The Legal Protection of Human Rights in Africa: How to Do More with Less

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It may sound heretical for me as a lawyer to suggest that African societies may actually "do more" for the implementation of human rights "with less" reliance on the legal protection of these rights.[1] My basic argument for this proposition is premised on a dilemma: the importance of legal protection of human rights, on the one hand, and the inability (not simply unwillingness, which is also usually true) of the postcolonial African state to provide adequate legal protection as required by the modern human rights paradigm,[2] on the other. This dilemma leads me to ask: Since the postcolonial state in Africa is unable to provide the necessary legal protection of human rights, should efforts to realize these rights therefore focus on nonlegal strategies of implementation? Indeed, will legal protection ever be appropriate for

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1. As explained in section II, this chapter is based on studies done in fourteen African countries: Botswana, Egypt, Ethiopia, Ghana, Kenya, Morocco, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Sudan, Uganda, and Zambia. Accordingly, I am not claiming that my analysis here applies to every African country or society, though my basic thesis can probably be substantiated with reference to most of them.

2. By *human rights paradigm* I mean the notion that because certain standards of human rights are binding on states as a matter of international law, protection and implementation is a matter of legitimate international concern, not left exclusively to the domestic jurisdiction of individual states. The binding nature of international human rights norms and an evaluation of the efficacy of international mechanisms for their implementation are not within the ambit of this chapter.

the type and degree of human rights violations experienced by the peoples of Africa today?

In exploring these questions I do not mean to suggest that legal protection of human rights should be abandoned. On the contrary, by the phrase "do more with less" I mean that African states and human rights advocates should keep trying to achieve the maximum possible degree of legal protection with the capacity and resources available to them, as well as seek to realize more implementation of human rights through other strategies. In this chapter, the term *implementation* refers to a proactive deployment of a variety of measures and policies to achieve the actual realization of human rights, and the term *protection* signifies the application of legal enforcement methods in response to specific violations of human rights norms in individual cases. While exploring both approaches, I will argue that implementation is more appropriate in most African countries. That is, I am emphasizing the need to address the structural, cultural, and other root causes of violations in order to implement human rights in a systematic and comprehensive manner, instead of seeking redress for violations on a case-by-case basis. But since legal protection of human rights, in the broader, more inclusive, and accessible sense discussed below, should be part of this emphasis on implementation strategies, what I am suggesting in this chapter may not be so heretical after all.

To begin with a brief explanation of my thesis here, I first note that it is difficult to generalize about the causes and consequences of the decolonization of Africa in the present limited space except to emphasize that there are certain associations between specific global phenomena of the period after World War II, on the one hand, and the untenableness of direct colonial rule, on the other.[3] For my purposes here, I suggest that, in conceding to decolonization, the colonial powers were simply adapting to new trends in global economic and security relations in ways that were more consistent with the internal conditions within those powers than the retention of direct control over their African colonies. This is not to say that human rights were irrelevant even from the perspective of the colonial powers themselves. Rather, it is only to note that human rights were cited by European powers in conceding to the independence of the African colonies, but those con-

3. Crawford Young, *The African Colonial State in Comparative Perspective* (New Haven: Yale University Press, 1994), 182–91. See generally John D. Hargreaves, *Decolonization in Africa*, 2d ed. (New York: Longman, 1996).

siderations were subordinate to broader and more compelling economic and political calculations. It is beyond dispute, however, that the human rights dimension of the period after World War II was exploited by African leaders in demanding the end of colonial rule. Consequently, the protection and implementation of human rights became part of the raison d'être of the postcolonial state. However, due to the nature and consequences of colonialism, formal decolonization did not really lead to genuine self-determination. Instead, most postcolonial African states continue to be so dependent on former colonial powers and their allies that they are unable to fulfill their raison d'être of self-determination and implementation of human rights.

Many factors affect the implementation of human rights, such as the level and quality of political commitment, availability of economic resources, activism within civil society, and implementation of administrative, educational, and other policies. However, legal protection is particularly important for the modern paradigm of human rights not only for the judicial enforcement of these rights as legal entitlement, but also to sustain the efficacy and credibility of all other mechanisms and processes relevant to their implementation. The modern paradigm also relies on legal protection as a means for the development and application of operational definitions of rights in relation to other considerations of public policy, as well as for the mediation of competing claims of rights. But, as discussed below, the successful legal protection of rights has its own requirements and conditions. It presupposes a certain degree of political stability, economic resources, institutional capacity, and the willingness and ability of the public at large to resort to the courts for the enforcement of their rights. Legal protection also assumes the prevalence of a certain conception of the rule of law, independence of the judiciary, and executive compliance with judicial determinations.

The lack or weakness of legal protection is an indication of the structural and institutional failure or inadequacy of the system as a whole. For one thing, since access to effective legal remedies is itself a human right, its absence is a violation of human rights. Second, the lack or weakness of legal enforcement is symptomatic of other problems such as executive interference with the independence of the judiciary or failure to comply with its decisions. Problems with the legal enforcement of human rights may be due to underlying cultural and institutional difficulties with the rule of law or evidence of a lack of public

confidence in the ability of the courts to vindicate rights that is a reflection of other problems. In other words, one expects weak legal protection of human rights in situations of political instability, economic underdevelopment, institutional incapacity, and the unwillingness or inability of the public at large to resort to the courts for the enforcement of their rights. Whatever the reasons, the lack or weakness of legal protection of human rights means that its functions in the definition and mediation of rights are unfulfilled, leading to even greater weakness of legal protection. Ironically, therefore, legal protection of human rights tends to be weakest where it is most needed. Moreover, a society that needs to do more to implement human rights because it is less able to protect them legally usually faces other serious problems that make it even harder for it to "do more with less" in the sense of addressing root causes of violations.

The objective of this chapter is to examine the nature and implications of this phenomenon in relation to certain African societies today, and to suggest strategies for dealing with this compounded predicament. To pursue this double objective, I first offer a working definition of human rights and a brief analysis of the nature of the postcolonial state in Africa in order to understand the general relationship between the two. Against this background, section II focuses on specific issues of adequate legal protection of human rights in the postcolonial context, with a view to enhancing the prospects of legal protection as such. Finally, section III considers broader issues of structural and cultural factors, as well as political, economic, and social context, with a view to suggesting a strategy for greater implementation of human rights with less reliance on legal protection.

I. Human Rights and the Decolonization/Recolonization of Africa

In articulating a working definition of human rights for the purposes of this chapter, I would begin by emphasizing that human rights are the product of a long history of struggle for social justice and resistance to oppression in all human societies. As Mamdani put it:

> Wherever oppression occurs—and no continent has had a monopoly over this phenomenon in history—there must come into being a conception of rights. . . . This is why it is difficult to accept that

> human rights was a theoretical notion created only three centuries ago by philosophers in Europe. True, one can quote Aristotle and his ideological justification of slavery as evidence that the idea of human rights was indeed foreign to the conscience of the ruling classes in ancient Greece. And yet, did anyone—as [Paulin J.] Hountondji rightly asks—question the slaves? Given what we know today of slave revolts in antiquity, can we assume that these in no way shaped the thinking of slaves, such as giving rise to a conception of rights that tended to undermine the legitimacy of their masters' practice? Or, given that no one bothered to hand down to us the victims' discourse on their oppression in ancient Greece, must we assume the opposite?[4]

This does not mean that all human societies have actually articulated and applied human rights in the modern sense of the term, namely as rights that are due to every human being, without distinction on such grounds as gender, race, ethnicity, religion, language, or national origin. The point here is to understand this modern concept of human rights as a specific manifestation of an ancient pursuit of social justice and resistance to oppression by all human societies. That is, the modern concept should be seen as the product of, and building on, earlier conceptions and efforts, rather than a total break with past experiences of human societies around the world. While different societies pursue this objective in accordance with their own political and cultural conditions, there are sufficient similarities of experience and mutual influence to support progression toward shared understandings and common strategies. To emphasize an exclusive claim of some societies to the authorship of the modern concept of human rights undermines the very nature and objectives of these rights as a common cause for all humanity. In my view, this historical perspective is essential for substantiating the universality of human rights: all human societies and communities can identify with the concept and contribute to the specification of its normative content, precisely because it is already part of their own history and current experiences.

It is in this light that one should understand the obvious association between the modern concept of human rights and a particular line

4. Mahmood Mamdani, "The Social Basis of Constitutionalism in Africa," *Journal of Modern African Studies* 28, no. 3 (1990): 359–60.

of philosophical and cultural development within West European and North American (herein referred to as Western) societies over the last two to three centuries. The joint authorship by all human societies of the modern concept of human rights can be further elaborated as follows.

First, the Western origin of the modern concept of human rights does not mean that it is accepted by all Western philosophical and ideological perspectives. This concept is the product of a specific line of development in Western thinking and experience and is opposed in its full scope and implications by some aspects of Western thinking and practice.[5] Therefore, one should not assume Western unity in support of the full range of human rights. The very fact that these rights are appealed to in Western societies means that opposition to them remains.

Second, since the modern concept of human rights emerged in the West in response to particular models of political organization and economic development, the same concept would probably provide an appropriate response to the adoption of those models in other societies. That is, because Western models of the extensive and centralized powers of the state and capitalist economic development have been "universalized" through colonialism and its aftermath, the modern idea of human rights that emerged in Western experience in response to those models will probably be necessary for achieving social justice and resisting oppression wherever those models were adopted.[6] For example, trade union rights are necessary for the protection of the human dignity and well-being of workers under certain types of relations of production, wherever those relations may prevail in the world.

Third, to accept the Western origins of the modern concept of human rights, and its linkage to Western political and economic models that now prevail throughout the world, is not to take a determinis-

5. See generally, for example, Virginia Leary, "The Effect of Western Perspectives on International Human Rights," in *Human Rights in Africa: Cross-Cultural Perspective*, ed. Abdullahi A. An-Na'im and Francis M. Deng (Washington, D.C.: Brookings Institution, 1990), 15–30; and Virginia Leary, "Postliberal Strands in Western Human Rights Theory: Personalist-Communitarian Perspectives," in *Human Rights in Cross-Cultural Perspectives: Quest for Consensus*, ed. Abdullahi A. An-Na'im (Philadelphia: University of Pennsylvania Press, 1992), 105–32.

6. This point has been made by Rhoda Howard in several articles and developed more fully in *Human Rights and the Search for Community* (Boulder, Colo.: Westview Press, 1995).

tic view of the normative content and the mechanisms of implementation of these rights. Since political and economic models constantly evolve and adapt to changing conditions everywhere, the precise nature of corresponding human rights formulations is also likely to change over time and from one place to another. This is clear enough from the recent history of Western societies themselves, as they transform in response to political, economic, security, and other factors; hence the recent shift from the welfare state to more conservative economic and political policies in Western Europe and North America. A preconceived view of human rights is even less tenable in non-Western societies that seek to adapt Western political and economic models to their own diverse contexts. To suggest the universalization of Western models of state structures and powers does not mean that they are replicated everywhere according to the same blueprint.

To summarize, the modern concept of human rights is the product of a long history of struggle for social justice and resistance to oppression that is constantly adapting to changing conditions in order to better achieve its objectives. To the extent that the structures and processes of social injustice and oppression are specific to each society, cultural and contextual relativism—the claim that a society should live by its own norms and values—exerts a pull. Conversely, as local particularities diminish under the force of globalization, the push for universal human rights becomes more common. But since globalization reflects the unequal power relations between developed and developing countries, the tension between the relative and universal will remain. To keep this unavoidable tension from repudiating the concept of human rights and frustrating its purpose in different societies, there must be a deliberate effort to build an overlapping consensus around the normative content and implementation mechanisms of human rights.[7] That is, the project of the universality of human rights is to be realized through a congruence of societal responses to injustice and oppression, not by transplanting a fully developed concept and its mechanisms of implementation from one society to another.

From a practical point of view, human rights norms are traditionally enacted in national constitutions and laws for domestic application

7. See John Rawl's "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7, no. 1 (1987): 1–25. This idea is applied to the justification of universal human rights in different cultures by several authors from different perspectives in An-Na'im and Deng, *Human Rights in Africa,* and An-Na'im, *Cross-Cultural Perspective.*

by the judicial and executive organs of the state. Prior to the emergence of the modern human rights paradigm, the state was taken to have exclusive "territorial jurisdiction" in defining and implementing whatever level of protection of human rights it deemed fit. Since experience has shown that the state cannot be trusted to adequately protect the rights of all persons and groups within its territorial jurisdiction, the modern concept of human rights emerged as a means of ensuring certain minimum standards everywhere. Some of these minimum standards, like the prohibition of genocide, slavery, and torture, have evolved as customary international law binding on all states. But as a general rule, standards for human rights are articulated in international treaties that are binding only on states that have ratified them.[8] Paradoxically, however, the protection and implementation of both customary and treaty-based human rights is still completely dependent on the action of the state through its own legislative, judicial, and executive organs. Although the purpose of the modern concept of human rights is to restrict the exclusive power of the state, it is the same state that controls the means by which that purpose is to be achieved.

This paradox is the necessary consequence of the fundamental principle of state sovereignty on which the present international system is premised, as entrenched in the Charter of the United Nations and reiterated in numerous instruments.[9] Indeed, state sovereignty is the practical manifestation of the collective human right to self-determination. It is unlikely that states will relinquish their own autonomy by abandoning traditional notions of sovereignty or allow them to be undermined by other actors. More importantly for our purposes here, a frontal attack on the principle of sovereignty can also be counterpro-

8. For a review of the historical and conceptual development of international human rights law see Henry Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996), 117–65; and Francisco Forrest Martin et al., eds., *International Human Rights Law and Practice: Cases, Treaties, and Materials* (London: Klumer Law International, 1997), 1–4. On the sources of international human rights see Martin et al., 25–41.

9. Article 2(7) of the Charter of the United Nations, 1945; and Declaration on International Law Concerning Friendly Relations and Co-operation among States, GA Res. 2625, Annex UN GAOR, 25th Sess. (Supp. No. 28 at 122), UN Doc. A/8028; ELM 1292 (1970). In relation to African states see, for example, Young, *African Colonial State*, 27–30. See further, generally, Edmond J. Keller and Donald Rothchild, *Africa in the New International Order: Rethinking State Sovereignty and Regional Security* (Boulder, Colo.: Lynne Rienner, 1996).

ductive for the protection of human rights. Despite its problems, state sovereignty remains the essential expression of the fundamental right to self-determination, the practical vehicle of domestic policy, and the necessary medium of international relations. The sovereignty of the state is also a necessary safeguard against the control and manipulation of national economies by intergovernmental financial institutions (the World Bank and International Monetary Fund) or transnational corporations. A realistic and appropriate objective, therefore, is to diminish the negative consequences of the paradox of self-regulation by infusing the ethos of human rights into the fabric of the state itself and the global context in which it operates. The challenge is to address the structural, cultural, and other root causes of violations in order to implement human rights in a more systematic and comprehensive manner.

The paradox of self-regulation is further complicated in the case of most African countries by the nature and functioning of the postcolonial state, especially as the instrument of the protection and implementation of human rights.

> African states are direct successors of the European colonies that were alien entities to most of Africa. Their legitimacy derived not from internal African consent, but from international agreements—primarily among European states—beginning with the Berlin Conference of 1884–85. Their borders were usually defined not by African political facts or geography, but rather by international rules of continental partition and occupation established for that purpose. Their governments were organized according to European colonial theory and practice (tempered by expediency), and were staffed almost entirely by Europeans at decision-making levels. Their economies were managed with imperial and/or local colonial considerations primarily in mind. Their laws and policies reflected the interests and values of European imperial power, and these usually included strategic military uses, economic advantage, Christianization, European settlement, and so forth. Although the populations of the colonies were overwhelmingly African, the vast majority of the inhabitants had little or no constitutional standing in them.[10]

10. Robert H. Jackson and Carl G. Rosberg, "Sovereignty and Underdevelopment: Juridical Statehood in the African Crisis," *Journal of Modern African Studies* 24 (1986): 5–6.

When independence was eventually achieved, it was juridical statehood under international law more than empirical sovereignty on the ground. Since then, the preservation of juridical statehood and territorial integrity, rather than promotion of the ability and willingness of the state to live up to the practical requirements of sovereignty, has become the primary concern. As Chabal put it, the "post-colonial state in Africa was, with few exceptions, both overdeveloped and soft. It was overdeveloped because it was erected, artificially, on the foundations of the colonial state. It did not grow organically from within civil society. It was soft because, although in theory all-powerful, it scarcely had the administrative and political means of its dominance. Neither did it have an economic basis on which to rest political power."[11]

It is unrealistic to expect the postcolonial state to effectively protect human rights when it is the product of colonial rule that is by definition the negation of these rights. However one evaluates precolonial African political regimes from the point of view of human rights, it is clear that colonialism was incapable of creating and sustaining the institutions and processes necessary to protect rights. Therefore, independence usually signified the transfer of control over authoritarian power structures and processes of government from colonial masters to local elites.[12] Since the newly independent state usually lacked effective presence in most of its territory, ruling elites tended to focus on the government apparatus and patronage system. They also strove to retain the support of key traditional leaders, instead of seeking popular legitimacy and accountability to the people at large.[13] With their territorial integrity preserved primarily through membership of the United Nations and the Organization of African Unity, state security became the security of the regime in power, with no possibility of the transparency of the functioning of security forces, or of their political and legal accountability for their actions. Unable to govern effectively and humanely, postcolonial governments tended to use authoritarian methods to control political dissent through the same legal and institutional mechanisms initially set by

11. Patrick Chabal, "Introduction: Thinking about Politics in Africa," in *Political Domination in Africa: Reflections on the Limits of Power*, ed. Patrick Chabal (Cambridge: Cambridge University Press, 1986), 13.

12. See, for example, John A. A. Ayoade, "States without Citizens: An Emerging African Phenomenon," in *The Precarious Balance: State and Society in Africa*, ed. Donald Rothchild and Naomi Chazan (Boulder, Colo.: Westview Press, 1988), 104.

13. Ibid., 107–15.

colonial powers and maintained by several cycles of "native" governments since independence.[14]

Given these features of the postcolonial state, one can hardly expect much viability or efficacy for the idea that government must be in accordance with the rule of law that upholds the fundamental individual and collective rights of all citizens. Constitutional instruments have also failed to hold governments legally or politically accountable to their own citizens.[15] This general weakness of the principle of constitutionalism was compounded by the suspension or radical alteration of first constitutions by military usurpers or single-party states within a few years from independence. Irrespective of the explanation one accepts, it is clear that local people were unwilling or unable to resist the erosion of the rule of law and manipulation of state powers and institutions by civilian and military governments alike.[16] Far from having a sense of ownership, expectation of protection and service, and a general belief in their ability to influence its functioning, most African societies regarded the postcolonial state with profound mistrust. They tolerated its existence as an unavoidable evil and preferred the slightest possible interaction with its institutions and processes.[17]

Nevertheless, there are indications of countertrends in popular resistance and local activism within civil society supported by some international actors and factors.[18] It is in this light that one can expect

14. On the crisis of the postcolonial state and the search for explanations see Young, *African Colonial State*, 2–12. Young discusses this situation as "the integral state" (287–90), which he defines as "a design of perfected hegemony, whereby the state seeks to achieve unrestricted domination over civil society."

15. See H. W. Okoth-Ogendo, "Constitutions without Constitutionalism: Reflections on an African Political Paradox," and Issa G. Shivji, "State and Constitutionalism: A New Democratic Perspective," both in *State and Constitutionalism: An African Debate on Democracy*, ed. Issa G. Shivji (Harare, Zimbabwe: Southern African Political Economy Series Trust, 1991), 3–25 and 27–54, respectively. Other chapters in this book examine issues of nation building, military rule, single-party states, social movements, and related matters in different parts of the continent.

16. See, for example, Michaele S. Pietrowski, "The One-Party State as a Threat to Civil and Political Liberties in Kenya," in *Africa, Human Rights and the Global System: The Political Economy of Human Rights in a Changing World*, ed. Eileen McCarthy-Arnolds, David R. Penna, and Debra Joy Cruz Sobrepena (Westport, Conn.: Greenwood Press, 1994), 131–46.

17. Young, *African Colonial State*, 5.

18. Ibid., 218–43; Pita Ogaba Agbese, "The State versus Human Rights Advocates in Africa: The Case of Nigeria," in McCarthy-Arnolds, Penna, and Sobrepena, *Africa Human Rights*, 147–72. See generally, Claude E. Welch Jr., *Protection of Human Rights in Africa: Roles and Strategies of Non-governmental Organizations* (Philadelphia: University of Pennsylvania Press, 1995).

better prospects for more effective protection and systematic implementation of human rights in Africa today. This expectation, however, must be based on a realistic understanding of the situation as it is, rather than how one would like it to be. Part of this realistic approach is what might be called the "recolonization" of Africa.

Notwithstanding the mixed motives of both sides, human rights were cited by African nationalist leaders in demanding independence, as well as by European colonial powers in conceding to those demands. Accordingly, the protection and implementation of human rights became part of the raison d'être of the postcolonial state. Ironically, however, human rights can also be associated with the mutual cooperation of European powers and African nationalist leaders in a new *recolonization* of Africa that allowed colonial relations of power to continue.[19] By this I mean the increasing dependency of former African colonies on their colonial powers. An example is the continued French military presence in several western and central African countries to "keep the peace" by maintaining dictatorial and corrupt regimes in power.[20] More significant evidence of the diverse forms of dependency is to be found in the daily economic activities, political processes, and security arrangements, as well as the legal, administrative, and educational systems of most African states in their relations with former colonial powers. These dependencies continue to intensify under the growing globalization of the postcolonial world.

In current usage, the term *globalization* refers to, inter alia, transformation of the relations among states, institutions, groups, and individuals; the universalization of certain practices, identities, and structures; and the global restructuring that has occurred in recent decades within the framework of modern capitalist relations. Most recent definitions of globalization emphasize

But this dimension of the politics of human rights should be understood in light of the specific nature and context of civil society in Africa. On this see Patrick Chabal, *Power in Africa: An Essay in Political Interpretation* (London: Macmillan, 1992), 82–97.

19. See Daniel C. Bach, "Reappraising Postcolonial Geopolitics: Europe, Africa, and the End of the Cold War," and Shehu Othman, "Postscript: Legitimacy, Civil Society, and the Return of Europe," both in *Legitimacy and the State in Twentieth-Century Africa: Essays in Honour of A. H. Kirk-Greene*, ed. Terence Ranger and Olufemi Vaughan (London: Macmillan, 1993), 247–57 and 258–62, respectively.

20. See, for example, Ibrahim A. Gambari, "The Role of Foreign Intervention in African Reconstruction," in *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, ed. I. William Zartman (Boulder, Colo.: Lynne Rienner, 1995), 225–28.

> an emerging system characterized by interdependence, flows and exchanges, the role of new technologies, the integration of markets, the shrinking of time and space, particularly, the intensification of world-wide social relations which link distinct localities in such a way that local happenings are shaped by events occurring miles away and vice-versa. . . . [But in such definitions] there is a resounding silence with regard to the importance of notions such as coercion, conflict, polarization, domination, inequality, exploitation and injustice. . . . [T]here is little or nothing about monopolies, disruptions and dislocations of the labor and other markets, the emergence of a global regulatory chaos and possible anomie and how these are being exploited for gains.[21]

Since globalization is the expression of existing power relations, it has become the means by which developed countries sustain their economic and political hegemony over developing countries. That is, as the instrument of whatever patterns of power exist between most African and Western states, which continue to be power relations of colonial dependency despite juridical sovereignty, globalization has become the vehicle of recolonization. Should those power relations be transformed to reflect partnership in development and more equitable distribution of wealth and power around the world, globalization will become the instrument of justice and liberation for all human societies.

For the purposes of this chapter, the real irony of the continuity of colonial power relations is that reliance on the legal protection of human rights has become a conservative force, minimizing risks of change in the status quo by the inadequacy of their slow, piecemeal, and state-centered approach. Could it be argued that by promising relief or remedy on a case-by-case basis, legal protection diverts efforts and resources from more systematic approaches to implementation of human rights—indeed seeks to delegitimize those approaches as too radical or counterproductive? The paradox of state self-regulation in the realization of human rights is more striking in the context of single-party states, military rule, and other problems of constitutionalism in Africa noted earlier. Instead of realizing its liberating potential during the struggle for independence, the modern human rights paradigm actually enables

21. Tade Akin Aina, "Globalization and Social Policy in Africa: Issues and Research Directions," CODESRIA Working Paper Series 6/96, 1997, Dakar, Senegal, 11.

leaders to maintain political power and economic privilege without delivering on their promises to protect these rights. This state of affairs could not have been sustained without the collaboration of the former colonial powers, in exchange for the acquiescence of those African leaders in the recolonization of their countries through globalization. Claims of legal protection of human rights are legitimizing this state of affairs by making promises of remedies it is incapable of keeping.

Moreover, since conditions and requirements for effective legal protection of human rights are lacking in most African postcolonial states, the human rights paradigm is unlikely to have the same liberating power it has in developed Western countries.[22] Although the problem is the lack of conditions and requirements, it can be argued that the modem conception of human rights itself is an instrument of social injustice and repression. In contrast to their earlier association with decolonization, human rights have become associated with recolonization; emphasis on the legal protection of these rights is unable to check the massive violations that occur in the daily life of the vast majority of persons and groups who are subject to the jurisdiction of the postcolonial state in Africa.

Under these circumstances, people become disillusioned with the concept of human rights, but what they should reject is the application of that concept in African countries in the same way it is applied in Western developed countries. If not challenged, such disillusionment can breed relativist claims that African societies are bound only by their own cultural and religious values and norms, as opposed to international standards of human rights. This is unacceptable because it repudiates the principle that human rights are due to every human being, without distinction on grounds of race, gender, religion, or national origin.

I suggest that what should be rejected is the universalization of specific assumptions and institutional arrangements for the legal protection of human rights, with little possibility for innovation and local adaptation. If human rights are to be truly universal, their normative content as well as mechanisms of implementation must reflect a consensus that emerges from the actual experiences of all human societies, while at the same time accepting the diversity and specificity of those experiences. That is, the universality of human rights should be

22. See Julius Ihonvbere, *The Political Economy of Crisis and Underdevelopment in Africa: Selected Works of Claude Ake*, ed. Julius Ihonvbere (Lagos, Nigeria: JAD Publishers, 1989), 86–90.

premised upon cultural and contextual particularities, rather than pretending that these specifics are nonexistent or unimportant.

The preceding argument emphasizes the need for alternative approaches to the implementation of human rights in Africa; it does not suggest the total rejection of the legal protection of human rights as such. On the contrary, the best alternative approaches include the enhancement of legal protection, as explained in the next section. However, legal protection must not only be sought through the actual means available to African societies and in the manner appropriate to their own context, but must also be supplemented by other strategies of implementation, as suggested in this chapter.

II. Scope and Efficacy of the Legal Protection of Human Rights in Africa

Efforts to enhance legal protection of human rights in Africa should begin with a clear understanding of the inadequacy of the present concept and mechanisms of legal protection. In this light I propose a reconceptualization of legal protection as *part of wider strategies of implementation,* rather than as the primary means of realizing respect for human rights. A critique of the scope and quality of legal protection of rights may also indicate the nature and direction of broader strategies of implementation of human rights that should be adopted. For the purposes of this critique, I will take the Universal Declaration of Human Rights of 1948 as a framework for evaluating performance. Although not a binding treaty, the Universal Declaration is the founding instrument of the modern human rights paradigm, which has been adopted by all African states and incorporated into national constitutions of the majority of African states as well as into the African Charter on Human and Peoples Rights of 1981 as the authoritative regional human rights treaty.

By its own terms, the mandate of the Universal Declaration is simply the obligation to provide effective redress for every violation of human dignity and the rights of any person or group. For example, Article 25 provides that everyone has a "right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services." The clear meaning of this provision is that these economic and social rights are as much human rights as are life, liberty,

and security of person (Article 3), protection against torture and cruel, inhuman, or degrading treatment or punishment (Article 5), equality before the law without discrimination (Article 7), and freedom of opinion and expression (Article 19). Yet there is little objection to the denial of basic needs of food, shelter, and medical care to the majority of human beings in Africa today.

The clear intent of the Universal Declaration is that violation of any of the rights and freedoms it provides for must be equally condemned and redressed, regardless of their source or cause. There is nothing in its language that limits human rights to the model of narrow justiciability that requires the identification of an individual victim, violator, and judicial remedy, as explained below. On the contrary, Article 28 provides that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." That is, human beings around the world whose right to an adequate standard of living is violated are entitled to whatever adjustments in the social and international order are necessary for the realization of their right to a standard of living adequate for the health of themselves and their families, including food, clothing, housing, medical care, and necessary social services. Such is the liberating promise of the Universal Declaration of Human Rights, as adopted by the General Assembly of the United Nations without dissent, and repeatedly endorsed in subsequent international and regional human rights treaties and national constitutions throughout the world.

Yet—and notwithstanding procedural differences among legal systems—narrowly conceived legal protection comes down to justiciability, which signifies the ability of a court of law to identify an individual victim, a violator, and to prescribe a remedy for the violation. According to this paradigm, when a person or group of persons believes that one of their individual human rights has been violated by a state policy or administrative action or the behavior of a state official, the aggrieved party or parties can sue for redress (or prosecute if criminal charges are warranted, as in a torture case) before a court of law. If the issue is not settled out of court, a trial may follow whereby the court will determine whether a violation has occurred and direct the implementation of appropriate remedy. For example, if a woman proves that she is being discriminated against on grounds of sex by legislation, state policy, or administrative action, or the behavior of a state official,

a court will direct that the statute be repealed or order state officials to refrain from implementing the offending policy or administrative measure. In the case of an accused person who can show that he was convicted on the basis of a confession obtained under torture, the court will quash his conviction and order payment of compensation or punishment of the offending police officers when appropriate.

It is clear from these and similar examples that this conception of legal protection presupposes that the violation of rights is the exception rather than the rule, because the slow and expensive process of judicial vindication of rights cannot on a case-by-case basis cope with massive or systematic violations. Justiciability also assumes that potential victims have access to and can afford to pay for legal services, that the judiciary is independent and effective, that government officials will comply with court orders, and so forth. This model is not only limited, exclusive, expensive, and inaccessible to most Africans whose human rights are routinely violated by the state and nonstate actors, it is also incapable of redressing the type and scope of violations most frequently suffered. This is indeed a far cry from the "whatever it takes" approach of Article 28 of the Universal Declaration. This discrepancy, if unredressed, threatens the principle of the universality of human rights and defeats their essential purpose. How did this discrepancy between the expressed mandate of the Universal Declaration, on the one hand, and the legal protection of human rights, on the other, come about? The reasons for this discrepancy partly precede the adoption of the Universal Declaration, but most arise from the political and economic context in which human rights are supposed to be implemented in African countries today.

According to the modern human rights paradigm, every person is entitled to certain claims as of right against the state. In its traditional constitutional origins, the paradigm requires the state to refrain from infringing on the civil liberties of citizens, such as freedoms of expression and association, protection against torture and inhuman or degrading treatment or punishment, and so forth. Though the primary responsibility of the state under this conception is said to be "negative" in the sense of refraining from violating these rights through the actions or omissions of its own officials, the implementation of human rights actually entails expenditure and affirmative action. For example, respect for the right to the protection of the due process of the law

requires allocation of resources and implementation of educational and administrative policies to maintain a credible and constitutionally valid administration of justice. Prohibition of discrimination and requirement of equal protection of the law have been interpreted to mandate an active role for the state in affirmative action programs. In this light, the "negative" view of human rights as merely requiring the state to refrain from violating rights, without a "positive" obligation to act in an affirmative sense, is no longer true of even the domestic constitutional theory and practice of liberal Western societies.

At the international level, as noted earlier, the concept of human rights has included, from the beginning of the United Nations era, affirmative or positive economic, social, and cultural rights, as well as traditional negative civil and political rights. However, despite frequent affirmation of the indivisibility and interdependence of these two sets of rights, it is clear that economic, social, and cultural rights were not supposed to enjoy equal status and effective implementation with civil and political rights.[23] Although the primary reasons for this dichotomy and hierarchy of rights were ideological and cultural, especially in the context of the Cold War, the declared rationale was said to be a matter of justiciability, ability to monitor and evaluate performance, and possibility of specific remedy. According to this logic, claims of civil and political rights are specific and concrete enough to be litigated in a court of law that can determine whether a violation has been committed, by whom, and what should be the remedy.

The nonjusticiability and nondeterminacy of economic, social, and cultural rights became a self-fulfilling prophecy since no effort was made to develop the appropriate definition and procedural methods for judicial enforcement of these rights, as was done for civil and political rights, in an incremental process. That is, there was a time when civil and political rights too were nonjusticiable and nondeterminant, but they were made justiciable and sufficiently determinant through imaginative development of judicial mechanisms and remedies. The same can happen to economic, social, and cultural rights. Now that some imaginative effort is being applied to these rights, positive results

23. Statement to the World Conference on Human Rights on behalf of the UN Committee on Economic, Social, and Cultural Rights, UN Doc. E/I 993/22, Annex III, pars. 2 and 5. The view that economic, social, and cultural rights are of lower status is reflected in the language of treaties and mechanisms for their implementation.

are emerging.[24] In any case, since these rights are as important as civil and political rights, ways must be found for their implementation, whether through appropriate adaptation of justiciability to the nature of these rights, or by nonjudicial means. But this approach presupposes a capacity for legal protection of human rights, which is hardly adequate even for civil and political rights in most African countries. Although there is great need for the better protection of civil and political rights, the need for implementation of economic, social, and cultural rights is desperate. The obvious conclusion is that the improbability of legal enforcement for economic, social, and cultural rights in Africa necessitates the development of alternative strategies of implementation.

The situation is even worse for collective rights, which are nominally acknowledged as an exception to the norm of individual rights. Common Article 1 of International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of 1966, provides for the collective right to self-determination, yet no provision is made for the implementation of this right, through legal protection or otherwise. Once again, inefficacy is a self-fulfilling prophecy, and the collective right to self-determination remains the least developed among all human rights standards. Other collective rights, such as the right to development or protection of cultural identity, have also been subject to neglect and hostility. With minimal prospects for legal protection for such collective rights, alternative strategies for the implementation in the sense suggested in this chapter may be the only viable way to proceed.

Even for civil and political rights, the scope and quality of legal protection in most African societies is far from that envisaged by the modern paradigm of human rights. As stated earlier, that conception of

24. Examples of this creative approach to the implementation of economic, social, and cultural rights can be found under the constitutions of India (Articles 39–46) and South Africa (Articles 23–29). On the Indian experience see Upendra Baxi, "Judicial Discourse: The Dialectics of the Face and the Mask," *Journal of the Indian Law Institute* 35 (1993): 1.

Nongovernmental organizations such as Shelter Rights Initiative (Bank Chambers, Anambra House, 3d Floor, 27/29, Martins Street, Lagos, Tel/Fax 266 2947), are striving to realize these rights through a variety of strategies. See generally, Asbjorn Eide, Catarina Krause, and Allan Rosas, *Economic, Social, and Cultural Rights: A Textbook* (Dordrecht, Netherlands: Martinus Nijhoff, 1994).

legal protection presupposes a degree of political stability, economic resources, institutional capacity, and the willingness and ability of the public at large to resort to the courts for the enforcement of their rights. Legal protection also assumes the prevalence of a certain conception of the rule of law, independence of the judiciary, and executive compliance with judicial determinations. Few of these conditions can be sustained in postcolonial Africa.

Recent studies of the legal protection of human rights in some fifteen African countries (representing a cross-section of cultures, colonial and postcolonial experiences, and legal systems) identified the following common problems.[25]

1. Despite differences between the two systems, common law and continental civil law, followed in almost all African countries today, regimes suffer from similar problems of poor legitimacy and accessibility, as well as lack of human material resources.[26] Neither common law nor civil law, both of which are foreign colonial legal systems, has gained public confidence as a means of protection.

2. Most current African constitutions provide for the protection of civil and political rights, including broad nondiscrimination and equal protection clauses. Some constitutions, such as those of Ghana, Namibia, and Uganda, include economic, social, and cultural rights as "Directive Principles of State Policy." There is also a good level of ratification of international treaties on human rights. But at this normative level, effective implementation is hampered by such factors as the lack

25. See note 1 for the list of the countries covered. Not every study mentioned all the points made, but each point was supported by the all the studies that addressed it. These studies were conducted under the auspices of the project on the Legal Protection of Human Rights under Constitutions of Africa, co-organized by Interights (London) and Afronet (Lusaka, Zambia).

My remarks here also draw on the following documents prepared for this project: Cidi Anselm Odinkalu, "The Legal Protection of Human Rights under the Constitutions of Africa," Report of the Planning Meeting in Lusaka, Zambia, July 28–30, 1995; Chidi Anselm Odinkalu, "A Preliminary Report on Information and Training Resources for the Legal Protection of Human Rights," and the draft report of the proceedings of an international conference of some eighty African human rights lawyers and activists from thirty countries who convened in Dakar, Senegal, December 11–13, 1997.

All of these documents are on file at the offices of Interights in London; I am currently editing them for publication as a report of the project as a whole. A book containing the best country studies is also being edited for publication.

26. See, for example, Claude Ake, *Democratization of Disempowerment in Africa* (Lagos, Nigeria: Malthouse Press, 1994), 11–13.

of the incorporation of treaty obligations into domestic legislation, where it is required in common law jurisdiction; frequent and prolonged states of emergency; and claw back clauses permitting restriction of constitutional provisions by ordinary legislation.

3. At a practical level, the protection of human rights is seriously impeded by its reliance on judicial enforcement that is weak for civil and political rights and inappropriate for economic, social, and cultural rights. Because of their conceptual complexity and procedural formality, both common and civil law are incomprehensible and financially inaccessible for the vast majority of African peoples. Moreover, state courts and law enforcement mechanisms are incapable of addressing massive violations of human rights that occur under customary and religious laws and practices at the local, rural level.

4. These difficulties are compounded by general structural and contextual factors, such as political instability, economic underdevelopment, and lack of independence for, and poor training of, the judiciary, as well as poor quality and unavailability of legal services. These features, in turn, lead to inadequacy of courtroom facilities, lack of essential material resources, and rampant corruption. In Nigeria, for example, litigants have to provide the stationery (writing materials and file folders) required for their cases and are routinely subjected to extortion by magistrates and court personnel. Since the vast majority of the two hundred legal practitioners in the whole of Mozambique are concentrated in the capital, Maputo, the role of legal council in district courts is left to ad hoc "public defenders" who have no legal training.

Given these realities, to wait for all the prerequisite conditions of legal protection in the narrow sense, knowing that they are unlikely to materialize or work effectively, is to condemn human rights in Africa to empty political rhetoric and permanent marginality. Despite its limitations as the primary mechanism for the implementation of human rights, legal protection should be maintained and improved to achieve more protection with less capacity and fewer resources in the African context. But the sort of legal protection mandated by the "whatever it takes" approach of Article 28 of the Universal Declaration must be broader and more inclusive, affordable, and accessible. That approach also requires the sort of legal protection that is capable of redressing the type and scope of violations most frequently suffered.

The methods of such legal protection should include mediation,

arbitration, and other customary mechanisms to resolve disputes that are more appropriate to social and economic conditions in Africa, as well as justiciability in the narrow sense. But the whole rationale and process of such customary mechanisms is hardly consistent with the notion of legal protection of rights in the formal, legalistic Western sense underlying the present paradigm. This does not mean that the two approaches cannot work together, but flexibility and imagination regarding who is entitled to what against whom under the human right in question are required. In fact, the application of such customary mechanisms will be so different from present notions of legal protection as to require a radical shift in the conception and implementation of human rights. Such a shift is also necessary if the structural approach to addressing root causes of violations, as suggested in this chapter, is to be taken seriously. The problem is that such shifts will probably be resisted by human rights activists themselves who have developed a vested interest in preserving the status quo and their role in it. But an appreciation of the need for alternative strategies is perhaps a necessary step in the right direction.

III. Addressing Root Causes

It is better to address root causes of human rights violations than to pursue legal remedies on a case-by-case basis, especially for most African societies, because it is more economical, comprehensive, sustainable, and humane. Coerced enforcement requires extensive human and material resources and is an approximation of redress that can never erase the pain and suffering of the violation or restore the victims to their prior situation. Moreover, any enforcement regime must assume a high level of compliance in order to deal effectively with exceptional violations. These and similar reasons in support of addressing root causes apply when legal protection is working well in developed societies but apply even more strongly where legal protection is weak and ineffective, as in postcolonial Africa.

However, addressing the root causes of human rights violations is an extremely complex and protracted task, for obvious reasons. As indicated earlier, many factors are at work, such as the level and quality of political commitment to the implementation of specific norms, availability of economic resources for their realization, and the ability to utilize the necessary administrative, educational, and legal reform. As these and other factors interact, it is difficult to isolate any one of

them as a root cause of human rights violations. Moreover, it is simplistic and misleading to address any one of them in isolation from other factors and processes. In short, most of what can be described as root causes of human rights violations actually raise fundamental philosophical and ideological questions about the nature of the "good society" and how it can be realized in particular contexts. These factors, their interaction and consequences, are the subject matter of politics and social transformation everywhere.

For example, the lack of political commitment to the human rights of women is partly due to cultural resistance to the principle of equality and nondiscrimination on grounds of sex that is their foundation.[27] Political opposition to the human rights of women can also be promoted by men whose economic and social privileges are threatened. Equality for women challenges male dominance within the family and other social and political institutions, forces men to compete with women for jobs, compels employers to pay women equal wages and benefits, and requires the state to combat discrimination in education, provision of social services, access to employment, and so forth. Such political opposition will be reflected in resistance to the allocation of economic resources, to educational and administrative policies, and to law reforms necessary for the implementation of the human rights of women. Political or cultural opposition can also be reflected in administrative misconceptions, delay, and obstruction in the daily execution of formally approved policies.[28]

Another difficulty in addressing root causes of human rights violations is the allocation of limited human and economic resources among competing public policy objectives. Even if one assumes the political commitment and cultural support for the implementation of

27. Cf. Arati Rao, "The Politics of Gender and Culture in International Human Rights Discourse," and Ann E. Mayer, "Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle East," both in *Women's Rights, Human Rights: International Feminist Perspectives,* ed. Julie Peters and Andrea Wolper (New York: Routledge, 1995), 167–75 and 176–88, respectively.

28. On the problems and possibilities of the implementation of the human rights of women in Africa, see Abdullahi A. An-Na'im, "State Responsibility under International Human Rights Law to Change Religious and Customary Laws," Chaloka Beyani, "Toward a More Effective Guarantee of Women's Rights in the African Human Rights System," Adetoun O. Ilumoka, "African Women's Economic, Social, and Cultural Rights," and Florence Butegwa, "Using the African Charter on Human and Peoples' Rights to Secure Women's Access to Land in Africa," all in *Human Rights of Women: National and International Perspectives,* ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994), 167–88, 285–306, 307–25, and 495–514, respectively.

the human rights of women, priorities have to be set between this and other objectives of public policy, such as investment in economic development or meeting security needs of the country. These choices are in turn affected by philosophical and ideological considerations, for example, the proper role of the state in the provision of education, health care, and other economic and social rights.

The consequences of these domestic dynamics are linked to structural factors in global and bilateral relations of economic and political power. Those external factors not only limit the availability of economic resources to most African states, but also restrict their freedom to implement national policies permitted by existing resources. Structural factors in production and trade relations between developed and African countries condemn the latter to the role of producers of raw materials and consumers of goods manufactured elsewhere. In this unequal relationship, most African countries must accept whatever prices developed countries are willing to pay for raw materials, while paying high prices for the import of manufactured goods because of the added value of these goods due to investment and services provided by developed countries.

Moreover, because of their economic and technological superiority, developed countries prescribe for most African countries the scope and direction of their own economic development and social policy through bilateral and multilateral "aid and development assistance" programs. Burdened with interest on loans, with little prospect of paying the capital, most African countries are forced to implement "structural adjustment programs" that require them to reduce government spending. Given the nature of the postcolonial state in Africa and prevalence of certain cultural norms and practices, the implementation of human rights is the first victim of these restrictions.

The analysis of this chapter leads me to pose the issue in terms of a fundamental global as well as local responsibility for the implementation of human rights. Recalling the "all it takes" mandate of the Universal Declaration of Human Rights, it is simply unacceptable to blame African victims for the complicity of their ruling elites with powerful economic and political forces in the so-called international community. Far from discharging this mandate, legal protection in the narrow sense of the term can in fact be part of the problem in creating the false hope of relief and wasting the energy and resources of the few local and international advocates of human rights. Given the requisite political

commitment by all relevant actors, the difficulties of addressing root causes can be resolved, and legal protection can play its appropriate role in the implementation of human rights. Here are some elements of an alternative strategy for the effective implementation of human rights in Africa.

First, there should be an honest and candid appreciation of the limitations of the present paradigm, especially its reliance on legal protection in isolation from structural, cultural, and other root causes of violations. Narrowly conceived legal protection cannot cope with the scale of human rights violations.

Second, a serious commitment to the implementation of human rights as envisaged by the Universal Declaration requires drastic structural changes in international economic and political relations. The fate of the United Nations initiative to establish a New International Economic Order,[29] as continued by the Group of 77, shows that no significant adjustments in global economic and political relations can be achieved without the consent of, and leadership by, developed countries. In view of the nature of the postcolonial state in Africa, international initiatives must be weighed carefully, for it cannot be assumed which initiatives would improve human rights.

Third, commitment to the implementation of human rights requires addressing delicate and complex issues of sovereignty and the paradox of self-regulation. Though national governments cannot be trusted to regulate their own behavior, unilateral action or intervention by major powers is also dangerous and usually counterproductive. The best

29. This effort of developing countries to redress their economic and political relations with developed countries gathered some momentum in the 1960s and 1970s, as reflected in such United Nations instruments as Resolutions 1803 of 1962 and 3171 of 1973, on Permanent Sovereignty over Natural Resources, Resolution 3201 of 1974, Declaration on the Establishment of a New International Economic Order, Resolution 3201 of 1974; and Resolution 3281 of 1974, the Charter of Economic Rights and Duties of States.

This initiative has been continued, in some respects, by what is known as the Group of 77 (now more than 120) African, Asian, and Latin American countries. This group has found institutional staff support in the United Nations' Conference on Trade and Development (UNCTAD) which has become, in many ways, a counter-balance to the Organization for Economic Cooperation and Development (OECD), the Paris-based organization that includes most of the industrialized countries. In 1993, the Group of 77 revised its 1981 Caracas Action Program for coordinating efforts in eight key areas: energy, finance, food and agriculture, industrialization, raw materials, technical cooperation, trade, and technology. Since the early 1990s, however, the group has found it difficult to maintain unity on its objectives, as more developing countries began to opt for bilateral negotiations with industrialized countries.

approach, therefore, may be more effective implementation through multilateral action, whether through the United Nations and its specialized agencies, or some other international or regional mechanism.

Fourth, insofar as legal protection plays a role in human rights, its methods must be adapted to the actual conditions in different societies. In particular, the traditional notion of justiciability should be examined critically to improve its application where it is appropriate, and it should be replaced with other strategies and mechanisms where it is inappropriate or ineffective.

Fifth, in these and other strategies for addressing the root causes of violations of human rights, whatever good or bad happens in the world happens through the moral choices each of us makes. All violations are committed by human beings acting or failing to act, whether they are the direct perpetrators of the wrong or persons who let it happen. As I write, human rights are being violated all over the world. The ultimate question is simply this: what am I doing to prevent this or the next violation?

Whatever view one may take of the root causes of human rights violations in Africa, the practical question is who is going to address them, and how? In view of the problematic nature and role of the postcolonial state, one might look to nongovernmental organizations for initiative and leadership, though their efforts must be implemented through state organs and agencies. But besides the lack of resources and restrictive political conditions facing nongovernmental organizations, there is the problem of what I call "human rights dependency." Human rights initiatives in most African countries originate from foreign sources, not from within, and are addressed to foreign governments, not African governments. In contrast to developed countries, where human rights are protected by local organizations acting through their own political and legal institutions against offending officials, policies, or legislation, such international organizations as Amnesty International and Human Rights Watch play this role in most African countries. These international organizations monitor human rights to report them to their constituencies in developed countries, who are expected to influence their governments to pressure African governments into respecting the human rights of their populations.

Although the number of local human rights organizations in African countries is growing, this dependency model continues, for several reasons. First, local organizations tend to adopt the operational

style of international organizations, monitoring and reporting violations through international media in order to generate pressure on their own governments from foreign rather than local sources. Second, since local organizations tend to find funding from foreign agencies and foundations, they do not feel the need to build local constituencies for material and political support. But the consequence of this state of affairs is that local organizations remain isolated from their communities, perpetuating human rights dependency. Third, African governments take advantage of the situation by oppressing local activists without fear of political consequences at home, while challenging the credibility of international organizations as agents of foreign cultural imperialism.

The preceding remarks are not intended to suggest that monitoring by international human rights organizations should stop, or that local African organizations should change their operational methods. In view of the economic, political, security, and other dependencies of most African states on former colonial powers and other developed countries, this dependency is both unavoidable and useful, at least in the short term. Instead, I am calling for change in the attitudes and operational style of international and local nongovernmental organizations in order to gradually diminish this dependency by promoting internal initiatives and processes. In my view, local organizations are more likely to understand, and to have greater credibility in addressing, cultural, economic, or political root causes of human rights violations. Local organizations certainly need material and technical support of international organizations, especially protection of their right and ability to operate effectively in their own countries, but this should be in the nature of partnership, not dependency. This dual approach—more effective legal protection and addressing root causes—depends on sufficient commitment among local and international constituencies to do "whatever it takes" for the implementation of human rights.

Having argued that most African societies can do more for human rights with less reliance on legal protection—what sounds like heresy from a lawyer—I conclude with what sounds like a heresy from a human rights advocate: Humanity has existed in the past without the modern human rights paradigm and will survive its demise. Indeed, the struggle for social justice and resistance to oppression will continue through whatever means are available to people everywhere in the

world. The human rights movement will stand or fall by its own record of achievement in each society's struggle for human dignity and social justice. To say that the human rights movement will be condemned to permanent marginality if it fails to deliver on its promises is simply to state the obvious.