Title: Attributes of Successful Human Rights Non-Governmental Organizations (NGOs)—Sixty Years After the 1948 Universal Declaration of Human Rights.

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ATTRIBUTES OF SUCCESSFUL HUMAN RIGHTS NON-GOVERNMENTAL ORGANIZATIONS (NGOS) — SIXTY YEARS AFTER THE 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS

George E. Edwards *

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ATTRIBUTES OF SUCCESSFUL HUMAN RIGHTS NON-GOVERNMENTAL ORGANIZATIONS (NGOs) — SIXTY YEARS AFTER THE 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS

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, and that human rights NGOs play a critical role in promoting and protecting human rights in all corners of the globe. But 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.

Furthermore, despite the omnipresence of human rights NGOs, human rights community stakeholders cannot agree on a framework for vetting NGOs to help ensure their legitimacy. Definitional and other problems make it difficult for

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3 Academics, diplomats, governmental bureaucrats, and jurists have struggled on what to call these groups—the Third Sector, the independent sector, civil society organizations (“CSO”—objectionable because includes corporations), non-state actors (NSAs—objectionable because includes terrorists, guerillas), private voluntary organizations (PVOs), citizen associations, the volunteer sector, grassroots organizations, transnational social movement organizations, citizen sector organizations, self-help organizations, or community based organizations (CBOs). John Samuel, Civil Society in an Uncivil World, PAMBAZUKA (Oct. 18, 2007) (noting that the “term ‘Civil Society’ is contested terrain. Over the last fifteen years it has been used to denote everything from citizens’ groups and activist formations to highly institutionalized non-governmental organisations and foundations.”) (www.globalpolicy.org/ngos/intro/defining/2007/1018civil.htm)

4 Such “stakeholders” include inter-governmental organizations such as 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, individual and group victims and 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 conceivably 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.
stakeholders easily to distinguish between human rights groups deserving support and groups deserving disbandment. The UN, other inter-governmental organizations, and national 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 the anti-slavery and other social movement groups of the eighteenth century, through the participation of human rights NGOs in the creation of the UN, through 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 mission, adherence to human rights principles, legality, independence, funding, non-profit status, transparency and accountability, responsiveness and adaptability, cooperative and collaborative nature, and competence.

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 and efficacy as NGOs protect human rights. Though efficacy of these Codes may vary, they all contain useful criteria in assessing NGOs.

Part V concludes that though much has changed since the UN and modern human rights NGOs were born six decades ago, one thing that has not changed is the disagreement over what constitutes a human rights NGO and on how to categorize such groups. But, 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, effective human rights NGOs must 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.

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5 Many commentators consider social movements of the late Renaissance of the 1700s as an appropriate historical starting point for discussing modern human rights NGOs. See infra xxx.
II. NGOs & Human Rights NGOs

1. 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. Furthermore, it is undisputed that a universally agreed definition of NGOs has proved elusive.

Rather than seek to crystallize a universal definition of NGO, I will instead provide the following working definition for purposes of this article: An NGO is a private, independent, non-profit, goal-oriented group not founded or controlled by a government.

The broad term “NGO” encompasses research institutes, churches and other religious groups, political parties, foundations, cooperatives, literary or scientific organizations, credit unions, foundations, girl and boy scouts, sporting groups, service organizations, neighborhood associations, consulting firms, 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, protesting corporate

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6 For example, an NGO is not a governmental organization. See, e.g., Peter R. Baehr, Mobilization of the Conscience of Mankind: Conditions of Effectiveness of Human Rights NGOs, A Presentation Made at a UNU Public Forum on Human Rights and NGOs, United Nations University, Tokyo, Japan (Sept. 18, 1996) (www.gdrc.org/ngo/lecture14.html) (“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.”) (citations omitted). See also Philip Alston, The ‘Not-a-Cat’ Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors? in NON-STATE ACTORS AND HUMAN RIGHTS, 3, 3. (Philip Alston ed., 2005); Martin A. Olz, Non-governmental Organizations in Regional Human Rights Systems, 28 COLUM. HUMAN RTS. L. REV. 307, 313 (1997) (“NGO” definition depends on context)

7 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.”


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.
behavior, promoting sports, promoting political candidates, promoting the interests of a specific industry, education and training, disseminating news, or protecting the rights contained in the Universal Declaration of Human Rights.

Private organizations such as religious orders, charities and 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 private individuals who joined to combat government policy on slavery and other social issues in the 1700s. By the 1800s, NGOs increasingly lobbied governments, molded public opinion and effected change. Those “early” NGOs included the British and Foreign Anti-Slavery Society (1839), 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, the American Jewish Committee, and the French-based League for Human Rights.

NGOs continued to flourish through the World Wars and are abundant today, sixty years later.

Because private corporations are for profit, they would not qualify as NGOs. 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).

See Gavin Keeney, The Unbearable Lightness of NGOs (noting that NGOs “in one form or another have been part and parcel of the theory of civil society since at least the 18th century”). www.counterpunch.org/keeney0525.html (May 24, 2002). In April 1775, The Society for the Relief of Free Negroes Unlawfully Held in Bondage was formed in Philadelphia and is said to be the first U.S. slave abolition society. (www.history.com/this-day-in-history.do?action=Article&id=462). In 1784, the society change its name to the Pennsylvania Society for Promoting the Abolition of Slavery and the Relief of Free Negroes Unlawfully Held in Bondage. Id.

In 1835 French commentator Alexis de Toqueville 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 Toqueville, Democracy in America. (Harper & Row, 1966), p. 485-488)). See Theda Skocpo, What Toqueville Missed: Government made all that “volunteerism” possible, SLATE.COM (Friday, Nov. 15, 1996) (www.slate.com/id/2081). See also 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. OF INT'L L. 348, note 8 and text accompanying note (Apr. 2006), (www.jstor.org/stable/pdfplus/3651151.pdf)

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 (www.antislavery.org/homepage/antislavery/history.htm and www.dango.bham.ac.uk/record_details.asp?id=49&recordType=ngo). 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. In 1975, it worked for creation of a UN expert group dedicated to the elimination of slavery, now called the UN Working Group on Contemporary Forms of Slavery. Anti-Slavery International now focuses on forced and bonded labor, child labor, human trafficking, and traditional or 'chattel' slavery. Id.

Lynne M. Rudasil, NGO, Information Flow and Nation, supra note 7 (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.”); Kenneth Boulding, xx (Rise of international NGOs “perhaps one of the
2. Definition of a “Human Rights NGO”

How appropriately to define, classify or categorize “human rights NGO” has proved as elusive as if not more elusive than sorting out the 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 and non-profit, 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 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, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, other international human rights law instruments, and in the customary international law of human rights. The UN has reconfirmed the importance of human rights NGOs, and the UN and other bodies have promulgated international instruments to protect the integrity of human rights NGOs.

The UN intended the UDHR to be a “common standard of achievement for all peoples and all nations”. Its thirty articles address human rights broadly in several categories: civil and political rights (Articles 3-21); economic, social and cultural rights (Articles 22-28); and third generational rights (Articles xx – xx). These rights form the bases for over 100 UN treaties, declarations and other instruments, and for many national constitutions and other domestic law sources. 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 US supports and at the root of human rights policies and practices with which the US 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.
The concept of “international human rights norm” is broad, and 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 (e.g., rights of criminal suspects and defendants, due process rights, environmental rights of indigenous peoples, labor rights of refugees or asylees, or rights of individuals to nourishment acquired from ocean fishing). 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.

3. Appropriate Categorization of Human Rights NGOs

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

<table>
<thead>
<tr>
<th>NGO Categorization</th>
<th>Category Descriptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>By geographical emphasis of operations</td>
<td>Local, national, regional, sub-regional, or international</td>
</tr>
<tr>
<td>By staff or members nationality</td>
<td>Single nation or territory; multi-national</td>
</tr>
<tr>
<td>By status of personnel</td>
<td>Volunteer, paid, professional</td>
</tr>
<tr>
<td>By geo-political and</td>
<td>E.g., originate in democratic versus totalitarian nation; North versus South</td>
</tr>
</tbody>
</table>

The above categorization sheds light on NGOs with human rights competence. Article 18 provides, in relevant part:

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.

See also European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, Apr. 24, 1986, Eur. T.S. 124 (convention designed to facilitate work of international NGOs); Martin A. Olz, NGOs in Regional Systems, supra note 6) (exploring NGOs in the UN, Inter-American, European and African human rights systems; comparing definitions of “NGO” in the ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, ECOSOC resolutions, and the European Convention on Legal Personality of INGOs).

19 A full discussion of how to differentiate among different NGO types, or a taxonomy or typology, is beyond the scope of this article. Attempts at such include that by Spiro, Peter J., NGOs and Human Rights: Channels of Power at 2 (Jan. 8, 2009). (available at SSRN: http://ssrn.com/abstract=1324971) (seeks “to systematize NGO activity relating to human rights”, and offering “a typology of human rights NGOs, distinguishing generalist from identity-oriented human rights NGOs and domestic from transnational” and further that “It is not clear, however, that these distinctions are meaningful”.)
economic origin or East versus West

By their 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)

By their size E.g., large such as Save the Children, Oxfam, Human Rights Watch or Amnesty International, or small such as many local, grassroots groups

By substantive areas 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 & degrading treatment & punishment, disability rights, race discrimination & xenophobia, economic & social rights, cultural rights, civil & political rights

By the nature of their 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, 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

By their funding levels For personnel, physical resources and programs

By their funding sources From services rendered or sale of goods sales; donations from private donors, foundations, governments, quasi-NGOs, or IGOs

By how they lobby or consult domestic governments & IGOs Testifying at hearings, participating in treaty negotiations, joining government panels & delegations, liaising among other NGOs, governments & locals

By the manner in which 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

By the manner in which they share information Through conferences, colloquia, seminars, human rights public awareness campaigns, position papers, participating in government consultations

By their affiliations E.g., affiliated with a law school human rights clinics & program, church

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

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

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.

See also Gay McDougall, The Durban Racism Conference Revisited: The World Conference Against Racism Through a Wider Lens, 26 FLETCHER F. WORLD AFF. 135 (noting that the closing declaration of the NGO Forum associated with the World Conference on Racism “is a valuable document” as the

Human rights NGOs contributed significantly to the negotiation of the UN Charter,\textsuperscript{22} and to virtually all, if not all, the UN’s major international human rights law instruments from the Universal Declaration of Human Rights to date.\textsuperscript{23} 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 UN system.\textsuperscript{24}

\textsuperscript{22} See, e.g., William Korey \textit{NGOs and the Universal Declaration of Human Rights: "A Curious Grapevine"} 19 (ST. MARTIN'S PRESS: NEW YORK, 1998) (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, 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 Korey, \textit{NGOs and the Universal Declaration of Human Rights, supra} note 22 (quoting NYT, Dec. 8, 1948)

\textsuperscript{23} See, e.g., Reference document on the participation of civil society in United Nations conferences and special sessions of the General Assembly during the 1990s Version 1 August 2001 (document prepared by Office of the President of the Millennium Assembly 55th session of the United Nations General Assembly) (www.un.org/ga/president/55/speech/civilsociety1.htm) This document also outlines rules and procedures for NGO accreditation, modalities for NGO participation, and NGO documentation for various UN meetings and conference during the 1990s and illustrates the significant participation and impact of NGOs on protecting human rights through the UN system. Id.

\textsuperscript{24} On the occasion of the UDHR’s 60\textsuperscript{th} Anniversary, UN Secretary General Ban Ki-Moon noted:

\begin{quote}
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. (transcript of videolinked remarks at the 61st UN Department of Public Information-NGO Conference, Sept. 3 2008, at UNESCO in Paris. www.un-ngls.org/spip.php?article614 and www.un.org/dpi/ngosection/conference/home.shtml (last visited March 7, 2009)

UN Secretary General Kofi Annan, at the closing session of the 58\textsuperscript{th} Annual UN Department of Public Information-NGO Conference, remarked:

\begin{quote}
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.
\end{quote}


Former UN Secretary General Boutros Boutros-Ghali stated that even “a cursory examination of the participation of NGOs in the decision-making systems and operational activities of the United
This part of the article explores the legal bases for the relationship between the UN 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 UN-affiliated NGOs.

a. Legal Bases for NGO Involvement with the UN.

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

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. [emphasis added]

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

As domestic and international human rights NGOs proliferated from the 1950s to the 1990s, and they significantly contributed to the UN’s work, the UN 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 UN Charter”. This resolution, which

Nations shows without any doubt that NGO involvement...has far exceeded the original scope of” the Charter provisions permitting NGO participation. (n152)


26 UN Charter, supra note xx, art. 71. Article 71 appears to have been primarily focused on relations between the UN 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.

27 By 1946, ECOSOC had granted consultative status to approximately 41 NGOs, while today over 3,000 are accredited. NGOs with consultative status are listed at www.un.org/esa/coordination/ngo

See Bloem, Agazzi & Dam, The Conference of NGOs (CONGO), supra note 25, at 5, 6.

28 Id.

defines NGO as "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 in 2006.\(^{30}\) NGOs, whose NGO accreditation applications are reviewed by the ECOSOC Committee on NGOs,\(^{31}\) provide input to the UN at public meetings, during international conferences and their preparatory meetings, and informally. NGOs may offer insights on all critical matters concerning the UN’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 UN on an ad hoc basis, or through procedures established by various UN affiliated bodies.\(^{32}\)

The 1993 Vienna Declaration and Program of Action Further provides further authority for NGOs to participate in UN affairs, proclaiming that NGOs “should be free to carry out their human rights activities, without interference, within the

Resolution 31 of 1996 establishes three categories of consultative status 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 (c) Roster inclusion, for NGOs whose competence enables them to make occasional and useful contributions to the work of the UN and that are available for consultation upon request. The resolution also formulated guidelines for written statements, oral statements and meeting attendance. See also Prodi & Kinnock, The Commission and Non-Governmental Organisations: Building a Stronger Partnership, (discussion paper of the European Commission noting that Council of Europe accredits NGOs but the European Commission does not) http://ec.europa.eu/civil_society/ngo/docs/communication_en.pdf at, 11, 12) (last visited Mar. 2, 2009)

\(^{30}\) Resolution 1296 supersedes ECOSOC Res. 288 B (X) of Feb. 27, 1950. The Millennium Declaration (adopted by resolution 55/2) offered a new mandate to enhance the NGO relationship:

We also resolve [t]o develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication. (para 20); We resolve . . . [t]o strengthen further cooperation between the [UN] 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. (para 30); 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. (para 30)

The follow-up resolution to the Millennium Summit (A/RES/55/162) states:

Calls for enhanced partnership and co-operation 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. (para 14)

\(^{31}\) The Committee on NGOs is an ECOSOC standing committee with 19 member states. It meets two to three times a year in New York. It may suspend or withdraw consultative status, particularly for unsubstantiated or politically motivated acts against Member States of the UN incompatible with those purposes and principles”.

\(^{32}\) Among various U.N. specialized agencies that grant accreditation for NGOs working in the agencies’ areas of specialization are: the International Labor Organization (ILO) (Geneva), the Food and Agriculture Organization of the UN (FAO)(Rome), UN Educational, Scientific and Cultural Organization (UNESCO) (Paris), the World Health Organization (WHO)(Geneva), the International Telecommunication Union (ITU)(Geneva), the International Maritime Organization (IMO) (London), the World Intellectual Property Organization (WIPO) in Geneva, the UN Industrial Development Organization (UNIDO) (Vienna), and the UN Conference on Trade and Development (UNCTAD) (Geneva). (http://esa.un.org/coordinate/ngo/new/index.asp?page=faqs) (last visited Mar. 3, 2009)
framework of national law and the Universal Declaration of Human Rights.\textsuperscript{33} 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."\textsuperscript{34} 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."\textsuperscript{35}

\textbf{b. Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO)}

A principal NGO membership organization associated with the UN since the 1940s, the Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO)\textsuperscript{36} has divided the historical relationship between the UN and NGOs into three "generations". In the first generation, from 1945 to the end of the Cold War, the UN Economic and Social Council (ECOSOC) permitted formal relationships principally to a handful of international NGOs.\textsuperscript{37} In the second generation, a wave of national NGOs emerged, and the UN modified its consultative process to permit them to become accredited\textsuperscript{38} In the third generation, accredited international and national NGOs, individually and in concert with each other, were able to contribute even more to the work of the UN.\textsuperscript{39}

The NGO Section of the UN Department of Economic and Social Affairs (DESA), through a network called “United Nations NGO Informal Regional Network” (UN-NGO-IRENE), coordinates collaboration between the UN and NGOs.\textsuperscript{40} The UN-NGO-IRENE network interfaces between the UN headquarters in New York, UN organizations at the country level and non-UN organizations including academia, NGOs, business organizations and philanthropic foundations.\textsuperscript{41} 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

\begin{itemize}
\item \textsuperscript{34} Id. (emphasis added)
\item \textsuperscript{35} Id.
\item \textsuperscript{36} In 1948, CONGO was founded as an independent, international, non-profit membership association of NGOs. Since then CONGO has facilitated NGO participation in UN debates and decision-making. It assists NGOs to support the UN Charter and enhance their relationship and cooperation with the UN and provides a forum for NGOs to study, plan, support and act on issues relating to UN principles and program. Members represent a wide range of human rights interests. (www.ngocongo.org/index.php?what=about; www.ngocongo.org/index.php?what=about&start=1)
\item \textsuperscript{37} Id.
\item \textsuperscript{38} Id.
\item \textsuperscript{39} Id.
\item \textsuperscript{40} www.un.org/esa/coordination/ngo/
\item \textsuperscript{41} 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,
\end{itemize}
interactive website forum for NGOs to share and discuss best practices.\(^{42}\)

c. **The United Nations Duty to Consult NGOs.**

The United Nations, other inter-governmental bodies, and domestic
governments facilitate NGO participation in those bodies’ deliberations,
negotiations, and decision-making.\(^{43}\) 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 permissive.\(^{44}\)

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.\(^{45}\) 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 UN Security Council.\(^{46}\) NGOs
are routinely consulted in proceedings of the UN treaty bodies, the General
Assembly,\(^{47}\) the UN Forum on Forests, the Food and Agricultural Organization,
the World Health Organization, the International Labor Organization, ECOSOC
and the Human Rights Council.\(^{48}\)

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”,\(^{49}\) which is mandatory language, and not permissive, as it would be if it

\(^{42}\) Id.

\(^{43}\) *See generally infra at xxx*

\(^{44}\) *See generally Steve Charnovitz, Nongovernmental Organizations and International Law, supra
note 11 at 368 – 372* (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 mean "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, and stakeholder dialogues, and general NGO access. *Id*

\(^{45}\) *See id.*

\(^{46}\) *Id.*

\(^{47}\) In 2003, UN Secretary General Kofi Annan appointed a Panel of Eminent Persons on United
Nations-Civil Society Relations to examine "the modes of participation in UN processes of non-
governmental organizations, as well as of other non-governmental actors such as the private sector
and parliamentarians." daccessdds.un.org/doc/UNDOC/GEN/N04/376/41/PDF/N0437641.pdf?OpenElement. In response to the Panel's findings, the UN 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." Further,
the Secretary General agreed to create a fund to underwrite expenses for developing countries NGOs
to attend intergovernmental meetings. For a review of the Panel's reports and work, see

\(^{48}\) NGOs have been consulted less routinely in proceedings of other inter-governmental bodies such
as the UN General Assembly, the International Monetary Fund, and the World Bank. *See Steve
Charnovitz, Nongovernmental Organizations and International Law, supra note 11 at 368 – 372.

\(^{49}\) *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),
said “may” be admitted.

Furthermore, in 1999 the UN General Assembly promulgated a Declaration 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.”

Similarly, the *opinio juris* prong as been satisfied. Furthermore, numerous legal scholars and practitioners have supported a right to consult.

5. **Activities (Selected) of Human Rights NGOs in the International and Domestic Arenas**

a. **NGO participating in United Nations Conferences**

Since the San Francisco conference in which NGOs significantly influenced world powers in shaping the UN, NGOs have continued to play a major role in UN conferences and meetings at all levels.

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”

50 *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society*, supra note 18.

51 The UN 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.


52 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. Steve Charnovitz, *Nongovernmental Organizations and International Law*, supra note 11 at 371 (citing Janne Elisabeth Nijman, *The Concept of International Legal Personality* 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, *Introduction to International Law, The International Court of Justice and Nuclear Weapons* 1, 10 (L.B.D. Chazournes & P. Sands eds., 1999) (seeing 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*, 6 *GLOBAL GOVERNANCE* 191, 205 (2000) (suggesting that UN Charter Article 71 has risen to customary international law))

b. NGOs Presenting Shadow Reports to United Nations Treaty Bodies.

Pursuant to various UN international human rights law treaties, states parties are required to report periodically on how the states are complying, or not complying with the human rights mandates incorporated into the treaties.\textsuperscript{54} States submit their reports to UN “treaty bodies”, which are groups of experts acting in their personal capacities, who review the states’ reports and render “concluding observations” on whether the states comply or fail.\textsuperscript{55} 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” that the treaty bodies consider as counter to states’ own reports.\textsuperscript{56}


\textsuperscript{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”. (www.unhchr.ch/html/menu3/b/a_ccpr.htm) (last visited Mar. 2, 2009)

\textsuperscript{55} The eight UN 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. 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.

\textsuperscript{56} The Program in International Human Rights Law (PIHRL), based at Indiana University School of Law—Indianapolis, has authored numerous Shadow Reports related to human rights abuses in many countries. The PIHRL has traveled to Geneva and New York and formally and informally presented their Shadow Reports to UN Treaty Bodies, and have witnessed their Shadow Report issues incorporated into questions that UN Committee Experts asked government representatives in hearings and that Committees incorporated into their Concluding Observations post-hearings. The PIHRL submitted and presented Shadow Reports to the UN Human Rights Committee as follows: Australia (rights of women, March 2009), Chad (rights of women and girls, March 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). www.indylaw.indiana.edu/humanrights/UNshadow.html. The PIHRL submitted Shadow Reports to the UN Race Discrimination Committee as follows: USA (discrimination against Muslims, Arabs, Middle Easterners, & South Asians, 2008); USA (Hurricane Katrina, 2008); Nepal (Dalit People, 2000). \textit{Id.} 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 www.law.harvard.edu/programs/hrp/, www.law.columbia.edu/center_program/human_rights, indylaw.indiana.edu/humanrights/shadowreports/USA%20Sexual%20Minorities.pdf & www.indylaw.indiana.edu/humanrights/UNshadow.html (Harvard Human Rights Program & Indiana submit separate shadow reports on Panama during same Human Rights Committee session; Stetson law student participated in Indiana report to Race Committee). NGOs
Human rights NGO shadow reports have positively impacted the work of the treaty bodies, whose members referenced shadow reports when posing questions to or raising issues with government representatives who appear for hearings. Treaty body members may 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 will incorporate into their concluding observations recommendations raised by NGOs in NGO shadow reports. NGOs are valuable resources for information at treaty body hearings.\textsuperscript{57}

Human rights NGOs participate in treaty enforcement by urging states to include the citizenry in the compliance process. Human rights NGOs can encourage states to disseminate copies of the relevant treaties, to draft overdue government periodic reports and disseminate them widely, to hold broad consultative sessions and permit NGO and other citizenry feedback on issues such as withdrawing treaty reservations, to disseminate treaty body concluding observations, and to fund NGO participation at treaty body hearings in New York or Geneva. Most of all, NGOs can encourage governments to ensure that all persons are afforded full rights under applicable human rights treaties and norms.

c. United Nations Bodies & “Major Groups”—The UN Forum on Forests

The United Nations Forum on Forests (UNFF)\textsuperscript{58} is one of many UN bodies that reaches out to NGOs and other non-state actors for participatory guidance and consultation.\textsuperscript{59} The UNFF is charged with protecting the world’s exhaustible forests from environmental sustainability and human rights perspectives. The UNFF identified a range of nine forest-related stakeholders, called “Major

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\textsuperscript{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 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. Moralez, \textit{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 (2000) (reflections by one of three DePaul law students who accompanied the author to these hearings in Geneva and worked with the Hong Kong Human Rights Monitor and other NGOs).

\textsuperscript{58} The UN Forum on Forests was created by ECOSOC Resolution 2000/35 as a UN 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, \textit{inter alia}, the Rio Declaration, the Forest Principles, Chapter 11 of Agenda 21 and other milestones of international forest policy. (www.un.org/esa/forests/about.html)

\textsuperscript{59} For discussions of other UN bodies that encourage or accept NGOs cooperation or participation, see \textit{supra} note xxx and text accompanying note.
Groups”, who participate in UNFF proceedings as a key component of the body’s work. NGOs are one the Major Groups, all of which are encouraged to participate actively in virtually all aspects of UNFF work. Major Groups are invited to full-day multi-stakeholder dialogues (MSD) as part of UNFF regular sessions, are entitled to submit statements for the record, and can intervene orally at UNFF meetings.

UNFF work is directly related to human rights because governmental and non-state actor policies and practices regarding forests may threaten economic, social, cultural, civil and political rights of poor, marginalized indigenous forest-dependent peoples. The UNFF is charged 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

60 The other eight Major Groups are women, children and youth, indigenous people, local authorities, workers and trade unions, business and industry, scientific and technological communities, farmers and small forest landowners. Many of the other Major Groups are represented by NGO leaders, and many of the representatives are heavily involved with NGOs independent of their involvement with the Major Groups.

61 See UNFF, Major Group Accreditation, “Major groups organizations that are accredited with the Economic and Social Council of the UN (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.” www.un.org/esa/forests/participation.html#1; www.un.org/esa/forests/contacts-major_groups.html; www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter23.htm

62 For discussions about human rights violations related to forests, see, e.g., 2007 Annual Report of the Forest Peoples Programme, Support Forest Peoples’ Rights www.forestpeoples.org/documents/ann_rep/fpprog_ar_07.pdf. 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.

NGOs such as Global Witness and Partnership-Africa Canada participate in and played a major role in the creation of the Kimberley Process, which seeks 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 UN Security Council resolutions, the Kimberley Process Certification Scheme and other norms. (see www.kimberleyprocess.com/background/index_en.html) The scheme requires rough diamonds transported internationally to be in tamper-resistant containers accompanied by Kimberley certificates. For a discussion of the Kimberley process and the role of NGOs, see generally Ann C. Wallis, Data Mining: Lessons from the Kimberley Process for the United Nations’ Development of Human Rights Norms for Transnational Corporations, 4 Nw. U. J. Int’l Hum. Rts. 388, 397-398 (2005) (discussing conflict diamonds, NGOs & human rights in Angola, Democratic Republic of the Congo, & Sierra Leone)

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67 The UN Torture Committee and the UN Women’s Committee may on their own initiative initiate an “inquiry” if they receive “reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.” www2.ohchr.org/english/bodie s/petitions/index.htm#inquiry. The inquiry procedures and standards are set out in Article 20 of the Convention Against Torture (www2.ohchr.org/english/law/cat.htm) and articles 8 - 10 of the Optional Protocol to CEDAW (www2.ohchr.org/english/law/cedaw-one.htm). For a discussion of complaint procedures within the United Nations system, see FACT SHEET NO. 7/REV.1, COMPLAINTS PROCEDURE (www2.ohchr.org/english/law/docs/Part_of_FS_No.7.pdf).

Law schools that have created human rights programs or clinics with these objectives include Indiana University School of Law – Indianapolis,69 Harvard Law School,70 Columbia Law School,71 DePaul,72 University of New South Wales,73 the University of Hong Kong (HKU) Faculty of Law,74 and others in the


Professor Henry Steiner has aptly described the university's role in the human rights movement as one that best focuses on interdisciplinary teaching and scholarship. Moreover, by naturally favoring this academic focus, the university guarantees that the teaching and scholarly activities carried out in the university setting will include a "significant critical component." Professor Steiner defines this . . . as "an approach that challenges and problematizes some fundamental aspects of the movement rather than remains securely within its basic choices or dominant assumptions." Thus, unlike many NGOs, [law school human rights clinics] tend to be more "open to rethinking [human rights] norms and institutions in light of a half century's experience and evolving conditions, ideas and needs." . . . [M]any conventional human rights NGOs, especially those operating at the grassroots level, do not have either the time or the wherewithal to engage in extended academic reflection and critique.


69 The missions of the Indiana PIHRL, which was founded by the author in 1997, include: (1) to further the teaching and study of international human rights law at Indiana University School of Law at Indianapolis; (2) to promote scholarship in 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. (www.indylaw.indiana.edu/humanrights)

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. 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 UN International Criminal Tribunal for the Former Yugoslavia, advocated before the UN, hosted UN and national leaders at campus conferences and seminars, and helped train judges in the U.S. and abroad.

The PIHRL through its human rights activities carries out its primary educational mission. Students receive academic credit for overseas and domestic intern work, and for researching for criminal defendants, shadow reports, and government, NGO or UN position papers.

70 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”. www.law.harvard.edu/programs/hrp/ The Harvard Program was founded in 1984, and supported two overseas human rights internships for the author, who was a Harvard student at the time.


72 DePaul’s International Human Rights Law Institute (IHRLI) was founded in 1990 and engages in human rights law research, documentation, training and advocacy. http://www.law.depaul.edu/centers_institutes/ihrli/about_us/ (last visited Mar. 8, 2009)

73 The Australian Human Rights Centre (AHRRC) is an inter-disciplinary research and teaching institute based in the Faculty of Law at the University of New South Wales (UNSW). Since it was founded in 1986, it has sought to increase public awareness about human rights procedures, standards and issues within Australia and internationally community. It researches contemporary human rights
f. Human Rights NGOs outside the UN and other Inter-Governmental Systems

Many thousands of local human rights NGOs in many different countries have no relationships with and seek no involvement with the UN or any other intergovernmental 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 work, but 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 is:

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.

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. But, it tends to work on these issues through a domestic U.S. and Indiana lens, referring to local criminal law or local social services, rather than referring to international human rights law, even though the US is bound to comply with the ICCPR and other international human rights law.

Domestic violence implicates not only domestic law, but also it implicates the internationally recognized rights to life, liberty, security, integrity, health, and a wide range of other international law protections. That a group does not adopt the name “human right NGO” or does not use international human rights law “language” does not negate the nature of that group as being a human rights NGO. Local private social service agencies and other similar groups are “human rights

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74 The HKU 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 author is Founding Associate Director of the HKU Centre for Comparative & Public Law.

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 (2006) (discussing Georgetown’s International Women’s Human Rights Clinic and its overseas NGO partners—Law & Advocacy for Women—Uganda; Leadership and Advocacy for Women in Africa—Ghana Alumnae, Inc.; and Women’s Legal Aid Centre in Tanzania)


77 ICADV’s training and resource materials point towards the local, domestic environment rather than towards international human rights law treaties. See www.violenceresource.org/home.htm.
NGOs” whether or not they identify themselves as human rights NGOs.\textsuperscript{78}

III. Ten Characteristics of Successful NGOs

Successful human rights NGOs share many characteristics in common, far more than the ten listed below. However, in analyzing successful NGOs, the characteristics identified and analyzed herein stand out as critical for human rights NGOs that seek to protect human rights in their chosen area(s) of emphases. 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 chances are far greater that an NGO will be successful if it incorporates these characteristics into its structure and operations. These characteristics, which overlap and are not exhaustive, relate to the human rights NGOs’ mission, adherence to human rights principles, legality, independence, funding, non-profit status, transparency and accountability, responsiveness and adaptability, cooperative and collaborative nature, and competence.

1. Human Rights NGOs Must Have A Clear Mission to Promote and Protect Human Rights, and be Result-Oriented

An NGO’s obligation to protect human rights is an obligation of result,\textsuperscript{79} which means that to fulfill its goal, the NGO must indeed protect human rights.\textsuperscript{80} 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. For an obligation of result, steps, attempts or tries won’t suffice.

\begin{itemize}
\item 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, helping to protect neighbors’ right to vote, conditions in a local prison, or fair trials in local courts.
\item The United Nations Economic Committee, that oversees implementation of the UN Covenant on Economic, Social and Cultural Rights, discusses the relationship between obligations of conduct and obligations of result as follows:
    \begin{itemize}
    \item 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.
    \item 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."
    \end{itemize}
\end{itemize}


\textsuperscript{79} 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.
All human rights NGOs advocate on behalf of human rights. They all attempt to convince some actor—a local or national government, an inter-governmental organization like the UN, or other non-state actors—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 is seeking to protect. The NGO could be committed to advocating on behalf of prisoners of war, submitting reports to the UN human rights treaty bodies, proposing plans to promote development in countries lacking food, health care or infrastructures, raising money for humanitarian aid, combating torture, building homes for homeless, or many other activities.

A human rights NGO’s objectives must be clearly defined and focused. They cannot be so broad as to offer no guidance to their workers, to victims seeking assistance, to donors wanting to know to what they are contributing, to other NGOs seeking collaboration, or to governments that license or monitor. 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, which would be an unreasonable goal. And the objectives must not be overly narrow, since human rights overlap and are interrelated and do not exist in a vacuum.\(^{81}\)

Human rights NGOs that skip from project type to project type and are otherwise unfocused appear to be unpredictable, unable to acquire expertise in a particular substantive area, and less attractive to donors.

2. Human Rights NGOs Must Adhere to Human Rights Principles\(^{82}\)

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

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\(^{81}\) Vienna Declarations and Program of Action, paragraphs 5 provides:

(5) 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.


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. See Steiner, supra note 60, at 5-15, 61-76 (discussing the characteristics of human rights NGOs). I do not think the hazy distinctions drawn by INGOs are helpful; they still leave open why certain groups are not categorized as human rights NGOs.
rights instruments, and customary international law. An NGO that does not comply with human rights norms is hypocritical, loses credibility and can become ineffective. It risks giving the field a bad name, 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 not only must state that they abide by human rights norms in their structure and internal operations, and 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. Non-compliant NGOs can have their accreditation terminated.83

NGOs pledge to be democratic,84 consistent with the human rights to representation. NGOs must also comply with UDHR rights to non-discrimination in hiring and firing employees and volunteers, and in assisting constituents. This can prove challenging when cultural, societal, religious differences—distinctions based on gender or class—would ordinarily not permit mixing. For example, in societies where tribal or ethnic differences are the bases for conflict, mixed-membership NGOs may be difficult to form and operate, given looming questions of impartiality, suspicions and distrust.

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

A human rights NGOs 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 NGO status due to illegal status and conduct under domestic or international law. Mafia, triads, gangs could also be disqualified. Anarchists who used violence to demonstrate against the World Trade Organization’s first Ministerial Conference in the United States in 1999, or against the annual World Economic Forum in Davos, Switzerland would be disqualified because of their conduct, and guerilla or rebel groups may be disqualified because they may not be legally formed and/or may engage in unlawful conduct.

Many countries require NGOs to register as non-profit organizations. In some

83 For example, for an NGO to become accredited with the United Nations DPI, “the NGO must support and respect the principles of the Charter of the UN 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”. (ECOSOC, para 25). For example, the NCCI holds members “bound by” a set of conduct principles, including that members operate free from religious and political agendas, operate free from economic gain, and are held accountable.

84 The Coordination Committee in Iraq (NCCI), which is an independent initiative launched by Baghdad NGOs in April NCCI, has a General Assembly composed of all NCCI members. The General Assembly is the primary decision maker and must identify issues for developing NCCI’s strategic plan. It votes on decisions, elects the Executive Board, approves the creation of working groups and endorses the appointment of the Executive Coordinator.
countries, the registration process is fairly simple, and NGOs do not have great difficulty in registering. In other countries, the governments impose significant hurdles to NGOs getting registered. In countries where NGOs face security and other difficulties, they may operate secretly, without registration. This may render those groups illegal under their national law, and would make it very difficult to carry out their objectives because, for example, they could not openly raise funds or advertise for new members. Their capacity could be severely diminished, which begs the question of whether it is better to have a crippled NGO than to have no NGO at all.

Human rights NGOs should have “clean hands”. They should be law-abiding institutions, 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. NGOs should not accept contributions illegally or accept contributions from donors who acquired the funds illegally.

4. Human Rights NGOs Must be Independent and Non-Political

a. Human Rights NGOs should serve 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 people the human rights NGO was organized to protect. NGOs administrators engage in a wide range of activities, not unlike that of for-profit administrators, and 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”.

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85 For example, on January 6, 2009, the Ethiopian Parliament passed into law the Proclamation for Registration and Regulation of Charities and Societies to regulate NGO creation, fundraising, membership of trusts and endowments. (www.crdaethiopia.org/Documents/Proclamation%20Final%20Draft.pdf – Must acquire the final enacted version.) It restricts 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. See Hanibal Goitom, New Law on Charities Passed Despite Objections, IRIN, Jan. 6, 2009, available at allafrica.com/stories/printable/200901070659.html (Jan. 13, 2009); see also Equality Now, Ethiopia: Proposed New Law Threatens to Shut Down Non-Governmental Organizations (December 2008) (http://equalitynow.org/english/actions/action_2205_en.html) (last visited Mar. 8, 2009)

Registration and maintenance problems have occurred in many other jurisdictions, including Hong Kong, Malaysia, Russia, Kyrgyzstan, Cuba, Zambia, Zimbabwe, and Egypt.

86 Multiple labels exist for “fake NGOs” or “rogue NGOs”. 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),
b. Human rights NGOs collaborating and cooperating with governments, political groups, and others.

Being independent and non-political does not mean that an NGO cannot collaborate with or support a political group or governmental agency, or cannot accept funds such groups. Many NGOs assist governments (e.g., human rights NGOs often provide humanitarian, consulting and other services to governmental agencies), and many NGOs collaborate with political groups on a wide range of human rights issues (e.g., the Obama campaign pre-election solicited and feedback from NGO representatives and individuals who were part of Obama Steering Committee and Policy Groups).

Furthermore, NGOs brief governments on important matters involving human rights domestically and globally.

However, governments can 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 US government’s position on political matters. Such an NGO would be acting as an extension of U.S. foreign policy, and would find it difficult to criticize or take positions opposite of the US government. NGOs must be loyal to their causes, which transcend loyalties to their donors and themselves.

c. Human Rights NGOs Must Not Be Wedded to Donors

As discussed, human rights NGOs must be independent and non-political. NGOs should not accept funding from sources that attach conditions to the

Other types include MANGOs (man controlled NGOs), BINGOs (business controlled), RINGOs (reactionary controlled), TINGOs (tribal controlled) and DONGOs (donor-organized 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.

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

For example, NGOs are routinely consulted by the US government in the preparation of the annual Human Rights Reports the State Department publishes outlining the human rights situations in countries around the world. See, e.g., United States Bureau of Democracy, Human Rights and Labor, 2008 Country Reports on Human Rights Practices: Introduction, available at www.state.gov/g/drl/rls/hrrpt/2008/frontmatter/118984.htm (noting that information for reports drawn “from governments and multilateral institutions, from national and international nongovernmental groups, and from academics, jurists, religious groups, and the media.”)

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 US government soldiers on the battlefield as they were in Iraq, and the life of a journalist is literally in the hands of the US combatants, will the journalist be able to criticize his protector, or will he be biased by loyalty to his protector? See, e.g., COLUM. JOURNALISM REV., article on embedding, NGOs, like journalists, must not be self-serving.

See supra section III(4)(b).
funding, jeopardizing the NGO’s independence in decision-making, internal operations, or programs or projects. For example, until January 2009, the US government restricted funding to NGOs providing health-related human rights services overseas if those NGOs advocated for or provide abortion-related services, even if the abortions were provided using the NGOs own, non-US resources. This restricted foreign non-governmental organizations (NGOs) that receive U.S. family planning assistance from advocating for or providing abortion-related services, even with their own, non-U.S. resources. If the US is the only donor for a particular NGO, that NGO would be completely wedded to the US and its policies.

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

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91 The phenomenon where donors to NGOs, and even some NGOs themselves seek to dominate, manipulate and control NGOs’ work has been referred to as “neo-colonialism”. See, e.g., Makau Mutua articles. Not all instances of donor “attaching strings” to NGO funding should be refused. NGOs should consider whether accepting a donation might jeopardize the NGOs independence and other characteristics that NGOs should possess.


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.” See Rob Stein and Michael Shear, Funding Restored to Groups That Perform Abortions, Other Care, WASH. POST, p. A03, Jan. 24, 2009. (www.washingt


94 Similarly, NGOs should not attach conditions to projects and programs they offer beneficiaries.
governments, which translates into a subsidy of the NGOs. NGOs in many jurisdictions must be registered with the government, and may feel pressure to comply with government demands for fear of their licenses being 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 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 donations on the NGO’s advocacy positions or practices. The NGO should avoid actual impropriety and the air of impropriety.

5. Human Rights NGO Funding Must Be Adequate & Appropriate

NGO funding must be adequate, appropriate, and appropriately managed to carry out its projects and programs.

a. 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. Some large, multi-national NGOs may need millions of dollars to carry out its mission each year, while some local NGOs may only need $100.

b. Appropriate Funding and Appropriate Managing of Funding

Several human rights NGOs lost sizeable amounts of money in the Bernie Madoff investment fraud scandal. This has begged the question of what duty an NGO has not to risk NGO assets in investments, and whether NGO duties equal

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95 In December 2008, Bernard L. Madoff was arrested Dec. 11 after admitting that a hedge fund he ran was essentially a $50 billion "Ponzi" scheme that bilked investors. See Jacob Berkman, Madoff scandal rocks Jewish NGOs, THE JERUSALEM POST, www.jpost.com/servlet/Satellite?pageName=JPost/JPArticle/ShowFull&cid=1228728207674.

MoveOn.org Civic Action (formerly MoveOn.org) is a U.S. nonprofit. www.moveon.org/about.html. It sponsored a fundraiser for the following NGOs harmed by Mr. Madoff’s admitted illegal behavior: (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; (a) Human Rights Watch that seeks to “build intense pressure for action and raise the cost of human rights abuse”; (c) Advancement Project, that is committed to racial justice, voters, education and immigrants’ rights; and (d) The Center for Constitutional Rights, that was founded in 1966 by civil rights attorneys and is committed to the creative use of law as a positive force for social change in diverse areas such as governmental illegal wiretaps to Guantanamo. (See e-mail from Eli Pariser, MoveOn.org Civic Action, Dec 29, 2008; see also MoveOn.org Civic Action website https://civ.moveon.org/donatec4/thankyou.html) (on file with author)

At least two foundations announced they closed because they lost all their money through Madoff investments: (a) Robert I. Lappin Foundation, Salem, Massachusetts (announced $8 million loss on Dec. 12, 2008); and (b) the Chais Family Foundation (announced on Dec. 14, 2008). See also E-mail from Alma Montclair, ACLU Director of Administration and Finance to author, Dec. 23, 2008, (on file with author) (ACLU lost $850,000 from swindled donor; also noting that “As Director of Administration and Finance, it’s my job to make sure that that preparation includes prudently managing our organization’s resources.”)
those in the for profit world.\footnote{Various Codes of Conduct address the issue of fiduciary and other responsibilities to donors, human rights victims who are the intended beneficiaries, and to other international human rights law stakeholders. See, generally, infra Part IV, 1 – 11.}

6. **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 to earn profits for the NGO, staff or other stakeholders. But, that does not preclude NGOs from employing tools and mechanisms common in the profit-making business world, for example for administrative and fund-raising purposes.

7. **Human Rights NGOs Must Be Transparent & Accountable**

   To be effective, human rights NGOs must be transparent and accountable.\footnote{Hearty discussions have ensued about internal and external NGO accountability. See, e.g., NCCIO, Code of Conduct, # 4 (“We hold ourselves accountable in the provision of assistance to our beneficiaries”). The UN Department of Public Information calls for NGOs to have statutes/by-laws providing for a transparent process of making decision, elections of officers and members, and ECOSOC calls for NGOs to be accountable to its members.}

   Transparency would help avoid an air of impropriety and inhibit actual impropriety, as 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, people 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, the public at large.

   Transparency and accountability do not require a human rights NGO to open all its financial operational and other internal documents all the time. It requires an NGO to be cognizant of the sources of its funding, and to inform interested stakeholders about internal decisions and records that would offer insight into agendas an NGO might have that might conflict with the needs of the NGOs’ constituents, or that may conflict with donor or governmental requirements.\footnote{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. (www.clintonfoundation.org) (last visited Mar. 2, 2009). For transparency to protect the public good, Obama’s staff examined the Foundation’s activities and finances, including a list of all donors, to determine if they would preclude Senator’s Clinton’s appointment. See Peter Baker & Helene Cooper, Clinton Vetting Includes Look at Mr. Clinton, NYT, Nov. 16, 2008 www.nytimes.com/2008/11/17/us/politics/17memo.html?partner=rss&emc=rss&page wanted=all. On December 18, 2008, the Clinton Foundation listed its donors to date. See Press Release, William J. Clinton Foundation Publishes Names of All Contributors on Foundation Website: Foundation provides the names of all contributors since its inception in 1997 (available at www.clintonfoundation.org/contributors/pages/page_1.html) (last visited Mar. 2, 2009).}

8. **Human Rights NGOs Must Be Adaptable and Responsive To Change**

   An effective NGO needs to be open-minded, creative, and extremely flexible
and 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 human rights areas of concern, and educational opportunities.

a. Technology

To carry out their missions today, many NGOs rely on the internet, which is a relatively new phenomenon. Even in the least 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 telephones, mail, fax, easier international travel, and tele-conferencing.

A relatively new innovation in the electronic sphere is social networking, upon which NGOs increasingly rely. Social networking consists of individuals and groups who connect 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, 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 share 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.99

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 blogs of interest to them, and may even be able to comment on the blogs of the NGOs. Blogs are used to share information, to stimulate discussion and to prompt action.

Many other NGOs are adapting to the 21st Century and adopting

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99 For example, the Campaign to Ban Torture advertised online for this position:
The Campaign to Ban Tortures 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 goal of this position will 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.

100 Groups such as NetSquared seek to help NGOs use “community empowering capabilities of the Internet to increase their impact and achieve social change”. (www.netsquared.org/about/netsquareds-goals) NetSquared, has goals to help “hundreds of thousands of” NGOs to: Improve/increase advocacy efforts; find new supporters around the globe; reengage the base; have greater influence on national and global policy; get more and better press; increase value for NGO supporters; reinvent the possibilities of global collaboration; build more and better partnerships; help NGO constituents become more active and accomplish more through Internet communities.”

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. hub.witness.org/en/AboutHub. Individuals and groups can connect through The Hub to share human rights information. Id. The Hub is a project of WITNES, which is a human rights NGO that uses video and online technologies to expose human rights violations around the globe. Id. (citing www.witness.org/)

101 LGBT and other NGOs have long debated whether sexuality discrimination protections should be afforded to transgendered persons. See, e.g., Paul Schindler, Tammy Baldwin Withholds Name From ENDA Stripped of Trans Protections, Sept. 28, 2007, GAY CITY NEWS, (www.thetaskforce.org/T_F_in_news/07_1009/stories/12_tammy_baldwin_withholds_name.pdf) (last visited Mar. 2, 2009) (discussing how LGBT groups differ over level and timing of protection for transgendered people, as the Employment Non-Discrimination Act, or ENDA, would be considered by the U.S. Labor and Education Committee without protections for transgendered Americans that were part of 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 LGBTa with transgendered protection being sought incrementally. See id. (citing letter from Congressman Barney Frank)

Twelve groups signed a letter stating their “collective position remains clear and consistent” and they would “oppose any employment nondiscrimination bill that did not protect transgender people.” Id. (listed groups included 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 AFL-CIO)
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.  

9. Human Rights NGOs Must Be Cooperative & Collaborative

In today’s world, human rights NGOs will fail if they work only within their own community or with the constituency they serve. 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, who are charged with registering, monitoring, and granting tax and other benefits to them. Furthermore, NGOs collaborate with governments on projects and programs, and may rely on governments for aid to help the NGO carry out its mission. Similarly, NGOs cooperate and collaborate with inter-governmental organizations, such as the United Nations, that in essence vet the NGOs to help ensure their credibility and viability, and then fund them on projects, many of which involve doing collaborative work with a UN agency.

Local and international NGOs working in the same geographic and substantive areas must all 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 in theory know the extent of deprivations, but may not have physical or fiscal resources that international NGOs may have to offer. International NGOs entering local environments must take into account sensitivities, cultural and other needs of the communities they enter. International NGOs must answer to their donors, many if not most of which are not located in the local regions to be served. Those outside donors may have different notions of how funds should be spent in local areas than do local NGOs on the ground. International NGOs should be cautious about attempting to impose their will

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102 Several NGO educational programs are listed at www.gdrc.org/ngo/ngo-curriculum.html, including: Cass Business School (London, Postgraduate Diploma & Masters in NGO Management); Rutgers University (New Jersey, USA, Non-Profit / NGO Management and Development); School for International Training (Vermont, USA, Non-Profit / NGO Management & Development); Imperial College at Wye (UK, NGO Management); International NGO Training and Research Centre (INTRAC) (United Kingdom, Short Course Training Programme for NGO Staff). See also NGO Management Courses in India www.indiaedu.com/career-courses/ngo-management/; NGO Management School – Switzerland www.ngoms.org/courses.htm.

This webpage cites the London School of Economics as offering 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. Id. (citing www.lse.ac.uk/collections/CCS/study/msc_develop_countries.htm). 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.

103 Inter-governmental organizations “vet” through NGO accreditation. National governments “vet” NGOs when determining whether to bestow tax exempt status and other benefits.
locally, which could alienate the victims sought to be protected. International NGOs might find themselves competing with local NGOs for the same donations, diminishing the efficacy of the local NGOs.

NGOs must cooperate with media that can be used to help disseminate information about human rights abuses and remedies, and must cooperate 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 can work together, the better, as they work to promote and protect human rights.104

10. Human Rights NGOs Must Be Competent

To be effective, NGOs must be competent.105 Many NGOs demonstrate high levels of competence, and succeed in promoting and protecting human rights.106 World leaders, within the UN and otherwise, have complimented NGOs for their contributions to the promotion and protection of human rights.107

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104 For example, NGOs are on both sides of a divisive issue regarding the Durban Review Conference. Some support all states participating, while other NGOs are calling on states to boycott.

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 purpose. See, e.g., www.merriam-webster.com/dictionary/competent; www.askoxford.com/concise_oed/competent?view=uk

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 (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 (1944). nobelprize.org/nobel_prizes/peace/laureates/index.html

107 Former UN 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.” UN Department of Public Information News & Media Division, Without Vital Role of NGOs, World Could Hardly Respond to Myriad Crises, UN Secretary-General Annan Tells DPI/NGO Conference: Calls on NGOs to Assess Summit’s Outcome Document, SG/SM/10085, NGO/582, PI/1674 (Sept. 9, 2005). He 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,
If a human rights NGO is not competent, it does mean that it is no longer an NGO. It simply failed in its mission to protect human rights. For various reasons, many NGOs fail substantially, they do not reach their target goals. Some human rights NGOs fail due to their own fault because of incompetence. Some NGOs are mismanaged or are alleged to be 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, or by outsiders.

Not all competent NGOs will successfully protect human rights. Some NGOs fail because governments place insurmountable hurdles in NGOs’ paths, making it impossible for those groups to succeed, particularly if the NGO has no political or other leverage. For example, NGOs in oppressive countries may be subjected to impossibly demanding registration regulations, or government harassment, reprisal, discrimination, threats, or intimidation. Some governments may restrict the amount of outside funding for NGOs, and limit other personnel and other outside assistance. Some countries intent on quashing NGOs enact legislation that expressly limits NGO freedom of expression, association, and

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 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.

(www.un.org/News/Press/docs/2005/sgsm10085.doc.htm)

108 See infra at XXX (discussing failed human rights NGOs)

109 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 (July 29, 2002) (www.cbsnews.com/stories/2002/07/29/eveningnews/main516700.shtml)

110 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. See infra xxx. A question is 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?

111 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.

112 See, e.g., Ethiopia’s Proclamation for Registration and Regulation of Charities and Societies, supra note 85 (imposing NGO restrictions).
peaceful assembly.\(^\text{113}\)

Many individual NGOs and groups of NGOs have competently carried out their missions to protect human rights in a wide range of areas over the years. NGOs competently lobbied for human rights protections incorporated into the UN Charter and the Universal Declaration of Human Rights. NGOs successfully lobbied for a new UN position for a High Commissioner for Human Rights (that had been opposed by UN leaders and many governments).\(^\text{114}\) NGOs were instrumental in the promulgation of the Landmine Treaty,\(^\text{115}\) the Rome Treaty on the International Criminal Court,\(^\text{116}\) the Disabilities Convention,\(^\text{117}\) and many other important international negotiations that resulted in codification of international human rights law norms.

NGOs have also been successful in campaigns directed against private corporations that allegedly violated human rights, such as in the case of Nestle to stop it from pushing powered milk for babies (rather than natural milk) in the developing world, Monsanto to reduce distribution of genetically modified food, and Starbucks, when a “campaign for justice for coffee workers” caused Starbucks to adopt a code of conduct for workers in its plantations in Guatemala.\(^\text{118}\)

\(^{113}\) For example, such restrictions were recently reported in Iran: The laws on founding NGOs are often restrictive, funding is scarce, and many groups lack both experience and expertise. A majority of NGOs operate from a member’s house or flat because they cannot afford an office.”


\(^{114}\) Sheikh Hafizur Rahman Karzon, Human rights and non-state actors, THE DAILY STAR, ISSUE 225, Feb. 4, 2006 (www.thedailystar.net/law/2006/02/01/index.htm) (last visited Mar. 2, 2009) (also describing two NGO phases: the first phase is the emergence and development of NGOs international NGOs like Amnesty International; the second phase involves the creation and proliferation of domestic human rights monitoring and advocacy groups around the globe).

\(^{115}\) In 1997, in Ottawa, Canada – signing Convention on the Prohibition of the Development, Production, Stockpiling, Transfer, and Use of Anti-Personnel Mines and on Their Destruction, International Campaign to Ban Landmines. The Campaign Against Landmines, which is still a growing coalition of over 1,000 NGOs from over 50 countries, won the Nobel Peace Prize for promoting this Treaty.

\(^{116}\) ICC treaty entered into force on July 1, 2002. NGOs worldwide fought hard for the establishment of the court. The Coalition for the International Criminal Court, a network of over 2,000 NGOs, coordinated many of the efforts of a diverse NGOs from all regions of the world.


\(^{118}\) U.S. labor rights NGOs advocating for Guatemalan coffee workers lobbied Starbucks to require
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 proposed by individual NGOs, groups of NGOs, governments, inter-governmental organizations, and commentators. These Codes were designed 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, to bolster credibility of NGOs who could advertise “seals of approval” awarded under the Codes.

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 explained earlier in this article. A question remains as to how effective these Codes have been at protecting human rights. A full inquiry into their efficacy is a worthy endeavor but is beyond the scope of this Article. However, evidence pointing strongly towards these Codes being deemed successful includes the proliferation of such Codes, the adherence by longstanding, well-respected human rights NGOs, and governments using Code participation as an assessment criterion in determining whether to work with NGOs. Though the Codes discussed herein are not necessarily exemplars of well-crafted, well-implemented, or highly effective Codes, discussion of these Codes—selected from the many Codes that exist—is insightful as all these Codes contain at least some attributes that any successful human rights NGO must possess.

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-Darricarrere, Enforcing International Labor Rights through Corporate Codes of Conduct, 33 COLUM. J. TRANSNAT’L L. 663, 683 (1995). The Starbucks president initially refused to meet with the coalition and declined to adopt a code. Id. The coalition initiated a public communication campaign, “including informational picketing at Starbucks stores, to pressure the company into adopting the proposed code”. Starbucks ultimately gave in. Id.

119 In this article I refer to these codes and schemes collectively as “Codes of Conduct” or “Codes”.


122 See Simon Heap, Building Trust in NGOs, 3 INT’L J. FOR NOT-FOR-PROFIT LAW x (March 2001).

123 See supra sections III(1) – (10).

124 Many Codes other than those discussion herein were proposed and adopted by different groups
1. **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 a code of conduct to regulate their in-country activities. The Afghan Code of Conduct contains 21 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.

The Afghan Code of Conduct has been signed by over 100 of the 2,400 national and international NGOs registered to operate in Afghanistan, who share the values of being people-centered, and transparent and accountable, and are committed to sustainable positive impact, to good internal governance, to honest, integrity and cost effectiveness, to diversity, fairness, and non-inclusion. And institutions, and inclusion herein does not reflect the Author’s endorsement. For example, in 1999, the Mauritius Council of Social Services (MCOSS), which was founded as an umbrella body for Mauritius NGOs in 1965 to protect human rights for Mauritian citizens proposed a Code of Conduct for Mauritian NGOs. The Code of Conduct was never agreed upon even though the Mauritian government, UNDP and MCOSS appear to have agreed on the “urgent need to produce a new policy . . . to clarify and established relations, roles and responsibilities between NGOs, the government and the private sector thereby improving the quality of services provided by NGOs”. NGOs, according to some, lack transparency, accountability, and credibility, and need better mechanisms for funding and capacity building.

A joint effort to bolster NGO efficacy in Mauritius, was entitled **Strengthening of the NGO Sector in Mauritius (SNSM): An initiative of the Government of Mauritius, MACOSS and UNDP**. See www.ngo.org.mu/ngo_sector_mauritius.htm (last visited Mar. 1, 2009). This project recognized the need for an NGO Code of Conduct in Mauritius. (“At present, there is no agreed code of conduct for NGOs but the one produced by MACOSS in 1999 could be used and updated with current needs and development and adhered to by the NGOs themselves.”) Id. 125 The official name is the “Code of Conduct for NGOs Engaged in Humanitarian Action, Reconstruction and Development in Afghanistan”.

126 Afghan Code of Conduct, “Purposes of the Code”.


128 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. Id. at sec. I(1).

129 NGOs working in Afghanistan commit to being transparent and accountable to government and community partners, the public, donors and other interested parties. Id. at section I(3). 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. at sections I(3)3.2 & 3.3.

130 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. at section I(2).

131 Id. at section I(4).

132 NGOs working in Afghanistan commit to honesty in activities, and to practices that do not
discrimination, to building Afghan capacity, and to independence. It was reported that the Afghan government and members of the public had confused NGOs working in Afghanistan with highly paid contractors and other profitable organizations “many of which are registered as NGOs with the country’s ministry of economy.”

2. **Australian NGO Code of Conduct.**

The Australian Council for International Development (ACFID) administers a Code of Conduct for local and international human rights and development NGOs working in Australia. Approximately 80 NGOs participate in this voluntary scheme and agree to conduct their activities with integrity and accountability. The Australian Code seeks to enhance standards and 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 to sign and comply with it. Adherence to the Australian Code is required of all NGOs accredited with the Australian Agency for International Development to maintain integrity, such as corruption, nepotism, bribery, trading in illicit substances. Id. at section I(5). NGOs will accept funds or donations only from those whose aims are consistent with NGOs’ mission and which do not undermine NGOs independence and identity. Id. 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, including providing opportunities for the underserved, the vulnerable, the disabled, and other marginalized persons, and providing for affirmative action. Id. at section I(6).

NGOs working in Afghanistan are: to help build Afghan capacity to understand needs, establish priorities, and take effective action to ensure that Afghans meet humanitarian, development and reconstruction needs; to consult with local communities and the government when designing and implementing projects; to design projects to be taken over by target communities or the government to enhance sustainability; to prioritize Afghan nationals in recruiting, hiring and training; to maximize using appropriate local physical and technical resources; and to use appropriate locally owned and maintained technologies. Id. at section I(7).

NGOs working in Afghanistan commit: to not implement programs or gathering 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 the NGOs 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 ant to not promote partisan national or international political agendas; and to apply “SPHERE” – “We are knowledgeable about the SPHERE Humanitarian Charter and Minimum Standards in Disaster Response, and seek to apply these standards and the SPHERE indicators in the implementation, monitoring and evaluation of our humanitarian projects and programs.” Id. at section I(8).


The Australian NGO Code of Conduct has been operating ten years and was last amended in 2004. The Code can be found at www.acfid.asn.au/code-of-conduct/acfid-code-of-conduct or www.acfid.asn.au/code-of-conduct/docs_code-of-conduct/code.pdf. (last visited Mar. 1, 2009)

Id.
9 March 2009 [ Attributes of Successful Human Rights NGOs ]

(AusAID) to apply for Australian government funding.\(^\text{139}\)

The Australian Code of Conduct sets out standards in the areas of organizational integrity, governance, communication with the public, finances, and personnel and management practice.\(^\text{140}\)


The NGO Coordination Committee in Iraq (NCCI) is an independent initiative launched by NGOs present in Baghdad in April 2003.\(^\text{141}\) The principal objectives of NCCI, which has expanded to a network of 80 International NGOs and 200 Iraqi NGOs,\(^\text{142}\) 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 capacity to deliver humanitarian and development assistance in Iraq.\(^\text{143}\) All NCCI members are bound by its Code of Conduct incorporated into the NCCI Charter.\(^\text{144}\)

4. Ghanaian Proposed NGO Standards

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, concerns of NGO credibility flowing from reports of NGO “misdeeds”, and lack of different stakeholders’ commitments to building local capacity.\(^\text{145}\) They developed the Ghana NGO Standards, which sought to establish minimum standards, determined by the community, that enshrine “principles of good and ethical practice.”\(^\text{146}\)


\(^{140}\) In 2008, ACFID’s Executive Committee appointed a committee to manage a formal review of the Australian Code and stakeholder activities in ten years of the Code’s existence, and the committee will also make recommendations on the Code’s objectives, governance and operational activities. See http://plone.acfid.asn.au/code-of-conduct/code-review; see also http://plone.acfid.asn.au/code-of-conduct/docs_code-of-conduct/docs_code-review/Code%20Review%20Status%20Report%20Sep%202008%20Final.pdf

\(^{141}\) www.ncciraq.org/

\(^{142}\) Id.

\(^{143}\) www.ncciraq.org/. Its mission today further includes: to optimize humanitarian assistance in Iraq through coordination; to empower Iraq NGOs through information sharing, knowledge exchange, link creation, capacity building and sensitization to humanitarian principles and approaches; to provide an independent and neutral space for Iraq NGOs; to increase NGO capacities and knowledge to protect human rights; and to strengthen understanding among the various Iraq stakeholders. Id.

\(^{144}\) See www.ncciraq.org/spip.php?article6.


regulatory framework for NGOs in Ghana was meant to help ensure that Ghana NGOs are 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.\footnote{The Standards seek to demonstrate that NGOs can: regulate themselves voluntarily; 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 and sustenance 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. 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. A Commission of peer NGO members seeks to ensure self-regulation. Self-regulation, rather than governmentally imposed regulation, was a primary goal. Thus, government was not represented on the Standards’ Commission. The government proposed enacting legislation to create a governmental commission to regulate NGOs.}

5. **Philippine NGO Codes of Conduct.**

a. **Philippine Council for NGO Certification (PCNC)**

The Philippine Council for NGO Certification (PCNC)\footnote{The PCNC comprises 6 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) (a network of 14 NGO networks with over 3000 NGO members throughout the country; the League of Corporate Foundations (organization composed of large and active corporate foundations); the National Council of Social Development Foundations (NCSD) (one of the country's oldest NGO networks comprising about 100 NGOs engaged in development and basic services); and 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, \textit{The Philippines: Self-Regulation on Trial} (www.icnl.org/KNOWLEDGE/news/2004/01-09.htm) (noting that “Certification by PCNC shall also be a “seal of good housekeeping” that funding partners and prospective donors may consider in their choice of organizations to support,” says its website”).} was established in 1998 and entrusted by the Philippine government to: (a) certify NGOs for tax benefit 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.\footnote{The Standards seek to demonstrate that NGOs can: regulate themselves voluntarily; 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 and sustenance 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. 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. A Commission of peer NGO members seeks to ensure self-regulation. Self-regulation, rather than governmentally imposed regulation, was a primary goal. Thus, government was not represented on the Standards’ Commission. The government proposed enacting legislation to create a governmental commission to regulate NGOs.}

Seeking to ensure that NGOs meet minimum criteria for greater transparency and accountability, the PCNC assesses NGOs based on six criteria: Vision, Mission, Goals; Governance; Administration; Program Operations (including monitoring and evaluation systems); Financial Management; Networking.

Ghana NGO Standards include the Pan-African Organization for Sustainable Development (POSDEV) (which serves 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.\footnote{The PCNC website states that 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”. www.pcnc.com.ph/aboutUs.php (last visited Mar. 2, 2009)}
b. Philippine Caucus of Development NGO Networks (CODE-NGO)

In 1990, the ten largest NGO networks in the Philippines established a coalition called the Philippine Caucus of Development NGO Networks (CODE-NGO). 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. CODE-NGO crafted the implementing rules for its Code of Conduct for Development NGOs, 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 done through the National Board, the CIRI, and the members themselves, and is meant to be rigorous, with concrete mechanisms for ensuring compliance. For example, if members do not file certain reports or attend certain meetings, punishments may include: 1st Offense—Notice; 2nd Offense—Warning; 3rd Offense—Suspension of Benefits; and 4th Offense—Ground for termination.

6. 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. The Code 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. See id. The Code has apparently been promoted by CODE-NGO, which has 11 networks with 2,500 and its own code of conduct. See Caroline Hartnell, The Philippines: Self-Regulation on Trial www.icnl.org/KNOWLEDGE/news/2004/01-09.htm (last visited Mar. 1, 2009). The Covenant was reviewed and amended in 2001. Furthermore, CODE-NGO strengthened its advocacy for transparency and social accountability through the Local Anti-Poverty Project (LAPP II), the Pork Barrel or PDAF Watch, the Economic Policy Reform and Advocacy (EPRA) and the advocacy for federalism and Constitutional Reform. See id.

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151 The Code 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. See id. The Code has apparently been promoted by CODE-NGO, which has 11 networks with 2,500 and its own code of conduct. See Caroline Hartnell, The Philippines: Self-Regulation on Trial www.icnl.org/KNOWLEDGE/news/2004/01-09.htm (last visited Mar. 1, 2009). The Covenant was reviewed and amended in 2001.
152 See id. Furthermore, CODE-NGO strengthened its advocacy for transparency and social accountability through the Local Anti-Poverty Project (LAPP II), the Pork Barrel or PDAF Watch, the Economic Policy Reform and Advocacy (EPRA) and the advocacy for federalism and Constitutional Reform. See id.
154 www.crdaethiopia.org/Code%20of%20Conduct/CoC.htm
155 www.crdaethiopia.org/Code%20of%20Conduct/CoC.Final.pdf (page 3, Purpose of the Code). The Ethiopian Code provides that NGOs working in Ethiopia: be people centered, be fair and equitable; have moral and ethical integrity, be transparent and accountable, have good governance; be independent; be communicative and collaborative; fostering gender equity; be environmentally conscious; promote sustainability; and have clear measurements for assessing impact.
7. South African National NGO Coalition (SANGOCO) NGO Code of Conduct

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. SANGOCO believed 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. The Code of Ethics focuses on six core elements: values, governance, accountability, management and human resources, finance, and resources.

8. United States of America—InterAction NGO Code of Conduct

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. InterAction claims to be the largest coalition of U.S.-based international nongovernmental organizations (NGOs) focused on the world’s poor and most vulnerable people. InterAction’s 172 members collectively work in every developing country to protect human rights in gender equality in education, health care, agriculture, small business, and other areas.

Since 1994, all InterAction member organizations have had to certify compliance with the InterAction’s Private Voluntary Organization (PVO) Standards. Every other year, each member also self-certifies, using documented “evidence of compliance” to re-certify their compliance with the Standards.

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. 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.

9. World Alliance for Citizen Participation (CIVICUS) NGO Code of Conduct

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”. 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.°

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- 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. InterAction Standards Revised March 2007

163 www.interaction.org/pvostandards/

164 See www.interaction.org/pvostandards/

165 See www.interaction.org/pvostandards/


167 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
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. 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. CIVICUS also launched the International Advocacy Non-Governmental Organizations (IANGO) Workshop, in which IANGO for leaders engage in reflection, learning and strategic thinking on accountability, transparency and other issues. Other regulatory mechanisms include the Global Reporting Initiative (GRI), and NGO Sector Supplement, and the GRI Sustainability Reporting Guidelines.

10. European Commission Proposed NGO Code of Conduct

On July 22, 2005, the European Commission published a Draft Code of Conduct which it stated would help prevent NGOs from being exploited for financing terrorism and other crimes abuse. The voluntary Code, it suggested, would help protect NGOs, strengthen donor integrity and confidence, and promote high standards of transparency and accountability. 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.” 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 “Know your beneficiaries, donors and associate [NGOs]” rule (meaning that the NGO “should make best endeavours to verify the identity, credentials and good faith of their beneficiaries, donors and associate [NGOs]”. 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”.

future.” Id. CIVICUS, in the meantime, stated that it was “committed to complying with any external reporting requirements agreed-upon by Charter Signatories”, id., 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.


169 Id. The EC stated that the Draft Code of Conduct “also responds to requests from EU Member State Governments and international bodies”. Id.

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

171 Id.
11. World Association of Non-Governmental Organizations (WANGO) 
NGO Code of Conduct

The World Association of Non-Governmental Organizations (WANGO) is an international organization founded in 2000 by international NGOs and others. WANGO seeks to unite NGOs worldwide to advance 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.”

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. In March 2004, a draft was circulated, and in March 2005, the WANGO Code of Ethics and Conduct for NGOs was completed. The Guiding 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.

V. Conclusion

This article has shown that NGOs—defined as private, independent, non-profit, goal-oriented groups not founded by or controlled by a government—share common characteristics that render them effective at carrying out their missions. Though sixty years after the Universal Declaration of Human Rights, 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 promoting and protecting human rights in every corner of the globe. Stakeholders at all levels rely on successful, effective human rights NGOs that possess those critical characteristics. Successful human rights NGOs can and

172 www.wango.org/about.aspx. 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.

173 Id.

174 Id. (noting that the Code “remains an evolving work, which will be revised as necessary”).

175 Id. (noting that the Code “remains an evolving work, which will be revised as necessary”). The Preamble 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.
should be models for newly organized human rights defenders and others who might benefit from tutelage and mentorship. Some human rights NGOs fail. But many more succeed, with or without adopting NGO Codes of Conduct. However, it would behoove any group to recognize that the ten attributes described herein appear in successful human rights NGOs, whether those NGOs are small, one-volunteer operations in a remote city, or whether they are large, international NGOs with multi-million dollar operation budgets with staff and operations spread around the globe. Further research is needed to determine the efficacy of voluntary Codes of Conduct, and their impact on the protection of human rights. Similarly, further research will help identify additional guidance for human rights NGOs, of all structures, capacities and emphases, that seek to promote and protect internationally recognized human rights.