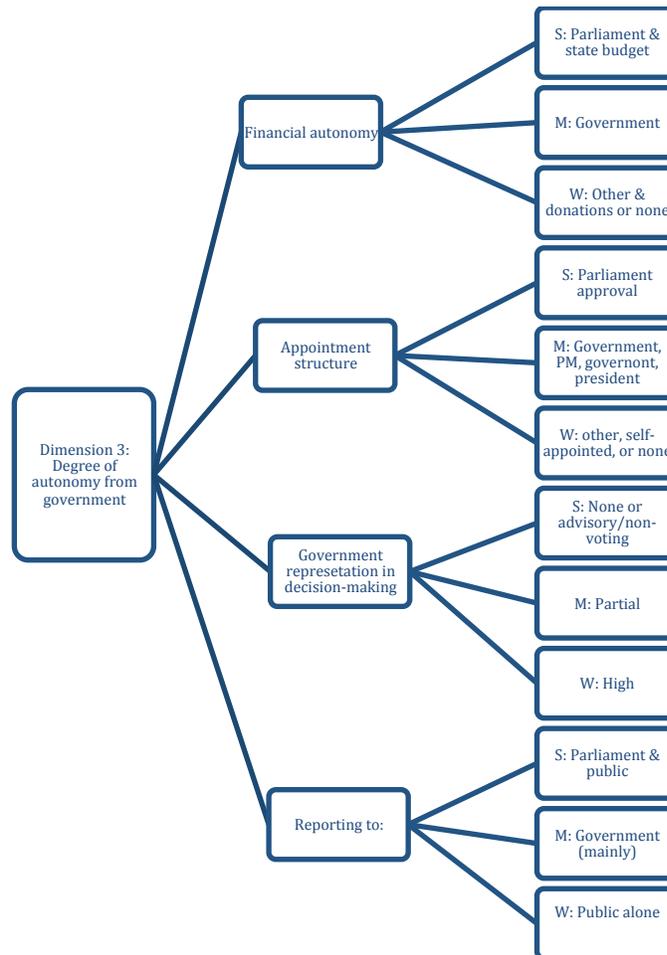
In order to code the third dimension of design I aggregate the scores across the four indicators according to the following scheme: If a country is ranked as 'strong' in at least three of the four indicators, it is coded as 'strong' in the third dimension of institutional design. For the indicator that measures financial independence, an institution is ranked as strong if its budget is guaranteed through inclusion in the state budget and the final yearly amounts are decided on every year by Parliament. If Government alone decides on the institution's budget without approval by Parliament and without inclusion in the yearly state budget, the institution is ranked as 'medium'. If the institution has another financing structure, more closely tied to the government, it is ranked as weak – such an example is Benin's Human Rights Commission, whose sources of funding are linked to active paying membership in the organisation and whose budget is administered by the

National Treasury in collaboration with the Commission's own Treasury Department.

The third indicator of autonomy from government measures the extent to which government representatives are involved in decision-making and the leadership of the national human rights institution. When the institution is a government agency or has the country's Prime Minister as leader, government representation in decision-making is considered 'high'. A number of countries have institutions where government involvement in leadership and decision-making is high – Albania's Ombudsman, Bangladesh, Benin, Chad, Costa Rica, Gabon, Guatemala, among others. If one or more government representatives are members of a pluralist Board alongside other representatives of social groups (civil society, academics, Parliament, political parties) that supports the Ombudsman or the President of the national human rights institution, government involvement is ranked as 'medium'. If the Executive does not participate in decision-making, the institution is ranked as having 'no' government representation.

The fourth indicator of the degree of autonomy from government measures the reporting mechanism in place at the institution as a test for the accountability system that assesses its annual activity – if an institution reports on its annual activity directly to Parliament and the wider public, it is ranked as 'strong'. If it reports to the government and the country president alone, as is the case in Gabon, Guinea, and France, it is ranked as 'medium'. If the national human rights institution reports to the public alone through issuing research or press reports and has no explicit reporting system in place, it is ranked as 'weak'.

**Figure 2.3. Degree of autonomy from government**



As a general assessment of the degree of autonomy from government, I aggregate the four indicators to obtain one composite measure for this dimension of design. When a country has two indicators on which it is ranked as ‘strong’ and gets two indicators coded as either ‘medium’ or ‘weak,’ it is coded at least ‘medium’ in the third dimension of design. Cases in which at least three indicators were ranked as ‘medium’ were coded as at least ‘medium’, with the exception of countries which rank as ‘strong’ in one of the four dimensions.

#### **2.2.4. Powers of Investigation and Predominant Activities**

A fourth dimension of institutional design offers an assessment of the **powers of investigation and predominant activities** that an institution performs. Often institutional mandates and legal regulatory frameworks specify the scope of activity in general terms, leaving the spectrum of daily functions to be determined by each institution. My assessment of actual activity is based on activity mentioned in their annual reports for 2012-2013 and also the projects listed on institutional webpages. A strong national human rights institution has a double human rights mandate, which encompasses both promotion and protection activities. The mandated tasks of institutions vary across countries and also across time. The list below presents a synthesis of main types of competencies encountered in many institutions, grouped by main categories of competencies:

##### Reporting

- Periodic (annual) drafting of public reports

##### Complaint handling and semi-judicial powers

- Handle complaints of human rights violations from individuals
- Carry out investigations in cases of human rights violations
- Provide advice to alleged victims of human rights violations
- Mediate between all parties impartially
- Pronounce binding judgments in cases of human rights violations
- Represent victims in court and take part in legal settlements
- Impose fines and penalties

### Government advising

- Propose amendments of laws to prevent human rights violations
- Advise government on harmonisation with international human rights law

### Participation in regional and international networks

- Be a member of regional and international networks of human rights institutions
- Participate in regular meetings of regional and international human rights networks

### Research and awareness raising

- Conduct research on human rights issues in the country
- Carry out campaigns for awareness raising

A strong institution can be mandated to perform most of the above duties, and most institutions have a mix of preventive and protection powers. Classical ombudsman institutions have mostly complaint handling responsibilities in cases of violations by public administration officials, with very few institutions having quasi-judicial powers such as pronouncing binding judgments and imposing sanctions. An ombudsman with a strong human rights mandate or a strong human rights commission perform a range of activities related to all human rights violations, including promotional activity and research.

Often, however, countries do not perform all the activities they are mandated to carry out. The discrepancy between mandated powers and actual predominantly performed activities is informative in itself in as much as political, financial, and

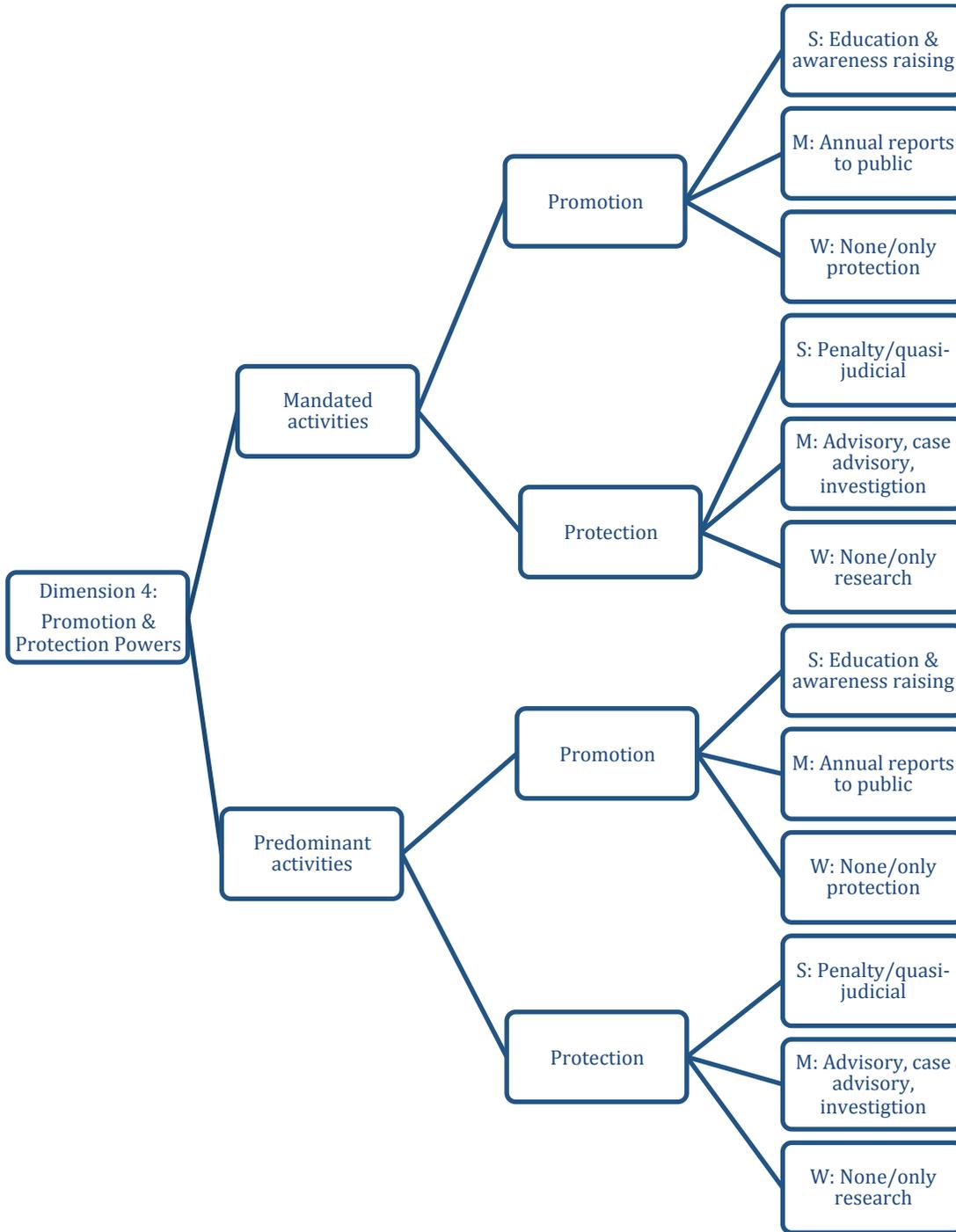
social factors can determine these differences and constrain institutional activity as stated in its mandate or performed in the everyday. For the purposes of this thesis, the measure of institutional powers is an aggregate of the assessment of both investigatory and predominant duties, capturing both de jure and reported de facto responsibilities with the help of four indicators – mandated promotional power; mandated protection power; predominantly promotional activities; predominantly protection activities. The highest level of human rights protection strength is given by the capacity to carry out investigations, apply fines or sanctions, the power to represent cases in a court and, in very few institutions, semi-judicial powers. Medium level of strength consists of advisory powers when working with government, case advisory role, investigation and mediation. Weak institutions from the point of view of protection duties have very limited, or no power at all, to carry out investigations or handle complaints at a minimum. This is the case with some institutions that only have promotional mandates, such as the Norwegian Human Rights Centre.

Strong promotion powers involve education, awareness raising and research on human rights issues in the country. Institutions with ‘medium’ powers to promote human rights generate general reports on human rights in the country and limit their activity to research on specific human rights issues. The Romanian Human Rights Institute offers is an example of a generally weak institution with only a limited promotional mandate focused on research about general human rights issues in Romania and abroad, which is disseminated largely online.

Institutions with very limited or no powers of promotion, such as the Ombudsman Office of Trinidad and Tobago, can have predominantly protection powers.

When coding the institutions in this fourth dimension of design, I weighted indicators such that all institutions that were ranked as 'strong' in both the 'de facto protection' and 'predominantly protection' functions as 'strong' even if their promotional duties were ranked as 'medium' level. If a country is ranked as 'strong' in at least three of the four indicators, it is coded as 'strong' in three dimensions of institutional design. When a country has two indicators on which it is ranked as 'strong' and gets two indicators coded as either 'medium' or 'weak,' it is coded as 'medium' in the third dimension of design. Cases in which at least three indicators were ranked as 'medium' were coded as 'medium.' When a country has very limited or no powers of promotion or protection, or does not have an institution at all, it is coded as 'weak.'

**Figure 2.4. Promotion and protection powers**



### **2.2.5. Pluralism of Representation**

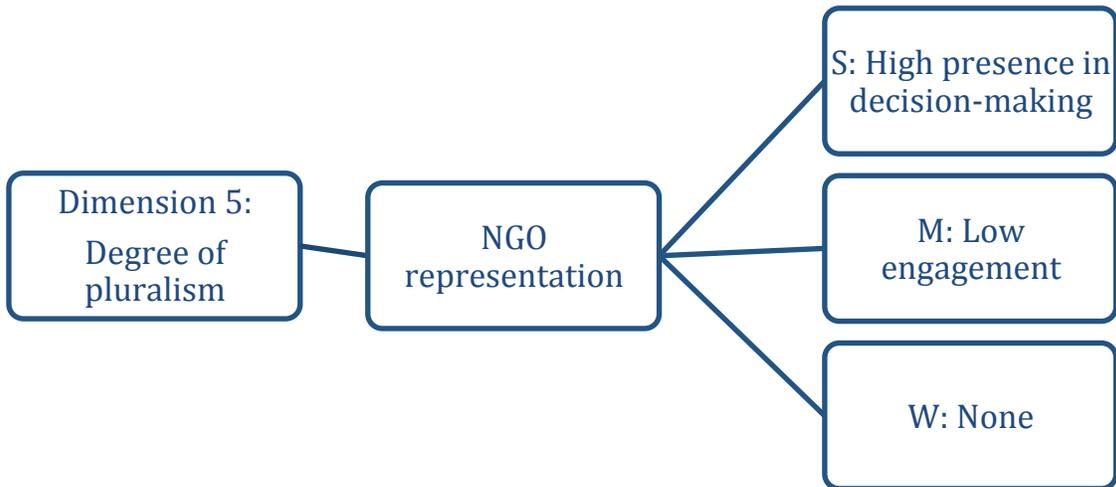
A fifth dimension of design captures the degree of **pluralism of representation** in institutional decision-making. Despite seeking to address a broad spectrum of rights-related issues for all citizens in a country, plurality of representation is not a common feature included in the design of most institutions. In its broadest sense, pluralism of representation entails concrete efforts by the national human rights institution to involve representatives of different societal groups in leadership or decision-making. The reports issued by the Sub-Committee on Accreditation do not give a consistent definition of pluralism, emphasising various factors of interest linked to this dimension of design in different accreditation reports. In earlier reports, the emphasis was on the establishment of ties with different social groups within civil society at large, through involvement in institutional decision-making and also through collaborations. In more recent reports, the Sub-Committee on Accreditation emphasises the need to support equality of representation through the involvement of women as well as different ethnic and minority groups. An example of an institution with high level of pluralism is the German Institute for Human Rights, which has 15 voting members in its Board of Trustees, representing a number of different civil society organisations and regional branches of the Institute (German Institute for Human Rights 2016). Moreover, the Board includes nine non-voting members that are government officials from different ministries and departments whose activity is linked to human rights issues. An additional form of affiliation with the Institute is membership-based. The 2016 version of the Institute's webpage lists 64 individuals and organisations that are 'registered

associate' members (German Institute for Human Rights 2016). This kind of pluralist and inclusive institutional setup is rare among national human rights institutions, with most bodies having very limited or no direct collaboration with civil society.

In order to measure pluralism of representation, I propose an indicator that quantifies the involvement of civil society through the presence of NGO representatives through consultation during the meetings of the institutional Board or of other institutional decision-making body. Although the measure does not capture the entire extent to which a national human rights institution may engage with civil society actors, it captures one of the main important dimensions of pluralism of representation. This definition of the indicators is also in line with the main requirement of pluralism listed by the Sub-Committee on Accreditation in their interpretation of the Paris Principles when assessing institutional design and performance as part of the accreditation process. On this dimension, a great deal of variation is registered even in institutions that are otherwise fully functional and have also been accredited by the Sub-Committee on Accreditation at the A-level of strength.

An institution is ranked as 'strong' on this dimension of design if it engages with NGO representatives by involving them in decision-making. Medium strength represents a lower level of engagement with NGOs, as evidenced through reporting collaborative activities and programmes in the annual report and on the institutional webpages. If a national human rights institution does not have any type of NGO involvement, it is ranked as 'weak' on this category.

**Figure 2.5. Degree of pluralism**

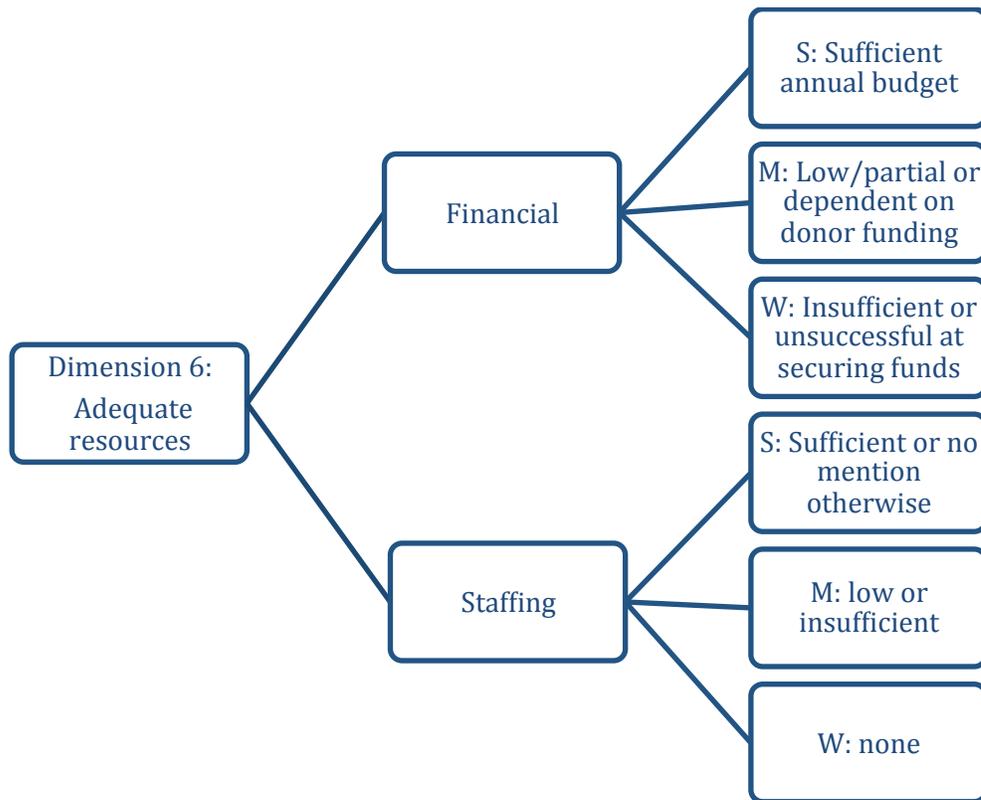


### **2.2.6. Human and Financial Resources**

A sixth dimension of institutional design represents **human and financial resources** available to a human rights institution in order to function according to its mandate and its full capacity. This dimension is measured with the help of two indicators – adequate staff and adequate financial resources. This is the dimension on which the least information is available publicly. While a number of institutions include detailed budgets and staff lists in their annual reports, a large number of institutions do not offer financial details and sometimes no information about staff members either. Most institutions, however, make a qualitative assessment of their human and monetary resources in their annual reports or on their Internet pages. This qualitative assessment informs the coding of the data included in the

institutional strength dataset. Whenever budgets were available, the qualitative information was corroborated with details about sources of funding and use of such funding for staff salaries and/or projects.

**Figure 2.6. Adequate resources**



The two indicators I propose – adequate staff and adequate financial resources – are coded on a three-point scale primarily on the basis of a qualitative assessments of adequate funding as expressed in annual reports and institutional webpages. All accredited NHRIs have made such information publicly available, also

in response to the requirement included in the Paris Principles to declare and assess sufficient funds and resources. Such qualitative evaluation of resources is often also available in the accreditation reports. In the case of new EU member states and candidate countries, such information is also assessed qualitatively in the country progress reports. On the basis of this publicly available information, I code all institutions in the dataset according to the following coding scheme: if a country has enough financial resources or makes no explicit reference to insufficient resources when reporting on its finances and staffing, it is ranked as 'strong' for this dimension. If the institution reports on its funding and staff as existing but being low or highly dependent on external grant money, the country is ranked as 'medium' on the two resource indicators. If the institution makes a clear reference in its reports that funding is insufficient or that it has made unsuccessful efforts to secure funding and adequate staff in 2012-2013 to perform all duties it is mandated to carry out, it is ranked as 'weak' on this dimension.

### **2.3. Institutional Strength and the UN-led Accreditation Scale**

The institutional strength index proposed here has country/institution as a unit of analysis and makes up a global dataset that proposes institutional strength in 194 countries. Due to missing data on some of the independent variables, the number of cases used for analysis in the following chapter was reduced to 187. The index is original and captures institutional strength on a three-point categorical scale (1-3), where institutions ranked as '3' are considered strong, with '2' indicating medium-

strength institutions, while the '1' category encompasses countries with weak institutional power due to either the lack of an institution or the existence of an institution that is not de jure functional, or inadequately fulfilling its mandated functions. I carried out manual two-step aggregation of indicators: first, the individual indicators were aggregated in the six main dimensions of institutional design, which in their turn were aggregated in the three-category ranked ordinal variable. All countries without an institution are coded 'weak' for all indicators and all six dimensions. Data on all six dimensions of strength is aggregated into one index on a three-point scale including the values 'strong,' 'medium', 'weak'.

While the operationalization and coding proposed in this thesis are different from the existing United Nations-based peer review framework of institutional assessment, they are highly comparable and reach similar results in the case of most accredited institutions. An important aspect where the two types of institutional assessment bear differences lies in the tool of measurement. The main difference between my assessment and the one carried out by the Sub-Committee on Accreditation is that the one I propose here focuses exclusively on institutional design features. The dependent variable only focuses on the measurement of features that make up design attributes linked to legal framework, mandates, powers of investigation, infrastructure, and degree of autonomy from government. The Sub-Committee on Accreditation has developed a set of guidelines for peer-reviewers (Sub-Committee on Accreditation 2013) that include an assessment of a number of design features – predominantly de jure independence, autonomy from government intervention, and availability of sufficient funds – as well as a number of

elements that are linked to the institutions' effectiveness in implementing its human rights mandate. Country reports include detailed information on institutions' level of compliance with Paris Principles, including legal framework, relationship with government, and financial stability, and go beyond this information to cover also aspects linked to institutional performance – for instance, the extent to which each institution is integrated in a regional network of institutions, or the degree to which it engages effectively with government and can influence policy-making, or the types and numbers of cases of human rights violations it investigates successfully. The SCA evaluation goes beyond the scope of an institutional design assessment.

The peer-review system of assessment is a largely qualitative assessment of institutional health, assessing both institutional mandates and the effectiveness of the main programs and activities carried out in the past five years. The reports can also make reference to the political context in the country to the extent that it is relevant for the good functioning of the institution. Based on the evaluation, the Sub-Committee on Accreditation recommends one of three possible statuses – A status for institutions considered to be in full compliance with the Paris Principles; B status for institutions considered to be in partial compliance with the Paris Principles; C status for countries that do not have a functional institution. If countries decide to apply for re-accreditation, the peer-review process repeats at five-year intervals.

It is important to highlight, however, that the two types of institutional evaluation have significant similarities. First, the peer-review assessment process of institutions which have sought accreditation is conducted with the assistance of

interviews or questionnaires based on interpretive issues regarding the Paris Principles set up by the Sub-Committee on Accreditation at the International Coordinating Committee of NHRIs (Sub-Committee on Accreditation 2013). Similarly, my assessment of institutional design is based on an analysis of annual reports, legal documents, and individual surveys. Second, the explicit aim of each evaluation is different: the SCA seeks to assess the degree of compliance with the Paris Principles and goes on to further specify these criteria in terms of both institutional design and performance, while my institutional strength scale captures only design features of institutions. It is not surprising, however, that these two scales result in the same scores for a number of strong institutions that have undergone the accreditation process, as often institutions with strong designs are also better at carrying out their mandate effectively. My assessment of institutional strength in the case of C-level institutions does not align with the assessment of the SCA in the accreditation process. Certain countries without a national human rights institution, such as the United States and Italy, can have alternative institutions for the promotion and protection of human rights, such as regional and local ombudsmen offices. In Annex E, I re-estimate the model to include four categories of institutional strength of the dependent variable.

Arguably the most significant difference between the two scales of measurement is the coding of 'weak' institutions and the inclusion in the dataset of countries that do not have any institution mandated to promote and protect human rights at the national level. The main definition and operationalisation of the dependent variable in the *ologit* and multinomial models included in the analysis

proposes an aggregate measure of 'weak institutions' that groups countries with weak NHRIs in the same category as countries without a human rights institution that operates with a human rights mandate at the country level. Based on the indicators included in the definition of institutional strength, all C-level institutions are 'weak', by lacking *de jure* independence, a human rights mandate, by not operating autonomously from government or by having very limited activity of promotion and protection.

As such, a number of institutions have been assessed differently and given different scores in the two scales. In Libya, the activity of the National Council for Civil Liberties and Human Rights is constrained by conflict and political instability – the Sub-Committee for Accreditation accredited it with a B status in 2014. The design of the institution as set up by legislation and indicated by official institutional documentation in 2013, however, presents it as a strong institution. The Bosnia and Herzegovina Institute of Human Rights Ombudsmen has accreditation status A, after many years of having been assessed as a B status institution that needed to address concerns about full compliance with Paris Principles. On the basis of low pluralism of representation and limited resources, in this thesis' dataset, the institution is assessed as having medium-level strength. In the case of Romania, the institution that has been put forward for accreditation is the Human Rights Institute, which was given C status by the Sub-Committee for Accreditation. This institute, however, has very limited activity and appears to have no powers beyond the ones of research and promotion. At the same time, Romania has a classical ombudsman office, the Romanian People's Advocate, which is much more active and has powers of rights

promotion and protection. In the original dataset of this thesis, the People's Advocate is included and assessed.

## **2.4. Data Collection and Coding**

The dataset contains original data coded manually for all countries in the dataset. The dataset has the advantage of being global, thus making possible the investigation of global patterns. The data, however, are cross-sectional and collected for the year 2013, whether reported in 2012 or in 2013. The cross-sectional nature of the data is dictated by the lack of publicly available historical information about the design of all institutions around the world. In this context, the lack of over-time global information about the entire global population of national institutions creates a trade-off between the sample size and the temporal dimension of the dataset. In its final form, the dataset contains complete information about 187 countries, having dropped 7 states on which data on the dependent variable existed, but on which data were missing for a number of independent variables.

### **2.4.1. Internet-based archival data**

The data collection process consisted of three main stages aimed at compiling systematic quantitative institutional data for a dataset consisting of a total of 187

countries. Data collection began with internet-based searches of keywords – country name, in combination with one of the following: “human rights institutions,” “national human rights commission,” “NHRI”. This stage generated an archive of official institutional documents on all institutions included in the dataset. Sources of primary data on institutional mandates and formal attributes are Internet-based and include NHRI websites and the databases of organizations which coordinate the activity of national human rights institutions at the global and regional levels, such as the International Coordinating Committee of National Institutions, National Human Rights Institutions Forum, European Group of National Human Rights Institutions, South East Asia NHRI Forum, the Network of African National Human Rights Institutions, and the Asia Pacific Forum of National Human Rights. All accredited NHRIs have a website and, with few exceptions, their electronic profiles are organized similarly on the basis of categories: mission statement, vision, founding document and legislation, annual reports, various activities, events and news, etc. The data consist of documents representing legal mandates of NHRIs, revised mandate laws, mission statements, national constitutions in which the role and functions of the human rights institution are listed. For information specifically about ombudsman institutions, the International Ombudsman Institute has a database with contact information and legislation. University-based archives dedicated to human rights are located at Harvard University and University of Minnesota and provide access to some legal documents about human rights institutions.

All documents were checked against the information available at the National Human Rights Institutions Database ('NHRI Database - Raoul Wallenberg Institute' 2013) and the International Labour Organization's NATLEX database of national labour, social security and related human rights legislation maintained by the ILO's International Labour Standards Department ('NATLEX Database, ILO, 2013) NATLEX was also a source of human rights institutions legislation in a small number of cases for which country data were missing due to malfunctioning or inactive websites. The NHRI Database contains annual reports and other human rights reports issued by a number of institutions around the world – although a valuable resource, the archive of documents is incomplete and does not contain all resources available on institutional webpages. For the purposes of this thesis, the NHRI Database did provide an additional check for the completeness of yearly reports and other institutional documents used in the coding process. NATLEX was an important source of country constitution documentation and, in a small number of country cases, also of the legal framework established for the creation of their human rights institutions. Such legal materials were helpful for collecting information on the breadth of institutional mandates, relationship with the Executive, and sometimes also the model used for financing the institution and the degree of pluralism of representation. The extent of information included in country constitutions and legal framework papers varies significantly from country to country. Annual reports available on institutional webpages and in some cases also in the NHRI Database provided the additional information needed to complete coding of all six dimensions of institutional design. When English versions of legislative texts were missing,

Internet searches were performed in foreign languages, among which French, Spanish, or Portuguese were the most common. It is worth noting, however, that none of the Internet databases contained all the institutional information or legal documents pertaining to the NHRI.

#### **2.4.2. Content Analysis**

The second stage of data collection consisted of content analysis of text-based information. The archive of collected documents – annual institutional reports, ICC records, institutional records available online and national legal documents on ombudsman and human rights commissions – made up the body of text that was coded resulting in the disaggregated data on the thirteen indicators measuring various aspects of institutional design. Klaus Krippendorff defined content analysis the method as “a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use (Krippendorff 2013). As a technique, it involves specialized procedures that need to be made explicit to the reader. Although not necessarily set in linear order, six main elements are vital to all content analyses: textual data, research question, context, analytical constructs, abductive inference-making, and validating evidence. Incorporating these elements, the analyst needs to take the following steps constitutive of the research design of content analyses. For data-making purposes, however, the analyst unitizes, samples and codes the textual data; subsequently, data are

simplified or reduced, most commonly through the use of established statistical methods (Krippendorff 2013).

For textual coding of institutional reports and official documents in this project, I employed simple manual content analysis for identification of key information and coding purposes. I did not make use of content analysis for inferential purposes or for inductive ends with the goal of generating descriptive data on the subject matter of the texts as a whole, through the use of word frequency analysis, word clouds or discourse analysis. Close reading of the documents for deductive purposes allowed me to analyse the content of the text and identify the information that was necessary for coding. I discuss the coding scheme in detail above, when I present each dimension of institutional design.

Institutional reports and official documents such as country constitutions, institutional mandates and legal framework regulating the design and activity of national human rights institutions were collected in six different languages – English, French, Spanish, Romanian, Portuguese, and Swedish – of which I have advanced reading knowledge. A number of national human rights institutions in countries where the above languages are not spoken have information available in English on their websites. One exception to the rule was the Bulgarian Ombudsman Office, which only had information available in Bulgarian – I used the help of Google Translate and also input from a native speaker of Russian to help with cross-checking some of the relevant information about the institution. All documents were coded in English and based on a coding scheme written in English and translated for each language.

Textual data was coded manually, according to the information provided primarily in institutional annual reports and, when needed, additional sources were used to provide details on all thirteen indicators of strength. The textual unit of analysis is the paragraph, as individual words are seen in a broader context. The assessment of institutional design was made possible by the close reading of each document – information about legal mandate, activity, and performance is factual and, when publicly available, is also explicit and easy to identify in the texts. Generally the annual reports follow a clear structure, focusing on the assessment of certain main elements of institutional performance every year and presenting changes in relation to prior years – although the extent of detail and the writing style may differ, most reports tend to encompass facts about main types of promotional activities coordinated, the financial situation of each institution, collaborative work in regional and international networks, and more often than not concrete details about cases of complaints and human rights violations that have been the object of investigation in the past year. Moreover, institutional websites tend to display similar information about the structure and the activity of each body, which can be grouped in three broad substantive categories – the founding documents and legal framework of activity, the types of protection and promotion activities carried out by the institution, and an archive with various types of documents. In most cases, these documents are annual reports, although a number of institutions only have a limited number of them available, substantive reports on different human rights issues in the country, press releases, and in the rare cases when the institution also carries out development work abroad – like the Danish

Institute for Human Rights – also reports on human rights records of countries where projects have taken place.

The third data collection stage focuses on the institutions that are functioning ombudsmen and human rights commissions on which not much information is publicly available and which do not hold ICC accreditation. The process of accreditation requires countries under peer-review to submit documentation that details their mandates, infrastructure, and activities that are in line with the guidelines formulated in the Paris Principles. A prerequisite is also the maintenance of an Internet identity and an electronic archive of main legal documents and annual reports. Hence information on institutional design can be compiled and coded more easily in the case of institutions that have undergone the accreditation process, due to easier access to information. In some cases, however, institutions that do not have accreditation status with the UN such as Sweden or Finland, for instance, also have electronic archives of documents that are partly available in English translation. For the purposes of defining the frame for survey administration, I included all non-accredited institutions in the population of interest.

### **2.4.3. Survey**

#### **2.4.3.1. Survey design**

In the fourth stage of data collection and coding, I used a survey instrument administered online and on paper to 46 institutions, which will be described more

at length below. Its administration occurred in three phases, the third completed in early January 2015. This survey-based data collection process ran in parallel with report-based data collection, for the purposes of triangulating results and, to the extent possible, making up for missing information in the surveys. The survey instrument was designed for the purpose of collecting data in a systematic manner about the institutions that had little information that was publicly available and were often were not accredited by the UN's ICC as of the end of 2013. The frame of the survey consisted of all names of 46 institutions, with their contact information. The online platform used for the design of the survey is created and supported by Google and allows for the selection of nine different types of questions. Upon sending out the online survey, eight email addresses of ombudsman and human rights commissions located in African countries generated return emails with error messages about failed delivery. In order to increase the chance of survey response, the online survey was printed on paper and shipped by surface mail to all the institutions in 46 countries.

Central to the design of surveys is the idea of measurement, which refers to the assignment of numbers to objects and events (Groves 2009, p. 2). A survey is 'fit for purpose' when we have descriptive and/or relational questions that require two simultaneous forms of inference – measurement and representation (Groves 2009, p.42). Though questions in the survey instrument designed for the non-accredited institutions are both descriptive and are formulated with the main purpose of understanding descriptive characteristics of institutional design in relation to the main dimensions included in the conceptual frame. It is important to consider also

survey error, due to the global scope of the survey and the unpredictability of responses. These challenges are compounded by the rather conflicting evidence from prior research regarding response rates to online surveys – though reported response rates can vary from study to study, one generally agreed upon conclusion in the literature is that it is indeed hard to predict the response rate to an online survey and that the expectation is that paper-based surveys delivered through in-person interviews yields the highest number of responses. Given the geographic location of the countries to be covered by the survey, in-person administration of the survey interview is unrealistic, leaving online and paper-based self-administered questionnaires as the only viable option. In order to facilitate responses, the survey was translated into French as well, as roughly one third of non-accredited institutions are located in countries that have Romance languages as official languages – French, Francophone, Spanish or Portuguese speaking counties.

At the same time, the self-administered nature of the survey instrument and the clarity of the questions included in it facilitates responses on the four aspects identified as essential by the literature on survey designs: comprehension, retrieval, judgment and reporting (Groves 2009). The persons answering the questions are active staff members (oftentimes in executive positions) at the institutions contacted by the primary investigator and are familiar with all concepts included in the questionnaire. Nevertheless, the survey instrument is an essential tool of systematic data collection and of operationalization as part of the process of descriptive inference and a first step necessary for researching a number of institutions that have never before been the object of investigation. To the extent

that a concept's operational definition specifies the procedures (operations) that will permit difference between individuals/institutions in respect of the concepts to be specified more specifically (Bryman and Cramer 2005), this survey of non-accredited institutions is an important analytical and methodological step in the process of operationalization of institutional power as a theoretical concept into observable variables that can help to explain in a systematic manner the variation in institutional design among institutions across the globe.

Data collected from the surveys is integrated in the broader dataset of institutional power. Depending on each institution's design, its national institution was grouped in one of the existing – strong (3), medium (2), weak (1). Survey data allows for a triangulation of report-based information, whenever available, and also makes possible the further specification for the dependent variable based on information otherwise not publicly accessible. The conceptual scheme used for the design of the survey is identical to the one created for the content analysis of the institutional documents and reports, yielding results that can be coded along the six dimensions of strength and ultimately in the index values.

#### **2.4.3.2. Discussion of survey results**

In the dataset of 187 observations, a total of 25% of country/institutions are non-accredited ombudsman and human rights commissions, with the largest number, 21, located in Africa, out of a total of 54 on the continent. Europe has 10 such institutions, which represents 23% of all countries included in the regional

classification. The non-accredited group shows an interesting pattern of state-level and sub-regional institutional establishment and design among countries that share cultural ties throughout history – Czech Republic, Estonia, Finland, Latvia, Lithuania, and Montenegro. Out of the seven countries, Finland and Estonia have the two oldest human rights institutions in the world, established in 1919 and 1938 respectively, while Lithuania and Latvia adopted their institutions in subsequent years after independence from the Soviet Union, 1994 and 1995 respectively. The Americas have 8 such non-accredited institutions, representing 23.5% of the total on the continent, with the majority being the same institutions model as in most Spanish speaking countries, namely *defensoria del pueblo*. Asia has 7% non-accredited institutions, representing 14.5%, and has comparatively the largest number of countries without any national human rights institution as of 2013, at least on the basis of the data collection and research performed for this project. Oceania presents a special case, as it has a relatively small number of national institutions with the vested authority to promote and protect human rights, namely 4, out which three are strong and two are non-accredited. A large number of island nations in the region are integrated in a regional network called the Pacific Ombudsman Alliance, alongside the Australian Commonwealth Ombudsman and New Zealand's Office of the Ombudsman. A number of countries, such as Vanuatu, Solomon Islands, and Samoa do not have accredited ombudsman institutions, but hold ombudsman representatives as part of the Pacific Ombudsman Alliance. A number of governments in the Pacific Rim do not have ombudsman institutions (Nauru, Niue, Palau, Kiribati, Federated States of Micronesia, Marshall Islands, and

Tuvalu), but are granted seats for non-ombudsman representatives at the meetings of the regional alliance.

The survey response rate is 32.6%, with 15 countries out of 46 in total having completed the online and paper-based survey. The distribution of institutional strength across the respondent countries is evenly split amongst countries with institutions with medium-strength NHRIs and countries with strong NHRIs. The regional distribution of respondent countries across the two dimensions of strength, however, shows a clear preference for strong institutions in Europe to complete the survey (Cyprus, Czech Republic, Estonia, Finland, Latvia, Lithuania). Uruguay's *Defensoria* is the sole institution located outside of Europe to have completed the survey. Additionally, with the exception of Malta, all other medium-strength institutions that have completed the survey are located outside of Europe (Belize, Côte d'Ivoire, Guinea, Haiti, Pakistan, Saint Kitts and Nevis as well as Trinidad and Tobago). More specifically, Pakistan is the only country with a medium strength institution that is located in Asia, and Côte d'Ivoire is the only African institution that responded to the survey, with the rest of the medium-strength respondent institutions being located in Central and Latin America.

**Table 2.2. Distribution of survey response countries by strength**

<b>Country</b>	<b>Strength level</b>
Belize	Medium
Côte d'Ivoire	Medium
Cyprus	Strong
Czech Republic	Strong
Estonia	Strong
Finland	Strong
Guinea	Medium

Haiti	Medium
Latvia	Strong
Lithuania	Strong
Malta	Medium
Pakistan	Medium
Saint Kitts and Nevis	Medium
Trinidad and Tobago	Medium
Uruguay	Strong

On the basis of the survey results, the following institutions are assessed as 'strong' – Cyprus, Czech Republic, Estonia, Finland, Iraq, Latvia, Lithuania, Montenegro, Samoa, Uruguay, and Uzbekistan. In addition to having full de jure independence, a broad human rights mandate and being fully autonomous from government, all of these strong institutions present also an overall high level of institutional performance across all dimensions, despite more variation in three of the six dimensions. Similarly to other countries in the global dataset, surveyed countries presented the same high degree of variation along three dimension of institutional strength, namely power of investigation, adequate resources and pluralism of representation. The scores given to institutions based on the survey results were integrated in the dataset of the dependent variable.

## **2.5. Dimensions of institutional strength**

This section presents the general patterns of institutional strength in the dataset. It begins with the descriptive results of the regional distribution of country cases and

their levels of strength and continues with a presentation of the distribution of cases by level of strength for each indicator of institutional design.

### 2.5.1. General trends and regional distribution

The general global trends in the distribution of institutional strength present a rather balanced picture, with strong institutions being more numerous, totalling 70 or 37%, and a total of 65 medium level institutions, which represent 35% of the 187 total. Countries that have no or a poorly performing institution belong in the weak category, with 52 in total, which is about 28%.

**Table 2.3. Distribution of institutional strength in Africa**

AFRICA		
Weak	Medium	Strong
Benin	Algeria	Burundi
Comoros	Angola	Egypt
Equatorial Guinea	Botswana	Ghana
Eritrea	Burkina Faso	Kenya
Madagascar	Cote D'Ivoire	Malawi
Niger	Cabo Verde	Mauritania
Republic of the Congo	Cameroon	Namibia
Sao Tome & Principe	Central African Republic	Rwanda
Suriname	Chad	Sierra Leone
	Democratic Rep of Congo	South Africa
	Djibouti	Tanzania
	Ethiopia	Togo
	Gabon	Uganda
	Guinea	Zambia
	Lesotho	

	Liberia	
	Mali	
	Mauritius	
	Morocco	
	Mozambique	
	Nigeria	
	Senegal	
	Seychelles	
	South Sudan	
	Sudan	
	Swaziland	
	The Gambia	
	Tunisia	
	Zimbabwe	

**Table 2.4. Distribution of institutional strength in the Americas**

<b>AMERICAS</b>		
<b>Weak</b>	<b>Medium</b>	<b>Strong</b>
Antigua & Barbuda	Belize	Argentina
Barbados	Grenada	Bolivia
Brazil	Haiti	Canada
Cuba	Honduras	Chile
Dominica	Jamaica	Colombia
Dominican Rep.	St Kitts and Nevis	Costa Rica
Guyana	St Lucia	Ecuador
St Vincent & Grenadines	Trinidad & Tobago	El Salvador
United States		Guatemala
		Mexico
		Nicaragua
		Panama
		Paraguay
		Peru
		Uruguay
		Venezuela

**Table 2.5. Distribution of institutional strength in Asia**

<b>ASIA</b>		
<b>Weak</b>	<b>Medium</b>	<b>Strong</b>
Bhutan	Bahrein	Afghanistan
Brunei	Bangladesh	India
Cambodia	Iraq	Indonesia
China	Israel	Jordan
Iran	Khazakhstan	South Korea
Japan	Kuwait	Mongolia
Laos	Kyrgyzstan	Nepal
Lebanon	Malaysia	Philippines
Libya	Maldives	Qatar
Myanmar	Pakistan	Thailand
Oman	Sri Lanka	Timor-Leste
Saudi Arabia	Tajikistan	Uzbekistan
Singapore		
Syria		
Turkmenistan		
United Arab Emirates		
Vietnam		
Yemen		

**Table 2.6. Distribution of institutional strength in Europe**

<b>EUROPE</b>		
<b>Weak</b>	<b>Medium</b>	<b>Strong</b>
Belarus	Austria	Albania
Iceland	Azerbaijan	Armenia
Italy	Belgium	Croatia
Monaco	Bosnia&Herzegovina	Cyprus
Switzerland	Bulgaria	Czech Republic
Turkey	Liechtenstein	Denmark
	Macedonia	Estonia
	Malta	Finland

	Moldova	France
	Netherlands	Georgia
	Norway	Germany
	Romania	Greece
	Slovakia	Hungary
	Slovenia	Ireland
	Sweden	Latvia
		Lithuania
		Luxembourg
		Montenegro
		Poland
		Portugal
		Russian Fed.
		Serbia
		Spain
		Ukraine
		United Kingdom

**Table 2.7. Distribution of institutional strength in Oceania**

<b>OCEANIA</b>		
<b>Weak</b>	<b>Medium</b>	<b>Strong</b>
Fiji	Vanuatu	Australia
Kiribati		New Zealand
Marshall Islands		Samoa
Fed States of Micronesia		
Palau		
Papua New Guinea		
Solomon Islands		
Tonga		
Tuvalu		

The regional distribution of institutions across five different regions provides evidence that Africa has the largest overall number of national bodies for the

promotion and protection of human rights (53), out of which the majority are at the medium level of strength (29). The next largest number is located in Europe (46), which is also the region where the largest number of strong institutions can be found (25). The region with the smallest number of institutions and also with weak institutions is Asia (18).

**Table 2.8. Summary of regional distribution of institutional strength**

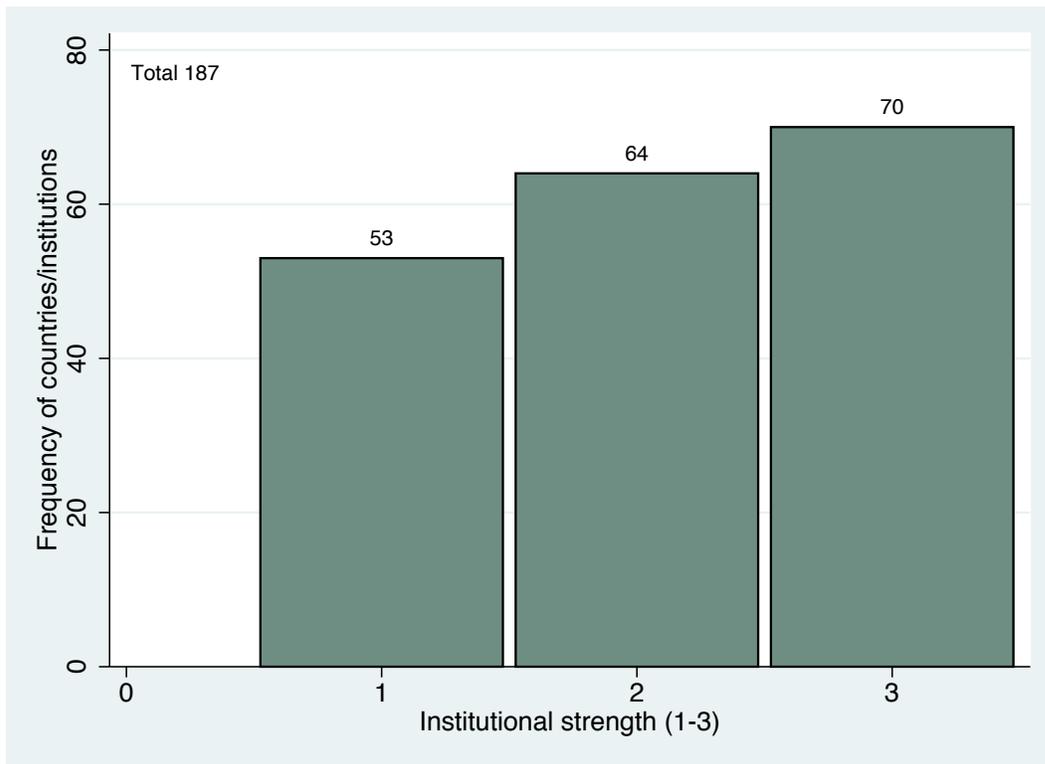
	<b>Weak</b>	<b>Medium</b>	<b>Strong</b>
<b>Africa</b>	10	29	14
<b>Americas</b>	9	8	16
<b>Asia</b>	18	12	12
<b>Europe</b>	6	15	25
<b>Oceania</b>	9	1	3

Based on descriptive analysis of the 187 observations in the dataset, strong institutions are evenly distributed across regions as percentages of the total number of country/institutions in each of the five regions, with the Americas having the highest percentage, 44%. Europe, Africa, and the Asia have similar percentages. As far as the accreditation status is concerned, the findings corroborate results of prior studies, placing Europe at the top of the list with the highest density, 66%, out of which over 61% being at the medium or strong levels of strength and. A slightly larger number of Asian countries, namely 18 of them and 37.5% of all states on the continent, have no national institution mandated to promote and protect human rights as reported in 2012, at least as a result of my data collection process.

## 2.5.2. Discussion of distribution for each indicator

We will turn now to the discussion of the variation in the number of countries distributed across the three levels of assessment for each indicator of design. The dimensions consisting of more than one indicator are also presented in tables of aggregate values.

### 2.5.2.1. Nature of mandate



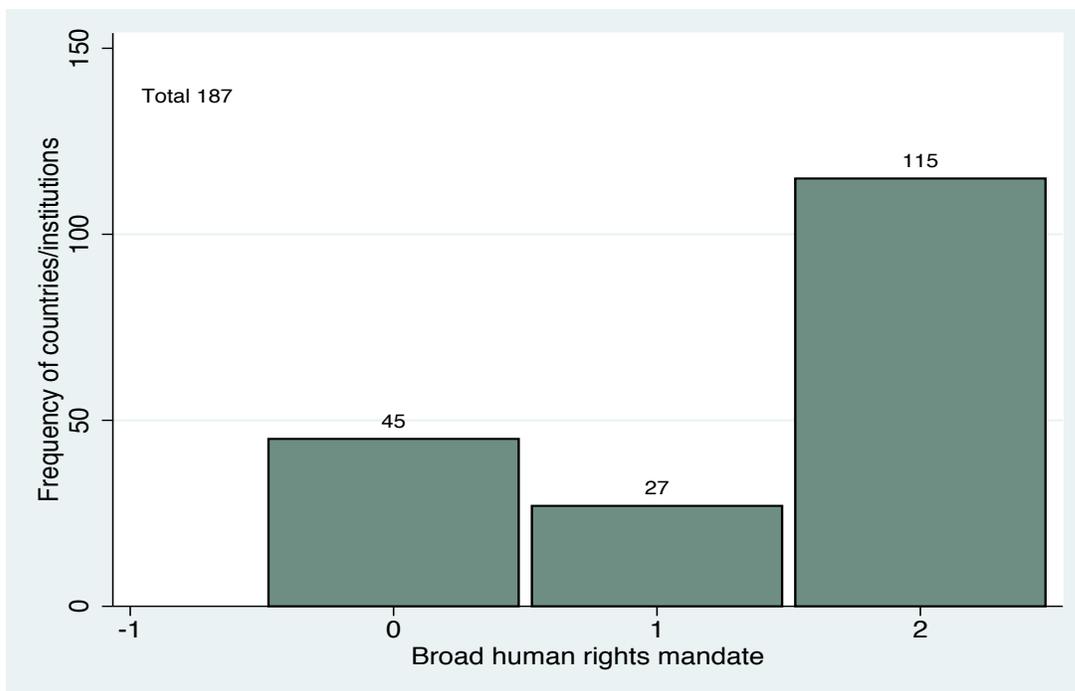
**Figure 2.7. Frequency global distribution of HR institutions**

**(3 = strong; 2 = medium; 1 = weak)**

A strong national human rights institution has a broad mandate to promote and protect human rights. Variation in this dimension is operationalized as three-level ordinal variable, ranking from highest value for institutions with a broad mandate to promote and protect human rights, to the middle value for institutions with a partial human rights mandate. As illustrated by their annual reports and also noted SCA’s 2014 report, the Ukrainian Parliament Commissioner for Human Rights performs activities in line with a broad mandate of promotion and protection, though its de facto mandate includes a vaguely specified promotion power, designated as the promotion of “the legal awareness of the public.” The 25 B-status institutions are largely in compliance with the broad mandate requirement, with Belgium, Macedonia, Maldives, Mali, Slovakia, and Sweden having a commission with a partial human rights mandate or a classical ombudsman model with no explicit human rights provisions. C-status institutions like, Benin, Iran and Romania have a broad human rights mandate but are otherwise largely not in compliance with the Paris Principles, while Antigua and Barbuda, Barbados, Madagascar, Switzerland have only a partial or not an explicit human rights mandate.

**Table 2.9. Nature of mandate per level of institutional strength**

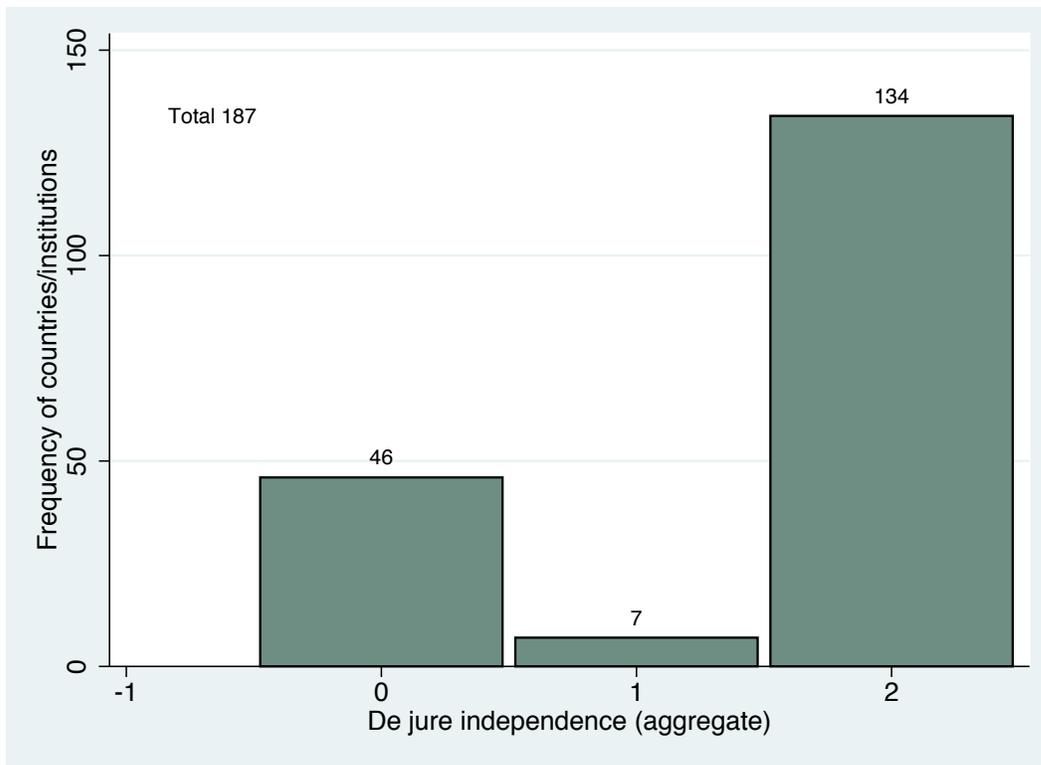
Nature of Mandate						
	Broad HR Mandate		Partial Mandate or Classical Ombudsman		Other or none	
Strong	69	60%	1	3.7%	0	0
Medium	41	35.65%	23	85.19%	0	0
Weak	5	4.35%	3	11.11%	45	100%
Total	115		29		45	



**Figure 2.8. Nature of institutional mandate**

### 2.5.2.2. Extent of de jure independence

Independence is understood as de jure legal status of an independent institution (or not) and operationalized with the help of two indicators measuring the legal status of the institution (explicitly established as an independent body or not) as well as a second indicator measuring the level of inclusion in national law by ranking the type of official document was used to establish the institution.



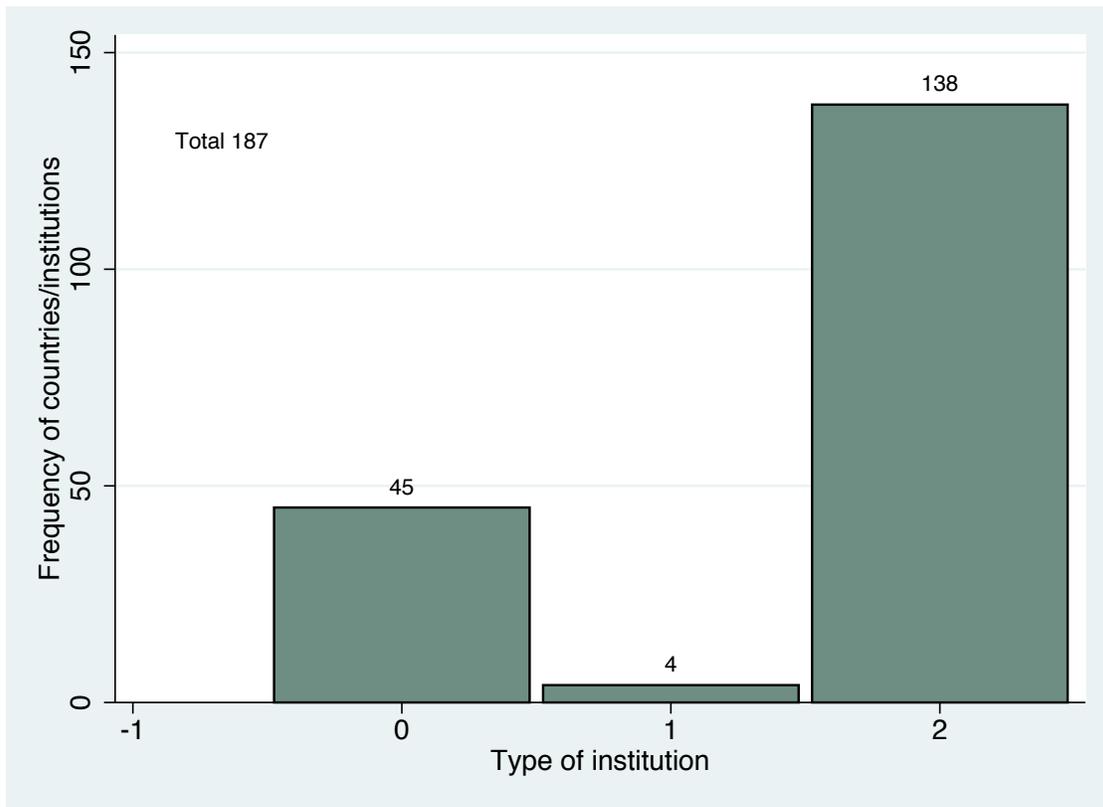
**Figure 2.9. De jure independence dimension (aggregate)**

The first indicator used to measure independence, de jure legal status, is a three-level ordinal variable with the following values – strong, if the human rights institution has de jure independent status stated in its founding documents; medium if it is an agency operating within a government ministry; and weak if the institution is an NGO with human rights mandate or a research institute that has NHRI status. An example of a weak institution is for instance Iceland, which has an active NGO, the Human Rights Centre charged with research on human rights issues, and a government ombudsman office with responsibilities partly or indirectly linked to human rights, but no independent institution with a human rights mandate. Countries that have strong institutions have also given their institutions

fully independent status. In addition, 60 countries with medium strength institutions have also given them independence status. Four countries in the data set – Gabon, Liechtenstein, Pakistan, as well as Saint Kitts and Nevis – have established institutions that do not have full de jure independence.

**Table 2.10. Institutional type per level of institutional strength**

Institutional Type						
	Independent		Government agency or ministerial office		NGO or none	
Strong	70	50.72%	0	0	0	
Medium	60	43.48%	4	100%	0	
Weak	8	5.8%	0	0	45	100%
Total	138		4		45	

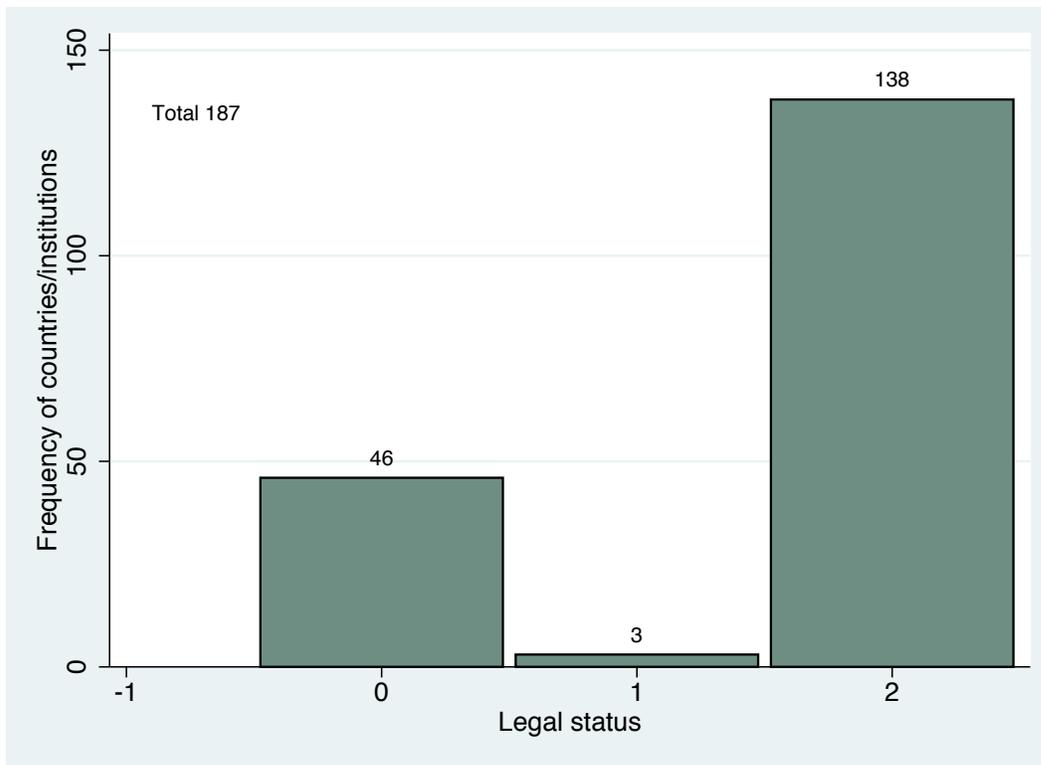


**Figure 2.10. Type of institution**

A second indicator used to measure de jure independent status is given by the level of inclusion of an institution in national law, ranging from strong independent status through official declaration in the text of the country constitution or national law, middle strength given through official decree or other government-issued act, or no such de jure independence at all. All strong level institutions are established through inclusion in country constitutions or national law. 138 countries in the world established their institutions through national law or constitution, with nearly 51% of them being also assessed as strong institutions, while 61 institutions have medium-level strength. Three institutions – Bahrain, Kazakhstan and Kuwait – established theirs through a presidential decree or government-issued act. Among the countries with weak institutions, Iceland is the country that has a national NGO mandated with human rights promotion work.

**Table 2.11. Integration in national law/Legal status**

<b>Integration in national law / Legal status</b>						
	National law or constitution		Government or presidential decree/act		NGO or none	
Strong	70	50.72%	0	0	46	
Medium	61	44.2%	3	100%	0	
Weak	7	5.07%	0	0	0	100%
Total	138		3		46	

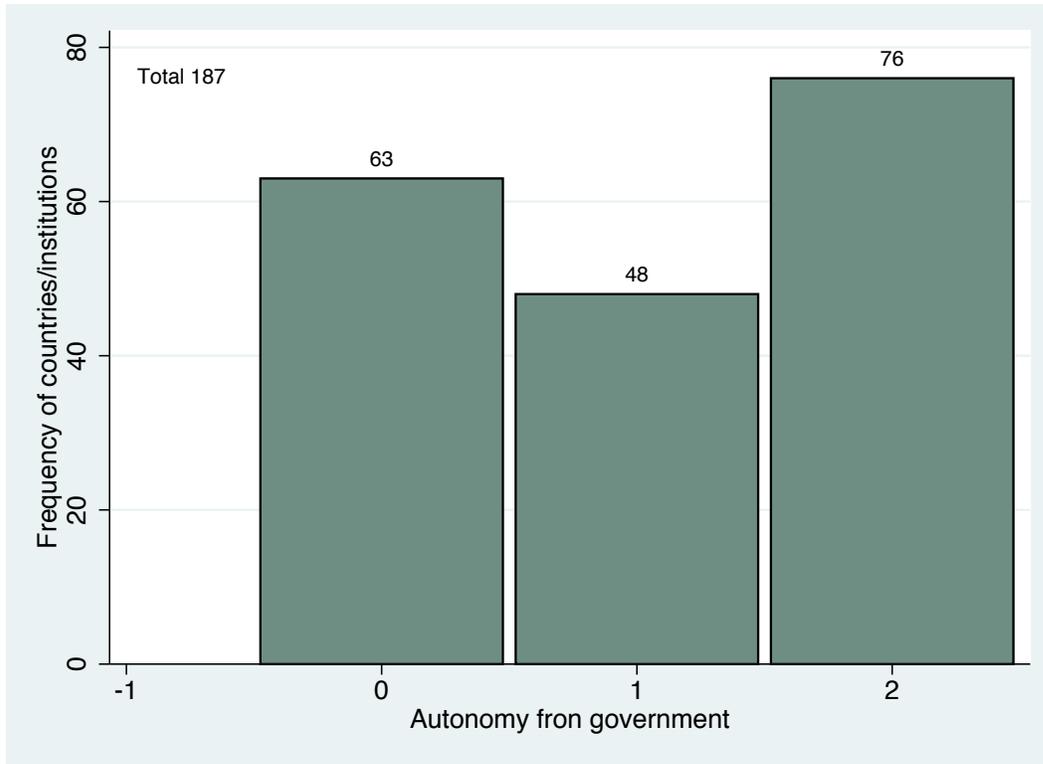


**Figure 2.11. Legal status**

### **2.5.2.3. Degree of autonomy from government**

Autonomy from government is understood as the institution’s capacity to carry out its functions without interference by the national government. This dimension is measured with the help of four different indicators that represent the main elements of the relationship between government and independent human rights institutions: financial independence, appointment structure, government representation and reporting structure. In aggregate terms, the degree of autonomy from government is high among 76 institutions, encompassing both strong and

medium-level bodies, while 48 institutions are operate with a degree of government intervention in decision-making.



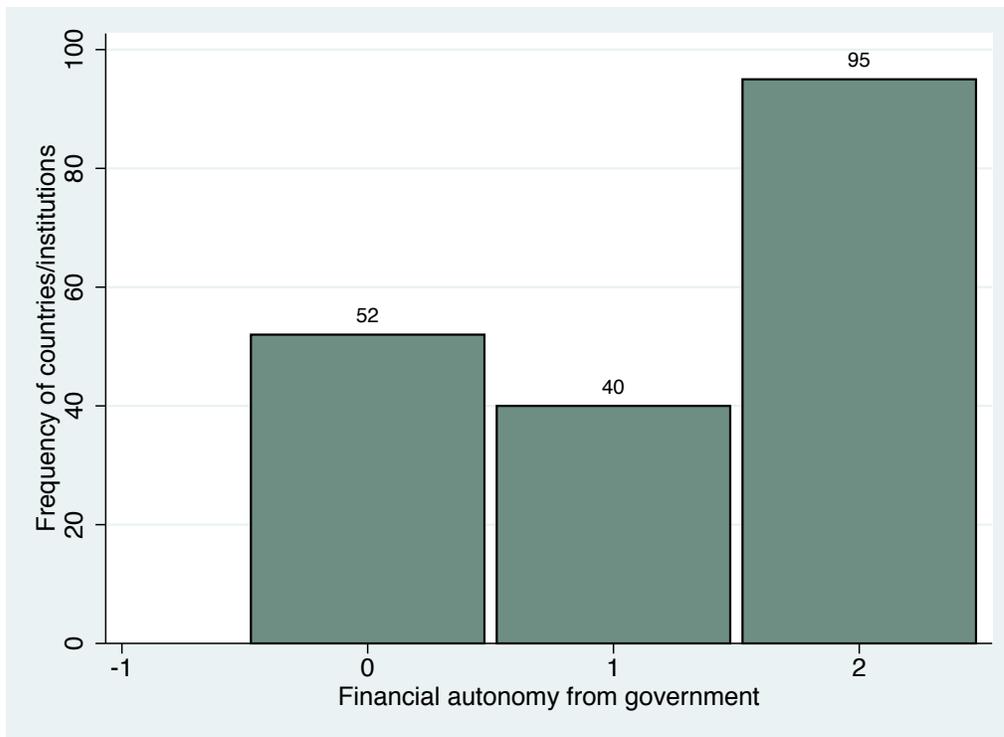
**Figure 2.12. Autonomy from government**

The first measure of autonomy from government is the degree of financial autonomy and is measured on a three-point scale on the basis of the source for the institutional budget, namely whether the institution obtains the majority of its funding from Parliament, as a fixed percentage sum out of the annual state budget, or it gets its financial support primarily from the government or the president, or has very different sources of financing such as donations from international institutions of private donors. 95 institutions in total receive their funding from the Parliament directly and often through the creation of a separate category in the

national budget. 61 out of these institutions are also considered strong, while 29 institutions display medium-level strength while being financially independent from government. 40 institutions receive their funding from the government directly or through presidential funds, including seven institutions that are otherwise assessed to be strong – Australia, Burundi, France, Ghana, Greece, Jordan and Zambia.

**Table 2.12. Financial independence**

Financial independence						
	Predominantly Parliament or national budget		Predominantly government or presidential funds		Other	
Strong	61	64.21%	7	17.5%	2	3.85%
Medium	29	30.53%	32	80%	3	5.77%
Weak	5	5.26%	1	2.5%	47	90.38%
Total	95		40		52	



**Figure 2.13. Financial autonomy from government**

The appointment structure is also measured on a three-point scale: the highest level of autonomy is assigned to institutions who require Parliamentary appointment of the director/head of the institution; the middle level of autonomy is attained if an institution required government, governor general, ministerial, or presidential approval for the selection of its director/head; institutions with a different appointment system are coded as 0. 83 institutions in total require Parliament approval for the appointment of the institution’s leader and committee, with 57 strong being ranked as strong institutions. Of the strong institutions, Germany and Denmark, whose institutions are set up as human rights institutions with a strong research component and little to no judicial powers, have appointment structures that are completely separate from other state institution. 47 institutions have appointment structures that are fully or primarily reliant on the Parliament, while 16 of them allow a degree of government involvement (Australia, Cameroon, Egypt, France, Greece, India, Kenya, Luxembourg, Malaysia, Mauritius, Morocco, Nepal, Nigeria, Palestine, Philippines, Zambia).

**Table 2.13. Appointment structure**

<b>Appointment structure</b>						
	Parliament approval		Government or presidential approval		Other	
Strong	57	68.67%	11	23.4%	2	3.51%
Medium	24	28.92%	34	72.34%	6	10.53%
Weak	2	2.41%	2	4.26%	49	85.96%
Total	83		47		57	



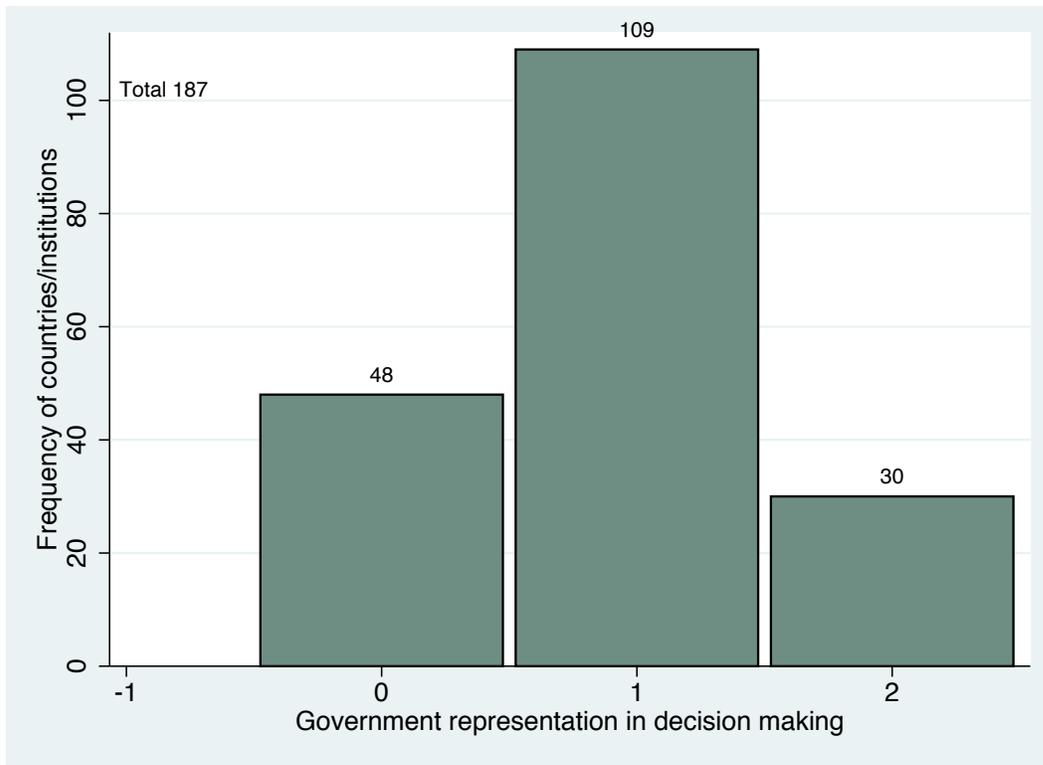
**Figure 2.14. Leadership appointment structure**

A third measure of autonomy from government is given by an indicator of government representation in decision-making processes at the institution. 30 institutions have high involvement of government in decision-making, while 109 institutions present a low degree of government involvement in institutional functioning. Seven strong institutions present a high level of government representation in decision-making – Colombia, Egypt, France, Greece, India, Luxembourg, and Nepal. For instance, Colombia’s *Defensor* establishes contact with the international community with the help of government mediation, while Egypt has a member of the Parliament as an active participant in the governing of the country’s national human rights institution. 20 institutions at the medium level of

strength show high presence of government in decision-making, while Benin, Iran, and Turkey have weak institutions in which the extent of government intervention is high.

**Table 2.14. Government representation in decision-making**

Government representation in decision-making						
	High		Low		None	
Strong	7	23.33%	63	57.8%	0	0
Medium	20	66.67%	42	38.53%	2	4.17%
Weak	3	10%	4	3.67%	46	95.83%
Total	30		109		48	

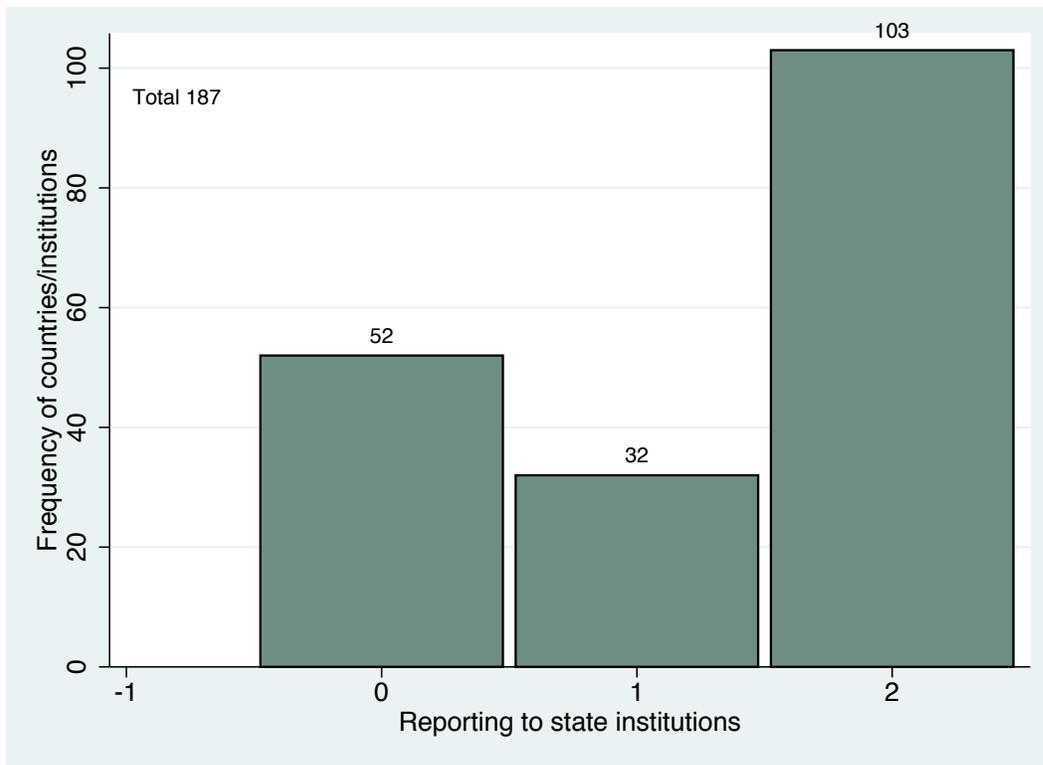


**Figure 2.15. Government representation in decision-making**

Reporting mechanisms are linked to institutional autonomy on the basis of the varying target audience for the annual activity reports and, whenever available, the country human rights reports issued by such national institutions. Reporting implies a degree of institutional accountability to social and political actors. Thus, an institution could be reporting officially to the Parliament and the public, the government and the president, or none of the above. 103 institutions state that they report to the Parliament directly and to the domestic public, while 32 of them report exclusively or mainly to a government or government-administered agency, prime minister, or the president (for instance, Australia, Cameroon, France, India, Luxembourg, Mauritius, Morocco, Nepal, and Nigeria).

**Table 2.15. Reporting to government**

<b>Reporting to government</b>						
	Parliament and the public		Government and president		None	
Strong	65	63.11%	5	15.63%	0	0
Medium	34	33.01%	27	84.38%	3	5.77%
Weak	4	3.88%	0	0	49	94.23%
Total	103		32		52	



**Figure 2.16. Reporting to state institutions**

#### **2.5.2.4. Promotion and protection powers**

Adequate powers of investigation are measured through an assessment of predominantly performed functions, on the basis of information publicly available, using two broad categories of functions – human rights promotion and human rights protection. A national institution can be mandated to perform either set of functions, or can be vested with both sets of powers, thus being both in charge of promotion and protection. In other words, institutions can have de facto powers of promotion and protection vested through a broad human rights mandate, but only perform certain functions that make it predominantly a protection or promotion

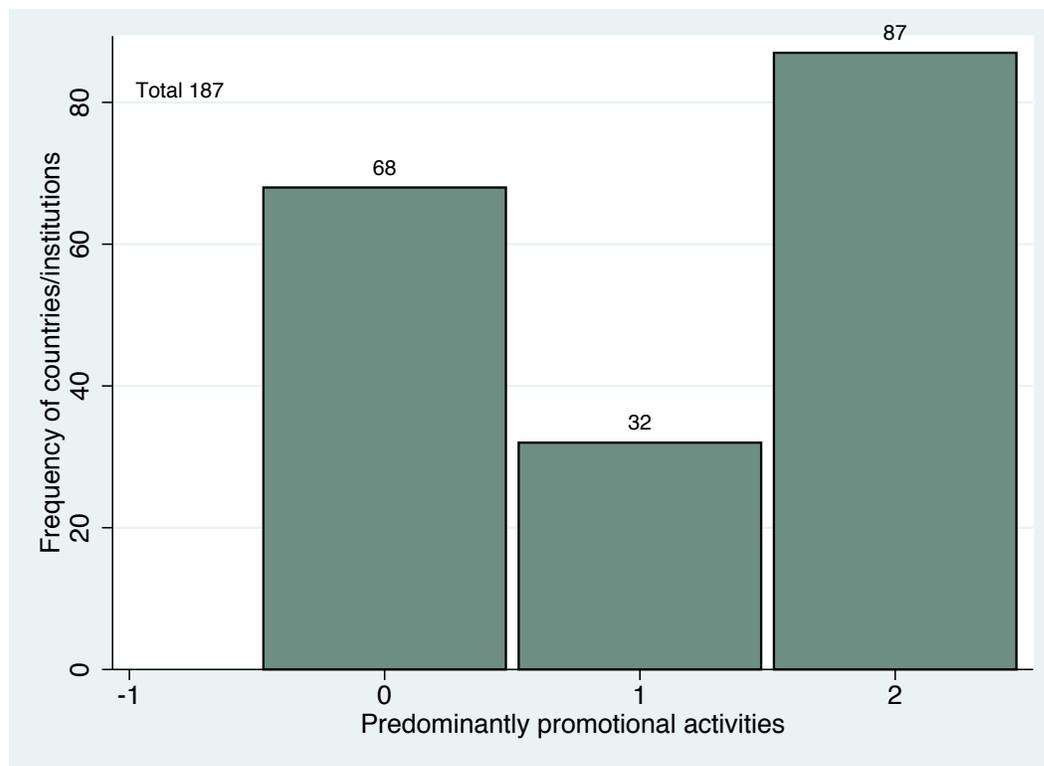
institution. Promotion is measured as high if institutions engage in education and training as well as human rights research, with low power being given by the publication of just annual reports of activity, and no such power at all for institution that do not perform any of the above activities. Protection strength can be high if institutions have quasi-judicial power and low power if the institution only performs an advisory role, or have no such power of at all. According to the SCA, human rights institutions can have quasi-judicial powers – when they do, however, they need to meet certain obligations, namely to seek an amicable settlement through reconciliation, a binding decision or on the basis of confidentiality; to inform petitioners of their rights and available remedies as well as promote direct access to them; hear complaints and transmit them to competent authorities; finally they can make recommendations to competent authorities regarding such cases of human rights violations. The difference between de jure mandated investigative powers and the predominant functions performed in regular institutional activities is important as it highlights the distinction between mandated functions and practice. This difference can be a result of many factors, including internal and external determinants – the coding performed for a study that builds on a global dataset provides a cursory understanding of patterns of design across countries and regions. Case-based studies that also incorporate qualitative data are better suited to allow a more in-depth look at the situation in each country/institution.

**Table 2.16. Predominantly promotional activities**

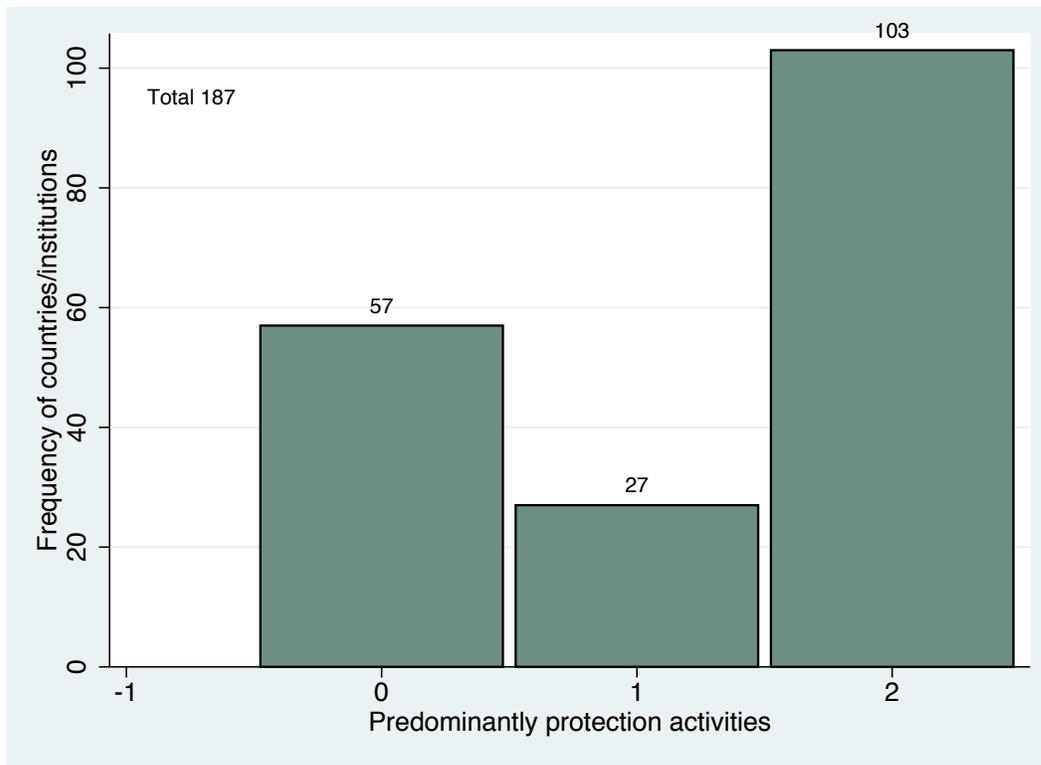
Predominantly promotion activities						
	Education and research		Reports		None	
Strong	64	73.56%	6	18.75%	0	
Medium	21	24.14%	25	78.13%	18	26.47%
Weak	2	2.3%	1	3.13%	50	73.53%
Total	87		32		68	

**Table 2.17. Predominantly protection activities**

Predominantly protection activities						
	Quasi-judicial		Advisory		None	
Strong	60	58.25%	10	37.04%	0	0
Medium	41	39.81%	16	59.26%	7	12.28%
Weak	2	1.94%	1	3.7%	50	87.72%
Total	103		27		57	



**Figure 2.17. Predominantly promotional activities**



**Figure 2.18. Predominantly protection activities**

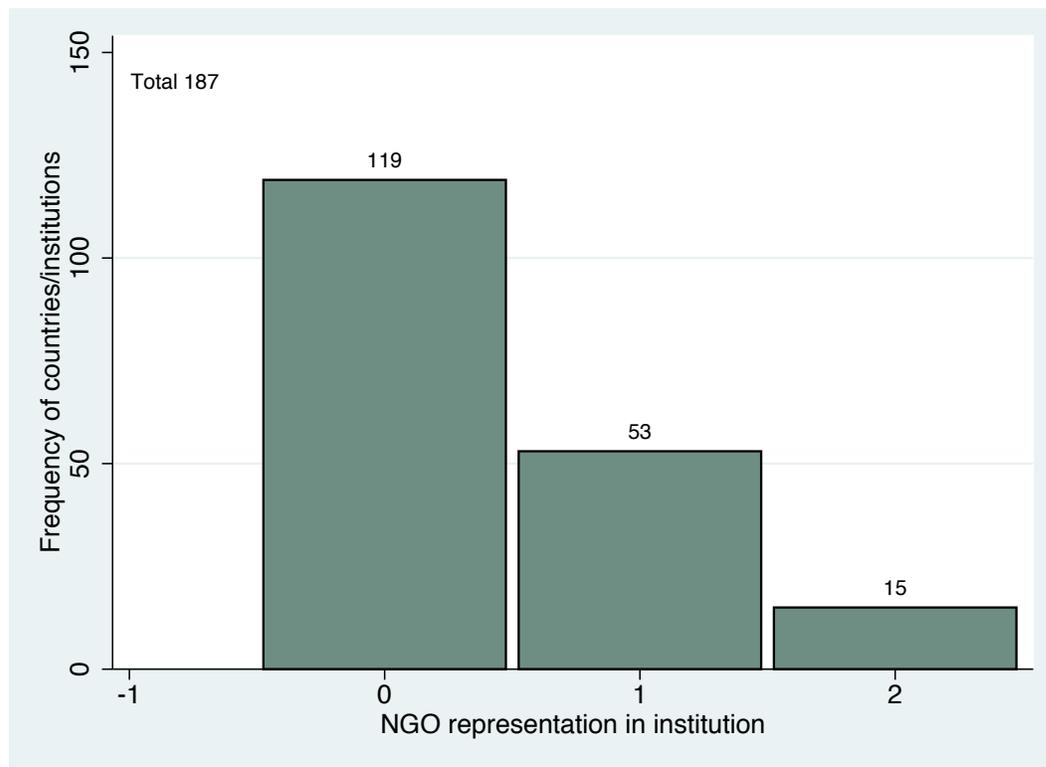
In the case of strong human rights institutions, 87 institutions have predominantly promotional functions, with Albania, Armenia, Ukraine having few or no mandated promotion functions. Though not mandated with such powers, Armenia’s Human Rights Defender performs such activities and includes them in the annual reports. In line with their mandate, Albania and Ukraine have rather limited promotion powers as evidenced by their reported activities. Human rights institutions vested with limited protection powers are Denmark, France, Germany, Greece, Jordan, South Korea, while 60 strong institutions have high protection, quasi-judicial powers. Actual protection power is limited for Denmark, Egypt, France, Germany, Greece, Jordan, South Korea, and Ukraine.

#### **2.5.2.5. Degree of pluralism**

The fifth dimension refers to pluralism of representation of as many strata of a country's society as possible and is operationalized as a measure of civil society representation in decision-making. If NGO involvement is high, representatives are active members of institutional boards and have the right to propose activities and vote for or against decisions. Institutions display a lot of variation in this dimension, with a large number of institutions at all levels of accreditation allowing limited or no civil society involvement. This is the dimension that registers the most variation, as countries with institutions that function at all levels permit different degrees of NGO presence in their activities. While some institutions may collaborate with NGOs for the promotion and protection of human rights in their respective countries or consult them regarding human rights violations, they often do not allow NGO representatives to be active members in their boards or have decision-making power. Out of the 70 countries ranked as strong, only nine (Armenia, Burundi, Cyprus, France, Germany, Greece, Qatar, Togo, and Uruguay) allow civil society representatives to participate in decision-making processes in their NHRIs. 30 others perform at a low level of pluralism, while 29 independent institutions ranked as strong do not engage at all with NGOs.

**Table 2.18. NGO representation in institutional decision-making**

NGO representation in decision-making						
	High		Low		None/N/A	
Strong	9	60%	32	60.38%	29	24.37%
Medium	4	26.67%	21	39.62%	39	32.77%
Weak	2	13.33%	0	0	51	42.86%
Total	15		53		119	



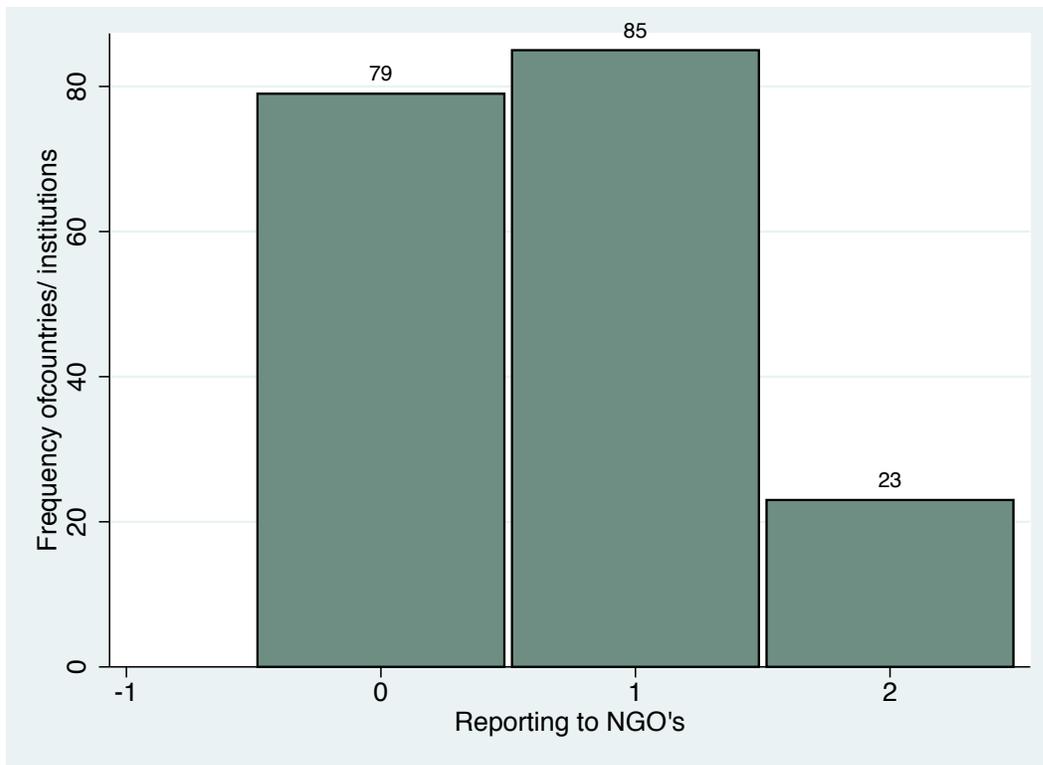
**Figure 2.19. NGO representation in institutional decision-making**

A second measure of the relationship that institutions have with NGOs is focused on the reporting mechanisms set up by each institution and whether it included NGO's. Only 14 strong institutions and eight medium-level ones state explicitly that they share their reports with NGOs, while 49 strong and 34 at the medium level of

strength make their reports public and mention civil society as some of the beneficiaries of their work without targeting them directly. Similar to the indicator that measures NGO involvement in decision-making processes, the distribution of the indicator that assesses the extent of reporting to NGOs is skewed in the direction opposite to the indicators that measure the independence and autonomy of institutions.

**Table 2.19. Reporting to NGOs**

Reporting to NGOs						
	High		Low		None/N/A	
Strong	14	60.87%	49	57.65%	7	8.86%
Medium	8	34.78%	34	40%	22	27.85%
Weak	1	4.35%	2	2.35%	50	63.29%
Total	23		85		79	

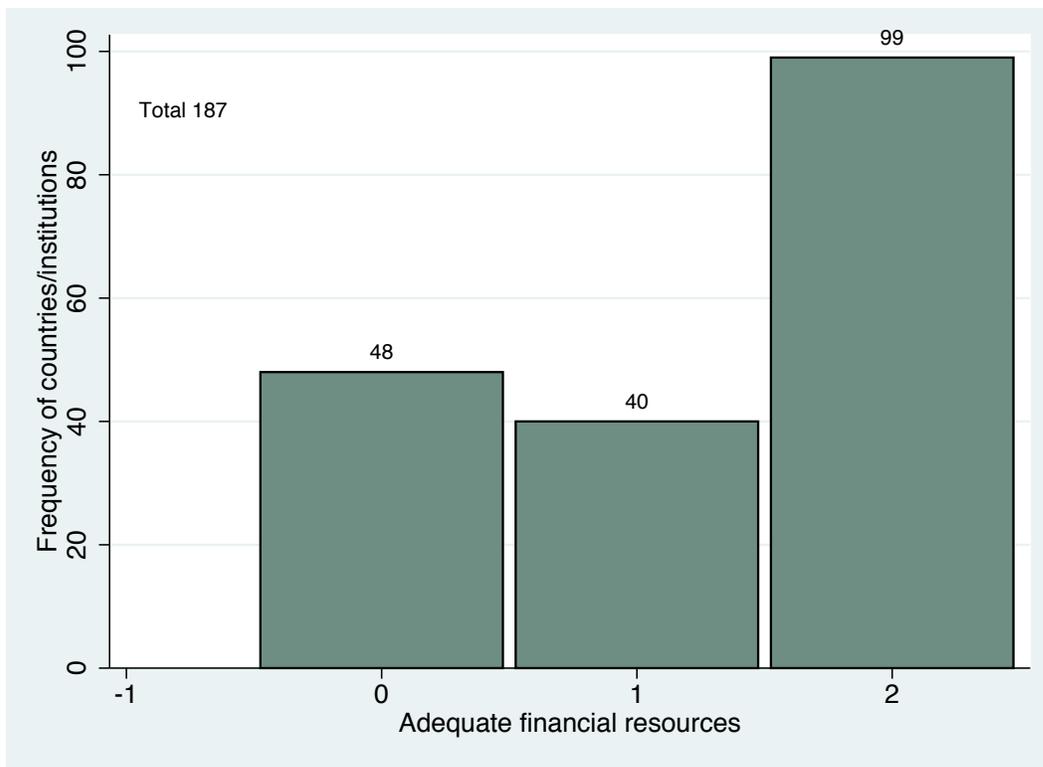


**Figure 2.20. Reporting to NGOs**

### **2.5.2.6. Adequate resources**

The sixth dimension of institutional power represents the extent to which an institution has adequate infrastructural resources to operate and fulfil its mandated duties. This dimension is operationalized with the help of two indicators – adequate resources and adequate staffing. 99 institutions across all levels of strength do not report having inadequate funding, while 117 report having adequate staffing or do not mention explicitly being in need of additional staff members. 40 institutions mention being in need of more funding, and 22 of them in need of more staff members to carry out their mandated functions. These two indicators measure the

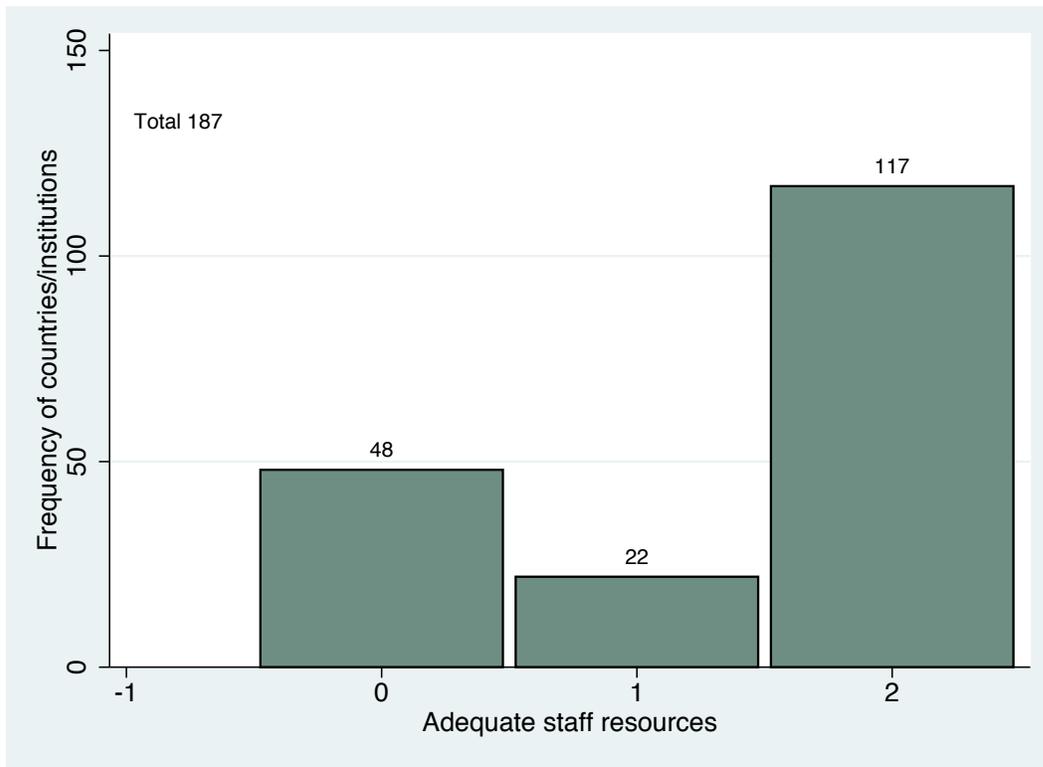
financial and staff resources capacity based on explicit statements in annual reports, public documents, and institutional websites. As such, it assesses only clearly stated need and does not include in its measurement financial or staffing needs that were not made public or explicit. A fair assumption to make is that most institutions would probably benefit from more funding and adequate staff, even when they do not make such needs explicit.



**Figure 2.21. Adequate financial resources**

**Table 2.20. Adequate financial resources**

Adequate financial resources						
	High		Low		None/N/A	
Strong	59	59.6%	10	25%	1	2.08%
Medium	35	35.35%	28	70%	1	2.08%
Weak	5	5.05%	2	5	46	95.83%
Total	99		40		48	



**Figure 2.22. Adequate staff resources**

**Table 2.21. Adequate staff resources**

<b>Adequate staff resources</b>						
	High		Low		None/N/A	
Strong	67	75.260%	2	9.09%	1	2.08%
Medium	46	39.32%	17	77.27%	1	2.08%
Weak	4	3.42%	3	13.64	46	95.83%
Total	117		22		48	

## **2.6. Conclusion**

This chapter has presented the dependent variable for the thesis – institutional strength – discussing the conceptual scheme that guided its operationalisation and introducing the original dataset of thirteen different design features. The conceptual scheme consists of six dimensions of institutional design – broad human rights mandate, de jure independence, autonomy from government, predominant activities, pluralism of representation, as well as financial and staff resources. The dataset is cross-sectional and presents data for 2012-2013 collected from institutional reports and official documentation, which is coded with the help of content analysis on a three-point scale (1 weak; 2 medium; 3 strong). Data on the thirteen indicators is aggregated into one composite variable – the institutional design index. The chapter presents also a detailed discussion of the operationalisation for each indicator and presents also descriptive statistics for all countries in the dataset.

The dataset of design features for national human rights institutions is original. The data making up the dataset of the different dimensions of institutional

power is cross-sectional due to lack of publicly available information in the form of institutional reports or documents. Although it does not capture change over time, this cross-sectional dataset offers a valuable first insight into the design of independent institutions at the national level. Linos and Pegram have collected data on institutional performance and a number of institutional design characteristics for accredited institutions, based on reports issued by countries carrying out the peer-review process at the SCA (Linós and Pegram 2015). The original data collected for this thesis is global and includes observations for over 40 institutions that never underwent the accreditation process. Moreover, it assesses institutional design on the basis of institutional reports and country-level legislative documents, in a manner similar to the evaluation carried out by the SCA, for over 180 countries which have an institution regardless of whether they ever sought accreditation with the UN.

The next logical step in institutional design data collection and generation is to expand the dataset to include over-time data. I expect that collection of over-time data on the annual performance of these institutions will be easier in the coming years. A positive development in this direction is the tendency in the past years for an increasing number of independent national bodies to systematize the information about their mandate and yearly activities on their websites. Making such institutional documentation available publicly and online facilitates the collection of global data, which would otherwise be impossible due to high cost of travel to such a large number of institutions and lack of access to document archives in the UN. Given that over-time change in institutional power tends to be gradual,

slow, and in the majority of institutions takes place in a positive direction, panel data collected at 5-year intervals would be sufficiently illustrative.

## 2.7. Annex

### A. Institutional Design Survey (English Version)

1. What country is your institution located in?

2. Do you have a mandate to protect and promote human rights?

*Mark only one oval.*

- Yes
- No

3. Are there specific human rights excluded from your institution's mandate?

Please specify below.

4. Your institution was established through (please select from the list below):

*Mark only one oval.*

- Inclusion in the country Constitution
- National law
- Parliamentary decree
- Other:

5. What statute does your institution have?

*Mark only one oval.*

- Ministerial office
- Government agency
- Parliamentary commission
- Independent organization
- Other:

6. What are the main functions that you are mandated to perform? \*

Please select all that apply:

- Periodic (annual) drafting of public reports
- Handle only complaints of human rights violations referred by a Member of Parliament or the Government
- Handle complaints of human rights violations from individuals
- Carry out investigations in cases of human rights violations
- Provide advice to alleged victims of human rights violations
- Mediate between all parties impartially
- Pronounce binding judgments in cases of human rights violations
- Represent victims in court and take part in legal settlements Impose penalties
- Propose amendments of laws to prevent human rights violations
- Advice government on harmonisation with international human rights law
- Be a member of regional and international networks of human rights institutions
- Participate in regular meetings of regional and international human rights networks
- Conduct research on human rights issues in the country
- Carry out campaigns for awareness raising

7. Of the functions you are mandated to perform, please select the functions you spend most of your time working on.

Please select 4 items from the list below:

- Periodic (annual) drafting of public reports
- Handle complaints of human rights violations from individuals
- Carry out investigations in cases of human rights violations
- Provide advice to alleged victims of human rights violations
- Mediate between all parties impartially
- Pronounce binding judgments in cases of human rights violations
- Represent victims in court and take part in legal settlements Impose penalties
- Propose amendments of laws to prevent human rights violations
- Advice government on harmonisation with international human rights law
- Be a member of regional and international networks of human rights institutions
- Participate in regular meetings of regional and international human rights networks
- Conduct research on human rights issues in the country
- Carry out campaigns for awareness raising

8. Are NGOs/members of civil society participating in decision-making at your institution?

*Mark only one oval.*

- NGOs/civil society are not present at Board meetings nor consulted
- NGOs/civil society are consulted by the Board but do not attend Board meetings
- NGOs/civil society are represented but have no voting power at regular Board meetings
- NGOs/civil society are active members of the Board

9. Are representatives of the Government participating in decision-making at your institution?

*Mark only one oval.*

- Government representatives are not present at Board meetings nor consulted
- Government representatives are consulted by the Board but do not attend Board meetings
- Government representatives are represented but have no voting power at regular Board meetings
- Government representatives are active members of the Board

10. Who appoints the Ombudsman/Commissioner/Head at your institutions?

*Mark only one oval.*

- Parliament Government President
- By public election
- The Board/Council of Directors at your institution
- Self-appointed
- Other:

11. Who appoints the Board/Council of Directors at your institutions? *Mark only one oval.*

- Parliament
- Government
- President

- By public election
- The Ombudsman/Commissioner/President of your institution
- Self-appointed
- Other:

12. To whom does your institution report on its activities?

Please select all that apply.

- Parliament
- Government
- President
- The public
- Regional organizations
- International organizations
- Other:

13. Please name all the regional networks/organization of which your institution is a member:

14. Please name all the international networks/organization that your institution is a member of:

15. How many members of full-time staff does your institution have?

16. How many members of staff at your institution have legal training?

17. What is your institution's yearly budget?

If no exact number is available, an approximate value is fine.

18. What are the main sources of your budget?

Please select all the apply.

- Government through national budget
- Government directly (through an office/ministry)
- Parliament
- Donations through fundraising
- Other:

19. Can the researcher contact you with follow-up questions?

*Mark only one oval.*

- Yes
- No

20. Please write the full address and contact information of your institution.

## **B. Etude de structure institutionnelle**

1. Dans 122quell pays se trouve votre institution?

2. Est votre institution mandatée pour la protection et la promotion des droits de l'homme?

Cochez la bonne réponse:

- Oui
- Non

3. Existe-t-il des droits de l'homme exclus du mandat de votre institution?

Merci de mentionner les droits en dessous:

4. Votre institution a été établie par:

Cochez toutes les bonnes réponses:

- Constitution nationale
- Loi nationale
- Décision parlementaire
- Autre
- 

En cas d'autre, merci de mentionner le document en dessous:

5. Quel est le statut de votre institution?

Cochez toutes les bonnes réponses:

- Institution ministérielle
- Agence gouvernementale
- Commission parlementaire
- Organisation indépendante
- Autre

En cas d'autre, merci de mentionner le statut en dessous:

6. Quelles sont les fonctions principales incluses dans le mandat de votre institution?

Cochez toutes les bonnes réponses:

- Rédaction régulière (annuelle) de rapports publics
- Traitement des plaintes référées seulement par des membres du Parlement ou du gouvernement
- Traitement des plaintes déposées par des individus/particuliers
- Conduite d'investigations en cas de violation des droits de l'homme
- Prestation de conseils aux victimes ayant subi des violations des droits de l'Homme
- Médiation impartiale entre les parties
- Le prononcé d'arrêts obligatoires en cas de violations des droits de l'homme
- Représentation légale des victimes et participation au règlement juridique
- Imposition de sanctions/amendes
- Modification de la législation pour la prévention des violations des droits de l'homme
- Prestation de conseils au gouvernement en matière d'harmonisation avec la législation internationale relative aux droits de l'homme
- Etre membre des réseaux d'institutions relatives à la protection et à la promotion des droits de l'homme au niveau régional et international
- Participation aux événements organisés par les réseaux d'institutions relatives à la protection et à la promotion des droits de l'homme au niveau régional et international
- Publication d'études et de rapports sur la situation nationale des Droits de l'homme
- Organisation de campagnes pour sensibiliser le grand public aux violations des droits de l'homme

7. Quelles sont les fonctions de quelles institutions occupe plus fréquemment?

Cochez les quatre plus fréquentes activités

- Rédaction régulière (annuelle) de rapports publics
- Traitement des plaintes référées seulement par des membres du Parlement ou du gouvernement
- Traitement des plaintes déposées par des individus/particuliers
- Conduite d'investigations en cas de violation des droits de l'homme
- Prestation de conseils aux victimes ayant subi des violations des droits de l'Homme
- Médiation impartiale entre les parties

- Le prononcé d'arrêts obligatoires en cas de violations des droits de l'homme
- Représentation légale des victimes et participation au règlement juridique
- Imposition de sanctions/amendes
- Modification de la législation pour la prévention des violations des droits de l'homme
- Prestation de conseils au gouvernement en matière d'harmonisation avec la législation internationale relative aux droits de l'homme
- Etre membre des réseaux d'institutions relatives à la protection et à la promotion des droits de l'homme au niveau régional et international
- Participation aux événements organisés par les réseaux d'institutions relatives à la protection et à la promotion des droits de l'homme au niveau régional et international
- Publication d'études et de rapports sur la situation nationale des Droits de l'homme
- Organisation de campagnes pour sensibiliser le grand public aux violations des droits de l'homme

8. Est-ce que les ONG/les membres de la société civile prennent part au processus décisionnel de votre institution?

Cochez la bonne réponse:

- Les ONG/les membres de la société civile ne sont pas présents ou consultés pendant les réunions du Conseil de votre institution.
- Les ONG/les membres de la société civile sont consultés par le Conseil, mais n'assistent pas aux réunions.
- Les ONG/des membres de la société civile assistent aux réunions mais n'ont pas le droit de voter.
- Les ONG/les membres de la société civile sont membres à part entière du Conseil.

9. Est-ce que des représentants gouvernementaux prennent part au processus décisionnel de votre institution?

Cochez la bonne réponse:

- Des représentants gouvernementaux ne sont pas présents ou consultés pendant les réunions du Conseil de votre institution.
- Des représentants gouvernementaux sont consultés par le Conseil, mais n'assistent pas aux réunions.
- Des représentants gouvernementaux assistent aux réunions mais n'ont pas le droit de voter.
- Des représentants gouvernementaux sont membres à part entière du Conseil.

10. Qui est responsable de la nomination du médiateur/ombudsman/directeur de votre institution? Cochez toutes les bonnes réponses:

- Le parlement
- Le gouvernement
- Le président
- Les citoyens au moyen d'élections
- Le Conseil
- Auto-proclamation

11. Qui est responsable de la nomination du Conseil de votre institution

Cochez toutes les bonnes réponses:

- Le parlement
- Le gouvernement
- Le président
- Les citoyens au moyen d'élections
- Médiateur/ombudsman/directeur de votre institution
- Auto-proclamation
- Autre

En cas d'autre, merci de mentionner l'institution responsable en dessous:

12. A qui devez vous rendre compte de vos activités sous la forme de rapports ?

Cochez toutes les bonnes réponses:

- Le parlement
- Le gouvernement
- Le président
- Les citoyens
- Organisation régionale
- Organisation internationale

13. Veuillez citer, s'il vous plait, les organisations régionaux et internationaux a qui votre institution rendre compte.

14. Veuillez citer, s'il vous plait, les réseaux régionaux et internationaux dont votre institution est membre.

15. Quel est le nombre de membres de votre personnel?

16. Combien de membres du personnel ont suivi une formation en droit?

17. Quel est le budget annuel de votre institution? Donnez une approximation si vous ne pouvez pas mentionner le montant exact.

18. Quelles sont les principales sources de financement de votre budget? Cochez toutes les bonnes réponses:

- Le gouvernement dans le cadre du budget national
- Le gouvernement par le biais d'un ministère (merci de mentionner le nom du ministère)
- Le parlement
- Dons obtenus par levée de fonds
- Autres

19. Veuillez citer, s'il vous plait, d'autres sources de financement.

20. Donnez-vous l'autorisation au chercheur de vous contacter pour obtenir plus d'informations? Cochez la bonne réponse:

- Oui
- Non

21. Merci de noter vos coordonnées exactes au sein de votre institution.

# **Chapter 3: Determinants of Institutional Design in the Case of National Human Rights Institutions**

## **3.1. Introduction**

This chapter introduces the explanatory framework for institutional strength as a function of design in the case of formal bodies set up to promote and protect human rights at the national level. The model draws on three bodies of academic scholarship – cross-border diffusion, Europeanization, and constructivist scholarship on national identities – and furthers their understanding of factors determining countries' commitment through the establishment of good governance institutions at the national level. The literature of diffusion investigates the determinants of the cross-border transmission of institutions and policies. Its main focus is on the role that international actors, such as regional or international organizations or neighboring countries, play as agents of change at the national level. Organizations such as the United Nations and the European Union are influential international actors that offer material and ideational incentives to states in support of stronger national human rights institutions (Pegram 2010; D. W. Kim 2009; Kim 2013).

The explanatory framework presents four main mechanisms that consist of the interplay between two sets of factors – international vs. domestic and material vs. ideational. As scholars of Europeanization have shown (Schimmelfennig and

Sedelmeier 2004; Grabbe 2006; Sedelmeier 2006; Sedelmeier 2011), institutions and practices can be adopted in response to incentives offered by the European Union, which are felt particularly strongly in Eastern and Central European countries that have joined the Union since 2004 and have been subjected to accession conditionality. Additionally, some governments can decide to adopt and support the activity of stronger national human rights institutions in response to domestic factors – executives in states that have recently transitioned to democracy could aim to lock in democracy through the establishment of strong liberal democratic institutions such as national human rights institutions. Moreover, domestic characteristics such as a social and cultural commitment to liberal democracy that has manifested itself through ratifying international human rights instruments and having strong human rights records can create a favorable environment for the creation of a strong national human rights institution.

The remainder of the chapter is organized as follows: first, it introduces briefly the dependent variable, institutional strength, and its operationalization along six dimensions of institutional design features. Second, it presents in detail the analytical model that consists of two sets of factors, – international vs. domestic on the one hand and material vs. ideational, on the other hand – hypothesized to have an effect on institutional strength. Third, it discusses in depth four causal mechanisms that explain the effect of the above-mentioned factors on institutional strength – domestic cost and benefit calculations, incentive-setting, identity as linked to human rights, and socialization or acculturation. A number of hypotheses

propose systematic tests of the four mechanisms and discuss indicator operationalization that builds on existing scholarship.

### **3.2. Institutional Design and Its Determinants**

The analytical framework presented in this chapter proposes a set of explanations for global patterns of institutional strength in the case of national human rights institutions. These causal explanations propose ideal types that build on two major lines of debate in international relations theory and propose four different sets of factors accounting for cross-border variation in institutional design – domestic factors versus international factors and material versus ideational factors. In order to explicate the two dimensions that structure the analytical framework and the explanations it provides for hypothesis testing, I will turn to a presentation of international relations theory from an institutionalist approach.

Many theories of international politics embrace a two-stage conception of world organization echoing the Westphalian nation-state order in its fundamental distinction between domestic political spheres and the international realm (March and Olsen 1998). In the first stage, the state imposes unity and coherence on domestic society (Habermas 1996), a coherence grounded in a complex set of laws and institutions as well as a national identity that overpowers other competing identities. Within the boundaries of the nation-state, national identity and other political identities are essential to structuring behavior and rules of appropriate behavior. Institutions that are linked to these identities infuse the state with shared

meaning, while domestic political processes, including political socialization, participation, and discourse, generate coherent state actors out of the inconsistencies of the many diverse individuals forming a nation-state (March and Olsen 1998, pp. 944-945). In the second stage, these domestic systems compete and cooperate in the international spheres, in pursuit of state interests. International political life is less institutionalized and more anarchical, while individual states are expected to behave like rational actors that reach mutually satisfactory agreements making use of all available resources to maximize distinct national benefits and reach separate state goals. Thus political order is defined primarily as “negotiated connections among externally autonomous and internally integrated sovereigns” (March and Olsen 1998, p. 945).

The second dimension making up the analytical framework opposes material and ideational factors. This dichotomy informs the main theoretical divide within IR: on the one hand, the neorealist and neoliberal scholarship traditions view the structure of the international system as a distribution of material capabilities and, in the case of the latter as a combination of material capabilities and institutional superstructure (Keohane 1984). This view of the world functions according to a consequentialist perspective that sees society as constituted by individuals for the fulfilment of individual ends. Politics is an aggregation of individual preferences into collective actions by means of bargaining, negotiation, coalition formation and exchange (Downs 1957; Riker 1962; March and Olsen 1998; Coleman 2008). On the other hand, constructivists see the international system as a distribution of ideas and recognize the substantial role of identities, rules and institutions in shaping

human behaviour, a view informed by an idealist ontology (Wendt 1999). Informed by the logic of appropriateness, actions are seen as rule-based and as matching with the obligations of that identity or role to a specific situation. Identities more than interests and socially constructed rules and practices more than individual rational expectations motivate action (Cerulo 1997). Identities and norms are constitutive as well as regulative and are molded by social interaction and experience (Ruggie 1988; Ruggie and Kratochwill 1986; Young 1989; Wendt 1999; Katzenstein 1997; Finnemore 1996).

**Table 3.0. Analytical framework of institutional strength**

<b>Factors</b>	<b>Material factors</b>	<b>Social factors</b>
<b>Domestic factors</b>	Cost calculations Benefit calculations	Human rights identity
<b>International factors</b>	Incentive setting (Indirect coercion)	Socialisation (Acculturation)

Analytically distinctive, within the framework of the theoretical model, rationalist and constructivist explanations are treated as potentially complementary and not only competing. Important theoretical distinctions mark the putative divide between constructivist and rationalist approaches to the study of institutions, such as, among many, the degree to which institutions structure and constitute identities and preferences (Jupille, Caporaso, and Checkel 2003). Nonetheless, a problem-driven, empirically oriented perspective makes such divides much less meaningful.

Middle range social scientific perspectives bridge this theoretical gap by focusing on specifying the conditions under which institutions matter and the precise causal path that the mechanisms specify (Jupille, Caporaso, and Checkel 2003). Within the framework of this analytical framework, the mechanisms inscribed in the rationalist logic focus on telling a story of institutional strength to which material factors are central, objective characteristics of organizational performance or the political actors' rational calculations condition the transfer of certain policies and institutions across borders. Policy makers select the best alternatives from a range of options on the basis of an assessment of consequences (March and Olsen 1998, pp. 949-951) which institutional adoption had in other countries and potential consequences of future adoption in their domestic environment.

From a constructivist point of view, a state's decision to establish an institution or adopt a policy that other states have adopted is an indication of commitment to a certain kind of appropriate global or regional standard of behaviour. Institutional change is not driven by knowledge acquisition or a focus on the relationship between adoption and its outcomes, but rather on the desire to imitate the prior model decisions of states perceived as the most successful or powerful. From this perspective, countries are expected to commit to human rights regardless of the compliance and monitoring mechanisms built into the ratified human rights instruments, as long as the provisions of the human rights treaties and institutions help them affirm their normative, ideological, or cultural beliefs (Cole 2009a). Evidence of normative pressures at the global and regional levels as well as the existence of imitation/socialization in country integration in the global human

rights regime through NHRI adoption or treaty ratification, which supports a constructivist hypothesis, has been found in both qualitative (Pegram 2010) and quantitative studies (Wotipka and Tsutsui 2008; Cole 2009b; Koo and Ramirez 2009).

Patterns of decentralized diffusion systems have been the object of investigations at the subnational level, especially in the context of American federalism. The first systematic analyses of policy diffusion in the US were published in 1940s, and focused on the spread of innovation across states that are treated as “policy laboratories” and proliferated with works on the spread of different categories of policies across state borders (Walker 1969; Gray 1973; Berry and Berry 1990; Volden 2006; Shipan and Volden 2006). Within potentially adopting polities, domestic policymakers can express preferences and formulate goals for policy innovation. Such domestic actors can be, among many, the electorate, elected politicians, appointed bureaucrats, interest groups, and policy advocates (Dolowitz and Marsh 1996; Shipan and Volden 2008). Their capabilities (Volden 2006) coupled with the environment in which they operate and their access to information (Weyland 2005) can affect the adoption and implementation of certain new policies and institutions. As is the case with the establishment of human rights institutions at the national level, national governments are the main actors deciding the powers of national human rights institution in different countries. These domestic actors make decisions regarding the establishment and powers of institutions with potential to limit their own freedom to protect its own citizens for different reasons – in line with rationalist arguments, domestic actors could see costs and/or benefits to such

decision and could also be responding to pressure exercised by other domestic factors.

### **3.2.1. Domestic cost and benefit calculations**

First, we consider domestic cost and benefit calculations that national governments make when they decide to establish a strong national human rights institution or to consolidate the design of an existing one. Although processes of cross-border diffusion can have an impact on states' decisions to establish strong human rights institutions, domestic political context is key to their existence and good functioning over-time. Given their nature, human rights institutions are intended to operate as accountability frameworks at the domestic level – as such, human rights institutions are designed primarily to hold governments accountable for violations against their own citizens. The distinct role of human rights regimes is to empower citizens to challenge the domestic activities of their own governments (Moravcsik 2000). By this logic, we can expect that countries that have strong human rights records and a tradition of support for citizens' rights ought to incur very small political costs when they decide to have a strong national human rights institution. It is also likely that countries with a longstanding tradition of democracy established a classical ombudsman even prior to the formation of the international human rights regime in the aftermath of World War II, as is the case with Sweden, Finland, among others. With limited amendments and only incurring small material costs, countries could expand the mandate of such institutions to include also safeguarding human rights.

What can we expect to happen if countries do not have a history of democracy and little to no domestic tradition of establishing and supporting strong institutions for the promotion and protection of human rights? Newly democratized states are the most likely to seek to lock in democracy for fear of its destabilization and backsliding in the longer run (Moravcsik 2000). By the same logic, once politicians take into account the political future of a state in their cost-benefit analyses of supporting the establishment of strong human rights institutions, they aim to constrain the behaviour of subsequent national governments. Considering the risk that opposing interests may gain traction in the future and that other political actors could change the course of the relationship between citizens and authorities (Moe 1990), governments may seek to “lock in” favoured policies (Moravcsik 2000) in an attempt to secure them as much as possible from the actions of future governments. Democratic regimes endeavor to prevent political retrogression or “backsliding” into tyranny. As such, national human rights institutions represent both a salient and symbolic constraint and ultimately are triggers meant to oppose a possible breach of democratic order. In other words, sovereignty costs are weighed against establishing a strong human rights institution, whereas greater political stability may be weighted in favor of it (Moravcsik 2000). In contrast to the view that hypothesizes that social actors are responsive to external socialization and often altruistically motivated, republican liberal theories work under the assumption that states are self-interested and rational in their pursuit of different national interests. These national benefits reflect variation in the nature of domestic pressures and representative institutions

(Doyle 1986; Russett 1993; Snyder 1991; Bailey, Goldstein, and Weingast 1997; Moravcsik 1997; Van Evera 1999; Legro and Moravcsik 1999; Moravcsik 2000).

Surrendering national discretion represents an agency cost at the domestic level. By design these national institutions are set up *de jure* to hold governments accountable for the implementation of international human rights agreements. They are also created to function independently from government intervention, so at least formally, they can pose a risk to governments that would risk a higher loss of sovereignty from their activity. In the case of national institutions mandated to promote and protect human rights, the agency cost of establishing a strong institution can be too high for some governments to undertake – a clear such example are countries with autocratic regimes. This cost, however, is perceived as lower than the loss of sovereignty incurring when delegating to an international agent. All other things equal, governments tend to be skeptical of delegation to an international authority due to both the sovereignty cost that this surrender of national discretion would entail and also their interest in maintaining short-term discretion to shape collective behavior or redistribute wealth as they see fit.

The scope of activity that these institutions have at the national level represents at least an equally high agency cost for governments as the ratification international human rights treaties which have little power of enforcement. While the need for government support to establish a strong national human rights body that is functional over the long run gives the executive a degree of influence over the institution's activity and effectiveness. A strong institution, however, is *de jure* independent and also *de facto* autonomous from political intervention so the cost of

having it monitor the relationship between state institutions and citizens can be high. Generally speaking, the lower the costs, the more likely states are to establish strong institutions. Depending on the type of political regime at the domestic level, such costs can potentially be very high and higher even than when ratifying international or regional human rights treaties that “lack teeth.” Costs incurred as linked to policy change, unintended consequences, and limited flexibility of were found significant explanatory factors that states weigh against the benefits of democratic lock-in when they commit to the international Convention Against torture. In the case of country commitment to the CAT through signing or ratifying it, Goodliffe and Hawkins find that normative conformity and costs both matter (Goodliffe and Hawkins 2006). From the perspective of democratic countries, it would be fair to expect the political costs of establishing such institutions to be low, at least in principle, as the mandate and work of such independent bodies are in line with the country’s existing liberal democratic values and national human rights legal frameworks.

But often these new human rights institutions can represent a change in the long-standing democratic practices of countries with strong human rights records. More specifically, binding international or regional obligations represent an increased, if modest, risk of nullification of domestic laws without a corresponding increase in the expected stability of domestic democracy (Moravcsik 2000). One particular example is the case of countries that do not have a constitutional court – as Great Britain, for instance – judicially imposed harmonization by international agreement marks a significant innovation (Drzemczewski 1983). From this

perspective, the defense of “national sovereignty” nearly equates the defense of national ideals, political culture, and even democratic practices, which is a reality informing the decisions of the framers of the post-World War II human rights documents and their academic advisers (McKeon 1949; Moravcsik 2000).

In the empirical analysis focused on the ratification and compliance with the treaty of the European Court of Human Rights, Moravcsik operationalizes newly democratized states based on whether the country was “within 30 years of becoming a democracy” in 1950, when the ECHR system was established – a country would not be considered a stable democracy if it had not been clearly established by 1950, a new democracy if it maintained continuous democratic status since between 1920-1950, and a stable democracy if it had been a stable democracy since before 1920 (Moravcsik 2000). In their dataset of European Court of Human Rights Compliance, Grewal and Voeten proposed a new robust measure of newly democratized countries that captures change over-time for countries between 1960 and 2006. Countries members of the Council of Europe are coded on the basis of whether they were within 10 years of becoming a democracy or did not yet receive a 10 on the Polity scale. Additionally, countries ranking below 6 on the Policy scale are considered non-democracies (Grewal and Voeten 2013).

The indicator for newly democratized states included in this model is operationalized by drawing on these two prior measures, but makes use of the data from the *Freedom in the World Reports* instead of *Polity IV*, due to the larger number of countries included in the former dataset. The *Freedom in the World Index* captures for each country ‘the electoral process, political pluralism and participation, the

functioning of the government, freedom of expression and of belief, associational and organizational rights, the rule of law, and personal autonomy and individual rights' (Freedom House 2016). A country receives the highest score if political rights come closest to the ideals suggested by a checklist of questions, beginning with whether there are free and fair elections, whether those who are elected rule, whether there are competitive parties or other political groupings, whether the opposition plays an important role and has actual power, and whether minority groups have reasonable (Freedom House 2016).

The measure of whether a country is 'newly democratized' is a binary variable developed using the Freedom House global data and focused on capturing change at the time when the rate of establishment of national human rights institutions peaked in the early to mid-1990s. In the context of the analysis, a country is considered newly democratized and thus is assigned the value of "1" if its status in the Freedom House reports from 1989-1993 stayed the same, as "partly free" (PF) with no change in the direction of either "free" (F) or "not free" (NF). A country gets a value of "1" also if its status changes to "free" (F) at the same time interval. Robustness checks were run, using the Polity IV dataset of degrees of democracy and autocracy (please see Annex E, following Chapter 4, and Tables 4.11, 4.12, 4.13, and 4.14) and the status of new democracy developed by Grewal and Voeten (2013). The results of the analysis including Freedom House data include 187 observations. The analysis that makes use of the Polity IV data includes a smaller number of observations (159), for which data on countries' position on the scale of democratization/autocracy are available.

### Hypothesis:

1. A newly democratic state is more likely to have a strong institution for the promotion and protection of human rights at the national level.

### **3.2.2. Incentive-setting**

Incentive-setting is an international level mechanism that refers to the pressure that certain international organizations and powerful states put on other countries to establish of institutions or policies. In the case of human rights, these incentives are positive in nature and resemble more a system of reward mechanisms. The disbursement of overseas development assistance by European states and institutions as well as by the Washington-based INGOs, for instance, is often tied to meeting a number of human rights standards. The European Commission includes recommendations for the creation and capacity building of functional ombudsmen and human rights commissions in all country progress reports for candidates states. Additionally, the European Union included human rights clauses in their existing international agreements with states outside of Europe, such in Africa, Caribbean and Pacific states (Fierro 2003; Bartels 2005). The continuation of such development funding programs is usually linked to whether countries met some of the conditions set as part of the earlier stages of projects. Within the framework of this explanatory framework, countries that entered the types of agreements discussed above are expected to have established stronger independent institutions for the promotion and protection of human rights.

It is important to note that both human rights agreements in general and human rights requirements attached to preferential trade agreements (PTA) or official development assistance (ODA) between international organizations and national governments have an intrinsically non-coercive nature. In the diffusion literature this type of cross-border phenomenon has been sometimes discussed and labeled as coercion (Gilardi 2013), whether manifested directly or indirectly (Pegram 2010). In the case of NHRIs, Pegram finds evidence of indirect coercion being at work when countries decide whether or not to establish their own institution. Looking beyond human rights research at the institutional diffusion literature, the findings of empirical research about domestic institutional reform by international political economy and development scholars has found mixed evidence of such external pressure being effective. It is important to note that explanations of the effects of such instruments of external influence in domestic policy areas are not equivalent mechanisms in the realm of human rights and thus do not necessarily provide a robust account of institutional design across borders. For instance, studies on the effect of IFI's requirements do not find conclusive evidence of a relationship between World Bank loan and credit programs and pension reform in Latin America (Weyland 2007). Also, countries dependent upon IFI loans sometimes resist pressure and do not comply fully with international recommendations, though this effect may be partly due to the fact that IFIs target countries that are more recalcitrant to reform in the first place (Weyland 2007). In certain cases, however, pressure for reform can be used by national governments to garner otherwise missing domestic support to push policy adoption in social areas

of their interest (Gilardi 2013) and in areas where institutional structures are developed enough to offer compensation to losers (Mukherjee and Singer 2010). Incentive-setting is a more appropriate label for what is at work when we speak of human rights institutional strength, given intrinsic positive nature of the incentives offered to governments – whether money in the form of overseas development assistance, a partnership through a Preferential Trade Agreement, or conditionality tied to the prospect of membership in the European Union.

Certain international agreements like the Preferential Trade Agreements (PTA) carry human rights conditionality imposed on signatory states. A number of countries with strong human rights records link ODA disbursement to good human rights performance in recipient countries. In the case of countries' ratification of international human rights treaties, the impact of such incentives has not always been proven significant. Neither the fact that a country is a recipient of foreign aid in the form of overseas development assistance or loans from the International Monetary Fund (Simmons 2002) nor the amount of ODA received is an indicator of a country's higher likelihood of ratifying human rights treaties (Wotipka and Tsutsui 2008). Coercion through human rights conditionality has been linked to PTAs, in particular to those agreements that set hard human rights standards (Hafner-Burton 2005)(Hafner-Burton 2009). Replicating the same report-based dataset and analysis carried out by Hafner-Burton on PTAs signed in 1966/67-2009, Spilker and Böhmelt found that states agree on 'hard' human rights standards in PTAs only if they have a general propensity to abide by human rights in the first place (Spilker and Böhmelt 2013). By re-fitting the model for an omitted variable selected to

reflect the reality of countries at the domestic level, the authors show that in fact PTAs are unlikely to affect human rights compliance (Spilker and Böhmelt 2013).

European Union policies with regard to its enlargement strategies provide another illustration of incentive-setting at work through EU conditionality tied to the prospect of membership offered to candidate countries and harmonization policies in new member states. The success that the EU has had in employing conditionality strategies has been inconsistent and highly dependent on the nature of the policy to be adopted and the domestic context – such is the case of minority rights in countries experiencing ethnic conflict and where the cost of compliance are too high (Schimmelfennig 2012). In addition to adoption costs and the credibility of conditionality, factors such as the clarity and formality of EU requirements and the size and speed of rewards as well inform national policy reform in response to EU conditionality (Schimmelfennig and Sedelmeier 2004).

As the EU enlarged toward the east, to incorporate Central and Eastern European countries, it made use of a system of external incentives to support the transfer of rules, policies, and institutions across borders as part of the negotiations for membership. The logic driving EU conditionality is a “bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions (Schimmelfennig and Sedelmeier 2004).” Schimmelfennig and Sedelmeier speak of two major contexts for this kind of EU driven external governance in Central and European Union: democratic conditionality centres on “the fundamental political principles of the EU, the norms of human rights and democracy (669).” This first context of conditionality began

after the fall of communism when Central and Eastern European countries embarked on the transitional path to democracy. At this stage, the EU aims to establish institutional ties, such as association, followed by the opening of the accession process. Democratic conditionality becomes the backdrop for accession negotiations, when the EU sets in motion a second type of conditionality, *acquis* conditionality, based on the specific rules of the *acquis communautaire*. Membership is the key external incentive for rule transfer. In the case of the Central and Eastern European countries, the EU made extensive pre-accession alignment a condition even prior to the start of accession negotiations.<sup>1</sup>

Research on the integration of human rights in accession conditionality is limited, although human rights have been part and parcel of the EU requirements of democratic consolidation in Central and Eastern European countries. The prospect of enlarging the EU to include countries from the Eastern bloc led to the incorporation of human rights as part of the integration process. The first human rights requirements for candidate states were enforced after the end of the Cold War and once the Yugoslav war brought to light the deeply troubling effects of human rights violations. In 1993, the EU formulated the ‘Copenhagen Criteria’, in order to prepare post-communist transitional states for membership by setting political standards to be met prior to the start of formal accession negotiations – stable institutions guaranteeing democracy, the rule of law, human rights and protection of minorities (de Búrca 2003; Grabbe 2006; Sedelmeier 2011). In the one extensive study of the role of human rights in EU conditionality, Conant finds that

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transitional democracies have made progress in respecting human rights, but these commitments have remained shallow. Moreover, the process of transition to liberal democracy is at high risk of being reversed (Conant 2014).

Returning to our dependent variable, existing scholarship has found that for accredited NHRIs, “indirect coercion” as informing states’ decision to establish NHRIs, though this mechanism only manifests indirectly (Pegram 2010). More direct coercive policy transfer can occur in settings characterized by colonialism, democracy promotion and post-conflict scenarios where, but these tools do not have an equally strong impact on human rights performance in an unmediated manner. Evidence of such coercive measures is linked to conditionality as part of the World Bank judicial and administrative reform packages or to EU accession conditionality for new member states (Pegram 2010). In the case of NHRIs in developing countries, the regional influence of the EU on national governments measured as a PTA agreement with human rights conditionality has not been found statistically significant when measuring developing countries’ decision to establish such an institution at the national level (Kim 2013b). Although INGOs have an influence on domestic human rights performance, Kim found no evidence that coercion is at work. The institutionalization of human rights promotion and protection through the activity of an independent national body can no doubt be the result of international influence. The nature of this influence with regard to human rights is more likely to be “soft” rather than directly coercive as may be the case with other types of military or economic policy transfer across borders. Incentives, whether materials of ideational, are more likely to have an effect on governments’ decisions

to support the establishment and capacity building of a strong national human rights institution.

I propose three indicators that capture incentives offered by three kinds of actors: incentive-setting through PTA are bilateral agreements with strong or weak human rights standards. Data on such agreements in which countries enter is available only up to 2009 – the slow rate of over-time change in whether countries enter PTAs in the early 21<sup>st</sup> century makes 2009 data a good approximation of the situation in the timeframe of our dataset 2012-2013. The effects of such an agreement on institutional strength are not immediate, so the lag between the time of signing and the time of the cross-sectional data of our analysis also account for this effect. Another indicator is a binary measure of conditionality imposed by the European Union on states that are members or candidates since the 2004 wave of accession. Requirements of human rights performance and the strengthening of institutional capacity are tied to the benefits of European Union membership. The third indicator that captures the effect of incentives at the global level is operationalized as the amount of development assistance received by countries from main donor countries, such as the United States and the European Union, which are the principles international actors that promote of human rights as part of their foreign policy.

### Hypotheses:

2. Countries that have entered a PTA with strong human rights conditionality are more likely to have stronger national human rights institutions.

3. Countries that have been subjected to EU accession conditionality (since 2004) are more likely to have stronger national human rights institutions.

4. States that are recipients of higher amounts of ODA from the EU or US are more likely to have strong national human rights institutions.

### **3.2.3. Identity**

According to the constructivist school of thought, some governments' decision to establish strong institutions mandated to promote and protect human rights at the national level are informed by a certain identity that manifests also in relation to human rights. In other words, some societies identify collectively as democracies with longstanding traditions of respect for human rights and sometimes also their promotion abroad. Following this logic, countries with a strong attachment to high levels of human rights promotion and protection are expected to have strong national human rights institutions. Such cases are, for instance, the Scandinavian countries which have some of the oldest ombudsman institutions in the world and have remained strong promoters of democracy and human rights across borders.

In broad strokes, identity can be understood as “a property of intentional actors that generate[s] motivational and behavioral dispositions” (Wendt 1999). Additionally, it is fundamentally subjective and rooted in an actor’s self-understanding, but incorporates both internal and external structures. States are such actors with certain essential properties that constitute one such identity for each state (Campbell 1958). State identity always has a material base, many bodies and a territory, plus a consciousness and memory of a collective Self as a separate locus of thought and activity (Wendt 1999). Two main characteristics, which help to shed light on the constitution of identities as they apply to states, are types and roles. A type is a “label applied to persons who share (or are thought) to share) some characteristic or characteristics, in appearance, behavioral traits, attitudes, values, skills (e.g. language), knowledge, opinions, experience, historical commonalities (like region or place of birth), and so on” (Fearon 1997). This simultaneously self-organizing and social quality can be seen clearly in the states system where type identities correspond to “regime types” or “forms of state” (Cox 1987). Such a type is also represented by shared beliefs in the rights of citizens by virtue of being human and the state’s institutional responsibility to safeguard them through specific institutions and policies. Thus a society’s citizens can come together in their common views on a culture of rights, and with governmental and institutional support can become viewed by other states as countries with strong human rights identities. Role identities take the dependency on culture and thus *Others* one step further. Such characteristics that account for the role-like nature of an identity are pre-social and exist exclusively in relation to *Other*. From this

perspective, the intrinsic qualities that will make a country democratic are complemented by the position that the countries occupies in the international order and the following behavioral norms toward Other ones possessing relevant *counter-identities* (Crowe and Meade 2007; Burke 1980; Stryker 1980; Wendt 1999).

A strong human rights identity is reflected by the history of a state's behavior toward its own citizens and also by its formal structures of rights protection and promotion. The Universal Periodic Review process carried out by the United Nations Office of Human Rights Commissioner mentions in its reports some state characteristics that can constitute a definition of a country's strong human rights identity (Universal Periodic Review, 2007). Such examples are the efforts take the form of implementation measures of international human rights and the passing of national legislation that strengthens the protection of the rights of a country's citizens. Other indications of strong human rights identity can be a general public awareness of human rights, an active civil society that engages in the prevention of human rights violations, and the political will to cooperate with regional and international human rights mechanisms.

A country's history of independent rights protection and prevention practices can be seen an indicator of its commitment to having a strong human rights record and thus to establishing stronger human rights institutions. In the 1990s, once the Paris Principles as a regulatory international framework and the accreditation process came into force, the human rights commission was established as a standard model for the independent national body that is mandated to promote and protect human rights. The institutional model preceding the

commission was the classical ombudsman. The first one ever to have been created was in Sweden, where the Swedish Ombudsman for Justice was established in 1809, followed by Finland in 1919, Denmark in 1955, Norway in 1962 and spread through other parts of the world to New Zealand in 1962, and Australia in 1977 (Reif 2004; Koo and Ramirez 2009). In a number of countries, the human rights commission functions in parallel with the classical ombudsman, having a mandate more directly focused on human rights, while in other countries the only independent body charged with human rights promotion and protection is the relatively recent (post-1990s) human rights commission. The original idea of the classical ombudsman was far from the ideals of human rights, also due to the lack of an international human rights regime until years after World War II. Although initially their main functions focused on ensuring the rule of law in public administration, they have come to incorporate human rights values in their mandates through a focus on the protection of citizens' right to information, fair treatment, and transparency in their interactions with the public administration (Reif 2004; Koo and Ramirez 2009). The early establishment of a classical ombudsman institution is an indication of a country's willingness to empower its citizens to exercise their citizens' rights through petitioning grievances regarding public administration.

Human rights identity has not been operationalized per se in prior studies of national human rights institution diffusion or of human rights treaty design. But most studies, however, consider important the measurement of a domestic dimension such as a historical tradition to support human rights. For instance, a country's Western heritage or its human rights record, as indicators of a

commitment to the promotion and protection of human rights, are not significant to the country's decision to establish a classical ombudsman (Koo and Ramirez 2009). The country's cultural traditions, measured through religious affiliation, are also not good predictors of commitment to human rights treaties and their implementation on the ground (Simmons 2002) (Cole 2009b).

To the extent that a country has proven to be generally more inclined to promote and protect the rights of its own citizens, one could also expect it to establish a strong national human rights institution. In the context of this model of human rights institutional strength, human rights identity is operationalized with the help of one indicator that registers a country's ratification of a strong human rights treaty. The selection of the international human rights treaty with the strongest enforcement mechanism is based on a classification which ranks 14 different human rights treaties, with the Optional Protocol of the Convention Against Torture and the International Criminal Court as the strongest to their stronger enforcement mechanisms, such as the Court's mandate to carry out independent prosecutor investigations and the Optional Protocol that allows an international inspection system for places of detention (Dutton 2012, please see chapter Annex for table). By the same token, if a country is a signatory of the treaty of the International Criminal Court, that country is expected to be more likely to commit to establishing and maintaining a strong national human rights institution. The second measure of a strong human rights institutional identity is whether a country adopted a classical model of ombudsman institution before 1990s. The first half of the 1990s marked a time when the largest number of national human rights

institutions was created and the Paris Principles were established. This indicator captures a country's commitment to the promotion and protection of citizens' rights prior to the establishment of the Paris Principles as international regulatory framework and the peer review process linked to it. A country that is an early adopter of a classical ombudsman institution is more likely to have a strong national human rights institution in 2013, whether this institution is a stronger version of the existing classical ombudsman, which was given a broader human rights mandate as well, or in the form of a human rights commission established after the creation of the Paris Principles framework that promotes their establishment.

Hypotheses:

5. Countries that have ratified the Treaty of the ICC and the Optional Protocol of the Convention against Torture are more likely to have stronger national human rights institutions.

6. Countries that are early adopters of classical ombudsman institutions are more likely to have strong national human rights institutions today.

**3.2.4. Socialisation**

Socialization is a mechanism telling a constructivist causal story about the diffusion of institutions. Socialization tells an account of diffusion as a process driven by normative and socially constructed institutional and policy properties (Checkel

2005; Gilardi 2013). It follows the idealist or constructivist logic by which policymakers decide in favor of institutional and policy adoption as they attempt to conform to what they perceive as a more widely accepted role or position in a global or regional context. Although there is relatively little consensus regarding one unique definition or a set of manifestations of socialization (Alderson 2001), most constructivist scholars engaged in the study of socialization agree on some broad parameters of an analysis of such processes. They acknowledge the significance of norms and values as principles to be shared among states organized as part of international networks and diffused within these networks through the coordination of IOs (Alderson 2001; Whitehead 2001; Bearce and Bondanella 2007). Domestic politics can play a large, sometimes determining, role in defining national norms and values, but local conditions and national politics alone do not explain many of policy choices states make. The normative context influences the behaviour of policymakers and of mass publics who may elect or constrain decision-makers. The normative context is subject to change over time and, as internationally held norms and values change, they generate coordinated shifts in interests and behaviour across borders and institutions (Finnemore 1996). As demonstrated by a rather large number of scholars, IOs can play an important role in socializing states to accept new political goals and new values that have lasting impacts on international political processes such as the structure of states themselves, the workings of the international political economy, etc. (Finnemore 1993).

In terms of institutional strength, policymakers in one country can learn from their peers in other countries about institutional design by participating in regional

or international fora where structural characteristics of human rights institutions are discussed. The study of socialization works on the assumption that states are embedded in dense networks of transnational and international social relations that shape their perceptions of the world and their role in that world (Finnemore 1996; Ruggie 1988). Within these networks, states define their interests not as a result of external threats or pressure from domestic groups but rather through shared norms and values, which structure and give meaning to political life. Human rights networks are regional or global, and can incorporate specifically institutions with NHRI accredited status, like the European Network of National Human Rights Institutions and the Asia Pacific Forum; they can also be more general in scope and global in membership, such as the United Nations' International Coordinating Committee of National Human Rights Institutions. The regular meetings of member states are focused on the accreditation process coordinated by the NHRI International Coordinating Committee at the OHCHR based on a peer-monitoring and assessment instrument and provides a setting for governments and institutional representatives to learn from one another. This learning process can promote reform that can result in a strengthening of institutional powers.

A primary methodological challenge for the study of socialization is the differentiation between processes of social learning and acculturation. Both mechanisms are contingent upon the international context in which states make their decisions and the nature of the relationships states form with the networks to which they belong. For instance, Finnemore and Sikkink speak of processes of new norm diffusion as 'cascades' taking place through the international system (1998).

They see the mechanism at work as linked closely to the existence of ‘peer pressure’ fuelled also by material sanctions, but these characteristics of the nature of relationships among state and institutional members of international networks belong more to processes of acculturation.

Acculturation is the process by which “actors adopt the beliefs and behavioral patterns of the surrounding culture, without actively assessing either the merits of those beliefs and behaviors or the material costs and benefits of conforming to them (Goodman and Jinks 2013).” Unlike socialization, some processes of acculturation can involve also shaming, thus leading to the same incomplete learning, where institutions are created without the norms they represent being internalized – for instance, such human rights institutions would be created to conform to the expectations of good governance practice in a certain community of states. The human rights norms associated with the institutions themselves, however, would not be fully internalized, even in cases where institutions have a strong design. Unlike processes of persuasion, which emphasizes the content of a norm or a belief and leads to a change of interests or identities, acculturation stops short of the internalization of norms and beliefs about appropriate behavior, highlighting the relationship of the actor to a reference group of wider cultural environment (Kelman 1958; Goodman and Jinks 2013). To the extent that acculturation depends on the individual’s integration in a social context, the process at work is partly identical to the one of socialization, although the latter leads to attitude change as a result of the interactions with the group to which one belongs (J. R. Smith and Hogg 2008). The pressure for an individual to conform to

the acceptable behaviors and norms of a reference group (Meyer and Rowan 1977; Zucker 1977; Powell and DiMaggio 1991; Scott and Meyer 1994; Yzer 2012), usually situated in their surrounding environments, can take place through the process of identification with a certain group with which an individual wishes to establish or maintain a satisfying self-defining relationship. But the end result of acculturation is usually a superficial level of conformity or, in some circumstances, the partial internalization of taken-for-granted norms. By way of contrast, socialization leads to an internalization of norms and values that are learned as a result of membership in a certain networked community.

Both qualitative and quantitative studies of human rights have indicated that international and regional network influence is likely to contribute to the adoption of institutions, leading to a kind of reflexive emulation behavior as a result of persuasion (Simmons 2002). In a study of human rights ratification in 160 countries, looking in particular at three main human rights agreements signed in the period 1984-2003, Hathaway finds that if a country lies in a region in which human rights norms are highly valued, it will have an increased chance that a state will ratify a human rights treaty as well. Her results are statistically significant in the case of the CAT, states' acceptance of CAT enforcement under Articles 21 and 22, the ICCPR and CEDAW. Though Hathaway's analysis does not draw conclusions regarding mechanisms of diffusion, these significant findings at the regional level indicate a possible social learning effect taking place in the case of human rights treaty ratification (Hathaway 2007). Similarly, the ratification of human rights treaties at the individual treaty level occurs as a consequence of governments

looking for external guidance in making international human rights commitments (Simmons 2002). These behavioral patterns can be the result of regional trends, as ratification by countries in the same region appears to impact subsequent ratification by other states (Wotipka and Tsutsui 2008).

The few studies that focus on NHRI establishment find evidence that, similarly to human rights treaty ratification, regional networks are relevant to countries' decisions to establish such an institution (Pegram 2010). In a history analysis of NHRI establishment, Koo and Ramirez find that regional adoption densities and international conferences fostering human rights developments are positively correlated with higher rates of ombudsman and human rights commission establishment (2009).

Pegram identifies acculturation at work alongside socialization processes, from which it differs in the degree it integrates shaming processes when belonging to a community of states, such as a regional organization like the European Union (2010). Evidence of acculturation has been found in both qualitative (Pegram 2010) and quantitative studies (Kim 2013), where the former makes a case for such causal mechanism being at work in global diffusion of NHRIs in general, while the latter finds evidence for shaming in the relationship between international organizations and developing nations in the process of establishing NHRIs. Socialisation and acculturation differ in as much as the latter implies shaming that leads to the same policy or institutional outcome as socialization which is a form of social learning facilitated by participation in a peer network. Kim argues that, in the case of NHRIs established in developing countries, "naming and shaming" strategies carried out by

INGOs work to determine states to establish an NHRI. The event history analysis he carries out shows that this mechanism operates in two steps – on the one hand, INGOs criticize some governments’ human rights records in general, putting pressure on them to make structural changes to address their shortcomings and also supporting local activist organizations in their own efforts to persuade the political class to conform to international recommendations (Wiseberg 2003; Kim 2013). In addition, some governments that become targets of sustained international criticism choose to establish NHRIs as a form of political concession and demonstration of political will to seek a longer-term institutional solution that would redress its human rights record (Kim 2013). Acculturation is measured with the help of two indicators – shaming as the number of recent human rights reports issued about each country and network density as the level of integration in an international network of INGOs as a measure of these largely populist human rights institutions’ mediation of discourses between elite INGOs and targeted national governments (Kim 2013). While Kim’s findings are significant in the context of the study of the activity of INGOs, their scope is limited to developing countries and, among them, to the ones that have poor human rights records.

When considering the strength that countries bestow the institutions that they set up to promote and protect human rights at the national level, we can expect a similar process of acculturation to be at work at the global level. The UN coordinated accreditation process can lead to socialization and acculturation, as institutional learning across borders can take place through the mobilization of shame or through collaboration by enabled by participation in the same networks.

For states whose institutions are considered for accreditation and also monitored every five years as part of the re-accreditation process, the general strengthening effect of such a mechanism can be increased by the recommendations of the accreditation reports. The accreditation process leads to recognition as members of the international community of NHRIs and is expected to lead to countries aiming to strengthen their human rights institutions. Accredited NHRIs are vested with competence to perform advisory work for the national governments with cooperation and maintain close ties with the United Nations and organizations in its system as well as similar regional and national institutions charged with the promotion and protection of human rights. Their responsibility to promote and protect human rights can be equated broadly with activity meant to ensure the harmonization of national legislation and practices with international human rights instruments of which the country is a member. The assessment and monitoring processes carried out by peer countries and institutions as members of the NHRI community operate as mechanisms on the basis of shame, with the potential to incite institutional change. In their study on NHRI and implementation of human rights law at the country level, Linos and Pegram find that international human rights agreements and the peer review process more specifically play a key role in determining countries to establish these national institutions for the promotion and protection of human rights (2014). This finding is confirmed also in their natural experiment of the effect of the Paris Principles on countries' decision to establish an NHRI. Their work makes use of UN-based reports of institutional performance and is based on a dataset of only accredited NHRIs (Linos and Pegram 2015).

In the case of human rights institutions' strength, I am proposing two different measures of socialization and acculturation. The first indicator that captures a socialization and acculturation effect is the regional density of strong national human rights institutions. Two world regions have a high density of strong institutions – Europe and the Americas, with Africa and Asia having a medium density level and Oceania and the Pacific having the lowest. The second indicator of socialization, which could indicate the presence of acculturation phenomena, is linked to the United Nations-led peer review accreditation process established soon after the creation of the Paris Principles in the early 1990s. Although countries with institutions at all three levels of design seek accreditation, we contend that states that underwent the accreditation process by the International Coordination Committee for NHRIs up to 2008-2009 are more likely to have strong human rights institutions in 2013. In this study's dataset, UN accreditation data is coded as binary ('yes' for countries who have undergone the accreditation process/'no' for countries that do not have UN accreditation) regardless of the level of strength they have. An important methodological concern linked to the indicator that we propose is whether the effect of the UN accreditation process could be the effect of self-selection due to the fact that only countries with strong institutions in the first place might decide to enter the UN peer-review accreditation process. In this case, accreditation as such would not play a causal role as the cost of undergoing the accreditation process is too low and no major institutional adjustments would be necessary. In order to seek accreditation, however, institutions are not required to

have reached the A-level status. In fact, accredited NHRIs have different levels of design.

Hypotheses:

7. States that have undergone the UN-led institutional accreditation process are more likely to have stronger national human rights institutions.

8. Countries that are located in regions with a high density of strong national human rights institutions are more likely to have strong national human rights institutions

### **3.3. Conclusion**

In this chapter, I have introduced the analytic model of institutional strength for national human rights institutions. The model presents a 2x2 table mapping the interplay of two sets of factors hypothesized to impact on countries' decisions to set up a stronger institutional design. International organizations like the United Nations or the European Union exert their influence at both regional and global levels through accession conditionality and the peer-review accreditation process assessing compliance with the Paris Principles. Material incentives are tied to institutional practices that promote liberal democratic values, while peer networks facilitate the creation of an environment fertile for learning and emulation. Such cross-border diffusion phenomena are concurrent with domestic factors – countries

with democratic traditions and strong human rights identities demonstrated through the ratification of international legal instruments are expected to establish stronger institutions for the promotion and protection of human rights. Additionally, governments in states that have recently transitioned to democracy establish stronger liberal democratic institutions in an attempt to lock in democracy.

Four mechanisms capture the causal processes presented the literature as linking the above factors with institutional design characteristics. First, incentives set by international institutions, such as material rewards in the form of ODA or membership in the European Union motivate governments to support stronger human rights institutions on their national territories. The European Union is a particular actor with influence on the regional stage through accession conditionality imposed on candidate states since 2004. Second, norm-based effects on institutional design can be explained through interactions with other governments in networked settings such as the UN-led community of accredited NHRIs. Cross-border learning about institutions and their powers is also more likely to happen in regions with high density of strong institutions, such as Europe or the Americas. Third, domestic characteristics such as a strong liberal democratic identity that has demonstrated a country's commitment to international human rights instruments is a more fertile ground for stronger institutions mandated to promote and protect human rights. A fourth mechanism is also linked to the domestic sphere and explains institutional strength as linked to the cost and benefit calculations of political elites that aim to lock in democracy in transitional states. By

the same logic long-term democracies are expected to set up strong institutions as the political costs associated with such an independent and strong human rights institution on their territory are minimized in democratic settings where liberal values are already inscribed in the existing legal framework.

Drawing from theoretical and empirical work on institutional diffusion, Europeanization and constructivist scholarship on country identity, I formulate a number of different hypotheses to be tested through statistical analysis in subsequent chapters. The indicators I propose draw on existing scholarship in International Relations and Comparative Politics and, whenever necessary, refine existing measures and design new ones that encapsulate more appropriately the processes that impact on the institutional strength of national bodies charged with the promotion and protection of human rights at the national level. The following chapter gives the quantitative empirical analysis that tests these theory-driven hypotheses on an global dataset.

### 3.4. Annex

**Table 3.2. Fourteen Human Rights Treaties and Levels of Enforcement**

**Mechanisms (Dutton, 2012)**

<b>Level of Enforcement</b>	<b>Description of Mechanism</b>	<b>Human Rights Treaty</b>
1- weakest	State must file reports	ICCPR (1966); ICESCR (1966); CERD (1966); CEDAW (1980); CAT (1984); CRC (1989)
2- weak	States make complaints for committee	Article 41 ICCPR (1966); Article 21 CAT (1984)
3-moderate	Individuals file complaints with committee	Optional Protocol ICCPR (1966); Article 14 CERD (1966); Article 22 CAT (1984); Optional Protocol CEDAW (1999)
4-stronger	Committee may visit state	Optional Protocol CAT (2003)
5-strongest	Independent prosecutor investigations	ICC (1998)

# **Chapter 4: Global Analysis of Institutional Design in the Case of National Institutions Mandated to Promote and Protect Human Rights**

## **4.1. Introduction**

This chapter introduces the statistical analysis that tests empirically the model of institutional strength for national human rights institutions. First, it gives a brief overview of the ordinal *logit* model and the multinomial *logit* model that test the global impact of independent variables on the three-point ordered categorical variable, institutional design. The former model assumes that the three categories of the dependent variable (weak, medium, strong) are ordered in a meaningful way, although the distance between them is unknown. The multinomial *logit* model does not build on the assumption of ordinality and relaxes its intrinsic restrictions on probabilities. The multinomial *logit* model (MNL) is the most commonly used statistical model for nominal outcomes with more than two categories.

The model consists of the ordered categorical dependent variable – institutional strength, – and the nine explanatory variables that are hypothesised to have an effect on it (plus GDP/capita as a control variable). Institutional strength is defined as a function of institutional design features, which is a composite variable made up of six dimensions. Four different mechanisms account for the causal relationship between the nine determinants of institutional design and the outcome (i.e. socialization, human rights identity, incentive-setting, as well as cost and benefit

calculations). The second part of the chapter presents definitions for each indicator and gives details of the level of measurement for each variable as well as its coding scheme.

The results of the statistical analysis find evidence of five different theoretical explanations of institutions strength in the case of national human rights institutions. Whether a country has undergone the UN-led accreditation process appears to have the strongest effect on the likelihood of establishing a strong national human rights institution. A country's early adopter status shows that an early commitment to liberal democratic values has also a statistically significant impact on institutional strength. The higher regional density of strong institutions in a region is a significant predictor of the likelihood to establish stronger bodies to promote and protect human rights domestically. Variables that measure incentive-based effects on institutional strength have also statistically significant coefficients in the model, such as overseas development assistance disbursed by the US. or membership conditionality that the European Union introduced since the 2004 wave of accession. The global effects on European Union influence through overseas development assistance is not statistically significant in the model. Being a new democracy that transitioned from authoritarianism from 1989 to 1993 has a negative effect on institutional strength, and so does a country's joining a preferential trade agreement with strong human rights standards.

The findings of the analysis provide evidence that three causal mechanisms are at work when seeking to understand global patterns of human rights institutional design. Socialisation tells a story of rule transfer and policy adoption

through cross-border learning from countries with strong human rights identities that have committed to the establishment of a classical ombudsman before the 1990s and earlier than most countries around the world. Strong and long-standing commitment to the institutionalised protection of rights on national territory is an indicator of strong domestic identity of liberal democracy and respect for rights, which can provide a more fertile environment for stronger national human rights institutions. Institutional design isomorphism is more likely to occur in regions with high density of strong institutions, such as Europe and the Americas, due to government deciding to establish stronger institutions in an attempt to align their human rights and institutional policy choices with a standard perceived as appropriate at the regional level. Socialisation and acculturation processes are driven by idealist factors can also be at work across borders when they are coordinated through the efforts of the United Nations, through institutional accreditation. In contrast to, material factors inform mechanisms like incentive-setting, which is found to be provided by powerful regional organisations, such as the European Union, has made use of external governance tools such as conditionality that includes human rights legislation and stable democratic institutions when it has negotiated with candidate states since the 2004 wave of accession.

## 4.2. The *logit* statistical models – brief introduction

Institutional strength is a three-point ordered categorical variable, with a ranking that assumes an ordering of difference degrees of strength – some human rights institutions are strong, while others have medium-level strength, and some of them have weak ones. The ordered *logit* model (ORM) has a dependent variable that is categorical and contains categories that can be ordered in a meaningful way in the context of the study. A distinctive characteristic of this model is that, despite the categories of the response variable being ordered, the distances between these categories are unknown. In other words, the difference between the three categories of strength for each indicator is not a continuous variable with numerical values that can exactly measure these differences in strength as they occur in the institutions globally. Each indicator is a latent categorical variable with each dimension of strength capturing a change in the degree of its occurrence whose metric is unknown – the difference in strength between the weak and medium level strengths on the one hand and the medium to strong categories in each indicator are not the same, even if the numeric value on the ordinal scale (0-1-2) may be the same.

McKelvey and Zavoina introduced the *logit* version of the ordinal regression model in terms of an underlying latent variable (McKelvey and Zavoina 1975) and shortly thereafter in biostatistics McCullagh referred to the *logit* version as the proportional-odd model. The ORM is nonlinear, and the magnitude of the change in the outcome probability for a given change in one of the independent variables depends on the levels of all the independent variables. Given that different

assumptions of ordering can sometimes lead to different ways of ordering and also different conclusions (Miller and Volker 1985) the intrinsic ordering of the categorical variable ought to be justified substantively in the context of the analysis. Additionally, best practice indicates that results of ordinal models ought to be compared with results from models that do not assume ordinality. This is also a recommended approach due to the restrictions that ORM apply on the relationship between the independent variables and the probabilities of the (three in our case) outcome categories.

In this analysis, both an ordinal *logit* and a multinomial *logit* model are fit, as the latter does not build on the assumption of ordinality and relaxes its intrinsic restrictions on probabilities. The multinomial *logit* model (MNL) is the most commonly used statistical model for nominal outcomes with more than two categories. The model essentially fits separate binary *logits* for each pair of outcome categories (Long and Freese 2014). These outcome categories are assumed to be unordered. Even when an outcome is ordered, MNL can be used as a sensitivity test, when the parallel regression assumption is rejected or there are other doubts about the ordinality of the dependent variable. Compared to ordinal *logit* models, the potential loss of efficiency in using models for nominal outcomes is outweighed by avoiding potential bias. Additionally, MNL captures differences between different outcome categories and makes possible the exploration of the relationships between separate binary relationships between independent variables and each of the outcome categories.

### 4.3. Explanatory variables

The measure of whether a country is '**newly democratized**' is a binary variable developed using the Freedom House global data and focused on capturing regime change at the time when the rate of establishment of national human rights institutions peaked in the early to mid-1990s. In the context of the analysis, a country is considered newly democratized and thus is assigned the value of "1" if its status in the Freedom House reports from 1989-1993 stayed the same, as "partly free" (PF) with no change in the direction of either "free" (F) or "not free" (NF) or change in status to "free" (F) in the same time interval. A national institution in a country not considered "newly democratized" and assigned the value of "0" if its status is consistently "not free" or "free" for the indicated period of five years.

A country's strong liberal democratic **identity**, in particular strong human rights identity is coded as a binary variable, with the value of "1" if a country's human rights identity is considered strong and "0" if a state's human rights identity is considered weak. A country has a strong human rights identity if it shows commitment to liberal democratic values such as international human rights standards through ratifying international human rights treaties that have strong enforcement mechanisms. The operationalization is based on Dutton's study of ratification of human rights treaties, which offers a ranking of 14 different human rights treaty strength based on their varied levels of enforcement mechanism.

National human rights institutional strength could also be associated with whether **a country established its institution early**, prior to 1990, when the Paris

Principles as the international framework regulating the establishment and activity of national human rights institutions around the globe, was put under discussion and later put in place by the United Nations Office for the High Commissioner of Human Rights. If a country is an early adopter, it is coded as “1” and if it is not an early adopted, it is assigned “0” as a value.

Institutional strength can also be a result of **socialisation and acculturation** processes for institutions that have undergone the UN-led accreditation process and been integrated in the global community of NHRIs. In the dataset for this thesis, institutions that underwent the accreditation process during two years prior to the year of data collection 2013 receive a score of “1” and the ones that were never accredited or were accredited in the years following data collection are coded as “0.”

As a measure of states’ response to incentive setting is the binary variable that indicates whether or not they have signed **Preferential Trade Agreements with strong human rights conditionality**. If in 2012 a state has entered a PTA with strong human rights conditionality, it is coded as “1”; if states have entered PTAs with low human rights standards or other trade agreements with no preferential clause, they are coded as “0.” Data on PTAs with human rights conditionality is drawn from the Spilker and Boehmelt dataset (Spilker and Böhmelt 2013), which re-created the dataset utilized by Hafner-Burton in her study of the effect of PTAs on government repressive practices. The dataset in Spilker and Boehmelt right censored at 2009 values; given the over-time slow rate of change in states entering PTAs, the rate of PTA adoption in 2009 can be considered a fair estimation of the adoption rate in the year of interest for this analysis, 2012.

A government could create a strong national human rights institution also as a response to **European Union accession conditionality** imposed onto candidate and new member states. The variable is a binary, with the value of “1” for countries that have joined the European Union since 2004 or were candidate states in 2013, and the value of “0” for member states that joined prior to 2004. The source of information on the basis of which data was coded is the European Commission’s webpage on the enlargement process. Financial incentives such as **Overseas Development Assistance** disbursed by Western countries as part of their democracy promotion programs are linked to human rights conditions intended for recipient countries to meet, including requirements linked to the establishment and capacity building of NHRIs. Thus, a government’s decision to establish a strong national human rights institution can be tied to its being the recipient of a higher amounts of ODA from the main international donors in support of democracy promotion – the United States and the European Union. Data is in current prices, in US Dollars, calculated in millions. The source of the data is the OECD Query Wizard for International Development Statistics (QWIDS) and values are averaged for the years 1990-2013.

A government’s decision to have a strong national human rights institution could be linked also to a regional learning effect – in other words, if a country is located in a **region with a high density of strong national human rights institutions**, it is more likely to have a strong institution itself. Given the regional distribution of strong institutions across the five regions (Americas, Europe, Asia, Africa, and Oceania), two regions stand out as having a high density of strong

national human rights institutions – Europe and Americas (0.51), while the other three have low density (0.30 for Asia, 0.33 for Africa, and 0.21 for Oceania). Coding is based on own calculations. Gross Domestic Product is also used as a control variable, testing for the effect of income per capita on institutional strength.

**Table 4.1. Codebook for all variables in the model**

<b>Variable</b>	<b>Obs</b>	<b>Unique</b>	<b>Mean</b>	<b>Median</b>	<b>Min</b>	<b>Max</b>
Strength	187	3	2.096	2	1	3
NewDem_89/93	187	2	0.118	0	0	1
ICCCATop	187	2	0.620	1	0	1
PTAhard	187	2	0.508	1	0	1
EUmem2004	187	2	0.097	0	0	1
ODAEU	187	147	104.378	31.86	0	858.71
UDAUS	187	138	75.127	10.19	0	2003.86
Adens	187	3	0.442	0.51	0.21	0.51
Adopt	187	2	0.140	0	0	1
UNAccr	187	2	0.513	1	0	1
logGDPcap	187	186	8.560	8.602	5.525	12.003
GDPcap	187	186	14436.55	5440	251	163352

#### 4.4. Ordered *Logit* Model and Estimation

In an ordered *logit* model the estimated output is

$$y^* = x\beta + \varepsilon_i,$$

where  $i$  is the observation and  $\varepsilon$  is the random error. The marginal change in  $y^*$  with respect to  $x_k$  is:

$$\partial y^*/\partial x_i = \beta_i$$

Because  $Y^*$  is unknown, its true metric is unknown. The value of  $y^*$  depends on the identification assumption we make about the variance of errors. As a result, the marginal change in  $Y^*$  cannot be interpreted without standardizing by the estimated standard deviations of  $Y^*$ . For the case a total of nine independent variables, the ORM looks as follows:

$$y^* = \alpha + \beta_{x_1} + \beta_{x_2} + \beta_{x_3} + \beta_{x_4} + \beta_{x_5} + \beta_{x_6} + \beta_{x_7} + \beta_{x_8} + \beta_{x_9} + \varepsilon_1$$

Using the data in the model of institutional strength, we use *ologit* to fit the model

$$\Pr(\text{strength} = m \mid x_i) = F(\tau_m - x\beta) - F(\tau_{m-1} - x\beta)$$

where  $\Pr$  is the probability of observing  $y = m$  for given values of the  $x$ 's corresponds to the region of the distribution where  $y^*$  falls between  $\tau_{m-1}$  and  $\tau_m$ .

The mathematical expression of the model of institutional strength is as follows:

$$y^* = \alpha + \beta_{\text{NewDem}} + \beta_{\text{ICCCATop}} + \beta_{\text{PTAhard}} + \beta_{\text{EUmem2014}} + \beta_{\text{ODAEU}} + \\ \beta_{\text{ODAUS}} + \beta_{\text{ADens}} + \beta_{\text{Adopt}} + \beta_{\text{UNAcc}} + \beta_{\text{logGDPcap}} + \varepsilon_1$$

**Table 4.2. Model 1 (full model)**

**Model 1 (full model)**

<b>Strength</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>	<b>Odds ratio</b>	<b>St. err. or</b>
NewDem_89/93	- 0.2022	0.4838	0.676	0.8169	0.3952
ICCCATop	0.2739	0.3609	0.448	1.3150	0.4747
PTAhard	-0.0920	0.3659	0.801	0.9121	0.3337
EUmem2004	1.4960**	0.6302	0.018	4.4639**	2.8131
ODAEU	-0.0006	0.0013	0.645	0.9994	0.0013
ODAUS	0.0018**	0.0008	0.020	1.0018**	0.0008
Adopt	1.0324**	0.5089	0.042	2.8078**	1.4289
Adens	3.9461**	1.7971	0.028	51.7343**	92.9742
UNAccr	2.6769***	0.3883	0.000	14.5400***	5.6469
logGDPcap	- 0.0742	0.1209	0.540	0.9285	0.1123
/cut 1	1.4087			1.4087	
/cut 2	3.8010			3.8011	

Prob > chi2 = 0.0000, N = 187

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

#### 4.5. Hypothesis tests

The effect of having undergone the United Nations process of accreditation on institutional power is significant:

$$LRx^2 = 5.64, df = 1, p<0.02$$

The effect of having undergone the United Nations process of accreditation on institutional power is significant:

$$LRx^2 = 47.51, df = 1, p<0.01$$

The effect of having adopted a classical ombudsman before 1990 on institutional power is significant:

$$LRx^2 = 4.12, df = 1, p < 0.05$$

The effect of the higher regional density of strong (A-level) institutions on institutional power is significant:

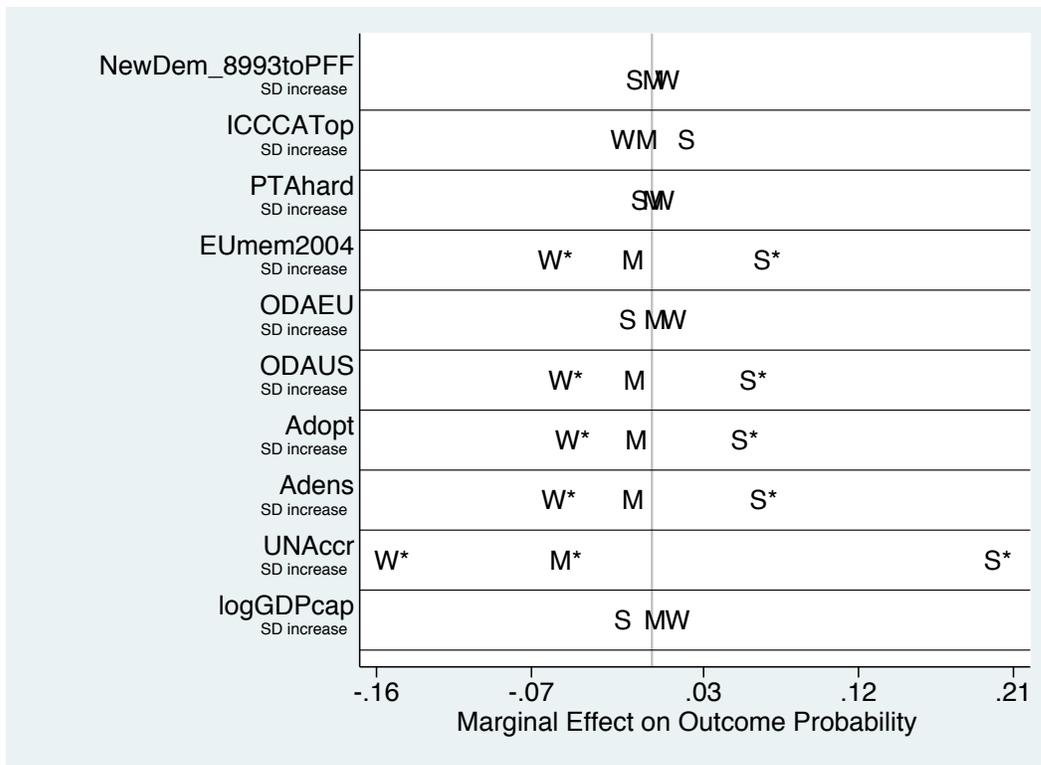
$$LRx^2 = 4.82, df = 1, p < 0.01$$

The effect of having received overseas development assistance from the United States is significant:

$$LRx^2 = 5.39, df = 1, p < 0.05$$

A plot of average marginal effects of each independent variable on the outcome probability offers an overview of the magnitudes of effects of each independent variable on the outcome probability. In the plot, the horizontal axis indicates the magnitude of the effect, with the letters within the graph marking the discrete change for each outcome. This plot offers a quick overview of the effects of independent variables and helps also to identify the variables whose effect is significant and thus worthy of further investigation. This plot offers a visual illustration of the magnitude of the effects that individual independent variables have on the outcome. From the plot, it is evident that the magnitude of the effects of

five variables on the outcome probability is greater: EUmem2004, UNAccr, Adens, Adopt, and ODAUS. Among the four, the effect of a change in one unit for the UNAccr (i.e. whether or not an institution has UN accreditation or not) is the greatest. The second largest effects are due to a one standard deviation increase in the amount of overseas development assistance that a country receives from the United States and is strongest on weak and strong institutions and not as great on medium level institutions and, additionally, to whether a country has been objected to European Union conditionality. The third significant effect on institutional power is due to the existence of a high density of strong (A-level) institutions in the region where a country is based. A factor change in whether a country is an early adopter of a classical ombudsman institutional model has also a significant effect on the probability that a country establishes a weak or a strong institution.

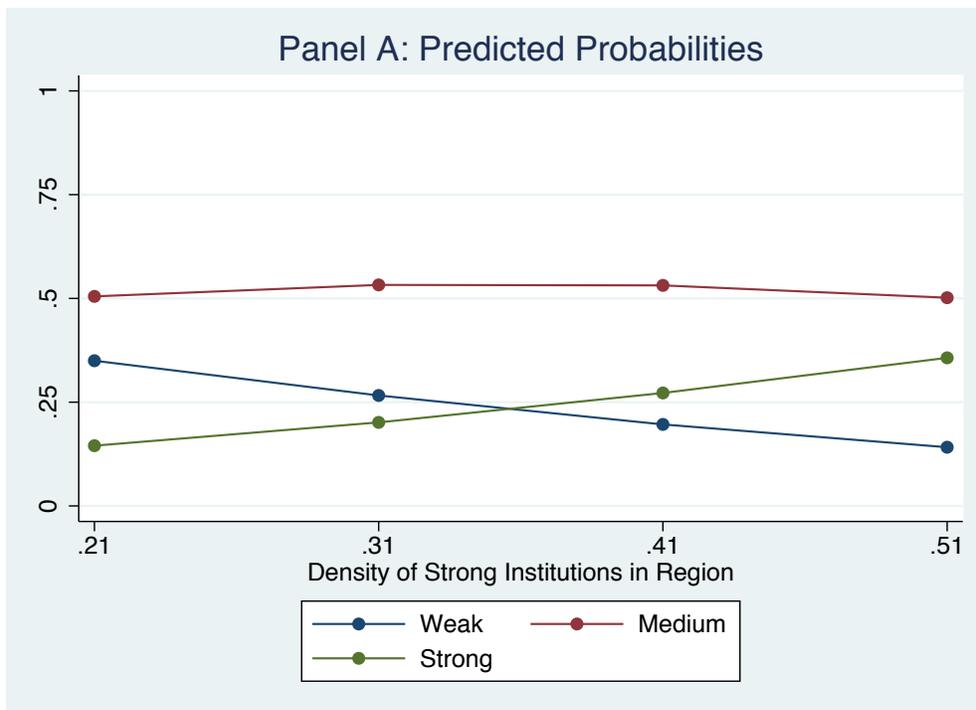


**Figure 4.1. Plot of marginal effects of independent variables on outcome probability (\* indicates  $p < 0.05$ ) NB A breakdown and discussion of the standardized estimates of the marginal change in y can be found in the Annex.**

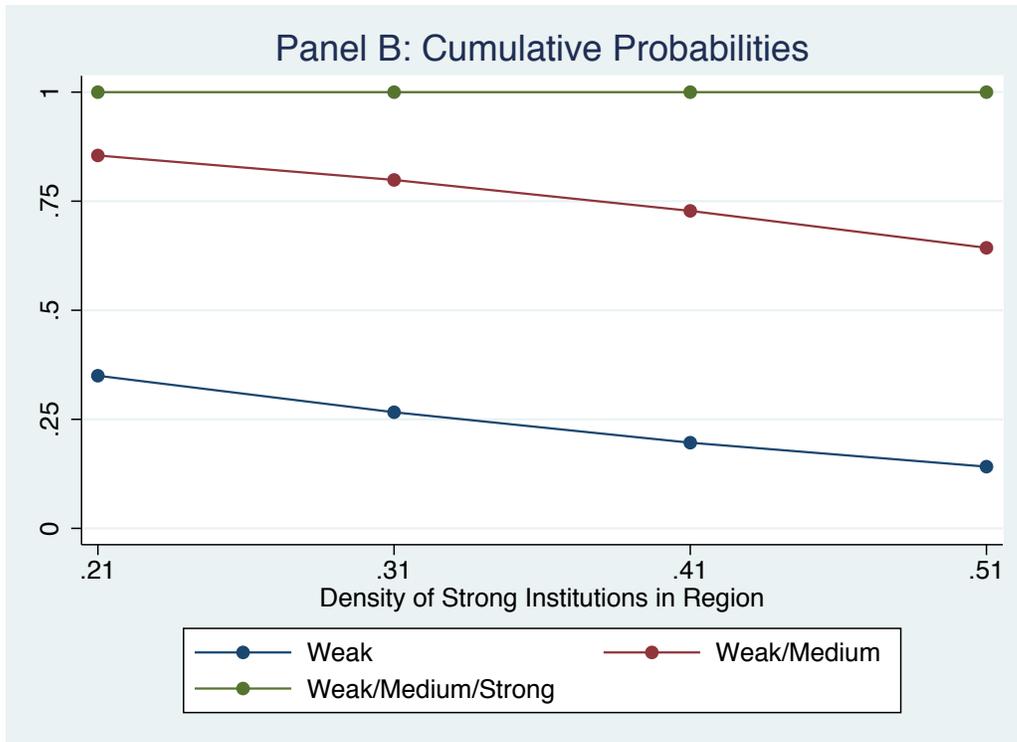
The plots below represent visually the predicted and cumulative probabilities for the ordered *logit* model. Cumulative probabilities measure the probability of observing a given category or lower. Two of the variables that are statistically significant in the analysis are continuous and thus lend themselves to visual graphs of effects on the outcome probability by outcome level (weak, medium and strong), namely ODA from the United States and the density of strong institutions in the region. In the case of both variables, the most significant impact that the two variables have is on the probability of having an institution with a strong design, with the medium level line registering a slight rise followed by a decline. In other

words, the higher the amount of ODA from the United States, the higher the probability is of a country having institutions with a strong design. More specifically, the findings mean that countries that are located in Europe and the Americas are more likely to establish medium and strong institutions, while the probability of having a strong design is lower in Oceania, Africa and Asia.

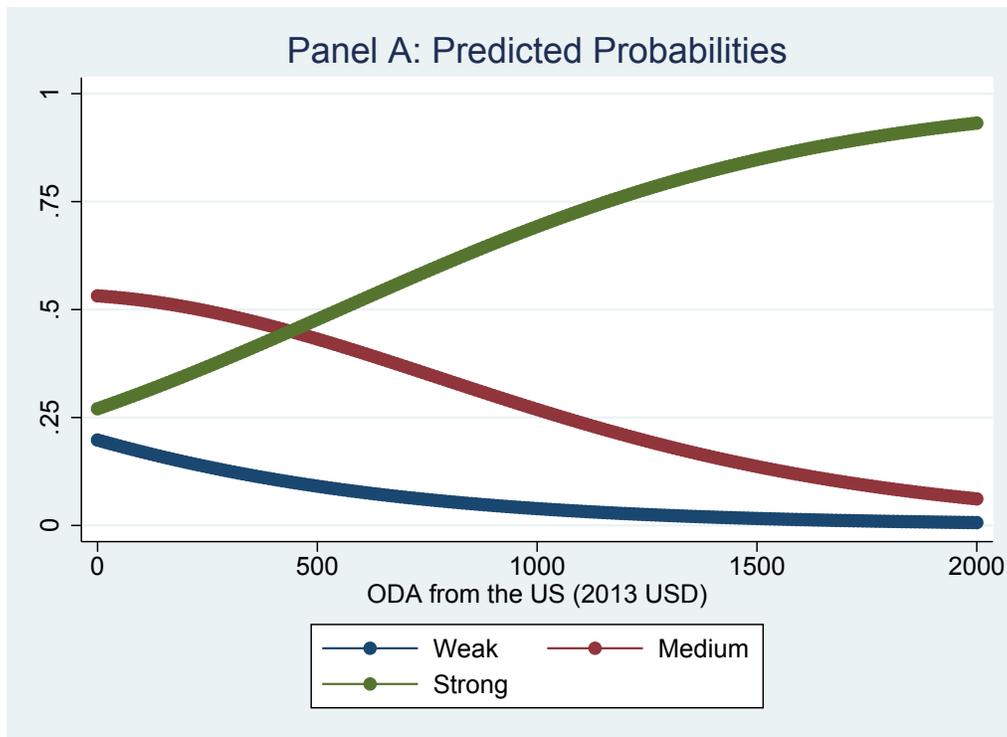
**Plots of predicted and cumulative probabilities on the three ordered outcome categories**



**Figure 4.2. Predicted probabilities: Density of strong institutions in region**



**Figure 4.3. Cumulative probabilities: Density of strong institutions in region**



**Figure 4.4. Predicted probabilities: ODA from the US**

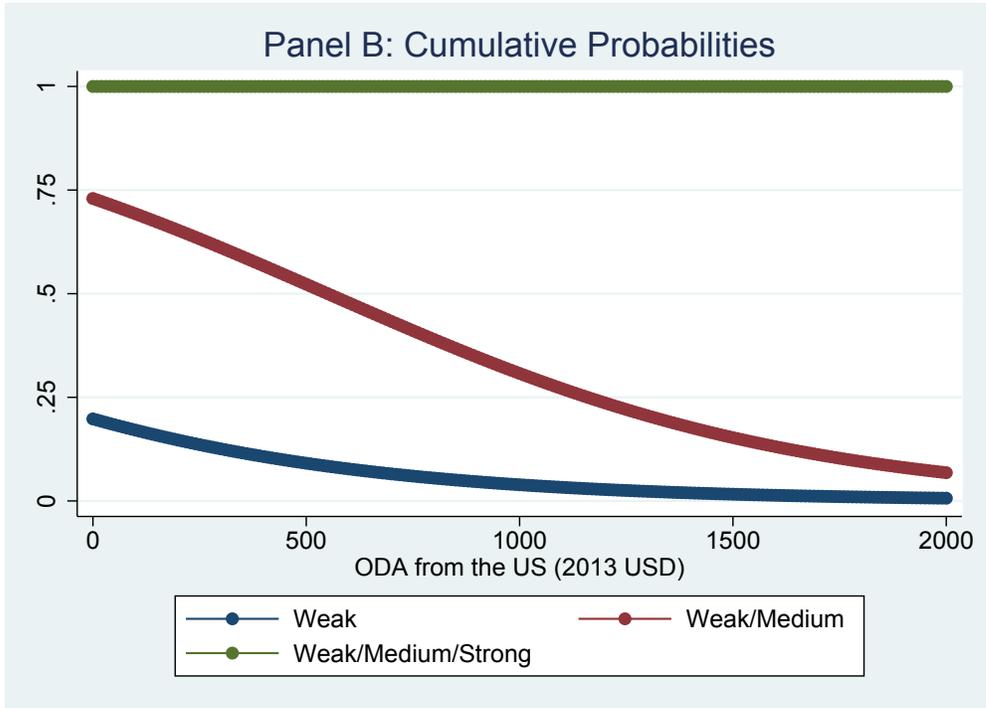


Figure 4.5. Cumulative probabilities: ODA from the US

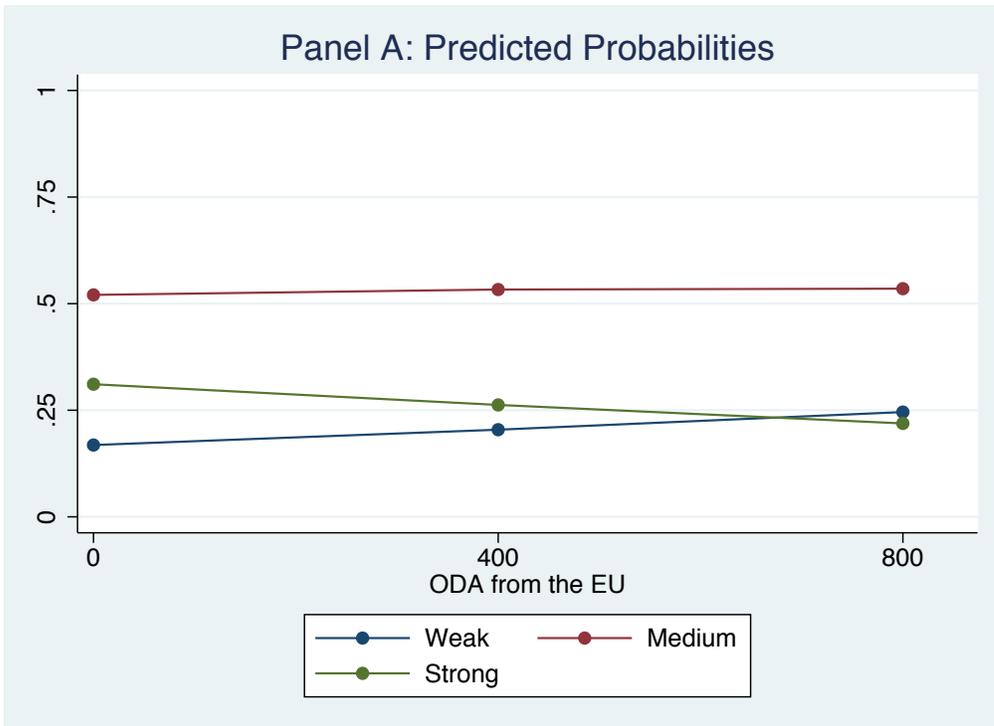
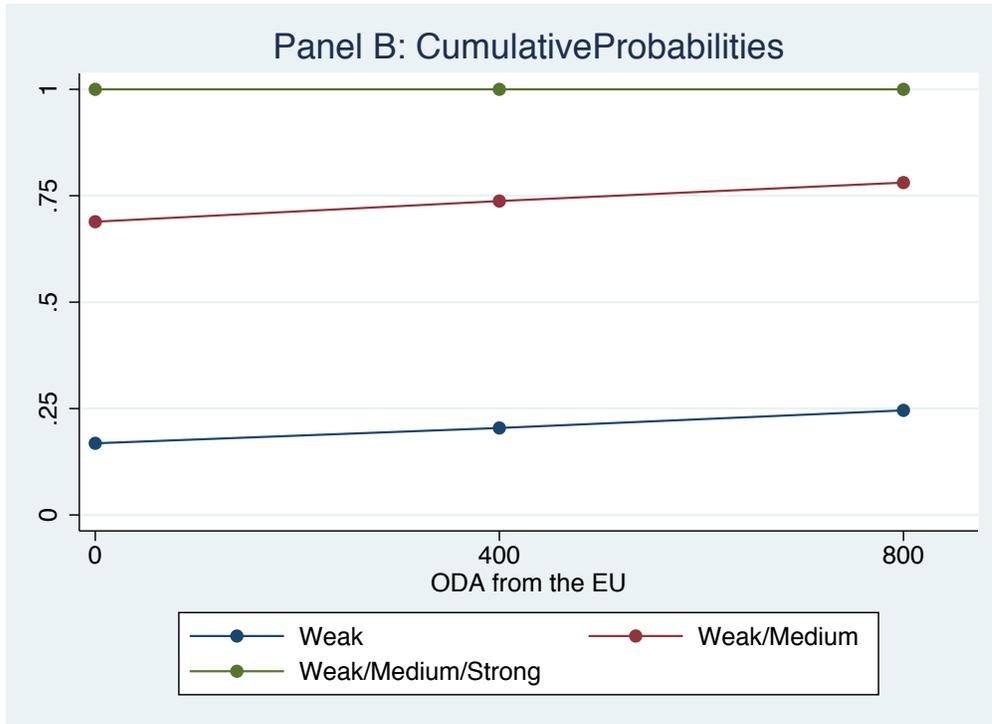
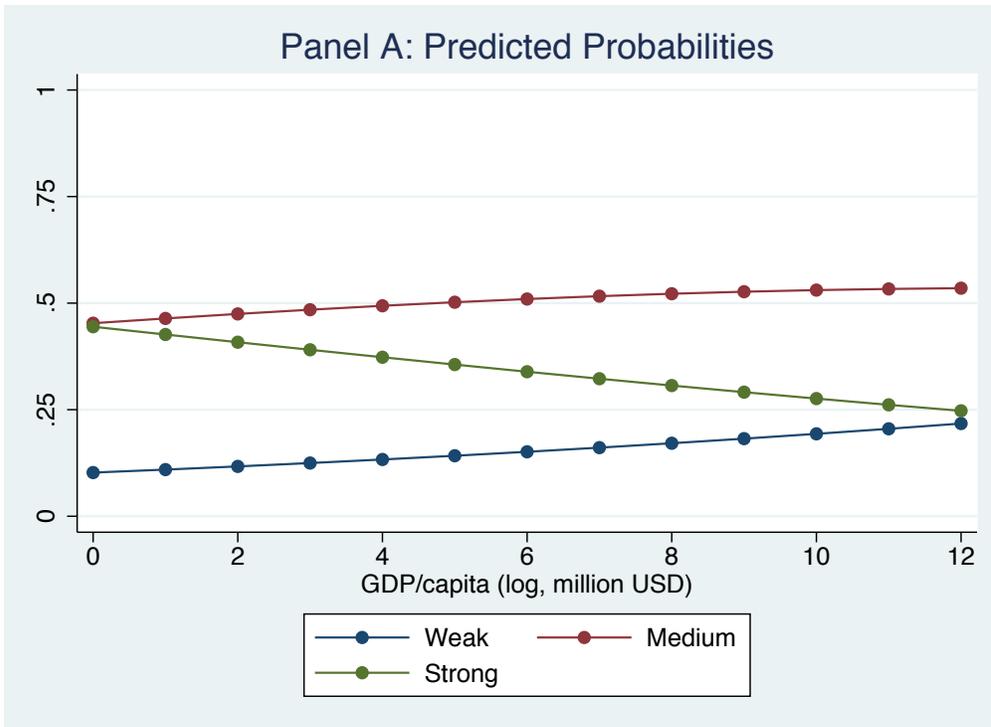


Figure 4.6. Predicted probabilities: ODA from the EU

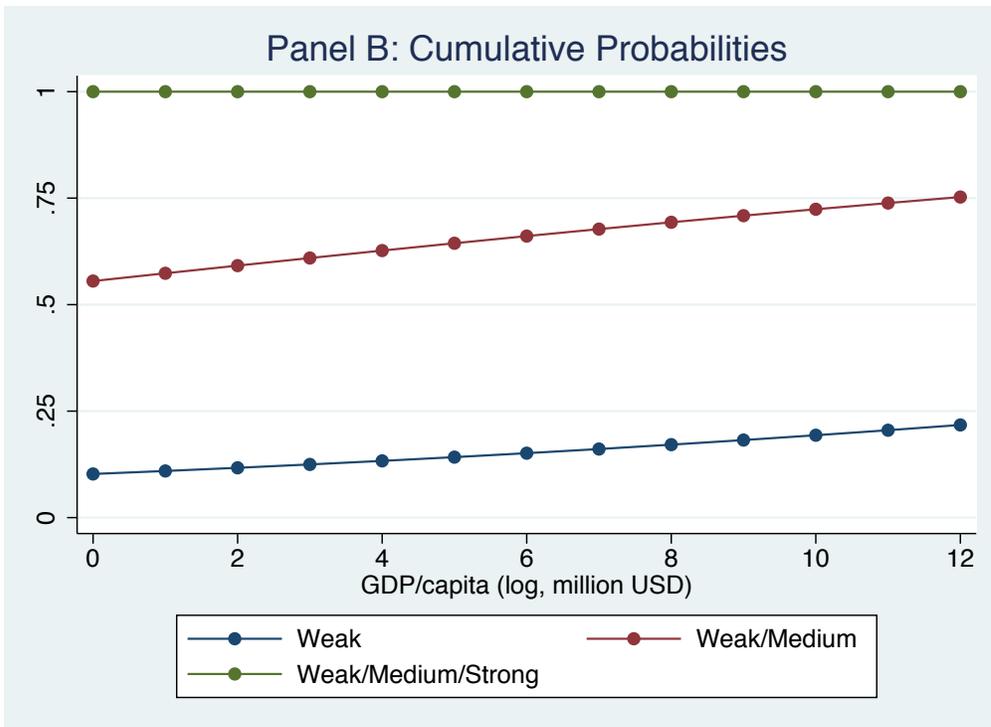


**Figure 4.7. Cumulative probabilities: ODA from the EU**

In addition to the two statistically significant variables, we plot also the change in predicted probabilities of institutional strength in relation to changes in the GDP/capita of each country. Although not statistically significant, the effect of GDP/capita is positive on the probability of establishing medium and weak institutions and negative in the case of institutions with a strong design.



**Figure 4.8. Predicted probabilities: GDP/capita**



**Figure 4.9. Cumulative probabilities: GDP/capita**

In order to measure the effect that the four statistically significant variables have on the outcome, we fit three ordinal *logit* models – the full model, a model with only the significant explanatory factors, and a third model with the independent variables that were not significant in the full model – and perform likelihood ratio tests on them.

**Table 4.3. Results of ordinal *logit* (Models 2 and 3)**

<b>Strength</b>	<b>Coef.</b>	<b>St. err.</b>	<b>Model 2</b>	<b>St Err</b>	<b>Model 3</b>	<b>St Err</b>
NewDem_89/93	- 0.2022	0.4838	-0.6587	0.4524		
ICCCATop	0.2739	0.3609	1.3111***	0.3140		
PTAhard	-0.0920	0.3659	0.5432*	0.2949		
ODAEU	-0.0006	0.0013	0.0020**	0.0009		
EUmem2004	1.4960**	0.6302			1.5272**	0.6147
ODAUS	0.0018**	0.0008			0.0016**	0.0006
Adopt	1.0324**	0.5089			1.0319**	0.4927
Adens	3.9461**	1.7971			3.9309***	1.4845
UNAccr	2.6769***	0.3883			2.7272***	0.3618
logGDPcap	- 0.0742	0.1209	0.0946	0.1096		
/cut 1	1.4087		0.9709		2.0183	
/cut 2	3.8010		2.6581		4.3996	

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

In Annex E, I re-estimate the model using four categories of strength, separating between countries with weak institutions and countries without an NHRIs.

#### **4.6. Post-estimation tests**

Since the ordered *logit* model estimates one equation over all levels of the dependent variable, a concern is whether our one-equation model is valid or a more flexible model is required. We can test this hypothesis with the test for proportional

odds test (the Brant test or “*omodel logit*” of parallel regression assumption. The Brant test is an approximate Wald test that estimates the unconstrained and the constrained models, comparing the estimates from binary *logit* models fit for individual variables, and tests the restrictions in the null hypothesis. It is important to note, however, that while the null hypothesis might be rejected because  $\beta_m$ 's differ by  $m$ , Brant notes that the null hypothesis could be rejected because of other departures from the specified model). Thus, the tests may cast doubt on the basic model but do not indicate what the appropriate model might be. The test statistic is only significant at the 90% level significant test statistic ( $\chi^2 = 16.49$ ;  $p > 0.10$ ;  $df = 10$ ). Based on the results of the binary *logits*, the largest violation is for the Adens and also for PTAhard and ODAUS, which indicates that the differences in these three variables matter more for whether a countries have a weak national human rights institution (please see Annex for full results). As an additional test of the parallel regression assumption we used the command “*omodel logit*” command – when applied to the basic model, the results ( $\chi^2 = 20.07$ ,  $df = 10$ ,  $p < 0.05$ ) suggest also that the parallel regression assumption is violated at the 95% confidence level, calling thus for fitting a more flexible model, such as the *logit* model. More often than not in real-life applications of the ordinal *logit* model, the hypothesis of the parallel regression is rejected. Best practice recommends fitting a model that relaxes the parallel regression assumption, such as the multinomial *logit* model, when the parallel regression assumption has been violated.

#### 4.7. The multinomial *logit* model

The multinomial *logit* model can be thought of as simultaneously fitting binary *logits* for all comparisons among the alternatives – in other words, for a multinomial *logit* model fits separate binary models for the effects of independent variables on each of three categories of the outcome, institutional strength, by comparison to the base level, low institution. The general formal statement of this type of model is

$$\ln \Omega_{m|b} (x) = \ln \Pr (y = m|x) / \Pr (y = b|x) = x\beta_{m|b} \text{ for } m = 1 \text{ to } J$$

These  $J$  equations can be solved to compute the probabilities for each outcome. The probabilities will be the same regardless of the base outcome  $b$  that is used. In a model with an outcome that has three categories and fit the model with alternative 1 as the base outcome, where one would obtain estimates Est  $\beta_{2|1}$  and Est  $\beta_{3|1}$  with  $\beta_{1|1} = 0$ . The probability equation is

$$\Pr (y = m|x) = \exp (x\beta_{m|1}) / \sum_{j=1}^J [\exp (x\beta_{j|1})]$$

In the case of our model, the formal statement is as follows:

$$\begin{aligned} \ln \Omega_{2|1} (x_i) = & \beta_{0, 2|1} + \beta_{1, 2|1}\text{NewDem} + \beta_{2, 2|1}\text{ICCCATopt} + \beta_{3, 2|1}\text{PTAhard} + \\ & + \beta_{4, 2|1} \text{EUmem2004} + \beta_{5, 2|1}\text{ODAEU} + \beta_{6, 2|1}\text{ODAUS} + \beta_{7, 2|1} \text{Adopt} + \beta_{8, 2|1}\text{Adens} + \\ & + \beta_{9, 2|1}\text{UNAccr} + \beta_{10, 2|1}\text{logGDPcap} \end{aligned}$$

$$\ln \Omega_{3|1}(x_i) = \beta_{0,3|1} + \beta_{1,3|1}\text{NewDem} + \beta_{2,3|1}\text{ICCCATopt} + \beta_{3,3|1}\text{PTAhard} + \\ + \beta_{4,3|1}\text{EUmem2004} + \beta_{5,3|1}\text{ODAEU} + \beta_{6,3|1}\text{ODAUS} + \beta_{7,3|1}\text{Adopt} + \beta_{8,3|1}\text{Adens} + \\ + \beta_{9,3|1}\text{UNAccr} + \beta_{10,3|1}\text{logGDPcap}$$

The full model is specified and results listed in terms of coefficient estimates for both level 1 (low strength) as the base outcome and level 3 (strong institution) as the base outcome. Although the effect of the variables on the outcome does not change, fitting the model with two different base outcomes allows to capture also the effect of the independent variables on the institutions that belong in the category that is considered the base. The same four independent variables that appeared as significant in the ordinal *logit* model are significant in the multinomial *logit* model. The latter, however, allows us to see the effect of independent variables on different levels/categories of the outcome.

**Table 4.4. Multinomial model 1****Model 1 (full model, base 1/W)**

<b>Strength</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>
1	base		
2			
NewDem_89/93	- 0.2483	0.6618	0.707
ICCCATop	0.0296	0.5057	0.953
PTAhard	0.7806	0.5498	0.156
EUmem2004	1.6223	1.1553	0.160
ODAEU	-0.0004	0.0022	0.846
OD AUS	0.0118	0.0073	0.105
Adopt	-.3403	0.8339	0.683
Adens	4.8254*	2.4851	0.052
UNAccr	1.7181***	0.5634	0.002
logGDPcap	-0.0117	0.1831	0.949
3			
NewDem_89/93	- 0.7317	0.8366	0.382
ICCCATop	0.5475	0.5980	0.360
PTAhard	0.2812	0.6344	0.658
EUmem2004	2.8360**	1.2041	0.019
ODAEU	-0.0008	0.0025	0.750
OD AUS	0.0119	0.0073	0.103
Adopt	0.6121	0.8308	0.461
Adens	3.3008	2.9513	0.263
UNAccr	3.7573***	0.6324	0.000
logGDPcap	0.0168	0.2107	0.936

Prob > chi2 = 0.0000, N = 187

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

**Table 4.5. Multinomial model 2**

**Model 1 (full model, base 2/M)**

<b>Strength</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>
<b>1</b>			
NewDem_89/93	0.2483	0.6618	0.707
ICCCATop	-0.0296	0.5056	0.953
PTAhard	-0.7806	0.5498	0.156
EUmem2004	-1.6223	1.1553	0.160
ODAEU	-0.0004	0.0022	0.846
ODAUS	-0.0118	0.0073	0.105
Adopt	0.3403	0.8339	0.683
Adens	-5.8253**	2.4851	0.052
UNAccr	-1.7181***	0.5634	0.002
logGDPcap	0.0117	0.1831	0.949
<b>2</b>			
	base		
<b>3</b>			
NewDem_89/93	-0.4834	0.6697	0.470
ICCCATop	0.5179	0.4986	0.299
PTAhard	-0.4995	0.4814	0.299
EUmem2004	1.2136*	0.6857	0.077
ODAEU	-0.0004	0.0017	0.829
ODAUS	0.0001	0.0011	0.924
Adopt	0.9523	0.5888	0.106
Adens	-1.5250	2.7098	0.574
UNAccr	2.0392***	0.4970	0.000
logGDPcap	0.0286	0.1616	0.860

Prob > chi2 = 0.0000, N = 187

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

#### 4.8. Hypothesis tests

The effect of having undergone the United Nations process of accreditation on institutional power is significant:

$$LR\chi^2 = 36.64, df = 1, p < 0.01$$

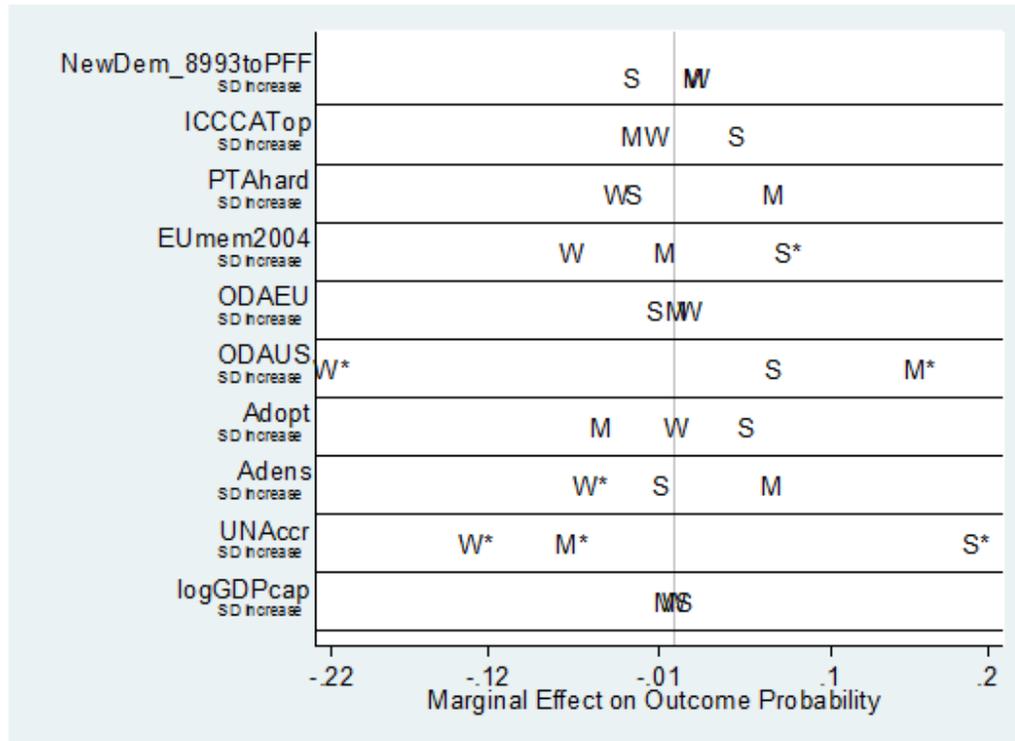
The effect of being an EU member or candidate state since 2004 is significant:

$$LR\chi^2 = 6.55, df = 1, p < 0.05$$

An alternative test for the hypotheses that the effects of all independent variables in the models are equal to 0 is the Wald test, which confirms that the strongest effects are of EUmem2004 and UNAccr variables, followed by Adens and Adopt and ODAUS, although their p values are not significant in the multinomial model.

A plot of average marginal effects of each independent variable on the outcome probability offers an overview of the magnitudes of effects of each independent variable on the outcome probability. In the plot, the horizontal axis indicates the magnitude of the effect, with the letters within the graph marking the discrete change for each outcome. This plot offers a quick overview of the effects of independent variables and helps also to identify the variables whose effect is significant and thus worthy of further investigation. From the plot, it is evident that

the magnitude of the effects of four variables on the outcome probability is greater: UNAccr, Adens, Adopt, and ODAUS. The plot indicates that the marginal effect of independent variables on the outcome for the multinomial *logit* model is similar to the results in the plot of marginal effects in the ordinal *logit* model. Among the four, the effect of a change in one unit for the UNAccr (i.e. whether or not an institution has UN accreditation or not) is the greatest, with an effect on all three categories of the outcome, institutional strength. The second large effect is due to a one standard deviation increase in the amount of overseas development assistance that a country receives from the United States and is strongest on all categories of institutions – weak, medium, and strong. A factor change in whether a country is an early adopter of a classical ombudsman institutional model has also a significant effect on the probability that a country establishes a strong institution – unlike the effect in the ordinal *logit* model, in the multinomial model the early adoption of an institution does not have an effect on weak institutions. A high density of strong institutions in the region where a country is located also has a significant effect on the weak institutions category of the outcome.



**Figure 4.10. Plot of marginal effects of independent variables on outcome probability (\* indicates  $p < 0.05$ )**

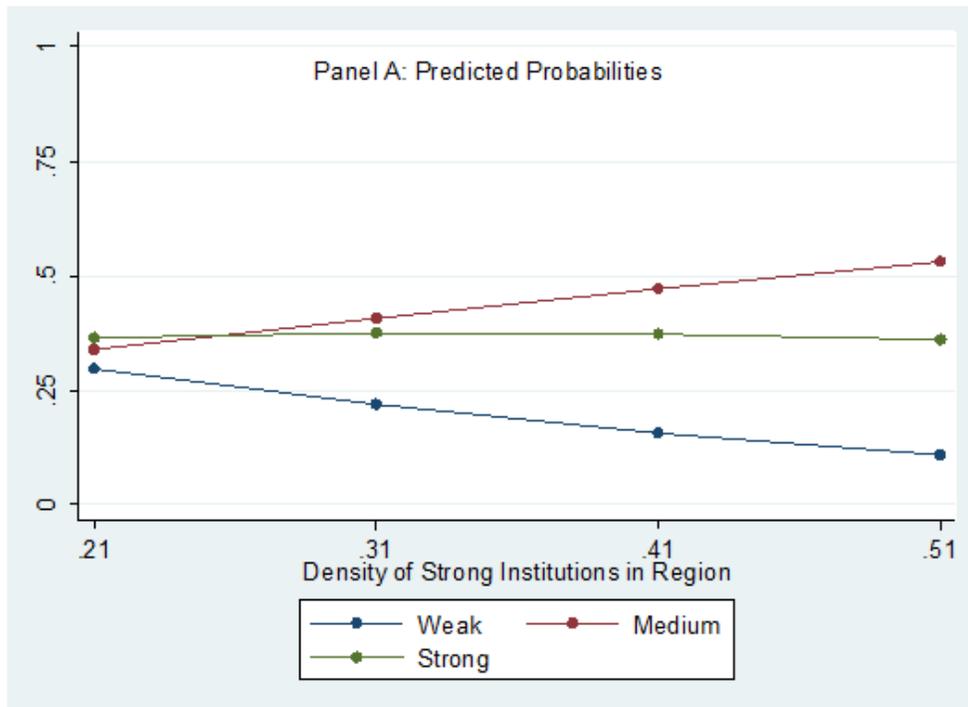
The marginal effects plot shows that the probability of each outcome category of institutional strength, is predicted to change based on variations in each explanatory variable holding the other independent variables constant at their mean values. Similar to the results of the analysis for the ordinal *logit* model, four independent variables are significant in the analysis and have a direct effect on the three outcome categories. Two variables have a comparatively stronger effect on the three categories of the outcome: one standard deviation change in the amount of ODA that a country receives has a significant effect on all the probability of the weak and medium levels of the outcome category, holding all other independent variables constant, with the strongest effects on the medium and strong level categories.

Additionally, a discrete change in status from having no UN accreditation to having undergone the accreditation process has statistically significant effects on all three categories of outcome strength, holding all other explanatory variables constant, with the strongest on the strong level institutions. The change in the position of a country in a region with a high density of A-level institutions as opposed to a region with low density of strong institutions has a statistically significant effect on the probability of a country to have a weak institution, but no effect on the probability of having a medium or a strong institution, when holding all other independent variables constant at their mean values. A discrete change in a country's status of EU member or candidate since 2004 has a statistically significant effect on the probability of countries having A-level institutions and no statistically significant effect on the probability of having a weak or medium level institution, when holding all other variables constant.

Similar to the predicted probabilities for the ordinal model, we fit plots of predicted and cumulative probabilities for three variables, of which two are statistically significant, density of strong institutions in a region and ODA from the United States. The plots show largely similar trends with the ordinal model, but with a more dramatic drop in effect at lower values of ODA for weak institutions and a sharp increase followed by a steady decrease on the probability of having a medium level institution. The effect on the strong institutions remains the most significant. In the case of the effect of change in the regional density on the outcome, once more, countries in Europe and the Americas are more likely to have strong and medium institutions and less likely to have weak institutions. Additionally, we plotted also

the effect that a unit change in GDP/capita has on the outcome probabilities and have found a negative impact on the probability of having a strong institution and a positive one on institutions with a design that is at the medium level of strength.

**Plots of predicted and cumulative probabilities on the three outcome categories**



**Figure 4.11. Predicted Probability: Density of strong institutions in region**

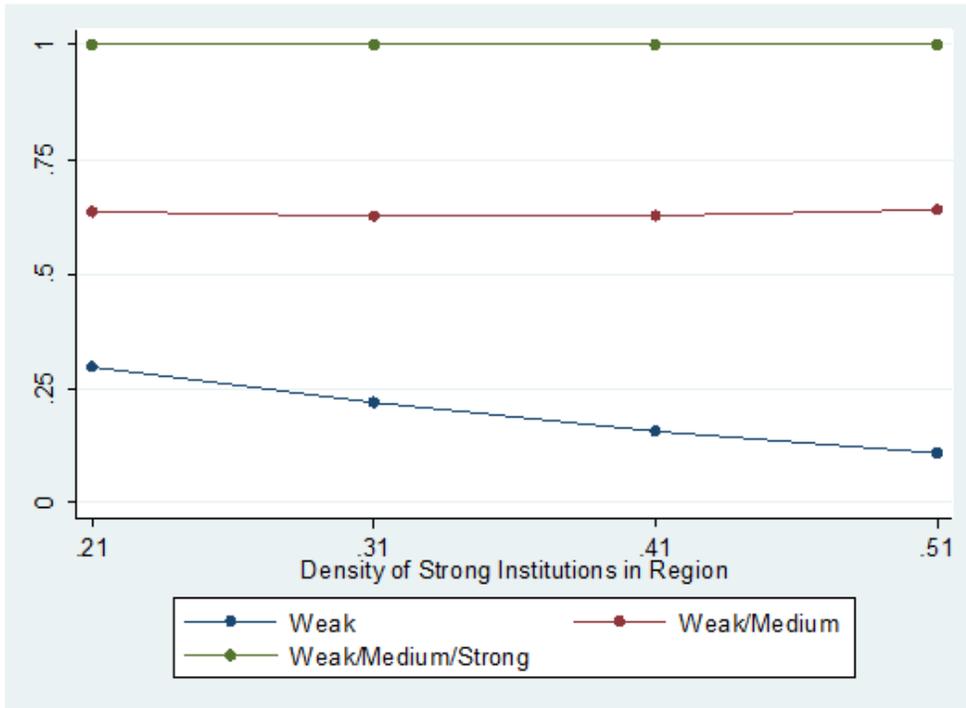


Figure 4.12. Cumulative probability: Density of strong institutions in region

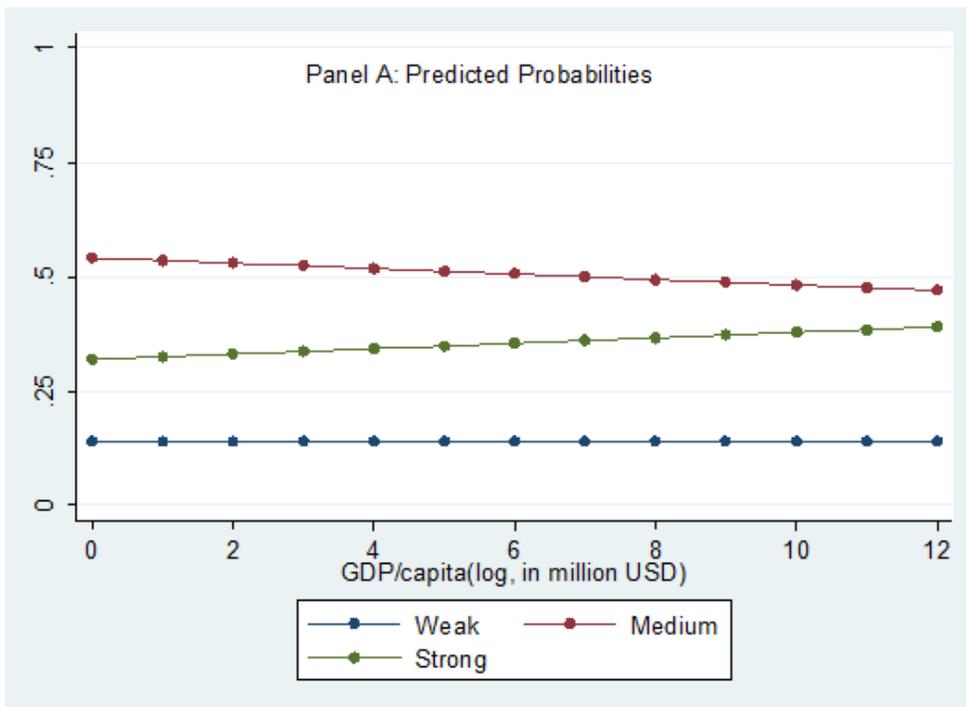
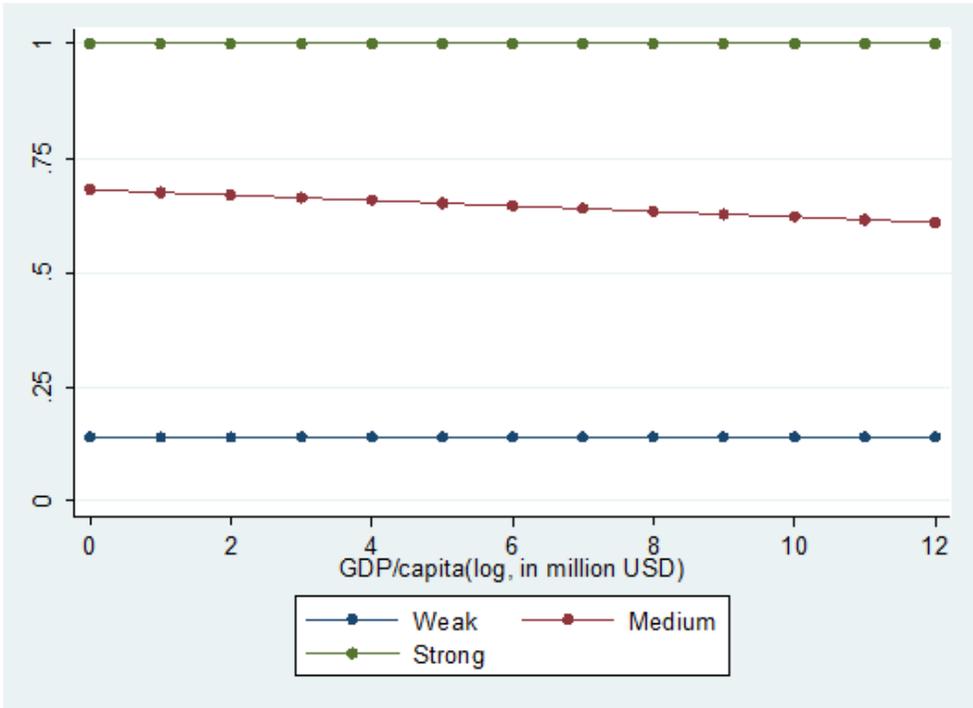
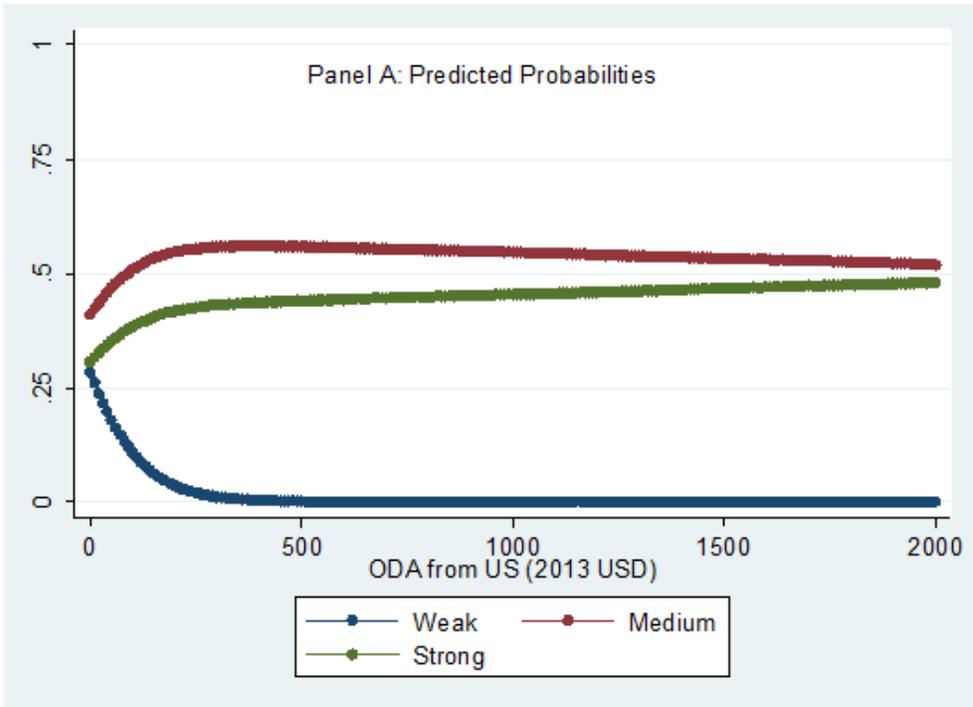


Figure 4.13. Predicted probabilities: GDP/capita



**Figure 4.14. Cumulative probabilities: GDP/capita**



**Figure 4.15. Predicted probabilities: ODA from the US**

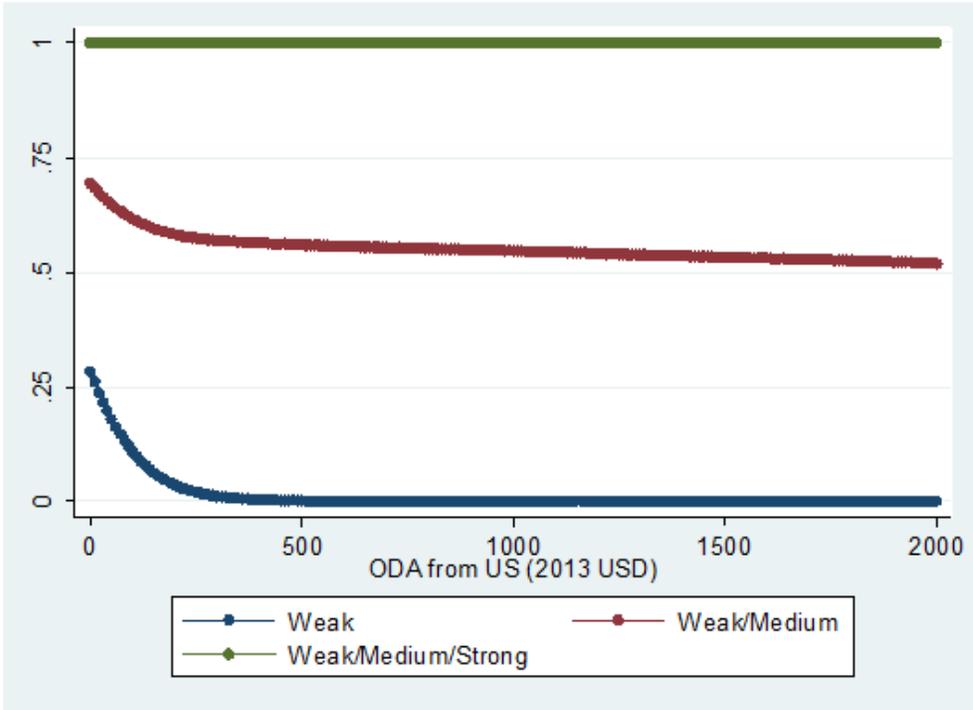


Figure 4.16. Cumulative probabilities: ODA from the US

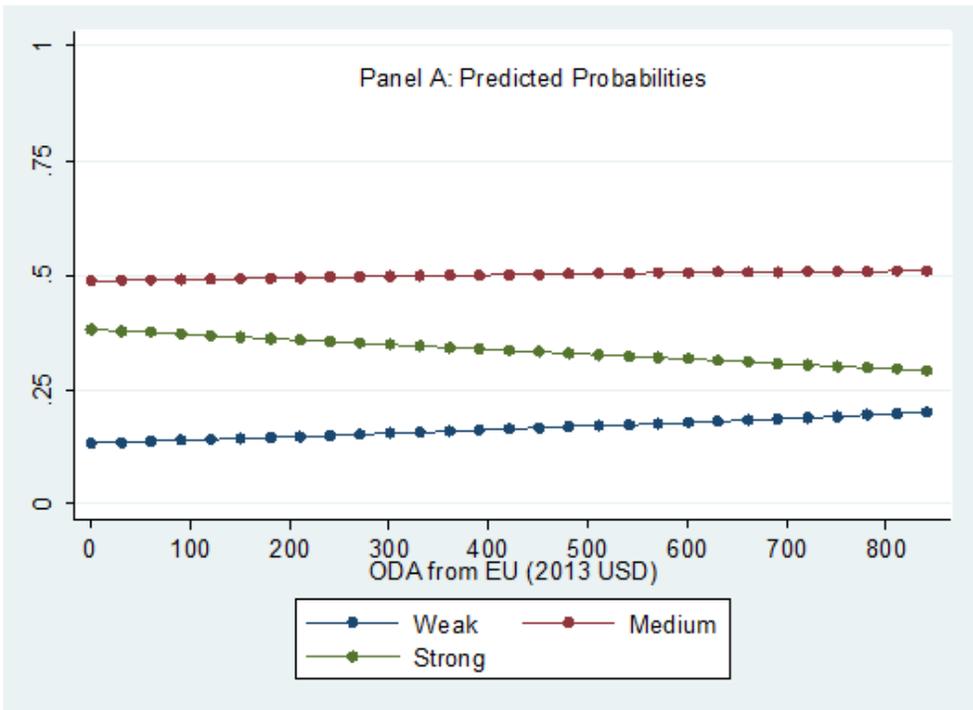
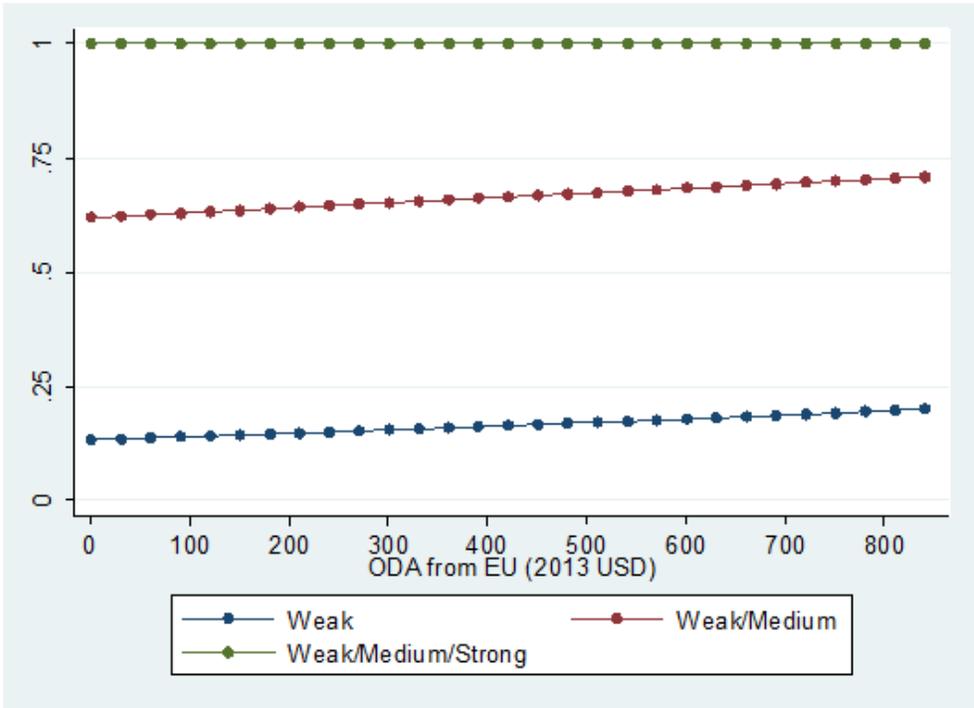


Figure 4.17. Predicted probabilities: ODA from the EU



**Figure 4.18. Cumulative probabilities: ODA from the EU**

## **4.9. Discussion of results**

### **4.9.1. Human Rights Identity**

A strong domestic identity grounded in values of liberal democracy and a history of respect for human rights create fertile environments in which governments create strong institutions and support their efforts to carry out their mandate to promote and protect human rights. The model in this thesis proposes two ways of operationalising human rights identity: first, a country's early adopter status is considered a proxy for a country's human rights identity, understood as a commitment to institutionalize the protection of its citizens' rights and the rule of law. Second, a country's commitment to international human rights instruments can be a measure of a strong identity grounded in respect for human rights especially when countries' ratify international human rights treaties that bind states with strict standards of enforcement such as the Convention Against Torture and the International Criminal Court.

The analysis finds that effect of a country being an early adopter of a classical ombudsman institution on institutional strength in 2013 is statistically significant. A country is an early adopter if it established an institution before the formal international structures put in place in the early 1990s began the regulation of the establishment and consolidation of human rights institutions globally. The early adoption of an institution is an indicator of a country's sense of duty to protect its citizens, democratic values and safeguard the implementation of international standards of human rights. The measure of an institution's early adoption aims also

to capture the temporal dimension, by aiming to capture the impact of a historical allegiance to the institutionalization of democratic values on institutional strength decades later. The early adoption of a national human rights institution can be understood as both a process is linked to cross-border diffusion and as a domestic characteristic that is important for the creation and maintenance of strong national human rights institutions. In line with the constructivist school of thought, some governments' decision to have a national human rights institution with a stronger design is rooted in a certain identity built on a longstanding tradition of respect for rights and democratic values. Some societies identity collectively as democracies and are expected to have stronger institutions for the promotion and protection of human rights. As illustrated by the data in the below table, early adopting countries have institutions of different strength levels today, but the predominant design type is strong, followed by the medium level of strength.

The relevance of early adopters is twofold: on the one hand, they represent longstanding supporters of liberal institutions with strong democratic identity; on the other hand, they can also be role models for learning across borders at the regional level. In other words, countries whose governments learn about early adopters in their neighbourhood are more likely to follow in their footsteps and establish strong national institutions themselves. The regional distribution of the early adopters covers all five regions of the world, but the strong and medium institutions are primarily based in Europe and Latin America. These are also the two regions that have the overall highest density of strong institutions. Amongst these, the Scandinavian countries and Estonia appear to indicate evidence of a sub-

regional effect, which have some of the oldest ombudsman institutions in the world and have remained strong promoters of democracy and human rights across borders. The one Scandinavian country that is not an early adopter is Norway – in 2015, the first independent national human rights institution was established in Oslo.

**Table 4.6. Early adopting countries**

<b>Country</b>	<b>Year</b>	<b>Strength</b>
Australia	1986	strong
Austria	1982	medium
Barbados	1987	weak
Benin	1989	weak
Canada	1977	strong
Denmark	1987	strong
Estonia	1938	strong
Finland	1919	strong
France	1947	strong
Guatemala	1985	strong
Haiti	1987	medium
Hungary	1989	strong
Libya	1985	weak
New Zealand	1977	strong
Nicaragua	1986	strong
Pakistan	1987	medium
Philippines	1987	strong
Poland	1987	strong
Portugal	1975	strong
Saint Lucia	1982	medium
Samoa	1988	strong
Spain	1978	strong
Sweden	1980	medium
Switzerland	1976	weak
Togo	1987	strong
Trinidad & Tobago	1976	medium

The second indicator of a country's identity as linked to human rights is not measuring institutionalization but rather a state's commitment to international human rights instruments through their ratification. Although the direction of the relationship between design and being a signatory of two instruments that have strong enforcement mechanisms (ICC and CAT Optional Protocol) is positive, it is not statistically significant in the full model. In the model that excludes the four variables that are statistically significant in the full model, excluding also the early adopter variable from the model, being a signatory of the ICC and CAT Optional Protocol becomes statistically significant.

In the framework of this analysis, we find evidence that human rights identity matters for NHRI strength when measured as countries' early adopter status. The finding about the stronger effect that the presence of an early adopter in the region makes a twofold original contribution to the constructivist literature, speaking both to the scholarship on the role of national liberal democratic identity (Cox 1987; Wendt 1999; Fearon 1997) and to the work on social learning across borders that manifests itself more visibly at the regional level. The status of an early adopting country is in itself a predictor of both that country having a strong national human rights institution and of a tendency among neighboring countries' to learn from its example and establish strong institutions themselves. Europe and the Americas are the regions with the highest density of strong institutions and both have countries that are early adopters. Europe in particular is the region with the highest number of early adopting countries. The regional effect in our model confirms findings in the existing literature on human rights treaty ratification, which

discusses regions' tendency toward isomorphism, where states mimic ratification patterns of neighbours regardless of their commitment. In the case of national human rights institutions, early adopters model a long-standing commitment to strong designs for other countries in the region which either that learn from them how to establish such strong institutions, or simply copy the institutional design without fully internalising the democratic values it promotes and protects.

#### **4.9.2. Socialisation and acculturation**

Socialisation is a mechanism that traces a constructivist causal path for diffusion processes, seeing them as driven by normative and socially constructed properties. In a world driven by constructivist principles, policymakers decide in favour of institutional and policy adoption in an attempt to conform to what they perceive as more appropriate in a global or regional context. Norms and values are shared amongst members of international networks, through socialisation processes such as learning, imitation, or acculturation coordinated by IOs. Acculturation is the process by which actors embrace the beliefs and behavioural patterns of the surrounding culture, without assessing more in-depth either the merits of those ideas or the material costs and benefits of conforming to them. In certain cases, acculturation can lead to only the partial internalisation of norms, in particular when countries are shamed into adopting a certain institution that are considered apt in a certain context.

Our analysis finds evidence of two main types of socialisation processes – one associated with accreditation received from the UN Sub-Committee on Accreditation at the International Coordinating Committee for National Human Rights Institutions and a second one linked to the regional context in which institutions are located. As evidenced by the results of both the ordered and the unordered models, countries that have undergone the UN accreditation process are more likely to have a strong national human rights institution. A second significant result that provides further evidence for socialization shows that higher regional density of strong institutions has an impact on individual countries' institutional strength. In other words, if a country is located in a region where strong institutions are predominant, it is more likely to have a stronger institution. This effect is not felt in the case of medium-level strength institutions, but the impact on the strong institutions is significant.

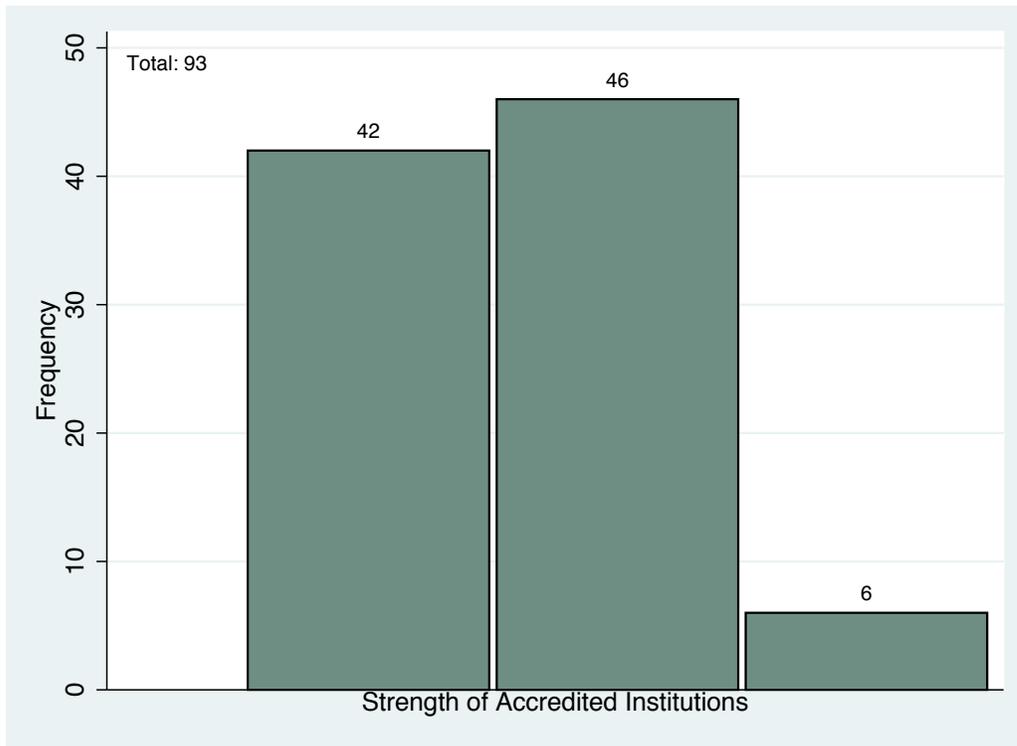
The first significant result shows evidence that the accreditation process leads to recognition as members of the international community of NRHIs and is expected to lead to countries aiming to strengthen their human rights institutions. As such, one can argue that countries that have undergone the UN accreditation process are more likely to seek to strengthen their institutions and be similar to other countries in the NHRI network, as a form of post-accreditation cross-border learning. Thus, they are more likely to have stronger institutions over time, provided they enter the accreditation process with a less strong institution. Additionally, this finding would also hold for strong institutions as that entered the

peer-review process, as they are also more likely to support and maintain their strong design over-time.

For states with whose institutions are considered for accreditation and also monitored every five years as part of the re-accreditation process, the general strengthening effect of such a mechanism is enhanced by the recommendations of the accreditation reports. Institutions of different levels of design can apply for accreditation with the UN and, depending on their strength, receive one of three statuses – A, B, or C. Re-accreditation every five years can recommend a change in status, reflecting a modification of design since the previous peer-review process. Accredited NHRIs are vested with competence to perform advisory work for the national governments with cooperation and maintain close ties with the United Nations and organizations in its system as well as similar regional and national institutions charged with the promotion and protection of human rights. Their responsibility to promote and protect human rights can be equated broadly with activity meant to ensure the harmonization of national legislation and practices with international human rights instruments of which the country is a member. Once accepted into the network of NHRIs, the benefits of being an A-level institution could motivate countries to mobilize resources and improve the design of their own national institution. The institutions that are assessed to be in full compliance with the Paris Principles become voting members of the International Coordination Committee and can themselves take part in the peer-review process of other states' institutions.

Our findings indicate that socialization and acculturation processes are at work. The indicators capture both elements of social learning and certain aspects of acculturation. Through peer-review processes and an incentive-based system of participation in global networks, international institutions such as the UN have a global effect in determining countries to establish stronger institutions. Empirically, however, UN accreditation is neither a sufficient nor a necessary condition for institutional strength. The assessment and monitoring processes carried out by peer countries and institutions as members of the NHRI community operate as mechanisms that exert social influence with the potential to incite institutional change through the activation of shame or by offering positive reinforcement through 'back-patting.' In other words, conformity to a certain global or regional standard of institutional design can be an indication of superficial commitment to a structure that is strong by design but does not indicate a true belief in the values it promote. Countries can decide to establish an institution in order to abide by appropriate international standards, as prescribed by the International Coordination Committee at the UN, but this commitment could be superficial and would not match the human rights record of the country more broadly. An alternative explanation for the effect of UN accreditation would be self-selection, which would see countries with strong institutions enter the peer-review process as the costs of institutional adjustments they would incur prior to entering the accreditation process would be very low for them. This explanation, however, does not account for the reality that countries with institutions at different levels of

design seek accreditation or for the change in institutional strength for accredited NHRI over time.



**Figure 4.19. The distribution of accredited institutions by strength**

The second variable in our model that has a significant impact on the outcome and provides evidence of socialization processes is the density of strong institutions in the region in which each institution is located. This is the variable that captures a global regional effect as relates to institutional strength and the cross-border diffusion within regional country networks. In other words, countries that are in the proximity of other countries with strong institutions are more likely to want to emulate their example or learn from them how to create a strong institution themselves.

According to socialisation scholarship, the cross-border diffusion of institutional strength as a norm is more likely to happen if a country is embedded in a wider environment that accepts strong human rights institution as appropriate regional human rights norms. From this perspective, normative and mimetic processes are very important, as countries embrace human rights discourse and create human rights institutions to comply with standards that can be seen as constitutive of a regional community of states. The salience of the stronger institutional design becomes more influential and leads to greater change as more countries affirm its appropriateness. Learning at the regional level can occur through two different processes – policy-makers in one country can learn from governments in a neighbouring country as they become increasingly aware of other strong institutional designs in their proximity and become more likely to copy what other countries do with respect to institutional developments. Additionally, the political culture of a region as reflected in countries' commitment to establishing strong human rights institutions exerts a positive influence on the formation of strong institutional designs. The more states in a region share the high standards of institutional design, the more they are seen as constitutive and appropriate regional standards for states that consider themselves part of this regional community.

The two regions with the highest density of strong institutions are Europe and the Americas. Although the region with the largest number of national human rights institutions is Africa, the proportion of strong institutions is lower on the African continent than in Europe or the Americas. In the past decades, national human rights institutions have become increasingly important actors on the

European stage, with their design and performance being considered a measure of countries' commitment to human rights institutionalization and alignment with international standards. For instance, the performance of national human rights institutions is included in the assessment of the general performance of candidate states and also of new member states. The move toward strengthening the design of these institutions is a dynamic process that has seen transformations over-time. In recent years alone, for example, countries such as Sweden and Norway, with longstanding democratic traditions of rights protection and promotion, are establishing national human rights institutions that have strong mandated powers. Both countries have had weak institutions, with Sweden having a system of multiple institutions promoting and protecting rights disaggregated by type (e.g. equality and anti-discrimination, women's rights, children's rights, etc.) and Norway having a university-based human rights institute that focused primarily on the academic study of human rights.

The predominant model of national human rights institution in Latin America is the hybrid ombudsman model called 'Defensoría del Pueblo,' usually mandated with the protection of citizens' rights when interacting with government, the support and monitoring of the rule of law and the defence of human rights more broadly. Examples of a strong design of such institutions are the Defensorías of Peru and Colombia – they work in collaboration with both national governments and fellow national human rights institutions in the region and have mandates that go beyond the promotion and protection of human rights through complaint handling, investigations, monitoring and advising policy-making and research. They carry out

multiple development projects that target the improvement of human rights in less developed areas of the two countries, thus targeting the citizens directly and participating actively in the improvement of their lives and ultimately the countries' human rights records.

Important to consider, however, is also the fact that regional effects on the probability of having strong institutions can also be the result of other factors that manifest themselves in Europe and Latin America. Institutional strength is but one aspect of what appropriate human rights standards are in these two regions – the two parts of the world have the strongest legal human rights frameworks and the regional treaty tools with the strongest enforcement mechanisms. The Council of Europe has long functioned as the backdrop for the formation of a European Network of National Human Rights Institutions – regular meetings of national institutional representatives took place alongside annual conferences organized by the Council of Europe for many years until 2014, when the European Network of NHRIs was officially founded. The effect of membership in the Council of Europe is not a statistically significant factor in our global model.

This is the first study that finds evidence of socialisation when explaining institutional strength in the case of national human rights institutions. The statistically significant indicator that captures socialization effects at the global level is whether a country has undergone the UN accreditation process by 2013. At the regional level, statistically significant indicators that capture socialization are the density of strong institutions and the presence of an early adopter in a region. The findings from this quantitative analysis make an original contribution to the

literature that finds evidence of socialization and acculturation process in the countries' decisions of adopting national human rights institutions. When focusing on the sample of countries that have accreditation, studies have found that the Paris Principles can play an important role in explaining the spike in number of NHRI establishment in the early 1990s. Moreover, the existence of a world populated by a lot of institutional networks makes it more likely for countries to establish human rights commissions, although not equally likely to create classical ombudsmen. Qualitative studies also support these findings about institutional creation and NHRI diffusion across borders and speak also of the mobilization of global shame in the case of developing countries that establish NHRIs (D. Kim 2013b) and of acculturation processes in the particular case of EU candidate countries that are subjected to conditionality prior to accession.

#### **4.9.3. Incentive-setting**

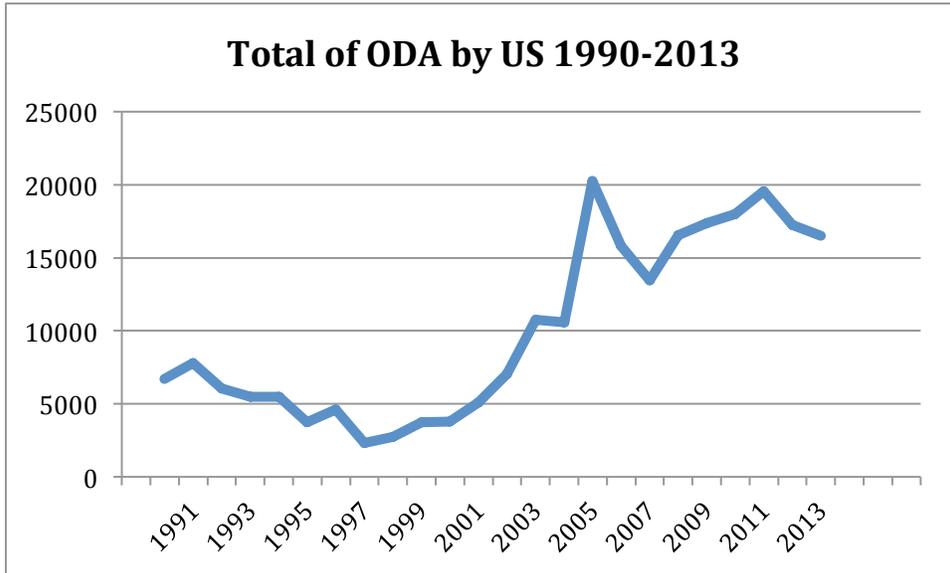
An international level mechanism, incentive-setting refers to different forms of pressure that international organizations and powerful states apply on other countries to establish or strengthen the capacity of institutions and support policy change. In the case of human rights, these incentives are generally positive in nature and resemble more a system of rewards. The model proposed in this thesis tests for the impact of three indicators capturing incentives set by three different types of actors. The literature on cross-border diffusion proposes that individual states can create incentives for other states to have better overall human rights records and

also stronger human rights institutions through provisions in bilateral Preferential Trade Agreements. Similarly, ODA disbursed by individual states or Washington Consensus Institutions has been hypothesised to have a positive effect on countries' human rights records or governments' decision to enter international human rights treaties, although evidence of such effects has been either mixed or not lending them support (Simmons 2002; Wotipka and Tsutsui 2008). A third type of incentive-setting across borders occurs at the regional level and is coordinated by the European Union as part of its membership conditionality imposed on candidate states since the 2004 wave of accession.

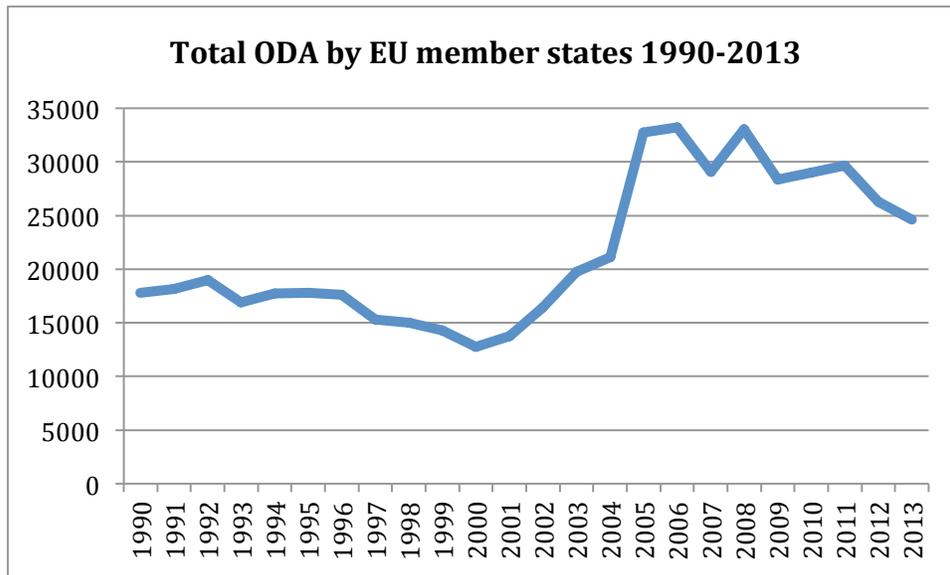
The analysis in this thesis finds also evidence for the effect of incentive-setting on institutional design in the case of national human rights institutions. A one-unit change in the average amount of ODA the United States disbursed to countries around the world from 1990-2013 has a significant effect on the probability of having stronger institutional design. This finding would offer support for the liberal hypothesis of the effect of financial incentives on institutional strength. It is important to consider, however, the argument that the US would perhaps offer more funds in the form of ODA to countries that already have strong national human rights institutions. Thus, the causal pathway proposed in the model would be reversed and ODA would not motivate states to strengthen weaker institutions. In this case, ODA would become a reward for well-performing institutions and not an incentive for the strengthening of institutional design in countries with weaker institutions. In the multinomial *logit* model, which relaxes the assumption or ordering of the three categories of institutional strength, this

effect is no longer statistically significant. The causal explanation for their differential effects of ODA on institutional design at different levels strength can only be illuminated further by case-based qualitative work.

More specifically, the results of the above analysis offer statistically significant evidence in support of the hypothesis that ODA-based democracy promotion efforts led by the US. Although scholarship regarding domestic support for liberal internationalism has waned in Washington DC in the past decade (Zakaria 1997; Kupchan 2002; Kupchan and Trubowitz 2007) due also to a perceived lack of effectiveness, development efforts have remained a priority among policymakers as illustrated by the amount of overall development assistance funds disbursed by the US over the last decade. From the 1990 until 2013, the amount of global ODA nearly quadrupled, peaking in 2005 and recovering after a slow decline, returning to high levels in 2011. Moreover, since the 1970s support for each country to establish a functional and strong human rights institution has become a central recommendation in multilateral democracy promotion, such as that of the United Nations (UNHCHR). This is also monitored in country human rights reports carried out by the US Department of State and international nongovernmental organizations, such as Amnesty International and Human Rights Watch. To the extent that capacity building improves over-time as a result of continued development efforts, higher amounts of development funds may have an even stronger impact on democratic institutions by virtue of both the increased funds and of the improved capacity on the ground.



**Figure 4.20. Total of ODA by US 1990-2013**



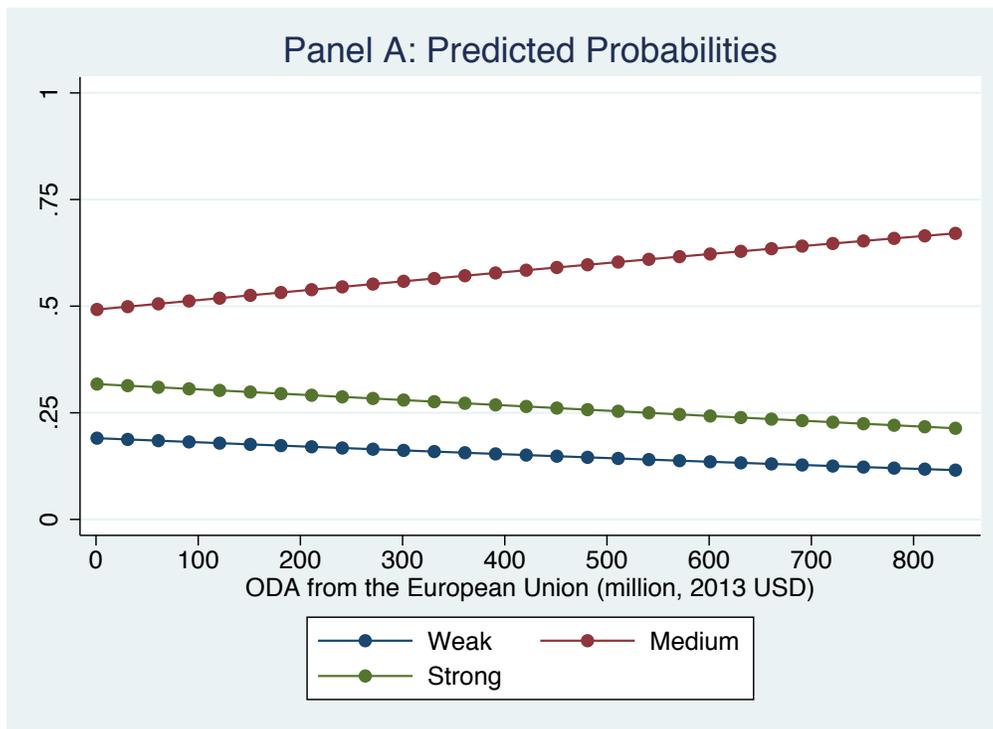
**Figure 4.21. Total of ODA by EU member states 1990-2013**

Another form of incentive-setting is manifest through human rights conditionality tied to the signing of preferential trade agreements between states. Prior research has found evidence in support of the liberal agenda that links the

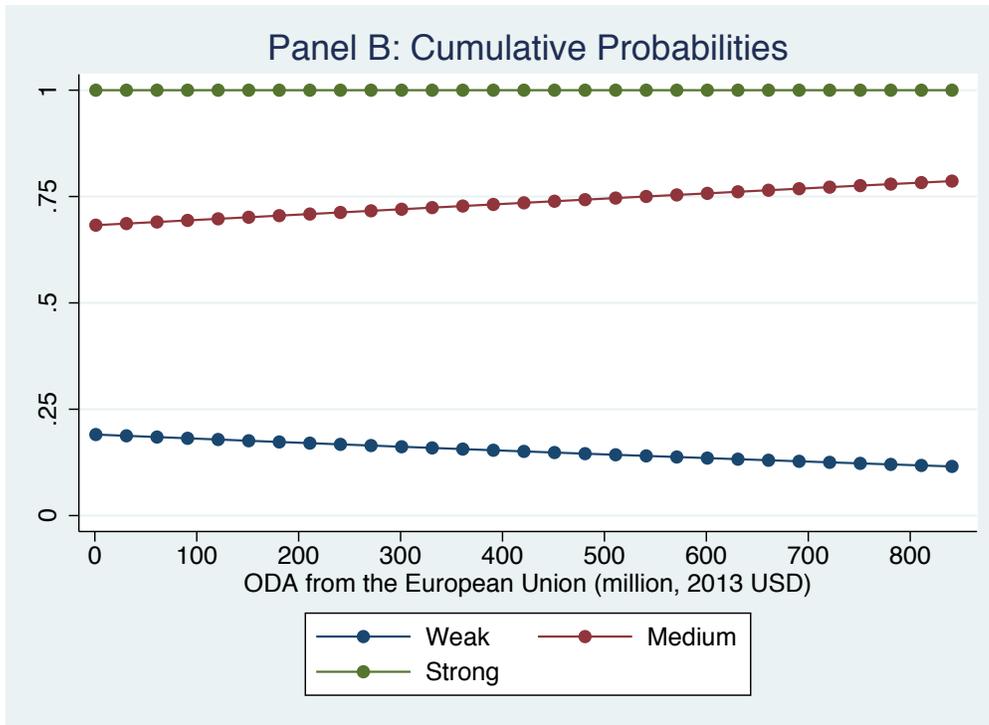
national level effectiveness of signing international agreements through entering Preferential Trade Agreements with strong human rights conditionality (Hafner-Burton 2009). We find no evidence in favour of a causal effect that incentive-setting through bilateral preferential trade agreements would have on institutional strength. In our full model whether a country is a signatory of a PTA with strong human rights standards has a positive relationship with institutional design, but the results are not statistically significant. In the model which is restricted to the variables that are not significant in the full model, excluding US-disbursed aid, the effect of whether a country has entered a preferential trade agreement with strong human rights standards is statistically significant. This restricted model provides evidence of significant impact on institutional design of variables that are otherwise not statistically significant in the full model, such as ODA from the European Union and the ratification of international human rights treaties that have strong enforcement mechanisms such as the Optional Protocol of the Convention Against Torture and the International Criminal Court. While other variables in the full model have offered support to mechanisms that could also account for such identity-based and Europe-led explanations of institutional design, these the effects in the restricted model do not fully explain global phenomena. Qualitative studies may be better suited to tease out causal explanations of such impact that are not manifest at the global level as measured in the full model.

When compared to the ODA disbursed by the European Union, the effect of the US and EU contributions on institutional design is not a direct reflection of the general amount of development assistance for the period 1990-2013. The EU states

in total allocated more development funds than the US in the span of the 23 years, with the former disbursing \$26693.50 million and the latter \$18002.68 million to a slightly higher number of countries – 147 received funds from the EU, and 138 from the US. A significant difference between the two total average amounts is in the maximum sum allocated in the span of 23 years per country – during the indicated period of time, the EU and the US have had the same country as the main beneficiary for their funds, Iraq. The country has received the most funds overall in the past 23 years, Iraq, namely an average of \$2003.86 million by the US disbursed to Iraq and \$858.71 million by EU states.



**Figure 4.22. Predicted probabilities: ODA from the EU**



**Figure 4.23. Cumulative probabilities: ODA from the EU**

The global impact of Overseas Development Assistance disbursed by the European Union is not a statistically significant determinant in this model of institutional design, but the European Union's system of regional incentives at the appears significant in the model that explains institutional design globally. The analysis provides evidence of incentive-setting being at work at the regional level through a measure of conditionality specific to the European Union as part of membership negotiation processes since the 2004 wave of accession. Conditionality is a bargaining strategy through which the EU has sought to offer rewards to reinforce rule transfer by transitional post-communist states in Central and Eastern Europe (Schimmelfennig and Sedelmeier 2004; Kelley 2004; Grabbe 2006; Sedelmeier 2011). This form of external governance of post-communist states begins even prior to the accession negotiations and ends only once the accession is

complete. Schimmelfennig and Sedelmeier speak of two main contexts of EU external governance as manifested in Central and East European countries: first, democratic conditionality begins early in the post-communist transition process and is linked to the transfer of fundamental political principles of the EU, such as the norms of human rights and democracy (Schimmelfennig and Sedelmeier 2004). It takes the form of institutional ties, such as association, and the actual beginning of the accession process. Extensive pre-accession alignment of rights-centred rule transfer is central to the EU process of external governance in preparation for membership negotiations and subsequent integration (Sedelmeier 2011). Once accession negotiations begin, democratic conditionality is not longer at centre stage, and *acquis* conditionality is the new conditionality context that takes prominence. This form of conditionality places membership as the ultimate key incentive for rule transfer and, in order to be implemented successfully, requires also a favourable domestic environment with few veto players and low costs associated with rule adoption (Schimmelfennig and Sedelmeier 2004).

EU integrated human rights in the requirements for integration of Central and East European states after the end of the Cold War, with the 1993 'Copenhagen Criteria'. In preparation for the formal accession negotiations, post-communist transitional states had to establish stable institutions safeguarding democracy, the rule of law, human rights and the protection of minority (de Búrca 2003; Grabbe 2006; Schimmelfennig and Sedelmeier 2004; Conant 2014). EU Conant finds that post-communist democracies have made progress in respecting human rights, but these human rights commitments remain shallow and transitions to rights-

respecting democracies are reversible (2014). Institutional change in the case of gender equality institutions has been linked to a combination of government partisan preferences and veto players account for a lock-in effect prior to accession, which can contribute to their persistence after the EU's sanctioning power weakens(Sedelmeier 2009). In the particular case of national human rights institutions, Pegram identifies EU conditionality as a mechanism that can explain the adoption of NHRIs in Eastern and Central European countries (2010).

**Table 4.7. Candidate and new member states, year of institutional establishment and strength level**

<b>Country</b>	<b>Year</b>	<b>Strength</b>
Albania	1999	strong
Bulgaria	2004	medium
Croatia	1991	strong
Cyprus	1991	strong
Czech Republic	1991	strong
Estonia	1938	strong
Hungary	1989	strong
Latvia	1995	strong
Lithuania	1994	strong
Macedonia	1991	medium
Malta	2003	medium
Montenegro	2003	strong
Poland	1987	strong
Romania	1991	medium
Serbia	2005	strong
Slovakia	1993	medium
Slovenia	1991	medium
Turkey	2012	weak

In the case of the strength national human rights institutions, the findings from the analysis point to EU conditionality as a factor with a statistically significant effect on governments' choice of design strength. In both *logit* models, the variable that measures whether a country is an EU member since 2004 and thus has been objected to accession conditionality is statistically significant. In the multinomial *logit* model, the effect is only statistically significant in the case of a change from a weak design or no institution at all as a baseline category to a strong institution. Similar to the effect of the other indicator measuring incentive-setting as a mechanism, namely overseas development assistance disbursed by the US, the results indicate that the EU conditionality may impact on a country's decision to adopt a strong institution but does not appear equally able to account for improvement of institutional strength over-time for countries that have weak or medium level institutions. The findings of the analysis are in line with the conclusions of the literature on European integration about the sustainability of compliance with EU conditionality post-accession. On the one hand, a significant coefficient that measures the effect of EU conditionality indicates a clear impact of EU driven incentive-setting on institutional design, the findings do not appear as conclusive for over-time capacity building in countries where institutions are not as strong.

The results of the statistical model do not lend support for the hypothesis that links countries' commitments to preferential trade agreements with strong human rights standards to institutional design. On the basis of the global analysis, we can conclude that incentive-based systems at the international level appear to

have stronger effects when enforced at the regional level, as evidenced by the EU, or coordinated by nation states that offer financial incentives for development as part of their foreign policy, as illustrated by the US and its overseas development assistance programmes.

#### **4.9.4. Cost and benefit calculations**

A fourth hypothesis seeks to explain the effects of rational domestic factors on institutional design. Viewed through the theoretical lens of republican liberalism, countries' decisions to establish and maintain strong national human rights institutions are often strongly determined by the actions of a number of domestic political actors. The main rationale for supporting a strong institution is domestic self-interest – a government decides to establish a strong institution if the costs incurred by such a decision are low and the benefits are high. A rational decision to delegate to an independent body such as a human rights institution charged with the promotion and protection of human rights requires that a sitting government weigh two crosscutting considerations, namely *restricting government discretion* and *reducing domestic political uncertainty* (Moravcsik 2000). These calculations provide an explanation of state behaviour for governments in transitional democracies. Their decisions to establish strong institutions that promote and protect human rights could be aimed at securing a certain state of institutional development and safeguarding democracy in their country against the uncertain actions of future governments.

In our analysis, we find no statistically significant evidence that cost and benefit calculations account for the establishment of strong national human rights institutions. Whether a country transitioned to democracy in the five years after 1989 does not have a statistically significant effect on institutional strength. In fact, the statistical effect is negative in both the ordinal model and the multinomial model with the 'weak' level of design as its baseline level – in other words, whether a country is a transitional democracy will make it less likely for it to have a strong national human rights institution. It is more likely, then, for these countries to have weaker designs. This conclusion is further supported by the result of the multinomial model with the baseline level of analysis at 'medium'. More specifically, countries that are new democracies are more likely to have weak rather than medium level institutions. At the global level, the higher political and financial costs of establishing strong human rights bodies may be motivating the lower levels of institutional design. This finding is in agreement with the findings of Beth Simmons, where she sought to test whether Moravcsik's theory would apply to states outside of Western Europe in the case of human rights treaty ratification (Simmons 2002). She finds that neither normative explanations nor democratic lock-in theory offer statistically significant predictors of ratification of the core United Nations human rights treaties. Similarly, a country's transitional democratic state does not provide strong evidence that cost and benefit calculations can account for decisions to support strong designs of national human rights institutions.

#### **4.10. Conclusion**

The analysis finds evidence for three mechanisms that can help us understand countries' decisions to have strong national human rights institutions. Socialization processes tell a story of norm and policy learning taking place across borders. Sharing knowledge leads to countries with less strong institutions or no institution at all learning from stronger peer institutions situated in the same region, thus increasing the chance of having a higher number of stronger institutions globally. Membership in global peer review-based networks such as the group of accredited NHRIs can also lead to the activation of shame linked to a type of appropriate behavior set according to standards of members within the network. The adoption of a strong institution or the efforts to build the capacity of a national human rights institution that was weaker are linked to undergoing the UN-coordinated peer review process.

Governments can also decide to establish strong institutions as a result of being offered financial incentives. Development assistance programs that focus on the promotion of liberal democracy place great importance on institutions and in particular on their capacity to work independently from government in promoting and protecting human rights. National human rights institutions are the only such domestic bodies that, when fully functional, are charged with operating autonomously from government intervention that could keep them from carrying out their mandate. They play an important role domestically and have also been central to development efforts led by Washington and Brussels in the past decades. At the global level, the impact of ODA disbursed by the US on institutional strength is greater than the one of the EU, although both international actors' funding efforts

have a generally positive impact on institutional strength. A special and Europe specific regional effect emerges from the data and the analysis as well – the European Union set up a reward-based incentive system of conditionality for candidate and new member states since before the 2004 wave of accession. Requirements for accession appear to have a statistically significant effect on institutional strength in the case of the 19 states located in Eastern and Central Europe.

Cross-border factors tell only part of the story of global institutional design in the case of national human rights institutions. One domestic factor is particularly important, namely a country's identity as a supporter of democratic values and liberal institutionalism, which include the promotion and protection of citizens' rights. Early adopting countries provide such an example, of states that established independent bodies in charge of defending the rule of law and monitoring the enforcement of rights at the national level before the creation of the Paris Principles as an international regulatory framework or UN-led peer review system that leads to NHRI accreditation. In line with their own liberal democratic values, governments that created such bodies early are more likely to have strong institutions today. Early adopting countries can also be role models for other institutions in their region, by providing an example of a successful institution to be copied by neighbouring countries. Cross-border learning in conditions of geographic proximity can lead to rule transfer and institutional isomorphism.

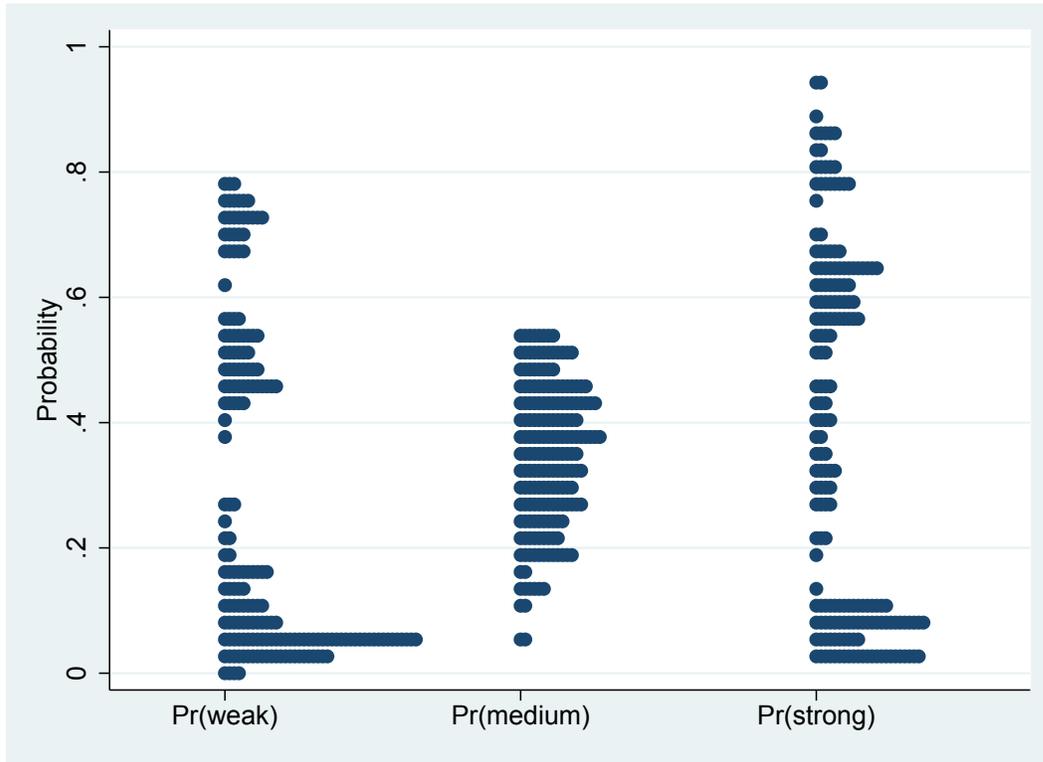
The results of global and regional determinants of institutional design bring to light important causal stories about cross-border institutional change and

regionally clustered tendencies toward institutional isomorphism. Successful rule and institutional transfer is highly context-dependent, with each country representing a different environment for the more or less effective and sustainable compliance with conditionality. Case study work, whether comparative or within-case, is best suited to investigate the causal pathways at work in each context and explore country specific responses to EU-driven cross-border governance.

#### **4.11. Annex**

##### **A. Additional post-estimation tests for the ordinal *logit* model**

In sample predicted probabilities for ordinal *logit* model



**Figure 4.24. Average predicted probabilities for the three outcome categories**

As a form of model assessment, computing the in-sample predictions is a tool to get a general sense of the model and whether there are problems with the data. We specify three different variables for each outcome category and plot the values of their predicted probabilities. The range of predicted probabilities plotted for our model appear larger for the extreme categories and smaller for the middle category, which is common for ordinal regression models. This plot offers a general view of distribution of predicted probabilities but does not allow for a substantive interpretation of results, which can be achieved by calculating marginal effects.

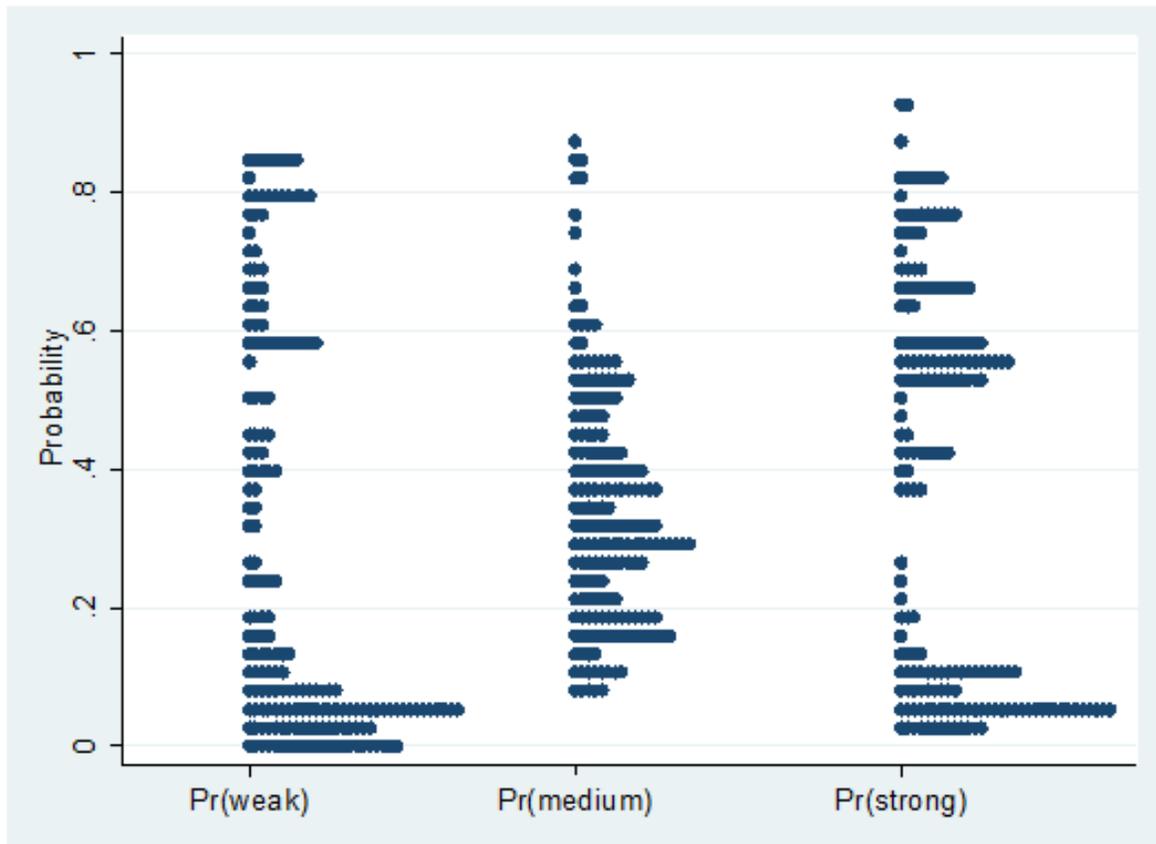
**B. Test of parallel regression assumption (with values for each independent variable)**

**Table 4.8. Brant test results**

	<b>chi2</b>	<b>p&gt;chi2</b>	<b>df</b>
All	16.49	0.086	10
NewDem_89/93	0.06	0.811	1
ICCCATop	0.30	0.584	1
PTAhard	2.63	0.105	1
EUem2004	0.09	0.767	1
ODAEU	0.00	0.962	1
ODAUS	2.15	0.142	1
Adopt	1.17	0.280	1
Adens	2.00	0.157	1
UNAccr	0.01	0.906	1
logGDPcap	0.00	0.967	1

**B. Additional post-estimation tests for the multinomial *logit* model**

In sample predicted probabilities for multinomial *logit* model



**Figure 4.25. Predicted probabilities for each outcome category**

Similar to the steps taken for measuring model fit for the ordinal *logit* model above, we specify three different variables for each outcome category and plot the values of their predicted probabilities. The range of predicted probabilities plotted for our model appear to be distributed evenly across the three categories, with slightly larger values for the weak and strong categories. A plot of predicted probabilities offers a general view of the model but does not allow for a substantive interpretation of results, which can be achieved by calculating marginal effects on outcome probability.

**C. An alternative test for the hypotheses that the effects of all independent variables in the models are equal to 0 is the Wald test:**

**Table 4.9. Likelihood ratio test on all independent variables in multinomial model**

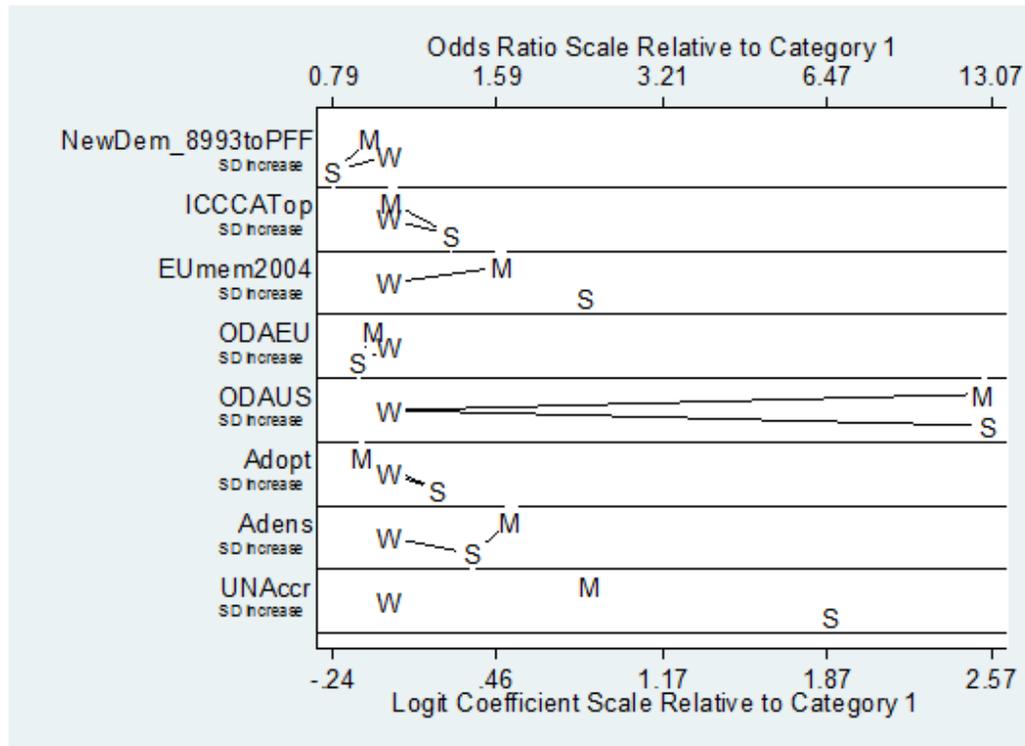
	chi2	p>chi2	df
NewDem_89/93	0.82	0.663	2
ICCCATop	1.23	0.541	2
PTAhard	2.55	0.280	2
EUmem2004	8.17	0.071	2
ODAEU	0.11	0.948	2
OD AUS	9.69	0.008	2
Adopt	2.80	0.246	2
Adens	3.93	0.140	2
UNAccr	51.287	0.000	2
logGDPcap	0.03	0.984	2

**Table 4.10. Wald test results**

	chi2	p>chi2	df
--	------	--------	----

NewDem_89/93	0.81	0.666	2
ICCCATop	1.221	0.543	2
PTAhard	2.52	0.284	2
EUmem2004	6.59	0.038	2
ODAEU	0.11	0.948	2
OD AUS	2.66	0.264	2
Adopt	2.65	0.266	2
Adens	3.79	0.150	2
UNAccr	36.64	0.000	2
logGDPcap	0.03	0.984	2

**D. The average discrete change in odds for each increase in one of SD of the explanatory variables**



**Figure 4.26. Logit Coefficient Scale Relative to Category 1**

In order to see patterns in coefficients more easily across the three outcome categories, we fit a plot of odds ratios. Such graphs provide a quick way to assess all the parameters in the model and to get a general sense of what is going on to help plan further analyses. Such insights can inform more detailed analyses focused on only some of the variables, using other methods of interpretation. We fit two additional graphs that contain information about odd ratios and different in two main aspects – the former plots only the magnitude of the coefficient in the distance between individual pairs and its statistical significance through connecting lines, and the second one includes also information about the marginal effects. While the factor change in the odds is constant across levels of all variables, the marginal effect gets larger or smaller at different values of the variables, so the second graph marks visually this change in probability by making the area of a square drawn around a letter proportional to the discrete change in the probability. Sign is indicated by underlining the letter if the marginal effect is negative.

**E. Robustness check for the measure of democracy/autocracy, making use of Polity IV data to replace the Freedom House data in the full model reported in the analysis.**

Due to the smaller number of countries for which Polity IV data are available, the models generated as robustness checks include a smaller number of observations (159) instead of 187 included in the analysis including Freedom House data. The first robustness check includes the indicator Polity 2 as presented in the Polity IV dataset. The second the robustness check includes a variable of New Democracy developed by Grewal and Voeten (2015) on the basis of the Polity IV dataset and building on the measurement scale proposed by Moravcsik (cited in Grewal and Voeten, 2015). The two authors define stable democracies all countries that have a Polity score of 6 or higher for over 30 years. New democracies are countries that have a Polity score of 6 or higher but have not reached the score of 10 in the past thirty years. Non-democracies are countries that have a Polity score of less than 6 in 2013 (Grewal and Voeten, 2015).

The results of both robustness checks confirm the finding of the analysis using Freedom House data. Higher levels of democratisation on the Polity scale are not correlated with stronger institutions. The analysis of the multinomial *logit* model including the second measure of democracy for newly democratised states broadly confirms the same finding. The one finding that indicates a significant effect is for the change from a weak institution to a medium-strength institution, but this change is only significant at the  $p < 0.10$  level.

**Table 4.11. Ologit (full) model including Polity IV data**

<b>Strength</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>
Polity	0.0535	0.0349	0.126
ICCCATop	0.1386	0.4258	0.745
PTAhard	-0.4633	0.4410	0.293
EUmem2004	1.2354*	0.6904	0.074
ODAEU	-0.0002	0.0013	0.872
OD AUS	0.0016**	0.0008	0.046
Adopt	0.8566	0.5565	0.124
Adens	3.3477**	2.2642	0.018
UNAccr	2.6827***	0.4262	0.000
logGDPcap	- 0.0456	0.1329	0.732
/cut 1	2.0580		
/cut 2	4.5452		

Prob > chi2 = 0.0000, N = 159

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

**Table 4.12. Multinomial model including Polity IV data**

<b>Strength</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>
1	base		
2			
Polity 2	- 0.0065	0.0513	0.898
ICCCATop	0.0912	0.6557	0.889
PTAhard	1.2290*	0.7179	0.087
EUmem2004	1.4619	1.2212	0.231
ODAEU	-0.0012	0.0026	0.646
OD AUS	0.0168*	0.0096	0.081
Adopt	-0.9987	0.9883	0.312
Adens	3.9783	3.5102	0.257
UNAccr	2.3652***	0.7028	0.001
logGDPcap	-3.9531	2.5826	0.126

3			
Polity 2	- 0.0541	0.0605	0.371
ICCCATop	0.3763	0.7398	0.611
PTAhard	0.0109	0.7852	0.989
EUmem2004	2.3920**	1.2464	0.055
ODAEU	-0.0006	0.0028	0.820
OD AUS	0.0164*	0.0096	0.089
Adopt	-0.1319	0.9744	0.892
Adens	6.0097	3.8916	0.123
UNAccr	4.1402***	0.7630	0.000
logGDPcap	0.1693	0.2422	0.018

Prob > chi2 = 0.0000, N = 159

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

**Table 4.13. Ologit model including categorical specification of Polity IV data**

<b>Strength</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>
PolityCat	0.4722	0.2830	0.095
ICCCATop	0.2042	0.4117	0.620
PTAhard	-0.5377	0.4456	0.228
EUmem2004	1.4637**	0.6792	0.031
ODAEU	5.71e-06	0.0014	0.997
OD AUS	0.0016**	0.0008	0.046
Adopt	0.8977	0.5561	0.106
Adens	5.4690**	2.2705	0.016
UNAccr	2.6709***	0.4261	0.000
logGDPcap	- 0.1182	0.1455	0.417
/cut 1	1.6853		
/cut 2	4.1715		

Prob > chi2 = 0.0000, N = 159

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

Approximate likelihood-ratio test of proportionality of odds:

Chi2(20) =26.80

Prob > chi2 = 0.0028

**Table 4.14. Multinomial model including categorical specification of Polity IV data (Grewal and Voeten, 2015)**

<b>Strength</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>
1	base		
2			
PolityCat	- 0.5667	0.4507	0.209
ICCCATop	0.3026	0.6251	0.628
PTAhard	1.2953*	0.7204	0.072
EUmem2004	1.4582	1.2105	0.228
ODAEU	-0.0016	0.0026	0.555
OD AUS	0.0181*	0.0102	0.077
Adopt	-0.9293	0.9801	0.343
Adens	4.7450	3.4955	0.175
UNAccr	2.4940***	0.7261	0.001
logGDPcap	0.1987	0.2380	0.404
3			
PolityCat	-0.2534	0.4872	0.603
ICCCATop	0.5611	0.7066	0.427
PTAhard	-0.0680	0.8060	0.933
EUmem2004	2.7094**	1.2316	0.028
ODAEU	-0.0006	0.0028	0.833
OD AUS	0.0176*	0.0102	0.085
Adopt	-0.1311	0.9721	0.893
Adens	6.6040*	3.9234	0.092
UNAccr	4.2729***	0.7862	0.000
logGDPcap	0.1471	0.2674	0.582

Prob > chi2 = 0.0000, N = 159

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

## **Annex F. Alternative specifications of the dependent variable, NHRI strength**

Please note that these results present different specifications of the dependent variable simply as alternatives, but ought not to be viewed as more accurate measurements of institutional strength in the case of national human rights institutions. They are merely suggested as alternative forms of measurement of the dependent variable, with particular relevance when discussing the inclusion of countries without a national human rights institution in the analysis.

The main definition and operationalisation of the dependent variable in the *ologit* and multinomial models included in the body of this chapter proposes an aggregate measure of ‘weak institutions’ that groups countries with weak NHRIs in the same category as countries without a human rights institution that operates with a human rights mandate at the country level. Based on the indicators included in the definition of institutional strength, all C-level institutions are ‘weak’, by lacking *de jure* independence, a human rights mandate, by not operating autonomously from government or by having very limited activity of promotion and protection.

The first alternative specification of the dependent variable includes a four-point ranked categorical variable of NHRI strength. Strong and medium-strength institutions remain the same as in the main specification of the model. However, the ‘weak’ category includes only countries that have a weak institution, while the ‘non-existent’ category comprises countries that do not have a national human rights institution. The results of the *ologit* model are relatively similar to the ones included in the analysis of three degrees of strength. In the case of the multinomial model, the

results indicate that none of the independent variables are statistically significant. Some of the very large values of coefficients and standard errors indicate also that a multinomial model may not be the appropriate fit for a four-point ranked dependent variable measuring institutional strength.

The second alternative specification of the model includes fewer observations (145), as it is restricted to countries that have a national institution after excluding the countries without an institution from the analysis dataset. The results of this analysis are different from the results of the full model, likely due to sensitivity of the model to the reduction in the number of observations.

**Table 4.15. *Ologit* full model with institutional strength operationalised as a four-point ranked categorical variable**

<b>Strength (1-4)</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>
NewDem	0.0637	0.4675	0.892
ICCCATop	0.2524	0.3577	0.480
PTAhard	-0.0616	0.3622	0.865
EUmem2004	1.5876**	0.6575	0.016
ODAEU	-0.0006	0.0013	0.649
OD AUS	0.0019**	0.0008	0.011
Adopt	1.2258**	0.5084	0.016
Adens	4.3659**	1.7711	0.014
UNAccr	2.8476***	0.3925	0.000
logGDPcap	- 0.0695	0.1199	0.562
/cut 1	1.3884		
/cut 2	1.8634		
/cut 3	4.2565		

Prob > chi2 = 0.0000, N = 187

\*\*\* indicates values significant at p<0.01 level

\*\* indicates values significant at p<0.05 level

\* indicates values significant at the p<0.10 level

Approximate likelihood-ratio test of proportionality of odds:

Chi2(20) = 53.27

Prob > chi2 = 0.0001

**Table 4.16. Multinomial model including Strength 1-4 (base 1/no institution)**

<b>Strength (1-4)</b>	<b>Coef.</b>	<b>St. err.</b>	<b>p value</b>
1	base		
2			
NewDem_89/93	0.4021	1.1859	0.735
ICCCATop	0.0251	0.9782	0.979
PTAhard	-0.4193	1.0266	0.683
EUmem2004	16.0487*	1.1337.85	0.099
ODAEU	-0.0025	0.0056	0.658
OD AUS	0.0067	0.0162	0.680
Adopt	18.6087	1189.612	0.988
Adens	11.0467**	5.1737	0.033
UNAccr	17.6573	659.7285	0.979
logGDPcap	-0.2232	0.3620	0.538
3			
NewDem_89/93	0.0268	0.7623	0.972
ICCCATop	-0.0247	0.6140	0.968
PTAhard	0.6549	0.6903	0.343
EUmem2004	15.8860	1337.85	0.991
ODAEU	-0.0013	0.0031	0.674
OD AUS	0.0158	0.0126	0.208
Adopt	16.4595	1186.611	0.989
Adens	8.3308**	3.2529	0.010
UNAccr	16.8076	659.7281	0.980
logGDPcap	-0.0401	2.4882	0.081
4			
NewDem_89/93	0.0659	0.9183	0.943
ICCCATop	0.4188	0.7925	0.567
PTAhard	0.0903	0.7925	0.909
EUmem2004	17.1367	1337.85	0.990
ODAEU	-0.0017	0.0035	0.612

ODAUS	0.0162	0.0126	0.200
Adopt	17.7221	1189.61	0.988
Adens	8.4004	3.9185	0.032
UNAccr	18.9805	659.728	0.977
logGDPcap	-0.0088	0.2629	0.973

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Prob > chi2 = 0.0000, N = 187

\*\*\* indicates values significant at  $p < 0.01$  level

\*\* indicates values significant at  $p < 0.05$  level

\* indicates values significant at the  $p < 0.10$  level

# **Chapter 5: A Qualitative Comparative Analysis of Institutional Strength in Europe**

## **5.1. Introduction**

The chapter proceeds as follows: first, it justifies the selection of Europe as the regional case study. Europe is a pathway case (Gerring 2007), which allows us to examine more closely the relationship between explanatory factors and the outcome at the regional level. Of particular interest are the variables that were found to be significant in the global statistical analysis, three of which having direct regional relevance for institutional design in Europe – the region has a high number of early adopting institutions, also a high density of strong institutions, and the EU as a powerful actor both for socialization and through its conditionality imposed on candidate states prior to accession. The second section of the chapter introduces the method of analysis, Qualitative Comparative Analysis, presenting its main characteristics and the appropriateness for the type of regional data and research question this analysis is aiming to answer. In the third section, I review briefly the main four analytical explanations proposed in the theory chapter and the hypotheses that test the effects of factors relevant for Europe.

The analysis in this chapter focuses on only four explanatory factors linked to the four main mechanisms tested also in the global analysis – UN accreditation, early adopter status, EU conditionality, and newly democracy status. No new factors that are region or country specific are introduced at this stage. Thus the chapter merely

presents an illustrative discussion of explanatory factors at the European level and identifies country cases in which the combination of these factors leads to two different levels of the outcome – strong institution or weak institution. QCA does not introduce further analytical nuance by considering other region-specific factors, but rather allows to investigate the interplay of factors at the regional level in a case of particular importance for the global analysis. This chapter paves the way for a more fine-grained qualitative exploration of factors that account for the reasons why governments decide to sustain a certain institutional design for their national human rights institution. QCA opens also the discussion of country cases based on the combination of factors that are necessary for them to have strong institutional designs. The next natural step of research will be to carry out interview-based work in cases of institutions identified by QCA and complete the examination of the causal pathway through process tracing and in-depth case analyses.

The fourth section of the chapter presents the binary data for the 36 countries in the truth table and the results of the Qualitative Comparative Analysis. The analysis observes the sets of conditions linked to two main outcomes - ‘strong vs. not strong’ and ‘weak vs. not weak’. The fifth section of the chapter discusses briefly all country cases that have strong and medium institutions and the factors that are relevant for explaining their choice of institutional design. The case studies are based on report and survey-based information, and are intended to present illustrative evidence for the QCA.

## **5.2. Method and case selection**

### **5.2.1. Case selection**

Europe is a pathway case for our argument at the regional level of analysis. The statistical analysis provided statistically significant evidence for three indicators that operationalise a regional dimension linked to Europe – a high regional density of strong institutions quantifies information about Europe and Latin America; the ‘early adopter’ status of countries that established classical ombudsmen prior to most other countries describes a characteristic of a larger number of countries in Europe compared to other regions; and European Union membership conditionality, which gives the most direct conceptual link to Europe and the most unambiguous causal pathway between explanatory factor and outcome of all three independent variables of interest. The results of the statistical analysis, which find three independent variables linked to Europe to have significant effects on institutional design underlies the selection of country cases included in the csQCA dataset.

A pathway case is form of crucial case study, which as Eckstein (1975) describes, is a case that “must closely fit a theory if one is to have confidence in the theory’s validity, or, conversely, must not fit equally well any rule contrary to that proposed” (Eckstein 1975, p. 118). The crucial case has become the most widely recognised as a staple of case study method for single-case work (Levy 2002; George and Bennett 2005). Building on Eckstein’s definition, Gerring (2007) proposes that a pathway case has a slightly different technique and underlying purpose – it presents

an opportunity to examine more closely the relationship between an explanatory factor and the outcome and see them interact in isolation from other possible causes (Gerring 2007). For such cases, the covariational pattern between a cause and an effect is already well known and has been investigated across a broad range of cases, but the causal mechanism may be ambiguous (Seawright and Gerring 2008).

In other words, pathway case(s) help to illuminate the causal pathway that link an independent variable to the outcome, providing qualitative evidence that confirms the findings of a large-N study. The evidence provided by QCA does not allow an in-depth analysis of cases, but does provide insight into the combinations of different factors that are linked to strong institutional design in Europe and paves the way for a closer investigation of institutions through in-case analyses. QCA allows both to explore the causal pathways at work at the regional level and to identify cases for further country level analysis. Further qualitative work, in the form of ethnographic research would provide further evidence of how cross-border explanatory variables impact on the national institution's design and can also provide further insight into domestic factors that cannot be captured by the large N analysis. Before we discuss more in depth the QCA model for the analysis of institutional design in Europe, I will introduce briefly the main principles of QCA and the set-theoretic logic underlying it.

### 5.2.2. What is QCA?

Qualitative comparative analysis is a set-theoretic method for the analysis of qualitative data. All set-theoretic models share three main features: first, they work with membership scores of cases in sets. Sets are a kind of ‘data container’ (Sartori 1970) is defined in terms of “boundaries that define zones of inclusion and exclusion” (Mahoney 2010). Set-theoretic methods operate on data that is coded with the help of case membership scores in sets that represent social science concepts, through a process called ‘calibration’ (Schneider and Wagemann 2012, p. 32). In the case of crisp sets, as the one used for the analysis of European cases, all variables are coded as dichotomous (i.e. either 0 or 1), based on whether or not a case belongs in a certain set. Second, they perceive relations between social phenomena as set relations. Categories that describe the characteristics of a country or a number of countries, such as ‘newly democratised’ or ‘early adopter of an institution’ represent sets in which different countries belong. This allocation to certain sets is closely linked to the third feature of set-theoretic models, namely the interpretation of set relations in terms of sufficiency and necessity, as well as forms of causes that can be derived from them (Schneider and Wagemann 2012, pp. 65-66). For instance, if we observe that all European Union members are democracies, but that not all democracies are European Union members, then the set of European Union members is a subset of the (global) supra-set of democracies. In other words, all European Union member states are necessarily democracies, but the condition of

a state being a democracy is not sufficient for membership in the set of countries in the European Union.

The data used in this regional set model of institutional strength in Europe are in the form of a crisp set. Crisp sets have been the object of criticism due to their necessary simplification into dichotomous categories of fine-grained social science concepts for which more detailed and nuanced information is available (Bollen, Entwisle, and Alderson 1993; De Meur, Rihoux, and Yamasaki 147AD). As such, they can represent a loss of empirical information. A crisp set, however, is the appropriate format for the set conceptualisation and calibration of data in this analysis and matches the operationalization of the four variables in the statistical dataset used for the global analysis. More nuance could certainly be added to the analysis if one were interested in capturing more detail in the categories of factors that could have an effect on the outcome. However, one of the goals of this analysis is first and foremost to capture variation within the sets that make up the outcome, – institutional strength. The binary coding of the main variables of interest for Europe in the global statistical dataset overlaps in conceptualisation with the binary operationalization in terms of conceptual sets for the QCA analysis.

### 5.3. Explanatory factors and causal mechanisms

Four categories that capture set membership in the factors that have an effect on the outcome are included in the model, and their selection is theory driven: UNAC - whether or not a country has undergone the accreditation process overseen by the International Coordinating Committee provides a measure of socialisation at the global level. ADOPT - whether or not a country is an early adopter of a classical ombudsman or hybrid ombudsman is an indicator of a country's strong human rights identity. Whether a state is newly democratised, which is defined as belonging to the set of countries that moved from being autocratic in the aftermath of 1989 to becoming transitional or fully democratic, provides a measure of the role that domestic benefit and cost calculations may play in governments' decisions to adopt a certain institutional design for their national human rights institution. Some of the independent variables in the global dataset were not carried over to the crisp set as they do not show variation across cases at the regional level more generally, and in Europe more specifically. For instance, all countries in the crisp set are already members of the Council of Europe, thus rendering the inclusion of this factor in the model meaningless. The selection of the four main factors to be included as set categories in the QCA model is theory driven with each of them linked to one of the four causal mechanisms tested also through statistical hypothesis testing in the global analysis.

The analytical framework we propose offers four main ideal types that seek to explicate the effect of a number of factors on governments' decisions to establish

and support strong national human rights institutions. These causal explanations build on two major lines of debate in international relations theory as relevant for the discussion of institutions – on the one hand, domestic versus international factors and, on the other hand, material versus ideational factors. The mechanisms tested in the QCA are identical to the ones tested for in the global analysis, seeking to identify the interplay of factors at the regional level in Europe. The indicators included in the statistical model that are not carried over into the regional QCA model are the ones that do not present much variation at the European level – all European states included in the analysis are signatories of strong human rights treaties and the vast majority of them have also entered preferential trade agreements with strong human rights standards. Similarly, they are members of the Council of Europe. This QCA analysis intends to find the combinatory logic of the main conditions of sufficiency and necessity accounting for institutional design choices in countries of the European Union and candidate states for 2013. At this point, we will review briefly the main causal mechanisms proposed for the study of national human rights institutional strength and emphasise also their regional explanatory in the case of Europe.

**Incentive-setting:** The EU uses positive and negative incentives routinely to introduce institutional change in accession candidates and in its neighbourhood in pursuit of its own instrumental interests (Börzel and Risse 2012) – security, prosperity, environmental protection, human rights as well as minority rights promotion and protection. When seeking to determine other actors to adopt and

accept its institutions, the EU and the member states rely on external incentives in the form of conditionality and capacity building (Kelley 2004; Schimmelfennig and Sedelmeier 2005; Vachudová 2005). Conditionality aims to manipulate the cost-benefit calculations of target actors through creating negative and positive incentives, while capacity-building provides additional resources enabling targeted actors to make strategic choices (Börzel and Risse 2012, p. 7). This mechanism is particularly powerful in the case of accession candidates and manifests also in the case of national human rights institutions.

**Table 5.1. Countries subjected to EU conditionality (levels of institutional strength)**

<b>Country</b>	<b>Strength</b>
Albania	A
Bosnia&Herzegovina	A
Bulgaria	B
Croatia	A
Cyprus	A
Czech Republic	A
Estonia	A
Hungary	B
Latvia	A
Lithuania	A
Macedonia	B
Malta	B
Montenegro	A
Poland	A
Romania	B
Serbia	A
Slovakia	B
Slovenia	B
Turkey	C

Over the years, the European Commission made clear recommendations to candidate states with regard to the establishment and consolidation of national human rights ombudsmen and human rights commissions (European Commission 2016). The EU maintains a system of monitoring and support through recommendations through the use of annual reports on the progress of candidate states since the 2004 wave of accession. In these reports, ombudsman and human rights commissions play a central role in the efforts to implement international human rights law in domestic environments, to harmonise legislation about the promotion and protection of minority rights, combat corruption, or handle cases of torture by police forces and seek to support governments' efforts to improve conditions in prisons and protect the rights of prisoners. The roles of these institutions vary according to national context, responding to individual domestic society needs. Their health and robustness is also an important concern for the European Commission – whenever necessary, clear recommendations are made about an increase in their strength, whether in their independence from government intervention, sufficient funding for infrastructure and staff, or increased effectiveness of their collaboration with state bodies. Their establishment and good independent operation represent a clear priority for the process of institutional alignment and development – they are targets of incentives through conditionality and capacity building offered to member states by the European Commission. Hence, one can hypothesise that countries which have been the object of EU conditionality are more likely to have strong national human rights institutions.

Hypothesis:

Countries that have had membership candidate state status since the 2004 wave of accession are more likely to have strong national human rights institutions.

**Identity:** In line with the constructivist school of thought, some societies identify collectively as liberal democratic and consider support for human rights promotion and protection as part and parcel of a country's history and tradition. Governments in these countries decide to establish strong human rights ombudsmen and national human rights commissions because they believe in the norms these institutions embody and also because the political costs incurred in their establishment and strong design would be minimal or non-existent. The Scandinavian countries, for instance, have some of the oldest ombudsman institutions in the world and over the years have remained strong promoters of democracy and human rights across borders.

As Wendt (1999) defines it, identity is "a property of intentional actors that generate(s) motivational and behavioral dispositions (Wendt 1999)." State identity is essentially subjective and grounded in a nation's self-understanding, although it does incorporate both internal and external structures. Certain essential properties constitute the national identity of each state – on the one hand, it consists of a material base, many physical bodies and a territory, complementing a consciousness and memory of a collective self (Wendt 1999). Human rights identity has not been conceptualized or measured in prior studies of national human rights institutions' diffusion. Most studies, however, do mention a domestic dimension that captures

support for human rights – such as a country’s Western heritage or its human rights record, as indicators of a commitment to the promotion and protection of human rights (Koo and Ramirez 2009). This domestic aspect is not found statistically significant and thus does not account for states’ decision to create NHRIs in the first place (Koo and Ramirez 2009). Countries’ religious affiliations are not good predictors of commitment to human rights treaties or to their implementation on the ground (Simmons 2002; Cole 2009b).

Europe is the region with the most countries that established an ombudsman institution prior to the institutional boom of the early 1990s. In fact, the Scandinavian countries are the oldest adopters of a classical parliamentary ombudsman worldwide, with Finland in 1919, Denmark in 1955, Norway in 1962 (Reif 2004). Importantly, also, Sweden is the country that designed the ombudsman institutional model and created the first one in the world in 1809, called the ‘Ombudsman for Justice.’ Although the Swedish model of the Ombudsman for Justice has little to do with our understanding of human rights promotion and protection or indeed with the current ombudsmen system in Sweden, the institutional concept became a reference point for all subsequent countries’ decisions to establish on their territories a similar independent body concerned with the protection of their citizens’ rights. Most, if not all, institutional histories of national human rights commissions or ombudsmen cite the historical Swedish ombudsman institution as the model that provided the inspiration for their own governments’ decision to create a similar body.

**Table 5.2. Early adopting countries in Europe  
(levels of institutional strength and year of establishment)**

Country	Year	Strength
Austria	1982	medium
Denmark	1955/02/13*	strong
Estonia	1938	strong
Finland	1919	strong
France	1947	strong
Hungary	1989	strong
Poland	1987	strong
Portugal	1975	strong
Spain	1978	strong
Sweden	1809/2009*	medium
Switzerland	1976	weak

\*The first date corresponds to the creation of the ombudsman and the second to the institution in existence today, when different.

A country that is an early adopter of a classical ombudsman institution is more likely to have a strong national human rights institution in 2013, whether this institution is a stronger version of the existing classical ombudsman, which was given a broader human rights mandate as well, or in the form of a human rights commission established after the creation of the Paris Principles framework that promotes their establishment. The presence of an early adopter in a region can also prompt a cross-border effect causing social learning and imitation. We will return to this discussion in the section dedicated to socialisation dynamics and the measures we propose for it.

Hypothesis:

Countries that are early adopters of a human rights ombudsman are more likely to have stronger institutions.

**Cost and benefit analysis:** What can we expect to occur in countries that do not have a strong human rights identity manifest through longstanding tradition of democratic or a history of a consistently strong human rights record? Governments in newly democratized states are more likely to focus their efforts to lock in democratic reform through supporting human rights institutions for fear of destabilization by future governments and backsliding in the longer run (Moravcsik 2000). Cost and benefit calculations drive decision-making processes when supporting the establishment and consolidation of institutions that could constrain the potentially undemocratic behaviour of subsequent national governments. A rational decision to delegate to an independent body such as a human rights institution charged with the promotion and protection of human rights requires that a sitting government weigh two crosscutting considerations, namely *restricting government discretion* and *reducing domestic political uncertainty* (Moravcsik 2000).

In contrast to the view that hypothesizes that social actors are responsive to external socialization and often altruistically motivated, republican liberal theories work under the assumption that states are self-interested and rational in their pursuit of different national interests. These national benefits reflect variation in the nature of domestic pressures and representative institutions (Doyle 1986; Russett 1993; Snyder 1991; Bailey, Goldstein, and Weingast 1997; Moravcsik 1997; Van Evera 1999; Legro and Moravcsik 1999; Moravcsik 2000). National human rights institutions are domestic bodies set up by governments in response to different national environments and political pressures. The design and mandate of national

human rights institutions are such that these bodies have *de jure* power to hold governments accountable for the implementation of international human rights agreements and for violations of human rights they have carried out against their own citizens. Generally speaking, the lower the costs, the more likely states are to establish strong institutions. Depending on the type of political regime at the domestic level, such costs can potentially be very high and higher even than when ratifying international or regional human rights treaties that “lack teeth.” Costs incurred as linked to policy change, unintended consequences, and limited flexibility of were found significant explanatory factors that states weigh against the benefits of democratic lock-in when they commit to the international Convention Against torture. In the case of country commitment to the CAT through signing or ratifying it, Goodliffe and Hawkins find that normative conformity and costs both matter (Goodliffe and Hawkins 2006).

**Table 5.3. New democracies in Europe  
(levels of institutional strength)**

<b>Country</b>	<b>Strength</b>
Albania	A
Bosnia&Herzegovina	A
Bulgaria	B
Croatia	A
Czech Republic	A
Estonia	A
Hungary	B
Latvia	A
Lithuania	A
Macedonia	B
Montenegro	A
Poland	A
Romania	B
Serbia	A
Slovakia	B
Slovenia	B

With a large number of newly democratised countries in the region, Europe is the regional setting where we could expect to observe such behaviour. Establishing a strong national human rights institution would be perceived as a commitment to human rights promotion and protection at the domestic level and an effort both to consolidate democracy in response to domestic pressures and to gain legitimacy at the regional and global level. A strong such institution complements country commitments to international and regional human rights treaties, granting states access to membership in country networks and organisations such as the Council of Europe or OECD. Importantly, also, governments in countries with popular pressure for reforms that strengthen democracy would also garner public

legitimacy and increased electoral support through the establishment of a strong ombudsman or national human rights commission, or sometimes also an entire human rights ombudsman system addressing different categories of rights (this is the case in the Czech Republic, Hungary, Lithuania, or Poland).

### Hypothesis

Countries that are newly democratised are more likely to have strong human rights institutions.

**Socialisation:** Socialisation explains cross-border diffusion as a process driven by normative and socially constructed institutional and policy properties (Checkel 2005; Gilardi 2013). Processes of socialization often result in complex learning by which actors reconfigure their interests and identities (Checkel 2005). Acculturation is one type of socialisation processes can lead to a more incomplete (or superficial) kind of learning, in which actors adapt beliefs and behaviours that they face in their environment without evaluating either the merits of those beliefs or the material costs and benefits of conforming to them (Kelman 1958; Goodman and Jinks 2013). Unlike socialisation, acculturation stops short of producing attitude change as a result of the interaction with the group to which one belongs (J. R. Smith and Hogg 2008). From this perspective, the EU can be seen as a large scale socialisation agency which actively tries to promote rules, norms, practices and structures of meaning to which member states are exposed (Börzel and Risse 2012). The end result of such a process is the full incorporation of these new norms and practices in

domestic structures (Checkel 2005). In its relationship with member states, accession candidates, and countries in its neighbourhood, the EU can be seen as a “teacher of norms (Finnemore 1993).” Epistemic communities or advocacy networks can act as norm entrepreneurs that socialise domestic actors into new norms and rules of appropriateness through social learning, aiding in the redefinition of domestic interests and identities (Börzel and Risse 2007).

Four main actors can facilitate learning at the regional level in Europe – (1) institutional networks such as the European Network for National Human Rights Institutions or the Asia Pacific Forum; (2) the global network of accredited national human rights institutions coordinated by the UN’s International Coordination Committee for NHRIs; (3) early adopting countries whose influence will manifest strongly on countries in their proximity; and (4) in the case of Europe in particular, the European Union and its institutions. Other regional network-based actors, such as the Council of Europe, can also facilitate the formation of environments that promote learning across borders at the regional level, but their impact on member states is much more diffuse and does not present enough within-region variation. The effect of the European Union is expected to be different on member states as opposed to accession candidates.

Moreover, early adopting countries with long-standing traditions of liberal democracy in Western Europe play an important role in learning processes, as they represent role models for other countries in their proximity. The most prominent example is Sweden, as it is the country that created the very first model of an ombudsman in the early 1800s – even though no modern version of an ombudsman

is an institutional replica of the initial Swedish Ombudsman of Justice, the majority of human rights institutions mandated to promote and protect human rights at the national level point to Swedish institutional model as their inspiration. Another early adopted institution that played an influential role in promoting cross-border learning is the Danish Human Rights Institute, which has run a long campaign of not simply promoting and promoting human rights domestically in Denmark but rather by coordinating the activities of the ENNHRI and also by managing international development programmes focused on institutional capacity building around the world. In other words, early adopting countries can also be role models for other institutions in their region, by providing an example of a successful institution to be copied by neighbouring countries. Geographic proximity can facilitate cross-border learning and can lead to rule transfer and institutional isomorphism.

Of particular interest when it comes to institutional change is the understanding that socialisation processes are particularly effective when countries are embedded in dense networks of transnational and international social relations that shape their perceptions of the world and their role in that world (Finnemore 1996; Ruggie 1988). Networks of national human rights institutions are both regional and global in reach – the European Network for National Human Rights Institutions (ENNHRI) is a relatively recent institution, founded in 2013, compared to its equivalent body in Asia, the long-standing Asia Pacific Forum, founded in 1996. For over a decade prior to the establishment of the ENNHRI, its predecessor, the European Group of National Human Rights Institutions was a small and loosely structured body affiliated with the Council of Europe with the main role of assisting

in the accreditation process for national human rights institutions located in Europe. Given its very recent establishment and overall unstructured operation until 2013, the European network cannot be considered a key facilitator of cross-border learning.

Given the particularly significant effect that the accreditation process has on the establishment globally (Linos and Pegram 2016) and the institutional strength of national human rights institutions as demonstrated by the statistical analysis at the global level, an equally strong impact is expected to be manifest at the regional level in Europe. Hence having undergone the accreditation process five years prior to the year of data collection is hypothesised to have an impact on the governments' decisions to establish and support strong institutions that promote and protect human rights domestically.

### Hypothesis

Countries that have undergone the accreditation process five years by 2008 are more likely to have stronger institutions mandated to promote and protect human rights in 2013.

## 5.4. A QCA model of institutional design in Europe

### 5.4.1. Outcome: strong institutional design

Seeking to capture the variation across the three levels of the outcome, I propose a model that seeks to capture different degrees of variation in institutional strength. The outcome of QCA is always in binary form, indicating whether or not a case belongs in the outcome set. The outcome of the statistical analysis at the global level is ordinal and made up of three different categories (weak, medium, strong). In order to capture this variation in outcome ranks, I propose three different definitions of the outcome category – strong versus non strong (i.e. weak and medium); medium versus non medium (i.e. strong and weak); and weak versus non weak (i.e. strong and medium). The first truth table and formal proposition presented have as outcome the set of institutions that are ‘strong,’ so institutions that do not belong in that set are either ‘medium’ or ‘weak.’ A second model has as outcome the set of institutions that are ‘weak,’ so institutions that do not belong in that set are either ‘strong’ or ‘medium.’ A third model includes an outcome with the set of ‘medium’ versus ‘strong’ and ‘weak’ institutions, but the results are inconclusive, so I will include the truth table for information purposes but will not incorporate the results in the analysis.

The model below shows the results of the analysis for the outcome ‘STRONG’ presenting two combinations of conditions sufficient for a country to belong to the strong (versus weak and medium) outcome set. A country being a new democracy

and subjected to EU accession conditionality without having undergone the UN accreditation process has met sufficient conditions for the outcome.

**Model 1:** un.ac\*NEWDEM\*EUCOND + UN.AC\*newdem\*eucond => STRONG

The sufficient conditions and the cases which meet them is as follows:

**Table 5.4. Model (outcome = STRONG)**

	PRI/incl	cov	Cases
un.ac*NEWDEM*EUCOND	0.833	0.238	Czech Rep, Latvia, Lithuania, Montenegro, Romania; Estonia
UN.AC*newdem*eucond	0.714	0.476	Belgium, Germany, Greece, Ireland, Luxembourg, Netherlands, United Kingdom; Austria, Denmark, Finland, France, Portugal, Spain, Sweden
M1	0.750	0.714	

Total: 35; No. of multiple-covered cases: 0; inclusion cut: 0.7

In the case of the first path to the outcome of a strong institution, all countries are new democracies that have been objected to European Union conditionality. All of these countries have strong institutions, with the exception of Romania, whose Ombudsman has medium level design. Estonia is the only case of a new democracy that has also taken part in the EU accession process and that is an early adopter of a Parliamentary Ombudsman. None of the cases included in the minimal solution has undergone the UN accreditation process. The analysis finds that a strong human rights identity does not play an important role in explaining why countries establish national institutions with a strong design. However, some of

the cases that illustrate the minimal solutions are early adopting countries – Sweden, Denmark, Estonia. The case discussions will highlight this factor in their case and further qualitative work will allow to uncover the extent to which this condition plays a role for strong institutional design.

On the basis of the results of the QCA analysis, we can be reasonably confident that the first identified path supports a rational story of strong institutional design of national human rights institutions in Europe. This path leads to strong institutions in almost all identified cases, with the exception of Romania, which has a medium strength institution. None of the cases illustrating this path has undergone the UN-coordinated accreditation process, but ‘no UN accreditation’ is not a necessary condition for the outcome. The easy counterfactual combination includes newly democratic countries that have been the object of EU conditionality and have also undergone the UN accreditation process by 2013. This is observed in reality and included also among the combination of logical remainders in the analysis. Line 12 in the truth table contains the following cases Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Macedonia, Serbia, Slovakia, and Slovenia. Although the UN accreditation has not led to a strong outcome in their cases, half of the countries do have institutions with strong designs (Albania, Bosnia & Herzegovina, Croatia, and Serbia). At the same time, the other half of the countries have institutions of medium strength (Bulgaria, Macedonia, Slovenia, and Slovakia), with no institution among these cases that has a weak design. Thus, not having UN accreditation is not a necessary condition for countries that are newly democratic and have been subjected to EU conditionality to have strong institutions.

Recent developments in institutional strength in the particular case of Latvia lend additional support to our rationalist story about institutional design in the case of some newly democratised states that have been subjected to EU conditionality. In March 2015, the Sub-Committee on Accreditation granted Latvia A status. This institutional development linked to accreditation confirms the finding in our analysis based on data collected in 2013 – the UN accreditation is not a necessary condition for a strong design in the case of a newly democratised state that is also a new EU member state. In other words, the combination of the two factors – new democracy and EU conditionality – is likely to lead to the outcome ‘strong design’.

The second path lends support for an ideational narrative of strong institutional design as linked to UN accreditation in the case of countries that are not newly democratised and that have never been at the receiving end of EU accession conditionality. Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Portugal, Spain, and the United Kingdom are old member states that have strong national human rights institutions. Austria, Sweden, Belgium, and the Netherlands are countries with institutions of medium level strength. Further qualitative research will offer a more fine-grained view of the domestic factors that have not been included in the analysis which can offer a more detailed account of the medium level of design in their cases.

Support for the second path is confirmed by considering the easy counterfactuals among the logical remainders. The easy counterfactuals for the second path include combinations that have countries with UN accreditation that are new democracies but have not been part of EU conditionality programmes (Line

11 in truth table). An additional counterfactual path includes countries with UN accreditation that are not new democracies but have been objected to EU conditionality (Line 10 in truth table). As the truth table indicates, these combinations of factors leading to a strong outcome are not observed empirically.

**Table 5.5. Truth table for outcome STRONG (after minimisation)**

	<b>UN. AC</b>	<b>ADOP T</b>	<b>NE WD EM</b>	<b>EUC OND</b>	<b>OU T</b>	<b>INCL /PRI</b>	<b>Cases</b>
1	0	0	0	0	0	0.000	Iceland, Italy
2	0	0	0	1	0	0.333	Cyprus, Malta, Turkey
4	0	0	1	1	1	0.800	Czech Rep, Latvia, Lithuania, Montenegro, Romania
8	0	1	1	1	1	1.000	Estonia
9	1	0	0	0	1	0.714	Belgium, Germany, Greece, Ireland, Luxembourg, Netherlands, United Kingdom
12	1	0	1	1	0	0.500	Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Macedonia, Serbia, Slovakia, Slovenia
13	1	1	0	0	1	0.714	Austria, Denmark, Finland, France, Portugal, Spain, Sweden
16	1	1	1	1	0	0.500	Hungary, Poland

#### **5.4.2. Outcome: weak institutional design**

The analysis of the combinations of conditions that are sufficient for the outcome to be a weak institutional design indicate one path – countries without strong human rights identities that are not newly democratised, have never undergone the UN

accreditation process and have not been objected to EU conditionality. The two country cases that illustrate this path are Italy and Iceland have different histories of human rights and ombudsman institutions and different relationship with the European Union.. The model below shows the results of the analysis for the outcome 'WEAK' presenting one combination of conditions sufficient for a country to have the outcome 'weak'.

**Model 2:** un.ac\*adopt\*newdem\*eucond => WEAK

**Table 5.6. Model (outcome = WEAK)**

	PRI/incl	cov	Cases
un.ac*adopt*newdem*eucond	1.000	0.667	Iceland, Italy
M1	1.000	0.667	

Total: 35; No of multiple-covered cases: 0; inclusion cut: 0.7

Italy does not have a unique national human rights institution or an ombudsman, but rather a well-developed regional and local ombudsman system. In 1994, the National Coordination Body of Regional Ombudsmen in Italy was constituted, holding regular conferences with all of its members. The general functions of each regional and local ombudsman are broadly similar to the one of a national ombudsman, but the implementation of its measures respond to regional and local needs and realities. Italy has no other independent body that performs the functions of a national human rights institution.

Iceland presents a different case from Italy, with different factors accounting for the lack of a national human rights institution. Iceland has a Parliamentary

Ombudsman, the Althing Ombudsman, which monitors the activity of public administration offices with the purpose of regulating the relationship between public offices and citizens. It does not have a wide remit of fundamental or human rights protection. In addition to the Althing Ombudsman, Iceland has one Human Rights Centre that is an independent NGO carrying out human rights promotion work and research (Icelandic Human Rights Centre 2016). Iceland is not an EU member state but does belong to the European Economic Area. It applied for accession in 2009 and began negotiations in 2010, but in 2013, the Government suspended its application and dissolved the accession team. In March 2015, Iceland has officially withdrawn its application for membership.

**Table 5.7. Truth table for outcome WEAK (after minimisation)**

	<b>UN. AC</b>	<b>ADOP T</b>	<b>NE WD EM</b>	<b>EUC OND</b>	<b>OU T</b>	<b>INCL /PRI</b>	<b>Cases</b>
1	0	0	0	0	1	1.000	Iceland, Italy
2	0	0	0	1	0	0.333	Cyprus, Malta, Turkey
4	0	0	1	1	0	0.000	Czech Rep, Latvia, Lithuania, Montenegro, Romania
5	0	1	0	0	0	0.000	Finland
8	0	1	1	1	0	0.000	Estonia
9	1	0	0	0	0	0.000	Belgium, Germany, Greece, Ireland, Luxembourg, Netherlands, United Kingdom
12	1	0	1	1	0	0.000	Albania, Bulgaria, Croatia , Macedonia, Serbia, Slovakia, Slovenia
13	1	1	0	0	0	0.000	Austria, Denmark, France, Portugal, Spain, Sweden
16	1	1	1	1	0	0.000	Hungary Poland

## 5.5. Illustrative Case Discussions

This section presents a few brief case studies intended to provide illustrations of the interplay of factors found to be sufficient for the outcome 'strong'. The case studies build on information based on publicly available documentary evidence including annual reports, country constitutions and national legislation used also for coding purposes. Additional sources include also country surveys I carried out over the Internet and via surface post and country progress reports issued by the European Commission assessing the performance of states that are candidates to membership in the EU. These cases provide an illustration for the analysis and are intended to lay out a case study agenda for further qualitative work that can provide an in-depth look at the institutional and domestic dynamics in each country.

The first cases under discussion present countries that illustrate the first and the second combinatory paths despite not having strong institutions – Sweden, Romania, Austria, and Montenegro. These cases offers preliminary insight into the reasons why these institutions do not have strong institutional designs despite meeting all other conditions to have the outcome 'strong'. The subsequent case studies present a preliminary discussion of countries with strong national human rights institutions which illustrate the two paths to having a strong outcome. Some of the countries share historical legacies that are also visible in the institutional models they adopt for the promotion and protection of citizens' rights and, more recently, for their national human rights institutions.

## **5.5.1. Institutions with Medium Strength**

### **5.5.1.1. Sweden's Ombudsman System**

The very first country to establish an ombudsman, Sweden is the globally credited role model of rights protection institution. The country has a strong human rights identity evident through its longstanding tradition of liberal democracy, grounded in the protection of citizens' rights as well as the control and monitoring of government work. Despite its well-developed national and regional ombudsman system, Sweden does not have a single independent national human rights institution. Upon accreditation in 2011, the ICC's Sub-Committee on Accreditation recommended the strengthening of institutional design for the Equality Ombudsman and an increased collaboration with the bodies that coordinate the NHRI networks at the European level (ECNHRI) and the global level as well (UN's OHCHR).

The country with the very first ombudsman – the Justice Ombudsman (*Justitieombudsmannen*) established in 1809 – Sweden is universally credited with the creation of a unique institutional model. Since its inception, the ombudsman has come to be adopted by over 150 countries in the world. Although the designs of ombudsman are diverse and respond to country specific needs, all subsequent models retain the main functions of the initial institution – safeguard the rights of citizens, handle complaints, monitor the judiciary and oversee the work of public administration with the purpose of supporting the rule of law and securing

accountability. Although a new institutional model through its direct subordination to Parliament, the institutional concept of the ombudsman had already been in existence in the 18<sup>th</sup> century. In 1713, King Karl III established the King's High Ombudsman, in charge of overseeing the activity of personnel in public administration institutions. At the time, he had been abroad for over 13 years and appointed the King's Ombudsman as his representative in the country whose main responsibility was to restore order and oversee the work of public bodies (Riskdagens Ombudsmaen 2016). Another such body was the Attorney General, (*Justitiekansler*), which was established in the early 17<sup>th</sup> century as a domestic official who was empowered to supervise the application of the law by judges and other officials and whose office had long been a part of the royal administration (Jaegerskjoeld 1961). For most of its existence, the Attorney General was subordinated to the government, although the Parliament did succeed to have a degree of power over it for short periods of time. Nearly a century later King Gustav III, who believed in the principles of separation of state powers, established the Justice Ombudsman as 'the prosecutor in actions of impeachment' (Jaegerskjoeld 1961) through inclusion in the 1809 Constitution, subordinated it to Parliament and mandated it with the powers to inspect the work of government.

The Ombudsman played a prominent role in the realm of rights protection even prior to the establishment of the human rights regime in the aftermath of World War II. On many occasions, the Ombudsman pioneered work in the field of civil rights, playing a key role in the development of rules about freedom of assembly, speech, religion and press, as well as about access to public documents.

Its role was even more noteworthy in times of political unrest, such as the general strike of 1909 and the two world wars (Jaegerskjoeld 1961). In many civil rights areas, where the Ombudsman was involved in complaint handling, the courts have since adopted his opinion. Today Sweden does not have a single national human rights institution, but rather a system of ombudsmen bodies mandated with the decentralised protection of rights. The Justice Ombudsman continues its work with the primary function of overseeing law-making, the activity of the courts, with the goal to insure the protection of fundamental rights (Riksdagens Ombudsmaen 2016).

In addition, the Equality Ombudsman (*Diskrimineringsombudsmannen*) is charged with supervising the laws relating to discrimination on the basis of sexual orientation, ethnicity, religion or other belief, disability, or sexual orientation or age. It began its activity in 2009, as a result of merging four existing ombudsmen that were mandated with the protection and promotion of different types of human rights. In 2011, the Equality Ombudsman underwent the UN-led accreditation process for the first time, and the International Coordination Committee granted it B status. The recommendations included in the accreditation report target the mandate and independence of the institution. Although more centralised than the earlier institutional network charged with rights protection, the focus of the Equality Ombudsman's work is too narrowly centred on antidiscrimination issues, leaving unaddressed a spectrum of human rights. Thus, the peer-review recommendation is to give the institution a broad human rights mandate, in line with the Paris Principles. Moreover, the institution is now under the control of

government – the accreditation report proposes the strengthening of the institution by increasing its independence through direct subordination to Parliament. It also notes the requirement for “a clear, transparent and participatory selection process that promotes the independence of, and public confidence in the senior leadership of a national human rights institution (ICC Sub-Committee on Accreditation Report 2011, pp.9-10).” In order to have a strong institution, the ICC recommends that the Swedish Equality Ombudsman seek advice and assistance from OHCHR and the European Coordinating Committee of NHRIs.

#### **5.5.1.2. The People’s Advocate of Romania**

Romania is a newly democratised country that joined the EU in 2007, alongside Bulgaria. It has a relatively strong ombudsman institution, The People’s Advocate, assessed at medium level of design – the focus of its activities has been on the protection fundamental and human rights in citizens’ interactions with state officials and all staff in the public administration. The medium-level evaluation of its strength is justified by the missing capacity to carry out any promotional work that would raise awareness of human rights and of its own activities, any research or educational activities. The People’s Advocate is the first such institution to be established in a post-communist country, through inclusion alongside the Constitutional Court in the first democratic Constitution of Romania passed in 1991 (Romanian Ombudsman 2016). The Swedish Ombudsman provided inspiration to policymakers at the time, while the model of the People’s Advocate is of a hybrid

ombudsman charged with both oversight of government and public administration and the protection of human rights (Romanian Ombudsman 2016). The ICC's Sub-Committee for Accreditation assessed a different Romanian institution, the Romanian Institute for Human Rights (IRDO), established in 2003 with the purposes of carrying out research, training, dissemination of information and consultancy (IRDO 2016). The Institute has been assessed as having C status, and has had very limited activity overall. The ICC never assessed the performance of the Romanian Ombudsman.

The People's Advocate is one of the key institutions included in the country progress reports drafted by the European Commission, as a pillar in the national efforts to increase the protection of fundamental and human rights. From 1998 when the first progress reports was published, until 2007 when Romania joined the EU, the remit of the Ombudsman institution increased to cover not only the protection of civil and social rights, but also individual rights linked to land restitution, issues linked to the equality of men and women, minority rights protection (with a focus on the protection of the Roma community's rights), anti-discrimination, and child rights protection. A later addition to the People's Advocate is the office dedicated to the protection of personal data, entitled the Data Protection Directorate – this body was created in order to address the accession requirements linked to Convention 108 of the Council of Europe, ratified in 2002, regarding the processing of personal data and the free movement of this data. The Ombudsman is independent and autonomous, can carry out investigations on cases on the basis of

individual complaints, reports to Parliament annually and can also advise policymakers on areas of its legal competency.

Romania has a generally well-functioning Ombudsman institution. In order to strengthen its design and also work toward compliance, the People's Advocate would benefit from either a broadening of its mandate to incorporate also human rights promotional and research capacity, or the strengthening of the existing (or the creation of a new) Institute for Human Rights with which to collaborate closely. A newly democratised country of the post-Soviet block, Romania showed its commitment to democratic transition through establishing the Ombudsman relatively early, in 1991. The strengthening of Ombudsman's institutional design occurred through a coordination of domestic political will and continued support from the European Union throughout the accession process as evidenced by the country progress reports.

#### **5.5.1.3. Austria's Ombudsman Board**

As indicated by the QCA results, Austria meets the sufficient conditions to have a strong national human rights institution – namely, it adopted its institution early, prior to 1980, and has also undergone the accreditation process. Nonetheless, Austria's Ombudsman Board is an institution with B level accreditation status by the ICC's Sub-Committee on Accreditation, granted both in 2000 and once again upon re-accreditation in 2011.

Political disagreement on the composition of the Board and lack of Parliamentary support impacted negatively on the strengthening of the institution's design in the early years. At the same time, insufficient effort to increase the capacity and independence of the human rights protection and promotion component has prevented the institution from achieving a strong design. The Ombudsman Board was established through a governmental decision in 1970 and represented the culmination of decades of public calls for its creation after the end of World War II. Although a draft for an amendment to the Federal Constitution at the start of 1971 stipulated the creation of a new "federal attorneyship", party representatives did not reach an agreement on the composition of the Board at the time (AOB 2016). After a new government attempt in 1975, all members of Parliament reached an agreement in early 1977 on a new Federal Law specifying the existence and powers of the Board. The Law, however, was only provisional in nature until 1981, when public support for the Ombudsman Board incentivised Parliament to include the provisions on the institution in the Austrian Federal Constitution.

In July 2012, the capacity of the Board was extended to include also an explicit mandate for protecting and promoting human rights. In the 2011 Report, the Sub-Committee on Accreditation assesses the efforts to include a human rights mandate as insufficient. While the Ombudsman Board now includes also an instrument dedicated to providing preventive human rights monitoring in the country and oversees the enactment of OPCAT implementation legislation, the scope of its human rights mandate is still not general enough. The remit of the

Ombudsman Boars is restricted to state powers and does not have competence over the private sector (ICC Sub-Committee on Accreditation Report 2011 p.11). Additionally, the independence of the institution's mandate and activities from political interference is not secured as the members of the Board are elected upon recommendation of the three major political parties and often the members of the Board are former elected representatives. The transparency and participatory nature of the Ombudsman Board's selection and appointment are key conditions for the independence and pluralism of the Board as an NHRI. The Austrian Ombudsman lacks also a structured approach to establishing strong relationships with civil society (ICC Sub-Committee on Accreditation Report 2011, p.11). Closer ties with the OHCHR and the European Coordinating Committee of NHRIs are also part of the recommendations by the Sub-Committee on Accreditation to the Austrian Ombudsman Board.

Austria is an established liberal democracy and an EU member since 1995. Its Ombudsman Board has undergone the accreditation process twice being granted B status twice. Despite meeting all sufficient conditions for having a strong institution, other necessary factors appear to be preventing the Ombudsman Board from reaching the strongest level of institutional design. Direct political interference in the leadership of the institution jeopardises its independence. Moreover, the scope of the mandate on human rights promotion and prevention is still rather limited. Given that provisions to expand on the Board's mandate to incorporate human rights are very recent (2012), it is possible that the coming years will see a further strengthening of institutional power and the human rights remit.

#### **5.5.1.4. Protector of Human Rights and Freedoms of Montenegro**

The Montenegrin Ombudsman, the Protector of Rights, is an independent and autonomous institution charged with protecting and promoting human rights and freedoms in cases of violations by government authorities and all other holders of public offices (EQUINET 2015). Established in 2003 by Law passed by Parliament, the Ombudsman performs its duties as protector of human rights in line with the provisions in the country Constitution. One of its functions is to raise awareness regarding the importance of the rule of law and the importance of legal certainty, as well as the lawful and partial work of state authorities when interacting with citizens. The Ombudsman is also active in the field of anti-discrimination, where it carries out promotional and protection work as well, handling complaints and also supporting awareness raising efforts.

Based on survey results, the analysis of official documentation, and the country progress reports, the Ombudsman of Montenegro is a generally functional and strong institution. It is relatively young and operating independently from the Serbian equivalent since only 2006, but its efforts to carry out investigations and casework have been significant. In the country progress reports, the European Commission assesses the institution today as functional but in need of strengthening both through higher levels of funding, consolidation of its independence through legislation, and increased respect for its work on the part of the state offices responsible for implementing the measures it recommends. The overall evaluation of the Ombudsman's activities has been positive. However, the recommendation to

strengthen institutional design has remained a constant since the first progress report in 2007. Over the years covered by the country reports, the remit of the Ombudsman has expanded to incorporate a range of different rights – from being mandated with the protection of citizens’ rights more broadly in 2007, it also becomes responsible for the prevention of torture and ill-treatment in particular in cases of detention, minority rights, anti-discrimination, as well as women’s and children’s rights. The reports assess the general country situation and institutional performance on all of the above rights, making recommendations for their improvement.

Montenegro is the only country in the QCA cluster of newly democratised states that are objected to EU conditionality undergoing today. Its Ombudsman meets the conditions sufficient for a strong national human rights institution. The institution existed prior to the start of the accession negotiations with the European Union, but it has achieved a significant increase in its powers since 2010, when Montenegro was granted candidate country status. The country progress reports focus extensively on the institution and call for its strengthening as it is considered a pillar in the efforts to align legislation and ensure the promotion and protection of human rights in the country. The Ombudsman has been actively involved in a number of international networks, both European and sub-regional with a focus on the Balkans or the Mediterranean, and is in the final stages of accreditation with the Global Alliance of National Human Rights Institutions (formerly ICC).

## **5.5.2. Institutions with strong design**

### **5.5.2.1. The Ombudsman of the Republic of Latvia**

The Latvian Ombudsman follows a hybrid institutional model that combines both the case-based functions of a classical ombudsman in charge of fundamental rights protection against violations of the state administration and the broad human rights promotion and protection functions of a national human rights institution. At the time data was collected on all countries and institutions included in this study, Latvia had not applied for accreditation with the ICC's Sub-Committee on Accreditation. In March 2015, however, the Ombudsman was reviewed and received A status. This outcome of the peer-review process confirms the findings of the qualitative assessment of documentation and the survey results, which found that the design of the Ombudsman institution is strong.

The Ombudsman of the Republic of Latvia is an official elected by Parliament on a remit "to encourage the protection of human rights and the promotion of a legal and expedient State authority, which observes the principles of good administration" (Latvian Ombudsman 2013). The Ombudsman Law, adopted in April 2006, regulates the activities of the Ombudsman, which came into force in January 2007. Appointed for a five-year term, the Ombudsman acts independently and without influence from any other person or public institution, being only governed by the law. The Ombudsman is organised in four main legal divisions and two assisting divisions – the division of civil and political rights; the division of

social, economic and cultural rights; the division of the rights of children and the division of equality before the law, all supported by the Administrative Division and the Chancery (Latvian Ombudsman 2013). The institution is also in charge with the national implementation of European law promoting the principle of equal treatment between persons irrespective of racial or ethnic origin (Council Directive No 2000/43/EC); equal treatment between men and women in the access and supply of goods and services (Council Directive No 2004/113/EC) and the Council Directive No 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The oversight and guidance of the European Union is arguably most visible in the process of creating the Ombudsman institution. The European Commission's country progress reports recommended that the Latvian government build on the institutional foundation of the existing and independent National Human Rights Office that had been established in 1996, to create an Ombudsman institution that could be in charge of both promotion and protection of human rights in the country. In 1998, the Cabinet adopted a medium-term strategy that included a series of systemic reforms to improve the efficiency and design of public administration institutions. One of the main tasks was to create an Ombudsman office. With the support and encouragement of the OSCE country office, an expert committee was formed in order to collaborate with similar types of institutions abroad and acquire information about the design and functions of ombudsmen based on their experiences. The committee recommended that the National Human Rights Office be

transformed into an Ombudsman office. The government had not made much progress with regards to the implementation of the committee's decision by the time the OSCE country mission closed down or by 2004, when Latvia joined the EU. In 2006, however, the Law of the Ombudsman was passed and the institution became functional. Over the span of the following decade, the cooperation with international peer institutions as part of international networks increased, and in particular, active collaboration with European networks intensified.

The Ombudsman of the Republic of Latvia provides an example of a body that morphed over the years into a full-fledged A status institution. At the strong encouragement of European institutions, the Ombudsman became operational in 2006, on the basis of an existing institutional foundation of a National Human Rights Office, which was modified to include also rights protection duties and case-based investigations. The creation of an Ombudsman was a priority for the EU that remained a constant in the monitoring of country progress in the annual pre-accession reports. Deliberate effort on the part of domestic actors to collaborate with external partners and learn from institutional experiences in other countries was a key element to learning and policy change.

#### **5.5.2.2. Estonia's Chancellor of Justice**

Estonia's Chancellor of Justice is a unique institution in the cluster of newly democratised European countries. Established as early as 1938, the Chancellor of Justice makes Estonia an early adopting country. The institutional design of the

Chancellor's office follows an institutional model in existence in the Sweden and Finland countries since the early 18<sup>th</sup> century, illustrating a likely cross-border learning process facilitated by the close cultural and historic ties between Finland and Estonia. In its first iteration, the Chancellor of Justice was established to guarantee the legality of public authority and provide legal assistance to the President of the Republic (Chancellery of the Chancellor of Justice 2015). During the time Soviet era, the institution was closed down, but the continuity of the institution was preserved from 1949-1981 by Artur Maegi, who was Chancellor of Justice with the Estonian government-in-exile and one of the authors of the 1938 Constitution of the Republic of Estonia. In 1992 Constitution, the institution was restored on the basis of continuity. The Chancellor of Justice widened its remit through inclusion of explicit ombudsman functions in 1999, when it was assigned the duties to guarantee the protection of the constitutional rights and freedoms of people (Chancellery of the Chancellor of Justice 2015). Since 2007, it is also the national preventative mechanism implementing the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The design of the institution is unique, as it combines fundamental and human rights protection, government advisory roles, and the preservation of constitutionality in the country. In other words, in addition to classical ombudsman functions, it has the power to review the application of the legislative and executive powers of the state and of local governments to assess conformity with the Constitution and national laws. The European Commission mentions the institution extensively in four of the five country progress reports prior to accession in 2004.

The main focus of the reports is on the ombudsman functions, especially the ones centred on rights protection, which were added onto the institutional mandate in 1999. The major challenges the institution had were the integration of the ombudsman functions with the existing activities of the Chancellor of Justice, an increase in public visibility and activity, higher funding, and an improvement in the capacity to handle issues related to minority rights protection. In its early stages of development, the institution received support from the national OSCE office. In 2002, when the country office closed, the European Commission in its progress report called for strengthened capacity and financial independence of the Ombudsman with the help of the government. Following the accession of Estonia in the EU, the capacity of the institution continued to strengthen both financially and through further integration of all of its functions.

On the basis of survey and report-based data, Estonia's Chancellor has a strong design. Among the cases discussed in this analysis, Estonia's Chancellor of Justice is a distinctive institution. An earlier model of the institution was adopted early, in 1938, following the example of Finland and Sweden that had a longstanding tradition of these consultative bodies to the king or the government. Despite the facilities closed down during the Soviet era, the institutional model continued in the diaspora and was reactivated after Estonia declared independence in the post-Soviet era. Rights-centred ombudsman functions were added to the mandate of the Chancellor in 1999 and subsequent years, as a response to pre-accession requirements by the European Commission. The further integration of the two main

functions as well as efforts to strengthen the capacity of the Chancellor continued after Estonia became an EU member.

### **5.5.2.3. Lithuania**

Lithuania has a strong system of ombudsman institutions safeguarding human rights and individual freedoms through both promotion and protection work, grouped under the Seima's Ombudsmen Office. The ombudsman offices include a general Ombudsman focused on complaint handling, and Children's Ombudsman and an Ombudsman for Equal Opportunity of Women and Men. The three main independent institutions as well as specialised government offices and commissions provide both case-based protection and promotion work on both general human rights and more specialised rights that are a priority for the government, such as gender equality and children's rights. Lithuania has not sought accreditation with the ICC's Sub-Committee on Accreditation. All three Ombudsman offices, however, state as a priority their active involvement in international networks, primarily the Europe-based ones. In the case of the Seima's Ombudsman, such networks are the International Ombudsman Institute, the European Ombudsman Institute, the European Ombudsman, the European Network of Ombudsmen, the European Network of National Human Rights Institutions, the European Union Agency for Fundamental Rights and, through information sharing and event participation, also the Office of the United Nations High Commissioner for Human Rights.

The Parliament (Seimas) of the Republic of Lithuania passed the Law on the Seimas Ombudsmen in 1994 (to be amended in 1998 and again in 2004) and the institution became operational in 1995. The institutional mandate encompasses the “protection of human rights and freedoms by developing respect for them and promoting personal and public dialogue in order for the state authorities to serve better the people” (Seimas Ombudsmen 2016). The Ombudsmen are appointed by the Parliament. Beginning in 2003, the institution issues also an annual report of activities and in 2014, it published the first report on the national efforts for the prevention of torture.

The European Commission’s overall assessment of the institutional health of the Ombudsman in Lithuania was positive throughout the seven years of monitoring prior to accession. Unlike other countries in the region, the Ombudsmen’s Office was already in existence at the time the European Commission began its assessment of the country’s performance in 1998. In the following year, the Equality Ombudsman was also established and in 2000, Parliament passed the law founding the Children’s Ombudsman. The progress reports present the Government and Parliament as responsive to policy priorities in the domain of human rights set by the Commission. The main areas of import are children’s rights, equality of opportunity between men and women, in particular in the work force, as well as human trafficking, minority rights and the protection of human rights more broadly.

Lithuania is a newly democratised state with a successful and well-developed Ombudsman system. The Seimas Ombudsmen’s Office is an institution with a broad human rights protection and promotion mandate, while associate ombudsmen

offices focus their activity on specific types of rights that represent areas of legal and institutional priority in the process of accession to the EU (i.e. equality of opportunity, children's rights, and minority rights). The institutions are integrated in international networks and particularly active in the European organisations of ombudsmen and national human rights institutions. Lithuania offers an example of a post-communist country that began forming an institutional framework for the independent promotion and protection of human rights early in the transitional period. European conditionality and active participation in regional and other international networks of similar institutions provided the appropriate support for strengthening existing bodies and also for creating specialised institutions that target certain rights-based policy areas that are European priorities.

#### **5.5.2.4. The Czech Republic's Public Defender of Rights**

The institutional system for the promotion and protection of human rights in the Czech Republic is well developed and includes both governmental bodies, such as the Secretariat of the Government Council for Human Rights and the Government Commissioner, and the independent ombudsman institution called the Public Defender of Rights. The work of the Government Commissioner is focused primarily on providing council to the government for policymaking purposes and reporting to the Executive on the human rights situation in the country. The government Council and the Commissioner do not have the authority to handle individual complaints or monitor the activity of public officials. The Czech Republic has an independent

ombudsman institution, the Public Defender of Rights, which carries out investigations in cases of violation of fundamental rights when interacting with members of the public administration, which are brought to their attention by individuals, and reports on them to the Parliament and the public. The Defender of Rights suggests methods of remedy and changes that the institutions ought to make in order to remedy the cause of the malpractice.

The Czech Public Defender of Rights was established by a 1999 Act approved by the Chamber of Deputies of the Parliament by a tight majority and later that year also by the Senate. A first draft of the founding legal act had been proposed in 1993 but was not successful in the initial form. In the years prior to its passing, the preparation of the 1999 draft was the object of a great deal of public debate and political opposition. National debate was also fuelled by the fact that access to other institutional models across borders was not seen as appropriately conducive to learning, as other institutions had stemmed from socio-political contexts that are very different from the one in the Czech Republic (Czech Public Defender of Rights 2016). Moreover, resistance to the very idea of an independent ombudsman was strong. Institutional documents mention EU-level input as crucial support in favour of the decision to pass the Act. The statement of the Council of Ministers of the Council of Europe on its Recommendation R/97/14 (Council of Europe, Committee of Ministers 1997) on establishment of independent national institutions for the promotion and protection of human rights in particular in countries that have experienced political and economic transformation provided a strong argument in favour of the political argument for establishing the Ombudsman. Additionally, the

Council of Europe's Recommendation R/85/13 (Parliamentary Assembly, COE 2013) on the strengthening of the ombudsman in Europe without institutional duplication that could undermine the legitimacy of the one independent national human rights institution have offered additional endorsement for member countries to support strong institutional designs.

Although the Ombudsman has never undergone the UN Accreditation process, survey-based and documentary evidence shows that the institution has a generally strong design. Its activity is largely focused on case handling and the protection of fundamental rights, without including explicit responsibilities to coordinate promotion activities or research on human rights in the country. It does report, however, on its investigations and casework in four different reports presented to the Chamber of Deputies. Annually, it writes an annual report which presents findings and conclusions in a more general form to Chamber of Deputies, Senate, the President, ministries and government departments, as well as other administrative bodies with national powers. The appointment of the Public Defender and the Deputy Public Defender involves the election by the Chamber of Deputies of the best candidate from two sets proposed by the President and the Senate. An area of further legal strengthening is linked to the functioning and the structure of the Office assisting the Public Defender of Rights, which are not included in the Act of the Ombudsman and are left at the discretion of the Defender. Based on official documentation and survey-data, we have found no evidence of infrastructural weakness.

The European Commission monitored the activity of both the Government Commissioner for Human Rights and the Ombudsman from 1998 until 2003, one year prior to the accession. The early reports mention the legal framework and the establishment of the two institutions, calling for more funding and support in order to strengthen their capacity. The EC sees the activities of the two bodies as complementary, combining promotion and research on the one hand with protection and case-based investigative work on the other hand. They also share the responsibility of overseeing enforcement of legislation on different sets of rights – the Commissioner is focused on issues such as the freedom of speech and the media, minority rights and equal opportunity. The Ombudsman’s work is centred on cases of land and property restitution claims, disputes over social insurance, as well as mistreatment by the police, the army or prison personnel. In 2003, EC’s general assessment of the functioning of the Ombudsman and the institutional framework for the promotion and protection of human rights in the country was positive.

The Czech Republic is an example of a newly democratised country from Central Europe which established a strong system of human rights promotion and protection and consolidated an Ombudsman office that is functional and cooperates well with other state bodies. Its mandate on human rights protection is not as developed as the protection one, thus the Ombudsman itself would perhaps require a degree of change to its mandate or legislation in order to broaden the scope of its work and comply fully with the Paris Principles as assessed by the ICC-led peer-review process. In the EC’s pre-accession assessment of the human rights promotion and protection activities, the Czech Republic performed well, seeing the work of the

Government Commissioner for Human Rights and the one of the Ombudsman as complementary, successful and widely respected.

#### **5.5.2.5. Finland's Parliamentary Ombudsman and Human Rights Centre**

Finland is an early adopting country and a member of the European Union since 1995. Finland has two main institutions mandated to supervise the exercise of public power – the Chancellor of Justice and the Ombudsman. The Chancellor of Justice existed as early as the 18<sup>th</sup> century, when Finland was an autonomous part of Sweden. King Karl III established it at the same time as the Swedish Parliamentary Ombudsman in order to have a representative on Finish territory who would ensure oversight of public administration and responds to citizens' complaints about rights violations (Gellhorn 1966). In 1919, a Government Act established the Ombudsman and integrated its legal functions in Finland's Constitution. The institution was modelled after the Swedish Ombudsman (Finland et al. 2010). The Ombudsman's mandate overlaps to some degree with the one of the Chancellor of Justice, which is a post fully integrated in the system of public administration. Charged with the oversight of government and public administration, the Ombudsman can follow up on individual complaints, carry out investigations and inspections of his/her own initiative, specialising in handling complaints by members of the military, conscripts, prisoners and other persons in closely connected institutions (Gellhorn 1966).

The Ombudsman's duties have always incorporated an important aspect of fundamental rights protection, scrutinising the work of the state authorities for possible violations. A broad human rights mandate was not explicitly added to the institutional mandate until 2011, when the Ombudsman Act was amended to add also the Human Rights Centre as an independent and autonomous body that is administratively part of the Parliamentary Ombudsman's Office. The Centre's role is focused on human rights promotion activities, such as carrying out research and training, drafting reports on human rights implementation, participating in European and international cooperation associated with promoting and safeguarding fundamental and human rights (Finland's Ombudsman Office 2016). The Centre does not handle complaints or deal with other individual cases that belong to the remits of the supreme overseers of legality. Finland's National Human Rights Institution consists of the shared efforts of both the Ombudsman Office and the Human Rights Centre. The explicit intention to establish an NHRI in full compliance with the Paris Principles motivated the efforts to create the Human Rights Centre, which began in the early 2000s and culminated with its recognised operation in compliance with the Paris Principles. In 2014, the International Coordination Committee of NHRIs granted the Finish National Human Rights Institution A status following the accreditation.

Finland's independent human rights body charged with the promotion and protection of human rights is an example of how a longstanding domestic identity grounded in the respect for human rights can complement the efforts to align with international standards of institutionalisation of national human rights institutions.

The Parliamentary Ombudsman is now a hybrid case of ombudsman institution, as a result of the modification of its traditional remit based on complaint handling to incorporate also human rights promotion efforts and an active cooperation with similar institutions across borders.

#### **5.5.2.6. France's Consultative Commission for Human Rights**

France presents a different institutional history from the Scandinavian countries and the other early adopting countries in the region. Although not a country with a long history of an ombudsman institution like the Scandinavian countries (the Mediateur institution was founded in the mid-1970s), France is one of the founders of the international human rights regime in the aftermath of World War II. Its Human Rights Commission was particularly active in international fora, representing also France's national interests and shaping the formulation of international human rights laws. Over the years, France has remained one of the stalwarts of global and regional human right networks. On 27<sup>th</sup> March 1947, a decree of the Minister of Foreign Affairs give birth to the 'Consultative Commission for the Codification of International Law and the Definition of the Rights and Duties of States and Human Rights', which quickly came to be called the Consultative Commission on Human Rights (CNCDH 2016). It was made up of ten members, among which diplomats, magistrates, lawyers, and academics) and played a key role in the formulation of the Universal Declaration of Human Rights (adopted by the General Assembly in 1948) and the creation of the United Nations' Human Rights

Commission. The Commission played a key role in researching the implications for France of entering into international human rights agreements preparing also the official position France would in the process of elaborating treaties and conventions.

After one decade of limited activity, the institution re-opened in 1984. With its re-activation came an expansion of its mandate to include not only international issues but also a national mandate of human rights promotion and protection. In 1989, the national Commission came under the direction supervision of the Prime Minister and gained the power to oversee all questions related to human rights in the Executive's decisions and policies. In 1990, the Commission became also France's equality body, vested with the power to support the fight against racism, anti-Semitism or xenophobia. This new capacity requires that the Commission write an annual report and present it to Parliament. In 1993 the Commission's design was strengthened by granting it institutional independence and aligning its mandate and activity with the Paris Principles. In 1996, the mandate of the Commission incorporated also humanitarian emergency response. In 1999, the Commission received A accreditation status following accreditation by the ICC Sub-Committee on Accreditation. In the late 2000s at the recommendation of the ICC Sub-Committee on Accreditation, the appointment structure of the Commission's leadership changed in order to increase its independence from the Prime Minister's involvement in decision-making. In 2007 and 2013, the re-accreditation re-newed the A status.

The historical path of France's national human rights commission is an indisputable example of a country with a strong national liberal democratic identity.

Moreover, the French political elites have been long committed to creating an international human rights regime and to maintaining human rights networks that are active both regionally and internationally. At the national level, its involvement with cross-border networks has resulted in a strengthened design of the institution as a response to recommendations by the ICC Sub-Committee on Accreditation.

#### **5.5.2.7. Denmark's Ombudsman and the Danish Institute for Human Rights**

Denmark's Ombudsman is one of the oldest in the world, established in 1955. Its current mandate is focused on handling complaints by citizens in cases where there is reason to believe that members of the public administration may have caused errors (The Danish Ombudsman 2016). Complementing the work of the Ombudsman with respect to human rights is the Danish Institute for Human Rights, which has national human rights institution status and A-level accreditation. The Act on the Danish Institute for Human Rights entered into force on 1 January 2013 re-establishing the institute as an institution on its own after ten years of being part of a joint institution with the Danish Institute for International Studies (The Danish Institute for Human Rights 2016). The Danish Institute for International Studies continues its work as a research body with a promotional and academic profile.

With a shorter history than its other Scandinavian counterparts, the Danish Ombudsman has received much more international attention in the English speaking world (Christensen 1961) – given that Denmark, unlike Sweden, had no tradition of free inspection of the public records at the time it decided to support the

establishment of an Ombudsman, public officials in England and the United States saw the Danish experience as potentially more instructive when considering the establishment of equivalent bodies in their own countries (Blom-Cooper 1960). Unlike the Swedish Parliamentary Ombudsman, also, the Danish institution was created during peaceful times, providing an example to other countries of a democratic government decision to include the control of an expanding administration and the protection of individual rights in the Constitution. With strong support from the Labour Party members, the Ombudsman was seen as "the protector of the man in the street against injustices, against arbitrariness, and against the abuse of power (Christensen 1961)."

In its current form, the Danish Institute for Human Rights is a very recent institution, created and strengthened in 2013 to be fully in compliance with the Paris Principles. Its mandate is broad in scope, covering human rights promotion and protection in general, as well as equality and antidiscrimination, both in Denmark and abroad. In its advisory role, the Institute advises Government, Parliament, ministries and other authorities on human rights by preparing reports on specific human rights situations in the country, designing projects that promote equal treatment, and maps national areas of human rights challenges (The Danish Institute for Human Rights 2016). It also monitors the government's efforts to follow up on recommendations from the UN. The Danish Institute has also an international development agenda, working with governments, NGOs, business and industry to strengthen their capacity to advance human rights in their countries. As a national equity body, the Institute concentrates on improving ethnic equality, the

equal treatment of women and men as well as the equal treatment of persons with disabilities (The Danish Institute for Human Rights 2016).

Denmark provides an example of a long-term member of the European Union with a longstanding liberal democratic history and a tradition of rights protection and promotion as evidenced by the activity of the Ombudsman. Responding to expectations of human rights institutionalisation from the international community coordinated by the UN, Denmark strengthened the design of the Danish Institute for Human Rights in recent years by giving it full financial and operational independence and expanding its mandated powers to go beyond promotional and research activities. As of 2013, the Institute is in full compliance with the Paris Principles. In addition, the Danish national human rights institution is also one of the main regional actors coordinating the work of the newly formed European Network for National Human Rights Institutions.

#### **5.5.2.8. Portugal's *Provedor de Justica***

Portugal's Provedor de Justica provides an example of an early adopted institution in a country that has been committed to liberal democracy prior to the 1989 wave of democratisation. Portugal has also been a member of the European Union since 1986, when Portugal joined alongside Spain. Similar to Spain, at the time of accession, the country had left behind a Fascist past one decade earlier. The Ombudsman institution was one of the liberal democratic bodies to be established in the country, with efforts to create one being made public even prior to the 1974

regime change, with the intention to consolidate democracy, the control of the public administration, and the protection of human rights at the national level. The Ombudsman institution had an explicit human rights mandate from its inception and was among the first to undergo the accreditation process and achieve A status in 1999.

In the early 1970s, three of the most renowned Portuguese intellectuals and anti-Fascist politicians – José Magalhães Godinho, Vasco da Fernandes Gama and Mário Raposo – proposed the idea of founding an Ombudsman, following the model of the Nordic national institutions. This institution would play an important role in protecting human rights and overseeing the activity of government preventing the abuse of power in the relationship of public administration bodies with citizens. One year after the Carnation Revolution, in 1975, the Government issued the decree-law that established the Ombudsman. Before the Government decided on the mandate and design of the Ombudsman the first Ombudsman, Lieutenant Colonel Manuel da Costa Brás, visited Denmark and France, in order to understand how existing institutions in these countries worked and the model that would work best for Portugal (Provedor de Justiça 2016). In March 1976, the Government set in national law the structure of technical and administrative support for the Provedor de Justiça. Mandate law safeguards the body's independence from political intervention. The institution has maintained full compliance with the Paris Principles reflected in an A accreditation status since 1999. Parliament appoints the Ombudsman for a four-year tenure. The mandate of the Ombudsman is centred on

complaint handling in cases of unfair or illegal acts by public administration as well as other violations of fundamental rights.

The history and mandate of the Portuguese Provedor the Justica provide a perfect illustration of the processes of social learning for the purposes of establishing a national human rights institution with a strong design. The decision to establish the institution was the result of both political mobilisation at the national level and of learning from successful models of similar bodies in France and Sweden. Moreover, the hybrid ombudsman model of the Provedor would be in itself a model for other countries to follow, such as the Provedores in Angola and Cape Verde. Cross-border learning would allow take place with Spain and other Hispanic countries that have established very similar hybrid ombudsman models as people's advocates, or *defensorias del pueblo*. Looking back, Portugal is a country with a tradition of liberal democracy and respect for human rights, especially by comparison with the newly democratised countries of the post-Soviet era. At the same time, the establishment of the Provedor de Justica in the mid-1970s provides an example of the efforts that political elites made at a time of regime transition to solidify the institutional foundation for democracy and make possible its long-term consolidation.

#### **5.5.2.9. Spain's *defensor del pueblo***

During the same times of transition from dictatorship to democracy experienced by Portugal, Spain established its first *defensor del pueblo*. The 1978 Constitution

introduces the Ombudsman in Spain's body of law, granting it mixed powers of both oversight over government activities addressing potential violations of citizens' rights as well as the capacity to promote and protect human rights more broadly in the country. Although the institution was generally modelled after the Scandinavian ombudsman, Spain boasts a longstanding tradition of similar bodies set up on its territories throughout history. For instance, perhaps a distant relative can be found in Muslim Spain, which had a representative of the Sultan by the name of Sahib-al-Mazalim, in charge of handling complaints about state institutional abuses (UNESCO 2016). In addition, the *corregidores* (or *justicia mayor*) was a local administrative and judicial official in Spain and its overseas empire in the Americas. Inspired by the late-medieval revival of Roman law, these bodies were the representatives of the royal jurisdiction over a town and its district and acted independently in the interest of overseeing local affairs. King Felipe V abolished this role in 1711 (UNESCO 2016).

The modern Defensor del Pueblo is the High Commissioner of the Parliament, vested with power to monitor the activity of the Administration and public authorities with the goal to defend the fundamental rights and civil liberties of citizens (UNESCO 2016). Congress and Senate elect the Defensor for a five-year term. The Ombudsman is independent and impartial in its activities and decision-making, enjoying inviolability and immunity in the exercise of his/her office. The activity of the Ombudsman is primarily complaint-based, although they can intervene also *ex officio* in cases that come to their attention. In November 2009, the Parliament attributed the functions of a Spanish National Preventative Mechanism to the Defensor as a result of Spain having ratified the Optional Protocol to the

Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment adopted by the UN General Assembly in New York in December 2002. The Defensor has maintained A status through three rounds of accreditation since its first one in 2000.

The Spanish Defensor institution bears similarities of design with the Portuguese Provedor – as hybrid ombudsman models, they perform both the function of oversight of government activities with the goal of combatting violations of fundamental rights and cases of abuse of power and, in addition, the human rights-centred mandate of protection and promotion. They were created in the context of the countries' transition from authoritarianism to democracy in the mid-1970s, reflecting the political commitment to the establishment of solid institutions that would ensure the long-term preservation of liberal democracy. Similar to the political conditions that favoured the creation of the first Swedish ombudsman-like bodies in pre-modern times, Spain has a rather distant historical tradition of a pre-modern institutional model that resembles the one of the modern ombudsman in its power to represent the king in regional and national territories and oversee the activities of the public administration. The Defensor joined the international networks of national human rights institutions from their inception – it has maintained A accreditation status since 1999. Moreover, the defensor institutional model was also adopted in the former overseas territories in Latin America, so the Spanish institution provided a model for cross-border learning of institutional design.

## 5.6. Conclusion

Europe is the region with the highest number of strong national human rights institutions and the most countries that adopted their institutions earlier than the 1990s global 'boom' of interest in independent institutions. It is also home of the EU, one of the strongest regional promoters of neoliberal democratic values and the institutionalisation of human rights protection both inside Europe and outside of the EU's borders. Hence it is also the region whose patterns of institutional adoption and strength can tell us a more nuanced story about the regional factors that play a role in countries' decisions to establish and sustain a strong national human rights institution.

The qualitative comparative analysis has helped to lay out a research agenda for the qualitative exploration of institutional design in the case of national human rights institutions in Europe. Its findings lend support for two main paths to the outcome 'strong', which are in line with rationalist and constructivist explanations respectively. The combination of being a new democracy and having been objected to EU conditionality while not having UN accreditation is sufficient for a number of European countries to be more likely to have stronger (strong and medium) institutional designs. The second path to a strong outcome is made up of the combination of having UN accreditation, while not being a new democracy and never having experienced EU membership conditionality. The unique path to weak institutional design consists of the combination of the absence of all four factors – countries that are not new democracies and have never experienced EU

conditionality, are not early adopters and do not have UN accreditation also have weak institutional designs. Italy and Iceland are the two country cases that illustrate this combination of conditions. QCA has provided an example of the regional interplay of different factors that were tested for in the global analysis as well, laying out the beginnings of a more developed qualitative analysis. Further qualitative work would make possible the more fine-grained exploration of variation in institutional design within Europe, by introducing new regional and domestic factors while keeping constant some of the indicators used in the global analysis.

## 5.7. Annex

**A. Table 5.8. Truth table for outcome = STRONG**

	UN .AC	ADOP T	NE WD EM	EUC OND	OU T	INCL /PRI	Cases
8	0	1	1	1	1	1.000	Estonia
4	0	0	1	1	1	0.800	Czech Rep, Latvia, Lithuania, Montenegro, Romania
9	1	0	0	0	1	0.714	Belgium, Germany, Greece, Ireland, Luxembourg, Netherlands, United Kingdom
13	1	1	0	0	1	0.714	Austria, Denmark, Finland, France, Portugal, Spain, Sweden
12	1	0	1	1	0	0.500	Albania, Bosnia & Herzegovina Bulgaria, Croatia, Macedonia, Serbia, Slovakia, Slovenia
16	1	1	1	1	0	0.500	Hungary, Poland
2	0	0	0	1	0	0.333	Cyprus, Malta, Turkey
1	0	0	0	0	0	0.000	Iceland, Italy
3	0	0	1	0	?	-	
5	0	1	0	0	?	-	
6	0	1	0	1	?	-	
7	0	1	1	0	?	-	
10	1	0	0	1	?	-	
11	1	0	1	0	?	-	
14	1	1	0	1	?	-	
15	1	1	1	0	?	-	

**B. Table 5.9. Truth table for outcome = WEAK**

	UN .AC	ADOP T	NE WD EM	EUC OND	OU T	INCL /PRI	Cases
1	0	0	0	0	0	1.000	Iceland, Italy
2	0	0	0	1	0	0.333	Cyprus, Malta, Turkey
12	1	0	1	1	0	0.000	Albania, Bosnia & Herzegovina Bulgaria, Croatia, Macedonia, Serbia, Slovakia, Slovenia
9	1	0	0	0	1	0.000	Belgium, Germany, Greece, Ireland, Luxembourg, Netherlands, United Kingdom
13	1	1	0	0	1	0.000	Austria, Denmark, Finland, France, Portugal, Spain, Sweden
4	0	0	1	1	1	0.000	Czech Rep, Latvia, Lithuania, Montenegro, Romania
16	1	1	1	1	0	0.000	Hungary, Poland
8	0	1	1	1	1	0.000	Estonia
3	0	0	1	0	?	-	
5	0	1	0	0	?	-	
6	0	1	0	1	?	-	
7	0	1	1	0	?	-	
10	1	0	0	1	?	-	
11	1	0	1	0	?	-	
14	1	1	0	1	?	-	
15	1	1	1	0	?	-	

**C. Table 5.10. Truth table for outcome = MEDIUM (after minimisation)**

	<b>UN .AC</b>	<b>ADOP T</b>	<b>NE WD EM</b>	<b>EUC OND</b>	<b>OU T</b>	<b>INCL /PRI</b>	<b>Cases</b>
12	1	0	1	1	0	0.500	Albania, Bosnia & Herzegovina Bulgaria, Croatia, Macedonia, Serbia, Slovakia, Slovenia
16	1	1	1	1	0	0.500	Hungary, Poland
9	1	0	0	0	0	0.375	Belgium, Germany, Greece, Ireland, Luxembourg, Netherlands, United Kingdom
2	0	0	0	1	0	0.333	Cyprus, Malta, Turkey
13	1	1	0	0	0	0.286	Austria, Denmark, Finland, France, Portugal, Spain, Sweden
4	0	0	1	1	0	0.200	Czech Rep, Latvia, Lithuania, Montenegro, Romania
1	0	0	0	0	0	0.000	Iceland, Italy
8	1	0	1	1	0	0.000	Estonia

## Chapter 6: Conclusions

For nearly three decades, independent national institutions mandated to promote and protect human rights have become commonplace around the world and also key upholders of human rights at the national level. In the first decade of their existence, they were a harbinger of renewed UN efforts to coordinate the implementation of human rights in nations around the world. They have gained increased prominence in international efforts to support the institutionalisation of human rights commitments and to consolidate liberal democracy. The UN-coordinated peer review process for accreditation has continued successfully over the years and has seen the numbers of accredited and re-accredited institutions grow by the year. Additionally, the European Union has placed at the centre of its accession conditionality monitoring the establishment and capacity building of national ombudsmen and human rights commissions in all prospective member states. They are not only a sign of candidate countries' intentions to develop their institutional frameworks and align them with the standards set by the European Commission, but also represent a measure of sustained effort to protect the rights of citizens' and support progress in the direction of the transition to liberal democracy. We can safely regard the developments of the past decade as an indication of increased interest in the establishment and consolidation of strong national human rights institutions.

Academic scholarship of the past decade has dedicated accredited NHRIs limited but steadily growing attention, aiming to understand the factors that

determine countries to establish them in the first place (Koo and Ramirez 2009; D. W. Kim 2009; D. Kim 2013b). Insight into their diffusion, however, only tells part of the story of country commitment to the institutionalisation of independent rights protection. The systematic investigation of institutional design offers a more nuanced view of the degree of a country's commitment to institutionalise the promotion and protection of human rights and allows us to investigate more in-depth the nature of the factors that determine different levels of design strength. This thesis is the first to explore the strength of national institutions set up to promote and protect human rights, as linked to their design. It seeks to explain global patterns of variation in institutional strength. To this end, it proposes the first index of institutional strength, made up of six different categories of design, and ranks 187 countries according to a three-point scale (weak, medium, strong). Subsequently, it presents the first global model of institutional design, building on the literatures of institutional design, cross-border diffusion and Europeanisation.

### **6.1. Main findings and contributions to academic scholarship**

The research makes two main contributions to International Relations scholarship. The dataset of institutional design features consists of original design data, and the index of institutional strength is the first of its kind in the scholarship about institutional design. The conceptual scheme represents an original synthesis of information on the main characteristics of activity set out by the United Nations-

coordinated international community in the form of the Paris Principles (Meagher 2004; International Coordinating Committee of NHRIs 2016). Institutional strength is understood as a function of an institution's design features and is measured as a ranked categorical variable with three values (weak, medium, strong). In the case of national human rights institutions, I proposed a conceptual scheme that consists of six design dimensions representing a synthesis of the main characteristics of these institutions: 1) de jure independence; 2) nature of institutional mandate; 3) autonomy from government intervention; 4) predominant de facto duties; 5) pluralism of representation, and 6) staff and financial resources.

Existing data on national human rights institutions focuses on only accredited institutions, thus containing data for approximately 100 countries, and is not structured with the intention of capturing institutional design features but rather structural and behavioural elements (Conrad, DeMeritt, and Moore 2016). Another existing dataset is yet to be made public and has informed a recent article by Linos and Pegram (2016); the data captures a few dimensions of design included in the accreditation reports of the Sub-Committee for Accreditation of the International Coordination Committee for countries that have undergone the accreditation process. The dataset informing this doctoral project differs from the above both in scope, as it covers global level information about 187 countries, and contains data operationalized from institutional report data, country constitutions and legislation.

Moreover, this doctoral project seeks to make a theoretical contribution to the literatures of cross-border diffusion and Europeanisation. The past decade has

seen an increase in research on cross-border diffusion processes. International Relations scholars have explored more closely the determinants of institutional and policy transfer and identified a large number of explanations for countries' decisions to replicate the decisions of other governments. Work on human rights diffusion has focused largely on international treaty ratification and the effectiveness of governments' treaty-based commitments in improving national human rights records on the ground (Simmons 2002; Simmons 2009; Elkins 2011; Gilardi 2013). Only very few studies explored the reasons why countries establish national human rights institutions (Koo and Ramirez 2009; Pegram 2010; D. Kim 2013b; Linos and Pegram 2016). No work to date has offered a systematic investigation of institutional strength, more specifically of countries' reasons to establish strong national human rights institutions. In other words, no research has gone beyond the binary measure of countries' commitment to institutionalised human rights promotion and protection through national human rights institutions to explore governments' choice of institutional design.

The research in this thesis furthers the existing scholarship on the establishment and diffusion of national human rights institutions by providing a complementary framework for analysis of institutional design and by quantifying some of its arguments. On the one hand, the thesis builds on the premise that work on the establishment of national human rights institutions that measures their diffusion with the help of a binary variable only tells part of the story about governments' reasons to support such an independent body on their territories. In effect, the strength of these institutions as a function of their design can be viewed

as a proxy of countries' commitments to human rights promotion and protection in response to domestic and cross-border pressures. In this sense, the findings in this thesis build on existing work (Koo and Ramirez 2009; Pegram 2010; D. Kim 2013b; Linos and Pegram 2016) and provide complementary insight into both the dimensions of institutional design for national human rights institutional design and their domestic and cross-border determinants.

On the other hand, the thesis operationalizes some of the arguments that the literature on the diffusion of human rights has advanced so far. It proposes four different possible analytical explanations for countries' decisions to establish strong institutions and proposes original measures for them. Existing diffusion-focused work has advanced and discussed these mechanisms in work about human rights treaty ratification (Simmons 2002; Hathaway 2007; Hafner-Burton 2009), the domestic impact of countries' commitments to international human rights treaties (Simmons 2009), and the diffusion of national human rights institutions (Pegram 2010; Kim 2013b). This thesis proposes original measurements of human rights institutional design determinants that can test for the occurrence of these main four causal mechanisms. The indicators used for the measurement of theoretical arguments about the creation and design of national human rights institutions are presented in more detail below.

Four explanations of interest in the framework of this project draw on diffusion scholarship to understand the reasons why governments decide to support a strong design for an institution set up to promote and protect human rights. First, a strong human rights identity in countries with a longstanding tradition of liberal

democracy is expected to drive countries to have stronger national human rights institutions. As such, a strong human rights identity is operationalized as a country having established its independent ombudsman institutions early, prior to the consolidation of the regulatory framework of the Paris Principles and the widened support for the NHRIs in the 1990s. Second, domestic political cost and benefit calculations could be informing governments' decisions to establish and support strong such institutions. This is particularly the case in countries that are newly democratised, and where some governments seek to consolidate support for democracy in the process of transition and safeguard it against changes in political preferences of future governments. Third, social learning can take place in favourable environments, such as in regions with a high density of strong institutions (like Europe and the Americas) and in countries that are located in the proximity of early adopting countries. Learning can also occur when countries participate in specialised international networks that promote and support the strengthening of institutional design – the UN Office of the High Commissioner for Human Rights coordinates such a network and promotes institutional strength through the peer-review accreditation process. A fourth international determinant measures the influence of material incentives and rewards offered to countries by other states or international organisations such as the EU. The two indicators measuring such cross-border influence are the amount of Overseas Development Assistance that the EU or the United States offer other states and, more specifically in Europe, the accession conditionality offered by the EU to countries that are candidates to membership.

The project follows a multi-method research design that combines two levels of analysis. It begins with a quantitative analysis at the global level and continues with QCA for the regional level of analysis with a focus on Europe. It also presents case studies for illustrative purposes, which allows to capture the interplay at the national level of factors that are found to be relevant at the European level.

The findings of the global analysis provide evidence in support of three of the above ideal types: socialisation, incentive-setting, and human rights identity. Countries that have undergone the accreditation process are more likely to have strong national human rights institutions, providing support for socialisation and acculturation explanations of institutional design. Additionally, countries with a strong human rights identity, which have established their independent institutions for the promotion and protection of human rights, are also more likely to have strong institutions currently. Finally, countries that have been subjected to EU conditionality due to their accession candidate status are also more likely to have institutions with a stronger design. These findings provide evidence that cross-border processes can play a key role in explaining patterns of strong design of national human rights institutions around the world. International factors alone, however, cannot account for governments' decisions to support strong independent human rights institutions on their territories. Domestic environments can also be more or less conducive to supporting strong designs, especially in countries with longstanding traditions of liberal democratic values and practices. Additionally, a particular kind of international factors make their effects felt at the regional level. High density of strong human rights institutions in a region is likely to lead to

governments deciding to establish stronger national human rights institutions. In the case of Europe, the influence of the EU is felt strongly in the case of countries that have applied to become member states and have been the object of accession conditionality.

The fourth chapter of the thesis explores the dynamics of international and domestic factors, both of ideational and material nature, in Europe. The chapter sketches a qualitative research agenda to be continued in future research. In its current form, the analysis explores the regional interplay of factors that were included in the global analysis and finds cases for which some combinations of ideational and rationalist factors are meaningful and sufficient to explain strong institutional design. The analysis at the regional level will be continued in future research by considering other determinants of institutional design in addition to the ones in the global analysis, giving a more fine-grained perspective of international, regional, and domestic dynamics of support for national human rights institutions in Europe.

The qualitative comparative analysis (QCA) makes use of a crisp dataset with binary data that captures whether or not a country belongs to the set of countries with particular characteristics represented by the factors of the analysis. The QCA tested four main hypotheses, following the same conceptual model as the analytic framework for the global analysis. The findings of the analysis provide evidence for two types of combinations of factors that can explain the occurrence of stronger institutions. Newly democratised countries that have been subjected to EU conditionality and never underwent the UN accreditation process have strong

institutions. Romania is the only country that meets all three main criteria but does not have a strong institution – however, it does have a medium level institution in the form of a functional national ombudsman. Additionally, QCA generated a second solution that finds that the UN-led accreditation plays an important role in explaining the occurrence of the outcome in countries that are not new democracies and that have not been subjected to EU conditionality.

The chapter continues with a discussion of country case studies intended to provide a more detailed illustration of the creation and strength of national human rights institutions' strength as well as to lay out a research agenda for future qualitative research. The case-based analyses serve only an illustrative purpose, offering country and institution specific details about the history and formation of each institution and the ways in which the main factors included in the analysis played out in the development of each national human rights institution. QCA proposes two main combinations of conditions sufficient for European countries to have strong institutions. These QCA solutions consist of three factors that interact to explain the outcome and provide illustration that three out of the four analytical explanations are relevant for understanding strong institutional design in Europe. A country's status as a new democracy, combined with EU conditionality and the absence of UN accreditation make up the first solution proposed by the QCA. This first combination of conditions shows that rational explanations tell a compelling story of institutional strength in Europe by means of cross-border incentive-setting as well as domestic cost and benefit calculations. The second solution identified by the qualitative comparative analysis finds that UN accreditation can account for

strong institutional design in the case countries that are not new democracies and that have not been subjected to EU conditionality. This second path illustrates the combination of conditions that offers support to an ideational explanation of institutional strength. In the QCA, early adoption status is the only condition that cannot account for strong institutional design, thus not finding that a strong human rights identity plays an important role in explaining strong design in Europe.

An important methodological implication of the multi-level analysis is that findings in the two analyses are complementary and allow for a more nuanced understanding of the causal pathways from the global to the national dimensions. The QCA analysis offers a closer look at the interplay of sufficient conditions that can explain the adoption of strong institutions in Europe. For the purposes of causal inference-making in a multi-method design, the existing QCA will be best complemented with further qualitative work in the form of semi-structured interviews including other indicators that capture variation of sociocultural determinants at the domestic and regional levels and offer a more fine-grained image of the conditions for institutional design.

## **6.2. Policy implications**

While every national human rights institution is unique and has its particularities, the findings of my thesis have some policy ramifications that apply across different cases and which can be relevant to the general use, design, and implementation of human rights. A first conclusion of my thesis is that international institutional

networks play a key role in the creation of strong national institutions (Alderson 2001; Whitehead 2001; Bearce and Bondanella 2007; Linos and Pegram 2016). Networks such as the global community of NHRIs created through the UN-led accreditation process can provide opportunities for socialisation (Finnemore 1993) and acculturation (Goodman and Jinks 2013). Direct interaction at regular meetings can lead to learning from peers and sharing best practices that can increase the strength of national human rights institutions and enhance the effectiveness of their activities, ultimately leading to stronger domestic human rights records. International organisations and national governments can pay particular attention to the important role that peer review plays in cross-border learning (Milewicz and Goodin 2016). The peer review process as part of the accreditation generates concrete feedback on the design and effectiveness of each institution with targeted recommendations for improvement. In many countries the national ombudsman or human rights committees are often the only independent bodies charged with the promotion and protection of human rights, thus national governments that wish to strengthen their institutions would benefit from entering the accreditation process and joining the UN-coordinated network.

Fostering cross-border learning is also possible through participation in regional networks. One such example is the longstanding Asia-Pacific Forum, which has coordinated the activity of national human rights institutions in Asia for over two decades. Government and institutional representatives meet annually, offering all participating members the chance to discuss domestic challenges they face as they carry out their mandates. The leadership of the APF is ensured on a rotational

basis, and the network has also assisted with the UN accreditation process of countries in the region. The European equivalent regional structure, the European Network for NHRIs, is a more recent institution on the regional landscape, created in its current form in 2013. Working in coordination with other human rights bodies in Europe such as the Council of Europe, the network can play a key role in the strengthening of institutional design and the domestic implementation of regional and international human rights law.

These regional and international networks can also benefit from the experience of early adopting countries. Moreover, geographic proximity and, whenever existent, shared cultural backgrounds, can facilitate cross-border learning. As countries decide to establish new human rights commissions or strengthen the design of their national human rights institutions, the experience of countries located in their geographic proximity can prove instrumental.

A second conclusion of my thesis is that material incentives offered by international organisations and certain national governments through international development programmes can lead to stronger independent national human rights institutions. Concerted efforts by the European Commission to monitor and advise the progress of candidate countries in the process of accession to the European Union has proven effective in fostering stronger designs for national human rights institutions. Country progress reports present an annual assessment of country progress toward policy and institutional targets which each candidate state is required to meet. The prioritisation of independent national institutions in the efforts of ensuring human rights promotion and protection motivates domestic

governments to strengthen national human commissions and ombudsmen. Ultimately, these institutions' activities leads to legislative harmonisation with European requirements and a better domestic human rights performance.

A different form of financial incentive, the allocation of overseas development funds, has also been found to be connected to stronger independent institutions globally. My analysis finds that the United States overseas development assistance funds are associated with stronger institutional designs around the world. With special attention given to national socio-political contexts and collaboration with domestic actors in charge of using these disbursed funds, international development efforts can make a difference in national contexts. They can foster the establishment and capacity building of stronger national human rights institutions and, through that, contribute actively to strengthening domestic human rights records.

### **6.3. Future directions of research**

The thesis research charts new avenues for future research. One direction of research will involve carrying out interview-based qualitative research in selected countries in Europe, in order to explore more in-depth the effects that international factors have on domestic context. I will begin by establishing the analytical framework and incorporating new factors not included in the global or regional analyses, thus making a significant empirical contribution to the study of national human rights institutions. Domestic determinants such as the strength of civil

society would allow us to measure the support of civil society actors, such as the general public or NGOs, for national human rights institutions. An additional cross-border determinant to be considered at the regional level measures the influence of neighbouring countries with strong historic ties on institutional change. Such geographic proximity doubled by shared historic ties would allow us to examine sub-regional patterns of institutional design such as the ones occurring in the Nordic countries.

Another new route of research lays out a comparative analysis of institutional strength in different regions of the world. Factors that are region-specific would be introduced in the QCA model for each region, thus testing for different regional effects. For instance, the EU is a critical presence in the regional context in which it exerts influence. In Asia, however, no such regional IO is the main actor coordinating learning across borders or incentivising governments to align behaviour with fellow candidate countries as future members of the Union. The Asia Pacific Forum, however, is a much powerful network of national human rights institutions, which has been in existence for much longer than its European counterpart the European Network for NHRIs and has been an active force in supporting UN accreditation efforts in the region and facilitating cross-border learning. Moreover, the early adopters and model states in each region are different and bring to bear different kinds of influence on other states in their proximity. Powerful actors such as China and Japan, which have no clear official support for the institutionalisation of human rights and alignments with international policy practices, counteract the influence that Australia, India or New Zealand may have as

early adopters and long-term coordinators of the Asia Pacific Forum. Of course, the context in a different region is different and would open up new paths for exploration – on a continent like Africa, where the influence of regional human rights networks on domestic politics is rather limited and no powerful regional organisation coordinates efforts to align institutional practices across borders, we expect the effect of United Nations programmes on governments' decisions to establish strong institutions to be the one of the strongest international factors complementing the power of the domestic political actors. Similar to the European analysis, all of the cross-regional comparisons could be complemented with ethnographic work.

A third direction of research represents a natural continuation of the quantitative analysis, which would entail the extension of the dataset to include over-time data. The lack of publicly available documents provided by the institutions themselves would make the collection of global over-time data a nearly impossible endeavour in all countries. Such a dataset would probably be more likely to be developed in some of the regions (i.e. such as Europe and the Americas), depending on available reports and institutional documents. Qualitative interviews and surveys could complement report-based data collection.

A fourth direction of research would seek to expand the dataset by increasing variation in institutional design features across more than one type of independent regulatory institution. For instance, such bodies could be central banks and anticorruption agencies. A study of these institutions' variation in strength would offer a systematic view of governments' preferences in liberal democratic designs

and different degrees of commitment to the institutionalisation of liberal values and practices. This research design places national human rights institutions in the broader context of democratisation and institutionalisation efforts integrated in the foreign policy agenda of the United States, the European Union and the development programmes supported by the Washington Consensus and the United Nations.

A generally important and interesting issue worth exploring further is the effectiveness of national human rights institutions as linked to their design. In other words, does an institution's design make a difference in terms of the human rights record of the country where it is based? Is a stronger institution more effective in its collaboration with the government? Does it address more adequately the needs and interests of a wider spectrum of the population? Does it represent adequately also the interests of NGOs and civil society more broadly? Research on the effectiveness of human rights policies as linked to their diffusion finds mixed evidence of either 'radical decoupling' (Meyer et al. 1997) or of partial impact in the case of human rights treaty ratification (Simmons 2009). Research to date has not address the issue of NHRI effectiveness systematically although some case study-based work has found evidence of some success at the national level (Talwar 1997; Norchi 1998). To the best of my knowledge, no one has investigated the link between the institutional design and the effectiveness of national institutions created to promote and protect human rights.

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