

**The Deterrence Effect:**  
**An Analysis of Preliminary Examinations by the International Criminal**  
**Court on the Severity of Civilian Atrocities**

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## **Abstract**

Despite preliminary examinations being the first stage of a four-stage intervention by the International Criminal Court (“the Court”), their deterrent effects remain largely unexamined. In this paper, I argue that, because a preliminary examination involves high-cost operations and comprehensive reports, it serves as a credible commitment signal to perpetrators that the Court is willing to take further and serious actions for the pursuit of justice. Thus, perpetrators are more likely to scale down the intensity of atrocities in order to avoid the escalation to a formal investigation, avoid being tried at the Court in the Hague, and protect their legitimacy. I test my argument by using time-series cross-section data for a period of 15 years, from 2004 to 2018, from 46 countries, including those with and without preliminary examinations. The findings support my hypothesis and theory, highlighting that preliminary examinations are significantly sufficient on their own to decrease the severity of civilian atrocities by approximately 15%. This study contributes to the literature on international criminal law and international tribunals by displaying the deterrence effect of preliminary examinations when analyzed independently instead of collectively with the other stages of intervention.

**Keywords:** International Criminal Court, international tribunals, preliminary examinations, deterrence, civilian atrocities

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## 1. Introduction

*“We must learn: there is no safe haven for life and freedom if we fail to protect the rights of any person in any country of the world.”*

—(Moreno-Ocampo 2003, 4).

These were the closing words of Luis Gabriel Moreno-Ocampo at the “Ceremony for the Solemn Undertaking of the [first] Chief Prosecutor of the International Criminal Court” in The Hague, on June 16<sup>th</sup>, 2003 (Moreno-Ocampo 2003, 1). The statement made reference to the mission of the International Criminal Court (“the Court”), which is to “exercise its jurisdiction over *persons* for the most serious crimes of international concern,” such as crimes against humanity, genocide, the crime of aggression, and war crimes (Rome Statute of the International Criminal Court 1998, Art (1), and (5)). While the Court (2022) has four stages of intervention that have the potential to prevent further atrocities: (1) preliminary examinations, (2) formal investigations, (3) arrest warrants and summons, (4) and prosecutions, pursuit of the entire process through its four stages is a lengthy process.

In this study, I focus solely on the effects of the first stage of the Court intervention, that is, preliminary examinations. There is significant interest in seeing whether this initial process can bring about a decrease in the level of atrocities because preliminary examinations constitute the first step of international law in the pursuit of "Never Again" processes to prevent the gravest crimes, and according to the Court (2020), they are also one of the most significant methods to accomplish the mission of the Court. Furthermore, they lay the foundation for high-quality

investigations and prosecutions, and they can serve as a legitimate signal that the Court is willing and able to investigate and prosecute perpetrators.

As a result, I pose and seek to answer the following research question: **How do preliminary examinations by the International Criminal Court affect the severity of civilian atrocities?** Herein, I demonstrate that the threat of direct intervention raised by the commencement of preliminary examinations by the Court acts as a deterrent to decrease the severity of civilian atrocities that perpetrators commit, regardless of whether they are state or non-state actors. More specifically, since a preliminary examination is characterized by its comprehensive reports and its significant monetary commitment to examine the atrocities at hand, it serves as a credible signal to perpetrators that the Court is willing to take further and serious actions that could lead to investigation and prosecution for the pursuit of justice.

By running a regression model on time-series cross-section data from 46 countries — both with (23) and without (23) preliminary examinations — with the highest reports of civilian atrocities, specifically with a minimum cut-off point of 14.4 atrocities per 100,000 population for a period of 15 years, 2004 to 2018, I find that the presence of a preliminary examination in a country is sufficient to decrease the severity of civilian atrocities by approximately 15%. This effect holds true even after including fixed-effects to account for country and year-specific effects. Further, I reinforce my findings through the discussion of Colombia as a case study, which justifies and exemplifies the legitimate signal that preliminary examinations send to perpetrators. Thus, this study contributes to the literature on international criminal law and international tribunals by showcasing that preliminary examinations by the Court have an independent deterrent effect in terms of the severity of civilian atrocities; justifying the time and

monetary investment that is currently put into first-stage interventions by the Court and building on the existing literature that focuses on the effects of the four stages of intervention collectively.

This study proceeds as follows: **Section 2** provides a brief background on the Court and its jurisdiction. **Section 3** provides an overview of the literature on the effects of the Court intervention stages and preliminary examinations. **Section 4** describes the hypothesis and theory on how preliminary examinations affect the severity of civilian atrocities. Next, **Section 5** outlines the research design and illustrates how the different variables are operationalized. **Section 6** presents the empirical results along with a discussion of these, and the case study of Colombia. Lastly, **Section 7** provides a conclusion summarizing the findings along with contributions to the literature, policy implications, limitations and avenues for further research.

## **2. Brief Background**

The Rome Statute was adopted in July 1998 to establish the Court, but the Court itself entered into force in July 2002 under the Statute with 60 ratifications, making it the first and only permanent international court in the world (Rome Statute of the International Criminal Court 1998, Art (126)); as of April 2022, the Court counts 123 states parties to the Rome Statute [see Figure 1] (International Criminal Court 2022).

[Figure 1 here]

The Court has the jurisdiction to investigate crimes committed in the territory of any state party, or in the territory of non-states parties by the use of a special agreement<sup>1</sup> (Rome Statute of the International Criminal Court 1998, Art (4)). Additionally, the Court uses the complementary principle, which means that a state has the duty and right to prosecute crimes committed within its jurisdiction (Office of the Prosecutor 2003). Thus, the Court can only exercise its jurisdiction when the national jurisdiction of the state in question has failed to investigate and prosecute (Office of the Prosecutor 2003). More specifically, a case is only admissible to the Court if the state “is unwilling or genuinely unable to carry out the investigation or prosecution” (Rome Statute of the International Criminal Court 1998, Art (17)(1)(a)).

In order to effectively exercise its jurisdiction over certain situations,<sup>2</sup> the Office of the Prosecutor (OTP)<sup>3</sup> of the Court must have received a referral: (1) by a state party; (2) by the United Nations Security Council (UNSC); or (3) by the OTP itself applying its *proprio motu* power<sup>4</sup>, (Rome Statute of the International Criminal Court 1998, Art (13)). Once a referral is made, the OTP decides whether the situation grants the initial intervention by the Court. This intervention is made up of four different stages: (1) a preliminary examination, which is conducted by the Office of the Prosecutor (OTP) to determine whether there is a reasonable legal basis to start an investigation; (2) a formal investigation, which aims to gather evidence and question the different parties involved; (3) arrest warrants or summons, which are requested by

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<sup>1</sup> An example of this exception is Ukraine, which is not a state party to the Rome Statute, but welcomed the Court’s jurisdiction to open a preliminary examination in relation to alleged crimes committed since 2014 (International Criminal Court 2015).

<sup>2</sup> A *situation* is the name given by the Court to the general series of events where crimes have allegedly been committed (International Criminal Court 2022)

<sup>3</sup> The OTP works on behalf of the Court by conducting examinations, investigations, and prosecutions (Rome Statute of the International Criminal Court 1998, Art (42)(1)).

<sup>4</sup> *Proprio motu*, which means “on one's own initiative.”

the OTP to the Court's judges to ensure the person is present at the trial; and (4) a prosecution, which is composed by the Court's Pre-Trial Chamber's trials, and by the issuing of convictions and acquittals as final judgements (International Criminal Court 2022).

### **3. Literature Review**

#### **3.1 The Effects of the Court Intervention**

Numerous scholars in the field of international criminal law and international tribunals have analyzed the direct effects of the Court in different areas such as individual punishment and domestic accountability. For example, Prorok (2017) has found that the Court intervention in a specific conflict increases the potential punishment that individuals who may be under investigation may face. However, Prorok (2017) also argues that the active intervention by the Court lengthens civil wars when the punishment is low nationwide. On the other hand, Bates (2021) has found that the threat of intervention by international tribunals such as the Court increases the commitment to domestic accountability in peace negotiations worldwide by having domestic elites agreeing to hold trials in their own countries. Bates (2021) also concludes that this effect is higher when the OTP is involved along with the support of other international actors such as the UNSC.

In addition, a variety of scholars have analyzed the deterrent effects of collective intervention by international tribunals such as the Court. As a result, when exploring deterrence in atrocities and prosecutorial deterrence by the four stages of intervention by the Court, different scholars have found successes and failures in specific situations. For example, Hörtnagl (2020)

has found that the intervention by the Court conducted in Sudan effectively exercised deterrence effects, with a specific focus in Darfur. These positive results are supported by the reduction of civilian fatalities in Darfur, and by the approval of a trial for members of the Sudanese government, who allegedly committed serious atrocities.

On the other hand, Nichols (2015) has found that the Court intervention did not succeed in ending impunity in Kenya between 2008 and 2013. These negative results are exemplified by how there were zero convictions for those responsible of sexual and gender-based violence and for the perpetration of mass atrocities committed in Kisumu and Kibera. According to Nichols' research, less than 3% of perpetrators of crimes committed post-election were convicted, a statistic that includes the impunity of the main six suspects known as the Ocampo Six, whose charges were either not confirmed, vacated, or withdrawn.

While Hörtnagl and Nichols have focused on the collective deterrent effects of the four stages of intervention by the Court in specific countries, other scholars had a global and comparative approach when exploring this causal relationship, through a quantitative and qualitative approach. For example, Jo and Simmons (2016) surveyed whether the Court can deter atrocities by examining 101 countries, finding that the Court is able to deter atrocities from several state actors, and from rebel groups that try to gain domestic and international legitimacy. Similarly, by using case studies of prosecutions by the Court in Central African Republic, Côte d'Ivoire, Darfur, Democratic Republic of Congo, Kenya, Libya, and Uganda, Cronin-Furman (2013) has found that the Court is able to deter atrocities from those perpetrators who may not have any strong incentive to commit atrocities. However, she also argues that the collective

intervention by the Court is less likely to deter atrocities from those perpetrators who have a strong incentive to commit atrocities.

### **3.2 Preliminary Examinations by the Court**

The available literature highlights an overwhelming focus on the effects of collective intervention by the Court on different outcomes with a special focus on deterrence, by treating all four stages of intervention as one. However, none of the studies in international criminal law and international tribunals literature have analyzed the independent effects of preliminary examinations on the severity of civilian atrocities. In turn, the existing scholarship focuses on explaining the nature of these preliminary examinations. For example, Stahn (2017) has explored the concept and process of preliminary examinations. In his research, he describes a preliminary examination as a “sort of pre-investigation carried out by the Prosecutor” before opening a formal investigation (Stahn 2017, 414). Additionally, Wharton and Grey (2019) have analyzed in depth the role of the OTP in preliminary examinations, finding that although former Prosecutors Luis Gabriel Moreno-Ocampo (2003 - 2012) and Fatou Bensouda (2012 - 2021) did not have a full investigatory authority, they still had significant and active roles during this specific stage.

On the other hand, Stahn (2017) has also found different dilemmas in preliminary examinations such as the absence of a time limit, and the unfeasible scope for judicial review. He concludes that preliminary examinations are overlooked and unresearched. Other scholars have focused on the theoretical aspect of preliminary examinations in terms of the principles of

complementarity. For example, Chappell et al. (2013) found that the complementary principle has created impunity in crimes of sexual violence in states such as Colombia and Guinea, while Tillier (2013) has found that the power of the Prosecutor is successful in positive complementary<sup>5</sup> policies when there is an effective engagement with domestic actors during a preliminary examination. This argument is supported by analysis conducted by Human Rights Watch operations, through which it is shown how preliminary examinations can positively influence national justice in different nation-states such as Colombia, Georgia, and Guinea (Pappier 2018).

The Court states that each preliminary examination has four different phases of analysis: (1) initial, in which the OTP assesses if the referred situation meets the requirements of the Rome Statute; (2) jurisdictional, in which the OTP assesses whether the Court has the temporal, territorial, subject matter, and personal jurisdiction over the referred situation; (3) admissibility, in which the OTP assesses the gravity of the alleged crimes and whether the complementary principle is or could be applied; and (4) interest of justice assessments, in which the OTP assesses whether opening a formal investigation is in the interests of justice, which is further reviewed by the Pre-Trial Chamber (International Criminal Court 2022).

Investigating the deterrence effect of preliminary examination is paramount and matters because they are one of the most significant methods to accomplish the Court's mission and lay the foundation for high quality formal investigations and prosecutions. Additionally, because preliminary examinations by the Court create the initial threat of direct intervention for those

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<sup>5</sup> Positive complementary is a principle used by the OTP to enhance domestic investigations and prosecutions by state parties. In other words, the Court attempts to equip these parties with legal assistance so that they are willing and able to work independently (Hunter 2014).

responsible for civilian atrocities. In other words, preliminary examinations serve as a credible commitment signal by the Court that they are willing to take further and serious actions that could lead to prosecution in terms of arrests, summons, and legal convictions. Preliminary examinations are able to do that through the high monetary cost that they entail and their comprehensive reports available to the public.

More specifically, the Committee on Budget and Finance of the Court highlights that the operating expenses of preliminary examinations represent approximately 25 million euros per year because they involve legal training, operating expenses, and legal personnel, including two Deputy Prosecutors, Senior Coordinators, Situation Analysts, and the Preliminary Examination Section, which includes: unified teams, investigators, analysts, lawyers, international cooperation advisors, among others (International Criminal Court 2021). Additionally, the Court releases multiple reports in different languages every year explaining the operations and details of preliminary examination processes in specific countries, as well as specifically naming potential perpetrators and the alleged crimes committed should the OTP decide to open a formal investigation (International Criminal Court 2022). Despite the clear reasons stated above that showcase how significant it is to understand the effects of preliminary examinations, there are no specific studies that solely focus on their effects on the severity of civilian atrocities.

### **3.3 Closing the Existing Knowledge Gap**

This research builds on the existing literature on preliminary examinations and contributes to the scholarly conversation by closing the existing knowledge gap that was

previously highlighted. More specifically, my study investigates how the Court's preliminary examinations on their own have an impact on the severity of civilian atrocities. Additionally, this study is different from other studies in the international criminal law and international tribunals literature because it analyzes the effects of the most understudied and overlooked stage of the Court intervention, that is, preliminary examinations. This study is also worthy of investigation because it seeks to provide academic and public awareness about the possible deterrence of preliminary examinations by the Court. Furthermore, this study will enable individuals to develop a deeper understanding of the effects of specific high-stake mechanisms in global governance.

#### **4. Hypothesis and Theory**

To answer the research question of this study: **How do preliminary examinations by the International Criminal Court affect the severity of civilian atrocities?** I hypothesize that: **The presence of preliminary examinations by the International Criminal Court decreases the severity of civilian atrocities, all else equal.** I theorize that this result is produced by the threat of direct intervention raised by the commencement of preliminary examinations by the Court. Such examinations should act as a deterrent to decrease the severity of civilian atrocities that perpetrators commit, regardless of whether they are state or non-state actors. More specifically, because a preliminary examination is characterized by the Court's significant monetary commitment to examine the severity of civilian atrocities and the production of comprehensive reports on its findings, it serves as a credible commitment signal to perpetrators

that the Court is willing to take further and serious actions for the pursuit of justice at the international level.

As a result, this serious and legitimate signal pressures perpetrators and makes them less likely to continue committing atrocities at the same level in order: (1) to avoid escalating the preliminary examination to a formal investigation because that entails the possibility of being questioned based on alleged evidences and incriminated by the OTP; (2) to avoid being tried at the Court in the Hague, The Netherlands, where perpetrators would face greater risk of serious punishment, with penalties for convictions often surpassing those imposed by domestic courts, and in some cases including life imprisonment by the Court's (2022) Trial Division of the Chambers; and (3) to protect their legitimacy at the domestic and/or international level because of political and/or ideological motives, which could be jeopardized due to potential accusations and processes that are public and shared worldwide through official channels or social networks. Further, because the presence of preliminary examinations by the Court puts perpetrators in jeopardy, they are more likely to scale back acts of violence against civilians, which ultimately decreases the severity of civilian atrocities.

In this study, I attempt to provide novel contributions to the scholarly conversation. First, if the deterrent effects of preliminary examinations on the severity of civilian atrocities are positive, the empirical results can contribute to the literature (a) by demonstrating that preliminary examinations when analyzed independently are sufficient to decrease the severity of civilian atrocities; (b) by highlighting the significant power and potential of the initial stages or processes of international tribunals such as the Court, and (c) by informing and perhaps encouraging referrals to the Court by the established parties based on Article 13 of the Rome

Statute. On the other hand, if the deterrent effects are negative, the empirical results can contribute to the literature by (a) highlighting the need for changes and reforms in the operations and strategies used when initiating and conducting preliminary examinations, and by (b) specifying how preliminary examinations, when analyzed independently, do not deter civilian atrocities, suggesting that they need to be accompanied by other stages of intervention by the Court to have a deterrent effect.

## **5. Research Design**

### **5.1 Quantitative Analysis**

To analyze the effects of preliminary examinations on the severity of civilian atrocities over time, I have chosen to investigate these effects through a quantitative approach, using time-series cross-section data from 2004, the year when the Court initiated its first preliminary examination, to 2018, the most current year containing all the necessary data to conduct this study quantitatively. Additionally, I focused on analyzing the effects of preliminary examinations on the severity of civilian atrocities in 46 countries with the highest number of atrocities, with a specific minimum cut-off point of 14.4 atrocities per 100,000 population. The reasoning behind this is to maintain a threshold that fairly assesses the effects of preliminary examinations without diluting the possible effect, and to make a fair comparison between countries that have had and have not had a preliminary examination.

In other words, to have variation in my independent variable, I analyze the 23 countries that *have had* a preliminary examination and 23 countries that *have not had* a preliminary

examination, the latter which were potentially eligible for a preliminary examination by the Court due to their high incidents of civilian atrocities. [Figure 2] highlights in the map with the color yellow the 23 countries that have had a preliminary examination. Additionally, [Table 1] specifically names these 23 countries where these examinations have occurred from 2004 to 2018, and also highlights the length of a preliminary examination in each country. [Table 1] also names the 23 countries where examinations have not occurred.

Furthermore, I will be using the Ordinary Least Squares (OLS) regression model primarily to conduct this analysis since it offers the most unbiased, consistent, and effective results. I will also be using a fixed-effects model to account for country-specific effects and year-specific effects, that is, to account for location and time invariant unobservables, and to check the robustness of the OLS model.

[Figure 2 here]

[Table 1 here]

## **5.2 Independent Variable**

The independent variable (IV) is the presence or absence of a preliminary examination over time in a country in a given year, which refers to the stage that OTP of the Court conducts to determine whether there is an acceptable legal basis to start a formal investigation. The concept is measured through the Court's database that states their stages of intervention in

different countries. This IV is a binary variable from 0 to 1, with 0 being the absence of a preliminary examination in a given year, and 1 being the presence of a preliminary examination in a given year. It is important to highlight that a preliminary examination is counted as one event throughout different years, that is, until the OTP decides to close it or shift to a formal investigation (International Criminal Court 2022).

### **5.3 Dependent Variable**

The dependent variable (DV) is the severity of civilian atrocities. The concept of atrocities is measured by using the Global Violent Deaths (GVD 2021) dataset from Small Arms Survey (SAS), and constitutes direct conflict deaths, homicides, and violent deaths by firearms committed by government officials and rebel groups, which are the usual parties under investigation by the Court (Small Arms Survey, 2021). This DV is a continuous variable that measures the rate of violent deaths per 100,000 population from 0 being the lowest rate of violent deaths, and 130 being the highest rate of violent deaths within the sample under examination.

As previously highlighted, I select the 46 countries with the highest number of atrocities per 100,000 population, with 14.4 atrocities as the minimum cut-off point. This DV is operationalized by a five-year percentage change in the number of violent deaths in a given country, in other words, through the percentage of civilian atrocities. The DV ranges from -100% to 800%, with -100% being the highest decrease, and 800% being the highest increase of atrocities. Since one should not expect a preliminary examination to have immediate effects, the

five-year percentage change is necessary in order to have valid and reliable results that accurately captures how preliminary examinations might affect the percentage of civilian atrocities.

## **5.4 Control Variables**

The literature highlights a few variables that could also potentially explain the variation of atrocities as follows, which I control for in this study as potential confounding factors. First, I control for the number of human rights organizations to account for the argument that the number of human rights organizations plays a fundamental role in deterring atrocities, and especially in the presence of conflict (Murdie 2014). This concept is measured through a continuous variable from 0 to 100, with 0 being the lowest, and 100 being the highest. The dataset was originally collected by Smith and Wiest (2021), which is listed in the Yearbook of International Organizations, with a focus on human rights in specific countries and years.

Additionally, I control for the rule of law perception in a country to account for the argument that the rule of law serves as a deterrent for future crimes and impunity (Nichols 2015). This is a concept measured through a discrete variable from -2.5 to 2.5, with -2.5 being the weakest level, to 2.5 being the strongest. The data is collected by the World Bank (2021) through the Worldwide Governance Indicators (WGI), which measures the extent governments abide by factors such as property rights, the police, courts, and the quality of different laws and contract enforcement.

I also control for access to justice in a country to account for the argument that higher opportunities to access domestic jurisdictions represent a relevant risk for perpetrators in terms

of punishment, which ultimately makes them more likely to reduce the perpetration of atrocities (Cronin-Furman 2013). This concept is measured through an interval variable from 0 to 1, with 0 being the lowest, and 1 being the highest. The data is collected by Varieties of Democracy (V-Dem), and it measures whether citizens “enjoy secure and effective access to justice” (V-Dem 2022, 176). It is important to highlight that these two variables differ from each other based on the fact that while the rule of law focuses on the quality of the general set of laws and bodies that enforce these, access to justice only focuses on the tools that citizens have to receive equal rights and fairness.

Consequently, I control for the level of democracy in a country with a focus on participatory democracy to account for the argument in the international tribunals literature that in unconsolidated democracies, perpetrators are more likely to continue perpetrating crimes against humanity (Cronin-Furman 2013). This concept is measured through an interval variable from 0 to 1, with 0 being the lowest, and 1 being the highest. The data is also collected by V-Dem, which measures whether the ideal of participatory democracy is achieved through “active participation by citizens in all processes, electoral and non-electoral” (V-Dem 2022, 44).

To account for the influence of economic factors, I control for Gross Domestic Product (GDP) in a given country to account for the argument that greater economic performance decreases the rate of atrocities based on society’s standard of living (Hunter 2014). This is measured via a continuous variable given in USD. The data is collected by the World Bank (2021) through the World Development Indicators (WDI), which measures the output of the country’s economy. Lastly, I also control for location to ensure a more accurate analysis that accounts for the potential regional effect on the severity of civilian atrocities. I follow the method

of Bates (2021) by dividing countries into six regions: Africa, Asia, Europe, Middle East and North Africa (MENA), North America, and South America. This concept is measured with a binary variable from 0 to 1, with 0 indicating that the country does not belong to the respective region, and 1 indicating that it does.

## 6. Results

### 6.1 Empirical Findings: OLS

After conducting the OLS regression model, [Table 2] shows that *a preliminary examination decreases the percentage of civilian atrocities by 15.06%*. Additionally, the relationship is statistically significant at the 95% confidence interval, which serves as evidence against the null hypothesis. Thus, the results support the argument and hypothesis of this study by indicating that *the presence of preliminary examinations by the Court decreases the severity of civilian atrocities, all else equal*. As argued earlier, preliminary examinations serve as a legitimate signal to perpetrators that the Court is willing to take serious actions in the pursuit of justice through the high sum of monetary funds spent and reports with detailed information. As a result, this commitment signal compels perpetrators to reduce the severity of civilian atrocities to avoid the opening of a formal investigation and being tried at the Court, putting at risk their freedom, and to preserve their legitimacy at the local and/or international level.

[Table 2 here]

Looking at my control variables, the results suggest that the number of human rights organizations are associated with a decrease in the percentage of civilian atrocities by 0.372%. The relationship is statistically significant at the 90% confidence interval. The reason behind the low coefficient may be because human rights organizations do not necessarily impose a commitment signal as strong as preliminary examinations by the Court do. In other words, human rights organizations may focus on advocacy work depending on the context of the country instead of trying to hold war criminals accountable for their actions. However, while this decrease may represent a small decrease of atrocities, it does not negate the work of human rights organizations that have a history of highlighting abuses publicly and of trying to bring perpetrators to justice such as Human Rights Watch, which potentially slightly discourages the perpetration of atrocities.

The results also highlight that a one-unit increase in the rule of law perception results in a decrease in the percentage of civilian atrocities by 14.84%. Moreover, the relationship is statistically significant at the 95% confidence interval. These results are expected taking into account that the rule of law perception is measured by factors such as the quality of police forces and judicial courts, which have the objective to either prevent the perpetration of atrocities or to prosecute individuals who commit them. As a result, these actions serve as significant and legitimate threats making perpetrators less likely to commit atrocities at the same level in order to protect their freedom at the domestic level.

Additionally, the findings also suggest that GDP is associated with an increase in the percentage of civilian atrocities by 1.69% with a confidence interval of 95%. I suspect this may be because GDP data is limited and may not always be reliable, that is, it does not necessarily

measure the well-being of society and prosperity accurately. Interestingly, the results also suggest that a one-unit increase in participatory democracy means an increase in the percentage of civilian atrocities by 64.42%. The relationship is also statistically significant at the 95% confidence interval. These results challenge arguments in the literature that participatory democracies may have less atrocities due to their core values such as justice, life, and liberty. This inconsistency may be because much of the literature focuses on the decrease of civilian atrocities among different democracies by applying the democratic peace theory, and not in a specific democracy where atrocities could be affected by political instability and the rise of polarization, as these are two critiques of participatory democracies. These results may also be driven by the small range of the variable, from 0 to 1, as discussed.

Geographical location does not seem to matter, except for the MENA region, which is associated with a 34.83% increase in the percentage of civilian atrocities, with a relationship that is statistically significant at the 95% confidence interval. The results coincide with the fact that the region has experienced unprecedented levels of repression, insurgency and foreign intervention in the last decade where citizens' lives have been at stake. Additionally, Cronin-Furman's theory (2013) can be applied in this context, highlighting that high-level perpetrators with strong incentives to commit atrocities are less likely to fear high-stake international decisions, which in this case is applicable to the opening of a preliminary examination by the Court. In other words, there have been a lot of high-intensity conflicts from 2004 to 2018 in the region where actors involved were motivated to increase the severity of civilian atrocities due to the high-stake nature of these conflicts.

Last but not least, the table shows that access to justice is not statistically significantly associated with a change in atrocities. I suspect this may be the case because having more opportunities to access justice does not necessarily mean that impunity will largely disappear as well as the perpetration of atrocities. More specifically, national jurisdictions may have a lower punishment rate than the Court, as Prorok (2017) highlights, which ultimately means that perpetrators may not take these domestic threats at the same level as they would take intervention from international tribunals such as the Court. As a result, they would not reduce the perpetration of atrocities significantly.

## **6.2 Empirical Findings: Fixed-Effects**

In addition to the OLS regression model, I also conducted a fixed-effects model in order to account for country and year-specific effects. The reasoning behind the use of this model is to estimate the effect of a preliminary examination by the Court only within-unit variation over time and to reduce selection bias. As [Table 2] highlights, the results of the fixed-effects model are similar to the results in the OLS regression model, that is, there was no significant change in relation to the deterrence effect of preliminary examinations on the percentage of civilian atrocities. For example, the coefficient only slightly decreased from 15.06% to 14.92%, which is expected based on the fact that specific effects were controlled for. Thus, the results are still statistically significant at the 95% confidence interval. Furthermore, the hypothesis of this study continues to be supported, which means that *the presence of a preliminary examination by the Court does decrease the percentage of civilian atrocities*.

The number of human rights organizations, the rule of law, and GDP remained statistically significant at the 95% confidence interval. Access to justice remained statistically insignificant, and participatory democracy was the only variable that experienced a decrease in its confidence interval from 95% to 90%. Last, but not least, because physical geographical regions do not change over time, they are omitted by the fixed-effects model. Thus, since the results from the fixed-effects model are fairly identical to the OLS regression results, the former works as a robustness check and continues to prove that preliminary examinations by the Court have a deterrence effect in the severity of civilian atrocities.<sup>6</sup>

### **6.3 Discussion and Case Study: Colombia**

The previous empirical results shown through the OLS and fixed-effects models are largely consistent, which further reinforces the reliability and validity of the quantitative findings. Hence, these results lend support to the stated research question of this study by indicating that preliminary examinations by the Court have a statistically significant effect on the severity of civilian atrocities, which can be seen through an approximately 15% decrease.

In order to further illustrate the impact of preliminary examination on the severity of civilian atrocities, I use Colombia as a case study. In order to limit the possibility of selection bias, that is, of selecting a country that has only had a single major event for a short period of time, I focus on Colombia because of its ongoing armed conflict, which has lasted over 50 years.

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<sup>6</sup> I also conducted a Matrix of Correlation as an additional robustness check. The results are relevant as they demonstrate that there are no multicollinearity issues, meaning that it does not undermine the statistical significance of a preliminary examination by the Court.

The main actors of the conflict are the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP); the National Liberation Army (ELN); armed paramilitary groups, and the Colombian National Army (International Criminal Court 2018). Colombia has experienced the perpetration of mass atrocities from all the stated parties, particularly in rural provinces, including Antioquia, Cauca, Magdalena, Santander and Norte de Santander (El Tiempo 2018).

The Rome Statute existed when some of these mass atrocities took place, and Colombia ratified the Statute in August 2002, which means that the Court is able to exercise its jurisdiction (International Criminal Court 2018). As a result, in June 2004, the OTP by the Court, led by Prosecutor Moreno-Ocampo decided to open a preliminary examination, using *proprio motu* authority based on Article 13 of the Rome Statute, to examine the situation in Colombia during the armed conflict (International Criminal Court 2018).

[Figure 3] showcases the number of atrocities per 100,000 people from 2004 to 2018 in Colombia. The orange vertical line and first dot in 2004 highlights the opening of the preliminary examination with a record of 62.4 deaths per 100,000 population. Taking into account that the severity of civilian atrocities has been operationalized through a five-year percentage change to see the effect of preliminary examinations, it is noticeable that from 2008 to 2012 there was a decrease of 27.7% in the percentage of civilian atrocities in Colombia. As a result, Colombia serves as a case study to further prove the hypothesized relationship of this study by highlighting that the presence of a preliminary examination significantly decreases the severity of civilian atrocities.

[Figure 3 here]

While the overall trend through 2018 is a decrease in atrocities, [Figure 3] also shows a marked increase in atrocities from 2008 to 2009. This outlier may have been caused by the extradition of the main FARC-EP's leader Gerardo Aguilar, known as "César," in 2009 to the United States, who was captured at the end of 2008 during Operation Jaque, in which the Colombian army also rescued 15 hostages (Presidency of the Republic of Colombia 2009). This action might have given rebels a temporary strong incentive to increase the perpetration of civilian atrocities as revenge, coinciding with Cronin-Furman's argument that stronger incentives to commit atrocities may undermine high-stake international mechanisms.

However, from 2010 onwards, the severity of atrocities continued to decrease yearly at a similar pace as before, which suggests that an effective preliminary examination lays the foundation for the next intervention stages should the Court decide to proceed. A limitation of this analysis is that this foundation along with the commitment signal sent by the Court may lose their significance in lengthy preliminary examinations of 12 or more years as slightly seen in 2017 and 2018. In other words, perpetrators might not see preliminary examinations with the same credibility as before, which creates an opportunity for further research in the literature.<sup>7</sup>

Colombia also serves as an example to further elaborate on the theorized causal mechanism. More specifically, according to the Court's database, the Court (2022) has released more than 30 reports in different languages about the operations and details of the preliminary examination conducted in Colombia from 2004 to 2018. Moreover, these reports specifically named the potential responsible perpetrators should the OTP decide to open a formal

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<sup>7</sup> This research could also control for variables such as Peace Agreements taking into account the case of Colombia in 2016.

investigation (International Criminal Court 2022). On the other hand, from 2004 to 2018, during the preliminary examination by the OTP in Colombia, the Committee on Budget and Finance reported an overwhelming increase of jobs, with a focus on translators and lawyers with knowledge of Spanish, becoming the most expensive preliminary examination in the Court's history, due to its length (International Criminal Court 2021). Here, preliminary examinations by the Court send a credible commitment signal to perpetrators that they are able and willing to take further actions in order to investigate and prosecute responsible parties.

As a result, I suspect that this legitimate signal pressured perpetrators in Colombia, both state actors and non-state actors, to scale back acts of violence in order: (1) to avoid the escalation to a formal investigation, which would have meant the possibility of being incriminated and questioned for the perpetration of atrocities against civilians, such as that of Internationally Displaced People by rebel groups, and the perpetration of atrocities against civilians such as farmers in what are known as false positives;<sup>8</sup> (2) to avoid being tried at the Court in international lands, which would have put their personal freedom at risk, with the threat of longer sentences than the ones established in Colombian jurisdictions; and (3) to protect their legitimacy at the domestic and/or international for political survival in the case of the Government of Colombia, and ideological survival during the armed conflict for the rebels. Because preliminary examinations by the Court put parties of the conflict in Colombia in jeopardy based on the three stated reasons, I suspect that they were more likely to scale back acts of violence against civilians, which ultimately can describe the decrease in the severity of civilian atrocities.

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<sup>8</sup> *False positives* is the name given to the practice committed by the Colombian army in the early 2000s, in which innocent civilians were killed and misrepresented as rebels (positive results) due to the Government's pressure and high remuneration under the campaign "Democratic Security" under Álvaro Uribe Vélez (Acemoğlu et al. 2020).

## **7. Conclusion**

### **7.1 Summary of Findings**

After the creation of temporary international tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993, and the International Criminal Tribunal for Rwanda (ICTR) in 1994, the permanent International Criminal Court came into force in 2002 to enhance accountability and the pursuit of justice. Since then, the literature in international criminal law and international tribunals have collectively analyzed the deterrence effects of the four stages of intervention by the Court, placing them into one category, without analyzing the independent effect of each stage. In this study, I analyze the deterrence effects of solely the first stage of intervention by the Court, that is, preliminary examinations. I argue that preliminary examinations send a credible commitment signal to perpetrators, through the high monetary cost they entail and the detailed reporting of findings, that demonstrate the willingness by the Court to take further and serious actions to investigate and prosecute, which pressures perpetrators to decrease the severity of civilian atrocities to avoid further escalation, a trial, and the loss of their legitimacy.

Using time-series cross-section data for a period of 15 years, from 2004 to 2018, from 46 countries, both with (23) and without (23) preliminary examinations, I test my theory and find that the presence of a preliminary examination is associated with approximately a 15% decrease in the perpetration of civilian atrocities. This effect holds true even after including fixed-effects to account for country and year-specific effects. Further, I reinforce my findings

through the discussion of Colombia as a case study, which justifies and exemplifies the serious signal afforded by preliminary examinations.

## **7.2 Contributions to the Literature and Policy Implications**

The contributions of this study to the international criminal law and international tribunals literature, and to the public policy field are as follows: First, this study demonstrates that preliminary examinations by the Court when analyzed independently are sufficient to decrease the severity of civilian atrocities by approximately 15%. By doing so, the study addresses potential assumptions and inquiries made when the four stages of intervention are analyzed collectively. Second, this study emphasizes the significant potential that initial stages of intervention by international tribunals may have, thus, significantly contributing to the limited literature that exists on preliminary examinations by the Court.

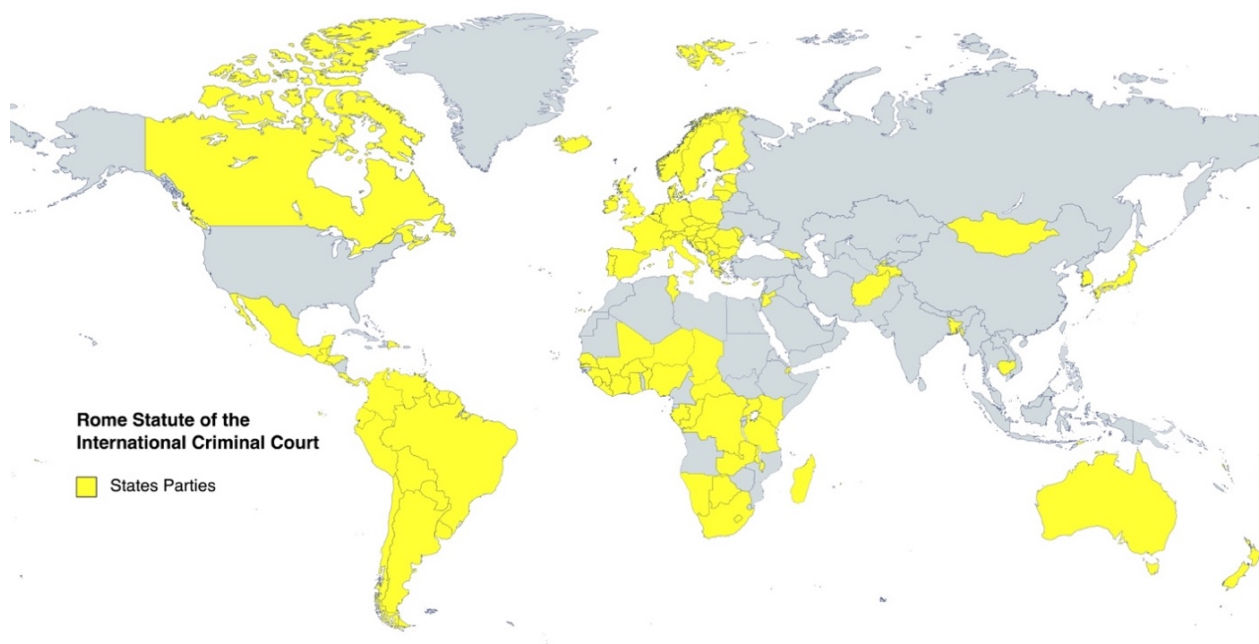
Third, this study addresses the negative views towards the Court and international tribunals, and particularly the cost of preliminary investigations, by highlighting the positive effects that these could have in the pursuit of justice; and can perhaps inform and encourage the established parties, based on Article 13 of the Rome Statute, to make referrals for the opening of preliminary examinations, despite the requisite time and money investment required. Moreover, this study illustrates that the high sums of money spent by the Court in operations such as preliminary examinations are valuable and well spent, which could be used as a motivation factor for state parties to the Rome Statute to contribute to the annual funding of the Court as set forth in Article 115 of the Rome Statute, as well as to justify voluntary contributions and larger funding from international organizations such as the UN.

### **7.3 Limitations and Further Research**

While preliminary examinations are sufficient by their own to decrease the severity of civilian atrocities by approximately 15%, as the empirical evidence conducted through OLS and fixed-effects models have highlighted, this study has three major limitations. First, due to the limited available data on atrocities committed by specific individuals, this study does not distinguish between state and non-state actors when referring to perpetrators. As a result, further research could be conducted to see the differential deterrent effect of preliminary examinations on both state and non-state actors. Second, this study does not control for an active conflict, which is closely linked to perpetration of civilian atrocities, and is therefore a shortcoming of the analysis and an avenue for further research in order to strengthen the results of this study. Third, due to preliminary examinations being under-researched, the operationalization of these only considers the presence or absence of these, and not the level of effectiveness by the OTP in each country, which limits the amount of variation. Other avenues for research also include the opportunity to analyze the effects of preliminary examinations on specific crimes against humanity, such as sexual violence, based on Article 7(1)(g) of the Rome Statute.

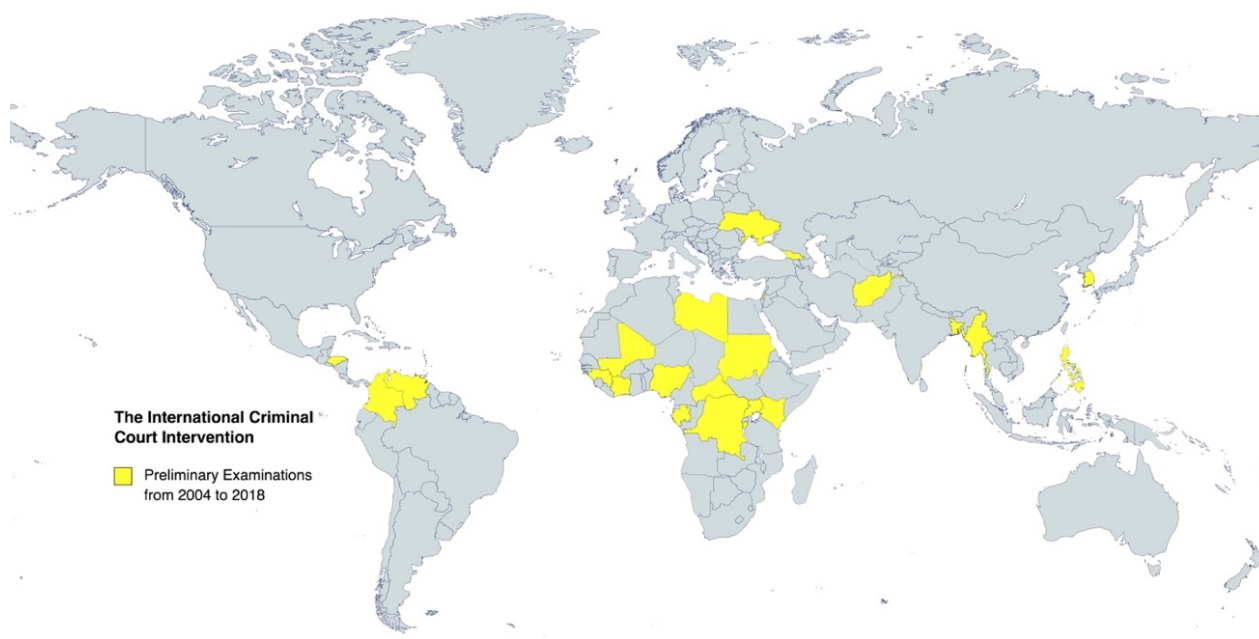
## Tables and Figures

**Figure 1: States Parties to the Rome Statute of the International Criminal Court\***



\*As of April 2022.

**Figure 2: Countries with Preliminary Examinations from 2004 to 2018 \***



\*As of December 31<sup>st</sup>, 2018.

**Table 1: Countries with and without Preliminary Examinations by the Court**

	<b>Country</b>	<b>Presence of a Preliminary Examination?</b>	<b>Length</b>
1.	Afghanistan	Yes	2006 to 2017
2.	Bangladesh	Yes	2018
3.	Burundi	Yes	2015 and 2016
4.	Central African Republic	Yes	2004 to 2006
5.	Colombia	Yes	2004 to 2018
6.	Cote d'Ivoire	Yes	2010
7.	Democratic Republic of Congo	Yes	2014
8.	Gabon	Yes	2016 to 2018
9.	Georgia	Yes	2008 to 2015
10.	Guinea	Yes	2009 to 2018
11.	Honduras	Yes	2010 to 2015
12.	Kenya	Yes	2010
13.	Libya	Yes	2011
14.	Mali	Yes	2012
15.	Myanmar	Yes	2018
16.	Nigeria	Yes	2010 to 2018
17.	Palestine	Yes	2015 to 2017
18.	Philippines	Yes	2018
19.	South Korea	Yes	2010 to 2014
20.	Sudan	Yes	2005
21.	Uganda	Yes	2004
22.	Ukraine	Yes	2014 to 2018
23.	Venezuela	Yes	2018
24.	Bolivia	No	N/A
25.	Botswana	No	N/A

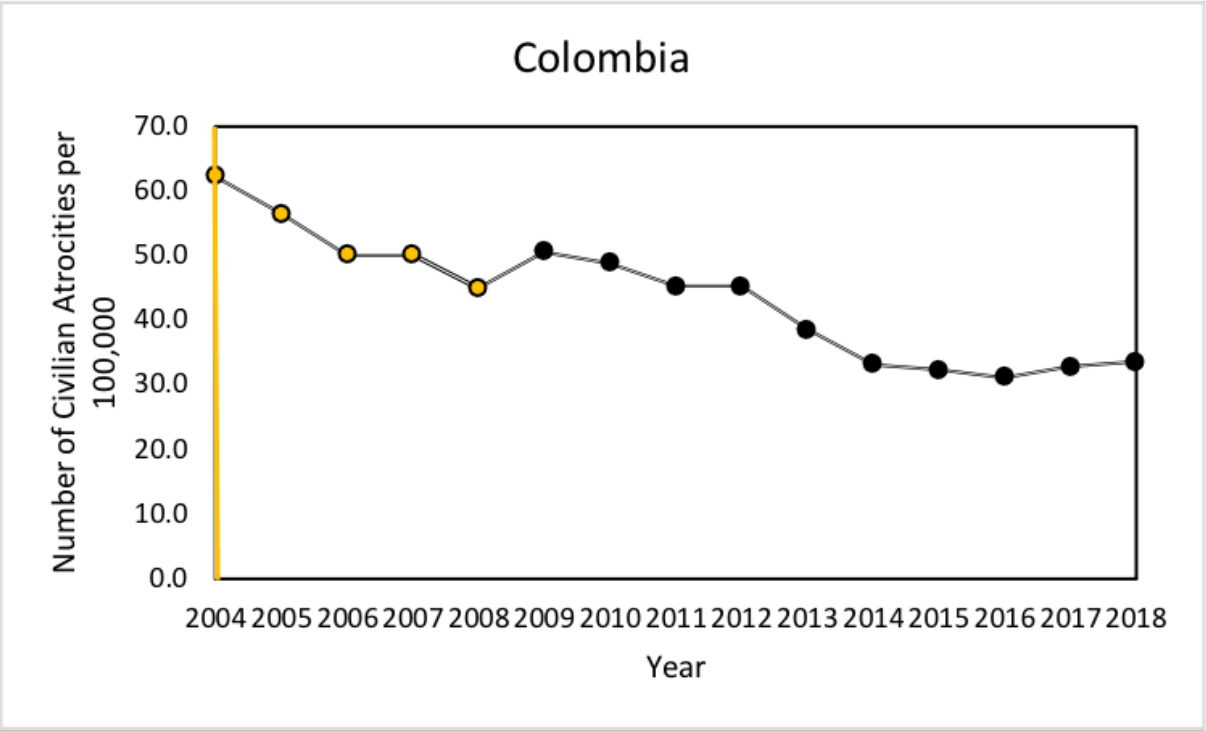
26.	Brazil	No	N/A
27.	Cape Verde	No	N/A
28.	Chad	No	N/A
29.	Costa Rica	No	N/A
30.	Dominican Republic	No	N/A
31.	Ecuador	No	N/A
32.	El Salvador	No	N/A
33.	Eritrea	No	N/A
34.	Ethiopia	No	N/A
35.	Gambia	No	N/A
36.	Guatemala	No	N/A
37.	Lesotho	No	N/A
38.	Mexico	No	N/A
39.	Namibia	No	N/A
40.	Nicaragua	No	N/A
41.	Panama	No	N/A
42.	Paraguay	No	N/A
43.	Seychelles	No	N/A
44.	Somalia	No	N/A
45.	South Africa	No	N/A
46.	Swaziland	No	N/A

**Table 2: Effects of Preliminary Examinations by the Court on the Percentage of Civilian Atrocities**

	<i>Percentage of Civilian Atrocities</i>	
	(1) OLS Model	(2) Fixed-Effects Model
Preliminary Examinations	-15.06** (0.036)	-14.92** (0.037)
Human Rights Organizations	-0.372* (0.080)	-0.367* (0.080)
Participatory Democracy	64.42** (0.048)	62.75* (0.051)
Access to Justice	-24.27 (0.253)	-22.61 (0.283)
Rule of Law	-14.84** (0.049)	-15.32** (0.041)
GDP	1.69** (0.032)	1.71** (0.028)
Africa	5.958 (0.679)	
Asia	13.31 (0.423)	
Europe	14.54 (0.525)	
MENA	34.83** (0.044)	
North America	-1.840 (0.907)	
South America	-15.35 (0.326)	
Constant	-3.682 (0.880)	-2.055 (0.936)
No. of Observations	440	440

*Note:* Numbers in parentheses represent p-values. \* indicates  $p < 0.1$ , \*\* indicates  $p < 0.05$ , and \*\*\* indicates  $p < 0.01$ . The first (1) model is the OLS regression, while the second (2) is the Fixed-Effects.

**Figure 3: Decrease of Civilian Atrocities in Colombia after the Opening of a Preliminary Examination**



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## Appendix: Matrix of Correlation

To further understand the relationship among the IV and control variables, I conducted a matrix of correlation. A value of -1 means a perfectly negative correlation between two variables, while a value of 0 demonstrates no linear correlation between two variables, and a value of 1 means a perfectly positive correlation between two variables. As [Table 3] shows, the results report no significant correlation between a preliminary examination, and the control variables used in this study such as the number of human rights organizations, access to justice, the rule of law, participatory democracy, GDP per capita, and the geographical regions. These findings are paramount as they demonstrate that there are not multicollinearity issues, meaning that it does not undermine the statistical significance of a preliminary examination.

**Table 3: Matrix of Correlation Results**

Variables	(1) Preliminary Examinations	(2) Human Rights Organizations	(3) Participatory Democracy	(4) Access to Justice	(5) Rule of Law	(6) GDP	(7) Africa	(8) Asia	(9) Europe	(10) MENA	(11) North America	(12) South America
(1) Preliminary Examinations	1											
(2) Human Rights Organizations	-0.085	1										
(3) Participatory Democracy	-0.069	0.451	1									
(4) Access to Justice	-0.059	0.095	0.634	1								
(5) Rule of Law	-0.063	0.168	0.661	0.818	1							
(6) GDP	0.021	0.554	0.4	0.168	0.227	1						
(7) Africa	-0.093	-0.307	-0.339	0.061	-0.045	-0.266	1					
(8) Asia	0.076	-0.074	-0.181	-0.196	-0.167	-0.048	-0.302	1				
(9) Europe	0.089	-0.125	0.009	0.074	-0.018	-0.011	-0.146	-0.048	1			
(10) MENA	0.104	-0.15	-0.126	0.017	0.035	-0.095	-0.258	-0.086	-0.041	1		
(11) North America	-0.099	0.089	0.272	-0.091	0.112	0.022	-0.416	-0.138	-0.066	-0.118	1	
(12) South America	0.05	0.397	0.323	-0.027	-0.099	0.333	-0.38	-0.126	-0.061	-0.107	-0.173	1