

# 1 Human rights and the politics of regime legitimation in Africa

## From rights commissions to truth commissions

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### Introduction

Human rights have become the new political ideology. In the post-Cold War world, human rights have become the most powerful creed for political legitimation. Along with rhetorical assertions of the state's commitment to human rights principles, the establishment of national human rights institutions (NHRI) and truth commissions have become the means by which governments seek to legitimize power and gain credibility at home and abroad. Even the most repressive regimes learn quickly that by publicly pledging commitment to human rights and establishing human rights institutions, they can gain some validation within the international community. The proliferation of national human rights institutions across Africa in the 1990s started a trend in statist appropriation of human rights discourse for political legitimation and has continued with the spread of truth commissions.

Despite their popularity across the continent, national human rights commissions that were created to promote human rights, have not lived up to their mandates of protecting the rights of citizens or holding governments accountable for abuses. Similarly, truth commissions that were created to investigate human rights violations, bring justice to victims, and foster national reconciliation in the aftermath of conflict, have not always been effective mechanisms for human rights accountability, victim-centered justice, or national reconciliation. It raises the question of why, despite their limitations, these institutions have proliferated across the continent.

In this chapter, I argue that the proliferation of national human rights commissions and truth commissions represents an emerging global trend in statist appropriation of human rights discourse for regime legitimation. Just as governments in Africa and elsewhere strategically used Cold-War ideological alliance with Western and Eastern bloc powers as an instrumental basis to legitimize political power, so too have human rights become a means of asserting political legitimacy in an uncertain unipolar world. African ruling elites that are jostling for power have learned that old ideologies of Marxism, socialism, and liberal capitalism no longer confer political legitimacy. Instead, the language of human rights now provides the most effective means of rallying domestic support and gaining international acceptance.

Paradoxically, the language of human rights has also proved to be an effective means of challenging the legitimacy of rulers and governments. In the post-Cold War world, the most effective way to undermine political opponents is to accuse them of being human rights violators, as opposed to labeling them as communist autocrats or capitalist oppressors. Autocrats and dictators justify the overthrow of elected governments and the usurpation of political power with hollow pledges of human rights reforms. Authoritarian regimes strategically profess commitment to human rights even as they resist calls for political liberalization and hold on to power through repressive policies. For some ruling elites in Africa as elsewhere, the appeal of human rights has more to do with political legitimation than civil liberties or socio-economic empowerment. The seeming ascendancy of human rights talk in the corridors of power in Africa therefore calls for critical assessment.

### **Legitimizing power through human rights talk**

After his election as president of Liberia in 1997 following a brutal civil war, one of the first announcements made by the former factional warlord Charles Taylor was that he would establish a national human rights commission. The protection of human rights, Taylor proclaimed, would be the guiding principle of his government and would mark a break from the atrocities and abuses of the past. Taylor's pledge to uphold human rights came amidst domestic opposition to his government and international pressure for accountability for his own war crimes. Taylor's government functioned without accountability and exacerbated the divisions and resentments fueled by the war. His security agents allegedly engaged in threats, intimidation, arbitrary arrests, and political assignments (Onwumehili, 1998, p. 29). State power was regularly misused to further parochial political objectives, to avoid accountability, and for personal enrichment. State institutions that could have provided an independent check on the Taylor administration – such as the judiciary, the legislature, and the human rights commission – were harassed and intimidated. Independent voices in the media and the human rights community were steadily silenced (Amnesty International, 2012).

The Human Rights Commission Taylor's government established with great fanfare was placed under tight government control. Although it comprised representatives from non-governmental organizations, groups that had spoken out against the abuses by Taylor's forces were excluded (Armstrong, 2006, p. 187). The Commission suffered from a lack of qualified personnel, inadequate funding, and a flawed mandate (Human Rights Watch, 2002). It was clearly evident that Taylor was no human rights champion. Taylor and his ministers accused human rights groups of promoting publicity that was detrimental to the economy. The government also accused human rights groups of publicizing human rights abuses that resulted in the withholding of international financial aid. Non-governmental organization personnel faced constant intimidation by security forces (Armstrong, 2006, p. 187).

Throughout Taylor's six-year rule, the Human Rights Commission was largely ineffective, paralyzed by the government through its flawed legislation, inadequate

funding, and political pressure. One nominated human rights commissioner fled the country, stating that he feared for his life after his detention and beating by the police (Human Rights Watch, 1999). Despite its deplorable human rights record, Taylor's government, in its desperation for domestic acceptance and international legitimacy, touted its commitment to human rights, holding up as evidence, the establishment of a national human rights commission. Taylor would be ultimately deposed, tried, and convicted by an international court for what the presiding Judge described as "some of the most heinous and brutal crimes recorded in human history" (Jalloh and Meisenberg 2012, p. 4060).

The establishment of national human rights commissions in several African countries was driven by similar political considerations. The governments of President Daniel arap Moi in Kenya, General Sani Abacha in Nigeria, Paul Biya in Cameroon, and Gnassingbe Eyadema in Togo, all created human rights institutions at moments of national political crisis with the principal aim of deflecting criticism of their human rights record. None of the human rights institutions established by these governments seriously addressed politically charged human rights issues (Nowrojee, 2001, p. 26). In Morocco, Tunisia, and Algeria, the main impetus for the establishment of human rights institutions in the 1990s were internal developments linked to the growing strength of Islamist political activity. In the wake of government crackdowns against Islamist opposition movements, international criticism of state repression, and widespread human rights abuses, institutions were created to show a commitment to democracy and human rights even as state repression persisted (Murray, 2007, p. 14).

From these examples, one can delineate a pattern in the use of human rights talk for regime legitimation. Amidst growing public awareness of universal human rights, and demands by citizens that these rights be protected, repressive regimes in Africa as elsewhere have sought to legitimize their rule by paying lip service to human rights. From Liberia's Charles Taylor to Cameroon's Paul Biya, the dubious invocations of human rights by authoritarian African rulers reflect an emerging trend in the instrumentalization of human rights to legitimize their governments and consolidate political power. This trend which began with the proliferation of national human rights institutions in the 1990s has expanded with the establishment of truth and reconciliation commissions (TRCs) with mandates to investigate human rights abuses and foster national reconciliation in the aftermath of conflict.

National truth commissions that have proliferated in the continent since the creation of the South African TRC have also served as instruments of political legitimacy for ruling regimes. Beyond their mandates of truth-finding and national reconciliation, governments have deployed truth commissions to serve partisan political agendas. Truth commissions established by newly elected governments in Nigeria, Ghana, and Kenya as part of democratic transition programs or post-conflict peacebuilding processes have been criticized for targeting political opponents rather than objectively investigating human rights abuses or fostering national healing (Asare, 2018; Perry and Sayndee, 2015; Lynch, 2018; Slye, 2018). In Ghana for example, the creation of the National Reconciliation

Commission was part of the competition between the ruling New Patriotic Party (NPP) and the previous government of the National Democratic Congress (NDC) (Asare, 2018, p. 37). In Nigeria, the government of Olusegun Obasanjo which established a truth commission with great fanfare in 1999, abruptly annulled the commission and suppressed its report which indicted the military and influential politicians in the government for human rights abuses. The growing popularity of truth commissions may be attributed as much to their utility as instruments for political legitimation than as to their value as mechanisms for human rights accountability and post-conflict peacebuilding.

### National human rights commissions

The end of the Cold War raised questions about the viability of the international state system plunging the world into crises of sovereignty and statehood. The crisis of statehood was most keenly felt in Africa. Despite attempts at democratization, this crisis was evident in weakened and fragile states, corrupt and dictatorial elites, disruptive militaries, ethnic tensions, and economic decline. The collapse of the Soviet Union and several other formerly communist European states foreshadowed similar state collapse in Africa including in Sierra Leone, Liberia, Somalia, and Rwanda (Mutua, 1995). Coinciding with the end of the Cold War, the 1990s also was a period of proliferation of national human rights institutions across Africa. Between 1989 and 2000, the number of national human rights commissions grew significantly across the continent, from one to twenty-four (Nowrojee, 2001, p. 1). The trend was nurtured partly by financial and technical support from donor governments and the United Nations (UN) who viewed the establishment of these institutions as advancing global human rights promotion and protection. The UN and its agencies, particularly the United Nations Development Programme (UNDP) and the Office of the High Commissioner for Human Rights, and the African Commission on Human Rights made national human rights institutions a major policy priority. Many donor governments also actively championed and funded the creation of these institutions across Africa in the hope they would become independent bodies for human rights protection.

The key policy framework for national human rights institutions is the Paris Principles, a set of internationally recognized principles concerning the status, powers and functioning of national human rights institutions that were endorsed by the UN Commission on Human Rights in 1992 and the UN General Assembly in 1993 (OHCHR, 2013). Since its adoption, the Paris Principles have become the standard applicable to national institutions with a mandate to promote and protect human rights (de Beco and Murray, 2014, p. 7). It sets out the basic guidelines for the establishment of national human rights institutions, defined as a “government body established under the constitution or by law to promote and protect human rights.” The Paris Principles advance the importance of a broad mandate on human rights protection, a constitutional or legislative founding statute, an independent appointments procedure, and adequate funding (OHCHR, 1993). Few African national human rights institutions meet these standards.

Some commentators have interpreted the proliferation of national human rights institutions as a sign that African governments, including some of the most repressive, are becoming more accepting of the international human rights discourse and an acknowledgment that human rights protection should be a part of government’s portfolio (Nowrojee, 2001, p. 2). This interpretation may indeed be true. However, the proliferation of national human rights institutions in Africa and elsewhere in the world can also be explained in terms of the end of the Cold War, the collapse of Western and Eastern bloc political alliances, and the demise of doctrinaire political ideologies. It is not a coincidence that human rights institutions became popular in the immediate post-Cold War era. In a post-Cold War world where governments could no longer latch on to international geo-political ideological alliances to legitimize their rule, human rights became the new and preferred ideology for legitimizing power.

Such was the appeal of human rights as the new ideology for political legitimation that by 2000, Africa was host to the largest number of government human rights commissions of any continent. Yet, the continent’s human rights record stood in stark contrast with the wave of renewed rhetorical and institutional commitment to human rights by governments. Even as national human rights institutions proliferated in the 1990s, much of the continent remained characterized by authoritarian and repressive regimes, widespread human rights violations, economic crises, insecurity, and conflict. Although statist discourses of human rights had become popular, they did not translate into improvement in actual human rights conditions.

A study of African national human right institutions by Human Rights Watch found that these institutions have made limited contribution toward the protection of human rights in their respective countries (Nowrojee, 2001). It found evidence to indicate that the flawed mandates and the composition and operation of these institutions limited their capacity to have a significant impact on human rights protection. The study concluded that although a few national human rights institutions such as those of Ghana, Senegal, and South Africa have been progressive and partly effective, most national human rights institutions have been “a disappointment.” According to the study:

Many have been formed by governments with dismal human rights records, weak state institutions, and no history of autonomous state bodies. Some appear largely designed to *deflect international criticism of serious human rights abuses*. They have been formed with flawed mandates and weak powers that limit their ability to effectively investigate, monitor, or make public statements. Others have been staffed with commissioners who are unwilling or unable to protest abuses because they are either beholden to the executive or fearful of reprisal.

(Nowrojee, 2001, p. 4. My emphasis)

Indeed, the work of many national human rights commissions in Africa continues to be undermined by a lack of independence and the lack of transparency.

Some institutions were created only to give the appearance of the government's commitment to human rights and to forestall domestic or international pressure for political reforms. Others have been granted limited powers, pressured into silence by the executive branch, or manipulated to serve as a mouthpiece for the government.

When measured against the provisions of the Paris Principles, most African human rights institutions fall dismally short. Many institutions lack the autonomy to undertake independent investigations into abuses or make independent recommendations for prosecution. For example, the Kenyan and Cameroonian human rights commissions were established with the limited mandate to only provide their findings to the president of the country who then has the discretion of accepting or rejecting them. This limited mandate has served to damage the credibility of both institutions in the eyes of the public and undermine the role of human rights commissions in holding the government and its agents accountable for human rights abuses (Toure, 2002, p. 17). In some countries, such as Liberia under Charles Taylor's rule, the selection of human rights commissioners was done in a way that excluded representation from civil society organizations that were critical of the government. Consequently, the Liberian human rights commission was mainly concerned with non-state abuses such as domestic violence. Its commissioners carefully avoided addressing complaints relating to politics or government abuse.

Similarly, the Nigerian human rights commission was set up by the military government of General Sani Abacha in 1995 in a way that made it incapable of holding the government accountable for its many human rights violations. Created by military decree, the commission was created in an attempt to head off international criticism of military rule in Nigeria and the repressive policies of the Abacha government. The Commission was mostly ineffective and largely silent on major human rights abuses of the Abacha government including the execution of the regime's political opponents such as the environmental rights activist, Ken Saro-Wiwa who had campaigned for the rights of the Ogoni people against the devastation of the Niger Delta by oil companies. For Abacha, "human rights abuses brought him to power and kept him in charge" (Hafner-Burton, 2008, p. 710). Like the Taylor regime, the Abacha regime rebuffed international criticism of its human rights record by drawing attention to the establishment of a human rights commission. When the UN General Assembly voted to censure Nigeria for the execution of Saro-Wiwa and other activists, the country's officials stressed that the government had demonstrated a commitment to human rights and that those executed had been given a fair trial (Goshko, 1995).

Even before the post-Cold War era proliferation of human rights institutions, some African governments had realized that human rights talk could serve as an effective means of deflecting pressure for political reforms. The first national human rights institution in Africa, Togo's Commission Nationale des Droits de l'Homme [National Human Rights Commission] (CNDH), was established by the authoritarian regime of President Gnassingbe Eyadema in 1987, mainly in response to international criticism of his repressive single-party rule. The creation of the commission was one of the government's concessions to opposition

demands for political liberalization and an end to Eyadema's 20-year rule. The CNDH was largely ineffective. When President Eyadema began his crackdown on the democratic movement, the CNDH was one of the first victims. Its head was forced into exile and the commission reduced to a passive and largely irrelevant institution (Nowrojee, 2001, 339). President Eyadema would hold on to power for another 18 years as head of an authoritarian and repressive government.

In Cameroon, the National Commission on Human Rights and Freedoms (NCHRF) was also created by presidential decree by one of the continent's longest ruling regimes in the context of the wave of pro-democracy movements in the 1990s. The NCHRF was among the first institutions created by President Paul Biya as part of the democratization measures announced in 1990 following widespread opposition protests. It was evident from the start that the establishment of the commission was a political strategy to pacify opposition demands for reforms and to legitimize Biya's one-party rule. The general public saw the commission as the "Government's umbrella to cover its human rights violations" (Gwei, 2000, p. 181).

Hindered by the strong presidential control over its appointment and operations, Cameroon's human rights commission lacked credibility and autonomy. The commission's funding was dramatically reduced after it criticized government abuses in a confidential report on the state of emergency in the North-West Province. That the commission was a façade is evident from the penchant of the government to flout its statute. The statutory provision that all political parties represented in the National Assembly should have members in the commission has never been respected (Jua, 2003, p. 105). After decades of existence, the commission remains largely irrelevant to human rights conditions in the country and is seen more as a compliant institution serving the executive branch (Nowrojee, 2001, p. 124). President Biya has survived the pro-democracy wave that swept away many African dictators in the 1990s and early 2000s. At 2018, President Biya had ruled Cameroon for 43 years, making him the world's longest serving head of state.

Political considerations also informed the creation of Kenya's national human rights institution in 1996. President Daniel arap Moi hurriedly established the Human Rights Standing Committee just two days before the annual donor meeting in Paris to discuss the renewal of Kenya's aid that was conditional on economic and human rights reforms. The largely arbitrary human rights committee did not meet the standards stipulated in the Paris Principle. It lacked independence and functioned completely at the discretion of the president. The committee was tightly circumscribed by executive control and undermined by its questionable legal status since it was not created through the proper parliamentary procedures. The committee proved to be ineffective and critics condemned the seemingly empty rhetoric used by the government to appease international human rights criticism (Schmitz, 2009, p. 64).

The story is largely the same with the human rights commissions established in North African countries. In Algeria and Tunisia, the impetus for creating human rights commissions came mainly from domestic pressure arising from the growing

strength of Islamist political activity. In the wake of rising security challenges and the crackdowns against Islamist opposition movements, human rights institutions were created by the Algerian and Tunisian governments to show a commitment to democracy and human rights. Algeria's Observatoire National des Droits de l'Homme [National Observatory for Human Rights] (ONDH) was created in 1992, shortly after the annulment of parliamentary elections won by Islamists. A military coup ousted the president, leading to a state of emergency and crackdown on Islamists that unleashed a wave of violence across the country. The human rights commission was established by a presidential decree at a moment when "authorities were aware that to establish legitimacy after halting the democratic process, they had to appear attentive to human rights" (Nowrojee, 2001, p. 38).

In Tunisia, President Zine el-Abidine Ben Ali created the Higher Committee for Human Rights and Fundamental Liberties in 1991, at a time when his government faced increased human rights criticism and pressure for reform. Similarly, the Conseil Consultatif des Droits de l'Homme [Human Rights Advisory Council] (CCDH) was created by King Hassan II by royal decree in 1990 in response to domestic pressure for reforms and international condemnations of the government's human rights record. The establishment of the council was in direct response to the criticism that the government faced for its entrenched control of the Western Sahara, despite the UN involvement in the conflict, and for its crackdown on Islamist opponents (Cardenas, 2014, p. 120). The council was essentially an advisory body to the King with no real investigatory or prosecuting powers. None of the North African human rights institutions has had significant impact on improving human rights conditions in these countries. The wave of pro-democracy protests and uprisings during the Arab Spring of 2010 and 2011, that swept away entrenched regimes in Tunisia, Egypt, and Libya, is evidence that these human rights institutions did not have much impact.

If human rights institutions in Africa have not served the intended role of protecting human rights, why have they become so popular and whose interests have they ultimately served? My argument here is that these institutions have been more effective as political instruments for regime legitimation than as mechanisms for rights protection. The Moroccan Human Rights Advisory Council for example, has been more effective as a propaganda arm of the government than as a human rights protection agency. The council has tended to emphasize the positive aspects of Morocco's human rights record and has shown deference toward authorities on the most politically contentious issues. Similarly, Tunisia's Higher Committee for Human Rights and Fundamental Liberties was seen within the human rights NGO community as nothing more than a mouthpiece to defend government abuse. The committee has portrayed Tunisia's poor rights record in a positive light and ignored glaring violations of the country's international human rights obligations. The assessment of the committee by Tunisia's independent human rights community is that it has contributed little, if anything, to redressing or deterring abuses. Rather, it has positioned itself among many government-created entities whose sole purpose is to "burnish the government's human rights record" (Nowrojee, 2001, p. 38).

## The politics of truth commissions

The politics of regime legitimation that has characterized the establishment and processes of human rights commissions is also increasingly evident in the work of truth commissions that have proliferated across the continent. One of the great ironies of the development of human rights institutions in Africa is that the first truth commission on the continent was established by one of the most ruthless dictators. In 1974, President Idi Amin established the Commission of Inquiry into the Disappearance of People in Uganda (Hayner, 2001, p. 51). Given Idi Amin's own extensive record of human rights violations, it is incongruous that he would establish a commission to investigate human rights abuses. It is unlikely that his government had any intention of abiding by human rights doctrine (Perry and Sayndee, 2015, p. xvii). Idi Amin's creation of a truth commission soon after he seized power from the elected government of President Milton Obote in a military coup, was clearly part of his efforts to gain domestic acceptance and international legitimacy.

Since the establishment of South Africa's Truth and Reconciliation Commission (TRC) in 1996, truth commissions in Africa appear to have served less as mechanisms of victim-centered transitional justice and more as political instruments for governments to further statist agendas. It is estimated that of about 67 national truth commissions that have been established globally, one third have been established in Africa (Perry and Sayndee, 2015, p. xvii). Across Africa, truth commissions have been deployed both as mechanisms of post-conflict transitional justice (South Africa, Rwanda, Sierra Leone, and Liberia) and democratic transitional justice (Nigeria, Ghana, Kenya, and Gambia). Although they differ in composition and purpose, the core mandate of truth commissions is to investigate human rights violations and provide public accounting of the causes, patterns, and consequences of political violations. A common goal is to recover the truth about rights violations and narrate national histories in the context of state (re)building. Such truth commissions represent the hope that collective acknowledgment of past atrocities, reflection, and repair can help build less violent, and more just and inclusive societies.

While post-conflict truth commissions established in the immediate aftermath of conflicts focus on accountability for war crimes, democratic transitional justice truth commissions are typically concerned with the longer-term democratic transition in the aftermath of authoritarian rule. The Nigerian and Ghanaian truth commissions emerged in the context of transitions from authoritarian rule to multiparty democracy. Nigeria's Human Rights Violations Investigation Commission (which became known as the Oputa Panel, after its chairman, Justice Chukwudifu Oputa) was set up in 1999 to investigate and recommend redress for human rights violations committed in the country under previous civilian and military governments. It received over 10,000 statements of human rights violations and conducted public hearings characterized by rancorous debates over culpability for past atrocities that revealed the country's ethnic and political fissures.

The most controversial issues that the commission addressed centered on alleged massacres during the Nigeria-Biafra civil war in the 1960s, and conflicts over oil resources in the Niger Delta. Ethno-political groups appropriated the commission as a formal space for rewriting histories and evoking politicized memory to mobilize constituencies, claim and reclaim political territories, and gain access to social and economic resources (Yusuf, 2007; Nwogu, 2007). The commission's final report indicted the military and successive civilian governments for gross human rights violations. Among its recommendations were constitutional reforms, compensation for victims, and programs for women's empowerment and gender equity. The commission also recommended broad consultations of civil society about Nigeria's constitutional structure, improved human rights education, and attention to the social, political, and environmental conditions in the Niger Delta and other troubled spots in the country.

Although welcomed by civil society groups, the commission's findings and recommendations were rejected by the government which unexpectedly annulled the commission and suppressed its report on the grounds of a Supreme Court ruling that questioned the investigative powers of the commission. However, even before the court ruling, it was clear to most observers that the Obasanjo government, which set up the commission, had become uneasy about the broad scope of its investigations and the recommendations for sweeping political reforms. Popular assessment of the Nigerian truth commission is that it failed on several fronts. Although the commission produced an extensive catalogue of human rights abuse spanning several governments, the government that created it neither acknowledged its findings nor implemented its recommendations. This meant that the commission's efforts had limited effects on Nigerian society and the development of human rights policies (Guàker, 2009, p. 15; Perry and Sayndee, 2015, p. xvii).

Ghana's National Reconciliation Commission (NRC) did not fare better. Established in 2001, the commission was mandated to investigate human rights abuses committed under past unconstitutional regimes, and to foster an environment of government transparency and accountability. Although the title of the NRC did not include the word "truth," ascertaining the truth about past human rights abuses was considered to be a core objective. The commission was charged with promoting national reconciliation among Ghanaians by establishing "an accurate and complete *historical* record" of human rights violations related to killings, disappearance, detention, torture, ill-treatment, and seizure of property during the periods of unconstitutional government (Ghana NRC, 2004, vol. 2, p. 3).

Individual citizens could petition the commission to investigate specific issues within its mandate. The commission conducted two years of investigations and public hearings where it heard testimonies from over 2,000 victims and 79 alleged perpetrators. It found that the legacies of colonial rule contributed to a culture of human rights abuse and that post-colonial law enforcement institutions and the armed forces were responsible for most abuses. It recommended a comprehensive reparation program of public apologies, memorials, and monetary compensation. However, the political tension between the two main political parties in the country made it difficult to agree on a shared truth about the history of human rights

violations. This stifled implementation of the commission's recommendations (Alidu and Ame, 2013, p. 18).

Some scholars have argued that a truth commission was a prudent choice for Ghana rather than criminal prosecution in dealing with its violent past. While a truth commission might not be a panacea for all the problems encountered in a transitional democracy, it offers a better solution and hope than the alternatives available (Ame, 2006, p. 105). However, other scholars have noted that Ghana's truth commission was more political theatre than anything else and that it was plagued with overt politicization of the institution from start to finish (Asare, 2018; Valji, 2006, p. 47). It was established nine years after the country's return to democracy, raising questions as to whether there was really need for a truth commission at that point. Historian Abena Asare has argued that Ghana's decision to join the growing community of African nations using TRCs to wade into the past had more to do with politics than human rights protection. The creation of the National Reconciliation Commission was part of the competition between the country's two major political parties: the New Patriotic Party (NPP) and the National Democratic Congress (NDC). For the newly elected NPP, demanding a truth and reconciliation process was a way of framing its electoral success as a "moral victory," similar to the end of apartheid in South Africa which necessitated the establishment of the TRC (Asare, 2018, p.1).

President John Kufuor and leaders of the NPP justified the NRC as the first step in the journey toward human rights accountability, national unity, and economic growth. For the outgoing NDC, however, a truth commission was seen as an attack on the person of Jerry Rawlings, the military dictator turned democrat, whose two-decade rule was the focus of the truth commission. The NDC objected strongly to the creation of the NRC, framing it as a political strategy to discredit it and the previous Rawlings regime. Critics referred to the NRC not as the National Reconciliation Commission but as the Nail Rawlings Commission (Fair and Gadzekpo, 2011, p. 61). This situation set the tone for an acrimonious controversy that undermined the work of the commission from its inception. The commission was criticized for alleged bias in dealing with witnesses leading to accusations that it was nothing more than a political witch-hunt. Even though the commission's public hearings and witness testimonies led to an unprecedented public accounting of Ghana's past, the lasting image of the Ghanaian NRC was a "site of partisan contest, not citizen testimony" (Asare, 2018, p. 37).

Kenya's Truth, Justice and Reconciliation Commission was created by a parliamentary bill in 2008 to investigate and recommend appropriate action regarding abuses committed between the country's independence in 1963 and the inauguration of a new coalition government in 2008. This followed disputed presidential elections in 2007 and the eruption of post-election violence along ethnic lines. About 1,500 people were killed in the clashes and almost 300,000 were displaced from their homes. The clashes subsided only with the intervention of the UN and the African Union, which brokered a power-sharing coalition government among President Mwai Kibaki and opposition leader Raila Odinga. The creation of the Justice and Reconciliation Commission was one of several measures taken

to address the political crisis and the violence that followed. Its mandate was to investigate the gross human rights violations and other historical injustices in Kenya, including incidents of politically motivated violence, assassinations, displacements, and major economic crimes and irregular acquisition of land.

After more than three years of investigations and public hearings in which more than 100 people testified and over 40,000 statements were submitted, the Commission submitted its report in 2013. The report documents extensive human rights violations and other injustices committed in Kenya from the British colonial period to the administrations of Presidents Jomo Kenyatta, Daniel arap Moi, and Mwai Kibaki, including during the 2007–2008 post-election violence (Kenya TJRC Report vol. 1, 2013; Slye, 2018). The commission recommended prosecutions, reparations for victims, institutional changes, and amnesty in exchange for truth for perpetrators who did not commit gross human rights violations. The report stands as “an official record of the state’s complicity in serial human rights violations, a state whose institutions are frequently exposed as corrupt and in callous disregard of the fundamental human rights of citizens” (Ndungú, 2014, p. 5).

Kenya’s truth commission is widely believed to have failed (Lynch, 2018, p. 3). Members of the commission came under immense political pressure from the government to influence the report (Slye, 2018). The difficulties surrounding the truth commission process and its final report reflect the reluctance of the political leadership to account for the country’s dark past. The commission’s report came short on the issue of ethnicity and inter-ethnic conflict, which was identified as a cause of some of the worst violence experienced in the country, including during the bloodshed that followed the 2007 elections. The commission’s report faced serious challenges, including the government’s reluctance to publish it widely and several court cases disputing its contents (ICTJ, 2014). Despite finding the Kenyan Army to have been responsible for alleged crimes, no recommendations for institutional reform are made regarding this branch of the armed forces (Ndungú, 2014, p. 10). The commission also largely ignored issues of social and economic rights which were within its mandate (Slye, 2017, p. 306).

The establishment of the Zimbabwe Human Rights Commission (ZHRC) by the government of Robert Mugabe in 2009 was also a direct fallout of protracted political and economic crises in the country. Its main mandate was to investigate human rights abuses following widespread violence arising from the disputed presidential elections in 2008. Like many African political leaders of the immediate post-colonial era, Mugabe’s politics hinged on a Cold War-era revolutionary socialist rhetoric that he used to legitimize his rule and justify economic policies, notably his land redistribution policy. With the crippling economic crisis in the new millennium and protests against the government, the regime resorted to repressive tactics against its political opponents. There were widespread reports of systematic and widespread violations of human rights by the regime and the ruling Zimbabwe African National Union – Patriotic Front (ZANU–PF) (Howard-Hassmann, 2010).

Facing international isolation and growing pressure for political liberalization, the Mugabe government made some political concessions. These included the

creation of the Zimbabwe Human Rights Commission which had the broad mandate to promote awareness of and respect for human rights and freedoms, and to make recommendations to parliament on measures to promote human rights (Chiduzo, 2015). However, the impact of the ZHRC on the human rights environment, particularly curtailing impunity for serious abuses, was hampered by partisan politicking, lack of funds, and ambiguous mandates (Dziva et al., 2013; Mukuhani, 2014, p. 177). The Mugabe regime paid lip service to the protection of civil and political liberties, while it continued systematic human rights violations including the right to life, political participation, freedom of speech, association, assembly, and expression, at the hands of state security forces and other pro-government groups.

The ZHRC did not seriously address human rights complaints or carry out its core mandate of protecting and promoting human rights. It was widely criticized for being unresponsive to continued human rights violations committed by the government and political parties. The failure of the ZHRC, which media reports described as “dysfunctional,” became most evident in 2012 when the commission’s chairperson, Professor Reginald Austin, resigned citing inhibiting laws and lack of resources that compromised the ZHRC’s independence and capacity to carry out its mandate (*The Zimbabwean*, 2013). The ZHRC remained largely ineffective throughout Mugabe’s rule and failed to make a significant impact on human rights conditions in the country (Dziva et al., 2013).

In spite of the well-documented shortcomings of these truth commissions, they remain popular with transitioning states. Gambia is the most recent African country to adopt the TRC model. Following the ousting of President Yahya Jammeh in 2017, the newly elected government of Adama Barrow promptly established a national Truth, Reconciliation and Reparation Commission to investigate human rights abuses during Jammeh’s 20-year rule and to recommend reparations for victims.

Like human rights commissions, many African truth commissions have not delivered on the promise of truth-finding and national reconciliation. As evident in the case of Nigeria, Ghana, and Kenya, truth commissions have fallen short of their mandate to objectively investigate human rights abuses, deliver justice to victims, and foster national reconciliation. If anything, truth commissions have served more as vehicles for legitimizing political power and reinforcing statist agendas. In Kenya, for example, politicians sought to influence the outcomes of the truth commission to legitimize a fragile coalition government in the aftermath of political crisis and violence. The commission’s recommendations on political reforms have largely been ignored and its work has had little or no effect on human rights conditions in the country.

The political instrumentalization of truth commissions is also evident in Nigeria where the government abruptly annulled the commission. Some scholars of the Nigerian truth commission have suggested that President Obasanjo lost interest in the commission after public hearings appeared to establish that he was innocent of the charges of planning a coup for which he had been convicted and imprisoned by the previous regime (Albert, 2018). This suggests that the establishment of

Nigeria's Human Rights Violations Investigation Commission was driven more by the quest for political rehabilitation and regime legitimacy rather than by a commitment to investigating human rights abuses, bringing justice to victims, or promoting national reconciliation.

### **Conclusion: the instrumentality of human rights**

The proliferation of human rights and truth commissions in Africa and around the world provides evidence of the use of human rights discourses as instruments for statist political agendas. Invocations of human rights in the corridors of state power have not translated into improvements in human rights conditions. Rather, human rights have been instrumentalized as a political ideology for regime legitimation.

My argument that African states have invoked human rights discourse more to legitimize power than to protect civil liberties does not deny that in some countries, national human rights institutions have made positive impacts. Governments establish human rights institutions for various reasons. This may be part of wider constitutional change, as in South Africa; it may be an indication of the government's commitment to human rights, as in Ghana, Malawi, and Senegal; or as a means of deflecting criticisms over its human rights record, as was the case in Liberia, Nigeria, and more recently in Zimbabwe. However instrumental government acceptance of human rights norms might be, it opens up new windows for further mobilization and deepened consciousness by civil society actors and international agencies (Schmitz, 2009, p. 64). National human rights institutions can be partners with international and regional bodies in assisting the latter to implement state obligations (Murray, 2007, p. 3). Furthermore, national human rights institutions that may have been originally created by repressive governments to confer political legitimacy can evolve into independent and effective bodies for human rights protection.

Truth commissions have similar potential. In some countries, truth commissions have provided opportunities for victims to publicly share stories of abuse, even if this is not followed by justice and reparations. Truth commissions can also bring justice and closure to victims and reconcile conflicted communities. Archbishop Desmond Tutu, the chairman of South Africa's TRC and chief proponent of the TRC model, has argued that, if done well, truth commissions increase public knowledge about what happened and, in some cases, why it happened and who is responsible. More than simply revealing the truth, Tutu argues that truth commissions can provide a safe space for individuals of all walks of life to tell their stories, and to recount their experience of the gross violation of human rights that are the focus of such commissions (Slye, 2018, p. xvii).

My argument is therefore not a rejection of human rights institutions and truth commissions per se. Rather, it is a call for caution in celebrating their proliferation as evidence of the acceptance of human rights norms by governments. Self-serving invocations of human rights by governments are not an entirely new phenomenon or one that is unique to Africa. Studies of human rights institutions in the Asia-Pacific region have identified similar patterns of statist appropriation of human

rights discourse to serve political agendas (Nasu and Saul, 2011). Generally, however, human rights scholars have paid little attention to this trend. There is a tendency to view the growth of human rights institutions as incontrovertible evidence of the normative ascendancy of human rights. Some scholars have celebrated the global "justice cascade," pointing out how prosecutions against individual human rights perpetrators in domestic, foreign, and international courts have increased almost exponentially in recent decades. These prosecutions, it is said, have served to reinforce human rights norms domestically and internationally (Sikkink, 2011; Risse et al., 2013).

To be sure, the growing number of countries, including African states, that have adopted international and domestic human rights norms and established human rights institutions suggest a growing awareness of universal human rights. It is a stretch, however, to read this as evidence of government commitment to human rights principles. 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 a human rights institution, in and of itself, with greater respect for human rights.

This trend is not a uniquely African story. Transnational human rights histories have shown that rights discourses and movements have facilitated progressive change, but they have also operated historically to insulate power and sustain structures of ideological, cultural, economic, and political hegemony. The language of international human rights has been used historically to institutionalize, legitimize, normalize, and reproduce existing relations of domination (Perugini and Gordon, 2015). One of the Cold War legacies for human rights is the selective invocation and manipulation of human rights principles to serve statist ideological and geo-political agendas. Such manipulations reflected the East versus West polarization in international relations, which reduced human rights to a weapon of propaganda and political ideology in a bipolar struggle (UNDP, 2000, p. 3). It is essential, therefore, that human rights scholars and practitioners pay attention, not only to the emancipatory outcomes of rights talk, but also to the ways in which rights can be used to legitimize government agendas and further the political interests of ruling elites. Human rights institutions and truth commissions that have proliferated in Africa have the potential of improving human rights protection and accountability in the continent. However, their usefulness and relevance must be measured against their outcomes in terms of objectively investigating abuses and protecting rights rather than the rhetoric and agendas that drive their creation.

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