

# ASSESSING THE EFFECTIVENESS OF HUMAN RIGHTS NON-GOVERNMENTAL ORGANIZATIONS (NGOs) FROM THE BIRTH OF THE UNITED NATIONS TO THE 21<sup>ST</sup> CENTURY: TEN ATTRIBUTES OF HIGHLY SUCCESSFUL HUMAN RIGHTS NGOS

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## I. INTRODUCTION

It is undisputed that human rights non-governmental organizations (“human rights NGOs”) have proliferated dramatically in the sixty years since the United Nations promulgated the Universal Declaration of Human Rights,<sup>1</sup> and that human rights NGOs play a critical role in promoting and protecting human rights in all corners of the globe.<sup>2</sup> However, the human rights community cannot agree on what constitutes a “human rights NGO,” how tidily to categorize them, or even that “NGO” is an appropriate moniker for such groups.<sup>3</sup>

Furthermore, despite the omnipresence of human rights NGOs, human rights community stakeholders<sup>4</sup> cannot agree on a framework for vetting NGOs to help ensure their legitimacy. Definitional and other problems make it difficult for stakeholders easily to distinguish between human rights groups deserving support and human rights groups deserving disbandment. The United Nations, other inter-governmental organizations, and national

1. Universal Declaration of Human Rights [UDHR], G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1<sup>st</sup> plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948); see Felice D. Gaer, *Reality Check: Human Rights Nongovernmental Organizations Confront Governments at the United Nations*, 16 THIRD WORLD Q. 389 (1995); see, e.g., United Nations Educational, Scientific and Cultural Organization (UNESCO), Conclusions: The Increasing Role and Importance of Human Rights NGOs, [http://www.unesco.de/c\\_humanrights/V.php](http://www.unesco.de/c_humanrights/V.php) (last visited July 21, 2009) (“Over the last 57 years an almost explosive growth of NGOs for the promotion and the defence of human rights has taken place.”).

2. Ved P. Nanda, *The Human Rights Era at Fifty: Looking Back and Looking Forward*, 5 WILLAMETTE J. INT’L L. & DIS. RES. 69, 78 (1997) (recognizing positive NGO contributions in promoting and protecting human rights on the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights).

3. Academics, diplomats, governmental bureaucrats, and jurists have struggled on what to call these groups — the Third Sector, the independent sector, the volunteer sector, civil society organizations (“CSO” — objectionable because includes corporations), non-state actors (NSAs — objectionable because includes terrorists, guerillas), private voluntary organizations (PVOs), citizen associations, grassroots organizations, transnational social movement organizations, citizen sector organizations, self-help organizations, or community based organizations (CBOs). See, e.g., Peter J. Spiro, *NGOs and Human Rights: Channels of Power*, in RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW (forthcoming Nov. 2009), available at <http://ssrn.com/abstract=1324971> (discussing NGO descriptor); John Samuel, *Civil Society in an Uncivil World*, PAMBAZUKA NEWS, Oct. 18, 2007, <http://www.pambazuka.org/en/category/comment/43788>; See also John Samuel, *Civil Society in an Uncivil World*, Global Policy Forum, Oct. 18, 2007.

4. Herein, the term “stakeholder” broadly includes “any person or entity affected by or interested in human rights concerns,” such as inter-governmental organizations (e.g., the UN), national governmental bodies with human rights competence (e.g., national human rights commissions), private organizations that engage in human rights work, academic institutions that teach human rights or provide human rights pro bono services, individual and group victims of human rights abuses, prospective victims, donors to human rights endeavors, and groups that receive human rights donations. This definition of “stakeholder” is not exhaustive and could include, for example, corporations (who are obligated to protect human rights), terrorist groups, unlawfully organized rebels groups or mercenaries — irrespective of whether the stakeholder is an NGO.

governments need to know which groups are lawful, legitimate, and worthy of accrediting, licensing, granting tax benefits to, or supporting. Individuals seeking to join an NGO and recipients of NGO largesse need to know which NGOs to trust. Donors need to know which NGOs to fund, and NGOs need to know with which other NGOs they might collaborate to protect human rights.

While this Article does not purport to develop this much-needed, coherent framework, it advances the framework's development by identifying and analyzing attributes shared by successful human rights NGOs. This Article posits that human rights community stakeholders may assess human rights NGOs in part by determining whether they possess these shared characteristics.

This Article proceeds in five parts. Part II briefly traces the history of the contemporary human rights NGO from anti-slavery and other social movement groups of the eighteenth century, through the participation of human rights NGOs in the creation of the United Nations, to the proliferation of human rights NGOs today.

Part III identifies and analyzes ten characteristics of successful human rights NGOs. These characteristics, which overlap and are not exhaustive, relate to the human rights NGO's: (1) mission; (2) adherence to human rights principles; (3) legality; (4) independence; (5) funding; (6) non-profit status and commitment to service; (7) transparency and accountability; (8) adaptability and responsiveness; (9) cooperative and collaborative nature; and (10) competence and reliability.

Part IV builds upon the attributes identified in Part III and explores a selection of NGO Codes of Conduct from around the globe designed to promote NGO accountability and transparency and to help bolster NGO credibility. Though efficacy of these Codes may vary, they all contain criteria useful in assessing NGOs.

Part V concludes that although much has changed since the United Nations and modern human rights NGOs were born six decades ago, what has not changed is the disagreement over what constitutes a human rights NGO and how to categorize such groups. However, stakeholders in the international human rights law arena universally agree that human rights NGOs are meant to protect internationally recognized human rights at local, national, sub-regional, regional and global levels. Successful and effective human rights NGOs should possess basic attributes, as described herein, and self-regulate — possibly in part by following NGO Codes of Conduct — to overcome internal and external challenges. Concerted efforts of all relevant stakeholders are needed to ensure that human rights NGOs are able to fulfill their mandate to protect human rights.

## II. NGOS & HUMAN RIGHTS NGOS

### A. NGO Definition and Pre-United Nations History

Many scholars and practitioners agree that the term “non-governmental organization” (“NGO”) may be more readily defined by what it *is not*, and that what an NGO *is* depends on context.<sup>5</sup> Furthermore, it is undisputed that a universally agreed definition of NGOs has proved elusive.<sup>6</sup>

Rather than seek to crystallize a universal definition of NGO, I will instead provide the following working definition for purposes of this

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5. For example, an NGO *is not* a governmental organization. See, e.g., Peter R. Baehr, presentation at a UNU Public Forum on Human Rights and NGOs, United Nations University, Tokyo, Japan: Mobilization of the Conscience of Mankind: Conditions of Effectiveness of Human Rights NGOs, Sept. 18, 1996, [www.gdrc.org/ngo/lecture14.html](http://www.gdrc.org/ngo/lecture14.html) (stating that “Human rights organisations are part of the phenomenon known as . . . NGOs. Curiously enough, these NGOs are defined by what they are *not*. They emphasize their distance and independence from governments, yet at the same time it is mostly the actions and activities of national governments that are the very cause and purpose of their existence. Without governments there would be no non-governmental organizations.”) (emphasis in original) (citation omitted); See generally Philip Alston, *The ‘Not-A-Cat’ Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?*, in NON-STATE ACTORS AND HUMAN RIGHTS 1, 1–36 (Philip Alston ed., Oxford University Press 2005); Martin A. Olz, *Non-Governmental Organizations in Regional Human Rights Systems*, 28 COLUM. HUM. RTS. L. REV. 307, 313 (1997) (providing that the definition of “NGO” depends on context).

6. Lynne M. Rudasil surveyed NGO definitions as follows:

Michael O’Neill divides NGOs into nine types in the United States. (O’Neill, 1990) His view of the NGO rests on the organization’s orientation — whether it is toward religion, private education and research, healthcare, arts and culture, social sciences, advocacy and legal services, international assistance, foundations and corporate funders, and mutual benefit organizations. Gerard Clarke (1998) from the University of Wales, Swansea, defines NGOs as “...private, nonprofit, professional organizations with a distinctive legal character, concerned with public welfare goals.” Suter (2003) defines them as “any organization outside the government, such as the public service and the defense forces, and business.” Reinalda and Verbeek (2001) identify two defining characteristics for the NGO in an analysis of power relations. They agree with the definition in the YEARBOOK OF INTERNATIONAL ORGANIZATIONS that identifies NGOs as “organizations which have not been founded, and are not formally controlled, by national governments.” In going beyond the Yearbook’s definition, they maintain that a second characteristic for these organizations is pursuit “by private means private objectives that are likely to have domestic or transnational public effects.

LYNNE M. RUDASIL, NGO, INFORMATION FLOW AND NATION: AN EXPLORATION IN RELATIONSHIPS, WORLD LIBRARY AND INFORMATION CONGRESS: 70TH IFLA GENERAL CONFERENCE AND COUNCIL 2 (Aug. 26, 2004), <http://ifla.queenslibrary.org/IV/ifla70/papers/079e-Rudasil.pdf>.

Article: An NGO is a private, independent, non-profit, goal-oriented group not founded or controlled by a government.

The broad term “NGO” may encompass research institutes, churches and other religious groups, cooperatives, literary or scientific organizations, credit unions, foundations, girl and boy scouts, sporting groups, service organizations, neighborhood associations, consulting firms, political parties or other political groups,<sup>7</sup> educational and training institutions, and trade unions and other professional associations. Goals of these groups could be equally as broad and could include protecting business interests of the group’s corporate members,<sup>8</sup> protesting corporate behavior,<sup>9</sup> promoting sports, promoting political candidates or policies, promoting the interests of a specific industry, education and training, disseminating news, or generally protecting international human rights.

Private organizations such as religious orders, charities, foundations, and educational groups have existed for centuries, but scholars tend to trace the roots of contemporary NGOs to the late Renaissance era, pointing to groups of private individuals who formed to combat government policy on slavery and other social issues in the 1700s.<sup>10</sup> By the 1800s, NGOs increasingly

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7. Scholars differ over whether certain political groups or groups struggling for self-determination are human rights NGOs. *See, e.g.*, Makau wa Mutua, *Book Review: Claude E. Welch, Protecting Human Rights in Africa: Strategies and Roles of Non-Governmental Organizations*, 17 MICH. J. INT’L L. 591, 613 n.81 (1996). Dean Mutua states that:

INGOs and Western human rights academics have not, as a general rule, treated liberation movements such as the African National Congress (ANC) of South Africa or the South West African Peoples Organization (SWAPO) of Namibia as human rights groups despite the fact that such groups have sought to vindicate the right to self-determination, which is in my view the most fundamental of all human rights. They see such groups as “political” organizations and not human rights NGOs, which they believe should be “neutral,” “apolitical,” or “non-partisan.” To them a group is a human rights NGO only if it is not directly involved in the contest for state power, does not seek to form government, is not directly linked to a particular political party, and primarily uses human rights standards as a basis for its advocacy.

*Id.* (citation omitted).

8. Trade associations are an example of an NGO whose goals include protecting the interests of corporate members. Labor unions would also be NGOs, but with interests of workers paramount. Because private corporations are for profit, they would not qualify as NGOs.

9. A broad range of NGOs focus on “corporate social responsibility” issues such as working conditions. *See, e.g.*, Isabella D. Bunn, *Global Advocacy for Corporate Accountability: Transatlantic Perspectives From the NGO Community*, 19 AM. U. INT’L L. REV. 1265, 1266 (2004) (listing over twenty such NGOs in Europe).

10. *See* Gavin Keeney, *The Unbearable Lightness of NGOs*, COUNTERPUNCH, May 24, 2002, <http://www.counterpunch.org/keeney0525.html> (noting that NGOs “in one form or another have been part and parcel of the theory of civil society since at least the 18<sup>th</sup> century.”). In April 1775, The Society for the Relief of Free Negroes Unlawfully Held in Bondage is said to have been formed in Philadelphia as the first U.S. slave abolition society.

lobbied governments, molded public opinion, and effected change.<sup>11</sup> Those “early” NGOs included the British and Foreign Anti-Slavery Society (1839),<sup>12</sup> the International Committee of the Red Cross (1863), the International Worker’s Association (1864), the International Peace Bureau (1892), the Union of International Associations (1907), the Federal Council of Churches (1908), the American Jewish Committee (1906), and the French-based League for Human Rights (1898).

NGOs continued to flourish through the World Wars and are abundant today, sixty years later.<sup>13</sup>

### B. Definition of a “Human Rights NGO”

How appropriately to define, classify or categorize “human rights NGOs” has proved as elusive as if not more elusive than sorting out the

This Day in History, History.com, 1775: First American Abolition Society Founded in Philadelphia, April 14, 1775, <http://www.history.com/this-day-in-history.do?action=Article&id=462>. In 1784, the society changed its name to the Pennsylvania Society for Promoting the Abolition of Slavery and the Relief of Free Negroes Unlawfully Held in Bondage. *Id.*

11. In 1835 French commentator Alexis de Tocqueville famously noted about volunteer groups: “Americans of all ages, all stations of life, and all types of disposition are forever forming associations . . . . In democratic countries knowledge of how to combine is the mother of all other forms of knowledge; on its progress depends that of all the others.” Alexis de Tocqueville, *Democracy in America* 485–88 (J.P. Mayer & Max Lerner eds, George Lawrence trans., Harper & Row 1966) (1835); see Theda Skocpo, *What Tocqueville Missed: Government Made All That “Volunteerism” Possible*, SLATE, Nov. 15, 1996, <http://www.slate.com/id/2081>; FRANCIS LIEBER, ON CIVIL LIBERTY AND SELF-GOVERNMENT 129 (enlarged ed. 1859) (noting the “all-pervading associative spirit” in the US and elsewhere), quoted in Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT’L L. 348, 350 (2006).

12. In 1909, this group merged with the Aborigines’ Protection Society, and in 1990 changed its name to Anti-Slavery International. Anti-Slavery International bills itself as “the world’s oldest international human rights organization.” Anti-Slavery, Introduction to Anti-Slavery, [http://www.antislavery.org/english/what\\_we\\_do/antislavery\\_international\\_today/antislavery\\_international\\_today.aspx](http://www.antislavery.org/english/what_we_do/antislavery_international_today/antislavery_international_today.aspx) (last visited Oct. 18, 2009). It fought to abolish the slave trade (achieved in Britain in 1807) and slavery throughout the British colonies (achieved in 1833, effective 1834) and helped draft the 1926 *Convention on the Abolition of Slavery* and the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*. PETER P. HINKS ET AL., *ENCYCLOPEDIA OF ANTISLAVERY AND ABOLITION* 58 (2006). In 1975, it worked for creation of a U.N. expert group dedicated to the elimination of slavery, now called the U.N. Working Group on Contemporary Forms of Slavery. *Id.* Anti-Slavery International now focuses on forced and bonded labor, child labor, human trafficking, and traditional or ‘chattel’ slavery. *Id.*

13. RUDASIL, *supra* note 6, at 2 (providing that NGO growth “has been almost as exponential as the growth of the Internet and has sometimes been seen as part of the process of globalization.”). “[T]he rise of international [NGOs] [is] perhaps one of the most spectacular developments of the twentieth century, although it has happened so quickly that it is seldom noticed.” AKIRA IRIYE, *GLOBAL COMMUNITY: THE ROLE OF INTERNATIONAL ORGANIZATIONS IN THE MAKING OF THE CONTEMPORARY WORLD* 159 (2002) (quoting Kenneth Boulding) (internal citation omitted).

definition of “NGO”. At the very least, a human rights NGO must fit the definition of NGO — it must be a group that is private, independent, non-profit, goal-oriented, and not founded by or controlled by a government.

But a human rights NGO goes further by requiring that the group’s primary concern must be to promote and protect internationally recognized human rights. Human rights NGOs must be guided by international human rights law norms as incorporated into the 1948 Universal Declaration of Human Rights,<sup>14</sup> the International Covenant on Civil and Political Rights,<sup>15</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>16</sup> other international human rights law instruments, and the customary international

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14. The U.N. intended the UDHR to be a “common standard of achievement for all peoples and all nations.” UDHR, *supra* note 1, at 72. Its thirty articles address human rights broadly in several categories: civil and political rights (Articles 3–21); economic, social and cultural rights (Articles 22–27); and third generation rights (e.g., article 28, including group or collective or solidarity rights related to, for example, peace and development). *See generally id.* These rights form the bases for over 100 U.N. treaties, declarations and other instruments, and for many national constitutions and other domestic law sources. *See generally id.* On December 10, 2008 (Human Rights Day), weeks after being elected President of the United States, Barack Obama reconfirmed that the UDHR is at the root of many international agreements the U.S. supports and at the root of human rights policies and practices with which the U.S. aligns itself:

The United States was founded on the idea that all people are endowed with inalienable rights, and that principle has allowed us to work to perfect our union at home while standing as a beacon of hope to the world. Today, that principle is embodied in agreements Americans helped forge — the Universal Declaration of Human Rights, the Geneva Conventions, and treaties against torture and genocide — and it unites us with people from every country and culture.

When the United States stands up for human rights, by example at home and by effort abroad, we align ourselves with men and women around the world who struggle for the right to speak their minds, to choose their leaders, and to be treated with dignity and respect. We also strengthen our security and well being, because the abuse of human rights can feed many of the global dangers that we confront — from armed conflict and humanitarian crises, to corruption and the spread of ideologies that promote hatred and violence.

So on this Human Rights Day, let us rededicate ourselves to the advancement of human rights and freedoms for all, and pledge always to live by the ideals we promote to the world.

President-elect Barack Obama, Statement of President-elect Obama on Human Rights Day, (Dec. 10, 2008), available at [http://change.gov/newsroom/entry/statement\\_of\\_president\\_elect\\_obama\\_on\\_human\\_rights\\_day](http://change.gov/newsroom/entry/statement_of_president_elect_obama_on_human_rights_day).

15. International Covenant on Civil and Political Rights [ICCPR], G.A. Res. 2200A (XXI), art. 17, U.N. Doc. A/6316 (Dec. 16, 1966) (adopted and opened for signature, ratification and accession, December 16, 1966, entered into force March 23, 1976).

16. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter Economic Covenant] (adopted and opened for signature, ratification, and accession; December 16, 1966, entered into force Jan. 3, 1976).



law of human rights. The United Nations and other bodies have promulgated international instruments to protect the integrity of NGOs, including human rights NGOs.<sup>17</sup>

The concept of “international human rights norm” is broad, and it overlaps with rights protected under other areas of international and domestic law, including international humanitarian law, international criminal law, international environmental law, development law, labor law, refugee and asylum law, constitutional law, domestic criminal law and procedure, and even the law of the sea. All these areas of law seek, in one form or the other, to protect international human rights (including, for example, rights of criminal suspects and defendants, due process rights, environmental rights of indigenous peoples, rights of individuals to nourishment acquired from ocean fishing, or labor rights of refugees or asylees). The definition of “human rights NGO” is broad and includes NGOs that seek to protect human dignity rights in all these boundless substantive areas of law.<sup>18</sup>

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17. For example, the preamble of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* acknowledges:

[T]he important role of international cooperation for, and the valuable work of individuals, groups, and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources[.]

G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999). European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, Council of Europe Treaty Series, No. 194, Apr. 24, 1986 (convention designed to facilitate work of international NGOs), available at <http://conventions.coe.int/Treaty/en/Treaties/Html/124.htm>; Olz, *supra* note 5, at 307–08 (exploring NGOs in the UN, Inter-American, European and African human rights systems, and comparing definitions of “NGO” in the *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, ECOSOC resolutions, and the European Convention on Legal Personality of INGOs); *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 276 (Rudolf Bernhardt et al. Eds., 1986). A full discussion of how to differentiate among different NGO types, or a taxonomy or typology, is beyond the scope of this Article, though such attempts have been made in other publications. See, e.g., Spiro, *supra* note 3 (stating that the article seeks “to systematize NGO activity relating to human rights” and offer “a typology of human rights NGOs, distinguishing generalist from identity-oriented human rights NGOs and domestic from transnational” and further that “[i]t is not clear, however, that these distinctions are meaningful.”).

18. The *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society* sheds light on NGOs that have competence in the area of human rights. For example, Article 18 provides:

### C. Categorization of Human Rights NGOs

Although many attempts have been made systematically to categorize human rights NGOs, universal agreement does not exist on a cogent typology.<sup>19</sup> The table below reflects a very broad categorization:

<b>NGO Taxonomy</b>	
<b>NGO Category</b>	<b>Category Description</b>
Geographical emphasis of operations	Local, national, regional, sub-regional, or international
Staff or members' nationality	Single nation or territory; multi-national
Status of personnel	Volunteer, paid, professional
Geo-political and economic origin	E.g., originate in democratic versus totalitarian nation; North versus South or East versus West
Structure	E.g., project model (funds raised for specific projects only), academic model (attached to academic institutions with teaching, research & service goals), consultancy (e.g., charge fees for services), corporate (operate like a corporation), membership (that promote the interests of their members)
Size	E.g., <i>large</i> such as Save the Children, Oxfam, Human Rights Watch or Amnesty International, or <i>small</i> such as many local, grassroots groups
Substantive area of human rights concern	E.g., fair trial rights, freedom of expression & association, rights of women & children, sexual orientation rights, liberty & security of persons, torture, cruel, inhuman or degrading treatment or punishment, disability rights, race discrimination & xenophobia, economic & social rights, cultural rights, civil & political rights

18(2). Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

18(3). Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized. [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.53.144.En](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.53.144.En) (accessed July 20, 2009).

*Id.* at art. 18.

19. See, e.g., Spiro, *supra* note 3.

Nature of mandates and work	E.g., identifying human rights violators & documenting abuses; monitoring & influencing laws, policies & practice of governments and non-state actors; shaming human rights violators to force compliance with law; human rights education; fact-finding with or without on-site visits; legal research; advocacy including domestic & international litigation; <sup>20</sup> information evaluation & dissemination; democratization; fund-raising; mobilizing & empowering locals to participate in civil society; designing and implementing development projects; providing humanitarian aid; establishing standards or norms to measure or judge the conduct of individuals, NGOs, states, & other international actors
Funding levels	For personnel, physical resources and programs
Funding sources	From services rendered or sale of goods; donations from private donors, foundations, governments, quasi-NGOs, or IGOs
How they lobby or consult domestic governments & IGOs	Testifying at hearings, participating in treaty negotiations, joining government panels & delegations, liaising among governments and other NGOs
How they gather information	From interviews with victims & other human rights NGOs, newspapers & other periodicals, web, visits & discussions with governments, inter-governmental organization representatives & private persons
How they share information	Through conferences, colloquia, seminars, human rights public awareness campaigns, position papers, government consultations
Their affiliations	E.g., affiliated with a law school human rights clinic or program, or a church, mosque, or temple

In all cases, human rights are and should be “on the frontline of the human rights struggle, fighting to promote human rights”.<sup>21</sup>

20. See, e.g., *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

21. Gay J. McDougall, *Decade of NGO Struggle*, 11 HUMAN RIGHTS BRIEF 12, 11(2004).  
When discussing human rights NGOs, Ms. McDougall states:

Through their work, NGOs frame policies and influence key government decisions. They give voice to causes that have been ignored, forgotten, or marginalized. They raise legal awareness within targeted communities, often providing basic legal representation in high-risk or neglected human rights cases. NGOs generate expert analysis on the ground and are integral to both the field and headquarters-level operations of virtually every human rights mission, often working alongside staff of the United Nations, the Organization for Security and Cooperation in Europe, the Organization of American States, the African Union, the Economic Community of West African States, and other international peacekeepers in dangerous conflict environments.

*Id.* See also Gay J. McDougall, *The World Conference Against Racism: Through a Wider Lens*, 26 FLETCHER F. OF WORLD AFF., Summer–Fall 2002, at 135, 147 (noting that the closing declaration of the NGO Forum associated with the World Conference on Racism “is a valuable document” as “[t]he vast majority of NGO representatives participating in the NGO Forum came with legitimate anti-racism agendas” and the NGO closing document is

#### D. Human Rights NGOs and the U.N. System

Human rights NGOs contributed significantly to the negotiation of the U.N. Charter<sup>22</sup> and to virtually all, if not all, the U.N.'s major international human rights law instruments from the Universal Declaration of Human Rights to date.<sup>23</sup> This section of the Article explores the legal bases for the relationship between the United Nations and NGOs, the history of the relationship, the duties of inter-governmental organizations to consult with NGOs, and specifics about an umbrella NGO working with U.N.-affiliated NGOs. Recent Secretaries General of the United Nations — including Ban Ki-Moon, Kofi Annan, and Boutros Boutros-Ghali — have heralded the “indispensable” contributions that NGOs have made to the protection of human rights in the United Nations system.<sup>24</sup>

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“overwhelmingly progressive and articulates the aspirations of civil society groups from around the globe — people who face racism in their daily lives and who have much to say about how to combat it.”).

22. See, e.g., WILLIAM KOREY, *NGOs AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: “A CURIOUS GRAPEVINE”* 2, 19 (2001) (discussing study showing NGOs instrumental “in making human rights a vibrant and major force on the agenda of international diplomacy and discourse.”). The subtitle of this book alludes to statements of Eleanor Roosevelt, who was instrumental in the UDHR’s negotiation and drafting and who referred to the “curious grapevine” that would carry word of the UDHR around the globe so it “may seep in even when governments are not so anxious for it.” See generally *id.* See Claude E. Welch, Jr., *NGOs and the Universal Declaration of Human Rights: “A Curious Grapevine,”* 22 *HUM. RTS. Q.* 298 (2000) (book review).

23. See, e.g., The President of the General Assembly, *Reference Document on the Participation of Civil Society in United Nations Conferences and Special Sessions of the General Assembly During the 1990s*, <http://www.un.org/ga/president/55/speech/civilsociety1.htm> (Aug. 2001). This document also outlines rules and procedures for NGO accreditation, modalities for NGO participation, and NGO documentation for various U.N. meetings and conference during the 1990s, and illustrates the significant participation and impact of NGOs on protecting human rights through the U.N. system. *Id.*

24. On the occasion of the UDHR’s 60<sup>th</sup> Anniversary, U.N. Secretary General Ban Ki-Moon noted:

Since 1948, human rights have been at the core of the work of the United Nations. At the same time, civil society has been on the front line. For six decades, human rights defenders have sacrificed liberty, comfort and even life to ensure that all human beings can enjoy the rights enshrined in the Declaration — irrespective of their race, religion, ethnicity, gender or other status.

The Secretary-General, *Secretary-General’s Video Message For Historic Paris DPI/NGO Conference Stresses Duty To Ensure That Human Rights Are Living Reality*, transcript of video message to the 61st U.N. Department of Public Information-NGO Conference, U.N. Doc. SG/SM/11774, NGO/650, PI/1850 (Sept. 3, 2008), available at <http://www.un.org/News/Press/docs/2008/sgsm11774.doc.htm>. U.N. Secretary-General Kofi Annan, at the closing session of the 58th Annual U.N. Department of Public Information-NGO Conference, remarked:

Whatever is decided and achieved, the United Nations cannot move ahead on its own. You all have a key role to play and we depend on you. Just as you have closely watched and influenced the

### 1. *Legal Bases for NGO Involvement with the U.N.*

Article 71 of the U.N. Charter and various Economic and Social Council (ECOSOC) resolutions provide the legal bases for the relationship through which NGOs receive U.N. “consultative status” and formally provide technical analysis and expertise to various U.N. bodies. Article 71, which marked the first time that the term “non-governmental organization” was referred to in a U.N. document,<sup>25</sup> provides for international and national organization consultative arrangements, with priority on international groups:

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negotiations on the Summit outcome, so must you now closely review what happens next. The grass roots you represent will expect you to assess the outcome document, and to tell us whether the reforms the leaders adopt go far enough. And we all need you to monitor developments at the country level, in the streets, in the villages, and to ensure that the leaders of your countries produce real results in the months and years ahead. You must make yourselves the guardians of the reform of the international system.

In this sixtieth anniversary year of the United Nations, let us again acknowledge the wisdom of the founders, who, in Article 71, made provision for consultations with NGOs. Close engagement with civil society was seen then as vital for the Organization’s health and for people’s well-being. That is as true today as it was then — if anything, even more so.

The relationship between us can never be measured merely by the number of NGOs attending global conferences, or taking part in meetings at UN Headquarters. What really matters is what happens out there, in the world and on the ground. Whether your main activity is helping set policy at the global level, or working directly to help people, you give true meaning to the phrase “we the peoples”. I am grateful to every one of you for your engagement, and count on your support in the crucial time ahead.

Press Release, Secretary-General, Without Vital Role of NGOs, World Could Hardly Respond to Myriad Crises, U.N. Secretary-General Annan Tells DPI/NGO Conference, U.N. Doc. SG/SM/10085 (Sept. 9, 2005) (remarks by Kofi-Annan). Former U.N. Secretary General Boutros Boutros-Ghali stated that

[e]ven a cursory examination of the participation of NGOs in the decision-making systems and operational activities of the United Nations shows without any doubt that NGO involvement has not only justified the inclusion of Article 71 in the Charter of the United Nations, but that it has far exceeded the original scope of . . . [the Charter’s] legal provisions [permitting NGO participation].

U.N. Econ. & Soc. Council [ECOSOC], *General Review of Arrangements for Consultations with Non-Governmental Organizations — Report of the Secretary-General*, ¶ 40, U.N. Doc. E/AC.70/1994/5 (May 26, 1994).

25. See Renate Bloem et al., *The Conference of NGOs (CONGO): The Story of Strengthening Civil Society Engagement with the United Nations*, [http://www.ngocongo.org/files/story\\_of\\_congo.doc](http://www.ngocongo.org/files/story_of_congo.doc) (last visited Oct. 2, 2009) [hereinafter *CONGO: The Story*] (paper presented for the Conference of NGOs (CONGO)).

The Economic and Social Council *may make* suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements *may be made* with international organizations and, *where appropriate*, with national organizations after consultation with the Member of the United Nations concerned.<sup>26</sup>

ECOSOC granted NGOs consultative status as early as 1948 and spelled out the first set of rules governing this relationship in resolution 288 B(X) of 1950.<sup>27</sup> The General Assembly (GA) reviewed these rules, and through GA resolution 1296 of 1968, the GA established criteria for NGO participation and provided for the United Nations to appoint NGO liaison officers.<sup>28</sup>

As domestic and international human rights NGOs proliferated from the 1950s to the 1990s and significantly contributed to the U.N.'s work, the United Nations expressly invited national, sub-regional, regional and international NGOs to participate. In 1996, after a multi-year review of the NGO relationship, ECOSOC adopted resolution 1996/31 to update that relationship and permitted national and regional NGOs to be accredited if "their aims and purposes are in conformity with the spirit, purposes and principles of the U.N. Charter."<sup>29</sup> This resolution, which defines NGO as

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26. U.N. Charter art. 71 (emphasis added). Article 71 appears to have been primarily focused on relations between the U.N. and international NGOs (INGOs), as opposed to national NGOs, as evidenced by the article's provision that national NGOs arrangements should be made "where appropriate" and "after consultation with the Member [State] of the United Nations concerned" restrictions that did not exist with INGO relations. U.N. Econ. & Soc. Council [ECOSOC], Consultative Relationship Between the United Nations and Non-Governmental Organizations, ECOSOC Res. 1996/31, U.N. Doc. E/RES/1996/31 (July 25, 1996) <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm>. [hereinafter Resolution 1996/31].

27. By 1946, ECOSOC had granted consultative status to approximately 41 NGOs. United Nations Department of Economic and Social Affairs, NGO Section, Consultative Status with ECOSOC, <http://esa.un.org/coordination/ngo/new/index.asp?page=intro> (last visited July 19, 2009). Today over 3,000 NGOs are accredited. NGOs with consultative status are listed at United Nations Department of Economic and Social Affairs, NGO Section, Consultative Status with ECOSOC <http://esa.un.org/coordination/ngo/new/index.asp?page=table2007> (last visited Oct. 16, 2009).

28. G.A. Res. 1296 (XIV), U.N. Doc. E/RES/1968/1296 (May 23, 1968).

29. Resolution 1996/31, *supra* note 26. Resolution 31 of 1996 establishes three categories of consultative arrangements for NGOs: (a) General consultative status for large international NGOs whose area of work covers most issues on the ECOSOC agenda; (b) Special consultative status for NGOs that have special competence in a few fields of the ECOSOC activity and that are known within the fields in which they have or seek consultative status; and (c) Roster inclusion, for NGOs whose competence enables them to make occasional and useful contributions to the work of the U.N. and that shall be available for consultation upon request. *Id.* Part III. The resolution also formulated guidelines for written statements, oral statements and meeting attendance. *Id.* Part IV. For a discussion on NGOs and the European Commission, see European Commission, The Commission and Non-Governmental Organizations: Building a Stronger Partnership, COM (2000) 11 Final

“any international organization which is not established by a governmental entity or intergovernmental agreement,” governs the NGO relationship today, including NGOs’ relationship with the Human Rights Council, which began operating only in 2006.<sup>30</sup> NGOs, whose NGO accreditation applications are reviewed by the ECOSOC Committee on NGOs,<sup>31</sup> provide

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(January 2000) (Commission discussion paper), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0011:FIN:EN:pdf>.

30. See U.N. Econ. & Soc. Council [ECOSOC], 1296 (XIV) — *Arrangements for Consultation with Non-Governmental Organizations, delivered to the General Assembly*, U.N. Doc. E/RES/1968/1296 (May 23, 1968) (stating how Resolution 1296 supersedes ECOSOC Res. 288 B (X) of Feb. 27, 1950). Notably, in 1998, the Secretary-General issued a report elaborating NGO arrangements, and in 1999 issued another report that purported to reflect views of Member States, specialized agencies, observers, intergovernmental organizations and NGOs. The Secretary-General, *Arrangements and Practices for the Interaction of Non-Governmental Organizations in all Activities of the United Nations System, delivered to the General Assembly*, U.N. Doc. A/53/170 (July 10, 1998). The Secretary-General, *Views of the Member States, Members of the Specialized Agencies, Observers, Intergovernmental and Non-Governmental Organizations from all Regions on the Report of the Secretary-General on Arrangements and Practices for the Interaction of Non-Governmental Organizations in all Activities of the United Nations System, delivered to the General Assembly*, U.N. Doc. A/54/329 (Sept. 8, 1999). In 2000, the Millennium Declaration (adopted by resolution 55/2), offered a new mandate to enhance the NGO relationship, as follows: “We also resolve . . . [t]o develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication.” G.A. Res. 55/2, ¶ 20, U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

We resolve . . . [t]o strengthen further cooperation between the [U.N.] and national parliaments through their world organization, the Inter-Parliamentary Union, in various fields, including peace and security, economic and social development, international law and human rights, and democracy and gender issues. . . . To give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the Organization’s goals and programmes.

*Id.* at ¶ 30. The follow-up resolution to the outcome of the Millennium Summit provides:

*Calls* for enhanced partnership and cooperation with national parliaments as well as civil society, including non-governmental organizations and the private sector, as set out in the Millennium Declaration, to ensure their contribution to the implementation of the Declaration; Declaration[.]

Follow Up to the Outcome of the Millennium Summit, G.A. Res. 55/162, U.N. Doc. A/Res/55/162, ¶ 14 (Dec. 18, 2000).

31. The U.N. Committee on NGOs is an ECOSOC standing committee that was established by resolution 3(II) on June 21, 1946. United Nations Committee on Economic and Social Affairs, NGO Branch, Committee on Non-Governmental Organizations, <http://esango.un.org/paperless/Web?page=static&content=committee> (last visited October 17, 2009). The Committee, which reports directly to ECOSOC, has 19 member States, meets annually for several weeks in New York, and has occasional other sessions. *Id.* The Committee’s current terms of reference are outlined in Resolution 1996/31 of 25 July 1996. *Id.* After the Committee reviews and approves an NGO’s application, “it is only considered recommended for consultative status.” *Id.* “It is only after the recommendation becomes an ECOSOC decision that the NGO is granted the consultative status.” *Id.*

input to the United Nations at public meetings, during international conferences and their preparatory meetings, and informally. NGOs may offer insights on all critical matters concerning the U.N.'s operations, including matters that directly threaten peace and security. Even if an NGO does not have ECOSOC consultative status, the NGO may still consult with the United Nations on an *ad hoc* basis or through procedures established by various U.N. affiliated bodies.<sup>32</sup>

The 1993 Vienna Declaration and Program of Action provides further authority for NGOs to participate in U.N. affairs, proclaiming that NGOs "should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights."<sup>33</sup> The Vienna Declaration confirmed "the promotion and protection of human rights" as "a matter of priority for the international community" and called on "States and international organizations, *in cooperation with non-governmental organizations*, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights."<sup>34</sup> The Vienna Declaration also recognized "*the important role of non-governmental organizations* in the promotion of all human rights . . . at national, regional and international levels . . . and to the . . . protection of all human rights and fundamental freedoms."<sup>35</sup>

## 2. *Conference of Non-Governmental Organizations in Consultative Relationship with the U.N.*

As a principal NGO membership organization associated with the United Nations since the 1940s, the Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO)<sup>36</sup> has recognized that the historical relationship between the

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32. For example, various U.N. specialized agencies grant their own accreditation for NGOs working in the agencies' areas of specialization. See U.N. Department of Economic and Social Affairs, NGO Section, NGO related Questions and Answers, <http://esa.un.org/coordination/ngo/new/index.asp?page=faqs> (last visited Oct. 17, 2009). Examples include: the International Labor Organization (ILO) in Geneva, the Food and Agriculture Organization of the U.N. (FAO) in Rome, U.N. Educational, Scientific and Cultural Organization (UNESCO) in Paris, the World Health Organization (WHO) in Geneva, the International Telecommunication Union (ITU) in Geneva, the International Maritime Organization (IMO) in London, the World Intellectual Property Organization (WIPO) in Geneva, the U.N. Industrial Development Organization (UNIDO) in Vienna, and the U.N. Conference on Trade and Development (UNCTAD) in Geneva. *Id.*

33. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 38, U.N. Doc. A/CONF.157/23 (July 12, 1993).

34. *Id.* ¶ 13 (emphasis added).

35. *Id.* ¶ 38 (emphasis added).

36. In 1948, CONGO was founded as "an independent, international, non-profit membership association of" NGOs. CONGO, About CONGO, Introduction, <http://www.ngocongo.org/index.php?what=about> (last visited Oct. 17, 2009) [hereinafter



United Nations and NGOs has been divided into three “generations”.<sup>37</sup> In the first generation, from 1945 to the end of the Cold War, the U.N. Economic and Social Council (ECOSOC) permitted formal relationships principally to a handful of international NGOs.<sup>38</sup> In the second generation, a wave of national NGOs emerged and the United Nations modified its consultative process to permit them to become accredited.<sup>39</sup> In the third generation, accredited international and national NGOs, both individually and in concert with each other, were able to contribute even more to the work of the United Nations.<sup>40</sup>

The NGO Branch of the U.N. Department of Economic and Social Affairs (DESA), through a network called “United Nations NGO Informal Regional Network” (UN-NGO-IRENE), coordinates collaboration between the United Nations and NGOs.<sup>41</sup> The UN-NGO-IRENE network interfaces between and among U.N. headquarters in New York, U.N. organizations at the country level, and non-U.N. organizations including academia, NGOs, business organizations, and philanthropic foundations.<sup>42</sup> Today, the United Nations has opened its doors to NGOs in many ways, for example, by its UN-NGO-IRENE Best Practices Network, which is an interactive website forum for NGOs to share and discuss best practices.<sup>43</sup>

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About CONGO Introduction]. Since 1948, CONGO has facilitated NGO participation in U.N. debates and decision-making. *Id.* It assists NGOs to support the U.N. Charter and enhance their relationship and cooperation with the U.N. and provides a forum for NGOs to study, plan, support, and act on issues relating to U.N. principles and program. CONGO, About CONGO, Mission Statement, [www.ngocongo.org/index.php?what=about&start=1](http://www.ngocongo.org/index.php?what=about&start=1) (last visited Oct. 17, 2009).

37. See *CONGO: The Story*, *supra* note 25 (citing Tony Hill, *Three Generations of UN-Civil Society Relations: A Quick Sketch*, Background Paper for the Secretary-General’s Panel of Eminent Persons on United Nations Relations with Civil Society, remarks by Coordinator, United Nations Non-Governmental Liaison Service); see generally, About CONGO Introduction, *supra* note 36.

38. Tony Hill, *Three Generations of UN-Civil Society Relations: A Quick Sketch*, U.N. Non-Governmental Liaison Service, Aug. 2004, available at <http://www.reclaimourun.org/documents/documents/ThreeGenerationsofUnCivilSocietyRelations.pdf>.

39. *Id.* at 1–3.

40. *Id.* at 3–4.

41. See U.N. Department of Economic and Social Affairs, NGO Section, At Your Service, <http://www.un.org/esa/coordination/ngo> (last visited Oct. 8, 2009).

42. UN-NGO-IRENE works with the International Association of the Economic and Social Councils and Similar institutions (AICESIS) spread over 5 continents with activities in 65 countries involving over 3000 NGOs. *Id.* U.N. Econ. & Soc. Council [ECOSOC], *List of Non-Governmental Organizations in Consultative Status with the Economic and Social Council as of 18 September 2008*, U.N. Doc. E/2008/INF/5 (Sept. 18, 2008).

43. COS Net ECOSOC Civil Society Network, Best Practices, <http://esango.un.org/irene/?section=2&type=2> (last visited Oct. 18, 2009).

### 3. *The United Nations Duty to Consult NGOs*

The United Nations, other inter-governmental bodies, and national governments facilitate NGO participation in those bodies' deliberations, negotiations, and decision-making. An emerging body of literature debates whether governments, inter-governmental organizations, and national governments have a duty to consult with NGOs, or whether these consultations are only permissive.<sup>44</sup>

The two principal traditional sources of international law — treaties and customary international law — assist in the resolution of this question. No treaty specifically addresses the issue of whether the duty to consult is a rule of international law.<sup>45</sup> Thus, we turn to the next source, customary international law, for which proof would need to be adduced in the form of state practice and *opinio juris*. These two elements exist, proving that the duty to consult is a binding norm of customary international law.

The state practice prong is easily satisfied. As Charnovitz notes, “consulting with NGOs is widespread and continues to expand,” even in bodies that had “appeared to be off-limits for NGOs,” such as the U.N. Security Council.<sup>46</sup> NGOs are routinely consulted in proceedings of many U.N. bodies, including the U.N. treaty bodies, the U.N. Forum on Forests, the Food and Agricultural Organization, the World Health Organization, the International Labor Organization, ECOSOC and the Human Rights Council.<sup>47</sup>

The state practice prong for the duty to consult is bolstered by treaty language that requires NGO consultation, such as provisions that NGOs “shall be admitted,”<sup>48</sup> which is mandatory language and not permissive.

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44. See generally, Steve Charnovitz, *Nongovernmental Organisations and International Law*, 100 AM. J. INT'L L. 348 (2006) (citing treaties, non-treaty international instruments, and writing and teachings of scholars and jurists on the issue of the duty to consult). Professor Charnovitz defines “consultation” as “a duty to listen” with a “good faith commitment to consider the information provided by the consulting partner.” *Id.* at 368 (citations omitted). Consultations could also include advisory groups, notice and comment, stakeholder dialogues, and general NGO access. *Id.*

45. See *id.* at 369.

46. *Id.* at 368.

47. NGOs have been consulted less routinely in proceedings of other inter-governmental bodies such as the U.N. General Assembly, the International Monetary Fund, and the World Bank. See Charnovitz, *supra* note 44, at 368.

48. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Mar. 3, 1973, entry into force July 1, 1975, Art. XI(7)(a), 993 U.N.T.S. 243, 12 I.L.M. 1085 (1973) (“Any [NGO] technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the [CITES] Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object.”); see generally What is CITES?, <http://www.cites.org/eng/disc/what.shtml> (last visited Oct. 17, 2009) (emphasis added).

Furthermore, the U.N. General Assembly promulgated a Declaration in 1999 that provides that “everyone has the right, individually and in association with others, at the national and international levels: . . . (c) To communicate with non-governmental or intergovernmental organizations.”<sup>49</sup>

Similarly, the *opinio juris* prong has been satisfied.<sup>50</sup> Numerous legal scholars and practitioners have supported a right to consult.<sup>51</sup>

#### E. Activities (Selected) of Human Rights NGOs in the International and Domestic Arenas

Illustrating comprehensively the wide variety of human rights NGO types and the wide range of activities in which they engage, would require substantially more space than this Article permits. Thus, this section of the Article will merely identify and examine a somewhat random cross-section or sampling of activities engaged in by a selection of human rights NGOs that operate in the international and domestic arenas. Highlighted are

49. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society, art. 5(a).

50. The U.N. has stressed the importance of consultation in the promotion and protection of human rights. For example, in Agenda 21, the United Nations states:

23.2 One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. Furthermore, in the more specific context of environment and development, the need for new forms of participation has emerged. . . .

23.3 Any policies, definitions or rules affecting access to and participation by non-governmental organizations in the work of United Nations institutions or agencies associated with the implementation of Agenda 21 must apply equally to all major groups.

U.N. Conference on Environment and Development, June 3–14, 1992, *Agenda 21 Rio Declaration on Environment and Development*, ¶ 23, U.N. Doc. A/CONF.151/26 (Aug. 12, 1992) (chapters 23 through 32 are entitled “Strengthening the Role of Major Groups”).

51. Professor Charnovitz wrote that “[o]ver the past several years, several commentators have suggested that international decision makers have an obligation to provide consultative opportunities for private groups, or contended that NGOs have a right to render advice.” See Charnovitz, *supra* note 44 (citing JANNE ELISABETH NUMAN, *THE CONCEPT OF INTERNATIONAL LEGAL PERSONALITY: AN INQUIRY INTO THE HISTORY AND THEORY OF INTERNATIONAL LAW* 469 (2004) (suggesting that when groups “are silenced or suppressed, the international community has a duty to accommodate these groups on stage and to be an audience to them”); LAURENCE BOISSON DE CHAZOURNES & PHILIPPE SANDS, *INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE AND NUCLEAR WEAPONS* 1–10 (1999) (noting the evolution of a “growing entitlement of individuals and non-governmental organisations to a more formal and informal involvement in international judicial and quasi-judicial proceedings”); Peter Willetts, *From ‘Consultative Arrangements’ to ‘Partnership’: The Changing Status of NGOs in Diplomacy at the UN*, *GLOBAL GOVERNANCE*, Apr.–Jun. 2000, at 191, 205 (suggesting that U.N. Charter Article 71 has risen to customary international law).

human rights NGOs participating in the U.N. system,<sup>52</sup> including NGOs participating in U.N. conferences, NGOs submitting “shadow reports” and making oral presentations to U.N. treaty bodies about human rights violations in different countries, human rights “major groups” operating in the U.N. Forum on Forests, and NGOs participating in international complaint mechanisms. Also discussed are academic institutions engaging in human rights promotion and protection, and human rights NGOs operating outside the United Nations and inter-governmental human rights systems.

### 1. NGOs Participating in U.N. Conferences

Since the 1945 San Francisco conference, in which NGOs played a major role in influencing world powers in shaping the United Nations, NGOs have continued to play a major role in U.N. conferences and have made substantial contributions to the work of the United Nations in many areas, including development, peace, nutrition, health, rights of women and children, international crimes, racism and race discrimination, global finance, and human settlements — all of which directly or indirectly concern international human rights issues.<sup>53</sup>

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52. In 2003, the Secretary General appointed a Panel of Eminent Persons on United Nations-Civil Society Relations to examine “the modes of participation in U.N. processes of non-governmental organizations, as well as of other non-governmental actors such as the private sector and parliamentarians.” U.N. Press, *UN-Civil Society Relations Panel Established*, Feb. 13, 2003, <http://www.globalpolicy.org/component/content/article/177-un/31845.html> (last visited Oct. 17, 2009). In response to the Panel’s findings, the U.N. Secretariat agreed that increased involvement of NGOs should “become a regular component of the General Assembly’s work,” and that the Security Council should “find ways to strengthen further its relationship with civil society.” The Secretary-General, *Report of the Secretary-General in Response to the Report of the Panel of Eminent Persons on United Nations-Civil Society Relations*, ¶¶ 10, 14, delivered to the General Assembly, U.N. Doc. A/59/354 (Sept. 13, 2004). Further, the Secretary General agreed to establish a trust fund to increase participation of representatives of non-governmental organizations from developing countries. *Id.* at ¶¶ 20–22.

53. United Nations Conferences with major NGO participation have included: United Nations Conference on Environment and Development. See U.N. Conference on Environment & Development, *supra* note 50, at ch. 27; International Conference on Population and Development, Cairo, Egypt, Oct. 18, 1994, *Preliminary Report*, ch. 4, ¶ 15; World Conference on Human Rights, June 14–25, 1993, *Report of the Secretary-General*, ¶ 41, U.N. Doc. A/CONF.157/24 (Part I) (Oct. 13, 1993); World Summit for Social Development, Mar. 6–12, 1995, *Accreditation of Non-Governmental Organizations in Accordance with the Rules for Their Participation Set Out in Preparatory Committee Decision 2*, U.N. Doc. A/CONF.166/4 (Feb. 7, 1995); Fourth World Conference on Women: Action for Equality, Development and Peace, Sept. 4–15, 1995, Beijing, China, *Preliminary Report*, ch. 2, ¶ 10, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995); United Nations Conference on Human Settlements (Habitat II), June 3–14, 1996, *Accreditation of Non-governmental Organizations*, U.N. Doc. A/CONF.165/5 (Apr. 4, 1996); World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, July 31 – Aug. 10, 2001, *List of Attendance*, U.N. Doc. A/CONF.189/PC.3/INF.1 (Aug. 21, 2001); International

## 2. NGOs Presenting Shadow Reports to U.N. Treaty Bodies

Pursuant to various U.N. international human rights law treaties, states party to the treaties are required to report periodically on how the states are complying or not complying with the human rights mandates incorporated into the treaties.<sup>54</sup> States submit their reports to U.N. treaty bodies, which are groups of U.N. independent experts who review the states' reports and render "concluding observations" on whether the states comply or fail.<sup>55</sup> Human rights NGOs have, through express treaty language or by practice of treaty bodies, been permitted to participate in this process by, for example, submitting "shadow reports" that are "alternative to" and that counter states' own reports, and then traveling to the United Nations in New York or Geneva and orally presenting the reports to the U.N. treaty bodies.<sup>56</sup> Human

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Conference on Financing for Development, *see* High-level International Intergovernmental Event on Financing for Development, *List of Non-Governmental Organizations Recommended by the Bureau of the Committee for Accreditation in the Substantive Preparatory Process and the High-Level International Intergovernmental Event on Financing for Development*, U.N. Doc. A/AC.257/10 (Oct. 23, 2000); Special Session of the General Assembly for the Overall Review and Appraisal of the Agenda 21, *see* Programme for the Further Implementation of Agenda 21, G.A. Res. S/19-2, Annex, U.N. Doc. A/RES/S-19/2 (Sept. 19, 1997).

54. For example, pursuant to article 40 of the ICCPR, the Human Rights Committee will receive reports States Parties "undertake to submit . . . on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights." International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, art. 19, S. Exec. Doc. E, 95-2, at 29 (1978), 999 U.N.T.S. 171, 178 (entered into force Mar. 23, 1976).

55. The eight U.N. human rights treaty bodies are: The Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of Discrimination against Women; the Committee Against Torture; the Committee on the Rights of the Child; the Committee on Migrant Workers; and the Committee on the Rights of Persons with Disabilities. United Nations Office of the High Commissioner for Human Rights, Human Rights Bodies, <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> (last visited Oct. 17, 2009). Other international human rights bodies exist in regional systems, including the African Commission on Human and Peoples' Rights, the European Commission and the European Court of Human Rights, the European Committee for the Prevention of Torture, the Inter-American Commission and the Inter-American Court of Human Rights, and the ILO Committee on the Application of Conventions and Recommendations.

56. For example, the Program in International Human Rights Law (PIHRL), based at Indiana University School of Law — Indianapolis, has authored or facilitated through the research and drafting of law students numerous Shadow Reports related to human rights abuses in many countries. *See* IndyLaw, Program on Human Rights Law: U.N. Shadow Reports, [www.indylaw.indiana.edu/humanrights/UNshadow.html](http://www.indylaw.indiana.edu/humanrights/UNshadow.html) (last visited July 21, 2009). Representatives of the PIHRL and affiliated student groups from the school have traveled to Geneva and New York and formally and informally presented Shadow Reports to U.N. Treaty Bodies, and the student groups have witnessed their Shadow Report issues incorporated into questions that U.N. Treaty Body Experts asked government representatives in hearings and that Committees incorporated into their Concluding Observations post-

rights NGO shadow reports have positively impacted the work of the treaty bodies, whose members have, for example, referred to shadow reports when posing questions to or raising issues with government representatives who appear for treaty body hearings. Sometimes treaty body members raise these issues during the formal, on-the-record hearings, and other times they may raise the issues informally with government representatives outside of meetings. At times, the treaty bodies incorporate into their concluding observations recommendations raised by NGOs in the NGO shadow reports. NGOs are a valuable resource for information for U.N. treaty bodies.<sup>57</sup>

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hearings. The law students, faculty, and staff — with the collaboration and assistance of outside NGOs and others — tendered and presented Shadow Reports to the U.N. Human Rights Committee for countries and issues that include: Australia (rights of women, March 2009), Chad (rights of women and girls, March and July 2009); Panama (indigenous peoples, 2008); Zambia (press freedom, 2007); Chile (sexual orientation discrimination, 2007); USA (Hurricane Katrina, 2006); USA (sexual orientation discrimination, 2006); Hungary (Roma, 2001). *Id.* Shadow Reports were submitted to the U.N. Race Discrimination Committee on: USA (discrimination against Muslims, Arabs, Middle Easterners, and South Asians, 2008); United States (Hurricane Katrina, 2008); and Nepal (Dalit People, 2000). *Id.* In 2009, a report was submitted to the Committee Against Torture on other cruel, inhuman or degrading treatment or punishment in the Philippines. Joint Civil Society, *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Philippines*, March 2009, <http://indyaw.indiana.edu/humanrights/shadowreports/Joint%20Civil%20Society%20Report%20Philippines%202009.pdf>. The PIHRL has also worked with the National Bar Association – International Law Section (NBA-ILS) in submitting Shadow Reports. Shadow Report by the National Bar Association-International Law Section and the Program in International Human Rights Law of Indiana University School of Law — Indianapolis, *International Human Rights Law & Hurricane Katrina: U.S. Government Fails to Comply with ICERD*, Feb. 2008, at 14–15, [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NBA-ILS\\_USA72.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NBA-ILS_USA72.pdf). Students and faculty from other law schools have also submitted Shadow Reports, and collaborated on other treaty body advocacy projects, in collaboration with Indiana, on their own, or with other schools and NGOs. *See, e.g.*, International Human Rights Clinic Releases Report Documenting Prison Conditions in Panama, [www.law.harvard.edu/programs/hrp/newsid=32.html](http://www.law.harvard.edu/programs/hrp/newsid=32.html) (last visited Oct. 3, 2009); Columbia Law School Human Rights Institute, Current Initiatives, [www.law.columbia.edu/center\\_program/human\\_rights/HRinUS/HRinUSProject](http://www.law.columbia.edu/center_program/human_rights/HRinUS/HRinUSProject) (last visited Oct. 3, 2009); Maria T. Bates et al, *The U.S.A.'s Breach of its Obligations under the International Covenant on Civil and Political Rights to Protect the Rights of Sexual Minorities, Including Lesbian, Gay, Bisexual, and Transgender People*, <http://indyaw.indiana.edu/humanrights/shadowreports/USA%20Sexual%20Minorities.pdf> (discussing the submission of shadow reporters by the Harvard Human Rights Program and Indiana during the same 2008 Human Rights Committee session as well as participation by a Stetson law student in the Indiana report to Race Committee). NGOs that regularly submit shadow reports include Amnesty International, [www.amnesty.org/en/library](http://www.amnesty.org/en/library) (last visited Oct. 3, 2009), Human Rights Watch, [www.hrw.org/en/publications](http://www.hrw.org/en/publications) (last visited Oct. 3, 2009); and The Centre for Civil and Political Rights (CCPR Centre), <http://www.ccprcentre.org/en/latest-state-reports> (last visited Oct. 3, 2009).

57. An NGO participant at Human Rights Committee hearings in Geneva on implementation of the ICCPR in Hong Kong reflected:

Many Committee members commented on the number of Hong Kong NGO representatives present at the hearings. As I sat and watched, and listened to the concerns of various members, I could

Human rights NGOs can facilitate states' treaty compliance by urging states to include the citizenry in the compliance process. Human rights NGOs can encourage states to disseminate copies of the relevant human rights treaties, to disseminate draft government periodic reports, to hold wide consultative sessions, to permit NGO and other feedback, to fund NGO participation at treaty body hearings in New York or Geneva, and to disseminate widely any treaty body's concluding observations. Also, NGOs can encourage states to withdraw any treaty reservations and to submit overdue periodic reports. Furthermore, NGOs can urge states to encourage other states similarly to comply with treaty substantive and other rules.

3. *U.N. Bodies & "Major Groups" — U.N. Forum on Forests — Example of NGOs Working Within the U.N. System*

The U.N. Forum on Forests (UNFF)<sup>58</sup> is one of many U.N. bodies reaching out to NGOs and other non-state actors for participatory guidance and consultation. The UNFF is charged with protecting the world's exhaustible forests from environmental sustainability and human rights perspectives. The UNFF identified a range of forest-related stakeholders, called "major groups", who participate in UNFF proceedings as a key component of the body's work. NGOs are one of nine major groups<sup>59</sup> that

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not help but think about the member states that cannot send human rights advocates to these proceedings. Present and listening, human rights advocates from Hong Kong were able to provide immediate research and responses to any inaccurate representation the government made. Without this type of advocacy and physical presence, the Committee does not have adequate resources, or the same balance or diversity of input, to draft immediate concluding observations. This limitation, coupled with the fact that the Human Rights Committee cannot hold annual hearings on every member state, emphasizes the importance of on-site human rights advocacy.

Cheryl K. Morales, *Seizing the Opportunity: Participation in the Fifth Periodic Report of the Hong Kong Special Administrative Region before the U.N. Human Rights Committee*, 4 DEPAUL INT'L L. J. 175, 180 (2000) (containing reflections by one of three DePaul law students who accompanied the author of this Article to those hearings in Geneva and worked with the Hong Kong Human Rights Monitor and other NGOs).

58. The U.N. Forum on Forests was created by ECOSOC Resolution 2000/35 as a U.N. subsidiary body instructed to promote "the management, conservation and sustainable development of all types of forests and to strengthen long-term political commitment to this end" based on, *inter alia*, the Rio Declaration, the Forest Principles, Chapter 11 of Agenda 21 and other milestones of international forest policy. U.N. Econ and Soc. Council [ECOSOC], Report on the 4th session of the Intergovernmental Forum on Forests, U.N. Doc. E/RES/2000/35 (Nov. 22, 2000); United Nations Forum on Forests, About UNFF, <http://www.un.org/esa/forests/about.html> (last visited Oct. 17, 2009).

59. United Nations Forum on Forests, UNFF Major Group Focal Points, [http://www.un.org/esa/forests/contacts-major\\_groups.html](http://www.un.org/esa/forests/contacts-major_groups.html) (last visited Oct. 17, 2009) (stating that the nine major groups are: women; children and youth; indigenous people; local authorities; workers and trade unions; business and industry; scientific and technological communities; NGOs; and farmers and small forest landowners). Many of the Major Groups

are encouraged to participate actively in virtually all aspects of UNFF work.<sup>60</sup> The major groups are invited to full-day, multi-stakeholder dialogues as part of UNFF regular sessions, are entitled to submit statements for the record, and can intervene orally at UNFF meetings.

Human rights fall within the competency of the UNFF as governmental and non-state actor policies and practices regarding forests may threaten economic, social, cultural, civil, and political rights of poor and marginalized indigenous forest-dependent peoples.<sup>61</sup> The UNFF is charged

are represented by NGO leaders, and many of the representatives are heavily involved with NGOs independent of their involvement with the Major Groups.

60. See U.N. Forum on Forests (UNFF), Participation of Major Groups, <http://www.un.org/esa/forests/participation.html#1> (last visited July 18, 2009) (“Major groups organizations that are accredited with the Economic and Social Council of the U.N (ECOSOC) and the Commission on Sustainable Development (CSD) are encouraged to participate in UNFF Sessions. . . . Organizations NOT accredited with ECOSOC or CSD may attend as part of the delegation of its country or as part of the delegation of an accredited organization.”); *Id.* (“This focal point system [including NGOs] is intended to be a fluid, flexible mechanism to help facilitate coordination, planning and discussion on UNFF-related issues within and between major group networks”); see also U.N. Conference on Environment and Development, *supra* note 50, at ¶ 23.2 (“Furthermore, in the more specific context of environment and development, the need for new forms of participation has emerged. . . . Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities . . .”).

61. For discussions about human rights violations related to forests, see, e.g., Forest Peoples Programme, *Annual Report 2007*, at 2, [http://www.forestpeoples.org/documents/ann\\_rep/fpprog\\_ar\\_07.pdf](http://www.forestpeoples.org/documents/ann_rep/fpprog_ar_07.pdf) (last visited Oct. 17, 2009). The Forest Peoples’ Programme (FPP) stated:

FPP’s Legal and Human Rights Programme (LHRP) helps forest peoples to secure their rights through legal action and using international and national mechanisms set up to protect human rights. The LHRP provides information, training and capacity building so that people know their rights and how to defend them, and offers legal advice and litigation support for forest peoples pursuing complaints and cases through national courts and the international human rights system. FPP’s detailed research and analysis, and submissions to international human rights bodies, help shape the evolution of international human rights standards and create a body of evidence and international opinion that supports indigenous peoples’ advocacy in other areas such as multilateral banks and development agencies.

See *Case of the Saramaka People v. Suriname*, 2007 Inter-Am. C.H.R. (ser. C) No. 172 (Nov. 28, 2007) (recognizing the human rights of indigenous peoples in ruling that Suriname violated the Saramaka’s human rights by not consulting and obtaining their consent before Suriname granted logging and mining concessions.) available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf); Forest Peoples Programme, *Annual Report 2007*, at 4, [http://www.forestpeoples.org/documents/ann\\_rep/fpprog\\_ar\\_07.pdf](http://www.forestpeoples.org/documents/ann_rep/fpprog_ar_07.pdf) (last visited Oct. 17, 2009). For further discussion of the tie between human rights and forests, see, e.g., Global Witness, *Global Witness Testifies at the Liberian Truth and Reconciliation Commission on the Role of National and International Timber Companies in Fuelling Liberia’s Civil War*, Feb. 19, 2009, [http://www.globalwitness.org/media\\_library\\_detail.php/722/en/global\\_witness\\_testifies\\_at\\_the\\_liberian\\_truth\\_and](http://www.globalwitness.org/media_library_detail.php/722/en/global_witness_testifies_at_the_liberian_truth_and) (human rights violations and abuse of forest



with ascertaining how climate change and other forces deprive peoples of their human rights. Just like NGO stakeholders in cases involving human rights violations related to natural resources (such as conflict diamonds or conflict timber),<sup>62</sup> NGO stakeholders working on forest issues play a vital role in identifying those human rights violations, violators, and remedies.<sup>63</sup>

#### 4. NGOs Participating in International Complaint Mechanisms

International human rights law treaties that permit individuals or states to file complaints include: the International Covenant on Civil and Political Rights; the Convention Against Torture; the Women's Convention, the Race Convention; the European Convention on Human Rights; the

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resources); Stephen Then, *Logging, Land Clearing Caused Mass Fish Deaths in S'wak*, THE STAR, Feb. 20, 2009, <http://thestar.com.my/news/story.asp?file=/2009/2/20/nation/20090220143652&sec=nation>. The government noted the "unusual mass deaths" of fish in Malaysian rivers were caused by "suffocation due to siltation triggered by logging, plantations and land-clearing projects", and noted its desire "to balance the need for land development with the need to protect and conserve the environment and its natural resources because interior folks depended on these natural assets for their daily survival." *Id.* See generally Stener Ekern, *Saving the Forest Through Human Rights: Indigenous Rights and Ethnic Tension in Guatemala*, 13 Int'l J. on Minority & Group Rts. 171 (2006).

62. NGOs such as Global Witness and Partnership-Africa Canada participated in and played a major role in the creation of the Kimberley Process, which is a scheme seeking to curb "conflict diamonds" which are "rough diamonds used by rebel movements" or their allies to finance conflict aimed at undermining "legitimate governments" in contravention of U.N. Security Council resolutions, the Kimberley Process Certification Scheme, and other norms. See *What is the Kimberley Process?*, <http://www.kimberleyprocess.com/> (last visited Sept. 24, 2009). The Scheme obligates members to certify shipments of rough diamonds as "conflict-free" and prevent conflict diamonds from entering the legitimate trade. *Id.* Diamonds must be in tamper-proof packaging and must be accompanied by a certificate guaranteeing that they are conflict-free. *Id.* For further discussion of the Kimberly process and the role of NGOs, see Ann C. Wallis, *Data Mining: Lessons from the Kimberley Process for the United Nations' Development of Human Rights Norms for Transnational Corporations*, 4 Nw. J. of Int'l Hum. Rts. 388, 397-398 (2005) (discussing conflict diamonds, NGOs and human rights in Angola, Democratic Republic of the Congo, and Sierra Leone). For discussion of conflict timber, see Arthur G. Blundell, *Conflict Timber and Liberia's War*, EUR. TROPICAL FOREST RES. NEWS, [http://www.etfrn.org/etfrn/newsletter/news4344/articles/2\\_2\\_Blundell.pdf](http://www.etfrn.org/etfrn/newsletter/news4344/articles/2_2_Blundell.pdf) (last visited Oct. 15, 2009) (commenting on U.N. Security Council Panel Experts on Liberia); See generally *Timber in Conflict*, <http://globalpolicy.org/security-council/dark-side-of-natural-resources/timber-in-conflict.html> (last visited Oct. 8, 2009) (a collection of NGO reports, articles, and documents related to conflict timber); see generally *Bloody Timber Off the Market*, <http://www.greenpeace.org/international/news/bloody-timber-off-the-market> (last visited Oct. 8, 2009).

63. See Frances Seymour, *Forests, Climate Change, and Human Rights: Managing Risk and Trade-offs*, Center for International Forestry Research (Oct. 2008), <http://rightsandclimatechange.files.wordpress.com/2008/10/seymour-forests-cc-hr-0810021.pdf>.

American Convention on Human Rights (Pact of San Jose),<sup>64</sup> and the African Charter on Human and Peoples' Rights.<sup>65</sup> Essentially three types of complaints have been used in the context of human rights treaties: (1) inter-state complaints, (2) individual complaints against a state, and (3) inquiries.<sup>66</sup> Generally, NGOs may file on behalf of themselves as aggrieved parties, or on behalf of individual or group victims. Furthermore, human rights NGOs may serve as legal advisors, experts, or amicus curiae in these cases.

### 5. Academic Activities to Promote Human Rights

Increasingly, academic institutions are promoting and protecting human rights through incorporating human rights research, teaching and service into their mission statements, and creating programs and centers to further those goals.<sup>67</sup> Law schools that have created human rights programs or clinics with these objectives include Indiana University School of Law — Indianapolis,<sup>68</sup> Harvard Law School,<sup>69</sup> Columbia Law School,<sup>70</sup> DePaul

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64. *American Convention on Human Rights*, Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, Nov. 22, 1969, <http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm> (last visited Oct. 17, 2009).

65. See African Charter on Human and Peoples' Rights, *adopted* June 26 1981, O.A.U. Doc. CAB/LEG/67/3, Rev.5 (*entered into force* Oct. 12 1986), *reprinted in* 21 I.L.M. 58 (1982).

66. The U.N. Torture Committee and the U.N. Women's Committee may, on their own initiative, initiate an "inquiry" if they receive "reliable information . . . containing well-founded indications [of] . . . systematic violations of the . . . Conventions by a State party." Office of the United Nations High Commissioner for Human Rights, Human Rights Bodies – Complaints Procedures, <http://www2.ohchr.org/english/bodies/petitions/index.htm> (last visited Oct. 17, 2009); United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 20, Dec. 10, 1984, 1465 U.N.T.S. 85, *available at* [www2.ohchr.org/english/law/cat.htm](http://www2.ohchr.org/english/law/cat.htm) (last visited Oct. 16, 2009) (setting out the inquiry procedures and standards for article 20); G.A. Res. 54/4, U.N. Doc A/RES/54/4 (Oct. 15, 1999) (setting out the inquiry procedures and standards for articles 8–10 of the Optional Protocol to CEDAW); for a discussion of complaint procedures within the United Nations system, see Fact Sheet No. 7/Rev.1, Complaints Procedure, [http://www2.ohchr.org/english/law/docs/Part\\_of\\_FS.No.7.pdf](http://www2.ohchr.org/english/law/docs/Part_of_FS.No.7.pdf) (last visited July 18, 2009).

67. For a discussion of the academy's role in promoting and protecting human rights, see Henry J. Steiner, *The University's Critical Role in the Human Rights Movement*, 15 HARV. HUM. RTS. J. 317 (2002); Arturo J. Carrillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process*, 35 COLUM. HUM. RTS. L. REV. 527 (2004); Stanley H. Hoffman & Corinne S. Schelling, *Universities and Human Rights*, 6 HUM. RTS. Q. 5 (1984) (discussing the conceptual framework of whether universities should get involved in foreign countries in which human rights are violated). See generally Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT'L L. 505 (2003).

68. The missions of the Indiana PIHRL, which was founded by this Article's author in 1997, include: (1) to further the teaching and study of international human rights law at Indiana University School of Law — Indianapolis; (2) to promote scholarship in

College of Law,<sup>71</sup> University of Buffalo School of Law,<sup>72</sup> University of New South Wales,<sup>73</sup> the University of Hong Kong (HKU) Faculty of Law,<sup>74</sup> and others in the U.S. and other countries.<sup>75</sup>

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international human rights law; (3) to assist human rights governmental, inter-governmental, and non-governmental organizations on international human rights law projects; and (4) to facilitate student placements as law interns at domestic and overseas human rights organizations. See Program in International Human Rights Law, <http://www.indylaw.indiana.edu/humanrights> (last visited Oct. 8, 2009). The PIHRL has undertaken many human rights academic projects in the US and overseas. Since 1997, the PIHRL has facilitated over 100 U.S. law student placements as human rights law interns in over 50 countries on 6 continents. Students work for NGOs, IGOs (e.g., the UN), and governmental groups. Students receive law school scholarships for travel, housing, food and other internship expenses. Host organizations around the world incur no financial costs for interns.

The PIHRL researched and provided expert witness resources to defend US cases against Guantanamo Bay detainees Australian David Hicks and Canadian Omar Khadr, researched on behalf of former Yugoslav President Slobodan Milosevic (who was on trial at the U.N. International Criminal Tribunal for the Former Yugoslavia), researched for governments, advocated before the U.N. and other bodies, hosted U.N. and national leaders at campus conferences and seminars, and helped train judges in the U.S. and abroad.

The PIHRL, which is attached to an academic institution, through its human rights activities carries out its mission to teach its law students. Students receive academic credit for overseas and domestic intern work experiences, and for the research for criminal defendants, for Shadow Reports, for preparing position papers for governmental agencies, NGOs or the United Nations, and for other undertakings.

69. The Harvard Law School Human Rights Program “fosters course work and participation of students in human rights activities through its summer fellowships, clinical work, speaker series, applied research and scholarship.” Harvard Law School Human Rights Program, <http://www.law.harvard.edu/programs/hrp> (last visited Oct. 17, 2009). The Harvard Program was founded in 1984, and supported two overseas human rights law internships for this Article’s author, who was a Harvard Law School student at the time.

70. Since 1998, the Columbia Law School Human Rights Institute has focused on international human rights education, scholarship, and practice. Columbia Law School Human Rights Institute, About the Human Rights Institute, [http://www.law.columbia.edu/center\\_program/human\\_rights](http://www.law.columbia.edu/center_program/human_rights) (last visited July 20, 2009).

71. DePaul’s International Human Rights Law Institute (IHRLI) was founded in 1990 and engages in human rights law research, documentation, training and advocacy. See DePaul University College of Law, About the International Human Rights Law Institute, [http://www.law.depaul.edu/centers\\_institutes/ihrl/about\\_us](http://www.law.depaul.edu/centers_institutes/ihrl/about_us) (last visited July 20, 2009).

72. “[T]he Buffalo Human Rights Center . . . fosters coursework, research, scholarship and practical experience in the field of human rights.” Buffalo Human Rights Center, University at Buffalo Law School, *available at* <http://wings.buffalo.edu/law/BHRC> (last visited Oct. 16, 2009) (emphasis omitted). It “aims to garner greater exposure and community support for the recognition, promotion, and protection of international human rights.” *Id.*

73. The Australian Human Rights Centre (AHRC) is an inter-disciplinary research and teaching institute based in the Faculty of Law at the University of New South Wales (UNSW), Australian Human Rights Centre, <http://www.ahrcentre.org> (last visited Oct. 16, 2009). Founded in 1986, it has sought to increase public awareness about human rights procedures, standards and issues within Australia and the internationally community. It researches contemporary human rights issues, disseminates human rights information, and involves academics, research associates, student interns and volunteers in their programs.

## 6. Human Rights NGOs Outside the U.N. and Other Inter-Governmental Systems

Many thousands of local human rights NGOs in many different countries have no relationship with and seek no involvement with the United Nations or any other inter-governmental body. Those local NGOs may or may not use the language of “rights,” “human rights,” or “international human rights law,” though the local issues fall squarely under conventional and customary international human rights law. These groups engage in international human rights endeavors, working at the domestic level.

An example of a human rights NGO that focuses on domestic issues is the Indiana Coalition Against Domestic Violence (ICADV), based in Indianapolis, Indiana, U.S.A. The mission statement of ICADV states, “ICADV is committed to the elimination of domestic violence through: providing public awareness and education; advocating for systemic and societal change; influencing public policy and allocation of resources; educating and strengthening coalition members; and, promoting the availability of quality comprehensive services.”<sup>76</sup>

The ICADV works to protect domestic violence victims’ internationally recognized human rights, such as the right to bodily and mental integrity, the right to health and the right to security. However, it tends to work on these issues through a domestic U.S. and Indiana lens, by referring to local criminal law or local social services, rather than referring to international human rights law,<sup>77</sup> even though the United States is bound to comply with the ICCPR and other international human rights law instruments and norms.

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74. The Hong Kong University Centre for Comparative and Public Law was founded to “promote research in the fields of public and comparative law,” but its main projects since the Centre’s 1995 founding are essentially human rights in nature and include the international law implications of the resumption of Chinese sovereignty in 1997, immigration law and practice, equality and Hong Kong law, the Hong Kong Bill of Rights, and human rights protection under the Hong Kong Basic Law. The University of Hong Kong Centre for Comparative and Public Law, About the Centre, [http://www.hku.hk/ccpl/about\\_centre/about\\_centre.html](http://www.hku.hk/ccpl/about_centre/about_centre.html) (last visited Oct. 4, 2009).

75. Much has been written about human rights work of academic institutions. See, e.g., Tamar Ezer & Susan Deller Ross, *Fact-Finding as a Lawmaking Tool for Advancing Women’s Human Rights*, 7 GEO. J. GENDER & L. 331, 331–42 (2006) (discussing work of Georgetown’s International Women’s Human Rights Clinic and its transnational NGO partners: Law and Advocacy for Women – Uganda (LAW-Uganda); Leadership and Advocacy for women in Africa – Ghana Alumnae, Inc. (LAWA – Ghana); and the Women’s Legal Aid Centre in Tanzania (WLAC – Tanzania)).

76. Indiana Coalition Against Domestic Violence, Our Mission and Philosophy, <http://www.violenceresource.org/mission.htm> (last visited Oct. 4, 2009).

77. ICADV’s training and resource materials point towards the local, domestic environment rather than towards international human rights law treaties. See Indiana Coalition Against Domestic Violence, *ICADV Resources and Programs Overview*, <http://www.violenceresource.org/resources.htm> (last visited Oct. 16, 2009).

Domestic violence implicates not only domestic law, but it also implicates the internationally recognized rights to life, liberty, security, integrity, health, and a wide range of other international law protections. The nature of a group as a human rights NGO is not negated simply because that group may not adopt the moniker “human rights NGO” or may not use “international human rights law language.” Local private social service agencies and other similar groups are “human rights NGOs” whether or not they identify themselves as such.<sup>78</sup>

### III. TEN CHARACTERISTICS OF SUCCESSFUL HUMAN RIGHTS NGOS

Successful human rights NGOs share many characteristics, far more than the ten listed and analyzed below. However, the characteristics identified and examined herein stand out as critical for human rights NGOs that seek to protect human rights in their chosen area(s) of work. This is not to say that every group that possesses these characteristics will be successful, or that every successful group fully incorporates all these characteristics. This Article posits that the likelihood of an NGO’s success is enhanced if it incorporates these characteristics into its structure and operations. These characteristics, which overlap and are not exhaustive, relate to the human rights NGO’s: (A) mission; (B) adherence to human rights principles; (C) legality; (D) independence; (E) funding; (F) non-profit status and commitment to service; (G) transparency and accountability; (H) adaptability and responsiveness; (I) cooperative and collaborative nature; and (J) competence, reliability and credibility.

#### A. Human Rights NGOs Must Have a Clear Mission to Promote and Protect Human Rights, and Be Result-Oriented

Successful human rights NGOs carry out their mission to promote and protect a wide range of rights in many substantive areas. “Human rights,” as broadly defined, includes rights and fundamental freedoms essential to the full lives of humans. Such rights include economic, social, cultural, civil, political, and third generational rights enumerated in the Universal Declaration of Human Rights, other international human rights law instruments, and customary international human rights law.

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78. Similarly, local groups would qualify as being human rights NGOs if they focus on other internationally recognized human rights at the domestic level, such as feeding or educating poor people in their village or community or helping to protect neighbors’ right to vote; helping to improve conditions in a local prison; or helping to promote equal rights for persons of all sexual orientations, clean air, or fair trials in local courts.

An NGO's obligation to protect human rights is an "obligation of result,"<sup>79</sup> which means that to fulfill its goal, the NGO must indeed protect human rights.<sup>80</sup> The nature of this obligation differs from that of an "obligation of conduct," which imposes an obligation "to take steps" or "to attempt" or "to try" to protect human rights, where compliance is realized when the conduct is undertaken. Mere steps, attempts or tries will not constitute fulfillment of an obligation of result.

All human rights NGOs advocate on behalf of human rights. They all endeavor to convince some actor — a local or national government, an inter-governmental organization like the United Nations or another non-state actor — to take some action or refrain from some action to protect the human rights of the NGO's constituency, those whose human rights the NGO seeks to protect. The NGO could be committed to advocating on behalf of prisoners of war, submitting reports to U.N. human rights treaty bodies, proposing plans to promote development in countries lacking food or health care, raising money for humanitarian aid, combating torture, providing adequate housing, or pursuing many other activities that would further human rights protection internationally or domestically.

A human rights NGO's objectives must be clearly defined. They must offer guidance to the NGO's workers, to victims seeking assistance, to donors wanting to know to what they are contributing, to other NGOs seeking collaboration, and to governments that license or monitor NGOs. The objectives must not be so broad as to be unattainable, such as a mission to eradicate all human rights violations of any nature in a particular country,

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79. The United Nations Economic Committee, which oversees implementation of the U.N. Covenant on Economic, Social and Cultural Rights, alludes to obligations of conduct and obligations of result:

1. . . . [W]hile the [Economic] Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. . . .

2. . . . Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the [Economic] Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the [Economic] Covenant.

Office of the High Commissioner for Human Rights, *The Nature of States Parties Obligations* (Art. 2, ¶1), available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument) (last visited Oct. 8, 2009).

80. However, human rights NGOs can be "successful" even if they do not achieve all their stated goals, particularly if they fail due to forces outside their control. An NGO would be deemed successful, at least for purposes of this Article, if it moves the human rights movement forward towards full protection of human rights. Sometimes the mere creation of a human rights NGO will move human rights protection forward, as its creation will spur individuals to recognize their rights and to take actions, even if small, to help in the realization of those rights.

which may not be a reasonably achievable goal. In addition, the objectives must not be overly narrow, since human rights overlap and are interrelated and do not exist in a vacuum.<sup>81</sup> Human rights NGOs that skip from project type to project type may be unfocused and may fail to acquire needed expertise in a particular substantive area.

Human rights NGOs should have “clean hands.” They should be law-abiding, committed not only to protecting against violations of international human rights law, but also committed to complying with international human rights norms in their internal and external actions. That is, as explained more fully in paragraph III(B) below, human rights NGOs must adhere to human rights principles.

#### B. Human Rights NGOs Must Adhere to Human Rights Principles

Human rights NGOs must be guided by and must adhere to human rights principles as contained in the Universal Declaration of Human Rights, other human rights instruments, and customary international human rights law. An NGO that does not comply with human rights norms is hypocritical, loses credibility, and can become ineffective. It risks tainting the image or reputation of itself and of human rights NGOs generally, and it decreases the likelihood that it will be funded and will be able to carry out its mission to protect human rights.

To become affiliated with NGO networks, umbrella groups, and caucuses, NGOs must not only state that they abide by human rights norms in their structure and internal operations as well as externally in their human rights programs and projects, but also they must actually abide by human rights norms. To become accredited by inter-governmental organizations, NGOs must pledge to comply with UDHR rights.<sup>82</sup> Non-compliant NGOs can have their accreditation terminated.

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81. Vienna Declaration and Programme of Action provides:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

World Conference on Human Rights, *supra* note 33, at ¶ 5.

82. See, e.g., Resolution 1996/31, *supra* note 26 ¶ 25 (stating that for an NGO to become accredited with the United Nations Department of Public Information (UNDPI), “the NGO must support and respect the principles of the Charter of the U.N. and have a clear mission statement with those principles” and “should pursue the goals of promotion and protection of human rights in accordance with the spirit of the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action”). The UNDP, which was created in 1946, recognized the importance of working

NGOs pledge to be democratic,<sup>83</sup> consistent with the human right to representation. NGOs must comply with the UDHR right to non-discrimination in hiring and firing employees and volunteers, and in assisting victims. This can prove challenging when cultural, societal, or religious differences — or distinctions based on gender or class — would ordinarily stifle mixing people of different groups. For example, in societies where tribal or ethnic differences are bases for conflict, mixed-membership NGOs may be difficult to form and operate, given looming questions of partiality, suspicion and distrust.

### C. Human Rights NGOs Must Be Legally Organized & Must Comply With Law

A human rights NGO must comply with rules of its nation of incorporation, with the laws of the country in which it operates, and with international law, including international human rights law. Terrorists groups like al Qaeda may be disqualified from being considered an NGO due to illegal status or conduct under domestic or international law. Mafia, triads, and gangs could also be disqualified. Anarchists, such as those who use violence to demonstrate against World Trade Organization meetings or against the annual World Economic Forum in Davos, Switzerland, may be disqualified because of their conduct. Guerilla or rebel groups may be disqualified because they may not be legally formed or may engage in unlawful conduct.

Many countries require NGOs to register as non-profit organizations. In some countries, the registration process is fairly simple, and NGOs do not have great difficulty registering. In other countries, the governments impose significant hurdles to NGO registration generally.<sup>84</sup> In countries

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with and through NGOs. This relationship was grounded in General Assembly Resolution 13(1) of 1946 and later on ECOSOC Resolution 1296 (XLIV) of May 23, 1968 and ECOSOC Resolution 1996/31 of July 25, 1996. See NGOs and the United Nations Department of Public Information: Some Questions and Answers, <http://www.un.org/dpi/ngosection/brochure.htm> (last visited Oct. 8, 2009); About the Department of Public Information, <http://unic.un.org/aroundworld/unics/en/whoWeAre/aboutDPI/index.asp> (last visited Oct. 8, 2009).

83. For example, the NGO Coordination Committee in Iraq (NCCI), which is an independent initiative launched by Baghdad NGOs in April 2003, has a General Assembly composed of all NCCI members. NGO Coordination Committee in Iraq (NCCI), NCCI Vision, <http://www.ncciraq.org/inside.php?Src=Ml&MlId=1> (last visited July 19, 2009). The General Assembly is the primary decision maker and must identify issues for developing NCCI's strategic plan. NGO Coordination Committee in Iraq (NCCI), NCCI Charter, <http://www.ncciraq.org/inside.php?Src=Sl&MlId=1&SlId=5006> (last visited Oct. 16, 2009). It votes on decisions, elects the Executive Board, approves the creation of working groups and endorses the appointment of the Executive Coordinator. *Id.*

84. See, e.g., *Proclamation No. 621/2009, Proclamation to Provide for the Registration and Regulation of Charities and Societies*, FEDERAL NEGARIT GAZETA, February 13, 2009, at 4521, <http://www.crdaethiopia.org/Documents/Charities%20and%20>



where NGOs face security and other difficulties, they may operate secretly, without registration. This may render those groups illegal under their national law, and this would make it very difficult for them to carry out their objectives because, for example, they could not openly raise funds or recruit for new members. Their capacity could be severely diminished, which begs the question of whether it is better to have a crippled human rights NGO than to have no NGO at all.<sup>85</sup>

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Societies%20Legislation%20(Final%20Version)-Negarit%20Newspaper.pdf (stating that in early 2009, the Ethiopian government proclaimed a law to regulate NGO creation, fundraising, and membership of trusts and endowments). This Proclamation is reported to restrict activities in “human and democratic rights, gender or ethnic equality, conflict resolution, the strengthening of judicial practices or law enforcement” to Ethiopian NGOs with funding from “foreign sources” not exceeding 10% of their spending. *Id.*; see Hanibal Goitom, *Ethiopia: New Law on Charities Passed Despite Objections*, INTEGRATED REGIONAL INFO. NETWORKS (IRIN), Jan. 6, 2009, <http://www.unhcr.org/refworld/docid/49670b911a.html>; see also *Ethiopia: Proposed New Law Threatens to Shut Down Non-Governmental Organizations*, EQUALITY NOW, Dec. 2008, [http://www.equalitynow.org/english/actions/action\\_2205\\_en.html](http://www.equalitynow.org/english/actions/action_2205_en.html). Registration and maintenance problems for human rights NGOs have reportedly occurred in many other jurisdictions, including Hong Kong, Malaysia, Russia, Kyrgyzstan, Cuba, Zambia, Zimbabwe, and Egypt.

85. This question is essentially answered in the affirmative, as evidenced by support given domestically and internationally to “human rights defenders”, acting alone or as part of human rights NGOs, when those individuals and groups are challenged, harassed, or physically or otherwise harmed by governments or other repressors. The United Nations created a special procedure on human rights defenders, to help ensure their safety and ultimately their efficacy. In 2000, the U.N. Commission on Human Rights passed a resolution pursuant to which a U.N. Special Representative on the Situation of Human Rights Defenders was appointed, about which the Office of the High Commissioner for Human Rights reports:

The Special Representative was mandated to report on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection in full compliance with the Declaration. The main activities of the special representative shall be:

- (a) To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;
- (b) To establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration;
- (c) To recommend effective strategies better to protect human rights defenders and follow up on these recommendations.

Human Rights Defenders, Commission on Human Rights resolution 2000/61 (Apr. 26, 2000), available at <http://olddoc.ishr.ch/hrdo/documents/resolutions/CHR2000-61.pdf>; Commission on Human Rights Res. 2000/61, U.N. Commission on Human Rights, 56th Sess., 65th mtg., U.N. Doc. E/CN.4/RES/2000/1 (April 26, 2000), [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.61.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2000.61.En?Opendocument) (last visited Oct. 2, 2009). Front Line is a human rights NGO that protects human rights defenders – individuals and other NGOs. Front Line, About Front Line,

NGOs should not accept contributions illegally or accept contributions from donors who acquired the funds illegally.

#### D. Human Rights NGOs Must Be Independent & Non-Partisan

##### 1. *Human Rights NGOs Serving Only One Master*

Human rights NGOs cannot afford to serve more than one master; they must be answerable to the needs of their constituents, who are the victims the human rights NGO are organized to protect. NGO administrators engage in a wide range of activities, not unlike that of for-profit administrators, and they must be strong and independent as they carry out mandates. NGO administrators set the NGO's policies and strategies, oversee its budget, operations and work methods, implement programs, make personnel decisions, and carry out the NGO's mission to protect human rights. Effective NGOs do not bow to undue outside influences, political or otherwise, from any source, including governments, political groups, corporations, or other human rights NGOs. A group that compromises its independence risks becoming a "fake NGO" or a "rogue NGO".<sup>86</sup>

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<http://www.frontlinedefenders.org/about/frontline> (last visited Oct. 2, 2009). "Front Line is the International Foundation for the Protection of Human Rights Defenders." *Id.* "Front Line was founded in Dublin in 2001 with the specific aim of protecting human rights defenders at risk." *Id.* "Front Line seeks to provide rapid and practical support to at-risk human rights defenders, including through a 24 hour emergency response phone line, and to promote the visibility and recognition of human rights defenders as a vulnerable group." *Id.*

86. The World Association of Non-Governmental Organizations ("WANGO") in the Preamble to its Code of Ethics and Conduct for NGOs notes:

Unfortunately, there are many actors in the NGO community that are neither responsible nor ethical. Alan Fowler, in his book *Striking a Balance*, utilized a collection of NGO acronyms to identify various NGO "pretenders," such as BRINGO (Briefcase NGO), CONGO (Commercial NGO), FANGO (Fake NGO), CRINGO (Criminal NGO), GONGO (Government-owned NGO), MANGO (Mafia NGO), and PANGO (Party NGO). Other NGOs may have started with the highest ideals, but now tolerate practices that were previously unacceptable. Many NGOs do not even understand the standards that they should be applying to their activities and governance.

World Association of Non-Governmental Organizations [WANGO], Code of Ethics & Conduct for NGOs, <http://www.wango.org/codeofethics.aspx?page=0> [hereinafter WANGO Ethics] (last visited Oct. 18, 2009). Other types include MANGOs (man controlled NGOs), BINGOs (business controlled NGOs), RINGOs (reactionary controlled NGOs or religious NGOs), TINGOs (tribal controlled NGOs) and DONGOs (donor-organized NGOs). For additional acronyms, see Norbert Götz, *Reframing NGOs: The Identity of an International Relations Non-Starter*, 14 EUR. J. INT'L REL. 231 (2008); F. Halliday, *The Romance of Non-State Actors*, in NON-STATE ACTORS IN WORLD POLITICS 23 (Daphne Josselin & William Wallace eds., Palgrave Macmillian 2002) (including QUANGO — quasi non-governmental organizations, or possibly TINGO — terrorist NGOs).

Being independent and non-partisan does not mean that an NGO cannot collaborate with or support a political group or governmental agency, or cannot accept funds from such groups. Many NGOs assist governments (e.g., by providing humanitarian, consulting and other services to governmental agencies), and many NGOs collaborate with and brief governmental and political groups on a wide range of human rights issues (e.g., the Obama Presidential campaign pre-election received feedback from NGO members, some of whom were part of Obama Steering Committee and Policy Groups).<sup>87</sup>

However, governments could impose conditions on NGOs that would compromise the NGO's independence. For example, it would compromise an NGO's independence if it accepted money from the U.S. government with the understanding that the NGO would promote the U.S. government's position on political matters. Such an NGO would be acting as an extension of U.S. foreign policy and may find it difficult to criticize or take positions against declared or unstated U.S. government positions. NGOs must be loyal to their causes and constituencies, which transcend loyalties to their donors and to themselves.<sup>88</sup>

## 2. *Human Rights NGOs Must Not Be Wedded to Public or Private Donors*

As mentioned, human rights NGOs must be independent. NGOs should not accept funding from sources that attach conditions to the funding, jeopardizing the NGO's independence in decision-making, internal operations, or programs or projects.<sup>89</sup> For example, until January 2009, the

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87. For example, this Article's author participated in two official Barack Obama Campaign Policy Groups: (a) the Obama Law & Justice Policy Group; and (b) the Obama LGBT Policy Group. Some members of each were affiliated with different outside groups, including academic institutions and human rights NGOs.

88. These loyalties might color the attitudes and other behavior of other members of society, for example, journalists, who are meant to be unbiased and non-partisans. If a journalist is embedded with U.S. government soldiers on the battlefield, as they were in Iraq, and the life of a journalist is literally in the hands of the U.S. combatants, will the journalist be able to criticize his protector, or will he be biased by loyalty to his protector?

See, e.g., Michael Massing, *Blind Spot: Seeing Iraq through Uncle Sam's eyes*, COLUM. JOURNALISM REV., Sept.–Oct. 2008, at 14. Paul McLeary, *Why Jon Lee Anderson Doesn't Like Embedding: The too-close-to-the-troops notion is flimsy*, COLUM. JOURNALISM REVIEW, Oct. 5 2007, [http://www.cjr.org/behind\\_the\\_news/post\\_63.php](http://www.cjr.org/behind_the_news/post_63.php). NGOs, like journalists, must not be self-serving.

89. The phenomenon where donors to NGOs, and even some NGOs themselves, seek to dominate, manipulate and control NGOs' work has been seen as a form of neo-colonialism. But, not all instances of donor "attaching strings" to NGO funding should be refused. NGOs should consider whether accepting a donation might jeopardize the NGO's independence. See Jay S. Ovsiovitch, *Feeding the Watchdogs: Philanthropic Support for Human Rights NGOs*, 4 BUFF. HUM. RTS. L. REV. 341, 344 (1998) (arguing that funding should be avoided if it raises questions about an NGO's independence and objectivity). See,

U.S. government restricted funding to NGOs providing health-related human rights services overseas if those NGOs advocated for or provided abortion-related services, even if the services were provided using the NGOs' own, non-U.S. resources.<sup>90</sup> If the United States is the sole donor for a particular NGO or is one of only a few donors, and if the NGO heavily relies on the United States for sustenance, that NGO would be wedded to the United States and its policies.<sup>91</sup>

Many, if not most NGOs depend to some degree on their governments for direct or indirect assistance. Some NGOs are exempt from paying taxes to their governments, which translates into a subsidy of the NGOs. NGOs in many jurisdictions must be registered with the government, and they may feel pressure to comply with government demands for fear their licenses will be revoked.

Human rights NGOs should not be beholden to private donors. Private donors are not immune from seeking to control human rights NGOs. NGOs should inquire about whether any "strings are attached" to proposed

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*e.g.*, HOWARD B. TOLLEY, THE INTERNATIONAL COMMISSION OF JURISTS: GLOBAL ADVOCATES FOR HUMAN RIGHTS 17 (1994). Professor Tolley notes that some question whether NGOs that accept government aid may be co-opted or lack credibility. *Id.* On the other hand, NGO reliance on funding from philanthropic organizations also raises questions of accountability and susceptibility to outside influence. David P. Forsythe, HUMAN RIGHTS AND WORLD POLITICS, 156 (2d ed. 1989) (noting Amnesty International refusing money to "project an image of neutrality").

90. This is known as the "global gag rule" or "Mexico City Policy." See Center for Reproductive Rights, *Myths and Realities: Debunking USAID's Analysis of the Global Gag Rule*, Jan. 15, 2009, [http://www.ipas.org/Publications/asset\\_upload\\_file795\\_2440.pdf](http://www.ipas.org/Publications/asset_upload_file795_2440.pdf) (arguing that research shows that the global gag rule severely erodes family planning and related health-care services for rural women and interferes with NGO's goal of helping secure locally responsive public health agendas). See also Patty Skuster, *Advocacy in Whispers: The Impact of the USAID Global Gag Rule Upon Free Speech and Free Association in the Context of Abortion Law Reform in Three East African Countries*, 11 MICH. J. GENDER & L. 97, 103–09 (2004) (noting rights deprivation in Uganda, Ethiopia, and Kenya). Rachael E. SeEVERS, *The Politics of Gagging: The Effects of the Global Gag Rule on Democratic Participation and Political Advocacy in Peru*, 31 BROOK. J. INT'L L. 899 (2006) (noting that "restrictions . . . prevent advocacy and civil participation by these recipient NGOs, and infringe on their right to free speech and their ability to speak out in a national democratic dialogue"). Some NGOs argue that the Global Gag Rule negatively affects human rights protections. See, *e.g.*, Center for Reproductive Rights, *Breaking the Silence: The Global Gag Rule's Impact on Unsafe Abortion*, [http://www.reproductiverights.org/pdf/bo\\_ggr.pdf](http://www.reproductiverights.org/pdf/bo_ggr.pdf) (last visited July 20, 2009); Population Action International, *Access Denied — U.S. Restrictions on International Family Planning*, Jan. 3, 2005, <http://www.populationaction.org/globalgagrule/Summary.shtml> (stating that the gag rule "forces a cruel choice on foreign NGOs", stifles free speech and public debate on abortion-related issues, and may jeopardize patients' health). See Rob Stein & Michael Shear, *Funding Restored to Groups That Perform Abortions, Other Care*, WASH. POST, Jan. 24, 2009, at A3 (stating that President Barack Obama reversed the Mexico City Policy on January 23, 2009, three days after his inauguration. He noted that the policy "undermined efforts to promote safe and effective voluntary family programs in foreign nations").

91. Similarly, NGOs should not attach unreasonable conditions to projects and programs they offer beneficiaries.

contributions and should accept those contributions only if no strings are attached. For example, an NGO conducting work related to the right to health in developing countries might examine closely whether a pharmaceutical company that donates to the NGO may expressly or implicitly condition such donations on the NGO's advocacy positions or practices. The NGO should avoid actual impropriety and the air of impropriety.

#### E. Human Rights NGO Funding Must Be Adequate & Appropriate

Funding for an NGO must be adequate and appropriate so that the NGO will be able to carry out its projects and programs. Ascertaining what constitutes "adequate" or "appropriate" depends on many variables, making resolution of these questions the subject of much debate.

##### 1. *Adequacy of Funding*

If an NGO's funding is not adequate, the NGO cannot fulfill its mandate of protecting human rights. The amount of funding that is adequate varies based on the NGO, its mission, and its operations. A large multi-national NGO may need millions of dollars to carry out its mission each year, while a small local NGO may only need a few hundred dollars.

##### 2. *Appropriate Managing of Funding*

Several human rights NGOs lost sizeable amounts of money in the Bernie Madoff investment fraud scandal.<sup>92</sup> This has begged the question of

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92. Bernard L. Madoff admitted that an "investment" fund he ran was essentially a \$50 billion "Ponzi" scheme that bilked investors, and after pleading guilty, in June 2009 was sentenced to 150 years in prison. Tomoeh Murakami Tse, *Madoff Sentenced to 150 Years: Calling Ponzi Scheme 'Evil,' Judge Orders Maximum Term*, Wash. Post, June 30, 2009, [www.washingtonpost.com/wp-dyn/content/article/2009/06/29/AR2009062902015.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/06/29/AR2009062902015.html). MoveOn.org Civic Action (formerly known as MoveOn.org), is a U.S. registered 501(c)(4) nonprofit organization and focuses on education and advocacy on national issues. MoveOn.org: Democracy in Action, About the MoveOn Family of Organizations, <http://www.moveon.org/about.html> (last visited Sept. 24, 2009). This organization sponsored a fundraiser for several NGOs negatively affected by illegal behavior admitted by Mr. Madoff. MoveOn.org: Civic Action, Can you help progressive groups hurt by the Madoff Scam?, [http://civ.moveon.org/donatec4/dec\\_2008.html?id=15302-3191873-F2eyvdx&t=3](http://civ.moveon.org/donatec4/dec_2008.html?id=15302-3191873-F2eyvdx&t=3) (last visited Sept. 24, 2009). MoveOn describes these NGOs as follows: (a) *The Brennan Center for Justice*, that focuses on democracy and justice, voting rights and fair elections, checking presidential power in combating terrorism, and redistricting reform; (b) *Human Rights Watch*, that engages in "rigorous, objective investigations and strategic, targeted advocacy [to] build intense pressure for action and raise the cost of human rights abuse"; (c) *Advancement Project*, which is a policy, communications and legal action group committed to racial justice founded by veteran civil rights lawyers in 1998, and litigates to protect voters and support grassroots movements for education and immigrants' rights; and

what duty an NGO has not to risk NGO assets in investments, and whether NGO fiduciary duties equal those in the for-profit world.

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(d) *The Center for Constitutional Rights*, which was founded in 1966 by attorneys who represented civil rights movements in the South, and is a legal and educational organization committed to creatively using law as a positive force for social change in areas as diverse as illegal governmental wiretaps to Guantanamo. *Id.*; E-mail from Eli Pariser to G. Edwards, Carl M. Gray Professor of Law, Indiana University School of Law — Indianapolis (Dec. 29, 2008) (on file with author). Multiple foundations announced they closed because their funding was lost due to of Madoff investments. Gabrielle Birkner & Anthony Weiss, *Madoff Arrest Sends Shockwaves Through Jewish Philanthropy*, *The Jewish Daily*, Dec. 12, 2008, at 1, available at <http://www.forward.com/articles/14725/>. The Robert I. Lappin Foundation announced an \$8 million loss on December 12, 2008. *Id.* In December 2008, the Chais Family Foundation announced it would be closing. *Jewish Philanthropy*, *Chais Family Foundation Closes*, Dec. 15, 2008, <http://ejewishphilanthropy.com/chais-family-foundation-closes/>. The Jeht Foundation announced upon Madoff's arrest that:

The JEHT Foundation, a national philanthropic organization, has stopped all grant making effective immediately and will close its doors at the end of January 2009. The funds of the donors to the Foundation, Jeanne Levy-Church and Kenneth Levy-Church, were managed by Bernard L. Madoff, a prominent financial advisor who was arrested last week for defrauding investors out of billions of dollars.

The [Jeh] Foundation was established in 2000. Its name stands for the values it holds dear: Justice, Equality, Human dignity and Tolerance. It supported programs that promoted reform of the criminal and juvenile justice systems; ensured that the United States adhered to the international rule of law; and worked to improve the voting process by enhancing fair representation, competitive elections and government transparency.

The JEHT Foundation Board deeply regrets that the important work that the Foundation has undertaken over the years is ending so abruptly. The issues the Foundation addressed received very limited philanthropic support and the loss of the foundation's funding and leadership will cause significant pain and disruption of the work for many dedicated people and organizations. The Foundation's programs have met with significant success in recent years — promoting change in these critical areas in partnership with government and the non-profit sector. Hopefully others will look closely at this work and consider supporting it going forward.

JEHT Foundation, Statement of Robert Crane, President of the JEHT Foundation, on behalf of the Foundation's Board of Directors, Dec. 15, 2008, <http://www.jehtfoundation.org/news/>. The American Civil Liberties Union stated that "two foundations that have been incredibly generous and longstanding supporters of [the ACLU's] national security and reproductive freedom work have been victimized by the Madoff scandal — forced to close their doors and terminate their grants" which means "that \$850,000 in support we were counting on from these foundations in 2009 simply won't exist". E-mail from Alma Montclair, ACLU Director of Administration and Finance (Dec. 23, 2008) (on file with author) (noting that "As Director of Administration and Finance, it's my job to make sure that preparation includes prudently managing our organization's resources.").

#### F. Human Rights NGOs Must Be Committed to Service to Others & Be Non-Profit

Human Rights NGOs goals should focus on service to others, emphasizing altruism, selflessness, and volunteerism. Those goals should not be on profit for the NGO, staff, or other stakeholders. However, that does not preclude NGOs from employing tools and mechanisms common in the profit-making business world, such as for administrative and fund-raising purposes.

#### G. Human Rights NGOs Must Be Transparent & Accountable

To be effective, human rights NGOs must be transparent and accountable.<sup>93</sup> Transparency would help avoid an air of impropriety and would inhibit actual impropriety because not only must NGOs be honest and trustworthy, but also they must appear to be such. To be credible, an NGO must share information about itself to stakeholders, including governments, victims they are aiding, donors, staff, consultants, advisors, relevant inter-governmental organizations, other relevant NGOs, umbrella groups or other similar structures in which the NGO participates, and the public at large.

Transparency and accountability do not necessarily require a human rights NGO to open all its financial, operational and other internal documents all the time. It suggests that an NGO be cognizant of its funding sources and that it may inform interested stakeholders about internal decisions and records that would offer insight into agendas that an NGO might have that conflict with the needs of the beneficiaries of the NGO's protection or conflict with donor or governmental requirements.<sup>94</sup>

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93. Hearty discussions have ensued about internal and external NGO accountability. See, e.g., NGO Coordination Committee for Iraq, NCCI Charter, <http://www.ncciraq.org/inside.php?Src=SI&MIId=1&SIId=5006> (last visited Oct. 17, 2009) ("We hold ourselves accountable in the provision of assistance to our beneficiaries."). The U.N. Department of Public Information calls for NGOs to "have statutes/by-laws providing for a transparent process of making decisions and electing officers and members . . . ." U.N. Non-Governmental Liaison Serv. [NGLS] & Gretchen Sidhu, *Making at the United Nations: A Guide Second Updated Edition*, 134 (2007), [http://www.un-ngls.org/IMG/pdf/DMUN\\_Book\\_PAO\\_WEB.pdf](http://www.un-ngls.org/IMG/pdf/DMUN_Book_PAO_WEB.pdf). ECOSOC also calls for NGOs to be accountable to its members.

94. In 2008, Senator Hillary Clinton was nominated as Barack Obama's choice to be U.S. Secretary of State. Her husband, former US President Bill Clinton, chairs a foundation — an NGO — in his name that focuses on human rights related to global climate change, HIV/AIDS in the developing world, childhood obesity and economic opportunity in the U.S., and economic development in Africa and Latin America. William J. Clinton Foundation, About the Clinton Foundation, <http://www.clintonfoundation.org> (last visited Oct. 3, 2009). For transparency to protect the public good, President Obama's staff sought to examine the Foundation's activities and finances, including the identity of donors, to determine if Senator Clinton's appointment should be scuttled. See Peter Baker & Helene Cooper, *Clinton Vetting Includes Look at Mr. Clinton*, N.Y. TIMES, November 16, 2008,

## H. Human Rights NGOs Must Adapt & Respond to Change

An effective NGO needs to be open-minded, creative, and extremely flexible, and needs to be willing and able to adjust to changing needs and interests of donors, aid recipients, and governments. In particular, an effective NGO must be responsive and adaptable to changes in technology, substantive areas of human rights focus, and educational opportunities.

### I. Technology

To carry out their missions today, many NGOs rely on the internet. Even in lesser-developed countries, NGOs use the internet to raise funds, to collaborate within NGO networks, to share information, to submit advocacy documents to the United Nations and other institutions, and to discuss better methods to protect human rights. Successful NGOs gain advantage through adapting to innovation, such as the internet, e-mail, mobile or cellular telephones, mail or post, fax, easier international travel, and teleconferencing or video-conferencing.

A relatively new innovation in the electronic sphere is social networking, upon which NGOs increasingly rely. Social networking consists of individuals and groups connecting in online communities to communicate about topics of common interest. Of course human rights NGOs share interests in protecting human rights. Social networking sites include Facebook, LinkedIn, MySpace, Twitter, and many others. Through these sites, an individual creates a “user profile”, which is used to connect with others with human rights interests, who in turn connect with others with that interest, and so on. What results are communities of networked individuals and groups with shared human rights concerns. These networks are used to exchange information, promote programs, solicit funding or other assistance, and solicit support for human rights causes. NGOs have found social networking sites useful, as evidenced by their recruiting staff to create and operate their networks.<sup>95</sup> Also, NGOs, human rights advocates,

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[http://www.nytimes.com/2008/11/17/us/politics/17memo.html?\\_r=1&partner=%20rss&emc=rss&page%20wanted=all](http://www.nytimes.com/2008/11/17/us/politics/17memo.html?_r=1&partner=%20rss&emc=rss&page%20wanted=all); *Press Release: William J. Clinton Foundation Publishes Names of All Contributors on Foundation Website*, Dec. 18, 2008, <http://www.clintonfoundation.org/news/news-media/press-release-william-j-clinton-foundation-publishes-names-of-all-contributors-on-foundation-website> (stating that on December 18, 2008, the Clinton Foundation listed its donors to date); Peter Baker and Charlie Savage, *In Clinton List, a Veil Is Lifted on Foundation*, N. Y. Times, Dec. 18, 2008, <http://www.nytimes.com/2008/12/19/us/politics/w19clinton.html>.

95. For example, an advertisement for the Campaign to Ban Torture appeared online for this position:

The Campaign to Ban Torture seeks a self-motivated, innovative intern to advance our organizational goals through social networking on Facebook. The intern would be responsible for creating, designing and operating the Campaign to Ban Torture’s Facebook page. The



and victims have found such networks invaluable in instantly sharing with the world evidence of violations as they occur.<sup>96</sup>

Another relatively new phenomenon is “blogging.” Human rights NGO blogs are websites on which human rights NGOs or their staff regularly post news and other items related to human rights and post comments about those items. Members of the general public can access NGO blogs of interest to them and may even be able to comment on them. These blogs serve many purposes, including to share information, to stimulate discussion and to prompt action.

Many other NGOs are adapting to the 21<sup>st</sup> Century and adopting other technologically innovative strategies to promote human rights.<sup>97</sup>

goal of this position will be to increase the organization’s online presence by reaching a larger audience especially through our spreadable media.

The internship can be preformed remotely beginning immediately. The Campaign will launch its Web site in late June and would like the Facebook page to be completed then to go live simultaneously . . .

Responsibilities include:

1. Design dynamic social network page on Facebook
2. In coordination with Senior Communications Manager, post, update and distribute informational materials, calendar listings, etc.;
3. Monitor the presence of similar nonprofits on social networking sites.

See Derechos: *Human Rights Listings, Social Networking Intern*, April 22, 2008, [http://www.humanrightsblog.org/listings/2008/04/social\\_networking\\_intern.html](http://www.humanrightsblog.org/listings/2008/04/social_networking_intern.html).

96. See, e.g., Noam Cohen, *Twitter on the Barricades: Six Lessons Learned*, N.Y. TIMES, June 20, 2009, <http://www.nytimes.com/2009/06/21/weekinreview/21cohenweb.html> (“Social networking, a distinctly 21st-century phenomenon, has already been credited with aiding protests from the Republic of Georgia to Egypt to Iceland. And Twitter, the newest social-networking tool, has been identified with two mass protests in a matter of months — in Moldova in April and in Iran last week, when hundreds of thousands of people took to the streets to oppose the official results of the presidential election.”). See also Fran Quigley, *Growing Political Will From the Grassroots: How Social Movement Principles Can Reverse the Dismal Legacy of Rule of Law Interventions*, 41.1 COLUM. HUM. RTS. L. REV. (forthcoming 2009) (manuscript on file with the author).

97. Groups such as NetSquared seek to help NGOs use “community empowering capabilities of the Internet to increase their impact and achieve social change.” NetSquared, NetSquared’s Goals, <http://www.netsquared.org/about/netsquareds-goals> (last visited Oct. 2, 2009). NetSquared seeks:

[t]o help hundreds of thousands of . . . non-governmental organizations (NGOs) [to] . . . [i]mprove/increase advocacy efforts; [f]ind new supporters (around the globe); [r]eengage the base; [h]ave greater influence on national and global policy; [g]et more and better press; [i]ncrease volume for . . . [NGO] supporters . . . ; [r]einvent the possibilities of collaboration on a global scale; [b]uild more and better partnerships; [and] [h]elp . . . NGO constituents become more active and accomplish more through their . . . [NGO] Internet communities.

## 2. Substantive

Substantively, it is critical to assess whether and how responsive NGOs are to constantly changing values and mores, to conflicting advocacy strategy among other NGOs working in the same subject area, or to the expanding interpretations or definitions of rights.

For example, a particular NGO might traditionally support civil and political rights (such as the rights to free expression, to bodily integrity, to a fair trial, and to vote), paying little if any attention to economic rights (such as the rights to food, to health care, and to shelter). That NGO may modify its strategy and incorporate economic rights, recognizing that civil, political and economic rights are inextricably intertwined, interrelated, and indivisible.

Human rights NGOs may adopt a comprehensive strategy, fighting for immediate full implementation of rights, or may adopt an incremental approach, fighting for rights in stages. For example, some groups combating sexual orientation discrimination may insist on full and immediate equality for persons of all orientations, whereas other similar groups may defer some claims such as equality of transgendered persons, until, for example, society is perceived to be more receptive.<sup>98</sup>

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*Id.* Another group, The Hub, has a participatory website through which individuals and NGOs around the world can post media such as videos, photos, and audio recordings to call attention to and mobilize action about human rights issues. *See* The Hub, About the Hub, <http://hub.witness.org/en> (last visited Oct. 17, 2009). Through the Hub's website, individuals and groups can connect to share human rights information. *Id.* The Hub is a project of WITNESS, which is a human rights NGO that uses video and online technologies to expose human rights violations around the globe. *See* WITNESS, About WITNESS, [http://www.witness.org/index.php?option=com\\_content&task=view&id=26&Itemid=78](http://www.witness.org/index.php?option=com_content&task=view&id=26&Itemid=78) (last visited Oct. 17, 2009).

98. LGBT and other NGOs have long debated whether sexuality discrimination should be afforded to transgendered persons. *See, e.g.*, Paul Schindler, *Tammy Baldwin Withholds Name From ENDA Stripped of Trans Protections*, GAY CITY NEWS, Sept. 28, 2007, [http://www.thetaskforce.org/TF\\_in\\_news/07\\_1009/stories/12\\_tammy\\_baldwin\\_withholds\\_name.pdf](http://www.thetaskforce.org/TF_in_news/07_1009/stories/12_tammy_baldwin_withholds_name.pdf) (discussing how LBGT groups advocate for differing levels of protections for transgendered people in such pieces of legislation as the Employment Non-Discrimination Act (ENDA), which will be considered by the U.S. Labor and Education Committee without the protections for transgendered Americans contained in the original bill). Some NGOs favor legislation that would immediately protect transgendered persons, and others believe that since there is more resistance to protecting transgender people than LGBT people, immediate emphasis should be on LGBTs with transgendered protection being sought incrementally. *See Id.* (noting, *inter alia*, statement by Congressman Barney Frank). Twelve groups signed a letter stating that their "collective position remains clear and consistent" and they would "oppose any employment nondiscrimination bill that did not protect transgender people." *Id.* (listing groups such as the National Gay and Lesbian Task Force (NGLTF), the National Center for Transgender Equality, the Empire State Pride Agenda, Lambda Legal, the National Center for Lesbian Rights, P-FLAG, the National Stonewall Democrats, Pride At Work, and the AFL-CIO).

### 3. Education

Some human rights NGO workers or prospective workers may benefit from NGO educational opportunities in formal NGO degree programs or informal training programs on NGO management that cover topics such as creating and sustaining effective NGOs.<sup>99</sup>

#### I. Human Rights NGOs Must Be Cooperative & Collaborative

Human rights NGOs may not succeed if they work only within their own community or only with the constituency they serve, or are otherwise detached. Human rights NGOs must cooperate and collaborate with outsiders, including governments, inter-governmental organizations, other NGOs, the media, persons whose human rights the NGOs are seeking to protect, and others.

NGOs must cooperate with governments that are charged with registering, monitoring, and granting tax and other benefits to them. Furthermore, NGOs collaborate with governments on projects and programs, and they may rely on governments for aid to help the NGOs carry out their missions. Similarly, NGOs cooperate and collaborate with inter-governmental organizations, such as the United Nations, that in essence vet the NGOs<sup>100</sup> to help ensure their credibility and viability, and then may fund

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99. Several NGO educational programs are listed at [www.gdrc.org/ngo/ngo-curriculum.html](http://www.gdrc.org/ngo/ngo-curriculum.html), including: Cass Business School (London, Postgraduate Diploma & Masters in NGO Management); Rutgers University (New Jersey, United States, Non-Profit/NGO Management and Development); School for International Training (Vermont, United States, Master of Science in Management); Imperial College at Wye (UK, NGO Management); International NGO Training and Research Centre (INTRAC) (United Kingdom, Short Course Training Programme for NGO Staff). NGO Management and Development Courses Worldwide, <http://www.gdrc.org/ngo/ngo-curriculum.html> (last visited July 19, 2009). See also NGO Management Courses, <http://www.indiaedu.com/career-courses/ngo-management> (last visited Oct. 8, 2009) (regarding India education); see also Courses, <http://www.ngoms.org/courses.htm> (last visited Oct. 8, 2009) (regarding school for NGO management in Switzerland). The London School of Economics and Political Science (LSE) offers a Master of Science degree in NGO Management for people seeking to work in the developing world as NGO analysts, policy-makers, researchers or practitioners. MSc Management of Non-Governmental Organisations, [http://www.lse.ac.uk/collections/CCS/study/msc\\_devel\\_countries.htm](http://www.lse.ac.uk/collections/CCS/study/msc_devel_countries.htm) (last visited Oct. 8, 2009). The degree focuses on development, humanitarian, relief, and advocacy NGOs and examines: (a) NGO work, challenges, and the role they play in development, relief, and advocacy; (b) NGO relationships with other stakeholders including beneficiaries, communities, government, donors, social movements, transnational networks and other actors and how these relationships affect NGO work; (c) NGO internal organizational challenges, including evaluation, accountability, legitimacy, and planning; (d) changing policy contexts in which NGOs operate; and (e) theories of NGO public action. *Id.*

100. Inter-governmental organizations “vet” NGOs through the NGO accreditation process. See United Nations Department of Economic and Social Affairs, NGO Branch, <http://www.un.org/esa/coordination/ngo/> (last visited Oct. 4, 2009). National governments

them on projects, many of which involve doing collaborative work with U.N. agencies.<sup>101</sup>

NGOs charged with advocating for human rights must cooperate with governments and inter-governmental institutions to gain accreditation or a similar status to be able to present advocacy papers and participate in deliberations of those organizations. For example, the U.N. Economic and Social Council accredits NGOs who can assist ECOSOC on human rights and other issues. NGOs can also gain accreditation to national and regional human rights institutions.

Through cooperation with the United Nations, NGOs have been an instrumental part of treaty negotiations, such as for the Rome Conference on the ICC.<sup>102</sup> NGOs play a major role in the treaty monitoring process of U.N. treaty bodies, and indeed NGOs play an official role for some of the committees.<sup>103</sup> NGOs work very closely with academic institutions, whose

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“vet” NGOs when determining whether to bestow tax exempt status and other benefits. See The Global Development Research Center, Starting an NGO: Funding and Fundraising, <http://www.gdrc.org/ngo/start-ngo/startngo-6.html> (last visited Oct. 4, 2009); International Committee on Fundraising Organizations, About ICFO, <http://www.icfo.de/about.htm> (last visited Oct. 4, 2009).

101. For example, UNDP engages a global network of development and human rights NGOs “at all levels to promote the Millennium Development Goals and support people in their efforts to build a better life.” See United Nations Development Programme, UNDP and civil society organizations, <http://www.undp.org/partners/cso> (last visited July 19, 2009). In addition, UNDP recognizes working with NGOs “is critical to national ownership, accountability, good governance, decentralization, democratization of development co-operation, and the quality and relevance of official development programmes.” *Id.* UNDP partners with NGOs in six thematic areas: democratic governance; poverty reduction, crisis prevention & recovery, HIV/AIDS, energy & environment and Women’s empowerment. *Id.*

102. See William R. Pace, Convenor, Coalition for the International Criminal Court, Civil Society Participation in the International Criminal Court: NGOs Advocacy for a Fair, Independent, and Effective ICC From Rome to Today, Address Before the Contributions to HURIDOCs Conference ‘Human Rights Council and International Criminal Court: The New Challenges for Human Rights Communications’ (Feb. 25–27, 2009), available at [www.huridocs.org/involved/conference/presentations/Pace.doc](http://www.huridocs.org/involved/conference/presentations/Pace.doc). During the Rome ICC treaty conference 535 NGOs contributed to the delegations. Approximately 200 attended throughout the five weeks of negotiations. *Id.* at 2. Their participation in “the ICC process will be regarded in history as one of the most successful human rights and human security international lawmaking initiatives ever. It has been uniquely effective due to the united efforts of many individuals and organizations pulling in the same direction.” *Id.* at 1.

103. See, e.g., Mara R. Bustelo, *The Committee on the Elimination of Discrimination Against Women at the Crossroads*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING* 79, 106–07 (Philip Alston & James Crawford eds., 2000). The Committee on the Elimination of Discrimination Against Women is a prime example of NGOs becoming increasingly involved in committee efforts. The CEDAW Committee has gradually increased the responsibility and opportunities of NGOs with regard to their participation in the session meetings. *Id.* at 106–07. For example, NGOs are now “part of the Committee’s formal process of preparing general recommendations, and formally part of the pre-sessional working group preparation for the review of periodic reports.” *Id.* at 107.

professors and students lend expertise and person-power to NGO efforts, and who may hold key positions in the NGOs.<sup>104</sup>

Local and international NGOs working in the same geographic and substantive areas must cooperate with each other. The synergies can benefit victims and other constituents and communities who stand to be protected by human rights responses. Local NGOs on the ground may be more familiar with local victims and the extent of deprivations, and more familiar with political and legal personalities and structures that fuel violations, and may be more familiar with local cultural, social and other community needs. International NGOs, many of whom may not be permanently located in the local regions to be served, must work with local NGOs, adapt to the community, recognize that the needs of the local community are paramount above the needs of the international NGOs, and refrain from actions that undermine successful local efforts. International NGOs must answer to their donors, some of whom are outsiders, who may disagree with local NGOs on how funds should be spent locally, or on which and the extent to which policies should be implemented locally. International NGOs should be cautious about attempting to impose their will own locally, which could alienate the victims sought to be protected, undermine community spirit, and even weaken local human rights protections. Also, international NGOs should be mindful that they may be competing with local NGOs for the same donations, diminishing the efficacy of the local NGOs.

NGOs must cooperate with media that can help disseminate information about human rights abuses and remedies and with human rights victims whose interests, needs and sensitivities must be taken into account before NGOs seek to act on victims' behalf.

NGOs will not always agree among themselves on policy, logistics, or other critical components of their work, and they may not all speak with one voice. But the more they collaborate, the better, as they work to promote and protect human rights with the best interests of the victims paramount.

#### J. Human Rights NGOs Must Be Competent, Reliable & Credible

To be effective, NGOs must be competent.<sup>105</sup> Many NGOs demonstrate high levels of competence and success.<sup>106</sup> World leaders, and many other

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104. Tanya Lokshina, *NGO and Academia – A Liaison Between Amateurs and Professionals*, (Presentation Text – Moscow Helsinki Group) [http://programs.ssrc.org/gsc/gsc\\_activities/lokshina](http://programs.ssrc.org/gsc/gsc_activities/lokshina) (discussing the interplay between academia and NGOs. Human Rights NGOs benefit from their cooperation with academics involved in the fields of sociology, law, and psychology. “Academic lawyers [are] vital for the conduction of quality analysis of current legislation and development of legislative drafts and amendments in the interests of human rights.”).

105. Dictionaries define “competent” as follows: having the necessary skill or knowledge to do something successfully; having requisite or adequate ability or qualities; capable; having the capacity to function or develop in a particular way; adequate for the

people, have complimented NGOs for their contributions to the promotion and protection of human rights.<sup>107</sup>

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purpose. See, e.g., Merriam Webster, <http://www.merriam-webster.com/dictionary/competent> (last visited July 19, 2009); Competent can also be defined as “adequate for the purpose.” The Free Dictionary, <http://www.thefreedictionary.com/competent> (last visited Oct. 2, 2009).

106. Competency in human rights NGO work is evidenced by the award of multiple Nobel Peace Prizes to NGOs and private individuals with NGO leadership, including: Wangari Maathai (founder of the Green Belt Movement “for her contribution to sustainable development, democracy and peace”) (2004); Shirin Ebadi (“for her efforts for democracy and human rights. She has focused especially on the struggle for the rights of women and children;” co-founder of NGOs in Iran, including the Association for Support of Children’s Rights and the Human Rights Defence Centre) (2003); Médecins Sans Frontières (“in recognition of the organization’s pioneering humanitarian work on several continents”) (1999); International Campaign to Ban Landmines, Jody Williams (1997); Rigoberta Menchú Tum (1992); Aung San Suu Kyi (1991); Mother Teresa (1979); Amnesty International (1977); Friends Service Council, American Friends Service Committee (1947); International Committee of the Red Cross (1917, 1944, 1963). See The Nobel Foundation, All Nobel Peace Prize Laureates, [http://nobelprize.org/nobel\\_prizes/peace/laureates/index.html](http://nobelprize.org/nobel_prizes/peace/laureates/index.html) (last visited July 19, 2009).

107. For example, former U.N. Secretary-General Kofi Annan, speaking to Iranian Nobel Peace Prize Laureate Ms. Shirin Ebadi, said “you, too, have shown us the impact that NGOs can have at home and on the global stage. Your richly earned Nobel Peace Prize continues a welcome trend of recognizing NGOs for their contributions to human rights, peace, disarmament and democracy.” The Secretary-General, *Without Vital Role of NGOs, World Could Hardly Respond to Myriad Crises, UN Secretary-General Annan Tells DPI-NGO Conference*, U.N. Doc SG/SM/10085 (Sept. 9, 2005), U.N. Secretary-General Kofi Annan continued:

Just two weeks ago in Niger, I saw United Nations agencies, funds and programmes doing what they do best: helping people in need. I was pleased to see how well they were working with their NGO partners. And I was impressed to see how quickly Médecins Sans Frontières was able to set up a nutrition centre, and treat more than 2,000 children, in a mere three weeks. I saw other humanitarian groups carrying out similarly valiant efforts. We have a long way to go in meeting the needs there, and a similar crisis looms in other parts of the Sahel and Africa. But without NGOs, we could hardly begin to respond to any of these crises. I thank you for the vital role you are playing.

We also have much work to do in Sudan. There, too, NGOs have been our indispensable partners. When I visited Darfur in May, I was accompanied by Tom Arnold, Ken Bacon and George Rupp — the heads of Concern, Refugees International and the International Rescue Committee — who were able to offer invaluable perspectives on the situation. So let me pay tribute again, not only to the NGOs who have braved a threatening environment to deliver relief, but also to the others — local and international alike — who are working for reconciliation and human rights and making other essential contributions to the Sudanese peace process.

The truth is that NGOs are working with us everywhere: . . . alongside us whenever crisis strikes . . . right behind us in advocating for women’s rights, international criminal justice and action on

If a human rights NGO is not competent, it does not mean that it is no longer an NGO. It simply failed in its mission to protect human rights. Some human rights NGOs may fail because they are mismanaged, suffer from bad decisions made by the board or employees, or underestimate the effort or resources needed for particular projects or programs. Some may fail because of corruption, embezzlement, or other illegal activity by employees<sup>108</sup> or outsiders.<sup>109</sup>

Not all competent NGOs succeed.<sup>110</sup> Some competent NGOs fail because governments place insurmountable hurdles in the NGOs' paths, making it impossible for those groups to succeed, particularly if the NGOs have no political or other leverage. For example, NGOs in oppressive countries may be subjected to impossibly demanding registration regulations, government harassment, reprisal, discrimination, threats, or intimidation. Some governments may restrict outside funding for NGOs, limit personnel and other outside assistance, and limit NGO freedom of expression, association, and peaceful assembly.<sup>111</sup> International human

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global warming . . . and . . . often far out in front of us in identifying new threats and concerns. This is certainly one of your most important roles. You can often see what is not yet visible to diplomats, and think what still seems unthinkable to governments and their officials might not yet be able to admit. What you say may be unpalatable today, but often becomes the conventional wisdom of tomorrow, and, for that, I'm personally very grateful to you.

*Id.*

108. For example, American Red Cross employees were charged with defrauding the institution for padding a personal bank account with donations, embezzling to support a crack cocaine habit, forging signatures on purchase orders meant for disaster victims, and diverting other Red Cross funds to personal use. *See, e.g.,* Jaime Holguin, *Disaster Strikes In Red Cross Backyard: Charity Fails To Get A Grip On Criminal Scandals At Local Chapters*, CBS, July 29, 2002, <http://www.cbsnews.com/stories/2002/07/29/eveningnews/main516700.shtml>.

109. For example, an NGO may invest funds through outsiders who handle the funds fraudulently, causing the NGO to lose large sums, as in the case of Mr. Madoff. A question would be raised as to whether and to what extent the NGO knew or should have known that the funds would be handled fraudulently, that is, should the NGO have invested the money elsewhere?

110. An NGO that does not complete its stated mission to protect human rights does not necessarily fail. All steps NGOs take towards protecting human rights are positive. Attempts to protect human rights will make victims, governments and others more aware of human rights norms, of state obligations to protect human rights, of human rights violations, and of steps that can be taken to promote human rights protection. NGOs serve a valuable human rights education function.

111. For example, recent attempts to restrict foreign financing are reported to have occurred in Moldova, Zimbabwe, Eritrea, Uzbekistan, and Belarus. *See generally* International Center for Not-for-Profit Law, *Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations*, 8 THE INT'L J. OF NOT-FOR-PROFIT LAW 76 (2006), available at [www.icnl.org/knowledge/ijnl/vol8iss4/art\\_1.htm](http://www.icnl.org/knowledge/ijnl/vol8iss4/art_1.htm) (noting that over the previous year "nineteen countries have reduced restrictive legislation aimed at weakening civil society. These countries join the more than 30 with existing laws, policies, and practices that stifle the work of civil society organizations."); *see also* Golnaz Esfandiari,

rights law permits governments to regulate NGOs, but some governments violate international human rights law by expressly banning NGOs or imposing regulations that *de facto* eliminate NGOs' ability to exist and function.

Many individual NGOs and groups of NGOs have successfully carried out their missions to protect human rights in a wide range of areas over the years. NGOs competently lobbied for human rights protections to be incorporated into the U.N. Charter and the Universal Declaration of Human Rights. NGOs successfully lobbied for a new U.N. position for a High Commissioner for Human Rights (a post that had been opposed by U.N. leaders and many governments).<sup>112</sup> NGOs successfully lobbied for the international instrument promoting greenhouse gas control terms at the 1992 Earth Summit in Rio de Janeiro,<sup>113</sup> and were instrumental in the promulgation of the Landmine Treaty,<sup>114</sup> the Rome Treaty creating the International Criminal Court,<sup>115</sup> the Disabilities Convention,<sup>116</sup> and many

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*Iran: Growing NGO Community Offers Activism Where Government Does Not*, RADIO FREE EUROPE/RADIO LIBERTY, Feb. 16, 2004, <http://www.rferl.org/content/article/1051564.html>.

112. Sheikh Hafizur Rahman Karzon, *Human Rights and Non-State Actors*, DAILY STAR, Feb. 4, 2006, <http://www.thedailystar.net/law/2006/02/01/index.htm> ("The . . . NGO[] has evolved in two phases: The first phase is the emergence and development of international NGOs . . . like Amnesty International. The second phase involves the creation and proliferation of domestic human rights monitoring and advocacy groups [around the globe].").

113. Approximately 2,400 NGO representatives participated at the Earth Summit, and approximately 17,000 people attended the parallel NGO Forum in Rio de Janeiro. Earth Summit, U.N. Conference on Environment and Development, June 3–14, 1992, <http://www.un.org/geninfo/bp/enviro.html>.

114. The International Campaign to Ban Landmines (ICBL) "is a global network in over 70 countries that works for a world free of antipersonnel landmines and cluster munitions, where landmine and cluster munition survivors can lead fulfilling lives." ICBL-International Campaign to Ban Landmines, About Us, <http://www.icbl.org/index.php/icbl/About-Us> (last visited October 4, 2009). "The Campaign was awarded the Nobel Peace Prize for its efforts to bring about the 1997 Mine Ban Treaty." *Id.*

115. For example, the Coalition for the International Criminal Court ("ICC NGO Coalition"), which is a network of 2,500 NGOs, coordinated many efforts of diverse NGOs from all regions of the world who were active at all stages of the development of the ICC. <http://www.iccnw.org/?mod=coalition> (last visited July 19, 2009). This author was an NGO delegate to the 1998 Rome Conference, and other pre-and post-Rome Conference ICC meetings (including Prep Comms, ASP sessions), through the National Bar Association ("NBA") and in conjunction with ICC NGO Coalition efforts. In 2003, the ICC Assembly of States Parties adopted a resolution entitled "Recognition of the coordinating and facilitating role of the NGO Coalition for the International Criminal Court" Recognition of the coordinating and facilitating role of the NGO Coalition for the International Criminal Court, Sept. 11, 2003, ICC-ASP/2/Res.8. *Id.* Ambassador Allieu I. Kanu of Sierra Leone, Vice-President of the Assembly of States Parties introduced the resolution and noted: "In this journey, there are people who are generally seated on the sides or in the back of our assemblies, those who took the floor only occasionally, those who do not get the credit but nevertheless tirelessly sustain, defend and yes, set the spirit of the institution which we incarnate today. An organization that represented such people is the NGO Coalition for the ICC." *Id.*



other international law instruments that codify international human rights law.

NGOs seemed to have been successful in campaigns directed against private corporations that allegedly violated human rights, such as Nestle regarding promoting its marketing artificial infant feeding around the world (rather than breast milk), Monsanto regarding distributing genetically modified food, and Starbucks, when after pressure of a “campaign for justice for coffee workers” Starbucks adopted a code of conduct for workers in its plantations in Guatemala.<sup>117</sup>

#### IV. NGO SELF-REGULATION VIA CODES OF CONDUCT AND ETHICS

Some NGOs self-regulate through complying with Codes of Conduct, Codes of Ethics, or NGO Certification Schemes<sup>118</sup> proposed by individual NGOs, groups of NGOs, governments, inter-governmental organizations,<sup>119</sup>

116. Janet E. Lord, *NGO Participation in Human Rights Law and Process: Latest Developments in the Effort to Develop an International Treaty on the Rights of People with Disabilities*, 10 ILSA J. INT'L & COMP. L 311, 314 (2004) (noting that NGOs lobbied and received access to official bodies at all stages of the treaty negotiations, were permitted participation as observers, with rights to “submit written statements” and “make oral interventions”). See, e.g., Accreditation and Participation of Non-Governmental Organizations in the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 56/510, U.N. Doc. A/RES/56/510 (July 26, 2002). See also United Nations Enable, Ad Hoc Committee on an International Convention, *Decision on the modalities of the participation of accredited non-governmental organizations in the Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities*, ¶ 1 (a)–(d), Aug. 2, 2002.<http://www.un.org/esa/socdev/enable/rights/adhocdecision2.htm#top>.

117. It is reported that U.S. labor rights NGOs advocating for Guatemalan coffee workers lobbied Starbucks to require “business partners to ‘pay a living wage, respect freedom of association, provide sanitary housing, provide safe and healthy workplaces, and not practice discrimination.’” Lance Compa & Tashia Hinchliffe-Darricarrère, *Enforcing International Labor Rights through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663, 683 (1995) (quoting Letter from John C. Boonstra et. al, Wash. Ass'n of Churches, to Howard Schulz, President, Starbucks Coffee Co., (July 21, 1994) (on file with Compa & Hinchliffe-Darricarrère)). The Starbucks president is said to have initially refused to meet with the coalition and declined to adopt a code. *Id.* at 683–84. The coalition reportedly “initiated a public communication campaign, including informational picketing at Starbucks stores, to pressure the company into adopting the proposed code.” *Id.* at 684. Starbucks agreed to adopt a code of conduct. *Id.* at 685 “[W]e accept the challenge to take the lead in adopting a Starbucks code of conduct.” *Id.* (quoting Letter from Howard Behar, President, International & Dave Olsen, Sr. Vice President, Starbucks Coffee Corp., to Stephen R. Coats, Executive Director, U.S.–Guat. Labor Educ. Project, (Feb. 10, 1995) (on file with Compa & Hinchliffe-Darricarrère)).

118. In this Article I refer to these codes and schemes as “Codes of Conduct” or “Codes.”

119. See, e.g., Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society, G.A. Res. 53/144, Annex, U.N.Doc. A/RES/53/144/Annex (Mar. 8, 1999). See also John R. Crook, *Current Developments: The Fifty-First Session of the U.N.*

or commentators.<sup>120</sup> These Codes were designed for various reasons, including: to foster trust in NGOs; to help NGOs become more efficient; to defend against claims that NGOs are self-serving, corrupt and thus ineffectual; to stifle government attempts to impose regulations on NGOs; to codify standards of behavior among NGOs; and, to bolster credibility of NGOs who could advertise “seals of approval” awarded under the Codes.<sup>121</sup>

These Codes, some of which have not yet come into force, require NGOs to aspire to and comply with norms equal to or consistent with those contained in the list of attributes for successful human rights NGOs identified and analyzed earlier in this Article.<sup>122</sup> A question remains as to how effective these Codes have been, but a full inquiry into their efficacy is beyond the scope of this Article. They appear to be successful, generally, as evidenced as follows: by the proliferation of such Codes; by adherence thereto by longstanding, well-respected human rights NGOs; and by governments using Code participation as a criterion in determining whether to work with specific NGOs. Though the Codes discussed herein may not necessarily be the best-crafted, best-implemented, or most highly effective of the many Codes that exist, examining them is illustrative as all the Codes contain at least some attributes that any successful human rights NGO must possess.

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*Commission on Human Rights*, 90 AM. J. INT'L L. 126, 133 (1996) (noting that one of the Commission's working groups released the 'human rights defenders' declaration, which was intended to “strengthen the position of individuals and groups working to promote human rights internationally and within particular countries”).

120. See, e.g., Ramon Mullerat, *The Need for Codes of Conduct in NGOs: The Experience of the Legal Profession* (Apr. 15, 2005) (paper presented at the American Bar Association Section of International Law, available at <http://www.abanet.org/intlaw/calendar/spring2005/papers/31.09.doc>). Mullerat discusses, *inter alia*, the 1995 *Commonwealth Foundation NGO Guidelines for Good Policy and Practice* which contain “guidelines for governments dealing with NGOs, for NGOs themselves, for the policy and practice of those who fund NGO's [sic], along with a strategy action plan for the implementation of the guidelines.” *Id.* at 3. Mullerat argues that particularly post-scandals like Enron and WorldCom, NGOs, like private corporations, should have a code of ethics and a conflict-of interest policy. *Id.* at 1. See Anthony Adair, *Codes of Conduct Are Good for NGOs Too*, IPA REV., Mar. 1999, at 26, 26, (noting that NGOs, like commercial enterprises, must “earn their role in society”). Robert Charles Blitt, *Who Will Watch the Watchdogs? Human Rights Nongovernmental Organizations and the Case for Regulation*, 10 BUFF. HUM. RTS. L. REV. 261 (2004) (arguing that human rights NGOs need concrete rules to ensure credibility); Pieter H. Kooijmans, *The Nongovernmental Organizations and the Monitoring Activities of the United Nations in the Field of Human Right*, in THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS IN THE PROTECTION OF HUMAN RIGHTS, SYMPOSIUM INTERNATIONAL COMMISSION OF JURISTS 15 (Alex G. Castermans et al. eds., 1989).

121. See Simon Heap, *Building Trust in NGOs*, 3 INT'L J. NOT-FOR-PROFIT L., Mar. 2001, [http://www.icnl.org/knowledge/ijnl/vol3iss3/sr\\_2.htm#\\_ftn18](http://www.icnl.org/knowledge/ijnl/vol3iss3/sr_2.htm#_ftn18); see generally, Catherine Shea & Sandra Sitar, *NGO Accreditation and Certification: The Way Forward? An Evaluation of the Development Community's Experience*, [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/private\\_voluntary\\_cooperation/conf\\_icnl.pdf](http://www.usaid.gov/our_work/cross-cutting_programs/private_voluntary_cooperation/conf_icnl.pdf) (last visited Sept. 23, 2009).

122. See *supra* §§ III(A)–(J).

### A. Afghan NGO Code of Conduct

In Afghanistan in 2005, in response to accusations that NGOs had been abusing funds provided to rebuild the country post-war, aid groups in Afghanistan formulated the Afghan Code of Conduct<sup>123</sup> to regulate NGOs' in-country activities.<sup>124</sup> The Afghan Code of Conduct contains twenty-one articles to promote transparency, accountability and good management among NGOs by "voluntary self-regulation", to raise NGO standards of conduct and improve the quality of NGO services, and to help the public, governments, donors and media understand NGOs.<sup>125</sup>

The Afghan Code of Conduct has been signed by hundreds of the 2,400 national and international NGOs registered to operate in Afghanistan.<sup>126</sup> These groups are meant to be people-centered,<sup>127</sup> to be transparent and accountable,<sup>128</sup> and to be committed to sustainable positive impact,<sup>129</sup> to good internal governance,<sup>130</sup> to honesty, integrity and cost effectiveness,<sup>131</sup>

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123. See *Code of Conduct for NGOs Engaged in Humanitarian Action, Reconstruction, and Development in Afghanistan*, [http://www.acbar.org/downloads/Code%20of%20Conduct\\_English%20Version.pdf](http://www.acbar.org/downloads/Code%20of%20Conduct_English%20Version.pdf) (last visited Oct. 8, 2009) [hereinafter *Code of Conduct*].

124. It had also been reported that the Afghan government and members of the public had confused NGOs working in Afghanistan "with highly paid private contractors and [other] profitable organisations, many of which are registered as NGOs with the country's ministry of economy." Integrated Regional Information Networks [IRIN], *Afghanistan: New Code of Conduct to Regulate NGOs*, May 31, 2005, <http://www.irinnews.org/Report.aspx?ReportID=28641> [hereinafter *New Code of Conduct*].

125. *Id.*; *Code of Conduct*, *supra* note 123, § 3–4, 12.

126. See *New Code of Conduct*, *supra* note 124; ACBAR, Agency Coordinating Body for Afghan Relief, *Code of Conduct*, [http://www.acbar.org/display.php?page\\_id=66](http://www.acbar.org/display.php?page_id=66) (last visited Oct. 17, 2009).

127. The Afghan Code of Conduct provides that NGOs are primarily loyal, accountable and responsible to the people they serve whom they seek to help develop self-reliance. NGOs are to protect human rights, build trust, engage local people in conceiving and implementing projects and programs, and respect local values. *Code of Conduct*, *supra* note 123, § 1.

128. NGOs working in Afghanistan commit to being transparent and accountable to government and community partners, the public, donors and, other interested parties. *Id.* § 3.1. Accountability involves: sound financial policies, audits and systems for their accounts; complying with Afghan government regulations; being truthful in raising, using and accounting for funds; and sound financial, accounting, procurement, transport and administrative systems to ensure that resources are used for intended purposes. *Id.* § 3.2–3.

129. NGOs working in Afghanistan commit to: being effective, including avoiding duplicative services; sustainability, including seeking durable, cost-effective solutions, building Afghan ownership and capacity, and focusing on long-term community goals; protecting Afghanistan's physical and natural environment and protecting the eco-system; and monitoring and evaluating program impact and sharing findings with relevant stakeholders. *Id.* § 2.

130. NGOs working in Afghanistan commit to having written constitutions or memoranda to clearly define the NGOs' missions, objectives, and organizational structures, developing policies and procedures to affirm a commitment to equal opportunities, applying hiring and termination practices that respect freedom of choice and human resource needs,

to diversity, fairness and non-discrimination,<sup>132</sup> to building Afghan capacity,<sup>133</sup> and to independence.<sup>134</sup>

### B. Ghanaian NGO Standards of Excellence

In 2004, local Ghanaian NGOs, international NGOs working in Ghana, and donors began formally to address problems recognized in their mutual relations, including a lack of equity in their partnerships, accountability concerns, and concerns of NGO credibility flowing from reports of NGO “misdeeds” as well as lack of stakeholder commitments to building local capacity.<sup>135</sup> If NGOs met a certain standard, they would receive a “seal” or “certificate” which they could proudly display to show their commitment to complying with the Standards.

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offering positions based on merit, paying appropriate salaries, allocating job responsibilities appropriately, having appropriate notice provisions, and maintaining freedom from personal and professional conflicts. *Id.* § 4.

131. NGOs working in Afghanistan commit to honesty in activities, and to practices that do not undermine NGOs’ ethical integrity, such as corruption, nepotism, bribery, and trading in illicit substances. *Id.* § 5. NGOs will accept funds or donations only from those whose aims are consistent with the NGOs’ mission and which do not undermine the NGOs’ independence and identity. *Id.*

132. Within their organizations, and within the scope of the NGOs’ external programs and other initiatives, NGOs should seek gender, ethnic, geographic and religious diversity and equity, provide opportunities for the underserved, the vulnerable, the disabled, and other marginalized persons, and provide for affirmative action. *Id.* § 6.

133. NGOs working in Afghanistan are committed to help build Afghan capacity to understand needs, establish priorities, and take effective action to ensure that Afghans meet humanitarian, development, and reconstruction needs; consulting with local communities and the government when designing and implementing projects; designing projects to be taken over by target communities or the government to enhance sustainability; prioritizing Afghan nationals in recruiting, hiring and training; maximizing use of appropriate local physical and technical resources; and using appropriate locally owned and maintained technologies. *Id.* § 7.

134. NGOs working in Afghanistan commit: to not implement programs or gather information of a “political, military or economically sensitive nature for governments or other bodies that may serve purposes other than those directly consistent with [the NGOs’] humanitarian or development missions;” to be autonomous “according to Afghan and international law, and to resist imposing conditions that may compromise [NGO] missions and principles;” to provide aid impartially based on need alone, regardless of race, religion, ethnicity, gender or nationality, or political affiliation of recipients and not to tie humanitarian assistance to the embracing or acceptance of a particular political or religious creed; to be neutral and to not promote partisan national or international political agendas; “not choose sides between parties to a conflict;” and to apply “the SPHERE Humanitarian Charter and Minimum Standards in Disaster Response . . . and the SPHERE indicators in the implementation, monitoring, and evaluation of our humanitarian projects and programs.” *Id.* §§ 8–11; see also The Sphere Project Humanitarian Charter and Minimum Standards in Disaster Response, <http://www.sphereproject.org> (last visited Sept. 24, 2009); see also Sphere in Brief, [www.sphereproject.org/content/view/229/232](http://www.sphereproject.org/content/view/229/232) (last visited Sept. 24, 2009).

135. See The Ghana NGO/CSO Standards Project, Frequently Asked Questions (FAQs), [http://www.posdev.org/standards/faq\\_2007\\_eng.html](http://www.posdev.org/standards/faq_2007_eng.html) (last visited Oct. 2, 2009).

The Ghana NGO Standards of Excellence sought to establish minimum standards, determined by the community, that enshrined “principles of good and ethical practice.”<sup>136</sup> The regulatory framework for NGOs in Ghana was meant to help ensure that Ghana NGOs were accountable and transparent and were seen by the public and others to be accountable and transparent, and to enhance mutual trust and confidence among local NGOs, international NGOs, and donors.

The Standards were intended to demonstrate that NGOs could regulate themselves voluntarily, and that they had the ability: to promote internal organizational and institutional learning; to ensure transparency, accountability and good governance; to remain relevant and responsive to the needs of the Ghanaian people; to comply with internal guidelines; to improve the quality of their services; to improve relations and links between NGOs and stakeholders including the government and the private sector; and to encourage the development of mutually-beneficial strategic partnerships.<sup>137</sup>

The Standards were meant to reflect shared norms and rules of standardized behavior, all subject to NGO self-verification and quality control which would obviate governmentally imposed regulations. The Standards would apply to all NGOs working in Ghana, big or small, and irrespective of their specific remits.

### C. Australian NGO Code of Conduct

The Australian Council for International Development (“ACFID”)<sup>138</sup> administers a Code of Conduct for local and international human rights and development NGOs working in Australia.<sup>139</sup> Approximately eighty NGOs participate in this voluntary scheme and agree to conduct their activities with integrity and accountability. The Australian Code seeks to enhance standards and to ensure public confidence in the groups and their work to protect human rights through using overseas aid to reduce poverty through effective and sustainable development. NGOs need not be ACFID members to sign the Australian Code, but all members must sign and comply with it. Adherence to the Australian Code is required of all NGOs accredited with

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136. *Id.* Sponsors of the Ghana NGO Standards Project included the Pan-African Organization for Sustainable Development (“POSDEV”) (serving as the Secretariat), Care International, the Ghana Association of Private and Voluntary Organizations in Development (“GAPVOD”), ActionAid Ghana (“AAG”), Ghana Center for Democratic Development (“CDD”), the Opportunities Industrialization Centres International (“OICI”), and the Democracy and Governance Department of the USAID Mission in Ghana.

137. *Id.*

138. The Australian NGO Code of Conduct has been operating ten years and was last amended in 2004. See Australian Council for International Development [ACFID], *Code of Conduct for Non Government Development Organisations* (amended Oct. 5, 2004), <http://www.acfid.asn.au/code-of-conduct/docs/code.pdf>.

139. *Id.*

the Australian Agency for International Development (“AusAID”) to apply for Australian government funding.<sup>140</sup> The Australian Code sets out standards and requirements to which signatories are bound and against which complaints and compliance is assessed in areas including organizational integrity, governance, communication with the public, finances, and personnel and management practice.<sup>141</sup>

#### D. Iraqi NGO Code of Conduct

The NGO Coordination Committee in Iraq (NCCI) is an independent initiative launched by NGOs present in Baghdad in April 2003.<sup>142</sup> The principal objectives of NCCI, which has expanded to a network of 80 International NGOs and 200 Iraqi NGOs,<sup>143</sup> include: (a) to be an independent, neutral and impartial NGO forum for coordination and information exchange among the NGO community on issues and activities related to Iraq and its population, irrespective of ethnicity, politics, gender and religion; (b) to advocate that human rights and international humanitarian law are respected and ensure humanitarian needs are identified, well lobbied for and met; and (c) to collaborate to enhance NGO

140. The Australian NGO Code of Conduct is accompanied by a non-legally binding Guidance Document. The Guidance Document helps signatories interpret and apply the Code by offering suggestions for implementing the Code’s provisions. ACFID, *Code of Conduct Guidance Document*, Dec. 2008, [http://plone.acfid.asn.au/code-of-conduct/docs/guidance/12.08\\_full\\_doc.pdf](http://plone.acfid.asn.au/code-of-conduct/docs/guidance/12.08_full_doc.pdf).

141. In 2008, ACFID’s Executive Committee appointed a committee to manage a formal review of the Australian NGO Code of Conduct and stakeholder activities in the decade of the Code’s existence, and the committee is to make recommendations on the Code’s objectives, governance, and operational activities. ACFID, *Terms of Reference for the Review of the Content of the Australian Council for International Development’s Code of Conduct*, <http://plone.acfid.asn.au/code-of-conduct/review/tor> (last visited Oct. 3, 2009). The aim of the review of the content of the Code:

is to update and where necessary develop the Code to ensure that it is continuing to meet all stakeholders’ requirements and expectations. The revised Code will articulate the world’s best practice standards against which the ethics, organisational integrity, governance, management, communication with the public, financial control and reporting, accountability and transparency of signatories can be measured and published.

*Id.* See also ACFID, *Code Review*, <http://plone.acfid.asn.au/code-of-conduct/review> (last visited Oct. 3, 2009). The Code Review Final Documents were disseminated on August 26, 2009. See ACFID, *Executive Committee’s Report to ACFID Council* (2009) <http://plone.acfid.asn.au/code-of-conduct/docs/Res5-1%20Code%20Framing%20Paper%20Council09.pdf>; ACFID, *Proposed Resolution for Council* (2009) [http://plone.acfid.asn.au/code-of-conduct/docs/docs\\_code-review/Resolution%205%20-%20Code%20Review%20Resolution%20for%20Council%2009.pdf](http://plone.acfid.asn.au/code-of-conduct/docs/docs_code-review/Resolution%205%20-%20Code%20Review%20Resolution%20for%20Council%2009.pdf).

142. See generally, NGO Coordination Committee in Iraq, About Us, NCCI Vision, <http://www.ncciraq.org/inside.php?Src=MI&MIId=1> (last visited Sept. 23, 2009).

143. *Id.*

capacity to deliver humanitarian and development assistance in Iraq.<sup>144</sup> All NCCI members are bound by its Code of Conduct incorporated into the NCCI Charter.<sup>145</sup>

#### E. Ethiopian NGO Code of Conduct

In 1997, NGO umbrella groups in Ethiopia appointed an Ad Hoc NGO Consultation Working Group which drafted a Code of Conduct for NGOs in Ethiopia, which was elaborated upon at consultative meetings in 1998 and adopted in September 1998 at a meeting attended by more than 200 NGO representatives.<sup>146</sup>

The Ethiopian NGO Code of Conduct was designed to promote NGOs' voluntary self-regulation to ensure transparency and accountability, to improve the quality of NGO services "by helping NGOs to adopt higher standards of conduct and to devise efficient decision-making processes," to "improve communication between the NGO community and the various stake holders," and to improve NGO performance "by encouraging the exchange of experiences among its members and learning from proven best practices."<sup>147</sup>

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144. NGO Coordination Committee for Iraq, NCCI Objectives, <http://www.ncciraq.org/inside.php?Src=S1&MIId=1&SIId=5004> (last visited Oct. 2, 2009). NCCI's mission further includes: (1) optimizing humanitarian assistance in Iraq through coordination; (2) empowering Iraq NGOs through information sharing, knowledge exchange, creation of links, capacity building and sensitization to humanitarian principles and approaches; (3) providing an independent and neutral space for NGOs operating in Iraq; (4) increasing NGO capacities and knowledge to enhance the delivery of assistance on humanitarian grounds to Iraqi people in need; and (5) strengthening understanding amongst the various Iraq stakeholders. *See id.*

145. *See* NGO Coordination Committee in Iraq, Charter, Our Conduct, <http://www.ncciraq.org/inside.php?Src=S1&MIId=1&SIId=5006> (last visited Oct. 2, 2009).

146. *See* NGO Code of Conduct for NGOs in Ethiopia, <http://www.crdaethiopia.org/Code%20of%20Conduct/CoC.Final.pdf> (Mar. 1999) (indicating that the code of conduct is posted on Christian Relief and Development Association ("CRDA") webpage).

147. *Id.* § 3. The Ethiopian Code provides that NGOs working in Ethiopia be "people centered," and "transparen[t] and accountab[le]." *Id.* §§ 1, 4. The NGOs should also promote "independence," "fairness and equity," "sustainability," "gender equity," and "communication and collaboration." *Id.* §§ 2-10. Finally, NGOs should have an "environmental consciousness," "moral and ethical integrity," and clear measurements for assessing "impact." *Id.*

## F. Philippine NGO Codes of Conduct and Ethics

### 1. *Philippine Council for NGO Certification*

The Philippine Council for NGO Certification (PCNC)<sup>148</sup> was established in 1998 and entrusted by the Philippine government to: (a) certify NGOs for tax benefits and other purposes; (b) monitor NGOs with a Code of Conduct; and (c) recommend withdrawal of registration and tax privileges from NGOs who fail to comply.<sup>149</sup> Seeking to ensure that NGOs meet minimum criteria for greater transparency and accountability, the PCNC assesses NGOs based on the following criteria, which are also incorporated into the PCNC Guidebook on the Basics of NGO Governance: vision, mission, goals; governance; administration; program operations (including monitoring and evaluation systems); financial management; and partnering and networking.<sup>150</sup>

The PCNC writes about the significant role played by NGOs in Philippine society:<sup>151</sup>

The Philippine NGO sector has developed a strong reputation for the delivery of basic services to the urban and rural poor. This has been recognized by national and local government, by other NGOs in the

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148. The PCNC comprises six umbrella organizations: the Association of Foundations (AF) (composed of 135 foundations nationwide); the Bishops-Businessmen's Conference for Human Development ("BBC") (among its leaders being Catholic bishops and business leaders); the Caucus of Development NGO Networks ("CODE-NGO") (CODE-NGO is the country's biggest coalition of NGOs with six national networks and six regional networks, and it represents more than 2,000 development NGOs, people's organizations and cooperatives nationwide.); the League of Corporate Foundations (organization composed of large and active corporate foundations); the National Council of Social Development Foundations ("NCSDF") (one of the country's oldest NGO networks comprising about 100 NGOs engaged in development and basic services); the Philippine Business for Social Progress ("PBSP") (a social development foundation set up and funded by 180 business corporations in the Philippines). For a discussion of the PCNC, see generally Caroline Hartnell, *The Philippines: Self-Regulation on Trial*, ALLIANCE MAGAZINE, Dec. 2003, at 8 <http://www.icnl.org/KNOWLEDGE/news/2004/01-09.htm> (noting that the PCNC website states that PCNC Certification shall be a "seal of good housekeeping" that funders and donors may consider in choosing which organizations to support (quoting Philippine Council for NGO Certification [PCNC], <http://www.pcnc.com.ph/background.php>) (last visited Oct. 3, 2009).

149. PMCP, Philippine Council for NGO Certification, About Us, <http://www.pcnc.com.ph/aboutUs.php> (last visited Oct. 3, 2009) (stating its "main function is to certify non-profit organizations that meet established minimum criteria for financial management and accountability in the service to underprivileged Filipinos").

150. See Guidebook on the Basics of NGO Governance, [http://www.pcnc.com.ph/docs/PCNC\\_Guidebook\\_on\\_the\\_Basics\\_of\\_NGO\\_Governance.pdf](http://www.pcnc.com.ph/docs/PCNC_Guidebook_on_the_Basics_of_NGO_Governance.pdf) (last visited Oct. 2, 2009).

151. See generally PCNC, Philippine Council for NGO Certification, PCNC: Background and Rationale, <http://www.pcnc.com.ph/background.php> (last visited Oct. 2, 2009).



region, and by the donor community. In fact, NGO participation in all aspects of governance is enshrined in the Philippine Constitution. The past administrations of President Aquino and President Ramos have included NGOs in local and national consultations on important issues and have encouraged them to participate in the governance processes of the country.

The newfound recognition of the role and contributions of the NGO sector in Philippine development has led to the spectacular rise in the number of NGOs in the country. Some reports state that there are as many as 60,000 non-profit, non-governmental organizations registered in the Philippines today.<sup>152</sup>

## 2. Philippine Caucus of Development NGO Networks

In 1990, the ten largest NGO networks in the Philippines established a coalition called the Philippine Caucus of Development NGO Networks (CODE-NGO).<sup>153</sup> In December 1991, 1000 NGOs attended CODE-NGO's first National Congress which ratified CODE-NGO's Covenant on Philippine Development and the Code of Conduct for Development NGOs.<sup>154</sup> CODE-NGO crafted the implementing rules for its Code of Conduct for Development NGOs,<sup>155</sup> and in 2000, the CODE-NGO National Board created the Commission on Internal Reform Initiatives (CIRI) to oversee creation of a mechanism to enforce member transparency and accountability. Enforcement is accomplished through the National Board, the CIRI, and the members themselves, and is meant to be rigorous, with concrete mechanisms for ensuring compliance.<sup>156</sup> For example, if members do not file certain reports or attend certain meetings, punishments may

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152. *Id.*

153. The Caucus of Development NGO Networks, CODE-NGO, About Us, HISTORY – How we started, [http://code-ngo.org/home/index.php?option=com\\_content&view=article&id=84&Itemid=91](http://code-ngo.org/home/index.php?option=com_content&view=article&id=84&Itemid=91) (last visited Oct. 8, 2009).

154. The CODE-NGO's Code of Conduct was implemented to promote professionalism, to better enable NGOs to self-regulate, to distinguish legitimate NGOs from untrustworthy groups that were abusing public trust, and to expand the reach of social development work in the Philippines. *Id.*; see Hartnell, *supra* note 148; Caucus of Development NGO Networks, The CODE-NGO Covenant on Philippine Development, Implementing Guidelines for the Code of Conduct for Development NGOs (2003), <http://code-ngo.org/home/images/stories/pdf/CODE-NGOCovenantonPhilippineDevelopmentandCodeofConduct.pdf> (last visited Oct. 17, 2009) [hereinafter Covenant on Philippine Development].

155. CODE-NGO also created "the Local Anti-Poverty Project (LAPP II), the Pork Barrel [Project] or PDAF Watch, [a project for] the Economic Policy Reform and Advocacy (EPRA) and [efforts at] advocacy for federalism and Constitutional reform." CODE-NGO, *supra*, note 153.

156. *Id.* at 13.

include: 1st Offense — Notice; 2nd Offense — Warning; 3rd Offense — Suspension of Benefits; and 4th Offense — Ground for termination.<sup>157</sup>

#### G. South African National NGO Coalition NGO Code of Conduct (SANGOCO)

The South African National NGO Coalition (“SANGOCO”) is an umbrella organization of NGOs from throughout the country formed in 1995 to coordinate NGO input into South African Government policy and ensure that NGOs continued to serve the people of South Africa.<sup>158</sup> SANGOCO believes that strong, informed, and effective NGOs are needed to contribute to government policy on all issues affecting South African human rights development, and that for NGOs to reach and maintain a high level, they must abide by a Code of Ethics promulgated by SANGOCO.<sup>159</sup> The Code of Ethics focuses on six core elements: values;<sup>160</sup> governance;<sup>161</sup> accountability;<sup>162</sup> management and human resources;<sup>163</sup> finance;<sup>164</sup> and resources.<sup>165</sup>

157. Covenant on Philippine Development, *supra* note 154, at 13.

158. South African NGO Coalition [SANGOCO], About SANGOCO, <http://www.sangoco.org.za/site/index.php?option=content&task=view&id=3&Itemid=25> (visited Oct. 2, 2009).

159. South African NGO Coalition [SANGOCO], Code of Ethics, <http://www.sangoco.org.za/site/index.php?option=content&task=view&id=8&Itemid=30> (last visited Oct. 2, 2009).

160. SANGOCO Code of Ethics signatories “are committed to the following fundamental values that underpin the mission and objectives of signatories:” being responsive to needs and welfare of South Africans; Accountability and transparency; participatory democracy; people-centred development; respecting the rights, culture and dignity of all people within the framework of the Bill of Rights, as enshrined in the South African Constitution; enhancing race and gender equity; ensuring SANGOCO remains true to its mission and objectives; promoting voluntarism and active volunteer involvement at all levels; mutual co-operation, collaboration and networking with other agencies around issues of mutual concern; and striving for excellence, including efficient and effective service provision at all levels. *See id.*

161. In the SANGOCO Code of Ethics, “governance” refers to: ensuring that “the organization has a clear vision, mission, objectives and policies, and adheres to them;” specifying governance structures; developing and implementing conflicts of interest policy; ensuring independent auditing of accounts. *Id.* ¶ 2. It involves ensuring that “members of the governance structure and staff excuse themselves from decisions where they have, or are perceived to have, a vested interest,” and ensuring that “governance structure reflects the race and gender and composition of South African society.” *Id.*

162. In the SANGOCO Code of Ethics, “accountability” refers to: ensuring internal democracy and transparency; enabling involvement of all stakeholders in planning programmes directly affecting them, and include stakeholders in “regular evaluations” of those programs; conducting regular sessions, including annual meetings; providing full disclosure of goals, programs, finances and governance; and inviting stakeholders to participate. *Id.* ¶ 3.

163. In the SANGOCO Code of Ethics, “Management & Human Resources” refers to: periodically reassessing the NGO’s “mission, objectives and operations, in the light of

#### H. U.S. InterAction Private Voluntary Organization Standards

InterAction, which is a membership association of U.S. NGOs, seeks to enhance the effectiveness and professional capacities of its members engaged in international humanitarian efforts.<sup>166</sup> InterAction claims to be the largest coalition of U.S.-based international NGOs focused on the world's poor and most vulnerable people.<sup>167</sup> InterAction's 175 members collectively work in every developing country "expanding opportunities and supporting gender equality in education, health care, agriculture, small business, and other areas."<sup>168</sup>

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changing context and constituents' needs;" analyzing "practices and implementing "changes needed to build a culture that encourages creativity, diversity, responsibility and respect;" developing "clear, well defined written policies and procedures . . . which relate to all employees, members and volunteers," with the policies adhering to law; establishing and maintaining "disciplinary and grievance procedures with clear lines of authority and accountability;" having "clear and transparent" development and other policies for staff; properly "assessing skills, experience, qualifications, levels of responsibility and performance," and remuneration; and facilitating good internal communication. *Id.* ¶ 4.

164. In the SANGOCO Code of Ethics, "Finance" refers to: developing and maintaining proper financial management strategies; "[w]herever possible ensur[ing] that the funding base of the organisation is diversified;" and ensuring "clear and transparent accounting." *Id.* ¶ 5.

165. In the SANGOCO Code of Ethics, "Resources" refers to: "manag[ing] organizational assets in a sustainable and cost-effective manner;" developing "internal procedures and control mechanisms and implement[ing] these to ensure the proper use of the assets;" properly monitoring "the use of staff time;" and conducting "cost-benefit analysis of projects and review resource allocations in the light of these." *Id.*

166. InterAction, InterAction's PVO Standards, Mar. 2007, <http://www.interaction.org/sites/default/files/PVO%20Standards%20.pdf> [hereinafter InterAction's PVO Standards]. The InterAction Mission Statement notes InterAction's commitment to:

Advocating and fostering human dignity and development; Striving for world justice through programs of economic and social development, relief, and reconstruction; Ameliorating the plight of refugees and migrants through relief, protection, settlement in place, voluntary repatriation, or resettlement to a third country; Helping people help themselves; Building public awareness and understanding as a necessary prerequisite for humanitarian assistance; Initiating a dialogue on public policy issues of importance to the membership; Being accountable to our individual constituencies, the American public, and the people we strive to assist; Respecting the diversity of perspectives and methods of operation of member agencies as a source of strength and creativity; Working in a spirit of collaboration and partnership as the most effective way to achieve common objectives; and Encouraging professional competence, ethical practices, and quality of service.

*Id.* at 1–2.

167. About InterAction, InterAction, <http://www.interaction.org/about-interaction> (last visited Oct. 18, 2009).

168. *Id.*

Since 1994, all InterAction member organizations have had to certify compliance with the InterAction's Private Voluntary Organization (PVO) Standards.<sup>169</sup> Every other year, each member also self-certifies, using documented "evidence of compliance" to re-certify their compliance with the Standards.<sup>170</sup>

InterAction's PVO Standards were intended to ensure and strengthen public trust and confidence in the integrity, quality, and effectiveness of member organizations and their programs.<sup>171</sup> The Standards define the financial, operational, programmatic, and ethical code of conduct for InterAction and its member agencies, and encourages organizational learning, best practices, and InterAction members meeting the highest international non-profit standards.<sup>172</sup>

### I. The Sphere Project: Another Collaborative Effort for a Code of Ethics

The Sphere Project was launched in 1997 by humanitarian NGOs, including the Red Cross and Red Crescent, and is based on two beliefs: first, that all possible steps should be taken to alleviate human suffering arising out of calamity and conflict; and second, that those affected by disaster have a right to life with dignity and therefore a right to assistance.<sup>173</sup> Sphere is three things: (a) a handbook entitled "Humanitarian Charter and Minimum Standards in Disaster Response"; (b) a broad process of collaboration; and (c) an expression of commitment to quality and accountability.<sup>174</sup> NGOs from around the world are linked by their adopting Sphere and applying it in national jurisdictions to protect human rights. The goals of Sphere are "to improve the quality of assistance to people affected by disaster and improve the accountability of states and humanitarian agencies to their constituents, donors and the affected populations."<sup>175</sup>

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169. See generally InterAction's PVO Standards, *supra* note 166.

170. *Id.* The InterAction website notes that the Standards were "intended to ensure and strengthen public confidence in the integrity, quality, and effectiveness of member organizations and their programs", and that "the Standards were created when the overseas work of US NGOs was dramatically increasing in scope and significance. Defining the financial, operational, programmatic, and ethical code of conduct for InterAction and its member agencies, these high and objective standards, set InterAction members apart from many other charitable organizations." *Id.*

171. *Id.*

172. See *id.*

173. Sphere Project, <http://www.sphereproject.org/> (last visited Oct. 2, 2009).

174. *Id.*

175. "Sphere is based on: [(a)] International Humanitarian, Human Rights, and Refugee law; and (b)] The Code of Conduct: Principles of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes." The Sphere Project, Sphere in Brief, [www.sphereproject.org/content/view/229/232](http://www.sphereproject.org/content/view/229/232) (last visited Oct. 3, 2009).

J. World Alliance for Citizen Participation International Non-Governmental Organizations Accountability Charter

In June 2006, World Alliance for Citizen Participation (“CIVICUS”) and ten other International NGOs launched the voluntary *International Non-Governmental Organizations Accountability Charter*, “publicly outlining their collective commitments to uphold the highest standards of professional and moral conduct”.<sup>176</sup> CIVICUS sought to enhance NGO legitimacy, transparency and accountability, and lead by example. Charter signatories pledged to apply the Charter’s provisions to all its policies, operations and programs, and it published a report outlining its level of compliance and intended steps to comply.<sup>177</sup>

The CIVICUS Civil Society Index (“CSI”) is a participatory needs assessment and action planning tool for global civil society, at the national level, aimed at creating a knowledge base and momentum for civil society strengthening initiatives.<sup>178</sup> The CSI seeks information about the state of civil society in a country, disseminates that information broadly to stakeholders (including government, donors, academics and the public at large), and seeks to enhance NGO capacity and sustainability and strengthen NGOs’ contribution to positive social change.<sup>179</sup> CIVICUS also launched the International Advocacy Non-Governmental Organizations (“IANGO”) Workshop, in which IANGO leaders engage in reflection, learning and strategic thinking on accountability, transparency and other issues.<sup>180</sup> Other regulatory mechanisms include the Global Reporting Initiative (“GRI”), the NGO Sector Supplement, and the GRI Sustainability Reporting Guidelines.<sup>181</sup>

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176. International Non-Governmental Organisations Accountability Charter, *CIVICUS: World Alliance for Citizen Participation*, June 2006–June 2007, at 1, 3, available at [http://civilsociety.developmentgateway.org/uploads/media/civilsociety/CIVICUS%20NGOs%20Accountability%20Charter\\_%20Compliance%20Report.pdf](http://civilsociety.developmentgateway.org/uploads/media/civilsociety/CIVICUS%20NGOs%20Accountability%20Charter_%20Compliance%20Report.pdf).

177. *Id.* In June 2007, “Charter signatories agreed to work with the Global Reporting Initiative in the development of an NGO Sector Supplement, against which indicators signatories will report in the future.” *Id.* at 3. CIVICUS stated that it was “committed to complying with any external reporting requirements agreed-upon by Charter Signatories,” and that it would “continue to strengthen its internal systems of accountability and reporting as it seeks to surpass the minimum external requirements and become a civil society leader in promoting the responsibilities of civil society organizations towards their different stakeholders.” *Id.*

178. *Id.* at 8–10.

179. *Id.*

180. *Id.* at 10–11.

181. *Id.* at 3, 12.

## K. World Association of Non-Governmental Organizations Code of Ethics and Conduct for NGOs

The World Association of Non-Governmental Organizations (“WANGO”), which is an international organization founded in 2000 by international NGOs and others,<sup>182</sup> seeks to unite NGOs worldwide to advance the human rights of peace and global well being. It “helps to provide the mechanism and support needed for NGOs to connect, partner, share, inspire, and multiply their contributions to solve humanity’s basic problems.”<sup>183</sup>

WANGO at its 2002 Annual Meeting in Washington DC initiated its Code of Ethics Project and appointed a committee to develop an NGO Draft Code of Conduct.<sup>184</sup> In March 2004, a preliminary draft was circulated, and in March 2005, after two and one half years of work, the current *WANGO Code of Ethics and Conduct for NGOs* was completed.<sup>185</sup> The Guiding

182. See World Association of Non-Governmental Organizations [WANGO], About WANGO, <http://www.wango.org/about.aspx> (last visited Oct. 3, 2009). The WANGO website provides:

Concerned with universal values shared across the barriers of politics, culture, religion, race and ethnicity, the founding organizations and individuals envisioned an organization that would enable NGOs to work in partnership across those barriers, thereby weaving a selfless social fabric essential to establishing a worldwide culture of peace. By optimizing resources and sharing vital information, WANGO provides a means for NGOs to become more effective in completing their vital tasks.

*Id.*

183. *Id.*

184. WANGO Ethics, *supra* note 86.

185. *Id.* (noting that the Code “remains an evolving work, which will be revised as necessary”). The Preface to the WANGO Code notes that in formulating the Code, numerous standards and codes of conduct and ethics from NGOs and NGO associations worldwide were consulted including the following:

Association of Fundraising Professionals’ *Code of Ethical Principles and Standards of Professional Practice*; Australian Council for Overseas Aid’s (ACFOA) *Code of Conduct*; BBB Wise Giving Alliance’s *Standards for Charity Accountability*; the *Code of Conduct for The International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief*; the *Code of Conduct for NGOs (Earth Summit, 1992)*; the *Code of Conduct for NGOs in Ethiopia*; International Committee on Fundraising Organizations’ (ICFO) *International Standards*; Maryland Association of Nonprofit Organizations’ *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector*; Minnesota Council of Nonprofits’ *Principles and Practices for Nonprofit Excellence*; *NGO Code of Conduct (Botswana)*; *People in Aid’s Code of Good Practice*; Star Kampuchea’s *Code of Ethics: Goal, Mission and Roles of NGOs and POS*; and Transparency International’s *Statement of Vision, Values and Guiding Principles*.

Principles of the WANGO Code are: responsibility, service and public mindedness; cooperation beyond borders; human rights and dignity; religious freedom; transparency and accountability; and truthfulness and legality.<sup>186</sup>

#### L. European Commission NGO Code of Conduct

On July 22, 2005, the European Commission published a Draft Code of Conduct<sup>187</sup> which it stated would help prevent NGOs from being exploited for financing terrorism and other crimes abuse. The Commission suggested that the voluntary Code would help protect NGOs, strengthen donor integrity and confidence, and promote high standards of transparency and accountability.<sup>188</sup> The Code was for NGOs working in the European Union that “engage in the raising and/or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works.”<sup>189</sup> The Code required, *inter alia*, that NGOs prepare and maintain specific records (e.g., annual financial statements and annual reports), maintain audit trails of funds, and follow the “[k]now your beneficiaries, donors and associate” NGO rule, meaning that the NGO “should make best endeavours to verify the identity, credentials and good faith of their beneficiaries, donors and associate” NGOs.<sup>190</sup> The European Commission suggested that following these guidelines would “constitute a tool for [NGOs] to maintain public trust, to enhance credibility of their indispensable work and at the same time establish a framework for public authorities to identify and trace misuse of [NGOs] for terrorist financing and other criminal abuse.”<sup>191</sup>

#### V. CONCLUSION

This Article has shown that human rights NGOs — as defined herein as private, independent, non-profit, groups not founded by or controlled by a

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*Id.*

186. *Id.*

187. Draft Recommendations to Member States Regarding a Code of Conduct for Non-Profit Organisations to Promote Transparency and Accountability Best Practices (EC) No. JLS/D2/DB/NSK D(2005) 8208 of July 22, 2005, *available at* [http://ec.europa.eu/justice\\_home/news/consulting\\_public/code\\_conduct\\_npo/draft\\_recommendations\\_en.pdf](http://ec.europa.eu/justice_home/news/consulting_public/code_conduct_npo/draft_recommendations_en.pdf) (The “discussion paper [was] drafted on the basis of preliminary consultations and does not reflect any official position of the European Commission.”).

188. *Id.* The European Commission stated that the Draft Code of Conduct “also responds to requests from EU Member State Governments and international bodies.” *Id.* (citation omitted).

189. *Id.* The European Commission refers to these NGOs as “NPOs” (Non-Profit Organisations).

190. *Id.* at 5.

191. *Id.* at 4.

government, that have as a goal the promotion and protection of internationally recognized human rights — share common characteristics that help render them effective at carrying out their respective missions. Although sixty years have passed since the Universal Declaration of Human Rights was promulgated, and although scholars and practitioners still cannot agree on how to define or categorize human rights NGOs, it remains undisputed that successful, effective human rights NGOs play an instrumental role in helping to eradicate human rights abuses in every corner of the globe. Stakeholders at all levels rely on human rights NGOs, whether those NGOs possess the critical attributes discussed in this Article, or whether they adhere to specific NGO Codes of Conduct, which themselves invariably incorporate the attributes. It is unfortunate that some human rights NGOs fail, but it is encouraging that many more human rights NGOs succeed, at least in part because of the attributes. The ten attributes identified and analyzed herein appear in successful human rights NGOs, whether they are small, one-volunteer, low-budget, locally-focused entities, or whether they are large, international groups with multi-million dollar operation budgets with staff and operations spread around the globe. These successful, effective human rights NGOs can and should be models for all human rights advocates and defenders, who struggle with great sacrifice for others to enjoy the human experience.