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**Domesticating Human Rights on African Soil: Theorizing from Practice**

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## ABSTRACT

In the 70<sup>th</sup> anniversary year of the Universal Declaration of Human Rights (UDHR), this paper proposes an alternative perspective on the progress of the international human rights regime inaugurated in 1948. Focusing on the multiple ways that international human rights discourse is deployed in diverse African locales throughout the late twentieth and early twenty-first centuries, this paper launches the concept of *domestication* as a way to apprehend the variety of human rights practice. In so doing, this paper challenges definitions of human rights progress that focus on expanding global consensus, and instead theorizes a future for human rights discourse that is rooted in difference, particularly the divergent strategies and ideologies of diverse local stakeholders.

# Domesticating Human Rights on African Soil: Theorizing from Practice

## Abena Ampofoa Asare

### Introduction

How do we tell the story of international human rights? Of what it is, how it came to be, and what it will be in the future? The variation within and among the organizations, initiatives and practices corralled together under the banner of international human rights poses a challenge to all who would define and evaluate this highly mutable rhetoric, legal framework, and network of institutions. An *AlJazeera News* photographic report from 2013 displays the drastically different ways that December 10, Human Rights Day, is celebrated around the world. In one image, a member of Cuba's controversial "Ladies in White" organization is caught in mid-scream while being forced into a vehicle by six security agents. Another photo is the unveiling of a massive sculpture: a flying Nelson Mandela set in gold soars at the Cape Town International Airport. There are other photos. A bundle of young people at the Indian embassy in Kathmandu protesting a five-month blockade of the Indo-Nepal border; a leisure human rights bicycle tour in Mandalay, Myanmar; all of these are part of the marking of Human Rights Day. Clearly, the international human rights concept appears in the world in different ways. This is partly by design. The 1950 United Nations (UN) resolution that established Human Rights Day exhorted governments and organizations around the world to celebrate as they saw fit, and then report their activities back to the UN.<sup>1</sup> This ecumenism is useful; only a human rights regime that is "polyvalent and flexible"<sup>2</sup> could gain traction and "find[ ] favor in both political and popular circles, among the ideologues of the state and the interlocutors of civil society."<sup>3</sup> And yet, amid this variety, there is no shortage of scholarship lauding or condemning a unitary international human rights—notwithstanding the fact that this has never existed.

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<sup>1</sup> UN General Assembly Resolution 423, December 4, 1950 "Human Rights Day"  
<http://www.un.org/documents/ga/res/5/ares5.htm>

<sup>2</sup> Sally Engle Merry, "Inequality and Rights: Commentary on Michael McCann's 'The Unbearable Lightness of Rights,'" *Law & Society Review* 48, no. 2 (2014): 288.

<sup>3</sup> Paul Tiyambe Zeleza, "The Struggle for Human Rights in Africa," *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines* 41, no. 3 (2007): 475.

In the 70th anniversary year of the Universal Declaration of Human Rights (UDHR), this paper attends to the fecundity of international human rights practice—and the seeming insensibility to the same in the writing of human rights history. Around the world today the language of human rights is used, unapologetically, in diverse political and social movements and for ideologically disparate purposes. There is an observable process of *domestication* underway as African activists, organizations and people utilize the language of human rights in ways that diverge from the version of human rights codified in international law and custom.

I propose the language of domestication, with its connotations of adaptation, cultivation and making something “fit” for use, in order to highlight the redemptive work undertaken by African organizations and activists who deploy human rights in ways that diverge from and exceed existing legal codifications. The language of domestication, with its intimations of “taming” of “curbing” a powerful force, also acknowledge the risk that human rights discourse has historically posed to the autonomy of African societies and the self-determination of African peoples. Speaking of international human rights as a force to be domesticated foregrounds the charges of Eurocentric imperialism that have been intertwined with the notion of universal human rights even from its origins. The dynamic heterodoxy of global human rights practice stands in contrast to the assumption of a unitary or uniform human rights apparatus and offers a new foundation to contemplate the future of international human rights. By attending to the ideologically-profligate realm of African human rights practice, this paper challenges one of the truisms of the UDHR-centric human rights regime: that global consensus is the fulcrum and the future of the human rights project.<sup>4</sup>

The idealization of global consensus—whether through proclamation, persuasion, or coercion— has been central to the human rights project.<sup>5</sup> From the UN Charter’s multiple statements about “harmonizing the actions of nations,” “the attainment of common ends,” and “achieving international cooperation,” to the High Commissioner for Human Rights’ directive to “mainstream” human rights around the world, to the treaty structure that imagines ever-

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<sup>4</sup> “The Declaration of Human Rights was looked upon as so important because many people believed it to be one of the things on which we might build understanding in the future, if enough nations could agree on what basic rights and freedoms were.” Eleanor Roosevelt, “Making Human Rights Come Alive,” March 30, 1949.

<sup>5</sup> Joe Hoover, “Rereading the UDHR: Plurality and Contestation, Not Consensus” *Journal of Human Rights* 12 (2) 217-241.

expanding lists of signatory countries, global human rights is usually imagined as an ethic progressively disseminated (and embraced) around the world.<sup>6</sup> The foundational human rights document, the UDHR establishes that human rights is “a common standard of achievement for all peoples and nations...” and that “a common understanding of these rights and freedoms is of the greatest importance...” (UDHR, Preamble). Although the image of international human rights discourse as an engine of global consensus might animate the legal apparatus, the practice of human rights does not bend toward this vision of global ideological consensus. “Human rights laws do not succeed by themselves but only when there is an active global civil society promoting those rights abroad and a vibrant national civil society advocating for those rights on the ground.”<sup>7</sup> The organizations and actors that constitute international civil society may seek to remake their world, and even use the language of human rights, while harboring different visions of success and using ideologically divergent strategies. In short, those who pursue the future using the language of human rights, are not necessarily taking cues from the UN and their visions need not be limited by the existing corpus of international law. If grassroots activists and civil society around the world are supposed to be the hands and feet of international human rights, these appendages are now moving at a speed and in directions to which the main corpus is not privy. There is diversity of purpose, conflicting visions, and lack of consensus within the global human rights regime— and this may be all to the good.

### **On Domestication**

The assumed vertical relationship between human rights law and human rights practice has already been put on notice. Actor-focused analyses of human rights make it plain that the wide variety of organizations and activists that speak human rights do not uniformly exhibit a rights consciousness tethered to the UN apparatus, or its powerbrokers.<sup>8</sup> The assumption of ideological alignment or shared strategic vision between grassroots stakeholders and the architects of the human rights law crumbles under moderate pressure. The manifestations of

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<sup>6</sup> UN Charter, Article 1, <http://www.un.org/en/sections/un-charter/chapter-i/index.html> UN Office of the High Commissioner, <https://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>

<sup>7</sup> Stephen Meyers, “NGO-ization and Human Rights Law: The CRPD’s Civil Society Mandate,” *Laws* 5, no. 21 (2016): 1.

<sup>8</sup> Shadi Mokhtari, “The Middle East and Human Rights: Inroads Towards Charting Its Own Path,” *Northwestern Journal of Human Rights* 10, no. 4 (January 1, 2012): 194.

global human rights do not constitute a unified advance. Even as global human rights continue to be an arena “embod[ying] unequal relations of power and the... inequities present” in the international political order, reconstitution and transformation is possible as communities and individuals deploy human rights in pursuit of diverse goals and visions. Lucie Perelman and Jeremy White describe a new generation of African organizers and lawyers that “seize[] upon human rights values, language, and tactics” to address an issue about which international human rights law has been decidedly reticent: economic injustice.<sup>9</sup> Likewise, resources originating from UN coffers may flow to social movements and activists and reap unexpected returns. Elizabeth Holzer’s gripping monograph shows how the UN High Commissioner for Refugees (UNHCR) efforts in a Liberian refugee camp in Ghana spurred the creation of a grassroots refugee rights organization that ultimately challenged the tenets of the UNHCR’s governance in a resounding public clash.<sup>10</sup>

The vibrancy of human rights appearance around the world should not be a surprise. The “social life of human rights” call attention to human rights practice as a negotiated, contingent outcome rather than a matter of laws, conventions, instruments generated in Geneva or New York (or even in Addis Ababa or Arusha).<sup>11</sup> Conceptualizing human rights as a social practice makes it plain that human rights struggle is created differently by US ambassador to the United Nations, Nikki Haley and Abahlali baseMjondolo, the Urban Shackdwellers’ Association in South Africa. Anthropologists of human rights like Richard Ashby Wilson suggest that human rights practice is created through the actions, desires, and social worlds of people. Necessarily “plural and fragmentary”; the regime constructed atop the pristine UDHR appears to be “ideologically promiscuous” and undeniably “slippery.”<sup>12</sup> Under this type of scrutiny, the

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<sup>9</sup> Lucie E. White and Jeremy Perelman, *Stones of Hope: How African Activists Reclaim Human Rights to Challenge Global Poverty* (Stanford University Press, 2011), 3.

<sup>10</sup> Elizabeth Holzer, *Concerned Women of Buduburam* (Ithaca, NY: Cornell University Press, 2015).

<sup>11</sup> Michael McCann, “The Unbearable Lightness of Rights: On Sociolegal Inquiry in the Global Era,” *Law & Society Review* 48, no. 2 (2014): 248; Richard Ashby Wilson, “Afterword to ‘Anthropology and Human Rights in a New Key’: The Social Life of Human Rights,” *American Anthropologist* 108, no. 1 (March 1, 2006): 77, <https://doi.org/10.1525/aa.2006.108.1.77>; “Duke University Press - Human Rights in the Maya Region,” accessed March 28, 2019, <https://www.dukeupress.edu/human-rights-in-the-maya-region>.

<sup>12</sup> Wilson, “Afterword to ‘Anthropology and Human Rights in a New Key,’” 77.

“human rights regime includes a vast array of different kinds of moral and political projects,” many of which may be patently incompatible.<sup>13</sup>

In making sense of this complexity, Tine Destrooper’s introduction to *Human Rights Practice in Transformation* is an invaluable review of the interdisciplinary theorizations of how human rights “travels” throughout the world. “There are changes in substance, strategy, and language that occur when human rights norms move between rights users at various scales and localities,” and the motivations and consequences of these shifts are complex.<sup>14</sup> In this important collection, Destrooper and Sally Engle-Merry use an expansive language of “travel and transformation” compatible with indeterminate outcomes. “Neither a vertical nor a horizontal framework adequately describes how grassroots and local human rights actors influence the global manifestations of international human rights law and policy. There are “downstream approaches” that show that human rights are altered as they move from the institutions and powerbrokers at the center and find roots in local soil. Conversely “upstream approaches” imagine a human rights-from- below in which local understandings of justice and dignity ultimately impact how international mechanisms legislate, fund, and understand human rights. In both these approaches, the blooming of multiple versions of human rights is largely seen as a matter to be reconciled. Theories of vernacularization, indigenization, and translation all imagine closing the space between local expression and global law. However, attending to the expansiveness of a global human rights apparatus is not only a matter of *reconsidering the direction of influence* (i.e. whether human rights is defined by the powerbrokers in Geneva or by “the voices of those who are suffering” in the words of Upendra Baxi.<sup>15</sup> Instead, the diversity of the corpus of human rights practice urges us to *reconsider the directive of influence*: the UDHR’s vision of a world connected by a common understanding of freedom and justice.

Human rights’ appearance in the world is a revelation of difference. Disparate communities enact this discourse to articulate their conceptions of justice, dignity, and freedom and to pursue the future. Speaking of domestication recognizes that these multiple visions need

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<sup>13</sup> Wilson, 77.

<sup>14</sup> Tine Destrooper and Sally Engle Merry, *Human Rights Transformation in Practice* (Philadelphia, PA: University of Pennsylvania Press, 2018), 7.

<sup>15</sup> Upendra Baxi, “Voices of Suffering and the Future of Human Rights,” *Transnational Law & Contemporary Problems* 8 (1998): 125.



not be reconciled, or forced into mutually-agreeable whole; it challenges the idea that global consensus is the *raison d'être* and highest progression of human rights. The ongoing reconstruction occurring on African soil upsets this image of a settled code to be rolled out throughout the world and illuminates the potential of human rights as a capacious arena, a catalyst for debate. The paper pursues the heuristic value of an ideologically-profligate realm of human rights practice. First, I explore the nature of domestication by describing Ghana's National Reconciliation Commission as a site where every day citizens used the discourse of international human rights as a platform from which to offer robust analyses of political violence and restoration. Subsequently, I argue that this challenging/ riotous realm of human rights practice is an opportune vantage point from which to approach two of the most pressing questions about global human rights: can human rights be decolonized? Does human rights have a future?

### **Examples of Domestication**

Elsewhere I have written about Ghana's National Reconciliation Commission (NRC, 2000- 2004) as a site of energetically divergent claims about the substance and consequence of human rights.<sup>16</sup> The Ghanaian NRC, like other global truth and reconciliation commissions (TRCs), was rooted in both the discourse of human rights and global transitional justice. The sponsoring Ghanaian government championed the NRC as a "soul-searching investigation of human rights violations and abuses" that might compel the Ghanaian citizenry to "become true apostles and disciples of human rights" able to "raise [their] collective voices loudly against their violation and abuse" in the future.<sup>17</sup> In many ways, Ghana's NRC structure reflects the ideological investments of transitional justice and international human rights. The focus on individual testimony and individual accountability, the overarching dichotomy of victims and perpetrators, the sublimation of structural and corporate violence—all reflect the biases of a Eurocentric human rights concept, made manifest in global transitional justice.<sup>18</sup> However, the

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<sup>16</sup> Abena Ampofoa Asare, *Truth without Reconciliation: a Human Rights History of Ghana*, Philadelphia: University of Pennsylvania, 2018.

<sup>17</sup> "White Paper on the NRC" (Government of Ghana, April 2005), 3, 12, 2009-0193 International Center for Transitional Justice Records, David M. Rubenstein Rare Book and Manuscript Library Human Rights Archive.

<sup>18</sup> Ismael Muvingi, "Donor-Driven Transitional Justice And Peacebuilding," *Journal of Peacebuilding & Development* 11, no. 1 (January 2, 2016): 10, <https://doi.org/10.1080/15423166.2016.1146566>. Muvingi, "Donor-Driven Transitional Justice And Peacebuilding"; Tshepo Madlingozi, "On Transitional Justice Entrepreneurs and the

Ghanaian NRC petitioners wielded human rights in ways that stretched beyond the ideological and political constraints of the commission's founding.

In the archives of the Ghanaian NRC, a petition submitted by Nii Ayi and Grace Plange highlights this reconstruction of human rights. In 1982, twenty-one year old Nii Ayi was inadvertently hit by a stray bullet from a Ghanaian soldier controlling a traffic check point. Among his many losses was the power of speech and some of his mental capacity. From the very first sentence the Plange petition calls into question one of the fundamental premises of the TRC form. "I, Nii Ayi Plange, cannot speak when I am called to testify because I am mute. I have therefore delegated my sister, Madam Grace Plange to do the talking for me." In the transitional justice framework, individual speech and public articulation are valorized as pathways toward psychic wholeness, political stability, and social restoration; truth commissions "draw from a model that holds that speech is cathartic and that persons are autonomous individuals with the capacity to choose freely how to engage in institutional processes."<sup>19</sup> These commissions allow victims to "move from repression to expression," to "turn from silent icons of past horrors into active producers of words and speech."<sup>20</sup> But what of those in the body politic who, for any number of reasons, cannot make this move toward public articulation? What of the exclusions (social, physical, economic, and political) that render some stories, suffering, and histories, impossible to capture within the TRC? By illuminating the limitations of the NRC's accounting, the Plange petition calls attention to the moments of violence and harm that remain unspeakable, and the problem of human rights law as a system that depends on articulate victims who launch a case, even within the truth and reconciliation framework.

Only the presence of Nii Ayi's sister, "she [who] had been with me since my accident," makes his experience visible. Grace Plange is at once caretaker, witness, and amanuensis; she describes herself as the "mouthpiece to [her] brother," speaking for and under the authority of the

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Production of Victims," *Journal of Human Rights Practice* 2, no. 2 (July 1, 2010): 208–28, <https://doi.org/10.1093/jhuman/huq005>; Adam Branch, *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford University Press, 2011); Rosemary Nagy, "Transitional Justice as Global Project: Critical Reflections," *Third World Quarterly* 29, no. 2 (February 1, 2008): 275–89, <https://doi.org/10.1080/01436590701806848>.

<sup>19</sup> Fiona C. Ross, "An Acknowledged Failure: Women, Voice, Violence and the South African Truth and Reconciliation Commission," in *Localizing Transitional Justice*, Stanford Studies in Human Rights, 2010, 75.

<sup>20</sup> Annalisa Oboe, "The TRC Women's Hearings as Performance and Protest in the New South Africa," *Research in African Literatures* 38, no. 3 (2007): 61.

true victim who bears the markers of the state violence so plainly on his body. And yet, the remainder of the Plange petition makes it plain that this notion of a discrete victim, a single person whose suffering can be easily located, quantified, and repaired, does not align with this family's experience of violence. Grace Plange's words reveal that her brother's gunshot wound echo within her own life in myriad ways. She offers an accounting of her own losses, those incurred from the fateful day when "she rushed to the spot where [she] saw only bloodstains" and found that her brother had been carried off to the Korle-Bu Teaching Hospital by soldiers.<sup>21</sup> Since then, the severity of her brother's ailments have drained her resources: "I am the only family he has, I have sold everything I have to take care of him. ... We are appealing to the NRC to come to our aid financially.... I can no longer pay Nii's medical bills and two of [my] children could not continue with their education [because] I have to channel all my money into looking after Nii." The injury cannot be quarantined to her brother's body; in Grace Plange's words, the suffering created by soldier's act is compounded and extends to other members of the family. By challenging the premise of the notion of a single, discrete victim, this retelling calls for a broader accounting of the social and collective consequences of any act of violence, and consequently invokes a necessarily expansive vision of restoration. Broad are the reparations that would be required to give succor to all those who are suffering because of Nii Ayi's injury.

In addition, the Plange petition outlines the policies and systems that convert an errant bullet into enduring suffering. Upon arrival at Korle Bu Teaching Hospital, Grace Plange was told that her brother required a blood transfusion and immediately exited the hospital to buy razor blades that would be used to shave his body for procedure and to look for blood donors. "I had nine donors in all, some I had to pay before they agreed to donate." The Plange petition impugns a Ghanaian health care system in which a surgery patient depends on family members to secure the basic necessities from shaving blades to blood donation. This phenomenon—the responsibility placed upon family members of injured citizen to provide for the basic medical needs of their injured loved ones—is analyzed within the literature on health care delivery in sub-Saharan Africa. These studies largely do not consider the psychological and economic consequences of this practice for the affected families; they do not use the language of trauma

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<sup>21</sup> Nii Ayi Plangue, "ACC00349," n.d., accessed September 17, 2007.

and atrocity in assessing this practice.<sup>22</sup> On the contrary, Grace Plange shows how these conditions and practices converge to create the contours of a human rights violation. Accounting for the 1982 shooting requires confronting an inadequate health care system; it also requires addressing the social stigma and policy gaps surrounding disability in Ghana.

In this telling, a lack of educational and professional opportunities ensures that Nii Ayi's injury becomes a life sentence of idleness and frustration. "There were some occasions when he used the monies given to him ...by sympathizers to go and pay his school fees but after a while, he comes back home and refuses to go back again." "It is Nii's wish to go back to school though I do not think he can make it because of the injury. Gone were the days—before the injury—when he was brilliant." The door to further education has been firmly shut by financial struggles and a lack of accommodation within a notoriously competitive national education system. Likewise, productive labor is also out of reach: "I took him to learn as a carpenter and a cobbler but in all these cases he could not cope or the men in charge could no longer stand him." The stigma of disability, and the lack of policies around fair accommodation ensures that Nii Ayi's future is constrained. Without prospects, Nii "resorted to begging to get money and this is depressing to him..." In brief, declarative sentences, the Plange petition reveals that human rights violation is not only a matter of a bullet and a solidier, but that injury is consolidated in the hospital, the classroom, in the place of business, and all other places where disability is imposed. By reaching toward a capacious vision of human rights, speaking of the pain of sisters, nieces and nephews and exploring the ongoing violence of poverty, and disability stigma, the Plange petition utilizes the human rights framework in ways that extend far beyond the expectations of the truth and reconciliation commission form.

### **On Decolonization**

This, the breaking open of human rights practice to include different desires, strategies, and ideologies impacts long-standing debates about whether the human rights framework can serve communities marginalized by modernity-making processes including slavery, settler

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<sup>22</sup> Lucy Asamoah-Akuoko et al., "Blood Donors' Perceptions, Motivators and Deterrents in Sub-Saharan Africa – a Scoping Review of Evidence," *British Journal of Haematology* 177, no. 6 (June 1, 2017): 864–77, <https://doi.org/10.1111/bjh.14588>.

colonialism, European imperialism and capitalist globalization. Concerns about the origins of human rights (i.e. is this a Western concept or a universal concept?) hover above a deeper query about whom global human rights serves and why. Scholars have dared to approach this undercurrent by calling for the “decolonization” of international human rights concept. Confronting the partiality in how the individual human subject is imagined, questioning “who speaks for the human in human rights?” and urging a “radical reconceptualization of the human rights paradigm” is required to make human rights fit for dreaming beyond the endemic inequalities of the current world system.<sup>23</sup>

Calls for decolonization recognize the risk that ‘rights talk’ has historically posed for African peoples. In human rights, Makau Mutua, a Kenyan political scientist sees “a system of ordering the world... that makes [him] acutely aware [his] subordinate and marginal place in it, as the “other.”<sup>24</sup> Anthropologist Harri Englund has warned of the undemocratic underbelly of human rights interventions. Many have given up entirely on human rights as a force that presupposes the integration of African polities and people into an international political order built upon their subjugation. Isn’t international human rights, after all, nothing more than the “rhetoric of emancipation that hides the reality of coloniality”?<sup>25</sup> Philosopher Nelson Maldonado-Torres has perceptively pointed out that just two years after the UDHR was written, Aimé Césaire published an “incisive” critique of the freshly-established global human rights regime as a form of “pseudo-humanism” that champions universal humanity but in actuality deploys a rights concept that is “narrow and fragmentary, incomplete and biased and, all things considered, sordidly racist.”<sup>26</sup> To the degree that human rights is embraced by Africans and other Southern political contexts, is this not an accommodation to Eurocentric liberal modernity? And surely, as Samuel Moyn has recently stated, there may be other frameworks that are not so encumbered by their historical origins and ideological attachments. *Not Enough’s* conclusion

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<sup>23</sup> Walter D. Mignolo, “Who Speaks for the Human in Human Rights,” *Human Rights in Latin American and Iberian Cultures* 5, no. 1 (2009); Jose-Manuel Barreto, “Decolonial Strategies and Dialogue in the Human Rights Field,” in *Human Rights from a Third World Perspective* (Cambridge Scholars Publishing, 2013), 4.

<sup>24</sup> Makau Mutua, “Human Rights in Africa: The Limited Promise of Liberalism,” *African Studies Review* 51, no. 1 (2008): 18–19.

<sup>25</sup> Sabelo J Ndlovu-Gatsheni, “Global Coloniality and the Challenges of Creating African Futures,” *Strategic Review for Southern Africa* 36, no. 2 (2014): 185.

<sup>26</sup> Nelson Maldonado-Torres, “On the Coloniality of Human Rights,” *Revista Crítica de Ciências Sociais*, no. 114 (December 1, 2017): 117–36, <https://doi.org/10.4000/rccs.6793>.

calls for human rights to be displaced from its place of primacy as the language for global progress: “[We] should not believe human rights are the only or even the main keys to unlock the portal to the world’s future.”<sup>27</sup> Surely this is useful advice; the international human rights framework is neither talisman nor totem; it is not worthy of any special reverence. At the same time, the call to discard human rights and take up new frameworks of changing hearts and minds may be premature, perhaps unnecessary.

However, when cultural theory scholars call for the decolonization of human rights they rarely consider that such work is already being done by displaced Liberians in a Ghanaian refugee camp, or Tanzanian lawyers addressing conservation, indigenous rights, and land redistribution in one breath, or Nii Ayi and Grace Plange in their presentation to the NRC’s Accra office. In these settings, human rights is a site of debate rather than the expression of a settled code. By attending to the innovation and flexibility of the versions of human rights percolating in contemporary African political contexts, and specifically to the reconstruction of global human rights apparatus in the hands of diverse actors, this paper suggests that the future of human rights is now. The inutile aspects of the rights framework, in some places and times, are already being discarded. This reconstruction is largely overlooked among those scholars who would theorize the future of the human right concept, many of whom, with some measure of anxiety or glee, insist that international human rights is on the wane. An intriguing parochialism plagues this new wave of scholarship; the procession of scholars sounding the death knell for international human rights usually reference a singular version of human rights, without looking well at the concept’s margins. For example, Eric Posner’s insistence that we are in the “twilight” of human rights law understands human rights as the continuation of the White Man’s Burden. “If Westerners bear a moral responsibility to help less well-off people living in foreign countries”; Posner claims, they should “abandon” human rights law and instead embrace development economics.”<sup>28</sup> In this truncated formulation, human rights law is something the West does for the rest, out of largesse. It is no wonder that within this conceptualization of human rights law-as-civilizing mission, the rights concept appears moribund.

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<sup>27</sup> Samuel Moyn, *Not Enough* (Cambridge, MA: Harvard University Press, 2018), 220.

<sup>28</sup> Eric A. Posner, *Twilight of Human Rights Law* (Oxford University Press, 2014), 9.

Even Samuel Moyn's incisive revisionist histories are rooted in a narrow view of the substance and form of global human rights. Moyn's discussion (2011) of human rights as the "last utopia": "the god that did not fail when other ideologies did," traces the ascendance of what is, ultimately, one particular version of human rights.<sup>29</sup> *Last Utopia* interrupts the dream of an eternal and righteous human rights by arguing that the public collapse of the socialist model and the dizzying rise of neoliberalism in the 1970s paved the way for a human rights movement that self-consciously situates itself outside of politics. Challenging the teleological reading of the UDHR as the codification of eternal principles, Moyn (2011) describes human rights as ideology—contingent, recent, and flawed. In a more recent exploration, Moyn interrogates one of these flaws: a foreshortening of the human rights concept from an expansive vision of political and economic transformation to a limited cry to "save the poor" by pursuing basic minimum sufficiency.<sup>30</sup> Despite the ascendance of the human rights framework, Moyn mourns that "the idea of material equality has lost out in our time."<sup>31</sup> I do not question Moyn's rigorous reading of the insufficiency of the prevalent human rights apparatus; only, the question must be asked: among whom, precisely, has the idea of material equality lost out? Surely not to S'bu Zikode, the founder of Abahlali basMjondolo who, at one of many meetings with the UN Special Rapporteur on Adequate Housing, explained clearly that his organization's "primary strategy is always to build the power of the poor and to reduce the power of the government and NGOs to dominate us."<sup>32</sup> Neither does Moyn's categorization of human rights as the pursuit of a basic minimum sufficiency reflect the complexity of South Africa's Alternative Mining Indaba (AMI), an annual gathering of African civil society organizations focused on combating the multiple forms of violence (environmental degradation, economic corruption, and social devastation) perpetrated by mining companies and their governmental allies. The version of human rights that animates South Africa's Alternative Mining Indabas (AMIs), like the practical work of Abahlali, bears little resemblance to the anemic vision of human rights-as-basic minimums that Moyn criticizes.

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<sup>29</sup> Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, Mass: Belknap Press, 2010), 5.

<sup>30</sup> Moyn, *Not Enough*, 2.

<sup>31</sup> Moyn, 3.

<sup>32</sup> Presentation by S'bu Zikode at the Regional Consultation on Security of Tenure called by UN Special Rapporteur on adequate housing, Raquel Rolnik, in Johannesburg, May 2013. <http://www.polity.org.za/article/sa-statement-by-abahlali-basemjondolo-shack-dwellers-movement-on-the-power-of-organising-the-urban-poor-to-advance-tenure-security-29052013-2013-05-29>

Every year in Cape Town, the AMI convenes just ten kilometers away from the world's largest mining investment conference. A pointed response to the mining conference's exclusivity, the AMI harnesses the anger, suffering, and expertise of mining-affected communities. The language of human rights animates this Alternative Mining Indaba, thematic sessions urge organizations to cooperate with the UN to develop binding treaties about business practices, and the AMI's Final Communiqué often references the African Charter on Human and People's Rights as a point of legal leverage for organizers. In this, the AMI is not limited to the existing human rights infrastructure, but is also decidedly expanding it. In 2016, the AMI articulated an atrocity not yet articulated in existing human rights law or by most human rights institutions. "We... call for the avoidance or minimization of externalized costs through market exchange-based values for human health, time, psychological well-being and productivity to be characterized as a human rights violation."<sup>33</sup> Corporations and governments that mask violence by using cost/benefit analyses divorced from the experiences and voices of affected communities, the AMI claimed, were committing an atrocity: perverse, violent, and ethically indefensible. "People are the only true barometer of their own value and the only acceptable gauge of such value is where a community gives its free prior and informed consent."<sup>34</sup> Corporate attempts to evaluate the benefits and harms of development project while eliding local resistance, the AMI elegantly calls out as abuse, atrocity, a negation of the full humanity of affected communities. In the AMI's hands, global human rights are a living and mutable framework able to be deployed, theorized, and expanded at the local level.

Comparing the bleak scholarly assessments of human rights future with the dynamic and fluid practices occurring under the human rights banner around the world must spur a reconsideration of the future of international human rights. When international relations professor Stephen Hopgood warns of the "imminent decay of the Global Human Rights Regime" because new centers of economic and political power are eroding the capacity of the United States and Europe to control global institutions, he reduces human rights to a framework inseparable from the interests and belief systems of countries ascendant during the mid-

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<sup>33</sup> *Alternative Mining Indaba Official Report 2016*. p.18. <http://altminingindaba.co.za/wp-content/uploads/2015/11/2016-EJN-AMI-Report-FINAL.pdf>

<sup>34</sup> *Ibid*, p. 19.



twentieth century.<sup>35</sup> Hopgood's analysis rightly observes that activists around the globe wield rights talk without genuflecting to the liberal and secular norms that are the triumphant ideologies of Western modernity. These alternative pursuits Hopgood describes as lesser visions; he draws a clear line between "Global Human Rights," duly capitalized, and human rights, multifarious, varied and without the benefit of majuscule script. Those activists and organizations who wield human rights in local struggles and in ways that depart from the directives of the formalized human right apparatus, Hopgood names human rights "workers," a term that assesses their labor and role differently from those persons at the center (who in corollary must be Human Rights bosses?). Although his analysis is well-attuned to the stratification within the world of human rights; his myopia is in crowning a partial version of human rights as the true face of international human rights.

To be clear, Hopgood charts the demise of Global Human Rights with ambivalence. His book opens with an eloquent description of the East Timorese resistance movement and a critique of the Human Rights response to this war of liberation. "Gusmao's liberation fighters always seemed to me exemplary human rights defenders. What they knew was that no one else was coming to save them. Through their own tight communal bonds, shoulder-to-shoulder with people on whom they depended and who in turn depended on them, they defeated a threat to their very existence."<sup>36</sup> However, "East Timor's guerrillas would not be considered true 'human rights defenders' at all by international agencies" because they had taken up arms to protect their own lives and freedom.<sup>37</sup> Despite this conundrum, for Hopgood, this inadequate Human Rights (capitalized) he takes seriously as an ideology with global impact and power. Not so human rights (without the benefit of capitalization): this "less institutionalized, more flexible, more diverse and multi-vocal level where social movements operate."<sup>38</sup> The efforts, however morally consistent and inspiring, Hopgood ultimately disparages as globally insignificant. Although 'human rights' may "help" change the world in "small and positive ways...they will never revolutionize global politics."<sup>39</sup> And yet, apart from whether the East Timorese guerrillas are embraced as human rights defenders by UN High Commissioner Mary Robinson, and important

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<sup>35</sup> Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, NY: Cornell University Press, 2013).

<sup>36</sup> Hopgood, vii.

<sup>37</sup> Hopgood, viii.

<sup>38</sup> Hopgood, 13.

<sup>39</sup> Hopgood, 13.

matter is if, how and when the East Timorese guerrilla movement called upon human rights. What did human rights offer to the East Timorese guerrillas? How did it anchor or expand their own efforts to mobilize a collective struggle or to rebuild in the shadow of war? What is the value of human rights to those who wield it?

### **Alternative Histories of Human Rights**

The innovation in the realm of global human rights practice must change how we write human rights history. There is an emerging scholarship exploring human rights' trajectory beyond Europe and North America and responding to political scientist Susan Waltz's call to "reclaim and rebuild" the history of human rights by recognizing the smaller countries and diverse collection of diplomats (Latin American, Asian, and North African) who helped to develop international human rights law, including the UDHR.<sup>40</sup> However, tracking the domestication of global human rights goes beyond marking the contributions of a few articulate men to the mainstream version of human rights codified in San Francisco (1945), London (1946), Lake Success (1947) and so on. The concept of domestication reaches toward a human rights history that does not take for granted the ubiquity or singularity of the image of a progressively universal code.

Assumptions of global consensus and shared ideology do not easily align with the myriad ways that human rights are embraced and deployed in African contexts. Bonny Ibhawoh's groundbreaking study, now a decade old, is both model and inspiration in understanding the potential of human rights as a language that may be marshaled in the margins in ways that diverge from the interests and codifications of the center. Using petitions in the colonial Nigerian archive— some created by everyday people, and others written in Pidgin English— Ibhawoh insists that human rights was a language and a framework that African petitioners were "quick to appropriate" in pursuit of their own local ends.<sup>41</sup> In Ibhawoh's telling, the Idumuashaba, a

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<sup>40</sup> Susan Waltz, "Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights," *Third World Quarterly* 23, no. 3 (June 2002): 441. <http://www.hunter.cuny.edu/the-lgbt-center/repository/files/Eleanor%20Roosevelt%20-%20The%20Universal%20Declaration%20of%20Human%20Rights.pdf>

<sup>41</sup> Bonny Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History*, SUNY Series on Human Rights, 2008, 133.

community in southwestern Nigeria discriminated against because of their slave origins, utilized the language of global human rights in their struggle for civic standing and social equality.

Likewise, in the mid-twentieth century African anti-colonial leaders wielded human rights as a tool not a totem: useful in some instances, discarded in others. Scholarship criticizing African leaders' use-and-discard approach as inconsistent and shallow claim that the center's normative approach to human rights as an exclusive gospel is somehow primary or authentic. On the contrary, the instrumentalist approach of the mid-century African anti-colonialists such as Kwame Nkrumah who "occasionally strengthened his claims by referring to the UDHR" and "more often... distanced himself from the ideas it expressed" and Julius Nyerere who brandished human rights in his speeches to underscore diverse policies, is not a flaw, but an image of domestication. The "tentative embrace" of anti-colonialists who "do not apply human rights in a uniform way" and "do not make human rights the centerpiece of the political rhetoric;" is a signal of human rights capacity to be marshaled differently at the margins.<sup>42</sup> In 1963, in a meeting of 32 African heads of state in Addis Ababa, Kwame Nkrumah approached the human rights apparatus as one of many possible frameworks that might suit the African future.

What are we looking for in Africa? Are we looking for Charters, conceived in the light of the United Nations' example? A type of United Nations Organization whose decisions are framed on the basis of resolutions that in our experience have sometimes been ignored by member states? Where groupings are formed and pressured develop in accordance with the interest of the groups concerned?<sup>43</sup>

There is a tradition of unorthodox and contingent human rights practice, where African thinkers and stakeholders have held the human rights notion at arm's length, turning it this way and that, considering where and when it may be useful. As such, human rights moralism, this exclusive version of human rights-as-gospel may well be an affliction of the center.<sup>44</sup> As you may realize, speaking of domestication includes a double move. First, I assert that the realm of human rights

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<sup>42</sup> Jan Eckel, "Human Rights and Decolonization: New Perspectives and Open Questions," *Humanity Journal*, June 10, 2014, <http://humanityjournal.org/issue-1/human-rights-and-decolonization-new-perspectives-and-open-questions/>.

<sup>43</sup> Kwame Nkrumah, Speech in Addis Ababa, 1963. <https://consciencism.wordpress.com/history/dr-kwame-nkrumah-speaks-in-addis-ababa-in-1963/>

<sup>44</sup> Gayatri Chakravorty Spivak, "Righting Wrongs," *South Atlantic Quarterly* 103, no. 2/3 (Spring 2004): 525.

practice is rich and varied. There is evidence that the discourse of human rights has been appropriated by diverse constituents, in ways that are well-suited to local struggles, but which often diverge from the versions of human rights codified at the center. Second, I suggest that this realm of practice, with its unorthodoxies, is a fertile location from which to theorize the future of human rights.

## **Conclusion**

Writing a global human rights history requires acknowledging that there are communities thinking and doing human rights beyond Geneva and New York and Paris. The UDHR and the accompanying cascade of instruments must be placed into the context of these other attempts to enable and protect an increasingly just global order.

Tracing the social histories of human rights in African locales, past and present, on this seventieth anniversary year is a way to broaden our vision of international human rights trajectory in the world. This paper is rooted in a rewriting of the global history of international human rights that illuminates the political thought and action of African actors. There have been multiple visions and ideologies of global freedom and justice-- but some have been elevated as universal theory while others have been quarantined as local practice. Attending to the realm of practice reveals a human rights that is far more capacious and ideologically promiscuous than previously imagined. In the margins, human rights claims are used in ways that diverge from and discomfit the prevalent version of human rights at the center. Without valorizing this domestication of human rights as unitary, or ethically unerring, this paper offers an alternative to the scholarship that remains enamored with a singular version of human rights. By focusing on the innovation at the margins, particularly on how rights talk is domesticated and used to reflect local political and cultural visions, this paper offers an alternative narrative of what human rights was and is around the world—and what it might yet become.