The role of non-governmental organizations in the protection of human rights in South Africa*

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1 Introduction

“Human rights” is one of those concepts that usually tend to elude definition. However, the United Nations has described human rights as those rights that are inherent in our nature and without which we cannot live as human beings.1 Similarly, it is not an easy task to find a common definition of the term “non-governmental organization” (NGO). Indeed, there is no single definition of what constitutes an NGO, as many NGOs are perceived according to their nature and the purpose for which they are created. It can however be said that non-governmental organizations ordinarily share the following characteristics:

- They are voluntary in terms of formation and participation.
- They have some degree of formal existence and they are accountable to their members and donors.
- They are supposed to be independent of government and other public authorities including political parties and commercial organizations.
- They are not created to generate personal profit. This means that they do not pursue the commercial or professional interests of their members. Rather, their aim is to act in the public interest on concerns and issues related to the well-being of specific groups of people or society as a whole.

Although the above characteristics apply to most NGOs, it ought to be understood that the sizes of NGOs may vary considerably depending on the nature and scope of their activities. Some NGOs may consist of a handful of members, whereas others may have thousands of members and hundreds of professional staff.2 The activities of NGOs mainly revolve around two fundamental areas, namely, operational activities and advocacy activities. Operational NGOs are mainly concerned with the delivery of services (for example in the field of welfare) whereas advocacy NGOs are mainly concerned with influencing the policies of public authorities and public opinion in general.3

A typical human rights NGO ordinarily carries out some or all of the following functions:

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3 (n 2).
gathering, evaluating and disseminating of information;
- advocacy for relief or legal aid to human rights victims and their families;
- building solidarity among the oppressed and those whose rights are violated;
- internationalizing and legitimizing local human rights concerns;
- moral condemnation or praise; and
- lobbying national and inter-governmental authorities.4

There are numerous NGOs engaged in the protection of human rights both at the national and international level. Some NGOs are concerned with the promotion and protection of human rights on a worldwide basis, while others limit their activities to particular regions of the world.5 Yet others focus upon specific countries or even particular groups of people.6 It is in this context that this article seeks to discuss the role of NGOs in human rights protection in South Africa. However, before we do that it is necessary to point out that the article is not aimed at assessing the level of success or otherwise of the said role, nor is it aimed at criticizing or glorifying such a role. The article intends to point out what NGOs can and have done in the field of human rights protection, the problems and challenges that they face and the future prospects of their activities. It is also necessary first to overview briefly the role of NGOs in human rights protection on the international level.

2 International dimension

The growth and proliferation of international human rights non-governmental organizations has historically corresponded with the development of international human rights norms, instruments and institutions. Indeed, it is difficult to say with certainty which one pre-dates the other. However, there is no doubt that some NGOs played an important role in the drafting of the 1945 United Nations Charter and the 1948 Universal Declaration of Human Rights. In particular, not only did NGOs play a pivotal role in ensuring that human rights provisions were included in the United Nations Charter, they also influenced much of the language included in the final Charter and the Universal Declaration of Human Rights.7

2.1 Human rights NGOs and the United Nations

In view of the role played by NGOs in the drafting of the United Nations Charter, it is not surprising that the charter clearly delineates a role for NGOs in the United Nations system. Article 71 of the charter provides as follows:

“The Economic and Social Council may make suitable arrangements for consultation with non governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Members of the United Nations concerned.”

The above article has been implemented by the Economic and Social Council

6 (n 5).
7 (n 5).
(ECOSOC) through Resolution 1296 (XLI) of 1968 by dividing NGOs into three categories. These include Category I for NGOs with interest in most ECOSOC activities, Category II for those with a special competence in a few ECOSOC activities and Category III (Roster) for all other NGOs that might be consulted on an *ad hoc* basis. Furthermore, article 71 of the United Nations Charter was given practical application through ECOSOC Resolution 1996/31 which states that the committee, when considering applications for consultative status, should ensure participation of NGOs from all regions and especially developing countries, in order to achieve a just, balanced and effective involvement of NGOs from all regions and areas of the world. As a result, all NGOs enjoying consultative status with the ECOSOC are entitled to send observers to its public meetings and those of its commissions, sub-commissions and other subsidiary bodies. It should be noted that most international NGOs have consultative status with other United Nations agencies besides ECOSOC. These include the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization. It is through this involvement that NGOs play a significant role in the protection of human rights through the United Nations system by providing direct and reliable information on human rights violations. In that regard, it is important to note that the number of NGOs with consultative status has risen steadily and quite significantly.

### 2.2 Human rights NGOs and the regional systems

Non-governmental organizations also play an important role at the regional level. Under the European human rights system, the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that the European Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of the rights in the convention and its protocols. It should be noted, however, that NGOs may submit application to the court only if they claim to be themselves victims of human rights violations. The European Social Charter also makes provision for input from NGOs with particular competence in certain fields. In particular, article 27(2) provides *inter alia* that the sub-committee of the governmental social committee “may consult no more than two representatives of international non-governmental organizations having consultative status with the Council of Europe, in respect of questions with which the organizations are particularly qualified to deal, such as social welfare, and the economic and social protection of the family”.

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8 See Warren and Rossi “Human rights NGOs: role structure and legal status” Working Paper no 14 Institute of International Law (Nov 2001) 8. See also *New Zealand Handbook on International Human Rights* (n 5) 90 91. The distinction between the various categories of NGOs is laid down in a 16 of the resolution.

9 a 5 of resolution 1996/31.

10 See *New Zealand Handbook on International Human Rights* (n 5) 91.

11 It is estimated that the number of NGOs with consultative status rose from 41 to over 1350 between 1948 and 1998.

12 of 1950 as amended by Protocol 11.

13 a 34.
Under the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, provision is specifically made for the rights of non-governmental organizations to submit complaints to the council. Apart from workers and employers organizations, “other international non-governmental organizations which have consultative status with the Council of Europe and have been put on a list established for this purpose” may submit complaints alleging unsatisfactory application of the charter. National non-governmental organizations also enjoy this right if the contracting party in question has made a declaration to this effect when becoming a party to the Additional Protocol.

Under the American system, article 44 of the American Convention on Human Rights gives power to the Inter-American Commission to consider petitions lodged by persons, groups of persons or non-governmental organizations. The consent of the parties is not necessary. This situation is similar to that under the European Convention (as amended by Protocol 11), article 34 of which requires the high contracting parties not to hinder in any way the effective exercise of the right of NGOs or individuals to file petitions to the European Court.

It is perhaps under the African system that NGOs play the most prominent role in the protection of human rights. This is partly because of the nature and level of human rights violations on the continent and partly due to the astronomical rise in the number of NGOs involved in the field of human rights over the last two decades. The significance of NGOs in the protection of human rights was rightly acknowledged by the African Commission on Human and Peoples Rights, which granted observer status to NGOs with an interest in the work of the commission. The role of NGOs has been further acknowledged by the recent Protocol to the African Charter on the Establishment of an African Court on Human and Peoples Rights. Under the protocol, in addition to complaints lodged by the commission, state parties and African international organizations, the court is empowered to allow complaints lodged by non-governmental organizations with observer status before the commission, individuals and groups of individuals. Those complaints, however, will be considered in the light of article 56 of the charter, which lists certain requirements to be met by such petitions.

It is clear from the above that there is a close working relationship between the African Commission and NGOs. It is also clear that NGOs are rightly given recognition and locus standi before the envisaged African court. This is quite vital, as NGOs are able to address the commission as well as submit written information. It is also vital as, compared to individuals, NGOs usually have more resources and are therefore more capable of accessing the envisaged African court.
2.3 Non-governmental organizations and other international human rights treaties

Quite apart from their involvement in the United Nations system through ECOSOC and the regional human rights systems as discussed above, NGOs play an important role in the drafting and implementation of several other international human rights instruments. Such a role obviously varies from treaty to treaty.

It is perhaps the Convention on the Rights of the Child in which the NGO system of involvement is most developed. Article 43 of the Convention establishes a Committee on the Rights of the Child. Part of this committee consists of the NGO Group for the Convention on the Rights of the Child. The NGO Group brings together international NGOs directly involved in the implementation of the Convention. One of the principal tasks of the NGO Group is to facilitate the flow of information between the Committee on the Rights of the Child and the NGO community, on the international and national levels.

Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides for individual complaints to the Committee against Torture. No specific mention is made of NGOs. NGOs, however, still play an important role in the implementation of the conventions. For example, the Coalition of International NGOs against Torture, an organization which brings together six international NGOs, works towards combating torture through exposure of abuses, exerting pressure on governments, lobbying at international level, providing rehabilitation, providing human rights education and training for government officials and local NGOs and campaigning to mobilize international opinion. The coalition has also pressed for universal ratification of the Convention against Torture and lobbied for the adoption of an Optional Protocol to the Convention providing for a global system of inspection visits to places of detention.

Although no specific role is delineated for non-governmental organizations under the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), NGOs play an active role in the monitoring and implementing of the Convention. This is done through the following activities:

- spreading awareness of CEDAW and the rights in it;
- lobbying governments, businesses and individuals to implement CEDAW;
- compiling shadow reports to the four-yearly national government reports sent to the CEDAW Committee and assisting the Committee with information; and

24 under a 22.
26 (n 25).
providing information to national governments on progress, difficulties and strategies to enable more effective human rights implementation.28

It is clear from the above that NGOs play a crucial role in international human rights treaties. The scope of this article does not lend itself to a detailed discussion of the role of NGOs in every international human rights instrument; suffice it to say that non-governmental organizations not only participate in and often initiate the drafting of international standard setting instruments, they are also instrumental in the implementation and enforcement of such instruments.

3 Human rights NGOs in South Africa

The role of human rights NGOs in South African has to be seen against the background of the unique history of the country — a history that was characterized by gross violations of human rights, institutionalized racism, political disfranchisement of the majority and denial of access to social and economic rights on the basis of skin colour. It is perhaps because of this reason that South Africa has the most highly developed non-governmental sector in the whole continent, with more than 50 000 NGOs.29 More than one hundred of these may be described as human rights organizations.30 It has to be pointed out that the ways in which NGOs operate shift over time. An abrupt change in the national political climate, such as occurred in South Africa in 1994, can easily permit the rapid sprouting and flowering of NGOs.31 With the advent of a new political and constitutional dispensation and the establishment of democratic institutions, new challenges in South Africa led to many NGOs changing their ways of operating. This explains the sudden rise in the number of human rights NGOs in the country over the last ten years.

As mentioned above, there are more than one hundred human rights NGOs operating in South Africa. It is obviously impossible to discuss the functions of each of these organizations. What can only be attempted here is a discussion of a few of the better-known human rights NGOs with a view to understanding the role such organizations play in protecting human rights.

3.1 International human rights NGOs in South Africa

Apart from national NGOs, there are a number of international human rights non-governmental organizations operating in South Africa. Prominent among these are Amnesty International and Human Rights Watch.

Amnesty International is a worldwide campaigning movement that works to promote all the human rights enshrined in the Universal Declaration of Human Rights and other international instruments.32 In particular it campaigns to free prisoners of conscience, ensure fair and prompt trials for political prisoners, abolish the death penalty, torture and other cruel treatment for...
prisoners, end political killings and “disappearances”, and oppose human rights abuses by opposition groups.\textsuperscript{33} Amnesty International has around a million members and supporters in 162 countries. In South Africa, the coordinating structure of the movement is known as Amnesty International South Africa and its main objective is to assist in engendering a lasting human rights culture in South Africa.

One of the key activities of Amnesty International is to investigate and document, through annual reports, human rights abuses occurring in the countries within which the organization operates. The 2003 Amnesty International Report, for example, documented human rights abuses in 151 countries and territories during the year 2002.\textsuperscript{34} In the particular context of South Africa, the 2003 report highlighted the continued deaths in custody in suspicious circumstances, torture and excessive use of force by the police. A resurgence in political violence leading to deaths and injuries was also reported. Furthermore, the report documented a rise in levels of reported cases of rape of women and girls. According to the report, there was also continuing criticism of the government’s policy on the provision of treatment for those living with HIV/AIDS.\textsuperscript{35}

Human Rights Watch is an international, independent non-governmental organization based in the United States of America. It is composed of lawyers, journalists, academics and country experts of many nationalities and diverse backgrounds. It works towards preventing discrimination, upholding political freedom, protecting people from inhumane conduct during wartime and bringing offenders to justice.\textsuperscript{36} In so doing, the organization tries to expose human rights violations and to hold perpetrators accountable. This is done through fact-finding investigations into human rights violations in all regions of the world. The findings are then published in dozens of books and reports every year, generating extensive coverage in local and international media.\textsuperscript{37} In extreme circumstances Human Rights Watch presses for the withdrawal of military and economic support from governments that egregiously violate the rights of their people.\textsuperscript{38} And in moments of crisis, the organization provides up-to-date information about conflicts while they are under way.\textsuperscript{39}

Although Human Rights Watch does not have a regional office in South Africa, it does a lot of work in the country by conducting intensive investigations and reporting thereon. In its 2003 World Report, for example, the organization gave a detailed account of human rights developments in the country, the role of the South African Human Rights Commission and other independent constitutional bodies and the role of the international community in supporting human rights initiatives.\textsuperscript{40}

\textsuperscript{33} (n 32).
\textsuperscript{34} (n 32).
\textsuperscript{38} (n 37).
\textsuperscript{39} E.g., Human Rights Watch was instrumental in shaping the response of the international community to the recent conflicts in Kosovo, Chechnya, Afghanistan and Iraq.
Apart from Amnesty International and Human Rights Watch, there are several other international human rights non-governmental organizations of a more regional nature. The Southern Africa Human Rights NGO Network is one such organization. Established in 1998, its core business is the promotion and protection of human rights in the southern African region. On the continental level, a good example of an international NGO that plays a role in the protection of human rights in South Africa is the Institute for Human Rights and Development in Africa. This is a pan-African non-governmental organization, with headquarters in Gambia, committed to contributing to the development of the African human rights systems through its programme activities. In particular it aims to make the human rights treaties of the African Union as effective as possible and works to strengthen the African Commission on Human and Peoples Rights with whom it has observer status. With the leading role that South Africa has played in the formation of the African Union and in other African initiatives, the role of this organization in South African human rights protection cannot be overemphasized.

It is not possible to discuss the role and functions of all international human rights NGOs operating in South Africa. Suffice it to say that such role and functions supplement and sometimes complement the role of national NGOs to which we now turn.

3.2 South African human rights non-governmental organizations

There are various ways in which the role of South Africa NGOs in human rights protection can be discussed. The approach preferred here is to briefly outline the activities of a number of such human rights NGOs with a view to creating a general picture regarding such a role. The organizations outlined below do not reflect any order of importance or level of activity but rather represent, in a random way, a spectrum of human rights NGOs, the activities and functions of each of which cannot possibly be detailed.

a Lawyers for Human Rights

Lawyers for Human Rights is a non-governmental, non-profit organization which strives to promote awareness, protection and enforcement of legal and human rights through the creation of a human rights culture. Formed in 1979, the organization initially played an important role in fighting oppression and abuses of human rights under apartheid. It was later involved in the transition to democracy through its voter education and election monitoring in 1994. Today, it continues to be vigilant in its activities, which revolve around the following objectives:

- to be a leading, effective human rights and constitutional watchdog and advocate;
- to be an international force in the development and delivery of human rights, with a primary focus on Africa; and

to be a primary contributor to clear strategic policy on the delivery of socio-economic rights for the disadvantaged.  

The organization carries out its activities and tries to realize the above objectives through projects or departments which deal with, among other things, litigation, human rights education, paralegal training, and penal and law reform. Quite apart from its past and present functions, the Lawyers for Human Rights has clearly mapped out its future role as a relevant and effective human rights organization and, for that reason, it is obviously one of the most important non-governmental human rights organizations in the country.

b Black Sash

Formed in 1955, the Black Sash is one of the longest-standing South African human rights organizations. It initially began as a women’s anti-apartheid movement opposed to the gross human rights violations practised under apartheid. Although it began as an organization of white, liberal women, it has clearly outgrown those origins and is now dedicated to ensuring the recognition and protection of the human rights of all citizens. The vision of the Black Sash is a South Africa in which human rights are recognized in law and respected in practice, and in which the government is accountable to all its people and meets its obligations to the poor. The organization believes that, through individual and collective non-violent action for change, people can have the power to influence their own situation and that of society.

With emphasis on the needs of women, the organizations main aim is to enable all people to recognize and exercise their human rights, particularly the social and economic rights, and to create a society which has effective laws and delivery systems, including comprehensive social security provisions for those most in need. This the organization hopes to achieve by, inter alia:

- informing and organizing targeted beneficiaries and civil society so that they can claim their rights;
- working towards achieving effective and honest administration in government and legislation that works;
- promoting budgetary allocation to social security; and
- protecting the integrity of the constitution.

The Black Sash plays two major roles — first, as a network of advice centres, and secondly, as a campaigning organization. In its first role the organization deals with several human rights issues in its network of advice centres, and in its second role, it engages in several campaigns aimed at human rights awareness and protection.

c Freedom of Expression Institute

The Freedom of Expression Institute was formed in January 1994 from a
merger of three organizations involved in campaigning for freedom of expression during the apartheid years, namely the Campaign for Open Media, the Anti-Censorship Action Group, and the Media Defence Trust.\footnote{See Freedom of Expression Institute Annual Report 2003.}

The institute differs from most other human rights non-governmental organizations in that it is neither a legal nor a community-based organization, but a small pressure group whose work is mainly centred on legal and human rights issues with a particular focus on freedom of expression. The aims of the organization include the following:\footnote{See “What is the Freedom of Expression Institute?” \url{http://fxi.org.za/about.htm} (accessed 21 Oct 2003).}

- to ensure the repeal or amendment of laws inhibiting freedom of expression and association;
- to ensure that government does not enact new legislation to curb freedom of expression;
- to ensure that those whose right to communicate is interfered with have access to the courts;
- to educate and mobilize the public to resist any encroachment on their rights to receive and impart information, ideas and opinion;
- to campaign for freedom of expression at grassroots level;
- to continue the role of actively influencing media policy developments to ensure the freedom, independence and diversity of media in South Africa;
- to express solidarity with, and protect victims of censorship.

Although the institute is involved in several human rights activities, such as monitoring, research, litigation and education, the bulk of the organizations work is centred on campaigns. The following are some of the specific campaigns currently run by the organization:

- popularizing the Promotion of Access to Information Act;\footnote{2 of 2000.}
- monitoring the implementation of the Films and Publications Act;\footnote{65 of 1996.} and
- a campaign on freedom of expression \emph{versus} national security in the South African National Defence Force.\footnote{See “FXI Campaigns” \url{http://fxi.org.za/camps.htm} (accessed 21 Oct 2003).}

The Freedom of Expression Institute is also involved in general campaigns in the areas of media diversity, broadcasting, constitutional review and transparency in appointments. In most of these campaigns the institute involves a range of other organizations to ensure legitimacy and wide support.

d Legal Resources Centre

The Legal Resources Centre is a client-based public interest non-governmental organization with offices in Johannesburg, Durban, Cape Town, Port Elizabeth, Pretoria and Grahamstown. Using law as an instrument of justice, the organization works for “the development of a fully democratic society based on the principle of substantive equality by providing legal services for the vulnerable and marginalized, including the poor, homeless and landless people...
and communities of South Africa who suffer discrimination by reason of race, class, gender, disability or by reason of social, economic and historical circumstances’.

The aims and objectives of the Legal Resource Centre are stated as follows:

- to ensure that the principles, rights and responsibilities in the national constitution are respected, promoted, protected and fulfilled;
- to build respect for the rule of law and constitutional democracy;
- to enable the vulnerable and marginalized people to assert and develop their rights;
- to promote gender and racial equality and oppose all forms of unfair discrimination;
- to contribute to the development of a human rights jurisprudence; and
- to contribute to the social and economic transformation of society.

In attempting to achieve these aims, the Legal Resource Centre uses a range of strategies, including test case litigation, law reform, and participation in partnerships, education and networking within and outside South Africa. The legacy of test case litigation hails from the centre’s past involvement in vital cases concerning issues such as influx control and states of emergency. Today, the work of the organization is increasingly focusing on social and economic rights, particularly land rights. The organization also runs a fellowship programme for the training of candidate attorneys with the aim of increasing access to the legal profession by disadvantaged groups as well as increasing the experience and commitment of the legal profession to public interest law.

e Women’s Legal Centre

The Women’s Legal Centre, based in Cape Town, was started by a group of women lawyers with the aim of advancing the struggle for equality for women, particularly black women, who suffer socio-economic disadvantage. The organization seeks to fulfil this objective through the promotion and development of human rights for women. To that end, the activities of the Women’s Legal Centre include litigating cases which advance women’s rights and producing briefs to assist courts in constitutional cases which concern women’s rights and gender equality. These services are provided free of charge.

Apart from litigation, the activities of the Women’s Legal Centre also include advocacy, the development of resources and the strengthening of women’s rights networks. In so far as litigation is concerned, the organization litigates cases which are in the public interest, particularly women’s rights. This sometimes involves going to court to get unjust laws changed. It also involves intervening as amicus curiae in cases that involve women’s rights. With regard to advocacy, the centres activities vary in nature. They range from training sessions and other educational fora, to publications, conferences and different kinds of written interventions. In 2002, for example, the centre made a sub-

54 (n 53).
55 See “The status of human rights organizations in Sub Saharan Africa” (n 29).
56 See “Womens Legal Centre” http://www.wlce.co.za.
mission on the South African Law Commissions Issue Paper on “Sexual of-
fences: adult prostitution”; in which they argued that criminalization of adult
sex work is unconstitutional in that it is an unjustifiable violation of rights of
sex workers to freedom and security of the person, equality, dignity, privacy
and the right to engage in their economic activity of choice and to pursue a
livelihood. The organizations advocacy activities cover issues such as violence
against women, child sexual abuse, customary law, Muslim marriages, main-
tenance issues, unfair discrimination and women’s access to resources.

f Community Law Centre

The Community Law Centre is a non-governmental organization based at the
University of the Western Cape. Opened in 1990, the primary goal of the centre
was the establishment of a legal order based on a culture of human rights and
democracy. Initially established as a research institute, the centre played a key
role in the realization of the new constitutional order by influencing the multi-
party negotiations that led to the interim constitution and the drafting of the
1996 constitution. What is unique about the Community Law Centre is that it combines a
strong academic tradition with a practical hands-on approach to transforma-
tion and the promotion and protection of human rights. As a result of that
tradition and approach, the organization houses and runs a documentation
centre, which has a specialized collection of published and unpublished mate-
rials on children’s rights, women’s rights, socio-economic rights, inter-govern-
mental relations and human rights in general.

With the country’s new constitutional dispensation now in place, the Com-
munity Law Centre has had to shift its focus and adapt itself to serve the
emerging needs of society. This has led to the development and expansion of
special areas on which the centre now focuses. These include:

- the Children’s Rights Project;
- the Gender Project;
- the Socio-Economic Rights Project; and
- the Local Government Project.

The Children’s Rights Project works towards the recognition and protection of
children’s rights within the framework of the United Nations Convention on
the Rights of the Child, the African Charter on the Rights and Welfare of the
Child and the Constitution of the Republic of South Africa. The Gender
Project, on the other hand, focuses on advancing the achievement of substan-
tive equality and realization of women’s human rights, while the Local Gov-
ernment Project assists local government to give effect to its constitutional
mandate of developmental local government through research, advice, training
and advocacy. As for the Socio-Economic Rights Project, the centre focuses

60 (s 59).
on the realization of socio-economic rights of groups and communities living in poverty. The centre has conducted research and produced several reports and publications on all the above focus areas.

g Centre for Socio-Legal Studies
The Centre for Socio-Legal Studies based at the University of Natal, Durban, is another non-governmental organization with a strong academic background and tradition. It was established in 1987 with the aim of meeting community needs for education and training in order to make the legal system more accessible. To that end, the centre concentrates on the expansion of public legal and democracy education, human rights initiatives, and the development of educational materials, which promote a non-discriminatory and democratic legal system in South Africa.

Apart from providing civic education (in democracy, legal and human rights) the Centre for Socio-Legal Studies co-ordinates two important programmes, namely, Street Law and Democracy for All. Street Law is a prominent human rights and legal education programme designed to introduce the law and human rights to people of all levels of education, particularly the youth, by providing a practical understanding of the law, the legal system and the constitution to all learners. The programme also contributes towards the consolidation of a democratic society through the cultivation of a culture of rights and responsibilities as well as promoting respect for the rule of law.

The Democracy for All programme on the other hand is a national programme established in 1994 to support the transition to a democratic government in South Africa. While its most important aim is to promote and nurture a culture of democracy and human rights, its overall objective is to provide all people with an understanding of the principles of democracy and how a democracy functions. The programme is aimed at young people, adults, students, teachers and the general public: everyone, in other words.

The Centre for Socio-Legal Studies has produced and continues to produce several books and other publications on democracy and human rights. Among the books published by the centre are ABC of Women’s Rights in South Africa and ABC of Human Rights Policy. Other publications include Democracy Watch; Currents; HIV/AIDS, the Law and Human Rights Training Manual. The most prominent publication of the Centre, however, is the South African Human Rights Yearbook. This annual reference book reviews legal and related developments in specific areas of human rights, such as capital punishment, children’s rights, conscription, constitutional developments, detention, elections, environment, health, legal representation, prisoners’ rights and women’s rights.

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65 E.g., a report on “Implementation of bail legislation in sexual assault cases (2000 2002)”, the Economic and Social Rights Review, and submissions on several important bills.
Diakonia Council of Churches

Diakonia is a Durban-based ecumenical agency established in 1976. It is an inter-church organization that works with 15 member churches and church organizations to promote justice, development and peace. Through these member churches and organizations, Diakonia strives to motivate communities in and around Durban to be active in transforming society. This is done through various programmes, which include:

- the AIDS programme;
- Democracy in Action;
- Economic Empowerment;
- Economic Justice;
- Exposures programme;
- Social Justice;
- Community Resources Centres; and
- Survivors Support Programme.

Clearly, the organizations activities extend far beyond human rights issues. However, some of its programmes have a human rights focus. For example, the Democracy in Action programme is aimed at deepening the churches understanding and practice of democracy, especially at local government level, through training and lobbying. The Community Resource Centres programme also primarily focuses on paralegal issues through training, advocacy and lobbying. Furthermore, the Survivors Support programme offers training as a way of responding to the extreme stress and trauma caused by human rights violations, violence, poverty, family conflicts, HIV/AIDS and a rapidly changing society. Moreover, human rights is one of the cross-cutting issues that permeates almost all the work of the Diakonia Council of Churches. The organization produces annual reports, periodic newsletters and other publications.

Centre for the Study of Violence and Reconciliation

The Centre for the Study of Violence and Reconciliation is a multi-disciplinary non-governmental organization that was launched in 1989 under the name of the Project for the Study of Violence. Although the organization functions with many different departments and programmes, its main focus is on various forms of violence and conflict including criminal, political, domestic and gender violence; violence against children; and violence within the educational sphere. It also focuses on violence that is generated during democratization and looks at conflict that results from the reconstruction and development of impoverished communities.

The primary goal of the centre is to utilize its expertise in building reconciliation, democracy and a human rights culture in South African governance and society. The centre attempts to achieve this goal not only through lobbying and advocacy but also through research in spheres of trauma management and

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70 (n 69).
72 (n 71).
counselling, education and training, institutional change and management, and socio-economic development.

Although the centre is a multi-disciplinary organization, it runs several programmes that have a direct or indirect bearing on human rights protection. One of these is the Africa Programme, whose goal is “to strengthen the capacity of civil society organizations in targeted African countries to develop and advance sustainable peace, healing and reconciliation based on justice, accountability and respect for human rights”.73 The other is the Criminal Justice Programme whose aim is to work “for a reduction in violence in South Africa through working towards the establishment of an effective and human rights orientated criminal justice system.”74 Others include the Gender Programme, the Transition and Reconciliation Programme, the Victim Empowerment Programme and the Youth Violence Prevention Programme. Through these programmes and other projects, the centre has made a meaningful contribution to peaceful and fundamental transformation in South Africa and has played a critical role in the protection of human rights.

j Other human rights non-governmental organizations

From the above discussion, it can be seen that there are many non-governmental human rights organizations operating in South Africa. Besides those discussed above, a few others may be mentioned here. Some of these organizations focus their activities on specific geographical areas of the country or on specific groups such as women, children, refugees, the disabled or prisoners. Some, therefore, have a specific and closely defined mandate, while others have mandates that are much broader and more vaguely defined. In the context of prisoners, the main NGO involved in prison work is the National Institute for Crime Prevention and the Reintegration of Offenders. Unfortunately, its impact on the protection of prisoners’ rights has been rather minimal as the organizations approach is long-term and its objectives and activities are rather too broad, extending beyond human rights issues.

Besides those NGOs dealing with specific groups of people, there are those that focus on specific human rights aspects. Such aspects include political violence, socio-economic rights, freedom of expression, the death penalty, labour relations, housing, health care and environmental justice. In the context of health care, for example, mention ought to be made of the Treatment Action Campaign, which campaigns for greater access to treatment for all South Africans, by raising public awareness and understanding of issues surrounding the availability, affordability and use of HIV treatments. One of its major gains was its success in the so-called Nevirapine case75 in which the constitutional court ordered the government to permit and facilitate the use of Nevirapine76 and to remove the restrictions that prevented the drug from being made available for the purpose of reducing mother-to-child transmission of HIV.

75 Minister of Health v Treatment Action Campaign 2002 10 BCLR 1033 (CC).
76 Nevirapine is an anti retroviral drug used worldwide in the treatment of HIV/AIDS. It is also approved by the World Health Organization for use against mother to child transmission of HIV.
A good example of a NGO that focuses on environmental justice is the South Durban Community Environmental Alliance. Based in the southern outskirts of Durban, it was formed in 1996 as an umbrella body for environmentally concerned local organizations to deal with the barrage of negative social and environmental impacts of pollution emanating from industries. One of the main activities of the organization is to mobilize and assist communities in protecting their right, particularly the constitutional rights to a clean and healthy environment.

As mentioned earlier, it is not possible to discuss or even mention all NGOs operating in South Africa. Suffice it to say here that most, if not all these organizations, play an important role in the promotion and protection of human rights. This role, however, has to be seen against the background of the problems and challenges faced by the NGOs. It is these shortcomings, together with the prospects, that we now turn our attention to.

4 Prospects and challenges

Like many other non-governmental organizations, human rights NGOs invariably try to establish themselves as legitimate actors in civil society. In so doing, they usually try to promote human rights and monitor human rights violations through advocacy, training, advice, research and investigations, amongst other things. Many of these organizations work in difficult and sometimes hostile environments. By their very nature, they have to engage, or sometimes confront, the state, which is usually complicit in or indirectly responsible for violations of human rights. Sometimes these organizations operate in conditions plagued with political violence. In spite of a fairly functional judicial system and a relatively favourable political environment in South Africa today, many human rights non-governmental organizations still face enormous difficulties in meeting the demands from the poor who usually turn to them for help.

In a brief survey conducted by the author for purposes of determining the main difficulties facing South African human rights non-governmental organizations, lack of funding and adequate resources were identified as the main problems. This has led to the inability of these organizations to build, develop and enhance capacity in various areas. These areas include: campaigning, advocacy, enhancement of knowledge and understanding of international and regional human rights standards; carrying out investigations; monitoring human rights abuses; organizational, management and administrative skills; communication and media skills; and fund-raising and networking. The issue of lack of funding has been aggravated by the problem of donor-dependency. Many human rights NGOs rely heavily on international or foreign funders. However, many of these donors apparently now think that, after ten years of democracy, human rights education and activism are no longer necessary. Unfortunately, there is very little of a local philanthropic community to fall back on.

77 The survey was conducted as part of the NRF research project on which this study is based. The author is grateful to the NRF for the funding.
78 This was the view of Ms Isabelle de Grandpre, projects manager of the Centre for Socio Legal Studies, an NGO based at the University of Natal.
In this context it is significant to note that several human rights NGOs have had to close down due to lack of funding. A good example is the Human Rights Committee of South Africa. Established in 1988, the organization had branches in the Eastern Cape, KwaZulu-Natal and Western Cape. It was active in promoting and protecting human rights through monitoring, exposing and disseminating information on state violations of human rights and political violence. It was also actively involved in lobbying the government around the formulation and implementation of effective human rights legislation. The organization has since closed shop, however, as a result of lack of funding, among other things.

Another organization that ceased to exist for funding-related reasons is the Community Law and Rural Centre. Established in 1989, and attached to the University of Natal, the centre (the nucleus of a network of mainly rural community centres) was mainly involved in human rights education and the training of paralegal workers. The organization recently closed down allegedly due to lack of funding, mismanagement of funds and lack of accountability.

Many human rights organizations in Africa have generally been criticized for the tendency to focus predominantly, if not exclusively, on rights in the civil and political arena (freedom of expression and association, political participation, freedom from arbitrary detention and torture and so on). South African human rights NGOs are not immune from this criticism. It has been opined that this emphasis is due in part to the significant involvement of human rights initiatives of lawyers, journalist and other professionals whose interests and activities tend to be substantially affected by infringements of these types of rights. In addition, there is a predominant perception that donors are less interested in supporting activities aimed at the protection of economic and social rights. However, it is gratifying to note that many human rights organizations in South Africa are now broadening their work to include economic and social rights. This problem is sometimes compounded by politics, as the success of some human rights organizations may well depend on the political significance of the supporters or opponents within a particular society. A further dimension to the role of politics is that, although the constitutional and political changes of the 1990s opened the political space necessary for human rights NGOs to press their agenda, such organizations that are per-

81 (n 80).
ceived not to toe the ruling party line, and are increasingly being marginalized and sidelined or even undermined.

Another major problem is that most human rights NGOs are based in urban areas, in a country where the population is predominantly rural. Urban areas have their own dynamics and are often not representative of the human rights issues that most people face in the rural areas. This urban-rural split is significant in that urban-based organizations draw their main support from urban, educated and legally-aware individuals, whereas rural organizations have to deal with rural, uneducated and legally naive masses. As a result, success in gaining government action is far more likely with urban-based organizations.82 It is no wonder then that the few organizations that have tried to establish themselves or create branches in rural areas have met with limited success.

The relationship between human rights NGOs is the source of yet another problem. As mentioned earlier, there are more than one hundred such organizations and the way they relate to each other can easily give rise to various problems. At one level, there is a need for close links between South African human rights NGOs and their international counterparts. However, as the number of South African NGOs has increased in recent years, international organizations have found themselves competing with domestic organizations for the same sources of funding. Moreover, some South African human rights activists feel that the relationship between the two has been largely exploitative, with international organizations utilizing the work of local groups without acknowledgment.83 At another level, there is competition among domestic organizations, particularly those whose goals and objectives are not clearly defined. There is a tendency for some organizations to take on all sorts of issues and in so doing create an overlap in activities and competition in accessing funding. A clear need exists for human rights organizations to conceptualize their programmes and define their goals and objectives more clearly not only to avoid overlap and competition, but also to ensure their relevance to the communities addressed.

In spite of the many problems faced by human rights NGOs in South Africa, the prospects for the future are quite encouraging. The future climate for such organizations will be affected by several factors, including:

- the extent to which democratization can be improved and maintained;
- the extent to which funding can be accessed;
- the extent to which human rights abuses can be diminished or lessened;
- the extent to which public awareness of human rights can be increased; and
- the level of government commitment to accept and recognize the role of civil society in human rights protection.

Each of the above factors has to be seen as an objective requiring both short-term and long-term steps. More importantly, both government and NGOs need to put in place effective programmes aimed at realizing each of the above objectives.

The issue of lack of funding will remain a problem both in the short term and long term. However, the chronic insufficiency of funds and resources can be

82 See Welch Jr (n 31) 75.
83 See “The status of human rights organizations in Sub Saharan Africa” (n 80).
countered to some measure by NGO networking and coordination.84 The advantages and benefits of networking, particularly on specific issues, are obvious. As stated by Welch Jr:

“Networks based on specific issues stand a better chance of short run success than generalized networks for broad human rights or development matters, or politically motivated institutions that proclaim human rights more in their titles than in effective programmes of action.”85

In the final analysis, human rights NGOs will continue to play an important role in the protection and promotion of human rights in South Africa. Their efforts should result in increased awareness of human rights, which is a critical factor in the process of human rights protection. Although funding and resources are likely to remain limited, all indications are that those organizations with clear goals and objectives will continue to exist and operate.

5 Concluding remarks

The foregoing discussion shows that NGOs are important role-players not only in the international human rights system but also in the domestic human rights arena. In the South African context the role of NGOs has been enhanced by the recent political and constitutional developments that led to a new democratic order. Although human rights NGOs have to contend with several challenges, it is clear that their contribution to human rights protection will remain critical. It is evident from the discussion in this article that the protection of human rights in South Africa has undergone a huge paradigm shift from a past characterized by gross human rights abuses to a present that recognizes and acknowledges the importance of human rights in human development.

SAMEVATTING

DIE ROL VAN NIE REGERINGSORGANISASIES IN DIE BESKERMING VAN MENSEREGTE IN SUID AFRIKA

In hierdie artikel word die aktiwiteite van nie regeringsorganisasies ten opsigte van die beskerming van menseregte in Suid Afrika ondersoek, die probleme en uitdaginge waarmee hulle te kampe het word geïdentifiseer en die vooruitgang deur die organisasies word bespreek. Vooraf word ’n oorsig gegee van die funksionering van nie regeringsorganisasies in Suid Afrika. Die belangrikste probleem van die organisasies sluit in dat hulle, vanwee hulle feitlik een persoon, minder effektief kan werk as regeringsorganisasies. Daarna word die aard en die produk van hulle werk bespreek. 'n Aantal organisasies het reeds as gevolg hiervan ontbind. Organisasies word soms gekritiseer omdat hulle hoofsaaklik op burgerlike en politieke regte konsentreer, maar dit is belangrik om te onthou dat hulle sosiale en ekonomiese regte konsentreer.

Verdere probleme sluit in dat die organisasies soms onvoldoende hulpbronne het om hulle doeltegaan te behaal. Dit is belangrik om te onthou dat hulle die rol van nie regeringsorganisasies sal voortbestaan en waardevolle bydraes sal lewer.

84 See Welch Jr (n 31) 297.
85 See Welch Jr (n 31) 298.