

Performing Truth? Examining Transitional Justice Practice in West Africa*

Kelebogile Zvobgo[†]

Claire B. Crawford[‡]

This version: August 2, 2021

Abstract

In the last five decades, transitional justice (TJ) institutions have spread rapidly around the world. Scholars cite this trend as evidence of norm spread, specifically diffusion of the norm of acknowledging and providing restitution for human rights violations. But the spread of institutions does not necessarily mean that underlying norms are being diffused and accepted; it can also mean that those norms are being instrumentalized, even co-opted. TJ adoption may reflect, therefore, *a desire to perform* rather than *a substantive commitment*. We propose that the difference can be discerned as early as the design stage, with implications for TJ institutions' operations, outputs, and outcomes. We conceptualize a spectrum: At the lower end, *performance*, TJ mechanisms are poorly designed, under-resourced, and under-supported by governments, and, at the higher end, *substance*, they are well designed, adequately resourced, and strongly supported by governments. To begin to disentangle performance and substance, we study truth commissions, generally the first TJ measures implemented after political violence, and we focus on Africa, home to one-third of all global commissions. We analyze data on institutional design from the *Varieties of Truth Commissions* Project and produce case studies of three West African commissions. We find strong evidence of performative TJ: Many African governments have created truth commissions that are ill-equipped to uncover the truth. Consequently, they have served to (re)produce, rather than combat, impunity.

* For helpful advice and comments, we wish to thank Tafadzwa Christmas, Sévane Garibian, Daniel Posthumus, and participants at the 2021 International Association of Genocide Scholars Conference. This research is supported by fellowships from the University of Southern California (Provost Fellowship in the Social Sciences and Diversity, Inclusion, and Access Fellowship) and William & Mary (Global Research Institute Pre-doctoral Fellowship). In addition, this material is based upon work supported by the National Science Foundation Graduate Research Fellowship Program under Grant No. DGE-1418060. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Science Foundation.

[†] Government Department and Global Research Institute, William & Mary, kzvobgo@wm.edu.

[‡] Department of Political Science and International Relations, University of Southern California, clairecr@usc.edu.

Introduction

In the last five decades, transitional justice (TJ) institutions have spread rapidly around the world.¹ Scholars cite this trend as evidence of norm spread, specifically diffusion of the norm of acknowledging and providing restitution for human rights violations.² These scholars are not alone; policy makers agree. In 2016, former Secretary-General of the United Nations (UN), Kofi Annan declared, “Truth seeking and reconciliation has now become *an accepted, if not universal, feature of the architecture of post conflict peacebuilding*” and added as evidence of the fact, “The number of truth commissions has grown rapidly.”³

These perspectives are consistent with constructivist and world society accounts of global politics: actors form international regimes because of their shared beliefs, interests, and identities.⁴ From these regimes, practices are derived, transmitted, and implemented.⁵ In the context of TJ, the story is that state and non-state actors have developed, promoted, and delivered various mechanisms (e.g., trials, truth commissions, reparations, and legal reforms) because, as members of an

¹ Marcos Ancelovici and Jane Jenson, “Standardization for Transnational Diffusion: The Case of Truth Commissions and Conditional Cash Transfers,” *International Political Sociology* 7(3) (2013): 294-312; Elizabeth Jelin, *State Repression and the Labors of Memory* (Minneapolis: University of Minnesota Press, 2003); Kelebogile Zvobgo, “Demanding Truth: The Global Transitional Justice Network and the Creation of Truth Commissions,” *International Studies Quarterly* 64(3) (2020): 609-25.

² Michal Ben-Josef Hirsch, “Ideational Change and the Emergence of the International Norm of Truth and Reconciliation Commissions,” *European Journal of International Relations* 20(3) (2014): 810-833; Cyanne E. Loyle and Helga Malmin Binningsbø, “Justice During Armed Conflict: A New Dataset on Government and Rebel Strategies,” *Journal of Conflict Resolution* 62(2) (2018): 442-66; Saskia Nauenberg, “Spreading the Truth: How Truth Commissions Address Human Rights Abuses in the World Society,” *International Sociology* 30(6) (2015): 654-673; Ruti G. Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 (2003): 69-94; Jonathan VanAntwerpen, “Moral Globalization and Discursive Struggle. Reconciliation, Transitional Justice, and Cosmopolitan Discourse,” in *Globalization, Philanthropy, and Civil Society: Projecting Institutional Logics Abroad*, eds. David C. Hammack and Steven Heydemann (Bloomington: Indiana University Press, 2009), 95-136.

³ Emphasis added. Kofi Annan, “Truth Commissions and Peace Processes,” 2016, kofiannanfoundation.org/transitions-to-peace/truth-commissions (Accessed 15 September 2020).

⁴ Alistair I. Johnston, “Treating International Institutions as Social Environments,” *International Studies Quarterly* 45(4) (2001): 487-515; Stephen D. Krasner, *International Regimes* (Ithaca: Cornell University Press, 1983); Wayne Sandholtz, “Globalization and the Evolution of Rules,” in *Globalization and Governance*, eds. Aseem Prakash and Jeffrey A. Hart (London: Routledge, 1999), 77-102.

⁵ Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52(4) (1998): 887-917.

international community, they have a *shared interest* in TJ and a *shared belief* that it is “an essential partner” to democracy, human rights, and peace.⁶ Accordingly, states expect TJ from each other in the wake of political violence. In brief, there is a norm or expectation to acknowledge and provide restitution for human rights abuses, and this explains the growing use of TJ tools over time and across space.⁷ Or so the story goes.

But the spread of institutions does not necessarily mean that underlying norms are being diffused and accepted. In addition, regional, cultural, temporal, and other norm diffusion theories do not explain precisely *what models of TJ* are spreading, and whether they are actually good.⁸ We suggest that the spread of institutions can also mean that core norms are being instrumentalized, even co-opted.⁹ Institutional adoption may, therefore, reflect *a desire to perform* rather than *a substantive commitment*, and different rationales for TJ (instrumental or normative) may result in different types of institutions – with distinct a variety of designs, operations, outputs, and outcomes.¹⁰ This possibility bears implications for how we understand the growing use of TJ tools worldwide.

We note that we are not the first to propose that governments can exploit TJ norms for their own ends, nor are we the first to study trends in the design of TJ tools.¹¹ Neither are we the first to

⁶ Annan, “Truth Commissions”; Nauenberg, “Spreading the Truth.”

⁷ Ancelevici and Jenson, “Standardization”; Jelena Subotić, “The Transformation of International Transitional Justice Advocacy,” *International Journal of Transitional Justice* 6(1) (2012): 106-25; Naomi Roht-Arriaza, *The Pinochet Effect: Transitional Justice in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2006); Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: WW Norton & Company, 2011).

⁸ Ben-Josef Hirsch, “Ideational Change”; Nauenberg, “Spreading the Truth”; Adam Kochanski, “Mandating Truth: Patterns and Trends in Truth Commission Design,” *Human Rights Review* 21(2) (2020): 113-37; Kathryn Sikkink and Hun Joon Kim, “The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations,” *Annual Review of Law and Social Science* 9 (2013): 269-85.

⁹ Meredith Loken, Milli Lake, and Kate Cronin-Furman, “Deploying Justice: Strategic Accountability for Wartime Sexual Violence,” *International Studies Quarterly* 62(4) (2018): 751-64; Carla Winston, “Truth Commissions as Tactical Concessions: The Curious Case of Idi Amin,” *International Journal of Human Rights* 25(2) (2021): 251-73; Daniel Solomon and Kelebogile Zvobgo, “Co-Opting Truth: Explaining Quasi-Judicial Institutions in Authoritarian Regimes,” *Unpublished manuscript* (2020).

¹⁰ Throughout the text, we use the term “performance” to mean any act that is not serious or genuine but that is presented as if it were. We use the term “substance” to mean any act that is serious or genuine. The adjective forms “performative” and “substantive” respectively describe these acts. Generally, instrumental reasons for implementing TJ result in performances, while normative reasons result in substance.

¹¹ On subversion of TJ norms, see Kate Cronin-Furman, “Human Rights Half Measures: Avoiding Accountability in Postwar Sri Lanka,” *World Politics* 72(1) (2020): 121-63; Brian K. Grodsky, *The Costs of Justice* (South Bend:

theorize that different causes of TJ can yield different institutional designs and consequences. For instance, Solomon and Zvobgo study how leaders, specifically autocrats who face threats to their symbolic authority or survival, respectively create self-investigating or rival-investigating commissions, each intended to strengthen the incumbent by presenting them in a positive light and their opponents in a negative light.¹² But, to our knowledge, we are the first to make and evaluate the proposition that the impetus for TJ adoption, instrumental or normative, may produce two different general types of TJ, performative or substantive – with particular characteristics, results, and consequences.

For an example of performative TJ, consider Côte d’Ivoire. In the aftermath of the Ivorian Crisis, a period of violence related to the contested 2010-2011 presidential and parliamentary elections, President Alassane Ouattara implemented a truth commission, a national reparations program, prosecutions, and other measures. However, these measures were not designed to (nor did they) clarify the truth, repair harms, or tackle impunity for serious crimes. The commission sidelined victims’ interests and produced little testimony.¹³ Moreover the commission’s report, which was heavily edited by the government and belatedly published, did not establish essential facts like the nature and extent of abuses and the individuals and institutions most responsible.¹⁴ In addition,

University of Notre Dame Press, 2010); Cyanne E. Loyle and Christian Davenport, “Transitional Injustice: Subverting Justice in Transition and Postconflict Societies,” *Journal of Human Rights* 15(1) (2016): 126-49; Jelena Subotić, *Hijacked Justice: Dealing with the Past in the Balkans* (Ithaca: Cornell University Press, 2009). On truth commission design, see Kochanski, “Mandating Truth”; Franklin Oduro and Rosemary Nagy, “What’s in an Idea?: Truth Commission Policy Transfer in Ghana and Canada,” *Journal of Human Rights* 13(1) (2014): 85-102; Hakeem O. Yusuf, “Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria,” *International Journal of Transitional Justice* 2(1) (2007): 268-86; Kelebogile Zvobgo, “Designing Truth: Facilitating Perpetrator Testimony at Truth Commissions,” *Journal of Human Rights* 18(1) (2019): 92-110.

¹² Solomon and Zvobgo, “Co-Opting Truth.”

¹³ Research interview conducted by the first author via telephone with Anna Myriam Roccatello, Deputy Executive Director and Director of Programs at the International Center for Transitional Justice (ICTJ), in the spring of 2019.

¹⁴ Giulia Piccolino, “Peacebuilding and Statebuilding in Post-2011 Côte d’Ivoire: A Victor’s Peace?” *African Affairs* 117(468) (2018): 485-50; République de Côte d’Ivoire, *Rapport final de la Commission Dialogue, Vérité et Réconciliation* (Abidjan: République de Côte d’Ivoire, 2016).

despite the government's promises, the vast majority of victims did not receive reparations.¹⁵ Analysts also charge that prosecutions disproportionately targeted Ouattara's political opponents, relative to his supporters.¹⁶ If TJ in Côte d'Ivoire was not intended (and in fact failed) to produce accountability and restitution, what was its purpose? We suggest that TJ measures in Côte d'Ivoire were intended to *give the appearance* of doing something while actually accomplishing very little – in other words, they were part of a performance.

For an illustration of substantive TJ, take Ghana, which had a reasonably successful experience with several TJ modalities. In 2002, President John Kufuor established a truth commission with the cooperation and partnership of domestic and international civil society advocates, whose research shows are critical to a strong commission design and process.¹⁷ The Ghanaian commission was modeled after the South African commission and, like its predecessor, engaged thousands of witnesses.¹⁸ Victims' and perpetrators' accounts, and other evidence the commission compiled, were promptly published in a comprehensive report, without government interference. The report holistically addressed Ghana's struggle for self-determination, democracy, and human rights, and outlined a range of steps for the government to take to remedy past harms and protect against future harms.¹⁹ The Kufuor administration took many of these steps. Within a year of the commission's conclusion, the administration began awarding reparations, per the commission's recommendation.

¹⁵ Based on interviews conducted by Human Rights Watch in Abidjan, Côte d'Ivoire. Human Rights Watch, "To Consolidate This Peace of Ours" A Human Rights Agenda for Côte d'Ivoire, 2015, [hrw.org/report/2015/12/08/consolidate-peace-ours/human-rights-agenda-cote-divoire#_ftn226](https://www.hrw.org/report/2015/12/08/consolidate-peace-ours/human-rights-agenda-cote-divoire#_ftn226) (Accessed 14 September 2020).

¹⁶ ICTJ, "Côte d'Ivoire," 2020, [ictj.org/our-work/regions-and-countries/cote-divoire](https://www.ictj.org/our-work/regions-and-countries/cote-divoire) (Accessed 14 September 2020); Briony Jones and Dit Fatogoma Adou Djané, "Reading the 'Uncivil' in Civil Society Resistance to Transitional Justice in Côte d'Ivoire," *Political Geography* 67 (2018): 135-44.

¹⁷ Zvobgo, "Demanding Truth."

¹⁸ Oduro and Nagy, "What's in an Idea?"; Nahla Valji, "Ghana's National Reconciliation Commission: A Comparative Assessment," *International Center for Transitional Justice Occasional Paper Series* September 2006 (2006): 1-49. Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2 ed. (New York: Routledge, 2011).

¹⁹ United States Institute of Peace, "Truth Commission: Ghana," 2020, [usip.org/publications/2003/01/truth-commission-ghana](https://www.usip.org/publications/2003/01/truth-commission-ghana) (Accessed 25 September 2020); Ghana Center for Democratic Development, *Never Again: Summary and Synthesis of the National Reconciliation Commission's Final Report* (Accra: Ghana Center for Democratic Development, 2005).

What is more, the government accepted without reservation the commission's finding that the military bore the greatest responsibility for human rights violations during the four-decade period the commission studied.²⁰ This finding prompted the government to begin implementing a series of reforms.²¹

So, we see TJ performance, in the vein of instrumental adaptation, in Côte d'Ivoire alongside TJ substance, in the vein of norm diffusion and acceptance, in Ghana. But how prevalent is performative TJ and what is its effect? Is Côte d'Ivoire merely an outlier and TJ performance not a problem worth worrying about? Prior research is unclear on this question.

A fundamental limitation of existing studies is their near-exclusive focus on *institutional adoption*. Generally, research neglects *institutional design* and its influence on the *operations, outputs, and outcomes* of TJ institutions. But, as Kochanski underscores, there is a "spectrum of design options that are available to decision-makers in government, bilateral donor agencies, and domestic and transnational advocacy networks."²² Not only are there different options available, but which of these options decision makers select can influence the extent to which a TJ institution is successful in providing acknowledgment and restitution.²³

We propose that a strong or weak architecture can be a powerful, albeit early, indicator of a government's underlying commitment to truth and justice, as it offers analysts a demonstrated (rather than a stated) commitment to a robust process.²⁴ To be sure, substance or performance, like a commission's success or failure, does not happen overnight or suddenly; there are many

²⁰ Hayner, *Unspeakable Truths*, 51.

²¹ United States Institute of Peace, "Truth Commission: Ghana."

²² Kochanski, "Mandating Truth," 115.

²³ Oduro and Nagy, "What's in an Idea?"; Carsten Stahn, "The Geometry of Transitional Justice: Choices of Institutional Design," *Leiden Journal of International Law* 18(3) (2005): 425-66; Zvobgo, "Designing Truth."

²⁴ Zvobgo, "Demanding Truth," 619.

bellwethers along the way that merit our attention and consideration. As we study institutional design, we can begin to disentangle substance and performance across a range of contexts.²⁵

We conceptualize a spectrum: At the lower end, *performance*, TJ mechanisms are poorly designed, under-resourced, and under-supported by governments, and, at the higher end, *substance*, they are well designed, adequately resourced, and strongly supported by governments. We leverage the institution of truth commissions to operationalize and evaluate performance and substance. We focus on commissions because they “generally precede and often provide the foundation for subsequent memorialization projects, trials, reparations, and institutional reforms.”²⁶ Concerning commissions, performance is characterized by the absence of (1) key investigative powers, (2) funds, and (3) political will to uncover the truth. Meanwhile, substance is characterized by the availability of these and other forms of institutional support.

To weigh substance and performance, we study truth commissions in Africa, home to one-third of all global commissions. The Continent offers an extensive and useful laboratory to parse normative and instrumental rationales for TJ adoption and to trace the relationship between institutional design, operations, outputs, and outcomes. In addition, each of the main variants of norm diffusion and acceptance (geography, time, and cultural proximity) can be assessed. If there is anywhere that we can discern the extent to which TJ practices reflect concretely the norms from which they are derived, it should be in Africa.

²⁵ Certainly, institutional design is not always a determining factor for the success or failure of TJ mechanisms; TJ tools can overcome limited powers and expectations. However, limited powers and expectations often have negative downstream effects for TJ institutions’ operations, outputs, and outcomes. Based on research interviews conducted in person, via video call, and over email by the first author between 2019 and 2021 with Eduardo González, former Director of the Truth and Memory Program at the ICTJ, as well as with Anna Myriam Roccatello in 2019.

²⁶ Zvobgo, “Demanding Truth,” 611. For research on museums and other memorialization projects, see Laia, Balcells, Valeria Palanza and Elsa Voytas, “Do Transitional Justice Museums Persuade Visitors? Evidence from a Field Experiment,” *Journal of Politics* (forthcoming). For work on personnel reforms, see Genevieve Bates, Ipek Cinar, and Monika Nalepa, “Accountability by Numbers: A New Global Transitional Justice Dataset (1946-2016),” *Perspectives on Politics* 18(1) (2020): 161-84). For an investigation of reparations, see Claire Greenstein, “Patterned Payments: Explaining Victim Group Variation in West German Reparations Policy,” *International Journal of Transitional Justice* 14(2) (2020): 381-400.

We produce a medium-*N* descriptive analysis using novel quantitative data on truth commission design from the *Varieties of Truth Commissions* Project. We also produce comparative case studies of commissions in three West African countries: Côte d'Ivoire, Ghana, and Togo. Here, we examine institutional design more finely, addressing the economic and political resources invested in each process, and tracking the consequences for the commissions' results and impacts.

Our data reveal noteworthy variation in the design and architecture of African truth commissions, even when we consider commissions in countries that are the most geographically proximate, have shared histories, and whose TJ processes succeeded one another (i.e., the best possible candidates for observing norm diffusion and acceptance). Where the norm diffusion and acceptance thesis would expect consistency, and perhaps even improvements, in design based on prior experiences among neighbors (whether geographic, cultural, or temporal), we find significant heterogeneity, even regress – indicating many instances of performative TJ.

The case studies supplement the quantitative evidence. We show that the Ghanaian commission, which preceded the Togolese and Ivorian commissions, had a wide material scope of inquiry, possessing the power to examine a range of abuses and to trace root causes, as well as an effective means by which to gather evidence, namely subpoena powers. It was also fairly well funded, and the government afforded it important institutional support. With this strong architecture, the commission was able to weave together a comprehensive narrative of historical political violence and make a variety of policy proposals for redress and reform that the government made strides to deliver on.

While Togo and, later, Côte d'Ivoire also had a wide scope, the commissions lacked key evidence-gathering powers. This was *despite* having several strong models, including Ghana and South Africa. Instead of building on earlier experiences and successes on the Continent, or at least replicating their institutional set-ups, Togo and Côte d'Ivoire effectively regressed from these models. Thus, from a design perspective, they were ill-equipped to uncover the truth. While lacking key

investigative powers need not be ruinous, as commissions can overcome limited powers in some instances, the Togolese and Ivorian commissions produced inferior investigations. Exacerbating the commissions' weak structure was a lack of adequate material and political resources, and a lack of serious follow-through, that was emblematic of the commissions' founding governments' desire to *perform TJ*.

Institutional heterogeneity in both the cross-national and case analyses suggests that, while commissions have spread across Africa, key TJ norms have not been accepted in concrete, identifiable, and measurable ways. Lacking a substantive commitment to truth and justice but desiring to send some positive signals to domestic and especially international audiences, many African governments have established commissions that are ill-prepared to construct a full and accurate account of past violence.²⁷ In turn, these commissions have failed to establish important historical facts, like the types and degrees of past violence, and the persons and powers responsible. Consequently, many African commissions have helped to perpetuate, rather than combat, impunity. Therefore, enthusiasm about the continued spread of this and other TJ modalities in Africa and around the world should be tempered and met with greater circumspection.²⁸

The chapter proceeds as follows. In part two, we present our theory of substantive and performative TJ, and lay out how each type produces distinct institutional designs, operations, outputs, and outcomes. In part three, we present our data and methodology. Part four follows with the medium-*N* quantitative analysis and the case study analysis. We discuss in part five the implications of our findings for the scholarship and practice of TJ. Part six concludes the study.

²⁷ See also Gabrielle Lynch, *Performances of Injustice: The Politics of Truth, Justice, and Reconciliation in Kenya* (Cambridge: Cambridge University Press, 2018).

²⁸ David Mendeloff, "Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?" *International Studies Review* 6(3) (2004): 355-80.

Transitional Justice: Substance or Performance?

The theory and global practice of TJ suggests a strong norm, based on the internationally-recognized rights of victims to truth, justice, reparations, and guarantees of non-repetition – rights established in case law from the Inter-American and European human rights courts in the 1980s and 1990s and affirmed in a range of international frameworks (e.g., the 1997 UN principles on combating impunity) as well as international legal instruments (e.g., 1998 Rome Statute of the International Criminal Court [ICC], which has a mandate to “help end impunity for the perpetrators of the most serious crimes of concern to the international community”).²⁹

Analysts suggest that the global spread of TJ indicates the diffusion and acceptance of norms of acknowledgment and restitution for human rights violations.³⁰ This is consistent with sociological perspectives on global politics, notably constructivism and world society.³¹ Extant diffusion theories propose several mechanisms through which TJ norms have spread – such as geographic, cultural, and historical proximity – and empirical studies present some of these patterns.

Several scholars have shown that there is spatial and temporal clustering of TJ measures around the world.³² To illustrate, between 1970 and 2018, 27 truth commissions were established in Africa.³³ Of these, nearly half were created within a decade (1995-2005), suggesting learning and emulation between and among African nations, notably following the South African Truth and

²⁹ Emblematic cases include *Velázquez Rodríguez v. Honduras* (Inter-American Court of Human Rights 1988) and *McCann v. United Kingdom* (European Court of Human Rights 1995). For a longer discussion, see Roe Ariav, “National Investigations of Human Rights Between National and International Law,” *Goettingen Journal of International Law* 4(2012): 853-71; International Criminal Court “Understanding the International Criminal Court,” 2011, icc-cpi.int/iccdocs/pids/publications/uicceng.pdf (Accessed 26 July 2019).

³⁰ Sikkink, “The Justice Cascade”; Hun Joon Kim, “Structural Determinants of Human Rights Prosecutions after Democratic Transition,” *Journal of Peace Research* 49(2) (2012): 305-20; Hun Joon Kim, “Why Do States Adopt Truth Commissions After Transition?” *Social Science Quarterly* 100(5) (2019): 1485-502.

³¹ Johnston, “Treating International Institutions”; Krasner, *International Regimes*; Finnemore and Sikkink, “International Norm Dynamics”; Sandholtz, “Globalization”; Teitel, “Transitional Justice Genealogy.”

³² Sikkink and Kim, “The Justice Cascade”; Nauenberg, “Spreading the Truth”; Kochanski, “Mandating Truth.”

³³ Data from the *Varieties of Truth Commissions* Project.

Reconciliation Commission.³⁴ Other scholars have explored diffusion among “cultural neighbors” (i.e., countries with a shared national language or religion) and found that countries are more likely to implement measures like trials and truth commissions when others like them have previously done so.³⁵ Take, as an example, countries in Central and South America and the TJ boon they experienced in the 1980s and 1990s. However, these descriptive and correlational studies are more suggestive than conclusive of norm diffusion and acceptance.³⁶

To be clear, we do accept that there exist global and regional TJ norms. The very fact that governments implement TJ, often at the urging of domestic and international civil society actors, is evidence of these norms.³⁷ However, the finer point we wish to make is that government reactions and responses are not equal. That a government acquiesces to internal and external pressures to adopt a TJ mechanism, or cluster of mechanisms, does not mean that it actually accepts TJ as a governing rule or that the government fulfills the object and purpose of TJ in its policies. As Cronin-Furman explains, governments can deploy “half measures” intended to further the regime’s political interests – interests that do not necessarily encompass or serve truth and justice.³⁸

Certainly, those who perform *use the language* of substance, but they *do not deliver* on substance. Take, for example, “Never again” – the old adage that many government officials use to frame their countries’ TJ projects. “Nunca más,” “Plus jamais,” and other variants of the idea imply a level of accountability and initiative within a country to usher in truth, repair harms, renew societal bonds, and reform institutions. “Never again” suggests a substantive commitment. But, while a

³⁴ Anne K. Krueger, “The Global Diffusion of Truth Commissions: An Integrative Approach to Diffusion as a Process of Collective Learning,” *Theory and Society* 45(2) (2016): 143-68; Nauenberg, “Spreading the Truth”; Yusuf, “Travails of Truth.”

³⁵ Kim, “Structural Determinants”; Kim, “Why Do States Adopt Truth Commissions.”

³⁶ We note that the works cited do not make strong causal claims on the basis of their findings. We also note that the notion of cultural neighbors is difficult to separate from geographic neighbors, including and perhaps especially in Central and South America, which are predominantly Catholic countries where Spanish is the official language.

³⁷ Zvobgo, “Demanding Truth.”

³⁸ Cronin-Furman, “Human Rights Half Measures.”

promise and a sign of hope, the phrase has been the opening act of government-led performance in many places around the world.

Prior research has addressed performance *during* TJ processes – from the typecasting of victims, perpetrators, and bystanders, to the delivery of witness testimony in court or at a truth commission, to the rituals and ceremonies of public remembrance.³⁹ But little work considers performance *prior to* TJ processes. Yet the “show” can – and, as we will demonstrate, does – start earlier; it can be embedded in the initiative for and the design of the process itself. As Lynch reflects, it is a “performance of state-ness,” a “performance of a government’s capacity to investigate issues, take action and respond to the common good.”⁴⁰

Given the expectation that states provide TJ in the aftermath of political violence, governments seek to convey to domestic, and especially to international, audiences that they can provide TJ, regardless of their interest in and commitment to its underlying norms. In this way, we can observe a high degree of institutional isomorphism, or a similarity of form, across diverse political contexts. Yet governments’ gestures toward legitimate statehood may be more symbolic or ritualistic than they are practical or genuine; political leaders routinely make overtures toward accountability and reforms, even when they are insincere and their commitments hollow.⁴¹

³⁹ Belinda Bozzoli, “Public Ritual and Private Transition: The Truth Commission in Alexandra Township, South Africa 1996,” *African Studies* 57(2) (1998): 167-95; Catherine Cole, *Performing South Africa’s Truth Commission: Stages of Transition* (Bloomington: Indiana University Press, 2010); Yvette Hutchison, *South African Performance and Archives of Memory* (Manchester: Manchester University Press, 2013); Tim Kelsall, “Truth, lies, ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone,” *Human Rights Quarterly* 27(2) (2005): 361-91; Kieran McEvoy, “Beyond Legalism: Towards A Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34(4) (2007): 411-40; Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick: Transaction Publishers, 2000); Leigh Payne, “Confessional Performances: A Methodological Approach to Studying Perpetrators’ Testimonies,” in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, eds. Hugo van der Merwe, Victoria Baxter, and Audrey R. Chapman (Washington, D.C.: United State Institute of Peace, 2009), 227-48.

⁴⁰ Lynch, *Performances*, 109.

⁴¹ Wade M. Cole, “Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999,” *American Sociological Review* 70(3) (2005): 472-95; Emilie M. Hafner-Burton, Kiyoteru Tsutsui and John W. Meyer, “International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties,” *International Sociology* 23(1) (2008): 115-41; Oona A. Hathaway, “The Cost of Commitment,” *Stanford Law Review* 55(5) (2003): 1821-62; John W. Meyer, John Boli, George M. Thomas, and Francisco O. Ramirez, “World Society and the Nation-State,” *American Journal of Sociology* 103(1) (1997): 144-

A tale of two TJs thus unfolds, with some nations and governments making concrete investments in truth and justice while others do not. As we indicated earlier, a performative TJ process is marked by limited powers, inadequate financial support, and minimal political support. It is a process that reinforces a “familiar performance,” where the most powerful use the process to advance their own interests and maintain the status quo.⁴² In this hijacking or co-opting of TJ processes, a government commits to acting out the process but effectively rejects any changes that would challenge and possibly undo its power.⁴³

Performative TJ is, of course, not without risk. Using TJ tools as a smokescreen or deflection strategy can backfire. In his study of truth commissions in Bahrain, Morocco, and Sri Lanka, Wiebelhaus-Brahm finds that governments that attempt to “exploit transitional justice norms to alleviate pressure for political liberalization and accountability for human rights violations” may be forced to “reframe their depictions of the past.”⁴⁴ And, where their characterization of past events is incomplete or inaccurate, they may be criticized and sanctioned by domestic and international actors, civil society advocates included.⁴⁵

Conceptualizing Substance and Performance

We contend that TJ substance and performance can be detected as early as the institutional design stage. The practical acceptance or rejection of TJ norms at this stage, we argue, has implications for

81; Wayne Sandholtz, “Domestic Law and Human Rights Treaty Commitments: The Convention Against Torture,” *Journal of Human Rights* 16(1) (2017): 25-43.

⁴² The familiar performance is rooted in a country’s history, where the privileging of some groups’ interests over the interests of other groups began. In Africa, the setting of our coming analysis, the colonial past bleeds into the present, making it difficult to reimagine a political order and narrative that is not captured by powerful interests. Lynch, *Performances*, 59. See also Hugo van der Merwe, “Conclusion: The Role of Local Civil Society in Shaping Transitional Justice in Africa,” in *Advocating Transitional Justice in Africa*, eds. Jasmina Brankovic and Hugo van der Merwe, (New York: Springer International Publishing AG, 2018), 205-226.

⁴³ Duncan McCargo, “Thailand’s National Reconciliation Commission: A flawed response to the Southern Conflict,” *Global Change, Peace and Security* 22(1) (2010): 75-91; Solomon and Zvobgo, “Co-Opting Truth.”

⁴⁴ Eric Wiebelhaus-Brahm, “Global Transitional Justice Norms and the Framing of Truth Commissions in the Absence of Transition,” *Negotiation and Conflict Management Research* (2020, advanced access), 13.

⁴⁵ *Ibid.*

how TJ processes will be carried out and for their results and consequences. We conceptualize substantive and performative TJ by considering the presence (absence) of norms and expectations about institutional design. Of great concern to us are the powers that governments afford TJ institutions.

We take truth commissions as our point of entry and consider two types of commission powers: jurisdictional and operational. Jurisdictional powers refer to a commission's material scope of inquiry, i.e., *what* it can investigate. Operational powers, meanwhile, refer to a commission's evidence-gathering methods, i.e., *how* it can conduct its investigation.⁴⁶ Commissions that have a wider material scope of inquiry and more effective evidence-gathering powers are better positioned than all others to produce an exhaustive historical record that establishes such facts as the nature and extent of past abuses, the individuals and communities who were harmed, and the individuals and institutions who are responsible.

The institutionalization and acceptance of norms or rules around institutional design indicates their strength and their power, both generally and in particular contexts.⁴⁷ They make clear what actors operating under a given regime should and should not do. They contribute "strongly to *the possibility* for a norm cascade."⁴⁸ Studying how commissions are designed can help us better understand the extent to which their *use* matches the *norms* on which they are based and can help us evaluate the norm cascade's true reach.

⁴⁶ The term "investigative powers," then, encompasses both jurisdictional and the operational powers.

⁴⁷ Michal Ben-Josef Hirsch and Jennifer M. Dixon, "Conceptualizing and Assessing Norm Strength in International Relations," *European Journal of International Relations* 27(2) (2021): 521-47.

⁴⁸ Emphasis added. Finnemore and Sikkink, "International Norm Dynamics and Political Change," 900. See also Wayne Sandholtz, "Dynamics of International Norm Change: Rules Against Wartime Plunder," *European Journal of International Relations* 14(1) (2008): 101-31. Some scholars take a contrasting view, suggesting that institutionalization can weaken some norms. See, for example, Sarah V. Percy, "Mercenaries: Strong Norm, Weak Law," *International Organization* 61(2) (2007): 367-97. Yet others propose that "institutionalization is likely to reflect a strengthening norm." See, here, Ben-Josef Hirsch and Dixon, "Conceptualizing." See also Adam Bower, "Contesting the International Criminal Court: Bashir, Kenyatta, and the Status of the Nonimpunity Norm in World Politics," *Journal of Global Security Studies* 4(1) (2019): 88-104; Jutte Brunnée, and Stephen J. Toope, "Norm Robustness and Contestation in International Law: Self-Defense Against Nonstate Actors," *Journal of Global Security Studies* 4(1) (2019): 73-87; Judith Kelley, "Assessing the Complex Evolution of Norms: The Rise of International Election Monitoring," *International Organization* 62(2) (2008): 221-55.

Though there is excellent work on norm institutionalization in the field of human rights and, more generally, the fields of comparative politics and international relations, the institutionalization of TJ norms has been neglected in many ways, especially whether and to what degree TJ institutions are built on existing evidence-based, practice-refined international best standards.⁴⁹

Operationalizing Substance and Performance

Studying the norms around truth commission design can give us a sense of what is substantive and what is performative. To operationalize substantive and performative truth commissions, we focus on investigative powers. In terms of jurisdictional powers, we focus on two: a commission's ability to study a range of abuses and to trace antecedents of those abuses. Together, these powers establish a commission's scope of inquiry, either wide or narrow. A wide material scope of inquiry is crucial to understanding historical violence. As Zvobgo notes:

[R]arely, if ever, is it the case that only one type of abuse has been perpetrated by state and/or non-state actors during authoritarian governments, civil conflicts, or other periods of political violence [...] Commissions that investigate some, but not all, abuses are, by definition, incomplete and are, by design, at odds with victims' rights to truth [...] In a similar vein, commissions that document violence, but do not reveal root causes can only render a partial account.⁵⁰

In terms of operational powers, we focus on two: a commission's power to compel testimony and to preserve the evidence that it collects. These are a commission's primary evidence-gathering powers, either present and effective or absent and ineffective. On the subject of subpoena and evidence-preservation powers, Zvobgo continues,

A commission that is able to garner testimony from even reluctant sources is better positioned to produce a comprehensive and accurate account about past abuses.

⁴⁹ Some notable exceptions include Ancelovici and Jenson who study the standardization of truth commission goals; Ben-Josef Hirsch and Dixon, who investigate international concordance and institutionalization of the principles of legal accountability and truth-seeking; and Winston, who proposes a method for building and analyzing quantitative data on the structure of TJ norms. Ancelovici and Jenson, "Standardization"; Ben-Josef Hirsch and Dixon, "Conceptualizing"; Carla Winston, "Words Count: Discourse and the Quantitative Analysis of International Norms." *Journal of Human Rights* 19(1) (2020): 138-51.

⁵⁰ Zvobgo, "Demanding Truth," 619. See also Eduardo González, *Drafting a Truth Commission Mandate: A Practical Tool* (New York: International Center for Transitional Justice, 2013).

Relatedly, preserving evidence enables a commission to conduct a serious, independent inquiry.⁵¹

To function and to function well, commissions need both a strong “what” – a mandate to investigate multiple types of violence and abuse – and “how” – tools to effectively collect and guard testimony and other material evidence.⁵² Beyond investigative powers, we also consider the financial and political resources afforded commissions to do their work. Low resource allocation – regardless of the scope, tools, and methods of investigation – suggests that a government is more interested in institutional formalisms than efficacy. By contrast, high resource allocation indicates that a government is serious about a commission’s research and operation.⁵³

Research Design

For the first part of the analysis, we produce a medium-*N* descriptive analysis using quantitative data on truth commission design from the *Varieties of Truth Commissions* Project, which contains data on the universe of commissions from 1970 to 2018.⁵⁴ 27 of the 84 commissions captured in the data were established in African countries. This list was compiled after consulting previous TJ data projects and conducting archival and internet-based research to expand the list of cases and stretch

⁵¹ Zvobgo, “Demanding Truth,” 620. See also Eduardo González and Howard Varney, *Truth Seeking: Elements of Creating An Effective Truth Commission* (Brasilia: Amnesty Commission of the Ministry of Justice of Brazil, 2013).

⁵² González, *Drafting*; González and Howard Varney, *Truth Seeking*.

⁵³ Some scholars suggest that weakness in truth-seeking practice may stem from a weak normative basis for victims’ right to truth. Here, theorists draw a distinction between claims based on the morality of truth seeking and claims based on the written law. In essence, the proliferation of norm of acknowledgment and restitution, both in general and in Africa specifically, may relate more to moral claims than legal claims, with the former being weaker than the latter. Regardless of the strength of the basis for the right to truth, we can differentiate performance and substance once governments have decided to establish truth-seeking mechanisms. For a discussion on the pursuit of *terra firme* for the right to truth, see Tafadzwa Christmas, “Rethinking the Iconography of the South African Truth and Reconciliation Commission (TRC): An Analysis of the TRC’s Influence in Shaping Truth-Seeking Policy and Practice in Africa Today, *Unpublished manuscript* (2020). On the strength of moral and political claims versus legal claims in international relations, see Kyle Rapp, “Law and Contestation in International Negotiations.” *Review of International Studies* 46(5) (2020): 672-90.

⁵⁴ Zvobgo, “Demanding Truth.”

the timeline.⁵⁵ To be included in our data, each commission had to meet Hayner's definition's five conditions: be (1) a temporary body (2) formed by a national government to (3) research events in the past, and (4) determine a pattern of violence, in part by (5) engaging affected communities.

As Figure 1 shows, virtually every African country that had a truth a commission shares a border with another country that had a commission, making this an especially useful environment to parse between substance and performance. As Figure 2 shows, West Africa is a commission-dense region, claiming 9 of the 27 African commissions.

⁵⁵ These include the first and second editions of Hayner's *Unspeakable Truths*, Kathryn Sikkink, Geoff Dancy, and collaborators' Transitional Justice Research Collaborative, Leigh Payne and collaborators' Transitional Justice Database Project, and Monika Nalepa's Global Transitional Justice Dataset. We note that Hayner does not claim to study the universe of commissions. Both the first and second editions of *Unspeakable Truths* begin with Idi Amin's Commission of Inquiry into the Disappearance of People in Uganda since 25th January, 1971. The second edition concludes with Kenya's Truth, Justice, and Reconciliation Commission. The *Varieties of Truth Commissions* begin with Pakistan's 1972 War Inquiry Commission concludes with Nicaragua's 2018 Truth, Justice and Peace Commission.

Figure 1: African Truth Commissions

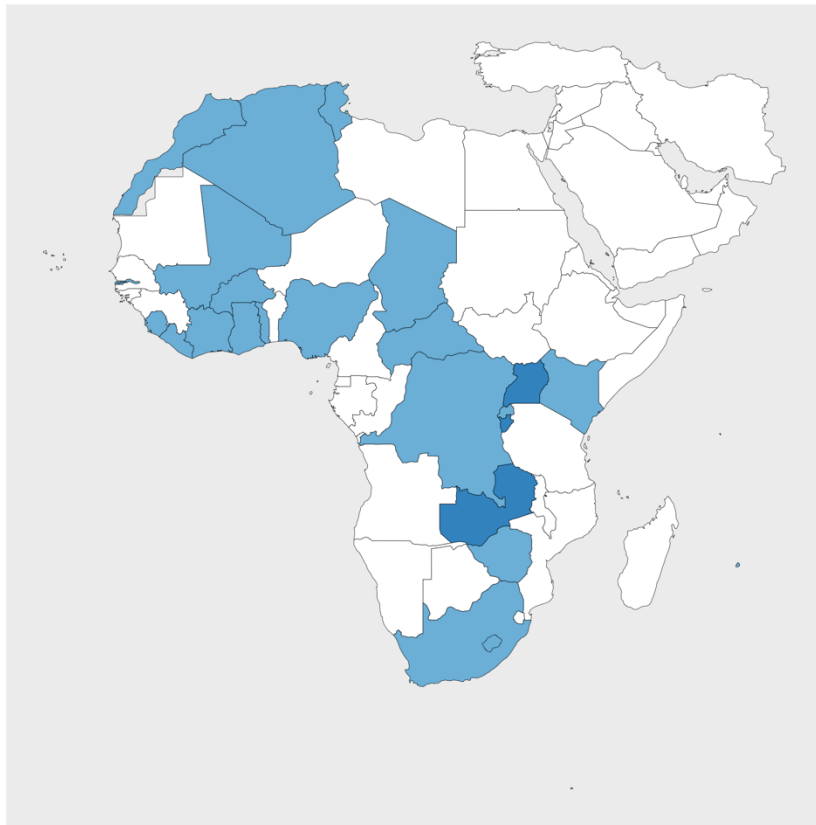
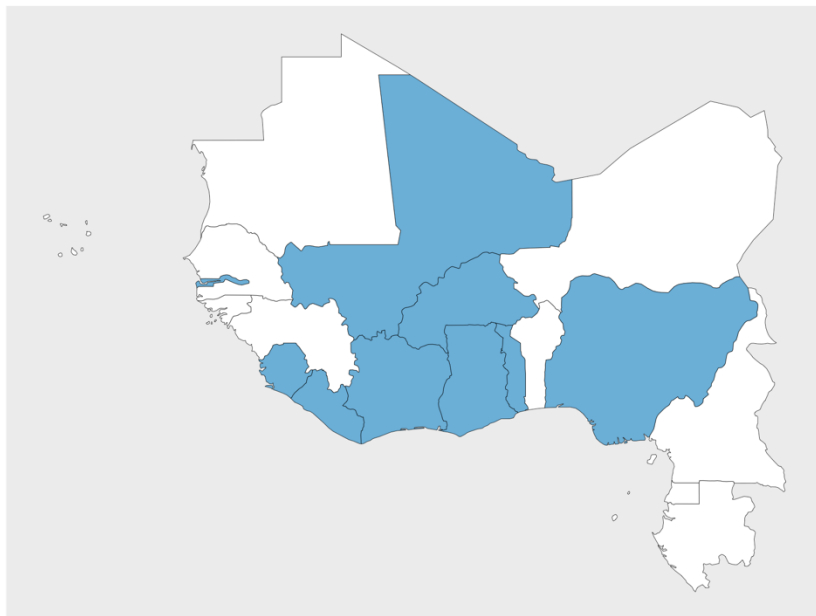


Figure 2: West African Truth Commissions



In addition to helping us describe the universe of cases, the *Varieties of Truth Commissions* allow us to describe the presence (absence) of key truth commission investigative powers, namely the power to (1) study a range of abuses, (2) identify root causes, (3) compel testimony, and (4) preserve forensic and other evidence. We use four binary variables to capture each of these.

Range of abuses distinguishes commissions that did (variable equals 1) and that did not (variable equals 0) possess the power to study many types of violations, for instance not only killings but also other physical integrity rights violations and even violations of social and economic rights. Second, *Range of abuses* separates commissions that did (variable equals 1) from commissions that did not (variable equals 0) have the power to study both instances of abuses as well as the factors contributing to those abuses, for example ethno-linguistic factionalism and economic inequality. Third, *Subpoena* distinguishes commissions that did (variable equals 1) and that did not (variable equals 0) possess the power to compel testimony and other evidence. Fourth, *Preserve evidence* separates commissions that did (variable equals 1) from commissions that did not (variable equals 0) have the power to collect and preserve forensic and other evidence.

In the second part of the analysis, we present comparative case studies of truth commissions in Côte d'Ivoire, Ghana, and Togo. A structured comparison of three West African countries is advantageous for many reasons. Focusing on Côte d'Ivoire, Ghana, and Togo, helps us hold constant some potentially confounding variables like history, culture, and geography. The three countries were among the first wave of independent countries in Africa in the 20th century. Ghana gained its independence from the United Kingdom in 1957, and Cote d'Ivoire and Togo both became independent from the French Republic in 1960. Beyond this, they share histories. For instance, part of the territory of modern-day Ghana was previously part of historical Togoland. In addition, the three countries are geographic neighbors: Cote d'Ivoire is to the west of Ghana and Togo is to the east. They are also cultural neighbors. Côte d'Ivoire and Togo are both French-speaking countries, with sizeable Christian and Muslim populations (34 and 43 percent of the total population,

respectively, for Côte d'Ivoire and 44 and 14 percent, respectively, for Togo). English-speaking Ghana has a much larger Christian population, approximately 71 percent, with a Muslim population of approximately 18 percent.⁵⁶

For the analysis, we rely on multiple sources, including government documents, reports by domestic and international civil society groups, truth commission publications, and secondary accounts. Using different data types helps us triangulate evidence in favor of either truth commission substance or performance.

Performing Truth?

We begin with an all-Africa analysis of powers that are important for a robust investigation. In terms of jurisdictional powers, 20 African truth commissions were empowered to examine multiple human rights abuses and 17 were empowered to determine root causes. In terms of operational powers, 9 enjoyed subpoena powers and 11 enjoyed the power to collect and preserve evidence.⁵⁷

Focusing on West Africa, all 9 commissions in the region were empowered to examine multiple abuses and all but one – Burkina Faso (1999) – were empowered to determine root causes. Despite similarities in jurisdictional powers in the region, operational powers differed considerably. Five commissions – Nigeria (1999), Ghana (2002), Sierra Leone (2002), Liberia, (2006), and The Gambia (2018) – enjoyed subpoena powers and four – Nigeria, Sierra Leone, Liberia, and The Gambia – had the power to collect and preserve evidence.

Taken together, the data show significant heterogeneity in truth commission designs throughout the Continent and across West Africa. This is true, even when taking into consideration

⁵⁶ Central Intelligence Agency, *The World Factbook*, 2020, cia.gov/the-world-factbook (Accessed 29 July 2021).

⁵⁷ We were unable to locate mandate documents for the two Zambian commissions. So, we only have data on commission powers for 25 of the 27 cases.

the chronology of the commissions. Where many countries could have easily replicated prior commission designs, they effectively regressed from other countries' examples.

To foreground the three-country analysis, we find that, while Ghana could have fully replicated prior models, notably Nigeria (a sub-regional neighbor with a shared history) and South Africa (a regional neighbor), it failed to do so; the Ghanaian commission lacked the power to preserve the evidence it collected, a potential obstacle for any commission seeking to advance an independent inquiry. Nonetheless, the Ghanaian commission had a strong setup that supported a relatively strong process. Togo and Côte d'Ivoire regressed further, lacking the Nigerian, Ghanaian, Sierra Leonean, and Liberian commissions' ability to compel testimony. Together with other operational deficits – in particular little funding, weak leadership, and low government support – their flimsy structures did not prepare them to accomplish the mission of uncovering the truth.

Ghana

Historical background. In 1874, Great Britain established the Gold Coast Colony, expropriating indigenous Wagadou lands, territory in the modern state of Ghana, and extracting resources like gold. Over the next half-century, Britain expanded its dominion to encompass previously unconquered lands to the north, including those of the Asante and the western region of Togoland. As with many of its other foreign possessions, Britain ruled the Gold Coast Colony indirectly, co-opting and delegating power to colonial governors, traditional chiefs, and private companies. Devolution of power, intended to secure long-term British control, however, precipitated the Colony's demise.⁵⁸

In 1951, revolutionary leader, Kwame Nkrumah and the Convention People's Party (CPP) launched the "Self-government Now" campaign and won a majority of seats in the Colony's legislative assembly. Nkrumah was elevated to Prime Minister of the Gold Coast and, six years later, in 1957,

⁵⁸ Amy McKenna, *The History of Western Africa, 1st ed.* (New York: Britannica Educational Publishing in association with Rosen Educational Services, 2010), 123-25.

became Prime Minister of an independent, though not-fully-sovereign, Ghana. Finally, in 1960, Ghana became a republic, with a single-party system steered by Nkrumah and the CPP.⁵⁹

Nkrumah's rule was short-lived, however. While he was on a diplomatic visit to Beijing, China in 1966, the military replaced him with Lieutenant General Joseph A. Ankrah. Successive coups over the next decade and a half produced in 1981 a new "supreme" government under Jerry Rawlings. Over the following two decades, Ghana slowly democratized but failed to address historical and ongoing human rights abuses. This changed in 2000, when John Kofi Agyekum Kufuor was elected president and established a body to reconcile the nation.⁶⁰

Truth Commission Background and Design. The Ghanaian National Reconciliation Commission (NRC) was charged with investigating human rights abuses perpetrated by public institutions and public officeholders during periods of unconstitutional rule, from 1957 to 1993.⁶¹ The commission undertook its investigation from 2002 to 2004, under the capable chairmanship of former Chief Justice Kweku Etrew "K.E." Amua-Sekyi, with eight other commissioners appointed by Kufuor in consultation with the Council of State, a non-partisan presidential advisory body.⁶² While instructed to differentiate abuses under civilian government and military rule, the commission ultimately considered written and oral statements on *all* violence within the mandate period.

The Ghanaian government had just two commissions in the West Africa region after which it could model its commission: Burkina Faso and Nigeria, the former a French-speaking, Muslim-majority state and the latter an English-speaking state with a near-even split between Christians and Muslims.⁶³ Both commissions were assigned to uncover a range of abuses, but only the Nigerian

⁵⁹ Ibid., 129-31.

⁶⁰ Naunihal Singh, *Seizing Power: The Strategic Logic of Military Coups* (Baltimore: Johns Hopkins University Press, 2014).

⁶¹ Ghana Center for Democratic Development, *Never Again*, 3-9.

⁶² Ken Agyemang Attafuah, "An Overview of Ghana's National Reconciliation Commissions and Its Relationship with Courts," *Criminal Law Forum* 15(1-2) (2004), 130.

⁶³ Central Intelligence Agency, *The World Factbook*.

commission was charged with tracing root causes. The Ghanaian commission was tasked *both* with investigating multiple types of violations, specifically “killings, abductions, disappearances, detentions, torture, ill-treatment and seizure of properties”, as well as with identifying “the causes and circumstances under which the violations and abuses occurred.”⁶⁴ This wide material scope of inquiry offers suggestive evidence for TJ norm diffusion and acceptance in Ghana and truth commission substance.

Moving on from jurisdictional powers to operational powers, the Ghanaian commission enjoyed subpoena powers like the Nigerian commission before it; however, unlike its predecessor, it lacked explicit powers to preserve the evidence that it collected. Nonetheless, the commission’s overall powers, “the standard of proof adopted, the elaborate information management process, and the internal control mechanisms”⁶⁵ set it up for a serious investigation. Here, the government built on regional and sub-regional precedents, signaling its substantive interest in and commitment to TJ. This was true not only in terms of the truth commission but also in terms of other measures.

Truth Commission Operations, Outputs, and Outcomes. The NRC’s strong founding legislation required it to establish a full historical record of human rights violations inflicted by public institutions and officials. It was further mandated to recommend to the president certain measures to appease victims of human rights abuses and to prevent such abuses in the future. The commission investigated more than 4,000 cases and held 2,000 public hearings, garnering significant attention from the media and the public more generally.⁶⁶ It directly engaged more than 2,000 victims and dozens of perpetrators,

⁶⁴ Parliament of the Republic of Ghana *National Reconciliation Commission Act, Act 611* (Accra: Republic of Ghana, 2002).

⁶⁵ Robert Kwame Ameh, “Uncovering Truth: Ghana’s National Reconciliation Commission Excavation of Past Human Rights Abuses,” *Contemporary Justice Review* 9(4) (2006): 345-68.

⁶⁶ Valji, “Ghana’s National Reconciliation Commission”; United States Institute of Peace, “Truth Commission: Ghana.”

including President Rawlings.⁶⁷ The commission operated for two years and shortly thereafter published its multi-volume report.⁶⁸

In its comprehensive concluding report, the NRC established the colonial roots of military and police abuse against civilians.⁶⁹ Ghana inherited from the British both the design of these institutions and the operation and conduct of the individuals who worked in them, including a penchant toward excessive use of force. Based on these facts and pursuant to its mandate to propose restitution and reforms, the commission recommended a holistic reparations program that encompassed apologies, memorials, and monetary compensation to victims, with the type and size determined by the violations suffered. The commission also recommended reforms within prisons, the police, and the military.⁷⁰

The commission was not perfect – no commission is. But it produced important policies, like the reparations mentioned above, which the Kufuor administration implemented reasonably quickly. The government made thousands of reparations awards, totaling roughly \$1.5 million.⁷¹ The government later announced that it would have given more if it had more resources to give, to which analysts retorted that the government was not fully committed to reparations. The Kufuor administration also took important, if modest, steps to reform the judiciary and tackle corruption among the military, police, prosecutors, and judges.⁷²

Overall, the Ghanaian truth commission reflected substance over performance. Because of its strong mandate and powers, it successfully brought together victims and perpetrators to share their experiences of violence and abuse, while creating a setting and an opportunity for forgiveness and

⁶⁷ Ibid.; Attafuaah, “An Overview,” 129.

⁶⁸ Ghana Center for Democratic Development, *Never Again*.

⁶⁹ Ibid., 3.

⁷⁰ Ibid., 11; United States Institute of Peace, “Truth Commission: Ghana.”

⁷¹ Hayner, *Unspeakable Truths*, 51.

⁷² United States Institute of Peace, Truth Commission: Ghana.” The NRC has been criticized in some academic and practitioner circles for giving so much time and attention to the Rawlings administration. See, for example, Valji, “Ghana’s National Reconciliation Commission.” However, we note that Rawlings ruled over Ghana during roughly two-thirds of the NRC’s mandate period.

reconciliation. The commission recorded and quickly disseminated the accounts and provided a normative and policy framework for redress and reform. Qualified and vetted commission leaders and high-level government officials' cooperation and support, during and after the commission, were also valuable. They made possible a holistic approach to TJ and helped the country secure democracy and peace, and improve respect for human rights.⁷³

Togo

Historical Background. In 1884, Germany established the protectorate of Togoland, building on decades of exploitation of native labor on palm oil, rubber, cotton, and cacao plantations. During the First World War, France and the United Kingdom invaded the territory and claimed it when German forces surrendered. The British initially took to the west and the French to the east. Both countries later surrendered the territories to the trusteeship of the League of Nations and, after the Second World War, its successor, the UN. British Togoland was later subsumed under the Gold Coast Colony, which became an independent nation in 1957, modern-day Ghana. Three years later, in 1960, French Togoland gained its independence, becoming contemporary Togo, under Sylvanus Olympio.⁷⁴

In the early years of the Olympio administration, there was debate about whether to integrate into the national army Togolese demobilized from France's colonial armies. Olympio rejected the proposal, triggering a rift between the government and the military. Credible death threats prompted Olympio to seek sanctuary at the embassy of the United States. He never entered the embassy compound, however: Army sergeant and future president, Étienne Gnassingbé Eyadéma shot Olympio outside the embassy gates on January 13, 1963. The army then invited Olympio's rival, Nicolas Grunitzky to assume the presidency. Grunitzky crafted a new constitution and opened a parliament comprised mostly of non-commissioned military officers. Instability persisted.⁷⁵

⁷³ Ameh, "Uncovering Truth."

⁷⁴ McKenna, *The History of Western Africa*, 208-10.

⁷⁵ *Ibid.*, 209-11.

Four years into the Grunitzky presidency, Eyadéma seized power and dissolved all political parties. Togo entered into a vicious cycle of violence, all to protect the Eyadéma clan and its allies. The family operated like a mafia, dominating the country's business, government, and military sectors. Secure in his power, Eyadéma declared himself president in 1972. International criticism forced Eyadéma to hold the country's first multiparty elections in 1993, which he won in dubious circumstances.

In the lead-up to 1998 elections, five years later, Eyadéma unleashed the army and select militias on civilians to intimidate and demobilize opponents. Hundreds were killed and thousands were displaced or exiled. And, when it appeared that former-President Olympio's son, Gilchrist, would win, Eyadéma had the army seize ballot boxes, disband the electoral commission, expel international observers, and again declare him the winner.⁷⁶

Mass demonstrations, strikes, and economic stagnation ensued. Nonetheless, Eyadéma reigned for five more years until his death. His son, Faure, succeeded him in 2005, precipitating a year-long crisis resulting in at least 500 dead. The second Eyadéma, unwilling to relinquish power but eager to end the crisis, tactically conceded to a Comprehensive Political Agreement in 2006.⁷⁷

Truth Commission Background and Design. The Comprehensive Political Agreement provided for the Commission Vérité, Justice et Réconciliation (Truth, Justice and Reconciliation Commission, or CVJR) to investigate human rights abuses under both the elder and younger Eyadémas' administrations, as well as the late pre- and early post-Independence period, a total of forty-seven years (1958-2005).⁷⁸ The commission conducted its work from 2009 to 2012, under the leadership of Catholic bishop,

⁷⁶ Ibid., 211

⁷⁷ Ibid., 212.

⁷⁸ République Togolaise, *Décret Présidentiel, n° 2009-046/PR du 25 février 2009 portant création de la Commission Justice, Vérité et Réconciliation* (Lomé: République Togolaise, 2009).

Nicodème Barrigah-Benissan. Other commission leaders hailed from academia, civil society, and business. Traditional leaders were also involved.⁷⁹

The commission was principally charged with investigating extrajudicial killings but was also empowered to study other related violence. The commission was further empowered to trace antecedent causes. Thus, it had a wide material scope of inquiry – evidence suggestive of norm diffusion and acceptance in Togo and truth commission substance. However, the commission lacked both subpoena and evidence preservation powers – evidence suggestive of instrumental adaptation and commission performance. Indeed, despite having many examples to emulate in this regard – including its immediate neighbor, Ghana, and its sub-regional neighbors, Liberia, Nigeria, and Sierra Leone, as well as other nations on the Continent like South Africa – Togo failed to build on them.⁸⁰ By not affording the commission critical operational powers, the government did not create the most effective commission possible.⁸¹

Truth Commission Operations, Outputs, and Outcomes. Similar to the law establishing the Ghanaian NRC, the presidential decree that inaugurated the Togolese CVJR required it to examine all politically-related violence within its nearly five-decade mandate period, identify the individuals responsible, propose reparations for victims, recommend accountability measures for perpetrators, and lay out potential preventive measures such as institutional reforms.⁸² Dissimilar to the Ghanaian case, however, commission officials in Togo were appointed under dubious, non-merit-based procedures. They were also granted complete immunity from prosecution in relation to any disclosure in the

⁷⁹ Hayner, *Unspeakable Truths*, 71-72.

⁸⁰ Data from the *Varieties of Truth Commissions* Project.

⁸¹ République Togolaise, *Rapport final de la Commission Justice, Vérité et Réconciliation* (Lomé: République Togolaise, 2012).

⁸² *Ibid.*

exercise of their functions, raising questions about their qualifications and integrity, and the president's commitment to the process.⁸³

In its three-year investigation, the commission managed to gather some 22,000 statements from across the country and diaspora. But only a fraction of these, roughly 500, were presented in public hearings.⁸⁴ The commission judged that hearing more testimonies would simply take too much time and require too many resources. Relatedly, there was a troubling lack of willingness to identify perpetrators and request their participation, and there was no possibility of compelling their testimony. Virtually all of the public testimonies were delivered by survivors, victims' family members, and experts. Perpetrators' marginal participation limited the extent of the truth that could be recovered. Barrigah-Benissan, the commission chair, later expressed regret about this. He said that both he and many Togolese would have appreciated hearing perpetrators confess, apologize, and seek forgiveness and, in turn, be granted forgiveness by survivors and victims' families.⁸⁵

The truth commission report drew the arc of modern Togolese history, connecting colonial-era violence to the present-day and linking "successive coups, terrorist attacks, detentions, disappearances, assassinations, and tensions between ethnic communities, orchestrated by militias backed by political actors."⁸⁶ However, the report was less detailed in its findings and conclusions than previous commissions, a criticism that commission officials preemptively defended themselves against in the report, citing the narrow window of time that they had to work in and the modest resources that the government afforded them.⁸⁷ Beyond the findings and conclusions, commissioners included among their recommendations respect for ethnic groups, judicial and electoral reforms, and

⁸³ Jeremy Sarkin and Tetevi Davi, "The Togolese Truth, Justice and Reconciliation Commission: Lessons for Transitional Justice Processes Elsewhere," *Peace and Conflict Studies* 24(1) (2017): 1-22.

⁸⁴ UN Office of the High Commissioner for Human Rights (OHCHR), *Healing the Wounds of the Past for a Better Future in Togo*, 2012, ohchr.org/EN/NewsEvents/Pages/HealingthewoundsofthepastforabetterfutureinTogo.aspx (Accessed 23 September 2020).

⁸⁵ Sarkin and Davi, "The Togolese Truth, Justice and Reconciliation Commission,"

⁸⁶ OHCHR, *Healing the Wounds of the Past*.

⁸⁷ République Togolaise, *Rapport final*, 64.

personnel reforms in law enforcement and the military. Commission leaders also proposed criminal investigations of suspected perpetrators and symbolic and material reparations to victims, including apologies and restitution of property.⁸⁸

While the commission did fairly well, considering its limited powers and resources, it was hamstrung by the broader political environment, including the fact that most of the abuses in question occurred during the current president's father's administration. What kind of truth could emerge from an investigation of a father by his son? In truth, it was a performance. Adding to this, Faure Gnassingbé was re-elected in 2015, which flew in the face of the commission's recommendation to limit successive terms. This aided, rather than confronted, impunity of perpetrators of abuse in the elder and younger Eyadéma's administrations. Simply, whatever effect the commission could have had was curtailed by the context in which it was deployed. The government established a body to assist with implementing the CVJR's recommendations, but it has accomplished little since – further evidence of performative TJ.⁸⁹

Côte d'Ivoire

Historical Background. In 1893, the French Republic established colonial rule over Côte d'Ivoire, exploiting native labor and natural resources. Over the next half-century, economic exploitation grew. Even as Ivorians fought on behalf of and died alongside the French in the First and Second World Wars, Ivorians did not enjoy civil and political rights at home. The colonial government routinely detained and, in some cases, deported so-called “dissidents” and imposed heavy taxes, even on local kings.⁹⁰

⁸⁸ République Togolaise, *Rapport final*, 244-88.

⁸⁹ Sarkin and Davi, “The Togolese Truth, Justice and Reconciliation Commission”; Lonozou Kpanake and Etienne Mullet, “What Can Reasonably Be Expected from a Truth Commission?: A Togolese View,” *Conflict Resolution Quarterly* 29(2) (2011): 201-24.

⁹⁰ McKenna, *The History of Western Africa*, 108-9.

In 1944, Ivorian social leaders, Félix Houphouët-Boigny and Auguste Denise developed a plan to address land and labor exploitation and led Ivorian planters in forming the Syndicat Agricole Africain (African Agricultural Union, or SAA). The SAA's central goal was to secure better treatment for native farmers – a fight that its members won. Building on this success, the SAA transformed into a political party, the Parti Démocratique de la Côte d'Ivoire (Democratic Party of Côte d'Ivoire, or PDCI), with Houphouët-Boigny as its leader. The French government attempted to co-opt the rising star and the movement he led, elevating him first to the Paris-based Commission des Territoires d'Outre-Mer (Commission on Overseas Territories) and, later, several ministerial positions, all the while repressing his confreres back home and sowing the seeds of future resentment, instability, and violence.⁹¹

Côte d'Ivoire declared its independence in 1960, with Houphouët-Boigny as its first president. The nation enjoyed significant economic growth under free-enterprise policies. Nevertheless, as in many other post-Independence African states, the single-party system grew unpopular and, for Houphouët-Boigny, increasingly dangerous. He survived two coup attempts in 1963 and 1973, and in the late 1980s he was forced to hold the country's first multiparty elections. Rather than representing the advent of a new era of peace and democratic governance, however, Ivorians witnessed more unrest, mutiny, and coups, and succumbed to a military government.

In 1999, the military brought out of retirement General Robert Guéï and installed him as president. One year later, in 2000, Guéï agreed to presidential and legislative elections. He also declared that he would not run – a pledge on which he would later renege. Guéï allowed only one opponent, Laurent Gbagbo, leaving off the ballot ex-Prime Minister under Houphouët-Boigny, Alassane Ouattara. The nation erupted into violence and hundreds died in the lead-up to the election, which Gbagbo won.

⁹¹ Ibid.

Civil unrest persisted after the election and, in 2002, a full-fledged civil conflict began, splitting the country between the Muslim-majority North and Christian-majority South. Peace talks proceeded in fits and starts. Finally, in 2007, a power-sharing agreement was negotiated in Ouagadougou, Burkina Faso. In the next electoral cycle in 2010, however, violence erupted as Gbagbo and Ouattara faced off again. This time, Ouattara won the election, but Gbagbo refused to vacate his position, prompting yet another civil conflict. Ouattara supporters captured the capital, Abidjan, in 2011 and installed him as president. The violence left 3,000 dead.⁹²

Truth Commission Background and Design. Ouattara installed the Commission Dialogue, Vérité et Réconciliation (Dialogue, Truth and Reconciliation Commission, or CDVR) to investigate political violence, from 1990 to the Ivorian Crisis of 2010 and 2011. The commission conducted its work from 2011 to 2014, under the leadership of former Prime Minister Charles Konan Banny, religious leaders, and regional representatives.⁹³

Similar to the Ghanaian NRC and Togolese CVJR, the Ivorian CDVR was tasked with uncovering a broad range of violations, including torture, sexual violence, and extrajudicial killings, and to study root causes, notably tribalism, nepotism, and social inequality and exclusion.⁹⁴ The wide material scope of inquiry, which built on regional and sub-regional precedents, supplies evidence in favor of norm diffusion and acceptance and truth commission substance. However, like the Togolese commission, the Ivorian commission lacked subpoena powers. It also lacked evidence-preservation powers.⁹⁵ Where Côte d'Ivoire could have built on its neighbors' legacies, it failed to do so, suggesting instrumental adaptation and commission performance.

⁹² Human Rights Watch, "'They Killed Them Like It Was Nothing': The Need for Justice for Côte d'Ivoire's Post-Election Crimes," 5 October 2011, [hrw.org/report/2011/10/05/they-killed-them-it-was-nothing/need-justice-cote-divoires-post-election-crimes](https://www.hrw.org/report/2011/10/05/they-killed-them-it-was-nothing/need-justice-cote-divoires-post-election-crimes) (Accessed 28 July 2021).

⁹³ République de Côte d'Ivoire, *Rapport final*, 18-19.

⁹⁴ *Ibid.*, 108.

⁹⁵ Data from the *Varieties of Truth Commissions* Project.

Truth Commission Operations, Outputs, and Outcomes. As previously mentioned, the CDVR had a wide material scope of inquiry, tasked with researching a diversity of civil, political, economic, and social rights violations over a two-decade period. The commission was also charged with identifying and suggesting measures to combat inequality, discrimination, and injustice. Yet, as Amnesty International reported in 2013, the events in question were not clearly defined. Essentially, the commission was assigned to investigate *everything*. Lacking priorities for the investigation, commission leaders undertook a national consultation to discern what Ivorians wanted to be investigated. This consultative process, which should have preceded the commission, consumed much of the precious little time that they had. The commission also lacked sufficient public funds and so was forced to rely heavily on external funding. Analysts worried about what truth could possibly come out of such a process. Relatedly, there were concerns that, whatever little the commission did find would not be made public. The commission report, the government had ordered, was to be delivered to the president, not shared directly with the people.⁹⁶

Victim participation in the CDVR was another notable point of contention. While commissions are intended to be restorative justice institutions centered on victims' experiences, the Ivorian commission was neither restorative nor victim-centered. In one of our research interviews, the Deputy Executive Director and Director of Programs at the International Center for Transitional Justice (ICTJ), Anna Myriam Roccattello reported that the commission was a waste of time and money; it did not seriously engage victims and did little to advance interpersonal and societal reconciliation. For this reason, the UN Independent Expert on the situation of human rights in Côte d'Ivoire, Doudou Diène called for an extension of the CDVR's mandate, admonishing:

Efforts at political dialogue and the national reconciliation process must not be tainted by tactical or electoral manoeuvring in a political context that neglects the higher interests of the Ivorian people. They must go hand in hand with the struggle

⁹⁶ Amnesty International, *Côte d'Ivoire: The Victors' Law: The Human Rights Situation Two Years After the Post-Electoral Crisis*, 2013, [amnesty.org/download/Documents/8000/afr310012013en.pdf](https://www.amnesty.org/download/Documents/8000/afr310012013en.pdf) (Accessed 14 September 2020).

against impunity, the promotion of equitable justice and the central importance that must be given to the situation of victims.⁹⁷

Regrettably, the Ouattara administration did not heed Diène's admonition. Bediako concludes, "The effect has been continuing tension and a fragile peace."⁹⁸

The commission concluded its investigation and report in 2014, but it took the government more than two years to make it publicly available, prompting international criticism from a range of international actors, among them the ICTJ, Amnesty International, and Human Rights Watch, as well as domestic civil society groups.⁹⁹ When the report was finally released in 2016, sections that were critical of Ouattara and his allies had been deleted.¹⁰⁰ Thus, only a partial and limited truth emerged. And, unsurprisingly, there has been little movement on the commission's recommendations.

The CDVR was not the only problematic or unsuccessful TJ mechanism established in Côte d'Ivoire. Reparations, prosecutions, and institutional reforms were few, far between, and unserious: Most would-be reparations beneficiaries never received them and Ouattara supporters and allies have enjoyed *de facto* immunity from prosecution, while some opponents and rivals have been prosecuted.¹⁰¹ Moreover, past violence was not comprehensively addressed and no robust measures were put in place to prevent abuses in the future. Overall, TJ in Côte d'Ivoire was a grand performance that produced little by way of truth, restitution, and accountability.¹⁰² Any genuine efforts toward truth and justice are now only likely to come from the ICC, which opened a formal investigation into

⁹⁷ UN Human Rights Council, A/HRC/25/73: *Report of the Independent Expert on the situation of human rights in Côte d'Ivoire, Doudou Diène* (New York: United Nations, 2014).

⁹⁸ Kofi Bediako, *The Politics of Transitional Justice in Côte d'Ivoire* (Master's diss., Liverpool Hope University, 2016), ii.

⁹⁹ ICTJ, "Côte d'Ivoire"; Amnesty International. *Amnesty International Report 2015/16 - Côte d'Ivoire*, 2016, amnesty.org/download/Documents/POL1025522016ENGLISH.PDF (Accessed 14 September 2020); Human Rights Watch, "To Consolidate"; Jones and Djané, "Reading the 'Uncivil'."

¹⁰⁰ République de Côte d'Ivoire *Rapport final*; Piccolino, "Peacebuilding."

¹⁰¹ Jones and Djané, "Reading the 'Uncivil'."

¹⁰² Daniel Lopes, *Note d'Analyse du GRI: La Commission Dialogue Vérité et Réconciliation en Côte d'Ivoire: la réconciliation n'a pas eu lieu* (Brussels: Groupe de Recherche et d'Information sur la Paix et la Sécurité, 2015).

alleged atrocity crimes in Côte d'Ivoire, from 2002 onwards, with a particular emphasis on the Ivorian crisis.¹⁰³

Discussion

TJ has blossomed as a field of practice and scholarship over the past several decades. Early enthusiasm and optimism about its potential to transform post-violence societies, however, has waned in recent years, as various mechanisms like truth commissions have not delivered desired outcomes; that is, truth, justice, reparation, and non-repetition. Some of the variation in TJ mechanisms' success globally arises from variation in institutional design and operation and, indeed, the will and skill of those who create, implement, and oversee these mechanisms. For this reason, we presented a rejoinder to the argument that the spread of TJ institutions means that relevant norms are being diffused and accepted. While institutional adoption may imply norm diffusion and acceptance, this is not always the case. Institutional adoption can also result from norm instrumentalization and co-optation. We argued that differences in rationales for TJ, either normative or instrumental, produce two general types of TJ: substantive and performative.

The differences between substantive and performative TJ, which we showed through a descriptive analysis of quantitative data and three case studies, is not only conceptually, theoretically, and empirically important; it is also practically and normatively important. If there is not consistency and improvement in the design of TJ institutions – particularly among geographically, culturally, and historically proximate countries – then we are unlikely to see consistency and improvement in the operations, outputs, and outcomes of these institutions. Further, we may see (and indeed have seen) regrettable losses in terms of institutions' set-up, activities, results, and consequences. So, rather than combat impunity and meet victims' rights to truth, justice, reparation, and non-repetition, TJ institutions can (re)produce impunity and actually contravene victims' rights. This is most likely

¹⁰³ International Criminal Court, "Côte d'Ivoire," 2021, icc-cpi.int/cdi (Accessed 29 July 2021).

where mechanisms are poorly designed, under-resourced, and under-supported by governments, i.e., in contexts of performance rather than of substance. Thus, scholars, practitioners, and advocates must meet with circumspection the proliferation of truth commissions, reparations projects, trials, and other such measures. Indeed, the spread of these measures without a commitment to the norms from which they are derived is no victory .

Conclusion

The scholarly contribution of this chapter is three-fold. First, we made an innovative conceptual contribution to the study of TJ. Whereas scholars generally conceptualize performance as *events and acts within a TJ process*, for example victims and perpetrators giving their testimony in trials and at commissions, we presented performance as *the structure and motivating logic of some TJ institutions*. Accordingly, performance does not start with participants; instead, it begins with policy makers and institutional designers.

Second, we built on constructivist and world society perspectives on global governance in the context of TJ. Meyer et al. cautioned more than twenty years ago that institutional isomorphism does not necessarily reflect shared beliefs and values. We extended this insight by arguing that the sheer spread of TJ institutions does not in and of itself supply evidence of the diffusion and acceptance of the underlying norms, or agreement on the conduct expected of post-violence states.

Third, we made a noteworthy empirical contribution. We produced a comprehensive study of truth commission institutional design in Africa, the region where we have observed the most commissions and where we may yet observe more. We provided an overview of commissions on the Continent and presented a sub-regional analysis of lesser-known commissions in the West Africa region, adding to our collective understanding of TJ in different parts of the world.

We found that the commissions in Ghana, Togo, and Côte d'Ivoire differed in terms of the investigative powers enumerated in their mandates and the material and political resources that

policy makers vested in them. Consequently, they varied in how they carried out their work, the facts they were able to uncover, and their impact on post-violence politics. Whereas the Ghanaian commission's design, operations, outputs, and outcomes reflected substance (i.e., they can be explained by norm diffusion and acceptance), the Ivorian and Togolese commissions' set-up, activities, results, and consequences reflected performance (i.e., they can be explained by instrumental adaptation). Therefore, we should not assume norm diffusion and acceptance from institutional adoption, and we must rigorously monitor and evaluate TJ processes to determine their consistency with international standards and expectations.

Future research should investigate how commissions with modest origins can nevertheless produce good work. While the impetus for and design of TJ institutions played a significant role in our analysis and conclusions, they are not always determining factors. TJ institutions can (and historically some have) overcome limited powers and expectations. Future research should also extend our concepts and theory to other mechanisms and evaluate how far they travel.