

70 Years after the UDHR: A Provocative Reflection Shaped by African Experiences

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Abstract

The 70th anniversary of the adoption of the *Universal Declaration of Human Rights* presents an opportunity for critical reflections from the Global South on why the dream of universalising the rights contained in this ground-breaking document is still just a dream. Shaped by a rigorous interrogation of African experiences as narrated by practitioners and scholars, this paper revisits some of the leading contentious issues which, undoubtedly, have impacted on the realisation of the *Universal Declaration of Human Rights* on the African continent. The paper revisits the issue of meaning, and how uncertainties surrounding it have triggered controversial perceptions and constructions of the notion of human rights, aggravated by adjectival calibrations. Capturing the views of scholars and practitioners, this paper takes an evidence-based approach to the matter as it identifies and discusses some of the common, recurrent challenges that have compromised the aspiration of universalising the ideals articulated in the *Universal Declaration of Human Rights*. These include, amongst other things, the impact of slavery and the slave trade, colonialism and neo-colonialism, the nature and impact of western hypocrisy, double-standards, bias and inconsistency – factors that not only dilute the recognition of human rights but further deepen the mistrust and misgivings Africans have about human rights. Lastly, the paper appraises the adverse impact of corruption on the realisation of human rights on the African continent. It is argued that all these factors, cumulatively, adversely impact on the perception and realisation of human rights on the African continent.

Keywords

Cultural relativism; colonialism; slavery and the slave trade; African perception and understanding of human rights; western hypocrisy and human rights.

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1 Introduction

In 2018 the global community celebrated the 70th anniversary of the adoption of the *Universal Declaration of Human Rights* (hereafter the UDHR). At the time of its adoption portions of Africa were still under the yoke of the brutal colonialism which, to some extent, has shaped socio-economic and political developments on the African continent today.¹ The UDHR was received with mixed feelings in Africa. Its purpose and contents were thought to be questionable. Given the history of the slave trade and later of colonialism, the whole human rights movement would face enormous challenges to its acceptance and implementation. The continent had undoubtedly known injustices, past, present and continuing. Such injustices are experienced on many fronts: political, racial, religious, tribal, and socio-economic. Undeniably, these injustices shape the perception and reception of human rights as well as their implementation in the challenging contexts of Africa. Prior to discussing some of these, perhaps it is necessary to consider some of the contentious ideological issues which have dominated contemporary human rights discourse, penned mostly by African scholars, in which they not only articulate their views but also capture the very fundamental uniqueness of African society which, in their opinion, cannot be ignored in the context of human rights. One of these issues is the question of the meaning of human rights.

2 The question of meaning and categorisation

Even though the UDHR initiated the international human rights movement, Africa would unfortunately not feature as a major player in that development. The reason is obvious: much of Africa was still under the tutelage of colonials in 1948. In spite of this, the Preamble to the UN Charter would "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ...".² For the African "people", the end to colonisation required fierce urgency even though the UDHR stipulated that the rights therein were available to everyone, with no distinction to be

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¹ Ocheni and Nwankwo 2012 *Cross-Cultural Communication* 51-53.

² Preamble to the *Charter of the United Nations* (1945) (the UN Charter).

... made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.³

The sequel to the UDHR was the right to self-determination, which was given international recognition in the *International Covenants on Civil and Political Rights* (hereafter ICCPR) and *Economic, Social and Cultural Rights* (hereafter ICESCR).⁴ The 1981 *African Charter on Human and Peoples' Rights* (hereafter the Banjul Charter) reiterated the burning and immediate need to liberate colonised peoples as a collective African effort.⁵

Regardless, the adoption of these international human rights instruments at the UN were colossal breakthroughs in the progressive recognition of human rights. Yet over decades scholars have not been able to agree on an answer to a fundamental question which resides at the centre of the human rights discourse and movement: what actually is the meaning of human rights and how does meaning situate in the context of a world in which the heterogeneity of cultures is an undeniable feature?⁶ Academics and practitioners alike have been engaged in debates on this question. But the intellectual outpourings penned by the different philosophers are not directed at discrediting the human rights movement. They perceive a grasp of the meaning as being central to the conversation (if one may use such a word). In the absence of such an understanding, it becomes a tedious and pointless task to establish the content of the instruments. If meaning is to be determined, it is because it defines content, especially in the case of human rights. In the context of human rights, understanding the meaning of the term may help in understanding its origin (with specificity), its evolution and, importantly, the contributions made by the different civilisations. As one searches of the meaning of human rights, one element features recurrently: the presence or centrality of human beings. For example, human rights are defined as the entitlements that a human being has by virtue of being a human being. If we hold this definition to be true, then some important questions need to be asked (not probably answered - at least, not now). Who grants these entitlements? Against whom are these entitlements

³ See A 2 of the *Universal Declaration of Human Rights* (1948) (the UDHR).

⁴ See A 1(1) of the *International Covenant on Economic, Social and Cultural Rights* (1966) (the ICESCR) and the *International Covenant on Civil and Political Rights* (1966) (the ICCPR) respectively.

⁵ Preamble to the *African Charter on Human and Peoples' Rights* (1981) (the Banjul Charter) paras 4 and 9.

⁶ This evokes a host of issues, some of which touch on philosophy and the notion of "cultural relativism". On these topics, there is quite an impressive literature penned by scholars: Donnelly 1984 *Hum Rts* Q 400-402; Sen 2004 *Philos Public Aff* 315-318; Donnelly 2007 *Hum Rts* Q 281-283, 293-296.

granted? Do these entitlements warrant a classification or categorisation? Taking the last question further, intellectual discourse on human rights has developed numerous calibrations which in themselves do not really help in providing answers to these questions. For example, drawing from the two Covenants and the evolution beyond them, there are civil, political, social, economic and cultural rights. They were further classified as "first generation" and "second generation" rights. Then came the "third generation" rights.⁷ Drawn from these same classes of rights are qualifiers such as "fundamental rights";⁸ "moral rights";⁹ "natural rights",¹⁰ etc. In another instance, human rights have been categorised as "important": Shestack interrogates this classification by posing a simple (but simplistic) question:

... [W]hen one says a right is 'important' enough to be a human right, one may be speaking of one or more of the following qualities ... intrinsic value ... instrumental value ... value to a scheme of rights ... importance in not being outweighed by other considerations ... importance as structural support for the system of the good life.¹¹

Shestack's views certainly provide a rare philosophical insight into the issues but they provide no answers to the recurrent questions on the meaning and classification of human rights. If human rights are defined as the entitlements that everyone has by virtue of being a human being, then that highlights an individualistic approach. An individual (a human being) possesses rights (entitlements). This at least pits such an individual against the community (that must recognise, respect, protect and protect these entitlements) in which he or she lives. Living in and within that community also requires that the individual must *accept* that other individuals possess entitlements which she or he must recognise and respect. It might be easy to accept these premises, but the recurring question is on the content. What is the content of these entitlements that an individual possesses? In other words, when rights are defined as legal entitlements that an individual possesses, what constitutes the substance or content of such entitlements? When one attempts to find an answer to this question in the context of Africa (and African civilisation as developed by different African societies over time), one may quickly perceive and interpret Africa's uniqueness as weirdness. But an understanding of African societies (their value systems, institutions, practices and philosophies) from a holistic African point of view

⁷ See, for example, Saito 1996 *U Miami Inter-Am L Rev* 389; Algan 2004 *Ankara L Rev* 124-128.

⁸ Brest 1981 *Yale LJ* 1064.

⁹ Raz 1984 *OJLS* 123-129.

¹⁰ Donnelly 1982 *Hum Rts Q* 392-395.

¹¹ Shestack 1998 *Hum Rts Q* 203.

reveals a civilisation that was built on its own pillars and ideas, making it distinct from non-African societies. An insider's perspective of Africa is context-specific as it illuminates the then-and-now fluidity of the notion of human rights lived in closely bonded African communities. This places the African apart, at least in perception, from his Western counterpart. In the Western world the individual is seen as an entity that lives in a community, regulated by law and function as an individual. *Homo Africanus* (the African man as opposed to his non-African counterpart) is the sum of his cultures (practices, institutions, values and norms) and his bonding (social interactions that are guided by his cultures). When attempting to define the meaning of human rights, one is tempted to delve into the question posed earlier: what constitutes these entitlements or human rights? What is at their core? To the African man it is a complex question, given the kind of civilisation in which he has been nurtured and to which he has been exposed. Consequently, *Homo Africanus'* understanding and application of what entitlements he may have are guided by the context in which he or she operates and how it may affect others. Put simply, to the African, "rights" are not defined from an individualistic perspective but by what duty he or she owes to the greater community at large. Like most other parts of the globe, Africa comprises peoples with diverse cultures, religious backgrounds and beliefs, races, tribes, ethnicities, economic statuses and political affiliations. These experiences define to a great extent the perceptions individuals have of their communities, their relationships with one another, and more importantly, what constitutes human rights in such contexts.

The contentions on the meaning and content of human rights in the context of African civilisations as they existed and continue to exist are informed by the particularities of the African people as they have been shaped by the sum of the norms and practices that influence their perception, reception and practice of human rights. Africa's uniqueness, in terms of its civilisations, must not be misrepresented as weirdness or abominations, for to do that will mean African lifestyles are screened from an outsider perspective, with an utter lack of understanding of the unique traits of African societies. Ultimately, this leads to competing cultures, with one depicting the other as inferior and second-class, while affirming or imposing its superior status.

Without an iota of doubt, the human rights movement has given rise to a clash of civilisations. Scholars from different backgrounds have contested the origin of human rights, some arguing that the Western world takes credit for their evolution. On the other hand, African scholars have challenged this

view. The origin of human rights, as argued below, remains a contested issue which, obviously, is linked to the question of meaning itself.

3 The question of origin: some unfortunate misgivings

As pointed out in the foregoing discussion, the question of the meaning of human rights is yet to be answered, especially as different epochs of human history and civilisation should have contributed to its understanding. Consensus thereon is far from being achieved. As controversies loom over the meaning, they stretch to the origin as well. If we are unable to define what the notion of human rights is, how then can we determine at what point in human existence human rights originated?

In this regard, part of the African bias in the reception of the UDHR has been shaped by the perception that it is a product of Western civilisation. Its origin is tied to the West. Even if we ignored its origin, it has been perceived and argued by many scholars, some of African descent, that the substantive content of human rights reflects a Western civilisation and is therefore a "misfit" for African civilisation or societies.¹² Many scholars have contested the universality of human rights, given the fact that each society obviously presents unique features which may be supportive or challenging to the goal of universality human rights.¹³ Africa is one such society. Mende debunks this view, arguing that those who make such claims reject human rights in order to justify, excuse or accommodate human rights abuses by claiming that they are of an alien culture: a culture that is markedly different from theirs. Secondly, the claim presupposes that everything about human rights is western, thereby ignoring the priceless contributions of the non-western world. Thirdly, the argument is used to validate inherent inequalities across the globe, ranging from slavery and colonialism to the power dynamics in different societies and the terrible race relations across the world.¹⁴

Like the content and classification of human rights, the origin is quite important. Is it possible to pinpoint exactly when human beings began to have entitlements? Secondly, at what point did human rights get infused into social discourse? It might be challenging to answer these questions as controversies surround the contents and classification of human rights. If

¹² Motala 1988 *Hastings Int'l & Comp L Rev* 373, 378-383; Suri 2008 *Cold War History*; Cerna 1994 *Hum Rts Q* 740, 744-751; Mayer 1993 *Mich J Int'l L* 309-320.

¹³ Motala 1988 *Hastings Int'l & Comp L Rev* 373, 378-383; Cerna 1994 *Hum Rts Q* 740, 744-751; Mayer 1993 *Mich J Int'l L* 309-320.

¹⁴ Mende 2019 *J Int Political Theory* 1-3.

human rights are defined as entitlements that human beings have, is it logical to argue that early man had rights when he first appeared in Africa?

If the foregoing question is answered in the affirmative, then there is a need to revisit the argument that human rights came to Africa from the West. However, the emancipatory history of human rights has included many significant developments, which comprise both legal texts and human struggles. Unfortunately, legal scholars challenging human rights as a western concept have been limited in their notion of the development of human rights, and have also as confused human rights as a general concept with international human rights as fostered by the UN in the aftermath of the Second World War. Prior to the recognition of international human rights (which has, undoubtedly been a source of controversies), major developments had taken place within nations, as evidenced by the enactment of texts that gave legal recognition to and protection to human rights in those nations. For example, the English *Magna Carta* of 1215;¹⁵ the English *Habeas Corpus Act* of 1679;¹⁶ the English *Bill of Rights* of 1689;¹⁷ the US *Declaration of Independence* of 1776;¹⁸ the French *Déclaration des Droits de l'Homme et du Citoyen* of 1789;¹⁹ and the United States *Bill of Rights* (1789).²⁰ These legislative pieces, unfortunately, defined rights by excluding some specific categories of individuals such as women, slaves and people in the non-Western world. In addition to these texts and declarations were traditions that included enlightenment; liberalism; Protestantism – all adding value to the evolution of human rights.²¹

At the core of this debate is the unfortunate misprision of perceiving or depicting human rights as a Western concept. That is not only incorrect and fallacious but very misleading. In this context, it is argued that early man had entitlements when he appeared in Africa. His entitlements, probably, could have been to the natural environment in which he lived, as well as to everything that was in that natural environment. He probably had rights to his inventions as well. The evolution of society, from primitivity to civilisation, would undoubtedly require legal prescripts to regulate human conduct. In the same light, the definition of human rights might have been nuanced to

¹⁵ English *Magna Carta*, 1215.

¹⁶ English *Habeas Corpus Act*, 1679.

¹⁷ English *Bill of Rights*, 1689.

¹⁸ United States' *Declaration of Independence*, 1776.

¹⁹ French *Déclaration des Droits de l'Homme et du Citoyen*, 1789.

²⁰ United States' *Bill of Rights*, 1789.

²¹ Mende 2019 *J Int Political Theory* 3-5.

capture such changes, and the resultant effect has been to define human rights as those things that a human being is legally entitled to because he or she is a human being. On the other hand, if the notion of international human rights is taken broadly, starting with its evolution, then one can logically argue that it was born of Western civilisation. Historical developments preceding the birth of international human rights in 1948 do not lend support to this argument. To corroborate this argument, the language of the UDHR might be useful:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people

The Preamble to the UDHR not only introspects on the link between a "disregard and contempt for human rights" and the commission of "barbarous acts which have outraged the conscience of mankind" but also in prophetic form envisages a world in which all human beings shall live freely. Although this is not made explicit in the Preamble, this evokes the authors' graphic memories of the global conflagration that had just ended. World War II stands out as the most recent colossal struggle and development that had a direct consequence on the development of human rights. But the War itself did not directly reflect human (speaking in general) or European (with particularity) civilisation. Rather, it is argued that the War was a manifestation not only of mankind's unbridled cruelty to mankind, but of every monstrosity that mankind could ever conceive, however difficult to imagine. Winston Churchill's speech delivered in the USA in the aftermath of the commencement of the Second World War may help in painting a partial image of the atrocities that ravaged Europe. As Churchill remarked, the global community was in "the presence of a crime without a name".²² The details of the Second World War do not suggest that they are the products of a civilisation. They reveal aspects of barbarism in Europe which Churchill himself referred to as a "merciless butchery".²³ The danger, it is argued, has been to equate, even though mistakenly, barbarism with civilisation. International human rights were born out of European barbarism, not civilisation. These European monstrosities, as argued herein, helped in the development and production of legal texts that granted recognition to international human rights, introducing and infusing notions such as universality in their entitlements, and interdependence and inter-

²² Churchill 1941 <https://www.ibiblio.org/pha/timeline/410824awp.html>.

²³ Churchill 1941 <https://www.ibiblio.org/pha/timeline/410824awp.html>.

relatedness in their contents and realisation. These barbarities have been common features of struggles across the globe, some of which include the Armenian genocide, the numerous intra-European wars, the two World Wars and the brutalities with which they were waged, the Holocaust, the massacre of the native peoples of Americas, the segregation of black people in America, the exclusion of women from voting, the mass atrocities committed during wars of colonial conquest in Africa, the actions of the Germans in Namibia, etc. Even in the so-called era of human rights, colonialism would still continue on the African continent (and in some other parts of the world), this being a form of apartheid supported by the same leading global disciples of human rights. For the African continent, slavery and the slave trade, followed by colonialism, constitute the worst and most degrading forms of human treatment, the arrogation of superiority leading to the assumption of a right to control independent human beings for economic reasons, subjugating them to the status of second-class human beings. With their unapologetic tone and attitude, their claim that they are the proprietors and progenitors of human rights is not only fallacious and ludicrous but also vitiates the credibility and intent of the entire movement. These inhumanities, the remorseless degradation and dehumanisation of human beings represent the greatest barbarism ever perpetrated by mankind against mankind.

Ever since man appeared on African soil, Africans have fortunately built their own traditions. They have had their own struggles. The aftermath of these struggles has gone undocumented. The history of Africa has been one of slavery and the slave trade, ancestral worship, reliance on the natural environment for survival, occupation by and subjugation to colonials, and the battle for the liberation of their territories. Each of these struggles was tied to the fundamental and undeniable fact that they, as human beings, have their dignity and worth, with entitlements conferred upon them by the Creator, and that they are not to be reduced to servants to any other human beings. If these struggles and their accomplishments were not chronicled, this does not mean that their contributions must be discredited or go unrecognised. The UDHR and subsequent instruments that were generated were all aimed at recognising the entitlements human beings have: they did not create these entitlements. The UDHR, in its Preamble, affirms the undeniable link between rebellion and human rights. Years of injustice, inequality, inhumanities, dehumanisation, segregation and apartness, packaged as the right of some part of mankind to dominate other parts, gave rise to the international recognition of human rights as a way of preventing a relapse to the *status quo ante*. The view that international human rights

are a product of European civilisation is not only fallacious and misleading but untenable and does not accord with the plethora of incontrovertible evidence that exists.

4 The toxicity of the terrain: revisiting the unforgettable legacy of slavery, the slave trade and colonialism and their impact on human rights

A day before the adoption of the UDHR, the UN had adopted the *UN Convention on the Prevention and Punishment of the Crime of Genocide* (hereafter the Genocide Convention). Article 1 of the UDHR articulates one of the most fundamental premises of international human rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Walking down memory lane, one makes some disturbing findings: first, the adoption of the UDHR came eighty-three years after the Americans had abolished slavery; a century after the French, and 141 years after the English. Quite distinctive is the fact that the UDHR gave rise to the notion of a "juridical humanity".²⁴ Unfortunately, despite its being premised on the universal entitlement of all human beings, colonialists like the British, the French and the Belgians could not agree to the view that this was applicable to colonial peoples and their territories. It seems that this challenge confounded the perception, reception and universality of the UDHR, as its powerlessness was felt in its inability to reach or be claimed by either the colonials or the colonised peoples. Needless to say, at the time of the adoption of the UDHR, European nations still maintained colonies, especially on the African continent, most of which attained their independence only in the 1960s, approximately twelve years after the adoption of the UDHR.

But the inhumanity of colonisation, especially as it continued after 1948, was hardly the focal point in European national politics. At the level of the UN, its realisation of the cruelty of colonialism, in which juridical human beings were still deprived of the worth and dignity premised in the UDHR, would lead to the adoption of the *Declaration on the Granting of Independence to Colonial Countries and Peoples*. Article 1 of the Declaration stipulates the following:

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of

²⁴ Esmeir 2006 *PMLA* 1544.

the United Nations and is an impediment to the promotion of world peace and co-operation.

Article 1 not only describes what colonialism constitutes (the subjection of peoples to alien subjugation, domination and exploitation) but further characterises it as a "denial of fundamental human rights" which runs contrary to the Charter of the UN. This link between colonialism and human rights is quite apparent. However, and unfortunately, colonialism was not the only systematic and widespread perpetration of gross human rights violations against the African people. Its predecessor, slavery and the slave trade, had similar ramifications for human rights. Like any persistent practice across the globe, the slave trade had codes in place to regulate it. Every nation in which this practice occurred had in place defined sets of laws, rules and regulations which, amongst other things, defined the status of the slave, the responsibility owed by the slave trader or owner to the slave, and the conduct of the slave trade itself.

Even though they are explicit in themselves, it is important to reflect on some of these laws. The French *Code Noir* was decreed by Louis XIV in 1685.²⁵ In force until the dawn of the 1789 French Revolution, the *Code Noir* gave slaves no rights. The only exception was the responsibility to feed and care for the sick and old, which was shouldered by their master. The *Code Noir* stipulated that²⁶

... the slave who has struck his master in the face or has drawn blood, or has similarly struck the wife of his master, his mistress, or their children, shall be punished with death

Another clause, worrying and dehumanising, was as follows:²⁷

The fugitive slave who has been on the run for one month from the day his master reported him to the police, shall have his ears cut off and shall be branded with a *fleur de lys* on one shoulder. If he commits the same infraction for another month, again counting from the day he is reported, he shall have his hamstring cut and be branded with a *fleur de lys* on the other shoulder. The third time, he shall be put to death.

The *Code Noir* also contained a troubling definition of what would constitute punishment:²⁸

The masters may also, when they believe that their slaves so deserve, chain them and have them beaten with rods or straps. They shall be forbidden

²⁵ French *Code Noir*, 1685.

²⁶ Article XXXIII of the *Code Noir*, 1685.

²⁷ Article XXXVIII of the *Code Noir*, 1685.

²⁸ Article XLII of the *Code Noir*, 1685.

however from torturing them or mutilating any limb, at the risk of having the slaves confiscated and having extraordinary charges brought against them.

That would mean that beating or chaining them with rods or straps did not qualify as torture. And the penalty, if any slave was tortured or mutilated, would be confiscation and the imposition of extraordinary charges.

A recollection of these detailed cruelties, re-ignited by a perusal of such texts, breeds mental anguish and emotional pain rising from the realisation of what a human being could do to another human being. The discussion of such systemic abuses and cruelties often gets side-lined or trivialised and the victims of these generational cruelties are often labelled as emotional and irrational. Without discounting the fact that human beings who are endowed with reason and good conscience are bound to be emotional, these details question in every respect the *bona fides* of those who stand as the moral paragons of the UDHR, who were once the architects and perpetrators of these same inhumanities.

Over time, reflections on these barbarous crimes, combined with developments on the international plane, have sparked discussions on the issue of reparations. Earlier attempts at reparations for slavery featured the "forty acres and a mule" plan propounded by General William Sherman at the end of the Civil War., which was quickly reversed. Similarly, in the UK the Church of England, which also owned slaves and plantations in the Caribbean, seemed to have been the only institution that was willing to give serious thought to the idea of reparations.

In 2001 Human Rights Watch, as a contribution to the debate on reparations, remarked as follows:²⁹

We begin with the premise that slavery, the slave trade, the most severe forms of racism associated with colonialism, and subsequent official racist practices such as Apartheid in South Africa or the Jim Crow laws in the United States are extraordinarily serious human rights violations. If committed today these would be crimes against humanity.

The remark, unfortunately, begets criticism. In retrospect, would these actions not only be tantamount to crimes against humanity and but be genocide as well? Or do the legal characterisations thereof hinge on issues of law? In other words, in the absence of a law that recognised and protected human rights, these "violations" would not amount to any form of illegality, immorality or inhumanity? As a point of departure, if human rights

²⁹ Human Rights Watch 2001 <https://www.hrw.org/news/2001/07/19/approach-reparations>.

are considered to be the entitlements someone gets based on the fact that he or she is a human being, then such an *a fortiori* moral position also compels us to think and conclude that slaves, like their masters and traders, had rights. Yet they were deprived of these rights as a further extension of the assumed racial superiority of another race, with the use of oppressive and coercive measures. In the absence of any codified laws that gave, recognised or protected the rights of slaves, such cruelties were unnatural and immoral, and did not reflect the reason and good conscience endowed upon every human being. Put simply, the slave trade and colonialism were unnatural offences, immoral in content and illegal in operation.

Unlike the other countries in the northern hemisphere that took part in the slave trade, France has officially accepted some responsibility for the role it played in the slave trade.³⁰ At a reception honouring the Slavery Remembrance Committee on 10 May 2001, the then French president Jacques Chirac described slavery as "a wound ... a tragedy ... an abomination perpetrated by Europeans for several centuries, through an unspeakable trade between Africa, the Americas and the islands of the Indian Ocean".³¹

Slavery and colonialism shared so much in common. First, for the most part the perpetrators were the same. Second, they were predominantly practised by the West. Third, they share a common theoretical apparatus: the imposition of dominance by a race that perceives itself as being superior on another race perceived as inferior.

³⁰ It is important to consider, in a comparative perspective, the manner in which Queen Elizabeth referred to the slave trade during her address to the joint session of the Virginia assembly on the occasion of the commemoration of the 400th anniversary of Jamestown on 3 May 2007: Queen Elizabeth II 2007 <http://www.americanrhetoric.com/speeches/queenelizabethvageneralassembly.htm>. See also the former US President, Bill Clinton's seeming or near-apology on 17 June 1997: Clinton 1997 <https://edition.cnn.com/ALLPOLITICS/1997/06/17/clinton.race/>. On the other hand, Former British Premier, Tony Blair, was categorical and unequivocal when he referred to slavery as one of history's most "shameful enterprises" (even though he failed to apologise for it): Blair 2007 http://news.bbc.co.uk/2/hi/uk_news/6493507.stm. Former Mayor of London, Ken Livingstone, did apologise for the role played by London in the slave trade. He referred to it as "a monstrous crime": Livingstone 2007 http://news.bbc.co.uk/2/hi/uk_news/england/london/6474617.stm.

³¹ Marlowe 2006 <https://www.irishtimes.com/news/chirac-announces-slavery-memorial-day-1.1008754>.

5 Western indifference, hypocrisy and double standards

In regard to the goal of universalising international human rights, it is quite unfortunate, vexing and disappointing to notice the conspicuous gaps and disjunctures that have taken permanent residence between rhetoric and reality. The actions and omissions of the West are not only dubious and in furtherance of their national interests, but have the impact of diluting the legitimacy of human rights. Looking at the attitudes of the Western nations, one can argue that they clearly and unequivocally display a disconnection between the aspirations expressed in international human rights instruments and the reality. In *realpolitik* contexts, national interests have overridden human rights concerns. The condemnation of human rights abuses in the western world, irrespective of the scale, depends entirely on what national interest will be furthered or compromised. Undoubtedly, the western world has made human rights a political football on the international plane, making it a fluid and dynamic concept with no clear underlying principles in regard to their protection and promotion. The volatility of human rights on the African continent has been brought about by its very politicking, as gross violations may be completely ignored without any condemnation. While this view may be very critical and pessimistic, a few examples are probably worth mentioning, as they will support the argument. On the African continent, documented cases of gross violations of human rights serve as cogent and bullet-proof evidence of western hypocrisy, indifference and double standards. The perpetration of apartheid in South Africa; the genocide in Rwanda, and the grave humanitarian crisis in the Darfur, Sudan, are a few examples that come to mind. One should consider the case of Africa in the aftermath of the Second World War. The UN Charter, in its Preamble, reaffirmed its "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". However, the innate ineffectiveness of the UDHR would be reflected in the continued colonialism, during which the people in the said colonies were still consigned to the repressive, exclusive and brutal policies prescribed and implemented by people who had invaded them and without consent occupied their land, and had since then been involved in an unconscionable theft of the resources therein. Looking at the experience, and appraising it from the aspirational standpoint of the UDHR, in all fairness, one can argue that the contextual reality experienced by Africans was an unbridgeable distance from the aspirations of the UDHR and evidenced the inherent powerlessness of the UDHR itself. The situation was aggravated by the conspicuous unwillingness of the same

colonial powers to at least grant recognition to these "subjects" as human beings with legal entitlements in the new international legal order.

Beyond the adoption of the UDHR, numerous international human rights instruments were developed partly for the purpose of furthering the recognition of specific categories of rights (such as social, economic and cultural rights, and civil and political rights), the prohibition of specific acts such as discrimination, the criminalisation of torture, and contextual definitions of the rights of vulnerable persons. Unfortunately, despite the rhetoric that accompanied these developments, their crystallisation into human rights instruments was not accompanied by the purest of intentions and obligations from some western countries. Take for example the actions, omissions and attitudes of the United States which, in all fairness, is the leading proponent in the international human rights movement and the foremost denouncer of human rights abuses. Even though the UDHR was spearheaded by Eleanor Roosevelt, the then First Lady of the US, the US played a very instrumental role in seeing to it that the UDHR did not succeed in becoming a binding covenant. Subsequent human rights instruments endured a vexing and dubious delay on the part of the US in ratifying them. The 1965 *Convention on the Elimination of All Forms of Racial Discrimination* was ratified only 29 years later (in 1994), and the ICCPR in 1992.³² The history of the ratifications discloses a disturbing trend: they came with a very high price, with reservations, understandings and declarations attached to the operation of these instruments in the US legal system. The ICESCR is yet to be ratified by the USA. The *United Nations Convention on the Rights of the Child* (hereafter the CRC) has not been ratified by only two states across the world, one of which is the USA. A similar pattern could be noted in regard to the *United Nations Convention on the Elimination of all Forms of Discrimination Against Women* (hereafter the CEDAW), which was signed in 1980, a year after its adoption, but has to date not been ratified. In addition to the unwillingness to support or ratify the UN instrument on racial discrimination, the United States and the United Kingdom, obviously the two leading countries in advancing the universal respect for, promotion and protection of human rights, were conspicuously ambivalent in the 1980s on their positions regarding apartheid in South Africa. Specifically, the Reagan and Thatcher administrations both followed a policy of "constructive engagement" with the apartheid regime. They both vetoed the imposition of UN economic sanctions on apartheid South Africa.

³² Upon ratification in 1992, the United States made five reservations, five understandings and five declarations which, in effect, severely limit the applicability of the ICCPR in its domestic legal system.

They were motivated not by the gross inhumanities perpetrated by the practice of apartheid, but rather by the economic considerations of free trade and seeing South Africa as a major bastion against Marxist forces in South Africa. Thatcher declared the African National Congress (ANC) a terrorist organisation. Her spokesman, Bernard Ingham, in the late 1980s expressed the opinion that anyone who believed that the ANC would ever form a government in South Africa was "living in cloud cuckoo land".³³ Nelson Mandela was also included in the US list of terrorists.³⁴

Humanitarian crises that occurred in the former Yugoslavia, Rwanda and Sierra Leone attracted unflinching commitments by the US to combat impunity by holding the perpetrators thereof responsible. Through international criminal justice mechanisms this objective was met with some comparable degree of success. Unfortunately, the US has shown unqualified opposition to the permanent International Criminal Court (hereafter the ICC), as opposed to its European allies. In the early months after the adoption of the *Rome Statute of the International Criminal Court*, US opposition reached its peak in Congress as a representative declared it "dead on arrival" at the US Congress.³⁵ John Bolton, one of the most ardent and unrepentant critics of the ICC, called it an illegitimate court that would tamper with the constitutional rights of US citizens and make them yield to foreign and international courts.³⁶ If the US is true to its human rights creed, and unequivocally believes that there should be accountability for human rights violations, then the US, it is thought, should be amongst the leading countries not only to establish such an institution but also to be part thereof. Given the current state of affairs, that seems very aspirational and quite distant from being realised. The US response to the genocide in Rwanda in 1994 was unfathomable. With Clinton barely over fifteen months in the White House, as Rwanda slipped into an ethnic cleansing, Clinton instructed his Secretary of State Madeleine Albright to refrain from using the word "genocide". Rather, she would argue that Rwanda was undergoing a minor ethnic tension which was resolvable. Before the conflict came to an end, over half a million Rwandans had lost their lives. The Western powers,

³³ The Ratcatcher 2013 <https://www.politicsweb.co.za/news-and-analysis/fight-back-of-the-thatcher-cloud-cuckoo-land-misqu>.

³⁴ Elliott 2019 <https://globalnews.ca/news/5201623/nelson-mandela-apartheid-terrorist-south-africa/>.

³⁵ Senator JA Helms, Jr, Chair of the Senate Relations Committee declared the Rome Statute "dead on arrival" if the treaty did not grant the US veto power: see Crossette 1998 <https://www.nytimes.com/1998/03/27/world/helms-vows-to-make-war-on-un-court.html>.

³⁶ Tamkin 2018 <https://www.buzzfeednews.com/article/emilytamkin/bolton-911-icc-israel-afghanistan-dead-to-us>.

which predominantly occupy the United Nations Security Council, displayed indifference and unresponsiveness to the Rwandan mayhem. They were unwilling to categorise the crisis as constituting a threat to world peace and security. And there was a delay in recognising the need to deploy troops to Rwanda to bring the conflict to an end. And then, in another sub-region of the African continent, there was the civil war in Sierra Leone. What is discernible in these crises (Rwanda and Sierra Leone in Africa, and as compared to Kosovo in the former Yugoslavia) is that the concept of humanitarian intervention itself is based on the national interests of the western powers and not on the alleviation of human rights violations occurring therein. When Sierra Leone slipped into a civil crisis, Nigeria, the biggest African state in terms of military might and resources, committed to neutralising and defeating the rebellious regime that had ousted the democratically elected government. Nigeria undoubtedly introduced a new model of what was meant by humanitarian intervention for the alleviation of human rights abuses (both within national, regional and international human rights law), marked by a swift use of military force. Despite the calls to the western powers, no support was forthcoming from them, since they had no interests to protect or further therein. Complemented by a handful of Ghanaians, Malians and Guineans, Nigeria was able to marshal the ECOWAS-coordinated operations that brought to an end a murderous rebellious regime and reinstated the democratically elected government of Ahmed Tejan Kabbah. Compared to the international response to the crisis in the former Yugoslavia, one is justifiably embarrassed by the glaring disparity in the humanitarian interventions affecting peoples in different parts of the world. Like many other casualties of the inexplicable violence that plagues African countries, the saddening images that should warrant immediate international condemnation and action often fade from the world's consciousness. In cases where humanitarian aid is considered, they are deficient in energy and efficacy, leaving the affected refugees scrambling for crumbs of mercy.

6 The corruption factor: the complicity of the West

A key challenge to realising the aspiration of universalising human rights has been the corruption factor which resides as an invisible enemy amongst African people. Defined as the use of public resources for private gain, corruption on the African continent is perpetrated by, amongst others, senior state officials who steal state-owned resources. These stolen resources and assets are transferred surreptitiously to financial institutions in Western

countries where they are concealed. Clearly, the theft of state resources affects the realisation of human rights. Borrowing from the language used in Article 2(1) of the ICESCR, State Parties thereto are urged to

... take steps, individually and through international assistance and co-operation, especially economic and technical, to the *maximum of its available resources*, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Without doubt, the theft of state resources deprives such a state of the resources needed for the realisation of human rights. For example, to realise the right to healthcare, resources are needed to construct the requisite infrastructure and to equip such facilities with the cutting-edge tools needed for the investigation, diagnosis, treatment and prevention of ailments. Resources are also needed for the maintenance of these appliances as well as the acquisition of new ones. Resources are needed to hire, train, remunerate and retain competent personnel in sufficient numbers. The same applies to the right to education. In order to realise the right to education, resources are needed for the construction of educational establishments and the provision of amenities that foster the development of the learners' intellect, abilities, physique and morale. The recruitment of teachers also requires resources. When resources stolen by senior state officials are received by western financial institutions, socio-economic development is not only hijacked and derailed but further thwarts the possibility of realising human rights. Foreign financial institutions, especially those in the West, have become safe havens where stolen resources from African states are kept. Data from credible sources reveal that the African continent loses over USD 50 billion annually. Different sources reveal stunning figures on the amount of monies stolen and transferred out of Africa, putting it on a rough estimate of US\$ 75 billion annually.³⁷ Bearing in mind the adverse effects of these stolen resources on the realisation of socio-economic and political development and human rights, it is logical to say that the west is complicit in the theft of these resources as well as in diminishing the possibilities of realising human rights on the African continent. The resource issue, in addition to their being stolen and consigned to the West, also accounts for the numerous intra-state wars that have plagued the African continent.

³⁷ Hope 2020 *Journal of Financial Crime* 297-298.

7 Conclusion

Africa is currently beleaguered by internecine, sporadic and avoidable man-made disasters emanating from irresponsible, toxic and unresponsive political leadership that has abused the will of the people, deprived them of their welfare and altered the purpose of government. Complicit in the exploitation and underdevelopment of their respective communities, these perpetrators of divisive politics have pitted segments of their people against one another in a bid to further their political grip on power and, with the aid of other political elites, have committed the theft of state resources, depriving their people and states of the resources needed to pursue development. Often, these acts are perpetrated with the complicity of Western powers who would prefer to have in power leaders who further their (Western) interests.

This situation is rendered more complex by the biases, hypocrisies and indifference of the Western world, as Western states take a remote position towards influencing the conduct of politics in Africa. Central to this is the place of human rights in terms of recognition, enforcement and implementation. As human rights have become side-lined by the continent's political actors in pursuit of their personal and national interests, Africans have witnessed double-standard bearers who preach human rights but practice human wrongs across the continent. If Africa is the hub of serious crime in international law, this is largely because their perpetration on African soil is given very minimal attention by the same institutions that are supposed to prevent them. If we argue that the human race is the only race created by God, and everyone in the human race possesses rights irrespective of any differences they may have, then respect for human rights as well as their enforcement can be meaningful and effective only if the entire human race is committed to alleviating the plight of everyone else, no matter where he or she is. Mankind must hold this solemn and sacrosanct duty and obligation at the centre of its being, instead of making it a chameleon-like entity that changes its appearances depending on the context in which it is operating.

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List of Abbreviations

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|-----------------------------|--|
| Ankara L Rev | Ankara Law Review |
| CEDAW | Convention on the Elimination of all Forms of Discrimination Against Women |
| CRC | Convention on the Rights of the Child |
| Hastings Int'l & Comp L Rev | Hastings International and Comparative Law Review |
| Hum Rts Q | Human Rights Quarterly |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| J Int Political Theory | Journal of International Political Theory |
| Mich J Int'l L | Michigan Journal of International Law |
| OJLS | Oxford Journal of Legal Studies |
| Philos Public Aff | Philosophy and Public Affairs |
| PMLA | Journal of Modern Language Association |
| U Miami Inter-Am L Rev | University of Miami Inter-American Law Review |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| Yale LJ | Yale Law Journal |