

Reconsidering Rwanda’s National Commission for Human Rights

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By: Pearl Eliadis

Introduction

The year 2024 marked three decades since the end of the Rwandan genocide. The United Nations designated April 7 as the International Day of Reflection on the 1994 Genocide against the Tutsi in Rwanda and this annual point of reflection provides an opportunity to look back and assess the

transitional period in Rwanda (1999-2004), a critical juncture in the country's development.

The 1993 Arusha Accords comprised the *Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front*, signed in Arusha, Tanzania, along with its protocols. The Arusha Accords would underpin the country's Fundamental Law during the transitional period. The protocols provided for the establishment of the National Human Rights Commission (NHRC) and the National Unity and Reconciliation Commission (NURC), both of which would play important roles in rebuilding Rwanda.

Despite their importance, these national institutions are understudied, possibly because they are viewed as outcomes of peace processes rather than active players in their own right.[1] Scholar Jeanine Natalya Clark has noted that the literature on the NURC is limited, while other sources on the transitional period provide limited information on the two commissions in an otherwise extensive body of literature on Rwanda after the genocide. As for the NHRC, reports tend to focus on specific incidents rather than a broader institutional assessment.

Both institutions tend to be treated similarly in the literature in terms of how quickly they were seen to be instrumentalized by the government. This point has been made by Jeanine Natalya Clark in her study of the NURC. Paul Gready describes both commissions as having been "tamed" by the government.[2]

This article invites readers to differentiate between the two commissions. While the NURC behaved more or less like a line department under the direct authority of the executive, this article argues that the NHRC did not, at least not consistently. While there are fair concerns about the NHRC's independence, its public record does not fit the narrative of a fully "tamed" commission. The following sections compare the two institutions and set out some reasons for a differentiated approach based on public reports from the two commissions, international human rights organizations and material from the author's files that was publicly available during missions to Rwanda from 2000-2003 while working with both commissions.

National Unity and Reconciliation Commission

The NURC was the central state institution designated to support the reconciliation process. In its 2016 report, *Unity and Reconciliation Process in Rwanda,* it noted that the redefinition of national identity was central to the unity project (pp. 52, 56). Its mandate overlapped to some extent with the NHRC's because they both aimed at repudiating discrimination and racism. However, the NURC was much more centred on realizing the government's goal of cementing a monolithic national identity to achieve the Unity Government's program of social engineering, a program that was designed to "transform how individual Rwandans saw their own social identities."[3]

1. *Legal mandate*

The NURC's 1999 enabling law established the Commission for an unspecified period (Art. 2). Its subjugation to the government is evident from the NURC's legal mandate to run the country's program for promoting national unity, reconciliation and human rights (Art. 3).

Although the NURC did not enjoy statutory independence (unlike the NHRC), the law conferred powers that required a measure of independence. The NURC played an oversight role by ensuring that the government, politicians and even individual Rwandans would "respect and observe" national unity and reconciliation (Art. 3). It also had surveillance powers, allowing it to denounce "any written or declared ideas and actions aimed at or based on disunity", although it lacked an enforcement mechanism (Art. 4).

The difficulties in fulfilling these responsibilities were obvious, even to the NURC itself. In its Annual Report on its 2002 activities, it noted the contradictions in running what was essentially a government program to meet governmental objectives while overseeing that same government.[4] Structural factors prevented meaningful exercise of these functions: the NURC reported to the President of the Republic directly, and its secretariat was in the President's office. Its members were appointed at pleasure. Its first Executive Secretary was Aloisea (sometimes spelled Aloysea) Inyumba.

2. Organizational development and leadership

The charismatic and partisan Inyumba embodied the close ties between the NURC and the Unity Government. She had served as a senior member of the RPF and as a government minister; she had also been a fundraiser for the RPF. Her talent with donors would be critical for the NURC. Inyumba was deeply committed to the national unity project; given her experience in the military wing of the movement, she also understood the connections of the unity project to ensuring national security.

In 2002, Fatuma Ndangiza assumed the role of Executive Secretary. As a Muslim woman, she reflected the diversity that the government sought to foster among its senior ranks. Like Inyumba, Ndangiza was clear-eyed about national security as the necessary "enabling environment" for unity and reconciliation.

3. Activities: Unity, unity and more unity

In 2000, the NURC convened the National Summit for Reconciliation, followed by an ambitious program of national and local activities on civic education and public awareness. In its strategic planning document in 2001, the connections among peace, human rights, and national unity were set out as integral to the reconciliation process:

> Reconciliation in Rwanda is founded on two fundamental components that come together in a vision for the country: a commitment to social cohesion by cultivating a culture of peace, unity and human rights, and a rejection of the politics of division and discrimination.[5]

Rwanda's history was marked by highly centralized governance and top-down control with a focus on surveillance (including within communities and by community members) and deference to authority. Mass education was embedded in the culture, and the NURC leveraged this tradition. It ran the re-education camps (*ingando*) for demobilized militia, a program that was later adapted for returnees and youth. Starting in 2003, prisoners were also re-educated in a version of the *ingando*. The activities of student clubs and artistic networks were promoted, including dance, sports, and theatre. The NURC also monitored the traditional courts (*gacaca*) and held national debates, consultations and meetings that attracted hundreds of thousands of people, many of whom left behind households, farms, and fields to attend.

The wide range of activities and their close association with government priorities and programming gave the NURC a prominent public profile.[6] More importantly, it promoted a form of ethnic unity that some describe as "ethnic amnesia."[7] Reconciliation was subjugated to national unity, while pluralistic perspectives were smothered.

National Human Rights Commission

After the NHRC's launch in 1999, its members were appointed and its head office was established. It worked collaboratively with the NURC, but was nonetheless prepared to assert its authority, even if that led to confrontation. One example took place in 2000, when the Kibungo Prefecture's security subcommittee leveled accusations against Frederic Nzabonimana, a NURC employee. The Executive Secretary, Inyumba, summarily dismissed him.

Nzabonimana filed a complaint with the NHRC, which characterized the firing as "less than prudent" and even "illegal" under Rwanda's labour laws. The NHRC's annual report for 2001 states that the NHRC facilitated Nzabonimana's reinstatement and made proposals to improve the NURC's human resources management. It was unusual to see such blunt criticism from one Rwandan institution to another, let alone one as prominent as the NURC or against its well-connected leader, Inyumba. The incident was even more noteworthy given that the allegations had been related to security matters.

1. *Legal mandate*

The NHRC's enabling law was generally consistent with the terms of the Arusha Accords' Protocol on the Rule of Law, although with some exceptions. The NHRC was given institutional independence to investigate and follow up on human rights violations committed by anyone on Rwandan soil. The authority applied to state organs and individuals acting under the cover of the state or any organization operating in Rwanda (Art. 3). It could provide its reports to the office of the President of the Republic, the government, the National Assembly, and the Supreme Court. In all these areas, it enjoyed more formal independence than the NURC.

The UN's Office of the High Commissioner for Human Rights (OHCHR) was closely involved in the early development of the NHRC. The NHRC's formal independence and its mandate to protect and promote human rights reflected the OHCRC's efforts to ensure compliance with the 1993 Principles

relating to the Status of National Institutions (Paris Principles). The Paris Principles are UN soft law that set minimum standards for the legitimacy and functioning of national human rights institutions.

However, there were gaps in the NHRC's legal authority: it could not compel witnesses or documents. Parties to complaints or investigations were not obliged to respond (Art. 5). It had no explicit authority to initiate legal proceedings before the courts, contrary to the Protocol on the Rule of Law in the Arusha Accords, although it sometimes sought prosecutions through the authorities.

The NHRC recommended amendments and, in 2002, the Transitional National Assembly finally introduced them. The Commission was established in perpetuity and its powers were strengthened. The Commission was authorized to act *proprio motu* (on its own initiative). It could receive information about human rights violations and act on them. Its commissioners were judicial police officers who could request explanations from anyone, go to any place to obtain documents, and ask authorities to provide restitution to victims. They were given authority over the entire Rwandan territory and the power to delegate that authority to employees.

2. *Organizational development and leadership*

The commissioners were appointed in May 1999. Several of them were closely associated with the RPF, which affected the perception of the commission's independence. Nonetheless, the first president, Gasana Ndoba, was a well-respected human rights advocate who had been outside the country during the war. He assumed a low profile and was deeply committed to human rights.

Between 1999 and early 2001, the NHRC operated under significant constraints. Senior staff had not yet been appointed. By the NHRC's own admission, most of its investigations could only be carried out in a summary manner. It was not until the end of 2001 that a sufficient staff complement was in place. Annual reports and strategic plans show that each department was led by a single Commissioner, often with overlapping mandates. In practice, the structure was top-heavy, and responsibilities were not always clear. The need for extensive training and orientation, and the ensuing and lengthy absences of members and senior staff, delayed decision-making, stalled organizational development, and resulted in lengthy case investigations.

In 2002, Ndoba was replaced by Sylvie Kayitesi. She had served in both civil society and as a junior UN staff member. Although she lacked Ndoba's experience, she would prove to be a capable administrator. Like Ndangiza at the NURC, she was a Muslim woman, and her appointment checked several political boxes. Muslims were seen as having played a neutral and sometimes conciliatory role during the genocide. The government hailed her appointment as part of its commitment to gender equality.

3. *Activities: When Unity and Human Rights Clash*

Because of the Commission's limited operational capacity between 1999 and mid-2001, the NURC relied on "good offices" interventions that were selected with care. According to a 2000 report by

Human Rights Watch, Ndoba had intervened with Paul Kagame in cases where victims were alleged to have experienced forced return, ill-treatment, and arbitrary detention.

However, the NHRC's low profile, the delays, and the perceived lack of independence from government generated understandable concern. In 2001, the prominent *Ligue des droits de la personne dans la région des Grand Lacs* (LDGL) criticized the NHRC, pointing out that its 2000 report offered "no information" on its work. The silence was troubling given the information from sources such as a 2010 survey report where Amnesty International reported on the impacts of the government's violations of freedom of expression, association, and the right to peaceful assembly in Rwanda, including during the transitional period. Reprisals and intimidation of the press and civil society, or indeed of anyone perceived as critical of the government, were widespread.

However, while the NHRC was relatively silent on these matters, the Commission's annual reports from 1999 to 2003 show that it was much more active on legal rights, publishing cases about victims who had been arbitrarily arrested, detained and mistreated by the government, often in the name of security or offences to national unity. For example, in commenting on "re-arrest" incidents by military personnel who had been acquitted or previously released from prison, the NHRC's annual report for 2000 denounced the practice as an unacceptable and "rampant" phenomenon (p. 33). The NHRC also denounced cases of unjustified denial of bail and access to legal counsel in its annual reports after the year 2000.

It spoke out in cases of individuals who had fallen out of favour or were accused of working against its unity and national security objectives. Many of these people were prominent figures whose cases had been reported widely in the media. Jean Mbanda, for example, was a former member of the Rwandan parliament who had been arrested by the office of the Prosecutor General of the Supreme Court of Rwanda after publicly criticizing the RPF. The government sought to justify the arrest by arguing that he had engaged in fraud six years earlier. The arrest smacked of arbitrariness and lack of due process. The NHRC reported on the case and noted that the arrest had had the effect of denying Mbanda access to a fair trial at first instance.

The NHRC's annual reports in this period also addressed the arrest and likely torture of five Rwandan soldiers who had been extraordinarily rendered after fleeing to Tanzania and Burundi, and on the cases of Daniel Ngenzi (illegally arrested and detained by the military police), Joseph Sebarenzi Kabuye (former Speaker of Parliament), and ex-RPA officer Frank Tega (who would later be assassinated). In all of these cases, the Commission intervened to speak out against the treatment meted out to these individuals.

Given how the government treated those who dared to disagree with it, and the sensitive nature of national security matters, the NHRC's public criticisms reflected no small degree of courage. The consequences of speaking out against the government became more perilous after Law N° 47/2001 of December 18th, 2001, which outlawed "divisionism" and prohibited "discrimination and sectarianism". It also criminalized statements that were "likely to spark conflicts among people…" (Art. 1 para 2). The

2003 Constitution would make such acts a type of constitutional crime, along with “genocide ideology.”

The language of “divisionism” was ambiguous and was used to weaponize discrimination and sectarianism as tools against perceived enemies and anyone seen as a danger to national unity. At a practical level, it prohibited discussions of ethnicity.[8] Article 15 of the divisionism law provided that it was “not time-bound,” meaning that prosecutions could be retroactive, contrary to the fundamental principle of non-retroactivity for crimes.

The Commission’s annual reports did not criticize the anti-divisionism legislation directly, although its Annual Report for the year 2001 refers to cases of people who alleged that they had been mistreated based on accusations of divisionism. Two years later, the NHRC stated in its Annual Report for the year 2003 that Law N° 47/2001 was proving difficult to interpret and to implement, expressing concerns about people accused of discrimination and divisionism and then “released due to lack of evidence” (p. 95).

The NHRC was also involved in economic and social rights, although this aspect of its work had been slower to get off the ground. The Annual Report for the Year 2002 noted that the main issues were about land and housing, especially regarding the highly sensitive dossier of the returning Tutsi, many of whom had started to flee the country in the violence of 1959 and returned to find their lands occupied (p. 83). Again, the NHRC was careful not to assail the government’s policies explicitly, but it did work with administrative departments and the courts to mediate disputes. It criticized the government for forcibly evicting returnees who had settled in encampments in the Gishwati forest. Many had been removed “hurriedly,” resulting in families being separated. The Commission observed that the new encampments lacked sanitation and housing, and there was little access to food and basic services. The NHRC complained to the Minister of State in the Ministry of Local Administration and Social Affairs (p. 58). Again, given the sensitivities of the housing and land issues during the transitional period, especially because of the possibility of an ensuing accusation of divisionism resulting from communal violence over contested land, these complaints by the NHRIC were not without their risks to the members and their staff.

Conclusion

The record of the NHRC is mixed and more complex than that of the NURC. It supported or at least rarely protested problematic laws, and took up few cases of freedom of expression or association, let alone discrimination cases related to ethnicity: such issues were off-limits even for a supposedly independent national institution during the transitional period.

On the other hand, the NHRC did take up significant human rights issues in notable cases, and tried to hold the government to account, including in high-profile matters involving serious violations perpetrated by an increasingly powerful security state. Given the dangers of confronting the government, especially for institutions and people working in the country, these cases should not be overlooked in the literature dealing with the work of the NHRC.

The Commission may have been unwilling to criticize the political processes that led to the targeting of the accused, let alone the increasingly authoritarian national unity agenda, but it was prepared to denounce them indirectly by publicly critiquing activities that were downstream from those political decisions. The role of the NHRC merits further study that takes a more nuanced approach in the literature on the transitional period in Rwanda.

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Photo of Pearl Eliadis

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