

NON-GOVERNMENTAL ORGANISATIONS, GOVERNANCE AND HUMAN RIGHTS IN
KENYA, TANZANIA, UGANDA AND SOUTH AFRICA: CONCEPTUAL AND STRATEGIC
QUESTIONS

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PREFACE

After belabouring for hours to explain to my grandmother the subject of my studies, she summed it up in one sentence: ‘Ooh! You are going to study good manners.’ I then began to question why human rights is a concept that is almost exclusively confined to regulating state power. And yet, despite NGO’s effort to dismantle existing power structures (especially hierarchies and patriarchies) we inadvertently repeat the same structures within our organisations and relationships.

I am grateful to Chris Maina Peter for authorising Kituo Cha Katiba (KCK) to promote my PHD studies and for books donated to me to launch my academic life. I am also thankful to the Ford Foundation through the auspices of Tade Aina for his confidence in my capabilities and mentorship; Joseph Gitari for having introduced the concept of NGO governance to me; Willy Mutunga and Nikki Naylor for the field research grant; Alice Brown for the friendship and having bought me my first proper meal in South Africa. I thank the LLD class for the collegiality and sacrifice of reading and peer reviewing the very raw and often chaotic first drafts of the chapters and for posing the hard questions; Umar Kakumba, Frederick Jjuuko and Jane Barry for reading and editing my scripts; the Board of Urgent Action Fund-Africa, Hope, Vahida, Jane, Betty for your empathy and encouragement; Mr and Mrs Ihonvbere for the fraternity and financial support towards my upkeep and my family for the love and support.

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I now know for sure that human rights is about good behaviour by using power in ways that treat others the way oneself would like to be treated.

This thesis is dedicated to my father. I am relieved that I have achieved our mutual dream.

ACRONYMS

AA	Action AID
ACC	Anti-Corruption Coalition
ACFODE	Action for Development
ACHPR	African Charter on Human and People's Rights
ACODE	Advocates Coalition for Development and Environment
AI	Amnesty International
ALPS	Accountability, Learning and Planning Systems
ANGOZA	Association of Non-Governmental Organisations Zanzibar
ANPPCAN	African Network for Prevention and Protection Against Child Abuse and Neglect
AWDF	African Women Development Fund
AWID	Association of Women in Development
BAWATA	Baraza la Wanawake wa Tanzania
BOCONGO	Botswana Council for Non-Governmental Organizations
BONGOs	Business-oriented NGOs
BRINGOs	Briefcase NGO - BRINGO
CAFSA	Charity Aids Foundation Southern Africa
CBOs	Community-based organisations
CEDAW	Committee for the Elimination of all forms of Discrimination Against Women
CERD	Committee on the Elimination of All Forms of Racial Discrimination
CERIMIDE	Centre for Minority Rights Development
CHR	Centre for Human Rights
CIDRI	Cooperation for Integrated Rural Development
CISO	Confederation of Informal Sector Organisations
CLARION	Centre for Law and Research
CLO	Civil Liberties Organisation
CODESRIA	Council for the Development of Social Science Research in Africa
COWE	Children, Orphans and Women Empowerment
CPDA	Christian Partners Development Agencies
CPRs	Civil and Political Rights
CONOB	Coalition on the NGO Bill

COPAW	Coalition for Political Accountability to Women
COSATU	Coalition of South African Trade Unions
CRC	Committee on the Rights of the Child
DENIVA	Development Network of Indigenous Associations
DC	District Commissioner
DONGO	Donor Organised NGOs
DNGO	Development organisations
EABC	East African Business Council
EAC	East Africa Community
EAJMA	East African Judges and Magistrate's Association
EALS	East Africa Law Society
EASSI	East African Sub-Regional Support Initiative for the Advancement of Women
EATUC	East Africa Trade Union Coordinating Council
ECOSOC	Economic and Social Council
ECWD	Education Centre for Women in Democracy
ESCC	Economic, Social and Cultural Council
ESCRs	Economic, Social and cultural rights
FCS	Foundation for Civil Society
FEMACT	Feminist Activism
FEMNET	African Women's Development and Communications' Network
FHR	Foundation for Human Rights
FHRI	Foundation for Human Rights Initiatives
FIDA-Kenya	Federacio International de Abogadas-Kenya
FIDA-Uganda	Federacio International de Abogadas-Uganda
FOWODE	Forum for Women in Development
GBM	Green Belt Movement
GEAR	Growth, Employment and Redistribution
GONGOs	Government NGOs
HMDS	Help Mission Development Services
HPA	Homeless People's Association
HRC	Human Rights Committee
HRSC	Human Sciences Research Council

HRW	Human Rights Watch
HRQ	Human Rights Quarterly
HURINGO	Human Rights NGOs
HURINET	Human Rights Network
HURIPEC	Human Rights and Peace Centre
HURISA	Human Rights Institute South Africa
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
ICJ	International Commission of Jurists
ICNL	International Centre for Non-profit Law
IDASA	Institute for a Democratic Alternative for South Africa
IDS	Institute of Development Studies
IEC	International Executive Committee
IED	Institute of Education in Democracy
IGOs	Inter-governmental Organisation
IHRIP	International Human Rights Internship Program
INGOs	International NGOs
IPPR	Institute of Public Policy Research
KHRC	Kenya Human Rights Commission
KCK	Kituo Cha Katiba
KNCHR	Kenya National Commission of Human Rights
KWPC	Kenya Women Political Caucus
LAP	Legal Aid Project
LASPNET	Legal Aid Service Providers Network
LAWA	Law and Women Advocacy
LCC	Legal Coordinating Committee
LCHR	Lawyers Committee for Human Rights
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersexuals
LHR	Lawyer for Human Rights
LHRC	Legal and Human Rights Centre
LPM	Landless People's Movement
MEW	Men for Equality

MONGO	My Own NGO
MPAEC	Mandela Park Anti-Eviction Campaign
NALAF	National Land Forum
NARC	National Alliance Rainbow Coalition
NFLS	Nairobi Forward Looking Strategies
NGO	Non-governmental organisation
NGOPADEO	Ngorongoro Pastrolist Development Organisation
NGOSC	Non Government Organisation GO Steering Committee
NHRI	National Human Rights Institutes
NLC	National Land Committee
NNGOs	Northern NGOs
NOCEM	National Organisation for Civic Education and Electoral Monitoring
NY	New York
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
ORAP	Organisation for Rural Association for Progress
PONGOs	Privately-organized NGOs
PRAG	Practical Rules and Guidelines Procedures
RADDHO	<i>Rencontre Africaine pour la Defense des Droit de L'homme</i>
RDI	Rural Development Initiative
RECINET	Regional Integration Civil Society Network
SADC	Southern Africa Development Cooperation
SAGA	South African Grantmakers Association
SAHRC	South African Human Rights Commission
SAHRiNGON	Southern Africa Human Rights NGOs Network
SANCO	South African National Civic Organisations
SANGOCO	South African NGO Coalition
SANGONET	South African NGO Network
SECC	Soweto Electricity Crisis Committee
SERAC	Social and Economic Rights Action Centre
SID	Society for International Development
SNGOs	Southern Non Governmental Organisations

TAC	Treatment Action Campaign
TACOSODE	Tanzanian Council for Social Development
TANGO	Tanzania Association of NGOs
TANLET	Tanzania Legal Education Trust
TCHRGG	Tanzania Commission on Human Rights and Good Governance
TGNP	Tanzania Gender Networking Programme
UAF-A	Urgent Action Fund-Africa
UCRN	Uganda Child Rights Network
UDHR	Universal Declaration of Human Rights
UJCC	Uganda Joint Christian Council
UNASO	Uganda National Aids Service Organisations
UNDP	United Nations Development Programme
UWONET	Uganda Women Network
VAW	Violence Against Women
WCAEC	Western Cape Anti Eviction Campaign
WCAR	World Conference on Against Racism
WILDAF	Women in Law and Development in Africa
WNGOs	Women organisations
ZAFELA	Zanzibar Female Lawyers' Association
ZLSC	Zanzibar Legal Service Centre

ABSTRACT

Although human rights NGOs (HURINGOs) have contributed to the institutionalisation of a human rights culture, the human rights discourse mainly focuses externally on the obligations of states and, more recently, of business. Little attention is paid to how HURINGOs manage their power and privileges within their internal governance, despite NGOs' growing influence, resources, scope and diversity. This thesis offers a theoretical interpretation of the experiences, challenges, dilemmas and lessons learnt by HURINGOs in Kenya, Tanzania, Uganda and South Africa to contribute to the evolving discourse of human rights theory and practice. It adopts a multi-disciplinary approach that articulates the human rights obligations of HURINGOs and their implications for governance, arguing that the improved governance of NGOs is critical to the strengthening of the human rights movement.

While upholding the dominant legal liberalism school which underlines that the state is the main human rights duty bearer and legal systems are critical to the enforcement of rights, it utilises the sociology of law discourse that conceptualises human rights as a normative principle to contain abuse of power. Drawing from the rights-based approach which is aimed at holding all actors accountable for the human rights implications of their actions, it evaluates how HURINGOs have applied the human rights principles and standards of: (i) express linkage to and mainstreaming of rights; (ii) accountability and transparency; (iii) participation and inclusion; and (iv) non-discrimination, equity and empowerment in their governance and operations, as they demand of others.

It is the main contention of this study that HURINGOs have the obligation to empower themselves internally before they can champion the empowerment of others. This entails being knowledgeable in the area of work; forging linkages with broader civil society and academia, building on the positive cultural values that resonate with human rights to stimulate mass support and balancing the different accountabilities to the law, boards, membership, self-regulatory mechanisms, public and donors. Further HURINGOs have the obligation to safeguard the autonomy of their mission; have transparent and participatory processes to enhance collective strength, legitimacy and ownership of consensus decisions; as well as promote and demand equal and equitable relationships based on mutual respect, shared responsibility and achievements while simultaneously enabling the weaker party to act on their own.

Although a higher responsibility is placed on HURINGOs to respect human rights values, all NGOs irrespective of how they define themselves have to mainstream human rights in their work. This is because all NGOs exist in the public trust and work to promote human dignity

and societal wellbeing. They must lead by example. Applying the human rights principles to NGOs enhances their moral legitimacy to measure up to the challenges of being a watchdog of the governance process and custodians of the better promotion and protection of human rights. Significantly, it advances the credibility of human rights to offer protection from any abuse of power.

CHAPTER ONE

TOWARDS THE INTERNAL STRENGTHENING OF THE HUMAN RIGHTS MOVEMENT IN KENYA, TANZANIA, UGANDA AND SOUTH AFRICA

1.1. Introduction

This thesis is motivated by the need to re-examine, critique and rebuild a legitimate and vibrant non-governmental organization (NGO) sector in the Sub-Saharan African countries of Kenya, Tanzania, Uganda and South Africa. Human rights are one of the most legitimising and mobilising forces for equality and justice in the contemporary world.¹ Although there is general agreement with Louis Henkin's observation that "... we are in the age of rights,"² Upendra Baxi observes that we are equally in "... [a]n age of radical evil as well as an age of human rights."³ Similarly, Shulamith Koenig expresses the view that "... [o]urs is an age of rights but also an age of human rights violations."⁴ Thus, since the 1990s, there is increasing debate on how to make human rights respected by all individuals and actors, resulting in increasing scrutiny of the acts and omissions of non-state actors. As part of this debate, the criticism has extended to the NGO sector, particularly for the abuse of its power. Such criticism has prompted considerable self-scrutiny amongst NGOs over the issue of internal governance. Central to this introspection has been an examination of the place of human rights in their operations. Consequently, human rights NGOs (HURINGOs) have asked themselves questions such as: How are NGOs governed? Where do NGOs derive their legitimacy? To whom are NGOs accountable? Whom do NGOs represent? How should NGOs ensure ownership and sustainability of their organisations? How should NGOs better their gender representation?

Given the above developments, this thesis examines the internal governance of NGOs and evaluates how their operations advance a human rights culture. In so far as this thesis is concerned, a human rights culture means a culture where human rights are enjoyed as well as respected by each individual and actors.⁵ The rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of all

¹ Sarat and Kearn (2001) 4, Mutua (2002) 2 and 4, Henkins (1990) ix and 1.

² Henkins (1990) ix and 1.

³ Baxi (2002) 18.

⁴ Koenig (1998) 120.

⁵ Butler (2005) 64, Spencer (2005) 36.

actors and stakeholders.⁶ It examines how NGOs individually and collectively contribute to the institutionalisation of a human rights culture, and interrogates whether they do so by applying human rights and governance principles to their governance processes, policies and strategies.

Neo-liberal ideology — which advocates the extension of public choice, while rolling back the frontiers of the state in the socio-economic and political spheres of public life — has fronted civil society in general and NGOs in particular as the custodians of good governance, in the new millennium.⁷ Thus, the participation by NGOs is promoted as a response to the nation-state's failures, which are also closely associated with the phenomenon of poor governance.

As the designated 'guardians' of good governance, NGOs must exhibit the virtues of human rights and good governance principles in their internal organisation and practices. However, the concern is that without good internal governance, the potential of NGOs to advance human rights principles at the broader state and local level is limited. The first of the limitations to their operations lies in the express linkage to rights, while the second covers the issues of accountability and transparency. The third element is concerned with the issues of participation and inclusion, while the fourth and last focuses on equity, non-discrimination and empowerment. This study investigates the internal governance practices of human rights NGOs in respect of these four elements and assesses how they have advanced human rights principles in East and South Africa.

From the outset, it is important to underline the point that this thesis is written in the spirit of hope rather than that of despair. While it is quite easy to disparage and undermine the nascent efforts to promote the acceptance of rights-based approaches, this thesis urges a more critical self-reflection by NGOs in a bid to instil a human rights culture into their governance practices. The thesis argues that being advocates of human rights imposes a moral obligation on NGOs to adhere to the same human rights principles in their own organising and functioning as what they advocate for more generally. NGOs must set an example to society by being exemplar "organisations which value their employees and partners, fight discrimination, practice internal democracy, use organisational power in liberating ways and are personally accountable."⁸ In the spirit of the old proverb, we are asking that the NGO 'doctor' heals itself before it turns its attention to healing the patient.

⁶ Robinson (2005) 38.

⁷ Kuye and Kakumba (2007) 3.

⁸ Edwards and Sen (2000) 615.

This chapter introduces the thesis by providing the background and rationale for the study. Furthermore, it presents the research problem and the research questions that informed the study. It also defines the key concepts in use and describes the research methodologies adopted. It further provides a bird's eye view of the historical development of NGOs in the countries of the study; and finally gives an overview of the content of this thesis.

1.2. Background to and rationale for the study

The role played by civil society in Africa in influencing the political and human rights discourses is a contested one. In its social role, civil society is seen as the reservoir of positive social norms that foster community building, bonds of trust, cooperation and reciprocity and enriches the human condition.⁹ In its political role, civil society serves as a crucial counter weight to state and corporate power, while providing an essential pillar in promoting good governance.¹⁰ Civil society also creates channels through which people can have their voices heard in governmental decision-making and sharpens skills for political leadership.¹¹ Thus, civil society provides an environment conducive for the strengthening of the human rights discourse.

This thesis specifically focuses on NGOs because NGOs have become indispensable to the human rights movement; indeed, they are the fastest growing and most 'fashionable' sector of civil society; they have generated vast resources in addition to being the major recipient of donor funding; and have become critical players in mitigating the most adverse effects and impact of globalization. The rationale for focusing this study on NGOs is now explored more fully.

In the first instance, NGOs played a pivotal role in securing the inclusion of human rights in the UN Charter, the establishment of the Commission on Human Rights and the Economic and Social Council (ECOSOC).¹² One year after the establishment of the UN system, in 1946, the ECOSOC legitimised the role of NGOs in the work of the UN in order to tap into their expert information and advice.¹³ NGOs are considered a necessity in the fulfillment of the UN's agenda.¹⁴ Indeed, NGOs have played a critical role in the development and functioning of the Human Rights Committee (HRC) established under the International Covenant on Civil and

⁹ Edwards (2004) 14, Salamon et al (2004) 23.

¹⁰ Edwards (2004) 14-15.

¹¹ Edwards (2004) 15, Fisher (1998) 30.

¹² Keck and Sikkink (1998) 85-86.

¹³ Korey (2001) 52.

¹⁴ <http://www.un.org/dpi/ngosection/brochure.htm#top>.

Political Rights (ICCPR), the Committee on the Rights of the Child (CRC), the Committee for the Elimination of all forms of Discrimination Against Women (CEDAW) and the Committee on the Elimination of All Forms of Racial Discrimination (CERD). Even under the UN Human Rights Council that replaced the Commission of Human Rights in 2006, NGOs continue to engage the body by submitting complaints and providing relevant information.¹⁵ NGOs have contributed tremendously to the growth of the human rights movement through their characteristic activities of monitoring, investigating, and reporting on delinquent states, lobbying national governments and intergovernmental human rights organisations, mobilising interest groups, educating the public, and by representing clients in their dealings with national officials or before courts and international organs.¹⁶ Whatever NGOs shortcomings may be, much less would have been accomplished without their contribution to the public interest sector.¹⁷

Secondly, since the late 1980s, there has been a blossoming of a global “associational revolution.”¹⁸ NGOs are the fastest growing sector of civil society. Due to their rapid proliferation, it is undeniable that NGOs are the vanguard of civil society in most third world countries.¹⁹ The NGO sector has been referred to as the “new growth sector,”²⁰ and the “fifth estate.”²¹ Although civil society has become the “big idea of the 21st century to such an extent that there are no solutions to social, economic and political problems that do not involve civil society,”²² discussions about global civil society are dominated by NGOs.²³ For example, in terms of accreditation to the United Nations ECOSOC, by May 2009, the number of NGOs with observer status was 3172.²⁴ Given that most third world countries have weak political leadership, the proliferation of NGOs has promoted alternative views to the state.²⁵

Thirdly, granted that it is impractical to accurately estimate the global income of NGOs due to the variations in treatment, categorisation and tax concessions, some NGOs

¹⁵ http://en.wikipedia.org/wiki/united_Nations_Rights_Council, Nader (2007) 9.

¹⁶ Steiner (1999) 1.

¹⁷ Steiner (1999) 2.

¹⁸ Salamon et al (2004) 1.

¹⁹ Fisher (1998) 2.

²⁰ Ngethe (1989) 10, Ndegwa (1996) 18-21.

²¹ Edwards (2004) 17.

²² Edwards (2004) ix.

²³ Edwards (2001) 2.

²⁴ www.un.org/esa/coordination/ngo/.

²⁵ Fisher (1998) 30.

particularly INGO have generated considerable resources which enable them to simultaneously function like donor organisations.²⁶ In 2003, globally, NGOs' annual budget was estimated at US\$ one trillion.²⁷ In 2005, the World Vision budget was US\$ 2 billion.²⁸ This demonstrates the vast resource capacity of NGOs, making them powerful global actors.

A fourth reason lies in the fact that NGOs are the major recipients of donor resources.²⁹ In the global arena, the 1989 Report of the Organisation for Economic Development (EOCD) notes that NGOs received US\$3.3 billion from private sources, and US\$1.5 billion from official aid agencies.³⁰ By the 1990s, 75% of British foreign aid, 40% of Swedish spending, 46% of French emergency funding and 50% of European Union humanitarian funding was spent through NGOs.³¹ It is even suggested that NGOs collectively deliver more aid than the entire United Nations systems.³² Forty-eight percent of the World Bank projects have an NGO component.³³ Between 1976 and 2001 the Ford Foundation allocated over \$100 million to human rights NGOs.³⁴ In 1998 NGOs in Uganda disbursed an estimated 25% of all official aid.³⁵

The growth of the NGO sector notwithstanding, hitherto the work of NGOs has mostly been situated within the development and political discourses and not within the framework of law or human rights.³⁶ A majority of NGOs are engaged in the welfare and development sector.³⁷ In this context, democratisation and development are conceptualised as political strategies, with NGOs as one of the mechanisms designed to ensure the participation of the public in the governance and development processes, as well as to be the promoters of human rights awareness.

²⁶ AWID (2007) 22 and 27.

²⁷ Sustainability, NGOs in the 21st Century: In the market for change (2003) 2, www.sustainability.com/insight/research-article.asp?id=51.

²⁸ AWID (2007) 13.

²⁹ Nyangoro (1999), Oloka-Onyango (2000), Ngunyi (1999), Hearn (1999).

³⁰ Ngethe (1989) 9.

³¹ Smillie (1999) 9.

³² Kamminga (2005) 98.

³³ Oloka-Onyango (2000) 22.

³⁴ Welch (2001) 19.

³⁵ Dicklitch (1998) 21.

³⁶ Edwards (1995), (1997), (1999), (2001), Ndegwa (1996), Johnson (2002), Keane (1998), Dicklitch (1998), Fisher (1998), Bakari (2001), Bujra and Adejumobi (2002), Ihonvbere (1996), Kothari and Eade (1999), Moyo et al (2000), Nyangoro (1999), Nyangabyaki (2000).

³⁷ Barr, Fafchamps and Owen (2003) 13, TGNP (2004) 4, Nyangabyaki (2000) 45, Barya (2000) 25, Dicklitch and Lwanga (2003) 489, Dicklitch (1998) 6, Fowler (2000b) 642, Koetz (2003) 26.

Thus, applying good governance to NGOs contributes to the building of a human rights state, which prescribes a civil and active society, human rights consciousness, and a society-wide respect for human dignity and the acceptance of the diversity of others.³⁸

From a gender perspective, while many women are active in the NGO sector, women's issues are generally confined within the development discourse and not considered part of the human rights discourse. A few who have worked on human rights concentrate on women's rights and are reluctant to engage the broader human rights questions, such as freedom of association or political liberalisation, unless it affects them specifically.³⁹ Similarly, human rights organisations are generally averse to women's rights issues, as epitomised in the lack of gender balance in decision-making organs, gender blind policies and practices coupled with teardrop funding for gender issues.

Perplexingly, while the World Bank acknowledges that not all NGOs are "representative or democratic," it applies good governance to NGOs as only necessary in terms of holding governments accountable, by "articulating popular interests, monitoring government performance and facilitating participation in governance."⁴⁰ Unfortunately, the concept of "good governance" is not directly applied to NGOs. Viewed from this perspective, NGOs are not regarded as the "subjects" of good governance that seek alternative views or state accountability but as "objects" necessary for programme implementation in service delivery.⁴¹ Similarly, the donor community has narrowly interpreted good governance in respect of NGOs to mean the creation of boards of directors, which are not directly involved in management and the submission of audited reports which are hardly looked at by anyone. Moreover, most NGOs confine their democratic and human rights credentials to having written constitutions, membership and frequent elections, which are often viewed as technical rather than substantive requirements.

The above indifference about the issue of the internal governance of NGOs is so, in spite of the recognition that the poor governance of NGOs ultimately results in the infringement of human rights. Furthermore, poor governance has adverse effects on the organisational capacity of these groups to positively contribute to the promotion of a culture of accountability, transparency, empowerment, and human rights.

³⁸ Dicklitch and Lwanga (2003) 485.

³⁹ Oloka-Onyango (2002) 293, Okafor (2006) 5, Mallya (2007) 64.

⁴⁰ World Bank (2000) 72.

⁴¹ Ngondi (2004) 11, Nyangabyaki (2004) 16, Barya (2000) 4, Hearn (1999) 3, Oloka-Onyango (2000a), 19-20, Mamdani and Otum (1994) 8.

Within the legal and human rights sphere, governance issues are alluded to in discussing the effectiveness of human rights organisations in fulfilling their mandates. However, this has not become a core focus. It is a tradition for critiques of NGOs to decry NGOs' weak governance, but without serious academic rigour. As observed in a recent study by Okafor, commentaries on the character of the NGO community have either become outdated or have taken the form of hypothetical essays. Alternatively, they are too brief to be comprehensive, for they are often subsumed within the broad category of civil society.⁴² The precise parameters and critical elements of the right of association in respect of civil society in general and of NGOs in particular, remain vague and ill defined in the jurisprudence of the major regional and international human rights supervisory bodies, with the exception of the ILO principles of freedom of association.⁴³

The capacity of the NGO sector has mostly either been taken for granted or heavily romanticised, with NGOs viewed through idealistic lenses which masks the intricacies, tension, contradictions, dynamics, as well as inequities within the sector. Unfortunately, information about NGOs is largely clouded in misguided beliefs about NGOs, because NGOs as the principal sources of this knowledge have generated and targeted this knowledge in a way that creates myths about themselves.⁴⁴ NGOs are often described as altruistic organisations working on the needs of others, independent from government, fostering the participation of ordinary people in development, and efficient in resource utilisation.⁴⁵ Much of the interest in NGOs is fuelled by suppositions, informed by “NGO-lore” or “articles of faith” about their qualities.⁴⁶

Initially, NGOs assumed a righteousness that shielded them from probing critiques.⁴⁷ For example, NGOs have been praised as the “nervous system”⁴⁸ of human rights, the “conscience of mankind”,⁴⁹ the “gate keepers” of human rights,⁵⁰ the “engine for the advancement of human rights,”⁵¹ and the “curious grapevine” that has made human rights part of the international discourse.⁵² NGOs are romanticised for espousing the values of altruism, charity, development, participation, efficiency, cooperation, diversity, pluralism, institutional autonomy, individualism and strength in diversity, with an ability to create additional channels for popular participation, accountability and consultation, thereby improving the quality of governance.⁵³ The contribution of NGOs to world peace is illustrated by the winning of the Nobel Peace prize by Amnesty

⁴² Okafor (2006) 1 and 4.

⁴³ Lawyers Committee for Human Rights (LCHR) (1997) 5-6.

⁴⁴ Ngethe (1989) 7, Okafor (2006) 153.

⁴⁵ Ngethe (1989) 8, Gutto (1993) 142, Dicklitch (1998) 12.

⁴⁶ Smillie (1999) 23.

International (AI) in 1977.⁵⁴ Likewise, Sean McBride of the International Commission of Jurists (ICJ)⁵⁵ and Jody Williams of Human Rights Watch (HRW)⁵⁶ have been recipients of the Nobel Peace Prize. In Africa, the Treatment Action Campaign (TAC) was nominated for the Nobel Prize in 2003.⁵⁷

However, towards the end of the 1990s, criticisms of the NGOs have emerged. Because institutions such as the UN had portrayed civil society as “magic bullet” for state and market failure, it is not surprising that the scrutiny is highlighting the actual and perceived failings of civil society itself.⁵⁸ Currently, NGOs are no longer the “good guys”, with governments as the “bad guys,” as NGOs’ human rights observance, particularly the lack of democratic structures, transparency and legitimacy, are increasingly being exposed.⁵⁹ Mbogori contends that “many NGOs fall short of the standards expected of them to observe the basic tenets of democracy and rights.”⁶⁰ The claim that NGOs apply human rights values in their practices and organisational structures, or that they are even clear about their core values, is increasingly being disputed.⁶¹ Although NGOs do not hesitate to question the legitimacy or conduct of others, they often offer ambiguous and inadequate answers to questions of their own accountability.⁶² Of critical concern is the shrinking of the space for civic engagement in favour of organisations with greater resources and more access to decision-makers in capital cities.⁶³ Furthermore, the lack of openness about money, evaluations, complexities and the uncertainty of development makes NGOs susceptible to attack.⁶⁴

⁴⁷ Mutua (2003) 37.

⁴⁸ Welch (2004) 200.

⁴⁹ Welch (2004) 201.

⁵⁰ Orlins (1998) 130.

⁵¹ Baehr (2003) 31.

⁵² Korey (2001) ix; Kamminga (2005) 110.

⁵³ Ngethe (1989) 10, Ndegwa (1996) 18-21, Smillie (1999) 8, Edwards (2004), De Senillosa (1999) 87.

⁵⁴ Korey (2001) 24.

⁵⁵ Welch (2001) 92.

⁵⁶ Brown (2001) 83.

⁵⁷ Friedman and Mottair (2004) 1.

⁵⁸ Edwards (2001) 5, Van Tuijl (2000) 617 and 622, Edwards (2004) 17.

⁵⁹ Mutua (2002), Edwards (2004) 16, Reinisch (2005) 62-63, Kamminga (2005) 111, Okafor (1006) 5.

⁶⁰ Mbogori (2000) 50, www.africaaction.org/rtable/rtb2.pdf.

⁶¹ Edwards and Sen (2000) 614.

⁶² Van Tuijl (2000) 617.

⁶³ Edwards (2001) 5.

NGO work is often trivialised as purely voluntary, temporary and transient but not as serious work. Likewise, there is also extreme scepticism about NGOs as a constituency of “redundant self-serving elites” or “personal fiefdoms” who apply themselves to the people.⁶⁵ Nyamugasira argues that on the whole NGOs tend to be self-appointed, rarely have constituencies and tend to project their own construct of the issues purported to be those of the poor, while they consciously or unconsciously protect their own interests and those of their kind.⁶⁶ It is such lack of accountability that has evoked a range of derogatory acronyms, namely, BONGO (business NGO), BRINGO (briefcase NGO) GONGO (government NGO), DONGO (donor organised NGO), MONGO (My NGO), to mention but a few.⁶⁷

On the flip side of the coin, the problem with NGOs is “not the lack of accountability, but balancing accountabilities,” while protecting the core purpose of the NGO.⁶⁸ It is almost unanimously conceded that accountability is mostly directed towards donors, and government irrespective of the fact that the board, the members and the beneficiaries should be the first line of accountability. Although some NGOs are membership organisations, the democratic nature of the decision-making processes in many NGOs is sometimes questionable, with hardly any formal rules to ensure representativeness, transparency or accountability.⁶⁹ In fact, most legislation in Sub-Saharan African is geared towards controlling rather than providing guidance for the democratic governance of NGOs. A majority of the leadership of NGOs confess to learning on the job without adequate guidance about their governance roles and responsibilities. As such, while many NGOs are fairly well managed in terms of programme implementation, their legitimacy and governance are seriously contested. The result has been a negative image for the sector, burn out, low-life organisation expectancy, high turnover of personnel, with the performance of a particular organisation highly contingent on the personalities in leadership.

In the pursuit of building an international civil society, there is a quest for a more complete articulation of normative principles to guide its future development.⁷⁰ To date, the rights

⁶⁴ Smillie (1999) 26.

⁶⁵ Shivji (2000), Nyamugasira (1997), Jjuko (1995), Oloka-Onyango (2002) 292.

⁶⁶ Nyamugasira (1999) 108.

⁶⁷ Anwar (2006) 7.

⁶⁸ Smillie (1999) 21.

⁶⁹ Baehr (2003) 40.

⁷⁰ Kingsbury (2005) 129.

and responsibilities of civil society remain ill defined.⁷¹ Van Tuijl recommends that the UN human rights mechanism monitors the accountability of NGOs.⁷² Regarding the relationship between NGOs and human rights, whenever oppression occurs, irrespective of who is the oppressor, the concept of human rights is invoked.⁷³ As a normative discourse, human rights is useful to contain power by all actors. Any organisation or actor with influence and power must be subjected to pressure for accountability.⁷⁴ Cognisant that power dynamics are in continuous flux, NGOs as the promoters and defenders of human rights are also capable of being violators of human rights principles. Acknowledging and addressing the power imbalances is essential in strengthening NGOs. In the words of Anwar, “accountability is about civilising power for the preservation of freedom and justice,” particularly the power one wields.⁷⁵ Conversely, hiding the act of power shields it from critical scrutiny to improve the use of power in a manner that advances the interest of all parties.

The foregoing background has provided the basic characteristics of NGOs, demonstrating both the opportunities and shortcomings of their internal governance which point to the challenges of the NGO sector in promoting good governance and human rights. The background also provides the justification for the study, which sought to interrogate the NGO internal governance arrangements and how they have supported a human rights culture and ideals of good governance. The background has also alluded to the research problem, which is clearly stated below.

1.3. Research problem

Civil society organisations (CSOs) in general and NGOs in particular are considered as vital pillars of good governance. Furthermore, the promotion of human rights is a critical component of good governance. The NGO sector has been referred to as the vanguard of civil society in most third world countries, given their rapid proliferation⁷⁶ and vast financial resource potential. Furthermore, NGOs enjoy a position of considerable influence in the development and human rights discourse.

⁷¹ Edwards (2001) 2 and 6, LCHR (1997) 5-6.

⁷² Tuijl (2000) 625.

⁷³ Mamdani (1990) 359–360.

⁷⁴ Edwards (2004) 17, Robinson (2005) 36, Edwards and Sen (2000) 605 and 608.

⁷⁵ Anwar, World Bank Presidential Lecture (2007) 3 and 7.

⁷⁶ Fisher (1998) 2.

The problem is that, in spite of the vantage position of NGOs in terms of resource support and international policy systems, there is a concern that their internal organisational governance practices are weak and have not demonstrated a strong human rights orientation. The claim that NGOs apply human rights values in their practices and organizational structures, or that they are even clear about their core values, is increasingly being disputed. Concerns are raised as to the extent to which NGOs have exhibited a critical self reflection role as a mechanism of instilling good governance and human rights principles in their practices. Consequently, this study investigates the nature of the internal governance practices of NGOs, and asks how NGOs have applied human rights and good governance principles in the three eastern Africa countries of Kenya, Tanzania and Uganda, and in South Africa. Put differently, the thesis interrogates how NGOs organise and have applied human rights obligations to their own governance.

1.4. Research questions

The need to study how NGOs organise and govern themselves in addressing the fundamental questions related to human rights and good governance inspired this thesis. Thus, the study is guided by the following specific research questions.

- a) Do NGOs have human rights obligations under international law? If so, what are they and what is the legal basis and content of these obligations? Why is it important?
- b) How have NGOs in Kenya, Tanzania, Uganda and South Africa ensured that their work and governance is linked to the human rights discourse, thus mainstreaming human rights into their agendas? Why is it important for NGOs to mainstream human rights in their policies and work?
- c) How have the NGOs in Kenya, Tanzania, Uganda and South Africa complied with the principles of accountability and transparency?
- d) How have the NGOs in Kenya, Tanzania, Uganda and South Africa ensured participation and inclusion of the various stakeholders in their operations?
- e) How have NGOs in Kenya, Tanzania, Uganda and South Africa addressed the issues of empowerment, equity and non-discrimination?

The above questions constitute key analytical issues that underpin the notions of human rights and good governance. These issues are obligations of NGOs towards linking their work to human rights; accountability and transparency; participation and inclusion; equity, non-discrimination and empowerment. These principles form the major themes for discussion in chapters three, four, five and six of this thesis.

1.5. Theoretical framework

The theoretical foundation of this study applies an integrated approach that views human rights as a multifaceted discourse involving the socio-economic, political, technological and legal domains. The notions of NGOs, governance and rights – which form the main themes of this study – are hinged on a multidisciplinary approach cutting across the social sciences and the legal discourses. Making a case for the interrelation between NGOs, governance and rights, this study particularly draws from the rights-based approach that infuses human rights principles into the policies and practices of NGOs. The post-cold war period reinvigorated the quest for good governance, which necessitated the convergence of rights and development. The rights-based approach to development is a conceptual framework for the process of human development that integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development.⁷⁷ The principles include equality and equity, accountability and transparency, participation and inclusion, equity, non-discrimination and empowerment, which are concurrently key tenets of good governance.⁷⁸

The debate is further enhanced by the relationship between good governance and NGOs, which is two-pronged. First of all, it entails affording NGOs the space to organise as independent legal entities; and secondly, it imposes an obligation on NGOs to subscribe to human rights principles in their organising. In sum, the principles of good governance that are demanded of the state should equally apply to NGOs in order to enhance NGO's moral legitimacy and public trust. The interrelation of NGOs, governance and rights also borrows from the three schools of civil society identified by Edwards, namely (i) civil society as associational life; (ii) civil society as good society; and (iii) civil society as public sphere.⁷⁹ This thinking is now applied to NGOs.

⁷⁷ <http://www.unhchr.ch/development/approaches-01.html>.

⁷⁸ World Bank (2000) 64, Alston and Robinson (2005) 4, Alston (2005b) 825.

⁷⁹ Edwards (2004.)

The first and most dominant view of civil society is that of voluntary associations or organisations between the family and the state, but, though autonomous of the state they interact with it to advance their interests.⁸⁰ In respect to this thesis, understanding NGOs as autonomous associations is useful in analysing how NGOs interact with different stakeholders such as the state, donors, communities and markets, particularly in safeguarding the autonomy of NGOs in order to allow them to pursue their mission.

The second school of thought conceptualises civil society as “good society”: a desirable social order in which all institutions operate in ways that reinforce and nurture positive social norms, such as tolerance, non-discrimination, non-violence, trust and cooperation.⁸¹ NGOs as part of civil society are obliged to be “civil” by applying positive social norms in their policies, programmes and practices, yet this is an aspect that is least subjected to academic rigour.

The third school of thought perceives NGOs as part of the public sphere; an arena for argument and deliberation as well as for associational and institutional collaboration.⁸² The public sphere is an arena where social problems, public policy, government action, and common identities are debated and developed. The effective functioning of the public sphere requires a wide representation of views and interests in forging societal resolutions and generating innovative ideas.⁸³ The conceptualisation of human rights as part of the public sphere requires that the NGO sector apply the principles of accountability, participation, inclusiveness, and of empowerment in order to strengthen itself as a coherent sector as well as to be able to mobilise societal interests. Given that on its own associational life cannot yield a “good society”, an integrated approach of the concept of civil society is useful in addressing all forms of inequities and for the promotion of good governance.⁸⁴

This study was underpinned by the above theoretical orientation involving the rights-based approach and the three schools of thought attached to civil society. The above theoretical foundation underlies the debate as to whether NGOs observe human rights and good governance principles in their internal organisation.

⁸⁰ Edwards (2004), Uvin (2004), Ngethe (1999), Nyangabyaki (2000), Holland and Glen (1998), Oloka-Onyango (2000a), Barya (2000), Swilling and Russell (2002), Ngunyi (1996) 257.

⁸¹ Edwards (2004) 39.

⁸² Edwards (2004) 55.

⁸³ Edwards (2004) 59.

⁸⁴ Edwards (2004) 96.

1.6. Definition of key terms

Different terms are used to provide different meanings depending on the context in which they are used. It is therefore necessary to clarify the terms used in this study. The most prominent notions used in this study and constituting the research topic are ‘NGOs,’ ‘governance’ and ‘human rights.’ These concepts are defined in this section, but their connotations are variously described and elaborated elsewhere in this thesis where they are linked to other concepts. Furthermore, the concept of power is defined in this section, given its vast attachment to and implications for the notions of governance, human rights and the operations of NGOs. The other concepts of express linkage to rights; accountability and transparency; participation and inclusion and equity, non-discrimination and empowerment, which have far-reaching implications to the study topic, are introduced in chapter two and respectively discussed in chapters three, four, five and six of this thesis.

1.6.1 *Non-governmental organizations (NGOs)*

This section proceeds by presenting the relationship and the distinctions between NGOs, civil society, non-state actors and social movements. The section explores the different classifications of NGOs and provides a working definition of the term NGO.

a) *NGOs and civil society*

Discussions about NGOs are often conflated with those of civil society, given that NGOs are engulfed within the larger discourse about civil society. While acknowledging that NGOs are part of civil society, this thesis restricts itself to NGOs due to the fact that the term “civil society” is such an omnibus expression encompassing professional associations, trade unions, cooperatives, community based organizations, NGOs, self-help informal associations, ascriptive groups, universities, hospitals, sports clubs, religious congregations and charities, to mention but a few. Quite obviously, such a range of actors is simply too broad for the current analysis. At the same time, the term civil society is quite restrictive because it excludes organisations that do not overtly engage the state, but instead exist to defend and maintain their autonomy. However, it is not within the scope of this thesis to get into the detailed account of the discourse on civil society, cognisant that it is plagued with conceptual and definitional disputes.

b) *NGOs and social movements*

NGOs have also been defined in relation to social movements. The term “social movement” is used in this thesis to refer to collective action by groups of organisations and individuals working for political and social change, but allowing for a diversity of actors and ideological positions within a coalition.⁸⁵ Therefore, NGOs can form part of these social movements. However, this thesis does not include social movements, but refers to them only in so far as NGOs have participated in them.

c) *NGOs and non-state actors*

NGOs are defined as non-state actors. Non-state actors are vaguely defined to include all those actors that are not representative of states, yet operate at the international level and are potentially relevant to international relations, are sizeable and have a substantial and multi-national constituency, and may include the international financial institutions, as well as terrorists and guerrilla groups.⁸⁶ The definition by the European Commission is illustrative:⁸⁷

[N]on-state actors [are] groups which are created voluntarily by citizens; are independent of the state; can be profit or non-profit making organisations; have a main aim of promoting an issue or defending an interest, either general or specific; and, depending on their aim, can play a role in implementing policies and defending interests. In trying to be more specific the EU indicates that they can include: NGOs, trade Unions, employers' association, universities, associations of churches and other confessional movements, cultural associations, etc.

Therefore, although NGOs are part of the group of non-state actors, this thesis focuses on only NGOs because the non-state sector is too open-ended to be of use to specific policy prescription under international law.⁸⁸

d) *Defining NGOs*

As in respect of many other terms, there is no universally agreed definition of the term “NGO”. There is indeed considerable contestation about what constitutes an NGO. Confusion over the term “NGO” is compounded by the suggestion by The *Encyclopaedia of Public International Law 1997* that NGOs may encompass multi-national corporations and even national

⁸⁵ Egan and Wafer (2004) 3, Ndegwa (1996) 6.

⁸⁶ Alston (2005) 15 emphasis added.

⁸⁷ Alston (2005) 15.

⁸⁸ Alston (2005) 16.

liberation movements.⁸⁹ The ECOSOC simply defines an NGO as “any organisation that is not established by a governmental entity or intergovernmental agreement.”⁹⁰ Besides there are domestic variances of what constitutes NGOs. For example, in Canada, NGOs include universities, colleges, professional organisations and even trade unions; in the Scandinavian countries, NGOs include trade unions; in Japan, NGOs include parastatals and in Germany NGOs include political foundations.⁹¹ The World Bank’s operational definition of NGOs is a “variety of groups and institutions that are entirely or largely independent of government and characterised by humanitarian or cooperative rather than commercial objectives.”⁹² Under the UN, NGOs are mainly defined in terms of the roles accorded to them.⁹³

Generally, in East Africa, NGOs have been defined in legalistic terms. In Uganda, an NGO is defined broadly as an organization established to provide voluntary services including religious, educational, literacy, scientific, social or charitable services to the community.⁹⁴ Thus charismatic churches are also registered under the NGO Act.⁹⁵ CBOs are defined as “non-governmental organisations operating at sub-county level and below whose objectives is to promote and advance the well being of its members or the community.”⁹⁶ In Tanzania, an NGO is defined as a “voluntary grouping or organisation which is autonomous, non-partisan and not for profit sharing which is organised at the local, national or international level for the purpose of enhancing or promoting economical, environmental, social or cultural development or protecting the environment, lobbying or advocating, but does not include a trade union, social club or sports club, political party, religious or faith based organisation or CBOs.”⁹⁷ In Kenya, an NGO is defined as a “private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organised themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry

⁸⁹ Kamminga (2005) 95.

⁹⁰ Resolution 1996/31 para 12, www.2.ohchr.org/documents/ecosoc/res/1996/eres1996-31.htm.

⁹¹ Smillie (1999) 16.

⁹² The World Bank Operational Directives on Non-Governmental Organisations collaboration, quoted in Smillie (1999b) 279.

⁹³ Alston (2005) 14.

⁹⁴ Uganda NGO Act (1989) s.13.

⁹⁵ NGO Board File: ADM/79/158/02, 11 April 2007, Min.03.04.07.

⁹⁶ The NGO Amendment Act, (2006) s.7(3).

⁹⁷ Tanzania NGO Amendment Act (2005) s.2.

and the supply of amenities and services.”⁹⁸ In South Africa, NGOs are referred to as non-profits, which includes a trust, company or other associations established for a public purpose and its income and property are not distributed to members or office bearers except for reasonable compensation.⁹⁹

One of the most common approaches of defining NGOs considers an NGO as an organisation that meets four negative criteria, namely that it should be non-governmental, non-corporate, non-profit and non-electorate.¹⁰⁰ Kamminga, for example, defines the term NGO as follows:¹⁰¹

NGOs are defined by what they are not. First and foremost, NGOs are private structures in the sense that they are not established or controlled by States. This distinguishes NGOs from inter-governmental organisation (IGOs). Secondly, NGOs do not seek to overthrow governments by force. This distinguishes them from liberation movements and armed opposition groups. Thirdly, while NGOs seek to change government policies they do not aim to acquire state power themselves. This distinguishes NGOs from political parties. Fourthly, while NGOs may engage in fund-raising and merchandising activities they do not seek financial profit for their own sake. This distinguishes NGOs from companies. Fifthly, while some NGOs may occasionally engage in civil disobedience, they are generally law abiding. This distinguishes NGOs from criminal organisations.

The Commonwealth Foundation identifies four defining characteristics which distinguish NGOs from other civil society organisations, namely:

- voluntary formation and an element of voluntary participation;
- controlled and managed independently but nonetheless operate within the laws of society as a whole;
- not functioning for personal private profit or gain of those who control and manage their affairs and using earned revenues in pursuit of the aims of the organisation; and
- not self-serving, but aiming to improve the circumstances and prospects of disadvantaged people and act on concerns and issues which are detrimental of the well being circumstances or prospects of people or society as a whole.¹⁰²

There are as many categorisations of NGOs according to target groups, methodologies, ideological focus and geographical scope. Women’s organisations (WNGOs) are

⁹⁸ Kenya NGO Act 19 (1990) s.2.

⁹⁹ South African Nonprofit Act 71 /1997.

¹⁰⁰ Mamdani and Otim (1994) 5, Ngethe (1989) 15, Barya (2000) 2, Kamminga (2005) 96, Mubangizi (2004) 199.

¹⁰¹ Kamminga (2005) 96.

¹⁰² Commonwealth Foundation, Guidelines for good policy and practices (1995) guideline 1.

those that primarily address women's issues and are led by women. Similarly, Lesbian, Gay, Bisexual, Transsexual and Intersexuals (LGBTI) are organisations that are led by those groups and primarily focus on their interests. Likewise, youth NGOs are led and primarily focus on youth.

The most common categorisation of NGOs is between those working in operational, relief, humanitarian and service delivery commonly known as development or welfare NGOs on the one hand. On the other hand are the NGOs working on advocacy and which are seeking to influence the policies of public authorities, commonly known as human rights, democracy or governance NGOs. According to the International Council of Human Rights Policy (ICHRP) human rights NGOs (HURINGOs) are organisations which have defined their goal as the promotion and protection of human rights.¹⁰³ Nonetheless, the ICHRP concedes that HURINGOs have much in common with other NGOs.¹⁰⁴ By focusing on providing economic, social and cultural rights (ESCRs), development organisations (DNGOs) contribute to the welfare of the human person thus promote the fulfilment of rights, while HURINGOs prioritise civil and political rights (CPRs), which also protect rights.¹⁰⁵ Increasingly, many NGOs are addressing rights violations and experimenting with addressing poverty as a human rights issue.¹⁰⁶ Globally, most NGOs describe themselves as multi-functional.¹⁰⁷ Moreover, most organisations in Sub-Saharan Africa engage in numerous programmes that blur the distinction between development and rights. Consequently, while conceding that NGOs have different goals, different strategies as a means of achieving those goals and different geographical foci, this thesis does not distinguish between HURINGOs and DNGOs arguing that it is the flip side of the same coin. Therefore, defining NGOs by their activities is inadequate given that many NGOs engage in numerous activities.

Another major distinction is the one between INGOs and local or domestic NGOs—a distinction introduced by the ECOSOC. On inception, the ECOSOC only granted observer status to INGOs, which are defined as organisations having an international character, with members and branches in more than one country and with objectives that are not limited to one state.¹⁰⁸ According to this understanding, national NGOs limit their activities to their countries while INGOs work in more than one country.

¹⁰³ ICHRP (2003) 2 and 25.

¹⁰⁴ ICHRP (2003) 19.

¹⁰⁵ Scott (2001) 209.

¹⁰⁶ ICHRP (2003) 23.

¹⁰⁷ Commonwealth Foundation (1995) 22.

¹⁰⁸ ECOSOC Resolution 1296 (XLIV) 23 May 1968 on Consultative relations between UN and NGOs.

In consonance with the above, INGOs define themselves as independent non-profit organisations that work globally, across a range of countries and cultures to advance the public good.¹⁰⁹ Similarly, Steiner distinguishes between INGOs, which he identifies as “1st world” NGOs and national NGOs as “3rd world” NGOs.¹¹⁰ Likewise, Bell and Carens define INGOs as organisations with substantial autonomy to decide upon and carry out human rights or humanitarian projects in different regions around the world and criticise human rights in foreign lands.¹¹¹ Furthermore, because INGOs do human rights work in many countries they tend to rely on international law as applicable across the board.¹¹² At a retreat in Harvard, participants found the criteria of reliance on international law to draw a distinction between the national and INGOs misplaced, because whether or not an organisation relies on international human rights law is a question of strategy.¹¹³ Although international law is illustrating the universal acceptance especially in the absence of supportive domestic laws, employing domestic law is politically expedient and dispels the criticism of being inspired by alien doctrine.¹¹⁴

The differences between so-called “1st World” and “3rd World” NGOs are quite superficial. Most African human rights organisations are “miniature replicas” of AI, HRW and ICJ in mandate, structure and methods of work.¹¹⁵ A similar categorisation distinguishes between indigenous and international organisations. Such a categorisation is redundant given that a majority of NGOs in the South are dependent on donor funding from the North and a number of INGOs actually employ the indigenous populace and benefit the South. Nonetheless, the thesis shall discuss the dynamics of Northern NGOs (NNGOs) and Southern NGOs (SNGOs) relations in building a coherent, fair and inclusive global human rights movement necessary in the world of globalisation. NNGOs are usually international NGOs and are headquartered in the North while SNGOs are usually headquartered in the South or the developing world.

The thesis does not distinguish between community-based organisations (CBOs) and NGOs. The term “CBO” is understood to refer to an informal association of individuals who

¹⁰⁹ INGO Charter (2005) 1.

¹¹⁰ Steiner (1999) 5.

¹¹¹ Bell and Carens (2004) 301.

¹¹² Steiner (1999) 7.

¹¹³ Steiner (1999) 5-6.

¹¹⁴ Ibid.

¹¹⁵ Mutua (2004) 194, Oloka-Onyango (2002).

mainly mobilise to support and improve the lives of ordinary people at the village level.¹¹⁶ Such associations include self-help groups, burial societies and revolving micro finance, to mention but a few. Furthermore, although CBOs are so localised that it is difficult to analyse them on a comparative and large scale, the rights-based approach principles should apply to them.

The Commonwealth Foundation recognises that despite the different classifications the shared characteristics and issues concerning NGOs provide a basis for common guidelines. Most importantly, NGOs share a set of values “based on the desire to advance and improve the human condition” and to “enhance human dignity.”¹¹⁷ Consequently, this thesis argues that any organisation that exists in the public trust, and works on the advancement of the welfare and dignity of the person—irrespective of whether it defines itself as development, human rights, humanitarian or equality NGOs, 1st or 3rd world, South or North NGO, international or indigenous, to mention but a few classifications—must apply human rights principles. Therefore the thesis adopts the term “NGO” in its broadest sense as any grouping with the following characteristics:

- a) It is established by legal authority or through voluntary association because the right to freedom of association is an inherent right whose enjoyment is not contingent on the registration.
- b) Its aims or objectives advance human rights or improve the welfare of the human person.
- c) Its methods of operations must not be criminal nor detract from human rights of others.
- d) It many engage in a profit endeavour for purposes of its sustainability but not for private gain.
- e) It is not partisan, irrespective of whether is political or apolitical in orientation.¹¹⁸
- f) It is not a trade union, cooperative, church, political party and university.

1.6.2 *Governance and Good Governance*

The word *governance* comes from the ancient Greek word, *kerberno*, meaning *to steer*.¹¹⁹ The concept of *governance* is traditionally applied to the narrow sense of exercising political power to manage the nation’s affairs.¹²⁰ In its historical context, particularly in colonial Africa, governance was essentially “coercive and authoritarian” without emphasis on “participatory and accountability

¹¹⁶ Swilling and Russell (2002) 20, Hassim (2004) 4 and 14.

¹¹⁷ Commonwealth Foundation (1995) vii and 14.

¹¹⁸ To be discussed in chapter 3.

¹¹⁹ Lakey (2000) 6.

¹²⁰ Koch (2002) 84.

elements.”¹²¹ The contemporary meaning of *governance* has extended from its traditional government action of utilising power to enforce societal compliance, to focus much more on addressing developmental roles by the different segments of socio-economic and political actors.¹²² The role of citizens and the way social groups organise to make and implement decisions affecting their well being is a core governance activity. This means that apparently, governance is not a preserve of the state but rather, a partnership between the leaders and the led to promote the entire society’s well-being.¹²³ Kuye and Kakumba define *governance* as the manner in which power, authority and resources are used towards the realisation of a nation’s or an organisation’s developmental objectives.¹²⁴ It could therefore be good or poor governance. In simplistic terms, governance refers to the task of running a government or an organisation. The World Bank defines *governance* as the “institutional capability of public organisations to provide the public and other goods demanded by a country’s citizens or their representatives in an effective, transparent, impartial and accountable manner subject to resource constraints”.¹²⁵

The Lawyer’s Committee for Human Rights (LHRC) was the first INGO to utilise the leverage of the World Bank to press for the application of human rights to development, arguing that the crisis of governance contributed to the failure of many of its development programmes.¹²⁶ Gradually, the World Bank began to undertake initiatives to increase accountability and legal reforms in developing nations, giving birth to the concept of *good governance*.¹²⁷ After the end of the Cold War, good governance became generally accepted as a guiding principle, with many donors began basing their relations on ownership, accountability to domestic stakeholders, rule of law, rather than purely strategic issues.¹²⁸

Good governance may be utilised as a practical and technical tool, legal or normative principle. In implementing good governance, most donors tend to use it as a practical and technical tool to strengthen state functioning in terms of public sector management, audit, accountability,

¹²¹ Oloka-Onyango (2003) 857.

¹²² Kuye and Kakumba (2007) 1.

¹²³ Kuye and Kakumba (2007) 1.

¹²⁴ Kuye and Kakumba (2007) 2.

¹²⁵ The World Bank (2000) 48.

¹²⁶ Korey (2001) 513-514.

¹²⁷ The World Bank (2000) 64.

¹²⁸ The World Bank (2000) 59 and 64.

professional ethos, transparency, anti-corruption and rule of law, in order to facilitate an environment that is conducive for economic growth.¹²⁹

Popularized by the 1989 World Bank Report, “Sub-Saharan Africa: From crisis to sustainable growth”, *good governance* became a concept to guarantee human rights, check corruption and promote democratization through citizen participation, as well as transparency and accountability. According to the World Bank, the aim of the good governance is to achieve the “three E’s,” namely:¹³⁰

- *empowering* citizens to hold governments accountable through participation and decentralisation,
- *enabling* governments to respond to new demands by building capacity, and
- *enforcing* compliance with the rule of law and greater transparency.

As a legal concept, good governance connotes the use of law to regulate the exercise of public power, which law includes public international law, and thereby encompasses human rights law.¹³¹ One of the cardinal principles of human rights law is the principle of equality, which emphasizes the point that legal rules must be applied without discrimination and the equal treatment of similar cases.¹³² Furthermore, the rule of law underscores the prevention of the arbitrary use of power by any actor.

Related to the above is the use of good governance as a normative concept that places human rights at the core of the realisation of good governance in order to enhance the welfare and dignity of the human person.¹³³ Inherent in the concept of good governance are the notions of state-citizen relations and the concept of civil society both as a counter balance to the state and more importantly to mitigate the negative impact of structural adjustment programmes (SAPs).¹³⁴ In conceptualising civil society, the World Bank perceives it in a technocratic and apolitical manner, useful for articulating popular interests, monitoring government performance and

¹²⁹ Sano (2002) 132, World Bank (2000), (1994), (1989), Koch (2002) 92.

¹³⁰ The World Bank (2000) 64.

¹³¹ Koch (2002) 86.

¹³² Koch (2002) 88, Scheinin (2002) 40.

¹³³ Sano (2002) 137.

¹³⁴ Mamdani and Otim (1994) 13, Hearn (1999) 3, Barya (2000) 6, Oloka-Onyango (2000) 89-20, Nyangabyaki et al (2004) 16, Sano (2002) 123.

facilitating participation in governance.¹³⁵ In applying good governance to non-state actors, the International Law Association Committee on Accountability of International Organisations, identifies the core principles of good governance to include accountability, transparency and participation.¹³⁶

Concerning NGOs, governance means to steer, to control and to influence from a position of authority.¹³⁷ Stone and Ostrower observe that within the non-profit literature governance is primarily understood as the board's compliance with their legal duties of care, obedience and loyalty.¹³⁸ However, while the popular belief is that governance is the mandate of the board, in reality there are numerous important actions by different stakeholders such as donors, state, founders, communities to mention but a few that impact on the governance of an organisation.¹³⁹ In other words, organisational governance refers to "the manner in which power is exercised in the optimal deployment of organisational resources so as to maximally achieve the mission of the organisation".¹⁴⁰

This thesis takes a broad definition of governance as the way in which an organisation sets direction by making decisions about people, priorities, programmes, and money, and how it ensures accountability and transparency in exercising its authority or stewardship.¹⁴¹ Governance also encompasses accountability to both internal and external stakeholders such as communities, beneficiaries, donors and government and different structures within the organisation.

1.6.3 *Human rights*

None of the international instruments expressly defines what human rights mean. Human rights are generally understood as the rights that one has simply as a human being.¹⁴² Traditionally under positivist international human rights law, human rights are guaranteed by law and the primary duty to protect human rights lies with the state.¹⁴³ The Office of the High Commissioner

¹³⁵ World Bank (2000) 72, Dicklitch (1998) 15, Uvin (2004) 173.

¹³⁶ Reinisch (2005) 49.

¹³⁷ Lakey (2000) 6.

¹³⁸ Stone and Ostrower (2007) 417.

¹³⁹ Stone and Ostrower (2007) 418 - 419, Lister (2003) 175, 185 and 189.

¹⁴⁰ Camay and Gordon (2002) 1-2.

¹⁴¹ Definition jointly formulated by participants of *Non-Profit Governance Workshop* in East Africa, Naivasha, 7 July 2000.

¹⁴² Encyclopedia Britannica, <http://www.britannica.com/EBchecked/topic/275840/human-rights#:~:>

¹⁴³ www.ohchr.org/EN/issues/Pages/WhatAreHumanRights.aspx

for Human Rights (OHCHR) defines human rights as: universal; inherent to all human beings; enjoyed equally; inalienable, interrelated, interdependent and indivisible.¹⁴⁴ Although rights are variedly defined a central theme is “equality and non-discrimination”¹⁴⁵ based on the recognition of the value of individual freedom or autonomy.”¹⁴⁶

In addition to the above, this thesis adopts the framework provided by the sociology of law, which conceptualises human rights as a normative concept that outlines the principles or values that enhance human dignity and welfare. The Universal Declaration of Human Rights (UDHR) defines human rights as “a common standard of achievement for all peoples and all nations.”¹⁴⁷ All societies espouse the principle of universal humanity and human dignity.¹⁴⁸ According to OHCHR, “... participation, empowerment, accountability, equity, non-discrimination, and express linkages to international human rights norms and standards” are widely recognised principles central to human rights.¹⁴⁹ It acknowledges that individuals have both rights and the obligation to respect the human rights of others.¹⁵⁰ Thus, human rights are similar to the South African concept of “*ubuntu*” loosely translated to mean humanness, respect for the human person and responsibility towards one another.”¹⁵¹

1.6.4 Power

The Oxford Dictionary defines ‘power’ as the authority to do something, influence people or events, and strength. According to Lips, social psychologists define power as the “capacity to affect the quality of the other person’s outcomes and the ability to get another person to do what one wants her or him to do, despite initial resistance”.¹⁵² Relying on the theory of social exchange, Lips argues that “one person’s ability to influence another depends on the first person’s

¹⁴⁴ [www.ohchr.org/EN/issues/Pages/WhatareHumanRights.aspx??](http://www.ohchr.org/EN/issues/Pages/WhatareHumanRights.aspx?).

¹⁴⁵ UDHR (1948) preamble and art. 1, ICCPR (1966) art. 3 and art. 26, ICESCR (1966), the African Charter (1981) art. 5 and art. 19.

¹⁴⁶ Shestack (1998) in Heyns and Stefiszyn (eds) (2006) 5.

¹⁴⁷ UDHR (1948) preamble.

¹⁴⁸ Leary (1990) 30, Gutto (1993) 160, Shestack (1998) in Heyns and Stefiszyn (eds) (2006) 3, Heyns and Viljeon (1999) 421, An-Na’im and Deng (1990) 9, Paul, (1990) 214, Mutua (2002) 8, Welch (1990) 206.

¹⁴⁹ Robinson (2005) 38.

¹⁵⁰ www.ohchr.org/EN/issues/Pages/WhatareHumanRights.aspx.

¹⁵¹ South African Human Rights Commission (2006) <http://www.sahrc.org.za/sahrc-cms>, Cornell and van Marle (2005) 205 - 206, Cobbah (1987) in Heyns and Stefiszyn (eds) (2006) 36.

¹⁵² Lips (1991) 3-4.

control over resources that the other wants”.¹⁵³ These resources can be tangible, such as food, shelter, objects, sex, money, job advancement, awards, honours, grades; or intangible, such as love, approval, acceptance, emotional support. According to Lips, in a power-based social exchange, the power of the parties in the exchange is usually unequal, as the party that is least dependent on the other for rewards has the greater power.

Therefore, power is not a commodity but it is a process underpinning human relationships.¹⁵⁴ The continuation of power relations depends to some extent on the cooperation of the weak to quietly accept it.¹⁵⁵ Power can also be used to manipulate and control others, instead of using it to improve the common good.¹⁵⁶ Thus power is a forerunner and a dilemma of human rights, such that whenever human rights violations occur, negative power relations are often prevalent. As such, the concept of human rights is useful as a discipline to tame power by all actors and at all levels of society. Change in personal behaviour to use power in a constructive manner cannot simply be achieved through law, but it requires a serious personal commitment to build a more humane society.¹⁵⁷ Thus NGOs as growing power holders have to self-reflect on how they address the power imbalances in their policies, strategies, programming and relationships. Hence the thesis discusses power as a relationship issue and specifically examines how NGOs have negotiated the unequal power within the organisation, the NGO sector and between NGO relationships with the different stakeholders, such as communities, donors and the state.

The assessment of the potential and constraints of NGOs requires an analytical framework that captures both the internal and external influences on the sector, covering their strategies, priorities, fears, funding and power dynamics within the NGO sector. It is hoped that this thesis makes a contribution to this development based on the experience of NGO activists in Kenya, Tanzania, Uganda and South Africa and adds to the efforts to strengthen struggles for NGO governance through self-regulation combined with public scrutiny of NGO human rights performance.

¹⁵³ Lips (1991) 57-58.

¹⁵⁴ Lips (1991) 3-4.

¹⁵⁵ Lips (1991) 3 and 8.

¹⁵⁶ Refer Greene (1998).

¹⁵⁷ Edwards and Sen (2000) 609-610.

1.7. Methodology

1.7.1. Focus area of study

The thesis provides a descriptive and analytical approach of the NGO sector from a comparative point of view. The study focuses on selected countries in Eastern and Southern Africa. Although in 2006 the East Africa Community (EAC) membership was expanded to include Burundi and Rwanda,¹⁵⁸ this thesis generally focuses on Kenya, Tanzania and Uganda as the original members of the EAC.¹⁵⁹ The original countries of East Africa share a common colonial history. The revival of the EAC is strengthening the political, security, economic, social and cultural collaboration. A regional Parliament, Court of Justice and Custom's Union are in place.¹⁶⁰ East African citizens are nurturing solidarity particularly among the youth, women, professional associations and the private sector. For comparative purposes, the thesis also focuses on South Africa. The focus on South Africa is due to the perception of South Africa as an example of a dramatic re-birth of a nation based on human rights struggles.¹⁶¹ Since the abolition of apartheid, South Africa continues to exert a significant influence on the international human rights agenda, both by domestic examples and by its new found prominence as a human rights advocate.¹⁶²

This thesis focuses on those organisations that identify themselves as NGOs. However, it does not profile any specific organisations. Instead, it adopts a thematic approach that focuses on the issues under investigation and discusses the opportunities, challenges and lessons learnt by NGOs. Put differently, the thesis does not in any way seek to evaluate any given NGO but highlights the insights into how NGOs organise offering scenarios of learning. This is intended to encourage honest reflection and discussion about the sector, while simultaneously attempting to mitigate the incrimination of specific NGOs, given that many NGOs are in a learning process. However, in situations of published information irrespective of its negative critique and in cases of positive examples, the identity of a given organisation or individual is revealed in order to encourage learning. In applying law as an instrument of social change, the thesis moves beyond the legalistic analysis of the law governing NGOs to an analysis of empirical information of the governance of NGOs.

¹⁵⁸ www.eac.int/about-eac.html.

¹⁵⁹ EAC Treaty (1999) art. 2.

¹⁶⁰ www.eac.int/about-eac.html.

¹⁶¹ Mutua (2002) 128.

¹⁶² Alston (1998) 1.

1.7.2. *Data collection techniques*

A literature review was undertaken to inform the conceptual framework and provide information about NGO operations. Sources of information included libraries, NGO inventories at the NGO regulation boards, information within the organisations such as evaluation reports, project reports and annual reports, donor reports accessible to the public and newspaper articles and parliamentary Hansards.

Face-to-face interviews supplemented the literature review. Over a hundred in-depth interviews were carried out in Uganda, Kenya, Tanzania, South Africa, the Arusha-based EAC Secretariat, the Gaborone-based SADC Secretariat and the Banjul-based Africa Commission on Human and Peoples' Rights.¹⁶³ The field research targeted the following:

- a) The leadership within NGOs were targeted in order to document their reflections and on-going struggles in applying human rights principles derived from the concept of good governance to their organisations. The field research helped to highlight the gaps between the law and practice.
- b) NGO Registration Boards were assessed to determine the extent to which the law and legal framework facilitates the governance of the NGOs.
- c) The focus on the NGO self regulatory body of Kenya analysed the factors that inhibit or promote self-governance of the NGO sector.
- d) The National Human Rights Institutions (NHRIs) were interviewed to investigate their working relationships, given that the Paris Principles oblige a collaborative relationship between the HRCs and NGOs in the promotion of human rights.
- e) NGO networks, such Development Network of Indigenous Associations (DENIVA) and Uganda NGO Forum in Uganda; Tanzania Association of NGOs (TANGO), Tanzanian Council for Social Development (TACOSODE); and the South African NGO Coalition (SANGOCO), were interrogated to investigate why, despite the theoretical consensus of the utility of networks to coordinate NGOs' participation and collective voice, networks are volatile and to highlight the factors that contribute to successful networking.
- f) A few strategic individuals from the donor community, academia, organisational development consultants and government officials for an outsider comparative perspective were interviewed.

¹⁶³Schedule of full list of interviews is attached as Appendix A. Reference to specific interviews will be made in the text where appropriate. Transcripts or notes of interviews are on file with the author.

1.7.3. *Data analysis*

Data analysis involves the process of scrutinizing, categorizing, tabulating and integrating information in such a way that it addresses the critical research questions of the study. The process of analyzing data was continuous. Analysis from field notes was done immediately after collecting the data. The preliminary review and analysis of documents enabled the researcher to identify the key thematic issues; and later during the interviews, it helped in redesigning the questions in order to capture the analytical themes.

The information generated from in-depth interviews was transcribed and summarised following developed themes and sub-themes related to the five research questions. Thus, the material was subjected to a thematic analysis to establish possible disparities and connections in meaning. This enabled the researcher to compare the data across and discover connections between themes, which offered a reliable and elaborate investigation into the NGO internal governance arrangements. The analytical themes that linked with the research questions were:

- The pursuit of human rights principles by NGOs as integral to their functioning;
- Accountability and transparency within NGOs;
- Participation within NGOs;
- Empowerment, equity and non-discrimination within NGOs.

1.8. **Limitations to the study**

The study encountered a number of limitations. A rigorous scientific study of the practices of NGO governance in East and South Africa would be unrealistically ambitious. Nonetheless, information in consultancy reports and scholarly literature covering a number of specific organisations was used to supplement this particular study, mindful of the ethics of confidentiality. In such cases, scenarios were painted instead of revealing the identity of a particular organisation.

Further, it is also quite clear that interviews may result in subjectivity, and may be prone to value judgments depending on the actual experience of a given organisation or interviewed respondents. Whereas written policies provide insights into NGO thinking, policies are not conclusive evidence of the governance status in an organisation. Policies can mask the struggle over power and accountability in any given organisation due to the obvious differences between written policies and practice. Thus, whereas policy documents were reviewed to establish the nature of

NGO internal governance arrangements, in some instances, such documentation were not available; and where they existed, some respondents would be cagey about their implementation.

Given that the governance of NGOs is contingent on the general human rights framework within which it operates, the following discussion provides an overview of the NGO sector in the countries of the study.

1.9. A bird's eye view of the historical development and status of the NGO sector

It is over-ambitious to attempt to describe the current status of the human rights movement in East and South Africa due to the fact of the different and varied NGOs and human rights movements amongst the different sectors of civil society, coupled with the fact that each are shaped by the specific context within which it operates.¹⁶⁴ Therefore this section maps the broad contours of the human rights movements in both contexts, providing a background to the chapter.

The INGO movement has its roots in the missionary movements that have been in existence since the sixteenth century and “derives its ideals in the volunteer-sending organisations.”¹⁶⁵ In contrast, the human rights movements in Africa have arisen out of necessity and survival, rooted in African communal tradition, the missionary crusade and colonialism.¹⁶⁶ Africans have a rich tradition of solving social problems through cooperative efforts at the grassroots, particularly in search of alternative ways of developing their communities.¹⁶⁷ The common characteristic of these social organisations was their collective nature, grounded in community social obligation for each individual's well being based on reciprocity rather than a benevolent act.¹⁶⁸ The right of association was an inherent and natural right in Africa, with the notion of dissent and expression of one's opinion an essential component of forging societal consensus.¹⁶⁹ Put differently, the most elementary human rights of self-expression, freedom of speech, the right to form social organisations to improve their conditions and above all the right to move freely within their communities were rights enjoyed from time immemorial.¹⁷⁰ Within the community life, the right of

¹⁶⁴ International Human Rights Internship Program et al (1994) 1.

¹⁶⁵ Smillie (1999) 8.

¹⁶⁶ Kanyinga et al (2004) 99.

¹⁶⁷ Mamdani and Otim (1994) 3.

¹⁶⁸ Kanyinga et al (2004) 100, Kenyatta (1938) 2 and 117, Kiondo et al (2004) 130.

¹⁶⁹ Interview Hansungule, Professor, Centre for Human Rights Pretoria, Advisor SADC Cultural leaders Association, 14 May 2007, Mandela (1994) 20 - 21.

¹⁷⁰ Kenyatta (1938) 197.

association is epitomised by the collective action in all aspects of life including eating, drinking, working, sleeping were done collectively.¹⁷¹

With specific reference to East Africa, from the mid 19th century, the missionaries galvanised the civil society sector as understood in the modern sense by establishing health centres and schools.¹⁷² Simultaneously, there were also numerous organisations such as cultural, professional, ethnic associations, farmers unions and women's groups. Although initially introduced to remedy social problems, these organisations often served as a basis for political mobilisation and the empowerment of the population in achieving access to basic needs and rights.¹⁷³ Many of these organisations constituted the foundation of the struggles against colonialism premised on the rights of citizens to participate in decisions that affect their lives. Undoubtedly, these organisations were human rights organisations, although not expressly referred to as such.¹⁷⁴ They are often trivialised as informal associations because under modern legal frameworks, an organisation has to be registered to qualify as an NGO. In other words, the right to freedom of association of an NGO becomes a positive right acquired on condition of registration by the state.¹⁷⁵

With the establishment of single party states soon after independence, the 1960s witnessed the conscription, co-option and decimation of the growth of human rights organisations and civil society in general. Mass organisations for women and youth, and trade unions were either banned outright or turned into party wings.¹⁷⁶ Although autonomous organisations existed, their primary objectives were survival, organising on self-help basis at the local level.¹⁷⁷ Furthermore, until the early 1980s, NGOs remained peripheral actors in Third World development, since most development aid was bilateral.¹⁷⁸

The proliferation of NGOs and the rekindling of popular struggles for democratic political space and constitutional reforms in the 1980s in East Africa is attributed to four main factors. These are the retreat of the state in the provision of welfare services, particularly health and

¹⁷¹ Kenyatta (1938) 195.

¹⁷² Kiondo et al (2004) 130, Kanyinga et al (2004) 100, Nyangabyaki et al (2004) 144.

¹⁷³ Mamdani and Otim (1994) 13, Welch (1995) 45, Nyangabyaki (2000) 39, Ndegwa (1996) 32, Oloka-Onyango (2003) 29, Chachage and Mbilinyi (2003), 8, Kanyinga et al (2004) 100-101, Salamon et al (2004) 50.

¹⁷⁴ Mutua (2004) 193, Oloka-Onyango (2002) 287, Ndegwa (1996) 8, Kitunga (2003) 37.

¹⁷⁵ Interview Hansungule Professor, Centre for Human Rights Pretoria, Advisor SADC Cultural leaders Association, 14 May 2007, Pretoria, Mandela (1994) 20-21.

¹⁷⁶ Peter (1997) 727, Kiondo and Mogella (2006) 24.

¹⁷⁷ Dicklitch (1998) 54-55.

¹⁷⁸ Ndegwa (1996) 22.

education as dictated by the Structural Adjustment Programmes, the rising unemployment of the educated strata, donor policy of channelling some funding through NGOs and political space ushered in by the end of the cold war that placed human rights and governance on the radar screens of many donors.¹⁷⁹

Despite being members of the East Africa Community and having a shared colonial history, there are several differences in the status of human rights movements in East Africa. For example, in the 1990s Kenya boasted of a vibrant NGO sector.¹⁸⁰ While NGOs in Tanzania are emerging from the single party (*Ujamaa*) ideology that dictated unquestioned allegiance to the state, in the 2000s, NGOs in Tanzania have exhibited a remarkable vigilance in the struggle for their autonomy and are comparatively better organised.¹⁸¹ In Zanzibar, with the exception of Zanzibar Legal Service Centre (ZLSC), the Zanzibar Society for Persons with Disability and Association of NGOs in Zanzibar (ANGOZA) NGOs are extremely weak and tainted with charges of partisanship.¹⁸² While human rights work has a long history, the emergence of open and self-professed human rights organisations in Africa is comparatively new.¹⁸³ The human rights movement in East Africa has been characterised as nascent, weak, ad hoc and episodic.¹⁸⁴ While there is no cross-cutting data on all issues investigated by this thesis, the chapter uses available data for illustrations. Although there is no clear data on NGOs, the estimates reveal disproportionate numbers. In 2007, registered NGOs were estimated at 4,800 in Kenya,¹⁸⁵ 3,000 in Tanzania¹⁸⁶ and 6,600 in Uganda.¹⁸⁷ South Africa boasts of a vibrant NGO sector, approximated at 50,000 groups, of which over 100 are self-defined as human rights NGOs.¹⁸⁸ However, most organisations work within the development discourse as pliant servants of the state using a welfarist approach that addresses human rights in an apolitical and technical manner.¹⁸⁹ A comparative review of civil

¹⁷⁹ Mamdani and Otim (1994) 13, Welch (1995) 45, Bazaara (2000) 39, Ndegwa (1996) 32, Oloka-Onyango (2003) 29, Chachage and Mbilinyi (2003) 8, Dicklitch (1998) 13-14, Fisher (1998) 2, Shivji and Kapinga (1998) 50.

¹⁸⁰ Ndegwa (1996) 9.

¹⁸¹ Maylla (2006) 59-66, Mogella (2006) 80-85.

¹⁸² Oloka-Onyango and Nassali (2003) 71.

¹⁸³ The International Human Rights Internship Program (1994) 1.

¹⁸⁴ Mutunga (2004) unpublished, Mutua (2009) 15.

¹⁸⁵ Interview, Ogombe Deputy Director NGO Board Deputy Director NGO Board, 4 September Nairobi.

¹⁸⁶ Interview, Katemba Director Tanzania NGO Board, 25 July 2007 Dar-es-Salaam.

¹⁸⁷ Interviews, Wamimbi Secretary NGO Board Uganda, 12 July 2007, Kampala.

¹⁸⁸ Mubangizi (2004) 204.

¹⁸⁹ This is a general observation made by almost all critiques. The proliferation of organisations is largely attributed to

society organisations in East Africa and South Africa by the John Hopkins University reveals that 60% of CSOs are involved in service delivery.¹⁹⁰ In Tanzania, 90% of NGOs work in service delivery and poverty reduction.¹⁹¹

South Africa boasts of the most developed NGO sector on the whole continent.¹⁹² Human rights organisations emerged out of opposition to the apartheid regime.¹⁹³ Substantive resources were channelled through NGOs to build a deeper understanding of the rule of law and develop skills necessary for the dismantling of apartheid.¹⁹⁴ The growth of the NGO sector in South Africa is attributed to the peculiar need of the apartheid regimes to demonstrate their democratic credentials by allowing some limited political space for opposing views within the white community.¹⁹⁵ For instance, Black Sash was founded in 1955.¹⁹⁶ Before 1993, many human rights organisations in South Africa functioned as service providers, providing legal defence to victims of the apartheid system, akin to law firms.¹⁹⁷ Since 1994, a few NGOs have redefined their role and purpose in relation to the state.¹⁹⁸ Also, the post-apartheid era has opened up space for collective action and constitutional rights advocacy.¹⁹⁹

However, the vestiges of apartheid remain entrenched within the economic foundation of the country. Accordingly, post-apartheid South Africa provides stunning examples of bolstering social movements mobilised around the struggle for basic needs and ESCRs, particularly amongst the marginalized communities, an overwhelming majority of whom are black.²⁰⁰ Concurrently, the voluntary sector is struggling to restructure and reposition itself in response to the

the diminished ability of the state to provide social services due to the application of the structural adjustment programmes in the 1980s.

¹⁹⁰ Salamon et al (2004) 50.

¹⁹¹ REPOA (2007) 9.

¹⁹² The Status of Human rights NGOs in Sub-Saharan Africa at www1.umn.edu/humanrts/Africa/safrica.htm, Mubangizi (2004) 204.

¹⁹³ Seafeld (2003) 317.

¹⁹⁴ NPO Impact Assessment (2005) 41.

¹⁹⁵ The International Human Rights Internship Program (IHRIP) (1994) 1.

¹⁹⁶ Ibid, Welch (2004) 201.

¹⁹⁷ Seafeld (2003) 233-234.

¹⁹⁸ Ibid.

¹⁹⁹ Friedman and Mottair (2004) 17-18, Hassim (2004) 5.

²⁰⁰ Pearce (2000) 36.

crisis generated by the brain drain to government and shrinking funding.²⁰¹ The crisis of the NGO sector is compounded by the dilemmas of how to work with a popular government, while simultaneously maintaining the autonomy requisite for critical civil society engagement with the state.²⁰²

1.10. Overview of the thesis

Chapter 1 introduces the study topic and provides highlights of the background to the study. It underscores the importance of NGOs as proponents of good governance and human rights principles, but hastens to point out that NGOs' internal governance arrangements are repeatedly questioned against the principles and the objectives they are supposed to propagate. The chapter presents the research problem, the critical research questions, and the significance of the study and articulates the theoretical and conceptual issues as well as a description of the research methodology upon which the study is based.

An interrogation of whether or not NGOs have human rights obligations is the subject matter of the second chapter of the study. It reviews the theoretical foundations of whether or not NGOs are obliged to respect human rights principles in their internal governance, functioning and operations; and if so, what are the legal bases and content of these obligations? In answering these questions, the chapter examines the human rights obligations of NGOs from both a legal and a moral perspective. In seeking to expand the rights-based discourse to NGOs in particular, the chapter adopts the sociology of law perspective that conceptualises human rights as a normative discourse aimed at enhancing human dignity and welfare. In so doing, human rights and good governance principles are invoked to make a case as to how NGO activities and practices should ordinarily reinforce accountability and transparency, participation, empowerment, equity and non-discrimination. The chapter demonstrates that human rights principles are not only linked, but are actually key pillars in promoting good governance.

Chapter 3 examines the extent to which NGO practices support the characteristics of human rights: They are universal, inalienable and indivisible. Given that human rights are universal, the chapter examines how NGOs have respected societies' values or norms and whether INGOs respect SNGOs' implementation of the human rights agenda. Secondly, through the case

²⁰¹ Pearce (2000) 36, FHR programme evaluation (2005) 11, NPO Impact Assessment (2005) 41, Saldana (2004) 211, Madlingozi (2007) 83.

²⁰² Swilling and Russell (2002) 72, Seafeld (2003) 317 and 333-4, Bell and Keenan (2004) 363, Friedman and Mottair (2004) 19.

study of DNGOs and HURINGOs the chapter examines the application of the principles of human rights as indivisible by analysing whether the DNGOs and HURINGOs appreciate each other's work as important human rights work and the extent to which DNGOs have also applied human rights principles to their work.

The issue of the multiple accountabilities of NGOs is tackled in Chapter 4. The discussion begins with an examination of the law regulating NGOs at the national level. It focuses on whether the state should legislate for NGOs as well as the extent to which the law enhances the governance of NGOs. More in-depth focus is placed on the role of the NGO governance board to ensure the accountability of NGOs to the public trust. The chapter investigates the different mechanisms that NGOs use in order to ensure accountability to the NGO mission as the core purpose for the existence of NGOs. It also examines the extent to which NGOs are transparent in order to promote accountability to the public. It discusses the attempts at self-regulation by the NGO sector as an alternative to state monitoring of NGO governance. The chapter also outlines the regulatory framework of NGOs at the African Union, African Commission, SADC and the EAC, exploring the potential of these as sites of the further development of NGO's human rights obligations. In answering this question the chapter analyses how NGOs have fulfilled the obligations attached to observer status.

Chapter 5 examines the nature of participatory and inclusive management within the NGO, paying a particular focus on founders of NGOs and extent to which they promote a supportive environment for staff participation, the management of conflicts as an integral element of this function, amidst the diverse and at times competing interests within a given NGO. It also interrogates the various strategies used by NGOs in engaging the state and concludes by making a case for more political consciousness of the NGO sector.

Chapter 6 examines the extent to which NGOs have empowered marginalised groups such as women, sexual and racial minorities and the youth. Given that the duty of care obliges NGOs to ensure that the organisation achieves its mission, the chapter begins with an examination of the efforts of the internal empowerment of NGOs focusing on whether they have the sufficient skills to undertake human rights and governance and how NGOs have negotiated unequal power relations with donors in general while mobilising the financial resources. Given the co-existence of NGOs, the key question is how has and should NGO relationships be structured in order to ensure the application of human rights principles, focusing on North NGOs (NNGOs)/South NGOs (SNGOs), to highlight the challenges, dilemmas, opportunities and lessons learnt in negotiating power.

Having provided the background to the application of human rights to NGOs and defined key concepts, the next chapter provides the conceptual analysis of NGO's human rights obligations.

CHAPTER TWO

THE HUMAN RIGHTS OBLIGATIONS OF NGOs IN THE INTERNATIONAL ARENA

2.1. Introduction

Persistent poverty and civil strife has influenced the reconsideration of the development and governance debates in order to re-orient their focus to human rights. This chapter conceptualises NGOs within the human rights discourse. In other words, this chapter asks the key question: *Do NGOs have human rights obligations?* If the answer to this inquiry is affirmative, then what is the source and content of these obligations? In answering this question, the approach is threefold. In the first instance, I examine the human rights obligations of NGOs from both a legal and a moral perspective. Secondly, in seeking to expand the rights discourse to non-state actors in general and to cover NGOs in particular, the chapter traces the genesis and rationale of the rights-based approach as one of the strategies that extends the human rights obligations to NGOs. Thirdly, it elaborates on the implications of the rights based approach to the governance of NGOs.

2.2. NGOs' obligations under international law

The question of whether or not NGOs in particular and non-state actors in general have human rights duties under international law is highly contested and has attracted more resistance than support. There are three schools of thought on this issue. The first argues that NGOs neither have legal nor moral duties under international human rights law.²⁰³ The second one holds the view that NGOs have the specific legal duty to respect and promote human rights.²⁰⁴ Premised on rights as a normative concept, the third school of thought contends that NGOs have a moral duty to respect and promote rights.²⁰⁵ The following section offers an in-depth discussion of each of these propositions.

2.2.1. *NGOs do not have legal obligations under international human rights law*

The school of thought that argues that NGOs do not have legal duties under international human rights law, is also the dominant one, and is grounded in legal liberalism. The

²⁰³ Kamminga (2005) 95, 98 and 108, Reinisch (2005) 53 and 70, Alston (2005) 36.

²⁰⁴ Reinisch (2005) 71, 72 and 80.

²⁰⁵ Gutto (1993), Reinisch (2005), Alston (2005), Shivji (1989).

dominant human rights discourse is state-centric with the state vested with the key responsibility of delivering rights.²⁰⁶ Legal liberalism puts an emphasis on the law to achieve rights.²⁰⁷ Legal liberalism is premised on the concept of the free market, liberal democracy and the rule of law.²⁰⁸ The majority of international lawyers are reluctant to extend the human rights discourse to non-state actors in general and NGOs in particular, and regard such attempts as disrespectful of a painstakingly built human rights system.²⁰⁹ They assert that what makes human rights important and distinguishable from criminal or other breaches of law is that it only relates to abuses of state power.²¹⁰ Put differently, human rights are primarily motivated by the imperative to protect the individual from the arbitrary use of power by the omnipotent state as well as to oblige the state to ensure the realisation of rights of the individual citizen.²¹¹ They are apprehensive that imposing duties on non-state actors would dilute the state's responsibilities to secure rights for all under its jurisdiction and detract attention from the state's violations by diverting focus to non-state actors.²¹² Extending obligations to non-state actors is resisted for it runs the risk of justifying human rights violations by the state and legitimises crackdowns on political opposition and alternative views.²¹³

The legal liberalism school insists that human rights claims must be justiciable. A state is obliged to ensure and promote the respect of human rights by legislating or penalising the negative behaviour of non-state actors under its jurisdiction.²¹⁴ The Human Rights Committee has emphasised that while the ICCPR cannot be viewed as a substitute for domestic criminal and civil law, nevertheless states are obliged to protect individuals not just against violations of the Covenant rights by the state and its agents, but also against acts committed by private actors that violate human rights.²¹⁵ In other words, states are required to ensure that private actors do not violate human rights. However, the Human Rights Committee was not prepared to affirm that in the absence of effective action by the state, international law imposes a direct obligation on private

²⁰⁶ UN Charter (1945) art. 1 and 55.

²⁰⁷ www.ohchr.org/EN/issues/Pages/WharareHumanRights.aspx.

²⁰⁸ Mutua (2002) 2.

²⁰⁹ Alston (2004) 21.

²¹⁰ Clapham (2005) 42.

²¹¹ Kamminga (2005).

²¹² De Feyter (2005) 3, Clapham (2005) 42.

²¹³ Mutua (2002) 90, Clapham (2005) 2, Scoble (1984) 192.

²¹⁴ De Feyter (2005) 49.

²¹⁵ General comment No 31 in art 2 of the Covenant: The nature of the general legal obligations imposed on State parties to the Covenant UN Doc CCPR/74/CRP.4/Rev.6 (2004) quoted in Alston (2005b) 770.

actors.²¹⁶ According to the legal liberalism school of thought, human rights law is adequate, requiring neither alteration nor further evolution, given that the state is already accountable for the human rights obligations of the non-state actors. In effect, despite the state's withdrawal from the provision of goods and service, its human rights obligations remain with a duty to oversee the activities of those who provide services and to intervene when the performance of a service provider results in a human rights violation.²¹⁷ This legalistic approach to the issue of rights is crucial because it ensures a credible accountability mechanism that identifies a duty bearer to redress the human rights violation.²¹⁸

Likewise, the African Commission has never reviewed any case alleging the non-fulfilment of obligations by private actors. In practice, communications against non-state parties to the African Charter have been declared inadmissible. It is instructive that the term "non-state parties" has been broadly defined to include non-African states, African states which had not yet ratified the Charter and non-state entities which cannot be parties to the Charter.²¹⁹ This is primarily because it is states and not individuals that are parties to the African Charter. For example, in *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights v. Nigeria*,²²⁰ where it was complained that the oil extraction by the National Petroleum Company and Shell Petroleum Development Company had caused environmental degradation to the Ogoni people, the case was brought against Nigeria. It is noteworthy that the Nigeria government was the major shareholder of the National Petroleum Company. Thus the Commission appealed to the government to provide meaningful access to regulatory and decision-making bodies to the communities likely to be affected by oil operations. However, and similar to the position of the Human Rights Committee, the Commission failed to specifically hold that direct human rights actions could be brought against a non-state actor. Yet it was clear that Shell wielded economic and political power as well as influenced most decisions in the Delta region.²²¹ Moreover, the approach towards human rights violators has evolved, moving from the state to transnational corporations (TNCs), to Multilateral

²¹⁶ Alston (2005b) 770.

²¹⁷ Clapham (2005) 12, De Feyter (2005) 22.

²¹⁸ De Feyter (2005) 23 and 220.

²¹⁹ Gutto (1996) 75- 6.

²²⁰ AHRLR (2002) 60, (2001) AHRLR 60 (ACHPR (2001)).

²²¹ Oloka-Onyango (2003) 905.

Financial Institutions (MFIs) such as the World Bank and the IMF.²²² Nonetheless, in 2006, the African Commission was urged to address the human rights violations by non-state actors.²²³

In spite of NGOs being associations of individuals, the liberal legalism school of thought underscores the non-existence of NGOs' rights or duties under human rights and international public law.²²⁴ To qualify as a legal entity under international law, an entity must have the capacities to make claims in respect of breaches of international law, make treaties and agreements valid on the international plane and enjoy the privileges and immunities from national jurisdiction.²²⁵ Only the International Committee of the Red Cross (ICRC) has been accorded international juridical capacity and assigned some responsibility under the Geneva Convention.²²⁶ The Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms²²⁷ does not outline any significant obligations on the part of NGOs.²²⁸ Similarly, there is some ambivalence concerning whether the recommendations of the Eminent Persons panel aimed at strengthening the role of civil society in general and NGOs in particular in the UN system would in fact yield a more enhanced and precise role.²²⁹

In large measure, global institutions remain hostage to state-based systems in international negotiations and participation, making it difficult for non-state actors to participate in any meaningful way.²³⁰ Cognisant that international public law results from willingness of states to make rules that bind them²³¹ it is rather ambitious to expect states to allow non-state actors to

²²² Oloka-Onyango and Udagama

(1999).[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1999.11.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1999.11.En?Opendocument), See also, Clapham (2003) 28 and 58.

²²³ African Commission, 20th Annual activity Report (2006) recommendation (g), 30, www.chr.up.ac.za/hr_docs/documents/20th%20Activity%20report.doc.

²²⁴ The question of legal personality will be revisited under the discussions of state, law and NGOs at the national level in Chapter 4.

²²⁵ Browlie (1998) 57.

²²⁶ Kamminga (2005) 99.

²²⁷ GA Res 53/144, 1999.

²²⁸ Ibid.

²²⁹ *We the People, Civil Society, the United Nations and Global governance: Report of the Panel of Eminent Persons on the United Nations-Civil Society Relations*, UN doc A/58/817(2004), quoted in Alston (2005) 28.

²³⁰ Edwards (2001) 1.

²³¹ ICJ (1946) art. 38 (1).

undermine the state-centric discourse of rights. Consequently, NGO participation is only permitted in so far as it strengthens the hegemony of the state in the human rights system.²³²

2.2.2. NGOs have specific legal obligations to respect and promote human rights derived from international law

a) NGOs' duties in the global human rights discourse

The second school of thought argues that both the state and NGOs have human rights obligations under international law. Although the state remains the bedrock of the human rights discourse and non-state actors do not have powers to make laws, a creative and elastic interpretation of the ICCPR and the ICESCR make both state and non-state actors addressees of human rights obligations.²³³ The two Covenants bar “any State, group or person to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”²³⁴ Furthermore, the ICCPR provides that the “individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant.”²³⁵ It is therefore possible that the above articles proclaim rights for everyone and define them with no reference to the state or to any specific duty bearers.²³⁶ In this respect, human rights are viewed as entitlements enjoyed by everyone to be respected by everyone, as complementary to the dominant state-centric human rights discourse.

For decades women have been advocating against the fallacy of the private/public dichotomy on grounds that a majority of women are located in the private sphere, with violations committed by non-state actors.²³⁷ Moreover, international law is not exclusively public-centred. CEDAW covers all violations against women irrespective of whether committed by the state, individuals or private organisations or enterprise.²³⁸ Similarly, the Convention on the Rights of Child

²³² Kamminga (2005) 110.

²³³ Alston (2005) 21, Reinisch (2005) 70, Clapham (2005) 28.

²³⁴ ICCPR (1966) art. 51, ICESCR (1966) art. 5 (1).

²³⁵ ICCPR (1966) preamble.

²³⁶ Clapham (2005) 34, Oloka-Onyango and Udagama (1999) 6.

²³⁷ CEDAW (1979), Declaration on the Elimination of Violence Against Women 1993.

²³⁸ CEDAW (1979) art. 2(e).

(CRC) places responsibility on parents and guardians to provide for the welfare of the child²³⁹ as well as to provide direction and guidance.²⁴⁰

Since 1948, fundamental changes have occurred in the global arena, necessitating a re-imagining of the world, beyond the reinterpretation of existing concepts.²⁴¹ Globalisation as a process driven by non-state actors renders the state too small a unit to control and organise international relations.²⁴² The state is no longer the only centre of power in ensuring rights. Considerable responsibilities hitherto assigned to the state are increasingly being supplemented or complemented by non-state actors. NGOs exercise great leverage in the communities in which they oversee the expenditure of huge amounts of aid, provide a wide range of basic services or implement major projects.²⁴³ Although the privatisation of state social provision on its own is not a violation of human rights, the non-state actor in control of the privatised activity shares the human rights responsibilities of the state.²⁴⁴ It is commonplace that “human rights violations are committed by human beings and not by an abstract phenomenon named globalisation.”²⁴⁵ Therefore the solution lies not in abandoning state responsibilities or in demonising globalisation, but devising creative ways of holding both the state and non-state actors accountable for human rights violations.

Furthermore, the phenomenon of privatisation has transferred the provision of major essential goods and services to the private arena.²⁴⁶ However, this does not necessarily diminish the state’s obligation to provide ESCRs, but rather changes the state’s obligations from that of a major “provider” to a “supervisory” role.²⁴⁷ Conversely, maintaining the public-private dichotomy shields private violations from scrutiny and fosters impunity. Impunity refers to the lack of punishment for, or the lack of acknowledged accountability of violations of human rights as well as a lack of an effective remedy for the victims of human rights violations.²⁴⁸

²³⁹ CRC (1989) art. 27(2).

²⁴⁰ CRC (1989) art. 5.

²⁴¹ Alston (2005) 6.

²⁴² Donnelly (2002) 227, Clapham (2005) 6 and 28, Reinisch (2005) 74.

²⁴³ Eade (1999) 6, Edwards (2001) 3, Alston (2005) 7 and 18, Kingsbury (2005) 130, Smillie (1999) 15-16, Winston (2001) 26, Malhotra (2000) 659.

²⁴⁴ Clapham (2005) 12.

²⁴⁵ Clapham (2005) 8.

²⁴⁶ Clapham (2005) 44 and 8, De Feyter (2005) 17.

²⁴⁷ De Feyter (2005) 2, Clapham (2005) 5.

²⁴⁸ Gutto (1993) 18.

The international human rights regime's aspiration of ensuring accountability of all major actors will be severely compromised by the failure to devise a more effective framework than currently exists that addresses non-state actors.²⁴⁹ As postulated by Philip Alston:²⁵⁰

A refusal to recognise and accommodate the new realities in relation to non-state actors will only serve to marginalize the existing arrangements and underscore the need to bypass it in devising future arrangements. ... An international human rights regime which is not capable ... of ensuring that private actors are held responsible, will not only lose credibility in the years ahead but will render itself unnecessarily irrelevant in relation to important issues.

The issue is not to encourage the state to abdicate from its human rights responsibility, but rather to extend the human rights responsibility to the private actor. Consequently, the desired change lies not in restricting the accountability of non-state actors, but in broadening the legal framework by widening the application of substantive norms, procedures and institutions available to mediate the enforcement of human rights norms.²⁵¹ A critical concern amongst development organisations is how to avoid being drawn into the role of “surrogate or substitute for the failed duty holders.”²⁵² While DNGOs may complement the state they are required to concurrently play the role of monitoring and exacting compliance of the state as the primary duty holder to deliver rights.²⁵³ In other words, NGOs cannot and should not enable the state as signatory of the UN conventions to derogate from or delegate its binding duty to fulfil rights.²⁵⁴ The state is still the main administrator of globalisation and the operating system of global capitalism, making the quality of the state critical in ensuring human rights.²⁵⁵ In summary, amongst the INGOs, there is a consensus that NGOs complement, but do not replace the primary responsibility of the state to promote equitable human development and uphold human rights.²⁵⁶

It is noteworthy that the ICCPR specifically refers to the obligation of “promotion and observance of rights.” Under international law, human rights obligations are considered to be of five major types, namely:²⁵⁷

²⁴⁹ Alston (2005) 19.

²⁵⁰ Ibid.

²⁵¹ Reinisch (2005) 42.

²⁵² Fowler (2000) 595.

²⁵³ Ibid.

²⁵⁴ Van Tuijl (2000) 620.

²⁵⁵ Brysk (2002) 9.

²⁵⁶ INGO Accountability Charter (2005) 1.

www.amnesty.org/resiurces/downloads/INGO_Accountability_charter.pdf.

²⁵⁷ www.ohchr.org/EN/issues/Pages/WhatareHumanRights.aspx, Compilation of General Comments and General

- i) 'Recognise' by incorporating international human rights obligations in domestic law;
- ii) 'Respect' by avoiding actions that hinder or prevent the enjoyment of rights;
- iii) 'Protect' by providing an appropriate regulatory framework to penalise or bring to justice those who commit rights violations;
- iv) 'Fulfil' by facilitating an enabling environment through appropriate legislation, policies and institutions for the realisation of rights and secondly by the state being the actual provider of the rights, such as basic free education, and
- v) 'Promote' human rights through education and awareness.

Therefore, in discussing the legal obligations of NGOs, this thesis confines itself to the obligation to respect and abstain from violating or undermining rights in the course of NGO work and the obligation to promote human rights through information and practice. Furthermore, in the event that an NGO seeks to assist the state in fulfilling its obligation to fulfil rights, it must do so in a manner that respects the beneficiaries' rights and enhances the respect of human rights rather than as mere charity or discretionary practice.

b) NGOs' obligations under the African human rights system

At the African continental level, the African Charter provides a more expansive framework for legitimising individuals as rights and duty bearers. The Africa Charter combines African values with international norms by incorporating collective rights and individual duties. The Preamble to the Africa Charter collates rights to duties by stipulating that the "... concept of the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone."²⁵⁸ The Charter dedicates a whole chapter to the duties of individuals.²⁵⁹ A duty is placed on every individual to consider fellow beings without discrimination and to reinforce mutual respect and tolerance.²⁶⁰ The principle that rights and duties are reciprocal and complementary is reiterated under the provision that the "rights and freedoms of each individual shall be exercised with due

Recommendations adopted by human rights treaty bodies, U.N. Doc HRI/GEN/1/Rev.6 (2003) 6, Oloka-Onyango (2003) 867, *SERAC and Centre for Economic and Social Rights v Nigeria*, AHRLR 60, ACHPR (2001) 54, Paris Principles, United Nations Commission on Human Rights resolution 1992/54, www.ohchr.org/english/laws/parisprinciples.htm.

²⁵⁸ African Charter (1981) Preamble.

²⁵⁹ African Charter (1981) Chapter 2.

²⁶⁰ African Charter (1981) art. 28.

regard to the rights of others, collective security, morality and common interest.”²⁶¹ Similarly the African Charter reiterates the individual duties on the part of the child.²⁶²

For Africa, the struggle for human rights is not confined to the public sphere, primarily between the state and the “single” individual, but it is part and parcel of the whole array of one’s life.²⁶³ Thus the responsibility for human rights promotion, defence and protection is not solely the duty of the state but of society as a whole. The lack of understanding of the African notion of community misperceives duties as a threat to rights instead of being complementary to them.²⁶⁴ The individual as social being and part of the community is both a bearer of rights and duties.²⁶⁵ The community ties provide a form of social security necessitating the reciprocal undertaking of duties towards each other. The African concept of duty is based on the presumption that the full development and enjoyment of rights of an individual’s action impacts on the rights and collective survival of others.²⁶⁶

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Protocol on Women) accords women protection in both the public and private sphere thus imputing duties by non-state actors. It also recognises that individuals can violate the rights of others, particularly with reference to the right to dignity,²⁶⁷ life, integrity and security of person.²⁶⁸ Further, the Africa Commission has established the practice of requesting states to report on what is being done to ensure that individual duties are observed as well as the efforts undertaken by states in protecting their citizens against domestic violence.²⁶⁹

This thesis argues that although the individual is the principal and central subject of human rights, NGOs as a collection of individuals who come together for collective action also have the same responsibilities as the individuals therein. However, it is my contention that the conceptual orientation of the second school is weak. I therefore support the third school which argues that the obligations of NGO are moral.

²⁶¹ African Charter (1981) art. 27 (2).

²⁶² The African Charter of the Rights of the Child (1989) art. 31.

²⁶³ Mutua (1997) 308, Gutto (1993) 153, Shivji (1989) vii.

²⁶⁴ Murray (2001b) 215.

²⁶⁵ Mutua (2002) 73.

²⁶⁶ Mutua (2002) 88, Ankumah (1996) 159, Cobbah (1987) in Heyns and Stefiszyn (2006) 38.

²⁶⁷ African Protocol on Women (2003) art. 3.

²⁶⁸ African Protocol on Women (2003) art. 4.

²⁶⁹ Murray (2001b) 216.

2.2.3. NGOs have a moral obligation to respect and promote human rights

While accepting the first proposition that NGOs do not have legal obligations under international law, the third school of thought supplements this point of view by pointing out that NGOs and wider non-state actors have a moral responsibility to promote and respect human rights.²⁷⁰ Thus the ICHRP recommends that because “NGOs are powerful, they should accept similar responsibility to report on their activities, follow agreed principles of behaviour and be accountable.”²⁷¹ Grounded in the sociology of law (also known as the socio-legal perspective), human rights are conceptualised as a normative concept. This is similar to the Preamble to the UDHR, which obliges “every individual and every organ of society to strive to ... promote and respect these rights and freedoms.”²⁷² It is also underlined that “everyone has duties to the community in which alone the free and full development of his personality is possible.”²⁷³

The socio-legal perspective school of thought criticises the dominant legal liberalism discourse of human rights for conceptualising human rights as merely legal rights in the sense of entitlements, with the law seen as a “self-contained system of norms complete in itself, separate and abstracted from both state and society.”²⁷⁴ Such an individualistic and ahistorical approach to human rights concentrates on episodes of human rights violations as legal rights, without addressing the root causes of such violations.²⁷⁵ Consequently, rather than questioning the efficacy of the dominant legal approach, the usual response is to clarify legal rules by drafting more international laws.²⁷⁶ And yet in the real world law is not insulated from the socio-political power struggles and value systems, but is the very product of such ongoing struggles and processes.²⁷⁷ Hence, law is conceptually and functionally inter-related to the social anthropological and political sciences.²⁷⁸

The lack of justiciability of human rights claims of non-state actors within the international arena should not be a ground of refusal to acknowledge their human rights responsibilities. Furthermore, while initially the legislative framework of human rights was located

²⁷⁰ Alston (2005), De Feyter (2005) ICHRP (2003) 3, Shivji (1989), Peter (2009).

²⁷¹ ICHRP (2003) 3.

²⁷² UDHR (1948) preamble.

²⁷³ UDHR (1948) art. 29(1).

²⁷⁴ Shivji (1989) 50.

²⁷⁵ Shivji (1989) 53.

²⁷⁶ Evans (2005) 1047, Baxi (2002) 7.

²⁷⁷ Darrow and Tomas (2005) 485.

²⁷⁸ Darrow and Tomas (2005) 484-5.

within the international arena, currently there are many institutions and mechanisms that address human rights, such as human rights commissions, the judiciary, commissions of inquiry and ombudsman institutions, to mention but a few. Increasingly, non-state actors are drafting codes of conduct for self-regulation.²⁷⁹

Although the traditional discourse of human rights provides a powerful tool for addressing state abuses, it hides the societal power dynamics that results in marginalisation and disenfranchisement.²⁸⁰ At times the law is insensitive to the struggles of popular justice that offer radically different responses to the problems of access to legal institutions.²⁸¹ By being neutral and treating everyone the same, the law masks the discrimination of marginalized groups such as women, particularly when the standard used is that of men.²⁸² For example, within East Africa, offences against women are characterised as offences against morality.²⁸³ Worse still, women's freedom to bodily integrity is "written out of the conceptualisation of rights," by drawing a distinction between the private and public sphere.²⁸⁴ Generally, women as a social category mostly experience violations of ESCRs, which are marginalised in both discourse and theory.²⁸⁵ Further, the Special Rapporteur for Violence against Women observes that "the human rights framework and its moral force is still not fully applied to the concerns of women."²⁸⁶

Law is also oblivious of the practical experiences of how ordinary people formulate their interests as rights and how they have addressed rights violations. Moreover, legal proceedings can tie down the domestic human rights and legal community in costly and time-consuming preparations to defend cases which never materialise. In African countries because the legal

²⁷⁹ OECD, Guidelines for Multinational enterprises, revision 2000, www.oecd.org/daf/investment/guidelines/index.htm; The global compact and the Working group on the activities of transnational corporations, www.unhchr.ch/global.htm and www.unglobalcompact.org, Code of conduct for International Red Cross, www.ifrc.org/publicat/counduct/code.asp, UN peacekeeping www.un.org/peace/reports/peace_operations/, The Australian Council of Non Government development organizations, www.acfoa.asn.au/code/code.PDF, Africa Feminist Charter (2006).

²⁸⁰ Oloka-Onyango (2009) 76-90.

²⁸¹ Trubek and Galanter (1974) 1062.

²⁸² Banda (2005) ix and 30.

²⁸³ Tamale (2009) 55-58.

²⁸⁴ Tamale (2009) 63.

²⁸⁵ Oloka-Onyango (2003) 853-854.

²⁸⁶ Human Rights Council, A/HRC/4/34 (2007) 21.

framework is weak, the violation of rights is the norm rather than the exception.²⁸⁷ Court processes are largely inaccessible, biased against the poor, costly and time consuming. In many developing countries rights are limited by claw-back clauses and weak implementation mechanisms.²⁸⁸ Occasionally, law is also instrumentally used as an instrument of oppression and control to legitimise selfish state interests, as is the case with the recently amended NGO laws in East Africa.²⁸⁹

In view of the above, but without trivialising the law as irrelevant to the struggle for human rights, the goal of law is to “enlarge freedoms,” in order to bring about positive social transformation.²⁹⁰ For example, the women’s movement has been at the forefront of utilising rights as a discourse of norm-setting in order to address the political and social injustices faced by both individuals and groups. It follows that the purpose of human rights is not only to “... create new opportunities for litigation, but also to act preventively by providing a set of basic standards and a positive approach that would instil a culture of respect of rights.²⁹¹ In this way, human rights enhance human dignity and fight injustices by all actors whose action’s impact on the welfare and dignity of the human person, otherwise, the human rights discourse runs the risk of becoming irrelevant to everyday struggles for justice.²⁹²

Put differently, the struggle for human rights goes beyond the legal arena to embrace individual liberation and the greater democratisation of society. This resonates with the aspirations of the drafters of the UDHR, as encapsulated in Eleanor Roosevelt’s powerful prose:²⁹³

Where after all, do universal human rights begin? In small places, close to the home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of individual persons; the neighbourhood he lives in; the school or college he attends; the factory, farm or office he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

Given that human rights are “entitlements enjoyed by everyone to be respected by everyone”,²⁹⁴ observing rights by all actors would strengthen a culture of human rights. In the

²⁸⁷ An-Na’im (2001) 105.

²⁸⁸ Peter (1998) 47.

²⁸⁹ Ref Chapter 4.

²⁹⁰ Donnelly (1990) 54.

²⁹¹ Butler (2004) 14, Harvey (2005) 2.

²⁹² De Feyter (2005) 19, Alston (2005) 19.

²⁹³ Roosevelt (1948) www.udhr.org/history/biographies/bioer.htm.

²⁹⁴ Clapham (2005) 58.

United Kingdom, in its report for the human rights commission, the Parliamentary Joint Committee on Human rights identified three components of a culture of human rights.²⁹⁵

First, a sense of entitlement. Citizens enjoy certain rights as an affirmation of their equal dignity and worth, and not as a contingent gift of the state. Secondly, a sense of personal responsibility. The rights of one person can easily impinge on the rights of another and each must therefore exercise his rights with care. Thirdly, a sense of social obligations. The rights of one person can require positive obligations on the part of another and in addition a fair balance will frequently have to be struck between individual rights and needs for a democratic society and the wider public interest.

In conclusion to 2.1, I argue that it is possible for NGOs to have both legal and moral duties to respect and promote human rights. The legal responsibility derives from both the ICCPR and ICESCR that bar any “state, group or person” to violate rights, the Preamble to the ICCPR which recognises that individuals have the “responsibility to strive for the promotion and observance of rights,” CEDAW art (2)(e), art 27 and 5 of the CRC and the African Charter, Chapter 2.

Nonetheless, although it is possible to make a case for non-state actors as having legal duties, the moral argument is more persuasive and less contentious. The moral obligation of NGOs is grounded in the argument that seeking legal accountability of the state is only one of the strategies of human rights protection and promotion. Human rights can also be understood as a normative concept useful for bringing about positive social transformation by making all actors accountable for the human rights implications of their actions. In essence, the expansion of the human rights discourse to NGOs does not infer the abdication of state responsibilities, but rather, is complementary to the dominant state-centric human rights discourse. In other words, the state remains the main duty bearer of human rights. Applying human rights principles to NGO day-to-day policies and practices make rights part and parcel of everyday practices, ultimately catalysing a human rights culture. The following discussion draws on the rights-based approaches 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’s governance.

²⁹⁵ Joint Committee on Human Rights 6th report, HL67-I, HC 489-1, vol1, (2002) 11-12 quoted in Butler (2005) 64, Spencer (2005) 36.

2.3. The rights-based approach as an instrument of good governance

The theoretical framework in Chapter one (section 1.6) alluded to the centrality of the rights-based approach to this study. This section explores the potential of the rights-based approach to human rights and good governance principles, which can inform the policies and practices of NGOs. 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.

The application of human rights by all actors became popular following the directive of the then UN Secretary General, Kofi Annan's in 1997 that all UN agencies and programmes make human rights a core value of their activities.²⁹⁶ 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 the 1997, who developed guidelines for the poverty eradication programmes.²⁹⁷ The OHCHR defines the rights-based approach to development as follows.²⁹⁸

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. ... [I]t ... 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.

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

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."²⁹⁹ This statement is reiterated in the preamble of the ICCPR and ICESCR. The African Charter demonstrates the concept of indivisibility and interdependence of rights by providing for CPRs and

²⁹⁶ Alston and Robinson (2005) 2, Robinson (2005) 29.

²⁹⁷ Robinson (2005) 11-12.

²⁹⁸ <http://www.unohchr.ch/development/approaches-01.html>.

²⁹⁹ UDHR (1948) Preamble.

ESCRs in one document. Further, the principles of the rights-based approach have been part of the struggle for social justice, good governance and development.³⁰⁰

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.”³⁰¹ However, the reality of 46 countries poorer today than in 1990,³⁰² 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.³⁰³

The Vienna Declaration of 1993 reiterates that rights, democracy and development, that the three are mutually reinforcing and interdependent.³⁰⁴ 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 approach can also be traced to women’s efforts of gender mainstreaming, underscoring the indivisibility, inalienability and universality of women’s human rights.³⁰⁵

This thesis is neither prescriptive nor does it offer a single comprehensive definition of the rights-based approach for all purposes. Doing so would reduce the rights-based approach to a technical concept. Rather, it adopts the principles identified by the Office of the High Commissioner of Human Rights, namely: express linkage to rights, accountability, transparency, participation, equality and empowerment³⁰⁶ and clarifies their meaning in respect to NGO governance.

³⁰⁰ Nyamu-Musembi and Cornwall (2004) 7, Mamdani (1996), Shivji (1989).

³⁰¹ Declaration of the Right to Development (1986) art. 1.

³⁰² UNDP (2004) www.hdr.undp.org/reports/global/2004/pdf/hdr04_completer.pdf, Robinson (2005) 26, Darrow and Tomas (2005) 474.

³⁰³ Nyamu-Musembi and Cornwall (2004) 12.

³⁰⁴ Vienna Declaration (1993) paras 8 and 74.

³⁰⁵ Alston and Robinson (2005) 2 and 12, Charter of feminist principles for African feminists (2006).

³⁰⁶ www.unohchr.ch/development/approaches-01.html.

In consonance with the earlier critiques of the rights-based approach,³⁰⁷ this thesis is not intended to undermine the nascent efforts to develop rights-based approaches, but rather it is motivated by the imperative for more critical self-reflection by NGOs to instil human rights principles in their governance. The following section highlights and clarifies the relevance of human rights principles to the governance and organising of NGOs.

2.4. Implications of the rights-based approach to NGO governance and organising

In discussing the principles of the rights-based approach, it is underscored that they are neither mutually exclusive, nor is there a clear demarcation of the boundaries of each principle. Rather, the principles should be understood as 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.

2.4.1. Express linkage to human rights

The principle of express linkage to rights requires all NGOs to mainstream human rights in their work. The importance of human rights is that they establish an agreed objective and minimum-benchmark whose goal it is to protect rights because both governments and members of society are adequately accountable.³⁰⁸ Human rights provide the universally agreed standards to regulate human interaction and a language to frame what constitutes progress or development in their lives.³⁰⁹ It also provides a framework that emphasises tolerance, privacy and autonomy on the one hand, and respect for the rights of others and the needs of the wider community, on the other.³¹⁰ Hence, all actors including NGOs are obliged to comply with international standards in their actions and relations in a way that advances all rights. The key characteristics of human rights are that they are inalienable, universal, inter-dependent and indivisible.

³⁰⁷ Uvin (2004), Alston (2005b), Alston and Robinson (2005), Nyamu-Musembi and Cornwall (2004), Darrow and Tomas (2005), Sano (2000).

³⁰⁸ Robinson (2005) 32 and 39.

³⁰⁹ Van Tuijl (2000) 619 and 625.

³¹⁰ Butler (2004) 15.

2.4.2. *Accountability and transparency*

Accountability means “responsibility ... explaining one’s actions or presenting accounts to someone else.”³¹¹ The notion of accountability is a common pillar in the rights-based approach, good governance and development. In broad terms, accountability involves individual or group responsibility for the performance of specified duties. Accountability entails being answerable for performance and the obligation that appointed, elected or delegated officials have, to give a satisfactory explanation to the respective authorities over the exercise of power, authority and resources entrusted to them.³¹²

When the notion of accountability is espoused, three important questions arise: *accountable to whom, for what, and how?* These issues amplify three main dimensions: the *agents of accountability* (accountable to whom); *the standards of accountability* (accountability for what); and the *means of accountability* (how accountability is ensured).³¹³ The agents of accountability from whom authority relationships is derived include; supervisors, elected chief executives and legislators, the courts, external auditing agencies, professional associations, co-workers, clients and the general public.³¹⁴ The standards of accountability have conventionally been attached to achievement of socio-economic progress in the form of law and order, poverty alleviation, employment generation, public well-being; and the maintenance of values such as integrity, equality, impartiality, representation and justice.³¹⁵ Further, the means of accountability include: *external* mechanisms, including legislative instruments, political executive means, judicial or quasi judicial processes, as well as public hearings, interest groups, and media scrutiny; *internal* mechanisms, including the Board, official rules, codes of conduct, official hierarchies, and performance reviews; and others like organisational culture and professional ethics.³¹⁶

Thus, the significance of accountability serves essentially three core purposes: to *control* for the abuse and misuse of entrusted authority/ power; to provide *assurance* in respect to the use of resources and adherence to the law and ethical values; and to promote learning in pursuit of *continuous improvement* in institutional management and governance.³¹⁷ This explains the existence of

³¹¹ ICHRP (2003) 12.

³¹² Kakumba and Fourie (2007) 653.

³¹³ Kakumba and Fourie (2007) 653.

³¹⁴ Romzek (2000) 22.

³¹⁵ Haque (2000) 601.

³¹⁶ Haque (2000) 606.

³¹⁷ Kakumba and Fourie (2007) 651.

numerous accountability processes and mechanisms in all systems, which serve to control behaviour and performance towards organisational objectives, and to provide assurance that NGOs are fulfilling their responsibilities as intended.³¹⁸

The rights-based approach provides a vehicle for expanding accountability beyond the government to other actors whose actions have an impact on the rights of people, such as the donor community, the intergovernmental organisations, and trans-national corporations.³¹⁹ The rights-based approach treats development issues as matters of obligation and rights, rather than discretion or charity.

Accountability should be demanded and accorded with reference to due process and objective rules of behaviours that are agreed upon with the participation of those affected by the rules.³²⁰ Often accountability is confined to financial issues and in demonstrating the value for money as spearheaded by donors. Rather accountability requires the development of adequate laws, policies, administrative procedures, practices and mechanisms of redress to translate the universal standards into locally determined benchmarks for measuring progress and performance. Accountability is realised through varied mechanisms such as monitoring and oversight mechanisms, reporting, public debates, public audits, participation in programmes, access to information and education.³²¹

Accountability also goes beyond compliance with the law and carries a moral imperative of civilising power for the preservation of freedom and justice, particularly the power one wields.³²² In effect, accountability involves an investigation of how one manages the unequal power distribution in instances where those that are meant to benefit from one's work have weaker social, economic and political voice.³²³

The rights-based approach thus has the potential of transforming power relations particularly how NGOs address inherent power inequalities in their interactions with less privileged persons in order to enable them claim genuine accountability from NGOs.³²⁴

³¹⁸ Kakumba and Fourie (2007) 651.

³¹⁹ <http://www.unohchr.ch/development/approaches-01.html>.

³²⁰ Darrow and Tomas (2005) 519.

³²¹ Darrow and Tomas (2005) 488 and 514.

³²² Anwar (2006) 2 and 7, Edwards and Sen (2000) 618.

³²³ Keystone Accountability Survey (2006) 4.

³²⁴ Nyamu-Musembi and Cornwall (2004) 47, Banda (2005) 294.

The essence of transparency is to promote the accountability of NGOs to the wider public. The principle of transparency is embedded in the right to freedom of expression which is enshrined in all major human rights documents.³²⁵ The right to freedom of expression includes the “right to seek, receive and impart information.” Further in exercising the right of freedom of information, everyone has the obligation to respect the rights and reputation of others.³²⁶ Although the Declaration of Principles on Freedom of Expression in Africa primarily concerns itself with the media, it underlines the point that transparency is a cornerstone of democracy that enables the free flow of ideas and the making of informed decisions.³²⁷ It further observes that the oral tradition within African culture promotes transparency.³²⁸

In applying good governance to non-state actors, the International Law Association Committee on Accountability of International Organisations, identifies the core principles of good governance to include accountability, transparency and participation.³²⁹ In detail this entails:³³⁰

Transparency in both decision making process and the implementation of the ensuing institutional and operational decisions: a large degree of democracy in the decision making processes; access to information open to all potentially concerned and or affected by the decisions at stake; the well-functioning of the international civil service; sound financial management and appropriate reporting and evaluation mechanisms.

The International Centre for Not-for-Profit Law recommends that in order for NGOs to promote integrity and transparency, NGO regulations should include purpose, governing documents, systems of internal accountability, non-distribution of profit and policy on reasonable compensations.³³¹ Further, being answerable and accountable obliges NGOs to give information about how the NGO makes decisions, safeguards against misgovernment, specific financial rules, organisational income and expenditure.³³² Furthermore, NGOs are obliged to avoid distorting information. Thus, the principle of transparency complements accountability, participation and democratic governance.

³²⁵ ICCPR (1966) art. 19, UDHR (1948) 19, African Charter (1981) 9.

³²⁶ ICCPR (1966) art. 19 (3).

³²⁷ Declaration of Principles on Freedom of Expression in Africa (2002) Preamble.

³²⁸ Declaration of Principles on Freedom of Expression in Africa (2002) Preamble.

³²⁹ Reinisch (2005) 49 footnote 70.

³³⁰ Reinisch (2005) 49 footnote 70.

³³¹ www.incl.org/gendocs/selfreg.htm; ICHRP (2003) 106.

³³² International Centre for Non-Profit Law, quoted in ICHRP (2003) 104.

2.4.3. Participation and inclusion

The orientation of people's participation or citizen/community participation as fondly known is retraceable in Plato's view of democracy, which had fundamentals such as assembly, voting, freedom of speech and equal representation.³³³ The rights-based approach prioritises strategies that place the human person at the centre of the development process in order to direct such development whether directly or indirectly through representatives, organisations and at the various levels of society.³³⁴

The right to participation is entrenched within the international treaty law.³³⁵ Both the UDHR and the ICCPR guarantee the right and opportunity of every citizen and without unreasonable restrictions to take part in government or in the conduct of public affairs and to have access to public services. The right to participation cannot be realised in isolation of other rights such as the right to freedom of speech and expression, the right to non-discrimination, the right to freedom of assembly and association and the right to freedom of expression.³³⁶ Furthermore, under the Declaration of the right to development, development is understood 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 coupled with the fair distribution of the resulting benefits."³³⁷

Participation is a major means by which people collectively determine their needs and priorities to ensure the protection and advancement of their rights and interests, or else projects are improperly designed and are not sustainable.³³⁸ The Charter on Popular Participation articulates that popular participation is both a means and an end.³³⁹

[As a means] it provides the driving force for collective commitment, for the determination of people based development processes and willingness of the people to undertake sacrifices and expend their social energies for its execution. As an end in itself, popular participation is the fundamental rights of the people to fully and effectively participate in the determination of the decisions which affect their lives at all levels and at all times.

³³³ Kakumba and Nsingo (2008) 109.

³³⁴ <http://www.unhcr.ch/development/approaches-01.html>.

³³⁵ UDHR (1945) art. 21, ICCPR (1966) art. 25, CRC (1989) art. 12, CEDAW (1979) art. 7, 13, 14(2), African Charter (1981) art. 13.

³³⁶ Alston (2005b) 812, Darrow and Tomas (2005) 509.

³³⁷ Declaration of the Right to Development (1986) art. 1.

³³⁸ Scott (2001) 215.

³³⁹ African Charter on Popular Participation (1990) para 10.

The rights-based approach requires a high degree of “active, free and meaningful” participation involving a broad spectrum of stakeholders, including, communities, civil society, minorities, indigenous peoples and women.³⁴⁰ Equally, the Vienna Declaration obliges states to promote participation of the poorest people in the communities in promoting human rights and combating poverty.³⁴¹ Participation guarantees that the human person as a central subject of human rights is the principal beneficiary of any interventions.³⁴²

The Charter of Popular Participation underlies the point that “popular participation begins at the family level and must be practiced at the workplace and in all organisations and in all walks of life.”³⁴³ Participation enables the stimulation of local knowledge and the promotion of local dialogue in order to generate a diversity of options for consideration. It also raises the efficiency of resource utilisation, maximises ownership and sustainability to processes and outcomes.³⁴⁴ Participation involves facilitating the grassroots to secure a deeper understanding of their problems and the best way of approaching them.³⁴⁵ The grassroots have practical and innovative ways of managing very difficult life situations with an unshaken perseverance. What is necessary is to expose ordinary people to processes that enable them to reflect on their lives and question the status quo of inequities as well as appreciate the imperative of them organising. Conceding that decision-making processes are often inaccessible to the majority of citizens, genuine participation requires addressing the barriers that keep citizens’ out of the arenas of participation. In order to construct participation as a process of development learning, the processes of participation must be permanent, ongoing, and embedded in an organisational culture.³⁴⁶ The role of NGOs in fostering participation is to enhance the skills of the people in asking the rights questions that are essential in ensuring their rights.³⁴⁷

One of the challenges of ensuring effective participation is that the process is an expensive and time consuming exercise.³⁴⁸ This explains why most often participation is confined to

³⁴⁰ UN Declaration on the Right to Development (1986).

³⁴¹ Vienna Declaration (1993) para 25.

³⁴² Vienna Declaration (1993) preamble.

³⁴³ African Charter on Popular Participation (1990) para 6 and 15.

³⁴⁴ Darrow and Tomas (2005) 506.

³⁴⁵ Ndegwa (1999) 62.

³⁴⁶ Keystone Accountability Survey (2006) 13.

³⁴⁷ McCrudden (2005) 24.

³⁴⁸ Darrow and Tomas (2005) 510, Edwards (2001) 5.

NGOs. However, the participation of NGOs may not be sufficient to prevent elite capture. Avoiding elite capture necessitates shifting from the conceptualising of people as passive receivers, choosers or users of already made solutions to recasting them as the makers and shapers of their destiny.³⁴⁹ Most importantly, the objective of participation is not only to improve the project performance but also to promote critical consciousness and decision-making as a basis of active citizenship in order to enable the people have a stake in their governance and conditions of life.³⁵⁰ Simply put, participation extends “beyond having a right to participate in a given space to include the right to define and shape that space.”³⁵¹ Having been socialised to act for the community, NGOs have to learn how to act with the community, and to be more open, accommodative and responsive to the voices of the grassroots.³⁵²

2.4.4. Equity, non-discrimination and empowerment

The human rights corpus rests on the value system of equality and non-discrimination that “all human beings are born free and equal in dignity and rights.” Consequently achieving equality requires paying attention to vulnerable groups, such as women, youth, the elderly, persons with disabilities, refugees and internally displaced persons and the poor to mention but a few. The foundations of non-discrimination are grounded in the UN Charter,³⁵³ the ICESCR,³⁵⁴ the ICCPR³⁵⁵ the UDHR³⁵⁶ and the African Charter.³⁵⁷

In order to achieve equality, a focus is placed on formal equality by treating people alike and on substantive equality by addressing the systemic and underlying causes of discrimination, through special measures such as affirmative action.³⁵⁸ Ensuring equity at times involves non-identical treatment in order to address the differences. For instance, in dealing with the women’s deprived history, a formal legal approach is insufficient to achieve substantive equality, which

³⁴⁹ Gaventa (2004) 29, Gutto (1993) 27, Paul (1990) 234.

³⁵⁰ Darrow and Tomas (2005) 506, Butler (2005) 77.

³⁵¹ Gaventa (2004) 29.

³⁵² Gaventa (2004) 22.

³⁵³ UN Charter (1945) art. 1.

³⁵⁴ ICESCR (1966) art. 2(2).

³⁵⁵ ICCPR (1966) art. 2(1).

³⁵⁶ UDHR (1948) art. 1.

³⁵⁷ African Charter (1981) art. 2 and 3.

³⁵⁸ CEDAW General recommendations on Temporary Special Measures, No 25, para 8.

requires strategies aimed at re-distributing resources and power.³⁵⁹ This necessitates the rectification of unintended results of neutral laws, policies and practices, on the vulnerable groups in order to afford them equality in the economic, social or political arena and to safeguard against the inequitable distribution of benefit and realisation of rights.

The principle of empowerment derives from the cardinal human rights principle of respect of the inherent equality and dignity of the human person.³⁶⁰ The “greatest merit of human rights is that it draws attention to discrimination and exclusion” and enables policy makers to target the most vulnerable people.³⁶¹ From the human rights perspective, empowerment is understood as the ability of people to claim and exercise their rights.³⁶² While citizen participation was noted as a critical component of good governance, it does not necessarily lead to empowerment. Empowerment, as Narayan contends,³⁶³ requires a process through which peoples’ freedom of choice and action is expanded to enable them to have more control over resources and decisions that affect them. For empowerment to happen participation must therefore be *effective*, in a way that it enforces accountability and changes in the behaviour of the organisation’s leaders, and to ensure changes that make participation more inclusive of the poor and the underprivileged.³⁶⁴ Similarly the Charter of Popular Participation emphasizes that “popular participation” is the “empowerment of people to effectively involve themselves in creating the structures and designing policies and programmes that serve the interests of all.”³⁶⁵

Given that power inequalities play a fundamental role in any intervention, the rights-based approach directly addresses the phenomenon of elite capture, by providing minimum human guarantees for the benefit of the most disempowered.³⁶⁶ Utilising rights as a social mobilisation concept empowers people to defend themselves and not be reduced to victims in need of saving by others or to mere beneficiaries of assistance.³⁶⁷ As tritely observed by Mutua:³⁶⁸

³⁵⁹ CEDAW No 25, para 4-10, CERD General Comment No 14.

³⁶⁰ UDHR (1948) art. 1, ICCPR (1966) art. 3, ICESR (1966) art. 2(2) and 3, African Charter (1981) art. 5 and 19.

³⁶¹ Robinson (2005) 36, Alston and Robinson (2005) 12, Darrow and Tomas (2005) 486.

³⁶² <http://www.unhchr.ch/development/approaches-01.html>.

³⁶³ Narayan (2002) 14.

³⁶⁴ Kakumba and Nsingo (2008) 109.

³⁶⁵ African Charter on Popular Participation (1990) para 11.

³⁶⁶ Darrow and Tomas (2005) 489.

³⁶⁷ Mutua (2002) 28, Bell and Carens (2004) 327, De Feyter (2005) 221, Darrow and Tomas (2005) 494.

³⁶⁸ Mutua (2002) 28-29.

A basic characteristic of the victim is powerlessness: an inability for self defence against a state or the culture in question, usually described as hordes of nameless, despairing, and dispirited masses. ... Many are uneducated, destitute, old, infirm, too young, poorly clad, and hungry, peasants, the rural poor, marginalized ethnic groups, and nationalities, and lower castes. Their very being is a state of divorce from civilisation and a large distance from modernity. ... In many cases the victims themselves deeply believe in and openly declare their helplessness and plead for outside help. ... The victim must also be construed as sympathetic and innocent otherwise it is difficult to mobilise public outrage against the victimiser.

Integral to the phenomenon of empowerment is the imperative to discard the concept of “victim-hood,” where NGOs substitute themselves as fighters for the vulnerable poor and helpless victims of human rights violations.³⁶⁹ Ordinary people are resilient actors with the experience of struggle against a variety of oppressions.³⁷⁰ Empowering people requires improving the way people think about themselves. They need to be able to recognise that “violations are not inevitable, that poverty is not a fact of nature or some original state everybody departs from” and therefore human rights violations are not merely “unfortunate but are fundamentally unjust.”³⁷¹

It is instructive that the poor have defined poverty not merely as the absence of commodities but also as a question of disempowerment.³⁷² NGOs should not simply empathise with the victims and beg the violators to desist from human rights violations, but join the struggle of the people in exposing and resisting violations.³⁷³ NGOs have to acknowledge and build on the efforts of the “informal associations” and facilitate an enabling environment for collective action, build trust and confidence in their capabilities to oppose, negotiate or forge strategic alliances with stakeholders who advance their interests.³⁷⁴ In this way the poor are not just brought into the political processes as technical actors to provide information, but are respected as “citizens with opinions to express, rights to exercise and interests to defend.”³⁷⁵ In other words, partnership-rather than stewardship should be the guiding philosophy in NGO relationships with other stakeholders.

The goal of empowerment is to enhance people’s power, capacities, and capabilities in order to act as their own human agency, change their lives and improve their own communities.³⁷⁶ While NGOs have been enthusiastic advocates for empowerment they have rarely interrogated how

³⁶⁹ Dicklitch (2001) 197, Uvin (2004) 154.

³⁷⁰ Shivji (1989) 53.

³⁷¹ Uvin (2004) 130, De Feyter (2005) 221, Gutto (1998) 61.

³⁷² Narayan et al (2000).

³⁷³ Shivji (1989) 71.

³⁷⁴ Uvin (2004) 105 and 109, Darrow and Tomas (2005) 495.

³⁷⁵ McGee (2004) 11.

³⁷⁶ Keystone Accountability Survey (2006) 13.

NGOs use the power gained. Yet, empowerment entails taking a conscious personal commitment to confront individual or organisational power particularly in the NGOs' praxis, programmes, fundraising, constituency building, structures, systems and management.³⁷⁷ In order to guard against the reinforcement of power imbalances, the rights-based approach entails the interrogation of the social-structural root causes of inequities, exclusion and oppression.³⁷⁸ Such power imbalances are not restricted to groups of marginalized persons but also require the targeting of the most vulnerable sections of people within the marginalized groups or communities such as the poor, the rural population, the displaced, persons suffering from disability, to mention but a few.³⁷⁹ To ensure the targeting of marginalized groups, development data needs to be disaggregated by race, religion, ethnicity, language, sex and age. Each organisation is required to have policies that provide for diversity, gender equity and balance, impartiality and non-discrimination.³⁸⁰

NGOs thus have a challenge to exhibit and promote empowerment of, especially, their marginalised constituents or stakeholders as part of their governance agenda as well as themselves.

2.5. Conclusion

Chapter two has evaluated the three schools of thought pertaining to the debate on whether or not NGOs have human rights obligations under the international law. The dominant legal liberalism school has been criticised for being legalistic and disregarding the impact of NGOs as part of non-state actors in the promotion of human rights. Whereas the second school of thought acknowledges that NGOs have some specific legal duties to respect and promote human rights, its orientation is rather inadequate and at most, it is complementary to the dominant state-centric human rights discourse. This thesis supports the third school of thought that is grounded in the sociology of law that conceptualises human rights as a normative concept and recognises that NGOs have a moral responsibility to promote and respect human rights. The issue is not a matter of abdication of state responsibility, but rather extending the state responsibility to the NGOs to complement the role of promoting and respecting rights.

The foregoing theoretical review has revealed that the principles of rights-based approach are similar to the imperatives of good governance. The discussion has demonstrated that

³⁷⁷ Edwards and Sen (2000) 611-612.

³⁷⁸ Uvin (2004) 135 and 175.

³⁷⁹ CEDAW (1979) art. 7 and 13, NFLS (1985), African Protocol on women's rights (2003) art. 20-24.

³⁸⁰ INGO Accountability Charter (2005) 3.

NGOs must exhibit the rights-based principles of express linkage to rights, accountability, transparency, participation, empowerment, equity and non-discrimination in their internal policies and practices if they are to measure up to the challenge of being the watchdogs for human rights and good governance. Although not a panacea for societal problems, the value of the rights-based approach lies in shedding light on how power inequalities affect the processes of development and governance. The application of the rights-based approach does not in any way suggest that law is unimportant to the realisation of rights. Rather in addition to law, the rights-based approach offers a more proactive approach in the quest of nurturing people centred development and human rights and good governance culture.

As advocates of human rights NGOs are thus obliged 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 voice. This requires the re-conceptualisation of people as makers and shapers of their own destiny, with NGOs learning to "work with" instead of "work for" the community, in an open, accommodative and responsive manner. The participation of the ordinary persons in decisions about their lives ensures that they are the central beneficiaries of interventions, while simultaneously enhancing the ownership, sustainability and legitimacy of interventions made. The functional linkages between empowerment, participation and accountability should be understood as both a means to human development and as an end in itself, in the pursuit of the culture of human rights. Having mapped the status of NGOs as duty bearers and made the case for the rights-based approach, the following chapter analyses how NGOs have applied the principle of express linkage to rights to their governance.

CHAPTER THREE

NGOs AND THE PRINCIPLE OF EXPRESS LINKAGE TO HUMAN RIGHTS

3.1. Introduction

The principle of express linkage to rights requires NGOs to mainstream human rights in their work. The reason for mainstreaming human rights in the work of NGOs is that human rights are universal, inter-dependent and indivisible. This chapter begins with a discussion of the justification as to why all NGOs should apply rights to their governance. It then moves on in part three to examine 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.³⁸¹ 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.³⁸² 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 inter-dependent and indivisible. The discussion illustrates the benefits of a rights-based approach in strengthening good governance. In short it answers the question: why human rights?

3.2. Why all NGOs should apply human right principles to their governance and management

Obviously HURINGOs derive their legitimacy from human rights and are therefore obliged to respect human rights.³⁸³ 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.”³⁸⁴ The ICHRP also contends that any organisation that does not acknowledge that human rights are universal would not qualify to be a human rights organisation.³⁸⁵

³⁸¹ See Leary (1990) 30, Gutto (1993) 160, Heyns and Viljoen (1999) 421, An-Na'im and Deng (1990) 9, Paul, (1990) 214, Mutua (2002) 8, Welch (1990) 206, An-Na'im (2001) 93, Heyns and Viljoen (2004) 143.

³⁸² Edwards (2000) 7.

³⁸³ ICHRP (2003) 2-3, 17 and 49.

³⁸⁴ ICHRP (2003) 11.

³⁸⁵ ICHRP (2003) 38-39.

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 thesis 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 Africa Union provides for “respect for democratic principles, human rights and the rule of law and good governance,³⁸⁶ as one of its guiding principles. The African Charter on Democracy, Elections and Governance (2007) commits itself to the principle of “respect for human rights and democratic principles.”³⁸⁷

NEPAD commits itself to “promoting and protecting human rights and democracy” by developing clear standards of accountability and participatory governance.³⁸⁸ SADC reaffirms “human rights, democracy and the rule of law,” as core principles and gender mainstreaming as a key objective.³⁸⁹ The fundamental principles of the 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.”³⁹⁰

In a debate on democracy and rights:³⁹¹ Aina has argued that “asking the question, “democracy for what?” underlines that “democracy is for the promotion and advancement of individual and collective wellbeing of different people.”³⁹² Therefore democracy cannot exist without respect of 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.³⁹³ Nonetheless, human rights are a social science

³⁸⁶ African Union, Constitutive Act (2000) art. 4(m).

³⁸⁷ African Charter on Democracy, Elections and Governance (2007) art. 3(1).

³⁸⁸ NEPAD (2001) para 49.

³⁸⁹ SADC Treaty (1992) art. 4 and art. 5.

³⁹⁰ EAC Treaty (1999) art. 6.

³⁹¹ Electronic Round Table: Democracy and Human Rights, Feb (2000) www.africaaction.org/rtable/rtb2.pdf.

³⁹² Aina (2000) 41, www.africaaction.org/rtable/rtb2.pdf.

³⁹³ Bell and Keenan (2004) 333.

to solve social problems, including and not restricted to taming the state.³⁹⁴ Hence, human rights is an ideology of mobilisation 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.³⁹⁵

The development of the rights based approaches in the 1990s integrated human rights in all major global issues and by all actors.³⁹⁶ There are numerous benefits of applying human rights principles to all NGOs, popularly known as rights-based approaches. The great merit of human rights is that it draws attention to discrimination and tames the exercise of power by all actors.³⁹⁷ 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.³⁹⁸ Consequently, the application of rights-based principles to development and governance facilitates the establishment of agreed 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.³⁹⁹

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 to both 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 voice, status and power.⁴⁰⁰ 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.”⁴⁰¹ Human rights therefore provide an

³⁹⁴ Chaskalson (2005), De Feyter (2005) 25, Clapham (2005) 56.

³⁹⁵ Shivji (1989) 71, Ibhawoh (2004) 30.

³⁹⁶ www.unhchr.ch/development/approaches-01.html.

³⁹⁷ Robinson (2005) 36.

³⁹⁸ Donnelly (2002) 229, Korey (2001) 3, Reinisch (2005) 39, Viljoen (2001) 19.

³⁹⁹ Robinson (2005) 32, Darrow and Tomas (2005) 487.

⁴⁰⁰ Darrow and Tomas (2005) 475.

⁴⁰¹ Ibid.

effective mechanism to overcome arbitrariness in decision-making and in the development processes.⁴⁰²

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.⁴⁰³ Thus, with respect to resources on a global scale, by the mid-1990s the human rights sector attracted only 1% of the US\$ 50 billion annual revenue of the development sector.⁴⁰⁴ Similarly, under the NGO sector, the human rights component is comparatively less financially resourced. For example, in 1996, the Organisation for Economic Cooperation and Development (OECD) found that 90% of available resources belonged to only 20% of DNGOs.⁴⁰⁵ In 2005, 50% of the European Commission funding was to DNGOs working in humanitarian and relief services.⁴⁰⁶ Both OXFAM and CARE generated ten-times more revenue than AI (USA) and more than twenty times that of Human Rights Watch, which are the most resourced HURINGOs.⁴⁰⁷ 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.⁴⁰⁸

In a nutshell, mainstreaming human rights would promote a culture of human rights. According to Butler, realisation of a human rights culture would mean that:⁴⁰⁹

...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 institutionalise 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 recognise and value both their own rights and the rights of others and would genuinely be tolerant of difference.

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 propounded by Nyamu-Musembi and Cornwall (2004):⁴¹⁰

⁴⁰² Darrow and Tomas (2005) 520.

⁴⁰³ Uvin (2004) 36.

⁴⁰⁴ Uvin (2004) 13.

⁴⁰⁵ De Senollisa (1999) 95.

⁴⁰⁶ AWID (2007) 48.

⁴⁰⁷ Scott (2001) 209.

⁴⁰⁸ Seafeld (2003) 233-234, Okafor (2006) 4 and 6.

⁴⁰⁹ Butler (2005) 69.

⁴¹⁰ Nyamu-Musembi and Cornwall (2004) 45.

[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 recognise and claim rights that are enshrined in the UDHR. For most, too, this entails 1) work with duty holders—generally 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.

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.⁴¹¹ 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.⁴¹² 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.⁴¹³ 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.”⁴¹⁴

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:⁴¹⁵

Discipline refers to “a mode of social organisation 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 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 behaviour and thoughts are clearly delimited. The epithet ‘common sense’ is achieved when a particular mode of thought and conduct is unquestioningly accepted as normal.

There is a growing appropriation of the human rights language in the mission statements of almost all institutions and organisations. Some organisations 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 rights-based approaches. This thesis also documents these efforts as a more accessible format of information sharing.

⁴¹¹ Van Tuiji (2000) 618.

⁴¹² ICHRP (2003) 3.

⁴¹³ Momba (2004) 230, Welch (2001) 264, Dicklitch and Lwanga, (2003) 485.

⁴¹⁴ Heyns and Viljoen (1999) 422, Heyns and Viljoen (2004) 130.

⁴¹⁵ Evans (2005) 1055.

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, respect for the basic rules of the organization.⁴¹⁶

The Charter of Popular Participation urges all NGOs and voluntary organisations 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 organisations and NGOs; give increased support and target their operations within the framework of national economic strategies; give due considerations to initiatives at the grassroots, utilise African expertise, strengthen advocacy nationally and internationally, and influence donors in genuine partnership.⁴¹⁷

As early as 1991-1995, the Commonwealth Foundation undertook extensive research and consultations that resulted in the “NGO guidelines for good policy and practice.”⁴¹⁸ Among others, the guidelines outline the values of NGOs as follows: advance and improve the human condition; 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 organisational and personal level.⁴¹⁹

Recently the International NGOs (INGOs) adopted an International Non-Governmental Accountability Charter.⁴²⁰ However, only INGOs can become formal signatory to the Charter.⁴²¹ 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

⁴¹⁶ ICHRP (2003) 9-10.

⁴¹⁷ Charter on Popular Participation (1990) part 111, subsection D.

⁴¹⁸ Commonwealth Foundation (1995) v.

⁴¹⁹ Commonwealth Foundation NGO Guidelines for good policy and practices (1995) Guideline 5.

⁴²⁰ International Non-Governmental Accountability Charter (2005).

⁴²¹ www.ingoaccountabilitycharter.org.

INGO performance and effectiveness as organisations.⁴²² It reiterates that transparency and accountability are good for government, business and non-profit organisations and seeks to ensure that the high standards that INGOs demand of others are respected in INGO's own organisations.⁴²³ 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, organisation structure and decision-making, written values, policies and procedures and ethical fundraising among others.⁴²⁴ Similarly, humanitarian NGOs have a Code of Conduct, namely "The Humanitarian Charter and Minimum Standards in Disaster Response".⁴²⁵

African women have developed the Charter of Feminist Principles for African Feminists.⁴²⁶ The Feminist Charter is a tool to monitor institutional development and establish peer review mechanisms.⁴²⁷ 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 herstories.⁴²⁸ 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 organisation; taking into account the need for self-fulfilment and professional development of others; leadership of women organisations 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 characterised by disciplined work ethics, strengthened multi-generational network; ensuring that the feminists' movement is recognised as a legitimate constituency; building

⁴²² International Non-Governmental Accountability Charter (2005) 3.

⁴²³ Ibid.

⁴²⁴ Ibid at 4-6.

⁴²⁵ ICHRP (2002) 4.

⁴²⁶ www.africanfeministsforum.org.

⁴²⁷ Africa Feminist Charter (2006) 3.

⁴²⁸ Africa Feminist Charter (2006) 10-11.

and expanding knowledge; mentoring and providing opportunities for young feminist in a “non-matronising” manner and being open to giving and receiving peer reviews.⁴²⁹ 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.

3.3. 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 prioritisation of the human rights discourse. It is followed by an analysis of the appreciation by African NGOs of ordinary people’s conceptualisation of human rights.

3.3.1. *The universality of rights: The conceptualisation of rights amongst NNGOs and SNGOs*

Human rights are universal and therefore must reflect the changing values, perceptions and different 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.⁴³⁰ 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.⁴³¹ 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.”⁴³²

Secondly, there is a difference in the prioritisation of rights. NNGOs prioritised CPRs while SNGO also sought to address ESCRs. The prioritisation 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.⁴³³

⁴²⁹ Africa Feminist Charter (2006) 15-16.

⁴³⁰ Mutua (2002) 2-4.

⁴³¹ Howard (1990) 166.

⁴³² Leary (1990) 30, Mutua (2002) 16.

⁴³³ IHRIP (1994) 6.

Further, during the Cold War, ESCRs were considered communist in inspiration and content and therefore lacked a comprehensive institutional framework for enforcement.⁴³⁴

Third, is the difference in strategies to advance human rights. Many African NGOs grew out of the overt support from the NNGOs.⁴³⁵ 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.”⁴³⁶ 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 abuses.⁴³⁷ 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.⁴³⁸ 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.⁴³⁹ 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.”⁴⁴⁰ 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.⁴⁴¹ The differences relate to the priorities, strategies and geographical focus of human rights work.

In criticising NNGOs at the Harvard Retreat, participants from the SNGOs appreciated the fact that advocacy based on individual cases adds the attraction of realism to

⁴³⁴ Oloka-Onyango (2009) 75-76, Mutua (2002)2, 52-53.

⁴³⁵ Ndegwa (1996) 32.

⁴³⁶ Mutua (2002) 37.

⁴³⁷ Mutua (2002) 37-38, Mutua (2009) 19, Oloka-Onyango (2009) 83, Mutunga (2003) 37, Welch (2001) 3.

⁴³⁸ Keck and Sikkink (1998) 184 and 88, Mutua (2002) 37, Dichter (1997) 3.

⁴³⁹ Steiner (1999) 17 and 81.

⁴⁴⁰ Steiner (1999) 8.

⁴⁴¹ Steiner (1999) 81 and 17.



activism.⁴⁴² Thus, SNGOs did not depart from 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.⁴⁴³ Likewise, at the African Retreat of Amnesty International (AI), which was aimed at enhancing its “dynamic and effective presence, visibility and strategic direction” in Africa,⁴⁴⁴ 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.⁴⁴⁵ 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 “civilising crusade” targeted at the South.⁴⁴⁶ 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 globalisation on the global ecology and economy.⁴⁴⁷ In contrast, reports on the North are both episodic and insufficiently publicised.⁴⁴⁸

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

⁴⁴² Steiner (1999) 23.

⁴⁴³ Steiner (1999) 22.

⁴⁴⁴ AI Africa Consultative Forum, 7-9 July 2005, Entebbe.

⁴⁴⁵ AI Africa Consultative Forum (2005) 1-5.

⁴⁴⁶ Mutua (2002) 19.

⁴⁴⁷ Manji (2004) 28, Mutunga (2003) 37, Dichter (1997) 129, Oloka-Onyango (2002) 292, Steiner (1999) 27–28, Bell and Carens (2004) 326–327.

⁴⁴⁸ Bell and Carens (2004) 314–315, Mutua (2002) 19.

3.3.2. *The universality of rights: African NGOs and cultural interpretation*

African NGOs have largely wrongly packaged human rights as a sophisticated discourse to be transmitted to “ignorant masses.”⁴⁴⁹ And yet, the legitimacy of NGOs is buttressed by the “... consistent stand in the interest of the large masses and for human rights values and causes.”⁴⁵⁰ 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.⁴⁵¹ 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:⁴⁵²

[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 organisations 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.

This thesis is neither intended to blindly romanticise African-ness or to belabour the somewhat stale cultural relativism and universalism debate. Instead, the thesis 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.”⁴⁵³ 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 democracy.⁴⁵⁴

UNESCO’s Declaration of the Principles of International Cultural Cooperation acknowledges that each culture has a dignity and value, which must be respected and preserved and

⁴⁴⁹ Steiner (1999) 74, An-Na’im (2001) 105, An-Na’im (2003) 3.

⁴⁵⁰ Shivji (2004) 3, Edwards (2000) 1.

⁴⁵¹ Ndegwa (1996) 16, Mutua (2004) 196, Mutua (2003) 14, Welch (1995) 297.

⁴⁵² Odinkalu (2001) 187-188.

⁴⁵³ African Charter (1981) art. 29(7).

⁴⁵⁴ Protocol on Women (2003) Preamble.

all cultures form part of the common heritage belonging to all mankind.⁴⁵⁵ 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.⁴⁵⁶ However culture is a “way of life, encapsulating a people’s identity and wisdom.”⁴⁵⁷ As substantiated by the Blair Commission:⁴⁵⁸

[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 socialised 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.

Similarly, the Human Rights Council defines culture as:⁴⁵⁹

a set of shared spiritual, material, intellectual and emotions features of human experience that is 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 meaning that allow for the continuation of everyday practices as well as competing meanings that galvanise change over time.

However, due to colonialism African culture is almost exclusively perceived as a source of human rights violations, as regressive and inimical to development.⁴⁶⁰ The CEDAW Committee depicts culture as a negative impediment to the enjoyment of women’s rights with no possibility of facilitating women’s empowerment.⁴⁶¹ Similarly, in considering state reports the African Commission tends to attribute the denial of women’s human rights to the restrictive construction of culture.⁴⁶² The hostility against culture is influenced by the fact that the African Charter tends to represent culture as straightforward, monolithic and homogenised.⁴⁶³ Likewise, the African Cultural Charter does not elucidate what African culture actually is, but speaks of it as a homogenous entity.⁴⁶⁴ Using an example of the issue of sexuality, Tamale illustrates the potential of

⁴⁵⁵ UNESCO Declaration of principles of cultural cooperation (1966) art. 1(1) and I (3).

⁴⁵⁶ Blair Commission on Africa (2005) 114, para 3.

⁴⁵⁷ Mutua (2002) 19.

⁴⁵⁸ Blair Commission on Africa (2005) 114, para 3.

⁴⁵⁹ Human Rights Council, A/HRC/4/34 (2007) 8.

⁴⁶⁰ Blair Commission (2005) 116, para 14, Okafor (2006) 215, Gutto (1999) 156, Murray (2001b) 224, Tamale (2007) 149-151. Tamale (2008) 1-3.

⁴⁶¹ Nyamu (2000) 381, Banda (2005) 249 - 250, UN Special Rapporteur of Violence Against women (2009) 39.

⁴⁶² Nyamu (2000) 381, Banda (2005) 249-250.

⁴⁶³ Banda (2005) 251.

⁴⁶⁴ Cultural Charter for Africa (1976).

the social legitimacy of African culture as an empowering resource to challenge male domination.⁴⁶⁵ Placing culture parallel to rights leaves a majority of women without redress because it requires them to “strip themselves of culture before enjoying rights.”⁴⁶⁶ Consequently, women are left with the limited choice of either complying with the negative culture or of joining the dominant human rights discourse that trivialises their cultural experiences.⁴⁶⁷ 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 (VAW).”⁴⁶⁸

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 human rights.⁴⁶⁹ 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.⁴⁷⁰ It is therefore incumbent on NGOs as proponents of human rights to demonstrate the relevance of international standards to local context.⁴⁷¹

Granted that culture is a double-edge 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 abuse.⁴⁷² Gutto recalls the resistance of most NGOs during the public session of the Africa Commission to any mention of “African culture, African traditions, African values and African practices.”⁴⁷³ 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

⁴⁶⁵ Tamale (2007) 158-164.

⁴⁶⁶ Tamale (2008) 5-6, Tamale (2007) 157.

⁴⁶⁷ Human Rights Council A/HRC/4/34 (2007) 17.

⁴⁶⁸ Human Rights Council A/HRC/4/34 (2007) 3 and 19.

⁴⁶⁹ Leary (1990) 30, Gutto (1993) 160, Heyns and Viljoen (1999) 421, An-Na'im and Deng (1990) 9, Paul, (1990) 214, Mutua (2002) 8, Welch (1990) 206, Banda (2005) 305, Baxi (2002) 12.

⁴⁷⁰ Nyamu-Musembi (2002) 127, Tamale (2007) 149-152, Human Rights Council, A/HRC/4/34 (2007) 9 and 21.

⁴⁷¹ An-Na'im (2003) 9.

⁴⁷² Gutto (1999) 156.

⁴⁷³ Gutto (1999) 156.

confined to those that enhance the enjoyment of human rights.⁴⁷⁴ 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.⁴⁷⁵ Similarly, in Tanzania, NGOs are obliged to respect the cultures and traditions of the communities they work with.⁴⁷⁶ However, the NGO Task Force in Tanzania complained that obliging them to respect the culture of the communities within which they operated was retrogressive, imputing culture as exclusively negative.⁴⁷⁷ Okafor attests to no knowledge of any NGO that has ever bothered to report or conduct a single seminar on the aspects of Nigerian culture that would support the human rights discourse.⁴⁷⁸ Hence, the Botswana Council of NGOs (BOCONGO) is unique for having taken a decision to draw from positive Tswana culture.⁴⁷⁹

Cognisant that human rights is the "most globalised political value of our time,"⁴⁸⁰ 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.⁴⁸¹ In *Chiku Lidah v. Adam Omar*⁴⁸² it was reiterated that Customary Law is not immutable but is a "living law capable of adaptation and development."⁴⁸³ 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 realisation of rights.⁴⁸⁴ The Human Rights Council calls for a "cultural negotiation" that emphasises positive elements to advance human rights and demystifies the oppressed elements and hierarchies within.⁴⁸⁵ Erturk Yankin 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

⁴⁷⁴ NGO participation in the work of African Commission workshop (1991).

⁴⁷⁵ NGO Forum Indaba, *Swazi Observer*, 6 May (2008) 14.

⁴⁷⁶ Tanzania NGO Act (2002) s.31 (b).

⁴⁷⁷ Tanzania NGO Act (2002) s.31 (b) critique by Sungusia (2002) 21.

⁴⁷⁸ Okafor (2006) 110.

⁴⁷⁹ BOCONGO Civil Society Education Strategy (2007) 16.

⁴⁸⁰ Sarat and Kearn (2001) 4.

⁴⁸¹ Sarat and Kearn (2001) 14-15.

⁴⁸² PC Civil Appeal No 34 of 1991 reported in Peter (1997) 66-67.

⁴⁸³ Ibid.

⁴⁸⁴ Banda (2005) 256, Nyamu-Musembi (2002) 126, Human Rights Council A/HRC/4/34 (2007) 19-20.

⁴⁸⁵ Human Rights Council A/HRC/4/34 (2007) 19-20.

culture per se.”⁴⁸⁶ 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.⁴⁸⁷ Ngugi-wa-Thiongo argues that culture, “as an embodiment of values in society is a positive social mechanism.”⁴⁸⁸ 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.”⁴⁸⁹

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 other⁴⁹⁰ provides a basis for linking rights to culture. Critics of “*ubuntu*” while agreed over its commonality among most African languages, trivialise it as inherently patriarchal and of limited relevance to contemporary youth.⁴⁹¹ Proponents of “*ubuntu*” acclaim it as a “philosophy of ... personhood, humaneness and morality.”⁴⁹² To Fredrick Jjuko, *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.⁴⁹³ The common rules of Africa cultures, such as responsibilities towards others, participation, compromise, tolerance of diversity are similar to the human rights principles.⁴⁹⁴ 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.”⁴⁹⁵

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

⁴⁸⁶ UN Special Rapporteur of Violence Against women (2009) 29.

⁴⁸⁷ An-Naim and Deng (1990) 9 and 12, Paul (1990) 214, Mutua (2002) 8, Welch (1990) 206.

⁴⁸⁸ Ngugi wa Thiongo (2004).

⁴⁸⁹ Ibid.

⁴⁹⁰ South African Human Rights Commission (2006) www.sahrc.org.za/sahrc-cms.

⁴⁹¹ Cornell and van Marle (2005) 196.

⁴⁹² Mokgoro (1998) 15.

⁴⁹³ Jjuko Interview, Chairperson Free Movement, Uganda, 29 August 2007, Makerere.

⁴⁹⁴ Welch (1990) 206, An-Na’im and Deng (1990) 12.

⁴⁹⁵ Mokgoro (1998) 17-18 and 21.

Programme the Centre has organised over twenty workshops targeting SADC cultural chiefs.⁴⁹⁶ The rationale of the programme is to challenge the chiefs to analyse their cultural civilisation and act as advocates for progressive change.⁴⁹⁷ For example, in its original conceptualisation 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 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.⁴⁹⁸ Moreover, the reference to culture by states is intended to preserve the unequal cultural interpretations bestowed upon privileged men.⁴⁹⁹ 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,"⁵⁰⁰ preached "self-sacrifice" and "condemned women's headstrongness as unfeminine."⁵⁰¹ At the Amnesty International (AI) African Consultative Workshop, 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 priestess and goddesses to reinforce the cultural legitimacy of women's struggles.⁵⁰² 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.⁵⁰³ However, the *Magaya v. Magaya*⁵⁰⁴ 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."⁵⁰⁵ It is redeeming that the Protocol on Women provides that women be consulted about the content

⁴⁹⁶ Interview Hansungule, Professor Centre for Human Rights: Pretoria, 14 May 2007, Pretoria.

⁴⁹⁷ Ibid.

⁴⁹⁸ Banda (2005) 262.

⁴⁹⁹ Banda (2005) 252.

⁵⁰⁰ Amadiume (1995) 38 and 54.

⁵⁰¹ Amadiume (1995) 56, Tamale (2007) 159.

⁵⁰² AI Africa Consultative Workshop (2005) 18.

⁵⁰³ Uganda Feminist Forum 16 January 2008.

⁵⁰⁴ 1999 (1) TLR 100, [1999]3lrc 35, www.law.utoronto.ca/documents/cook/WomenRights-syllabus.doc.

⁵⁰⁵ Banda (2005) 37.

of the cultural norms that are to operate within their societies.⁵⁰⁶ Significantly, the Protocol on Women validates “Africa women’s agency in challenging culture as a concept of power, authority and reshaping of society.”⁵⁰⁷ Similarly the Africa Feminist Charter obliges the “critical engagement with discourses of religion, culture, tradition and domesticity with focus on the centrality of women’s rights.”⁵⁰⁸ Likewise, the Commonwealth Foundation NGO guidelines for good policy and practice, recommends the “respect for the rights, culture and dignity of men and women.”⁵⁰⁹

The Ganda proverb *Yiga Ngokola* (learn as you work) is based on the African philosophy of community work and learning through community activity.⁵¹⁰ 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.⁵¹¹ A case study of Organisations 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.⁵¹² ORAP undertook an extensive cultural analysis that identified shared cultural values within the Ndebele language to shape its philosophy: “*zigoqe*-self mobilisation; *zenzele*-do it yourself/fend for yourself; *Ziqhatshe*-create self employment; *zimele*-self reliance (based on interdependence) be independent; *qugelela*-create savings.”⁵¹³

Bottom-up approaches anchored in traditional culture build on people’s experiences as a basis for reform.⁵¹⁴ 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.⁵¹⁵ The issue of how DNGOs and HURINGOs have promoted the principle of the indivisibility of human right is the focus of next debate.

⁵⁰⁶ Protocol on Women (2003) Preamble and art. 17.

⁵⁰⁷ Tamale (2007) 159.

⁵⁰⁸ Africa Feminist Charter (2006) 11.

⁵⁰⁹ Commonwealth Foundation: NGO Guidelines for good policy and practice, (1995) guideline 5.

⁵¹⁰ Nabudere (2009) 246.

⁵¹¹ Nabudere (2009) 246.

⁵¹² Sibanda (2002) 323.

⁵¹³ Sibanda (2002) 324.

⁵¹⁴ Tamale (2007) 164.

⁵¹⁵ FIDA-U Organisational development (2007) 20.

3.4. The principle of indivisibility of rights: The case study of DNGOs and HURINGOs

This discussion reviews the traditional relationship between DNGOs and HURINGOs and examines how DNGOs have linked human rights to their work. It also interrogates how HURINGOs appreciate the struggles of DNGOs as human rights struggles.

3.4.1. *The traditional relationship between DNGOs and HURINGOs*

The Vienna Declaration recognises the indivisibility of human rights.⁵¹⁶ 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."⁵¹⁷ As observed by UNDP:⁵¹⁸

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.

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.⁵¹⁹ HURINGOs preferred to stick to CPRs leaving the struggles for ESCRs and social change to the DNGOs.⁵²⁰ Likewise, DNGOs did not consider CPRs as part of their domain nor did they address the human rights implications of their work.⁵²¹ Development was conceptualised as a technical and not a political process, rendering it blind to the dynamics of power and exclusion.⁵²²

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.⁵²³ Mainstreaming human rights is strategic because development and human rights share the key common values of inclusion, non-

⁵¹⁶ The Vienna Declaration (1993) para 5.

⁵¹⁷ Uvin (2004) 1 and 47.

⁵¹⁸ UNDP (2000) 2, Robinson (2005) 27, Nyamu-Musembi and Cornwall (2004) 8.

⁵¹⁹ Tomasevki (1989) 113-114, Wolfensohn (2005) 21, Uvin (2004) 47.

⁵²⁰ Uvin (2004) 31, Oloka-Onyango (2000b) 33.

⁵²¹ Sano (2000) 42.

⁵²² Uvin (2004) 3, 31 and 37, Manji (2004) 26.

⁵²³ ICHRP (2002) 14.

discrimination, ownership, accountability, transparency, participation and empowerment and are committed to promoting the dignity and welfare of the human person.⁵²⁴

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.”⁵²⁵ 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.”⁵²⁶ 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 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.⁵²⁷ 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 the end of development.⁵²⁸ On the other hand, DNGOs use rights based approaches as an instrument to achieve more effective programming.⁵²⁹

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.⁵³⁰ This is due to the dismal reality of not automatically applying human rights as the core of good governance.⁵³¹ Moreover, economic globalisation 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.⁵³² There is also a tendency for DNGOs to simply repackage or add labels without necessarily re-conceptualising or changing their practice of treating rights as “... gifts, charity or policy blueprints.”⁵³³ Generally, DNGOs consider rights as

⁵²⁴ Alston (2005b) 825, Alston and Robinson (2005) 4.

⁵²⁵ Alston (2005b) 755, Darrow and Tomas (2003) 472.

⁵²⁶ Alston (2005b) 799.

⁵²⁷ Tomasevki (1989) 113-114, Sano (2000) 142, Uvin (2004) 2.

⁵²⁸ Darrow and Thomas (2005) 492.

⁵²⁹ Darrow and Thomas (2005) 492-493.

⁵³⁰ Donnelly (1999) 162, Uvin (2004) 118.

⁵³¹ Kjaer and Kinnerup (2002) 14-15, Nyamu-Musembi and Cornwall (2004) 17.

⁵³² Donnelly (2002) 232-233.

⁵³³ Scott (2001) 210, Uvin (2004) 53.

highly specialised legal discourse and not multi-disciplinary.⁵³⁴ 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.⁵³⁵ For example, in the UK for a long time, many voluntary organisations misperceived rights as a “far-fetched luxury,” principally of interest to expensive lawyers and celebrities.⁵³⁶ Others misconceived human rights as a means to advance the interference of European judges in British affairs.⁵³⁷ 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.⁵³⁸ Notwithstanding the above, many DNGOs and agencies have adopted rights-based approaches as previously discussed.⁵³⁹

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.⁵⁴⁰ For example, in seeking to infuse rights based approaches 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 behaviours and strengthen institutional capacity to base economic policies on human rights.⁵⁴¹

Action Aid’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” organisation that allows partners to respond to changing situations and context.⁵⁴²

⁵³⁴ Nyamu-Musembi and Cornwall (2004) 17.

⁵³⁵ Alston and Robinson (2005) 5, Robinson (2005) 32 - 37, Butler (2004) 49, Nyamu-Musembi and Cornwall (2004) 17, Wolfensohn (2005) 21.

⁵³⁶ Butler (2004) 23.

⁵³⁷ Butler (2005) 67.

⁵³⁸ Alston (2005b) 806.

⁵³⁹ Part 3.2.

⁵⁴⁰ ICHRP (2003) 74.

⁵⁴¹ Butler (2004) 20.

⁵⁴² David and Machini (2004) 8.

3.4.2. *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.⁵⁴³ Ironically, major HURINGOs have not eagerly embraced the struggles of DNGOs such as the anti-globalisation 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 prioritises economic growth to the detriment of human rights.⁵⁴⁴ Consequently, HURINGOs are dissuaded from engaging development struggles in general for fear of marginalising human rights.⁵⁴⁵ The ICHRP is on record as stating that joining large campaigns that are united by common values without a legal basis is risky.⁵⁴⁶ The ICHRP is of the strong opinion that:⁵⁴⁷

The two qualities that human rights organisations 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 organisations is often most effective when criticism is accompanied by precise descriptions of legal obligations. Where human rights organisations 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 organisations to defend vulnerable people effectively would be much reduced. Once again, in a period of polarisation this is a particular challenge. Human rights organisations 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 polarisation and put 'loyalty to the cause' before accuracy.

Mutunga counter argues that the anti-globalisation movements are struggles for economic, social, cultural and political justice,⁵⁴⁸ 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-globalisation movements are dealing with global forces that have minimal faith in or respect for precise descriptions of the legal obligations.⁵⁴⁹

⁵⁴³ Alston (2005b) 800 and 827.

⁵⁴⁴ Evans (2005) 1057.

⁵⁴⁵ Alston (2005b) 761.

⁵⁴⁶ ICHRP (2002) 48, quoted in Mutunga (2004) 21-22.

⁵⁴⁷ Ibid.

⁵⁴⁸ Ibid.

⁵⁴⁹ Ibid at 22.

Mostly, HURINGOs have not been active in the regional integration process. Yet, the existence of trade relations and diplomatic ties facilitates the successful enforcement of human rights in regional economic blocs.⁵⁵⁰ Moreover, all regional blocs provide for the active participation of civil society in the development processes.⁵⁵¹

At the continental level, the African Union has categorically made human rights a key principle of its operations. The Africa Union provides for the building of partnership, solidarity and cohesion between governments and all sectors of CSOs.⁵⁵² It establishes the Economic, Social and Cultural Council (ESCC),⁵⁵³ which statute was adopted in 2004. The objectives of the ESCC 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 gender equality and strengthen the capacities of CSOs.⁵⁵⁴ Some NGOs have attributed their lack of engagement with the AU to the criteria of observer status of the ESCC. For example, to be an observer, an NGO must derive 50% of its finances from the membership.⁵⁵⁵ In addition, women's organisations are likely to be excluded on the ground of discrimination on the basis of gender.⁵⁵⁶

SADC is yet to have a CSOs policy but works with NGOs out of personal conviction.⁵⁵⁷ Frequent change in the contact information of NGOs is also a hindrance to effective and continuous communication with NGOs.⁵⁵⁸ Likewise in East Africa, NGOs have hardly participated in the EAC activities.⁵⁵⁹ NGOs have not capitalised 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 Africa Trade Union Coordinating Council (EATUC), East African Judges and Magistrate's

⁵⁵⁰ Heyns and Viljoen (1999) 423 and 433.

⁵⁵¹ AU (2000) art 3g and 22, SADC Treaty (1992) art 23, EAC Treaty (1999) art 7, art 127-129.

⁵⁵² African Union (2000) preamble.

⁵⁵³ African Union, Constitutive Act (2000) art 3(g) and art 22.

⁵⁵⁴ Statute of the ESCC of the African Union (2004) art. 2.

⁵⁵⁵ Statute of the ESCC of the African Union (2004) art. 2, rule v and vi.

⁵⁵⁶ Statute of the ESCC of the African Union (2004) art. 2 rule ix.

⁵⁵⁷ Interview Madibela and Faye, Director and Technical Advisor, SADC Gender Unit, Botswana, 6 March 2008.

⁵⁵⁸ Interview, Hembe Director HIV/AIDs, SADC Secretariat, 8 March 2008.

⁵⁵⁹ KCK EAC Fact-finding missions (2004) 18.

Association and Kituo Cha Katiba (KCK),⁵⁶⁰ had observer status with the EAC. By 2004, ten organisations' applications were pending.⁵⁶¹ By 2008, the Civil Society Forum that allows periodic consultations between the Secretary-General and civil society had not been called.⁵⁶² The Consultative workshop of 2005⁵⁶³ recommended the establishment of the Economic, Social and Cultural Committee (ESCC) as one of the autonomous structures of the EAC.⁵⁶⁴ The EAC also noted that there were a number of organisations who qualified but had not applied for observer status.⁵⁶⁵ 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?"⁵⁶⁶ The once vibrant East Africa Youth Council has been dormant since 2000.⁵⁶⁷ Only KCK and East Africa Law Society (EALS) have actively engaged the EAC.⁵⁶⁸ 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 globalisation rather than the enhanced promoting and protection of human rights.⁵⁶⁹

⁵⁶⁰ Report of the Committee on Fast Tracking East African Federation (2004), 311, Appendix X (a).

⁵⁶¹ Report of the Committee on Fast Tracking East African Federation (2004), 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 Organisations (CISO), The East African Sub-Regional Support Initiative for the Advancement of Women (EASSI).

⁵⁶² Interview, Kiraso, Deputy Secretary General EAC, 4 May 2009.

⁵⁶³ Report of the Civil Society Workshop Organised by the East African Community Secretariat from 28-29 July 2005, Arusha, Tanzania.

⁵⁶⁴ EAC Summit Joint Communiqué (2005) para9, 29-30th May 2005.

⁵⁶⁵ 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 Organisation 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.

⁵⁶⁶ Member of the Legal and Harmonisation Committee 25 April 2007.

⁵⁶⁷ Interview Deya, Executive Director East Africa Law Society, Convenor of the Civil Society Forum, 7 August 2007, Arusha.

⁵⁶⁸ KCK EAC Fact-finding missions (2004) 28.

⁵⁶⁹ Peter and Mwakaje (2004) 56.

Human rights NGOs can no longer remain aloof to the globalisation and development agendas because existing voluntary codes adopted by businesses are so vague, applied in a discretionary fashion, and avoid human rights issues.⁵⁷⁰ NGOs can use the tool of litigation to stimulate public debate and prompt consumer boycotts with non-compliant businesses.⁵⁷¹ NGOs can also ensure that community consultations take on local concerns and address the barriers to the participation of communities in local processes.⁵⁷² For example, the Kenya Human Rights Commission (KHRC) successfully organised 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.⁵⁷³ 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 to socialise businesses to promote human rights.⁵⁷⁴ NGOs have to strengthen the state in order to regulate businesses to guarantee human rights for all.⁵⁷⁵

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.⁵⁷⁶ The participation of East African NGOs in the consultations was irregular, did not have thorough critiques and consequently failed to hold government accountable. For example, in Uganda, NGOs did not have facts and figures to support their positions.⁵⁷⁷ Similarly, in Tanzania NGOs participation was mediocre, because they were not united, and because they lacked technical expertise in economic and development issues.⁵⁷⁸

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.⁵⁷⁹ Furthermore, while the

⁵⁷⁰ Baehr (2003) 36.

⁵⁷¹ Bradlow (2005) 56 and 69.

⁵⁷² Bradlow (2005) 70.

⁵⁷³ Maina (2004) 60.

⁵⁷⁴ Old Mutual, Soweto and SABC 3.

⁵⁷⁵ Halvorsen and Michelsen (2002) 158, Kothari (1999) 20.

⁵⁷⁶ REPOA (2007) 18-19, Wandira and Patel (2003) 16 and 20, Koetz (2003) 26-27.

⁵⁷⁷ Asimwe-Mwesige Programme officer Programme Officer European Union Civil Society Capacity Building, Former Programme Officer Basket Fund, Ministry of Justice 28 August 2007, Kampala, Rukare Head of Party, European Union Civil Society Capacity Building 14 August 2007, Kampala.

⁵⁷⁸ REPOA (2007) 15 and 27.

⁵⁷⁹ Koetz (2003) 6.

Mid Term Expenditure Framework was intended to be a participatory process by enabling stakeholders to scrutinise the budget, civil society was "... guilty of last minute, ad hoc responses to the budget rather than a more focuses approach."⁵⁸⁰ It is such casual participation that marginalises NGOs from policy formulation, discourse and implementation.

3.5. Conclusion

The chapter has justified why all NGOs should embrace human rights principles in their governance arrangements, irrespective of whether or not they define themselves as HURINGOs. This is mainly because, human rights mutually reinforce democratic and development arenas, to which all NGOs, directly or indirectly subscribe. In essence, the merit of human rights is that it draws attention to discrimination, it 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 globalisation 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.

⁵⁸⁰ Verwey, Lefko-Everett and Friedmann (2007) 4.

CHAPTER FOUR

NGOs AND THE PRINCIPLE OF ACCOUNTABILITY

4.1. Introduction

Calls for an institutional framework that allows for the monitoring of civil society at the international, regional and national levels are increasing.⁵⁸¹ In both the North and South, NGOs increasingly face a host of questions about their operations: “From where do NGOs derive their legitimacy?” “To whom are NGOs accountable?” “Who or what do they represent?”⁵⁸² The question of NGOs’ legitimacy and accountability was also discussed at the World Social Forum: *Frank Talk in the Family*.⁵⁸³ NGO accountability is defined as the “process by which an NGO holds itself responsible for what it believes, what it does, and what it does not do in a way which shows it involving all concerned parties and actively responding to what it learns.”⁵⁸⁴ Accountability is not confined to the law but extends to “secure integrity in relationships within society.”⁵⁸⁵ Similarly, the Kingston Survey relates accountability to how “one manages unequal distribution of power in places when those that are meant to benefit from one’s work have weak political and economic voice.”⁵⁸⁶ This chapter examines the multiple accountabilities of NGOs to the various stakeholders, namely the law and government regulatory Board, the NGO governing Board, the membership, communities, the public, NGO sector-wide self-regulatory Councils and donors.

The chapter begins with a focus on accountability to the law within the national legal framework. It questions whether NGOs should have legal obligations to register under a specific law and whether NGOs should at all times obey the law. It then examines the role of government regulatory bodies in enforcing the accountability of NGOs to the law. Part three places an emphasis on the governing Board of individual NGOs. Under non-profit law, the governing Board is a key organ that ensures that the NGO is accountable and achieves its core purpose. The discussion begins with an investigation of the extent to which the Board is a source of accountability. It examines the various accountability mechanisms such as the duty of loyalty of the Board and the

⁵⁸¹ Commonwealth Foundation (1995) 32. Kingsbury (2005), van Tuijl (2000) 618, Edwards (2000) 21, Lehr-Lehnardt (2005) 35.

⁵⁸² Commonwealth Foundation (1995) 32.

⁵⁸³ World Social Summit 18 January 2007.

⁵⁸⁴ ICHRP (2002) 12.

⁵⁸⁵ Anwar (2006) 2.

⁵⁸⁶ Kingstone Survey (2006) 6.

conflict of interest policy, setting a clear mission, strategic planning, monitoring and evaluations processes. Part four highlights the dilemmas of accountability to the membership, profiling the tensions of having elections of the leadership vis-a-vis having a recruited Board, while part five of the chapter addresses the question of accountability to the communities a particular NGO works with. The final sections of the chapter examine the principle of transparency as an accountability mechanism to the broader public, explores the potential of the NGO sector-wide self-regulatory body to enforce good governance within the NGO sector, and addresses the question of accountability to the donors as well as donor's potential to influence the governance of NGOs.

4.2. Accountability through the law

4.2.1. *The obligation to register under the law*

The formation of associations provides an important beginning to organise in pursuit of common interests.⁵⁸⁷ It is only organised people who can effectively struggle against oppression and repression by governments.⁵⁸⁸ Nonetheless, there is controversy as to whether or not the state should provide specific legal regulations of NGOs. On the one hand, under international law there is neither a requirement for a law to regulate freedom of association nor the existence of a legal model of registration.⁵⁸⁹ The very growth of the NGO movement as part of civil society is a reflection of people's efforts to "create their own spaces and solutions to the crisis of the decay of the nation-state in satisfying their own needs."⁵⁹⁰ All the constitutions of East Africa⁵⁹¹ and that of South Africa provide for the right to freedom of association.⁵⁹² In a democratic society, the state is obliged to provide the legal and regulatory framework for civil society to function independently.⁵⁹³ The Lawyers Committee for Human Rights (LCHR) contends that NGOs should not be subjected to any special oversight mechanism nor suffers discrimination only because of their not-for profit

⁵⁸⁷ The African Commission, *Report of the African Commission's Working Groups of experts on Indigenous populations/ communities* (2005) 57.

⁵⁸⁸ Peter (1997) 650.

⁵⁸⁹ Lawyers Committee on Human Rights (1997) 20.

⁵⁹⁰ Jjuko (1996) 193.

⁵⁹¹ East African region refers to the countries of Uganda, Tanzania and Kenya, as the original members of the East African Community. In 2006, Rwanda and Burundi joined the East African Community, which changes the original meaning of the term East Africa.

⁵⁹² Tanzania art. 20, Uganda art. 29, Kenya Wako Draft art. 52, South Africa art. 18.

⁵⁹³ Edwards (2004) 24, Welch (1995) 44.

character, but rather ordinary criminal and civil laws designed to protect against fraud and abuse are sufficient.⁵⁹⁴ LCHR fears that governments can manipulate such regulations in order to interfere with legitimate associational life.⁵⁹⁵ In case of compulsory registration, the procedures for registration must be quick, straightforward, cheap and the denial of registration must be subject to judicial review by an independent and impartial court.⁵⁹⁶ The African Commission in the *Civil Liberties Organisation (CLO) v. Nigeria*⁵⁹⁷ underscored the state's duty to refrain from interfering in the internal affairs of an NGO.⁵⁹⁸ In *Christopher Mtikila v. AG*, the High⁵⁹⁹ Court in Tanzania held that a law which limits or derogates from the basic rights of the individual must be lawful and safeguard against arbitrary abuse by those in authority as well as be reasonably necessary to achieve the legitimate object.⁶⁰⁰

An NGO or coalitions of NGOs may decide not to register in order to enable it function in a free and flexible manner. At times an NGO may operate as a project of a registered NGO, pending its own registration. The informality of loose coalitions, as was the case with Coalition of Political Accountability to Women (COPAW) in Uganda, Mandela Park Anti Eviction Campaign (MPAEC), Landless People's Movement (LPM) and the Homeless People's Association (HPA) in South Africa and the Kenya Women's Political Caucus in its formative years,⁶⁰¹ allows flexibility and political autonomy from government.⁶⁰² At times NGOs worry that registration might widen the gap between formal leadership and membership.⁶⁰³ For example, Soweto Electricity Crisis Committee (SECC) and Mandela Park Anti-Eviction Campaign (MPAEC) were concerned that registration would result in "internal oligarchies" and blunt its "militancy."⁶⁰⁴ Free Movement in

⁵⁹⁴ LCHR (1997) 45.

⁵⁹⁵ World Bank (1993).

⁵⁹⁶ Lawyers Committee on Human Rights (1997) 22.

⁵⁹⁷ Communication No 101/93, Institute of human rights and development (1999) 43-46.

⁵⁹⁸ Communication No 101/93, Institute of human rights and development (1999) para 15.

⁵⁹⁹ *Christopher Mtikila v. AG*, High Court of Dodoma, Civil Case No 5 of 1993, discussing the constitutionality of s.40 of the Police Force ordinance 1953, reproduced in Peter (1997) 690-691.

⁶⁰⁰ *Christopher Mtikila v. AG*, High Court of Dodoma, Civil Case No 5 of 1993, discussing the constitutionality of s.40 of the Police Force ordinance 1953, reproduced in Peter (1997) 690-691.

⁶⁰¹ Greenberg (2004) 20, Oldfield and Stokke (2004) 21, Kibalama and Nassali (2004), Khan and Pietersen (2004) 16, Adhiambo-Oduol (2002) 105.

⁶⁰² Khan and Pietersen (2004) 16.

⁶⁰³ Greenberg (2004) 22.

⁶⁰⁴ Desai and Pithouse (2004) 23-24.

Uganda refused to register because the reference point for its existence was asserted to be the right to freedom of association enshrined in the Constitution.⁶⁰⁵

Given the cumbersome registration process, it is probable that some NGOs do not bother to register. Some operate as projects of registered organisations.⁶⁰⁶ For example, in Uganda, the registration process of NGOs is so cumbersome that most lawyers in Uganda are reluctant to register NGOs.⁶⁰⁷ Prior to the Amendment of 2002, in Tanzania the registration was so lengthy that a majority of organisations were registered as societies.⁶⁰⁸ Similarly in South Africa, registration can delay for up to three months.⁶⁰⁹

There is ambivalence whether the law in South Africa facilitates the governance and registration of NGOs. The Telesurvey on the Cooperative/NPO case study found that some NGOs found the multi-registration procedures complicated and frustrating. Contradictorily, other NGOs found that the triple registration governing NGOs contributes to an enabling environment because some NGOs use the different “legal entities interchangeably to access different things at different times.”⁶¹⁰ Nonetheless, in South Africa the motivation for registration is to secure funding through government contracts, subsidies and tax benefits and not necessarily to promote the good governance of NGOs.⁶¹¹

The World Bank argues that registered NGOs should accept reporting requirements and enforcement mechanisms that are appropriate and proportional to the legitimate public interests or public order.⁶¹² Likewise, the International Council of Human Rights Policy (ICHRP) contends that “... NGOs have a right to register their existence, as well as an obligation.”⁶¹³ According to the ICHRP, rather than refusing to register, an NGO should advocate for the amendment of the law because being law abiding enhances an NGO’s legitimacy.⁶¹⁴ For example, under the Landless People’s Movement (LPM) some NGOs believed that it was programmatically difficult to carry out plans without a formal structure, arguing that “too little structure can cause disintegration of the

⁶⁰⁵ Interview, Jjuko, Chairperson Free Movement, Uganda, 29 August 2007.

⁶⁰⁶ Murungi (2009) 40.

⁶⁰⁷ Interview Wante, Director Law Development Centre, Uganda, 30 July 2007, Kampala.

⁶⁰⁸ Shivji and Kapinga (1998) 46-47.

⁶⁰⁹ NPO Impact Assessment (2005) 101.

⁶¹⁰ NPO Impact Assessment (2005) 66.

⁶¹¹ Morgan (2005) 2, NPO Impact Assessment (2005) 8-9 and 71.

⁶¹² LCHR (1997) 45.

⁶¹³ ICHRP (2003) 73.

⁶¹⁴ ICHRP (2003) 73.

movement and localise the struggle.”⁶¹⁵ In fact the non-registered status of Kenya Women Political Caucus (KWPC) presented insurmountable difficulties such as inability to own bank account, rent premises and fundraise as well as made it difficult to distinguish between the work of the hosting organisation and that of KWPC.⁶¹⁶

Ironically, although in 1993 the World Bank found the law in Uganda was restricting the right to freedom of association, a government commissioned consultancy report found that many NGOs did not have major complaints about the law nor did they seek any improvements to the regulatory environment to facilitate their work.⁶¹⁷ It is only in 2009 that a few NGOs led by the Human Rights Network (HURINET) petitioned the Constitutional Court challenging the restrictive legal framework for the right to freedom of Association.⁶¹⁸ The petition sought the declaration of the NGO Act as unconstitutional for violating the right of freedom of association and specifically challenged s 2 (1) that provides for mandatory registration, s 2(2) giving the NGO Board power to impose restrictions on NGOs, s 2(1c) requiring annual renewal of the NGO permit and s. 8 giving the NGO Board discretionary powers to approve or reject the application. Some NGOs contend that seriously challenging the state requires a formal legal structure. In East African countries non-registration is a criminal offense.⁶¹⁹ Related to the above is the question of whether NGOs should obey the law at all times or whether breaking the law can in some situations be justifiable.

4.2.2. NGOs, accountability to the law and the contentious issue of civil disobedience

The ICHRP asserts that one of the values of human rights NGOs is the value of non-violent and lawful methods of engagement.⁶²⁰ Most African constitutions restrict citizen civil action because it undermines government authority and creates uncertainty. In Uganda, the Code of Honour of NGOs bars civil disobedience as “subversive.”⁶²¹ Citizen civil action includes the constructive criticism of government policies through mass media and public debate, voting, withdrawal of support from government programmes, policies, facilities, support of the opposition,

⁶¹⁵ Greenberg (2004) 22.

⁶¹⁶ Adhiambo - Oduol (2002) 106.

⁶¹⁷ Barya (2000) 30-31, Barr, Fafchamp and Owen (2002) 27-28.

⁶¹⁸ Constitutional Petition No 5 of 2009.

⁶¹⁹ Tanzania NGO Act, (2002) s. 35 (2), Kenya NGO Act 19 s. 22 (1) & 22 (2), The NGO Amendment Act (2006) s. 2 (5) and 2 (6).

⁶²⁰ ICHRP (2003) Table 3.1.

⁶²¹ DENIVA and NGO Forum Uganda: Code of Honour: The Quality Assurance Certification Mechanism (2006) 8.

demonstrations, strikes, processions and boycott to mention but a few.⁶²² However, the above citizen civil actions do not constitute civil disobedience as long as they are carried out through lawful means.⁶²³ Civil disobedience entails a deliberate choice to break the law with the intention that citizens will secure the desired change of the law or policy.⁶²⁴ Under the social contract concept, civil disobedience can be justified to compel the state to perform its obligations in the interest of the common good.⁶²⁵

An’Naim argues that struggle is a form of resistance to oppression:⁶²⁶

In fact, the violator’s power is usually dependent on the victim’s perception of, and response to, the situation. If the victim is somehow able to refuse to submit to the apparent power of the violator, and able to resort to whatever means of resistance are available, the terms of the relationship between the victim and the violator would already have begun to shift or change.

Likewise, Heyns contends that human rights and struggle are two sides of the same coin:⁶²⁷

Human rights ... is not about asking favours, and not theoretical concepts: they are guides to action and triggers of opposition to the illegitimate use of power, particularly state power. Human rights are therefore not dependent on recognition by a state—People can claim them even when the law, whether made by a dictator or by the majority, denies those rights. ... The concept of human rights does not challenge the state as an institution; in fact it endorses the state but claims that the protection of these rights is a primary obligation of the state and holds the state accountable to this standard. The human/rights/legitimate resistance approach emphasises that, to the extent that the state fails in this regard, the obligation to obey the state lapses.

Mandela contends that “it is the oppressor who defines the nature of the struggle and the oppressed is often left no recourse but to use the methods that mirror those of the oppressor. At a certain point ... one can only fight fire with fire.”⁶²⁸ Civil disobedience can yield some limited tangible and immediate benefits. People are enabled to vent their emotions and voice their concerns.⁶²⁹ By 2002, the evictions in Mandela Park had been halted, the new owners agreed to

⁶²² Kibwana (1996) 363.

⁶²³ Kibwana (1996) 363, Mutunga (2001) 131.

⁶²⁴ Kibwana (1996) 362.

⁶²⁵ Fowler (2002c) 244.

⁶²⁶ An’Naim (2003) 6-7.

⁶²⁷ Heyns (2006) 15-16.

⁶²⁸ Mandela (1994) 155.

⁶²⁹ Friedman and Mottair (2004) 20.

surrender the homes in exchange for alternative accommodation.⁶³⁰ Within six months, SECC had illegally reconnected 3,000 households and Eskom was forced to write off the electricity arrears.⁶³¹ In the Western Cape, anti-eviction campaign activists dug a 4-metre hole in the middle of the road when local government council failed to repair it and within a day the hole was fixed and speed limits erected.⁶³² In contrast SANCO, which fraternised with the government did not yield much policy change but allegedly became "...government's errand NGO."⁶³³

The thesis recognises that often human rights victories have been won through the law. Furthermore, government takes legal causes seriously when they have the potential for policy change.⁶³⁴ Nevertheless, the law has its own contradictions. Litigation is expensive and time consuming. For example, between 2000 and 2004, 400 residents of Mandela Park had spent some time in jail.⁶³⁵ The Kensington 87 (K87) pensioners who attempted to disconnect electricity from the Mayor's house were charged and the case dragged on for a year, only to be dismissed.⁶³⁶ The criminalisation of the Mandela Park Anti-Eviction Campaign (MPAEC) and the charging of its leadership exhausted activists in fundraising for bail and legal fees.⁶³⁷ At times governments may ignore court decisions, as was the case with the injunction against the de-gazetting of Butamira forest in Uganda.⁶³⁸ Furthermore, most of the engagement with the law is defensive, and largely in response to summons and arrests.⁶³⁹ In addition, building a constitutional case requires resources, professional lawyers and researchers to build the legality, constitutional and morality arguments.⁶⁴⁰

For the above reasons, NGOs have either used the law as a political tool to gain publicity, frustrate the law or simply to ignore it. In the Western Cape anti-eviction campaign, the Legal Coordinating Committee used law as a political tool:⁶⁴¹

⁶³⁰ Desai and Pithouse (2004) 16.

⁶³¹ Egans and Wafer (2004) 8.

⁶³² Oldfield and Stokke (2004) 15-16.

⁶³³ Habib 22 Nov 2006, Launch of Voices of Protest, Pretoria.

⁶³⁴ Oldfield and Stokke (2004) 27.

⁶³⁵ Desai and Pithouse (2004) 21.

⁶³⁶ Egan and Wafer (2004) 10-11.

⁶³⁷ Oldfield and Stokke (2004) 17 and 23.

⁶³⁸ Interview Muramuzi Executive Director National Association for Professional Environmentalist, (NAPE) Uganda, 30 July 2007, Kampala.

⁶³⁹ Oldfield and Stokke (2004) 22.

⁶⁴⁰ Oldfield and Stokke (2004) 26, Interview Jansen Executive Director LHR, South Africa, 19 Nov 2007, Pretoria.

⁶⁴¹ Oldfield and Stokke (2004) 24.

The LCC's goal is not to win cases but to f-up the system, and to buy time for families. In response lawyers get furious. We talk very loud, we skell them out and yet they are not allowed to talk back because are bound by the code of conduct. But lawyers try to scare us and belittle us, We laugh at them."

The above notwithstanding, this thesis argues that NGOs should only resort to civil disobedience where all lawful negotiations and engagements fail to yield acceptable outcomes.⁶⁴² The Gandhian tactics of breaking the law in an open but non-violent way which was adopted by TAC by importing HIV/AIDS drugs was morally justified because most people consider the making of profit out of illness immoral.⁶⁴³ Other social movements did not attract equivalent public empathy; for example, the media labelled the SECC and MPAEC "criminal, leftist and terrorist."⁶⁴⁴ Furthermore it is difficult to predict the outcome of civil disobedience as it can easily deteriorate into lawlessness and anarchy.⁶⁴⁵ Civil disobedience should not impair the liberty of others, be coercive and should cease when concessions have been made.⁶⁴⁶ It is therefore critical to examine whether the law promotes the accountability of NGOs.

4.2.3. The legal framework for the operations of NGOs and accountability to the governmental regulatory bodies

In all the countries examined in this study the law establishes a government regulatory body for the registration and monitoring of NGOs.⁶⁴⁷ In East Africa, the regulatory body is referred to as the Government NGO Board while in South Africa it is the Directorate of Non-profits.⁶⁴⁸ In Uganda and South Africa, NGOs are not represented on the government NGO Board. In Tanzania, the government NGO Board is comprised of four NGO representatives and six government representatives.⁶⁴⁹ In Kenya, the NGO Board is comprised of seven government officials and five NGO representatives.⁶⁵⁰ For the purposes of this thesis the generic term Government NGO Board is adopted.

⁶⁴² Kibwana (1996) 364.

⁶⁴³ Friedman and Mottair (2004) 28-29.

⁶⁴⁴ Oldfield and Stokke (2004) 24 and 20, Desai and Pithouse (2004) 18, Egans and Wafer (2004) 9 and 17.

⁶⁴⁵ Kibwana (1996) 363-4, Dias (1976) 428-434.

⁶⁴⁶ Kibwana (1996) 366.

⁶⁴⁷ Tanzania NGO Act (2002) s. 6, Kenya NGO Act 19 (1990) s. 3, South African Non-profit Act (1997) s. 4, Uganda NGO Act (1989) s. 3.

⁶⁴⁸ NPO Impact Assessment (2005) 21.

⁶⁴⁹ Tanzania NGO Act (2002) s. 7 (1) i.

⁶⁵⁰ Kenya NGO Act (1990) s. 4.

In Uganda, the NGO law was enacted in 1989, to provide for the registration of NGOs and establish the NGO Board.⁶⁵¹ A certificate of registration may be revoked where an NGO does not operate in accordance with its constitution, violates the conditions of operations or it is in the public interest to do so.⁶⁵² In 2006, the NGO law was amended.⁶⁵³ An NGO automatically acquires legal personality upon registration instead of having to undergo double registration under the Companies Act, as was originally the case.⁶⁵⁴ An NGO has the discretion to register under the Trustees Incorporation Act or the Companies Act.⁶⁵⁵ In Uganda, the Government NGO Board also has powers to guide and monitor NGOs by advising on general policy, making recommendations on the employment of non-citizens, tax exemption, privileges and immunities, impose conditions of operations, activities and staffing of NGOs and advise on general policy. The 2006 Amendment expanded the function of the Board beyond registration to include monitoring.⁶⁵⁶ Registration is obligatory and on failure to do so the NGO or its officer is liable to a fine, imprisonment or both.⁶⁵⁷

In Tanzania, NGOs can register as societies, companies limited by guarantee and trusts.⁶⁵⁸ The Act establishes a Government NGO Board.⁶⁵⁹ The functions of the Government NGO Board are to approve and coordinate the registration of NGOs, facilitate the implementation of the NGO Policy, direct the suspension or cancellation of the registration of NGOs, examine annual reports, advise the government on NGOs, review the register of NGOs, provide policy guidelines to NGOs in light of national development plans, receive, discuss and approve reports of the NGO Council, facilitate information sharing and provide guidelines for networking between NGOs and monitor the adherence of the NGOs' constitutions.⁶⁶⁰

In Kenya, the NGO law was passed in 1990.⁶⁶¹ The Act establishes an NGO

⁶⁵¹ Uganda NGO, Cap 113, formerly Statute 5 of 1989.

⁶⁵² Uganda NGO Act (1989) s. 10.

⁶⁵³ The NGO Amendment Act No 25/2006.

⁶⁵⁴ The NGO Amendment Act, (2006) s. 2 (3).

⁶⁵⁵ The NGO Amendment Act, (2006) s. 2(1)a.

⁶⁵⁶ The NGO Amendment Act, (2006) s. 7.

⁶⁵⁷ Uganda NGO Act (1989) s.2 (4).

⁶⁵⁸ Tanzania Act No 11 of 1954, Tanzania Act No 18 of 1956, Tanzania Cap 212 of 1932.

⁶⁵⁹ Tanzania NGO Act (2002) s.6.

⁶⁶⁰ Tanzania NGO Act (2002) s. 7.

⁶⁶¹ The NGO Act 19 of 1990.

Coordination Board as a government regulatory body⁶⁶² comprised of seven government officials and five members proposed by the NGO Council, a self-regulatory body.⁶⁶³ The functions of the Government NGO Board are to facilitate and coordinate the work of NGOs, maintain a register, receive and discuss annual reports, advise government, conduct regular interviews, provide policy guidelines for harmonising NGO activities with national development plans, receive and approve reports of the Council and advise it on strategies for efficient planning and coordination of the activities and approve the code of conduct for the self- regulation of NGOs.⁶⁶⁴

South Africa's non-profit law was enacted in 1997.⁶⁶⁵ Under the Act, registration is free and voluntary. The objectives of the law are to: provide an environment in which NGOs can flourish; establish an administrative and regulatory framework within which NGOs can conduct their affairs; set and improve standards of governance, transparency, accountability; create an environment for access to information on NGOs, promote cooperation and shared responsibility with government, donors and interested persons.⁶⁶⁶ If an NGO fails to submit reports it is automatically deregistered, after the lapse of a thirty days notice of reminder⁶⁶⁷ but may reapply for re-registration.

In South Africa, the equivalent of the Government NGO Board is referred to as the Directorate, and it is mandated to set and improve standards of governance. The functions of the Directorate are to facilitate the process of developing and implementing policy, support NGOs to register, ensure appropriate standards of governance, liaise with state and interested parties, facilitate the development and implementation of multisectoral and multi-disciplinary programmes and develop model documents and Codes of good practice.⁶⁶⁸ Model documents such as constitutions and the Code of Conduct have been developed and posted on the website. The Directorate has established a capacity building unit.

With the exception of South Africa, the law in all the surveyed countries is not aimed at promoting the governance of NGOs. The above notwithstanding, in practice in South Africa, the Directorate is more preoccupied with registration and not the strengthening of NGO governance by

⁶⁶² Kenya NGO Act 19 (1990) s. 3.

⁶⁶³ Kenya NGO Act 19 (1990) s. 4.

⁶⁶⁴ Kenya NGO Act 19 (1990) s. 7.

⁶⁶⁵ South African Nonprofit Act 71 of 1997.

⁶⁶⁶ South African Nonprofit Act (1997) s. 2.

⁶⁶⁷ NPO Impact Assessment (2005) 99.

⁶⁶⁸ South African Nonprofit Act (1997) s. 5.

undertaking capacity building programmes.⁶⁶⁹ Generally in South Africa, NGOs are poorly governed and there is poor financial reporting.⁶⁷⁰ By 2004, 2,100 organisations had been de-registered for failure to comply with the legal reporting requirements.⁶⁷¹ A research to determine the reasons for non-compliance with the NPO law has been commissioned.⁶⁷² Although the law mandates the Directorate to strengthen the governance of NGOs, the Directorate has primarily targeted government cadres. To fill this void since 2004, the Charity Aids Foundation Southern Africa (CAFSA), established the NGO Governance Initiative. Being an NGO, it has no legal basis.⁶⁷³

Similarly, none of the Government Boards in East Africa has enhanced the governance of NGOs, primarily due to weak capacity. All the Government NGO Boards in East Africa were not computerised.⁶⁷⁴ The Uganda NGO Board was the most pathetic: until 2006, the Board was staffed by immigration officers⁶⁷⁵ and it currently has only one professional member of staff, namely the Secretary to the Board; the only available typewriter had broken down. Consequently, approved certificates for the months of June and July 2007, could not be issued. The Board had only one copy of the NGO Act and no photocopying facilities to enable the public access the law. The government NGO Board meetings in Uganda are erratic and two Board members had not attended any meeting for two years.⁶⁷⁶

In contrast the Government NGO Board Secretariat in Tanzania had copies of printed Acts, National Policy and guidelines for registration are available on request. The Director has made his office very accessible to NGOs.⁶⁷⁷ In Kenya, NGOs consider the government NGO Board Secretariat opaque.⁶⁷⁸

Consequently, within East Africa the Government NGO Boards do not have the capacity to enforce the accountability of the NGOs to the law. In Uganda only 17% of surveyed

⁶⁶⁹ NPO Impact Assessment (2005) 8-10, 73, 91, 93, and 101.

⁶⁷⁰ NPO Impact Assessment (2005) 73, 89, 93 and 101.

⁶⁷¹ NPO Impact Assessment (2005) 95.

⁶⁷² Interview Mpho Deputy Director, South Africa Directorate for Non-profits, 22 November 2007, Interview Kgoto, South Africa Directorate for Non-profits, Capacity Building Unit, 22 November 2007, Pretoria.

⁶⁷³ Morgan (2005) 2.

⁶⁷⁴ An observation found during the field research in 2007.

⁶⁷⁵ Interview Wamimbi, Secretary Uganda Government NGO Board, 12 July 2007, Kampala.

⁶⁷⁶ Wamimbi (2007) 39.

⁶⁷⁷ Interview, Katemba Director Tanzania Government NGO Board, 25 July 2007, Dar-es-Salaam.

⁶⁷⁸ Interview Mutuma, Acting Dean, Kenya Human Rights Institutes, 24 August 2007, Nairobi.

NGOs had ever been visited by a representative of the Government NGO Board.⁶⁷⁹ Most local NGOs do not submit their annual programme reports and audited accounts as required by the law. Comparatively INGOs comply with the law.⁶⁸⁰ A respondent observed that had it not been for the tax incentives such as tax-free cars and non-taxable income given to INGOs, it is probable that they would also not comply.⁶⁸¹

The space allotted to NGOs to operate is principally determined by the political interests of the state.⁶⁸² Although, the NGO Policies of Kenya and Tanzania align NGOs to the government priorities,⁶⁸³ they are not framed in the language of human rights and barely mention the term “human rights.”

Where the NGO’s mission is to enhance rights and democracy, the law is at times used to frustrate that mission. For example, in 1990 The Tanzania Legal Education Trust (TANLET) received notice of deregistration for having sponsored a national seminar on multi-party democracy.⁶⁸⁴ In 1997/98 the Minister of Home Affairs in Tanzania warned that NGOs engaged in “hostile exchanges of words with government, proving stubborn ... or likely to create confusion and insecurity in the country would be struck off [the register].”⁶⁸⁵ Baraza la Wanawake wa Tanzania (BAWATA) registered in 1995 was banned in 1997 for outlining each party’s position on women.⁶⁸⁶ The registration of Zanzibar Women’s Lawyers (ZAFELA) and of the Zanzibar Law Society was delayed for more than a year.⁶⁸⁷

In Uganda, by 2006, the Board had deregistered ten “defiant” NGOs.⁶⁸⁸ The Secretary of the NGO Board has been quite contemptuous of the NGO sector referring to it as “rotten.”⁶⁸⁹ Engabo za Toro in Fort Portal was deregistered for decampaigning the Movement government during its radio programmes.⁶⁹⁰ The Children, Orphans and Women Empowerment

⁶⁷⁹ Barr (2003) 28.

⁶⁸⁰ REPOA (2007) 7, Barr (2003) 10-11, NPO Impact Assessment (2005) 91.

⁶⁸¹ Respondent working with INGO, requested anonymity.

⁶⁸² Welch (1995) 74, Dicklich (1998) 169, Juma (2004) 236.

⁶⁸³ Tanzania NGO Act (2002) s. 7, Kenya NGO Act 19 (1990) s. 7.

⁶⁸⁴ Kijo-Bisimba and Mvungi (2006) 19-21.

⁶⁸⁵ Shivji and Kapinga (1998) 50.

⁶⁸⁶ Peter (2007b) 110-111.

⁶⁸⁷ Tanzania Human Rights Report (2006) 164.

⁶⁸⁸ Wamimbi (2007) 38.

⁶⁸⁹ Wamimbi (2007) 33.

⁶⁹⁰ Interview Wamimbi, Secretary Uganda Government NGO Board, 12 July 2007, Kampala.

(COWE) was deregistered in 2003 but appealed to court, which reversed the Board's decision.⁶⁹¹ The NGO Forum took four years to be registered.⁶⁹² The registration of the National Organisation for Civic Education and Electoral Monitoring (NOCEM), took 3 years for fear that it would promote multi-partism.⁶⁹³

In Kenya, Kenya Human Rights Commission's (KHRC) was denied registration for two years.⁶⁹⁴ Even under the National Alliance Rainbow Coalition (NARC) reform government, Christian Partners Development Agencies (CPDA), Centre for Law and Research (CLARION), Northern Aid, Womankind, Corruption Watch International were threatened with deregistration for challenging government policy and actions.⁶⁹⁵

The above examples demonstrate that government have at times used the law to interfere with the freedom of association rather than promote the good governance of NGO to pursue its mission

4.3. Accountability to the NGO Board

4.3.1. *The Board as a source of accountability*

The Board of an NGO reassures the public that the NGO shall achieve its mission in an accountable manner.⁶⁹⁶ According to the ICHRP, the Board is the "... heart of the accountability and is absolutely vital where other forms of accountability are weak or absent."⁶⁹⁷ The leadership of the NGO is the most decisive factor in mobilising support for the NGO to achieve its mission.⁶⁹⁸ Being accountable for an NGO means demonstrating that the NGO uses its resources wisely, its activities are mission driven and its internal systems safeguard the public trust.⁶⁹⁹ Within non-profit law, the Board has three legal duties: care, obedience and loyalty.⁷⁰⁰ The duty of care which is also known as the "business judgement rule," obliges the Board to exercise the "care of an ordinary

⁶⁹¹ Interview Wamimbi, Secretary Uganda Government NGO Board, 12 July 2007, Kampala.

⁶⁹² Uganda NGO Board Meeting 6 July 2006, Min 64.

⁶⁹³ Dicklitch and Lwanga (2003) 505, Jjuko (1997) 195.

⁶⁹⁴ Murungi (2009) 40.

⁶⁹⁵ Nation (2006) 7.

⁶⁹⁶ Lehr-Lehnardt (2005) 2, Lakey (2000) 6, Save the Children governance best practices (2007) 5.

⁶⁹⁷ ICHRP (2003) 112.

⁶⁹⁸ Kaplan (2002) 423-425.

⁶⁹⁹ Wyatt (2004) 1.

⁷⁰⁰ Stone and Ostroner (2007) 417.

prudent person would exercise in a like position and under similar circumstances.⁷⁰¹ Therefore, the Board must be creative and take risks so long as they are made in the best interest of the NGO and having exercised due diligence.⁷⁰² Consequently, each Board member is expected to be informed, ask questions and participate in Board deliberations.⁷⁰³ The duty of obedience or respect obliges the Board to obey the law and be faithful to the NGO's mission. Therefore all actions undertaken by the NGO should be consistent to the mission, as the NGO's central purpose.⁷⁰⁴ The duty of loyalty obliges the Board to be faithful to the NGO's mission and not have divided allegiance to the NGO or to compromise the NGO to individual interests.⁷⁰⁵

Board Source in the USA has expounded on the three legal obligations of obedience, loyalty, and care into the following "ten responsibilities" of the Board:

- (i) Set a clear and common mission and strategies to achieve the mission;
- (ii) Select the Executive Director;
- (iii) Provide financial oversight;
- (iv) Ensure sufficient resources in terms of personnel, finances, equipment, technology and information;
- (v) Ensure legal and ethical integrity and maintain accountability;
- (vi) Ensure effective organisational planning;
- (vii) Recruit and orient new Board members;
- (viii) Undertake self assessment;
- (ix) Enhance public standing and determine, monitor and strengthen programmes and
- (x) Support the Executive Director.⁷⁰⁶

Globally, there are many scandals that point to the lack of Board oversight in executive compensation and fiscal management, with NGOs falling victim to fraud, embezzlement or breach of public trust.⁷⁰⁷ A study of NGO boards in South Africa by CORE in 2002 found that

⁷⁰¹ Lakey (2000) 25, Kurtz (2001) 13.

⁷⁰² KCK and Board Source (2002) 17.

⁷⁰³ Lakey (2000) 25.

⁷⁰⁴ Lakey (2000) 26, Kurtz (2002) 7 and 15.

⁷⁰⁵ Lakey (2000) 25.

⁷⁰⁶ KCK and Board Source (2002) 22, Ingram (2003) 8, Stone and Ostrower (2007) 417.

⁷⁰⁷ Stone and Ostrower (2007) 426, Ingram (2003) 8.

NGOs are poor at governance, accountability, participation, inclusiveness and representation.⁷⁰⁸ The above state of affairs is attributed to the poor induction in governance. According to the CORE study, only 63-69% provided the Board with financial reports and 65-76% prepared regular programme reports, to enable the Board act from a point of information.⁷⁰⁹ Less than 50% provide induction for new Board members, with the most common mechanisms of induction being invitation to meetings, field trips, and the provision of information about the organization.⁷¹⁰ There is hardly an effort to build Board capacity, apart from recruiting new members to fill the skills gap.⁷¹¹ The CORE study showed that the level of Board renewal is also poor. For example, only 58% of NGOs have term limits for Board members.⁷¹² Six percent (6 %) of Board members have been in office for more than 20 years, 5% for between 12 and 16 years, 25% between 11 and 15 years, 51% between 6 and 10 years and 10% between 1 and 5 years.⁷¹³

In East Africa, the challenges of having effective Boards include poor executive transitions, multiple engagements in different and at times competing NGO boards, weak gender representation, weak volunteerism, insufficient information to make informed decisions, poor fundraising and unclear separation of the governance and management roles.⁷¹⁴

A common challenge amongst Boards is the issue of representativeness. In East Africa, there is a preference for small boards because there is better synergy amongst the Board members.⁷¹⁵ Furthermore, it is argued that the right to freedom of association is a voluntary right, and each NGO has the discretion to decide whom to associate with.⁷¹⁶ Moreover, the wider representation of all interest groups on the Board does not automatically translate into having a more effective or efficient Board.

Generally, Executive Directors identify managing the Board as their biggest challenge.⁷¹⁷ Executive Directors expect Board members to be committed, have financial integrity and respond to issues in a timely manner and from an informed point of view. The

⁷⁰⁸ Camay and Gordon (2002) 49.

⁷⁰⁹ Camay and Gordon (2002) 33.

⁷¹⁰ Camay and Gordon (2002) 39.

⁷¹¹ Camay and Gordon (2002) 4.

⁷¹² Camay and Gordon (2002) 22.

⁷¹³ Camay and Gordon (2002) 19: Figure 2.

⁷¹⁴ KCK and Board Source (2002) 14.

⁷¹⁵ KCK and Board Source (2002) 10.

⁷¹⁶ Interview, Wanyeki, Interview, then Executive Director of FEMNET, 20 July 2007, Nairobi.

⁷¹⁷ KCK and Board Source (2002) 14.

Board/Executive Director relationship is aggravated when the Executive Director questions the basis upon which she or he is supervised by the Board which does not understand its roles.⁷¹⁸

Issues pertaining to the performance of a director are considered internal to an NGO, and yet rarely are there clear systems of redress.⁷¹⁹ Usually, cases of improper conduct are covered up for fear that it would dent the NGOs' public image. In cases of illegal or inappropriate behaviour within organisations, many Board members try to absolve themselves of responsibility contending that they had no idea about what was happening.⁷²⁰ Incidents of the leadership of an NGO reporting the NGO or beseeching the intervention of a donor to settle internal grievances are commonplace. Yet, a donor's nightmare is learning that the funding given to alleviate oppression and suffering has triggered avoidable conflicts.⁷²¹ The management of serious cases of bad governance and fiduciary responsibility of NGOs is the responsibility of courts.⁷²²

An outstanding global example of Board accountability happened in 1967, when Peter Benenson of Amnesty International (AI) and Sean MacBride the chair of Amnesty International's International Executive Committee (IEC) and head of the International Commission of Justice were subjected to an inquiry on suspicion of having received British government funding, albeit the charges were subsequently unsubstantiated.⁷²³ The inquiry sent a strong message of the imperative for leaders to implement policies in a transparent manner.⁷²⁴ However, such accountability of the Board and particularly founders is the exception rather than the norm.

Board Source recommends that each NGO establishes a Governance Committee or Board Development Committee to assess the skills gaps within the Board, undertake voters' education for the membership and generally provide rules and regulations for the electoral process of the NGO, address the membership needs, identify prospective nominees and oversee the Board orientation and self-assessment.⁷²⁵

⁷¹⁸ Interview Kisare, Executive Director EASUN, Centre for Organisational learning, 8 August 2007, Arusha.

⁷¹⁹ NPO Act Impact Assessment (2005) 88.

⁷²⁰ Camay and Gordon (2002) 38.

⁷²¹ Interview Gitari, Programme Officer, Human Rights and Social Justice, Ford Foundation Lagos, 5 June 2006, Senegal.

⁷²² NPO Act Impact Assessment (2005) 88.

⁷²³ Welch (2001) 88, Korey (2001) 167.

⁷²⁴ Welch (2001) 88.

⁷²⁵ KCK and Board Source (2002) 43, Ingram (2003) 13.

4.3.2. *The mechanisms of accountability by the Board*

There are numerous mechanisms of enabling the Board to guide an NGO's governance.

a) *The duty of loyalty and the conflict of interest policy*

Individuals are motivated to participate in NGOs in order to contribute to social change, be self-employed, get the opportunity to own ideas and influence society or in order to secure a platform for enhanced advocacy.⁷²⁶ At times members support an NGO because they expect a reciprocal relationship in which the NGO facilitates their life skills and enhances their public standing. It is common to have complaints about individuals' high-jacking an NGO's agenda in order to promote their self-image.⁷²⁷ Given the competing interests between the individual and the NGO's mission, the duty of loyalty ensures that personal interests do not override those of the NGO. In order to ensure that neither Board nor staff put personal interest above that of an NGO, the Board is obliged to put in place a conflict of interest policy.

The conflict of interest policy assures the public that the NGO is "... genuine, committed and operating with high standards of honesty and integrity."⁷²⁸ Importantly, the principle of conflict of interest assures the public that the Board has no vested financial interests in the NGO. However, not all Boards have written conflict of interest policies. For example, in South Africa, two-thirds of NGOs do not have a written conflict of interest policy.⁷²⁹

Conflict of interest is mainly understood to include benefiting from the NGOs such as paid consultancies, company business deals, benefiting from NGO programmes, doing consultancy work for an NGO and hiring relatives. In Uganda, 12% of NGOs had the Executive Director's spouse as a staff member.⁷³⁰ Usually NGOs do not perceive serving on a similar Board as a conflict of interest but rather as a demonstration of the worthiness of an individual.⁷³¹ Serving on a similar Board constitutes a conflict of interest because of divided loyalty.

Another conflict of interest arises where staff member is also a Board member of the same NGO because it confuses the management and governance roles. Generally, the Board sets the policy and identifies the vision and mission of the NGO, while management implements the

⁷²⁶ Interview Fall, Founder Executive Institute for Human Rights and Development in Africa, 24 April 2006, Pretoria.

⁷²⁷ Greenberg (2004) 25, Desai and Pithouse (2004) 24-26.

⁷²⁸ Commonwealth Foundation (1995) 32, Kurtz (2001) 7.

⁷²⁹ Camay and Gordon (2002) 37.

⁷³⁰ Barr (2003) 20.

⁷³¹ KCK and Board Source (2002) 49.

mission. The separation of the roles ensures adequate checks and balances necessary to safeguard the public interest.⁷³² Conversely, without the separation of roles there is a potential for a conflict of interest due to the mixing of the executive oversight and management function.⁷³³ In such situations the Board tends to concentrate on programmatic accountability and staff welfare at the expense of larger institutional issues such as the evaluation of the mission.⁷³⁴ The conflict of interest occurs because the staff approves the budget, sets their pay, assesses their programme, and monitors and oversees their own activities.⁷³⁵ Although the Executive Director may serve as a member of the Board for the purposes of having a link between the governance and management structures, as a best practice the Executive Director should not have voting powers.⁷³⁶

In East Africa, common abuses of the Board include interfering in the management function. Such bad practices include taking over a desk of a member of staff to read email, giving the secretariat personal work to type or asking the staff to carry personal luggage for the Board member or to do personal shopping. The Director of NGO Forum in Uganda observed that "... most Board members do not mind being manipulated by the Secretariat. For example, a Board member can jokingly ask: I am broke can you buy me a soda?"⁷³⁷

In addressing the issue of conflict of interest, each Board member is obliged to disclose potential conflict of interests, the interested party must be absent from the decision making process and the reasons and decisions taken to address a conflict of interest must be documented.⁷³⁸

b) Accountability to the NGOs' mission

The mission is the main reason justifying the NGO's existence.⁷³⁹ The rationale for forming an NGO is to collectively address common problems. Therefore, having a clear and concise mission strengthens collective efforts and the effectiveness of an organisation.⁷⁴⁰ A clear and concise mission is easier to achieve because it promotes the development of specialised

⁷³² Wyatt (2004) 14b.

⁷³³ Wyatt (2004) 4.

⁷³⁴ Tandon (2002) 217.

⁷³⁵ Wyatt (1990) 13a.

⁷³⁶ Save the Children governance best practice (2007) 7.

⁷³⁷ Interview Nyamugasira then, Executive Director NGO Forum, Uganda 3 August 2007, Kampala.

⁷³⁸ KCK and Board Source (2002) 20 -21.

⁷³⁹ Drucker (1990) 33 and 123, Lakey (2000) 1 and 19, Yankey and McClellan (2003) 15, Ingram (2003) 1, Lehr-Lehnardt (2005) 29.

⁷⁴⁰ Bayles and Bujra (2000) 16, Edwards (2004) 54.

knowledge and the achievement of clearer and tangible results, which increases the legitimacy and credibility of the NGO.⁷⁴¹ Having an expansive mission makes an NGO ineffective because it is difficult to be passionate about everything and to have expertise in everything.⁷⁴² The success of an NGO is measured by the extent to which it achieves its self identified mission or programme mandate.⁷⁴³ Drucker rightly argues that

[T]he role of the non-profit sector is not merely to deliver a service ... but to use its service to bring about change in a human being ... Until this has happens, the non-profit sector has had no results: it has only had good intentions.⁷⁴⁴

However, the process of arriving at the mission is deficient in many NGOs. In most cases both the Constitutions in which the mission is enshrined and the strategic plans written by external lawyers or by consultants. Rather, a mission should be derived internally from an NGO's own reflection of what it wants to be and achieve. Morgan recalls a situation in which an NGO working on a bakery as its principle activity requested for sewing machines as its key equipments. This highlights the practice of cutting and pasting from one constitution to another.⁷⁴⁵ The example also illustrates both the disconnection between the mission and core activities undertaken by the NGO and the lack of appreciation of a mission as the core purpose of an NGO.

The more successful an NGO is the more demands and expectations of it to act on every issue thus derailing it from its mission.⁷⁴⁶ According to Welch, as a general rule the more successful an organisation is the more difficult it becomes to change its mission.⁷⁴⁷ Consequently, activists who are frustrated by the limited mandate of the organization in which they are tend to form other NGOs.⁷⁴⁸ For example, Amnesty International's rigid mission restricted opportunities for collaboration with other NGOs.⁷⁴⁹ Likewise, FIDA-U's rigid mission that solely focussed on

⁷⁴¹ Steiner (1999) 12 and 14, ICHRP, (2002) 10, Interview, Made Board member, Gender Links, South Africa , 20 September 2008, Thaw (2002) 158, Edwards (2004) 54.

⁷⁴² Bell and Carens (2004) 309, Barr (2003) 15.

⁷⁴³ Thaw (2002) 158, Fowler (2002a) 74, ICHRP (2002) 10, Orlin (1998) 130.

⁷⁴⁴ Drucker (1990) 39.

⁷⁴⁵ Interview Morgan, Advisory Service Manager, Charity Aids Foundation, South Africa 26, February 2008.

⁷⁴⁶ Welch (2001) 88.

⁷⁴⁷ Welch (2001) 267.

⁷⁴⁸ Welch (2001) 267, Winston (2001) 35 and 5.

⁷⁴⁹ Korey (2001) 303.

legal aid resulted in a loss of skilled personnel and membership who sought a more transformational role of law by addressing the root causes of rights violation.⁷⁵⁰

In South Africa, the dramatic overthrow of apartheid compelled NGOs to redefine their missions to work as critical allies of the new government and champions of the marginalised groups.⁷⁵¹ Following the post-apartheid era, some NGOs applied for deregistration because they had completed their missions.⁷⁵²

Strategic planning enables an NGO to remain relevant to the changing world framework, improve its effectiveness and set benchmarks of success.⁷⁵³ Strategic plans enable an NGO to reflect on and evaluate the mission in order to confirm that the NGO is heading in the right direction. Strategic planning is the making of “... long-term choices in terms of concrete goals and resource allocation.”⁷⁵⁴ A strategic plan need not be long and complicated but outlines what “the organisation expects to achieve over the next several years, how it will do so, and what resources it will need.”⁷⁵⁵ In reality, strategic planning may “conjure up fear, ambivalence or resistance in the hearts and minds of [NGOs] because leaders assume that they know what they want to do and therefore resist scrutinising the mission.”⁷⁵⁶

Ideally an organisational development consultant has to facilitate the NGO to manage change in a sustainable way. Participation in strategic planning encourages ownership of the strategic direction of the NGO.⁷⁵⁷ In practice, strategic planning is usually a technical exercise directed by consultants with a limited engagement of the NGOs in negotiating the contested and varied strategies of achieving the mission. The terms of reference to the consultants can be quite vague, depicting the lack of seriousness on the part of an NGO in directing its mission and growth. A hilarious example includes “give it an oomph,” as a term of reference for one such exercise.⁷⁵⁸ NGOs usually expect the consultant to “fix the problem and they continue with their business as

⁷⁵⁰ FIDA-Uganda Membership Survey (2008).

⁷⁵¹ Saldana (2004) 211–212.

⁷⁵² NPO Impact Assessment (2005) 90.

⁷⁵³ Fowler (2002a) 79, Drucker (1990) 50, Yankey and McClellan (2003) 4 and 18, Fowler (2000a) 76, Thaw (2002) 146, Edwards and Hulmes (2002b) 209, Edwards and Fowler (2002) 3.

⁷⁵⁴ Fowler (2002a) 78.

⁷⁵⁵ Drucker (1990) 11.

⁷⁵⁶ Yankey and McClellan (2003) I & vii.

⁷⁵⁷ Ingram (2003) 10.

⁷⁵⁸ Interview Kiragu, Managing Director, Satima Consultant, Former Executive Director, FIDA-Kenya and Care taker members for the NGO Council Kenya, 7 Sept 2007.

usual.”⁷⁵⁹ The primary intention of the strategic plans often authored by consultants is to attract funding rather than to facilitate a serious process of reflection on governance, structures, systems or organisational culture. Consequently the strategic plan is ignored and the NGO continues pursuing the resource-driven agenda, often oblivious of the strategic plan.

c) *Monitoring and evaluations*

In order to remain accountable to its mission an NGO has to undertake continuous monitoring and evaluation of its work. Whereas success simply means achieving the maximum results from the resources invested in an NGO, measuring the impact of human rights NGOs is more elusive and problematic because of the difficulty of determining causation.⁷⁶⁰

In distinguishing between monitoring and evaluation, Smillie observes as follows:⁷⁶¹

Monitoring is a continuous process of collecting and processing data. It is essentially done by the partners involved in the action. Monitoring makes it possible to detect implementation anomalies, to correct management and effect technical reorientation. Whereas monitoring is designed to adjust the action to circumstances, evaluation is rather to appreciate the objectives set and the strategy chosen... with others eyes.

Lakey distinguishes between monitoring and evaluation as follows:⁷⁶²

[M]onitoring means checking to see whether plans are being implemented and goals achieved. ... [E]valuation focuses on the quality of the programmes and services and whether the results are worth the expenditure of funds and efforts. Monitoring asks, Are we doing what we said we would do? Evaluation asks, Are we doing the right thing? Is this the best way to accomplish our mission? Monitoring involves the collection of data, while evaluation involves the analysis of data.

In precise terms, an evaluation assesses whether the NGO has accomplished its mission.⁷⁶³ Evaluation is also useful in order to enable an NGO outline its achievements with the aim of protecting the gains, as well as be energised by the differences it is making.⁷⁶⁴ The moment the NGO loses sight of the mission, it wastes both resources and time.⁷⁶⁵ Measuring impact enables an NGO to determine the effectiveness of its strategies, correct mistakes, learn from failures, reward

⁷⁵⁹ Ibid.

⁷⁶⁰ Welch (2001) 12, Edwards and Hulmes (2002) 190.

⁷⁶¹ Smillie (1999) 23.

⁷⁶² Lakey (2002) 21.

⁷⁶³ Yankey and McClellan (2007) 20, Ingram (2003) 17.

⁷⁶⁴ Interview Nyaradzai Resident Representative UNIFEM East Africa, 10 April 2006, Nairobi.

⁷⁶⁵ Drucker (1990) 107.

successes, demonstrate results and cultivate public support.⁷⁶⁶ Self-evaluation is critical because each organisation has its unique experiences. However, monitoring and evaluation are mainly enforced by donors, and done by external evaluators but not by NGOs themselves.⁷⁶⁷

Among the guidelines for good policy and practices of the Commonwealth Foundation is proper management entailing maximum utilisation and development of human resources, accountability and transparency and continuous monitoring and evaluation.⁷⁶⁸ Given that the context in which NGOs operate is constantly changing, monitoring and evaluation is essential in order to guide growth. Monitoring and evaluation also enables an NGO to capitalise on its accumulated experiences and expertise rather than engage in “serendipities or opportunistic” work.⁷⁶⁹ Developing monitoring indicators enables an NGO to be accountable to the mission right from the planning processes through to the stage of implementation. The failure to monitor performance erodes the possibility of an NGO refining its niche or even to ascertain whether or not it is making an impact.⁷⁷⁰ No NGO can have a significant impact unless it consciously pays attention to the end and outcomes of its programme.⁷⁷¹ Having clear monitoring indicators improves data collection, knowledge building, facilitates the writing of comprehensive reports and ultimately energises the NGO as it celebrates the achievement of its mission.

Globally, NGOs usually ignore monitoring of performance on the pretext that NGOs serve a good cause.⁷⁷² In Tanzania, less than 20% of NGOs undertake formal monitoring to measure their effectiveness.⁷⁷³ NGOs refrain from undertaking self-evaluations due to several reasons, including a lack of time, the complexity of measuring intangible impact and a fear of demoralising themselves.⁷⁷⁴ A comprehensive research by the Organisation for Economic Cooperation and Development (OECD) on the efficiency and effectiveness of NGOs found that despite the growing interest in evaluations, reliable and quantitative evidence on the impact of NGOs projects and programmes is still lacking.⁷⁷⁵ Assessing impact is further complicated by the

⁷⁶⁶ Interview Murauri-Mwololo, Lead Consultant, Koobi Consult, Kenya 4 December 2007, Nairobi.

⁷⁶⁷ Refer to Ch 6 on Empowerment.

⁷⁶⁸ Commonwealth Foundation NGO Guidelines for good policy and practice (1990) guideline 9.

⁷⁶⁹ Commonwealth Foundation (1990) 35.

⁷⁷⁰ Edwards and Hulmes (2002b) 208-209, Lakey (1990) 21.

⁷⁷¹ Lakey (2002) 10.

⁷⁷² Drucker (1990) 107.

⁷⁷³ REPOA (2007) xiii, 4 and 96.

⁷⁷⁴ Scott (2001) 213.

⁷⁷⁵ Welch (2001) 273-374.

lack of objective measure and data of what NGOs produce. For example, Barr, Fafchamps and Owen while acknowledging that advocacy and awareness raising are important because such activities provide a service and strengthen communities as agents of social transformation, observed that “talk and advocacy” are non-material services, which are difficult to compute in monetary terms.⁷⁷⁶

NGOs ignore monitoring and evaluations because in many instances, funding is not contingent on the ability of an NGO to give evidence of its success.⁷⁷⁷ While acknowledging that precise answers are not useful in advocacy and can stifle innovativeness, it is useful for NGOs as human rights defenders to become more “self-conscious/introspective about their role and influence. It means agreeing targets, setting systems, evaluating impact.”⁷⁷⁸ Although mere numbers may be unsuited in all situations of monitoring and evaluations, it is important to clarify the shifts an NGO is making in the communities it is working with.⁷⁷⁹ For example, shifts in definition such as influencing people to define issues differently, shifts in engagement by promoting communities to engage in defining issues of concern to them and shifts in policies changed as a result of an NGO’s advocacy work.⁷⁸⁰ KCK effectively relied on continuous reflections after major activities. The Board would reflect on several questions, including: What went wrong? What did we learn? What could be done better and what should be consolidated as a practice.⁷⁸¹

Generally, the evaluations of the Executive Director are erroneously used as a basis of contract renewal or the determination of remuneration, yet the primary motivation of evaluations should be to help the Executive Director improve performance.⁷⁸² A common observation by Organisational development consultants interviewed is that Executive Directors often complain about insufficient recognition, a lack of space, micro-management and mistrust by the Board. The Executive Director’s performance is virtually equated to overall organisational performance without taking into account the whole range of other internal and external factors which influence outcomes.⁷⁸³

⁷⁷⁶ Barr, Fafchamps and Owen (2003) 6 and 17.

⁷⁷⁷ ICHRP (2003) 102.

⁷⁷⁸ ICHRP (2003) 93 and 101.

⁷⁷⁹ The Women’s funding network: Smart Growth (2004).

⁷⁸⁰ Interview Hope Chigudu Organisational Development Consultant, 16 March 2008, Kampala.

⁷⁸¹ Interview, Peter, former Board chairperson KCK 25 July 2007, Dar-es-Salaam.

⁷⁸² Ingram (2003) 19.

⁷⁸³ Camay and Gordon (2002) 43.

4.4. Accountability to members

Individuals come together to achieve a common mission. Therefore, it is generally assumed that membership organisations ensure accountability of the leadership to its social base through the general membership meeting (such as the “General Assembly”) as the highest decision-making organ.⁷⁸⁴ This discussion examines whether or not NGOs are accountable to their members and the mechanisms of accountability.

In reality, being a membership NGO does not necessarily result in being more accountable.⁷⁸⁵ It is doubtful that an organisation’s membership has influence over the establishment of an NGO’s agenda other than approving the proposals suggested by the Board. Mamdani observes as follows:⁷⁸⁶

The new NGO culture operates on an opposed principle: they operate on a principle of noblesse oblige, as charitable institutions and not democratic institutions. ... In fact most NGOs do not have members; they have recipients. NGOs think of the population on the ground as welfare recipients with needs, not members with rights. They see themselves more as on-the scene “reps” of donors, less as expressions of local initiatives ... democracy has to be thought of as internal mobilisation and struggle.

Under the ECOSOC, NGOs are required to have a membership which controls its actions and policies.⁷⁸⁷ Under the European Union, it is recognised that although NGOs usually have a membership, membership is not mandatory.⁷⁸⁸ Likewise, Lister argues that NGOs do not have to be member controlled in order to be legitimate but they do have to be accountable for what they do.⁷⁸⁹ A comparative study of Uganda, Ghana and South Africa conducted by the Institute of Development Studies, Sussex, found that a large membership on its own does not guarantee that the NGO is inherently more democratically governed.⁷⁹⁰ Some NGOs have a narrow disenfranchised or “token” base of membership.⁷⁹¹

Payment of membership fees and elections or recruitment of leaders are some of the mechanisms of accountability of an NGO leadership to its membership. Ordinarily, having members financially contribute to an NGO enables them to hold the NGO accountable. In reality,

⁷⁸⁴ Edwards (2004) 79, Barya (2000) 33, Mamdani and Otim (1994) 5.

⁷⁸⁵ Bebbington and Riddell (1997) 111.

⁷⁸⁶ Mamdani (2000) 64 www.africaaction.org/rtable/rtb2.pdf.

⁷⁸⁷ ECOSOC, Reso 1996/31, para 12.

⁷⁸⁸ European Fundamental principles on the Status of NGOs in Europe and Explanatory note, EU (2002) para 2.

⁷⁸⁹ Lister (2003) 177.

⁷⁹⁰ Bazaara, Friedman and Robinson (2002) 10.

⁷⁹¹ Commonwealth Foundation (1995) 32.

NGOs rarely canvass for members. This is probably due to the fact that the fees are so minimal and the collection processes tedious resulting in high levels of default in payment. In many instances, a membership organisation can function without the collection of membership dues. Even Treatment Action Campaign (TAC) has a significant membership base of between 8,000 and 9,500 members, its membership does not pay any membership fees. Indeed, TAC derives 98% of its income from donors.⁷⁹² Members only register as members without necessarily paying membership fees.⁷⁹³ Although TAC has a dynamic membership at the grassroots, many keep quiet at meetings.⁷⁹⁴ Nonetheless, given the level of internal democracy within TAC it is unlikely that any leader is able to shape the critical direction of the organisation unless it is consistent with the membership sentiment.⁷⁹⁵

Tanzania Gender Networking Programme (TGNP) has limited its membership to 30 arguing that its comparative advantage lies in the quality of its membership rather than the quantity.⁷⁹⁶ In the late 1990s, Lawyers for Human Rights in South Africa amended its constitution to remove the membership as a decision-making body. Lawyers for Human Rights argued that despite the benefit of rich human resources derived from a large membership, managing people is expensive and requires specialised skills.⁷⁹⁷ Although the Landless People's Movement in South Africa has a national council, provincial council and branch structure and the assembly elects leaders every two years,⁷⁹⁸ not all branches are functional, making accountability a challenge.⁷⁹⁹ Furthermore, most membership NGOs lack clearly demarcated lines between the Secretariat staff and membership. This breeds conflict between the two organs.

There are two major processes of becoming a leader within NGOs. One is through direct elections and the other through recruitment or nomination. With a recruited/nominated Board, the selection of leaders is normally through a nomination process where the needs of the NGO are assessed and individuals are nominated to the Board to provide the relevant expertise.⁸⁰⁰

⁷⁹² Friedman and Mottair (2004) 4-5.

⁷⁹³ Friedman and Mottair (2004) 5.

⁷⁹⁴ Friedman and Mottair (2004) 9.

⁷⁹⁵ Friedman and Mottair (2004) 6

⁷⁹⁶ Chachage (2002) 170.

⁷⁹⁷ Interview Jansen, Executive Director, Lawyers for Human Rights 19 Nov 2007, Pretoria, Interview Morgan, Programme Officer Charity Aids Foundation, 26 Feb 2008, Johannesburg.

⁷⁹⁸ Greenberg (2004) 21.

⁷⁹⁹ Greenberg (2004) 21.

⁸⁰⁰ Interview Gregoire: Former Programme Training Officer, Board Source, USA, 10 August 2008, telephone interview,

Usually, the existing Board is responsible for the final nomination to the Board although the membership may participate in identifying potential nominees.⁸⁰¹ TAC's National Executive Committee is elected and represents the social sectors such as children, youth, faith based organisations, health care professionals and labour.⁸⁰² In South Africa, Lawyers for Human Rights, Gender Links, HURISA and IDASA have nominated or recruited Board, while in East Africa KCK, UAF-A, KHRC and TGNP have nominated or recruited Boards. In Uganda, half the NGOs hold elections and a third nominate or recruit their Board.⁸⁰³ In practice, while many membership NGOs elect their Board, they fall far short of being democratically governed.

One view holds that the fact that very few NGOs vote for their leaders or vote on key decisions "contradicts the basic rule of democracy which is mainly to govern with the consent of the governed."⁸⁰⁴ The initial impression is that NGO Boards which are not publicly elected are unlikely to attend to broader societal interests as part of their governing functions.⁸⁰⁵ For example, during the NGO Forum at the World Conference on Against Racism (WCAR), there was a questioning of NGOs' democratic processes because the NGOs never voted or agreed on the Declaration on Xenophobia and Racism.⁸⁰⁶

The other view holds that having elections on its own does not ensure democratic governance. Even the ECOSOC acknowledges that voting is not the only appropriate democratic and transparent decision-making process.⁸⁰⁷ Drucker attests that prior to 1990 the most effective Boards were not elected but were recruited or nominated,⁸⁰⁸ a situation which continues to be applicable today. Likewise, Winston reiterates that NGOs with self-perpetuating Boards can be democratically governed.⁸⁰⁹ In East Africa strong NGOs tend to have nominated Boards.⁸¹⁰

The thesis acknowledges that NGOs have erroneously reduced democratic governance to elections and having a broad membership. Having elections does not automatically

resident in the USA.

⁸⁰¹ Ibid.

⁸⁰² Friedman and Mottair- (2004) 4 and 13.

⁸⁰³ Barr (2003) 29.

⁸⁰⁴ Lehr-Lehnardt (2005)16.

⁸⁰⁵ Stone and Ostrower (2007) 427.

⁸⁰⁶ Lehr-Lehnardt (2005) 8-9.

⁸⁰⁷ ECOSOC, Reso 1996/31, para 12.

⁸⁰⁸ Drucker (1990) 124.

⁸⁰⁹ Winston (2001) 31.

⁸¹⁰ Murungi (2009) 39.

translate into democracy because at times elections are a mere endorsement of preconceived agreements.⁸¹¹ Within many African contexts elections are “dicey” because hardly is there voter’s education or analysis of the competencies of the candidates.⁸¹² Usually the membership does not know the leadership and skills capacities of the candidates. In East Africa, it is common for leaders to be elected on a populist vote such as being most vocal at a meeting but without due regard to their availability to commit time and skills to the Board. There are also incidents of “trouble makers” who can abuse the Board to create a “political platform or just to hear themselves talk.”⁸¹³ Elections can easily be manipulated by members who register solely for the purpose of participating in the voting, particularly where the interested candidate pays the registration fees. In order to allow maximum participation in elections, some NGOs — particularly professional associations — allow voting by proxy. However, such voting is equally problematic because proxy votes can override the decision-making powers of the members present at a meeting.⁸¹⁴

The poorly organised electoral process of the Kenya NGO Council elections in 2004 illustrates the short comings of accountability through elections. A report of the Institute of Education in Democracy (IED) which served as the main observer of the elections, revealed a number of anomalies in the process.⁸¹⁵ Only 131 members out of the paid-up membership of 3,500 turned up for the elections of the Chairperson; the entrance to AMREF offices, which served as the polling station, was so heavily guarded that it could intimidate the membership; all election officials were either employees or officials of the NGO Council; candidates were allowed to campaign inside the polling station, a process that degenerated into a “war of words and almost a fist fight”; no arrangements for secret ballot were made; the criteria for electing the returning officer, one Charles Githuri, was not transparent; the rules and regulations were not available at the polling station; members were disqualified from voting on account of having subscription arrears which many of them refuted and yet the accountant was not available to collect dues as had traditionally been the practice; there was no proper scrutiny of voters and no accurate register of voters at the polling station.⁸¹⁶ Orié Rogo won the election with 34 out of 131 votes. The IED recommended among others that the NGO Council enlists the services of the Electoral Commission of Kenya in order to

⁸¹¹ Interview, Kiragu Managing Director, Satima Consultants, 7 Sept 2007, Nairobi.

⁸¹² Mbogori (2000) 50 www.africaaction.org/rtable/rtb2.pdf.

⁸¹³ Drucker (1990) 124.

⁸¹⁴ Interview, Kegoro, Executive Director ICJ-Kenya, 22 August 2007, Nairobi.

⁸¹⁵ Ibid.

⁸¹⁶ Ibid.

institutionalise democratic electoral processes and review the rules of procedure, particularly the statutory quorum set at fifty members that does not promote popular participation for a 3,500 membership and also institutionalise gender equality within the NGO Council.⁸¹⁷

In view of the above challenges of holding elections, Mutua cautions that while HURINGOs must be transparent and accountable, they need not fully democratise themselves because it can result in gridlock situations.⁸¹⁸ It is also trite to observe that participation and consensus building render democracy slow.⁸¹⁹ Similarly, Lehr-Lehnardt argues that NGOs can derive their legitimacy from the theory of rights, without having complete democracy in their internal processes.⁸²⁰ In fact it is popularly contended that NGOs are accountable only to their moral conscience to fight injustices.⁸²¹

Rightly, there is apprehension that the reduction of democracy to the elective vote may compromise the protection of minority voices, and yet HURINGOs exist in part to give voice to the voiceless minority.⁸²² Hence, the limitation of voting and majority rule may frustrate change from popular but negative social practices. TAC is an example of an NGO that is flexible in balancing the decision making processes.⁸²³ While many major strategic decisions are initiated by the national leadership through “Zackie,”⁸²⁴ there are examples where national decisions were overturned by the branch members.⁸²⁵

This thesis argues that the above challenges notwithstanding, applying democracy and human rights principles to NGO governance would strengthen NGO’s legitimacy in many respects. The democratic governance of NGOs strengthens public confidence that NGOs exist for the public good.⁸²⁶ In fact the ICHRP urges NGOs not to conduct their affairs in an undemocratic or unjust way.⁸²⁷ In short, leaders are supposed to be accountable to their members.⁸²⁸ Hence it is

⁸¹⁷ Institute of Education and Democracy (IED) Observer Report (2004).

⁸¹⁸ Mutua (2009) 34.

⁸¹⁹ Mutua (2009) 34.

⁸²⁰ Lehr-Lehnardt (2005)47-48.

⁸²¹ Interview Ramgobin, Executive Director, Human Rights Development Institute (HRDI) 19 August 2008.

⁸²² Lehr-Lehnardt (2005)24.

⁸²³ Friedman and Mottair (2004) 16.

⁸²⁴ Friedman and Mottair (2004) 15.

⁸²⁵ Friedman and Mottair (2004) 15.

⁸²⁶ Lehr-Lehnardt (2005) 2.

⁸²⁷ ICHRP (2003) 11

⁸²⁸ Mamdani (2000) 63 www.africaaction.org/rtable/rtb2.pdf

imperative that each NGO establishes a nomination/development committee that screens candidates according to the required skills for fulfilling the mission, and puts in place a mechanism that enables the membership to have a stake in the choice of leaders.

4.5. Accountability to the communities

A rights-based approach requires that those directly affected by social exclusion should be made the principal agents of action in the struggle for rights in order to ensure that they are the principal beneficiaries.⁸²⁹ A Keystone Survey of 404 respondents in 28 countries around the world revealed that practising accountability to the beneficiaries is complex, requiring both time and resources.⁸³⁰ The most common form of accountability to communities is through needs assessments (84%), followed by the review of strategic plans (68%), programme evaluation (65%), defining and measuring impact (54%), governance practices (34%), and financial accountability (20%).⁸³¹ Nonetheless, 71% think more structured ways of accountability would enhance performance and planning.⁸³²

Many NGOs involve rural communities in identifying, planning and implementing their projects in order to enhance the levels of success.⁸³³ NGOs are equally keen to involve host communities in the actual delivery of services or in the execution of projects.⁸³⁴ In Uganda, 55% of NGOs reportedly involve communities in decisions about their activities and elicit feedback.⁸³⁵ However, the NGO law in Uganda contributes to the rift between NGOs and communities by requiring NGOs to give seven days notice to the Resident District Commissioner before making contact with the local communities.⁸³⁶ Nonetheless, NGOs in Uganda had not contested the constitutionality of the NGO permit until April 2009, when they petitioned the Constitutional Court.⁸³⁷ In contrast in Tanzania, in interpreting a similar provision, that required a permit by the District Commissioner (DC) before organising an assembly or procession in a public place, the High

⁸²⁹ Gaventa (2005) 29.

⁸³⁰ Keystone accountability survey (2006) 3.

⁸³¹ Keystone accountability survey (2006) 6.

⁸³² Keystone accountability survey (2006) 6.

⁸³³ Sibanda (2002) 318.

⁸³⁴ Barr (2003) 28.

⁸³⁵ Barr (2003) 41.

⁸³⁶ NGO Regulations (1989) r. 12.

⁸³⁷ Constitutional petition No 5 of 2009.

Court held that the provision hijacks the right to peaceful assembly guaranteed under the constitution, by placing it under the personal disposition of the DC.⁸³⁸

The quality of NGO accountability to communities is questionable. In a case study of ACFODE, Dicklitch reveals the haphazard and top-down methods of the solicitation of beneficiaries' views after major decisions are taken.⁸³⁹ Consequently, communities are regarded as the objects of NGO work rather than autonomous individuals to hold NGOs accountable.⁸⁴⁰ In almost all NGOs a similar strategy is adopted. However, meaningful participation entails an ability to influence decisions instead of using participation to merely endorse already concluded decisions. Community volunteers or paralegals are recruited through a criteria essentially determined by NGOs. Although learning from beneficiaries is different from being accountable to them, generally participatory evaluations are wrongly equated to being accountable. Being accountable requires engaging the communities in dialogue over their self-identified interests and enabling the communities to question the root causes of inequality. In other words communities are reduced to mere providers of information sought by NGOs or to the servants of NGOs to facilitate the execution of their projects. Unsurprisingly, most NGO work is not sustainable beyond the departure of the NGO from a given community because such work competes with already existing community interests and groups.

There is an increasing practice of NGOs undertaking joint programmes with different stakeholders. For example, Gender Links partnered with the Media Institute of South Africa to do a media baseline study to monitor media projects.⁸⁴¹ Often the publications of NGOs recognise the various partners and funders. Some local organisations such as Foundation for Civil Society (FCS) in Tanzania, the Greater Rustenburg Community Foundation, the Nelson Mandela Children Trust Fund in South Africa hold annual forums as an accountability mechanism in order to showcase the work carried out during the year and solicit feedback from the communities at large.⁸⁴² The fact that 700 participants attended the 2005 FCS Annual Forum demonstrates the seriousness with which they regard FCS.⁸⁴³

⁸³⁸ *Christopher Mtikila v. AG*, High Court of Dodoma, Civil Case No 5 Of 1993, discussing the constitutionality of s. 40 of the Police Force ordinance 1953, reproduced in Peter (1997) 674.

⁸³⁹ Dicklitch (1998) 131 and 160.

⁸⁴⁰ Hulmes and Edwards (1997) 280.

⁸⁴¹ Interview Made, Board member Gender-Links, 20 September 2008.

⁸⁴² FCS Annual Report (2005) 9 and 11, Moyo (2004) 11.

⁸⁴³ FCS Annual Report (2005) 11.

At the African Feminist Forum, NGOs were urged to document real examples of grassroots strategies and ascertain what is important to the grassroots.⁸⁴⁴ Often the insensitivity to local knowledge and initiatives produces a backlash.⁸⁴⁵ As a good practice, Gender Links collects partners, CSO, and donor perceptions on issues before each Board meeting, which information informs its policies.⁸⁴⁶ It is therefore crucial for each NGO to identify its different stakeholders and clarify the appropriate mechanism of accountability to each stakeholder.

4.6. Transparency and public accountability

The principle of transparency imposes an obligation on NGOs to respect the rights of others and to provide accurate and objective information.⁸⁴⁷ Since the 1990s, NGOs have to be accountable for what they say, a situation which ICHRP refers to as “voice accountability.”⁸⁴⁸ Voice accountability also relates to the authority and power with which an NGO speaks.⁸⁴⁹ Therefore, each NGO has to be clear whether it “speaks as poor, with the poor, for the poor or about the poor.”⁸⁵⁰

The principle of transparency enables the public to hold NGOs accountable as well as to expose the fraudulent ones among them.⁸⁵¹ Transparency assures the public that the NGO will serve the will of the people and be ethical.⁸⁵² NGOs are expected to publicise their mission, objectives, policies, methods, activities, achievements, evaluations, geographical scope, organisational structures, sources of funds, profiles of staff and governance leadership among others.⁸⁵³ In South Africa, NGOs have an obligation to provide the contact details of their employees and Board members, annual narrative reports and audited accounts.⁸⁵⁴ In South Africa, an NGO’s registration lapses after thirty days on a reminder to submit reports, although it may

⁸⁴⁴ Second Africa Feminist Forum 19 September 2008.

⁸⁴⁵ Tamale (2009) 152.

⁸⁴⁶ Made Interview, Board member Gender Links, 20 September 2008, Kampala.

⁸⁴⁷ ICHRP (2003) 41.

⁸⁴⁸ ICHRP (2002) 5.

⁸⁴⁹ ICHRP (2002) 5

⁸⁵⁰ ICHRP (2002) 6.

⁸⁵¹ Orlin (1998) 136), Lehr-Lehnardt (2005) 17 and 26, Interview Viljoen: Director, Centre for Human Rights, 13 May 2006, Pretoria Commonwealth Foundation (1995) 31.

⁸⁵² Interview Viljoen, Director, Centre for Human Rights, 13 May 2006, Pretoria, Commonwealth Foundation (1995) 31.

⁸⁵³ Commonwealth Foundation, NGO guidelines for policy and practice (1995) Guideline 6, Orlin (1998) 137).

⁸⁵⁴ South African Nonprofit Act (1997) s. 18.

reapply for re-registration.⁸⁵⁵ Both the law of South Africa and Tanzania explicitly provide that all NGO information is public.⁸⁵⁶ The government regulatory authorities are obliged to keep a record of all organisations that are registered, cancelled or voluntarily deregister.⁸⁵⁷

In Uganda, NGOs are obliged to provide annual narrative and financial reports to the NGO Board. Barr, Fafchamps and Owen observe that 1/3 of the NGOs did not provide information on money and many who did so provided inaccurate figures.⁸⁵⁸ Globally, although 57% of NGOs consider it essential to be transparent about financial and governance information only 20% do so for financial accountability.⁸⁵⁹ Most donors are attracted to transparency because detailed information; clarity of the mission and strategies clarifies how both the NGO and the donor can achieve their mutual objectives.⁸⁶⁰ Hence, NGOs should not be modest about their achievements but publicise their work. Concurrently, transparency requires that the NGO reveals its failures and challenges.⁸⁶¹ The competitive nature of the NGO sector makes NGOs to only publicise the positive aspects of their work but conceal the challenges and weaknesses which compromises transparency.⁸⁶² The public needs to be reassured how an NGO “recognises its mistakes, learns from them and adjusts its strategies to respond to unintended consequences.”⁸⁶³ During field research for this study it was clear that NGOs were inclined to share programme reports but were unwilling to share the intimate details of evaluations or organisational development reports.⁸⁶⁴

FIDA-U is outstanding for having widely shared its organisational development evaluation report of 2007 to enable sister organisations in the women’s movement learn from its mistakes. At a workshop that discussed the challenges of having effective boards in East Africa, it

⁸⁵⁵ NPO Impact Assessment (2005) 99.

⁸⁵⁶ South African Non-profit Act (1997)s. 25, Tanzania NGO Amendment Act (2005) s. 34.

⁸⁵⁷ South African Nonprofit Act (1997) s. 24, Tanzania NGO Amendment Act (2005) s. 37.

⁸⁵⁸ Barr, Fafchamp and Owen (2003) 21.

⁸⁵⁹ Keystone Accountability survey (2006) 6.

⁸⁶⁰ Interviews, Donor round table: Ayanda Mvimbi OXFAM-UK, John Campbell- HIVOS, Barbra Phillips AWDF-US, Alice Brown –Ford Foundation, 9 November, 2007, Johannesburg.

⁸⁶¹ ICHRP (2003) 124.

⁸⁶² Edwards and Hulme (2002) 190 and 197.

⁸⁶³ Yankey and McClellan (2003) 32.

⁸⁶⁴ Candidate’s experience through out East and South Africa Evaluation reports are often classified as confidential materials.

was observed that even boards receive insufficient information from the Secretariat to be able to make informed decisions.⁸⁶⁵

NGO transparency is often frustrated by the almost nonexistent organisational documentation. Most international organisations have institutional biographies as tools of self-learning on the direction of the organisations and the choices made to shape their direction.⁸⁶⁶ Institutional biographies differ from the “self-congratulatory spiels” NGOs put on websites or publish in campaigns and fundraisings brochures.⁸⁶⁷ NGOs hardly document their work, such that they are often accused of being “secretive.”⁸⁶⁸ Likewise, websites are rarely updated and some require passwords to access. Some NGOs are accused of being “... academically dishonest or irresponsible in their position paper[s]”⁸⁶⁹ with a “... proclivity to exaggerating claims for publicity.”⁸⁷⁰

Generally, activists write so little about themselves because of the unease about publicity.⁸⁷¹ In both East and South Africa, very few NGOs have institutional biographies. A few exceptions exist such as KHRC’s *Constitution Making from the Middle*, which explains the organization’s efforts in the process of struggling for a people’s constitution in Kenya, and *Eyes on the Prize* which clarifies its position and rationale for political engagement.⁸⁷² The bulk of information from NGOs is focused on programme reports or research undertaken by NGOs. Moreover, vital information is mainly left in spiral bound copies, which creates the impression of unfinished work and remains inaccessible. Activists partially attribute their lack of writing to the almost non-existent opportunities for sabbaticals to reflect and write.⁸⁷³

Due to the poor record-keeping culture that afflicts most NGOs important documents disappear on final accountability to donors and especially in situations of executive succession. Furthermore, because information is beholden to individuals, individuals in office get “burnt-out” from giving interview after interview instead of distributing already processed

⁸⁶⁵ KCK and Board Source (2002) 14.

⁸⁶⁶ Welch (2001) 6.

⁸⁶⁷ Welch (2001) 6.

⁸⁶⁸ Commonwealth Foundation (1995) 35.

⁸⁶⁹ UN Press release NGO/296, PI/1029 (September 10, 1997) PI 1272; Stanley Foundation, quoted in Lehr-Lehnardt (2005) 28.

⁸⁷⁰ Lehr-Lehnardt (2005) 34.

⁸⁷¹ Barry and Dordevic (2007) 22.

⁸⁷² Mutunga (1999), Mutunga (2003.)

⁸⁷³ Adeleye-Fayemi, *Frank talk in the family panel*, World Social Forum, 18 January 2007.

information. The persistent practice of “oral history” makes individuals vital repositories of the NGO’s history. The sum effect of the poor documentation is the compromising of transparency which limits the potential of NGOs to learn from their experiences.

In order to strengthen transparency, there is a growing trend of working with academia to document NGO work. All INGOs have increased their research capacity and involve academia and think tanks to ensure high quality research.⁸⁷⁴ In South Africa, think tanks and academic based centres at universities have linked with NGOs to document the NGOs/social movement experiences.⁸⁷⁵ Since 2007, the Centre for Human Rights (CHR) at the University of Pretoria has been re-establishing the activism component under the Advocacy and Rapid Response Programme to address gross violations and engage the African Commission by offering legal opinions.⁸⁷⁶ Through the vegetable gardens project CHR gained access to the communities and worked with them on human rights and also analysed the experience of infusing human rights in HIV/AIDS work.⁸⁷⁷ The Centre for Civil Society at the University of Natal documented the campaigns of the social movements in South Africa.⁸⁷⁸ The SECC campaign initiated a community research to compile the community testimonies in order to affirm and validate their experiences and promote mutual learning between activists and communities.⁸⁷⁹ TAC asserts that its primary strength is not in numbers but the moral argument about the right to life, which is sharpened by its link with the Aids Law Project.⁸⁸⁰ IDASA has broadened its role beyond a policy think tank to include a “popular-ist” approach that collects information from the people and processes it in order to inform policy debates, as well as to link CBOs to local governance structures.⁸⁸¹

Kituo Cha Katiba (KCK) an East African regional think-tank undertakes action research on controversial issues in the region and discusses research findings with policy makers, activists, academia and the varied stakeholders.⁸⁸² Its research is both published and posted on the website. The challenge for KCK is to have simplified versions of its research to target the wider

⁸⁷⁴ ICHRP (2002) 6.

⁸⁷⁵ Interview Viljoen, Office Manager, Centre for Human Rights, Pretoria, 13 May 2008, Pretoria.

⁸⁷⁶ Interview Taku, Deputy Director Centre for Human Rights, Pretoria, 13 May 2008, Pretoria.

⁸⁷⁷ Interview Viljoen, Office Manager, Centre for Human Rights, Pretoria, 13 May 2008, Pretoria.

⁸⁷⁸ www.ukzn.ac.za/ccs/default.asp.

⁸⁷⁹ Oldfield and Stokke (2004) 28.

⁸⁸⁰ Friedman and Mottair (2004) 26-27.

⁸⁸¹ Interview Justin Steyn Capacity building programme officer and researcher IDASA, 5 October 2007, Pretoria.

⁸⁸² www.kituoachakatiba.org;

general public that may not be academically inclined.⁸⁸³ The recently created Kenya Human Rights Institute (KHRI) aims at changing the idea that “human rights work is done in Africa, but thinking is done in the North.”⁸⁸⁴

Timely and widely disseminated information is also vital to inform the advocacy of NGOs.⁸⁸⁵ Advocacy embraces a broad range of communication activities such as public education, consciousness-raising, enlisting stakeholders’ support and constituency building, and media dissemination to mention but a few.⁸⁸⁶ Advocacy entails the focusing of public and international attention on a given issue and to building solidarity with the oppressed.⁸⁸⁷ Accordingly, the narrow dissemination of information has constrained NGO advocacy work. Most NGOs interpret transparency by engaging the media and measure their success by the amount of media coverage secured. Ironically, NGOs have become media fanatics appearing casually on television and radio for the sake of it, but without making substantive contributions. However, not many CSOs have invested enough in creating professional communications desks or departments that can streamline their communication with other organisations, the media and the general public.⁸⁸⁸ Few NGOs have a media campaign or efficiently publicise their work.⁸⁸⁹ Consequently, many NGOs are unable to take credit for the excellent work they do.⁸⁹⁰

With the exception of NGOs with a media or academic background, very few have proper information and documentation strategies. Paradoxically, when information sharing is not structured, it can “degenerate into information overload that is trashed like spam.”⁸⁹¹ As a caution, rather than relying on the media to make the case for NGOs, if an NGO has money it is advisable to buy media space in order to prevent distortion and making the message sensational.⁸⁹²

⁸⁸³ Interview Kibalama, Executive Director KCK, Uganda, 19 July 2007, Kampala.

⁸⁸⁴ Interview Mutuma, Acting Executive Director, Kenya Human Rights Institute, 24 August 2007, Nairobi.

⁸⁸⁵ Scoble(1984) 178.

⁸⁸⁶ Ibid.

⁸⁸⁷ Scoble (1984) 180, Orlins (1998) 129.

⁸⁸⁸ Civil Society Capacity Building Programme: *In Focus*, Issue 1, (2005) 9.

⁸⁸⁹ Blazeric: Acceptance speech on behalf of *People in Need* for the honorary mention of UNESCO human rights education prize, 25 May 2007, Pretoria.

⁸⁹⁰ TrustAfrica, Programme Review October (2005) 6, Phillips Donor round table, 9 November 2007, Johannesburg.

⁸⁹¹ Interview, Aktasi-Bukachi Executive Director EASSI, Kampala, 13 August 2007, REPOA (2007) ix.

⁸⁹² Mutua and Mutunga (2003) 9.

4.7. Accountability to sector wide mechanism for self regulation

As previously discussed, government regulatory boards are more preoccupied with controlling NGOs than in strengthening their accountability. This section of the study explores the potential of self-regulatory mechanisms as an alternative to government to promote the accountability of NGOs.

Globally, there are no agreed standards or procedures for criticising another NGO. Shortcomings of NGOs are merely debated within the sector but not comprehensively addressed.⁸⁹³ There are no tribunals because NGOs are quite diverse and at different stages of development.⁸⁹⁴ In both Uganda and South Africa although the Codes of Conduct were drafted to self-regulate the sector, they are not enforced with any degree of strictness.⁸⁹⁵ In Uganda, efforts at self-regulation are nascent. While a Code of Honour has been drafted, it is voluntary.⁸⁹⁶ There was initial resistance to the Code due to the suspicion that the movers, Development Network of Indigenous Associations (DENIVA) and the NGO Forum would dominate the sector.⁸⁹⁷ Likewise, in South Africa the lack of an overall self-organised voice of NGOs makes the efforts of the Directorate to collaborate with NGOs in strengthening NGO governance difficult.⁸⁹⁸ Therefore, the NPO Directorate has resorted to having consultations through a sectoral approach or with prominent coalitions of NGOs such as the Non-profit Consortium, SANGOCO and the Aids Consortium, to mention but a few. However, none of the coalitions has powers to regulate and monitor the governance of coalition members.

Of the countries under study only Kenya and Tanzania have legally constituted self-regulatory bodies, hereinafter referred to as the NGO Council.⁸⁹⁹ In Tanzania the law introduces the NGO Council mandated to draft the Code of Conduct for NGOs.⁹⁰⁰ The Code of Ethics must be consistent with National NGO Policy and be published in the gazette.⁹⁰¹ The NGO Council is yet to take root and is seen as a duplication of the work of Tanzania Association of NGOs (TANGO)

⁸⁹³ ICHRP (2003) 54.

⁸⁹⁴ ICHRP (2003) 55.

⁸⁹⁵ Interview Logart Executive Director, SANGOCO, South Africa 29 Nov 2007, Johannesburg.

⁸⁹⁶ DENIVA and NGO Forum (2006) Uganda NGO Code of Honour: The quality assurance certification mechanism.

⁸⁹⁷ Interview Kwesiga Executive Director Development Network of Indigenous Voluntary Associations (DENIVA), Uganda, 6 Dec 2006, Kampala.

⁸⁹⁸ NPO Act Impact Assessment (2005) 21 and 23.

⁸⁹⁹ Morgan (2005) 2.

⁹⁰⁰ Tanzania NGO Act (2002) s. 27.

⁹⁰¹ Tanzania NGO Act (2002) s. 28.

and of the Tanzania Council for Social Development (TACOSODE).⁹⁰² Furthermore, the NGO Council is considered illegitimate by the INGOs and is starved of funding, such that half of its members are incapacitated from attending meetings.⁹⁰³

In Kenya, the National NGO Council is established under the law as a self-regulatory body of NGOs.⁹⁰⁴ The objectives of the NGO Council are to promote, create and maintain an enabling environment to contribute to equitable and sustainable development; provide a forum to build networks for promoting dialogue, learning experiences and information, to strengthen organisational operational and conceptual capacities, to defend the rights of NGOs, to influence public policy in relation to NGOs and to represent NGOs at the international, national and local levels.⁹⁰⁵ The regulations establish an Executive Committee⁹⁰⁶ and a Regulatory Committee.⁹⁰⁷ The Regulatory Committee is entrusted with promoting and maintaining adherence to the Code of Conduct, defining and reviewing the criteria for the NGO application for registration, work permits, duties and tariffs recommending cancellation of registration and providing civic education on NGO governance.⁹⁰⁸ No action can be taken against any person unless that person has been given an opportunity to defend him or herself.⁹⁰⁹ Other sub-committees include the networking sub-committee and the gender sub-committee.⁹¹⁰ The NGO Council cannot be dissolved except by repealing the entire NGO Co-ordination Act and only through the due process legal procedures.⁹¹¹

An interview with the CEO of the NGO Council revealed that the regulatory Committee meets once a month; the majority of cases involve the non-payment of salaries due to a lack of written contracts; in cases of fraud amicable settlements are not allowed but the case is referred to the police and parties are allowed legal representation.⁹¹² At times, NGOs seek court

⁹⁰² Interview Sangusia Programme Officer Legal and Human Rights Centre (LHRC), Tanzania 25 July 2007, Dar-es-Salaam.

⁹⁰³ Interview Tweve, Programme Officer PACT-Tanzania, 10 August 2007, Dar-es-Salaam.

⁹⁰⁴ The NGO Act (1990) s. 23.

⁹⁰⁵ NGO Council Rules and Regulations (1993) as amended in (2000) art. 4.

⁹⁰⁶ NGO Council Rules and Regulations (1993) art. 14.

⁹⁰⁷ NGO Council Rules and Regulations (1993) art. 18.

⁹⁰⁸ NGO Council Rules and Regulations (1993) art. 18(2).

⁹⁰⁹ NGO Council Rules and Regulations (1993) art. 18(4) 4.

⁹¹⁰ NGO Council Rules and Regulations (1993) art. 19.

⁹¹¹ NGO Council Rules and Regulations (1993) art. 28.

⁹¹² Interview, Adhanja Chief Executive Officer, Kenya NGO Council, 24 August 2007, Nairobi.

intervention to stop the NGO Council's proceedings.⁹¹³ There are also incidents of a failure to appear before the Council by seeking continuous adjournments.⁹¹⁴ Nonetheless, the decisions of the Council are basically respected although the dissatisfied party may appeal to court.

Until 2004, the NGO Council received an average of between twenty and thirty cases per month demonstrating the ability of the NGO Council to hold the NGO sector somewhat accountable. There are incidents where the NGO Council has recommended deregistration on account of poor governance. For example, the Public Law Institute had ceased to function and owed employees salary arrears for two years.⁹¹⁵ Faidi Kenya could no longer carry out its objectives as an NGO.⁹¹⁶ Empowering People's Perceptions Organisation (EPCO) was established for personal gain without any governance structures.⁹¹⁷ However, since 2004, many NGOs lost confidence in the NGO Council due to the disputed elections of Orië-Rogo. Hence the ability of the NGO sector to provide alternative leadership was severely undermined.⁹¹⁸ Consequently, the CEO, Senior Management Staff and the Board resigned and donors such as the Africa Capacity Building Foundation Fund withdrew funding.⁹¹⁹ Ironically some NGOs petitioned government to resolve the internal conflicts within the NGO Council: a self-regulatory body. However, in April 2005, Orië-Rogo secured an ex parte court injunction barring the dissolution of the NGO Council, by the then Minister of State for National Heritage, Najib Balala.⁹²⁰ Taking advantage of the lack of unity of the NGO Council, the government amended the law reversing the role of the NGO Council with respect to the issue of self-regulation.⁹²¹

The case study of the Kenya NGO Council highlights the potential of a self regulatory body to be autonomous from both state and donors and if well governed can effectively

⁹¹³ Nyaundi Tuiyott and Co Advocated letter to NGO council that matter in court Eldorate Cr.No 8535 of 2005.

⁹¹⁴ *Noah Makau, Evanson Karuti, Catherine Mukeken, Collins Ajoub, Micheal Kimani v. Youth for Conservation* Reg/06/04.

⁹¹⁵ Interview Angila, Formerly CEO Kenya NGO Council, currently programme officer PACT-Kenya, 6 Sept 2007.

⁹¹⁶ *David Muganda, Oriëdo and others v. Faidi Kenya*, Reg/03/04.

⁹¹⁷ *Evans C Jumab, Adiedo Empowering Community Perceptions Orga v. J Magut (Chairman) Empowering People's Perceptions Organisation (ECPO)*, Complaint Reg/No 2 of 2003.

⁹¹⁸ Interview Mutuma Director Kenya Human Rights Institute 24 August 2007, Nairobi, Kenya NGO session paper (2006)6.

⁹¹⁹ Francis Angila, Harum Ndubi, Abdul Hamid of Slatch, Njeri Kinyoko, Mary Amuyunzu Nyamongo resigned.

⁹²⁰ *R v. Minister of State for National Heritage Ex parte, The National Council of NGO Kenya, Amb, Orië Rogo Manduri* Miscellaneous Civil Application No 1347/2005.

⁹²¹ Breakfast meeting, hosted by Coalition of Young Kenyan voters, Hilton 11 October 2007, Kenya NGO session paper (2006) 18.

hold the NGO sector accountable. However, the NGO Council's centralised structure does not adequately reach out to NGOs outside Nairobi. In addition, the Council is yet to "promote a culture of plurality of ideas, accommodation of divergent views and shun fascists' tendencies of expecting everyone to agree with one perspective."⁹²² The above notwithstanding, where the self-regulatory body loses its legitimacy in the eyes of the constituency, it becomes useless. In fact in East Africa, most complaints against NGOs to the Government NGO Board are submitted by NGOs themselves and are finance related, which infers the willingness of the sector to police itself and hold itself accountable.

4.8. Accountability to donors

It is a fact that money is a source of power. Donors wield power in Africa and have influenced development and political policies, strategies and agendas.⁹²³ It is therefore expected that donors would influence the governance of NGOs in seeking accountability for their resources. The key question addressed in the following discussion is the ways in which NGOs have been held accountable by donors in promoting the application of human rights obligations.

Until the 1990s, donors mostly concerned themselves with financial accountability but not with the overall governance of NGOs. In South Africa, there is some limited application of good governance practices and proper financial reporting by NGOs.⁹²⁴ Most NGOs consider writing quality reports and submitting unqualified audited accounts a more important obligation than the application of human rights principles and processes in the execution of their work.⁹²⁵ Rarely do donors prosecute NGOs that misappropriate funding. Instead, they withdraw funding as a punitive measure. Most donors rarely verify whether NGOs are accountable to their target groups.⁹²⁶

In South Africa, the law does not specify the role of the NGO in instances of the misappropriation or mismanagement of funds.⁹²⁷ The case of Rev. Allan Boesak, who was a prominent former Minister of Economic Affairs in the Western Cape Government, is therefore

⁹²² Ombati and Orina-Nyamwamu (2004) 9-10.

⁹²³ REPOA (2007) xii and 12, De Coninck (2004) 64, McGee (2004) 5, Sewakiryanga (2004) 80-83.

⁹²⁴ NPO Impact assessment (2005) 73, 93 and 101.

⁹²⁵ Perera (1997) 167.

⁹²⁶ Keyston Survey (2006) 4.

⁹²⁷ The Assessment of NPO (2005) 73.

significant.⁹²⁸ In *S v. Boesak*,⁹²⁹ Rev Boesak (a former minister of the Dutch Reformed Mission Church and prominent anti-apartheid activist) was convicted for fraud relating to his position as President of the World Alliance of Reformed Churches (WARC).⁹³⁰ In 1984 the Council established a Trust, the Foundation for Peace and Justice (FPJ), with the appellant (Rev. Boesak) serving as trustee and a director. In 1988, the FPJ established the Children's Trust with funding from an American musician, Mr Paul Simon who donated US \$350,000 (equivalent to 682,161 South African Rand). However only 423,000 Rand was transferred to the Children's Trust, while Boesak claimed Rand 259,000 as his incidental expenses. The failure to inform the donor of his reimbursement was confirmed by the appeal court to constitute fraud.⁹³¹ The trial court found that the accused used money donated by SIDA for a purpose it was not intended for. The court held that this was a breach of a trust relationship and amounted to theft. In respect of SIDA's money, the appeal court overturned the convictions of theft, but found that "where purpose A and purpose B were related, the matter became one of degree. If the relationship was sufficiently close that it might reasonably be concluded that the donor would have had no objection to the money being used," then fraud was not established. The Supreme Court of Appeal relied on the fact that Boesak had acted openly and kept SIDA aware of the developments, although he had not done so at the time FPJ had extended the project. Therefore, although the appellant acted erroneously he acted *bona fide*. The appeal succeeded and the sentence was reduced from three to one year. It is instructive that the trial court observed that although the financial accounts were annually audited, annual audits are "hopelessly ineffective" because auditors often overlook ordinary checks and balances resulting in large amounts of funds being siphoned off by corrupt NGO employees.

Globally, Smillie observes, NGOs' financial reporting is "indecipherable ... often aimed at shedding the best possible light on overheads."⁹³² Likewise, in Uganda, the government commissioned a study in 2003, which found that only two-thirds of surveyed NGOs could provide figures on revenues and expenditure and that most figures did not add up.⁹³³ The lack of emphasis

⁹²⁸ *S v. Boesak* 2000 (3) SA 381 (SCA).

⁹²⁹ *Ibid.*

⁹³⁰ *Ibid.*

⁹³¹ *Ibid.*

⁹³² Smillie (1999) 11.

⁹³³ Barr, Fafchamps and Owens (2003) 21.

on NGO accounts by grant agencies may explain the incomplete accounts by NGOs and raises the possibility of double accounting.⁹³⁴

The relationship between NGOs and donors is quite unstructured, confined to visits, ad hoc discussions and the launch of strategic plans. 80% of NGOs in Uganda had been visited by a donor agency.⁹³⁵ In Tanzania, 65% of NGOs communicate with donors and an additional 15% regularly meet with their donors.⁹³⁶ However, rarely do NGOs and donors involve each other in the deliberations that inform each other's strategies.⁹³⁷ Donors have not effectively held NGOs accountable.

In many instances donors undertake evaluations and monitoring as a form of accountability for monies given. However, evaluations by donors primarily highlight inconsistencies, and bad practices, as a basis of discontinuing support rather than as a mechanism to help organisational learning.⁹³⁸ As a good practice the Ford Foundation utilised the 360-degree evaluation covering all key aspects of an organisation such as governance, policies, systems, programmes, funding and relationship, aimed at strengthening the organisation's weakest links.⁹³⁹

Since the 1990s, most donors introduced "log-frames," as a tool for results oriented management (ROM) to hold NGOs more accountable by identifying indicators of success and measurable outputs of their funding. However, results oriented management compels NGOs to focus on cost effectiveness and numbers rather than participatory processes. In addition many NGOs promise impossible outputs, exaggerate successes and conceal problems, which curtail learning from failure.⁹⁴⁰ Collecting information on the number of people reached is imperfect because it does not evaluate the quality of information conveyed in terms of relevance and clarity.⁹⁴¹ Organisations that invest in participatory processes and consensus building might be misconceived as time wasting and indecisiveness.⁹⁴² Moreover, it is more convenient to do the easy things that

⁹³⁴ Barr, Fafchamps and Owen (2003) 25.

⁹³⁵ Barr, Fafchamps and Owen (2003) 26.

⁹³⁶ REPOA (2007) 10.

⁹³⁷ Interview Mutunga Programme officer Ford Foundation, 17 July 2007, Nairobi.

⁹³⁸ Smillie (1999) 24 and 27, Scott (2001) 212-213, Ngethe (1989) 48.

⁹³⁹ Ford Foundation (2004) Evaluation of the Ford Foundation governance and civil society portfolio, on file with the author.

⁹⁴⁰ Smillie (1999) 27.

⁹⁴¹ Barr, Fafchamps and Owen (2003) 6.

⁹⁴² Takeru (1997) 209, Edwards and Hulmes (2002) 197.

produce quick results, which stifles innovativeness.⁹⁴³ It is therefore not surprising that generally, donors are unsure of how grantees are accountable to the communities they work with.⁹⁴⁴

Log-frames overemphasise short term quantitative targets, standardised indicators with a “... tendency to accountancy rather than accountability; audit rather than learning and sharing.”⁹⁴⁵ Ostensibly, log-frames are ill suited for long-term intangible pursuits such as human rights or social justice.⁹⁴⁶ Promoting social justice requires a degree of flexibility to respond to the ever-changing landscape as well as accept setbacks to enable NGOs learn from their experiences and mistakes.⁹⁴⁷

4.9. Conclusion

The chapter has reviewed the multiple accountability obligations that NGOs have to various stakeholders including the state laws, governmental regulatory Boards, NGO governing Boards, NGO membership, communities, NGO sector-wide self-regulatory Councils and donors. It is noted that NGOs’ accountability to state laws is constrained by common aspects of the legal framework that are often invoked to clampdown on NGO activism, especially where the NGO activities challenge the governments’ excesses. In other words, the law has not strengthened the governance of NGOs but rather frustrates the accountability of NGOs to their missions. Similarly, the government-established NGO Board are largely preoccupied with control of NGOs’ registration and operations as opposed to strengthening the NGOs’ internal governance capacity to enhance accountability to the beneficiaries. NGOs’ internal governing Boards equally suffer from challenges emanating from poor induction, conflict of interest, poor staff transitions, multiple engagements, weak voluntarism, poor gender representation and failure to democratise Board practices. Accountability to membership is almost non-existent given that members rarely influence strategic decisions.

The chapter has examined the quality of NGOs’ accountability to the communities, which is often derailed by the top-down methods where the views of NGO beneficiaries are merely solicited after major decisions have been taken. Likewise, NGO accountability through the sector-wide self-regulatory mechanisms is largely inadequate, owing to mistrust, voluntarism in

⁹⁴³ Drucker (1990) 82 and 28, Robinson (1997) 67.

⁹⁴⁴ Keystone accountability survey (2006) 4.

⁹⁴⁵ Edwards and Hulmes (2002) 197, Tajudeen World Social Forum, “Frank talk in the family” panel discussion (2007) 3.

⁹⁴⁶ Hulmes and Edwards (1997) 8, ICHRP (2003) 98, David and Machini (2004) 17.

⁹⁴⁷ David and Machini (2004) 23.

participation, inconsistencies in treatment and lapses in regulation. Although accountability to the donors is largely respected by NGOs, the donors rarely verify whether NGOs are accountable to their target groups or missions, as their concern is often the NGOs compliance to specific funding conditions.

Nonetheless, the challenges notwithstanding, applying democratic and human rights principles to the NGO governance can strengthen NGOs' accountability standing and promote their legitimacy in the eyes of the public that the NGOs, do exist for the public good. To ensure that neither Board nor staff put personal interests above those of an NGO, the Boards must put in place a conflict of interest policy and respect it. Further, in order to remain accountable to the NGOs' missions, the NGOs must undertake continuous monitoring and evaluation of their work to enable them capitalize on their strengths and expertise, rather than shielding their internal weaknesses to win donor favours. There is need to strengthen accountability to the communities by working with them on a broad spectrum of human rights issues of interest to the communities, compile and analyse their testimonies in order to affirm and validate their experiences and promote mutual learning between NGOs and communities.

CHAPTER FIVE

NGOs AND THE PRINCIPLE OF PARTICIPATION AND INCLUSION

5.1. Introduction

It is widely believed that NGOs directly and indirectly promote broader participation, strengthen pluralism and enhanced democratic values and improve political participation. Michael Edwards observes that the nature and frequency of face to face interactions stimulates trust and cooperation behaviour.⁹⁴⁸ Similarly, Camay and Gordon outline the strengths of NGOs, as including the following:⁹⁴⁹ commitment to the culture of service and voluntary spirit; sharpening leadership qualities such as integrity, loyalty, maturity, motivation, team spirit, professionalism, vision, ability to think strategically, self-reliance; asking of tough questions and proposing creative solutions; promoting principled behaviour and willingness to take an unpopular stand and fostering cooperative relations such as respect for each other, willingness to learn and listen and constructive criticism. This chapter examines the following key questions: How have NGOs applied the principles of participation and inclusion in their internal governance and secondly, how have NGOs broadened participation amongst the different stakeholders that NGOs works with?

Part two begins with an analysis of the ‘founder syndrome,’ highlighting the contradictions and tension of the extraordinary courage, zeal, and innovativeness of founders (especially Executive Directors) juxtaposed to the potential of such founders to undermine participation and dominate decision-making. The discussion is followed by an analysis of how change and succession processes are managed in a bid to expand participation within an NGO. It interrogates how NGOs address conflicts as an integral part of pluralism accruing from participation. Given that participation is not an end in and of itself but rather a means of ensuring that the interests and voice of the participants are taken into account in shaping policies,⁹⁵⁰ the chapter also addresses the nature of participation with communities focussing on the tensions between ‘NGOisation,’⁹⁵¹ professionalism and volunteerism. Part six examines the utility of networks in fostering collective participation and action, which is followed by an interrogation of the

⁹⁴⁸ Edwards (2004) 41-42, Dicklitch (1998) 12.

⁹⁴⁹ Camay and Gordon (2002) 48-49.

⁹⁵⁰ Gaventa (2004) 29.

⁹⁵¹ NGOisation refers to the organizing of activism into formal non-governmental organizations; see Ch 1.6.

question of the apolitical role of NGOs vis-à-vis NGOs' participation in political society. The final part of the chapter addresses NGOs participation at the Africa Commission on Human and Peoples Rights, focussing on NGOs' observance of the rules of observer status, and also looks at the case of the national Human Rights Commissions in relation to the effectiveness of NGO participation in their work.

5.2. Founders and inclusive and participatory management

Globally, it is conceded that the Executive Director is the most influential person for setting and implementing the NGO agenda.⁹⁵² In a majority of established NGOs (including INGOs) objectives are set by leaders or by the Secretariat.⁹⁵³ Most established NGOs are run by the core management team which is initially led by the founder/Executive Director who is widely regarded as the "owner" of the NGO.⁹⁵⁴ The term 'founder syndrome' is primarily used in reference to its negative connotation, as connoting an overbearing personality and private proprietary ownership of the NGO. It is necessary to explore the challenge NGOs face in promoting participatory and inclusive management, particularly where the founder is also Executive Director.

Generally founders have unusual dedication to the task at hand, and are risk takers, versatile, courageous, centres of acknowledged power, dedicated, competent and proficient. Building an NGO is a very intimate process driven by total commitment and sacrifice. The seed funding is the most difficult to raise because the NGO has no track record and is merely promising a dream of a better world. Many times, NGOs are founded in the sitting rooms of a core group of individuals hence perpetuating the illusion that NGOs' work can be cheaply accomplished.⁹⁵⁵ Asha Ramgobin left her job as Director of Campus Law Clinic at the University of Kwa Zulu Natal to found the Human Rights Development Initiative (HRDI). Although registered in 2004, she received the seed grant in 2006.⁹⁵⁶ The coherence of her dream based on a thoroughly researched master's thesis ensured the success of her fundraising efforts.⁹⁵⁷ FIDA-U's first office was a one-room affair with one chair. On weekends UNICEF would loan out its cars to enable women lawyers undertake

⁹⁵² Stone and Ostrower (2007) 420.

⁹⁵³ Welch (2001) 14, Welch (2001) 266.

⁹⁵⁴ Okafor (2006) 220-221.

⁹⁵⁵ Barry and Dordevic (2007) 11-12.

⁹⁵⁶ Interview Ramgobin, Executive Director, Founder and Director of HRDI, 19 August 2008, Johannesburg.

⁹⁵⁷ Ibid.

legal education.⁹⁵⁸ Kaari–Murungi ran UAF-A for six months from her private chambers until she found a sponsor.⁹⁵⁹ Hope Chigudu remembers literally carrying bricks to build the Zimbabwe Women’s Resource Centre.⁹⁶⁰

Almost all founders interviewed referred to the experience of founding an NGO as the same as “rearing a child.”⁹⁶¹ Many founders take the organisation as a matter of life and death. Once during a trip she was taking and air turbulence affected the journey, Jamina Toko cried: “what about the Womens’ Resource Centre?”⁹⁶² On her death bed, Grace Githu was talking about the Institute for Education and Democracy (IED).⁹⁶³ Welch observes that Peter Benenson and Sean MacBride of Amnesty International and Aryeh Neier and Robert Bernestein of Human Rights Watch left indelible marks on the organisations they founded.⁹⁶⁴ Zackie Achmat is treated with reverence by the communities in which he operates.⁹⁶⁵ The same is true for Trevor Ngwane of SECC.⁹⁶⁶ Importantly, founders have undivided dedication to an NGO. In FIDA-U, it was the founders who reorganised to rebuild the organisation when major donors had pulled out due to weak governance.⁹⁶⁷

The above positive attributes of founders notwithstanding, most NGOs are vulnerable to founder power because in the initial years the founder is the sole employee of the NGO who envisions the road map, and sets the agenda of the NGO, including recruiting both the Board and staff.⁹⁶⁸ However, once systems are not institutionalised, one person is capable of

⁹⁵⁸ Interview, Sarah Bagalaaliwo, former Chairperson of FIDA-Uganda, 18 June 2007, Kampala.

⁹⁵⁹ Interview Murungi, founder UAF-A, 14 April 2007, Nairobi.

⁹⁶⁰ Interview Chigudu, Organisational Consultant, Hope Africa, 16 March 2007, Kampala.

⁹⁶¹ Interpretation by the candidate in understanding the passion and care dedicated to founding the NGOs. Expression ranged from it is a teenager: troublesome and unpredictable; a baby, requiring undivided attention, a child: conceived and owned, intricate and time consuming. At the same time, many look back with delight on having outlived the organisation. “It feels real good,” was one such response about looking back on an organisation founded.

⁹⁶² Interview Chigudu, co-founder Zimbabwe Women Resource Centre, International consultant on gender and governance, 12 April 2007, Nairobi.

⁹⁶³ Interview Koki-Muli, Executive Director Institute for Education and Democracy (IED), Kenya, 7 Sept 2007, Nairobi.

⁹⁶⁴ Welch (2001) 262.

⁹⁶⁵ Friedman and Mottair (2004) 17.

⁹⁶⁶ Egan and Wafer (2004) 12.

⁹⁶⁷ FIDA-Uganda, Butterfly report (2008).

⁹⁶⁸ Egan and Wafer (2004) 13, Interview Sewanyana, Founder Executive Director, Foundation for Human Rights Initiative (FHRI) Uganda, 14 August 2007, Kampala.

determining the agenda of an NGO. Even amongst INGOs, personalities have the power to set mandates. For example, Aryeh Neier, was able to oppose Human Rights Watch's focus on economic, social and cultural rights (ESCR), but on succession by Ken Roth, HRW's mandate was expanded to include ESCRs.⁹⁶⁹ In many instances, because the founder Executive Director is more informed about the NGO than the others who interact with it, the Executive Director wields tremendous powers over the Board. Often communication from the Executive Directors is taken as gospel truth without any verification.⁹⁷⁰

Related to the founder syndrome, NGOs also suffer from the "star syndrome" of a human rights hero, making the NGO's institutional profile closely associated with a particular person.⁹⁷¹ Human rights awards to individuals heighten the perception of individual "heroes, soldiers or experts."⁹⁷² Rarely do personnel in second level management get invited to conferences and workshops as ideal places for networking and learning new ideas.⁹⁷³ Donors have also contributed to the narrowing of accountability and participation by working with only one individual who is often the Executive Director, further accentuating the power imbalances within NGOs. As a good practice, the Ford Foundation requires that at least two other persons in leadership positions write an endorsement letter confirming that they are aware of the project activities and the funding requested for.⁹⁷⁴

In East Africa, the vast majority of NGOs are "badly managed, poorly resourced, ill-staffed, subjected to a powerful CEO and dysfunctional Board of directors."⁹⁷⁵ Van de Walle notes that NGOs in South Africa are plagued with the same governance problems that affect the state, in that they tend to be dominated by a single leader who is rarely accountable to a professional Board, and manages the organisation with limited participation of other stakeholders.⁹⁷⁶ In East Africa, founders and Executive Directors often wield uninhibited power akin to personal rule. Ndegwa defines personal rule as: "a system of governance under which the ruler determines the issues, the

⁹⁶⁹ Bell and Carens (2004) 312.

⁹⁷⁰ Interview Michele, Organisational Consultant, South Africa, 11 November 2007, Johannesburg.

⁹⁷¹ Hamilton (2005) 16, de Waal (2008) 6.

⁹⁷² Ngondi-Houghton (2009) 156.

⁹⁷³ Hamilton (2005) 17.

⁹⁷⁴ Ford Foundation grant application proposal requirement outline (2008) 1.

⁹⁷⁵ Mutua (2009) 13 and 17.

⁹⁷⁶ Van de Walle (2003) 25.

rules, and often the outcomes of political relation; this role is neither institutionalised nor purposively constrained by impersonal institutions.”⁹⁷⁷

A study of Nigeria reveals that the quest for personal power, the “phenomena of *ogaship*” (chieftaincy) accounts for the fragmentation of NGOs because too often the emergent NGOs tends to do the same things that the parent NGO does and ends up competing for the very same resources as the parent NGO.⁹⁷⁸ Okafor observes as follows:

The new NGO becomes less institutionalised and much more driven by “personal rule” of one powerful boss or Oga, than is the case with the parent NGO. ... The real reason for the formation of the new NGO is oga-ship ambitions and desires of many of the leaders of the new organisation who have cut their teeth dutifully serving the older “Ogas” now want control directly of their own portions of the pot of funds.⁹⁷⁹

In some cases the founder ridiculously assumes private ownership of the NGO. For example, in one case a founder locked the NGO’s registration certificate in his bedroom and claimed that he could not have access to it, because the wife had gone to the market.⁹⁸⁰ In another, the founder locked up all the NGO’s equipment in her office and went away on vacation.⁹⁸¹ The saga of the Education Centre for Women in Democracy’s (ECWD) in Kenya demonstrates the ultimate abuse of founder power.⁹⁸² ECWD rented the premises of the founder CEO Tabitha Seii. When a disagreement ensued between her and the successor Margaret Hutchinson, in October 2006, the founder locked up the office premises, installed new watchmen and used the police to disperse the employees. The founder alleged that she was “rescuing her organisation” from mismanagement.⁹⁸³ The NGO eventually found new premises. The founder CEO has been reinstated as CEO and is currently serving in that capacity.

Although Welch observes that “what makes human rights realities South of the Sahara are individuals worth of attention and support,”⁹⁸⁴ he concludes that long term success

⁹⁷⁷ Ndegwa (1996) 12.

⁹⁷⁸ Okafor (2006) 217 - 218, Byamukama (2002) 38, Adhiambo Oduol (2002) 105.

⁹⁷⁹ Okafor (2006) 218.

⁹⁸⁰ Interview Jairo, Commissioner, Tanzania Human Rights and Good Governance Commission, 25 July 2007, Dar-es-Salaam.

⁹⁸¹ Adeleye World Social Forum, “Frank talk in the family,” panel discussion.

⁹⁸² The case was covered by the media and discussed by all respondents in Kenya, due the political prominence of Seii who at the time was serving as an Ambassador of Kenya to South Africa.

⁹⁸³ Interview Wangari, Coordinator, Women Direct, 6 September 2007, Nairobi.

⁹⁸⁴ Welch (1995) 314.

depends on the institutionalization of NGOs.⁹⁸⁵ The founder's power diminishes as the founder builds a constituency of like-minded people to provide a broad base of support which fosters the development of a diversity of ideas within the organisation.⁹⁸⁶ It is in the founder's interest to build participatory and inclusive management in order to sustain the vision of the NGO. Being highly dependent on an individual threatens the sustainability of any given NGO.⁹⁸⁷

NGOs are formed to serve a social interest or cause. Unless the NGO becomes institutionalised it is difficult to separate the identity of the person within an NGO from that of the NGO at large. "While originality and personal commitment of individual leaders is what drives innovations, most organisations achieve truly significant change when they inspire and mobilise like-minded people"⁹⁸⁸

5.3. Broadening participation through transitions and succession

Sustainability goes beyond the question of having the money to carry out the activities of the organization and includes organisational regeneration.⁹⁸⁹ Change is inevitable because like all living things, NGO missions become irrelevant, activists suffer burn-out and strategies become ineffective. Transitions and succession are positive strategies that enable an NGO to renew itself, set new goals, harness new opportunities, priorities, values and approaches. Therefore it is imperative for any NGO to renew its human resources and properly manage its transitions and change processes.

Although change is natural, it is equally painful to let go of the comfort zones and established routines.⁹⁹⁰ A respondent who had been away from Uganda for five years found all NGOs in a "state of stagnation, no growth, same table, same library, same paint and doing same old things: nothing much has changed."⁹⁹¹ Globally, many NGOs fail to have a smooth handover of authority.⁹⁹² Usually change in the leadership is due to an end of contracts or in response to crises.

⁹⁸⁵ Welch (1995) 295.

⁹⁸⁶ Interview Sewanyana, Founder Executive Director FHRI, 14 August 2007, Kampala.

⁹⁸⁷ Welch (2001) 272, Steiner (1999) 77.

⁹⁸⁸ Berresford Ford Foundation Annual Report (2006) 5.

⁹⁸⁹ Fowler (2002e) 367.

⁹⁹⁰ Thaw (2002) 151.

⁹⁹¹ Interview Kaduru, CEO, Club.de.Madrid, 30 August 2007, Kampala.

⁹⁹² ICHRP (2003) 109.

In South Africa, the post 1994 years have been dubbed the “crisis year of NGOs,” arising from erosion of institutional memory and the shrinking of donor resources.⁹⁹³

Seniority within NGOs impacts on individuals’ power over it, making succession issues very relevant.⁹⁹⁴ In many cases of a founder Executive Director, the Board hardly plays an oversight role. In Human Rights Watch (HRW), the succession of the founder Executive Director, Aryer Neier by Ken Roth, allowed for operational procedure and structures to be streamlined and diffused power from the office of the Executive Director as the main fundraiser and spokesperson whom every one consulted.⁹⁹⁵ Executive Directors need to have term limits otherwise it becomes difficult to challenge their decisions, resulting in organisational inertia.⁹⁹⁶ After ten years of leadership most options are exhausted. Having term limits harnesses new energy and is indicative of the institutionalisation of an NGO whose survival becomes less contingent on an individual.⁹⁹⁷

Many NGOs often fail to sustain themselves after the transition from powerful leadership of either Chairs or directors.⁹⁹⁸ In East Africa, most successful NGOs have not had a transition at the Executive Director’s level for more than two decades.⁹⁹⁹ The reluctance of donors to fund NGOs in transition further aggravates the turbulence of the transition.¹⁰⁰⁰ Even when the transition happens at the most successful time of the NGO, the assumption is that the NGO has problems. The uncertainty makes transitions conflict-prone. Therefore, succession requires strong leadership to mitigate anxieties and mobilise support in order to build on past successes.

The most complex transition is one from the founder Executive Director.¹⁰⁰¹ According to Kisare, the founder’s succession is often characterised by turmoil. As the founder envisions his or her departure, he or she seeks to strengthen the organisational system and delegates authority by creating mid-level management positions with administrative and decision-making powers. Contradictorily, the anointed successor often emulates the founder’s authoritarian style but not necessarily with the same unquestioned leadership and charisma. Ultimately, this leads to

⁹⁹³ Koetz (2002) 18.

⁹⁹⁴ Stone and Ostrower (2007) 420.

⁹⁹⁵ Korey (2001) 349.

⁹⁹⁶ Interview Gitari, Ford Foundation Programme Officer, Human Rights and Social Justice Lagos, 5 June 2006, Senegal.

⁹⁹⁷ Interview Kiai, Chairperson, Kenya National Human Rights Commission, Kenya 23 August 2007, Nairobi.

⁹⁹⁸ Welch (1995) 293, Welch (2001) 272.

⁹⁹⁹ Peter (2007c) 289.

¹⁰⁰⁰ Interview Bunga Idembe, Ahecbwa, Ndyabawe, Mugenyi, UWONET Secretariat, 13 August 2007, Kampala.

¹⁰⁰¹ Interview Kisare, 8 August 2007, EASUN: Institute for Organisational learning Tanzania, 8 August 2007, Arusha, Axerlod (2002) 7.

turmoil. As a result, the NGO's system is clogged as the prospective successor sub-consciously re-establishes what the pioneer seeks to change, breeding conflict between the founder, the successor and the NGO in general.

In order to retain competencies, skills and experience, there is a growing consensus that retaining founders as trustees helps to safeguard the vision and passion of the NGO. But this does not always work out. In Central and Eastern Europe many new Executive Directors found the transition of the former Executive director to the Board "inhibiting or frustrating."¹⁰⁰² It is also not prudent to immediately make the immediate previous Executive Director, the Chair of the Board because it compromises the renewal of an NGO, as the key reason for the succession. Rarely within East and South Africa is a former Executive Director recruited to the Board.¹⁰⁰³

Concurrently, while undertaking successions, NGOs need to create sufficient space for founders or predecessors to continue to contribute to the NGO and use the benefit of hindsight to guide the organisation. However, it is better that founders interact with the Board and not with the Executive Director.¹⁰⁰⁴ In reality founders feel discarded by the NGOs they started. Barry and Dordevic document a founder's frustration:¹⁰⁰⁵

The organisations we started are spaces we also build for ourselves ... where we feel good, where we ARE. Where we are accepted when the rest of society rejects us ... and after so many years of giving everything to women's rights ... we are asked to leave ... where do we expect a leader to go when she hands over the leadership of her organisation?"

Nkutu compares succession in an NGO to a divorce:¹⁰⁰⁶

Succession is like a divorce. One invests all her being, passion and commitment into an NGO so that it becomes a part of her and a way of life. Therefore, succession constitutes a loss of identity, power and even a contact address. At times one clings on, not necessarily for power but it is the only life one knows. ... It requires time and a deliberate effort to lose that part of you.

In one NGO, the outgoing Executive Director was visibly angry highlighting the messy manner in which succession is handled: "I am on my way out. I will not be useful in this

¹⁰⁰² Wyatt (2004) 16.

¹⁰⁰³ Researchers observation in East Africa and interview Van Garderen, Executive Director Lawyers for Human Rights, 11 March 2008, Pretoria.

¹⁰⁰⁴ Interview Gregoire, former Programme Training Officer, Board Source, 16 August 2008, telephone interview, resident in the USA.

¹⁰⁰⁵ Barry and Dordevic (2007) 67.

¹⁰⁰⁶ Interview Nkutu, Programme Officer World Vision, Kampala, 12 March 2008, Kampala.

discussion. ... I am leaving in a few days, so I will introduce you to my colleague who is here then I will leave you to continue the discussion. ... Maybe she can brief the new incoming person.”¹⁰⁰⁷

Hence the imperative for sensitivity to ensure smooth succession that retains the investment of passion, social networks and psychological attachment of individuals to mitigate the feeling of loss. Some of the issues that aggravate a relationship between the predecessor and a successor are so trivial that they could not be attributed to ill-intention. For instance, a successor can wonder why mail is still being addressed to a predecessor, months after he or she has left office.¹⁰⁰⁸ In one incident the successor could not find the keys which were in her desk, because she had not been told of the code name.¹⁰⁰⁹ This situation highlights the lack of comprehensive information during handover processes. In another, the successor was given a wrong budget for the programme. In one NGO, there were two meetings held to hear what the predecessor felt about the NGO, hardly interrogating the dynamics of change. In another NGO, an individual moved with practically the whole staff and contacts, leaving almost a shell of an NGO. In yet another NGO although a transition period had been established it was abruptly halted at a donor meeting where the predecessor was requested to excuse herself from the meeting.¹⁰¹⁰

As good practice, Tanzania Gender Networking Programme (TGNP) organises a ceremonial handover to introduce the successor to the stakeholders. ALLAVIDA had a one year succession plan, aimed at mentoring the new leadership and to transfer the oral institutional memory.¹⁰¹¹ Urgent Action Fund (UAF-A) ensured that the founder Executive Director handed over to the Board which transferred the information on the status of the organisation to the successor. The founder CEO was given a year of sabbatical after which she would automatically join the Board.

The predecessor is expected to allow the successor space and to trust that the successor would work in the interest of the common NGO's mission. Due to apprehension of being accused of unsolicited intermeddling, most predecessors keep aloof from the NGO. One respondent complained that the NGO she painstakingly built suddenly does not trust her to work in its best interest, simply because she is no longer in leadership.¹⁰¹² In many NGOs there is no

¹⁰⁰⁷ Person requested anonymity.

¹⁰⁰⁸ Interview Matovu, then Chairperson FIDA-Uganda, 12 Jan 2006, Kampala.

¹⁰⁰⁹ Interview Murungi Founder Executive Director, Urgent Action Fund, Kenya, 12 April 2007, Harare.

¹⁰¹⁰ Researcher finds it prudent not to disclose the respondent, since the fractious relationship has since been amended.

¹⁰¹¹ Interview Kingman, then Executive Director ALLAVIDA, Kenya 21 July 2007, Nairobi.

¹⁰¹² Respondent requested anonymity.

mechanism for the retention of competencies to ensure continuity of the NGO. In most NGOs where the successor was comfortable with consulting the predecessor on a need to know basis, there has been continuity and growth. Some consultations are critical given the generally poor institutional documentation within NGOs.

Most NGOs do not have a Deputy largely because of the fear that it could trigger opposition and conflict between the two officers. The establishment of the deputy position is more commonly initiated in preparation for succession but not in the ordinary course of work. For instance, only recently, Foundation for Human Rights Initiative in Uganda (FHRI)—a twenty year old NGO—established two deputies positions, one for programmes and the other for administration as part of succession planning.¹⁰¹³

In most instances, recruiting a Board member to serve as Executive Director has proven futile for Human Rights Network (HURINET), Kituo Cha Katiba (KCK), Uganda Women Network (UWONET), FIDA-Uganda (FIDA-U) and Action for Development (ACFODE), largely due to the inability of the previous Board member to relate to the Secretariat as peers. During the field research, a number of respondents in Kenya were critical of KHRC for having consecutively recruited internally from the Board. KHRC counter argued that it had to ensure its institutional memory and safeguard against its cooptation during the very dictatorial Moi regime.¹⁰¹⁴

Although the outgoing Executive Directors are expected to fundraise for the transition period so that they hand over a financially viable organisation it has inadvertently created the wrong impression that success is automatic, but not struggled for and money “pours” in. In one NGO, the successor Executive Director was reluctant to move into the institutional house because it was too far from the city centre.¹⁰¹⁵

Planning succession from the onset is very empowering because it sets a time frame for achieving specific goals. As a good practice, the Executive Director should be able to delegate the office when on leave or during travel, to the acting Executive Director and refrain from calling office or responding to office queries in order to build a culture of independence.¹⁰¹⁶ Another, way of promoting participation in an NGO is by ensuring that everyone has authority to incur expenditure, because money is power. Nonetheless, the power derived from money needs to be balanced by sufficient controls and oversight mechanisms.

¹⁰¹³ Interview Sewanyana, Executive Director FHRI, 14 August 2007, Kampala.

¹⁰¹⁴ Interview Kiai, Chairperson, Kenya National Human Rights Commission, 23 August 2007, Nairobi.

¹⁰¹⁵ Interview Tumaini, Former Executive Director Tanzania Women Lawyers’ Association, 24 July 2007, Dar-es-Salaam.

¹⁰¹⁶ Interview Mutunga, then Programme Officer, The Ford Foundation, Kenya, 17 July 2007, Nairobi.

Succession planning is not restricted to the practice of grooming one individual to become the Executive Director.¹⁰¹⁷ A good succession must begin with an institutional assessment to identify the salient issues that the new successor is expected to address.¹⁰¹⁸ Put differently, the first step in succession planning is not to search for the new Executive Director but to determine the NGO's strategic direction.¹⁰¹⁹ Yet Boards often focus on identifying the "... qualities the ideal candidate should possess before defining the institutional issues and priorities."¹⁰²⁰ While the new leadership is expected to infuse new ideas rarely are the key issues and strategies that would be brought to suit the NGO's strategic direction deliberated upon.¹⁰²¹ Where the NGO is successful, there is an inclination to recruit a succession candidate with similar attributes to the predecessor yet, "... carbon copies are weak."¹⁰²² Succession planning is more successful when the NGO builds on a model of shared leadership without anointing or simply grooming one successor.¹⁰²³ It is also prudent that an independent group makes the judgment to choose the successor.¹⁰²⁴

Where the departure is voluntary, amicable or planned, the following rules of engagement apply: the predecessor should be available at Board request to share insights; be willing to dialogue and respond to the questions raised by the successor or the Board; discourage discussions that seek to vent frustrations about the NGO's transition and be generally guided by the best interests of the NGO.¹⁰²⁵

5.4. Participation and the management of conflicts

Civil society is a place for public participation, argument and dissent in order to forge new, alternative or creative strategies to common problems.¹⁰²⁶ While an NGO is an expression of

¹⁰¹⁷ Axelrod (2002) 2.

¹⁰¹⁸ Axelrod (2002) 19.

¹⁰¹⁹ Axelrod (2002) 18.

¹⁰²⁰ Axelrod (2002) 18.

¹⁰²¹ Interview Gregoire, former Training Programme Officer, Board Source, 16 August 2008, telephone interview, resident in the USA.

¹⁰²² Drucker (1990) 19 & 120.

¹⁰²³ Interview Kisare, Executive Director, EASUN, Tanzania, 8 August 2007, Arusha, Interview Aina, then Resident Representative, the Ford Foundation, 5 December 2007, Nairobi.

¹⁰²⁴ ICHRP (2003) 110.

¹⁰²⁵ Axelrod (2002) 42.

¹⁰²⁶ Edwards (2004) 55.



common goals, people think differently and the strength of the NGO lies in harnessing diversity.¹⁰²⁷ Consequently, conflict is inherent in the principle of participation because participation encourages pluralism of opinions on how to achieve common goals. Conflict on its own is not the problem, but the manner in which conflict is addressed.

Darrow and Thomas argue as following:¹⁰²⁸

Conflict is an innate and natural aspect of human interaction, experienced on a daily basis by almost everyone. While not all conflicts lead to violence (and indeed some conflicts lead to positive change), conflicts do generally produce social change of some kind. The type of change generated by conflict ... in a given instance, involves the settling of a dispute through violence. In different instances the result might well be an altered configuration of social arrangements that effectively reduces poverty and the risk of violence.

Likewise, Drucker rightly argues that “dissent and disagreement can resolve conflict,”¹⁰²⁹ explaining that:

If one asks for disagreement openly, it gives people the feeling that they have been heard but they also know where the objectors are and what the objections are. In many cases you can accommodate them, so that they can accept the decision gracefully. That also enables them very often to understand the argument on the winning side. Maybe not to accept them: but to see that these people are neither stupid nor malicious. They only differ. In this way you resolve conflict, you do not prevent disagreement, but you resolve conflict.”¹⁰³⁰

However, NGOs inadequately address conflicts despite having conflict resolution mechanisms in place. In the situations of conflict between the Board and the Executive Director, the Executive Director often resigns.¹⁰³¹ Nonetheless, dynamic tension between the Board and the Executive Director is natural and healthy if managed through respectful dialogue and the willingness to accommodate different views.¹⁰³² Winston has drawn a comparison between an NGOs and a marriage which ends up in divorce because the partners fail to work out the differences in order to preserve the relationship.¹⁰³³

Due to the lack of an NGO sector-wide framework for conflict resolution, in extreme cases NGOs resort to court to settle their differences. For example, in Kenya the dispute within the Kenya Women’s Political Caucus over the selection of women representatives to

¹⁰²⁷ Drucker (1990) 118.

¹⁰²⁸ Darrow and Thomas (2005) 490.

¹⁰²⁹ Drucker (1990) 125.

¹⁰³⁰ Drucker (1990) 125.

¹⁰³¹ Interview, Michele Organisational consultant, South Africa, 11 November 2007, Johannesburg.

¹⁰³² Axelrod (2002) 9.

¹⁰³³ Winston (2001) 51.

participate in the Constitution of Kenya Review Process culminated in a court process.¹⁰³⁴ The leadership wrangles over the Kenya NGO Council were taken to court.¹⁰³⁵

Management of conflict is aggravated by the refusal to discuss power imbalances within the NGO sector or the tendency to define power in more idealised ways.¹⁰³⁶ For example, although feminists' principles espouse the values of equality, participation, fairness and respect, among others, in reality the concept of power as dominance and manipulation of others reigns even amongst feminists. Inadvertently, the flat structures in which official power has no place, result in the "tyranny of structureless-ness"¹⁰³⁷ characterised by the muddling of roles and responsibilities between the governance and management structures as well as among the various levels of the management team. The very refusal to discuss "power over" often results in the exercise of unofficial and virtually uninhibited power within the NGO which aggravates the conflict.¹⁰³⁸ Often a woman may resign after a misunderstanding. In one NGO in South Africa a chairperson was called a racist and she immediately tendered in her resignation.¹⁰³⁹ In another, staff identified the Executive Director as the stumbling block and she accused the consultant of wreaking havoc in the NGO.¹⁰⁴⁰

When the root causes of conflict are not addressed, conflicts manifest themselves in what may appear to be petty issues such as use of cars or the allocation of overseas trips, and other office 'perks.'¹⁰⁴¹ Paradoxically, while activism is about shared goals, competition for money and power is a source of conflict in the relationships amongst NGO activists. Instead of open confrontation conflicts are played out in the form of "low murmur of gossip, backstabbing, withholding information, outright violence and false accusations such as misappropriation of funds, harassment and nepotism."¹⁰⁴² Often employees in NGOs work at the sufferance of the leadership. In comparing NGOs to government, Kaguongo observed that NGOs conflict resolution procedures can easily be manipulated: Government tends to be more impartial with clearer

¹⁰³⁴ Michuki (2004) 107.

¹⁰³⁵ Refer Chapter 4.

¹⁰³⁶ Lips (1991) 3.

¹⁰³⁷ Sheelan and Taylor (1997) 215.

¹⁰³⁸ Lips (1991) 7.

¹⁰³⁹ Interview Chigudu, International gender and organisational development consultant, Zimbabwe 11 April 2007, Harare.

¹⁰⁴⁰ Ibid.

¹⁰⁴¹ Interview Kasente, Director Makerere Institute of Social Research, Uganda, 10 July 2003, Kampala.

¹⁰⁴² Barry and Dordevic (2007) 58.

disciplinary mechanisms which enable the employee ample time to prepare for the eventualities.¹⁰⁴³ In contrast, in NGOs, the person complained of is likely to be part of the disciplinary process, and the abrupt nature of conflict resolution procedures has a dramatic impact on the employees without ample time to reflect or reorganise him or herself; yet seeking court redress is so laborious, that the employee resigns themselves to fate.¹⁰⁴⁴

The predicament of employees is further aggravated by the fact that the NGO sector has no workers' trade union, despite the fact that some NGOs work on labour rights.¹⁰⁴⁵ In reflecting on his work in the NGOs sector, Irungu found NGO structures so confusing, that it is possible to jump three tiers at the discretion of the Director.¹⁰⁴⁶ A respondent, who worked as a sole employee, supported by an administrative assistant and who had successfully secured stable funding for the NGO was denied leave after two years of work. Her contract was abruptly terminated and partial arrears were paid six months later.¹⁰⁴⁷ The majority of cases at the Kenya NGO Council involve the non-payment of salaries due to the lack of written contracts.¹⁰⁴⁸

NGOs have to accept conflicts as an integral part of broadening participation and harnessing divergent views by putting in place mechanisms that promote diversity and inclusiveness. Despite the difficulty of reaching consensus all the time, it is important that all affected parties have a "stake in the ongoing dynamic of controversy resolution and change."¹⁰⁴⁹ Forcing submission or silence frustrates energy for social engagement.¹⁰⁵⁰ Curtailing arguments produces an illusion of agreement that disguises the differences to the advantage of those in power.¹⁰⁵¹ Participation and consultation does not necessarily mean that every decision has to be questioned or undone because of a lack of participation, but rather that stakeholders are involved in the deliberation of strategic decisions that affect them. Allowing a questioning atmosphere in an NGO encourages debate and creativity for new answers while simultaneously strengthening ownership of the agreed solution.¹⁰⁵²

¹⁰⁴³ Interview Kaguongo, LLD candidate University of Pretoria, South Africa, 19 March 2007, Pretoria.

¹⁰⁴⁴ Ibid

¹⁰⁴⁵ Interview Angila, Former CEO of Kenya NGO Council and Programme Officer PACT-Kenya, Sept 6 2007, Nairobi.

¹⁰⁴⁶ Irungu: World Social Forum, "Frank talk in the family," panel discussion (2007) 7.

¹⁰⁴⁷ Interview Kaguongo, LLD candidate University of Pretoria, 19 March 2007, Pretoria.

¹⁰⁴⁸ Interview Adhanja, CEO Kenya NGO Council, 24 August 2007, Nairobi.

¹⁰⁴⁹ Edwards (2004) 69.

¹⁰⁵⁰ Edwards and Sen (2002) 43.

¹⁰⁵¹ Edwards (2004) 68.

¹⁰⁵² Kaplan (2002) 427-428, Edwards (2004) 68.

Next the thesis analyses the practical manifestation of accountability and participation between the NGOs and the communities.

5.5. NGOs and community participation

This discussion examines the extent to which NGOs have promoted community participation. According to Edwards and Fowler:¹⁰⁵³

[T]he “power and influence of NGOs is based on civic engagement, social mobilisation and reliance on social capital, not the political mandate and ‘strong arm of government, or the financial capital and influence of businesses. The quality of [NGO] engagements with citizens is therefore a key determinant of the NGO’s legitimacy and effectiveness.”¹⁰⁵⁴

Although this thesis focuses on NGOs, the discussion here also draws from the experiences of NGOs working with or within social movements to highlight the lessons in NGO/community relationships in broadening participation. The thesis acknowledges that globally NGOs are elite institutions, as they are often “socially and culturally isolated from the communities that they work with.”¹⁰⁵⁵ Even AI, the pioneer human rights NGO, is described as elitist because its wide membership is primarily drawn from the global middle class.¹⁰⁵⁶ With the exception of the women’s rights movement and faith based organisations, human rights movements in Africa have excluded the participation of the very people whose welfare they purport to advance.¹⁰⁵⁷ Therefore the fact that the NGO sector is predominantly elite and urban based obliges NGOs to ensure a more egalitarian participation of the communities.

Nonetheless, in resonance with Mamdani, the chapter reiterates that there is no “Chinese wall between the elite and popular movements.”¹⁰⁵⁸ To be effective, NGOs need mass support. Social movements link NGOs to their social bases and optimise NGOs’ influence on the state and society.¹⁰⁵⁹ Simultaneously, it is difficult for the communities to achieve political change without allies among the NGOs.¹⁰⁶⁰ Because the poor tend to have fewer skills valued by the

¹⁰⁵³ Edwards and Fowler (2002) 4.

¹⁰⁵⁴ Edwards and Fowler (2002) 4.

¹⁰⁵⁵ Steiner (1999) 74.

¹⁰⁵⁶ Korey (2001) 169.

¹⁰⁵⁷ Odinkalu (2000) 4.

¹⁰⁵⁸ Mamdani (1995) 7.

¹⁰⁵⁹ Freidman and Mottair (2004) 39, Edwards (2004) 35, Okafor (2006) 219 and 226.

¹⁰⁶⁰ Fisher (1998) 85.

market, they are systematically disadvantaged as a class.¹⁰⁶¹ Consequently, where campaigns for social equity are restricted to weak sections of society, they get isolated and ignored, warranting coalition building from influential social groups such as NGOs.¹⁰⁶² In discussing inclusiveness and participation the chapter analyses the strategies of NGOs in mobilising communities for the human rights movements.

The importance of human rights awareness-raising by NGOs is fundamental because a majority of the communities are unaware of their constitutional rights. For example, in South Africa, a South African Human Rights Commission Study conducted in 1996 under the Roll Back Xenophobia Campaign Study found that only 24.9% of South Africans were aware of the human rights in the Constitution.¹⁰⁶³ Furthermore, access to free information promotes equal opportunity and offsets the isolation of excluded groups and makes it more likely for the people to influence public policies to their benefit.¹⁰⁶⁴ For example, by offering the basic information on HIV/AIDS, TAC enabled the people to better take care of their health and lives, engage as active citizens' and fight social stigma.¹⁰⁶⁵

The implicit belief that ignorance is a major source of poverty and unhappiness has made "... talking to the poor and needy" a key activity.¹⁰⁶⁶ Making people aware of their subordinate status is only one step towards addressing marginalisation. Otherwise, mere awareness without giving people the tools to alter the marginalisation accentuates their frustration.¹⁰⁶⁷ BOCONGO decries the predominant approach of civic education that "views the minds of those being enlightened as vessels waiting to be filled with appropriate ideas instead of using a participatory process that stimulates their knowledge based on concrete experiences."¹⁰⁶⁸ Human rights awareness is not an end in itself but a tool to influence decision making and to enable individuals claim their rights.¹⁰⁶⁹

Merely talking to the poor ultimately breeds levels of discontent because of failure to empower them to act in their own agency. For example, prior to 2007, FIDA-U had predominantly

¹⁰⁶¹ Donnelly (1999) 629.

¹⁰⁶² Friedman and Mottair (2004) 32.

¹⁰⁶³ Mubangizi (2004) 124.

¹⁰⁶⁴ Edwards (2004) 99.

¹⁰⁶⁵ Friedman And Mottair (2004) 25.

¹⁰⁶⁶ Barr, Fafchamp and Owen (2003) 17.

¹⁰⁶⁷ Dicklitch (1998) 158, Winston (2001) 49.

¹⁰⁶⁸ BOCONGO Civil Society Education Strategy (2007) 11-12.

¹⁰⁶⁹ Foundation for Human Rights (FHR) Review (2005) 12.

defined empowerment as “something done to people” through giving target groups the right information and developing their capacities and confidence to act, demand and access services as citizens.”¹⁰⁷⁰ Chigudu challenged FIDA-U to adopt: ¹⁰⁷¹

a participatory process that engages people in reflection, inquiry and action. By sharing life stories and doing a basic analysis of common problems such as domestic violence ... [t]hey begin to question their world and their place in it, affirming their own sources of power and ... sense of personal worth ... and ... willingness to act both individually and collectively to improve their world by challenging power relations.

Promoting human rights requires listening and learning from the rich experiences of how ordinary people have appropriated human rights to produce new knowledge.¹⁰⁷² Kenyatta argues that because the aim of education is to build the character and not the mere acquisition of knowledge, the main goal of education in traditional society was the application of instruction to concrete situations. Behaviour was taught in relation to some particular person and from doing things together as a social activity.¹⁰⁷³ Mandela affirms this approach. He states that among the Xhosa knowledge was acquired through observation, imitation and emulation, and not necessarily through questions.¹⁰⁷⁴ The vivid narrative of information often supported by imagery, and animal pictorial references resulted in an indelible mental picture.¹⁰⁷⁵ Songs, games, sports, riddles and puzzles constituted a form of education that helped in memorising the educational phrases.¹⁰⁷⁶ Hence, NGOs need to make human rights education a communicative and interactive discourse with NGOs imparting specialised knowledge while at the same time learning from the communities. Once human rights NGOs recognise that they have obligations towards their stakeholders they would have regular communication of information that involves explaining what the NGO is doing and why, taking advice from stakeholders, and collaborating together on implementing an agreed policy.¹⁰⁷⁷

¹⁰⁷⁰ FIDA-U Organisational development evaluation (2007) x.

¹⁰⁷¹ FIDA-U Organisational development evaluation (2007) x.

¹⁰⁷² Keck and Sikkink (1998) 2, Harvey (2005) 2, Nabudere (2007) 236.

¹⁰⁷³ Kenyatta (1938) 120-121.

¹⁰⁷⁴ Mandela (1994) 11.

¹⁰⁷⁵ Kenyatta (1938) xiv.

¹⁰⁷⁶ Kenyatta (1938) 100-104 and 192.

¹⁰⁷⁷ ICHRP (2003) 63 and 121.

Another dilemma is the impact of “NGOisation” on popular participation. There are structural impediments to broad participation because some strategies require technical and financial expertise gained through formal education.¹⁰⁷⁸ Unfortunately, efforts at “NGOisation” were not matched with building the necessary organisational governance structures to ensure broader participation. The worldwide professionalisation of the NGO sector accentuated by the quest for value for money gradually distanced organisations from the people who are closest to the problem.¹⁰⁷⁹ Concurrently, it is lamented that professionalisation has inadvertently promoted “paper qualified” professionals who are not necessarily passionate about their work.¹⁰⁸⁰ Activists simply move from one NGO to another on the expiration of project terms, in search of better pay. Hence the many unflattering acronyms applied to the term ‘NGO,’ including ‘privately-organized NGOs (PONGOs), nothing going on (NGO), and business-oriented NGOs (BONGOs).¹⁰⁸¹

NGOs face difficult tradeoffs between the professionalisation of their organisations and the strengthening of grassroots ties.¹⁰⁸² While professionalism should not necessarily conflict with popular participation, it is a fact that NGO professionals are prone to put personal interests or those of their social classes first.¹⁰⁸³ Professionals often become the privileged in society, wealthier, better educated and internationally connected.¹⁰⁸⁴ Nonetheless, as tritely observed by the ICHRP, although professionalism has resulted in exclusion, the issue is not professionalism as such but rather the unequal power relations within the professionals and the communities they work with or represent.¹⁰⁸⁵

The law contributes to making community participation difficult. The fact that NGOs are growing more autonomous from the state, and yet have relationships with communities on the ground they work with is of concern to governments.¹⁰⁸⁶ In Uganda, NGOs failed to mobilise the communities to support their advocacy against the restrictive NGO law.¹⁰⁸⁷ Thus,

¹⁰⁷⁸ Friedman and Mottair (2004) 16.

¹⁰⁷⁹ Edwards (2004) 35, Stewart and Taylor (1997) 218-220, UNRISD (2005) 182, Dicklitch (1998) 153, Greenberg (2004) 24, Friedman and Mottair (2004) 9, Just Associates (2006) 14.

¹⁰⁸⁰ Bell and Keenan (2004)368, Tamale (2009) 66-67.

¹⁰⁸¹ Shivji (1989) 34, 36 and 61, Baxi (2002) 43, Chachage (2002) 147, Anwar (2006) 7.

¹⁰⁸² Fisher (1998) 85.

¹⁰⁸³ Lehr-Lehnardt (2005) 20-23.

¹⁰⁸⁴ Lehr-Lehnardt (2005) 23.

¹⁰⁸⁵ ICHRP (2003) 102.

¹⁰⁸⁶ Ndegwa (1996) 22.

¹⁰⁸⁷ Interview Kwesiga, Executive Director DENIVA, 8 January 2007, Kampala.

somewhat predictably, when the NGOs petitioned the President not to sign the bill into law, he did not even acknowledge the petition, highlighting his disdain for the sector. Despite the public good will, NGOs in Uganda have not ably mobilized the public to protest against the restrictive NGO laws.

Furthermore, the petition was signed by only eight NGOs, namely, NGO Forum, Development Network of Indigenous Voluntary Associations (DENIVA), Human Rights Network (HURINET), Advocates Coalition for Development and Environment (ACODE), Uganda Child Rights Network (UCRN), the African Network for Prevention and Protection Against Child Abuse and Neglect (ANPPCAN), Environmental Alert and Anti-Corruption Coalition of Uganda.¹⁰⁸⁸

The above challenges notwithstanding, there are some positive examples of NGO/community relationships. The growing trend of donor funding of large NGOs as conduits to smaller CBOs has further strengthened NGOs and CBOs working relationships.¹⁰⁸⁹ For example, in South Africa, Foundation for Human Rights (FHR) facilitates CBOs' mentoring workshops and also encourages collaboration between NGOs and CBOs. The Centre for Policy Studies, Centre for Conflict Resolution, and Human Sciences Research Council worked collaboratively to conceptually inform public debates, strategies and priorities in the human rights sector.¹⁰⁹⁰ Similarly, its small size notwithstanding, SECC located its campaign in everyday struggles such as the re-connection of electricity, turning the electricity crisis into a political issue.¹⁰⁹¹ The Homeless People's Association (HPA) in South Africa initiated a "grassroots driven and non-hierarchical process" that mobilised the community to assess their needs, understand how external interventions can benefit them, and set their development priorities.¹⁰⁹² Subsequently, the professionals were involved to place the housing issue within the national and international arena. Exchange visits amongst other homeless groups were used as "an isolation buster, confidence booster, option expander and network builder."¹⁰⁹³ HPA maximised beneficiary participation and ownership, resulting in better quality houses than those delivered by government; numerous women acquired skills which enhanced their status and profile in the communities; bonds of trust, reciprocity and interdependence were

¹⁰⁸⁸ Petition on file with author.

¹⁰⁸⁹ NPO Impact Assessment (2005) 45.

¹⁰⁹⁰ FHR Programme Evaluation (2005) 24, Guidelines for Proposals Ref No W3/hrs/02/01.

¹⁰⁹¹ Egan and Wafer (2004) 16 and 21.

¹⁰⁹² Khan and Pietersen (2004) 6, 8 and 11.

¹⁰⁹³ Khan and Pietersen (2004) 11.

strengthened and the burden of housing provision on the state was lessened.¹⁰⁹⁴ Under the Mvula Trust model, the community project managers had the responsibility of appointing and paying all the technical and social service providers which strengthens ownership to sustain and maintain the projects.¹⁰⁹⁵ In addition, the ceremonial launchings enhance community pride, further encouraging them to pay for the water services as a sustainability mechanism.¹⁰⁹⁶ Mvula Trust engages the South African Local Government Association to promote a more facilitative role for CBOs.¹⁰⁹⁷

In Kenya during the 1980s, the *Ndugu Society* empowered women to protest and seek compensation from governments over the demolition of their illegal kiosks.¹⁰⁹⁸ Likewise, the Green Belt Movement (GBM) in Kenya relies on the local expertise of rural women in its tree planting to contribute to their self-reliance, ultimately enhancing women's agency for change.¹⁰⁹⁹

Increasingly NGOs hold their workshops or meetings in familiar and walking-distance venues such as a local school halls, community centres, markets grounds and church venues. Furthermore, discussions are practical and everybody is given an opportunity to speak, while concurrently obliged to listen to others.¹¹⁰⁰ Decisions are taken by a show of hands.¹¹⁰¹ FIDA-U undertakes mobile legal aid clinics in order to take the services closer to the communities. FIDA-Uganda's community projects — particularly in inheritance cases — have ensured that the village is mobilised to discuss the cases on site and to participate as mediators, witnesses and observers. The legal officers guide the parties by pointing out the law and answering legal questions of interest to the congregation. Consequently, the people are enabled to link the human rights of women to daily life experiences.

It is noteworthy that government commissioned studies in Uganda and South Africa, revealed that NGOs command considerable respect from communities.¹¹⁰² In Uganda, over 60% disagreed that NGOs exist to serve the purpose of its staff rather than the community and by inference serve the communities they work with.¹¹⁰³ Fifty percent (50%) strongly agree that NGOs

¹⁰⁹⁴ Khan and Pietersen (2004) 18.

¹⁰⁹⁵ The Mvula Trust, Field Note 14, August (2002) 4.

¹⁰⁹⁶ The Mvula Trust Field Note 14, August (2002) 6.

¹⁰⁹⁷ The Mvula Trust Annual Report (July 2004-June 2005) 2.

¹⁰⁹⁸ Ndegwa (1996) 20 and 115.

¹⁰⁹⁹ Ndegwa (1996) 82.

¹¹⁰⁰ Desai and Pithouse (2004) 23-24, Egan and wafer SECC (2004) 16-21.

¹¹⁰¹ Desai and Pithouse (2004) 23-24, Egan and wafer SECC (2004) 16-21.

¹¹⁰² Barr, Fafchamp and Owen (2003) and NPO Impact Assessment (2005).

¹¹⁰³ Barr, Fafchamp and Owen (2003) 42.

are an important part of their lives and are good at what they do.¹¹⁰⁴ Likewise, in South Africa, the majority of respondents disagreed that NGOs are as bureaucratic and unresponsive as government and that the public view NGOs with suspicion.¹¹⁰⁵ In South Africa, a majority were of the opinion that the NGOs' role is to service the needs of the people, that NGOs were closer to the people and that the public would suffer if not catered for by NGOs.¹¹⁰⁶ In Uganda having a physical presence within the communities such as offices, clinics or permanent structures boosts public appreciation of responsiveness to NGOs.¹¹⁰⁷

Ensuring the participation of the people to support an environment conducive for the operation of NGOs is also morally compelling because NGOs purport to act in the interests of the people. Where NGOs mobilise the public, government finds it difficult to ignore their issues. For example, the mobilisation of the public over the land question in Tanzania by the National Land Forum (NALAF) is a case in point.¹¹⁰⁸ The Save Mabira Crusade demonstrated that while there are many ways of activisms, governments succumb to pressure from social mobilization.¹¹⁰⁹ The Mabira Forest give away was averted at least for the time being.

In summarising the debate on NGO/community participation the thesis underscores the importance of NGO accountability to the communities they represent or work with. While many NGOs involve communities in identifying, planning and implementing NGO projects, in some instances the participation of communities is paternalistic, reducing communities to customers or mere branches of NGOs.¹¹¹⁰ Meaningful participation and accountability would involve working with communities on the self-identified interests and providing real decision-making opportunities.

5.6. Peer NGO Networks and Coalitions

Cognisant that a divided front weakens NGO effectiveness in protecting and promoting human rights, this discussion examines how NGO networks or coalitions have enhanced inclusiveness, participation and collective voice to holistically address the welfare, dignity and rights of the human person. Networking is frequently suggested as a panacea of NGOs weaknesses to

¹¹⁰⁴ Barr (2003) 42.

¹¹⁰⁵ NPO Act Impact Assessment (2005) 46.

¹¹⁰⁶ NPO Act Impact Assessment (2005) 46.

¹¹⁰⁷ Barr, Fafchamp and Owen (2003) 42.

¹¹⁰⁸ Mallya (2006) 57-63.

¹¹⁰⁹ Interview Muramuzi, Executive Director NAPE, 30 August 2007, Kampala.

¹¹¹⁰ Hulmes and Edwards (1997) 280.

facilitate the learning from each other and optimising the use of resources and addressing issues in a holistic manner. A network is defined as “any groups of individuals or organisations who, on a voluntary basis, exchange information or undertake joint activities, and who organise themselves in such a way that their individual autonomy remains intact.”¹¹¹¹ This thesis broadly defines a network as a voluntary association of autonomous groups in search of common interests.

The mutual sharing of skills, resources and information improves the overall competencies of members, promotes a wider participation of the population and the holistic addressing of issues, as well as avoids duplication and competition by members. Networks also create a critical mass for advocacy to defend and represent network interests.¹¹¹² Although networks are prone to power inequities accruing from inequitable access to resources and information, many members gain from mutual learning, respect and benefits through their participation.¹¹¹³ The Commonwealth Secretariat advocates for cooperation and networking to pursue common interests and the development of the common practices and standards, codes of conduct, monitoring and evaluation, information directories among others.¹¹¹⁴

Within the countries of the study there are numerous networks and coalitions according to different themes, target groups and geographical scope. In South Africa 46% of NGOs are affiliated to a network or forum.¹¹¹⁵ Prominent networks include Global Campaign for Education, the Basic Income Grant Coalition, South African NGO Network (SANGONET), Ecumenical Services for Socio-Economic Transformation, The Trade Strategy Group, Aids Consortium, SANGOCO, Reproductive Rights Alliance, Network Against Violence Against Women. Likewise, in Uganda, 21% of NGOs belong to a local NGO network, with the prominent ones being NGO Forum, Development Network of Indigenous Voluntary Associations (DENIVA) and Uganda National Aids Service Organisations (UNASO).¹¹¹⁶ Other thematic networks include, Human Rights Network (HURINET), Uganda Women’s Network (UWONET) and Uganda Land Alliance. In Tanzania most mentioned networks include NGO Policy Forum, Tanzania Association of National NGOs (TANGO), Tanzania Gender Networking Programme (TGNP), Tanzania

¹¹¹¹ Starkey (1998) 14.

¹¹¹² Ngondi-Houghton (2005) 29, Starkey (1998) 20-42, Development Update (1997) 1, REPOA (2007) 14-15.

¹¹¹³ Keck and Sikkink (1998) 207.

¹¹¹⁴ Commonwealth Foundation, NGO guidelines for good policy and practice (1995) guideline 11.

¹¹¹⁵ NPO Act Impact Assessment (2005) 57.

¹¹¹⁶ Barr, Fafchamps and Owen (2003) 8.

Feminist Activism (FEMACT), Tanzania Coalition for Debt and Development.¹¹¹⁷ In Kenya, prominent networks include the Land Alliance and the National Civil Education Projects, as well as the Refugee Consortium of Kenya.

Networks vary in form, from loose coalitions, formal establishments or temporary arrangements that address specific issues within a given time frame. Loose coalitions are preferred because they are ostensibly ‘SMART’: Specific, Measurable, Achievable, Resource friendly and Time bound.¹¹¹⁸ Globally, networks with specific objectives and definite time frames are more successful than those that aren’t.¹¹¹⁹

Loose networks are usually hosted by a member organisation or members merely coalesce and divide the tasks amongst each other. For example, SECC is not one organisation but a network of associate organisations which come together during mass action.¹¹²⁰

The disadvantage of loose coalitions is that they are difficult to coordinate and maintain a sense of accountability.¹¹²¹ For example, because the “Coalition to Safeguard Women’s Gains” in Kenya functioned in an ad-hoc manner, the committees ceased to function and tasks were divided up amongst the core organisations.¹¹²² Likewise, the Coalition for Political Accountability to Women (COPAW) in Uganda was short lived because of the lack of an appropriate institutional framework and of the resources to independently pursue the network agenda. Similarly, although the hosting of FEMACT in Tanzania was supposed to be rotational among its networks, Tanzania Gender Networking Programme (TGNP) has been hosting it since inception due to the lack of interest by other members in doing so.¹¹²³ Moreover, in situations where a network is hosted by a member and is successful it is often complained that the host organisation is undermining the network by usurping power and “stealing” credit for the network activities. For example, advocacy in opposition to the draft NGO law was the first activity in Uganda that brought together the four major networks, HURINET, UWONET, DENIVA and NGO Forum under the Coalition on the NGO Bill (CONOB).¹¹²⁴ However, NGO Forum did not operate as a network but appropriated the

¹¹¹⁷ REPOA (2007) 6.

¹¹¹⁸ A common tool used in NGO planning and monitoring.

¹¹¹⁹ ICHRP (2003) 68-69, Bunch (2001) 227.

¹¹²⁰ Egan and Wafer (2004) 14.

¹¹²¹ Egan and Wafer (2004) 12.

¹¹²² Muteshi (2009) 138.

¹¹²³ Interview Mallya, Executive Director, TGNP, 8 November 2007, Johannesburg.

¹¹²⁴ Interview Nakawesi-Kimbugwe, formerly Executive Director UWONET, currently Executive Director, Akina

campaign as its individual activity.¹¹²⁵ Similarly, the lack of resources to hold the General Council, the difficulty of managing diversity and the lack of a clear unifying ideology, contributed to the dissolving of the Mandela Park Executive Committee after only one year of operation.¹¹²⁶

Participation, inclusiveness and the contribution of finances, skills and time are vital to networking success.¹¹²⁷ Ironically, networks are more effective when there is a core group of committed members willing to invest time and resources to coordinate and manage network activities. For example, at the “... heart of SECC is a small core of activists who operate from a small office of Careers Centre Community hall, working on a single computer.”¹¹²⁸ According to Odembo, the 1990s NGO Steering Committee (NGOSC) in Kenya was a spirited struggle by a core group of individuals, who trusted each other and spoke with one voice.¹¹²⁹ Their coherence and thoroughness earned the respect of the NGO sector as articulating their concerns. In contrast current intra-NGO sector relationships in Kenya are superficial, competitive and devoid of trust, as reflected in the questions: “Why is she the one speaking on our behalf? Who mandated her? When? We have a slightly different position.”¹¹³⁰

The core group of the “Coalition for Safeguarding the Gains of Women” in the constitution was composed of individuals from FIDA-Kenya, Kenya Human Rights Commission (KHRC), Institute of Education and Democracy (IED) and League of Women Voters, who first and foremost made a personal commitment to the campaign and secondly committed their respective organisations.¹¹³¹ The formation of a strategic alliance was premised on a clear recognition of the need for different expertise and strategies.¹¹³² The coalition had an informal three tier structure with the core members constituting the first tier of accountability for the coalition activities, responsible for implementing and accounting for the Coalition; the second tier was composed of NGOs with self identified expertise on women’s issues and the third tier was composed of women’s organisations with broad national reach and community constituency.¹¹³³ The coalition developed

Mama wa Africa, 2 August 2007, Kampala.

¹¹²⁵ Ibid.

¹¹²⁶ Oldfield and Stokke (2004) 21.

¹¹²⁷ Starkey (1998) 38, Keck and Sicking (1997) 27.

¹¹²⁸ Egan and Wafer (2004) 13.

¹¹²⁹ Interview Odembo, inaugural Chair of NGO Council, CEO Ufadhili, 5 Sept 2007, Nairobi.

¹¹³⁰ Interview Odembo, inaugural Chair of NGO Council, CEO Ufadhili 5 Sept 2007, Nairobi.

¹¹³¹ Muteshi (2009) 128–129.

¹¹³² Muteshi (2009) 127 and 136.

¹¹³³ Muteshi (2009) 134 and 136.

shared positions for women in the draft constitution, a majority of which were adopted with the exception of the question of sexual and reproductive rights.¹¹³⁴

In many instances, however, the networking relationships are based on good will without clearly articulating the common interests, roles or responsibilities of the different organizations in writing. When the terms of reference are not clearly defined, one party can “...dominate and redefine the terms of engagement.”¹¹³⁵ The failure of the “Coalition to safeguard women’s rights” to reduce the understanding into a formal memorandum of understanding clarifying the roles and responsibility resulted in the ad-hoc functioning of the coalition, forcing the core group to undertake most of the tasks of the established committees.¹¹³⁶

While having a core group is strategic, the core group has to safeguard against dominating others and ensure that the network is participatory and accountable to all its members. A case study of the Rural Development Initiative (RDI), a temporary coalition formed by the National Land Committee (NLC) in collaboration with other rural NGOs to construct the land movement illustrates the power dynamics between NGOs and CBOs.¹¹³⁷ The top-down character of the RDI led by professional NGOs led to its immediate collapse once funding for the big gathering in Bloemfontein was exhausted.¹¹³⁸ Eventually the Landless People’s Movement (LPM) splintered into two factions: one headed by the NLC which sought a continuation of a relationship of critical engagement of government for restitution and the redistribution of land. The NLC expelled the director and staff of LPM allegedly for making the LPM ‘too radical.’¹¹³⁹ Concurrently, the expelled activists continued their mass based demonstrations against government.¹¹⁴⁰ The smaller NGOs were under pressure to align themselves with the position of the NLC or face isolation and the withdrawal of resources.¹¹⁴¹ The NLC succeeded in stifling the radical potential of the grassroots landless movement.¹¹⁴² Nonetheless, although the two factions pursued different strategies, at no time did any cease to refer to itself as the LPM.¹¹⁴³ The case study demonstrates the

¹¹³⁴ Muteshi (2009) 128.

¹¹³⁵ ICHRP (2003) 68.

¹¹³⁶ Muteshi (2009) 128 & 138.

¹¹³⁷ Greenberg (2004) 16.

¹¹³⁸ Greenberg (2004) 16.

¹¹³⁹ Greenberg (2004) 17-18.

¹¹⁴⁰ Greenberg (2004) 19.

¹¹⁴¹ Greenberg (2004) 20.

¹¹⁴² Greenberg (2004) 2.

¹¹⁴³ Greenberg (2004) 19-20.

ability of the large NGOs to use their better access to resources to dominate and control the Landless People's Movement network.

In South Africa there is a growing divide between the professional NGOs involved in service delivery and the smaller community based grouping and social movements which tend to be "survivalist" and generally opposed to the neo-liberal agenda that prioritises economic growth over social spending.¹¹⁴⁴ Tensions between NGOs and CBOs in South Africa revolve around issues of representative-ness and unequal resource distribution,¹¹⁴⁵ a situation that readily applies to the rest of Sub-Saharan Africa.

Formal networks are equally problematic. Networking is often weakest in Africa because it is donor driven.¹¹⁴⁶ Most formal networks are the result of top-down initiatives by international research centres, and the aid agencies of funding NGOs but "are not true networks based on active participation and interaction of autonomous members."¹¹⁴⁷ For example, in Kenya, the National Civic Education Project and Land Alliance were initiated by DFID.¹¹⁴⁸ Despite a common focus and shared objectives, LegalNet in Tanzania is quite dormant while that of Uganda Legal Aid Service Providers Network (LASPNET) is essentially sustained by donor interest with fragile commitment by the partners.¹¹⁴⁹ Formal networks are challenging because they are not based on a thorough understanding of each others' mission and values.¹¹⁵⁰ Within the SADC countries, it is an "era of survival for the fittest; all NGOs are struggling to crystallise their niches and are therefore less enthusiastic about being coordinated."¹¹⁵¹ Post 1998, SANGOCO weakened because of internal conflicts and ideological differences particularly over the relationship with the state.¹¹⁵² Following the NARC government in 2002, the NGO sector dissipated. According to Ombati and Orina-Nyamwamu:¹¹⁵³

¹¹⁴⁴ Koetze (2002) 3, Kotze (2003) 18, FHR Review (2005) 11.

¹¹⁴⁵ Kotze (2003) 21.

¹¹⁴⁶ Clark (1997) 51.

¹¹⁴⁷ Starkey (1998) 17.

¹¹⁴⁸ Ngondi (2009) 162.

¹¹⁴⁹ Interview, Ginwas Programme Officer, Tanzania Women Lawyers' Association, Tanzania, 23 July 2007, Dar-es-Salaam.

¹¹⁵⁰ Interview, Kwesiga Founder Executive Director, DENIVA, Uganda, 6 December 2006, Kampala.

¹¹⁵¹ Interview Jansen Executive Director Lawyers for Human Rights, 19 November 2007, Pretoria.

¹¹⁵² Interview Logart, then Executive Director, SANGOCO, South Africa 29 November 2007, Johannesburg.

¹¹⁵³ Ombati and Orina-Nyamwamu (2004) 6.

Organisations are more interested in personal strategies than shared principles and objectives; we have increasingly de-emphasised the universalism of our solidarity and emphasised the particularism of our differences. We approach key matters of sector development and national progress with suspicion and disunity ... We capture less the aspirations of the people given that our priorities are not as clear.¹¹⁵⁴

Similarly, African Women's Development and Communications' Network (FEMNET) has not lived up to its potential as an African network due to disparities in mandates, different ideological underpinning of development, equality and human rights and linguistic barriers among Anglophone, Francophone, Arabophone and Lusophone Africa.¹¹⁵⁵ Networks are also afflicted by ethnicity, religion, and class and egoistic power struggles.¹¹⁵⁶

Formal networks are also liable to manipulation by donor agencies or governments.¹¹⁵⁷ All network executives interviewed for this study argued that because members are unable to finance the network activities, they are unable to effectively shape the network's agenda. In other words, power and influence within NGO networks is contingent on the money contributed to the network. Consequently, INGOs are in a better position to shape both Policy Forum in Tanzania and NGO Forum in Uganda's agendas. In order to rectify the power imbalance, the NGO Forum's Strategic plan recommended that the NGO Forum be more accountable to its membership, enlist the participation of all its membership in setting the agenda, ensure more representation of all constituencies on the Board and lastly that the membership should financially support network activities.¹¹⁵⁸ Formal networks have neglected the critical roles of communicating with their memberships, collecting membership fees and initiating controversial debate to articulate alternative agendas.

Ironically while donors have encouraged the formation of formal networks they are hesitant to fund typical networking activities such as information sharing and coordination. The reluctance to fund networks is largely because networks are difficult to monitor and evaluate. In the

¹¹⁵⁴ Ibid

¹¹⁵⁵ Wanyeki (2009) 216 and 219.

¹¹⁵⁶ Michuki (2005) 49-50; Nyangabyaki (2000) 43-44, Interview Aina, the Resident Representative, The Ford Foundation, 22 January 2007, Nairobi, Starkey (1998) 21-28, Andreassen (2002) 115, Bazaara (2000) 43-44. REPOA (2007) xi.

¹¹⁵⁷ Starkey (1998) 21-28.

¹¹⁵⁸ Interview Nyamugasira, then Executive Director, Uganda NGO Forum, 3 Aug 2007, Kampala.

words of Paul Starkey, “a network is not a goal but a means of achieving a goal,” and the effectiveness of a network is determined by the achievements of its members.¹¹⁵⁹

Networks are not only neutral zones for a collective voice on common objectives but are also based on competing interests and mandates.¹¹⁶⁰ Despite the appearance of the harmonious relationships, networking is considered a very painful relationship, because organisations are so dissimilar. And yet there is no room for resolving the conflicts without being misunderstood for being non-cooperative. Due to the lack of effective conflict resolution mechanisms members retreat from the network, undertake the work of the network such as coalition hosting, while the network itself becomes yet another NGO engaging in similar activities as its membership.

This thesis underlines that the root problem is not the source of funding but rather the fact that networks operate in the same terrain and implement similar activities as their membership. For example, the shift by the Tanzania Chapter of the Southern Africa Human Rights NGOs Network, (SAHRiNGON-TZ) to the provision of legal aid on the grounds that there are gaps in thematic focus and geographical scope, was considered ridiculous by many national Tanzanian NGOs.¹¹⁶¹ Networking is preferred where the network serves as an information hub or mobilises resources which it channels to its members to implement common programmes. For instance, Policy Forum serves as an information and resource hub and solicits the participation of the membership to implement the programmes depending on expertise. All members claim credit for Policy Forum’s products. Likewise, CIVICUS and AWID are considered successful networks that offer timely and relevant information to its membership.

The lifespan of Regional Integration Civil Society Network (RECINET) which was established in 2004 to coordinate the advocacy work of NGOs working with the East Africa Community was short-lived. In explaining the demise of RECINET, it was opined that “... these days one can only create an effective network, if you have money ... It is difficult to do work since everybody seeks to be paid ... Networks need to have a project. The coordinating institution has to work very hard to maintain the network. Otherwise it exists only in name.”¹¹⁶² There was almost no effort by the membership to strengthen RECINET because they were already individually involved

¹¹⁵⁹ Starkey (1998) 89.

¹¹⁶⁰ Keck and Sikking (1998) 3.

¹¹⁶¹ Interview Soka, Women Legal Aid Centre, 23 July 2007, Dar –es-Salaam.

¹¹⁶² Interview Bujra, Founder Executive Director, Development Policy Management Forum (PDMF), Ethiopia, 17 February 2007, Kampala.

in the awareness activities that RECINET had prioritised. Moreover because a network is not a single actor, but a multiple one, its influence is even more difficult to trace.¹¹⁶³ Consequently, the lack of resources for the network activities compels networks to compete with its membership by engaging in similar activities as those of their membership. Ultimately the networks' collective strength is undermined.

The inability to acknowledge the contributions of all members of the network aggravates network relationships. The over stretching of networking often weakens the utility of networking as a mechanism of empowering NGOs. Given that the rationale for joining networks is not based on a deep-rooted conviction of mutuality of interests, it is common for an NGO to be a member of all networks, but committed to none.¹¹⁶⁴ For example, despite the different thematic focus, with, for example Tanzania Association of NGOs (TANGO) being rights based and Tanzania Council for Social Development (TACOSODE) development focussed, they are largely seen as competitors for legitimacy, mandates and membership.

Meaningful networking is frustrated by the work overload of most NGOs. Thus, most networking is casual, relating to attending each others' workshops or conferences to brainstorm on issues. Unanimously the management of networks complained that maintaining a network is a complex task.¹¹⁶⁵ More often than not, the membership is not accountable to the network and fails to meet its side of the bargain.¹¹⁶⁶ At one UWONET Annual General Meeting, an intern was elected to represent a member organisation.¹¹⁶⁷ Yet, she neither had any decision-making powers within the member organisation nor could she ensure the implementation of the network decisions.¹¹⁶⁸

Many networks have also largely failed to demonstrate the value in networking. In the countries of study only SANGOCO prior to 1999 had innovatively demonstrated the added value of networking to its membership. In 1998 SANGOCO had 4,000 registered members and attracted diversified funding from over twenty donors to a tune of 3,677,048 South African Rand.¹¹⁶⁹

¹¹⁶³ Keck and Sikkink (1998) 203.

¹¹⁶⁴ Baazara (2000) 43.

¹¹⁶⁵ Interviews: HURINET, Policy Forum, TANGO, TACOSODE, DENIVA, NGO Forum, SANGOCO.

¹¹⁶⁶ Interview Akatsi-Bukachi, Executive Director, EASSI, Kampala 13 August 2007.

¹¹⁶⁷ Interview Nakawesi-Kimbugwe, Executive Director, Akina Mama wa Africa, 2 August 2007, on her reflection on UWONET.

¹¹⁶⁸ Interview, Asiimwe, former Executive Director, UWONET, 28 August 2007.

¹¹⁶⁹ SANGOCO Annual Report (1997-98) 23 and 33.

A membership survey, *Talking to our Members* that solicited feedback from members on SANGOCO's role revealed that 25% of the members had the highest satisfaction with SANGOCO's advocacy role in creating an enabling environment for the NGO sector, 22% with uniting the sector, 12% with the war on poverty 12%, 7% with information, 6% with the development of the Code of Ethics, 1% with the NGO week and 2% with funding.¹¹⁷⁰ In recognition of the fact that the NGO sector was a significant consumer of a range of goods and service, SANGOCO negotiated for reduced rates with potential providers, such as Budget-Rent-A-Car, Canon Stationeries, Southern Sun Hotel, Damelin College, Toyota, Microsoft, Spin and South African Airways.¹¹⁷¹ In 1998 the Non-profit tripartite partnership of SANGOCO, South African Grantmakers Association (SAGA) and Charity Aid Foundation commissioned Liberty Life, Old Mutual and Sanlam to tender for the establishment and management of the United NGO Provident Fund, to provide a lump sum retirement benefit and basic deaths and disability cover for its membership.¹¹⁷² SANGOCO launched the Development Update, a quarterly journal in partnership with Interfund in 1997 and the e-prodder, a weekly e-mail service providing information about upcoming events in partnership with the Human Sciences Research Council (HRSC). Other information strategies included the Reconstruct a weekly supplement, a fortnightly fax to donors and Board members and NGO Matters: a monthly 24 page newsletter.¹¹⁷³ In collaboration with the South Africa Grant Markers Association (SAGA), SANGOCO introduced awards during the NGO week.¹¹⁷⁴ Unfortunately, most of the above achievements are no longer available due to transitional politics within SANGOCO. The membership and staffing considerably shrunk.

Most networks are established among like-minded NGOs hardly involving other critical stakeholders. Needless to say, alliance building goes beyond accepting the support of those who happen to agree as natural allies to include reaching out to those who voice controversial opinions.¹¹⁷⁵ Successful campaigns require flexibility to determine at any given time who is an opponent or an ally. For example, although YWCA in Uganda is one of the largest NGOs in Africa, it is ignored by the women's movement for being conservative and therefore ostensibly supportive

¹¹⁷⁰ SANGOCO Annual Report (1997-98) 27.

¹¹⁷¹ SANGOCO Annual Report (1997-98) 22.

¹¹⁷² SANGOCO Annual Report (1997-98) 22.

¹¹⁷³ SANGOCO Annual Report (1997-98) 33.

¹¹⁷⁴ SANGOCO Annual Report (1997-98) 28.

¹¹⁷⁵ Friedman and Mottair (2004) 30-31.

of the unequal power relationships between men and women.¹¹⁷⁶ As a good practice, TAC networked with COSATU for its two million memberships, the Medical Research Council for its critical information, and the Catholic Church despite its anti-condoms stance.¹¹⁷⁷ NAPE and ACODE's "Save the Mabira Crusade" success was essentially due to the unusual alliance with the private sector, religious and cultural institutions and the politicians.¹¹⁷⁸ However, alliance building does not mean working with everybody on any terms. For example, TAC has resisted working with other social movements for fear that their militancy could jeopardise its campaigns.¹¹⁷⁹ Therefore, given that no NGO can achieve much of its work alone, an NGO needs to determine the values and priorities that should regulate or shape its alliances with other NGOs.¹¹⁸⁰

Allegiance to a network is often dependent on an NGO's institutional needs.¹¹⁸¹ Consequently, because institutional needs are not static but are dependent on the immediate interests, resources and leadership of a given NGO, networking relations are often unsteady, requiring continuous nurturing of the relationship. The experience of Tanzania Gender Networking Programme (TGNP) attests to the fact that openly proclaiming each member's stance and providing an opportunity for members to opt out in case of disagreements protects the vision of the coalition from being compromised.¹¹⁸² Any network has to balance speed with efficiency in order to build a collective understanding of an issue in order to agree on a negotiated strategy.¹¹⁸³

The women's movement has been described as one of the most organised, mature, vibrant and effective movement, having greater cohesion than other social actors.¹¹⁸⁴ Nonetheless, the women's movement is also faced with the challenge of how to deal with differences and diversities within the movement. There is also some concern that the women's movement in Africa is dissipating as evidenced by the lack of consensus on obvious but critical issues such as land ownership, domestic relations/family law and sexual autonomy.¹¹⁸⁵ The negative identity associated

¹¹⁷⁶ Tripps and Kwesiga (2002) 6.

¹¹⁷⁷ Friedman and Mottair (2004) 30.

¹¹⁷⁸ Interview, Muramuzi, Executive Director NAPE, 30 August 2007.

¹¹⁷⁹ Friedman and Mottair (2004) 31.

¹¹⁸⁰ Eade (1999) 8.

¹¹⁸¹ Wanyeki (2009) 219.

¹¹⁸² Kitunga (2003) 42.

¹¹⁸³ Kitunga (2003) 43.

¹¹⁸⁴ Oloka-Onyango (2002) 292, Kwesiga and Tripp (2002) 1, Status (1994) 3-6, Tamale (2007) 37, Status (1994) 5 & 6.

¹¹⁸⁵ Michuki (2005) 50-51, Ahikire (2005), Kibalama and Nassali (2004), Hassim (2004) 12-13, African Feminist Forum (2006) 5.

with women as a disempowered and marginalised group further compounds the mobilisation of women as a sex. According to Lips:

[W]omen accept the negative stereotypes of femininity for other women but not for themselves. They may say that they do not enjoy the company of other women and may give low priority to female friendships. If they succeed in the male dominated career, they may encourage the view that they are exceptional, with more talent than the average woman, and discourage other women from aspiring to similar success. Female politicians may repudiate involvement in women's issues in an attempt to disengage themselves from the low status groups and blend in with the dominant group.

Likewise, not all women organisations are feminist in outlook, having as their core purpose the struggle for fair egalitarian gender relations. In reality, gender concerns compete with many other interests, priorities and identities of women such as survival, class, ethnicity, religion, rendering it difficult to target women as a social category.¹¹⁸⁶ In spite of repeated disillusionment, women have continued to mobilise on the basis of a false presumption of homogeneity based on womanhood.

In concluding the discussion of NGO networks, it is crucial to observe that despite the plethora of networks, the inability to internally apply human rights principles to them has made them fragile, with a preference for loose coalitions. Successful networking entails applying the following human rights principles: Respect of members as voluntary autonomous groups in pursuit of common interests coupled with dialogue to agree on the similar interests as well as negotiate the competing interests of the membership; Empowerment to enhance collective voice, common identity and organisational synergy through collaborative exchange of information, skills, knowledge and experiences as well as shield members from arbitrary state power; Participation of partners to nurture ownership while concurrently providing an opportunity for members to opt out in cases of disagreement, expanding the network beyond peer organisations, to recruit new allies to the human rights discourse and to mobilise wider populations and accountability to avoid duplication and competition of members and dedicate time and resources to the networking activities.

5.7. Participation of NGOs in political society

Given that government is the main duty bearer to deliver rights, NGOs have to engage the state and political society. It is thus necessary to discuss the nature of the participation of NGOs with politicians, highlighting the challenges and opportunities of NGOs obligation to be inclusive and promote participation with political society. The following discussion begins by making the case as to why NGOs have an obligation to participate or influence the political

¹¹⁸⁶ Awori (2004) 67.

discourse. Secondly, it examines the nature of NGO's political participation.

Human rights struggles are essentially political. The UDHR acknowledgement that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law," makes human rights part and parcel of the political realm of human affairs.¹¹⁸⁷

In *Christopher Mtikila v. AG*, the high court held that:¹¹⁸⁸

The citizen's right to participate in a government of the country implies three considerations: the right to franchise meaning the right to elect a representative. The right to represent, meaning the right to be elected to law-making bodies and the right to be chosen to political office. The proposition would then be that the right to participate in the government of one's country is not reserved for those in authority, or for members of some special class or group, but it is a right equally applicable to all citizens without distinction.

ICHRP contends that the work of human rights NGOs is political, because it is "... centrally about resisting abuse of power by government or by others who are in position to affect the lives of individuals or communities ... NGOs therefore need to take account of the responsibilities that they incur because they act in a political context and have influence."¹¹⁸⁹

NGOs impact on state policies by serving as an alternative source of credible and propose credible solutions in clear and powerful messages that appeal to human rights principles.¹¹⁹⁰

Umar and Kuye provide a simple definition of public policy as:¹¹⁹¹

whatever government choose to do or not to do, "because even inactions have impact. NGOs engage in policy advocacy because it is only government that can authoritatively act on the whole. Therefore policy advocacy relates to the efforts of understanding what, why, when and how governments do. Hence, policy advocacy is essentially political in nature, for policy making is a struggle over ideas."

Issues of democracy and human rights are not neutral because they are pushed by different people for different interests and therefore should not be depoliticised.¹¹⁹² By accepting the myth of being non-political or apolitical, NGOs effectively take sides with the status quo,

¹¹⁸⁷ Bromley (2001) 149.

¹¹⁸⁸ Civil Case No 5 of 1993, reported in Peter (1997) 694.

¹¹⁸⁹ ICHR (2003) 57.

¹¹⁹⁰ Keck and Sikkink (1998) 19.

¹¹⁹¹ Umar and Kuye (2006) 807 and 817.

¹¹⁹² Tajudeen (2001) 53.

because policy making is a political process characterised with competing interests.¹¹⁹³ The commitment of NGOs to actions that determine the social contract between the state and its citizens make them essentially political.¹¹⁹⁴ Such actions include defending the cause of marginalized groups, operating as interest groups, influencing policies and holding power to act in a particular way and serving as important sources of alternative policy ideas and promoting the political consciousness of the people to engage the state from an informed point of view.¹¹⁹⁵ As has been tritely argued by Boule: ¹¹⁹⁶

As educationists, CSOs provide training ground for democratic citizenship; develop political skills and new leaders; stimulate political participation and educate the broader citizenry on a wide range of public interest issues. As watch-dogs, they act as a check on the State's inclination towards centralising power and evading civic accountability. As service deliverers, they supplement government programmes by providing goods and services directly to the people who need them. Often, overlooked are their political role-supplementing political parties as varied and flexible mechanisms through which citizens define and articulate a broad range of interests and exert their demands on government.

Despite the above obvious facts, East African governments have been quite antagonistic to human-rights and pro-democracy organisations, accusing them of being part of the opposition and elitist, urban-based, self-seeking, facilitators of foreign agendas.¹¹⁹⁷ Participation in associational life promotes political consciousness and encourages more involvement in politics, through voting, campaigning and a willingness to stand for elective office.¹¹⁹⁸ Consequently, it is one of the most restricted rights because it threatens those in power.¹¹⁹⁹ Since September 11, concern has been expressed that NGOs can facilitate terrorism.¹²⁰⁰ Generally, governments are violating rights under pretext of state security.¹²⁰¹

Mutunga identifies three NGO positions in relation to the issue of political participation in East Africa: The dominant view perceives NGOs as apolitical; the middle ground argues that although NGOs have political views, they must not support partisan political interests

¹¹⁹³ Shivji (2006) 24-25, Kuye and Umar (2006) 807 and 817.

¹¹⁹⁴ Steiner (1999) 70.

¹¹⁹⁵ Dicklich (1998) 12, Blair (1997) 28.

¹¹⁹⁶ Boule (1997) 22.

¹¹⁹⁷ Peter (2009) 305-317, Murungi (2009) 37.

¹¹⁹⁸ Edwards (2004) 102.

¹¹⁹⁹ Peter (2007) 650-651.

¹²⁰⁰ Wamimbi (2007) 3, 8, 13-14, Interview Ogombe Deputy Director Kenya NGO Coordinating Bureau, 4 Sept 2007, Nairobi, Peter (2009) 313.

¹²⁰¹ Oloka-Onyango (2003) 907.

and the radical view argues that because the contest for political power is not the exclusive business of political parties, NGOs are nurseries of alternative political leadership and therefore have political views and can participate in politics, while simultaneously refraining from being partisan.¹²⁰² Mutunga traces the principle of non-partisanship as “defined as no expression on the political situation in a given country” to Amnesty International’s operational strategy which was aimed at affording it the impression of impartiality during the Cold War.¹²⁰³

Generally, women NGOs are most notorious for their apolitical role. A few women NGOs such as Forum for Women in Development (FOWODE) in Uganda, the Kenya Women’s Political Caucus and Education Centre for Women in Democracy (ECWD) in Kenya, Women’s National Coalition in South Africa and Baraza la Wanawake wa Tanzania (BAWATA) and Femi-Act in Tanzania, are unequivocal about their political role. While many women are active in the civil society sector, women’s issues have mainly been located in the discourse about development that many women do not perceive their engagement in the social and economic arena as political engagement. Either too concerned about conflicting with governments or safeguarding autonomy against state co-optation, women’s organisations have misconstrued being non-partisan as being apolitical.¹²⁰⁴

Generally women NGOs’ define themselves in apolitical language, such as “mothers, women rather than feminist.”¹²⁰⁵ Amadiume argues that whereas the dominant approach perceives power in terms of state control or engaging state systems, women in Africa have found the state a burden, and thus are disinterested in it and therefore seek to defend and maintain their autonomy from the state, as a “right against domination and violation.”¹²⁰⁶

Many NGOs have members from political society. ECOSOC recognises that NGOs can accept members working in government so long as they do not “interfere with the free expression of views of the organisation.”¹²⁰⁷ Therefore while politicians can be part of NGOs, the challenge lies in failure of NGOs to candidly discuss the different expectations between women NGOs and politicians in order to collectively forge a mutually agreeable consensus on strategies to achieve common goals. For example, the general apolitical nature of the women’s movements

¹²⁰² Mutunga (2001) 137.

¹²⁰³ Mutunga (2003) 36.

¹²⁰⁴ Oloka-Onyango (2000 b) 36.

¹²⁰⁵ Ngondi-Houghton (2009) 155.

¹²⁰⁶ Amadiume (1995) 35 and 63.

¹²⁰⁷ ECOSOC Reso 1996, 31, para 12.

diminishes women's political gains and makes them prone to cooptation and further manipulation. In Uganda, despite the women's movement advocacy to put the issue of political participation by women on national agendas, there is no direct causal relationship between NGO activism and the assumption of power by women politicians. Neither have NGOs expressed solidarity with women politicians when they are under attack by the political system or during campaigns.

During the Bomas Constituent Assembly debate in Kenya, women delegates and the women's coalition disagreed on how to choose the representatives of women to the Bomas. "The differences became so divisive and several initiatives at consensus building failed with both sides firm about their respective stands."¹²⁰⁸ Similarly the Sexual offences Bill advocacy campaign in Kenya illuminated the divisions between women politicians and activists. Although Njoki acknowledged the support of WNGOs such as providing administrative services, researching on and drafting the bill, she maintains that she neither received monetary support nor worked effectively with NGOs on the matter.¹²⁰⁹ An outstanding issue among NGOs was why the Bill was personalised and code-named 'Njoki's Bill,'¹²¹⁰ oblivious to the fact that it is legislators who make laws.

Similarly in South Africa, the decision of the Women's National Council (WNC) to exclude women who held elected party positions from participating in the WNC¹²¹¹ was short-sighted because it resulted in the loss of leadership, which weakened, fragmented and stratified the women's movement.¹²¹² NGOs have found engaging with popular governments more complex than challenging autocratic ones. In overtly dictatorial regimes, NGO/state relations are usually confrontational with NGOs serving as a bulwark against government excesses. However, in transition governments overt confrontations with government is perceived as unrealistic and unwarranted. For example, in South Africa opposing government policies is essentially seen as anti-ANC and therefore disruptive.¹²¹³ At the same time collaborating with transitional governments in order to support the fragile democracies, may compromise NGOs to merely serve as the implementing arm of government as articulated under the South Africa Reconstruction and Development Programme.¹²¹⁴ In Uganda the NRM government reorganised the National Women's

¹²⁰⁸ Muteshi (2009) 130.

¹²⁰⁹ Interview Njoki, UN woman of year 2007, 7 September 2007, Nairobi.

¹²¹⁰ Ibid.

¹²¹¹ Hassim (2004) 10-11.

¹²¹² Hassim (2004) 10-11.

¹²¹³ Oldfield and Stokke (2004) 13, Hassim (2004) 17.

¹²¹⁴ NPO Impact Assessment (2005) 34.

Council into the National Association of Women Organizations in Uganda (NAWOU).¹²¹⁵ In Kenya, the oldest women's organisation, Maendeleo ya Wanawake functioned as an appendage of KANU.¹²¹⁶ In Tanzania, Umoja wa Wanawake wa Tanzania (UWT) a mass women's organisation has remained a Chama cha Mapinduzi's (CCM) women's wing.¹²¹⁷ In South Africa, the appointment of individuals of the WNC into government although succeeding in integrating gender concerns into key law reform and social policy, eroded women's capacity to engage the more controversial issues located in the private sphere.¹²¹⁸ The above limitations notwithstanding, the engagement of women within the political arena equipped women with new skills and exposed the gendered nature of the state and the political discourse.¹²¹⁹

According to SANGOCO NGOs and governments have different structures and strategies which complicate the relationship. For example, NGOs prefer participatory processes of service delivery. In contrast governments' structures are hierarchical and governments find NGOs' processes time wasting¹²²⁰ because government prefers quick service delivery.¹²²¹

Another root cause of tension in the participation of NGOs in government programmes is government's ambivalence regarding NGO oversight particularly in matters of contested development strategy. However, the role of NGOs is not merely to engage in service delivery but also to draw attention to human rights violations as well as to participate in policy formulation.¹²²² In South Africa, most NGOs were born out of the political struggle against apartheid,¹²²³ and therefore have a political orientation. Nonetheless, overt resistance to the ANC is now frowned upon. Even TAC's leadership argue that it is not interested in "causing a revolution or broader political agenda."¹²²⁴

Thus, NGOs coined the term "critical allies" to permit a flexible relationship between cooperation and confrontation.¹²²⁵ For example, because TAC's membership are in the

¹²¹⁵ Oloka-Onyango (2000b) 17.

¹²¹⁶ Mutua and Mutunga (2003) 34-35.

¹²¹⁷ Peter (2007) 108.

¹²¹⁸ Hassim (2004) 9-10 and 17-19.

¹²¹⁹ Human Rights Council, A/HRC/4/34 (2007) 10.

¹²²⁰ Development Update: The Development Agenda and the Voluntary Sector (1997) Vol 1. No. 1 30-31.

¹²²¹ NPO Impact Assessment (2005) 33.

¹²²² NPO Impact Assessment (2005) 49-50, Koetz (2003) 27.

¹²²³ Saldana (2004) 210.

¹²²⁴ Friedman and Mottair (2004) 9.

¹²²⁵ Koetz (2003) 29, Desai and Pithouse (2004) 24 and 28.

main members of COSATU and the ANC, TAC conflicts and collaborates with government by monitoring the roll-out plans while simultaneously importing anti-retroviral drugs.¹²²⁶ In the 1990s IDASA adopted a critical strategy by analysing the political landscape to ensure more informed debates to strengthen democratic practices.¹²²⁷ SANGOCO has worked collaboratively with the SAHRC and the Commission for Gender Equality on “Speak out on Poverty Hearings.”¹²²⁸ Similarly, the Homeless People’s Association (HPA’s) promotes workable alternatives to official shelter policy and its implementation.¹²²⁹

NGOs have collaborated with government to strengthen government’s capacity as the main duty bearer in protecting rights. This has mainly involved capacity building for law enforcement agencies. However, NGOs have found collaboration with government quite expensive. Throughout East Africa, working with MPs and the judiciary requires catering for their escorts and drivers, in addition to working in venues commensurate with their status and safeguarding of their security.

Importantly, NGO’s work becomes sustainable where government as the main duty bearer responsible for delivering rights adopts the NGO’s agenda. For example the Mvula Trust pioneered the “participatory health and sanitation transformation approach” and the “sustainable, cost-effective school sanitations programme,”¹²³⁰ both of which have been adopted by government.

The above notwithstanding, close proximity to government has contradictory effects. On the positive side it facilitates access to opportunities and timely information. Although the Deputy Minister of Environment Affairs and Tourism, Mabudafhasi Rejoice is the chairperson of the Mvula Trust,¹²³¹ it prides itself as an “independent partner of government.”¹²³²

On the negative side, proximity to government may compromise an NGO’s mission and autonomy to independently influence policies.¹²³³ For example although in 1998 the South African Ministry of Housing adopted the Homeless People’s Housing process based on self-help participatory processes, the Ministry subsequently backtracked on the people driven housing delivery

¹²²⁶ Friedman and Mottair (2004) 6, 21 and 23.

¹²²⁷ Gupta and Kellman (2009) 268-269.

¹²²⁸ Lorgat (2007) 15, HURISA (2007) iii.

¹²²⁹ Khan and Pietsen (2004) 27-28.

¹²³⁰ The Mvula Trust Field Note 14, August (2002) 7.

¹²³¹ The Mvula Trust, Annual Report (2004-2005) 1.

¹²³² The Mvula Trust Field Note 14, August (2002).

¹²³³ Baazara, Friedman and Robinson (2002) 24.

strategy.¹²³⁴ Many NGOs in South Africa recognise that they have been co-opted and have become “part of the de facto welfare safety-net that unwittingly anaesthetises the pains of neo-liberalism.”¹²³⁵ In a critique of humanitarian organisations in Kenya, Juma observes that in most cases NGOs acquiesce in their cooption by the state in order to freely operate.¹²³⁶ Hence, NGOs confine their strategies to service delivery without challenging the root causes of displacement, which amounts to condoning the abuse.¹²³⁷

The experience of TAMWA which mainly relied on its good relationships with government to achieve the enactment of the Sexual Offences Special Provisions Act in 1998¹²³⁸ reflects the uncertainty of TAMWA’s capacity to hold government to account in situations where there are no common interests. There is a possibility that in cases of disagreement between government and NGOs the relationship with government would be jeopardised.¹²³⁹ Despite the engagement of NGOs in the drafting of the NGO Policy in Tanzania, government enacted the NGO Act with minimal reference to the NGO Policy.¹²⁴⁰ Of what use is collaboration if it merely results in the delay of retrogressive legislation, as was the case in both Uganda and Tanzania? Another practical challenge of working with government is that it derails an NGO’s focus. For example, in Zanzibar government abdicated from its key responsibility of assuring the rights of persons with disabilities, which it delegated to Zanzibar Association of persons with disabilities.¹²⁴¹

Ndegwa demonstrates that while the presence of high government officials on the Ndugu Board in Kenya enhanced the amicable relationship with government, it also hampered it from undertaking radical action.¹²⁴² In contrast, Green Belt Movement’s distance from government enabled Wangari Maathai to stop the building of the skyscraper in Uhuru Park.¹²⁴³

Governments have patronised some NGOs and use them to exert control over other NGOs.¹²⁴⁴ Bell and Carens observe that cooperation with undemocratic governments weakens the

¹²³⁴ Khan and Pietersen (2004) 18 and 21.

¹²³⁵ Editors Preface, Development Update Vol 4, No 4 (2002) ii, Koetz (2002) 17.

¹²³⁶ Juma (2004) 247.

¹²³⁷ Juma (2004) 236-237.

¹²³⁸ Kiondo (2006) 46, REPOA (2007) 20.

¹²³⁹ REPOA (2007) 21.

¹²⁴⁰ Ndubaro and Mvungi (2007) 148, Mallya (2007) 65.

¹²⁴¹ Focus group discussion, Zanzibar Society for person with disabilities (UWZ) 26 July 2007.

¹²⁴² Ndegwa (1996) 60.

¹²⁴³ Ndegwa (1996) 94 and 99.

¹²⁴⁴ Shivji and Kapinga (1998) 48, Fowler (2002c) 244.

impact of criticism by other NGOs.¹²⁴⁵ For example, Tanzania Association of NGOs (TANGO) — a government sponsored network — is relied on by the Registrar of Societies to screen applications before registration.¹²⁴⁶ In South Africa, by offering South African National Civic Organisations (SANCO) a 20% commission on fees collected, the ANC made SANCO co-sign the demand letters and eviction notices instead of representing the evictees.¹²⁴⁷ Likewise, the National Land Committee (NLC) was used to control the radical activism of the Landless People’s Movement.¹²⁴⁸

Holding power to account requires energy and courage in the event that power retaliates.¹²⁴⁹ Many human rights NGOs in East Africa hardly monitor government actions, or undertake public protest. Instead, they prefer to engage in non-contentious awareness raising and legal aid.¹²⁵⁰ Thus whereas 68% of NGOs in Tanzania claimed to have worked on advocacy, only 25% had targeted government in their various activities.¹²⁵¹

In Uganda, NGOs engaged in advocacy are considered political and are either labelled as sectarian and criminal or they are co-opted or silenced.¹²⁵² Consequently, most NGOs utilise the “softly-softly” approach characterised by engaging issues that the state does not contest.¹²⁵³ Although over the years NGOs in Uganda are increasingly asserting their watchdog role, such as the opposition of UJCC, HURINET and UWONET to the constitutional change in support of life presidency and the condemnation of the 2006 elections as not free and fair, such incidents are rare.¹²⁵⁴ The Save Mabira Campaign spearheaded by the National Association of Professional Environmentalist (NAPE) which involved a public protest demonstration attracted very few NGOs. Major NGOs preferred to work with ACODE’s coalition on the Save Mabila Campaign whose strategy involved workshops and litigation.¹²⁵⁵

¹²⁴⁵ Bell and Carens (2004) 320-2.

¹²⁴⁶ Shivji and Kapinga (1998) 51.

¹²⁴⁷ Desai and Pithouse (2004) 13, Egan and Wafer (2004) 7.

¹²⁴⁸ Greenberg (2004) 18 and 21.

¹²⁴⁹ Edwards (2004) 97.

¹²⁵⁰ Shivji (1998) 36; Oloka-Onyango (2000c) 83, (2003), Mutua (2004), 3, Momba (2004) 219, Dicklitch (1998) 158 and 162.

¹²⁵¹ REPOA (2007) 8.

¹²⁵² Dicklitch (1998) 25.

¹²⁵³ Oloka-Onyango (2000b) 25-27, Bazaara, Freidman and Robinson (2002) 22.

¹²⁵⁴ HURINET and MS-Uganda (2006) viii.

¹²⁵⁵ Interview Tumushabe, Executive Director Advocates Coalition for Development and Environment (ACODE) 17 July 2007.

In Kenya, when the National Council of Churches of Kenya raised the issue of state responsibility for the displacement of communities during mid 1997, government accused it of being a political party operating under the guise of an NGO and banned its peace activities in Burnt Forest and Elgeyo Marakwet.¹²⁵⁶ Similarly, the Ufungamano Initiative pursued by religious leaders, secular sectors of civil society and opposition leaders were labelled partisan and as puppets or tools of the opposition political forces.¹²⁵⁷ Likewise, KHRC's open support for NARC was criticised by both organisations within civil society and by western donors as being partisan.¹²⁵⁸

Given the frustrations of influencing governments to realise positive change, some NGOs leaders have opted to join government in order to cause positive change themselves. Cynics have thus joked that the acronym 'NGO' stands for "next-government officer." The use of NGOs for prestige and as a basis for political careers is a global phenomenon.¹²⁵⁹ During the transitions in Kenya, South Africa, Namibia, Mozambique, Zambia, and Uganda many local activists graduated into government. Indeed, prominent women leaders within East Africa assert that their activism in NGOs has acclimatised them to leadership roles.¹²⁶⁰

However, once former activists join government they invariably side with the government.¹²⁶¹ A more fundamental danger is that ordinary people get disillusioned with the "... paradox of change without change when they see the radical activists, the 'fire-eaters' who organised protest marches, hobnobbing with the government and 'arrogating' themselves the right to determine ... the political order."¹²⁶²

In Kenya, it is generally observed that "entering the state," is a form of self-cooption because former NGO activists get captured by it.¹²⁶³ In contrast, during the dictatorial Moi regime in Kenya, NGOs set the agenda for reform and significantly influenced the National Alliance and Rainbow Coalition (NARC) government.¹²⁶⁴ Former NGO activists who entered government designed similar programmes to those of NGOs. At the same time, NGOs were reluctant to

¹²⁵⁶ Juma (2004) 248.

¹²⁵⁷ Mutunga (2003) 32.

¹²⁵⁸ Mutunga (2003) 35.

¹²⁵⁹ Uvin (2004) 100.

¹²⁶⁰ Ford Foundation Round table on Gender, Civil Society, Governance, Kampala 22 June 2006.

¹²⁶¹ Miano (2009) 226, Mutua and Mutunga (2003) 34, Oloka-Onyango (2000) 9.

¹²⁶² Ihonvbere (1997) 38 and 40.

¹²⁶³ Interview Mutuma, Acting Executive Director, Kenya Human Rights Institute, 24 July 2007, Nairobi.

¹²⁶⁴ Ombati and Orina-Nyamwamu (2004) 6.

criticise their colleagues in government.¹²⁶⁵ The minority NGOs critical of NARC's betrayal of the reform agenda remained largely incoherent in their strategies.¹²⁶⁶

Likewise, in South Africa, the proximity of NGO to the NRC government constrained NGO's ability to articulate an alternative agenda or challenge the human rights violations arising from its Growth, Employment and Redistribution (GEAR) economic policy.¹²⁶⁷

Peter aptly asserts that "politics is about issues of everyday life."¹²⁶⁸ Politics, he argues, includes issues such as:

How one earns his or her living, whether there is medicine in hospitals, whether teachers are teaching in schools, whether bureaucracies are corrupt or not, how much one is paid as wages, what one listens to on the radio or reads in the newspaper, who owns what in the country—all these are political issues. ... A reasonable government needs to be tolerant, to listen to other points of view and accept criticism with grace.

Maintaining that human rights NGOs should be apolitical, is "a sham to produce political results in an apolitical way."¹²⁶⁹ Any successful struggle for social justice is first and foremost a political struggle "to redefine the subjects and their entitlements."¹²⁷⁰ Yet human rights organisations claim to be neutral and non-political in order to appease donors and governments.¹²⁷¹ In a political world, the struggle for political participation must be fought in the political arena.¹²⁷² In effect, being apolitical amounts to being political in the face of rampant corruption, the violation of rights and the exclusion of the majority of the populace from decision-making processes.¹²⁷³

Against the preceding background, which largely looks at the functioning of NGOs at the domestic level, the next discussion explores how effectively NGOs have participated in the operations of the African Commission on Human and Peoples Rights — the main regional organization charged with the responsibility of upholding the promotion and protection of human rights.

¹²⁶⁵ Kanyinga (2009) 199.

¹²⁶⁶ Kanyinga (2009) 200.

¹²⁶⁷ Khan and Pietersen (2004) 5.

¹²⁶⁸ Peter (2007b) 113-114.

¹²⁶⁹ Uvin (2004) 99.

¹²⁷⁰ Mamdani (2002) 59, www.africaaction.org/rtable/rtb2.pdf

¹²⁷¹ Odinkalu (2000) 3.

¹²⁷² Kibwana (1996) 194.

¹²⁷³ Mutunga (2004) 39.

5.8. NGOs and the African Commission on Human and Peoples Rights

The African Charter on Human and Peoples' Rights establishes the African Commission as a quasi-judicial body responsible for human rights.¹²⁷⁴ In its promotional role the African Commission is mandated to generate knowledge on African human rights and to cooperate with other institutions concerned with promoting and protecting human rights.¹²⁷⁵ The discussion which follows begins with an outline of the regulatory framework for NGOs and assesses the effectiveness of NGO participation at the regional body.

To enable the participation of NGOs in the Commission's work, the Commission initiated the system of observer status. Initially the procedure of granting observer status was so simple based on mere receipt of a written application, attached with the constitution, names of office bearers and funding sources.¹²⁷⁶ It was also not necessary that an applying NGO be registered in a country in which it is based. The Commission rightly argued that it had to independently apply its own rules and procedures and could not aptly examine the reasons for denial of registration of a given NGO at the national level.¹²⁷⁷

The revised criteria of 1999 requires an NGO seeking observer status to have objectives and activities that are similar to the OAU Charter and the African Charter, work in the field of human rights and declare its financial resources.¹²⁷⁸ The application must be lodged 3 months prior to an ordinary session of the Commission in order to enable the Secretariat process it.¹²⁷⁹ An NGO's statutes, proof of legal existence in the country of operations, list of members, constituent organs, sources of funding, latest financial statements, past and present activities, plan of action and "any other information that may help to identify the purpose, objectives and field of actions must be attached to the application."¹²⁸⁰

An observer is entitled to be present at the opening and closing of all sessions, and to have access to the documents of the Commission that are not of a confidential nature¹²⁸¹ be

¹²⁷⁴ African Charter (1981) art. 30.

¹²⁷⁵ African Charter (1981) art. 48 (1).

¹²⁷⁶ Motala (2002) 249-250.

¹²⁷⁷ Motala (2002) 249.

¹²⁷⁸ Criteria for Observer status (1999) Ch I, para 2, in Heyns and Killander (2006) 223.

¹²⁷⁹ Criteria for Observer status (1999) Ch I, para 3.

¹²⁸⁰ Criteria for Observer status (1999) Ch I, para 3-4, in Heyns and Killander (2006) 223.

¹²⁸¹ Criteria for Observer status (1999) Ch II, para 1-2.

present at closed sessions¹²⁸² and may propose issues to be included in the provisional agenda.¹²⁸³ In a reciprocal relationship an observer is obliged to “establish close relationship of cooperation with the African Commission¹²⁸⁴ and present their activity report to the Commission every two years.¹²⁸⁵ On failure of an observer to fulfil their obligations, the Commission may deny the observer participation in the session, documents and the opportunity to propose views to the agenda.¹²⁸⁶ In the worst-case scenario an observer may be suspended or observer status may be withdrawn.¹²⁸⁷ Viljoen observes that the practice of granting observer status “fluctuates between legalistic formulations and substance-based flexibility,” without clarity of reasons of denial or granting of observer status.¹²⁸⁸ How effective has NGO participation actually been at the African Commission? This question is the focus on the following section of this chapter.

5.8.1. Assessing NGO's effectiveness in participating at the Africa Commission

At its 3rd session in 1988, the African Commission started granting observer status to the first three NGOs, which were all INGOs.¹²⁸⁹ By 1990, only 16 NGOs had observer status.¹²⁹⁰ Under the leadership of Adama Dieng, ICJ-Geneva initiated NGO Forums immediately preceding Commission sessions enabled African NGOs to get more intimately involved in the Commission's work.¹²⁹¹ By the end of 2000, 247 NGOs had acquired observer status, the majority of which were African NGOs.¹²⁹² By the end of 2008, there were 375 NGOs with observer status.¹²⁹³

Despite the large numbers of African NGOs with observer status, a majority of them do not fulfil their responsibilities of attending Commission sessions and submitting their

¹²⁸² Criteria for Observer status (1999) Ch II, para 3.

¹²⁸³ Criteria for Observer status (1999) Ch II, para 6, Africa Commission (1999) rule 6(3) f, Africa Commission (1999) rule 74(1) & 75, www.chr.up.ac.za/hr_docs/themes.

¹²⁸⁴ Criteria for Observer status (1999) Ch III, para 1, in Heyns and Killander (2006) 224.

¹²⁸⁵ Criteria for Observer status (1999) Ch III, para 2.

¹²⁸⁶ Criteria for Observer status (1999) Ch IV, para 2, Heyns and Killander (2006) 224.

¹²⁸⁷ Criteria for Observer status (1999) Ch IV, para 3.

¹²⁸⁸ Viljoen (2007) 408.

¹²⁸⁹ Viljoen (2007) 406, Motala (2002) 249.

¹²⁹⁰ Viljoen (2007) 406.

¹²⁹¹ Viljoen (2007) 406.

¹²⁹² Status of Submissions of NGO Activity Reports as of 30 September 2000, see Doc/OS XXVIII) 182b, Motala (2002) 249, Murray (2001a) 5.

¹²⁹³ ACHPR 23-24 Activity report (2008) 4.

activity reports every two years.¹²⁹⁴ Thus many NGOs have failed to hold themselves accountable. Comparatively, INGOs such as ICJ, Interights, Penal Reform Initiatives, Amnesty International and International Working Group for Indigenous Affairs (AWGIA) have played a dominant and visible role within the NGO community.¹²⁹⁵

Only a handful of African organisations prominent among which are the Lawyers Committee for Human Rights–South Africa, Women in Law and Development (WILDAF), African Centre for Democracy and Human Rights Studies, Institute for Human Rights and Development and Southern African Human Rights Institute (HURISA), Civil Liberties Organisation and Social and Economic Rights Action Centre (SERAC), African Society of International and Comparative Law, Centre for Human Rights - Pretoria, Legal Research and Resource Centre, African Legal Aid and *Rencontre Africaine pour la Defense des Droit de L'Homme* (RADDHO) have actively worked with the Commission.¹²⁹⁶

Initially only a handful of NGOs attended the Commission sessions. The cumbersome and costly travel to Banjul (the seat of the Commission) accentuates the problem of non-attendance of the Commission's sessions.¹²⁹⁷ The practice of holding sessions in different countries has influenced the increased participation of NGOs in the Commission session.¹²⁹⁸ For example between the 36th and 39th sessions, NGOs representatives have increased to over a hundred: 137, 110, 135 and 128.¹²⁹⁹ Nonetheless, the numbers of participating NGOs is less than half of the number with observer status. NGOs from the West Africa sub-region in which the seat of the Commission is situated dominate the Commission's activities. For example, during the drafting of the Protocol on Women, NGOs from outside West Africa complained about not being consulted.¹³⁰⁰ This complaint was subsequently acted upon and NGOs from the SADC and East African sub-regions were enabled to make vital contribution to the draft Protocol.¹³⁰¹ Nonetheless, NGOs from East Africa are very few. For example at the 43rd session in May 2008 held in Manzini,

¹²⁹⁴ Motala (2002) 250, Viljoen (2007) 409.

¹²⁹⁵ Viljoen (2007) 409.

¹²⁹⁶ Motala (2002) 246-279, Okafor (2006) 151-196, Ankumah (1996) 2, ICJ (1996)69.

¹²⁹⁷ Interview Fall, Founder Executive Director, African Centre for Human Rights, 24 April 2006, Interview Nyanduga, Commissioner, ACHPR, 16 June 2007

¹²⁹⁸ Murray (2001a) 8 and 6.

¹²⁹⁹ Viljoen (2007) 407.

¹³⁰⁰ Banda (2005) 75.

¹³⁰¹ Banda (2005) 75.

Swaziland, there were less than five East African NGOs, although both the Tanzania and the Ugandan reports were scheduled for presentation.¹³⁰² Similarly, South African NGOs remain largely aloof to many forums of the African Commission.¹³⁰³

The African Centre for Human Rights and Democracy studies coordinates the NGO Forum as one of its key activities, but has not been proactive in broadening the number of NGOs that attend the Africa Commission session. According to Foster, the African Centre contacts only those organisations whose addresses it has.¹³⁰⁴ Consequently, the same people always attend the sessions.¹³⁰⁵ Letlojane laments the fact that many more NGOs work much more with the U.N agencies than with the African Commission.¹³⁰⁶ As underscored by Heyns, engaging the debate on the African human rights system is “an exercise of ownership” and it is up to Africans to continuously ensure the improvement of the African human rights system through the development of ideas that can result in new initiatives.¹³⁰⁷

A scrutiny of the status of submission of activity reports reveals that both INGOs and NGOs have failed to submit reports in a timely manner, with many having ceased doing so altogether.¹³⁰⁸ At the time of the analysis only Amnesty International, and Foundation for Human Rights Initiative from Uganda were up to date with their reports.¹³⁰⁹ Ironically, even NGOs that are vigilant in submitting communications and fundraising with the Commission are guilty in this regard.¹³¹⁰ Of the 351 observers, an alarming 221 observers have never submitted any report. Fifty-five observers have only submitted one report.¹³¹¹ The rest are in arrears of many reports.¹³¹² This is

¹³⁰² The candidate attended the session. Organisations present were Kituo Cha Katiba, ICJ-Kenya and Human Rights Network.

¹³⁰³ Seafeld (2003) 234.

¹³⁰⁴ Interview Foster, Executive Director African Centre for Human Rights and Democracy, 7 May 2008, Manzini.

¹³⁰⁵ Interview Letlojane, Executive Director HURISA, 5 Nov 2007, Manzini.

¹³⁰⁶ Ibid.

¹³⁰⁷ Heyns (2001) 174.

¹³⁰⁸ Africa Commission status of submission of NGOs' activity reports to the African Commission, ACHPR/40/OS/578 October (2006).

¹³⁰⁹ Ibid.

¹³¹⁰ Constitutional Rights Project, International Human Rights Law Group, International Association of Lawyers for Human Rights, SERAC, Kenya Human Rights Commission, Institute for Human Rights and Development, HURILAWs have never submitted any report.

¹³¹¹ Status of Submissions of NGO Activity Reports as of October 2006 ACHPR /40/OS/578.

¹³¹² For Example, Human Rights Watch last submitted in 1998, Interight in 2001, Human Rights Africa in 1996, Lawyers for Human Rights in 1996, Swedish NGO Foundation in 1997, International Alert in 1997, WILDAF in 1996, Ibid.

so in spite of the reminder to NGOs through the Commission's communiqué to do so.¹³¹³ It is mainly due to the leniency of the Commission towards NGOs that it has not taken any disciplinary actions such as suspension or withdrawal of observer status against them.¹³¹⁴

The joint workshop between the African Commission and NGOs held in 1991 resolved that NGOs perform the following functions: prepare comments on state reports, maintain constant contacts between the Commission and NGOs, be actively involved in the processes of nomination and appointment of Commissioners and create a coordination Committee whose functions would include the establishment of a voluntary fund to assist African NGOs to maximise their contributions to the work of the Commission.¹³¹⁵ The focus of developing these mechanisms was not to make NGOs accountable. Further, NGOs have resisted establishing a body to coordinate their activities despite calls by the African Commission to do so.¹³¹⁶ Motala notes that NGOs are reluctant to be coordinated for fear of domination by INGOs.¹³¹⁷

The fact that the NGO reports are merely received but not discussed discourages NGOs from submitting more reports.¹³¹⁸ Moreover, there is no binding obligation to do so under the Charter or under the rules of procedure.¹³¹⁹ The Charter confines the obligation to submit bi-annual reports on the protection and promotion of human rights to state parties.¹³²⁰ NGO reports were not aimed at holding NGOs accountable to their human rights obligations but rather to provide useful information that enables the Commission to hold the state accountable.¹³²¹ It is instructive that the Commission has not addressed the governance of NGOs as a sector nor required the application of human rights principles to NGOs. Yet, governments have persistently questioned NGOs' credibility as was the case at the Brainstorming Meeting on the Africa Commission held on May 2006 under the auspices of the African Union Commission.¹³²² Significantly, the said Brainstorming meeting urged the African Commission to address the human

¹³¹³ ICJ (1996) 60.

¹³¹⁴ Murray (2001a) 6.

¹³¹⁵ NGO participation in the work of African Commission workshop (1991).

¹³¹⁶ Motala (2002) 254-255.

¹³¹⁷ Motala (2002) 255.

¹³¹⁸ Interview Viljoen, Director Centre of Human Rights, University of Pretoria, 23 March 2007.

¹³¹⁹ Interview, Eno Senior Legal Office, Africa Commission, 9 May 2008.

¹³²⁰ African Charter (1981) art. 62.

¹³²¹ ICJ (1996) 60-61, Interview, Eno Senior Legal Office, Africa Commission, 9 May 2008.

¹³²² Report of the Brainstorming meeting on the African Charter (2006) African Commission, 20th Annual Activity report (2006) 30, Annex II, Item 4 para 53 - 58.

rights violations committed by non-state actors.¹³²³ Furthermore, governments are insistently demanding that the Commission takes action against NGOs that do not fulfil their observer obligations.¹³²⁴

Most NGOs have largely failed to appreciate the potential of the African Commission to guide NGO own governance. The fact that only a few NGOs have adhered to the obligations of their observer status illustrates NGO's external outlook to issues of human rights and governance as concerning the state but not themselves. It also erodes NGO's legitimacy to hold others' accountable for what they commit themselves to.

5.9. NGO participation with National Human Rights Institutions (NHRIs)

The Paris Principles oblige national human rights commission to collaborate with NGOs that are devoted to promoting and protecting human rights.¹³²⁵ This is reiterated under the national constitutions.¹³²⁶ However, it is only the South African Human Rights Commission (SAHRC) that has developed principles to guide the governance of the voluntary sector, following a three day inquiry held in July 2005.¹³²⁷ However, NGOs are not enthusiastic about being regulated by the SAHRC. For example, Brewis of the NGO Consortium argued that the HRC must respect the autonomy of NGOs and that conflicts between associational autonomy and the right to equality should be decided according to the merits of each case.¹³²⁸ Similarly in 1999, the SAHRC disbanded the 5 Committees which it had established to advise it on account of safeguarding its independence from civil society.¹³²⁹ Nonetheless, the Asmal Parliamentary Commission on the effectiveness of the Chapter 9 institutions recommended the reconstitution of the Committees to tap into outside expertise, and promote access to the majority of the people.¹³³⁰ Consequently, participation with the SAHRC is not structured but dependent on particular NGOs, such as SANGOCO, Community Law Centre and HURISA. While the Gender and Equality Commission is the only Commission

¹³²³ Report of the Brainstorming meeting on the African Charter (2006) African Commission, 20th Annual Activity report (2006) 30, Annex II, Reco a.

¹³²⁴ Report of the Brainstorming meeting on the African Charter (2006) African Commission, 20th Annual Activity report (2006) 30, Annex II recommendation (a).

¹³²⁵ Paris Principles 1993/A/RES/48/134 Methods of operation 6 (g).

¹³²⁶ South Africa Constitution (1996) art. 184(2).

¹³²⁷ SAHRC, The exclusionary policies of voluntary associations: Constitutional Considerations (2005).

¹³²⁸ SAHRC, The exclusionary policies of voluntary associations, Tessa Brewis presentation (2005) 11.

¹³²⁹ HURISA (2007) 17.

¹³³⁰ Asmal Commission Report (2007) 178, HURISA (2007) iii and 17, Lorgat (2007) 15.

that is explicitly required to work with civil society, there is more favourable relationship between the SAHRC and NGOs than between the Gender Equality Commission and NGOs.¹³³¹

Both Chairpersons of Kenya National Commission of Human Rights (KNCHR) and the Uganda Human Rights Commission revealed that at times NGOs consider the Commissions as competitors.¹³³² In order to build trust, the KNCHR has undertaken joint programmes with NGOs in recognition of their expertise, such as the symposium on the human rights agenda held in 2006 in collaboration with the Kenya Human Rights Commission (KHRC), an NGO and a public inquiry on insecurity in Kenya with Kenya Human Rights Network.¹³³³ The KNHRC has a draft framework for partnership with NGOs.¹³³⁴ An NGO may be considered as a focal point if it is credible and adheres to good governance practices, has a track record in promoting and protecting human rights and subscribes to the values of the Commission.¹³³⁵ The focal points investigate complaints, undertake research, conciliate complaints, assess and inspect conditions of detention and educate the public on human rights. In undertaking the task, the focal point must act professionally, observe principles of impartiality and be accurate.¹³³⁶ The KNHRC is obligated to “inform the relevant agencies about the appointment of the focal point, provide support to the focal point in the event of harassment or intimidation, link the focal point to potential sources of support, including funding, address cases referred by the focal point and appropriately acknowledge the contribution of the focal point.¹³³⁷ The memorandum of understanding may be terminated by a written notice of at least two months.¹³³⁸ Nonetheless, there is no overt effort to promote governance. Rather, it is assumed that the NGO would be democratically governed.

In Uganda, there is no working document to guide the relationship between the two. Engagements are mainly casual entailing officiating as guest of honour at NGO events and the referral of cases to the UHRC.¹³³⁹ Only a few NGOs have constructively engaged with UHRC, namely, Prisons Aid Foundation, African Centre for Rehabilitation and Torture, HURINET,

¹³³¹ HURISA (2007) 37.

¹³³² Interview Maina Kiai Chairperson of Kenya National Commission on Human Rights, 23 August 2007, Nairobi.

¹³³³ Ibid.

¹³³⁴ KNHRC CSOs partnership Code of conduct (2006) Draft 1, 26 Nov 2006.

¹³³⁵ KNHRC CSOs partnership Code of conduct (2006) para 3.

¹³³⁶ KNHRC and CSOs partnership Code of Conduct (2006) para 5.

¹³³⁷ KNHRC CSOs partnership Code of conduct (2006) para 6.

¹³³⁸ KNHRC CSOs partnership Code of conduct (2006) para 8.

¹³³⁹ Interview Margaret Sekaggya, Chairperson of UHRC, Patricia Nduru Director of Monitoring UHRC, Karugonjo Segawa Senior Legal Officer, 12 Sept 2007, Kampala.

Foundation for Human Rights Initiatives (FHRI), UWONET, Uganda Joint Christian Council (UJCC), ANPCAN and Kituo Cha Katiba. The quasi-judicial mandate of UHRC makes joint activities difficult because the UHRC maintains that it has to safeguard its independence as a court.¹³⁴⁰

The Tanzania Commission on Human Rights and Good Governance (TCHRGG) is generally perceived as a compromised body, doubting its ability to strengthen the governance of NGOs.¹³⁴¹ The lack of independence of the TCHRGG is exemplified by an incident where a Commissioner of the TCHRGG and the leaders of Mbulu District forced the Wahadzabe, a minority group to surrender their village land of Yaeda Chini and Mkono wa Mono to an investor.¹³⁴² But the Commission failed to denounce the individual commissioner's action. Instead one Commissioner decried the naming and shaming of the Legal and Human Rights Centre (LHRC) which had issued a press statement condemning the act as antagonistic.¹³⁴³

Within East Africa, none of the NHRIs have guided NGOs to apply human rights principles to their practices. In all Commissions, including SAHRC, the ability of NHRIs, to influence the governance of NGOs is constrained by the fact that the HRC are established by government coupled with the competition over space, influence and resources. Thus both NGOs and HRCs safeguard their autonomy from each other.

5.10. Conclusion

The chapter has examined two critical issues relating to the notion of participation as far as NGOs are concerned, namely: How NGOs applied the principles of participation and inclusion in their internal governance; and how the NGOs have broadened participation amongst the different stakeholders that they work with. It is argued that the nature of most NGOs where the founders are risk-takers with an unusual commitment and sacrifice, makes NGOs vulnerable to “founder power” and “star syndrome” where the founder executives deny opportunity for inclusive participatory management. The donors also accentuate power imbalances within NGOs, as they

¹³⁴⁰ Ibid.

¹³⁴¹ Interview Peter, Chairperson Foundation for Civil Society and former Chairperson Kituo Cha Katiba, Uganda, 27 April 2007, Dar-es-Salaam.

¹³⁴² Ibid

¹³⁴³ Legal and Human Rights Centre, Press release: “Forcing the Wahadzabe tribe to accepting the investor in their area is violation of their rights.” Ref: LHRC/HRM MON.REP.VOL.IV, 6th July 2007.

often work with a single individual, usually the Executive Director, thereby, making NGO institutional profile associated with a particular person and narrowing participation.

It is recommended that the founder power should diminish with the institutionalization of teamwork guided by the institutional needs and broad based policy outlook to provide support that fosters diversity of ideas and sustainability of the organisations. As change is inevitable, NGO missions also become irrelevant, activists get burnt out and strategies become ineffective. Therefore, there should be organisational regeneration where NGOs renew their human resources to broaden participation and properly manage NGO transitions and change processes.

Communities cannot achieve any political and developmental change without coalition building from influential social groups such as NGOs, which can foster community awareness and participation. However, participation and awareness should be effective and not patronising in order to enable the communities to develop their own initiatives and act on their own agency to deal with the different forms of marginalisation. The benefits, bottlenecks and the efforts of NGO participation in networks and coalitions have been underscored, but with a call to the participating bodies to establish formal frameworks that articulate the common interests, roles, obligations and terms of engagement to provide a basis for common understanding, mutual respect and resolution of conflicts. Despite the dilemmas and risks involved, NGOs must participate in political society especially if they are to promote the social contract between the state and its citizens. Thus, NGOs must abandon their apolitical stance and proactively influence public policy, since promoting human rights entails addressing the power relations in the political and social struggle for societal transformation.

CHAPTER SIX

EXPLORING THE PRINCIPLES OF EMPOWERMENT, EQUITY AND NON-DISCRIMINATION

6.1. Introduction

The legitimacy of NGOs is multifaceted, socially constructed and raises several questions about issues of power in society.¹³⁴⁴ The core of activism is about challenging existing power structures and imbalances, and to right the wrongs committed by those who hold power over others.¹³⁴⁵ However, power is “largely ignored in the human rights corpus.”¹³⁴⁶ Although NGOs have mobilised shame against those in power, they have not been as self-critical and honest in analysing their own power, despite getting increasingly powerful themselves.¹³⁴⁷ Globally, within the NGO sector there is a myth that the NGO sector is “clean” and powerless.¹³⁴⁸ NGO perception of power as bad or corrupting has shielded the probing of the situation of unequal relationships within the NGO sector.¹³⁴⁹ Yet, power is “dynamic, relational and multi-dimensional changing according to context, circumstances and interests.”¹³⁵⁰ Power is inherent in all relationships and is based on resources such as food, shelter, sex, money, job advancements, awards, love, approval, acceptance or emotional support to mention but a few.¹³⁵¹ According to Lips:¹³⁵²

In a power-based social exchange, each individual gets and gives something that she or he wants or needs. As long as each person has something the other wants, neither has complete or ultimate control over the others. [However]. ... it does not mean that the power of the parties in the exchange is equal. ... [T]he party who is least dependent on the other for rewards has the greater power.

¹³⁴⁴ Lister (2003) 175 and 184.

¹³⁴⁵ Interview Barry, International consultant, Urgent Action Fund, 2 February 2008, London.

¹³⁴⁶ Mutua (2002) 13.

¹³⁴⁷ Hulmes and Edwards (1997) 283, Nyamu-Musembi and Cornwall (2004) 5, Mutua (2002) 24, ICHRP (2003) 3 and 37.

¹³⁴⁸ ICHRP (2003) 2.

¹³⁴⁹ ICHRP (2003) 2.

¹³⁵⁰ Just Associates (2006) 4.

¹³⁵¹ Lips (1991) 57 and 58, Just Associates (2006) 4.

¹³⁵² Lips (1991) 57 and 58.

Power is defined as the “possibility of imposing one’s will on the behaviour of others”¹³⁵³ or the “capacity to influence behaviour.”¹³⁵⁴ Therefore, the principle of empowerment requires respecting people as equals.¹³⁵⁵ In this chapter the term ‘empowerment’ is understood as the ability of people to claim and exercise their rights and improve their lives.¹³⁵⁶ Empowerment espouses taking a conscious personal commitment to confront individual or organisational power particularly in the NGOs’ practice, programmes, fundraising, constituency building, structures, systems and management.¹³⁵⁷ Hitherto NGOs have been outward looking focusing mainly on the empowerment of communities to the exclusion of their own empowerment. Consequently, a number of critical enquiries have to be undertaken, first of all to consider how NGOs have empowered themselves in order to achieve their missions and ensuring their sustainability. This section of the chapter also interrogates how NGOs have empowered themselves in terms of skills capacity, mobilisation of financial resources, providing of conducive working environment for staff and paying of adequate remuneration. The chapter addresses how NGOs have dealt with the unequal power imbalances within the NGOs. In this respect empowerment involves addressing issues of exploitation, marginalization and exclusion in a manner that redistributes power in a more equitable manner to the advantage of the marginalised groups such as women, youth, sexual and racial minorities. Furthermore, in an era of globalisation it also addresses the unequal power between Northern NGOs (NNGOs) and Southern NGOs (SNGOs).

The thesis adopts the term “South” to describe the global South, which includes the African NGOs but also uses the term “African NGOs” for specific illustrations. In analysing the extent to which NNGOs have empowered SNGOs as the weaker party in the international relations, it is noteworthy, that the role of NNGOs as donors is highly appreciated and they are found to be comparatively more accessible and sensitive to the realities of SNGOs than bilateral donors.¹³⁵⁸ However, tensions emerge around the role of NNGOs as direct implementers of programmes in Africa.

¹³⁵³ Chandan (1994) 319.

¹³⁵⁴ Robbins and Judge (2007) 470.

¹³⁵⁵ UDHR (1948) art. 1, ICCPR (1966) art. 3, ICESR (1966) art. 2(2) and 3, African Charter (1981) art. 5 and 19.

¹³⁵⁶ <http://www.unhchr.ch/development/approaches-01.htm>; Keystone Accountability Survey (2006) 13.

¹³⁵⁷ Edwards and Sen (2000) 611-612.

¹³⁵⁸ REPOA (2007) xii and 10.

6.2. NGOs, empowerment and human rights and governance expertise

A typical lament heard today is the claim that the human rights movement in Africa is floundering.¹³⁵⁹ There is also a realisation that the responsibility of strengthening the human rights movement squarely lies on NGOs themselves. NGOs have a responsibility to self-empower themselves as organisations in order to influence other stakeholders.

6.2.1. NGOs and human rights and governance expertise

Globally most NGOs derive their legitimacy from “moral rights or a duty to act or speak out,” but not necessarily from a large constituency or interest group.¹³⁶⁰ Consequently, the onus is on NGOs to demonstrate that they derive legitimacy from expertise.¹³⁶¹ According to Orlin, NGOs are the “gatekeepers of the meaning of human rights,” because they have a responsibility of determining what constitutes a human rights violation.¹³⁶² Given that “knowledge is power” the correct utilisation of information enhances an organisation’s effective operations and legitimacy as an alternative source of credible and powerful information to challenge inequalities, identify the responsible party and propose credible solutions.¹³⁶³ Having valuable knowledge, skills and competencies also enables NGOs to address controversial issues.¹³⁶⁴ However, most NGOs are not sufficiently empowered to champion human rights discourse. The freedom to choose any organisation notwithstanding, all NGOs needs to apply human rights principles as a discipline.

Globally, the study of human rights as an academic discipline is a recent phenomena beginning in the 1970s.¹³⁶⁵ Originally international human rights law was expressed in exclusively western terms with a focus mainly on civil and political rights (CPRs).¹³⁶⁶ Non-western experiences and heroes were ignored, to the extent that even African academics and activists blindly echoed the

¹³⁵⁹ 2006 World Social Forum, Frank talk in the family workshop, 18 January 2007 the 11th AWID International Forum on women’s rights and development: The power of movements, Nov 2008, African Feminist Forum: Reclaiming our spaces, November 2006 and September 2008.

¹³⁶⁰ ICHRP (2003) 16.

¹³⁶¹ ICHRP (2002) 12.

¹³⁶² Orlin (1998) 130.

¹³⁶³ Keck and Sikkink (1998) 19, Chandan (1994) 321.

¹³⁶⁴ Edwards (2000) 27, Keck and Sikkink (1998) 23.

¹³⁶⁵ Alston (1998) 1.

¹³⁶⁶ Mutua (2002) 12, 33 and 154-155.

western human rights discourse.¹³⁶⁷ It is only in the 1990s that academia began to interrogate the power dynamics and contradictions within the human rights discourse and sought to have it more culturally grounded.¹³⁶⁸

In relation to the case of Africa, the development of the discipline is even fresher. Vocal and critical human rights thinking developed in the late 1980s and early 1990s.¹³⁶⁹ Academic Centres primarily focussing on human rights were also established around that time. For example, the Centre for Human Rights at Pretoria University was established in 1986 as an NGO. The LLM in Constitutional Practice was launched in the late 1990s and the LLM in Democratisation and Human Rights in 2000.¹³⁷⁰ The Human Rights and Peace Centre (HURIPEC) at Makerere University in Uganda was established in 1993, as a department in the Faculty of Law.¹³⁷¹ Moreover, human rights studies are almost exclusive to law faculties and not a cross-cutting discipline within the social and political sciences or the humanities.¹³⁷² In almost all academic institutions across Africa, human rights is not a compulsory and basic subject for legal qualification, but is either offered as an optional course or at the post-graduate level. Expectedly, an evaluation of the legal aid service providers, commissioned by DANIDA in Uganda found that lawyers sought continuing legal education covering basic knowledge such as human rights, gender, project management and mediation to mention but a few.¹³⁷³ Hence, the assumption that lawyers are automatically knowledgeable about human rights work and NGO governance is no longer tenable.

In Africa, the Centre for Human Rights at Pretoria has taken leadership in post graduate studies in human rights. It has a Masters' programme on Human Rights and Democratisation in Africa and short courses in good governance attended by students, academia, government officials, practitioners and NGOs across Africa.¹³⁷⁴ Its two flagship programmes in Human Rights and Democratisation in Africa and the Africa Human Rights Moot Court Competition bringing together eight Universities representing all regions of the Africa namely,

¹³⁶⁷ Mutua (2002) 33-34, 40 and 46.

¹³⁶⁸ Shivji (1989), An-Na'im and Deng (1990), Gutto (1993), Mutua (2002), Baxi (2002).

¹³⁶⁹ Mutua (2002) 38.

¹³⁷⁰ Viljoen Office Manager, Centre for Human Rights, Pretoria, 13 May 2008, Pretoria.

¹³⁷¹ Interview Viljoen Office Manager Centre for Human Rights, 13 May 2008, Pretoria, 13 May 2008, Interview Oloka Onyango, Director HURIPEC, February 25 2008, Kampala.

¹³⁷² Steiner (1999) 48.

¹³⁷³ Interview, Asiimwe Executive Director, East African Human Rights Institute, Uganda, 28 August 2007, Kampala.

¹³⁷⁴ Interview Viljoen Office Manager, 13 May 2008, Pretoria.

Cameroon, Egypt, Ethiopia, Ghana, Mozambique, South Africa, Tanzania and Uganda.¹³⁷⁵ The unconventional training offered in this program has a distinctive practical approach incorporating field-visits to problematic human rights situations, writing judgments, and living with communities.¹³⁷⁶ In his congratulatory speech on CHR winning of the award of human rights education, the UNESCO Director-General, Koichiro Matura, underscored human rights education as a powerful tool for building an inclusive society by “liberating minds from prejudices, stereotypes and intolerance, shaping attitudes and translating human rights knowledge into everyday practices.” The Kigali Declaration adopted by the African Union Ministerial Conference on Human Rights in Africa, underlines the imperative of teaching human rights as a permanent feature in the “school curriculum and for the law enforcement officers.”¹³⁷⁷

Within East Africa, only the higher levels of NGO staff clearly understand the ideology of human rights.¹³⁷⁸ Few human rights activists have any serious training in human rights.¹³⁷⁹ Yet, it is important that all staff apply human rights principles to their work. Generally, NGOs activists are “jacks of all trades,” without adequate orientation on how to relate to the communities in a manner that expands the human rights discourse.¹³⁸⁰ Livingstone Sewanyana an outstanding human rights activist in Uganda is on record that “qualifications are not a necessary prerequisite to promote human rights.”¹³⁸¹ Generally, NGOs tend to apply the dominant values of the oppressive state or capitalist private sector and operate as “individual fiefdoms.”¹³⁸² Government is equally cynical of NGOs’ governance record and of the failure on the part of NGOs to propose credible alternative solutions beyond mere criticism.

The poor academic foundations of NGO work explains why human rights discourse on the continent is essentially apolitical. This further marginalises NGOs engagement with the state and general public, and marks the failure to link human rights to the social practices. Related to the knowledge gap in the human rights discourse is the gap in governance and organisational development. Many reasons have been advanced to account for the poor governance of NGOs.

¹³⁷⁵ Interview Taku, Deputy Director Center for Human Rights: Pretoria, 13 May 2008, Pretoria.

¹³⁷⁶ Ibid

¹³⁷⁷ Kigali Declaration (2003) para 30.

¹³⁷⁸ Mutua (2009) 10, Orlin (1998) 137.

¹³⁷⁹ Mutua (2009) 10, Byamukama (2002) 21.

¹³⁸⁰ Interview Jjuko, Professor of Law, Makerere University, Chairperson Free Movement, 29 August 2007, Kampala.

¹³⁸¹ Byamukama (2002) 42.

¹³⁸² Byamukama (2002) 42.

Some have associated the poor governance of NGOs to the nascent growth of the NGO sector.¹³⁸³ The lack of training has compelled NGOs to learn on the job in a trial and error manner. Unlike other professionals that have institutions that train leaders in management and governance, civil society in general has for a long time had none, resulting in “mediocre leadership.”¹³⁸⁴ While NGO activists have passion for human rights work, they are not necessarily good managers.¹³⁸⁵ NGOs in Africa fail because activists assume that they can be “everything and everybody: from the director as the entrepreneur who envisions the strategic direction of the NGO, to the manager who plans the execution of programmes and to the technician who executes the programme.”¹³⁸⁶

While many NGOs aspire to be learning organisations, very few have learning as an objective that uses experience and information to continuously improve practice.¹³⁸⁷ NGO culture often sees “learning as indulgent and secondary to real work” that they do not plan for it, “until the NGO pays for its mistakes.”¹³⁸⁸ Failures are disguised or punished, risk aversion is common and the short term nature of work does not stimulate learning or long term research.¹³⁸⁹ Learning requires a willingness to accept failure, self-criticism, humility, honesty and openness to welcome error as a learning opportunity rather than a mistake to be concealed.¹³⁹⁰ Incentives and rewards for learning are weak and rarely linked to the activists’ self-development.

Most learning within NGOs is through short term workshops and similar interventions. Capacity building programmes are primarily geared to ensuring programme implementation rather than develop the NGO’s overall capacity.¹³⁹¹ The most common components of capacity building are financial management, advocacy skills and proposal writing. Human rights NGOs often overlook institutional building and rarely document institutional experiences.¹³⁹² A respondent observed that many NGOs are not institutionally driven, but many are a “shell with a fantastic sales person.”¹³⁹³

¹³⁸³ Dicklitch (1998) 27.

¹³⁸⁴ Bujra and Adejumobi (2002).

¹³⁸⁵ KCK Board Source, (2002) 10.

¹³⁸⁶ Interview Fall, Founder Executive Director, Institute for Human Rights and Development in Africa, 24 April 2007, Pretoria.

¹³⁸⁷ Edwards (2002) 331, Taylor (2002) 348 and 351.

¹³⁸⁸ Edwards (2002) 334 and 336 NGO reader, Taylor (2002) 352, Shivji (2006) 21.

¹³⁸⁹ Edwards (2002) 331.

¹³⁹⁰ Edwards (2002) 335.

¹³⁹¹ Andreassen (2002) 108.

¹³⁹² Bell and Keenan (2004) 368.

Therefore it is important to provide space for career development beyond the execution of the NGO's programme. However, investing in employees' development is one-sidedly perceived as merely a cost, thus jeopardising the NGO's growth.¹³⁹⁴ Staff development entails more than learning specific skills to do the job, but includes long term career goals.¹³⁹⁵ "Star performers" are not only looking for money, but also look for career growth and exciting work such as making a difference in the world.¹³⁹⁶ NGOs need to invest in talent management as a deliberate approach based on a people oriented organisational culture to attract, develop and retain people with aptitude and abilities to meet organisational needs.¹³⁹⁷

It is fairly common knowledge that the quality of the people within an NGO ultimately determines the effectiveness and efficiency of the organization. A good staff retention strategy includes giving people space to grow and enjoy their work. The ability of an NGO to retain good staff in great part accounts for the growth and sustainability of organizations such as IDASA,¹³⁹⁸ TGNP,¹³⁹⁹ LHRC,¹⁴⁰⁰ LHR, HRW,¹⁴⁰¹ and ICJ-International.¹⁴⁰² An NGO has to invest in its long term sustainability, by addressing the following questions: "Are we attracting the people we are willing to entrust this organisation to? Are we developing them so that they are going to be better than we are? Are we ... recognising them?"¹⁴⁰³

The fragile intellectual foundation of NGOs is aggravated by the weak relationship between activists and academia.¹⁴⁰⁴ Steiner observes that globally all NGOs, irrespective of "1st or 3rd World" do not explicitly develop and apply theory."¹⁴⁰⁵ Likewise Smillie notes a strong bias in the

¹³⁹³ Interview, Gitari, Programme Officer Ford Foundation, Lagos, 5 June 2006, Senegal.

¹³⁹⁴ Ruka Nyoka Talent Management, Advisor- Human Resources Companies, Markets Column Ernest and Young, *Financial Gazette*, April 11-19 (2007) 3.

¹³⁹⁵ Drucker (1990) 113.

¹³⁹⁶ Ruka Nyoka Talent Management, Advisor- Human Resources, Companies, Markets Column Ernest and Young, *Financial Gazette*, April 11-19 (2007) 3.

¹³⁹⁷ Ibid

¹³⁹⁸ Interview Jenkins Director Special Programme, IDASA, 14 November 2007, Pretoria.

¹³⁹⁹ Interview Mallya Executive Director Tanzania Gender Networking Programme, 8 November 2007, Johannesburg.

¹⁴⁰⁰ Kijo-Bisimba and Mvungi (2006) 31.

¹⁴⁰¹ Welch (2001) 100.

¹⁴⁰² Prouvez (2001) 18 and 120.

¹⁴⁰³ Drucker (1990) 120.

¹⁴⁰⁴ Tamale (2009) 65-66.

¹⁴⁰⁵ Steiner (1999) 30.

NGO culture against learning, with the majority of activists being “generalists with no specialisation.”¹⁴⁰⁶ Similarly, Uvin observes that:

practitioners hardly read scholarly materials because they are often “lengthy, opaque, heavily footnoted and unconcerned with operational implications ... Scholars, hardly read the little written by practitioners that often have a superficial knowledge of the practice.”¹⁴⁰⁷

Shivji observes that in Africa:

[T]he NGO discourse eschews theory, [and] emphasises and privileges activism. In the African setting in particular, whatever is left of critical intellectual discourse is largely located at Universities, runs parallel to and is divorced from NGO activism ... Theory is dismissed as academicism unworthy of activists who rely on common sense ... Yet, every practice gives rise to theory and every action is based on theoretical premises and philosophical outlook.¹⁴⁰⁸

In South Africa, difficult questions on the role of human rights within the broader political context are left to academic theorists,¹⁴⁰⁹ a situation which is common on the continent. In East Africa, the strategies and change processes of NGOs are “intellectually backward” with limited philosophical and conceptual analysis, rendering human rights movements reactive and ad-hoc.¹⁴¹⁰ Concurrently, while activists expect academia to help them overcome dilemmas encompassed daily, the latter are often too theoretical to be of use.¹⁴¹¹

The Dar-es-Salaam Declaration on Academic Freedom and Social Responsibility of Academics, adopted on 19th April 1990, by Six Staff Associations of Institutions of Higher Education in Tanzania, asserts that academia have a “human obligation and social responsibility towards our peoples’ struggles for rights, freedoms, social transformation and emancipation.”¹⁴¹² Despite the theoretical commitment, Baregu observes that in Tanzania intellectual engagement in human rights struggles remained “muted, anecdotal, intermittent and informed by cynicism and to some extent a sense of resignation,” because “the average intellectual either fears or shuns politics.”¹⁴¹³ In Kenya, by appointing professors to the management Board of public enterprises, former president Moi ensured that universities remained in the background during the struggle for

¹⁴⁰⁶ Smillie (1999b)20.

¹⁴⁰⁷ Uvin (2004) 4.

¹⁴⁰⁸ Shivji (2006) 21.

¹⁴⁰⁹ Bell and Keenan (2004) 371.

¹⁴¹⁰ Shivji (1989) 9-11, Uvin (2004) 19, Mbilinyi (2003)1, Mutua (2009) 15, 17 and 25, Tamale (2009) 65-66.

¹⁴¹¹ Bell and Carens (2004) 303, Bell and Keenan (2004) 317, Ngethe (1989) 54.

¹⁴¹² Baregu (1996) 158.

¹⁴¹³ Baregu (1996) 158.

multi-party politics.¹⁴¹⁴ In East Africa only a handful of academics have challenged societal inequalities and the abuse of power albeit in their individual capacities.¹⁴¹⁵

NGOs are too busy getting the job done to engage in serious training and research aimed at developing the institutional knowledge to alter social inequities, and analyse the strategic options for the NGO sector.¹⁴¹⁶ Given that most NGOs lack the expertise to conceptualise research, they rarely undertake feasibility studies. Instead, they conduct community consultations which are often undertaken by consultants.¹⁴¹⁷ The research is often done as an “output” of funding instead of generating new knowledge to help improve an NGO’s effectiveness. NGOs are also accused of being academically “dishonest or irresponsible in their position papers,”¹⁴¹⁸ with a “proclivity to exaggerate claims for publicity.”¹⁴¹⁹

There is clear a need for a more deliberate link between the academia and activists. The successful linking of activism with academic rigour strengthens the ability of an NGO to analyse options and continuously reinvent itself to suit the ever changing landscape. NGOs at the top of the sector in both South Africa and East Africa have a pool of academic resources which can help reflect and map their strategic directions. There is also a strong perception that think-tanks and academic-related NGOs are better managed and more guided by objectivity.¹⁴²⁰ Some of the good practices from academia worth emulating by NGOs are the practice of peer review and academic refereeing used to maintain high standards of work; engagement in critical and objective debate, arguing from an informed point of view and the internalised commitment to academic autonomy.¹⁴²¹ A former Chair of KCK reflected that when he presented an issue that was not well thought-out, “it would be trashed ... people would joke about it and dismiss it subtly in a very gentle way that focuses on the demerits and merits of the issue without making you angry.”¹⁴²²

¹⁴¹⁴ Ngunyi (1996) 266.

¹⁴¹⁵ Mutua (2009) 323, footnote 36, Mutua identifies Joe Oloka-Onyango, Fred Jjuko and Sylvia Tamale of Makerere University, Chris Maina Peter of University of Dar-es-Salaam, Karuti-Knayinga of University of Nairobi.

¹⁴¹⁶ Smillie (1999) 30, Ngethe (1989) 11 and 43, Welch (2001) 10.

¹⁴¹⁷ Ngethe (1989) 45 and 48.

¹⁴¹⁸ U.N Press Release NGO/296, P1/1029 (September 10, 1997), P1/1272 (August 28 2000); Stanley Foundation, quoted in Lehr-Lehnardt (2005) 28.

¹⁴¹⁹ Lehr-Lehnardt (2005) 34.

¹⁴²⁰ Modiba Interview Programme Officer Human rights, Open Society Institute for Southern Africa (OSISA) 5 Nov 2008, Johannesburg.

¹⁴²¹ Interview Sall Programme Director CODESRIA 7 June, 2006, Senegal, Starkey (1997) 27.

¹⁴²² Interview Peter former Chairperson Kituo Cha Katiba 27 April 2007, Dar-es-Salaam.

In contrast, globally there are no “procedures for making criticism when shortcomings are noticed” amongst NGOs.¹⁴²³ NGOs are not used to being questioned by their peers and such questioning is detested as amounting to “unreasonable criticism or a form of networking imperialisms.”¹⁴²⁴ The Kampala Declaration on Strengthening the Human Rights Movement in Africa, calls for NGOs (particularly HURINGOs) to strengthen their transparency, accountability and leadership skills.¹⁴²⁵ Related to the issue of skills development is the failure to retain NGO personnel. The most common reason why activists leave the NGO sector is poor remuneration. NGOs face the dilemmas of balancing volunteerism and ensuring competitive remuneration.

6.2.2. The dilemmas of volunteerism and the payment of competitive remuneration

Because many people offer time and services instead of money, volunteerism is an important aspect of NGO work. The concept of voluntary association has two main aspects: the first element is the non-compulsory one, meaning that the NGO was formed voluntarily without legal compulsion, and an “element of voluntary participation,” requiring that the Board or its membership give their services voluntarily without expectation of remuneration.¹⁴²⁶ In the industrialised world, voluntary action flourished from the 19th Century and was spearheaded by the wealthy classes to provide welfare to the poor and less privileged through charitable or philanthropic work.¹⁴²⁷ African countries have a high percentage of volunteers accounting for over half of the CSOs’ workforce.¹⁴²⁸ Nonetheless, in conditions of acute poverty, unemployment and HIV/AIDS, voluntarism may contain elements of exploitation and inequality.¹⁴²⁹ While in developed countries voluntary work was predominantly the “preserve of the middle and upper class women with the financial freedom and necessary leisure time at their disposal, in poor countries voluntary work is symptomatic of the failure of the state to meet its obligation to its citizens.¹⁴³⁰ The difficulty of running a successful workshop unless participants receive a transport allowance and a per diem is

¹⁴²³ ICHPR (2003) 54.

¹⁴²⁴ Starkey (1998) 27.

¹⁴²⁵ www.wmd.org/documents/demnews-nov2003/kampala-declaration.on-human-rights.doc

¹⁴²⁶ Commonwealth Foundation (1995) 14.

¹⁴²⁷ Commonwealth Foundation (1995) 14.

¹⁴²⁸ Salamon et al (2004) 50.

¹⁴²⁹ Kotze (2003) 24 McDonald and Page (2002) 28.

¹⁴³⁰ Kotze (2003) 24.

usually attributed to shrinking volunteerism. However, it also reflects the poverty levels of most African countries. Ordinary people tend to think of NGO workshops as income generating activities instead of capacity building strategies for political and human rights consciousness.¹⁴³¹

Consequently, the question of the remuneration of NGOs employees is controversial. One view holds the misperception that activists are motivated by self-aggrandizement.¹⁴³² It is common to dismiss activists as self-indulgent, working in fancy hotels and cruising 4-wheel drive vehicles.¹⁴³³ Another concern is why some activists should be paid for work that others do voluntarily. It is further decried that with the establishment of NGOs, there is more focus on fundraising and globe-trotting than in societal transformation, a situation Sylvia Tamale refers to as “careerism.”¹⁴³⁴ NGOs, donors and the media perpetuate the myth that NGO work is cheaper than that in any other sector, resulting in unrealistic low budgets.¹⁴³⁵ The continual myth that NGO work is undemanding reinforces NGOs’ practice of paying meagre salaries. Asking for a ‘good’ salary is misinterpreted as not being loyal to the cause. There is a tendency to perceive NGO activists as “selfless, poorly paid workers and dedicated amateurs rather than slick professionals.”¹⁴³⁶ A respondent recalls being found at a supermarket and looked at quizzically by the Chair who immediately ordered a reconciliation audit.¹⁴³⁷ Generally, most NGOs rely much more on low cost or volunteers for their internal expertise.¹⁴³⁸ In South Africa, it is estimated that 49% of the total work force of CSOs consists of volunteers¹⁴³⁹ and 88% of CBOs do not have paid staff.¹⁴⁴⁰

The other view holds that the quality of staff is a key determinant of the effectiveness and credibility of an NGO.¹⁴⁴¹ Consequently, it is argued that NGOs employees should be paid competitive salaries based on recognition of the demanding nature of their multi-

¹⁴³¹ Nyamugasira (2006) 2-3.

¹⁴³² Dicklitch (1998) 27, 159 and 128, Okafor (2006) 218.

¹⁴³³ Lehr-Lehnardt (2005) 22, Dicklitch (1998).

¹⁴³⁴ Tamale (2009) 67.

¹⁴³⁵ Smillie (1999) 11 and 14.

¹⁴³⁶ Commonwealth Foundation (1995) 34.

¹⁴³⁷ Respondent required anonymity.

¹⁴³⁸ Welch (1995) 292.

¹⁴³⁹ Kotze (2003) 23.

¹⁴⁴⁰ NPO Impact Assessment (2005) 58.

¹⁴⁴¹ Barry and Dordevic (2007) 35, Smillie (1999) 11, Fowler (2002d) 442, Murungi, formerly of Urgent Action Fund-Africa, Adeleye-Fayemi of Africa Women Development Fund.

tasked work and to be respected by their peers in other sectors.¹⁴⁴² Offering good salaries is a realistic measure taken in order to attract and retain skilled and committed staff.¹⁴⁴³ Even the Commonwealth Foundation remarks that it is wrong to expect NGOs to be largely dependent on voluntary labour.¹⁴⁴⁴ Smillie argues that having professionally prepared accounts, handling partners with empathy, understanding and care; recording and disseminating experiences costs money.¹⁴⁴⁵ Likewise, Fall is clear that “it is not shameful to create well paid jobs through an NGO nor is it realistic to stretch voluntarism.”¹⁴⁴⁶ Similarly, Fowler asserts that while “consultations, dialogue, listening and joint reflections are an important source of motivation of staff and psychological motivation it does not put food on the table.”¹⁴⁴⁷

Tensions over money are exacerbated by the lack of a uniform salary scheme within the sector with salaries being contingent on the NGOs’ fundraising abilities. In East Africa, male Executive Directors earn between US\$4,000 and US\$6,000 per month while female Executive Directors generally earn between US\$1,000 and US\$3,000, with a few exceptions.¹⁴⁴⁸ Perplexingly, women NGOs have internalised the devaluing of women’s work. For many women, NGO work and activism are taken as the natural extension of women’s mothering and nurturing roles.¹⁴⁴⁹ And yet women work for the same reasons as men do, such as financial necessity, personal identity, status or a sense of accomplishment.¹⁴⁵⁰

Given the poor pay and pressure to meet financial demands, staff tend to either adopt a casual attitude towards work or do not commit their time to only one NGO. In Uganda, one third of all NGO directors are involved in another NGO and half of the directors have other occupations, such as professional work, farming, trade or business.¹⁴⁵¹ Within East Africa, most

¹⁴⁴² Barry and Dordevic (2007) 35-36.

¹⁴⁴³ Barry and Dordevic (2007) 35-36.

¹⁴⁴⁴ Commonwealth Foundation (1995) 19.

¹⁴⁴⁵ Smillie (1999) 11 and 14.

¹⁴⁴⁶ Interview Fall, Founder Executive Director, Institute for Human Rights and Development in Africa, 24th April 2006, Pretoria.

¹⁴⁴⁷ Fowler (2002d) 442.

¹⁴⁴⁸ Although salaries are very sensitive issues within the NGO sector because ideally NGO activists are expected to be working for the moral good, I made it a point to ask each of the Executive Directors I interviewed the salary bracket of their organisation. It is instructive that none of them was willing to let me know the exact figure.

¹⁴⁴⁹ Barry and Dordevic (2007) 13.

¹⁴⁵⁰ Lips (1991) 164.

¹⁴⁵¹ Barr, Fafchamps and Owen (2003) 20.

Executive Directors are compelled to double as programme officers in order to earn a salary, leaving limited room for leadership reflection and planning.¹⁴⁵² Similarly in South Africa, many activists are “moonlighting doubling as consultants” in order to meet their survival needs.¹⁴⁵³ Such multiple occupations dis-empower an NGO in achieving its mission. In the alternative, many activists are forced to drop out of activism in a “painful and guilty-ridden transition equated to a “sell out” or else work day and night to make ends meet.”¹⁴⁵⁴ Asking for a competitive salary does not amount to being less passionate about human rights work as activists also have survival needs and social obligations and as such need jobs. Consequently, asking for a salary that is commensurate with the work involved is simply a request for “recognition and to be valued.”¹⁴⁵⁵

6.2.3. Empowerment and sustaining activism

It is expected that individuals within NGOs would easily exercise their rights and work in a supporting environment. The Vienna Declaration provides that “NGOs and their members should enjoy the rights and freedoms recognised in the Universal Declaration of Human Rights ... and the protection of the national law without interference.”¹⁴⁵⁶ The adoption of the “Declaration on the rights and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms”¹⁴⁵⁷ is further testimony of the increasing recognition of the necessity to protect both human rights activists and their organisations. The Africa Commission has also passed a resolution for the protection of human rights defenders¹⁴⁵⁸ and appointed a Special Rapporteur to that effect.

Because of the myth that the NGO sector is “clean” and powerless¹⁴⁵⁹ the interrogation of power dynamics within the NGO sector has been largely ignored. This debate focuses on women NGOs because it is women NGOs that have overtly interrogated the question of power and sustainability within the women’s movement.

¹⁴⁵²Personal observation. The issue is a constant lamentation amongst Executive Directors.

¹⁴⁵³ Van de Walle N (2003) 25.

¹⁴⁵⁴ Barry and Dordevic (2007) 37-38.

¹⁴⁵⁵ Barry and Dordevic (2007) 14.

¹⁴⁵⁶ Vienna Declaration (1993) para 38.

¹⁴⁵⁷ RES/56/16320 February 2002 Resolution adopted by the General Assembly [on the report of the Third Committee (A/56/583/Add.2)] 56/163.

¹⁴⁵⁸ African Commission Annual Report (2004) www.acphr.org/english/info/index_hrd_en.html.

¹⁴⁵⁹ ICHRP (2003) 2.

NGO work is found to be very stressful and at times results in chronic stress and even in death. Kulsum Wakabi of Law and Women Association (LAWA) collapsed in office and was announced dead on arrival at hospital; Koki Muli almost gave birth at the Electoral Commission; Nyangabyaki Bazaara of the Centre for Basic Research was hospitalised after continuous globetrotting and died soon thereafter.¹⁴⁶⁰

On reflecting on their workload, many Executive Directors noted:

“I have not felt normal in a year ... I could not sit and talk normal.”

“An Executive Director works at a mad pace.”

“I do not have a life beyond the NGO. I do not live.”

“The organisation creeps in my sleep.”

“My office assistant says I need roller skates.”

A former Executive Director, reflected: “We are always on the run ... We never walk. I would go to Church on Sunday but did not pray for my brain is going round and round the NGO. Now I feel it is time to look after myself ... I even have lunch.”¹⁴⁶¹

The above quotes highlight the toll NGO work imposes on Executive Directors. The work load is accentuated by the poor timekeeping culture. A respondent who works with the private sector on corporate social responsibility found that he wastes about 5 hours a week, waiting for NGO activists to turn-up at a pre-agreed meeting.¹⁴⁶² After a lapse of an hour, an activist would call to inquire whether the meeting had started. In contrast, private sector turns up ten minutes before the scheduled time in order to ensure that the meeting starts on time.¹⁴⁶³

NGOs tend to focus on programme results with a minimal focus on staff welfare. Given that the human rights edifice is premised on the imagery of victim and saviour, activists shun self care in order to fit the profile of the saviour-image: fighters for the poor, the vulnerable and the helpless.¹⁴⁶⁴ The conventional position expects human rights activists to be “martyrs for the cause” yet human rights defenders are equally entitled to their rights.¹⁴⁶⁵ The stigma associated with talking

¹⁴⁶⁰ Persons were personally known to me.

¹⁴⁶¹ Interview Sila Former Executive Director, Tanzania Women Lawyers Association, 24 July 2007, Dar-es-Salaam.

¹⁴⁶² Odembo, Executive Director Ufadhili, 5 September 2007, Nairobi.

¹⁴⁶³ Ibid.

¹⁴⁶⁴ Barry and Dordevic quoting Nassali (2007) 35-36.

¹⁴⁶⁵ Real and Chai (2005) 52 www.defendingwomen-defendingrights.org/pdf/WHRD-Resource-English-press.pdf.

about one's fears and needs inadvertently aggravates the stress and makes activists part of the oppressors.¹⁴⁶⁶ Some of the disempowerment is thus self-imposed. Many activists are reluctant or refrain from confronting their fears because they think it may demobilise them.

Evidently, self-martyrdom breeds fatigue and sustaining activism begins with self-empowerment and loving oneself.¹⁴⁶⁷ Drawing from the analogy of the Judeo-Christian teaching of "love thy neighbour as thyself," Edwards and Sen argue that:

to love our neighbours as ourselves, requires an understanding of our own inner being -to recognise that in our deepest essence we are compassionate, capable of giving love and worthy of receiving it. ... It then becomes easier to empathise with what it means to be the 'other' from whom we usually distance ourselves in subtle or overt ways. This shift is crucial because it provides the foundation for personal behaviour that is more expansive and less damaging of others-for why would we damage the life chances of someone who is much a part of ourselves?¹⁴⁶⁸

In a publication primarily focussing on the sustainability of activism, Barry and Dordevic observe that the gap in addressing the physical, spiritual and emotional needs of activists, amidst the challenges of balancing family and professional obligations contributes to the burn-out, depression, anger, fatigue, break down in family life, betrayals, and cynicism amongst activists.¹⁴⁶⁹ Although women are expected to nurture the family, female bosses are antipathetic to employees who request time off for care related duties.¹⁴⁷⁰ A respondent recalls how her female boss asked in disgust over her overtly protruding belly, whether she was pregnant, implying that she was likely to be less productive. The women's movement is also found to be exclusive, in that activists have to "earn their stripes" before they are accepted as genuine activists. Barry and Dordevic underline the point that "activism isn't a member only club ... anyone can be an activist- for a minute or a life time ... in whatever ways."¹⁴⁷¹ Simultaneously, there is an erroneous understanding that feminism infers a lack of authority and conformity to basic management systems. One Executive Director told of how when she asked a member of staff to account for her absence from office for a week, the staff members was not only surprised but also complained of being unduly harassed by the questioning.¹⁴⁷²

¹⁴⁶⁶ Barry and Dordevic (2007) 49.

¹⁴⁶⁷ Barry and Dordevic (2007) 103-111 and 118.

¹⁴⁶⁸ Edwards and Sen (2000) 610.

¹⁴⁶⁹ Barry and Dordevic, quoting Adeleye-Fayemi (2007) 4.

¹⁴⁷⁰ Sheelan and Taylor (1997) 201, Goetz (1997) 22.

¹⁴⁷¹ Barry and Dordevic (2007) 70.

¹⁴⁷² Interview Mallya, Executive Director TGNP, 8 November 2007, Johannesburg.

Although conferences and workshops have been criticised as “talk-shops that talk to the converted,” without grounding activists within the communities they work with, they play a vital role in resuscitating activists’ morale. Face-to-face interactions generate trust and cement common interests that strengthen NGO relations and build camaraderie.¹⁴⁷³ TrustAfrica confirms that without having face-to-face contact, it would have been impossible to sustain virtual communications.¹⁴⁷⁴ Conferences are considered ideal for activists to share common goals, create rapport and by listening to each other minimise their fears and find comfort zones.¹⁴⁷⁵

As a good practice in South Africa, the South African NGO Network (SANGONET) coordinates the “CEO Circle” support forum for Executive Directors that discusses contemporary challenges, opportunities and trends.¹⁴⁷⁶ A similar circle was established in Uganda in 2008, to provide peer support to the Executive Directors of WNGOs¹⁴⁷⁷ on a monthly basis to dialogue on contemporary leadership challenges. The hosting rotates amongst the partners. African Women Development Fund (AWDF) has flexible working home hours, three months paid sabbaticals leave every three years, statutory pension and a severance package according to years worked, staff medical services, time off in lieu of long trips equivalent to one day a week, staff wellbeing budget, social secretary to take note of birthdays. As a result, staff at AWDF play hard and work hard.¹⁴⁷⁸ Likewise, the Centre for Human Rights at Pretoria has succeeded in attracting the “centre person” characterised as innovative and self motivated people by providing for flexible hours and dress codes with the primary goal being the achievement of set targets.¹⁴⁷⁹ Many activists have learnt to switch off mobile-phones at night and are inaccessible on weekends.

In its prime years, FIDA-U boasted of a team culture aimed at supporting the collegiality of women lawyers. The leadership of FIDA-U ensured the presence of the organisation at all major personal events of staff and the membership such as funerals and weddings.¹⁴⁸⁰ Tseliso asserts that applying human rights principles to management is “pure common sense: A good

¹⁴⁷³ Keck and Sikkink (1998) 169.

¹⁴⁷⁴ TrustAfrica Review (2005) 5.

¹⁴⁷⁵ Barry and Dordevic (2007) 50.

¹⁴⁷⁶ Interview, Jansen Executive Director Lawyers for Human Rights, 19 November 2007, Pretoria.

¹⁴⁷⁷ Minutes of the inaugural Executive Directors Forum on file with the candidate 22 February 2008.

¹⁴⁷⁸ Barry and Dordevic (2007) 112-113.

¹⁴⁷⁹ Interview Taku, Ag Director: Centre for Human Rights: Pretoria, 13 May 2008, Pretoria.

¹⁴⁸⁰ Interview, Sarah Bagalaaliwo, Former Chairperson of FIDA-U and Vice President, FIDA-International 18 June 2007, Kampala.

manager must lead by example and be a team player who acknowledges that he or she is a small component of the team, be firm while concurrently making staff enjoy their work, do not bestow favours and lastly, acknowledge that she is a human being capable of making mistakes.”¹⁴⁸¹

The principle of empowerment requires that NGOs must first empower themselves before proceeding to empower others. Therefore, NGOs must take care of their skills needs, provide an environment which is conducive to work as well as nurture safe spaces to coalesce as peers. Conversely, NGOs transfer their frustrations to the communities they are supposed to empower, and are prone to being dismissive.

6.2.4. Empowerment and resource mobilisation to achieve an NGO's mission

Ensuring resources to achieve the mission of an NGO is a core governance function of the Board. The funding profile, autonomy in designing strategic direction and policy development reflects the extent to which an NGO is considered empowered.¹⁴⁸² The discussion analyses the obligation of NGOs to mobilise resources in order to empower itself to fulfil its mission. Put differently, the discussion questions whether NGOs mobilise resources in a manner that advances their individual missions. It underscores an obligation of NGOs to demand equitable partnership with donors, irrespective of whether such donors are governments, foreign bilateral donors or foundations.

Globally, with the exception of AI which exclusively relies on membership dues, most INGOs receive funding from a combination of government agencies, private donations, corporations, business and governments.¹⁴⁸³ Similarly, the majority of NGOs in sub-Saharan Africa are largely unable to generate their own funding, but depend on either government or donors. In 1994, the majority of NGOs in East Africa derived 75% of their financial requirements from foreign donor support.¹⁴⁸⁴ In Uganda, in 2003 only 2.5% of the funding of NGOs was locally generated.¹⁴⁸⁵ In Tanzania 90% of NGOs are donor funded.¹⁴⁸⁶ Outstanding examples such as Gani Fawehinmi, “Nigerian’s most famous human rights activist,” who supports his activism exclusively by funds

¹⁴⁸¹ Interview Tseliso, Chief Executive Officer, South African Human Rights Commission (SAHRC), 22 February 2008, Johannesburg.

¹⁴⁸² Fowler (2002b) 304.

¹⁴⁸³ Mutua (2002) 51.

¹⁴⁸⁴ Mamdani and Otim (1994) 8.

¹⁴⁸⁵ Barr, Fafchamps and Owen (2003) 22.

¹⁴⁸⁶ REPOA (2007) x and 6.

raised from law publications and his law firm business, are rare.¹⁴⁸⁷ What is the state of the relationship between NGOs and government funding, as well as that between NGOs and donor funding.

a) *NGOs and government funding*

In order to safeguard against compromising an NGO's mission and promote autonomy, globally, human rights NGOs have resisted taking government funding.¹⁴⁸⁸ It is noteworthy that the UN ECOSOC requires that any government funding to an NGO with observer status should be reported to the Council Committee on NGOs,¹⁴⁸⁹ inferring that doing so is problematic. Amnesty International (AI), Human Rights Watch (HRW) and Oxfam-USA in principle do not accept government funding in the interest of protecting their independence and autonomy.¹⁴⁹⁰ In contrast, INGOs working in the development sector usually accept government funding.¹⁴⁹¹

Bell and Carens compare CARE with Oxfam-USA and observe that the reliance of CARE on United States government funding constrains CARE from criticising US Policy while OXFAM-USA which does not get government funding can easily do so.¹⁴⁹² Within East Africa and South Africa, government funding to civil society varies, with Kenya providing 5%, South Africa 42-44%, Tanzania 27% and Uganda 7% of NGOs' funding.¹⁴⁹³ In South Africa, human rights NGOs are largely foreign donor funded, barely receiving support from the state.¹⁴⁹⁴ Likewise, in East Africa, the bulk of government support is directed towards development NGOs working in service delivery.¹⁴⁹⁵

Some NGOs in East Africa have found government funding beneficial for having reduced fundraising anxieties and eased reporting requirements which enabled NGOs to concentrate on realising their mission. However, NGOs are frequently co-opted to endorse governments'

¹⁴⁸⁷ Okafor (2006) 143.

¹⁴⁸⁸ ICHRP (2003) 39, Table 3.1, Welch (2001) 270, Smillie (1999) 9.

¹⁴⁸⁹ ECOSOC RESOLUTION 1996/31, para 13.

¹⁴⁹⁰ Welch (2001) 14, Smillie 1999, 15 and 19.

¹⁴⁹¹ Bell and Carens (2004) 324.

¹⁴⁹² Bell and Carens (2004) 32.

¹⁴⁹³ Salamon et al (2004) 51, NPO Impact Assessment (2005) 30.

¹⁴⁹⁴ Seafeld (2003) 233.

¹⁴⁹⁵ Barr, Fafchamps and Owen (2003) 13, Nyangabyaki (2000) 45, Barya (2000) 25, Dicklitch and Lwanga (2003) 489.

development strategies and policies, and are often diverted from addressing human rights violations.¹⁴⁹⁶ And yet, the comparative advantage of NGOs in development is in monitoring and policy advocacy to ensure the reduction of poverty and inequalities as well as respect for rights.¹⁴⁹⁷ Although NGOs may continue to complement the state in service delivery, they have to concurrently monitor the state as the primary duty bearer to deliver rights.¹⁴⁹⁸ Failing to monitor and challenge government reduces an NGO's ability to promote the interests of the marginalized groups it is supposed to represent.¹⁴⁹⁹ For example, many NGOs have rarely challenged development policies in terms of their human rights gaps, but instead conformed to proposed agendas.¹⁵⁰⁰ It is only after the reviews of the PRSPs in 2004-2006 in East Africa that human rights and women's rights issues were incorporated into the process, as advocated by NGOs.

It seems that the critical issue is not government funding but the ability of a given NGO to articulate its mission, and safeguard its autonomy while simultaneously ensuring accountability to the various stakeholders such as communities, donors and government. It is hypocritical of NGOs to refuse national government funding but to readily embrace funding from foreign governments. For example, the Botswana Council for Non-Governmental Organizations (BOCONGO) is currently about 50% to 60% government funded, and yet prides itself as an independent critic of government.¹⁵⁰¹ In any case government money is public money derived from public taxation or debts to be paid by the public. NGOs and government serve the same people. As rightly argued by SAHRC all organisations pursuing constitutionally permissible goals, improve the quality of life, benefit society, address disadvantages and discrimination and should be eligible to apply for state funding.¹⁵⁰² Given that in practice NGOs resist government funding, the following discussion interrogates whether or not reliance on donor funding has empowered NGOs.

¹⁴⁹⁶ Smillie (1999) 10, Fowler (2000b) 641, Hulmes and Edwards (1997) 280.

¹⁴⁹⁷ Fowler (2000) 593.

¹⁴⁹⁸ Fowler (2000) 595, Tuijil (2000) 620, INGO Accountability Charter (2005) 1.

¹⁴⁹⁹ Fowler (2000b) 643.

¹⁵⁰⁰ Wandira and Patel (2003) 6, Butegwa (2001) 41, REPOA (2007) 9 and 15.

¹⁵⁰¹ Interview Tlale, Executive Director Botswana Council for NGOs (BOCONGO), 6 March 2008, Gaborone, BOCONGO Strategic Plan (2005-2010) 3 and 9.

¹⁵⁰² SAHRC, The exclusionary policies of voluntary associations (2005) 32.

b) *NGOs and foreign donor funding*

The question of whether NGOs mobilise resources in a manner that empowers themselves to achieve their mission is a highly contested one. A comparative study of Ghana, Uganda and South Africa found that whether or not the source of funding is internally or externally generated is not a determinant of an NGO's effectiveness or of its organisational autonomy.¹⁵⁰³ Rather, the success of an NGO is the function of internal accountability, technical expertise and the certainty of funding.¹⁵⁰⁴ On the other hand, the dependence of NGOs on external funding raises questions about the NGO's independence and empowerment to fulfil the NGO's mission.¹⁵⁰⁵

There is increasing criticism that donor funding retards NGO's creativity, diverts them from their mission, erodes accountability to the communities, aggravates competition between NGOs and fuels leadership wrangles within NGOs.¹⁵⁰⁶ Against these claims, what are the opportunities, challenges and dilemmas facing NGOs which seek to empower themselves by balancing competing accountabilities to the NGO's mission and the donor?

The heavy reliance on external funding has prompted governments to criticise NGOs as foreign stooges. Expectedly, in order to qualify for observer status under the ESCC, NGOs are required to have raised 50% of their funding internally.¹⁵⁰⁷ President Mugabe has accused NGOs of acting against the state and of facilitating foreign interference in national affairs.¹⁵⁰⁸ At the 50th National Conference of NRC in December 1997, then President Mandela criticised NGOs for lacking a popular constituency and working with foreign donors to undermining the government's development programme.¹⁵⁰⁹ President Mbeki publicly questioned NGOs' independence and manipulation by donors.¹⁵¹⁰ In an open letter to government, Smuts, Davids and Holland responded

¹⁵⁰³ Nyangabyaki, Friedman and Robinson (2001) 21.

¹⁵⁰⁴ Ibid.

¹⁵⁰⁵ Welch (1995) 47, An-Na'im (2001) 114-115, Mutua (2007) 15, Ngondi-Houghton (2007) 147, Uvin (2004) 104, Odinkalu (2001) 187, Bazaara (2000) 41, Bebbington and Riddell (1997) 110, Okafor (2006) 124-129.

¹⁵⁰⁶ Dicklitch (1998) 160, DeConnick (1992) 201, Uvin (2004) 104, Odinkalu (2001) 187, Nyangabyaki (2000) 41, Bebbington and Riddell (1997) 110, Okafor (2006) 124-129.

¹⁵⁰⁷ Statute of the ESCC of the Africa Union (2004) art. 2 v and vi.

¹⁵⁰⁸ Opening of the Fifth Parliament of Zimbabwe on 20th July 2004.

¹⁵⁰⁹ Smut, Davids and Hollands (2005) in *Capetime* 25 Oct 2005, and *Star* 26 October 2005, www.search.subnet.co.za/innopac.up.ac.za, accessed 9 Dec 2005; African National Congress Report of the President of the ANC, Nelson Mandela to the 50th National Congress of the ANC, 16th December 1997, Bell and Caren (2004) 347.

¹⁵¹⁰ Ibid.

to the unsubstantiated attacks by government for damaging NGO's public credibility.¹⁵¹¹ They clarified that:¹⁵¹²

While concerns about donors' setting the agenda are valid, it erroneously implies that NGOs are unable to assert their independence within unequal power relations between funder and recipient. It is also naïve to assume that donors do not have specific agendas-but these agenda are not necessarily sinister or antagonistic to South African policy and law. ... Obviously governments are also recipients of donor funding ... The political insecurity that NGOs concentrate on criticising government and assumption that good NGOs should be pliant servants of the government is unsophisticated- and shows intolerance ... Political pluralism rests heavily with the voices from below expressed through a diverse range of NGOs and civil society organisations.

In a spirit of public debate, former President Thabo Mbeki in his address to the National Assembly in 2005, maintained the issue of the genuineness of the African NGOs due to donor dependence is also discussed within the NGO community and that foreign funding prescribes particular programmes leaving limited room for negotiation.¹⁵¹³

A critical question that flows from the above is whether NGOs have empowered themselves to promote a genuine NGO/donor partnership. In an ideal situation, the relationship between donors and NGO is based on partnership.¹⁵¹⁴ Authentic partnerships between donors and NGOs require "joint commitment to long term interaction, shared responsibility for achievements, reciprocal obligations of equality, mutuality and balance of power."¹⁵¹⁵ The Commonwealth defines partnerships as:¹⁵¹⁶

... a relationship in which the parties involved have mutual respect for each other. Partnership means working together to find solutions and achieve goals. It also assumes a willingness to learn from each other for while equal, the parties have different but complementary skills and experiences. It means sharing power and pooling resources.

In practice, the term partnership inadvertently masks the power inequalities inherent in the donor/NGO relationship and assumes a similarity of experiences and contexts between NGOs and donors.¹⁵¹⁷

There is no doubt that donor resources and goodwill have contributed significantly

¹⁵¹¹ Ibid.

¹⁵¹² Ibid.

¹⁵¹³ Thabo Mbeki (2005) *Cape Times* 15 Nov (2005) 13, Topic 8, Ref No 18233, ID 03285003-01, www.search.subnet.co.za/innopac.up.ac.za.

¹⁵¹⁴ Commonwealth Foundation NGO guidelines on policy and practices (1995) guideline 12.

¹⁵¹⁵ Fowler (2002c) 244.

¹⁵¹⁶ Commonwealth Foundation (1995) 52.

¹⁵¹⁷ Smillie (1999) 12 and 29, Fowler (2000b) 642, Ngondi-Houghton (2009) 149, Maina (1998) 134.

to the execution and survival of NGO programmes. Due to a weak local philanthropic culture, resisting donor money can also be disadvantageous. For example, Western Cape Anti Eviction Campaign (WCAEC), which does not take money from outsiders, could not sustain its activism.¹⁵¹⁸ In comparison, without donors' funds through the agency of the National Land Committee (NLC), HPA would have been constrained in hosting the Landless People's Assembly in 2002, alongside the World Summit on Sustainable Development in Johannesburg.¹⁵¹⁹

Nonetheless, the high dependence on external resources implies that many organisations have artificial strength. The fact is that many NGOs would not survive without donor support.¹⁵²⁰ In South Africa after 1994, donors shifted funding from NGOs to government, forcing several NGOs to close down,¹⁵²¹ prominent of which were Human Rights Committee of South Africa and InterFund.¹⁵²² Even those NGOs that survived shrunk considerably. For example, the Lawyers for Human Rights (LHR) budget decreased from Rand 14 million to 8 million, its offices from 14 to 6 and its employees from 105 to only 37.¹⁵²³ In 2002, SANGOCO's personnel shrunk from 23 to 3 employees.¹⁵²⁴ At the time of the interview SANGOCO was housed by the Methodist Church. Donor dependency is also said to weaken NGOs through leadership wrangles, competition amongst the NGO sector and a lack of accountability to members and the public.¹⁵²⁵

Buttressed by the financial power, donors use their experiences to define NGO strategies and ideological frameworks.¹⁵²⁶ Donors refrain from funding projects that overtly challenge globalization, the IMF and the World Bank.¹⁵²⁷ In Uganda, from the late 1980s to the early 2000s donors were quite antagonistic to civil society challenging the Movement regime which faithfully implemented World Bank's economic reforms.¹⁵²⁸ In South Africa donors' prefer to fund

¹⁵¹⁸ Oldfield and Stokke (2004) 18.

¹⁵¹⁹ Greenberg (2004) 18.

¹⁵²⁰ Oloka-Onyango (2000b) 34.

¹⁵²¹ NPO Impact Assessment (2005) 41.

¹⁵²² Mubangizi (2004) 216.

¹⁵²³ Interview, Jansens Executive Director Lawyer's for Human Rights 19 November 2007, Pretoria.

¹⁵²⁴ Interview, Lorgat Executive Director SANGOCO, 29 November 2007, Johannesburg.

¹⁵²⁵ Nyangabyaki (2000) 37 and 41, Dicklitch (1998) 128 and 160, Uvin (2004) 104, Odinkalu (2001) 187, Bebbington and Riddell (1997) 110.

¹⁵²⁶ Ngondi-Houghton (2009) 154-155, Okafor (2006) 223, Orlins (1998) 140.

¹⁵²⁷ Interview Mutunga, then Programme Officer, Human Rights and Social Justice, the Ford Foundation Nairobi, 17 July 2007, Nairobi.

¹⁵²⁸ Dicklitch and Lwanga (2003) 482 and 484, Oloka-Onyango (2000a) 3-4 and 23.

safe areas framed in acceptable donor language but not hard-hitting advocacy work.¹⁵²⁹ For example, the Landless People's Movement (LPM) in South Africa could not secure donor resources for land occupation, but to advocate for equitable land redistribution.¹⁵³⁰ In Uganda, ACODE's coalition that relied on awareness raising and litigation was heavily donor funded because it was less radical than NAPE's public protest campaign.¹⁵³¹

Globally most NGOs assimilate the donor's agenda in terms of thematic focus, methodologies, and reporting formats to mention but a few.¹⁵³² Donor's control can take the form of sitting in meetings, vetting decisions, determining employment criteria and providing technical assistance that aligns the NGO to the donors' preferences.¹⁵³³

The power dynamics in the NGO donor relationship is captured by the Gambian proverb "the hand that receives is always under the hand that gives."¹⁵³⁴ According to Bayles and Bujra, "unequals do not negotiate: One can beg and plead, whilst the other may at best magnanimously concedes."¹⁵³⁵ Donors wield power by drafting the call for proposals, preparing the Memorandum of Understanding and determining what they will fund.¹⁵³⁶ The Aid industry reflects "patrimony not justice," because it is based on "benevolent self interest" rather than obligations with recipients expected to be grateful and thankful.¹⁵³⁷

Power imbalances are also reflected in the fact that questions remain unidirectional from the donor to the NGO.¹⁵³⁸ Yet, in East Africa, generally, NGOs observe that there is neither transparency in donor criteria nor clear mechanisms of dialogue with donors.¹⁵³⁹ Very few NGOs question donors and a majority grumbles quietly, for fear of falling out of favour.¹⁵⁴⁰ In spite of efforts to have few grant makers at the TrustAfrica's conceptualisation meeting, TrustAfrica's

¹⁵²⁹ Bell and Keenan (2004) 364 and 366.

¹⁵³⁰ Greenberg (2004) 24 and 25.

¹⁵³¹ Interview Muramuzi, Chief Executive Officer, NAPE 30 July 2004, Kampala, Interview Tumushabe, Executive Director ACODE, 17 July 2007, Kampala.

¹⁵³² Hulmes and Edwards (1997) 8.

¹⁵³³ Peter (2009) 285.

¹⁵³⁴ Isatouh Toure, *Where is the money for women's rights workshop*, 8 November 2007, Johannesburg.

¹⁵³⁵ Bayles and Bujra (2000) xii.

¹⁵³⁶ Interview Angila, Programme Officer, PACT-Kenya 6 Sept 2007, Johannesburg.

¹⁵³⁷ Fowler (2000) 593.

¹⁵³⁸ Smillie (1999) 30.

¹⁵³⁹ Michuki (2004) 57-58, Barr, Fafchamps and Owen (2003) 25, Mutunga (2003) 35.

¹⁵⁴⁰ Interview Angila, Programme Officer, PACT-Kenya 6 September 2007, Nairobi.

evaluation noted an “awkwardness and pressure that often arises when grant-makers and grant-seekers get together.”¹⁵⁴¹ Kingman has observed that “grantees find it impolitic to speak absolute truths to donors. Meetings with donors reveal subtle changes in body language with the activist hanging on every word of the donor, laughing at every unfunny joke and praising at every small and at times insignificant contribution.”¹⁵⁴²

The above power imbalance notwithstanding it is necessary to underline the obligation of NGOs to empower themselves and safeguard their autonomy while simultaneously achieving their mission. By accepting to be defined by other interests, NGOs connive in their marginalisation.¹⁵⁴³ Therefore, NGOs have largely failed to alter the power imbalances in favour of NGOs.¹⁵⁴⁴ Andreassen finds that donor dependence has resulted in the “marketisation of civil society”:¹⁵⁴⁵

The ‘marketisation’ of civil society reflects a trend where civic society programmes are seen as ‘commodity’ or products with buyers (donors as ‘fundors’) and sellers [NGOs]. With competition among organisations (about funding) as well as among donors (for good projects) the relationship that occurs is very close to a market relation directed at equilibrium between demand and supply at a certain price (the expenses of the programme).

Another dilemma is that NGOs tend to wrongly equate the size of the organisation to being empowered, due to the false idea that bigger connotes more impact and effectiveness.¹⁵⁴⁶ In fact most NGOs are incapable of maintaining a large staff similar to that of INGOs, although they are effective in their work. For example, because WNGOs remain small they are misconceived as vulnerable and weak.¹⁵⁴⁷ Drawing on the analogy of cars, Smillie observes that size is irrelevant to the impact and efficiency of an NGO.¹⁵⁴⁸ The rapid expansion of an NGO can prove detrimental. FIDA-U’s rapid expansion without a clear strategic plan and monitoring processes adversely resulted in projects functioning as independent NGOs within the organization. As the organisation recruited more staff minimal attention was placed on quality. Consequently, the bulk of the staffing was support staff without clearly demarcated roles and responsibilities.

¹⁵⁴¹ TrustAfrica Programme Evaluation, October (2005) 8.

¹⁵⁴² Interview Kingman, then Executive Director ALLAVIDA, 21 July 2007, Nairobi.

¹⁵⁴³ Interview, Kisare Executive Director EASUN, 8 August 2007, Arusha.

¹⁵⁴⁴ Barr, Fafchamps and Owen (2003) 22, NPO Impact Assessment (2005) 44.

¹⁵⁴⁵ Andreassen (2002) 115.

¹⁵⁴⁶ Fowler (2000) 560, Edwards and Hulmes (2002) 195.

¹⁵⁴⁷ AWID (2007) 21.

¹⁵⁴⁸ Smillie (1999) 8.

A related challenge is the reluctance of NGOs to ask for money for fear of receiving a “No.” As amply articulated by Worth, a “no” should be embraced and interrogated:¹⁵⁴⁹

“No” means many different things, but – to repeat what all accomplished sales folks understand – rarely is it a personal rejection. ‘No’ may mean not now, not yet, not for that amount, not in cash, not for this programme, or not until I feel more comfortable. When you take the risk, make the request and hear ‘no,’ don’t despair. Don’t flee the conversation in embarrassment. On the contrary, keep it going. Find out what kind of ‘no’ the prospect is expressing. If volunteers do not take the risk and make some errors, they have no chance to learn and grow. Fear is expensive! It can prevent you from finding and winning supporters.”

A study of the women’s movement unveiled a very uncomfortable and suspicious attitude towards money which they associate with corruption, criminality and erosion of independence.¹⁵⁵⁰ Those activists who give money are sometimes seen as the ‘other’ or part of the oppressors to such an extent that their monetary donations are not valued in the same way as time and skills.¹⁵⁵¹ At the Uganda Feminist Forum, a participant conducted a rapid response survey that revealed that many participants perceived those with money as probably having acquired it through dubious means and the complacency that activists were better off without money.¹⁵⁵²

Unsurprisingly, some NGOs are visibly under-resourced. For instance, for over a decade, Association of Non-Governmental Organisations in Zanzibar (ANGOZA) was run by one woman who also served as Director, administrator, secretary and office attendant. The office moved and closed with the director because there was no other staff to keep it running, thus undermining ANGOZA’s effectiveness.¹⁵⁵³ Zanzibar Female Lawyers’ Association (ZAFELA) has no permanent staff but relies on volunteers from the Ministry of Constitutional Affairs, thus its Secretariat is usually closed.¹⁵⁵⁴

Chris Peter distinguishes between the few NGOs with an established track record and diversified funding that are able to control their agenda and the majority who are controlled by donors, to such an extent that they function as donor departments.¹⁵⁵⁵ The above notwithstanding the combination of diversified funding, the reputation to deliver high quality work and strong

¹⁵⁴⁹ Worth (2003) 9-10.

¹⁵⁵⁰ Barry and Dordevic (2007) 38.

¹⁵⁵¹ Interview Barry, International consultant gender and human rights and governance, 1 Feb 2008, London.

¹⁵⁵² Kawamara, session on “women and money,” *Uganda Feminist Forum*, 19 Jan 2008.

¹⁵⁵³ Interview Abubakar Executive Director Association of NGOs in Zanzibar (ANGOZA), July 26 2008, Zanzibar.

¹⁵⁵⁴ Interview Othman, Chairperson Zanzibar Legal Service Centre, 27 July 2007, Zanzibar.

¹⁵⁵⁵ Peter (2009) 311, Tajudeen, World Social Forum, Frank talk in the family panel discussion 18 January 2007.

internal governance shields some NGOs from the unequal donor-recipient relations.¹⁵⁵⁶ Progressively, donors also encourage a diversification of NGO funding as a demonstration of a particular NGO's credibility. NGOs that diversify funding are capable of setting the agenda as well as influencing that of the donor.¹⁵⁵⁷ A few NGOs are able to secure core support from donors. Core funding is a litmus test for trust and commitment to invest in any NGO.¹⁵⁵⁸ Core support boosts an NGO's esteem, its strategic institutional development and its overall and governance. Often times NGOs are tempted to take the unrealistically budgeted project funding or "cover administrative costs by fudging their financial statements."¹⁵⁵⁹

It is incumbent on the NGO to expose the inequalities between donors and grantees to scrutiny in order to devise honest strategies to improve the achievement of common goals. For example, while generally, donors are rarely interested in grantee feedback,¹⁵⁶⁰ some such as Open Society, the Ford Foundation, Plan International and Action Aid solicit grantees' input into their annual reflection processes. Donor agencies are rarely held accountable for the impact of their decisions or pressured to be transparent about the theories of social change they apply.¹⁵⁶¹ Unless there is a deliberate effort of making donors realise the importance of building egalitarian relationship, both NGOs and parties are curtailed from working to their fullest potential. Experience demonstrates that if a donor wields power in a manner that strengthens the NGO partner, the funded projects are more sustainable.¹⁵⁶² Donors with a human rights consciousness advance the space and opportunities for NGOs to achieve common objectives.¹⁵⁶³ For example, policy dialogues between donors and host country governments have a much bigger influence on improving the human rights environment than NGOs can on their own.¹⁵⁶⁴

¹⁵⁵⁶ Gupta and Kellman (2009) 273, ICHRP (2003) 40.

¹⁵⁵⁷ Gupta and Kellman (2009) 273, Ngondi-Houghton (2009) 157, ICHRP (2003) 40.

¹⁵⁵⁸ AWID (2007) 75, Barry and Dordervic (2007) 131.

¹⁵⁵⁹ Smillie (1999) 12, Bell and Keenan (2004) 364, REPOA (2007) 12-13.

¹⁵⁶⁰ Kingstone accountability survey (2006) 10.

¹⁵⁶¹ Edwards (2004) 105.

¹⁵⁶² Interview Brown Resident Representative, Southern Africa, 5 November 2007, Johannesburg, Interview Aina, then Resident Representative Ford Foundation Eastern Africa, 5 September 2007, Nairobi.

¹⁵⁶³ Interview Mutunga Programme Officer, Human Rights and Social Justice, Ford Foundation, Nairobi, 17 July 2007, Nairobi.

¹⁵⁶⁴ Blair (1997) 32.

“Friend-raising” is an essential first step in building meaningful relationships.¹⁵⁶⁵ Therefore, each board member has an obligation to introduce the NGO to individuals with whom they have a “level of personal relationship.”¹⁵⁶⁶ NGOs make choices in terms of relationship with donors, mission and strategies to achieve them. NGOs are also capable of influencing donors in a manner that enables each party to achieve their objectives.¹⁵⁶⁷ An NGO that is a “prisoner of money-raising” suffers from “serious identity crisis,” because of derailing from its mission.¹⁵⁶⁸ The purpose of “raising money is precisely to enable the [NGO] to carry out its mission without subordinating that mission to fundraising.”¹⁵⁶⁹ Drucker distinguishes between fund-raising and fund-development in that:¹⁵⁷⁰

Fund-raising is going around with a begging bowl, asking for money because the need is so great. Fund development is creating a constituency which supports the organisation because it deserves it. It means developing a membership that participates through giving ... the ultimate goal of fund development is self-fulfilment.”

It is commonplace that NGOs habitually accept money for projects that divert NGOs from their mission and jeopardise their independence. Indeed, NGOs often confess that they compromise their mission in order to suit donor priorities and that they tend to compete amongst each other.¹⁵⁷¹ Consequently, NGOs have a responsibility to assert their own power, including saying “No” to the money that does not support the NGO’s mission or else take responsibility for being corruptible.¹⁵⁷² Each NGO has a responsibility not to seek “opportunistic funding.”¹⁵⁷³ For example, some women NGOs resisted the US Global AIDS funding because of the “Prostitution Loyalty Oath,” obliging NGOs to oppose prostitution but with the resultant adverse effect on HIV/AIDS prevention and human rights protection.¹⁵⁷⁴ *Yiga Ngo’kola* in Uganda

¹⁵⁶⁵ Greenfield (2003) 14.

¹⁵⁶⁶ Ibid.

¹⁵⁶⁷ Hulmes and Edwards (1997) 11-12 and 283, AWID (2007) 104.

¹⁵⁶⁸ Drucker (1990) 41, Lakey (2000) 13.

¹⁵⁶⁹ Drucker (1990) 41.

¹⁵⁷⁰ Drucker (1990) 41-42 and 43.

¹⁵⁷¹ AWDF and AA-Africa wide workshop: *Where is the money for women’s right*, 8 November 2006, Johannesburg.

¹⁵⁷² Interview Brown, Resident Representative, Ford Foundation, Southern Africa, 5 November 2007, Johannesburg.

¹⁵⁷³ Commonwealth Foundation (1995) 46 and 48.

¹⁵⁷⁴ Barry and Dordevic (2007) 17, AIDS policy Watch: The Global Working Group “U.S. Anti-prostitution policy and HIV/AIDS, www.aidspolicywatch.org/sex-work/.

suspended its relationships with MS-Uganda for a year in order to reflect on its strategic role and the relevance of the Danish technical advisor.¹⁵⁷⁵

Any effective actor for social change must have a clear vision, mission and objectives, which practically translate into having an agenda. Thus donors like NGOs or government have agendas which are publicised in the call-for-proposals or websites which each NGO must familiarise themselves with. Significantly, the role of donors is not merely to distribute money to NGOs, but rather to meet the objectives of their agencies. Therefore a donor will give money to an NGO that can best facilitate the objectives of the donor agency. Thus, it is important to have a quality proposal that highlights how both the NGO and the donor agency can realise their common goals.¹⁵⁷⁶ It is also incumbent on the NGO to deliver what it committed itself to do in the proposal.¹⁵⁷⁷

The need to demonstrate funding outputs infers that the NGO with the best proposal gets funded. Due to a lack of technical expertise, strong personal connections and fluency in English, many CBOs shy away from engaging the donor processes.¹⁵⁷⁸ For example, in South Africa the introduction of the European Union Practical Rules and Guidelines Procedures (PRAG) in 2003 constrained CBOs to meet the technical requirements of the proposal. As a good practice, the Foundation for Human Rights (FHR) in South Africa provided a system where NGOs mentored CBOs in order to enable the latter access funding.¹⁵⁷⁹

NGOs have to put their house in order by strengthening their governance. Most donors are attracted to innovations, success, accountability, transparency, positive impact, strong and committed grantees and team work for the common purpose of social justice. Hence, NGOs should not be modest about their achievements but need to demonstrate the impact of their work. According to Adeleye-Fayemi, successful fundraising entails working on the three 'Ms': the Mission, Message and the Messenger: a well conceptualised mission, a crisp and dynamic message that resonates with a cross section of stakeholders as to why it is important to fund a particular NGO and the messenger, credible individuals to market the NGOs' mission to all levels of society.¹⁵⁸⁰

¹⁵⁷⁵ Nabudere (2009) 250.

¹⁵⁷⁶ Donor round table: Ayanda Mvimbi OXFAM-UK, John Campbell- HIVOS, Barbra Phillips AWDF-US, Alice Brown –Ford Foundation Where is the money for women's rights, 9 November 2007, Johannesburg.

¹⁵⁷⁷ Interview Jenkins, Director Special Projects IDASA, 14 November, Pretoria.

¹⁵⁷⁸ Barr, Fafchamps and Owen (2003) 25.

¹⁵⁷⁹ FHR Review (2005) 25.

¹⁵⁸⁰ Interview Adeleye-Fayemi, Executive Director, Africa Women Development Fund, 7 November 2007,

While acknowledging that a key ingredient of fund raising is “friend-raising,”¹⁵⁸¹ an African working in the donor agency urged “friends” to meet the obligations of the contract and effectively communicating the impact of the funding in order to shield the donor from accusations of conflict of interest.¹⁵⁸² Another donor previously working with an NGO reflected that when a proposal from former colleagues in the NGO sector is turned down, NGOs tend to question one’s loyalty to the cause.¹⁵⁸³ Having discussed how NGOs address their internal empowerment I now turn to examine how NGOs have addressed the unequal power relationships within the NGO sector.

6.3. Empowerment of marginalised groups within the NGO sector

Cognisant that power dynamics are in continuous flux, NGOs as promoters and defenders of human rights are also capable of being violators of human rights principles. Given that power is a process of human relationships,¹⁵⁸⁴ the continuation of power relations depends to some extent on the cooperation of the weak to quietly accept it.¹⁵⁸⁵

There is unequal power between WNGOs and HURINGOs. Hence the examination of how NGOs have applied the principles of gender equality within their organisations.

6.3.1. NGOs and the empowerment of women

From a feminist perspective empowerment relates to the growth and development of women’s autonomy and trust in women’s abilities.¹⁵⁸⁶ While feminists distinguish between bad power as “power over others” and good power as “the capacity to achieve one’s goals,”¹⁵⁸⁷ the two models of power are inter-related because an empowered person is better able to challenge power-over.¹⁵⁸⁸ Ironically, individual empowerment characterised by self-confidence and self-efficacy on its own is not a key determinant of women’s choices. Women’s choice is also shaped by societal

Johannesburg.

¹⁵⁸¹ AWID (2007) 115.

¹⁵⁸² Interview Wandira, Programme Officer Regional Women’s Rights Coordinator, Action Aid International 8 November 2007, Johannesburg.

¹⁵⁸³ Interview, Lingalireni Programme Coordinator, Oxfam-Malawi, 8 November 2007, Johannesburg.

¹⁵⁸⁴ Lips (1991) 3-4.

¹⁵⁸⁵ Lips (1991) 3 and 8.

¹⁵⁸⁶ Lips (1991) 8.

¹⁵⁸⁷ Ibid.

¹⁵⁸⁸ Lips (1991) 7.

inequalities, such as heavy domestic work, internalised inferiority and a simple lack of time.¹⁵⁸⁹ Therefore, the empowerment of women requires a “collective redefinition of what it means to be male and female in order to change the gender patterns of dominance, subordination and privilege.”¹⁵⁹⁰

The disconnection between human rights and women’s rights is reflected in the HURINGOs and WNGOs relationship. Despite the conceptual clarity that women’s rights are human rights,¹⁵⁹¹ generally there is a gap between HURINGOs and WNGOs.

The seclusion of women’s rights is traced to the international human rights framework. The establishment of the Commission of Status of Women in 1947, with the noble goal of paying attention to specific women issues, inadvertently resulted in a parallel track within the U.N: One addressing human rights in general and the other taking up women rights.¹⁵⁹² The parallel track fuelled the illusion that the safeguarding of women’s rights was exclusively a women’s job.¹⁵⁹³ To address this anomaly, in April 2007, the UN Secretary General reiterated that gender equality is a mandate of all UN entities and committed himself to the recruitment of “competent” women to his senior team.¹⁵⁹⁴

The state-centric human rights discourse, characterised by the private/public dichotomy trivialises women’s rights as private and not as public (human rights) issues. The individualistic orientation of human rights hides the structural inequalities accruing from patriarchy, class and state.¹⁵⁹⁵ Consequently, until the 1990s, most African constitutions omitted “sex” as a ground of non-discrimination, thus locking women’s struggles out of the arena of legal discourse. While HURINGOs mainly monitor the observance of legally binding treaties, WNGOs mostly focus on advocacy for law reform to protect women’s rights as legal rights.¹⁵⁹⁶

In view of the above, in the 1980s, the concept of gender mainstreaming was created in order to integrate women’s rights within all processes of development planning. Gender

¹⁵⁸⁹ Goetz (2005) 5.

¹⁵⁹⁰ Bayles and Bujra (2000) 23.

¹⁵⁹¹ Vienna Declaration (1993) para 18.

¹⁵⁹² Brautigam (2002) 4.

¹⁵⁹³ Brautigam (2002) 4.

¹⁵⁹⁴ Report A/61/836, www.un-ngls.org, 16 April (2007) para 17 and 18, also refer www.cwgl.rutgers.edu/globalcenter/policy/unadvocacy/gea.html.

¹⁵⁹⁵ Keck and Sikkink (1998) 184, Oloka-Onyango (2000) 33.

¹⁵⁹⁶ Wanyeki (2009) 238.

mainstreaming addresses the different ways in which gender relations shape women's and men's access to rights, resources and opportunities. Cognisant of the high obstacles to women's equal participation in public spaces, "gender equality, or the reduction of inequalities between the sexes, is an appropriate proxy measure of progress towards social justice goals."¹⁵⁹⁷ The Beijing Platform of Action requires all institutions and organisations to have equality of men and women in their ranks.¹⁵⁹⁸ Having women at the decision making table has the potential of promoting gender accountability, responsiveness to gender sensitive goals, policies, procedures, staffing, incentive systems, programmes and projects.¹⁵⁹⁹ Genuine engendering of HURINGOs has many advantages. HURINGOs cannot achieve social justice outcomes without a value system based on equity, respect and the participation of marginalized groups not as passive recipients of good gestures but as active participants.¹⁶⁰⁰ Both women and men have to participate in the building of an egalitarian society. Genuine gender mainstreaming casts women's issues as societal issues.

In reality, most workplaces are gendered institutions making it difficult for women to have parity with men.¹⁶⁰¹ Masculine solidarity does not mean that all men are against all women, but is rather about the "order of things ... even some women could be opposed to the idea of a woman ruling."¹⁶⁰² While it is expected that HURINGOs would apply the principles of equity and empowerment, very few HURINGOs have empowered women as leaders in their organisations. The resistance to women's leadership role is expressed by both men and women. A female Executive Director reflected that when she was confirmed, she did not receive any congratulations from her female peers, and also a female colleague challenged her confirmation to the Board.

A good example, of making women's rights part and parcel of NGO work is the Ford Foundation. A globally-renowned critical ally of women's rights,¹⁶⁰³ the Foundation applies the Diversity Table as a mandatory prerequisite for its funding. The Diversity Table outlines how a grantee promotes the participation of marginalised groups on account of sex, religion, ethnic minorities in both leadership and staffing. Placing women at the decision making tables is a starting point in altering power dynamics within the NGO sector. For example, LHR, HURISA and Centre

¹⁵⁹⁷ Goetz (2005) 1.

¹⁵⁹⁸ Beijing Platform of Action (1995) objective G.1, para 192 (c).

¹⁵⁹⁹ Goetz (1997).

¹⁶⁰⁰ Gaventa (2005) 16-23.

¹⁶⁰¹ Peacock (2005) 198.

¹⁶⁰² Ahikire (2004) 227.

¹⁶⁰³ AWID (2007) 88.

for Human Rights-Pretoria in South Africa, Botswana NGO Council (BOCONGO) and KCK in East Africa have about 50% leadership of women both at the board level and in senior management. In LHR and HURISA the Chairpersons of the Boards are women. The Homeless People's Association made deliberate efforts to provide opportunities for women's leadership as a collective and thus empowered women as equal and active participants.¹⁶⁰⁴ Recognising the importance of women's participation in the constitutionalism discourse, KCK in East Africa mobilised resources from the Ford Foundation for a masters' programmes in Democratisation and governance for women lawyers.¹⁶⁰⁵ KCK's gender policy provides for the equal representation of men and women in decision making and its activities.

In Uganda, a government-commissioned study on the status of NGOs revealed that despite women and children being the dominant target group of 70% of NGOs, 75% of Directors are men with women mostly occupying the lower levels of these organisations.¹⁶⁰⁶ Likewise, in South Africa, the leadership of most NGOs and CSOs is predominantly male, irrespective of the fact that the majority of memberships are women.¹⁶⁰⁷ For example, although 60% to 70% of TACs' membership is women, TAC's public face is predominantly male, with women only constituting about one third of office bearers.¹⁶⁰⁸ Even when men are absent from the Landless People's Movement (LPM), household heads are usually taken to mean men.¹⁶⁰⁹

Following the Vienna Declaration, major INGOs such as Amnesty International and Human Rights Watch established women's projects.¹⁶¹⁰ However, they are comparatively marginalized and under-funded.¹⁶¹¹ The Gender Unit at the Centre for Human Rights in Pretoria is managed by one staff member and was so poorly funded that at one point the programme manager spent 90% of her time fundraising.¹⁶¹² To address this anomaly, in 2008 the Centre budget has integrated the Gender Unit.¹⁶¹³ Likewise, HURISA concedes that donors are reluctant to fund

¹⁶⁰⁴ Khan and Pietersen (2004) 13.

¹⁶⁰⁵ KCK Annual Report 1999.

¹⁶⁰⁶ Barr Fafchamps and Owens (2003) 16-20.

¹⁶⁰⁷ Egan and Wafer (2004) 14, Friedman and Mottair (2004) 11, Hassim (2004) 15, Lorgat (2007) 31.

¹⁶⁰⁸ Friedman and Mottair (2004) 11-12.

¹⁶⁰⁹ Greenberg (2004) 9 and 21.

¹⁶¹⁰ Keck and Sicking (1998) 184-185.

¹⁶¹¹ Keck and Sicking (1998) 184-185.

¹⁶¹² Interview Stefiszyn, Programme Manager, Gender Unit Centre for Human Rights Pretoria, 13 May 2008, Pretoria.

¹⁶¹³ Interview, Taku, Director Centre for Human Rights Pretoria, 13 May 2008, Pretoria.

women's specific work on the assumption that it is addressed under "gender."¹⁶¹⁴ Many HURINGOs plead that it is pragmatically impossible to engage the gender discourse further reinforcing the misconception that gender programming is not integral to the rights discourse.¹⁶¹⁵

The technical application of gender mainstreaming has neither challenged the status quo nor safeguarded women's rights, but has facilitated the co-optation of women.¹⁶¹⁶ In practice very few HURINGOs generally take on women rights issues and very few WNGOs conceptualise their work within the rights framework.¹⁶¹⁷ WNGOs tend to be mostly situated within the development arena with only a handful having a defined feminist ideology.¹⁶¹⁸ Inadvertently, the exclusive focus on women's rights by WNGOs further ghettoises women's rights.¹⁶¹⁹ During the land reform debate in Tanzania, Mallya noted a disconnection between the National Land Forum (NALAF) and the Gender Land Task Force (GLTF) in that NALAF focused on protecting land for the poor in order to guarantee the equitable distribution between men and women, while GLTF contended that poverty is gendered and thus exclusively worked on the access rights of women and youth to land.¹⁶²⁰

Similarly, WNGOs are still ambivalent about including men in their work because of the likelihood of diluting the women's rights agenda or the possibility of the public misappropriation of women's creative ideas to men.¹⁶²¹ While conceding that the enemy of women is not men but patriarchy, it is preferred that "women own and direct feminism, for enlightened men do not have the personal understanding of being subjugated on the basis of gender."¹⁶²² The Africa Feminists Charter underlines the importance of women's organisations to be led and managed by women.¹⁶²³

At the same time, some women contend that WNGOs have to address their "own fundamentalism" because people different from themselves have a similar list of hopes and fears,¹⁶²⁴ requiring women to begin to communicate and listen to the so called "other."¹⁶²⁵ The fact

¹⁶¹⁴ Interview Letlojane, CEO, Human Rights Institute South Africa, 5 Nov 2007, Johannesburg.

¹⁶¹⁵ Interview Aina, then Resident Representative, the Ford Foundation, 5 Sept 2007, Nairobi, Okafor (2006) 95.

¹⁶¹⁶ Tamale (2009) 50, Kitunga (2003) 48.

¹⁶¹⁷ Oloka-Onyango (2002) 291.

¹⁶¹⁸ Moyo (2002) 13.

¹⁶¹⁹ Oloka-Onyango (2002) 293.

¹⁶²⁰ Mallya (2007) 64.

¹⁶²¹ Kibalama and Nassali (2004) 13.

¹⁶²² Tamale (2009) 72.

¹⁶²³ Africa Feminist Charter (2006) 13.

¹⁶²⁴ Pritchett (2005) 17.

that a great deal of female mobilisation occurs outside women-dominated organisations necessitates strategic alliances to be set up between WNGOs and civil society organisations in general.¹⁶²⁶ Since feminism is a political process that seeks to alter patriarchy by emancipating women, WNGOs have to entrench gender equality in society but with a distinct mission of articulating women's rights.¹⁶²⁷ For example, the success of the advocacy over the Sexual Offences Bill in Kenya is partially attributed to the positioning of the campaign as a societal issue in collaboration with Sam Thenya of Nairobi Women's Hospital, who facilitated as the male face of the campaign.¹⁶²⁸

It is important to point out the fact that since the advent of gender mainstreaming, there has been a steady decline of funding to women specific programmes.¹⁶²⁹ For example, in 2005, 726 WNGOs had a combined income of only US\$ 76 million constituting less than 4% of World Vision's income of US\$ 2 billion.¹⁶³⁰

The experience of Development Network of Voluntary Association (DENIVA) in Uganda, Christian Partner's Development Associates (CPDA) in Kenya and Homeless People's Association (HPA) in South Africa reveals that the engendering of the governance processes entails: Being sensitive to the constraints on women's participation; Targeting both men and women to mirror real life situation in order to address gender based challenges; Providing closed sessions to enable women raise the controversial issues as a collective; Using time that is sensitive to women's multiple roles; working from familiar and walking distance venues; Using local languages to stimulate the eloquence of both men and women in a local setting; Using local drama to de-package complex concepts by relating them to real life situation and having trainings facilitated by both men and women.¹⁶³¹

To mitigate the sense of disempowerment experienced by men which results in the excessive use of alcohol and domestic violence, *Yiga Ng'okola* engages both men and women in critical dialogues about the unequal sexual division of labour.¹⁶³² Voluntarily men began to share in

¹⁶²⁵ Pritcher (2005) 17.

¹⁶²⁶ UNRISD (2005) 168.

¹⁶²⁷ Hassim (2004) 2 - 3, Banda (2005) 7, Kitunga (2003) 37.

¹⁶²⁸ Interview Njoki-Ndungu, UN woman of the year, 2006 and MP Kenya, 7 Sept 2007, Nairobi.

¹⁶²⁹ Association for Women's Rights in Development (AWID) (2007) 20, 42 and 51.

¹⁶³⁰ AWID (2007) 13.

¹⁶³¹ The Ford Foundation evaluation of the Governance and Civil Society Programme (2006).

¹⁶³² Nabudere (2009) 248-249.

household chores such as fetching water on their motorcycles.¹⁶³³ Likewise, Organisation for Rural Association for Progress (ORAP) in Zimbabwe works with both men and women within the family unit in order to create fairer gender relations and indeed women have taken leadership roles in most groups.¹⁶³⁴ The family approach also impacted positively on men, by enabling them to appreciate the benefits of balanced gender roles.¹⁶³⁵ FEMNET's men-to-men initiative, in South Africa, Kenya, Malawi and Namibia was focussed on increasing men's role in combating gender based violence and HIV/AIDS.¹⁶³⁶ Men's Initiative for South Africa appreciates the power imbalance between men and women that enables men to influence and determine reproductive health, choice, family planning, condom usage and sexual abstinence.¹⁶³⁷ Although Men for Equality (MEW), an NGO in Kenya founded by Rev. Njoya works parallel to the women's movement and focuses on the socialisation of men it uses reference materials from the feminist movement.¹⁶³⁸ In March 1997, SANGOCO Pretoria march under the banner "Real men do not abuse women and children," was the first in the world to break male silence around violence against women.¹⁶³⁹ It drew the participation of ministers, business leaders, bishops and sports representatives, among others and was addressed by then President Mandela.¹⁶⁴⁰

Nonetheless, the major challenge is to secure a definite, consistent and committed constituency of men.¹⁶⁴¹ NGOs do not have a legitimate basis to exclude gender issues while WNGOs have a legitimate interest to protect their space from capture by men. In the submission to the SAHRC, Woolman argues that the only proper basis for exclusionary practices would be to prevent capture.¹⁶⁴² Capture means "a legitimate fear that new members would fundamentally alter the character of the organisation."¹⁶⁴³ The SAHRC advised that a voluntary association that excludes women must demonstrate a "reasonable apprehension that the inclusion of women would

¹⁶³³ Nabudere (2009) 248-249.

¹⁶³⁴ Sibanda (2002) 327.

¹⁶³⁵ Sibanda (2002) 327.

¹⁶³⁶ Mutunga (2009) 123-124.

¹⁶³⁷ Peacock (2005) 189.

¹⁶³⁸ Mutunga (2009) 130.

¹⁶³⁹ SANGOCO Annual Report (1997-1998) 12-13.

¹⁶⁴⁰ SANGOCO Annual Report (1997-1998) 12-13

¹⁶⁴¹ Mutunga (2009) 114.

¹⁶⁴² SAHRC, The exclusionary policies of voluntary associations (2005) 23.

¹⁶⁴³ SAHRC, The exclusionary policies of voluntary associations (2005) 23.

adversely and prejudicially affect the objectives of the voluntary association and would not perpetuate the disadvantages against women.”¹⁶⁴⁴

The SAHRC further clarified that any organisation seeking to adopt exclusionary policies would have to:¹⁶⁴⁵

- a) identify the right or interest it seeks to protect,
- b) identify the right that may be infringed or limited by the adoption of the policy,
- c) determine the alternative ways of achieving its objectives,
- d) adopt the alternative without unreasonable and unfairly limiting or restricting rights, and
- e) maintain reasons as to why a particular method or means was adopted and other alternatives disregarded.

In view of the disconnection between women’s NGOs (WNGOs) and human rights NGOs (HURINGOs) with the NGO practice, there is a need for a dual strategy that applies gender-mainstreaming strategies to supplement but not replace specific women’s rights programming. Engendering NGOs circumvents the adverse effect of the decline of funding to women specific programmes in favour of gender programming, situates women’s rights as a societal issue, targets the high numbers of women mobilised outside WNGOs, and helps to mobilise men to participate in achieving an egalitarian society, based on equity, respect and participation of marginalized groups.

6.3.2. NGOs and the empowerment of the youth

It is noteworthy that until the adoption of the African Youth Charter in 2006 there was no human rights document at a continental level that paid special attention to the situation of the youth. Youth issues were addressed either under the African Charter on the Rights and Welfare of the Child or generally as adults. The African Youth Charter defines a youth as a person aged between 15 and 35 years of age.¹⁶⁴⁶ The African Youth Charter provides that youth programmes and organisation should be led by youth.¹⁶⁴⁷ Youth are entitled to participation in all spheres of life.¹⁶⁴⁸ They are also obliged to defend democracy, the rule of law and human rights¹⁶⁴⁹ and encourage the culture of voluntarism, human rights protection and participation in civil society.¹⁶⁵⁰

¹⁶⁴⁴ SAHRC, *The exclusionary policies of voluntary associations* (2005) 29.

¹⁶⁴⁵ SAHRC, *The exclusionary policies of voluntary associations* (2005) 31.

¹⁶⁴⁶ African Youth Charter Preamble.

¹⁶⁴⁷ Africa Youth Charter art. 10 (2).

¹⁶⁴⁸ African Youth Charter (2006) art. (11).

Throughout Africa, issues affecting the youth have been marginalised and mainly used as tools of violence particularly during elections and armed conflicts. Youth struggles have been entirely left to youth organizations, with the exception of a few initiatives such as The *Triple F Initiative* launched by MWENGO in Zimbabwe in 2003, which brought together youth from Southern and Eastern Africa to reflect on the Vision of Africa for 2050.¹⁶⁵¹

Unfortunately, the predominant model of power within NGOs is hierarchical. Younger activists are expected to conform to the existing structures and systems established by older activists or else start their own organisations. Although WNGOs claim allegiance to sisterhood premised on equality within WNGOs, the mother-daughter dynamic is predominant in the way activists relate to each other.¹⁶⁵² “It is about hierarchies, competition, control and approval. If a daughter wants to become a leader she has to symbolically push her mother away. She has to reject her.”¹⁶⁵³ Consequently, many NGOs fail to honour their pioneers without much recognition of their contribution yet most of them do not have a pension to retire to.¹⁶⁵⁴ Young activists complain of being excluded by the current leaderships in organisations. Although 70% of the TAC’s membership fall in the 14 to 24 year age groups, it is uncertain whether the grassroots youth inform the TAC agenda.¹⁶⁵⁵

The challenge for HURINGOs is to utilise creative and non-traditional strategies that appeal to the youth such as drama and music as well as taking on issues that are of interest to them. Youth are crucial to the continuity of the human rights movements, hence the imperative of intergenerational learning.

Young feminists consider the movements as irrelevant to their concerns and feelings, because older feminists are “patronising, arrogant or misdirected.”¹⁶⁵⁶ Even where issues of concern are similar, there are different interpretations reflecting different contexts and perceptions between young and older generations.¹⁶⁵⁷ For example, most NGOs are reluctant to take on board issues of

¹⁶⁴⁹ African Youth Charter (2006) art. 26 (j).

¹⁶⁵⁰ African Youth Charter (2006) art. 26 k.

¹⁶⁵¹ Interview Mbogori, then Executive Director MWENGO, 11 April 2007, Harare.

¹⁶⁵² Barry and Dordevic (2007) 54.

¹⁶⁵³ Barry and Dordevic (2007) 54.

¹⁶⁵⁴ Barry and Dordevic (2007) 63 and 67.

¹⁶⁵⁵ Friedman and Mottair (2004) 8.

¹⁶⁵⁶ Antrobus (2005) xii and xv.

¹⁶⁵⁷ Antrobus (2005) xiii.

interest to youth such as sexuality. For example, during the Jacob Zuma rape case, Khwezi's supporters were young, black and politically feminists.¹⁶⁵⁸ The few NGOs who address sexuality largely adopt a purely legalistic approach focussing on criminal sexual abuse. Similarly, Bayles and Bujra observe that while older women are genuinely compassionate of the young, they tend to repress youth's sexuality under the guise of protecting the youth from HIV/AIDs.¹⁶⁵⁹ Sex, death, HIV/AIDs and STDS are seen as synonymous,¹⁶⁶⁰ ignoring the fact that sexual pleasure is the primary motivation for having sex amongst most youth.¹⁶⁶¹ In contrast older women activists perceive issues of sexuality as self-indulgent.¹⁶⁶² It is only after 2007 that FIDA-Uganda's programme on sexuality is experimenting with stimulating local dialogue to interrogate sexuality and power as the underlying causes of women's sexual, political, economic and social abuse and marginalisation.

Activists have difficulties with generational transition.¹⁶⁶³ Many senior activists are deemed to have abandoned the cause. There are also some attempts to promote intergenerational relations based on mutual trust, respect and learning. AWID and Akina Mama wa Africa have a young women's and leadership programme. At the African Feminist Forum,¹⁶⁶⁴ AWID¹⁶⁶⁵ and the Uganda Feminist Forum¹⁶⁶⁶ youth were given an opportunity to sit on the same panel as senior activists without confining them to youth-only panels. FOWODE's intergenerational learning and documentation project has promoted mutual learning between young and old to build new knowledge. *A Rising Tide* documents the experiences, achievements, strategies, skills and knowledge of women pioneers since colonialism.¹⁶⁶⁷ FEMACT in Tanzania is working on creating social funds and documenting popular feminist's life "her-stories" project.¹⁶⁶⁸ Graca Machel still engages with women activists because she recognises that it is "important to give back to young generations who

¹⁶⁵⁸ Bennett (2009) 121.

¹⁶⁵⁹ Bayles and Bujra (2000) xiii.

¹⁶⁶⁰ Ahmed (2005) 27.

¹⁶⁶¹ Ahmed (2005) 27, www.the-pleasure-project.org/more.html.

¹⁶⁶² Barry and Dordevic (2007) 96.

¹⁶⁶³ Barry and Dordevic (2007) 55.

¹⁶⁶⁴ Africa Feminist Forums, 15-19 Nov 2006 and 17-21 September 2008.

¹⁶⁶⁵ 11th AWID Women's Rights and Development, 14-17 November 2008.

¹⁶⁶⁶ World Social Summit 16 - 19 January 2008.

¹⁶⁶⁷ Byanyima (2004) ix.

¹⁶⁶⁸ Interview, Mallya Executive Director, TGNP, 8 November 2008, Johannesburg.

remain voiceless.”¹⁶⁶⁹ FIDA-U has re-created the mentoring programme based on the joint implementation of activities by teams of young and old lawyers as an integral part of organisational renewal and sustainability.

Nonetheless, youth must demonstrate the advantage of their inclusion and not base it on being a favour on account of age. For example, although the Chairperson of Lawyer for Human Rights (LHR), Sechaam Semacii (currently the Director of Association of University Clinics) is considered young, it was her competence rather than her age that was the decisive factor in her nomination.¹⁶⁷⁰ Centre for Human Rights-Pretoria targets young people because of their highly creative minds and vibrancy.

6.3.3. NGOs and sexual minorities

NGOs have generally ignored the rights of sexual minorities. During the drafting of the Maputo Protocol, there was a loud silence on issues of sexual orientation,¹⁶⁷¹ due to the misconception that issues of LGBTI are un-African.¹⁶⁷² At the Africa Feminist Forum in 2008, only five NGOs could be identified as consistently working on LGBTI issues. A more common excuse is the lack of mandate of the NGO, and yet mandates are internally defined by NGOs. It is only at the 43rd session of the Africa Commission that the NGO Forum acknowledged that rights of LGBTI are human rights.¹⁶⁷³ Only recently, ICJ Kenya began working on litigation on LGBTI.¹⁶⁷⁴ In Uganda, all legal aid service providers, such as Legal Aid Project (LAP) of Uganda Law Society, FIDA-Uganda, Public Defenders, failed to litigate for the rights of LGBTI arguing that they are illegal under the Penal Code, without seeking to change the discriminatory law. The case *Victor Juliet Mukasa & Yvonne Oyo v. Attorney General*¹⁶⁷⁵ on the right to privacy of the person’s home, the right to liberty and the rights to protection for torture, cruel, inhuman and degrading treatment of LGBTI activists was privately represented by Advocate Rwakafunzi.¹⁶⁷⁶ Although celebrated as a landmark

¹⁶⁶⁹ Machel Closing address, Where is the money for Women’s Rights: 10 November 2007, Johannesburg.

¹⁶⁷⁰ Interview, Van Garderen, Executive Director, Lawyers for Human Rights, 14 May 2008, Pretoria.

¹⁶⁷¹ Banda (2005) 77.

¹⁶⁷² www.washblade.com/pics/020215-kassembisham.jpg quoted in Banda (2005) 77.

¹⁶⁷³ Statement at the NGO Forum, presented by Hanna Foster, 7 May 2008, Foster, NGO resolution, at the Official Opening of the African Commission, 7 May 2008.

¹⁶⁷⁴ Interview, Kegoro Executive Director, ICJ-Kenya 22 August 2007, Nairobi.

¹⁶⁷⁵ Misc.Cause No 247/06.

¹⁶⁷⁶ Kabumba (2009) 220.

achievement for LGBTI¹⁶⁷⁷ it is instructive that the learned judge cautiously explained that the case was about human rights and not homosexuality.¹⁶⁷⁸ Nonetheless, given that Victor Mukasa is a prominent LGBTI activist, it provides a good starting point for appreciating LGBTI rights.

In Uganda, the major reason the “Vagina Monologues,” were banned was the fear that it would promote lesbianism.¹⁶⁷⁹ Through the Minister of Ethics and Integrity in Uganda, Nsaba Buturo, the government has consistently harassed NGOs that advocate for sexual freedom such as Akina Mama through press attacks or through the banning of workshops.¹⁶⁸⁰

6.3.4. NGOs and the empowerment of racial and ethnic minorities

Within East Africa, questions of racial minorities are considered irrelevant because the Asian and White minorities are economically dominant. In South Africa, race is a big issue even amongst NGOs because of internalised white supremacy.¹⁶⁸¹ In one NGO a white accountant resigned upon the recruitment of a black Executive Director.¹⁶⁸² However, considering white as a minority is contested even amongst the white community because they recognise the historical advantages they have enjoyed. Moreover, in South Africa, most well established organisations are predominantly white, given that the NGOs established by blacks were largely “localised, less formalised and survivalist.”¹⁶⁸³ To compound the problem many black lawyers and activists moved into politics and government, leaving the NGO sector predominantly white.¹⁶⁸⁴ As such, LHR asserts that indigenous communities are more vulnerable than the white numerical minority.¹⁶⁸⁵

In East Africa very few NGOs work on ethnic and racial minorities in a sustained and substantial manner. In Tanzania NGOs working on minorities are nascent, have weak organisational capacities and suffer resistance by governments as demonstrated by lengthy registration procedures.¹⁶⁸⁶ The Ngorongoro Pastrolist Development Organisation (NGOPADEO)

¹⁶⁷⁷ www.iheu.org/node/3369;

¹⁶⁷⁸ www.iheu.org/node/3369;

¹⁶⁷⁹ Mukasa and Kimbugwe (2005).

¹⁶⁸⁰ Interview Nakawesi, Executive Director Akina Mama Wa Afrika, host of the workshop, April 14 2008, Kampala.

¹⁶⁸¹ Mubangizi (2004) 217, Interview Letlojane, CEO, Human Rights Institute of South Africa, 5 Nov 2007, Johannesburg.

¹⁶⁸² Interview Letlojane, CEO, Human Rights Institute of South Africa, 5 Nov 2007, Johannesburg.

¹⁶⁸³ Swilling and Russell (2002) 69, IHRIP et al (1994) 81, Bazaara, Friedman and Robinson (2002) 7, Hassim (2004) 14.

¹⁶⁸⁴ Bell and Keenan (2004) 366-7.

¹⁶⁸⁵ Interview, Van Garderen, Executive Director, Lawyers for Human Rights LHR, 13 March 2008, Johannesburg.

¹⁶⁸⁶ Shivji and Kapinga (1998) 51-52.

took years to be registered.¹⁶⁸⁷ In Kenya only the Center for Minority Rights Development (CERIMIDE) seems to be working on minority rights.¹⁶⁸⁸ In Uganda, the focus of NGOs seems to be on welfare oriented activities, rarely engaging rights discourse.¹⁶⁸⁹

In South Africa the Constitution establishes the Commission for the Protection of Rights of Cultural, Religious and Linguistic Communities,¹⁶⁹⁰ and among others provides for affirmative action on the basis of culture, language, ethnic and social origin.¹⁶⁹¹ The state is obliged to advance and protect indigenous languages, including the Khoe, Nama and San.¹⁶⁹² However, NGOs are not aggressively taking advantage of the law to pursue minority rights.

Focussing on the question of internal NGO sector power inequalities, the proceeding part analyses how NNGOs and SNGOs have attempted to promote egalitarian relationship.

6.4. The contemporary efforts of promoting equality and empowerment within the NNGOs/SNGO relationship

It is noteworthy that although all INGOs are based in the North, not all NGOs based in the North are INGOs and some are as weak as SNGOs. It is important to acknowledge that “a viable and vibrant international human rights movement cannot exist unless the national, regional and continental human rights movements are also vibrant, permanent, irrevocable and irreversible,”¹⁶⁹³ However, the power imbalances in the North influence the nature of the relationships between SNGOs and NNGOs.

“Think globally and act locally or think locally and act globally” are common clichés amongst NGOs suggesting that effective advocacy requires strategic linkages between the North and South. Empowerment within the SNGOs/NNGOs relations is premised on mutual trust, respect and co-responsibility among its members.¹⁶⁹⁴ Yet, unequal access to resources, information and

¹⁶⁸⁷ Shivji and Kapinga (1998) 53-55.

¹⁶⁸⁸ Interview Kibalama, Executive Director, KCK 19 July 2007, Kampala.

¹⁶⁸⁹ Interview, Hansungule, Centre for Human Rights, Pretoria and Consultant with Minority Rights Group project in Uganda, 14 May 2007, Pretoria.

¹⁶⁹⁰ South African Constitution (1994) art. 185.

¹⁶⁹¹ South African Constitution (1994) art. 9 (3).

¹⁶⁹² South African Constitution (1994) art. 6.

¹⁶⁹³ Mutunga (2004).

¹⁶⁹⁴ Molhotra (2000) 662.

centres of global power significantly impacts on relationships between SNGOs and NNGOs.¹⁶⁹⁵ Influence, recognition, and resources remain concentrated in the North, with those in the South scratching from grant to grant.¹⁶⁹⁶ Before 1966, ECOSOC only granted observer status to INGOs,¹⁶⁹⁷ which compounded the power of INGOs over national NGOs. By 2007, only 33% of NGOs from the Global South had consultative status with the ECOSOC.¹⁶⁹⁸ 63% of the NGOs that operate across national borders are based in Western Europe and America while 90% of the membership of INGOs is located in the same regions.¹⁶⁹⁹ In 1999, the staff and board of all major INGOs were predominantly Northern.¹⁷⁰⁰

The bulk of funding is channelled into NNGOs who create and determine what SNGOs projects to fund.¹⁷⁰¹ A 2006 study by Association of Women's Rights in Development (AWID) found that US\$1.8 billion to the South was channelled through INGOs, with only US\$ 595 million being spent directly on the rest of the world.¹⁷⁰² In 2005, INGOs received three times much more overseas development support than the global SNGOs.¹⁷⁰³ In Sub-Saharan African only 1% of WNGOS has a budget of more than US\$ dollars 500,000.¹⁷⁰⁴ A study in Uganda found that INGOs are the largest sources of funding accounting for 53% of funding to NGOs.¹⁷⁰⁵

The disparity of power and resources between African NGOs and NNGO makes the "notion of an international civil society a mockery."¹⁷⁰⁶ As observed by ICHRP, "... issues of power and subordination influence the level of trust that NGO's place in their ... partnerships."¹⁷⁰⁷ Within the hierarchy of NGOs, NNGOs have a higher level due to better pay, working facilities and ability

¹⁶⁹⁵ Keck and Sikkink (1998) 206, Okafor (2006) 107, Molhatra (2000) 662, Smillie (1999) 18, Lehr-Lehnardt (2005) 16.

¹⁶⁹⁶ Welch (2001) 276.

¹⁶⁹⁷ ECOSOC Resolution 1296(XLIV) 23 May 1968 on Consultative relations between UN and NGOs; ECOSOC Resolution 1996/31 of 25 July 1996, http://www.un.org/documents/ecosoc/res/1996/eres_1996-31.htm.

¹⁶⁹⁸ Nader (2007) 10.

¹⁶⁹⁹ Baehr (2003) 41.

¹⁷⁰⁰ Steiner (1999) 61.

¹⁷⁰¹ Keck and Sikkink (1998) 182, Lehr-Lehnardt (2005) 16 and 18.

¹⁷⁰² AWID (2006) 49.

¹⁷⁰³ AWID (2007) 73.

¹⁷⁰⁴ AWID (2007) 26.

¹⁷⁰⁵ Barr, Fafchamps and Owen (2003) 22 and 25.

¹⁷⁰⁶ Mutua (2009) 30

¹⁷⁰⁷ ICHRP (2003) 68.

to influence critical processes within the South. Both SNGOs and NNGOs largely prize their autonomy of decision-making,¹⁷⁰⁸ and seek to be treated as equal partners.

The nature of relationships varies. In discussing the relationships between African NGOs and INGOs, Welch identified three possible types of theoretical linkages between African NGOs and INGOs:¹⁷⁰⁹ The ideal relationship is based on a partnership between equals, but this is rarely the case due to major differences in levels of funding, staffing and savvy-ness in utilising international media for publicity. Secondly, the relationships are characterised by subordination in which either an African NGO or NNGO takes leadership with the partner receiving far less recognition. Thirdly both the African NGO and NNGO take up similar issues but with potentially different takes on them.¹⁷¹⁰

Until the late 1990s, there was little interaction between SNGOs and NNGOs.¹⁷¹¹ In an era of globalisation, the locus of power extends beyond national borders, making international networking inevitable. Globalisation has eroded the state monopoly at the international public arena and ensured solidarity between the SNGOs and the NNGOs in addressing its adverse effects.¹⁷¹² The World Social Summit: A civil society forum held parallel to the Aid Consortium of the WB-IMF meetings draws between 20,000 and 40,000 delegates from all over the world demonstrating the growth of global movements.¹⁷¹³

The benefits of international partnerships between SNGOs and NNGOs are well documented.¹⁷¹⁴ International networks amplify the voices of the SNGOs in the international arena, provide the SNGOs some leverage at the UN, World Bank, European Union over economic and political policies and contribute to the monetary and technical resources of SNGOs. In turn, NNGOs look for local expertise, dynamism, solid connection with target groups and legitimacy from their partnership with SNGOs.¹⁷¹⁵ Before 1966, INGOs provided many African NGOs with

¹⁷⁰⁸ Steiner (1999) 67.

¹⁷⁰⁹ Welch (2004) 205.

¹⁷¹⁰ Welch (2004) 205.

¹⁷¹¹ Fowler (2000c) 242.

¹⁷¹² Kothari(1999) 25, De Senillosa (1999) 96.

¹⁷¹³ Kothari (1999) 38.

¹⁷¹⁴ Orlin (1998) 133-134, Mutua (2002) 26 and 37, Welch (2001) 268-269, Steiner (1999) 62-67, Fox (2002) 196, De Senillosa (1999) 96.

¹⁷¹⁵ Mards Resident representative MS-Uganda, 12 Sept 2007, Kampala.

institutional cover to participate in the UN and in turn, the INGOs gained credibility by demonstrating that they work in partnership rather than on behalf of their SNGO partners.¹⁷¹⁶

However, NGOs have ignored the crucial fact that the very coming together of different experiences, interests, and inequities in resources generates tensions within the SNGOs/NNGOs relationship. Although there is a shared commitment to human rights, there are differences in understanding about the goals, priorities and strategies among SNGOs and NNGOs.¹⁷¹⁷ Keck and Sikkink's study aptly identifies international networking as "political spaces" where different actors negotiate the social, cultural and political meanings of their joint activities.¹⁷¹⁸

Tensions between the SNGOs and NNGOs were most prominently manifested at the Vienna Conference NGO Forum in 1993. Korey details the crux of the contention between NNGOs and SNGOs relations during the preparations and the actual NGO Forum at the Vienna Conference: The major split centred around the INGOs' domination of the Joint Planning Committee (JPC), a body responsible for the general strategy of the NGOs and liaison with the UN Centre for Human Rights and major regional government caucuses. The SNGOs accused the JPC of not consulting them on the appointment of chairs, rapporteurs and speakers.¹⁷¹⁹ The marginalisation of SNGOs resulted in chaos at the actual NGO Forum due to a number of differences between them. In the first instance, the NNGOs considered the role of the NGO Forum as strengthening the UN human rights system by creating consensus, while the SNGOs argued that the failure to expose human rights abuses in specific countries frustrated SNGO activism. Secondly, the decision to dis-invite His Holiness the Dalai Lama from addressing the Forum at the Austrian Centre but instead host him at AI's tent was found disrespectful of the South and lastly, the JPC invited former US President Jimmy Carter to address the closing session, while the Latin American NGOs preferred Nobel Laureate Adolfo Peres Esquirel.¹⁷²⁰ At the closing, Carter's speech was booed. The JPC was thus disbanded and replaced by a 30 member NGO Liaison Committee representing all regions of the world and specialised groups.¹⁷²¹

Korey attributed the NGO Forum fracas to the "lack of sophistication" on the part

¹⁷¹⁶ Keck and Sikkink (1998) 12-13, De Senillosa (1999) 90, Welch (2001) 267.

¹⁷¹⁷ Steiner (1999) 17.

¹⁷¹⁸ Keck and Sikkink (1998) 3.

¹⁷¹⁹ Korey (2001) 286-290.

¹⁷²⁰ Korey (2001) 290-291.

¹⁷²¹ Korey (2001) 290-291.

of SNGOs in international conferencing and diplomacy.¹⁷²² In contrast, Phillip Alston urged SNGOs to be more “confrontational and less well-behaved” in demanding mutual respect in the international human rights movements.¹⁷²³ On the positive side, the active participation of SNGOs at the Vienna Conference ensured the affirmation that human rights were universal, inalienable and indivisible.¹⁷²⁴

Likewise, during the first Women’s Conference in 1975, feminists in the South had criticised their sisters in the North for monopolising the international women’s agenda.¹⁷²⁵ In contrast, the hosting of the 1985 women’s conference in Nairobi resulted in the adoption of “violence against women”¹⁷²⁶ as a common platform that bridged the gap between the NNGOs and SNGOs.¹⁷²⁷ Comparatively, at the Vienna Conference, the women’s movement was better organised with shared leadership between Charlotte Bunch of the Centre for Women’s Global Leadership at Rutgers University and Florence Butegwa, then CEO of Women in Law and Development in Africa (WILDAF).¹⁷²⁸ The active participation of WNGOs in the Vienna Declaration resulted in the official acknowledgment that women’s rights were indeed human rights.¹⁷²⁹

Since the 1990s, NNGOs have experimented with diverse strategies of becoming truly international organisations by overtly addressing the question of power, an issue explored in the examples given below.

As part of the process of internationalising itself, HRW has increased joint partnerships with SNGOs in undertaking researches.¹⁷³⁰ HRW’s Asia and Africa Divisions have liaison offices that maintain relationships with SNGOs,¹⁷³¹ but HRW is yet to achieve its goal of internationalising its staff, board and advisory council.¹⁷³² Akina Mama, a pan-African women’s NGO, moved its headquarters from London to Uganda. Society for International Development (SID) whose international secretariat represents the continents of the world piloted a decentralised

¹⁷²² Korey (2001) 291.

¹⁷²³ Korey (2001) 291..

¹⁷²⁴ Hamm (2001) 178.

¹⁷²⁵ Banda (2005) 8-9.

¹⁷²⁶ Nairobi Forwards Looking Strategies (1995) para 14-15, 23-25.

¹⁷²⁷ Keck and Sikkink (1998) 170 and 196.

¹⁷²⁸ Korey (2001) 286 and 388.

¹⁷²⁹ Vienna Declaration (1993) para 18.

¹⁷³⁰ Welch (2001) 101.

¹⁷³¹ Brown (2001) 84.

¹⁷³² Brown (2001) 82.

strategy, with the Kenya office having its own board and independent fundraising.¹⁷³³ Ten out of seventy-four national sections of ICJ are in Africa, and all national affiliates are financially independent of ICJ.¹⁷³⁴ PACT-US has established country offices, whose level of independence varies from one country to the next. A Kenyan board leads PACT-Kenya, while PACT-Tanzania is still under the leadership of Pact-International although recruitment of the national board is underway.

David and Machini's thorough critique of Action Aid's (AA) process of internationalisation aimed at distributing equitable power within the organisation, offers important lessons by highlighting the successes and contradictions in the process.¹⁷³⁵ In internationalising itself, AA moved its headquarters to South Africa. Noreen Kaleeba, an African woman, was appointed head of its international board of trustees.¹⁷³⁶ Initially there was confusion, disagreement and struggles to retain power due to the anxiety of the London office that the decentralised country programmes would decrease the information flow and make their work more difficult.¹⁷³⁷ AA's international workshop in Bangladesh analysed the power dynamics within AA and acknowledged that:¹⁷³⁸

Participatory methods, tools and techniques can easily become manipulative, extractive, distorted or impotent without an understanding of power dynamics. This meant looking inwards, at our own personal experiences of power, with which to see our work with our partners, our allies and crucially with poor people.

Through the Accountability, Learning and Planning Systems (ALP), AA was able to adapt to local context, analyse the power dimensions in its work and receive honest criticism and feedback.¹⁷³⁹ For example, AA Uganda invested in making staff take decisions relevant to their work, while in India partners were involved in defining the job description of staff members.¹⁷⁴⁰ Nonetheless, a respondent from the South observed that money remains a key determinant of the status within AA. She observed that

the criterion for becoming an associate is primarily based on capacity to raise funds and most associates are based in the North. Yet, basing associate status on money fundamentally

¹⁷³³ Interview Okello, Executive Director, SID-Kenya, 23 August 2007, Nairobi.

¹⁷³⁴ Prouvez (2001) 120.

¹⁷³⁵ David and Machini (2004) 4.

¹⁷³⁶ David and Machini (2004) 5.

¹⁷³⁷ David and Machini (2004) 6.

¹⁷³⁸ David and Machini (2004) 14.

¹⁷³⁹ David and Machini (2004) 18-22.

¹⁷⁴⁰ David and Machini (2004) 19-20.

contradicts the rationale of internationalisation, which is to enhance legitimacy, relevance and respect of all AA sections regardless of money.¹⁷⁴¹

The Urgent Action Fund (UAF) case study provides a different process of NNGOs/SNGOs internationalisation efforts:¹⁷⁴² UAF-Africa was originally registered as an affiliate of UAF-Global to undertake collaborative initiatives that would bring UAF closer to Africa as a conflict ridden area. The spin-off of UAF-Africa as an independent fund was prompted by pragmatism in the aftermath of September 11, 2001 which resulted in tightened US funding laws. UAF-Africa registered as an independent organisation with an independent board, programmes and finances. The Chairperson of UAF-Africa continued to be a board member of UAF-Global, which ensured institutional continuity. At the joint board meeting of UAF-Global and UAF-Africa in October 2006, the UAF family agreed to have an equal partnership based on “sisterhood” instead of “motherhood,” with each fund independent but united by common values.¹⁷⁴³ The sister funds share information, occasionally hold collaborative activities of mutual benefit to both, share successes and represent each other at forums where it is impossible for both to attend. UAF-A also acknowledges that the UAF-Global has a right to claim it as its off-shoot and therefore is its success story. The UAF model is unique because it is purely based on trust in women’s leadership and is not reduced into a written Charter or Constitution. There is no overseer body. Such an arrangement is common with professional NGOs whose values and ethics are inculcated by years of academic discipline as is the case with federation of women lawyers (FIDA).

Positive examples of partnership are increasing: International solidarity strengthened TAC’s campaign.¹⁷⁴⁴ The affiliation of Homeless People’s Association (HPA) with Slum Dwellers International not only enhanced solidarity and the exchange of information, but also increased HPA’s “prestige in local political negotiations and helped to raise the difficult questions about social exclusion and inequitable power relations.”¹⁷⁴⁵ Similarly, SANGOCO attests that it collaborates with NNGOs as an equal partner with NNGOs providing the resources while SANGOCO offers intricate local knowledge necessary for successful programming.¹⁷⁴⁶ The advocacy of Save Bujagali in Uganda was a joint-effort between International Rivers Network in California, Bank Information

¹⁷⁴¹ Respondent request anonymity.

¹⁷⁴² Interview Chigudu, Naiyar and Murungi, Board members, Urgent Action Fund-Africa, 12- 14 April 2007, Harare.

¹⁷⁴³ Resolution of the UAF-Global and UAF-Africa joint retreat, Kathmandu October 2006.

¹⁷⁴⁴ Friedman and Mottair (2004) 33.

¹⁷⁴⁵ Khan and Pietersen (2004) 13.

¹⁷⁴⁶ Interview Lorgat, Executive Director, SANGOCO Nov 29th 2007, Johannesburg.

Centre, Washington DC and Swedish Society for Nature Conservation and NAPE. The NNGOs did not dictate but rather enabled NAPE's voices to be heard in the international arena, offered vital information about processes, procedures and contact persons at the African Development Bank and the World Bank, discussed the effects of any proposed strategy on NAPE and secured NAPE's approval before implementing it.¹⁷⁴⁷ ALLAVIDA has a partnership with Ujaama Centre in Kenya with ALLAVIDA serving as an accompanying consultant.¹⁷⁴⁸

PLAN-International raises funds for FIDA-U to enable it offer legal services under the Circles of Hope Framework.¹⁷⁴⁹ PLAN international has an elaborate partnership framework. It underlines the fact that partnerships are reciprocal with each party bringing and gaining comparative advantage through:¹⁷⁵⁰

- a) Shared responsibility for achievements and goals
- b) Mutual accountability to important stakeholder of all parties
- c) Joint decision-making about all aspects of shared work
- d) Openness to learning from one another and contributing to each others' institutional development
- e) Acknowledgement and valuing all contributions e.g. knowledge, access to other NGOs, experience, money,
- f) Trust, respects and mutual cooperation underpinned by:
 - i. Task based personal relationships.
 - ii. Periodic review of working relationships
 - iii. Mutual sharing of problems and successes
 - iv. Honouring commitment made to one another
 - v. Conscious attention to respect the integrity of each party

Whether increasing the number of Africans in NNGOs empowers SNGOs is still a moot question. On the one hand, Mutua was critical that when NNGOs engage Southerners, it is usually in their native region which perpetuates the perception that it is only experts from the North that can work internationally.¹⁷⁵¹ Moreover, according to Mutua, Pierre Sane of Amnesty

¹⁷⁴⁷ Interview Muramuzi, Executive Director NAPE 30 July 2007, Kampala.

¹⁷⁴⁸ Interview Kingman Executive Director ALLAVIDA 21 July 2007, Nairobi.

¹⁷⁴⁹ PLAN-International, Circles of hope: Children's rights in a world with AIDS (2006).

¹⁷⁵⁰ PLAN-International framework for partnerships, October (2003).

¹⁷⁵¹ Mutua (2002) 181, Footnote 64.

International and Adama Dieng of International Commission of Justice (ICJ) in spite of being Africans “think white,” by championing the universalising of the human rights corpus and liberal democracy.¹⁷⁵² On the flip side of the coin, having Africans at the decision-making tables within the NNGOs such as Dieng in ICJ-Geneva, Ahmed Motala in Amnesty International, Ibrahima Kane and Chidi Odinkalu in Interights,¹⁷⁵³ has resulted in better spotlight on African issues; Adama Dieng strengthened African NGOs’ capacity to influence the ratification of the African Charter.¹⁷⁵⁴ Salil Shetty, who comes from the South, initiated the internationalisation campaign of Action Aid.¹⁷⁵⁵ The Ford Foundation has increasingly recruited Africans to head regional Offices in Africa, such as Akwaasi Aidoo, Adhiambo-Odaga, Tade Aina, Willy Mutunga, and Gerry Solole.¹⁷⁵⁶

In some instances, INGOs do not respect or utilise existing capacities in Africa.¹⁷⁵⁷ Rarely are SNGOs consulted despite being knowledgeable about the contextual situation.¹⁷⁵⁸ A respondent scorned at an incident where an INGO in Tanzania, commissioned an expert from the North to do “energisers:” small exercises that boost energy levels during meetings.¹⁷⁵⁹

Instead of recruiting competent Africans, NNGOs would rather use “interns” masquerading as “experts” to head their offices in the South, with most of the work done by African consultants.¹⁷⁶⁰ In most NNGOs in the South, key decisions such as Head of Programme, Finance and Resident Representative are reserved for the North. It is therefore not surprising that during the donor roundtables, a respondent was often queried whether he or she was qualified to speak on behalf of the particular Embassy, irrespective of the fact that the Ambassador himself had authorised his participation.¹⁷⁶¹ Yet another respondent working in a NNGO noted that “... recruitment from the North is justified under the pretext of objectivity, protecting local employees from state harassment and emphatically because it is Northern tax payers’ money.”¹⁷⁶²

¹⁷⁵² Mutua (2001) 154 and 161, Mutua (2002) 50-51.

¹⁷⁵³ Viljoen (2007) 409.

¹⁷⁵⁴ Welch (2004) 206, Welch (2001) 15.

¹⁷⁵⁵ David and Machini (2004) 5.

¹⁷⁵⁶ Resident Representatives of Ford Foundation West Africa, Eastern African and Southern Africa, respectively.

¹⁷⁵⁷ Interview Aina, Resident Representative, Ford Foundation, 5 September 2007, Johannesburg.

¹⁷⁵⁸ Steiner (1999) 66-67.

¹⁷⁵⁹ Interview Jairo, Commissioner Education and Training, Tanzania Human Rights Commission, 25 July 2007, Dar-es-Salaam.

¹⁷⁶⁰ Interview Mutuma Executive Director, Kenya Human Rights Institute, 24 August 2007, Nairobi.

¹⁷⁶¹ Interview, Rukare, then Governance Officer, Irish Embassy, Kampala.

¹⁷⁶² Respondent requested for anonymity.

The lack of recognition of local capacities frustrates innovativeness. Some professionals are reduced to clerks, receiving and acting on instructions from the Northern office without real decision making powers to influence the implementation of joint programmes. There is also concern that NNGOs deliberately undermine the local leadership of SNGOs to justify their continued presence in the South. For instance, in the case of Help Mission Development Services (HMDS)¹⁷⁶³ involving a partnership between CO-OPERAID Switzerland and HMDS, the crux of the problem arose over the management style.¹⁷⁶⁴ The local manager complained that the Director in the North was undermining his authority by directly communicating with local staff and defending them when he exercised his authority. It is noteworthy the HMDS had no Board but was governed by CO-OPERAID.

Oftentimes the NNGO assimilates the culture of the mother country. For example, a respondent recalled how on the death of a colleague, only one employee was given permission to attend the burial and the rest of the staff were expected to “continue working as usual,” which was found insensitive to African culture.¹⁷⁶⁵

Some cases exhibit overt power struggles between NNGOs and SNGOs. In the case of International Cooperation for Integrated Rural Development (CIDRI), a respondent argued that CIDRI was not an INGOs but a local NGO, having been registered as an independent organisation in Kenya but not as a regional office of CIDRI in Canada.¹⁷⁶⁶ Notice was posted in the local dailies that Phillippe Carette, Chairman of CIDRI-International was not associated with CIDRI Kenya.¹⁷⁶⁷

There is also concern that some NNGOs fundraise on the pretext of helping the South, but selfishly utilise the funding. In Uganda, the Gulu District Chairperson rejected the services of one INGO which had secured 800,000 Euro but had only budgeted about 30,000 Euro

¹⁷⁶³ *Nicholas Silingi v. Board of Help Mission Development Services*, Reg/04/06.

¹⁷⁶⁴ Nicholas email: info@co-operaid.ch; Email from Rao Satapati, 2 Feb 2006, 12:36, Subject HMDS Team Work, “Please do not forget the past.

¹⁷⁶⁵ Vision 31 August (2007) 9 “Mao, Okumu blasts NGOs.”

¹⁷⁶⁵ Respondent requested anonymity.

¹⁷⁶⁶ *International Cooperation for Integrated Rural Development (CIDRI) of Montreal (Quebec) Canada vs Patric Konieczniak NGO Council of Kenya*, Reg No /02/05.

¹⁷⁶⁷ Daily Nation and Standard, 25 May 2005.

for Gulu.¹⁷⁶⁸ Yet another respondent who had worked for a number of INGOs in Tanzania condemned the glaring difference in fees:

It is ironical that INGOs claim that we are fighting poverty together. They wear sandals, jeans and t-shirts as a camouflage. The gap in salary is humongous, almost a quarter of that earned by the local person. Although the actual salary is about \$3000, it is compensated by the benefits such as a four-vehicle vehicle, an international school for children's education, and a house in a posh and safe neighbourhood, totalling to about 15,000\$. ... (sic) When the financial controller is an African, she or he earns 1,200 dollars in spite of being the second in command.¹⁷⁶⁹

There is also controversy about how NNGOs and SNGOs should empower each other. Various propositions to strengthen the capacity of African NGOs have been experimented with. Orlin suggests that SNGOs either become members or affiliates of NNGOs, in order to access training, guidance and international recognition with the parent body serving as the quality controller akin to a franchise in the business sector.¹⁷⁷⁰ This well-intentioned approach is paternalistic and confines the problem of poor skills to African NGOs. In criticising the dismissal of expertise in the South in respect to HIV/AIDs, the Commonwealth has observed:¹⁷⁷¹

Since the beginning of the international response to HIV in 1986, there has been numerous 'training programmes' designed to transfer North American expertise to Africa. The common approach of these programmes is to 'trickle down' the knowledge of a small group of northern experts, through a 'training of trainers' mechanism, to large groups of African field workers. Meanwhile, many African organisations developed extraordinary skills and knowledge because they had to find ways of living with a serious situation affecting them directly. However, little attention was paid to validating and disseminating this local knowledge ... In retrospect, it should have been recognised that people facing challenges to life and livelihood tend to work out solutions long before international experts even grasp the nature of the problems.

The erroneous assumption that the North has the monopoly of human rights conceptualisation is reflected even within SNGOs. Nyamugasira considers most SNGOs weak in intellectual capacity to translate lived experience into internationally acceptable conceptual frameworks.¹⁷⁷² A majority view is that the SNGOs are not intellectually incompetent but simply lack research facilities. Even if SNGOs lacked skills, NNGOs should empower them to acquire the requisite skills and act on their own. Hence the critical question that NNGOs should ask is "We are here to help. How can we help?"¹⁷⁷³

¹⁷⁶⁸ Chris Ocowin (2007) *New Vision* 31 Aug (2007) 9 "Mao, Okumu blasts NGOs."

¹⁷⁶⁹ Respondent requested anonymity.

¹⁷⁷⁰ Orlins (1998) 135.

¹⁷⁷¹ Commonwealth (2002) 108.

¹⁷⁷² Nyamugasira (1999) 113.

¹⁷⁷³ Interview Mbogori, Executive Director MWENGO, 11 April 2007, Harare.

Building an egalitarian international human rights movement is not a one-way process whereby activists in one country help victims in another, but an interactive process to exchange resources.¹⁷⁷⁴ SNGOs such as CUTS of India and SEATINI of Zimbabwe have provided intellectual and organisational capacities to NNGOs.¹⁷⁷⁵ KCK served as a consultant to the AI-African Forum in 2005.¹⁷⁷⁶ The Law Group and ICJ have succeeded in designing projects that strengthen the technical capacities and resources of SNGOs and professionals without entering into formal parenting relationships.¹⁷⁷⁷ The Aids Support Organisation (TASO) in Uganda is a renowned international expert on HIV/AIDs.

Although SNGOs should not automatically shun expertise from NNGOs, it is more cost effective and politically prudent to access the capacities from within the country, the sub-region, the continent, the South and ultimately from the North, in that order.¹⁷⁷⁸ For example, the Schools without Walls (SWW), a network of eighteen African organisations active in HIV, transferred skills and local knowledge from organisation to organisation within Southern Africa.¹⁷⁷⁹

On the positive side, the competition has accentuated the urgency of SNGOs to strengthen their governance and programme implementation. Having offices in the South demonstrates solidarity and results in more realistic analysis and effective implementation of programmes. On the negative side, generally, African NGOs are apprehensive that NNGOs are not empowering them but are becoming their competitors over political influence, funds and skilled personnel.¹⁷⁸⁰ For example, International Republic Institute (IRI), National Democratic Institute (NDI) and International Foundation for Electoral System (IFES) which are all American NGOs funded by the US government have made it almost impossible for Institute for Education in Democracy (IED) to secure USAID funding to do electoral monitoring which had hitherto become its niche.¹⁷⁸¹ As a result, IED has shifted to training political parties and strengthening and monitoring the Electoral Commission in Kenya. Even in situations of partnership, some SNGOs

¹⁷⁷⁴ Keck and Sikkink (1998) 178-9.

¹⁷⁷⁵ Mutunga (2004) 14.

¹⁷⁷⁶ Document on file with candidate who served as the principal consultant on behalf of KCK.

¹⁷⁷⁷ Bromley (2001) 141, Prouvez (2001) 120.

¹⁷⁷⁸ Mutunga (2004) 14.

¹⁷⁷⁹ Commonwealth (2002) 108.

¹⁷⁸⁰ Bromley (2001) 146, Adeleye-Fayemi (2007) 18, AWID (2007) 50 and 73, SANGOCO Annual Report (1997-98) 29, Commonwealth (1995) 51, ICHRP (2003) 119, Steiner (1999) 66-67.

¹⁷⁸¹ Interview Michuki Chair of IED and Kooki-Muli Executive Director IED, 7 September 2007.

complain that NNGOs brand their logos without acknowledgement of SNGOs which accentuates NNGOs visibility in Africa.¹⁷⁸² There are real concerns about NNGO paternalism and micromanagement in determining the needs, structures, mandates and priorities of SNGOs.¹⁷⁸³ The fact that almost all respondents who criticised the NNGO/SNGO relationship chose to speak off the record, further highlights the power of NNGOs. As aptly articulated by AWID, NNGOs are criticised for four main tendencies:¹⁷⁸⁴

- Absorbing local capacity by offering better wages and benefits and as such cherry picking the best ... leaders out of local ... organizations,
- Repackaging and claiming credit for ... innovations and programme efforts that are the product of long term struggles of under resourced ... groups which are then sidelined,
- Funding their own ideas and campaigns rather than the work happening on the ground- especially in term of what would best build strong and effective local and national ... organisations; and
- Increasingly positioning themselves as leaders... raising further concerns about competition over resources, given the relative scale of INGOs, they can overshadow key...rights actors in the eyes of the donors and public opinion...as they are no longer seen as valid interlocutors for these issues, with government and funders preferring to work with INGOs.

Different countries have adopted different strategies to address the influx of NNGOs into the South. In Kenya, government is against hiring expatriates where local expertise exists and has warned against inequitable remuneration between expatriates and local staff.¹⁷⁸⁵ In Tanzania, the 2005 Amendment Act requires all INGOs to register in Tanzania and establish a founder Board in Tanzania.¹⁷⁸⁶ However, because the NGO Act does not specify the criteria for forming a founder Board, one INGO made its staff the Founder Board members to qualify for the certificate of compliance, which signifies resistance to subject itself to the decision-making of the

¹⁷⁸² Status (1994) 7, Mubangizi (2004) 218, AWID (2007) 41.

¹⁷⁸³ Mutua (2002) 9, Mutua (2004) 195.

¹⁷⁸⁴ AWID (2007) 74.

¹⁷⁸⁵ Kenneth Ogosia (2007) "Incompetent expatriates to go says Mutua" Daily Nation, 17 August 2007.

¹⁷⁸⁶ Interview, Katemba, Director Government NGO Board, Tanzania, 25 July 2007, Dar-es-Salaam.

Tanzanians.¹⁷⁸⁷ The original draft of 2002 had obliged INGOs to refrain from “causing competition” with local NGOs.¹⁷⁸⁸

Furthermore, INGOs are not allowed to participate in the NGOs District Assembly, Regional NGOs Assembly or the Nationally Operating NGOs Assembly.¹⁷⁸⁹ In addition, although the Tanzanian NGO Council provides for an INGO representative, Tanzanian NGOs insisted that the INGO’s representative be a Tanzanian.¹⁷⁹⁰ In South Africa, following the influx of NNGOs, local NGOs mandated South African Non-Governmental NGO Council (SANGOCO) to formulate a Code of Conduct to address issues of the use of local skills and working in partnership with South African NGOs.¹⁷⁹¹ Uganda is yet to take any stand on the relationship between SNGOs and NNGOs.

NNGOs should not stop offering material and technical support to SNGOs. SNGOs desire partnerships with NNGOs in coalition building, joint ownership of projects, exchange of information and expertise, avoidance of duplication and substitution of local capacity.¹⁷⁹² SNGOs also request that NNGOs support their struggles by influencing the business, financial and development policies of their governments and of multilateral institutions, sensitise the Northern publics about global poverty, unfair trade relations and the human rights violations within their midst; support SNGOs financial sustainability and facilitate SNGOs to speak in their own voice and influence debates in the international arena.¹⁷⁹³ Keck and Sikkink have found that international advocacy is more likely to succeed around issues where:¹⁷⁹⁴

The channels between domestic groups and their governments are blocked or hampered or where such channels are ineffective for resolving conflict; ii) activists or political entrepreneurs believe that networking will further their mission and campaigns and actively promote the relationship; iii) conferences and other forms of international contact create arenas for forming or strengthening networks.

¹⁷⁸⁷ Respondent request anonymity.

¹⁷⁸⁸ Tanzania NGO Act (2002) s. 31 (c).

¹⁷⁸⁹ Draft Code of ethics (2005) para 15.

¹⁷⁹⁰ Interview Tweve, INGO Representative to the Tanzania NGO Council, 10 August 2007, Dar-es-Salaam.

¹⁷⁹¹ SANGOCO Annual Report (1997-1998) 29.

¹⁷⁹² Welch (2001) 278, Kampala Declaration on strengthening human rights movement in Africa, (2003).

¹⁷⁹³ Molhotra (2000) 663, Mutunga (2004) 16 & 19, Bebbington and Riddell (1997) 127, de Senillosa (1999) 95 and 98, Edwards (2000) 31.

¹⁷⁹⁴ Keck and Sikkink (1998) 12.

In order to transform the power imbalance, NNGOs need to base the relationship with SNGOs on solidarity. As argued by Manji:¹⁷⁹⁵

Solidarity is not about fighting other people's battles. It is about establishing co-operation between different constituencies on the basis of mutual self-respect and concerns about injustices or processes that reproduce injustices. It is not about sympathy or charity or the portrayal of others as objects of pity. It is not about fundraising to run your projects overseas but fundraising funds which others can use to fight their own battles. It is about taking action within one's terrain, which will enable the capacity of others to succeed in their fights against injustices.

In concluding the discussion of empowerment amongst SNGOs/NNGOs' relationships, a case can be made for the strengthening of the mutually benefiting global human rights movement facilitated by open, principled and respectful dialogue to forge mutually agreed solutions and shared responsibilities. While the role of NNGOs as donors is highly appreciated, generally, NNGOs are criticised for poaching the best personnel from SNGOs, appropriating credit for innovative programmes of the SNGOs; superimposing and funding their ideas rather than supporting SNGOs agendas, and displacing SNGOs as leaders.¹⁷⁹⁶ Unless the NNGO is adding value by expanding new resources, opportunities, knowledge, networks which otherwise would have been inaccessible to the SNGO, it is considered irrelevant to the survival of the NGO sector in sub-Saharan Africa. Strengthening equality in partnership requires mutual respect and acknowledgement of each other's contributions, material and intellectual resources as well equal ability to set the agenda and participate in the implementation processes.¹⁷⁹⁷

6.5. Conclusion

This chapter has explored the application of the principle of empowerment to NGOs. It firstly interrogated how NGOs have internally empowered themselves, and evaluated the obligations and possibilities that NGOs have to empower themselves in terms of skills capacity, resource mobilisation, the provision of conducive working environment for staff and remuneration to enable them achieve their missions. Secondly, it examined how far NGOs have influenced and helped to empower their constituents and beneficiaries, and considered how NGOs have addressed empowerment issues involving exploitation, marginalisation and exclusion of groups like women, youth, sexual and racial minorities in their midst.

¹⁷⁹⁵ Manji (2004) 29.

¹⁷⁹⁶ AWID (2007) 74, The International Human Rights Internship Program (IHRIP) (1994)7, Mubangizi (2004) 218, AWID (2007) 41.

¹⁷⁹⁷ AI Africa Consultative Workshop July 2005, Kampala.

NGOs need to cultivate a human rights culture before they can sufficiently champion the human rights discourse elsewhere. The lack of training and the NGO culture that often relegates learning as secondary to real work has created knowledge gaps in human rights, governance and organisational development, amongst most activists who often exhibit poor organizational leadership. Thus, there must be a link between the activists and the academia to strengthen the NGOs' intellectual, analytical and research base, aimed at developing institutional knowledge to alter societal inequities.

NGOs are greatly disempowered by the failure to raise their own funding and having to depend on handouts from government and donors. The frequent co-option of NGOs to endorse governments' and donors development policies has often diverted NGOs from addressing the issues of marginalisation and rights abuses, or offer alternative strategies and ideologies from those imposed by the funder. The NGOs' internal empowerment is further derailed by the poor pay and failure to meet the financial demands of their employees, which forces the staff to take multiple occupations and relegate NGO work as secondary and voluntary.

The critical issue should not merely be government or donor funding, but the obligation of a given NGO to articulate its mission, and safeguard its autonomy while simultaneously ensuring accountability to various stakeholders such as communities, donors and government. The NGO-donor relationships need to be premised on partnership, characterised by mutual respect, shared obligation and credit. NGOs' empowerment of marginalised groups exhibits both dilemmas and accomplishments. While conceding that the enemy of women is not men but patriarchy, and the fact that gender based imbalances mirror a general societal problem, there is a need for programmes that target both, men and women, as well as creating strategic alliances between WNGOs and CSOs in general to spearhead women emancipation. On their part, the youth must exhibit vibrancy and competence to demonstrate the advantage of their inclusion in NGO activities and not base it on being a favour on account of age. While the role of NNGOs is highly appreciated, SNGOs criticise the NNGOs of draining them of skilled personnel, monopolising credit for innovations, imposing their agenda thus ultimately displacing SNGOs. However, SNGOs and NNGOs partnerships are equally critical in the evolving of an international human rights movement.

CHAPTER 7

WALKING THE TALK: HOLDING NGOs ACCOUNTABLE TO HUMAN RIGHTS PRINCIPLES

7.1. Introduction

The rationale for civil society organisations and NGOs in particular in the governance and development discourse is that they are forerunners and custodians of human rights and good governance. This study was conceived from the general concern that while NGOs criticise the human rights performance of government and business, little attention is paid to NGOs' own human rights and internal governance issues. The internal governance of NGOs has not effectively upheld the principles of human rights and good governance. And yet, as advocates of human rights, NGOs have a moral obligation to adhere to the same human rights principles in their own organising as what they advocate for and demand from others. Put differently, NGOs need to internalise and cultivate a human rights culture before they can legitimately advocate for the application of the human rights discourse and principles elsewhere. NGOs must set an example to society by respecting and valuing their members, employees, partners and other stakeholders as well as fight discrimination, practice internal democracy and use organisational power in ways that promote the interest of all, particularly the most vulnerable in society.

It is clear that NGOs individually and collectively contribute to the institutionalisation of a human rights culture. But it is essential to interrogate whether NGOs have applied the human rights principles of *express linkage to rights; accountability and transparency; participation; and equity, non-discrimination and empowerment*, to their governance processes, policies, strategies and relationships. These human principles informed the critical research questions and the constituent chapters of the thesis.

This concluding analysis of the issues begins with a recap and summary of key arguments of the thesis in part 2, 3 and 4. Part 2 begins with the question of whether NGOs have human rights obligations under the law. Part 3 outlines the human rights obligations of NGOs and articulates what is expected of NGOs in fulfilling each human rights principle in an ideal situation. The findings of the status of NGOs' fulfilment of their human rights obligations are presented in part 4, while part 5 makes recommendations for each principle, while the final section of the chapter concludes with general recommendations and highlights the significance of the study.

7.2. NGOs' human rights obligations

In order to shift the focus of responsibility to uphold human rights onto NGOs, it was necessary to consider, as a threshold question, whether NGOs have any human rights obligations under the law from both a legal and moral perspective. There is obviously some disagreement in the debate surrounding the three schools of thought over the human rights obligations of NGOs. The first and dominant view is that of the legal liberalism school, which argues that NGOs have neither legal nor moral duties under the international human rights law, is in my view obviously flawed. The dominant school argues that the state has the obligation to ensure that non-state actors, including NGOs, do not violate rights by putting in place relevant civil and criminal legislation that regulates non-state actors and intervenes when they violate human rights. The dominant school further argues that extending human rights obligations to NGOs would dilute the state's responsibility to ensure rights. While acknowledging that the state is a primary duty bearer of human rights, a focus on state-based systems ignores the shrinking capacity of states to ensure the realisation of rights. The dominant school is also too legalistic, and ignores the clear limitations in the operation of the law in third world countries. Although governments have put in place specific NGO legislation, the law falls short of enhancing NGO governance.¹⁷⁹⁸

The second school of thought acknowledges that both the state and NGOs have human rights obligations under international law, given that both the ICCPR and the ICESCR provide that human rights are to be respected by "everyone". In its preamble, the African Charter also reiterates that everybody has duties, and articles 27 to 29 of the Charter outline the duties of the individual (including non-state entities such as NGOs). Nonetheless, although it is possible to argue that NGOs have legal duties to promote and respect rights, the theoretical orientation of the second school remains weak.

It is contended that the third school, which is grounded in the sociology of law, and conceptualises human rights as a normative concept that outlines principles aimed at enhancing human dignity and welfare, provides the most solid foundation for the arguments developed in this study. It is a school that is complementary to the dominant legal liberalism school. While conceding that NGOs do not have legal obligations under international law, it argues that NGOs have a moral responsibility to promote and respect human rights. This study has demonstrated that human rights is resourceful as a discipline to tame power by all actors and at all levels of society. There is no moral reason to exclude its operation in respect of NGOs.

¹⁷⁹⁸ The legal obligation of NGOs shall further be discussed under the principle of accountability to the law.

The rights-based approach to development offers most support in extending the rights obligations to NGOs. Although the rights-based approach mechanism was developed by the OHCHR for application to UN agencies, it should equally apply to NGOs as important actors in the domain of human rights, governance and development. The critical issue is not to encourage the state to abdicate its human rights obligations, but rather to diversify the human rights obligations to the NGO sector in order to complement the state in its role of promoting and respecting rights. After all, applying human rights principles to the day-to-day policies and practices of NGOs ultimately strengthens a human rights culture. NGOs must exhibit the principle of *express linkage to rights; accountability and transparency; participation; as well as equity, non-discrimination and empowerment* in their internal policies and practices if they are to measure up to the challenge of being the watchdogs of human rights and good governance.

The theoretical utility of the principles of the rights-based approach is that it reinforces the imperatives of good governance. Although not a magic potion for the resolution of societal problems, the value of the rights-based approach lies in highlighting how power inequalities affect the processes of governance and development. The application of the rights-based approach does not in any way suggest that the law is unimportant to the realisation of rights. Rather, in addition to law, the rights-based approach offers a more proactive approach to people-centred development, human rights and good governance cultures by addressing the root causes of human rights violations. The following discussion elaborates on the implications of the rights based approach to the governance of NGOs.

7.3. NGOs human rights obligations elaborated

In discussing the principles of the rights-based approach, it is underscored that they are neither mutually exclusive nor clearly demarcated. Rather the principles are complementary and overlapping, aimed at the respect of the inherent equality and dignity of the human person.

7.3.1. The principle of express linkage to rights (mainstreaming)

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.¹⁷⁹⁹ 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.¹⁸⁰⁰

7.3.2. The principles of accountability and transparency

NGO accountability refers to how an NGO holds itself responsible for its actions, beliefs and the utilisation of resources. Accountability safeguards against the abuse of authority or power and strengthens ethical behaviour. Accountability also provides assurance that the NGO is fulfilling its responsibility as outlined in the NGO's constitution, mission, policies, programmes, administrative procedures, mechanism of redress and relationships with stakeholders in managing unequal power relations. NGOs have multiple accountability obligations under the law, to the governmental regulatory NGO Boards, NGO governing boards, their membership, communities, public, NGO sector-wide self-regulatory Councils and donors.

Accountability under the law is mainly related to registration. In order to register, an NGO is mostly obliged to have a written constitution outlining the roles and responsibilities of each organ, a governing Board and a membership. The governing Board is vested with authority to oversee the governance of the NGO. Accountability under the law imposes a duty of respect or obedience on the Board to respect the law and be guided by its mission as its primary reason for existence. Each NGO is required to submit periodic financial and narrative programme reports to the government Regulatory NGO Board. An NGO must explicitly prohibit the distribution of profits to leaders and members with the exception of reasonable compensation. The duty of loyalty obliges the Board not to compromise the interests of the NGO in favour of individual interests. Lastly, the duty of care obliges the Board to at all time act diligently in furthering the NGO's mission. The fulfilment of an NGO's mission is the basis upon which an NGO's effectiveness is measured. Common accountability mechanisms used by the Board include having a clear and concise mission and having participatory monitoring, evaluation and strategic planning processes. Accountability to donors entails submitting narrative and financial reports that account for the proper use of resources and justify the outcome of the funding. Accountability to the NGO sectors wide self regulation mechanism requires that the supervisory body itself obeys the Code of Ethics.

¹⁷⁹⁹ ICHRP (2002) 14.

¹⁸⁰⁰ Alston (2005b) 802 and 811.

Accountability to the community that the NGO works with and membership requires respecting them by enabling them to question the NGO's policies and programmes and to participate in taking critical decisions affecting them. Accountability carries a moral obligation on NGOs to enable the communities they work with to hold the NGO responsible for what it commits itself to do in its mission statements and proposals for funding.

Accountability to the general public requires transparency. An NGO should publicise its mission, objectives, policies, methods, activities, achievements, evaluations, geographical scope, organizational structures, sources of funds, profiles of staff and governance leadership. The principle of transparency imposes an obligation on NGOs to provide accurate and objective information. Common mechanisms of community and public accountability include public forums to solicit feedback, documentation of grassroots strategies, public hearings, audits, debates, needs assessments, stakeholders' analysis, monitoring and evaluations of programmes.

7.3.3. 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.¹⁸⁰¹ It guarantees every person a right and opportunity to take part in the conduct of public affairs and to have access to public services. Participation is a major means by which people collectively determine their interests, priorities, engage in local dialogue, generate diverse ideas and promotes collective commitment for the common good.¹⁸⁰² Participation must be "active, free, meaningful" and broad involving diverse stakeholders.¹⁸⁰³ Participation extends "beyond having a right to participate in a given space to include the right to define and shape that space."¹⁸⁰⁴ 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 expose them to processes and skills of asking the right questions and contribute diverse ideas to ensuring their rights. Instead of acting for the community, NGOs must act with the community to achieve the desired change.

¹⁸⁰¹ UDHR (1945) art. 21, ICCPR (1966) art. 25, CRC (1989) art. 12, CEDAW (1979) art. 7, 13, 14(2), African Charter (1981) art. 13.

¹⁸⁰² African Charter on Popular Participation (1990) para 10.

¹⁸⁰³ UN Declaration on the Right to Development (1986), Vienna Declaration (1993) para 25, African Charter on Popular Participation (1990) para 6 and 15.

¹⁸⁰⁴ Gaventa (2004) 29.

7.3.4. *The principles of equity, non-discrimination and empowerment*

The human rights discourse rests on the value system of equity and non-discrimination.¹⁸⁰⁵ 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 action.¹⁸⁰⁶ Affirmative action rectifies the unintended results of neutral laws, policies and practices, on the vulnerable groups in order to afford them substantive equality thus empowering them. The principle of empowerment derives from the cardinal human rights principle of respect of the inherent equality and dignity of the human person.¹⁸⁰⁷ Empowerment means the ability of people to claim and exercise their rights in order to improve their lives.¹⁸⁰⁸ 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 mobilisation, competitive remuneration and supportive working environment for staff. Secondly, empowerment entails addressing of power inequities to enable the weaker party to take action themselves. Therefore, each NGO has to address how it deals with power in its governance structures and fundraising policies as well as management systems, procedures, programmes and stakeholders.

Furthermore, empowerment addresses how the NGO sector addresses societal inequalities accruing from age, gender, ethnicity, race and sexuality among others which marginalise and exclude women, youth, ethnic and racial minorities. In the era of globalisation the thesis also addressed the marginalisation accruing from resource distribution within the NGO sector that manifests itself in the power struggle between NNGOs and SNGOs.

In order to target marginalised groups, each NGO must develop data disaggregated by race, religion, ethnicity, language, sex, age and sexual orientation. Further, each NGO must have policies that provide for diversity, gender equity and balance, impartiality and non-discrimination.¹⁸⁰⁹

¹⁸⁰⁵ UN Charter (1945) art. 1, ICESCR (1966) art. 2(2), ICCPR (1966) art. 2(1), UDHR (1948) art. 1, African Charter (1981) art. 2 and 3.

¹⁸⁰⁶ CEDAW General recommendations on Temporary Special Measures, No 25, para 8.

¹⁸⁰⁷ UDHR (1948) art. 1, ICCPR (1966) art. 3, ICESCR (1966) art. 2(2) and 3, African Charter (1981) art. 5 and 19.

¹⁸⁰⁸ <http://www.unhcr.ch/development/approaches-01.htm>; Keystone accountability survey (2006) 13.

¹⁸⁰⁹ INGO Accountability Charter (2005) 3.

7.4. Status of NGOs' observance of human rights obligations in Kenya, Tanzania, Uganda and South Africa

7.4.1. *The status of observance of the principle of linkage to rights*

Despite the recognition that human rights are universal, human rights are predominantly understood as Western ideas and its genesis is tied to Western history. Yet, the ideological and strategic differences between SNGOs and NNGOs influence the differences in priorities and strategies of achieving human rights. For example, NNGOs prefer the legal liberalism approach to rights, while SNGOs largely prefer a more expanded role that also addresses the root causes of human rights violations. Ironically, African NGOs often forget that human rights are universal and ignore how ordinary people adapt human rights to their practices and debate. NGOs tend to erroneously present African culture as exclusively a source of human rights violations and an impediment to the enjoyment of rights, without looking at the reverse side of the coin.

Despite the theoretical acceptance of the indivisibility of rights and the fact that both DNGOs and HURINGOs aim at promoting the welfare and dignity of the person traditionally, NGOs have maintained a distinction between them. HURINGOs prefer to use human rights as a normative concept that imposes moral obligations on all actors to address the abuse of power. HURINGOs have not embraced the struggles of DNGOs such as the anti-globalisation or poverty campaigns ostensibly because they have a weak legal basis. Likewise, because DNGOs consider rights too legalistic and impractical in context of scarce resources, and they thus tend to focus on economic development and address rights in a technical manner in a bid to achieve better programming without addressing the root causes of inequalities. Generally, although all regional blocs provide an opportunity for civil society participation and apply human rights as a core principle,¹⁸¹⁰ few NGOs have engaged them.

At the national level, many NGOs do not actively participate in the donor-government poverty reduction strategies on the pretext that such consultations merely endorse already-adopted positions. It is also true that NGOs have weak expertise in economic and development issues such that they have failed to hold government accountable by having thorough critiques that address the rights dimensions of poverty and development. Encouragingly, many

¹⁸¹⁰ African Union (2000) preamble, art. 3(g) and art. 2\

2, Statute of the ESCC of the Africa Union (2004) art. 2, KCK EAC Fact-finding missions (2004) 18, Report of the Committee on Fast Tracking East African Federation (2004), 311-312.

NGOs have pursued a dual mandate by addressing both development and rights and are currently experimenting with rights-based approaches.

7.4.2. The status of observance of the principles of accountability and transparency

Although accountability relates to how ethical and responsible an NGO is in fulfilling its mission, it is often confined to financial issues. Accountability to the law requires respecting the law. In East Africa NGO registration is mandatory, while in South Africa it is voluntary. However, some NGOs in East and South Africa chose not to register because the process of registration is so cumbersome. In South Africa some organisations are apprehensive that registration may constrain their flexibility and widen the gap between formal leadership and membership. In some instances the unregistered NGOs operate as projects of registered NGO. The unregistered organisation is constrained from opening bank accounts, renting office premises or receiving donor funding in its independent organisation.

While acknowledging that many human rights victories have been won through law, sometimes, civil disobedience satisfies some tangible immediate results as demonstrated by venting of emotions, voicing concerns, the halting of the evictions from Mandela Park in 2002, writing off electricity arrears by ESKON as a result of reconnections by SECC and repair of road in Western Cape anti-eviction campaign.

Government NGO Boards are primarily established to control registration and operations of NGOs as opposed to ensuring accountability to the law and good governance. Other than the requirement of establishing a Board, having a constitution and the submission of reports, the law has not ensured better governance of NGOs. Government regulatory Boards do not have the capacity to enforce compliance nor guide good governance.

NGO Governing Boards—despite their inherent potential of enhancing the internal governance—are not properly functioning but tend to be established to satisfy the condition for registration. They continue to suffer from poor induction, conflict of interest, poor transitions, multiple engagements, serving on similar boards, weak voluntarism, poor gender representation and failure to democratise Boards practices. Although an NGO governing Board has a fundamental role of ensuring that the NGO is accountable to its missions and memberships, many exhibit conflicts of interest when they benefit from NGO programmes such as consultancy work, the hiring of relatives and directly engaging in routine management issues of which they are only supposed to supervise. Not all Boards have written conflict of interest policies. In cases of financial impropriety, Boards tend to merely request the responsible person to resign while the rest of the membership exonerates

itself from responsibility. Very few cases have been referred to court or are comprehensively addressed by the NGOs.

Accountability to the NGO missions is largely deficient, because constitutions and strategic plans to achieve the missions are often hurriedly patched up, recycled or plagiarised from other organisations' documents in order to fulfil donor requirements.

NGOs desist from having membership because it is expensive and does not guarantee that the elected leadership is competent to advance the NGO's mission due to inadequate information of the competence of the leaders. In most NGOs, membership is unable to set the NGOs' agenda or to ask hard questions to hold leaders accountable, but merely implements the NGOs' programmes. At the same time Boards which are nominated based on skills are also criticised for not governing with the consent of the governed.

The quality of NGO accountability to communities is also problematic due to the commonly top-down methods where the views of the communities are solicited after major decisions have been taken. Often communities are perceived as beneficiaries or inputs of NGO's work. Nonetheless, incidents of joint implementation or facilitation of communities to work within their environment are increasing.

NGO transparency is frustrated by the almost nonexistent organisational documentation and poorly updated websites, that NGOs are misunderstood as being secretive. NGOs partially attribute their opaqueness to a lack of opportunities to reflect and write. Many NGOs depend on oral testimonies for institutional memory resulting in poor institutionalisation and the exhaustion of the interviewees. In all countries, although it is mandatory to submit narrative and financial reports there is poor compliance with this obligation. Even internally within NGOs, information about finances is often confined to the signatories to the accounts.

Globally there are no international standards for criticising or addressing shortcomings within the NGO sector.¹⁸¹¹ NGO accountability through the sector-wide self-regulatory mechanisms are largely inadequate, owing to mistrust, voluntarism in participation and inconsistencies in applying the rules and regulations. By 2008, the legally constituted NGO Council in Tanzania is yet to be operational mainly due to a lack of funding.¹⁸¹² In Kenya, since the contested 2004 elections of the National NGO Council legitimacy to supervise the sector was

¹⁸¹¹ ICHRP (2003) 54.

¹⁸¹² Interview Tweve, INGO representative to the NGO Council, 10 August 2007.

eroded. In Uganda and South Africa, there is no legally binding self-regulatory mechanism. The existing Codes of Ethics are voluntary and hardly enforced.

Similarly, accountability to the donors, which is perhaps the most respected form of accountability by NGOs, has its drawbacks. Donors rarely verify whether NGOs are accountable to their target groups or missions, as their preoccupation is often limited to compliance with specific funding conditions. However, in *S v. Boesak*,¹⁸¹³ the South African Supreme Court of Appeal observed that audited accounts are “hopelessly ineffective” in ensuring checks and balances of NGOs. Besides, donors rarely prosecute or publicly expose NGOs that misappropriate funding. Instead, most donors only withdraw funding, which is hardly a deterrent given that it is rarely publicised. Yet NGOs have traditionally utilised “name and shame,” as a strategy to enforce human rights compliance.

7.4.3. The status of observance of the principles of participation and inclusion

There are numerous challenges in the application of the principles of participation and inclusion in NGO internal governance as well as broadened participation amongst the different stakeholders. It is acknowledged that founders are risk-takers with unusual commitment and sacrifice. However, most NGOs continue to be vulnerable to “founder power” and “star syndrome” where the founder Executive is perceived as the “owner” of the NGO with limited opportunities for inclusive participatory management. Donors have also accentuated the power imbalances within NGOs as they often work with a single individual, usually the Executive Director, thereby making the NGO institutional profile associated with a particular person. Often employees tend to work at the sufferance of the leadership, although some may even work on labour rights. Disciplinary mechanisms are abrupt with persons complained of, often part of the disciplinary panel or having the ability to influence its outcome.

Successions and transitions within NGOs are badly managed or are treated as an accident. Transitions often happen at the end of contracts, in response to crises or when the leaders move out of the sector. In East Africa, most successful NGOs have not had a transition at the Executive Director’s level for more than two decades, resulting in organisation inertia mainly accruing from a difficulty in challenging their decisions. Where succession has happened, previous leaders and employees feel discarded. Many transitions as a result are volatile, resulting in chaos or

¹⁸¹³ *S v. Boesak* 2000 (3) SA 381 (SCA).

shrinking effectiveness for the first two years following the transitions from powerful Executive Directors.

Many NGOs involve communities in identifying, planning and implementing NGO projects. In some instances the participation of communities is paternalistic, reducing communities to customers or branches of NGOs. Demand for quality results has been used as a pretext by NGOs to exclude the ordinary persons closest to the problems from their work as actors. Nonetheless, generally NGOs public surveys have confirmed that NGOs are closer to the communities and are important actors in advancing their welfare and rights.¹⁸¹⁴

Despite the existence of numerous formal institutionalised networks, they have not promoted egalitarian relationships between the partners other than merely working together. Inequitable access to resources results in the domination of the network by those who contribute skills and financial resources. Given that the success of the network is dependent on the achievement of the members, it is difficult to fundraise for the networks' activities. Thus networks end up competing for the same activities and resources as its members. Inevitably, members tend not to be committed to most of the networks.

NGOs' commitment to advocate actions that determine the social contract between the state and its citizens is often dismissed as being elitist, self-seeking and a masquerading political opposition. Consequently, there is still ambivalence over NGOs' engagement with political society. The direct relationship between NGOs and those in power weakens NGOs' potential for effective advocacy. On the other hand, proximity to government while facilitating access to information may compromise the NGOs capacity to independently influence policies and is not sustainable in situations of competing priorities and interests. Simultaneously, out-right antagonism is counterproductive particularly where government is popular as is common in countries of political and economic transitions. Hence, the term 'critical ally' that balances confrontation with collaboration was coined.

Conflicts are part and parcel of participation because of the diverse experiences, opinions and interests of people. However, conflicts within NGOs are poorly managed and their root causes hardly interrogated. The covering up of power inequalities further accentuates the unofficial power within NGOs and compounds the muddling of roles and responsibilities between management and governance functions. In some instances some aggrieved activists form parallel NGOs. The situation is more acute with WNGOs, particularly in East Africa who often treat the

¹⁸¹⁴ Barr, Fafchamps and Owen (2003) 42, NPO Act impact assessment (2005) 46.

slightest differences as fundamental. The poor addressing of conflicts results in burn-out, gossip, backstabbing, withholding information and false accusations such as misappropriation of funds, harassment and nepotism.

7.4.4 The status of observance of the principles of equity, non-discrimination and empowerment

Regarding NGOs' empowerment of marginalised groups, the thesis unveils a picture of both failings and accomplishments. Some of the failings are linked to their training. Non-profit governance and non-profit law courses are not options available in any academic institutions of learning within East Africa or South Africa.¹⁸¹⁵ Similarly, human rights is not a compulsory subject of law nor the social sciences for the first degree.

Lack of training and NGOs' relegation of learning as secondary to real activism are noted to have created knowledge gaps in human rights, governance and organisational development amongst most NGOs. NGOs tend to trivialise theory as academicism and irrelevant to daily operational dilemmas. Most learning within the NGO sector is through short term courses or workshops aimed at programme implementation without critical conceptual analysis. Although research is undertaken, it is mainly seen as an output of funding, rather than an input to improve NGO effectiveness. Consequently, NGOs often exhibit poor governance and application of human rights principles.

This thesis acknowledges that donor resources and goodwill have contributed to NGOs' execution of programmes and their survival. Nonetheless, NGOs are greatly disempowered by the failure to raise their own funding and the inability to make a case for equitable partnerships with donors. Consequently, many organisations cannot survive without donor support. Frequently, NGOs are co-opted to endorse donor strategies and priorities or are at times are diverted from addressing the issues of marginalisation and rights abuses. A few NGOs with a reputation for high quality work and diversified funding are able to control their agenda as well as influence that of the donors.

NGOs' perception of power as bad or corrupting has constrained the willingness of NGOs to empower themselves to realise their mission or enforce their rights. Surprisingly, many NGOs are reluctant to ask for money for fear of refusal. Some NGOs associate money with corruption, criminality and the erosion of independence. Although DNGOs readily accept

¹⁸¹⁵ Swilling and Russell (2004) x, Observation by author for East Africa.

government funding, HURINGOs often resist government funding as one of the strategies of protecting their independence.

Many NGOs rely on low cost employees or volunteers for their internal expertise. The NGOs' internal empowerment is greatly constrained by the poor pay and consequential failure to meet the financial demands of NGOs' employees. Thus staff members are forced to take multiple occupations as consultants or move on to better paying jobs. Similarly, most Executive Directors double as programme officers to earn a salary, which marginalises strategic thinking for the NGO. The stressful nature of NGOs' work compounded by the stigma associated with talking about personal needs and fears contributes to burn-out, depression, and fatigue amongst activists and renders the NGO sector oppressive.

The state-centric human rights discourse, which places women's rights in the private sector, and the individualistic orientation of human rights which hides the structural inequalities accruing from patriarchy, class and state, have contributed to the marginalisation of addressing women's rights by HURINGOs. There is a strong misconception that women's rights are the exclusive domain of women and not integral to human rights. In all countries of the study, the leadership of NGOs is predominantly male with the exception of WNGOs. While a few NGOs have established gender programmes, they are under-funded. Similarly, very few WNGOs conceptualise their work within the rights framework, or have a defined feminist ideology. Women are reluctant to include men in their NGOs because of the fear of cooptation, misappropriation of women's ideas to men and lack of male experience of marginalisation on account of gender.

Likewise, before the adoption of the African Youth Charter in 2006 there was no human rights document at the continental level that focussed on the situation of the youth. In practice, the youth have been mainly left to themselves. Where youth are included they are expected to conform to existing power systems and structures. Their choices are simple, accept it, repeat it or leave and start their own NGOs. Unsurprisingly they repeat the same power dynamics without realising it. Rarely are issues of contemporary relevance to youth such as sexuality taken on board. Intergenerational relationships with NGOs are problematic because both young and older activists complain of exclusion. In order to promote more inclusion, some NGOs have honoured founders in ceremonial events, increased mixed panels of older and younger generations, have initiated intergenerational projects and have mentoring teams.

The rights of sexual minorities are largely ignored due to the misconception of being regarded as 'un-African' and due to a lack of mandates. It is only at the 43rd session of the Africa Commission that the NGO Forum for the first time acknowledged the rights of LGBTI. Likewise,

issues of ethnicity and race are not addressed in a concerted and sustainable manner. The complexity of addressing race issues is that the numerical and political minority are economically dominant.

The contemporary relationship between INGOs and African NGOs reveal numerous empowerment challenges to the African NGOs, amidst some positive gains. While the ideal relationship between NNGOs and SNGOs should be based on a partnership between equals, characterised by mutual trust, respect and shared responsibility among partners, this is rarely the case. Major differences in levels of funding, staffing and access to international media for publicity and unequal access to global centres of influence affect the relationship. As a result the relationships are characterised by subordination in which NNGOs, often use their vantage positions to exercise undue patronage and micromanagement in determining the needs, structures, mandates and priorities of SNGOs as well as rebrand SNGOs innovations as their own.

On the positive side, NNGOs have increasingly established offices in Africa in order to promote solidarity with SNGOs and achieve programme results in a more realistic and effective way, which also ensures mentorship of SNGOs. Likewise, there have been increasing numbers of Africans recruited to influential positions in NNGOs. Having Africans at the decision-making tables within the NNGOs has resulted in better spotlight on African issues and strengthened African NGOs' capacity to influence the global agenda.

7.5. Recommendations

In the quest for NGO renewal, NGOs are posing hard questions about their relevance and strategies to achieve their self-prescribed goals of social justice, good governance, equity, human rights and development. It is now customary for NGOs to enumerate in bold print and in visible areas of their organisations values that in many ways resonate with human rights principles. NGOs are also rethinking their terminologies to make them more respectful. Instead of using such terminology as “masses, beneficiaries and grassroots communities”, NGOs are using terminology such as “stakeholders, communities or citizens” adopting terminology from the development and governance discourses. In the human rights discourse there is shift from “victims” to “rights holders.” How can NGOs better realise their specific human rights obligations?

7.5.1. NGO obligations under the principles of linkage to rights

NGOs have a moral obligation to mainstream human rights principles into their governance processes irrespective of whether or not they define themselves as HURINGOs. The

building of a human rights culture must voluntarily begin with NGOs as part of their ordinary practice. NGOs should therefore build on positive culture and local people's knowledge and understanding of rights. NGOs should further address economic development, political issues, social welfare and rights as interlinked discourses. Applying human rights principles to NGO governance would strengthen their legitimacy in the eyes of the public that the NGOs exist for the public good. There is a higher responsibility upon HURINGOs to respect their own values and reflect on how they have addressed their own power and privilege.

The benefit of mainstreaming human rights is that it addresses discrimination, tames the exercise of power and provides checks and balances against arbitrary decision-making by all actors, which are critical aspirations in the NGO tradition. Significantly, human rights is an ideology against domination, exploitation and oppression in society. Mainstreaming human rights provides minimum standards of achievements and makes all actors accountable for the implication of their work. At a practical level mainstreaming human rights would expand the human rights movements as well as the resources invested in the human rights discourse.

The principle of universality means that human rights are present in all societies. Therefore the legitimacy of NGOs is also derived from the common norms pursued by NGOs and the communities they work with. It is therefore incumbent upon NGOs as proponents of human rights to build on the positive aspects of cultural values that resonate with human rights and support a cross-cultural perspective that promotes the interplay between the universal human rights standards and cultural norms in order to stimulate mass support for the human rights discourse. The danger lies in the blanket glorification or rejection of African culture. Culture is capable of both enhancing and detracting from human rights. Given that culture is a way of life and an identity, it provides a basis for making rights discourse a living and dynamic concept. The core values pursued under human rights are similar to the concept of "*ubuntu*" among the Bantu people of sub-Saharan Africa. In a positive way, the concept of "*ubuntu*" loosely defined as humanness provides a basis for linking rights to culture because it preaches mutual respect and responsibility towards each other, solidarity, compassion and collective unity. The African Charter, the African Protocol on Women's Rights, the UNESCO's Declaration of the Principles of International Cultural Cooperation, the Commonwealth Foundation NGO guidelines for good policy and practice, the Africa Feminist Charter all provide for the promotion of positive cultural values.¹⁸¹⁶

¹⁸¹⁶ African Charter (1981) art. 29(7), Protocol on Women (2003) Preamble, UNESCO Declaration of principles of cultural cooperation (1966) art. 1(1), 1(3), art. 4(2) and art.11(2), Commonwealth Foundation: NGO Guidelines for good

The main reason for the mainstreaming rights across the socio-economic and political spectrum is that human rights mutually reinforce development and governance discourses to which all NGOs directly or indirectly subscribe to. Indeed at the African level, all African treaties provide for the promotion of democracy and human rights in the same sentence or article.¹⁸¹⁷ Moreover, all NGOs share the common goal of promoting the dignity and welfare of the human person and societal wellbeing. Therefore, just like DNGOs cannot afford to ignore the centrality of human rights in development work, HURINGOs cannot afford to remain aloof to the development agendas such as globalisation and the privatisation of essential services that have a serious implication for the realisation of rights. Similarly, HURINGOs have the responsibility to monitor the realisation of ESCRs as well as the non-marginalisation of rights in the merger of the discourses of rights, development and governance. Given that none of the development frameworks are written under a human rights framework to challenge corruption, abuse of power and the unequal global economy, HURINGOs can also use litigation to stimulate public debate, prompt consumer boycotts with non-compliant businesses or work on apparently business issues like corporate social responsibility and fair trade relations.

7.5.2. NGO obligations under the principles of accountability and transparency

Resistance to oppression is part of the human rights struggle. Consequently, in exceptional cases NGOs may deliberately break the law under civil disobedience in order to achieve their pressing immediate demands. However, because civil disobedience can degenerate into lawlessness and anarchy it is only justified as a last resort where all lawful engagement with governments is exhausted. At the same times while undertaking civil disobedience, an NGO should not impair the rights of others or coerce others to join. Ultimately, civil disobedience should cease once appropriate concessions have been made.

The right to freedom of association does not require the mandatory registration of NGOs. However, registering an NGO facilitates accountability to the laws and enhances an NGO's legitimacy for others to invest in it as well as providing a legal basis for engaging in serious advocacy. In fact, although in South Africa registration is voluntary, NGOs register in order to qualify for tax exemptions or to attract donor or government funding, not necessarily to strengthen their systems

policy and practice, (1995) guideline 5, Africa Feminist Charter (2006) 11, Africa Feminist Charter (2006) 11.

¹⁸¹⁷ African Union, Constitutive Act (2000) art. 4(m).

of internal governance. Therefore, it is in the best interest of NGOs to advocate for law reform that ensures their independent existence.

The individual NGO Board is the most important accountability mechanism for NGOs. NGOs are created to pursue common interests independent of governments. An NGO Governing Board is necessary and imperative for the following reasons: Excessive state monitoring of NGOs can actually result in the violation of the right to freedom of association. Moreover, registration on its own does not guarantee that the NGO will observe the human rights principles. Thus it is recommended that each NGO puts in place a Governance Committee or Board Development Committee to ensure Board renewal and effectiveness in ensuring accountability. To ensure that neither Board nor staff put personal interests above those of an NGO, each NGO must put in place a conflict of interest policy and respect it. As a good practice each Board member is obliged to disclose the potential conflict of interests, the interested party must be absent from the decision making process and the reasons and decisions taken to address a conflict of interest must be documented.¹⁸¹⁸ In order to strengthen accountability to the mission, the mission should be clear and concise because it is easier to achieve and to mobilise collective efforts. In addition a mission must be dynamic to adapt to the changing environment, as well as be evaluated in participatory monitoring, evaluation and strategic planning processes.

Although most monitoring and evaluations are instigated by donors, self-monitoring and evaluation enable an NGO to address its unique circumstances. Monitoring is a continuous process to track achievements while evaluation is usually an external process undertaken to analyse the quality of the results. In order to remain accountable to the NGO mission, each NGO must undertake the continuous monitoring and evaluation of its work to enable it measure the effectiveness of its strategies to achieve the mission, correct mistakes, learn from failure, reward successes, highlight results and cultivate public support. Having clear monitoring indicators improves data collection, knowledge building, facilitates the writing of comprehensive reports and ultimately energises the NGO as it celebrates the achievement of its mission.

The right to freedom of association is premised on voluntary action by individuals. Having a wide membership is not a mandatory prerequisite of NGOs. The critical question is not whether a Board is elected or nominated by the membership but rather that the members have effective control over the NGO's policies and actions by either voting or other appropriate

¹⁸¹⁸ KCK and Board Source (2002) 20-21.

democratic and transparent decision making mechanisms.¹⁸¹⁹ Having a strong membership, however defined, ensures that the NGO governing Board itself is accountable. Payment of membership is one way of demonstrating a members' commitment to the NGO and increases a memberships' willingness and legitimacy to demand accountability of the leadership. Further, coordinating membership is a full time engagement that each NGO should have in place a liaison person to ensure their effective participation and the processing of their voices.

Strengthening the NGO sector-wide self-regulatory mechanism is a better option given the ineffectiveness by government in strengthening the governance of NGOs in the countries of the study and would circumvent undue interference of government in the NGOs' internal affairs. An NGO sector-wide self-regulatory mechanism can effectively police the NGO sector to respect the human rights principles, guide the NGOs on governance, serve as an independent ombudsman for the sector and promote mutual learning. In order to be effective, Codes of Ethics designed by the NGO sector-wide self-regulatory mechanism should apply to all NGOs but subject to judicial review as is the case with professional Councils. Significantly, the NGO Council must also adhere to the same human rights principles to earn the legitimacy to police the NGO sector. Hence, it must be independent, impartial and an excellent information processor. In fact functional self-regulatory bodies exist in the UK, New Zealand, the Philippines and Pakistan, to cite a few examples.¹⁸²⁰

The principle of transparency ensures public accountability that the NGO serves the people and is ethical. It also facilitates the exposure of fraudulent NGOs. Further transparency about an NGO's challenges reaffirms to the public that the NGO acknowledges its mistakes and adjusts its strategies to respond to unintended consequences. Transparency also calls for timely and wide dissemination of accurate information. To enhance the accountability and transparency of NGOs, there is a need to enlist communities, work with them on a broad spectrum of human rights issues, compile and analyse their testimonies in order to affirm and validate their experiences and promote mutual learning between NGOs and communities. It is also crucial for each NGO to identify the appropriate mechanism of accountability to each stakeholder.

¹⁸¹⁹ Resolution 1996/31 para 12 [www.2.ohchr.org/documents/ecosoc/res/1996/eres1996-31.htm](http://www2.ohchr.org/documents/ecosoc/res/1996/eres1996-31.htm).

¹⁸²⁰ Morgan (2005) 4.

7.5.3. NGO obligations under the principles of participation and inclusion

The principles of participation and inclusion are crucial to the process of institutionalising an NGO. This can be achieved through teamwork and broad-based policy that promotes the diversity of ideas. However, the solution for institutionalising an NGO does not lie in diluting the founder's passion and power but rather putting in place checks and balances to manage it. Change is inevitable, because NGOs' missions become irrelevant, activists get burnt-out and strategies become ineffective. Therefore, sustainability calls for organisational regeneration where each NGO renews its human resources, sets new goals and harnesses new opportunities, priorities and approaches. Properly managing succession requires putting in place systems that build on old gains and reassure the public that the succession is well planned in the interest of the NGO but not a result of crises. Most importantly, succession is not restricted to recruiting individuals but to identifying organisational needs and the strategies to achieve them. Each NGO must document its experiential learning in order to institutionalise good practices. This entails creating a "how to do" manual detailing important facts about the practical operations of the NGO, such as details about each funder including preferences, working styles, reporting dates, the dos and don'ts of the organisational culture, lessons learnt, debates and the rationale of major decisions taken, among others.

While recruiting former Executive Directors on the Board should be resisted for compromising the process of organisational renewal, it is strategic to create space for a predecessor to continue contributing to an NGO, but interacting with the Board rather than the Executive Director. NGOs are supposed to address common interests and provide all parties with identity, contact addresses, social networks and psychological attachment which founders and former employees are also entitled to. A good succession is planned right from the beginning of one's term by mentoring a broad pool of potential successors and not necessarily anointing one. This may be achieved through the delegation of office to different staff and giving every staff member the authority to be financially accountable.

Community participation is critical to the legitimacy of NGOs because NGOs purport to act in the interests of the voiceless and marginalised people. The participation of the ordinary people in decisions about their lives ensures that they are the central beneficiaries of interventions, while simultaneously enhancing the ownership, sustainability and legitimacy of interventions made. Numbers are critical for public advocacy as demonstrated by the struggles of social movements in South Africa. Professionalism should include the ability of an NGO to ensure the active participation of the communities it works with and ultimately their empowerment to act

on their own to achieve positive change. Conversely, mere participation and awareness-raising of the poor communities without empowering them to act on their own to challenge violations and marginalisation further accentuates their frustration.

Each NGO needs to make human rights awareness a participatory and interactive discourse that encourages reflection, inquiry and action to enable the communities to initiate action themselves. Meaningful participation and accountability requires working with communities on their self-identified interests and providing real decision-making opportunities. NGOs need to recapture traditional methods of learning as an interactive and enjoyable social activity aimed at building character and promoted through observation, imitation and emulation, songs, games, riddles, puzzles to mention but a few.¹⁸²¹ Working from familiar places and accessible venues; giving opportunity to everyone to speak, taking services closer to the people and encouraging community dialogue on common issues are some of the strategies of ensuring active participation of the target groups. Increasingly NGOs are undertaking joint implementation with communities, grounding activism in everyday issues, such as electricity, housing, domestic violence, economic activities, the environment to enable people to link rights to everyday struggles.

Formal networking is not mandatory, but is one of the strategies for broadening participation. Successful networking entails applying the following human rights principles: Firstly, respect of members as voluntary autonomous groups in pursuit of common interests; secondly, empowerment to enhance their collective voice and common identity, improve overall competencies of members, shield members from arbitrary state power and foster organisational synergy through collaborative exchange of information, skills, knowledge and experiences; and thirdly, active participation and inclusiveness of parties to nurture ownership while concurrently providing an opportunity for members to opt out in cases of disagreement without compromising the network's agenda. NGOs also need to diversify their networks beyond peers in order to recruit new allies to the human rights discourse. Each NGO needs to continuously reflect on whom to work with and who they have to influence or whom to ignore. The participating partners must continuously negotiate the network relationship and have written frameworks or memorandums of understanding that articulate the common interests and differences, roles and responsibilities as well as terms of engagement to provide a basis for common understanding and resolution of conflicts.

Civil society is a place for public debate and argument over competing views. Given that conflicts are part and parcel of managing divergent views, each NGO needs to put in place a

¹⁸²¹ Kenyatta (1938) 100-104 and 120-121, Mandela (1994) 11.

conflict resolution mechanism to process the competing interests of the parties. Nonetheless, this does not mean unnecessarily questioning each decision but rather that stakeholders are involved in the deliberation of strategic decisions that affect them to promote ownership of agreed positions. Creating room for open disagreements encourages appreciation of the different opinions and promotes ownership of consensus decisions. The failure to dialogue over the diverse experiences, concerns and knowledge, frustrates the development of common positions, breeds negative conflicts and organisational inertia.

Given the inevitability of NGOs' participation with the body politic of society, NGOs must abandon their apolitical stance and proactively influence public policy. No NGO should openly pursue a political agenda. Rather, each NGO must candidly articulate its relationship with the state and with politicians. Participating with political society, while simultaneously remaining non-partisan is critical because NGOs act in a political context given that human rights and social justice struggles are political struggles to promote an egalitarian society. Politics is about how, when and why power, resources and influence are distributed in society. NGOs serve as watch-dogs over the abuse of power, offer alternative sources of information and complement the state's role in service delivery. Most importantly, an NGO's work becomes sustainable where government as the main duty-bearer adopts the NGO's agenda. Significantly, participation in NGO's is believed to promote democratic practices and strengthen pluralism, build trust and cooperative behaviour, strengthen voluntary service, team work, analytical thinking and promote alternative solution to societal issues.

At whatever level of participation, whether internally within an NGO or externally with the different stakeholders, participation must be based on the equitable participation of all partners in order to influence the outcome of the participation. Hence it is imperative to address the power dynamics within a given NGO and in its relationships with other stakeholders. Participation obliges NGOs to reconceptualise people as makers and shapers of their own destiny, with NGOs learning to work with the different stakeholder's they engage within an open and respectful manner.

7.5.4. Equity, non-discrimination and empowerment

NGOs must first empower themselves internally before they can attempt to champion the empowerment of others. The responsibility of empowering NGOs squarely lies on NGOs themselves. Because NGOs have the responsibility of determining what constitutes a human rights violation and translate everyday practices into human rights knowledge, NGOs must have human rights expertise. Indeed the Kigali Declaration recommends the teaching of human

rights as a permanent feature in the school curriculum and for law enforcement officers.¹⁸²² NGOs must invest in learning and accept failure and criticism as an opportunity for growth. Linkages need to be established between activists and academia to strengthen NGOs' intellectual, analytical and research base, in order to develop institutional knowledge and propose concrete alternative voices on societal issues. Whereas NGOs are not accustomed to peer review, and shun peer reviews as unreasonable criticism and undue interference, academia have successfully used peer reviews to maintain high standards of performance, academic autonomy and honesty.

The extent to which an NGO is empowered is reflected by its funding profile, autonomy in designing strategic direction and policy development, staff skills competence and retention. Ensuring resources to achieve the mission is a core governance function of the Board. An NGO should fundraise to achieve its mission not to violate it in the interest of money. Each NGO has to safeguard its autonomy by resisting opportunistic money or take responsibility for being corruptible and participating in its own marginalisation. Rather than begging for money, each NGO has to develop constituencies to support its work. However, the practice of HURINGOs resisting government funding is not sustainable in the context where NGOs cannot raise their own funding and is hypocritical because NGOs take foreign governments' money. Moreover, government money is public money. Both government and NGOs serve the same people and seek to advance the constitutional rights and the quality of lives of the same people.

Given that power is a process of human relationships, the continuation of power relations depends to some extent on the cooperation of the weak to quietly accept it.¹⁸²³ It is therefore also incumbent upon NGOs as the weaker party to exercise their agency and demand equitable relationships with whatever dominant stakeholder they work with, such as business, government and donors. In an ideal partnership there are equitable power relations, reciprocal obligations, mutual respect, shared achievements and commitment to long term mutually benefiting working relationship. NGOs must learn to collectively speak the truth to donors rather than grumble quietly while mimicking donor rhetoric.

The critical issue should not merely be that of government or donor funding, but the ability of a given NGO to articulate its mission, and safeguard its autonomy while simultaneously ensuring accountability to various stakeholders such as membership, communities, donors and government. While friend-raising is critical in fundraising, the role of donors is not to distribute

¹⁸²² Kigali Declaration (2003) para 30.

¹⁸²³ Lips (1991) 3 and 8.

money but to achieve the donor's mission. Thus each NGO must write quality proposal that highlights how both the NGO and the donor agency can realise their common goals. Further, each NGO should also publicise the impact of its work by credible advocates, in a clear but interesting ways that appeal to the broad public at all levels of society.

Payment of competitive salaries is essential because of the multi-tasked nature of NGO work and the imperative to ensure professional results. Significantly, NGO employees also have rights and survival needs. An NGO's effectiveness and sustainability depends on the quality and retention of staff. Flexible working hours, paid sabbaticals leave for reflection, statutory pension and severance package, staff medical services, time off in lieu for long trips, and staff wellbeing budget are some of the good practices for sustaining activism.

In order to address the marginalisation of women, there is need for a dual strategy that applies gender-mainstreaming strategies to supplement but not replace specific women's rights programming. Gender mainstreaming was introduced to address the ways in which gender relations shape women's and men's access to rights, resources and opportunities. The Beijing Platform of Action requires all institutions and organisations to have equality of men and women in their ranks.¹⁸²⁴ Although not all men are against women's rights, the gender based violations mirror a general societal problem of power imbalances in favour of men. Hence, the imperative of programmes to target both, men and women, as well as create strategic alliances between WNGOs and other NGOs and CSOs in general to address gender injustices. It is also neither desirable nor feasible that women solely shoulder the burden of an egalitarian society because men have to participate in the dismantling of their power. Support should be extended to the Africa Feminists Charter that underlines the importance of women's organisations to be led and managed by women.¹⁸²⁵ While, WNGOs have a legitimate interest to protect their space from being fundamentally altered by men, NGOs do not have a legitimate reasons to exclude women for it would perpetuate the disadvantages against women.¹⁸²⁶

Drawing from the analogy of gender mainstreaming, marginalised groups have the legitimacy to have their own NGOs, while concurrently all NGOs should mainstream empowerment of marginalised groups as part of their contribution to an equal society. In respect of marginalised groups, empowerment requires an actor oriented approach that starts with the

¹⁸²⁴ Beijing Platform of Action (1995) objective G.1, para 192 (c).

¹⁸²⁵ Africa Feminist Charter (2006) 13.

¹⁸²⁶ SAHRC, *The exclusionary policies of voluntary associations* (2005) 23.

participation of those directly affected by social exclusion and making them the principal agents of action in the struggle for recognition, presence and influence.¹⁸²⁷ This includes having policies and programmes that promote diversity and empowerment of marginalised groups. For example equity in NGO processes by giving marginalised groups an opportunity to be at the decision-making tables, work as facilitators of their programmes, providing safe places to mirror real life situation in order to raise controversial issues as a collective and addressing the barriers to participation. Nonetheless, the recruitment of representatives from marginalised groups should not be a favour, but must equally demonstrate the added value of their participation and inclusion.

An international human rights movement needs to be premised on viable and vibrant movements at all levels of society beginning from the grassroots and extending up to the international arena. This is not to suggest that NNGOs should stop offering material and technical support to SNGOs. Rather, NNGOs ought to empower SNGOs to acquire the requisite skills, opportunities and resources to act on their own. More importantly, it is also in the interest of NNGOs to strengthen SNGOs to promote the evolution of dynamic and vibrant international human rights movements. SNGOs desire partnerships with NNGOs as donors, partners in coalition building, joint researches, and advocacy to influence national, regional and global processes, sensitise the Northern publics about global poverty, unfair trade relations and enable SNGOs to speak in their own voice and influence debates in the international arena. In turn NNGOs look for local expertise, dynamism, solid connection with target groups and legitimacy derived from partnership with SNGOs. Building an egalitarian international human rights movement is an interactive process of exchange of resources and knowledge based on mutual self-respect, acknowledgement of each other contributions and interests and shared responsibility.

7.6. General recommendations and significance of the thesis

In so far as it directs itself at NGO's in the region, this thesis is neither prescriptive nor offers a single comprehensive definition of the rights-based approach but rather urges each NGO to critically reflect on how it has internalised the human rights principles in its policies, programmes and practices. As advocates of human rights NGOs are obliged 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. In discussing the principles

¹⁸²⁷ Gaventa (2005) 29.

of the rights-based approach it is demonstrated that the human rights principles are mutually reinforcing.

In essence, the functional linkages between empowerment, participation and accountability should be understood as facilitating human development and the promotion of a culture of human rights. Empowerment in the NGO sector relationships requires enabling the marginalised groups to act as autonomous individuals or organisations to analyse their challenges and develop self-efficacy to take action themselves, supported by other stakeholders. For empowerment to happen participation must be active and meaningful so as to enforce accountability on the part of the NGO to respect the participants as active agents in the promotion of their rights, welfare and dignity. In other words, NGOs have to ensure that they are accountable to the people but not reduce them to victims or mere technical providers of information necessary for efficient programme implementation. Therefore, each NGO has to facilitate communities to participate as partners to claim and exercise their rights. Thus NGOs must act “with” the community instead of “for” the communities to enhance the communities to have a say in matters that affect their lives. Encouraging partnerships and broad participation further requires applying the principle of equity and non-discrimination to address inequities in the relationships while simultaneously respecting the different stakeholders as equals. Accountability requires NGOs to address the unequal power distribution in the NGOs’ policies, mechanisms and practices. Transparency also requires offering the right information to influence the way people think about themselves and encourage them to struggle against injustices thus strengthening their empowerment. Consequently, transparency entails openness about the NGOs programmes, income, decision making processes and safeguards against abuse of power.

This thesis constitutes part of numerous efforts to merge governance and human rights, arguing that the governance of NGOs is critical to the strengthening of the human rights movements. It would be both simplistic and inaccurate to suggest a lack of tensions, contradictions and ambivalence in the process of linking human rights to governance. Numerous dilemmas coupled with a lack of crystallised 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 thesis 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. In large measure, the materials and principles that have been developed to address these issues come from

Western/Northern countries, particularly the United States. While appreciating the principles of non-profit governance in general, there are limitations of grafting concepts largely derived from the North to local realities.

There is an eagerness on the part of NGOs to learn from each others' experience in an effort to guarantee their own survival. Yet, there is a scarcity of thorough investigation of the processes, policies and practices of NGOs let alone a serious examination and cataloguing of factors that induce growth, in order to strengthen NGOs. Therefore, the theoretical interpretation of the experience, challenges, contradictions, dilemmas, lessons learnt and achievements of NGOs' rights organising, has enabled the harnessing of NGOs' experiences to inform the evolution of NGOs' work within the human rights discourse. In other words, the thesis contributes to the development of the human rights jurisprudence based on the experiences of East and South Africa. This study documents the experiences of NGOs for lesson learning. Therefore, it fills the void of NGO actors who essentially learn in trial and error manner without adequate conceptual clarity and lesson sharing. It has also become customary for discussions of NGOs to focus on dismissing their positive attributes as unproven and as such focus on NGOs' obvious limitations. This thesis departs from this tendency by also highlighting the positive contribution of NGOs to human rights development.

In pursuit of building an international civil society, there is a quest for a more complete articulation of normative principles and the articulation of rights and responsibilities of civil society in general. Regretfully, the precise parameters and critical elements of the obligations of NGOs remain vague and ill defined at the national, regional and international human rights supervisory bodies. 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.

It is acknowledged that in order to qualify for observer status at supra-national levels an NGO must be registered, have a constitution, governance structure and membership. However, very few NGOs seek observer status. Moreover, being accredited is primarily aimed at enabling the human rights body access alternative information but not necessarily to guide an NGO in governance or monitor NGO's human rights observance. Yet, this thesis reveals that not all Governing NGO Boards have the capacity to enforce compliance to human rights principles. However, neither the African Commission nor the national commissions have legal basis for holding NGOs accountable. The Paris Principles merely recommend a collaborative relationship between

NGOs and HRCs.¹⁸²⁸ There is yet to evolve a systematic relationship that strengthens the governance of NGOs. Only the South African Human Rights Commission (SAHRC) has developed principles to guide the governance of the voluntary sector.¹⁸²⁹ While the KNHRC has a draft framework for partnership with NGOs, it is mainly targeted at joint programming and not at governance.

Even in South Africa, where the Board is mandated to strengthen the governance of NGOs, it has not done so. Good governance is marginally promoted through submissions of narrative and annual reports to government organs. None of the government NGO Boards had a comprehensive status report of the NGO sector, scope, characteristics, trends or accurate numbers of NGOs. Further, the government commissioned reports in Tanzania and Uganda observed that it was unrealistic and extremely costly for government alone to monitor NGOs. Instead the government commissioned reports recommend the strengthening of existing mechanism such as grant agencies, NGO Boards, trustees and beneficiaries to play an oversight role.¹⁸³⁰ It is therefore in the best interest of states to strengthen NGO sector wide self-regulatory mechanisms. Providing a supportive working environment also includes tax policy incentives which can help stimulate local public philanthropy which would in turn enhance public scrutiny of NGO governance. Currently the governance of NGOs is largely left to the discretion of the Governing NGO Boards who suffer from numerous limitations.

Consequently, this thesis 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 suggested reviews to facilitate the effectiveness of the NGOs' contribution to the UN's work.¹⁸³¹ 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, International NGOs have taken the initiative to articulate their responsibilities under the International Accountability Charter. Likewise, the Africa 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.¹⁸³²

¹⁸²⁸ Paris Principles 1993/A/RES/48/134 Methods of operation 6 (g).

¹⁸²⁹ SAHRC, The exclusionary policies of voluntary associations, Tessa Brewis presentation (2005) 11.

¹⁸³⁰ Barr, Fafchamps and Owen (2003) 48, REPOA (2007) xiv, Kenya NGO session paper (2006) 18.

¹⁸³¹ UN Resolution 1996/31, (1996) para 17, www.2.ohchr.org/documents/ecosoc/res/1996/eres1996-31.htm;

¹⁸³² Charter on Popular Participation (1990) part 111.

The African Commission has a strategic role to play in articulating NGO human rights obligations given its experience of building an African jurisprudence and initiating new paradigms. The incorporation of collective rights and duties in the Africa Charter provides a conceptual basis for applying human rights to NGOs. From a pragmatic perspective, because of the full ratification of the Africa Charter by all African states,¹⁸³³ African governments will be more receptive to respecting the African Commission. Increasingly state are challenging the legitimacy of NGOs to serve as human rights monitors and questioned NGOs' independence and accuracy of the information of NGOs' shadow reports on government human rights performance. It is instructive that the Brainstorming Meeting on the Africa Commission and the African Union Commission urged the African Commission to address the human rights violations committed by non-state actors.¹⁸³⁴ As a starting point the Africa Commission can highlight the basic tenets of governance, reporting structures, guidelines and methods of authoring shadow reports on governments, fact-finding missions to mention but a few.

Under international law governments are obliged to provide the legal and regulatory framework for civil society to function independently. While under international law there is no legal obligation on NGOs to register in case of compulsory registration, the procedures for registration must be quick, straightforward, cheap and denial of registration must be subject to judicial review by an independent and impartial court.¹⁸³⁵ Furthermore, the criminalisation of non-registration violates the right to freedom of association.

The thesis profiles NGOs as serious actors within the human rights, governance and development arena. Ultimately, the thesis is useful in advocating for better policy formulation in respect of NGOs' development assistance and strategies. The thesis does not suggest that NGOs should reject donor funding but rather that NGOs strengthen their governance and autonomy to negotiate for equitable partnerships. Donors need to shift from a paternalistic approach to strengthen NGOs to organise as autonomous entities. It is strategic for donors to solicit grantee feedback because it demonstrates solidarity for common goals and respect in the donor/NGO relationships. The Commonwealth defines partnerships as a relationship of mutual respect, learning and sharing skills, experiences, resources and power in a complementary manner.¹⁸³⁶ Thus donors are

¹⁸³³ Africa Commission 13th Annual Report (2000) para 2.

¹⁸³⁴ Report of the Brainstorming meeting on the African Charter (2006) African Commission, 20th Annual Activity report (2006) 30, Annex II, Reco a.

¹⁸³⁵ Lawyers Committee on Human Rights (1997) 20-22.

¹⁸³⁶ Commonwealth Foundation (1995) 52.

urged to pay attention to governance because although participatory processes and consensus building appear time-wasting, they are instrumental in guaranteeing ownership and sustainability of funded projects as value for money invested. Further, evaluations should not only be done on the basis of giving or withdrawing support but as a mechanism for experiential learning to strengthen the weakest links within NGOs. Put differently, although donors are more interested in quick and measurable results, human rights requires long term commitment to processes that support institutional development and innovativeness for experiential learning. Publicising bad practices and financial impropriety as a strategy of name and shame may further act as a deterrent for errant NGOs. Cognisant that donors shape the development policies, strategies and agenda, they can also use policy dialogue with government to influence the providing of an environment conducive to NGOs' growth. With the exceptions of foundations, INGOs and local Funds, donors have rarely supported institutional development programmes. Yet, experience affirms that block grants is empowering of NGOs because it enhances an NGO's effectiveness and imagination to achieve goals. Otherwise the refusal of donors to meet administrative costs is unrealistic and exploitative of NGOs. The practice of publicised "call for proposal" with guiding questions for key aspects of the proposal is a welcome development.

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. This thesis attempts to bridge this gap and has succeeded in clarifying NGOs' human rights obligations and their implications to the governance and organising. Issues of power are customarily agonised over within the NGO sector or misdiagnosed as petty, but hardly subjected to academic scrutiny and analysis. Nonetheless, changing NGO power relationships cannot simply be achieved through labels, partnership agreements or memorandums of understanding but also requires organisational commitment to build a more egalitarian society. This entails scrutinising the power inequalities to ensure the advancement of the common interests of all parties. For example, we use power with each other by excluding or including others, such as minority groups. NGOs need to reflect inside to address the assumptions and fears about power before they can truly challenge power outside us. Significantly, the tendency to treat power as inherently bad or shameful or manipulative inhibits NGOs' exploitation of their positive power to the fullest. It is clear that "whether power advances justice and transforms inequalities depends precisely on its purpose, the values guiding it and the way it is used."¹⁸³⁷

¹⁸³⁷ Just Associates (2006) 4.

The thesis recommends further research on key challenges that afflict the NGO sector, such as financial autonomy and local philanthropy, succession and transitions, and NGOs standards of playing a monitoring role of government. Further issues requiring more thorough analysis include:

What are the efforts of NGOs to increase financial sustainability? What factors promote donor attractiveness? What is the impact of government contracts on NGOs? How have NGOs balanced social entrepreneurship with the not-for-profit identity while safeguarding their missions? Is there a clear cut distinction between NGO governance and corporate governance? Can they complement each other or are they mutually exclusive? What are the lessons to be learnt from re-granting NGOs in order not to simply be conduits of donor funds? What is the impact of local funds on the governance of NGOs? In what ways can the membership be promoted to strengthened the financial status and accountability of NGOs? Is transitions peace for the activist who is transiting from the sector? Are transitions a mechanism for sustaining activism? Where do the leaders go after transitions? How best should the relationship between the successor and the predecessors be managed? What are the dilemmas involved? Why does an NGO often flounder with the transition of a powerful founder? What are the lessons learnt to sustain gains? In what ways and to what effect has the African Commission strengthened a human rights culture amongst NGOs?

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on Human Rights in Africa meeting on 8 May 2003 in Kigali,
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INTERVIEWS

	RESPONDENT	DESIGNATION	DATE
INTERVIEWS OUTSIDE THESIS GEOGRAPHICAL SCOPE			
1.	Akwaasi Aidoo	CEO and President TrustAfrica	8 June 2006
2.	Barry Jane	International consultant, Urgent Action Fund,	2 February 2008
3.	Bujra Abdallah	Founder Executive Director, Development Policy Management Forum	17 February 2007
4.	Chigudu Hope	Organisational Development Consultant	16 March 2007
5.	Ebo Sall	Programme Director CODESRIA	7 June, 2006
6.	Fall Apha	Founder CEO, Institute for Human Rights and Development in Africa, Gambia	24 April 2006
7.	Gitari Joseph	Programme Officer Ford Foundation, Lagos	5 June 2006
8.	Gregoire Crispin	Former Training Programme Officer, Board Source	10 and 16 August 2008
9.	Mbogori Ezra	Executive Director MWENGO	11 April 2007
SADC SECRETARIA, BOTSWANA			
10.	Atwine Jeffrey	Trade Policy Analyst USAID, Trade Hub Southern Africa	5 March 2008
11.	Faye Lisa Marie	Technical Advisor, Gender Unit, SADC	6 March 2008
12.	Hembe Antonica	Head SADC HIV Unit	8 March 2008
13.	Katagira Kabunga Grace	Public Enterprises evaluation and Privatisation Agencies	5 March 2008
14.	Madibela Matiba	Director, Gender Unit, SADC	6 March 2008
15.	Molokomme Athali	Attorney General of Botswana,	8 March 2008
16.	Simba Penny	Customs Legal and Technical Advisor	5 March 2008
17.	Tlale	Executive Director Botswana Council for NGOs	6 March 2008
INTERVIEWS MANZINI, AFRICA COMMISSION SESSION			
18.	Beedwantee Keetharuth Sheila	Africa Institute for Human Rights and Development in Africa	10 May 2008
19.	Eno Robert	Senior Legal Officer, Africa Commission Human and People's Rights	9 May 2008
20.	Foster Hanna	Chair, NGO Forum and Executive Director, Africa Center for Human Rights and Democracy	7 May 2008
21.	Kane Ebrima	Interrights, London	9 May 2008
22.	Masiga Martin	ICJ- Geneva Legal Officer	7 May 2008



23.	Ruhindi Fred	Minister of State, Justice and Constitutional Affairs, Uganda	8 May 2008
24.	Tsunga Arnord	Senior Legal Officer for Africa, ICJ-Geneva	7 May 2008
TANZANIA			
25.	Aboubakar Mariam	Executive Director Association of NGOs Zanzibar (ANGOZA)	27 July 2007
26.	Ginwas Redimna	Programme officer TAWLA	23 July 2007
27.	Haroub Othman	Executive Director Zanzibar Legal Resource Centre	27 July 2007
28.	Jairo Rosemary	Commissioner Tanzania Commission of Human Rights and Good governance	25 July 2007
29.	Juma Asha Abdalla	Ministry of Labour, Women, Children And Development	26 July 2007
30.	Katamba Micheal	Director Tanzania NGO Board	25 July 2007
31.	Mahahdi Mohammed	Permanent Secretary Ministry Of Good Governance	27 July 2007
32.	Mallya Usu	Executive Director TGNP	8 Nov 2007
33.	Mandari Vicky	Chairperson TAWLA	8 August 2007
34.	Mwalayimbi Ben, Mburo Ruby	Programme officers, Tanzania NGO Bureau	24 July 2007
35.	Nyanduga Bahame	Commissioner, ACHPR,	16 June 2007
36.	Peter Chris Maina	Former Chairperson KCK Chairperson Foundation for Civil Society	27 April 2007
37.	Shivji Issa	Director REPOA	27 April 2007
38.	Silaa Tumaini	Former CEO TAWLA currently in government	24 July 2007
39.	Soka Athanisia	Women Legal Aid Centre	23 July 2007
40.	Sungusia Harold	Programme officer Legal and Human Rights Centre	25 July 2007
41.	Talah Sais, Mwandawa Khamis and Sadar Salma Hajo	Zanzibar Association Of People With Disabilities: UWZ	27 July 2007
42.	Toufiq Salum	President Zanzibar Law Society and Chair KCK	26 July 2007
43.	Twalangeti Zaa	Information and Communication Manager Tanzania Association of NGOs (TANGO)	10 August 2007
44.	Tweve Godfrey	Programme Officer PACT-TZ and INGO representative to NGO Council	10 August 2007
EAC SECRETARIAT ARUSHA			
45.	Bossa Solome	Judge East Court of Justice and ICTR	7 August 2007
46.	Deya Don	CEO East Africa Society	7 August, 2007

47.	Kaahwa Wilbert	Legal Council EAC	6 August
48.	Kiraso Beatrice	Deputy Secretary General EAC,	4 May 2009
449.	Kisare Mosi	ED EASUN Centre for Organisational Learning	8 August 2007
KENYA			
50	Abdalla Amina	MP Kenya	7 Sept 2007
51.	Adhanja George	CEO Kenyan NGO Council	24 August 2007
52.			
53.	Aina Tade	Resident Representative Ford Foundation, Nairobi	22 January 2007 5 September 2007
54.	Angila Francis	Programme Officer PACT-Kenya and former CEO Kenya NGO Council	6 Sept 2007
55.	Anyona Simon	Programme Office Resource Mobilisation	22 August 2006
56.	Kegoro George	CEO International Commission of Jurist-Kenya, former Secretary Law Society of Kenya	22 August 2007
57.	Kiai Maina	CEO Kenya National Human Rights Commission	23 August 2007
58.	Kingman Andrew	Executive Director, ALLAVIDA	21 July 2007
59.	Kinsiga Faith	Programme Officer East African Grant Makers Association	21 August 2007
60.	Kiragu Jane	Former ED FIDA-Kenya, Former NGO Council Care Taker team member,	7 Sept 2007
61.	Koki Muli	ED IED	7 Sept 2007
62.	Manduli Orié Rogo	Chairman Kenya NGO Council	24 August 2007
63.	Michuki Jane	Chairperson Institute for Education in Democracy (IED)	20 August 2007
64.	Murauri-Mwololo	Lead Consultant, Koobi Consult, Kenya	4 December 2007.
65.	Murunga Godwin	Lecturer Nairobi University	22 August 2006
66.	Murungi Kaari	<i>Founder Executive Director , Urgent Action Fund-Africa,</i>	<i>12 April 2007.</i>
67.	Mutuma Rutere	Dean Human Rights Institute	24 August 2007
68.	Mutungu Willy	Programme Officer Ford Foundation, East Africa	17 July 2007
69.	Nyaradzai G	Then Resident Representative UNIFEM East Africa,	10 April 2006.
70.	Njoki-Ndugu	MP Kenya, UN woman of the year 2006	7 Sept 2007
71.	Obura Hellen	Secretary Uganda Law Council	31 August 2007
72.	Odembo Elkanah	ED UFHADILI and inaugural Chair Kenya NGO Council	5 Sept 2007
73.	Ogombe Andrew	Deputy Director NGO Board	4 Sept 2007



74.	Okello Duncan	CEO Society for International Development	23 August 2007
75.	Oloka-Onyango Joe	Director, Human Rights and Peace Centre	25 Feb 2008
76.	Onyango Jane	ED FIDA-Kenya	6 Sept 2007
77.	Thenya Sam	CEO Nairobi Women's Hospital	7 Sept 2007
78.	Wambui Kimathi	Kenya National Human Rights Commissioner	21 July 2007
79.	Wangari Kinoti	Coordinator Women Direct	6 Sept 2007
UGANDA			
80.	Akatsi Bukachi Marren	Director East African Support Services Institute (EASSI)	13 August 2007
81.	Asiimwe Allen	CEO International Human Rights Network	28 August 2007
82.	Assimwe Jackie	Programme officer Programme Officer European Union Civil Society Capacity Building	28 August 2007
83.	Bagalaaliwo Sarah	Former Chairperson FIDA-U	18 June 2007
84.	Bunga Idembe, Aheebwa Maisurah, Ndyabawe Alice and Mugenyi Margaret	Focus Group Uganda Women's Network	13 August 2007
85.	Jjuko Fredrick	Faculty of Law	29 August 2007
86.	Kaduru Rosemary	CEO Club de Madrid	30 August 2007
87.	Kampi Josephine	Accountant HURINET Human Rights Fund	14 August 2007
88.	Kamusime Thomas and Tumwine Patrick	HURINET Programme Officer	13 August 2007
89.	Kasente Deborah	Director Makerere Institute of Social Research,	10 July 2003.
90.	Kibalama Edith	Executive Director Kituo Cha Katiba	19 July 2007
91.	Kwesiga Jessy	Founder Director DENIVA	6 December 2006 8 Jan 2007
92.	Kyeyune Rebecca	Programme Officer European Union Civil Society Capacity Building	31 August 2007
93.	Matembe Miria	Founder Action for Development	27 July 2007
94.	Matovu Norah	then Chairperson FIDA-Uganda	12 Jan 2006.
95.	Muramuzi Frank	Director National Association for Professional Environmentalists (NAPE)	30 August 2007
96.	Mwebaze Rose	CEO Uganda Land Alliance	17 July 2007
97.	Nabiryo Justine	Administrator HURINET	13 August 2007



98.	Nakawesi-Kimbugwe,	formerly Executive Director UWONET, currently Executive Director, Akina Mama wa Africa,	2 August 2007.
99.	Namubiru Mukasa Sylvia	Head Legal Department, Legal Aid Programme (LAP)	29 August 2007
100.	Ninsima Sandra, Namanya Winnie, Gakire Marlene and Nansonga Irene	Documentalists Uganda NGO Board	12 July 2007
101.	Nkutu Freda	Programme Officer, World Vision, Kampala	12 March 2008.
102.	Nshemerweire Peruth, Asiimwe Allen, Oguli Margaret, Mugisha Linda, Webale Theo, Ovonji Odida Irene and Bitabareho Jennifer	FIDA Focus Group Interim Board	20 July 2007
103.	Nyamugasira Warren	Director NGO Forum Uganda	3 August 2007
104.	Rukare Don	Head of Party European Union Civil Society Capacity Building	14 th August 2007
108.	Sewanyana Livingstone	Director Foundation for Human Rights Initiative (FHRI)	14 August 2007
106.	Tamale Sylvia	Dean Faculty of Law Uganda	12 December 2007
107.	Tumushabe Gober	CEO Advocates Coalition for Development and Environment (ACODE)	17 July 2007
108.	Wante Eliaja	Director Law Development Centre	30 August 2007
SOUTH AFRICA			
109.	Adeleye Fayemi Bisi	Executive Director African Women Development Fund	7 November 2007
110.	Amina Mama	Formerly of the Gender Institute, University of Cape Town	20 Sept 2008
111.	Brown Alice	Resident representative Ford Foundation, Johannesburg	5 November 2007 9 November 2007
112.	Campbell John-	Programme Officer, HIVOS,	9 November, 2007, Donor round table: <i>Where is the money for women's rights workshop</i>
113.	Hansungule Michelo	Professor, Centre for Human Rights Pretoria, Advisor SADC Cultural leaders Association	14 May 2007
114.	Ivor Jenkins	Director Special Projects IDASA, Pretoria	14 November 2007
115.	Jansen Rudolf	National Director, Lawyers for Human Rights,	19 November 2007
116.	Kaguongo Waruguru	LLD candidate University of Pretoria, South Africa,	19 March 2007
117.	Killander Magnus		12 October 2007

118.	Letlojane Corlette	Executive Director, Human Rights and Institute for Southern Africa	5 Nov 2007
119.	Lingalireni Mary	Programme Coordinator, LISEP, Oxfam-Malawi, Johannesburg	8 November 2007,
120.	Logart Hassan	Executive Director SANGOCO	29 November 2007
121.	Made Pat	Board member, Gender Links	20 Sept 2008
122	Mvimbi Ayanda	Programme Officer OXFAM-UK,	9 November, 2007, Donor round table: <i>Where is the money for women's rights workshop,</i>
123.	Mbele Kgoto	Capacity Building Officer, Directorate of Non-Profits	22 November 2007
124.	Michele Odovan	Organisational consultant	11 November 2007
125.	Modiba Sami	Human Rights and Democracy Programme Officer OSISA	5 November 2007
126.	Moodliar Mogam	Programme officer Legal Unit, Foundation of Human Right	30 November 2007
127.	Mpho Mngaitama	Director Registration Compliance, Directorate of Non-Profits	22 November 2007
128.	Morgan, Yvonne	Programme Officer Charity Aids Foundation,	26 Feb 2008.
129	Mvimbi Ayanda Phillips Barbra AWDF-US,	Programme Officer OXFAM-UK,	9 November, 2007, Donor round table: <i>Where is the money for women's rights workshop,</i>
130.	Stefiszyn Karen	Head of Department, HIV/AIDs and Gender, Centre for Human Rights: Pretoria	13 May 2008
131.	Steyn Justin, Mgudlnwa Noxoco	Programme Officers IDASA: CSOs capacity building and researcher	5 October 2007
132.	Taku Norman	Director, Centre for Human Rights: Pretoria	13 May 2008
133.	Tseliso Thipanyane	Chief Executive Officer, South African Human Rights Commission (SAHRC),	22 Feb 2008.
134.	Van Garderen Jacob	Lawyers for Human Rights Executive Director	14 May 2008
135.	Viljoen Carole	Office Manager Centre for Human Rights: Pretoria	13 May 2008
136.	Viljoen Frans	Viljoen, Director Centre of Human Rights, University of Pretoria	23 March 2007
137.	Wandira Mary	Officer Regional Women's Rights Coordinator Action Aid International, Johannesburg	8 November 2007
138.	Wilson Shamila	Formerly AWID Youth Programme Coordinator	19 Sept 2008