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## Rights: The Rise of Rights and Nonprofit Organizations in East African Societies

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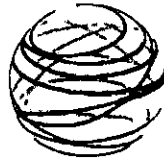
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## 10 – RIGHTS

### The Rise of Rights and Nonprofit Organizations in East African Societies

ALEX PERULLO

WHILE THE CONCEPT OF RIGHTS HAS A LONG HISTORY IN LEGAL AND cultural thought, it has increasingly become a focus of contemporary global processes and movements. In East Africa (Tanzania, Kenya, and Uganda), community organizations, religious institutions, and individuals regularly debate the tensions of justice and injustice occurring in society. There are frequent workshops, conferences, public speeches, and parliamentary sessions about the scope of rights in contemporary societies. Radio shows, musical events, and newspaper articles consistently feature explanations of and clarifications about rights-based issues. Rarely does a week pass without a public event organized by a nonprofit organization to educate the public about civil society.

In Tanzania, for instance, rights-based conversations cover a variety of themes, including the rights of women to be represented in political conversation; the rights of patients and the need for equitable standards in health care; land rights, particularly for women who may be unaware of the laws meant to protect them in situations where their husbands die and in-laws

claim ownership of the land (a common occurrence in many parts of Tanzania); the rights of animals and the prevention of animal cruelty; the rights of children in society and within their own families; and legal counsel on the prevention of gender violence.<sup>1</sup> The abundance of topics, organizations, and rights-based dialogue in East Africa presents one of the more significant transformations in the interactions occurring within the region and also between people in the region and other parts of the world.

This profusion of opportunities to claim and protect one's rights is a central aspect of larger cultural and political transitions occurring in African societies. Through an increased focus on neoliberal policies and a surge in transnational communication, people use rights-based language and actions to establish opportunities to protect and advance their interests. More specifically, the proliferation of debate about rights, as well as institutions meant to support those debates, such as nonprofit organizations, is in response to the growing need to formally communicate social justice issues to national and international audiences. Without the establishment of rights-based organizations, many individuals and groups lack the capabilities to push for more political and legal representation, or to establish options in attaining access to health care, land, education, citizenship, financial compensation, or other elements considered central to a person's "basic rights." States need to formally acknowledge their positions on rights in order to remain viable players in the global economy. In short, having the ability to use rights rhetoric is a distinct advantage to those who want to advance their interests whether in small rural communities or in cosmopolitan networks of international exchange.

The increased attention to rights globally is a response to several factors, including efforts to harmonize laws and policies. The universalization of rights laws and policies incorporates the development of institutions that attempt to standardize the development and implementation of rights throughout the world. The World Intellectual Property Organization (WIPO), which was created by the United Nations in 1967, aims to normalize development of international law dealing with intellectual property rights, including patents, trademarks, and copyrights. The World Health Organization (WHO), also an agency of the United Nations, aims to promote standards in health care worldwide. Margaret Chan, director-general of WHO, notes, "This world will never become a fair place all by itself. Fairness, especially

in matters of health, comes only when equity is an explicit policy objective."<sup>2</sup> Through creating a universal notion of health, intellectual property, or many other forms of human rights, these institutions promote the notion that everyone can and should be guaranteed equalities that are essential to all humanity.

Even though many institutions attempt to standardize rights laws and policies, many individuals and communities encounter difficulties ensuring those rights. And, more importantly, many do not share the same understanding of the meaning of human rights as international institutions or state governments. The standardization of rights presupposes a universal interpretation of personhood. Many individuals, communities, and cultural groups interpret rights in culturally or politically specific ways. The ability to promote rights has become a central means to ensure the protection of a particular vision of personhood. To promote those visions, people can use the courts or attempt to pass legislation. They can hold protests or promote their ideas through music, the media, and popular culture. However, in East Africa, one of the most common means to protect, promote, or contest particular visions of personhood is through nonprofit organizations. Nonprofit organizations become the vehicle through which people promote their ideologies, knowledge, and belief systems. Nonprofits can be used to raise money, file lawsuits, lobby legislators, or organize protests, political campaigns, or community action. Rather than promote the standardization of rights, they sustain a diverse and contested interpretation of personhood located in various communities and groups.

My argument that rights dialogue is an increasingly important form of social and political interaction is not meant to suggest that more people's rights are being protected. Rather, the rights-based dialogue has proliferated through individuals, the media, global institutions, and governments to the point where it is a vital means for people, companies, institutions, and governments to engage with one another. Familiarity with the dialogue of rights is an important skill for people to have as they negotiate concerns about their own safety, health, and well-being. Yet, there are also many barriers to protecting rights given divergent conceptions of their meanings, as well as inequalities in people's ability to protect their interests. A drug company, for instance, can defend its interests in a patent, while health-care workers argue that those who are sick have the right to less expensive drugs. The ability to

protect an invention and the right to protect the health of people are both considered foundational rights even if they may conflict with one another.<sup>3</sup>

Understanding tensions over rights and the formation of nonprofit organizations is central to conceptualizing power in social and economic relations between peoples around the globe. In particular, the shifting landscape of many contemporary societies from violent conflict to conflict over rights provides a means to comprehend contemporary global processes. Several scholars, most notably Steven Pinker (2011), have shown that violent conflict has steadily declined in the past century. Part of the decline is due to an increasing array of legal and security measures meant to protect people's basic rights. The rise of civil rights movements has further encouraged a decline in physical conflict in favor of contestations over the meaning of basic rights. While human rights can also be used to mask violence or promote one group's interest at the expense of others (Allen 2013), it remains a potent means to avoid physical conflict and promote a particular vision of justice, equality, or personhood.

The overall movement away from violence toward rights rhetoric emphasizes the notion that claiming power over the meaning of rights has become central to participating in broader debates about the contemporary human condition. If comprehending the global requires one to be attuned to the increasing interconnectedness of human interactions, then there needs to be a means to understand the ways people, communities, and nations negotiate those interactions. Claiming the right to something—a value, belief, idea, cultural norm, or economic policy—means carving out space within an increasingly interconnected world. The rhetoric of rights and, increasingly, the values attached to them force a position into public view and create the potential for situating oneself in a protected position. To say “I have the right to something” sets up boundaries—tangible or intangible—that can force others to take notice or counter those same rights. To interpret global exchanges of ideas, values, and cultural norms requires attention to the negotiation and protection of rights among individuals, communities, and governments around the world. The conflict between the harmonization of rights globally, particularly through the formation of international institutions, and the promotion of local interests through the creation of small-scale nonprofits proves to be one of the more engaging forms of cultural production occurring in contemporary East African societies.

## PERIODIZATION OF RIGHTS

In a 2011 interview on the BBC, the British prime minister David Cameron stated that "we want to see countries that receive our aid adhering to proper human rights, and that includes how people treat gay and lesbian people." He continued by stating that the treatment of homosexuality in African countries can determine British aid policy.<sup>4</sup> The statement caused an uproar among leaders and pundits in several African countries, including Ghana, Malawi, and Uganda. For many, Cameron's statement went against the values and cultures of African peoples. Tanzania's minister for foreign affairs, Bernard Membe, stated: "Tanzania will never accept Cameron's proposal because we have our own moral values. Homosexuality is not part of our culture and we will never legalize it. . . . We are not ready to allow any rich nation to give us aid based on unacceptable conditions simply because we are poor."<sup>5</sup> Others referred to the comments as a way of encouraging "weird behaviors from the Western world."<sup>6</sup>

The debate between the United Kingdom and many African countries revolves around the issues of basic human rights: the right to be free from discrimination regardless of sexual orientation and the right to define boundaries of morality and human decency. It also deals with the right of governments to make decisions based on cultural judgments drawn from their own society. Even though *British and Tanzanian citizens may disagree with the positions of their leaders*, the comments serve to reify national positions to international audiences. Many people living in East Africa, for instance, may be less familiar with the diversity of opinions on gay rights in England, just as many in England may be unfamiliar with the nonprofit organizations and community leaders that attempt to fight for those gay rights in East Africa. Through the public comments about rights, there is a political tug-of-war over the meaning and justification of fairness, justice, and, more profoundly, morals and values. Rights are not politically or morally "neutral"; rather, they "privilege certain social groups, practices, and values, while marginalizing others" (Donnelly 2002, 230). To lay claim to certain rights is to legitimate a specific cultural position and, potentially, to illegitimate others.

Conflict over rights, such as occurred between the British prime minister and African leaders, is a common occurrence in relations between these two parts of the world. Since at least the nineteenth century, disagreements have

emerged and reemerged over rights to land, resources, and possessions. It has also had a profound impact on conceptions of basic human rights, particularly aspects of freedom, equality, and dignity. Given the often contentious histories between the West and Africa, it is important to realize both the divergent perspectives on rights and the point where they become forcefully intertwined. In East Africa, the rhetoric over rights can be separated into periods based on major events, including colonization, independence, and post-independence reforms. This section examines these periods in order to show the historic contentiousness of rights and the rapid growth in rights dialogue that has emerged since the late 1980s. To begin, however, I need to briefly discuss the rise of rights in the West, which became the cultural tradition enforced in many African countries during colonialism.

Even though discussions about rights date at least from the time of Aristotle, the focus on issues of political rights significantly increased during the Enlightenment period. Rights in the Enlightenment were often described as distributed equally to everyone (Edmundson 2012, 23). There were natural rights where "moral law governs human beings even in a state of nature, prior to any social contract" (Feser 2012, 27). While the notion of rights for everyone was theoretically explored, in practice a great deal of inequality existed in the application of legal and political representation for all but a few in society. For instance, slavery was commonplace in pre-colonial Africa, as well as in Europe during part of the Enlightenment. Women could not vote, run for political office, or even attain economic autonomy (Mack 1984, 9). There was heavy taxation on the poor, and prisoners often had few civil protections. Natural rights, in practice, were often limited in scope and employed only in certain conditions and among certain populations. This is not to say that some did not argue for the universal presence of natural rights. Rather, it underlines the narrow application of rights to only a small segment of Western populations.

While there is no historical equivalent to the Enlightenment in Africa, studies that took place during the colonial period discuss historic conceptions of law and jurisprudence among local populations. Max Gluckman found that the Lozi of western Zambia (formerly Northern Rhodesia) explained their law as a body of rights and justice, which has existed since time immemorial (1967, 1). The concept of rights, along with justice and truth, was flexible and allowed judges to use rights to cover a wide range of meanings

in legal cases. If someone failed in his responsibilities to others, such as the need to show generosity to people, then that person could lose other rights, which could be determined by the judges depending on the severity of the wrongdoing. Gluckman notes, "The flexible generality of these concepts enables the judges to bring almost any action under the rubric of right or duty, or to define anything done against the interests of another as a wrong or injury. It enables the concepts to be expanded to contain all the customs and values, both historic and emergent, of Lozi law" (*ibid.*, 299). The flexibility of applying rights to different situations established a dynamic system of rules that could be shaped to fit each situation.

Other scholars documented records of court cases, legal proceedings, and organized forums for dealing with legal claims. The main concern of many of these legal proceedings was over land rights, inheritance, murder, witchcraft, treason, adultery, and other similar issues. In addition, the rights that were protected varied widely by community. Among many of Tanzania's ethnic groups, particularly pastoralists, land was communally held to allow various members of the community to graze cattle or other livestock (Tenga 1992, 14-17). In other communities, individual rights existed through distinct land interests, such as gardens, homes, and family property (Mwaikusa 1993, 146). Individual rights in these areas were important for inheritance, illegal trespassing, and the passing of land to family members. Even before colonialism, ownership practices shifted due to interaction with other groups, land scarcity, or economic factors (Dobson 1954, 81). This meant that populations living in what is now Tanzania, even before colonialism, did not share a single perspective on land tenure. Land was something that could be inherited, rented, borrowed, allocated, or shared (Malcolm 1953, 50-51).

The conceptions of law and rights promoted in the Enlightenment and among African populations came forcefully into contact during the colonial period. When colonialists arrived in East Africa, they promoted Enlightenment principles, particularly notions of liberalism. There was interest in encouraging free trade, fair labor, and Christian notions of rights and values. These were ideals held by a growing British middle class, which played a primary role in the colonization of East Africa; it was interested in eliminating slavery but also in expanding the potential for trade in goods such as ivory, tea, coffee, rubber, palm oils, and sisal (Iliffe 1979).

Along with the promotion of liberal ideals and free-market capitalism, however, there was also a strong belief that Africans themselves were incapa-



ble of self-determination and self-rule. While colonialists argued for freedom for all people, they also made clear that African populations did not possess the knowledge, skills, and, in particular, morals to adequately fulfill notions of freedom. This perspective played significantly into the design of colonial law and in the administration of the new territories. In contemplating the role of colonial administration in African societies, the British district officer based in Moshi, Tanganyika, in 1916, Theodore Morison, wrote:

Should we override native customs, some of which are in conflict with our Western standard of ethics? How should a District Officer regard witchcraft? How far should he support the father who marries off his daughter to the highest bidder? The gift of cows and goats which legalise a marriage comes perilously near the price of a slave. The missionary, of course, has no difficulty in answering these questions. These, he says, are pagan customs, his duty is to destroy them and substitute a higher law. He denounces polygamy, he insists upon covering nakedness and preaches the superior decency of clothes. . . . In theory the District Officer says that his policy is the sublimation of native custom so that it may approximate even more nearly to what we believe to be a higher standard (Morison 1933, 141-42)

Rather than acknowledge the varied and flexible forms of legal structures in African territories, colonial administrators often viewed African peoples in essentialized ways, and local policies, values, and morals were dismissed. The establishment of morality and law in the new colonies or protectorates came from external forces that obfuscated local traditions and practices. In addition, it attempted to create static and bounded notions of rights for entire colonies, a practice that remained in place for much of the colonial period.

Changes in rights and self-determination emerged with the formation of the United Nations and the Universal Declaration of Human Rights (UDHR) during the 1940s. Bonny Ibhawoh writes: "The UDHR was significant in the global anti-colonial movements of the post-war period and, specifically, the emergence of independent states in Africa because it reinforced the rights of self-determination" (2012, 719). Many African independence leaders articulated the move toward self-determination and self-rule through promoting rights ideals found in the UDHR. It was a means to embrace the language of the West in order to undermine the policies and practices of colonial rule.

Once independence arrived, the UDHR remained central to the design of state policies, constitutions, and legal structures. After independence in Tanzania, for instance, Julius Nyerere promoted the Arusha Declaration, a state policy document. One of the primary objectives of the Arusha Declaration was to "safeguard the inherent dignity of the individual in accordance with

the Universal Declaration of Human Rights." In Kenya, the Bill of Rights in the independence constitution were largely drawn from the UDHR. Similar provisions were made in all East African countries during the 1960s and 1970s.

The attention to the ideals of the UDHR in the creation of constitutions and policies in East Africa did not mean these governments guaranteed the rights of the UDHR. Many exceptions were made that limited the potential for ensuring or guaranteeing rights for all citizens. James Orengo, the controversial Kenyan lawyer and former presidential candidate, states: "We borrowed the Bill of Rights from the Universal Declaration of Human Rights but added in all the exceptions to rights that were common in Stalinist countries. In short, we now have a presidency without checks, a parliament without teeth, and a Bill of Rights that reads more like a Bill of Exceptions rather than Rights."<sup>7</sup> While Orengo's statement is an overgeneralization, there were many instances in which the rights, borrowed from the UDHR, were ignored, reinterpreted, or redesigned. In Tanzania, for instance, the movement toward African socialism meant that there was a profound rethinking of morality and values in terms of traditional African societies. The notion of community, including the sharing of community land, resources, and knowledge, had precedent over any sense of individual claim to those same elements. The UDHR, however, is a decidedly individual-rights document. Relying on the UDHR only meant that nations borrowed the language of the global standardization of rights. In practice, many exceptions and flexible interpretations emerged to accommodate the political landscape of post-independence Africa.

The 1970s and 1980s brought a dramatic decline in the effectiveness of African governments to provide for their citizens. While several countries were able to operate stable economies during the 1960s, the decline in commodities markets, the rise in oil prices, corruption, and increasing restrictions brought on by authoritarian rule made the ensuing decades more difficult for independent countries on the continent. Zambia's economy, for instance, collapsed when the price of copper fell and the cost of oil rose. Tanzania was unable to stabilize its economy after fighting a war against Idi Amin in Uganda. Cold War activities also limited the capabilities and trade potential of countries that had previously moved toward socialism, including Tanzania, Ghana, Mozambique, and the Democratic Republic of the Congo

(formerly Zaire). In many situations, the decline in the effectiveness of the government brought protests, strikes, wars, and coups d'état. Between 1956 and 2001, there were 139 reported coups d'état in sub-Saharan Africa, 80 of which were successful (McGowan 2003). The economies of all East African countries had stopped growing by 1984, when the economic crises peaked for the region (Arrighi 2002, 13).

The decline in many African economies meant that governments needed to turn toward Western institutions for support. Referred to as the Washington Consensus, institutions such as the World Bank and the International Monetary Fund (IMF) began a series of structural adjustment reforms in order to alleviate a specific country's debt, liberalize the pricing and marketing of commodities, expand the private sector, improve tax collection, and reduce government spending.<sup>8</sup> These efforts were meant to alleviate the debt burdens and promote growth through spurring trade. For many countries, however, the impact of these changes was an even more drastic decline in economic growth and a significant rise in corruption. In addition, it meant that African countries needed to move away from self-determination and to harmonize laws and policies with those of the West. This included sweeping changes to freedom of speech, freedom of the press, and multi-party elections. It also meant the passage of legislation meant to ensure the protection of basic rights.<sup>9</sup>

The decline of state services during the 1970s and 1980s meant that more people living in Africa had to search for ways to protect themselves and ensure their own social security. There was a significant shortage of basic goods, such as soap, clothes, and oil, due to the governments' lack of funds to import materials from overseas. Schools became too expensive for many individuals, especially given the cost of basic necessities, such as books and uniforms. Many countries experienced food shortages at some time during the 1980s. While the governments moved toward decentralization, people needed to be more creative in finding for themselves and finding security. This included illegal strategies, such as bribery and collusion, as well as legal strategies, such as building networks with well-connected individuals inside and outside of the country (Perullo 2011).

During this period of transition and instability, dialogue about rights became a central means to draw attention to injustices occurring on the continent. Discussion about universal human rights came from many places,

including conversations among Africans living in the diaspora and on the continent about freedoms and opportunities in the West. Because many Africans were being educated in the West, there was a growing interest in establishing codes of conduct, rules, and ideology associated with Western governments. Many artists and musicians criticized government policies and ideas. Remmy Ongala, the Tanzanian musician, sang "Mnyonge Hana Haki" (The Poor Have No Rights) as a critique of the failure of government policies to ensure the rights of the poor. Local community associations mobilized and gained confidence in voicing concerns about problems they encountered.

The proliferation of dialogues about rights, including both those interpreted as universal rights for all of humanity and those enshrined in African traditions and customs, created an explosion of interest in creating governmental and community-based organizations. The language of rights allowed people to gain support from international donors, charities, and religious organizations. If individuals embraced the proper rights language, there was a sense that they could leverage support from any number of international institutions. And when it was not possible to find international support, small-scale community groups could fight for social justice locally in order to gain recognition. States even sought ways to appease international leaders by passing rights laws, while also advancing country-specific interests in adapting the interpretation of those laws. The tension over laying claim to and defining the meaning of rights became a central means to push a specific worldview and protect one's own interests.

#### GENERATIONS OF RIGHTS

Human rights scholars often divide rights into three generations: classical rights (first generation), welfare or socioeconomic rights (second generation), and peoples', solidarity, or developmental rights (third generation). First-generation rights focus on liberty and the ability to live securely within a society. Second-generation rights include a variety of rights related to economic, cultural, and social issues. Whereas first-generation rights focus more on the individual—an individual's right to live without interference from the government—the second generation fosters collective or group rights. These rights include the right to live without discrimination, to organize

unions, to earn enough to sustain an adequate standard of living, to have rest and leisure, to participate in cultural life, and to receive an education. It also includes the ability to promote and protect intellectual property rights.

Finally, the third generation of rights, which is the most contested, focuses on the actions and behaviors of everyone in society, including the state and individuals. It includes the right to development, peace, and a healthy environment. The right to a healthy environment promotes the idea that people, companies, and governments should not negatively impact local ecosystems. Cultural heritage may also be considered a third-generation right where the traditions, customs, and beliefs of a population are widely supported and protected. In addition, there is a strong sense that third-generation rights apply most significantly to indigenous populations. The United Nations Declaration on the Rights of Indigenous Peoples, for instance, promotes indigenous peoples' rights to self-determination, which includes the right to freely determine their political status, as well as their economic, social, and cultural development. In other words, the declaration opens up the potential for alternative forms of justice and law even within an established nation-state.

Viewing the question of rights through these categories is useful for several reasons. First, it shows an important expansion in the rights dialogue that emerged in the post-World War II period. Second-generation rights were most significantly introduced in the UDHR, as well as postcolonial constitutions and the International Covenant on Economic, Social, and Cultural Rights, all documents that appeared after 1945. The growth in interest of third-generation rights has been more recent, and mirrors a growing impetus to protect indigenous populations and those living in less-developed countries. Collectively, the expanding rights dialogue has encouraged a movement toward universality in the adherence to and enforcement of moral attributes of persons since rights are often connected with cultural values and norms. State sovereignty became more tenuous as international organizations such as WIPO and WHO moved to encourage reforms to existing laws and practices, as well as to educate local populations about the rights available to them. A proliferation of nonprofit organizations and charities also emerged around the world to promote particular interpretations of these rights. According to 2012 U.S. Internal Revenue Service (IRS) records, over five thousand nonprofits existed in the United States to work on rights issues in Africa. That growth was even greater in African countries.

A second reason to categorize rights is that there is a correlating interest by international organizations and governments in protecting those rights. This has played a significant role in shaping policies and agreements between nations. The more nations move toward harmonization of national legislation, the greater the effort to enforce those standards transnationally. In 2005, a United Nations summit meeting promoted the notion of responsibility to protect (R2P), which obligates outside nations to become involved if other nations are unable or unwilling to prevent gross violations of human rights in their jurisdictions (Forsythe 2012, 4–5). While the focus of R2P is on mass atrocities and crimes against humanity, it opens the possibility for increasing disciplinary action in situations where there is cultural or political disagreement over the coverage or circumstances of rights. If a less-developed nation is unable or unwilling to protect certain rights, can they face sanctions, decreased aid, or other problems? If so, does that mean that many nations lack sovereignty in terms of deciding the moral obligations of the state and its citizens?

The contestation over homosexuality is one example of the rising tensions over the harmonization of rights. Many other conflicts have occurred in the past decade within East Africa: over water rights, held by a community for generations, when ownership was suddenly shifted to a transnational company; over ownership in traditional culture, knowledge, and music, which was not clearly or well protected under Western intellectual property regimes; and over appropriate ways to penalize violations over rights. In Uganda, for instance, the Lord's Resistance Army (LRA) has committed mass atrocities in the northern part of the country for over twenty years. In the year 2000, the Uganda Amnesty Act provided amnesty for rebels who abandoned and renounced their crimes. Close to thirteen thousand rebels received amnesty, including some high-ranking figures in the LRA.<sup>10</sup> In addition, the International Criminal Court (ICC) indicted five LRA leaders. Problematically, many populations affected by the LRA do not agree either with the amnesty policy or with efforts to extradite leaders of the LRA. Instead, according to Albert Gomes-Mugumya, who works on conflict resolution issues in Uganda, many people, such as the Acholi of northern Uganda, favor traditional justice mechanisms, such as *mato oput*, which “promotes community reconciliation and reasserts lost dignity” (2010, 78). The ceremony involved in *mato oput* is a nonviolent means to repair conflict within

a community and push for a process of healing. Neither the amnesty nor the ICC provides the same sense of healing that many people living in northern Uganda desire.

The more focus that is placed on protecting and harmonizing rights globally, the more likely tensions are to emerge between governments, communities, and individuals over the meaning, implementation, and enforcement of those rights. From the point of view of many people in East Africa, the universal harmonization of rights occurring in the neoliberal period mimics many characteristics of neocolonialism. If neoliberalism is a move toward creating open markets, free trade, privatization, and decentralization of governments, then the ability to shape and control the outcomes of national markets, courts, and social structures becomes critical to influencing the practices that take place within a country or region. The harmonization of rights can be thought of as a move toward shaping the outcomes of neoliberal reforms. Considering the strongest influence for harmonization comes from the West, these efforts not only impinge on a nation's sovereignty but also present a perceived sense that African countries are being forced to share the same ideals, values, and norms as the West. In his discussion about restricting aid to African countries that do not protect the rights of homosexuals, David Cameron stated, "I think these countries are all on a journey, and it is up to us to help them on that journey, and that is exactly what we do."

Cameron's rhetoric is similar to that of colonial administrators. It presupposes a form of international morality, which many African nations and, by default, many African people have yet to realize. The legal and historical scholar Brian Tierney writes, "Rights language did not grow up in the West because Western people are better or wiser than others; it is just that we have had a different history. There is at least a possibility that others may choose to profit from it" (1997, 347). The notion that Western countries have a purchase on morality has the same sense of elitism of the colonial and postcolonial periods. Yet, is there some accuracy to the point that the West has some purchase on morality? Or are alternatives presented in Africa also legitimate? In the case of the LRA, the Acholi's means of attaining social justice seems to offer an alternative to that of the ICC. In addition, it provides a means for the community to heal from the wounds created by the LRA. The issue here is that the language of rights need not be something controlled by the West within a system of international morality. Rather, the dialogue of rights

needs to be flexible and dynamic in order for there to be a sense of establishing fairness and justice according to various communities. To privilege one sense of morality is also to privilege one sense of justice.

One of the outcomes of having expansive conceptions of rights law, particularly that of second- and third-generation rights, is that it creates the possibility for individuals, communities, and governments to claim indigenous rights as unique and worth protecting. Through using the media, public dialogue, and the formation of nonprofit organizations, groups have learned to use rights to stake claims in their own concerns and potentially respond to injustices that they see in the world. Unlike previous historical periods in East Africa, when there were fewer opportunities to attain power through the advancement of indigenous concerns, today more people have the ability to debate their place in society and attempt to use the rhetoric of rights to advance their interests. At the same time, according to many East Africans, the protection of many types of rights remains tenuous. Even though more avenues exist to discuss rights, there are also more attempts to stifle exposure to rights violations. The conflict between protecting and preventing rights claims is a struggle that has grown more significant in East Africa.

#### GROWTH OF RIGHTS-BASED ORGANIZATIONS

While debates about rights provide a means to negotiate notions of self against those of others, the formation of nonprofits draws people together who share similar ideological perspectives. These nonprofits then become a means to represent the interests, desires, concerns, values, or beliefs of a community of people. They also provide a means for those same communities to build support for their causes. The more support that communities gain for their organizations, the more potential power they have in negotiating with other nonprofits, the state, local businesses, or international communities.

This potential to attain power—established through personal investment in nonprofit organizations—also creates a new set of relations that no longer depend solely on the state. Nonprofits can connect to organizations in other regions or countries to establish a stronger voice and more credibility. They can link to international organizations that can then place pressure on state governments to make changes; this occurred with copyright law in several East African countries where musicians pressured their governments



by first attaining the support of WIPO. And nonprofits can use the media to further promote their interests. The growth of nonprofits points to a new set of relations in East Africa and between Africa and the West, relations that are central to comprehending global processes of movement, exchange, and negotiation.

In many African countries, nonprofit organizations provide jobs and represent anywhere from 2 to 5 percent of a country's GDP. Most significant is that these organizations educate and assist a large number of people living in Africa. If statistics about Kenya are accurate, then there is a nonprofit for every one hundred ten people living in that country. That means that many Kenyans would have relative easy access to the resources, expertise, and assistance of nonprofits. While it is not possible here to assess the quality of these organizations, the relative number of nonprofits to the number of people living in Africa makes them a powerful and significant force in people's everyday lives.

The increase in rights-based dialogue fostered the formal establishment of nonprofit organizations to assist in the implementation and protection of rights among citizens of various nations. The nonprofit sector has a variety of subsets, including volunteer and charitable organizations and non-governmental organizations, and is sometimes termed civil society, the third economy, or the social economy. Organizations in the social economy work in a variety of areas, including hospitals, schools, and libraries, and a variety of contexts, such as grassroots organizations, sports and arts clubs, and intellectual property rights organizations. The scope and breadth of these organizations is so vast in African countries that it often appears that there are few areas or issues left untouched by nonprofit organizations.

Increased academic attention to the nonprofit sector is in part due to recognition of its size, in terms of both economic activity and workforce: The Johns Hopkins Comparative Nonprofit Sector Project organized a research project in thirty-six countries that documented the "scope, structure, financing, and role of the civil society sector" (Salamon et al. 2004, 5). The project started in 1991 and covered countries around the world including both developed and developing countries, such as Kenya, Tanzania, and Uganda. In tabulating the workforce of the civil society sector, the study provides a glimpse of the involvement of nonprofit organizations in national economies. In the thirty-six countries, 45.5 million people, including volunteers, worked in the civil society sector, while only 6 million worked in utilities, 39.3 million in

transportation, and 44.3 million in construction. Only manufacturing, at 105.8 million, had a larger workforce than the civil society sector.

As the authors of the Johns Hopkins study point out, however, 44 percent of the civil society workforce are volunteer, which often means they are an unpaid workforce. Nonetheless, they also note that since most volunteers actually do not work full-time, in which case they would not be counted in the civil society workforce, the actual number of people working in the social economy is estimated to be closer to 132 million or 10 percent of the adult population of these countries. The number of people working in civil society provides a sense of the needs that are not being met by other areas of society, including business and government, and also the growing desire to deliver certain services to local populations. Since many nonprofit organizations are small-scale and grass roots, they have an ability to work closely with local populations, organize around community concerns, and establish social capital. Social capital includes "bonds of trust and reciprocity that seems to be crucial for a democratic polity and a market economy to function effectively" (Salamon et al. 2004, 23). The large and growing workforce organized around social issues, whether human rights, advocacy, or leisure activities, presents a populace engaged in establishing rights and activities neglected by other areas of society, particularly the state and the market.

The growth of nonprofit organizations was so rapid that Lester Salomon has called it a "global associational revolution" (2004, xxi; see also Mascarénhas, chapter 14, this volume). Since the Johns Hopkins study, the number of nonprofit organizations working in African countries has only continued to expand at a rapid pace. Problematically, it is a challenge to determine their exact number. Most countries do not have the ability and/or the inclination to require organizations to register with the state when they start or to deregister when they stop functioning. There are also country-specific ways of identifying nonprofit organizations so that a search for just non-governmental organizations may miss cultural, youth, and social service groups that are categorized separately. Even government agencies struggle to formally identify the number of organizations operating in their country. For instance, in a November 2001 report, the vice president's office stated that three thousand local and international non-governmental organizations existed in Tanzania. This number is, even according to the report, incorrect: because of the "lack of information on who should register, inadequate infor-

mation of what is an NGO and to some extent [the] cumbersome process of registration, there are Organization [sic] which are not registered, but which quali[fy] to be identified as NGOs.<sup>11</sup>

Despite the difficulty in capturing the size of civil society in Africa, many studies and reports attempt to assess the number of organizations that exist. In Rwanda, there are an estimated 37,000 informal groups and 319 registered nonprofit organizations.<sup>12</sup> In the early 2000s in Tanzania, 2.1 million people or 11 percent of Tanzania's adult population engaged in volunteer work, while organizations employed over 330,000 people full-time (Kiondo et al. 2004, 127–28). The estimated total number of registered organizations, including cooperative societies, cultural and arts organizations, and community-based organizations, was 58,807 (Ndumbaro and Mvungi 2007, 27). Given the significant focus on rights and community organization in Tanzania, particularly after state efforts to privatize water and electricity in the country, which led to protests by nonprofit organizations (Perullo 2011), the interest in civil society expanded significantly. Based on estimates in Tanzania, more than twice as many non-governmental organizations were registered in 2009 as compared to 2001 (around 9,000 and 3,865 respectively).<sup>13</sup>

The proliferation of organizations in a short time span is not unusual. In Kenya, for instance, the number of nonprofit organizations tripled between 1998 and 2005 (113,259 to 347,387). These numbers include self-help, women's, and youth groups, cooperatives, non-governmental organizations, foundations and trusts, and unions (Kanyinga, Mitullah, and Njagi 2007). In Ghana during the same time period, the number of nonprofit organizations quadrupled to 40,000.<sup>14</sup> The combination of local and international assistance for various social issues in these countries provides tremendous support on a variety of social and legal issues. In fact, the number of areas covered by nonprofit organizations has expanded at an equally rapid rate. Tanzania's Ministry of Community Development, Gender, and Children divides nonprofits into fifteen categories, including education, capacity building, agriculture, legal rights, and health. These categories indicate only a small portion of the spectrum of rights work being done in East Africa.

Aware of the dramatic rise in nonprofit organizations, many governments, including all of those discussed thus far, have increased restrictions on their activities, required some level of reporting, and attempted to curb problematic practices, such as corruption or the distribution of misinformation.

Some countries have also attempted to increase the registration of nonprofits in order to avoid conflict or collusion between nonprofits working on the same issue. Most African governments, however, do not have the resources to monitor the actions or statuses of nonprofit organizations. Instead, there is a cacophony of nonprofits working in African countries—run by either local or foreign interests—that aim to help those in need or spur action from anyone else. Regardless of the job, social position, political or religious beliefs, or cultural philosophies, there is a nonprofit that can support that point of view. And, if there is not, the possibility always exists to start one.

#### THE AGE OF RIGHTS

In his book *The Proliferation of Rights* (1999), Carl Wellman makes the point that while the dialogue of rights has spread to more areas of modern life, it has also produced increasing resistance. That resistance can be seen within East African countries, as there are frequent debates in newspapers, parliamentary sessions, songs, and conversations about the character of rights. While European liberalism brought many specific conceptions of rights, national and indigenous concerns provide a means to reshape the landscape of meaning and the significance of those debates. More debates over rights will emerge simply as a means to establish identity differences between nations and between communities. Those debates create tensions over the use of morality in daily life. Laying claim to and advancing specific moral interests can create profound shifts in relations between people and nations. The move by Cameron to insert gay rights into dialogue with Africa is one example, as is the competing response by African leaders. Both sides clearly believe that they are correct in their assessment of morality and rights. Both are willing to take risks to protect those rights. If history provides any indication, then more African countries will adapt the policies and practices coming from the West. As the role of rights continues to proliferate, however, new debates will arise to once again test relations between people, communities, and nations.

In addition to the escalation in tensions over moral concerns, the increasing attention to rights in East Africa has also led to significant shifts in everyday life. It is now common for governments to have departments dedicated to ensuring the rights of local populations. There are new laws, amendments, legal norms, and courts that hear cases about human, environmental, intel-

lectual, or community rights. There is a vast network of nonprofit organizations and even organizations meant to survey the rights conditions of specific countries, such as the Legal and Human Rights Centre based in Tanzania. Nonprofit organizations from East Africa frequently send representatives to international meetings of the United Nations, WIPO, WHO, and other institutions. International development is no longer focused on infrastructure projects, but on issues related to rights. The law professor David Kennedy notes, "Human rights has elbowed economics aside in our development agencies, which now spend billions once allocated to dams and roadways on court reform, judicial training, and 'rule of law' injection" (2012, 20). He continues by arguing that the world of rights has created a "common vernacular of justice for a global civil society" (*ibid.*, 20). Rights and rights dialogue are a fundamental part of people's lives in East Africa and central to understanding global processes in the establishment of notions of universality, law, justice, and personhood.

#### NOTES

1. All of these rights-based issues were topics of conversation in Tanzania between June and September 2012. For English-language versions of these stories see Issa Yusuf, "Need to Involve Women in Decision Making Issues," *Daily News*, 12 September 2012; Kilasa Mtambalike, "Human Rights Body Urges Dedication to Health Care," *Daily News*, 1 June 2012; Jaffar Mjasiri, "Doctors' Strike: Were the Patients' Rights Violated?" *Daily News*, 14 July 2012; Dr. Ali Mzige, "The Bill of Rights of the Patient," *Daily News*, 8 July 2012; Daily News Editors, "Violation of Animal Rights," *Daily News*, 6 July 2012; Matthew Moses, "Ngara NGOs in Gender, Land Rights Awareness Campaign," *Daily News*, 22 June 2012; Daily News Editors, "NGOs to Offer Training on Gender Violence," *Daily News*, 27 August 2012; Meddy Mulisa, "RC Wants an End to Violence against Women and Children," *Daily News*, 13 July 2012.

2. See Margaret Chan, "More Countries Move towards Universal Health Coverage," opening statement at the International Forum on Universal Health Coverage: Sustaining Universal Health Coverage: Sharing Experiences and Supporting Progress, Mexico City, 2 April 2012. [http://www.who.int/dg/speeches/2012/universal\\_health\\_coverage\\_20120402/en/](http://www.who.int/dg/speeches/2012/universal_health_coverage_20120402/en/) (accessed 21 August 2012).

3. For instance, WIPO promotes the protection of intellectual property rights, including patents, while WHO promotes equitable health care globally, by, among other things, attempting to lower the costs of medicine.

4. Cameron made comments about gay rights in Africa and foreign aid at the Commonwealth Heads of Government Meeting in Perth, Australia. See "Cameron Threat to Dock Some UK Aid to Anti-Gay Nations," BBC News, 30 October 2011. Online edition: <http://www.bbc.co.uk/news/uk-15511081>.

5. Richard Mbuthia, "Africa, Want Aid? Recognise Gay Rights!" *Daily News*, 26 December 2011.

6. The Citizen Reporters, "Tanzania Says NO to UK," *Citizen*, 3 November 2011.
7. The quote is from "Constitution and the Crisis of Governance in Kenya," an address given to the Kenya Community Abroad Conference, Concordia University, Minnesota, 30 June–3 July 2000. The quoted section appears in Shadrack Wanjala Nasong'o and Theodora O. Ayot, "Women in Kenya's Politics of Transition and Democratisation," in *Kenya: The Struggle for Democracy*, ed. Godwin R. Murunga and Shadrack W. Nasong'o, 164–96 (Dakar, Senegal: Codesria, 2007).
8. A great deal of academic writing has appeared discussing the policies of structural adjustment, privatization, or the types of reforms that actually emerged in African countries through liberalization efforts. For a small sample, see Ferguson 2006; Hibou 2004; Logan and Mengisteab 1993; Lugalla 1997; Briggs and Yeboah 2001; and Tripp 1997.
9. In Tanzania, this included the passage of the Commission for Human Rights and Good Governance Act of 2001 and the Basic Rights and Duties Enforcement Act of 1994 (Act No. 33 of 1994).
10. Ashley Benner, "Uganda Rules That Amnesty Can't Be Denied to LRA Leaders," *Christian Science Monitor*, 27 September 2011. <http://www.csmonitor.com/World/Africa/Africa-Monitor/2011/0927/Uganda-rules-that-amnesty-can-t-be-denied-to-LRA-leaders>. Accessed on 28 August 2012.
11. The United Republic of Tanzania, *The National Policy on Non-Governmental Organizations* (Dar es Salaam: Vice President's Office, November 2001).
12. The International Center for Not-for-Profit Law, "NGO Law Monitor: Rwanda," 17 December 2009. Online at <http://www.africancso.org/documents/10136/0/NGO+Law+Monitor+-+Rwanda>. Accessed 28 August 2012.
13. In July 2012, only 1,370 local non-governmental organizations were officially registered with the Ministry of Community Development, Gender, and Children. Part of the change is in the way that organizations report their status to the government and the government's newer requirements for registration by non-governmental organizations.
14. For data on the Ghanaian nonprofit sector in 1998, see Anheier and Salamon 1998, 31.

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