

# National Commissions of Inquiry in Africa

Vehicles to Pursue Accountability for  
Violations of the Right to Life?

Edited by

Thomas Probert & Christof Heyns

Pretoria University Law Press  
PULP  
2020

*National Commissions of Inquiry in Africa: Vehicles to Pursue Accountability for Violations of the Right to Life?*

**Published by:**

Pretoria University Law Press (PULP)

The Pretoria University Law Press (PULP) is a publisher at the Faculty of Law, University of Pretoria, South Africa. PULP endeavours to publish and make available innovative, high-quality scholarly texts on law in Africa. PULP also publishes a series of collections of legal documents related to public law in Africa, as well as text books from African countries other than South Africa. This book was peer reviewed prior to publication.

For more information on PULP, see [www.pulp.up.ac.za](http://www.pulp.up.ac.za)

**Printed and bound by:**

Pinetown Printers, South Africa

To order, contact:

PULP

Faculty of Law

University of Pretoria

South Africa

0002

Tel: +27 12 420 4948

[pulp@up.ac.za](mailto:pulp@up.ac.za)

[www.pulp.up.ac.za](http://www.pulp.up.ac.za)

**Cover design:**

Yolanda Boozyen, Centre for Human Rights

**Cover image:**

The 'Monument aux Martyrs' in Ouagadougou, Burkina Faso, erected in the aftermath of the National Day of Forgiveness (see Ch.6), with the symbolism of a dove stitching together a broken calabash gourd invoking traditional societal understandings of the function of pardon. [© Thomas Probert, 2016]

ISBN: 978-1-920538-86-6

© The authors and editors, collectively, 2019

This manuscript represents the culmination of three years' research conducted by the Institute for International and Comparative Law in Africa under the auspices of a four-cluster project at the University of Pretoria funded by the Templeton World Charity Foundation.

## CONTENTS

---

	<b>Background and acknowledgments</b>	<b>i</b>
	<b>Members of the research team</b>	<b>iv</b>
<b>1</b>	<b>Introduction: The role of national commissions of inquiry in securing the supreme human right</b> <i>Thomas Probert &amp; Christof Heyns</i>	<b>1</b>
<b>2</b>	<b>The concept of accountability and its importance for the protection of the right to life</b> <i>Thomas Probert</i>	<b>18</b>
<b>3</b>	<b>'Lawfare', instruments of governmentality and accountability, or both? An overview of national commissions of inquiry in Africa</b> <i>Meetalı Jain</i>	<b>45</b>
<b>4</b>	<b>Commissions of inquiry and social solidarity in the African context</b> <i>Christof Heyns</i>	<b>70</b>
<b>5</b>	<b>Shedding all the light? The Commission of Inquiry into the Crimes and Misappropriations of Hissène Habré in Chad</b>	<b>100</b>
<b>6</b>	<b>A murdered journalist and a crisis of faith in the judiciary: The Independent Commission of Inquiry into the Death of Norbert Zongo in Burkina Faso</b> <i>Thomas Probert</i>	<b>143</b>

<b>7</b>	<b>Public hearings and secret envelopes: The Waki Commission as a case study of accountability in Kenya</b>	<b>181</b>
	<i>Anyango Yvonne Oyieke</i>	
<b>8</b>	<b>A slow but steady search for justice: The Commission of Inquiry into the July 2011 ‘riots’ in Malawi</b>	<b>217</b>
	<i>John Kotsopoulos</i>	
<b>9</b>	<b>The rose that grew from concrete: The Commission of Inquiry into policing in Khayelitsha, South Africa</b>	<b>241</b>
	<i>Meetali Jain</i>	
<b>10</b>	<b>The (im)partiality of justice: The challenges of investigating the clashes between the Islamic Movement of Nigeria and the Nigerian army in Zaria, Nigeria</b>	<b>279</b>
	<i>Anyango Yvonne Oyieke</i>	
<b>11</b>	<b>Commissions of inquiry: Valuable first steps towards accountability or smokescreens for inaction?</b>	<b>312</b>
	<i>Thomas Probert &amp; Christof Heyns</i>	
	<b>Annex: A list of commissions of inquiry in Africa, 1990-2016</b>	<b>334</b>

## BACKGROUND AND ACKNOWLEDGMENTS

---

This book is part of a long-running research project at the University of Pretoria, ‘Freedom from Violence in Africa’, that focuses on the right to life, and on ways to reduce violence, especially in Africa. In various contexts – at United Nations, African Union and national levels – we have dealt with questions of accountability, and have emphasised that proper accountability mechanisms and their investigations are part and parcel of the protection of the right to life and of effective responses to deadly violence.

One of the questions that arose along the way is to what extent commissions of inquiry can play a constructive role in ensuring accountability. What might be their proper role, especially in Africa? Do they serve, as is often suggested, largely as smokescreens for impunity, or can they enhance accountability? May they have a specific role on the continent? One potential strength of the participatory and inclusive character of some commissions of inquiry might be the sensitivity to local and traditional sources of knowledge and ethics. However, much of what has been said on the topic has been based on anecdote, or on assumption based on ‘lessons’ from other parts of the world. No comparative empirical research had been done specifically into the role of such commissions on the African continent.

The desire to fill this gap prompted us to include a proposal around commissions of inquiry in a 2014 multidisciplinary research project at the University of Pretoria funded by the Templeton World Charity Foundation on ‘The meaning and value of *ubuntu* in human and social development in Africa’. The Institute for International and Comparative Law in Africa (ICLA) was one of four clusters within that project, and focused its research on how *ubuntu* could inform accountability mechanisms responding to unlawful killings in Africa. We thus obtained the necessary funds to engage in an intriguing research project, stretching over three years, which allowed us to send researchers to six African countries where such commissions have been set up, and to obtain evidence “from the field” concerning the role the commissions had played in pursuing accountability.

In respect of the six commissions of inquiry chosen for in-depth study, our researchers were able to talk to a diverse range of actors involved in each case, from former commissioners, to government ministers, lawyers, those involved in advocacy around the process or since, and in some cases

with complainants or with representatives of affected groups. Based on this research this book presents an analysis of the role of each of these six commissions, and then draws some general conclusions about the potential role for such mechanisms in Africa.

At the outset we would like to thank Prof James Ogude, who presided over this multidisciplinary collaboration at the University of Pretoria with great patience and valuable insight. The nature of the overall project provided a framework within which to build upon existing partnerships and shared interests between faculties. The coordination of such projects is a vital role, and one which was ably managed by Meetal Jain who, in addition to undertaking important substantive parts of the research throughout, also ensured that the moving parts were shepherded in a consistent direction.

Research collaborations established between faculties at any university of course only really become meaningful when individual researchers choose to take part. In particular, we are grateful to Dr Cori Wielenga and Anthony Bizos from the Department of Political Sciences, and Prof Willem Fourie (at that time from the Faculty of Theology) who all gave generously of their time and knowledge throughout the collaboration. We are also grateful to ICLA student assistants Doris Uwicyeza and Peter Katonene who assisted researchers, particularly during the early stages of the project. Pumeza Matwa was an indispensable administrative coordinator.

ICLA is a research institute associated with the Centre for Human Rights in the Faculty of Law. The status of the Centre beyond the campus of the University allowed us to draw upon the accumulated expertise of those outside of the academy as well. At various points throughout the research when we held discussion seminars or other events, participants arrived from a wide range of civil society organisations throughout South Africa. In particular, we would like to thank the Institute for Justice and Reconciliation, which made available one of its project leads, Kelly-Jo Bluen, to contribute directly to our research, and which published a policy brief with some of our preliminary research findings.

This support and these collaborations within, across and beyond campus greatly enriched the work of the researchers whose contributions form chapters of this book. We are moreover grateful to the researchers themselves, who planned and undertook the research into the six core case studies across seven different African countries. Their case studies form the granular, empirical essence of this research project, and in each case

present new material that can shape our understanding of commissions of inquiry in their national contexts.

Beyond those directly mentioned here, and in addition to the expressions of gratitude each of the contributing authors make with respect to their particular field research, we would, finally, like warmly to thank all those who contributed very intimately to this project by discussing with us their impressions of the various commissions of inquiry reviewed. For many, this was the first time they had discussed their role or their experience with a researcher, and we hope that this project goes some way towards documenting important untold stories.

*Thomas Probert*  
*Christof Heyns*

*Pretoria, November 2019*

## MEMBERS OF THE RESEARCH TEAM

---

*Christof Heyns* is a member of the UN Human Rights Committee and Professor of Human Rights Law at the University of Pretoria, where he directs the Institute for International and Comparative Law in Africa. He is also an expert member of the African Commission's Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa. From 2010 to 2016 he served as UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and in 2016 he served as Chairperson of the UN Independent Investigation into Burundi.

*Meetali Jain* is an international human rights lawyer who has worked as a senior researcher with the Institute for International and Comparative Law in Africa at the University of Pretoria and the Centre for Applied Legal Studies at the University of the Witwatersrand. She also founded the Constitutional Literacy and Service Initiative, a South African human rights education organisation. Meetali taught as a clinical law lecturer in the United States and lectured on jurisprudence and human rights advocacy in South Africa. She has practised in the fields of human and civil rights, immigration and criminal defence, and previously clerked for judges on the Constitutional Court of South Africa and the US District Court in California.

*John Kotsopoulos* is a Senior Research Fellow at the Centre for the Study of Governance Innovation (GovInn) at the University of Pretoria. He holds a PhD in International Relations (University of Kent) with a focus on asymmetrical negotiations between the European Union and Africa. He also has research interests in security and democratic governance, as well as the role of perceptions in foreign policy decision making. Previously, he worked at the Brussels-based European Policy Centre think-tank where he ran the EU-Africa Forum and the European Security and Global Governance programme.



*Anyango Yvonne Oyieke* is a Lecturer in the Department of Public Law at the University of Nairobi's School of Law. She holds an LLM from the University of Pretoria, where she is finishing her LLD in the Department of Jurisprudence, on 'Law's archive and the development of a post-apartheid jurisprudence'. Her research interests include gender and women's studies, women's human rights, African human rights, transitional justice and critical legal/feminist/race theories.

*Thomas Probert* is an Extraordinary Lecturer at the Centre for Human Rights, University of Pretoria, where he is Head of Research for the international research collaboration 'Freedom from Violence in Africa'. From 2013 to 2016 he was a Research Consultant to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, partly based in the Office of the High Commissioner for Human Rights in Geneva. He is also a Research Associate of the Centre of Governance and Human Rights at the University of Cambridge.