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Introduction

Conceptualizing human rights issues in Africa

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Africa: understanding contemporary realities

Africa is huge and widely diverse. It is also a very complex place. It is complex because of its turbulent history of colonial exploitation and enslavement, vast ethnic differences, abject poverty, coupled with wars, insecurity, human rights abuses, and the rampant corruption of the post-colonial period. Africa's complexities also represent promises and opportunities in the bountiful natural resources of the continent, its rich cultural diversity, and an energetic population of young people estimated to be the fastest growing in the world. However, Africa confronts significant human security and human development challenges that have inhibited its overall developmental potential. To say the least, state crimes, conventional crimes, and crimes of globalization and endemic corruption make for significant human security and human rights concerns, especially in some segments of the continent. Africa is a large and diverse continent with over one thousand different linguistic and ethnic groups. This diversity is reflected in the variety of religious practices in the continent, including Christianity, Islam, Judaism, Hinduism, and traditional religions/belief systems specific to ethnic groups. Arguably, the peoples of Africa also display the widest difference in physical variation of any continent on the planet.

While this diversity implies a rich social fabric, it has also been the source of major internal tension and contestation, borne out of ethnocentrism, racism, tribalism, classism, and even xenophobia (see King, 2014; Izarali, Masakure, and Shizha, 2017). In varied ways, this has been evidenced in a number of notable instances – the 1995 genocide in Rwanda, the apartheid era of South Africa and southern Africa, and the factions in and eventual collapse of the Somali state. Such tensions have in many instances played out, most regrettably, in the loss of lives in significant numbers. Approximately half a million people died in the Rwandan genocide alone (King, 2014).

In some settings, physical and biological differences make individuals a major target by the poorly informed practices of witchcraft and so-called "local healers," as in the cases of albinos being hacked or kidnapped for their body parts, because these body parts are thought to yield some supernatural benefits. In yet other contexts, racial differences have been the basis of discrimination and human rights

violations, as in the experiences of black Africans under the apartheid regime in South Africa and South Asians in Uganda under Idi Amin. While blacks were excluded from political participation in South Africa because of their race, Idi Amin expelled the Asian population from the country in the 1970s based on racial difference. In short, demographic pluralism in African societies should not be taken to mean cohesiveness.

Beyond this, there are other issues, such as the abuse and treatment of persons with physical and psychological disabilities. Such persons are at times eschewed or neglected because they are construed as possessed or cursed by society. Similarly, persons of different sexual orientations are shunned and face an uphill battle to access public goods, or are at high risk of physical danger when their sexual orientations are uncovered. The wave of political homophobia that has recently swept across the continent has intensified discrimination against people based on their sexual orientation. Issues of refugees and foreign workers also stir up political tension and controversy. In South Africa in recent times, there has been an upsurge in xenophobia with resentment toward foreigners from Zimbabwe and elsewhere on the basis of the perception that they are depriving South African nationals of employment. This trend is not limited to South Africa. In some ways it is understandable and not altogether unusual for any society to be concerned about foreigners or difference, particularly under circumstances of economic stress and competition for limited employment opportunities. In the case of South Africa, the turbulent and oppressive history from which it emerged was such that gaps from decades of under-education amongst a certain segment of the society urged recruiting people from overseas to fill various professions. One example is hiring foreign scholars to work in the universities. However, there are concerns that the state has not done enough to address the inciteful rhetoric and violence arising from growing xenophobia.

In reflecting on the social fabric of the continent, it is significant to consider that Africa has a large youth population. Africa's youth population constituted 19% of the global youth population in 2015, numbering 226 million (UN, 2015). The United Nations defines youth as people aged 15 to 24 years. By 2030, it is predicted that the number of youths in Africa will have increased by 42% (UN, 2015). Africa's population as a whole is very young, with 60% of the entire continent below the age of 25, thus making it the continent with the youngest population in the world (UN, 2015). There is contention among critics and analysts over what this demographic dividend could mean for African nations. Some believe that with effective governance the economy could significantly benefit and develop; others have argued that a large, poorly managed youth population may lead to greater instability and civil conflict (AUC/OECD, 2018). Alongside this is the high level of unemployment among the youth and high level of informal sector employment; simultaneously, Africa is experiencing fast and steady economic growth. Africa's economy grew 4.7% per year between 2000 and 2017, making it the world's second fastest growing region (AUC/OECD, 2018). Yet, despite the continent's strong growth, quality jobs remain scarce and inequality high.

The unemployment rate for sub-Saharan Africa is 6%, coupled with high informal sector employment. When compared to the world average of about 5%, this rate may not seem that high; however, in most African countries youth unemployment occurs at a rate more than twice that of adults. Youth account for 60% of all unemployed Africans. Furthermore, unemployment is significantly higher among women than men, even if women have equivalent or equal skills and experience (AUC/OECD, 2018). Thus, there are major issues of equity, and availability and access to employment. All these have implications for human rights conditions in the continent. Therefore, it is important that appropriate leadership and prudent policies are prioritized, so that the plight of the youth and their futures are well addressed (AUC/OECD, 2018). This is vital when seeking to harness Africa's demographic dividend.

A seemingly forgotten or ignored constituency in African societies are the elderly. As Africa's population grows, so too does the number of older people (Cohen and Menken, 2006). Traditionally, extended families have taken care of elderly family members, but this tradition is now fading. As a result, aging Africans are facing new problems (Cohen and Menken, 2006). The elderly could comprise 4.5% of Africa's population by 2030, and almost 10% by 2050. In some African countries, the proportion of older people will almost match that of industrialized countries by 2030 and 2050 (Nabalamba and Chikoko, 2011).

Elders have tended to play a vital role in African society, including caring for orphaned grandchildren and providing much-needed household income (Nabalamba and Chikoko, 2011; Cohen and Menken, 2006). Yet, in spite of their contribution to the economy and society, many older people in Africa continue to experience deepening poverty, discrimination, violence, abuse, and neglect, and are unable to access entitlements that are theirs by right (Cohen and Menken, 2006). Many older people live in rural areas where there are fewer services. They experience economic exclusion and are often denied employment and access to insurance or credit schemes (Cohen and Menken, 2006). Older people also encounter social exclusion due to age discrimination and changing roles and practices within the family. At the political level, there is a general lack of will to deal with the problems facing the elderly (Cohen and Menken, 2006). Because younger people are more vocal and visible than the elderly, most governments are focusing on different urgent and pressing demographic problems than the aging population – among them, rapid population growth, high youth unemployment, high child and maternal mortality rates, and a growing urban population (Nabalamba and Chikoko, 2011; Cohen and Menken, 2006). There is a need for governments to prioritize issues concerning the elderly in their policy planning through, for example, boosting pension and social protection schemes, targeting health care, and supporting community and family care (Nabalamba and Chikoko, 2011; Cohen and Menken, 2006). The elderly are, after all, full members of the society.

Gender empowerment is another significant issue that demands attention. Africa's growth and development agenda can only succeed if the continent is able to draw on all its resources and expertise. The continent's growth and development

will depend on the full participation of women in economic, social, and political life. While the gender gap remains wide globally, it is even wider in Africa. The situation is complicated by the fact that the cultural and traditional contexts are anchored in beliefs, norms, and practices which breed discrimination against women and feminize poverty. Poverty, discrimination, and lack of opportunity affect women in multiple ways, not just their level of income. Maternal mortality rates continue to be extremely high. Although progress has been made on the education of girls, it still lags behind the education of boys – at all levels. Women disproportionately suffer from violence during armed conflicts as well as from violence in the home. Some also endure female circumcision or “female genital mutilation.” The majority of poor women in Africa live in rural areas. They are Africa’s major agricultural producers and are productively active in trade and the informal economy. However, they continue to have fewer economic rights and lower access to economic opportunities and resources, including land and credit facilities. Furthermore, women are under-represented in many occupations, especially in professions such as science and technology. Women, whether formally employed or not, also shoulder the burden of unpaid activities arising from low levels of access to clean water and energy sources. Hardship, in other words, plays out on the lives of women in very deep and major ways. In sum, Africa continues to face major challenges with far-reaching human rights implication, some of which may not be readily discernable. Some pertain to visible minorities while others pertain to non-visible minorities and marginalized groups.

Certainly, weak institutions and lack of good governance are key issues. Colonialism affected the political, social, and economic history of the African continent in deep ways. The partition of Africa at the Berlin Conference of 1884–1885 led to the establishment of African states as we know them today based on a combination of violent conquests, negotiations among colonial powers, references to geographic features, and a resort to simple geometrical lines. The result was a creation of boundaries that conveniently and forcibly amalgamated various culturally distinct and socio-politically and economically divergent pre-colonial states, while others were divided by arbitrary borders. This undertaking completely disrupted the autonomous development of pre-colonial societies, depriving them of their independence, and subjecting them to the authority of an alien political structure – the colonial state. Some scholars have framed this phase in the imposition of colonial rule as the process by which Africans were denied en masse of their collective rights to political self-determination (Ibhawoh, 2018). This led to the emergence of unequal and discriminatory patterns of relations between various groups and the state, and among the groups themselves. The colonial state also, through its divide and rule approach, institutionalized unequal patterns of relations between members of various groups – between racial and ethnic groups, and between citizens and subjects (Mamdani, 1996). Moreover, the nature of the administration of the colonial state, especially its economic processes, resulted in the creation of new patterns of inequality among the members of various ethno-cultural groups – such as through the unequal distribution of infrastructure, schools, and jobs in colonial administrations. The long-term effects

of this situation have been an intensification of rivalry between ethnic regions that enjoyed advantages through closer contact with Western education, infrastructural and agricultural development, and those that were neglected.

The postcolonial state saw the entrenchment of unequal patterns of power relations. As already noted, Africa is unique in its breadth of diversity. In much of Africa, social and political life revolves around ethnic identities. Despite such diversity, many African states were not vigilant enough to manage the competing demands of the constituent ethnic groups. After achieving independence, many states began to view ethnic diversity as a burden rather than as an opportunity for nation building. This attitude was further consolidated through the adoption of liberal constitutionalism that emphasized individual rights, often at the expense of collective solidarity rights. The postcolonial state essentially perpetuated the inequalities inherited from colonialism. This pattern of state attitude resulted in the continued monopolization of resources and state institutions by a few or particular ethnic groups. This in turn meant the marginalization of certain sections of society by the state machinery, and the spoils of economic developments accentuated the ethnic fragmentation inherited from colonial rule. In consequence, the undertaking of achieving unity, often accompanied by assimilation of ethnic communities within the postcolonial artificial borders, became the task of many states. In many states, this was done at the expense of denigrating the civil, political, linguistic, cultural, and economic rights of the various ethno-linguistic communities. Apart from the need to have political influence in the government, the nature of minority rights issues in Africa are such that minorities need access to resources and to be involved in the socio-economic framework of the state on fair and equitable terms. The lack of good governance explains the spate of minority agitations for a share of political and equitable resource distribution that has resulted in political crises and conflicts in several African states.

In the aggregate, there are large pockets of marginalized populations across the continent whose predicaments are deepened by lack of recognition and inattention to their fundamental rights as members of society. In particular, there has been a blind eye to their human rights. While a considerable amount of work has been done to advance human rights on the continent, not enough attention has been given to the rights of minorities and marginalized groups, and to developing human rights governance. In some sense, it is understandable that these dimensions of society have been neglected because the issues are complex. Minorities and marginalized groups tend to suffer discrimination and exclusion, in part due to the historical and political situations underpinning the contexts, nature, and form of such discrimination and exclusion, which vary from one country or region to another.

Our aim in this volume is to expand perspectives on human rights in Africa by responding to the gap in the literature. We focus attention on the emerging issues of the human rights of minorities, marginalized groups and persons, and human rights governance. We do so by highlighting the level to which universal human rights have been embraced by political establishments in Africa (Corrigan, 2016). We also give attention to the extent to which various minority

and marginalized groups and persons on the continent are denied rights, either through criminalization and persecution, or outright deprivation of such rights, as though those constituents do not matter. Such contexts undermine the moral worth and development of these persons (Corrigan, 2016; Minority Rights Group International, 2016).

While expanding human rights protections cannot be the solution to all social problems, they are fundamental to living a minimally decent and dignified life. They capture the core elements of human dignity and the basis to flourish as human beings – the right to life, liberty, and security of person. As such, human rights principles are invaluable, and their application to different contexts in Africa is worthy of deeper investigation. Those core elements are especially vital to people who continue to suffer discrimination – youth, the elderly, those with albinism and other physical differences, women, and to other variously marginalized groups.

Expanding the perspectives on human rights in Africa

While extant literature has emphasized the importance of contingent factors such as democracy, good governance, the rule of law, and material resources for human rights protection, the focus has tended to be on dominant groups and institutions. As such, it has largely failed to feature the plight of marginalized groups and various ethnic and non-ethnic minorities (Minority Rights Group International, 2016). Minorities – including children, the indigenous, the mentally ill, the disabled, albinos, Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQs), and constituents with issues related to reproductive rights, right to life-saving medicines, etc. – continue to suffer extensive human rights abuses, often under the oversight of the state (Ibhawoh, 2014b).

Although a significant proportion of such violations can be attributed to political instability, there is also a general culture of denial with regards to the rights of minorities, by politicians and the general public. The proliferation of human rights laws and institutions has not addressed these violations. African countries have a good record of signing and ratifying international and regional rights instruments such as the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the Genocide Convention, Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Rome Treaty, the Convention Against Torture, the African Charter on Human and People's Rights, and the African Charter on the Welfare and Rights of the Child. While acceding to these human rights principles makes for good optics, the political will and capacity for enforcement remain weak or are simply absent (see Corrigan, 2016). This situation impels one to ask: Why is this so?

Traditional African cultures and religions are often key factors explaining the persistent violation of the rights of minorities (Minority Rights Group International, 2016). For example, patriarchy is at the root of human rights violations associated

with practices such as widowhood rites, female ritual servitude, male preference, forced feeding, female circumcision or “female genital mutilation,” ritual killing of both children and adults, child marriages, violence against women and children, and wife inheritance (Ibhawoh, 2000; Minority Rights Group International, 2016). As well, many indigenous groups across Africa suffer from forced eviction from their lands; arbitrary arrests; torture and extra-judicial killings; confiscation of their livestock; and denial of access to lands, sacred sites, and other natural resources (Minority Rights Group International, 2016). While homosexuality is practiced across Africa (see Njeck and Epprecht, 2013), until recently there has been a rhetoric that homosexuality is “un-African” and this view has fueled the rise of political homophobia across the continent. This denial, however, underpins the persecution of men and women due to their sexual practices and identities (Njeck and Epprecht, 2013; Epprecht, 2012; Cheney, 2012; Tamale, 2014; Ilkkarcan, 2015).

Similarly, minority rights are highly controversial in Africa. For indigenous people, certain ethnic groups, the disabled or differently able, the mentally ill, or people of different sexual orientation (MSM [men who have sex with men], WSW [women who have sex with women], and LGBTQ [lesbian, gay, bisexual, transgender, queer]), risk is inherent in pursuing one's full range of human rights from financial costs, stigma, negative political reaction and possibly exile, and injury and/or death. If national human rights systems are unable to provide protection, what about the emerging regional human rights protection mechanisms such as the African Commission on Human and Peoples' Rights, and the African Court on Human and Peoples' Rights? In the absence of state measures that ensure the empowerment of minority groups (i.e., employment, education, and trust of institutions of governance), the prospect of attaining rights in a distant continental court or commission may not be apparent and feasible in practice. Such realities may undermine human development of particular groups of people who endure structural and cultural silencing, criminalization, and persecution for difference from the mainstream or the dominant class in society.

Constitutional human rights guarantees have not always provided the required safeguards against abuse. In recent years, several African countries have adopted new constitutions leading to what has been characterized as a “constitutionalism revival.” From 2000 to 2010 alone, at least ten countries have adopted new constitutions.¹ It may be asked: To what extent does this help to promote and protect the rights of non-dominant groups? Indeed, much of the human rights debate in Africa has been concerned with the legal, philosophical, and mainstream issues that are politically attractive and uncontroversial. This volume endeavours to shift the debate from the mainstream to those who are marginal in society. The volume seeks to re-conceptualize the human rights discourse from the standpoint of minorities and the marginalized in Africa, who suffer daily from the actions of mainstream politicians and ordinary citizens. By insisting on a holistic view that human rights are as much about economic, social and cultural rights, and civil and political rights as they are about the rights of minorities and the marginalized, our focus on minorities and the marginalized avoids the current pitfalls of human rights books that tend

to focus on the mainstream groups. Mainstreaming of minorities in both the debate and the enforcement of human rights is vital for the peace and stability of the region, and is thus the backbone of the democratic transformation sweeping across Africa. We believe, and hope, it will help to curb the cycle of discrimination and marginalization of different minorities and marginalized groups. More recently, Africa's civil society and think tanks have stressed the urgent need to consider the link between human rights and governance, as attention shifted from the Millennium Development Goals (MDGs) to the Sustainable Development Goals (SDGs) (Africa Civil Society Circle, 2015). A commitment by countries to embed human rights and good governance in the SDGs framework is important to advancing the rights of those who currently lack a voice (Africa Civil Society Circle, 2015). This volume addresses core issues relevant to SDGs as well. It also addresses the role of state human rights institutions, and the African Court on Human and Peoples Rights.

This book, therefore, provides new insights and perspectives on the rights of marginalized and minority groups in different parts of Africa, and on the extent to which they are denied entitlement to the universality and equality articulated in international and local human rights law. It lays bare the ways in which human rights, while having come of age as a moral ideal, have not been fully entrenched in practice in the times in which we live.

Why a human rights focus?

We approach human rights as rights we have, essentially because we are humans (Orend, 2002). They are a special class of moral rights that carry a high level of significance (Orend, 2002; Shue, 1980; Gewirth, 1973, 1982). Broadly speaking, the focus of human rights is to safeguard certain core elements of human dignity (Howard-Hassmann, 2010; Izarali, 2016; Orend, 2002). As Brian Orend (2002) notes, from the moral lens it is a matter of treating each person a certain way because each person has rights by virtue of being human; human rights therefore articulate a universality of core values about human beings. These rights are outlined in the United Nations Universal Declaration of Human Rights (UDHR) of 1948 and its associated international covenants. Their normative relevance and the yearning for them can be found across cultures, as variously extolled in religious traditions, poetry, and plain human suffering (Ibhawoh, 2000). Philosophers, sages, religious teachers, and lay persons alike throughout societies have envisioned or advanced notions of living well and being able to live a life where one's dignity and moral worth are respected and safeguarded. In this regard, rights have relational value (Ozar, 1986). Rights can be used to make certain normative demands in relation to other things, such as the right to be free of torture or the right to vote. Rights in this sense have correlative duties with other rights.

(a) Human rights are claim-rights

Human rights are claim-rights. Jurist Wesley Hohfeld (1978, orig. 1919) distinguishes among four classes of rights – liberties, powers, immunities, and claims.

Unlike the other classes of rights, claim-rights entail correlative duties on others. That is, another party or parties have duties toward one's claim-rights. Claim-rights are therefore rights to make certain demands of others. Human rights have correlative duties foremost on the state. In democratic societies, the state is reposed with a certain degree of authority by civil society to oversee security and stability, so that people are not harmed and so that there may be a social environment hospitable to pursuing lives with dignity and equal opportunity. The state takes on the larger role as guardian of its citizens and, as such, has authority and obligation to act in certain ways in the use of force and in the maintenance of security that individual citizens generally do not (Howard-Hassmann, 2012). Put simply, the state at face value has a lot of power, and instruments and institutions of power (Hafner-Burton, 2014). Thus, the state also needs to be kept in check; otherwise, the misuse of such instruments and institutions of power and control could result in severe adversity for its citizens. Many African societies have already painstakingly endured such situations with the multitude of coups and mistreatment over the past several decades, and from the criminal apparatus into which some leaders transformed their respective states.

(b) Positive and negative rights

Our approach to expanding the discourse on human rights in Africa recognizes the conceptual and practical distinction between negative rights and positive rights. The former does not require any active effort by others for one's right to be exercised, whereas the latter requires active effort and/or resources from others before one's right can be exercised. Positive rights include the right to socially provided education, social assistance for those in need, and public health care. Some proponents who only consider negative rights as real rights advance a libertarian ideal. They tend not to consider positive rights as rights at all (see Jan Narveson, 1988; Maurice Cranston, 1962; Robert Nozick, 1974). Others consider positive rights as vital to enjoying one's negative rights (see Jack Donnelly, 2002; Brian Orend, 2002; and Rhoda Howard-Hassmann, 2010). The idea is that if one slips below a certain threshold in meeting one's basic needs or that of one's family; or lacks the means to develop as a normal human being with basic education and cognitive skills; and if one does not have alternatives or support mechanisms; then one's ability to live a life of dignity and exercise one's human rights is jeopardized. Thus, if the state has the means to provide such support, then the state is obliged. An individual's positive rights impose positive duties on the state. In effect, positive human rights require the state to furnish the resources to facilitate the exercise or enjoyment of such rights for its citizens through the provision of certain social goods.

This tension underpins the classification of human rights at the UN in terms of "first generation" and "second generation" rights. The former is representative of civil and political rights, and the latter representative of economic, social and cultural rights. Certainly, the Cold War era was premised on this demarcation. The emergence of the two international covenants at the UN – the International

Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights – subsequent to the UDHR in the UN's effort to produce something that is legally binding upon signatory states (since the UDHR is not legally binding) is itself a product of that tension. The UDHR and these two international covenants comprise what is termed the International Bill of Rights (Orend, 2002; Howard-Hassmann, 2010, 2012).

We recognize, however, that the UN generations of rights framework has been criticized for prioritizing civil and political rights over economic and social rights or collective solidarity rights (Orend, 2002; Howard-Hassmann, 2010). Shaped by Enlightenment notions of liberal individualism, the twentieth-century crises of nationalism in Europe, and post-war Great Powers politics, international human rights as they emerged at the UN came to mean, primarily, individual-centered civil and political entitlements. However, this ordering of rights was always contested – by socialist arguments for the primacy of economic and social rights, and by anti-colonial activists in the colonized world who consistently prioritized the collective solidarity right to self-determination over all other rights.

(c) Human rights vs. natural rights

The distinction between negative and positive rights has been defined by ongoing controversy. However, the term “human” in human rights also reflects the evolution from controversy. Much before the UDHR, the discussion had previously centered on natural rights stemming from the natural rights tradition, but the term “natural rights” fueled a controversy about what it actually encompasses. Not surprisingly, some argued that it essentially extends to non-human lives. Others took issue with whether such putative rights to humans can be regarded as natural. That is, they questioned the merit of the claim that we are born with such rights. The utilitarian thinker Jeremy Bentham (1987) was a fierce critic of the idea that such rights are innate; he argued that they are not innate but, rather, it was the case that humans have decided to treat them as innate simply because we regard them as vital.

This controversy led to a transition from conceptualizing these rights as natural rights to conceptualizing them as human rights. The objective was to identify the exclusivity of such rights to human beings and not any other species. Human beings, after all, are said to be distinguished from other species on the basis of possessing reason. As a result, we get the notion that human rights are specific to human beings solely because they are human. Such rights carry significant weight because of their importance to a life of dignity and the preservation of one's moral worth; they are considered vital and prior to all other rights, and as a prerequisite for human agency or action (Gewirth 1973, 1982).

(d) Cross-culturality

Scholars like Amartya Sen and Charles Taylor claim that normative cross-cultural underpinnings of human rights are evident in non-Western ethical traditions

(Izarali, 2016; Sen, 2005; Taylor, 1999). In addressing those who see Africa and other societies as lacking human rights heritage, Bonny Ibhawoh (2001, p.57) states:

Human rights are the heritage of all mankind and the concept of human rights has been developed, struggled for and won by different people in different historical political, social and cultural contexts. There is hardly any basis or need for the rather sweeping assertions that traditional Africa, or indeed any pre-modern society for that matter, has made no normative contribution to the contemporary human rights corpus.

His point is that many of the elements of human rights depict what people in every society throughout time tend to aspire to or seek in their quest for a life of dignity and wellbeing, notwithstanding the varied structures or form their respective societies take. The contributions in this volume are premised implicitly on the assumption that although cultures and societies may vary, there are certain underlying core moral elements founded on human dignity that characterize them.

Therefore, it need hardly be said that human rights instruments may be viewed on one level as capturing certain underlying principles relevant to the human society – principles that are manifest in different ways amongst the different cultural traditions of the world. Of course, there are cultural differences across the human society as well. At a practical level, it is about imposing particular duties on the state to facilitate and safeguard certain rights such that individuals may have the basis to go about their lives safely and autonomously, in an environment that is free from arbitrary abuse by the state (Izarali, 2016; Howard-Hassmann, 2012; Shue, 1980). It also implies having recourse to address harms that inhibit one from living a life of dignity – harms particularly carried out by organs of the state. It is vital to have recourse through a competent and fair administration of justice where one is viewed as having equal moral standing before the law. Although the issue of human rights (especially positive human rights) have been contentiously debated (see Cranston, 1962; Howard-Hassmann, 2010; Orend, 2002; Shue, 1980; Narveson, 1988), human rights are a milestone achievement; they are vital for a life of liberty, dignity, and prosperity when implemented, protected, and enforced.

Human rights protections operate on three levels: international, regional, and national. While the International Bill of Rights represents the core of international human rights protection, national constitutions and bill of rights guarantee protection at national level. In between international and national protections are the regional protection mechanisms. There have been significant developments in the regional legal and policy framework for human rights protection in Africa within the past three decades. Regional human rights instruments now include the African Charter on Human and Peoples' Rights (also known as the Banjul Charter that the Organization of African Unity adopted in 1981), the Protocol to the African Charter on the Rights of Women, and the African Charter on the Rights and Welfare of the Child. There is also the African Court on Human and Peoples' Rights, which came into force on 25 January 2004, and has been ratified

by thirty states as of 2016. Human rights are also featured in the constitutional law of states, which is essential because it is at this level that human rights actually operate. These regional instruments have, in some cases, served to complement national legal and constitutional human rights protections. It is significant that human rights can also operate at sub-national levels, as in the case of Canada where there are provincial frameworks of human rights.

International human rights are often framed as universal, inalienable, and inter-related. In reality, however, states and societies prioritize certain rights over others. In some cases, certain rights are not even recognized or enforced. There may be certain slant toward a particular cultural bias or orientation in facilitating and enforcing such rights, despite the stipulation outlined in Article 2 of the UDHR that every person is entitled to the rights and freedoms of the UDHR irrespective of one's race, colour, sex, language, religion, political opinion, national or social origin, birth, or status. Such a slant is evident in some national frameworks where people of certain sexual orientation are criminalized or excluded, or who are precluded from access to a certain public resource because of their status or other factors (Ibhawoh, 2014a; Epprecht, 2012; Cheney, 2012). Similar situations apply to women, refugee groups, ethnic minorities, and children born outside wedlock in some parts of the world (Ibhawoh, 2014b; Murray and Wheatley, 2003; Durgaye and Murungi, 2014). In such situations, dominant cultural or governing players marginalize and oppress those who do not fall within their line of acceptance. It is in recognition of such situations in Africa that the present project focuses on expanding the perspectives of human rights on the continent. It is founded on the premise that one's full development as a human person is undermined when one's core elements to a life of dignity are deprived or violated.

Existing literature

It is necessary to locate the present volume within the growing landscape of scholarship on human rights in Africa, particularly in relation to some recent contributions by others who have similarly sought to navigate through specific issues and constituents that have been ignored or not given sufficient attention in scholarship. Mulugeta Gebrehiwot Berghe's (2014) edited collection *A Delicate Balance: Land Use, Minority Rights and Social Stability in the Horn of Africa*, produced through the Institute for Peace and Security Studies by Addis Ababa University, focuses on the rights and livelihoods of pastoralists in the Horn of Africa; it also focuses on the threats from climate change, land degradation, conflicts, invasive species, and the extent to which investments in local livelihoods will transform pastoral livelihoods. The book considers the ways in which investments in agriculture will play out on socio-political and cultural rights of pastoralist communities, and on conflict issues in pastoral areas. Ashley Currier's (2012) *Out in Africa: LGBT Organizing in Namibia and South Africa* uses the lens of social movement theory to examine "how, when, and why" LGBT rights movements in post-apartheid South Africa and Namibia cultivate intentional public visibility or invisibility as strategies to achieve LGBT equality. Marc Epprecht's (2013) *Sexuality and Social Justice in Africa* specifically focuses on the history of homosexuality and

the current LGBT and HIV/AIDS activism in Africa. It not only considers the issues of the persecution of people in Africa on the basis of their assumed or perceived homosexual orientation, but also provides a detailed analysis of the historical factors and external influences that are contributing to the problem of discrimination against sexual minorities. Epprecht thus offers grounds for optimism in the struggle for sexual rights and justice in Africa, for sexual minorities and the population at large. Lucie E. White and Jeremy Perelman's (2010) *Stones of Hope: How African Activists Reclaim Human Rights to Challenge Global Poverty* is a collection that provides detailed pragmatic advocacy for economic and social rights in Africa. It documents grassroots activists' struggles for land, housing, and healthcare, while linking these struggles to broader theories of human rights advocacy. Moreover, it offers case studies in which human rights non-governmental organizations (NGOs) in Nigeria, South Africa, and Ghana successfully fought for human rights and social justice. A recent addition to the literature is Bonny Ibhawoh's *Human Rights in Africa*, which offers a broad interpretative history of human rights in Africa (Ibhawoh, 2018).

These and other recent studies have made commendable efforts to address human rights in Africa. The issues they focus on, however, are understandably selective and, in effect, not fully or adequately encompassing of the category and scope of human rights issues taken up in this volume. They do, however, support the value and relevance of the volume we have produced.

Organization of the book

This book is organized into four sections. Section 1 is titled "Africa and universal human rights," section 2 "Human rights and governance," section 3 "Disability rights," and section 4 "Women's rights."

Several chapters in this volume address the gap between state human rights laws and institutions on the one hand and actual human rights conditions on the other. As Bonny Ibhawoh's chapter on human rights and truth commissions, and Oliver Masakure's chapter on minority rights show, it is not enough for states to sign human rights treaties and establish human rights institutions. Human rights conditions in Africa will improve only when human rights treaties are translated into policy and action, and when human rights institutions are empowered to fulfil their mandates of human rights protection. The enactments of human rights legislation, the establishment of national human rights institutions, and the adoption of international norms do not in themselves convey a commitment to these principles by governments. We cannot equate the creation of human rights institutions, in and of themselves, with greater respect for human rights.

Joannes Paulus Yimbesalu and David Zakus examine the sustainable development goals from a human rights perspective. Focusing on Africa, they detail existing socioeconomic inequalities and emphasize the role of youth in both SDG development and implementation. They emphasize the need for reliable data and state intervention in the health and education sectors that are cognizant of the social factors that limit people's access to health and education. Thomas Rose addresses the criticism of the African Union's decision to establish the African

Criminal Court as a cynical exercise to shield the violators of international crimes and to undermine the International Criminal Court (ICC) and international law. He points out that although several obstacles exist that have to be addressed, the proposed African Court of Justice and Human and Peoples' Rights, given the proper support, could become a useful complement to the ICC and contribute to the advancement of international law; rights can also strengthen Africa's human rights regime and by extending rights to all Africans.

In keeping with the book's focus on marginalized groups who are often left out in both academic and policy human rights debates, several chapters address issues of discrimination against marginalized communities. Olabanji Akinola's chapter focuses on social protection for the elderly in Nigeria, while Lamine Diallo and Ousmane Aly Diallo examine youths and their role in the struggles for civil and political rights in Africa. The chapters by Jeff Grischow and Sylvester Amara Lamin explore the rights of persons with disabilities; Jean Burke draws attention to the often-neglected topic of discrimination and violence against persons with albinism, while Consoler Teboh analyzes the human rights implications of mental health inequities. What is common to all these chapters is that they highlight the continuing struggles of these marginalized groups within societies where their rights have often taken a back seat in discussions about human rights protections, political inclusion, and socio-economic empowerment. Jean Burke's chapter is particularly instructive of the plight of these marginalized groups. Drawing on media analysis, she shows in detail, the negative depictions of people with albinism and the systemic human rights abuses that they encounter in Tanzania.

Olabanji Akinola makes a similar point in his argument that although governments have recently made efforts to provide social protection programs for the elderly in Nigeria, these programs are not based on human rights approaches, leaving the vast majority of elderly persons impoverished and neglected. Similarly, Grischow shows that although disabled activists have successfully struggled for the inclusion of disability rights in human rights legislation, the neoliberal context of the rights-based model at the core of the UN Convention on the Rights of Persons with Disabilities limits the potential for social development and social emancipation. This gap between human rights promise and reality is also reflected in the chapter by Diallo and Diallo that explores the struggles of African youth for political inclusion, democracy, and good governance.

Although women's rights have been at the forefront of academic and policy discussions about human rights in Africa, these discussions have not translated into significant improvement in women's rights conditions in the continent. Several chapters in this volume take up the issue of women's rights from diverse perspectives. Paul Ocheje's chapter on the tension between law and patriarchal cultural norms on questions of women's land rights offers some hope that law and the efforts of activist political forces can engender social changes towards protecting women's land rights. Andrea Brown's chapter also strikes a hopeful note in her examination of the intersection of women's rights and food security in urban Uganda from a rights-based governance perspective. She argues that with a proper understanding of urban food systems, rights governance has the potential

to address some of the challenges of both food security and gender. Ramola Ramtohol's chapter examines women's sexual and reproductive rights in contemporary Africa. She argues that despite many African countries having ratified international and regional conventions and treaties that are intended to safeguard the rights of women in the continent, there is little sign of progress. She attributes this lack of progress to, among other things, poverty, cultural perception, child marriage, and fertility control. She argues, furthermore, that the unwillingness of governments to confront patriarchal and cultural norms in relation to sexual and reproductive rights of women in the continent is a major contributing factor.

In sum, this volume has examined a number of deep and urgent issues of human rights of marginalized groups and persons across Africa. Raymond Izarali's chapter concludes the volume by emphasizing the value of human rights in the era of globalization, and why it is vital that there be an inclusive approach to human rights protection. He points out that globalization raises both challenges and opportunities, and while human rights respect and protection will not fix all problems in society, they will serve well to mitigate the harms of globalization and empower people with the basis to live a life of dignity and human flourishing. But this, he contends, requires an approach where everyone's human rights are respected and protected, and thus safeguarded from cultural stigma, state breaches and nepotism of policy makers.

It is our hope that the human rights issues examined in this volume and the suggestions offered in the respective chapters will bear fruit for the lives of the variously marginalized groups and persons across Africa, so they can live a life of dignity and be able to flourish. We hope we have given voice to the suffering endured by those who lack the means or reach to do so on their own. We hope, too, that others who are capable of doing so will continue this undertaking by developing the research further and deeper, to produce a wider, and even better, account of the human rights plight of those who are marginalized in the continent – one that resonates with Nelson Mandela's vision of an Africa that is seen first for its humanity.

Note

- 1 These include: Côte d'Ivoire (2000), Comoros (2001), Congo (2002), Rwanda (2003), Somalia (Transitional Charter 2004), Burundi (2004), Mozambique (2004), Sudan (2005), Swaziland (2006), Democratic Republic of Congo (2006), and Kenya (2010).

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