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NONGOVERNMENTAL ORGANIZATIONS AND AFRICAN GOVERNMENTS: SEEKING AN EFFECTIVE INTERNATIONAL LEGAL FRAMEWORK IN A NEW ERA OF HEALTH AND DEVELOPMENT AID

CHANDLER H. UDO*

Abstract: International and domestic nongovernmental organizations (NGOs) have multiplied on the African continent as both public and private donors have shifted their funding away from ineffective governments. Many African nations, including Zimbabwe and Sudan, have responded by expelling international NGOs and enacting laws that severely limit their ability to function. In most cases, NGOs are without recourse because of their precarious position in international law. Some scholars have posited that NGOs should be granted legal personality to make them full or partial subjects in international law. This Note argues that such a solution would not promote the important goals NGOs advance in Africa. It would also ignore the important role that African governments must play in health and development issues. Instead, the international community should reinforce the existing international legal framework, allow NGOs to remain independent, and create mechanisms to foster communication between NGOs and host governments.

INTRODUCTION

In 2005, the Government of Sudan took a number of steps to remove international nongovernmental organizations (NGOs) that were operating within its borders.¹ These official acts included sending a letter of warning to the charity Oxfam and arresting two Médecins Sans Frontières (Doctors Without Borders) workers who had recently re-

* Chandler H. Udo is a Note Editor for the *Boston College International & Comparative Law Review*. The author would like to thank his dearest friend, Kyle Hogan, for her unwavering support.

¹ See Cris Chinaka, *NGOs Tiptoe Through Africa's Political Minefields*, GLOBAL POL'Y F., Oct. 11, 2005, <http://globalpolicy.org/ngos/state/2005/1011tiptoe.htm>. Other African nations have taken similar steps to remove international NGOs, which are seen as agents of Western Governments. Eritrea, for example, recently told the U.S. Agency for International Development to cease their operations within that country. *See id.*

ported a rape in the Darfur region of Sudan.² Such acts of expulsion, in addition to similar incidents that occur throughout the African continent, highlight the precarious position of international NGOs relative to the power of the nation state.³ According to a proponent of NGOs in Zimbabwe, “Although NGOs are very important in advancing economic and social development and in alleviating poverty and hunger, some governments regard them as part and parcel of Western powers they have problems with.”⁴

The problem of uncooperative host states in Africa is not a new phenomenon, as many donor governments across the globe, and organizations such as the International Monetary Fund (IMF) and World Bank, have argued that misrule has kept Africa from attaining significant economic and political development.⁵ In the 1980s and 1990s, wealthy nations primarily channeled development assistance through the IMF and World Bank, who would recommended disastrous structural adjustment policies for the continent.⁶ As a result of these policies, many African nations accumulated enormous amounts of debt.⁷ The failure of these policies left many Western leaders skeptical of the efficacy of African governments, and thus official development assistance (ODA) has diminished over time.⁸

An important change has occurred in recent years in the fundamental approach to assisting the plight of needy Africans.⁹ Donor governments have been electing to channel foreign aid to NGOs rather

² See *id.* Oxfam describes itself as an international development and relief organization that seeks to alleviate poverty and suffering around the world. See Oxfam Int'l, http://www.oxfam.org.uk/about_us/index.htm (last visited May 19, 2008).

³ See Chinaka, *supra* note 1.

⁴ *Id.*

⁵ See JEFFREY SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* 188–89 (2005).

⁶ See *id.* at 189.

⁷ See *id.* The Catholic Church led a movement at the turn of the century dubbed “Jubilee 2000,” which aimed to eliminate all third world debt by the year 2000 to correspond with the Great Jubilee celebration of the Catholic Church. See Jubilee Debt Campaign, <http://www.jubileedebtcampaign.org.uk/?lid=282> (last visited May 19, 2008). Many governments responded to this call, including the United States, which pledged to forgive \$435 million of foreign debt in 2000. See Christopher Wilson, *US House Approves Third World Debt Relief*, CNN, Oct. 25, 2000, available at <http://archives.cnn.com/2000/ALLPOLITICS/stories/10/25/congress.aid.reut/index.html>.

⁸ See Sam Chege, *Donors Shift More Aid to NGOs: But Cooperation Between Governments and NGOs Is Critical for Greater Effectiveness*, AFR. RECOVERY, Vol. 13, June 1999, available at <http://www.un.org/ecosocdev/geninfo/afrec/subjindx/13Ingo.htm>.

⁹ See *id.*

than African governments they largely view to be corrupt.¹⁰ Simultaneously, individuals, corporations, and foundations have increased their giving by astronomical proportions.¹¹ For example, the Bill & Melinda Gates Foundation (Gates Foundation) alone has given over \$6.6 billion to global health and development programs.¹² The coffers of the Gates Foundation were more than doubled in the past year when Warren Buffet pledged thirty-seven billion dollars to the charity.¹³

Thousands of NGOs and humanitarian organizations have quickly responded to the influx of available funds and are looking to spend the money.¹⁴ Similarly, donors are seeking ways to distribute their aid efficiently and effectively.¹⁵ The Gates Foundation is looking for projects that “collaborate with government, philanthropic, private-sector, and not-for-profit employers.”¹⁶

A substantial amount of scholarly literature has been devoted to the issue of NGOs in international law.¹⁷ This inquiry is of particular importance now that international and local NGOs serve as the primary conduit for foreign aid in Africa.¹⁸ This Note seeks to add to this discussion by assessing the ways international legal rules can respond to the new reality of African aid-delivery, which involves partnerships involving many different actors.

Part I of this Note outlines the evolving role of NGOs in Africa, the emergence of local NGOs, and the reasons why African governments have problems with foreign assistance in general. Part II explores vari-

¹⁰ See *id.* In fact, the World Bank reported that NGOs in Africa were handling \$3.5 billion in foreign aid in 1999, compared to less than \$1 billion in 1990. See *id.*

¹¹ See Laurie Garrett, *The Challenge of Global Health*, FOREIGN AFF., Jan./Feb. 2007, available at <http://www.foreignaffairs.org/20070101faessay86103/laurie-garrett/the-challenge-of-global-health.html>.

¹² *Id.*

¹³ *Buffet Donates \$37 Billion to Charity*, BBC NEWS, June 26, 2006, available at <http://news.bbc.co.uk/2/hi/5115920.stm>.

¹⁴ See Garrett, *supra* note 11.

¹⁵ See The Bill & Melinda Gates Foundation, For Grant Seekers, <http://www.gatesfoundation.org/ForGrantSeekers> (last visited May 19, 2008) [hereinafter For Grant Seekers].

¹⁶ *Id.*

¹⁷ See, e.g., Gregory W. MacKenzie, Note, *ICSID Arbitration as a Strategy for Levelling the Playing Field Between International Non-Governmental Organizations and Host States*, 19 SYRACUSE J. INT'L L. & COM. 197 (1993) (arguing that the International Center for the Settlement of Investment Disputes (ICSID) would be a desirable option for the settlement of disputes between states and international NGOs); Karsten Nowrot, *Legal Consequences of Globalization: The Status of Non-Governmental Organizations Under International Law*, 6 IND. J. GLOBAL LEGAL STUD. 579 (1999) (arguing that legal status of NGOs should reflect their actual participation in international affairs).

¹⁸ See generally Chege, *supra* note 8.

ous legal doctrines within international law as they pertain to international organizations and international NGOs, as well as presenting a sample of African laws addressing NGOs. Part III argues that popular theories of NGOs in international law would not be conducive to fostering more effective aid delivery in Africa. Rather, what is needed is for NGOs to remain independent, rely on their moral legitimacy, and engage in more effective communication.

I. BACKGROUND

Although NGOs are numerous and influential today, many scholars contend they did not become an integral part of the international system until the creation of the United Nations (U.N.).¹⁹ One commentator has defined international NGOs as “groups of persons or of societies, freely created by private initiative, that pursue an interest in matters that cross or transcend national borders and are not profit seeking.”²⁰ NGOs that operate in Africa serve a variety of goals, including offering relief services during times of natural disaster, promoting environmental conservation, fostering development, and promoting human rights.²¹ International NGOs have experienced considerable growth in recent years as countries have elected to funnel their money directly to international NGOs as opposed to going through state governments.²² The international community considered NGOs to be more accountable and better able to address local development conditions.²³ Major financial institutions, including the World Bank, have backed the rise of NGOs.²⁴

The increasing prominence of international NGOs does not mean that intergovernmental organizations (IOs) are no longer major players in African aid-delivery.²⁵ For example, the World Health Organiza-

¹⁹ See Nowrot, *supra* note 17, at 581.

²⁰ Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT'L L. 348, 350 (2006).

²¹ See *NGOs Achievers or Deceivers? Hundreds of Non-Governmental Organisations (NGOs) Operate in Various African Countries*, BBC NEWS, Feb. 20, 2004, available at <http://news.bbc.co.uk/2/hi/africa/3502733.stm>.

²² See MacKenzie, *supra* note 17, at 205.

²³ Raymond C. Offenheiser, *Enhancing NGO Effectiveness in Africa: Re-Evaluating the Potential for Genuine Partnerships* 7 (Oxfam America, Working Paper No. 4, 1999), available at http://www.oxfamamerica.org/newsandpublications/publications/ideas_at_oxfam/art5070.html/OA-Working_Paper_4.pdf.

²⁴ *Id.*

²⁵ See generally U.N. Econ. & Soc. Council [ECOSOC], Comm. for Programme and Coordination, U.N. System Support for the New Partnership for Africa's Development, U.N. Doc. E/AC.51/2006/6 (Mar. 29, 2006), available at <http://www.un.org/africa/osaa/reports/>

tion (WHO) and the Food and Agriculture Organization (FAO) are still considerable actors in Africa.²⁶ The WHO spends nearly thirty percent of its operating budget in Africa for programs such as health care improvement, AIDS prevention, malaria prevention, child death reduction, and maternal health promotion.²⁷ Furthermore, many U.N. agencies frequently collaborate with NGOs to achieve shared objectives.²⁸ The WHO recently joined forces with the Malaria Consortium, Doctors Without Borders, and Medical Emergency Relief International to combat the pervasive problem of malaria in Africa.²⁹ A representative of the group stated, "Institutions are prone to slowness. We need NGOs to generate speed and action."³⁰ Similarly, the FAO asserted that, "Working with [civil society organizations] enables the FAO to increase the effectiveness and quality of its work in agriculture and in the fight against hunger."³¹ These examples highlight the changing nature of development assistance in Africa, which involves collaboration between multiple types of actors.³²

A. From Official Development Assistance to Multi-Faceted Partnerships

Statistics show that, although aid has increased overall, there has been a shift from ODA given to governments toward direct funding of

CPC%20Report%202006%20.pdf (outlining how U.N. agencies have contributed to the New Partnership For Africa's Development).

²⁶ See *id.*

²⁷ See generally WORLD HEALTH ORG. (WHO), WORKING FOR HEALTH, AN INTRODUCTION TO THE WORLD HEALTH ORGANIZATION (2007), available at http://www.who.int/about/brochure_en.pdf (providing a basic overview of WHO's expenditures, programs, and strategies).

²⁸ See WHO, *Principles for Governing Relations with Non-Governmental Organizations*, available at <http://www.who.int/civilsociety/relation/principles/en/index.html>. According to the WHO, "The objectives of WHO's collaboration with NGOs are to promote the policies, strategies and programmes derived from the decisions of the Organization's governing bodies; to collaborate with regard to various WHO programmes in jointly agreed activities to implement these strategies; and to play an appropriate role in ensuring the harmonizing of intersectoral interests among the various sectoral bodies concerned in a country, regional or global setting." *Id.*

²⁹ See WHO, WHO AND CIVIL SOCIETY: LINKING TOGETHER FOR BETTER HEALTH II (2002), available at <http://www.who.int/civilsociety/documents/en/CSICaseStudyE.pdf>.

³⁰ *Id.* The Civil Society Initiative governs the relationship between the WHO and non-governmental organizations. See WHO, The Civil Society Initiative <http://www.who.int/civilsociety/en> (last visited May 19, 2008).

³¹ FAO, *Cooperation with Civil Society*, http://www.fao.org/tc/NGO/index_en.asp (last visited May 19, 2008).

³² See *id.*

international NGOs.³³ This phenomenon resulted from concern that many governments were seen to be untrustworthy and ineffective at distributing aid.³⁴ In fact, the U.N. has called for a “new humanitarian order” that incorporates efforts by states, NGOs, and IOs to cooperate in the humanitarian field.³⁵ The amount of money devoted to NGOs has reached astronomical levels over the past several years.³⁶ This reality can be partially attributed to more funding provided by states, but it is primarily the result of the emergence of new donors in the private sector that have committed to expending large sums of money in support of health and development.³⁷ It is important to consider these actors, including the largest of them all, the Gates Foundation, because they will be key components of future African development.³⁸

1. The Bill & Melinda Gates Foundation: A New Donor

The Gates Foundation was formed in 2001 by the richest man in the world, Bill Gates, and his wife, Melinda.³⁹ The current endowment of the organization is thirty-three billion dollars with approximately thirty-seven billion more being provided by a donation by Warren Buffet.⁴⁰ The Gates Foundation focuses on global development, global health, and the U.S. educational system.⁴¹ This enormous stockpile of

³³ See Chege, *supra* note 8; OECD, *More Effort Needed to Reach Foreign Aid Targets*, Says OECD Report, http://www.oecd.org/document/38/0,2340,en_2649_201185_38144422_1_1_1_1,00.html (last visited May 19, 2008).

³⁴ See Offenheiser, *supra* note 23, at 12. A reflection of the frustration over wasted foreign aid was expressed by former U.S. Secretary of the Treasury Paul O’Neill, who said, “We’ve spent trillions of dollars on these problems and we have damn near nothing to show for it.” See SACHS, *supra* note 5, at 310.

³⁵ MacKenzie, *supra* note 17, at 206.

³⁶ See David Brown, *Gates Foundation Giving \$500 Million to Fight Disease*, WASH. POST, Aug. 10, 2006, at A15. On August 9, 2006, The Gates Foundation announced that it would give \$500 million dollars to the Global Fund to Fight AIDS, Tuberculosis, and Malaria, an international NGO that provides financial support for developing countries to fight those three diseases. See *id.*

³⁷ See *id.*; OECD, *supra* note 33. The Organization for Economic Cooperation and Development (OECD) reports that donors have increased their funding for aid programs faster than any other public expenditure to fulfill their commitments to double aid to Africa by 2010. The report also notes, however, that funding levels will have to be increased significantly to meet the stated targets. See *id.*

³⁸ See Brown, *supra* note 36.

³⁹ See Bill & Melinda Gates Foundation, Foundation Fact Sheet, <http://www.gatesfoundation.org/MediaCenter/FactSheet/default.htm> (last visited May 19, 2008) [hereinafter Fact Sheet].

⁴⁰ See *id.*; Buffet Donates \$37 Billion to Charity, *supra* note 13.

⁴¹ See Bill & Melinda Gates Foundation, *supra* note 39. According to the Foundation’s website, the organization focuses on “improving health, reducing extreme poverty, and

financial resources, in addition to the organization's past grants, has ensured the Gates Foundation will play a leading role in the future of aid-delivery in Africa.⁴² The Gates have publicly committed to spending all of their assets within fifty years of their death so they can focus on making substantial progress in the twenty-first century.⁴³

The organization works with partners consisting of local and international NGOs.⁴⁴ For example, past grants made by the Gates Foundation include: \$500 million to The Global Fund to Fight Aids; \$1.5 billion to the GAVI Alliance, an organization providing vaccinations for hepatitis and yellow fever; and \$110 Million to Save the Children's Saving Newborn Lives.⁴⁵ As previously mentioned, the Gates Foundation is looking for causes and grantees that focus on forging meaningful alliances among various types of donees.⁴⁶

2. International NGO Sampler

Oxfam International and Doctors Without Borders are two examples of major international NGOs playing a significant role in development- and health-related issues in Africa.⁴⁷ Oxfam pursues a three-pronged approach to alleviating poverty around the world by: providing support during emergencies; developing solutions for people to work their way out of poverty; and campaigning to achieve lasting change.⁴⁸ To achieve these objectives, Oxfam works in numerous areas including: debt and aid; natural disasters; health; and improving people's livelihoods.⁴⁹ Oxfam's enormous impact in Africa is illustrated by

increasing access to technology in public libraries. In the United States, the foundation seeks to ensure that all people have access to a great education" *Id.*

⁴² *See id.*

⁴³ *See* Sally Beatty, *Gates Foundation Sets Time Frame to Spend Assets*, WALL ST. J., Dec. 1, 2006, at A10. The foundation said the move was a decision by its three trustees to do "as much as possible, as soon as possible" to further its work. *Id.*

⁴⁴ *See* Carol J. Loomis, *The Global Force Called the Gates Foundation*, FORTUNE, June 25, 2006, available at <http://money.cnn.com/2006/06/25/magazines/fortune/charity4.fortune/index.htm>.

⁴⁵ *See* BILL & MELINDA GATES FOUNDATION, GLOBAL HEALTH GRANTEE PROGRESS 1 (2007), available at http://www.gatesfoundation.org/nr/downloads/globalhealth/Grantee_progress.pdf.

⁴⁶ *See* For Grant Seekers, *supra* note 15.

⁴⁷ *See* Doctors Without Borders/Médecins Sans Frontières, <http://www.doctorswithoutborders.org> (last visited May 19, 2008); Oxfam Int'l, *supra* note 2.

⁴⁸ Oxfam Int'l, *Mission Possible: Ending Poverty*, http://www.oxfam.org.uk/oxfam_in_action/what_we_do/index.html (last visited May 19, 2008).

⁴⁹ *See* Oxfam Int'l, *What We Do*, <http://www.oxfam.org/en/about/what> (last visited May 19, 2008).

the £213 million of funds available to that organization, much of which comes from government and private donors.⁵⁰

Similarly, Doctors Without Borders describes itself as “an independent international medical humanitarian organization that delivers emergency aid to people affected by armed conflict, epidemics, natural or man-made disasters, or exclusion from health care in more than [seventy] countries.”⁵¹ The medical and non-medical experts that make up that organization engage in approximately 4700 field assignments annually.⁵² In addition to offering medical care during times of disaster, Doctors Without Borders also provides long-term medical care for diseases such as HIV/AIDS, sleeping sickness, and tuberculosis.⁵³ Like Oxfam, a vast majority of its funding comes from individuals, corporations, and foundations.⁵⁴

B. *African NGOs: The Local Solution*

Recent years have witnessed the incredible proliferation of local NGOs in Africa that serve to fill the vacuum for services left by local and national governments.⁵⁵ For instance, the tiny African nation of Ghana has recently reported as many as 3000 NGOs operating within that country.⁵⁶ The major growth of local African NGOs can be partially explained by the increased willingness of international and bilateral aid agencies to contract with local groups to do their groundwork.⁵⁷ It might also be partially explained by the sheer volume of funds available from donor countries and private organizations.⁵⁸ Thus, “The promotion of NGOs as leaders in humanitarianism has created a land rush

⁵⁰ See OXFAM INT’L, ANNUAL REPORT & ACCOUNTS 22 (2006–07), available at http://www.oxfam.org.uk/resources/downloads/reports/report_accounts06_7.pdf.

⁵¹ Doctors Without Borders, About Us, <http://www.doctorswithoutborders.org/aboutus/index.cfm> (last visited May 19, 2008).

⁵² *Id.*

⁵³ *See id.*

⁵⁴ See DOCTORS WITHOUT BORDERS, ANNUAL FINANCIAL REPORT 32–45 (2005), available at <http://www.doctorswithoutborders.org/publications/ar/us2005.pdf>.

⁵⁵ See Iliasu Adam, *Ghana to Blacklist NGOs*, BBC NEWS, Feb. 25, 2004, available at <http://news.bbc.co.uk/2/hi/africa/3517827.stm>.

⁵⁶ *Id.* The prolific nature of NGOs in Africa is illustrated by South Africa, where some 50,000 NGOs currently operate. Chege, *supra* note 8.

⁵⁷ *See* Adam, *supra* note 55. The President of Oxfam claimed, “Many large international NGOs have become the equivalent of bilateral NGO subcontracting agencies.” Ofenheiser, *supra* note 23, at 7.

⁵⁸ *See* Garrett, *supra* note 11.

atmosphere and prompted the launching of many new humanitarian groups competing for the humanitarian donor dollar."⁵⁹

African governments have become frustrated by their lack of control over both local and international NGOs operating within their borders.⁶⁰ Ministries of health in African countries are concerned with their ability to track operations of foreign organizations, avoid duplication of resources, and ensure that the services provided match their own priorities.⁶¹ International NGOs have been criticized for their failure to evaluate and monitor, and African NGOs are viewed as lacking "competencies, professionalism, legitimacy, and [as being prone to] cronyism."⁶² Finally, African governments are particularly concerned that Western-backed international NGOs are "trojan horses," there to diminish their sovereign authority and promote a Western agenda.⁶³

II. DISCUSSION

In international law, different actors possess express rights and obligations depending on their fundamental characteristics.⁶⁴ These differences are crucial in the context of aid and development assistance in Africa because they dictate how such actors behave toward one another.⁶⁵ First, a state, as sovereign, is allowed to make, enforce, and adjudicate domestic laws within its territory.⁶⁶ In other words, "[S]overeignty could be considered a form of absolute domestic jurisdiction—the exclusion of external actors from domestic authority structures within a given territory."⁶⁷ Local African NGOs must therefore adhere to the legal rules laid down by their national government, even if such laws appear significantly to restrict their ability to carry out their stated goals.⁶⁸ Similarly, it is crucial to distinguish IOs and international NGOs because their legal status is very different in international law.⁶⁹

⁵⁹ See Offenheiser, *supra* note 23, at 5–6.

⁶⁰ See Garrett, *supra* note 11.

⁶¹ *Id.* The U.S. government has been accused of exerting too much control over the design and priorities of AIDS programs in Africa. See *id.*

⁶² Offenheiser, *supra* note 23, at 12.

⁶³ See Chinaka, *supra* note 1.

⁶⁴ See MARK JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 185 (2003).

⁶⁵ See *id.*; Chinaka, *supra* note 1.

⁶⁶ JANIS, *supra* note 64, at 192; Chinaka, *supra* note 1.

⁶⁷ Duncan B. Hollis, *Private Actors in Public International Law: Amicus Curiae and the Case for the Retention of State Sovereignty*, 25 B.C. INT'L & COMP. L. REV. 235, 249 (2002).

⁶⁸ See *id.*; Adam, *supra* note 55.

⁶⁹ See Charnovitz, *supra* note 20, at 355.

A. Intergovernmental Organizations vs. International NGOs

IOs are considerably different from international NGOs, primarily because they possess “legal personality,” which was first recognized in the *Reparations Advisory Opinion*.⁷⁰ International NGOs can possess legal personality under domestic laws, but they cannot under public international law.⁷¹ Thus, they are generally not considered to be full “subjects” of international law.⁷²

A distinguishing feature of IOs is that their existence is only attributable to the clear and express consent of the states that constitute them.⁷³ In the *Reparations Advisory Opinion*, the International Court of Justice (ICJ) held that the U.N. could bring suit on behalf of one of its agents.⁷⁴ A central aspect of the ICJ’s reasoning in that case was that the U.N. was granted a certain measure of “personality” by its member nations.⁷⁵ The ICJ stated that it was important to attribute international legal personality to the U.N. because the U.N. Charter assigned the organization specific tasks, such as promotion of international economic, social, cultural, and humanitarian cooperation.⁷⁶ The *Reparations Advisory Opinion*, though somewhat controversial, set a clear precedent for the legal status of IOs.⁷⁷

The legal status of international NGOs, however, is quite different from IOs.⁷⁸ Unlike IOs, international NGOs are not created by treaties, but are the product of the cooperation of individuals.⁷⁹ As one commentator noted, “International NGOs are private organizations whose membership and support come from more than one country and whose political activities cross national borders. NGOs are thus distinct from supra-national and inter-governmental organizations, such as the World Trade Organization or the U.N., which are created by States.”⁸⁰ Thus, under the reasoning in the *Reparation Advisory Opinion*, interna-

⁷⁰ See *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion (*Reparation for Injuries*), 1949 I.C.J. 174, 179 (Apr. 1949).

⁷¹ Charnovitz, *supra* note 20, at 355.

⁷² See Nowrot, *supra* note 17, at 635. One commentator has advanced the argument that international NGOs should be considered “partial subjects” of international law based on primary and secondary sources of international law. *See id.*

⁷³ See JANIS, *supra* note 64, at 200, 201.

⁷⁴ See *Reparation for Injuries*, 1949 I.C.J. at 187.

⁷⁵ *See id.* at 179.

⁷⁶ *Id.* at 178–79.

⁷⁷ *See id.* at 187.

⁷⁸ See MacKenzie, *supra* note 17, at 210.

⁷⁹ See JANIS, *supra* note 64, at 203; Charnovitz, *supra* note 20, at 352.

⁸⁰ Daniel C. Thomas, *International NGOs, State Sovereignty, and Democratic Values*, 2 CHI. J. INT’L L. 389, 390 (2001).

tional NGOs do not have international legal personality because they lack clear delegation from states via treaty.⁸¹ The individuals that make up an international NGO are committed to a collective purpose that arguably confers “moral authority” on the organization, but not “legal authority.”⁸²

Another distinguishing characteristic between IOs and international NGOs is their level of participation in international relations.⁸³ According to article 71 of the U.N. Charter, “The Economic and Social Council may make suitable arrangements for the consultation with non-governmental organizations which are concerned with matters within its competence.”⁸⁴ Article 71 thus creates a consultative relationship with NGOs as opposed to giving them actual decision-making powers.⁸⁵ Despite these limitations, NGOs do in fact make considerable contributions to the development of international law.⁸⁶ For instance, NGOs can correct potential mistakes or logical inconsistencies in proposals being considered for new conventions or treaties.⁸⁷ As one scholar noted, “Besides mobilizing public pressure on governments and providing expert support for international lawmaking, NGOs are also starting direct personal appeals to . . . responsible decision-makers in international organizations as well as in national governments.”⁸⁸

B. *International NGO Accountability Charter*

The leaders of eleven prominent human rights and development international organizations created and endorsed the first international NGO Charter (Charter) in June 2006.⁸⁹ The parties recognized that the non-profit sector was being increasingly scrutinized for their activities from both opponents and proponents of their work.⁹⁰ The Charter seeks

⁸¹ See *Reparation for Injuries*, 1949 I.C.J. at 179; JANIS, *supra* note 64, at 203.

⁸² See Charnovitz, *supra* note 20, at 348.

⁸³ See U.N. Charter art. 71.

⁸⁴ *Id.*

⁸⁵ MacKenzie, *supra* note 17, at 211.

⁸⁶ See Nowrot, *supra* note 17, at 593.

⁸⁷ *Id.*

⁸⁸ *Id.* at 594–95.

⁸⁹ See Press Release, Oxfam Int’l, NGOs Lead by Example: World’s International NGOs Endorse Accountability Charter (June 6, 2006), available at http://www.oxfam.org/en/news/pressreleases2006/pr060606_ngo_charter [hereinafter NGOs Lead]. The charter was signed by ActionAid Int’l, Amnesty International, CIVICUS World Alliance for Citizen Participation, Consumers International, Greenpeace International, Oxfam International, International Save the Children Alliance, Survival International, International Federation Terre des Hommes, Transparency International, and World YWCA. *Id.*

⁹⁰ See *id.*

to “enhance transparency and accountability” by working toward four key stated goals.⁹¹ The Charter outlines issues surrounding the principles, governance, and fundraising activities of international NGOs.⁹² The framers of the Charter recognized that, in addition to national laws and regulations, international NGOs need to create standards that transcend national boundaries.⁹³ The signatories explicitly indicated their unique role in finding solutions to problems that governments are either unable or unwilling to address on their own.⁹⁴ Furthermore, the Charter recognizes the primary role of local governments by stating, “[International NGOs] can complement but not replace the overarching role and primary responsibility of governments to promote equitable human development and well-being”⁹⁵

The Charter emphasizes that it is vital for international NGOs to maintain independence from governments and donors who may seek to influence their goals.⁹⁶ The most express statement of independence found in the Charter stated, “We aim to be both politically and financially independent. Our governance, programmes and policies will be non-partisan, independent of specific governments, political parties and the business sector.”⁹⁷ With respect to donors, the Charter states that: anonymity will be guaranteed except when the size of a donation would be relevant to an organization’s independence; and independence will be enhanced by recording and publishing major institutional gifts.⁹⁸

The creation of the Charter was a bold gesture to show that NGOs are truly concerned with public trust and accountability; however, it lacks binding authority in international law.⁹⁹ Because the international NGOs that endorsed the Charter are not states, they can-

⁹¹ See INT’L NON-GOVERNMENTAL ORGANIZATIONS: ACCOUNTABILITY CHARTER 2 (2006), available at http://www.oxfam.org/en/files/INGO_accountability_charter_0606 [hereinafter INGO CHARTER]. These four goals are: (1) identify and define shared principles, policies and practices; (2) enhance transparency and accountability, both internally and externally; (3) encourage communication with stakeholders; and (4) improve performance and effectiveness as organisations. *Id.*

⁹² *See id.*

⁹³ See NGOs Lead, *supra* note 89.

⁹⁴ INGO CHARTER, *supra* note 91, at 1.

⁹⁵ *Id.*

⁹⁶ *See id.* at 3, 5.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 5.

⁹⁹ See NGOs Lead, *supra* note 89.

not bind themselves by treaty.¹⁰⁰ The document is therefore closer to a declaration rather than a binding agreement.¹⁰¹

C. State Sovereignty: African Nations and Domestic Laws

International law is primarily concerned with the rights and duties of states because they remain the central actors in the international legal system.¹⁰² A sovereign state is free to govern its own population in its own territory by enacting laws and regulations.¹⁰³ It is therefore undisputed that international and local NGOs operating within African nations are subject to the local laws of their host state.¹⁰⁴ With the proliferation of NGOs working in Africa, and mounting suspicion over their activities, certain African leaders have enacted repressive laws that significantly limit the ability of NGOs to function within those nations.¹⁰⁵

1. Zimbabwe's NGO Act and Ghana's NGO Law

Zimbabwe enacted the highly controversial Non-Governmental Organizations Act (NGO Act) in 2004, which gave Zimbabwe's government broad power to interfere with the operations of NGOs.¹⁰⁶ According to the Act, all organizations that provided charity, relief, community development, or lobbying must register with the Governance Board (Board) as established by the NGO Act.¹⁰⁷ One of the four stated

¹⁰⁰ See JANIS, *supra* note 64, at 18.

¹⁰¹ See generally INGO CHARTER, *supra* note 91 (outlining issues surrounding principles, governance, and fundraising activities of international NGOs).

¹⁰² See JANIS, *supra* note 64, at 185.

¹⁰³ See *id.* A state consists of four essential elements: (1) a defined territory; (2) a permanent population; (3) a government; and (4) a capacity to conduct international relations. *Id.*

¹⁰⁴ See *id.*

¹⁰⁵ See, e.g., Zimbabwe Non-Governmental Organizations Act 2004, available at http://www.kubatana.net/docs/adv/initialdraft_ngoact_nango030115.pdf. (granting government broad powers to interfere with NGO operations) [hereinafter NGO Act]; Chinaka, *supra* note 1. Many African nations, including Malawi, Tanzania, and South Africa, have elected to allow NGOs to be self-regulating. In these countries, there is no effort made to cut off foreign funding, but rather to encourage creation of NGOs as legal entities to attract more donations. Human Rights Watch, *Assessing the NGO Bill*, Dec. 2004, <http://hrw.org/backgrounders/africa/zimbabwe/2004/12/4.htm>.

¹⁰⁶ See NGO Act, *supra* note 105, part IV § 9; Press Release, Amnesty Int'l, Zimbabwe: NGO Act is an Outrageous Attack on Human Rights (Dec. 10, 2004), available at <http://www.amnesty.org/en/library/asset/AFR46/039/2004/en/dom-AFR460392004en.html> [hereinafter NGO Act is Outrageous].

¹⁰⁷ See NGO Act, *supra* note 105, part I § 3(1)(a), part IV § 9(b). The purposes of the Act are stated as follows: "An Act to provide for the registration of voluntary organizations thereof, to provide for a framework for self-governance in promotion of the principle of

goals of the NGO Act is “to facilitate a constructive relationship between government and non-governmental organizations in order to advance the public good.”¹⁰⁸ Despite this noble language, many international NGOs have publicly announced their outrage at the law.¹⁰⁹ A representative of Amnesty International commented on the law’s potential repercussions, stating, “If the NGO Act is enforced across the board, tens of thousands of people being assisted by NGO programs could suffer. . . . Most victims have nowhere else to turn in a country where unemployment is above seventy percent and health service has been seriously eroded.”¹¹⁰ Various aspects of the NGO Act are troubling to the international aid community.¹¹¹

First, the law prevents local NGOs from receiving foreign funding.¹¹² Because the majority of funding for local NGOs comes from foreign sources, the effect of the law is essentially to eliminate all NGO finances within Zimbabwe.¹¹³ Second, the Board is granted sweeping powers to regulate activities of NGOs that have registered with it.¹¹⁴ For example, the Board has the power “to enforce the code of conduct for [NGOs] . . . and to ensure that [NGOs] act in the public interest in accordance with their objectives.”¹¹⁵ Similarly, the Board will be made up of government officials who will have interests aligned with those in power at the time.¹¹⁶ Human rights organizations are particularly concerned that these expansive powers will be applied selectively, thus hurting organizations that “promote and protect human rights.”¹¹⁷

In 2004, Ghana began rigorously enforcing a domestic law that required local and international NGOs to provide adequate records or become “blacklisted” by the government.¹¹⁸ All blacklisted NGOs were made public and their names were given to potential local and foreign

self-regulation by non-governmental organizations, to provide a framework for raising of funds by non-governmental organizations and for public accounting for those funds . . . to define the functions, powers and responsibilities of these bodies, and to provide for matters connected to or incidental to the foregoing.” *Id.* preamble.

¹⁰⁸ *Id.* part II § 6(4).

¹⁰⁹ See NGO Act is Outrageous, *supra* note 106.

¹¹⁰ *Id.*

¹¹¹ See *NGO Bill in Zimbabwe Draws Criticism*, CCEP REV. (Idasa, S. Afr.), Aug./Sept. 2004, available at <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1099>.

¹¹² NGO Act is Outrageous, *supra* note 106.

¹¹³ See *id.*

¹¹⁴ See NGO Act, *supra* note 105, part IV § 9.

¹¹⁵ *Id.* part IV § 9(c).

¹¹⁶ *NGO Bill Draws Criticism*, *supra* note 111.

¹¹⁷ See NGO Law is Outrageous, *supra* note 106.

¹¹⁸ Adam, *supra* note 55.

donors.¹¹⁹ A government official demonstrated his pessimism toward NGOs when he said, "Most NGOs spent around 80% of the money available to them from government agencies or foreign sponsors as administrative costs, for which they do not render proper accounts."¹²⁰

III. ANALYSIS

There have been a variety of proposed solutions to address the problem of the relative weakness of NGOs compared to sovereign states.¹²¹ The most logical solution would be to grant international NGOs the level of international personality generally associated with IOs.¹²² Thus, it is argued, these organizations will be able to function with well-defined rights and obligations in the international legal system.¹²³ Furthermore, such a construction would be in accord with the many roles that international NGOs are currently playing in both international development and advocacy.¹²⁴ This system would recognize the emergence of an "open system" in international law that acknowledges many non-state actors and grants them clearly articulated rights and responsibilities.¹²⁵ There are, however, a number of problems with this approach, both on a theoretical and a practical level.¹²⁶ These difficulties are of particular significance in the context of African aid because granting international NGOs greater status could be seriously detrimental to their cause.¹²⁷ As a result, a better solution would be to reinforce the existing international legal framework, allow NGOs to maintain their independence, and create more effective mechanisms to foster communication between international NGOs and host states.¹²⁸

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See MacKenzie, *supra* note 17, at 200 (arguing that ICSID would be a desirable option for settlement of disputes between states and international NGOs because tribunal provides existing framework for dispute resolution that puts both parties on a level playing field); Nowrot, *supra* note 17, at 580 (arguing there is a need to establish a legal framework for NGOs to reflect their actual participation in the international system).

¹²² See Nowrot, *supra* note 17, at 620–21.

¹²³ See *id.* at 614.

¹²⁴ See Charnovitz, *supra* note 20, at 352–55. In particular, article 71 of the U.N. Charter has served as the de facto charter for NGOs, justifying a substantial role for international NGOs when consulting with U.N. bodies. *Id.* at 357.

¹²⁵ See Nowrot, *supra* note 17, at 613.

¹²⁶ See *id.*

¹²⁷ See *id.*

¹²⁸ See *id.*

First, by granting international NGOs status as full subjects of international law, they would be deprived of their vital independence.¹²⁹ International NGOs receive nearly all of their funding from Western developed countries, and the volume of these funds is growing.¹³⁰ This tends to reinforce the view that NGOs are “part and parcel of Western powers.”¹³¹ Further legitimization from governments and organizations viewed as being dominated by Western interests would therefore hurt rather than help the current relationship between international NGOs and the African governments where they operate.¹³² Enhanced independence will allow the focus of health- and development-related aid groups to be on their humanitarian mission, and not the political interests those NGOs are perceived to represent.¹³³ The fact that there has been a significant increase in funding from private donors, such as the Gates Foundation, could increase the perception of independence possessed by international NGOs.¹³⁴ Because these donors primarily come from the United States and Europe, however, they might still be seen as proponents of Western interests.¹³⁵

A grant of legal personality to NGOs would run contrary to the reasoning of the *Reparations Advisory Opinion*.¹³⁶ In that case, the ICJ held that the U.N. was a subject of international law that was capable of possessing rights and obligations.¹³⁷ One of those rights was to bring international claims on behalf of its agents.¹³⁸ On a fundamental level, the constituents of NGOs are “groups of persons or societies,” not sovereign states.¹³⁹ Even if international NGOs were to delegate to “organs special tasks,” it would still not confer any degree of international legal personality as articulated by the ICJ because their constituents are not states.¹⁴⁰ Therefore, the reasoning in the *Reparation Advisory Opinion* breaks down when one tries to apply it to international NGOs.¹⁴¹

¹²⁹ See INGO CHARTER, *supra* note 91, at 3.

¹³⁰ See David Hulme & Michael Edwards, *NGOs States and Donors: An Overview*, in *NGOs STATES AND DONORS: TOO CLOSE FOR COMFORT?* 4 (David Hulme & Michael Edwards eds., 1997).

¹³¹ Chinaka, *supra* note 1.

¹³² See Hulme & Edwards, *supra* note 130, at 8.

¹³³ See *id.*

¹³⁴ See Fact Sheet, *supra* note 39.

¹³⁵ See *id.*

¹³⁶ See *Reparation for Injuries*, 1949 I.C.J. 174, 179 (Apr. 1949).

¹³⁷ See *id.* at 187.

¹³⁸ See *id.*

¹³⁹ See Charnovitz, *supra* note 20, at 350.

¹⁴⁰ See *Reparation for Injuries*, 1949 I.C.J. at 178.

¹⁴¹ See *id.*

Another important consideration when proposing that international NGOs should possess greater legal status is the role played by the government where NGOs operate.¹⁴² International NGOs recognize that governments should not be ignored in the context of African aid delivery.¹⁴³ In their proposed Charter, leaders of prominent international NGOs stated, “INGOs can complement but not replace the overarching role and primary responsibility of governments to promote equitable human development and well being, to uphold human rights and to protect ecosystems.”¹⁴⁴ This comment highlights the fact NGOs address problems faced by African governments that they are “unable or unwilling to address on their own.”¹⁴⁵ It will be these governments, or their successors, that will ultimately be the ones to take on such challenges in the long-term.¹⁴⁶

According to prominent economist Jeffrey Sachs, countries have to put aside misconceptions of massive corruption and continue to fund African governments to achieve development goals.¹⁴⁷ Through the U.N. Millennium Project,¹⁴⁸ Sachs argues that efforts should be made to work *with* African governments.¹⁴⁹ In Kenya, for example, efforts should be made to “improve the functioning of public administration . . . , [increase] job training, [grant] higher pay for senior managers so they do not have to live off bribes or side payments, [and offer] continued support for the government’s already major efforts to improve the judicial system”¹⁵⁰ All of these recommendations are particularly insightful—but often ignored—in the international NGO discussion.¹⁵¹ By starting with the assumption that all African governments are corrupt and ineffective, it is easier to focus on the status of NGOs in isolation.¹⁵²

¹⁴² See INGO CHARTER, *supra* note 91, at 1.

¹⁴³ *See id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *See id.*

¹⁴⁷ See SACHS, *supra* note 5, at 237.

¹⁴⁸ The U.N. Millennium Project was commissioned in 2002 to create a comprehensive plan of action to achieve the Millennium Development Goals and reduce poverty, disease, and hunger. See U.N. Millennium Project, <http://www.unmillenniumproject.org> (last visited May 19, 2008).

¹⁴⁹ See SACHS, *supra* note 5, at 237.

¹⁵⁰ *Id.* According to Sachs, the international donor community should focus on enhancing what he calls the “Big Five” development goals in Africa. These include: (1) increased agricultural inputs; (2) investments in basic health; (3) investments in education; (4) increased power, transport, and communications services; and (5) safe drinking water and sanitation. *Id.* at 232–34.

¹⁵¹ *See id.* at 237.

¹⁵² See Chege, *supra* note 8.

This neglects the reality that African governments must still be considered in the development equation.¹⁵³ Therefore, the legal status of international NGOs should be considered carefully in light of other considerations that will shape the future of aid delivery in Africa.¹⁵⁴

International NGOs can continue to put pressure on global policy changes by acting through already established legal regimes.¹⁵⁵ In particular, NGOs should remain in consultation with the U.N. to bring about changes in international law as they are currently allowed to do under article 71 of the U.N. Charter.¹⁵⁶ In this way, NGOs can play a prominent and important role in shaping the development of international treaties and agreements.¹⁵⁷ As an example of the influential role NGOs can play within this capacity, nearly 1400 NGOs officially participated at the Rio Earth Summit in 1992.¹⁵⁸ In the context of development- and health-related aid, NGOs can use their increased access to U.N. officials to lobby for change when they view an action taken by a state, such as the repressive NGO Law in Zimbabwe, as being a violation of basic human rights.¹⁵⁹ According to one commentator, "In the human rights area, NGOs contribute to the political debate at the U.N. level by providing information on . . . human rights violations in different countries."¹⁶⁰ Through these established legal mechanisms, international NGOs are able to put public pressure on governments and by doing so can influence the behavior of states.¹⁶¹

The Charter may be the best example of how communication can be enhanced between international NGOs and host governments.¹⁶² Because international NGOs should not be afforded international legal personality, this document would not serve as a binding legal instrument in international law.¹⁶³ The Charter does, however, have significant implications for shaping how governments and international

¹⁵³ See SACHS, *supra* note 5, at 237.

¹⁵⁴ See *id.*

¹⁵⁵ See U.N. Charter art. 71.

¹⁵⁶ See *id.*

¹⁵⁷ See KERSTIN MARTENS, *NGOs AND THE UNITED NATIONS* 3 (2005).

¹⁵⁸ *Id.* One example of the level of access NGOs have achieved at the U.N. is that members of the U.N. Security Council meet with NGO representatives to discuss current affairs. See *id.* at 4.

¹⁵⁹ See *id.* at 46.

¹⁶⁰ *Id.*

¹⁶¹ See NOWROT, *supra* note 17, at 594–95.

¹⁶² See generally INGO CHARTER, *supra* note 91 (outlining proposals to promote openness, transparency, and honesty about international NGO activities).

¹⁶³ See *id.*

NGOs will co-exist in the future.¹⁶⁴ For instance, the organizations that drafted the Charter emphasized similar themes throughout the document, including independence, accountability, and transparency.¹⁶⁵ In regard to transparency, the Charter states, “We are committed to openness, transparency and honesty about our structures, mission, policies and activities. We will communicate actively with stakeholders about ourselves, and make information publicly available.”¹⁶⁶ This statement showed a clear recognition that there is a problem of effective communication both between host states and those who have a stake in the international NGOs themselves.¹⁶⁷ By clearly defining their mission, goals, and intentions, international NGOs can more effectively distance themselves from powerful donors.¹⁶⁸

Similarly, local NGOs can adopt a comparable strategy, such as that proposed for international NGOs, to rebut the presumption that they lack professionalism and are prone to cronyism.¹⁶⁹ The pessimism toward some local NGOs was expressed by an official from Ghana: “NGOs are meant to be philanthropic, but many are fake and take a share of the money for their personal use.”¹⁷⁰ Although there will always be groups who will try to exploit aid that comes from foreign donors, as a whole, it would serve local NGOs well to let their governments know exactly how they are benefiting their community.¹⁷¹ By doing this, local NGOs can serve their vital role in furthering health- and development-related initiatives.¹⁷² Furthermore, greater levels of communication can foster a more unified structure of aid delivery and avoid duplication of resources.¹⁷³

By not granting international NGOs full legal personality, it will certainly put them in a more precarious position relative to IOs.¹⁷⁴ This status will, however, encourage international NGOs to collaborate with

¹⁶⁴ *See id.*

¹⁶⁵ *See generally id.* (proposing multiple ways to improve communication).

¹⁶⁶ *See id.* at 3.

¹⁶⁷ *See id.*

¹⁶⁸ *See* INGO CHARTER, *supra* note 91; Garrett, *supra* note 11.

¹⁶⁹ *See* Offenheiser, *supra* note 23, at 12.

¹⁷⁰ Adam, *supra* note 55. Another commentator expressed similar sentiment, stating, “This has led to accusations that some NGOs are primarily concerned with making money and not eradicating poverty, and will appear and disappear depending on where the money is.” Chege, *supra* note 8.

¹⁷¹ *See* Adam, *supra* note 55.

¹⁷² *See id.*

¹⁷³ *See* Garrett, *supra* note 11.

¹⁷⁴ *See* MacKenzie, *supra* note 17, at 210; *Reparation for Injuries*, 1949 I.C.J. 174, 179 (Apr. 1949).

governments, IOs, and other actors to achieve “shared objectives.”¹⁷⁵ When collaboration occurs, all of the actors engaged in African aid delivery can heed the U.N. call to form a “new humanitarian order” where states, NGO, and IOs cooperate with one another.¹⁷⁶ In other words, NGOs should not be relied on to be the exclusive actors in African aid delivery.¹⁷⁷ By granting NGOs greater power relative to the nation state, it will encourage NGOs and their donors to ignore the role of governments.¹⁷⁸ This would be a serious mistake because African governments are the ones that must ultimately assume the burden of providing many services that NGOs currently offer.¹⁷⁹

Finally, international NGOs can rely on their growing moral legitimacy to counteract the powers of an uncooperative host state.¹⁸⁰ Moral legitimacy is greatest when the mission of international NGOs is defined in terms of alleviating poverty and promoting basic health.¹⁸¹ Thus, when NGOs strive to attack the growing AIDS epidemic or stop the spread of malaria or tuberculosis, they are pursuing what many believe to be a moral duty.¹⁸² When a state consistently expels international NGO field workers, such as the Doctors Without Borders personnel in Sudan, or threatens Oxfam, the international community can condemn such acts on moral grounds.¹⁸³

To build genuine partnerships between IOs, international NGOs, and African governments, leaders of African nations must be committed to democratic governance.¹⁸⁴ Indeed, many countries are moving closer toward liberalized political systems including Benin, Ghana, Namibia, and Mali.¹⁸⁵ On the other end of the spectrum, Zimbabwe has regressed politically under the rule of President Robert Mugabe.¹⁸⁶ It is therefore not a surprise that one of the most repressive NGO laws is in

¹⁷⁵ See WHO, *supra* note 28. One example of successful collaboration between private actors and local government occurred in Botswana. See Garrett, *supra* note 11. With support from Botswana’s government, the Gates Foundation, Merck, and Bristol-Myers Squibb, an HIV/AIDS eradication program was implemented, dramatically reducing the number of newly infected patients. See *id.*

¹⁷⁶ See MacKenzie, *supra* note 17, at 206.

¹⁷⁷ See *id.*

¹⁷⁸ See *id.*

¹⁷⁹ See SACHS, *supra* note 5, at 237.

¹⁸⁰ See Charnovitz, *supra* note 20, at 348.

¹⁸¹ See *id.*

¹⁸² Garrett, *supra* note 11.

¹⁸³ See Chinaka, *supra* note 1.

¹⁸⁴ See Offenheiser, *supra* note 23, at 16.

¹⁸⁵ See *id.* at 3.

¹⁸⁶ See *Zimbabwe’s Bishops Warn of Revolt*, BBC NEWS, Apr. 9, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6538251.stm>.

one of the most repressive African nations.¹⁸⁷ In countries with the most genuinely corrupt leadership, such as Zimbabwe, leaders constantly face the reality of “open revolt” from their citizens.¹⁸⁸ In these extreme cases, the potential for genuine partnerships can only begin when there is a change in leadership.¹⁸⁹ Ghana, however, is a moderate and well-governed nation that has legitimate concerns about local and international NGOs.¹⁹⁰ In countries like Ghana, abandoning the assumption that all African governments are corrupt, enhancing communication between international NGOs and government officials, and recognizing the moral legitimacy of NGOs can truly advance the goals of health and development aid.¹⁹¹

CONCLUSION

The efforts of international and domestic NGOs to provide aid to African countries would not be enhanced by recognizing that they possess international legal personality. At first glance, such a suggestion appears logically sound and would seemingly provide a needed check on problematic African governments. This solution, however, is contrary to the reasoning laid down by the ICJ in granting entities legal personality. This view could also compromise the vital independence on which international NGOs rely to be effective. Finally, by focusing on private actors, and ignoring the fundamental importance of the state, it could frustrate the long-term goal of aid delivery. Instead, a framework is needed that allows NGOs to be self-regulating and fosters a more collaborative working relationship between all types of actors in aid delivery. African governments can then be certain that international NGOs are there to provide much needed assistance to their citizens, and not simply to push the agenda of Western nations. Furthermore, NGOs will be able to pursue their important health and development goals without fearing negative repercussions.

¹⁸⁷ See NGO Act, *supra* note 105.

¹⁸⁸ See *Bishops Warn of Revolt*, *supra* note 186.

¹⁸⁹ See *id.*

¹⁹⁰ See Adam, *supra* note 55; Offenheiser, *supra* note 23, at 3.

¹⁹¹ See SACHS, *supra* note 5, at 237; Adam, *supra* note 55; Charnovitz, *supra* note 20, at 348.