

MAINSTREAMING HUMAN RIGHTS INTO ALL NGO WORK

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ABSTRACT

This article argues that the governance of NGOs is critical to the strengthening of the human rights movement. It advocates for the rights based approach that advances the moral obligation of NGOs to apply human rights principles to themselves. It urges each NGO to address the power inequalities within its operations, policies and relationships, identify the rights and duty bearers and the nature of the responsibilities. Cognizant that human rights are indivisible and inter-dependent, it challenges the artificial distinction between human rights and development NGOs. Mindful that human rights are universal, it counsels NGOs to learn how ordinary people have appropriated human rights discourse in relation to their culture, knowledge and experiences. Finally, it challenges the human rights mechanisms to provide leadership that will enhance the credibility of the human rights discourse to tame power and offer protection from any abuse of power.

I. INTRODUCTION

Persistent poverty and civil strife have influenced the reconsideration of the development and governance debates in order to re-orient their focus to human rights. Relying on the rights based approach—a mechanism that calls for making all actors accountable for the human rights implications of their actions. This article makes a case for all NGOs to mainstream human rights within their work. Applying human rights principles to NGO day-to-day policies and practices make human rights part and parcel of everyday practices, ultimately catalyzing a human rights culture. The reason for mainstreaming human rights in the work of all NGOs is based on the universality, interdependence and indivisibility of human rights. In illustrating the benefits of a rights-based approach in strengthening good governance, this article answers the question: why human rights?

This article begins with a background to the rights-based approach as a tool of good governance and broadly maps the implications of the human rights principles to

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NGO work in part two. The discussion proceeds with the justification as to why all NGOs should apply rights to their governance in part three. Part four examines the extent to which NGOs have respected the fact that human rights are universal, given that the aspirations and values of human rights exist in all societies.¹

Furthermore, the legitimacy of NGOs is also derived from the common norms pursued by the NGO and the specific communities that the NGO works with.² The discussion focuses on how NGOs have related human rights to the knowledge and experiences of the communities that they work with, in order to promote the ownership of the human rights discourse. Using the example of how Development NGOs (DNGOs) have adopted the right-based principles and how Human Rights NGOs (HURINGOs) have respected the struggles of DNGOs as human rights struggles, I also examine the extent to which NGOs appreciate the point that human rights are interdependent and indivisible. The following discussion draws on the rights-based approach as a tool that advances the promotion of moral human rights obligations of NGOs to respect and promote rights. It begins by tracing the genesis of the rights-based approach followed by an articulation of the implication of each principle to NGO governance.

II. THE RIGHTS-BASED APPROACH AS AN INSTRUMENT OF GOOD GOVERNANCE

The rights-based approach is not a new phenomenon, only its popularity is. The post-cold war period rejuvenated the quest for good governance, which necessitated the linking of rights and development, as well as mainstreaming rights in all processes by all actors.

1. See, V. Leary, *The Effect of Western Perspectives on International Human Rights*, HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES (A.A. An-Naim & P.M. Deng eds, 1990), at 30; S. GUTTO, HUMAN AND PEOPLES' RIGHTS FOR THE OPPRESSED: CRITICAL ESSAYS ON THE THEORY AND PRACTICE OF HUMAN RIGHTS FROM A SOCIOLOGY OF LAW PERSPECTIVE 160 (1993); C. Heyns & F. Viljoen, *Current Developments: An Overview of International Human Rights Protection in Africa*, 15 SAJHR 421 (1999); A.A. An-Na'im & P.M. Deng, *Introduction*, in An-N a'im & Deng eds, *supra*, at 9; J.C.N. Paul *Participatory Approaches to Human Rights in Sub-saharan Africa*, in An-Naim & Deng eds, *id.*, at 214; M. MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE 8 (2002); C.E. Welch, *Human Rights and Francophone West Africa*, in An-Na'im & Deng eds, *supra*, at 206; and C. Heyns & F. Viljoen, *The Regional Protection of Human Rights in Africa: An Overview and Evaluation*, in HUMAN RIGHTS, THE RULE OF LAW, AND DEVELOPMENT IN AFRICA 143 (Zezeza & McConaughay eds, 2004).

2. M. EDWARDS, NGO RIGHTS AND RESPONSIBILITY: A NEW DEAL FOR GLOBAL GOVERNANCE 7 (2000).

The application of human rights by all actors became popular following the directive of then UN Secretary General, Kofi Annan in 1997 that all UN agencies and programmes make human rights a core value of their activities.³ This process is popularly referred to as the rights-based approach. The effort of mainstreaming rights was accelerated by the appointment of Mary Robinson as the Human Rights Commissioner in 1997, who developed guidelines for the poverty eradication programmes.⁴ The OHCHR defines the rights-based approach to development as follows.

A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. ... [It] integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. ... The principles include equality and equity, accountability, empowerment and participation.⁵

Traditionally, the role of NGOs is to serve as a watchdog of the state's rights obligations to the individual and to promote good governance. As custodians of good governance, NGOs are not only obliged to monitor and ensure the application of good governance principles by the state and its agencies, but to also observe the principles of accountability, transparency, participation, equity, and non-discrimination in their internal organizations.

The justification for the rights-based approach is traced from 1948, with the recognition by the UDHR, that "the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."⁶ This statement is reiterated in the preamble of the International Covenant on Civil and Political Rights (ICCPR)⁷ and the International Covenant on

3. P. Alston & M. Robinson, *The Challenges of Ensuring Mutuality of Human Rights and Development Endeavours*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 2 (Alston & Robinson eds, 2005); M. Robinson, *What Rights Can Add to Good Development Practice*, in Alston & Robinson eds, *id.*, at 29.

4. *Id.*, at 11-12.

5. See, <<http://www.unohchr.ch/development/approaches-01.html>>.

6. Preamble to the UDHR (1948).

7. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

Economic, Social and Cultural Rights (ICESCR).⁸ The African Charter⁹ demonstrates the concept of the indivisibility and interdependence of rights by providing for civil and political rights and economic, social and cultural rights in one document. Further, the principles of the rights-based approach have been part of the struggle for social justice, good governance and development.¹⁰

The Declaration of the Right to Development of 1986 makes reference to the interdependence and mutually reinforcing relationship between rights and development. It defines development as a “comprehensive economic, social, cultural and political process,” whose objective is the “constant improvement of the well-being of all people on the basis of their active, free and meaningful participation in development and in the fair distribution of the resulting benefits.”¹¹ However, the reality in 46 countries poorer today than in 1990,¹² with adverse consequences for peace and development, has compelled the need to re-examine development processes and priorities. Therefore, the rights-based approach places accountability on the recipient country of development aid.¹³

The Vienna Declaration of 1993 reiterates that the three: rights, democracy and development, are mutually reinforcing and interdependent.¹⁴ Similarly, the Copenhagen Declaration of 1995 reaffirms the link between human rights and development by establishing a new consensus that places people at the centre of sustainable development in order to achieve stable, safe and just societies for all. Rights-based approaches can also be traced to women’s efforts of gender mainstreaming, underscoring the indivisibility, inalienability and universality of women’s human rights.¹⁵

The article adopts the principles identified by the Office of the High Commissioner for Human Rights, namely: express linkage to rights, accountability,

8. G.A. res. 2200A (XXI), entered into force January 03, 1976.

9. ACHPR, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

10. C. NYAMU-MUSEMBI & A. CORNWALL, WHAT IS THE “RIGHTS BASED APPROACH” ALL ABOUT? PERSPECTIVES FROM INTERNATIONAL DEVELOPMENT AGENCIES 7 (2004); I.G. SHIVJI, THE CONCEPT OF HUMAN RIGHTS IN AFRICA (1989).

11. Declaration of the Right to Development (1986), art. 1.

12. UNDP, HUMAN DEVELOPMENT REPORT (2004); Robinson, *supra* note 3, at 26; M. Darrow & A. Tomas, *Power, Capture and Conflict: A Call for Human Rights Accountability in Development Cooperation*, in 27 HUM. RTS Q. 474 (2005).

13. NYAMU-MUSEMBI & CORNWALL, *supra* note 10, at 12.

14. Vienna Declaration (1993), paras. 8 and 74.

15. *Id.* See also, Alston & Robinson eds, *supra* note 3; Charter of Feminist Principles for African Feminists (2006).

transparency, participation, equality and empowerment¹⁶ and outlines their meaning in respect to NGO governance in the following discussion. In consonance with the earlier critiques of the rights-based approach,¹⁷ the article urges the self reflection of the different stakeholders to instil human rights principles in their governance. The following sub-section highlights and clarifies the relevance of human rights principles to the governance and organizing of NGOs.

A. *The Rights-based Approach to NGO Governance and Organizing*

In discussing the principles of the rights-based approach, it is underscored that they are neither mutually exclusive, but are complementary and overlapping, with the common aim of ensuring the cardinal human right principle of respect of the inherent equality and dignity of the human person.

1. *The Principle of Express Linkage to Rights.*—The principle of express linkage to rights requires that all NGOs mainstream human rights in their work because human rights are universal, inter-dependent and indivisible. Mainstreaming human rights does not change the focus of what an NGO does, but rather entails paying particular attention to the root causes of inequity, exclusion, discrimination and rights violations. It requires each NGO to undertake a right-duty analysis by identifying the rights addressed in its programme, and by demarcating the relevant rights holders and duty bearers as well as the content of the duty.¹⁸ Put differently, each NGO has an obligation to articulate the implication to rights of specific policies and practices as well as the roles and responsibilities of the different stakeholders.¹⁹

2. *The Principles of Accountability and Transparency.*—NGO accountability refers to how an NGO holds itself responsible for its actions, beliefs and the utilization of resources. Accountability safeguards against abuse of power and strengthens ethical

16. <www.unohchr.ch/development/approaches-01.html>.

17. P. UVIN, HUMAN RIGHTS AND DEVELOPMENT (2004); P. Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, in 27 HUM. RTS Q. (2005); Alston & Robinson eds, *supra* note 3; NYAMU-MUSEMBI & CORNWALL, *supra* note 10; Darrow & Tomas, *supra* note 12.

18. Hugo Slim, *By What Authority? The Legitimacy and Accountability of Non-governmental Organizations* (Paper presented at the International Council on Human Rights Policy International Meeting on Global Trends and Human Rights—Before and after September 11, Geneva, January 10-12, 2002), at 14, available at <www.jha.ac/articles/a082.htm>.

19. Alston, *supra* note 17, at 802-11.

behaviour. NGOs have multiple accountability obligations under the law, to the governmental regulatory NGO Boards, NGO governing boards, to the NGOs' mission and internal rules and procedures, their membership, communities, public, NGO sector-wide self-regulatory Councils and donors. Being accountable requires being transparent by publicizing the NGOs' mission as well as the methods and resources of achieving it. This entails among others providing timely, accurate and objective information and allowing space for stakeholder's feedback.

3. *The Principle of Participation and Inclusion.*—Participation guarantees that the human person is a central subject of human rights and the principal actor in determining his or her welfare and rights. The right to participation is entrenched within international treaty law.²⁰ Participation is a major means by which people collectively determine their interests, priorities, engage in local dialogue, generate diverse ideas and promote collective commitment for the common good.²¹ Participation must be “active, free, meaningful” and broad involving diverse stakeholders.²² Participation extends “beyond having a right to participate in a given space to include the right to define and shape that space.”²³ Given that the people closest to the problem have ingenious experience in solving them, NGOs are required to address the barriers that keep people from participating and exposes them to processes and skills of asking the right questions and contribute diverse ideas to ensure their rights. Instead of acting for the community, NGOs must act with the community to achieve the desired change.

4. *The Principles of Equity, Non-discrimination and Empowerment.*—The human rights discourse rests on the value system of equity and non-discrimination²⁴ and the inherent equality and dignity of the human person.²⁵ In order to achieve equality, focus is placed on formal equality by treating people alike and on substantive equality by addressing the systemic and underlying causes of discrimination through affirmative

20. UDHR, art. 21, ICCPR, art. 25, CRC, art. 12, CEDAW, arts 7, 13, 14(2), African Charter on Human and Peoples' Rights (1981), art. 13.

21. African Charter on Popular Participation (1990), para. 10.

22. UN Declaration on the Right to Development (1986); Vienna Declaration (1993), para. 25; African Charter on Popular Participation (1990), paras 6 & 15.

23. J. Gaventa, *Strengthening Participatory Approaches to Local Governance*, 16 NATIONAL CIVIC REV. 29 (2004).

24. UN Charter (1945), art. 1; ICESCR, art. 2(2); ICCPR, art. 2(1); UDHR, art. 1, African Charter (1981), art. 2 & 3.

25. UDHR, art. 1; ICCPR, art. 3; ICESCR, art. 2(2) & 3; African Charter (1981), art. 5 & 19.

action.²⁶ Empowerment means the ability of people to claim and exercise their rights in order to improve their lives.²⁷ The concept of empowerment within NGOs is two dimensional. Firstly, empowerment relates to internal empowerment with each NGO obliged to strengthen itself in terms of skills, capacity, resource mobilization, competitive remuneration and supportive working environment for staff. Secondly, empowerment entails addressing power inequities to enable the weaker party to take action themselves. Furthermore, empowerment addresses how the NGO sector addresses societal inequalities accruing from age, gender, ethnicity, race and sexuality among others. In the era of globalization, empowerment also entails the balancing of power inequalities within NNGOs and SNGOs.

B. Why Human Rights Principles in NGO Governance and Management?

Obviously HURINGOs derive their legitimacy from human rights and are therefore obliged to respect human rights.²⁸ The International Council on Human Rights Policy (ICHRP) is on record as stating that, “as organizations that advocate for democracy and justice, HURINGOs need to show that they do not conduct their own affairs in an undemocratic or unjust way.”²⁹ The ICHRP also contends that any organization that does not acknowledge that human rights are universal would not qualify to be a human rights organization.³⁰ The controversy remains as to whether all NGOs that do not define themselves as HURINGOs should also apply human rights principles to their governance.

This article argues that democracy and governance NGOs have to apply human rights because democracy and rights are mutually reinforcing. Human rights form the cornerstone of democracy. At the African level, all African treaties provide for the promotion of democracy and human rights in the same sentence or article, inferring that democracy and rights are inter-related. Thus, for example, the Constitutive Act of the African Union provides for “respect for democratic principles, human rights and the rule of law and good governance,”³¹ as one of its guiding principles. The African Charter on Democracy, Elections and Governance, 2007 commits itself to the principle

26. CEDAW, General Recommendations on Temporary Special Measures, No. 25, para. 8.

27. <<http://www.unhchr.ch/development/approaches-01.htm>>; KEYSTONE ACCOUNTABILITY SURVEY 13 (2006).

28. ICHRP, DESERVING TRUST (2003), at 2-3, 17 & 49.

29. *Id.*, at 11.

30. *Id.*, at 38-39.

31. African Union Constitutive Act (2000), art. 4 (m).

of “respect for human rights and democratic principles.”³²

NEPAD commits itself to “promoting and protecting human rights and democracy” by developing clear standards of accountability and participatory governance.³³ SADC reaffirms “human rights, democracy and the rule of law,” as core principles and gender mainstreaming as a key objective.³⁴ The fundamental principles of the East African Community (EAC) are “good governance, including adherence to the principle of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality and recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter.”³⁵

In a debate on democracy and rights,³⁶ Aina has argued that “asking the question, “democracy for what?” underlines that “democracy is for the promotion and advancement of individual and collective well-being of different people.”³⁷ Therefore, democracy cannot exist without respect of human rights. Applying human rights principles to all NGOs’ policies, processes and programming is in resonance with the indivisible, inter-dependent and mutually reinforcing conception of rights underscored by the Vienna Declaration of 1993. The political elite have also learnt to appropriate the language of rights, much less derived from principled commitment, than from political compromise and self-preservation.³⁸ Nonetheless, human rights are a social science to solve social problems, including and not restricted to taming the state. Hence, human rights is an ideology of mobilization for any struggle against domination, oppression and exploitation to expose and address any abuse of power and privilege that results in the violation of human rights.³⁹

The development of the rights-based approach in the 1990s integrated human rights in all major global issues and by all actors.⁴⁰ There are numerous benefits of applying human rights principles to all NGOs—popularly known as rights-based approach. The great merit of human rights is that it draws attention to discrimination

32. African Charter on Democracy, Elections and Governance (2007), art. 3(1).

33. NEPAD (2001), para. 49.

34. SADC Treaty (1992), arts 4 & 5.

35. EAC Treaty (1999), art. 6.

36. T. AINA, ELECTRONIC ROUND TABLE: DEMOCRACY AND HUMAN RIGHTS (2000), available at <www.africaaction.org/rtable/rtb2.pdf>.

37. *Id.*, at 41.

38. C. Bell & J. Keenan, *Human Rights, Non-governmental Organizations and the Problems of Transition*, 26 HUM. RTS Q. 333 (2004).

39. SHIVJI, *supra* note 10, at 71; B. Ibhawoh, *Restraining Universalism: Africanist Perspectives on Cultural Relativism in the Human Rights Discourse*, in Zeleza & McConaughay eds, *supra* note 1, at 30.

40. <www.unhchr.ch/development/approaches-01.html>.

and tames the exercise of power by all actors.⁴¹ Scholarly opinion suggests that the UDHR together with the two UN Covenants have attained the status of customary international law and thus provide a standard of achievement of all nations and peoples.⁴² Consequently, the application of rights-based principles to development and governance facilitate the establishment of agreed upon minimum standards of achievement for the protection of rights because both governments and members of society are held accountable for the human rights implications of their work.⁴³

Although mainstreaming human rights in NGO work does not impute a consensus on the most appropriate way of integrating human rights in development and governance, it would expand the human rights movement. The task of serving as a watchdog of both the market and state fundamentalism cannot be achieved by human rights NGOs alone. It requires forging strategic alliances with all NGOs and with the broader component of civil society with the aim of infusing the human rights discourse in the policies and practices of NGOs. Conversely an exclusionary approach could block a natural and important growth of human rights movements.

In real life what is defined as the problem and how it is addressed often depends on who has a voice, status and power.⁴⁴ Consequently, mainstreaming human rights addresses power inequalities by tackling the phenomenon of elite capture. The concept of elite capture is “a process by which the elite skim development resources intended for the legitimate development ... and defines politics in a way that protects their own interests.”⁴⁵ Human rights therefore provide an effective mechanism to overcome arbitrariness in decision-making and in the development processes.⁴⁶

Furthermore, given that the human rights community has fewer monetary and personnel resources than the development community, rights-based approach would attract more resources to human rights work.⁴⁷ Thus, with respect to resources on a global scale, by the mid-1990s, the human rights sector attracted only 1% of the US\$

41. Robinson, *supra* note 3, at 36.

42. J. Donnelly, *Human Rights, Globalizing Flows and State Power*, in GLOBALIZATION AND HUMAN RIGHTS 229 (Brysk ed., 2002); W. KOREY, NGOs AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A CURIOUS GRAPEVINE 3 (2001); A. Reinisch, *The Changing International Legal Framework for Dealing with Non-state Actors*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT (Alston & Robinson ed., 2005), at 39; F. Viljoen, *Africa's Contribution to the Development of International Human Rights and Humanitarian Law*, in 1 AHRLJ 19 (2001).

43. Robinson, *supra* note 3, at 32; Darrow & Tomas, *supra* note 12, at 487.

44. *Id.*, at 475.

45. *Id.*

46. *Id.*, at 520.

47. UVIN, *supra* note 17, at 36.

50 billion annual revenue of the development sector.⁴⁸ Similarly, under the NGO sector, the human rights component is comparatively less financially resourced. For example, in 1996, the Organization for Economic Cooperation and Development (OECD) found that 90% of available resources belonged to only 20% of DNGOs.⁴⁹ In 2005, 50% of the European Commission funding was to DNGOs working in humanitarian and relief services.⁵⁰ Both OXFAM and CARE generated ten times more revenue than Amnesty International (USA) and more than twenty times that of Human Rights Watch, which are the most resourced HURINGOs.⁵¹ Although both South Africa and Nigeria boast of the most dynamic NGO sectors in Africa, in both countries the number of self-professed human rights NGOs is low. HURINGOs constitute about 0.02% of civil society sector in South Africa.⁵² In a nutshell, mainstreaming human rights would promote a culture of human rights. According to Butler, realization of a human rights culture would mean that:

- i) the vulnerable would be better protected from violation, ii) government would promote human rights standards and operate within a human rights framework, iii) public authorities would institutionalize human rights thinking and treat people with fairness and respect thus safeguarding their dignity, iv) wider civil society would popularly accept human rights standards as the principle by which we live and treat each other and by which conflicts are resolved, v) people would recognize and value both their own rights and the rights of others and would genuinely be tolerant of difference.⁵³

The application of human rights principles to NGOs' work would contribute to a free, equal and equitable world and shift focus from patronage to self-agency. As

48. *Id.*, at 13.

49. I. De Senolissa, *A New Age of Social Movements: A Fifth Generation of Non-governmental Development Organizations in the Making?* in *DEVELOPMENT AND SOCIAL ACTION* (Kothari & Eade eds, 1999), at 95.

50. AWID (ASSOCIATION OF WOMEN IN DEVELOPMENT), *THE SECOND FUNDHER REPORT: FINANCIAL SUSTAINABILITY FOR WOMEN'S MOVEMENTS WORLDWIDE* 48 (2007).

51. T.J. Scott, *Evaluating Development-Oriented NGOs*, in *NGOS AND HUMAN RIGHTS: PROMISE AND PERFORMANCE* 209 (C.E. Welch ed., 2001).

52. L. Seafeld, *South Africa: The Interdependence of All Human Rights*, in *HUMAN RIGHTS UNDER AFRICAN CONSTITUTIONS: REALISING THE PROMISE FOR OURSELVES* (A.A. An-Na'im ed., 2003), at 233-34; C.O. Okafor, *LEGITIMISING HUMAN RIGHTS NGOS: LESSONS FROM NIGERIA* (2006), at 4 & 6.

53. F. Butler, *Building a Human Rights Culture*, in *HUMAN RIGHTS IN THE COMMUNITY: RIGHTS AS AGENTS FOR CHANGE* (Harvey ed., 2005), at 69.

propounded by Nyamu-Musembi and Cornwall:

[T]he rights-based approach or human rights based approach is a catalyst that can transform the practice of ... identifying and meeting needs [of victims] to enabling people to recognize and claim rights that are enshrined in the UDHR. For most, too, this entails 1) work with duty holders—generally the state, but also increasingly non-state actors to strengthen their capacity to respond and be accountable in protecting, respecting and fulfilling human rights ... 2) work to build the capacity of citizens to claim their rights, by working alongside them as advocates and by seeking to provide opportunities for people to empower themselves.⁵⁴

Human rights are strategic in enabling all NGOs and the wider civil society to build a shared perspective and language in order to influence the political and human quality of life in general.⁵⁵ NGOs have to be exemplars of the human rights practices they demand of the state and market, in order to legitimately monitor the wider civil society, states and the market.⁵⁶ Put differently, for NGOs to have the moral authority to demand human rights and democratic practices of others, they must practice what they preach. In other words, the building of a human rights culture or a rights-protective society must begin with NGOs.⁵⁷ Since the “concept of human rights relates to all aspects of human interaction, it is best protected when all people voluntarily observe human rights norms as part of their culture of doing things.”⁵⁸ The concept of human rights is useful as a discipline to tame power by all actors and at all levels of society. Evans provides an apt definition of discipline as:

a mode of social organization that operates without need for coercion. It is a form of modernist power that imbues the individual with particular ways of thinking, knowing and behaving, thus instilling

54. Nyamu-Musembi & Cornwall, *supra* note 10, at 45.

55. P. Van Tuijl, *Entering the Global Dealing Room: Reflections on the Rights-based Framework for NGOs in International Development*, in 21 *THIRD WORLD Q.* 618 (2000).

56. ICHRP, *supra* note 28, at 3.

57. J.C. Momba, *Civil Society and the Struggle for Human Rights and Democracy in Zambia*, in Zeleza & McConaughay eds, *supra* note 1, at 230; C.E. Welch, *Conclusion*, in Welch ed., *supra* note 51, at 264; S. Dicklitch & D. Lwanga, *The Politics of Being Non-political: Human Rights Organizations and the Creation of a Positive Human Rights Culture in Uganda*, in 25 *HUM. RTS Q.* 485 (2003).

58. Heyns & Viljoen (1999), *supra* note 1, at 422; Heyns & Viljoen (2004), *supra* note 1, at 130.

modes of social consciousness that makes social action predictable. Discipline is learned and practiced in the day to day complex of social life, through institutional training received, for example, in the school, the university, the military, the workplace, the church and the prison, where notions of correct and incorrect behaviours and thoughts are clearly delimited. The epithet ‘common sense’ is achieved when a particular mode of thought and conduct is unquestioningly accepted as normal.⁵⁹

There is a growing appropriation of the human rights language in the mission statements of almost all institutions and organizations. Some organizations have a dual mandate of rights and development. Many traditional DNGOs are concurrently undertaking advocacy to influence policies. Donors and governments have also demanded accountability of NGOs through the legal framework and the funding process. In an effort perhaps of self-preservation, there is a growing trend among NGOs of experimenting and innovating a rights-based approach. This article also documents these efforts as a more accessible format of information sharing. There are many attempts to clarify the human rights principles NGOs should observe. ICHRP identifies the following human rights principles that NGOs should observe—accountability, support to human dignity, universality, non-discrimination, safeguards against abuse of power, belief in the rule of law, commitment to accurate and objective information, effectiveness, and respect for the basic rules of the organization.⁶⁰

The Charter of Popular Participation urges all NGOs and voluntary organizations to: be fully participatory, democratic and accountable; strengthen institutional structures that bring them together; disseminate successful African and grassroots experiences throughout the continent; establish forum for honest, popular and open dialogue between governments, grassroots organizations and NGOs; give increased support and target their operations within the framework of national economic strategies; give due considerations to initiatives at the grassroots, utilize African expertise, strengthen advocacy nationally and internationally and influence donors in genuine partnership.⁶¹

As early as 1991-1995, the Commonwealth Foundation undertook extensive research and consultations that resulted in the “NGO guidelines for good policy and

59. T. Evans, *International Human Rights Law as Power/knowledge*, in 27 HUM. RTS Q. 1055 (2005).

60. ICHRP, *supra* note 28, at 9-10.

61. African Charter on Popular Participation (1990), part 111(d).

practice.”⁶² Among others, the guidelines outline the values of NGOs as follows: advance and improve the human conditions; respect for the rights, culture and dignity of men and women; devolving the maximum resources to the task at hand, remain true to its mission and objectives; involve beneficiaries as partners, exercise willingness to collaborate and network and maintain high ethical standards at both organizational and personal level.⁶³

Recently the International NGOs (INGOs) adopted an International Non-Governmental Accountability Charter.⁶⁴ However, only INGOs can become formal signatories to the Charter.⁶⁵ The Charter is a joint effort of INGOs working globally on human rights, sustainable development, humanitarian responses and other public goods. The purpose of the Charter is to: identify and define shared principles, policies and practices; enhance transparency and accountability both internally and externally; encourage communication with stakeholders and lastly improve INGO performance and effectiveness as organizations.⁶⁶

The Charter reiterates that transparency and accountability are good for government, business and non-profit organizations and seeks to ensure that the high standards that INGOs demand of others are respected in INGO's own organizations.⁶⁷ It articulates a number of principles such as political and financial independence; responsible advocacy that advances shared and defined public interests; effective programming working in genuine partnerships with local communities, NGOs and other stakeholders; non-discrimination that encourages diversity, impartiality and gender equity and balance; transparency, openness, honesty and active communication; compliance with relevant governance, financial accounting and reporting requirements; accuracy of information; good governance by adhering to clear missions, organization structure and decision-making, written values, policies and procedures and ethical fundraising among others.⁶⁸

Similarly, humanitarian NGOs have a Code of Conduct, namely, the Humanitarian Charter and Minimum Standards in Disaster Response.⁶⁹ African women

62. COMMONWEALTH FOUNDATION, NON-GOVERNMENTAL ORGANIZATIONS: GUIDELINES FOR GOOD POLICY AND PRACTICE (1995), at V.

63. *Id.*, Guideline 5.

64. International NGO Accountability Charter (2005).

65. *Id.*

66. *Id.*, at 3.

67. *Id.*

68. *Id.*, at 4-6.

69. ICHRP, *supra* note 28, at 4.

have developed the Charter of Feminist Principles for African Feminists.⁷⁰ The Feminist Charter is a tool to monitor institutional development and establish peer review mechanisms.⁷¹ The Feminist Charter outlines individual ethics: the indivisibility, inalienability and universality of women's human rights; networking; solidarity and mutual respect; care of other African feminists; non-violence; freedom of choice and autonomy; critical engagement of culture, tradition and domesticity; respectful personal relationships and documentation of women stories.⁷² It also prescribed institutional ethics: openness, transparency, equality and accountability; professionalism; egalitarian governance, fair and equal remunerations; creation of spaces to empower and uplift women; responsible leadership and management of organization; taking into account the need for self-fulfilment and professional development of others; leadership of women organizations by women; financial prudence and ethics; self assessment and working in response to real needs expressed by women.

Lastly, the Feminist Charter commits feminists to subscribe to the feminist leadership which is characterized by disciplined work ethics, strengthened multi-generational network; ensuring that the feminists' movement is recognized as a legitimate constituency; building and expanding knowledge; mentoring and providing opportunities for young feminist in a "non-matronizing" manner and openness in giving and receiving peer reviews.⁷³ It is evident that the policy prescriptions of the above charters signify the necessity of human rights and justify the NGO's application of human rights principles.

C. The Principle of Express Linkage to Rights and the Universality of Human Rights

The following discussion analyses the extent to which NGOs have respected the universality of human rights. The discussion begins with an examination of how Northern NGOs (NNGOs) respect African NGOs in interpretation and prioritization of the human rights discourse. It is followed by an analysis of the appreciation by African NGOs of ordinary people's conceptualization of human rights.

1. Conceptualization of Rights Amongst NNGOs and SNGOs.—Human rights are universal and therefore must reflect the changing values, perceptions and different

70. <www.africafeministsforum.org>.

71. African Feminist Charter (2006), at 3.

72. *Id.*, at 10-11.

73. *Id.*, at 15-16.

contextual realities of the world. Despite the recognition of the universality of human rights, human rights are still predominantly understood and expressed in western ideas and language.⁷⁴ The genesis of human rights is almost exclusively confined to western history which perpetuates the misconception of human rights as a western concept. For example, Rhoda Howard dismisses the presence of human rights in traditional Africa, arguing that it was merely a concept of human dignity.⁷⁵ On the other hand, Leary argues that while the “atrocities of the Nazi regime in Germany” were the immediate compulsion for the development of an international system of human rights, the contribution of the West in developing human rights “was great, but by no means unique.”⁷⁶

Secondly, there is a difference in the prioritization of rights. NNGOs prioritized CPRs while SNGO also sought to address ESCRs. The prioritization of CPRs was influenced by the fact that human rights initiatives were predominantly spearheaded by lawyers, journalists and other professionals whose interests and activities are substantially affected by the infringement of CPRs.⁷⁷ Further, during the Cold War, ESCRs were considered communist in inspiration and content and therefore lacked a comprehensive institutional framework for enforcement.⁷⁸

Third, is the difference in strategies to advance human rights. Many African NGOs grew out of the overt support from the NNGOs.⁷⁹ In practice, INGOs occupy such a “high moral plane in the public policy discourse” that questioning them is dismissed as either “naivety or being apologists for repressive governments and cultures.”⁸⁰ Consequently, most SNGOs initially mirrored the strategies of NNGOs, such as standard setting through legally binding treaties, the documentation of abuses, research, public advocacy and providing assistance to the victims of human rights

74. MUTUA, *supra* note 1, at 2-4.

75. R. Howard, *Group Versus Individual Identity in the African Debate on Human Rights*, in An-Naim & Deng eds, *supra* note 1, at 166.

76. Leary, *supra* note 1, at 30; MUTUA, *supra* note 1, at 16.

77. INTERNATIONAL HUMAN RIGHTS INTERNSHIP PROGRAM (IHRIP) AND THE SWEDISH NGOS FOUNDATION FOR HUMAN RIGHTS, *THE STATUS OF HUMAN RIGHTS ORGANIZATIONS IN SUB-SAHARAN AFRICA* 6 (1994).

78. J. Oloka-Onyango, *NGOs struggles for ESCRs in UTAKA: A Ugandan Perspective*, in *HUMAN RIGHTS NGOS IN EAST AFRICA: POLITICAL AND NORMATIVE TENSIONS* (M. Mutua ed., 2009), at 75-76; MUTUA, *supra* note 1, at 52-53.

79. S.N. NDEGWA, *THE TWO FACES OF THE CIVIL SOCIETY: NGOS AND POLITICS IN AFRICA* 32 (1996).

80. MUTUA, *supra* note 1, at 37.

abuses.⁸¹ While learning from the experience of others is essentially a positive thing in order to avoid repeating the same mistakes, in the 1990s, many SNGOs in addition to employing the strategies of NNGOs began investigating the root causes of the violation of rights.⁸² Hence, the differences in strategies with NNGOs preferring the apolitical liberal legalism approach to rights and SNGOs preferring a more political advocacy approach that addresses the roots causes of violations, such as bad governance and corruption.

Following the Vienna Conference, the Harvard Retreat highlighted the satisfaction, frustrations and some differences within the human rights movement, shaped by contextual experiences.⁸³ The Harvard Retreat noted that the "... NGO movement has no single inspiration or aspiration, neither a spiritual nor secular authority to define one belief for all within it, no pope and no central committee."⁸⁴ Nonetheless, the Harvard Retreat emphasised that the differences between the NNGOs and SNGOs were "superficial relating to priorities and style," but did not dispute the point that human rights are universal or the existence of an international human rights movement.⁸⁵ The differences relate to the priorities, strategies and geographical focus of human rights work.

In criticizing NNGOs at the Harvard Retreat, participants from the SNGOs appreciated the fact that advocacy based on individual cases adds the attraction of realism to activism.⁸⁶ Thus, SNGOs did not advocate for the abandonment of the traditional strategies of remedying individual human rights violations, but sought an expanded role that would also address the root causes of human rights violations.⁸⁷ Likewise, at the African retreat of Amnesty International (AI) which was aimed at enhancing its "dynamic and effective presence, visibility and strategic direction" in

81. *Id.*, at 37-38; M. Mutua, *Introduction: Human Rights NGOs in East Africa: Defining the Challenges*, in *HUMAN RIGHTS NGOs IN EAST AFRICA: POLITICAL AND NORMATIVE TENSIONS* (M. Mutua ed., 2009), at 19; Oloka-Onyango, *supra* note 78, at 83; W. Mutunga, *So What Really Is Non-partisanship?* in *EYES ON THE PRIZE* (2003), at 37; C.E. Welch, *Introduction*, in *NGOs AND HUMAN RIGHTS: PROMISE AND PERFORMANCE* (Welch ed., 2001), at 3.

82. M.E. Keck & K. Sikkink, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORK IN INTERNATIONAL POLITIC* (1998), at 184 & 88; MUTUA, *supra* note 1, at 37; T.W. Dichter, *Appeasing the Gods of Sustainability: The Future of International NGOs in Microfinance*, in *NGOs, STATE AND DONORS: TOO CLOSE FOR COMFORT* (D. Hulmes & M. Edwards eds, 1997), at 3.

83. H.J. STEINER, *DIVERSE PARTNERS: NGOs IN THE HUMAN RIGHTS MOVEMENT* (Report of a Retreat of Human Rights Activists, 1999), at 17 & 81.

84. *Id.*, at 8.

85. *Id.*, at 81 & 17.

86. *Id.*, at 23.

87. *Id.*, at 22.

Africa,⁸⁸ African participants (while appreciative of AI's hard hitting advocacy and critical role during dictatorial regimes) found AI's ostensibly apolitical stance and the rule that barred its members from working in their own countries frustrating.⁸⁹ The African participants contended that while NNGOs can afford to stay apolitical and detached from politics because they work in foreign lands and therefore have to respect the core principle of sovereignty in international law, African NGOs cannot afford to ignore the political trajectories within their midst.

Fourthly, because of the power imbalance in favour of NNGOs, NNGOs have set the international agenda and concentrated their activism in the South. Ironically, in spite of the human rights movement having been precipitated by the human rights violations in Europe following the 1st World War, it is currently a civilizing crusade" targeted at the South.⁹⁰ African NGOs accuse NNGOs of prejudice by predominantly portraying Africans as "hopeless and helpless" victims while ignoring the human rights violations in their own countries as well as the negative impact of globalization on the global ecology and economy.⁹¹ In contrast, reports on the North are both episodic and insufficiently publicized.⁹²

Ironically, African NGOs have equally ignored the experiences and knowledge of how ordinary people have applied human rights to their experiences, a point that is taken up in the following section of the study.

2. *African NGOs and Cultural Interpretation.*—African NGOs to a large extent have wrongly packaged human rights as a sophisticated discourse to be transmitted to "ignorant masses."⁹³ And yet, the legitimacy of NGOs is buttressed by the "...

88. AI Africa Consultative Forum, Entebbe, Uganda, 7-9 July 2005.

89. *Id.*, at 1-5.

90. MUTUA, *supra* note 1, at 19.

91. F. Manji, *Depoliticization of Poverty*, in DEVELOPMENT AND RIGHTS (D. Eade ed., 2004), at 28; Mutunga, *supra* note 81, at 37; Dichter, *supra* note 82, at 129; J. Oloka-Onyango, *Modern-day Missionaries or Misguided Miscreants? NGOs, the Women's Movement and the Promotion of Human Rights in Africa*, in THE HUMAN RIGHTS OF WOMEN: INTERNATIONAL INSTRUMENTS AND AFRICAN EXPERIENCES (Wolfgang, Kisaakye & Oberleitner eds, 2002), at 292; STEINER, *supra* note 83, at 27-28; D.A. Bell & J.H. Carens, *Ethical Dilemmas of International Human Rights and Humanitarian NGOs: Reflection on a Dialogue Between Practitioners and Theorists*, 26 HUM. RTS Q. (2004), at 326-327.

92. *Id.*, at 314-315; Mutua, *supra* note 81, at 19.

93. STEINER, *supra* note 83, at 74; A.A. An-Na'im, *The Legal Protection of Human Rights in Africa: How to Do More with Less*, in HUMAN RIGHTS: CONCEPTS, CONTESTS, CONTINGENCIES (A. Sarat & T.R. Kearns eds, 2001), at 105; A.A. An-Nai'm, *Expanding Legal Protection of Human Rights in Africa Contexts*, in HUMAN RIGHTS UNDER AFRICAN CONSTITUTIONS: REALIZING THE PROMISE FOR OURSELVES (A.A. An-Na'im ed., 2003), at 3.

consistent stand in the interest of the large masses and for human rights values and causes.”⁹⁴ For human rights to be entrenched as part and parcel of everyday struggle, it must infiltrate the ideological, financial and moral ethics of ordinary communities.⁹⁵ By implication, NGOs have an obligation to learn how the local people have adapted their traditional culture to human rights principles. Erasing negative cultural norms requires the active participation of the communities in effecting change. As Odinkalu reminds us:

[P]eople are acutely aware of the injustices inflicted upon them. ... [T]he real life struggles for social justice are waged despite human rights groups-not by or because of them-by people who feel that their realities and aspirations are not adequately captured by human rights organizations or their language. ... People will struggle for their right whether or not the language of human rights is accessible to them. ... But they will not build the struggle around the notion of human rights unless the language ... speaks directly to their aspirations and survival.⁹⁶

This article is neither intended to blindly romanticize African-ness nor to belabour the somewhat stale cultural relativism and universalism debate. Instead, the article advocates for the activism of NGOs to deconstruct the concept of traditional culture in order to discard the negative social practices while preserving the positive ones that contribute to the universality of human rights. Presently, respect of people’s knowledge based on their experiences is an exception rather than the norm.

One of the unique contributions of the African Charter is that it promotes “positive cultural values ... in a spirit of tolerance, dialogue, consultations to contribute to the promotion of the moral well-being of society.”⁹⁷ Likewise, the Protocol on Women unequivocally calls for the preservation of African cultures that are positive and based on principles of equality, peace, freedom, dignity, justice, solidarity and

94. I.G. Shivji, *Reflections on NGOs in Tanzania: What We Are, What We Are Not, and What We Ought to Be*, 14 DEVELOPMENT IN PRACTICE 3 (2004); EDWARDS, *supra* note 2, at 1.

95. NDEGWA, *supra* note 79, at 16; M. Mutua, *The Complexity of Universalism in Human Rights*, in HUMAN RIGHTS WITH MODESTY: THE PROBLEM OF UNIVERSALISM (A. Sajo ed., 2004), at 196; C.E. WELCH, PROTECTING HUMAN RIGHTS IN AFRICA: ROLES AND STRATEGIES OF NON-GOVERNMENTAL ORGANIZATIONS 297 (1995).

96. C.A. Odinkalu, *Why More Africans Don’t Use the Human Rights Language*, 2 HUM. RTS DIALOGUE (1999).

97. African Charter (1981), art. 29(7).

democracy.⁹⁸ UNESCO's Declaration of the Principles of International Cultural Cooperation acknowledges that each culture has dignity and values which must be respected and preserved and all cultures form part of the common heritage belonging to all mankind.⁹⁹ Reference to culture is most routinely used to mean artistic expressions or its cultural products, such as literature, music, dance, arts, sculpture, theatre, film and sports.¹⁰⁰ However culture is a "way of life, encapsulating a people's identity and wisdom."¹⁰¹ As substantiated by the Blair Commission:

[C]ulture is also about shared patterns of identity, symbolic meaning, aspirations and about relationships between individuals and groups within a society. Culture is also about the relationship between ideas and perspectives about self-respect and a sense of security, about how individuals are socialized and values are formed and transmitted. It is also deeply intertwined with structures of power and wealth. What it is not—contrary to the views of some—is an expression of unchanging tradition. ... Culture is both dynamic and reactive, it both influences economic and political conditions and is influenced by them.¹⁰²

Similarly, the Human Rights Council defines culture as:

a set of shared spiritual, material, intellectual and emotion features of human experience that are created and constructed within social praxis. As such culture is intimately connected with the diverse ways in which social groups produce their daily existence economically, socially, and politically. It therefore embraces both commonly held meanings that allow for the continuation of everyday practices as well as competing meanings that galvanise change over time.¹⁰³

98. Preamble to the Protocol on Women (2003).

99. UNESCO Declaration of Principles of Cultural Cooperation (1966), art. 1(1) & I (3).

100. OUR COMMON INTEREST: REPORT OF THE COMMISSION FOR AFRICA (2005) (hereinafter Blair Commission), available at <http://www.commissionforafrica.org/english/report/thereport/english/11-03-05_cr_report.pdf>.

101. MUTUA, *supra* note 1, at 19.

102. Blair Commission, *supra* note 100, at 114, ¶ 3.

103. YAKIN ERTÜRK, INTERSECTIONS BETWEEN CULTURE AND VIOLENCE AGAINST WOMEN (Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Implementation of General Assembly Resolution 60/251 of 15 March 2006, A/HRC/4/34 G. 2007), at 8.

However, due to colonialism African culture is almost exclusively perceived as a source of human rights violations, as regressive and inimical to development.¹⁰⁴ The CEDAW Committee depicts culture as a negative impediment to the enjoyment of women's rights with no possibility of facilitating women's empowerment.¹⁰⁵ Similarly, in considering state reports, the African Commission tends to attribute the denial of women's human rights to the restrictive construction of culture.¹⁰⁶ The hostility against culture is influenced by the fact that the African Charter tends to represent culture as straightforward, monolithic and homogenized.¹⁰⁷ Likewise, the African Cultural Charter does not elucidate what African culture actually is but speaks of it as a homogenous entity.¹⁰⁸

Using an example of the issue of sexuality, Tamale illustrates the potential of the social legitimacy of African culture as an empowering resource to challenge male domination.¹⁰⁹ Placing culture parallel to rights leaves majority of women without redress because it requires them to "strip themselves of culture before enjoying rights."¹¹⁰ Consequently, women are left with the limited choice of either complying with the negative culture or of joining the dominant human rights discourse that trivializes their cultural experiences.¹¹¹ Thus the UN Special Rapporteur on Violence Against Women argues that reducing violence against women to a cultural problem isolates it from the political/economic environment, yet "no custom, tradition or religion can be invoked to justify violence against women."¹¹²

The misconception that culture and rights are antagonistic and distinct from each other distances human rights from the realities of African people and therefore frustrates the entrenching of rights as a lived concept. Every culture has notions of

104. Blair Commission, *supra* note 100, at 116, ¶ 14; OKAFOR, *supra* note 52, at 215; R. Murray, *A Feminist Perspective on Reform of the African Human Rights System*, in 2 AFR. HUM. RTS L. J. 224 (2001); S. Tamale, *The Right to Culture and the Culture of Rights: a Critical Perspective on Women's Sexual Rights in Africa*, in SEX MATTERS (2007), at 149-51.

105. C. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimation of Gender Hierarchy in Developing Countries?* 41 HARV. INT'L L. J. 381 (2000); F. BANDA, WOMEN, LAW AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE (2005), at 249-50; 15 YEARS OF THE UNITED NATIONS SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES (2009), at 39.

106. Nyamu, *id.*; Banda, *id.*

107. Banda, *id.*, at 251.

108. Cultural Charter for Africa (1976).

109. Tamale, *supra* note 104, at 158-64.

110. *Id.*, at 157.

111. ERTÜRK, *supra* note 103, at 17.

112. *Id.*, at 3 & 19.

human rights.¹¹³ The assumption that local practices do not embrace human rights ignores the fluid and transformative potential of local cultural norms as well as the impact of human agency in bringing about change.¹¹⁴ It is therefore incumbent on NGOs as proponents of human rights to demonstrate the relevance of international standards to the local context.¹¹⁵

Granted that culture is a double-edged sword, capable of both enhancing and detracting from human rights, the problem emanates from the blanket rejection or glorification of culture. Rather than using culture as a building block for popularising the human rights movement, many NGOs shunned the reference to culture within the African Charter as amounting to the condoning of human rights abuses.¹¹⁶ Gutto recalls the resistance of most NGOs during the public session of the African Commission to any mention of “African culture, African traditions, African values and African practices.”¹¹⁷ It is noteworthy that eventually a consensus was reached with NGOs recommending that the reference to moral and traditional values in the African Charter be confined to those that enhance the enjoyment of human rights.¹¹⁸ Even at the 43rd session of the Commission in May 2008, the NGO Forum attributed the violation of women’s and children rights to culture.¹¹⁹

Similarly, in Tanzania, NGOs are obliged to respect the cultures and traditions of the communities they work with.¹²⁰ However, the NGO Task Force in Tanzania complained that obliging them to respect the cultures of the communities within which they operated was retrogressive, imputing culture as exclusively negative.¹²¹ Okafor attests to no knowledge of any NGO that has ever bothered to report or conduct a single seminar on the aspects of the Nigerian culture that would support the human rights

113. Leary, *supra* note 1, at 30; GUTTO, *supra* note 1, at 160; Heyns & Viljoen, *supra* note 1, at 421; An-Na’im & Deng, *supra* note 1, at 9; Paul, *supra* note 1, at 214; MUTUA, *supra* note 1, at 8; Welch, *supra* note 1, at 206; BANDA, *supra* note 105, at 305; and U. BAXI, *THE FUTURE OF HUMAN RIGHT* 12 (2002).

114. C. Nyamu-Musembi, *Are Local Norms and Practices Fences or Pathways? The Example of Women’s Property Rights*, in *CULTURAL TRANSFORMATION AND HUMAN RIGHTS IN AFRICAN* (An-Na’im ed., 2002), at 127; Tamale, *supra* note 104, at 149-52; ERTÜRK, *supra* note 103, at 9 & 21.

115. An-Nai’im, *supra* note 93, at 9.

116. GUTTO, *supra* note 1, at 156.

117. *Id.*

118. AFRICA COMMISSION, *CONCLUSIONS AND RECOMMENDATIONS OF A WORKSHOP ON NGO PARTICIPATION IN THE WORK OF THE AFRICAN COMMISSION, GAMBIA* (1991).

119. *NGO Forum Indaba*, SWAZI OBSERVER, 6 May 2008, at 14.

120. Tanzania NGO Act 2002, s.31 (b).

121. *Id.*

discourse.¹²² Hence, the Botswana Council of NGOs (BOCONGO) is unique for having taken a decision to draw from positive Tswana culture.¹²³

Cognisant that human rights is the “most globalized political value of our time,”¹²⁴ the issue is not to earmark the boundaries of each culture but to understand culture as a dynamic concept that has blended with human rights, religion, modernity, and capitalism to mention but a few. Culture is historically constructed through human action, incorporated into the power structures, and reinterpreted through local understanding and interests.¹²⁵

In *Chiku Lidah v. Adam Omari*,¹²⁶ it was reiterated that Customary Law is not immutable but is a “living law capable of adaptation and development.”¹²⁷ Therefore, NGOs should build on the positive cultural values that resonate with human rights principles instead of dismissing culture as solely an impediment to the realization of rights.¹²⁸ The Human Rights Council calls for a “cultural negotiation” that emphasizes positive elements to advance human rights and demystifies the oppressed elements and the hierarchies within.¹²⁹ Yankin Erturk rightly observes that the “threat to women’s human rights comes from the monopoly over the interpretation and representation of culture by the powerful few, rather than culture per se.”¹³⁰ The adoption of a cross-cultural perspective that promotes the interplay between cultural norms and universal human rights is crucial in stimulating the mass support of human rights.¹³¹ Ngugi-wa-Thiongo argues that culture, “as an embodiment of values in society is a positive social mechanism.”¹³² He therefore urges the elite to “remember not as prisoners of tradition, but to learn the pluses and minuses of their past experience in order to act in the present and project the future.”¹³³

122. OKAFOR, *supra* note 52, at 110.

123. BOCONGO CIVIL SOCIETY EDUCATION STRATEGY (2007), at 16.

124. A. Sarat & T.R. Kearns, *The Unsettled Status of Human Rights: An Introduction*, in Sarat & Kearns eds, *supra* note 93, at 4.

125. *Id.*, at 14-15.

126. PC Civil Appeal No. 34 of 1991.

127. *Id.*

128. Banda, *supra* note 105, at 256; Nyamu-Musembi, *supra* note 114, at 126; ERTÜRK, *supra* note 103, at 19-20.

129. *Id.*

130. ERTÜRK, *supra* note 103, at 29.

131. An-Na’im & Deng, *supra* note 1, at 9 & 12; Paul, *supra* note 1, at 214; MUTUA, *supra* note 1, at 8; Welch, *supra* note 1, at 206.

132. Ngugi wa Thiongo, *The role of intellectuals in African University*, The Ford Foundation Distinguished lectures, (2004).

133. *Id.*

The concept of *ubuntu* among the Bantu people of sub-Saharan Africa, loosely defined as humanness, respect for the human person and community responsibility towards each other¹³⁴ provides a basis for linking rights to culture. While its commonality is agreed over among most African languages, critics of *ubuntu* trivialize it as inherently patriarchal and of limited relevance to the contemporary youth.¹³⁵ Proponents of *ubuntu* acclaim it as a “philosophy of ... personhood, humaneness and morality.”¹³⁶ To Fredrick Jjuuko, *ubuntu* is a more expansive concept than human rights because it obliges mutual responsibility while the rights are demand driven, adversarial and confrontational and their enjoyment depends on an individual’s willingness and capability to claim rights.¹³⁷ The common rules of African cultures, such as responsibilities towards others, participation, compromise, tolerance of diversity are similar to the human rights principles.¹³⁸ Likewise, the social values inherent in *ubuntu* such as solidarity, conformity, compassion, respect, human dignity and collective unity, “... provide an indigenous impetus that aligns age-old African social innovations and historical cultural experiences to present day legal notions and techniques in order to create a legitimate system of law.”¹³⁹

The Centre for Human Rights at Pretoria has demonstrated the utility of engaging cultural institutions. Since 2003, recognizing that a majority of Southern Africans are subject to the chieftaincy rule particularly over land and inheritance issues, as part of its Community Service Programme, the Centre has organised over twenty workshops targeting SADC cultural chiefs.¹⁴⁰ The rationale of the programme is to challenge the chiefs to analyze their cultural civilization and act as advocates for progressive change.¹⁴¹ For example, in its original conceptualization, the estate of the deceased person was not taken as individual property of the heir for private appropriation but the heir served as the trustee of the estate for the collective good of all beneficiaries, akin to the concept of a legal administrator. The dispossession of

134. SOUTH AFRICAN HUMAN RIGHTS COMMISSION, REPORT ON THE SEMINAR ON AFFIRMING A CULTURE OF VALUES IN THE SOUTH AFRICAN HUMAN RIGHTS FRAMEWORK (August 2006), available online at <www.sahrc.org.za/sahrc-cms>.

135. D. Cornell & K. van Marle, *Exploring Ubuntu: Tentative Reflections*, in 5 AFR. HUM. RTS L. J. 196 (2005).

136. Y. Mokgoro, *Ubuntu and the Law in South Africa*, in 4 BUFF. HUM. RTS L. REV. 15 (1998).

137. Interview with Assoc. Prof. Fred Jjuuko, Chairperson, The Free Movement, Uganda, 29 August 2007, at Makerere University.

138. Welch, *supra* note 1, at 206; An-Na'im & Deng, *supra* note 1, at 12.

139. Mokgoro, *supra* note 136, at 17-18 & 21.

140. Interview with Professor Hansungule, Centre for Human Rights, Pretoria, 14 May 2007, at Pretoria.

141. *Id.*

women's property rights is a result of the introduction of individual property rights.

Fareda Banda also uses women's rights as an analogy to illustrate that human rights and culture are not opposed to each other but can be complementary.¹⁴² Moreover, the reference to culture by states is intended to preserve the unequal cultural interpretations bestowed upon privileged men.¹⁴³ Likewise, Ifi Amadiume argues that it is colonial rule and the introduction of Christianity which destroyed the traditional power of African women derived from "motherhood,"¹⁴⁴ preached "self-sacrifice" and "condemned women's headstrongness as unfeminine."¹⁴⁵

At the Amnesty International African Consultative Workshop of 2005, participants challenged women to use the positive examples of women's human agency in pre-colonial and colonial struggles such as Bibi Titi in Tanzania and Femiliao of Nigeria as well as the existence of powerful priestesses and goddesses to reinforce the cultural legitimacy of women's struggles. At the Jinja Retreat of the Uganda Feminist Forum, feminists observed that they were deliberately cast as "culturally alien" in order to alienate them from the social base of their communities.¹⁴⁶

However, in the case of *Magaya v. Magaya*,¹⁴⁷ the eldest girl sought to become heir to her father. Fareda Banda observes that the instituting of the case by a "simple, old rural woman" challenges the myth that it is only elite "women who without cultural moorings seek different interpretations of African cultural values."¹⁴⁸ It is redeeming that the Protocol on Women provides that women be consulted about the content of the cultural norms that are to operate within their societies.¹⁴⁹ Significantly, the Protocol on Women validates "Africa women's agency in challenging culture as a concept of power, authority and reshaping of society."¹⁵⁰

Similarly the African Feminist Charter obliges the "critical engagement with discourses of religion, culture, tradition and domesticity with focus on the centrality of women's rights."¹⁵¹ Likewise, the Commonwealth Foundation NGO guidelines for

142. Banda, *supra* note 105, at 262.

143. *Id.*, at 252.

144. I. Amadiume, *Gender, Political Systems and Social Movements: A West African Experience in, AFRICAN STUDIES IN SOCIAL MOVEMENTS AND DEMOCRACY* (M. Mamdani & Wamba-dia-Wamba eds, 1995), at 38 & 54.

145. *Id.*, at 56; Tamale, *supra* note 104, at 159.

146. Uganda Feminist Forum, 16 January 2008.

147. 1999 (1) TLR 100 [1999] 3lrc 35.

148. Banda, *supra* note 105, at 37.

149. Preamble to the Protocol on Women (2003), art. 17.

150. Tamale, *supra* note 104, at 159.

151. African Feminist Charter, available at <www.awdf.org/pages/?p.d=1&s.d=62>, at 11.

good policy and practice, recommends the “respect for the rights, culture and dignity of men and women.”¹⁵²

The Ganda proverb, *Yiga Ngokola* (learn as you work) is based on the African philosophy of community work and learning through community activity.¹⁵³ Building on the African proverb *Amagezi sigomu* directly translated to mean “knowledge does not belong to a single person;” activities are initiated by singing, dancing or story-telling to elicit vibrant discussions.¹⁵⁴ A case study of the Organization of Rural Associations for Progress (ORAP) in Zimbabwe reveals that for meaningful development to take place, NGO strategies must be rooted in the people’s cultural knowledge.¹⁵⁵ ORAP undertook an extensive cultural analysis that identified shared cultural values within the Ndebele language to shape its philosophy: “*ziqoqe*—self mobilization; *zenzele*—do it yourself/fend for yourself; *Ziqhatshe*—create self employment; *zimele*—self reliance (based on interdependence) be independent; *qugelela*—create savings.”¹⁵⁶

Bottom-up approaches anchored in traditional culture build on people’s experiences as a basis for reform.¹⁵⁷ The application of human rights education to specific situations enables the retention of what is best in African culture while upholding the universalism of human rights. Respect for the knowledge of ordinary people encourages the framing of everyday experiences in human rights language, ultimately promoting ownership of human rights as part of social debate and practices.¹⁵⁸ The issue of how DNGOs and HURINGOs have promoted the principle of the indivisibility of human rights is the focus of the succeeding debate.

III. THE PRINCIPLE OF INDIVISIBILITY OF RIGHTS

In this discussion, we review the traditional relationship that exists between DNGOs and HURINGOs, and critically examine how DNGOs have linked human rights to their

152. COMMONWEALTH FOUNDATION NON-GOVERNMENTAL ORGANIZATIONS: GUIDELINES FOR GOOD POLICY AND PRACTICE (1995), Guideline 5.

153. D.W. Nabudere, *Social transformation in Uganda: A Study of Grassroots NGOs*, in Mutua ed., *supra* note 81, at 246.

154. *Id.*

155. A.E. Sibanda, *Voicing a Peasant Alternative: The Organization of Rural Associations for Progress (ORAP) in Zimbabwe*, in PEASANT ORGANIZATIONS AND DEMOCRATIZATION IN AFRICA (Romdhane and Moyo eds, 2002), at 323.

156. *Id.*, at 324.

157. Tamale, *supra* note 104, at 164.

158. FIDA-U Organizational Development (2007), at 20.

work. The discussion also interrogates how HURINGOs appreciate the struggles of DNGOs as human rights struggles.

A. The Traditional Relationship between DNGOs and HURINGOs

The Vienna Declaration recognizes the indivisibility of human rights.¹⁵⁹ The indivisibility of human rights provides a conceptual basis to mainstream rights in all the practices and policies of NGOs. Prior to the 1990s, "... development enterprise lived in splendid isolation from human rights, both at the level of discourse and practice."¹⁶⁰ As observed by UNDP:

Until the last decade, human development and human rights followed different paths in both concept and action—one largely dominated by economists, social scientists and policy makers, the other by political activists, lawyers and philosophers. They promoted divergent strategies of analysis and action-economic and social progress on the one hand, political pressure, law reform and ethical questioning on the other.¹⁶¹

Development was considered a combination of goodwill and technical knowledge, devoted to economic growth and addressing poverty, while human rights was concerned with the exposure of abuse of power.¹⁶² HURINGOs preferred to stick to CPRs leaving the struggles for ESCRs and social change to the DNGOs.¹⁶³ Likewise, development was conceptualized as a technical and not a political process, rendering it blind to the dynamics of power and exclusion.¹⁶⁴ The principle of express linkage to rights requires each NGO to undertake a right-duty analysis which identifies the rights addressed in an NGO programme, the relevant rights holders and duty bearers as well as the content of the duty.¹⁶⁵ Mainstreaming human rights is strategic because development and

159. Vienna Declaration (1993), ¶ 5.

160. UVIN, *supra* note 17, at 1 & 47.

161. UNDP, *supra* note 12, at 2; Robinson, *supra* note 3, at 27; Nyamu-Musembi & Cornwall, *supra* note 10, at 8.

162. J. Wolfensohn, *Some Reflection on Human Rights and Development*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT (Alston & Robinson eds, 2005), at 21; UVIN, *supra* note 17, at 47.

163. *Id.*, at 31; Oloka-Onyango, *supra* note 91, at 33.

164. UVIN, *supra* note 17, at 3, 31 & 37; Manji, *supra* note 91, at 26.

165. ICHRP, *supra* note 28, at 14.

human rights share the key common values of inclusion, non-discrimination, ownership, accountability, transparency, participation and empowerment and are committed to promoting the dignity and welfare of the human person.¹⁶⁶

In spite of the common goal of promoting the dignity, equality and welfare of the human person, neither the DNGOs nor the HURINGOs embraced the indivisibility of human rights with “enthusiasm or conviction.”¹⁶⁷ Alston has likened the relationship between the development and human rights community to “... ships passing in the night, each with little if any sustained engagement with one another.”¹⁶⁸

The ambivalence of applying human rights by DNGOs is attributed to a number of factors namely divergent goals, the marketing of rights as an essentially legal discourse and the ambiguous conceptual framework. The major challenge in merging the rights discourse and development discourse is the divergent goals with development essentially preoccupied with economic growth while rights focus on the preservation of the dignity of the person and the exposure of abuses of power.¹⁶⁹ On the one hand, HURINGOs prefer to apply the rights-based approach as a normative concept that imposes legal and moral obligations on all actors and all processes and operations, arguing that rights are both a means and an end to development.¹⁷⁰ On the other hand, DNGOs use rights-based approach as an instrument to achieve more effective programming.¹⁷¹

In practice, the merging of rights and development is susceptible to controversy, which repeatedly provides a smokescreen for hiding inequities and rights violations from scrutiny.¹⁷² This is due to the dismal reality of not automatically applying human rights as the core of good governance.¹⁷³ Moreover, economic globalization tends to shift the balance of power towards markets, preoccupied with economic gain, to the detriment of a fair distribution of the benefits of economic growth in order to assure minimum rights for all.¹⁷⁴ There is also a tendency for DNGOs to

166. Alston, *supra* note 17, at 825; Alston & Robinson, *supra* note 3, at 4.

167. Alston, *id.*, at 755; Darrow & Tomas, *supra* note 12, at 472.

168. Alston, *id.*, at 799.

169. UVIN, *supra* note 17, at 2.

170. Darrow & Thomas, *supra* note 12, at 492.

171. *Id.*, at 492-93.

172. J. Donnelly, *Human Rights, Democracy and Development*, in 21 HUM. RTS Q. (1999), at 162; UVIN, *supra* note 17, at 118.

173. M. Kjaer & K. Kinnerup, *How Does Good Governance Relate to Human Rights*, in HUMAN RIGHTS AND GOOD GOVERNANCE: BUILDING BRIDGES (Sano & Alfredsson eds, 2002), at 14-15; Nyamu-Musembi & Cornwall, *supra* note 10, at 17.

174. Donnelly, *supra* note 42, at 232-33.

simply repackage or add labels without necessarily re-conceptualizing or changing their practice of treating rights as "... gifts, charity or policy blueprints."¹⁷⁵ Generally, DNGOs consider rights as highly specialized legal discourse and not multi-disciplinary.¹⁷⁶

Furthermore, DNGOs perceive rights as state-centric, political, adversarial, judgmental, elitist and preoccupied with quick results but impractical in cases of scarce resources and competing demands.¹⁷⁷ For example, in the UK for a long time, many voluntary organizations misperceived rights as a "far-fetched luxury," principally of interest to expensive lawyers and celebrities.¹⁷⁸ Others misconceived human rights as a means to advance the interference of European judges in British affairs.¹⁷⁹ There is apprehension that the rights-based approach may not address the inequalities in society because of the ability of the powerful to manipulate the rights-based approach to serve their interests.¹⁸⁰

Notwithstanding the above, many DNGOs and agencies have adopted the rights-based approach as previously discussed.¹⁸¹ Some development agencies appreciated that applying human rights principles enabled them to address the root causes of poverty in a manner that respects the agency of the people they work with.¹⁸² For example, in seeking to infuse a rights based approach in its programming, OXFAM commits itself to strengthening the accountability of duty bearers; support people to claim their rights; promote equality and inclusion in policies, services and programmes; promote provision of effective remedies; allocate resources and budgets equitably; build social norms, attitudes and behaviour and strengthen institutional capacity to base economic policies on human rights.¹⁸³ Actionaid's (AA) Accountability, Learning and Planning System (ALPS) strategy has three elements, namely: involving NGOs to manage their programmes with AA playing a supportive role; applying the principles of transparency, participation, learning, awareness of gender and power and accountability to poor people and lastly being a "reflective and reflexive" organization

175. Scott, *supra* note 51, at 210; UVIN, *supra* note 17, at 53.

176. Nyamu-Musembi & Cornwall, *supra* note 10, at 17.

177. Alston & Robinson, *supra* note 3, at 5; Robinson, *supra* note 3, at 32-37; F. BUTLER, HUMAN RIGHTS: WHO NEEDS THEM? USING HUMAN RIGHTS IN THE VOLUNTARY SECTOR 49 (2004); Nyamu-Musembi & Cornwall, *supra* note 10, at 17; Wolfensohn, *supra* note 162, at 21.

178. Butler, *id.*, at 23.

179. Butler, *supra* note 53, at 67.

180. Alston, *supra* note 17, at 806.

181. Part .2.

182. ICHRP, *supra* note 28, at 74.

183. BUTLER, *supra* note 177, at 20.

that allows partners to respond to changing situations and context.¹⁸⁴

B. The Indivisibility of Rights: HURINGOs and the Development Agenda

HURINGOs have equally not appreciated DNGOs' struggles as human rights struggles despite the concept of the indivisibility of rights. Surprisingly, although the rights-based approach grew out of HURINGOs' efforts, HURINGOs have not taken the lead to apply human rights principles to them.¹⁸⁵ Ironically, major HURINGOs have not eagerly embraced the struggles of DNGOs such as the anti-globalization crusade spearheaded by the World Social Forum. And yet, the struggle for ESCRs provides a common ground for HURINGOs and DNGOs to work together. HURINGOs contend that despite the rhetoric of the indivisibility of rights, in practice the state prioritizes economic growth to the detriment of human rights.¹⁸⁶ Consequently, HURINGOs are dissuaded from engaging in development struggles in general for fear of marginalizing human rights.¹⁸⁷ The ICHRP is on record as stating that joining large campaigns that are united by common values without a legal basis is risky.¹⁸⁸ The ICHRP is of the strong opinion that

The two qualities that human rights organizations distinctively bring to advocacy are knowledge of the law and a precise grasp of institutional procedures. Certainly, they can 'shame and blame' those who are guilty; but so can others. The rich and passionate campaigning tradition of human rights organizations is often most effective when criticism is accompanied by precise descriptions of legal obligations. Where human rights organizations can use their well-honed capacity for argument to add credibility and effectiveness to an alliance, this will clearly be valuable. On the other hand, if human rights advocates, taken as a whole, were to surrender legal rigour for a more imprecise rhetoric, campaigns for justice would scarcely be stronger but the ability of human rights organizations to

184. R. DAVID & A. MACHINI, GOING AGAINST THE FLOW: THE STRUGGLE TO MAKE ORGANIZATIONAL SYSTEMS PART OF THE SOLUTION RATHER THAN PART OF THE PROBLEM—LESSONS FOR CHANGE IN POLICY AND ORGANIZATIONS 8 (2004).

185. Alston, *supra* note 17, at 800 & 827.

186. T. Evans, *International Human Rights Law as Power/Knowledge*, in 27 HUM. RTS Q. 1057 (2005).

187. Alston, *supra* note 17, at 761.

188. ICHRP, *supra* note 28, at 48.

defend vulnerable people effectively would be much reduced. Once again, in a period of polarization this is a particular challenge. Human rights organizations cannot afford to stand on the edge of events, or be seen to be compulsively parsing law; but they might do harm to the cause of human rights if from weakness or passion, they give themselves up to the forces of polarization and put 'loyalty to the cause' before accuracy.¹⁸⁹

Mutunga counter-argues that the anti-globalization movements are struggles for economic, social, cultural and political justice, that:

the supercilious dismissal of people struggles for justice in the global economy illuminates the limitation of the dominant human rights discourse. ... The human rights movement has failed to acknowledge that the anti-globalization movements are dealing with global forces that have minimal faith in or respect for precise descriptions of the legal obligations.¹⁹⁰

Mostly, HURINGOs have not been active in the regional integration process. Yet, the existence of trade relations and diplomatic ties facilitate the successful enforcement of human rights in regional economic blocs.¹⁹¹ Moreover, all regional blocs provide for the active participation of civil society in the development processes.¹⁹²

At the continental level, the African Union has categorically made human rights a key principle of its operations. The African Union provides for the building of partnerships, solidarity and cohesion between governments and all sectors of CSOs.¹⁹³ It establishes the Economic, Social and Cultural Council (ECOSOCC),¹⁹⁴ which statute was adopted in 2004. The objectives of ECOSOCC are to ensure continuous dialogue between the people of Africa; forge strong partnerships with civil society; promote civil society participation in the implementation of the AU policies and programmes; support and defend peace and security, culture of good governance, democratic principles and institutions, popular participation, human rights, freedoms and social justice; promote

189. *Id.*, quoted in Mutunga, *supra* note 81, at 21-22.

190. *Id.*, at 22.

191. Heyns & Viljoen, *supra* note 1, at 423 & 433.

192. African Union Constitutive Act (2000), arts 3(g) & 22; SADC Treaty (1992), art 23; EAC Treaty (1999), art 7, arts 127-129.

193. Preamble to the African Union (2000).

194. African Union Constitutive Act (2000), arts 3(g) & 22.

gender equality and strengthen the capacities of CSOs.¹⁹⁵ Some NGOs have attributed their lack of engagement with the AU to the criteria of observer status of the ECOSOCC. For example, to be an observer, an NGO must derive 50% of its finances from the membership.¹⁹⁶ In addition, women's organizations are likely to be excluded on the ground of discrimination on the basis of gender.¹⁹⁷

SADC is yet to have a CSOs policy but works with NGOs out of personal conviction.¹⁹⁸ Frequent change in the contact information of NGOs is also a hindrance to effective and continuous communication with NGOs.¹⁹⁹ Likewise in East Africa, NGOs have hardly participated in the EAC activities.²⁰⁰ NGOs have not capitalized on the people-centred and people driven principles to demand their participation in and accountability of the EAC. The few NGOs with observer status have hardly articulated alternative agendas that integrate rights into the development discourse. By 2002, only the East African Business Council (EABC) and the East African Trade Union Coordinating Council (EATUC), East African Judges and Magistrate's Association and Kituo Cha Katiba (KCK),²⁰¹ had observer status with the EAC. By 2004, ten organizations' applications were pending.²⁰² By 2008, the Civil Society Forum that allows periodic consultations between the Secretary-General and civil society had not been called.²⁰³

The Consultative workshop of 2005²⁰⁴ recommended the establishment of the Economic, Social and Cultural Committee (ESCC) as one of the autonomous structures of the EAC.²⁰⁵ The EAC also noted that there were a number of organizations which

195. Statute of the ESCC of the African Union (2004), art. 2.

196. *Id.*, at art. 2, rules v & vi.

197. *Id.*, at art. 2 rule ix.

198. Interview with Madibela and Faye, Director and Technical Advisor, SADC Gender Unit, Botswana, 6 March 2008.

199. Interview with Hembe, Director HIV/AIDS, SADC Secretariat, 8 March 2008.

200. KCK EAC Fact-finding Missions (2004), at 18.

201. Report of the Committee on Fast Tracking East African Federation (2004), at 311, Appendix X (a).

202. *Id.*, at 312, Appendix IX (b): International Council of Social Welfare, East African Youth Forum, Legal and Human Rights Centre Tanzania, East African Youth Forum (Kenya Chapter), East African Youth Development Association, East African Fine Coffee Association, East African Book Development Association, East African Confederation of Informal Sector Organizations (CISO), and East African Sub-Regional Support Initiative for the Advancement of Women (EASSI).

203. Interview with Betty Kiraso, Deputy Secretary General, EAC, 4 May 2009, Kampala.

204. Report of the Civil Society Workshop Organized by the East African Community Secretariat from 28-29 July 2005, Arusha, Tanzania.

205. Joint Communiqué of the EAC Summit (2005), para.9, 29-30 May 2005.

qualified but had not applied for observer status.²⁰⁶ One official wondered: “How come CSOs having powers to demand their inclusion in the debate (over the amendment of the Treaty) did not bother to do so even when some of them share the same building as the EAC Secretariat?”²⁰⁷ The once vibrant East Africa Youth Council has been dormant since 2000.²⁰⁸ Only KCK and East Africa Law Society (EALS) have actively engaged the EAC.²⁰⁹ However, there are many ESCRs that need to be safeguarded while promoting economic development. Moreover, the main objective of legal reform in East Africa is to facilitate economic globalization rather than the enhanced promoting and protection of human rights.²¹⁰

Human rights NGOs can no longer remain aloof to the globalization and development agendas because existing voluntary codes adopted by businesses are so vague, applied in a discretionary fashion, and avoid human rights issues.²¹¹ NGOs can use the tool of litigation to stimulate public debate and prompt consumer boycotts with non-compliant businesses.²¹² NGOs can also ensure that community consultations take on local concerns and address the barriers to the participation of communities in local processes.²¹³ For example, the Kenya Human Rights Commission (KHRC) successfully organized a consumer boycott of the sale of Kenyan flowers in Italy, resulting in an improvement of the working conditions of export fruit and flower industries.²¹⁴ Similarly, the community builder of the year award to a company that contributes resources for social corporate responsibility in South Africa is an ideal example of how

206. Report of the Committee on Fast Tracking East African Federation (2004), 313, Appendix IX (c): EA Law Society, EA Council of NGOs, EA Federation of Employers, EA Manufacturers Association, EA Bankers Association, EA Chamber of Commerce and Industry, EA Organization of Trade Unions, EA Industries of Management, EA Media Owners Associations, EA Union of Journalists, EA Editors’ Guild, Rotary Club of EA, Lions Club of EA, EA Broadcasters Association, EA Community Abroad, Marketing Societies of EA, EA Public Relations Society, EA Cooperation Forum, EA Youth Council and EA Media Institute.

207. Member of the Legal and Harmonization Committee, 25 April 2007.

208. Interview with Deya, Executive Director, East Africa Law Society & Convenor of the Civil Society Forum, Arusha, 7 August 2007.

209. KCK EAC Fact-finding Missions (2004), at 28.

210. C.M. PETER & S. MWAKAJE, INVESTMENT IN TANZANIA: SOME COMMENTS AND ISSUES 56 (2004).

211. P. Baehr, *Human Rights NGOs and Globalization*, in *RESPONDING TO THE HUMAN RIGHTS DEFICIT: ESSAYS IN HONOUR OF BAS DE GAAY FORTMAN* (K. Arts & P. Mihyo eds, 2003), at 36.

212. D.D. Bradlow, *Differing Conceptions of Development and the Content of International Development Law*, 21 SAJHR (2005), at 56 & 69.

213. *Id.*, at 70.

214. B. Maina, *Civil Society and the Private Sector*, in *CIVIL SOCIETY IN THE THIRD REPUBLIC* (Okello ed., 2004), at 60.

to socialize businesses to promote human rights.²¹⁵ NGOs have to strengthen the state in order to regulate businesses to guarantee human rights for all.²¹⁶

At the national level, many NGOs in East and southern Africa have shunned the consultations process of donor-government poverty reduction strategies. NGOs contended that the consultations were manipulative and aimed at making NGOs endorse predetermined positions or only address non-contentious issues.²¹⁷ The participation of East African NGOs in the consultations was irregular, did not have thorough critiques and consequently failed to hold governments accountable. For example, in Uganda, NGOs did not have facts and figures to support their positions.²¹⁸ Similarly, in Tanzania NGOs participation was mediocre, because they were not united, and lacked technical expertise in economic and development issues.²¹⁹

In South Africa, with the exception of the SANGOCO's Poverty Hearings in 1998, there are hardly any efforts to address the rights dimensions of poverty. Furthermore, while the Mid Term Expenditure Framework was intended to be a participatory process by enabling stakeholders to scrutinize the budget, civil society was "... guilty of last minute, ad hoc responses to the budget rather than a more focused approach."²²⁰ It is such casual participation that marginalizes NGOs from policy formulation, discourse and implementation.

215. Old Mutual, Soweto and SABC 3.

216. T. Halvorsen & G.G. Michelsen, *Good Governance and Public Sector Reform: The Human Rights Consequences of Structural Adjustment Programmes*, in Sano & Alfredsson eds, *supra* note 173, at 158; M. Kothari, *Globalization, Social Action and Human Rights*, in DEVELOPMENT AND SOCIAL ACTION: SELECTED ESSAYS FROM DEVELOPMENT IN PRACTICE (Kothari & Eade eds, 1999), at 20.

217. Research on Poverty Alleviation (REPOA), Tanzania Non-Governmental Organizations: Their Perceptions of the Relationship with Government of Tanzania and Donors, and Their Role in Poverty Reduction and Development (REPOA Special Paper No. 07.21, 2007), at 18-19; M. WANDIRA, M. WANYEKI & A. PATEL, THE PROCESS OF INTEGRATING GENDER IN THE POVERTY REDUCTION STRATEGIC PLAN PROCESS IN KENYA AND THE CHALLENGES ENCOUNTERED BY THE GENDER LOBBY GROUPS (2003), at 16 & 20; H. Kotze, *Responding to the Growing Socioeconomic Crisis? A Review of Civil Society in South Africa*, in THE DEEPENING DIVIDE: CIVIL SOCIETY AND DEVELOPMENT IN SOUTH AFRICA (2003), at 26-27.

218. Interview with Asimwe-Mwesige, Programme officer, European Union Civil Society Capacity Building, Kampala, 28 August 2007; Interview with Rukare, Head of Party, European Union Civil Society Capacity Building, Kampala, 14 August 2007.

219. REPOA, *supra* note 217, at 15 & 27.

220. L. Verwey, K. Lefto-Everett & P. Friedman, MEDIUM TERM BUDGET POLICY STATEMENT 2007: SELECTED ISSUES (2007), at 4.

IV. CONCLUSION

The article has justified why all NGOs should embrace human rights principles in their governance arrangements, irrespective of whether or not they define themselves as HURINGOs. To take the decision to swim off shore requires conviction and preparedness to do so, otherwise it could be misunderstood as recklessness. Requiring all NGOs to mainstream human rights, whether or not in their core mandate has caused considerable confusion in terms of practical steps to take. The tendency has been to settle for cosmetic reforms that do not challenge power inequities within organizational operations, or simply rename old strategies.

Evidently, there are tensions, contradictions and ambivalence in the process of linking human rights to governance. Numerous dilemmas coupled with a lack of crystallized consensus on how governance and human rights can or should complement each other abound. It is this ambivalence and ambiguous status that presents an opportune moment for this paper to contribute to the development of good governance and best practices based on NGO experiences, rather than reacting to already-made models. Subsequently, the plurality of interpretations is both inevitable and necessary for the strengthening of good governance and human rights as integral elements of the global agenda. Mainstreaming rights is important because human rights democratic and development discourses to which all NGOs, directly or indirectly subscribe are mutually reinforcing. In essence, the merits of human rights are that it draws attention to discrimination, tames the exercise of power and provides mechanisms to overcome arbitrariness in decision-making and in the development processes, all of which are critical aspirations of the NGO tradition, irrespective of their priorities, style and belief.

The controversy surrounding the misconception that African culture does not embrace human rights is articulated, but with a caution to desist from either the blanket rejection or the glorification of African culture. African culture is a double-edged sword capable of both enhancing and detracting from human rights. NGOs must build on the positive cultural values that resonate with human rights, rather than dismissing culture entirely as an impediment to the improved protection of human rights. This among others requires NGOs to learn from how ordinary citizens have interpreted human rights in their day to day experiences.

The relationship between DNGOs and HURINGOs is examined making a case for promoting the indivisibility of human rights, which reinforces the relevance of rights in all the policies and practices of NGOs. Just like the DNGOs cannot afford to ignore the centrality of human rights in their advocacy struggles, HURINGOs can no longer remain aloof to the globalization and development agendas of DNGOs. Thus, even HURINGOs can stimulate human rights through advocacy on business-like issues

such as corporate social responsibility and fair business regulation. The failure to have a more effective framework to hold major actors such as NGOs accountable may erode the credibility of the human rights discourse to offer protection from abuse of power. Although much responsibility is placed upon HURINGOs to respect human rights values, all NGOs have to reflect on the way they mediate unequal power dynamics with other stakeholders, particularly in instances where the NGOs' stakeholders have weaker social, economic and political voices. Given that there is no a single comprehensive definition of the rights-based approach, each NGO is required to critically reflect on how it has internalized the human rights principles in its policies, programmes and practices.

Consequently, this article advocates for the further evolution of the human rights discourse to codify what can currently be described as moral obligations into legal obligations. Indeed, the ECOSOC recognises the evolving relationship between NGOs and the UN and has suggested reviews to facilitate the effectiveness of the NGOs' contribution to the UN's work.²²¹ The OHCHR has already taken the strategic role of articulating the human rights obligation for UN agencies which can easily be stretched to NGOs. Similarly, INGOs have taken the initiative to articulate their responsibilities under the International Accountability Charter. Likewise, the African Feminist Charter is another attempt to that effect. The Charter on Popular Participation also underlines the relationship between popular participation and empowerment and recommends that NGOs are participatory, democratic and accountable.²²² The governance of NGOs is critical to the strengthening of the human rights movement. It is only when human rights become part and parcel of everyday practices and vocabulary that a culture of human rights will crystallize.

221. UN Resolution 1996/31 (1996), ¶ 17.

222. African Charter on Popular Participation (1990), part III.