

**CHALLENGES FACING THE HUMAN RIGHTS MOVEMENT IN AFRICA  
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**Introduction**

Human rights are the single most ubiquitous and universalizing discourse of the 21<sup>st</sup> Century.<sup>1</sup> From the Aborigines of Australia, women in Pakistan or children in Congo's war and mining fields, human rights has become the near singular language used to define, legitimate, and animate their condition and struggle.

In this context, Africa is one of the central arenas for the pursuit of human rights considering that over the last 20 years the continent has witnessed genocides, massive killings, displacements, developmental disproportionality, hunger and malnutrition, HIV Aids, among others. Welch observes:

Millions of refugees and displaced persons eke out wretched lives in squalid camps. African women continue to labour longer and with far less reward than African men...Clogged court systems seem to apply one brand of justice for the few who can afford lawyers, another brand of justice for many with limited funds or knowledge. Despite veneers of democratization, transparency and accountability in government operations remain limited.<sup>2</sup>

If human rights are the transformative template and the crucible that should support state formation and reformation, and thereby provide moral basis for individual and communal action, it should then follow that the struggle for realizing human rights takes a primal place in a continent such as Africa. Where is the evidence that human rights norms have found residence in the institutional life of states and individuals? Perhaps we should look at the mushrooming numbers of NGOs that seek to address one or the other myriad of

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<sup>1</sup> Baxi Upendra, *Inhuman Wrongs and Human Rights: Unconventional Essays* (1994) observes that perhaps no single phrase in recent human history has been privileged to bear the mission or burden of human destiny more than "human rights".

<sup>2</sup> Welch C.E., *The NGO Revolution in PROTECTING HUMAN RIGHTS IN AFRICA: ROLES AND STRATEGIES OF NON GOVERNMENTAL ORGANIZATIONS* (Welch C.E. Edition, 1995), 184.

social problem or gaze at the significant and ever increasing funding for human rights work by bilateral and multilateral donors and philanthropic groups and individuals. Perhaps we should marvel at the number of international ad hoc tribunals based in Africa, be it Sierra Leone or Rwanda or the number of Truth Commissions established to expose, punish and mediate human rights violations. While these examples may provide a quantitative indication that human rights work is being pursued they in no way are dispositive of the qualitative extent to which human rights norms are playing a transformative role in a continent mired by conflicts, disease and want.

My presentation will explore the major challenges facing the human rights movement in Africa. It will, evaluate the concept of human rights movement by placing it in the larger context of the post colonial state in Africa; examine its major attributes by reviewing two case studies; interrogate four emerging challenges to such human right movement; and, expose possible prospects.

## **I. Human Rights Movement in Africa: Concepts, Attributes and Dynamics**

Since the seminal work of Welch on NGOs in Africa,<sup>3</sup> very little academic writing has been devoted to the subject. Moreover, beyond NGOs, the specific nature of human rights movements is a domain that remains fairly unexplored.

As a subset of the larger social movement,<sup>4</sup> the human rights movement in Africa is the assemblage of forces, institutions and groupings, both formal and informal, the networking, mobilization and advocacy of which is designed to further the protection and

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<sup>3</sup> *Id.*

<sup>4</sup> Pagnucco R., Smith J., and Chatfield C. *Social Movements and World Politics* in TRANSNATIONAL SOCIAL MOVEMENT AND GLOBAL POLITICS: SOLIDARITY BEYOND THE STATE (Smith, Chatfield & Pagnucco edition, 1997).

They view social movement organizations as “those formal groups designed to promote specific social changes. They are the principal carriers of social movements in so far as they mobilize new human and material resources. Activating and coordinating strategic action throughout ebbs and flows of movement energy.

*Id* at 60. This definition while specific to SMOs is suggestive that the life of a movement ‘ebbs and flows’ and must thus be sustained by structures outside the movement.

promotion of human rights.<sup>5</sup> Due to the variety of contexts, human rights movements in the continent constitute an eclectic group of Non Governmental Organizations (NGOs), Faith Based Organizations (FBOs),<sup>6</sup> issue-based networks, epistemic communities,<sup>7</sup> citizen groups, trade unions, and individuals. NGOs are by far the most predominant form of the human rights movement in Africa, hence the success or otherwise of NGOs will say a lot about both the survival of movements as well as the prevailing human rights situation in the continent. Part of the reason for this predominance is not merely because NGOs have over time acquired structural facets, but rather because NGOs flag up issues that may signal the emergence of a movement around an issue, as would become apparent from our exploration of the two case studies below. Moreover, due to the ephemeral and transience of movements, especially in Africa, NGOs become to movements what probate and administration departments are to bequests.

These groupings utilize an array of tools, mechanisms and strategies; national, regional and international in their quest for the advancement of rights. The most common strategies used by Africa's human rights movements include community development, civic education and engagement, policy advocacy, research, community mobilization, media publicity and litigation.<sup>8</sup> The organizational and management structures of these

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<sup>5</sup> Human rights in the context of this paper is an expansive rubric that enmeshes the civil and political rights, economic social and cultural rights as well as solidarity rights codified in international and regional instruments. It also incorporates concepts of rule of law, including independent judiciaries and the broader governance issues such as the democratization agenda and the struggle for accountability and transparency in government.

<sup>6</sup> The role of the Church, especially the Catholic Church in challenging structural problems of the state in Africa, particularly in extremely repressive periods of the 80s and 90s, requires respectful attention. The leadership provided by religious personalities such as Desmond Tutu in South Africa, Father Kaiser and Alexander Muge in Kenya, Bishop Luwum in Uganda's Idi Amin among others are deserving of mention. Since Rwanda and the complicity of the Catholic Church though, it would seem that the role of the FBO in transforming governance reality in Africa is on the wane. For an earlier appraisal of this issue in Kenya see e.g., Agnes Abuong, *Role of Kenyan Churches in Democratization*, paper presented at a Conference on the Christian Churches and African Democratization, Leeds, U.K., 1993.

<sup>7</sup> The particularly significant role of lawyers in the second wave of Africa's democratization cannot be gainsaid. Law societies in countries such as Kenya were the informal opposition party during the single party rule. The role of epistemic communities may have however taken a downward trend with the entrance of multiparty politics on the one hand, and the emergence of more specialized NGOs.

<sup>8</sup> Strategic litigation has become an extremely important vehicle for both mobilization of victim groups and providing an arena (courts) for the dramatization of human rights violations to wider audiences. See e.g., Sing'Oei Korir A., *Indigenous People in Africa: A Quest Yet Unmet*' in AFRICA'S LONG ROAD TO

groups vary from one to another, but whenever structures emerge, they are undemocratic, and undermine, in the long term, the legitimacy, sustainability and ownership of these groups.<sup>9</sup>

While one may question the effectiveness of these groups as purveyors of human rights norms and domesticators of their imperatives, it must be appreciated that the post colonial state in Africa is still heavily averse to independent and autonomous agency action.<sup>10</sup> Predominantly, thus such groupings have to contend with high handed state repression or subtle state manipulation either of which strategy is designed to mute the impact of such groupings.<sup>11</sup> In particular, it can be observed that states in Africa are most restive when issues in the nature of civil and political rights are raised, rather than those focusing on economic social and cultural rights.<sup>12</sup> The pursuit of solidarity rights however, seems to draw the greatest measure of targeted state resistance in so far as they are seen as implicating ‘national and international development’ or national security, and invite the state to an emergent decolonization discourse.<sup>13</sup>

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RIGHTS: REFLECTIONS ON THE 20TH ANNIVERSARY OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS, 36 (Hakima Abbas edition, Fahamu/Oxford: London, 2007).

<sup>9</sup> See e.g., Willy Mutunga & Alamin Mazrui, *Rights Integration in Institutional Context: The Experience of the Kenya Human Rights Commission*, 8 BUFF.HUM.RTS.L.REV. (2002) 123-145, at145. Authors warn of “the misappropriation of grassroots organizations to advance the interests of middle and other class bodies...” and thus see the need for the more direct involvement of... KHRC in stimulating the formation of grassroots structures and participating in their organization, management and mobilization

<sup>10</sup> In contrast to the prevailing norm, Benin, a country once known as Dahomey, in West Africa is one of the few exceptions, that seems to have proceeded to legalize hence legitimate the struggle against tyranny and particularly to stand up against *coup d’états*. See art. 66 of 1990 Constitution of Benin which provides:

In the case of a coup d’état...any member of the constitutional agency shall have the right and duty to make an appeal by any means to re-establish the constitutional legitimacy...In these circumstances, for any Beninese to disobey and organize himself to put a check to the illegitimate authority shall constitute the most sacred of ...duties.”

<sup>11</sup> Zimbabwe has become the *locus classicus* with regard to repression, while the East African states of Kenya, Uganda and Tanzania, may be said to have more benign forms of manipulation of movement, including through joint programming for development. Consider e.g., the impact of Kenya’s Governance Justice Law and Order Sector Reforms on NGO advocacy work

<sup>12</sup> This assertion is also not yet empirically proven, since for instance raising issues of hunger and malnutrition in the Ogaden region of Ethiopia, certainly a social rights issue, will be seen by the government in Addis, as an extreme engagement in political brinkmanship, and will most likely be resisted.

<sup>13</sup> See e.g., Joel Ngugi, Joel Ngugi, *The Decolonization - Modernization Interface and the Plight of Indigenous Peoples in Post-Colonial Development Discourse in Africa*, 20 WIS. J. INT’L L. 297 (2002).

The overt repressions of the 90s,<sup>14</sup> in most African states has transformed into a much more complex carrot and stick strategy which seeks to entrap human rights actors within a falsified construct of an increased political space, leading often to state co-optation.<sup>15</sup>

## **II. Attributes of the Human Rights Movement**

Two contrasting movements will be presented to provide a canvas against which the major attributes and challenges of human rights movements in the continent can be assessed.

### **a. Treatment Action Campaign (TAC) in South Africa**

Nine years ago, passers-by barely glanced at a handful of protesters on the steps of a Cape Town cathedral, unaware that they were witnessing the birth of Africa's most powerful Aids movement. By the end of that day, on 10 December 1998, the small group - including a 66-year-old grandmother, a medical student and a human rights activist, had collected some 1 000 signatures supporting their cause.<sup>16</sup>

They were the first members of the Treatment Action Campaign (TAC), a non-governmental organisation led by anti-apartheid and gay rights activist Zackie Achmat, which aimed to spread the news that cheap HIV/Aids drugs do exist. Since then, Achmat and the Treatment Action Campaign have mobilized a membership of well over 100,000 to bring to the fore the place and dignity of sero- positive individuals in post apartheid South Africa. They have strongly utilized litigation to challenge limits on importation of anti retroviral drugs, compel the state to provide drugs to HIV positive mothers and hence

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<sup>14</sup> See e.g., Korwa Adar & Isaac Munyae, *Human Rights Abuses in Kenya Under Daniel Moi, 1978-2001* (copy with author).

<sup>15</sup> The diminished role of trade unions as agents of social political transformation in Africa is markedly different from their exalted position at the independence period. NGOs too are not escaping the allurements of state largess. See e.g., Sebastian Bue Rakov, *Democratization and Constitutional Review in Kenya: A descriptive and Explanatory Analysis of Democratization in Kenya in the case of the Constitution Review Process in Between the General Elections of 2002 and 2007* (Unpublished PhD thesis, University of Aalborg, Denmark, 2008).

<sup>16</sup> Fienie Grobler, "How TAC Begun", *Channel 24 News*, November 25, 2005, available at [http://www.news24.com/News24/South\\_Africa/Aids\\_Focus/0,,2-7-659\\_1842267,00.html](http://www.news24.com/News24/South_Africa/Aids_Focus/0,,2-7-659_1842267,00.html).

prevent mother to child transmission, and compelled the state to provide anti retrovirals to infected prisoners.<sup>17</sup>

The have sustained political pressure to reverse Mbeki's government's assertion that the main causation of Aids in Africa was poverty rather than sexual transmission,<sup>18</sup> and have utilized music and popular theatre to advance their message quite successfully.<sup>19</sup>

This single issue movement that is structured as a membership NGO structural seems to have overcome the challenge of transiency and unsustainability that is often associated with movements.

b. The Campaign for the Release of Amina Lawal in Nigeria

In March 2002, an Islamic Sharia court in Nigeria Northern state of Katsina sentenced the then 29 year old Amina Lawal to death by stoning for adultery for conceiving a child out of wedlock. The father of the child was not prosecuted for lack of evidence. Baobab for Women's Human Rights, an NGO based in Nigeria took up her case, which was argued by Nigerian lawyers trained in both secular and Sharia law. Amina's lawyers included Hauwa Ibrahim, a prominent human rights lawyer known for her pro bono work for people condemned under Sharia law.

In their successful defense of Amina Lawal, lawyers used the notion of "extended pregnancy," arguing that under Sharia law, a five year interval is possible between human conception and birth, (Five years prior to the date of her daughter's birth, she was still married to her husband.<sup>20</sup>

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<sup>17</sup> See e.g. *Minister of Health v Treatment Action Campaign (TAC)* (2002) 5 SA 721 (CC); and *B and Others v Minister of Correctional Services and Others* 1997 (6) BCLR 789 (C).

<sup>18</sup> *Speech by the Minister of Health Ms Barbara Hogan at the HIV Vaccine Research Conference: Cape Town Icc*; 13 October 2008 available online at <http://www.tac.org.za/community/node/2421>>. See also Mandisa Mbali, *The Treatment Action Campaign And The History Of Rights-Based, Patient-Driven Hiv/Aids Activism In South Africa*, Centre for Civil Society, University of Kwazulu Natal, Research Paper No 29 available online at [http://www.ukzn.ac.za/ccs/files/RReport\\_29.pdf](http://www.ukzn.ac.za/ccs/files/RReport_29.pdf)>.

<sup>19</sup> The Generics – Jikilele music available at <http://www.tac.org.za/community/audio>>.

<sup>20</sup> Aminu Adamu Bello, *If Amina Lawal Had Failed: Issues in Constitutional and Islamic Criminal Law in Nigeria*. Available online at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1118011#](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1118011#)>

Amina Lawal's conviction was overturned by the Upper Sharia Court of Appeal and she has since remarried.<sup>21</sup> Of importance to our discussion is perhaps the manner in which an issue as complex as religion and gender discrimination was addressed in this campaign. The short term goal of securing an acquittal for Lawal while successful seemed to have trumped the long term dialogue on the need for rethinking of gender issues within the plural religious contexts in Africa. Further, as the campaign became internationalized, the essentialization of Islam as "the barbaric and savage other" became predominant.<sup>22</sup> If anything, the decision itself was made on procedural grounds, while the substantive issue, to wit, that adultery was punishable by death per the Sharia edict, was left uninterrogated. As the campaign fizzled out soon after Lawal's acquittal, these underlying issues remain unchallenged and continue to fester in Nigeria's highly polarized body politic. If anything, it may be doubtful that the campaign itself achieved substantial deference to human rights norms in this region of the country.<sup>23</sup>

Unlike in the case of TAC in South Africa, which has maintained visibility on the issue sustaining a national conversation and transforming attitudes to HIV Aids, Baobab organization in Nigeria, seems to have lost out in a larger contestation for transforming gender relations.

### **III. Major Challenges**

#### **a. Elitism**

Chidi Odinkalu observes that through history, the protection of human rights has been "won by struggle, and struggle requires mobilization. The process of mobilization validates the movement connecting it with the needs of the people and earning their

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<sup>21</sup> Amina Lawal online at [http://en.wikipedia.org/wiki/Amina\\_Lawal](http://en.wikipedia.org/wiki/Amina_Lawal)

<sup>22</sup> Ayesha Iman And Sindi Medar-Gould , "How Not to Help Amina Lawal The Hidden Dangers of Letter Campaigns" *The CounterPunch* , May 15, 2003, available online at <http://www.counterpunch.org/iman05152003.html>>. The sensibilities and nuances of such a campaign may call for an extensive understanding of cultural and political context for it to generate meaningful change.

<sup>23</sup> See e.g., Amnesty International Press Statement, *Nigeria: Amina Lawal's death sentence quashed at last but questions remain about discriminatory legislation*, September 25, 2003 available online at <http://www.amnesty.org/en/library/asset/AFR44/032/2003/en/dom-AFR440322003en.pdf>>.

commitment”.<sup>24</sup> On this basis Odinkalu finds that the *raison d’être* of the human rights movement in Africa is to fulfil donor contracts rather than serve the aspirations of their constituencies. The results are tragic for the internalization of the human rights language:

[M]ost of our people (Africans) do not describe their social problems in human rights terms. Many communities and groups involved in social justice movements and initiatives in Africa are reluctant to make the Universal Declaration, or language inspired by it, their mascot or medium”.<sup>25</sup>

Odinkalu’s contestation is that elitism is the bane of human rights movement in the continent. Such comments are not uncommon. Indeed, the prevailing perception in Africa is that NGOs and by extension leadership in human rights movements are but vehicles for self advancement, and a means of capturing political power. The trajectory of political leaders in Africa bears out this anecdotal observation.<sup>26</sup> For many in Africa, commitment to human rights is only skin deep.

This elitism has the overall impact of undermining the viability of human rights movements as instruments of transforming the state in Africa. Instead, due to elitist aspirations, such movements turn more towards pleasing external constituencies. In this regard, they serve only to undermine the state’s legitimacy externally.<sup>27</sup> The eventual change that results from such movement processes, would invariably be skewed towards an external orientation rather than having internal congruency. In a sense, this may be the

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<sup>24</sup> Odinkalu C.A Why More Africans Don’t Human Rights Language, cited in HUMAN RIGHTS: PEACE & JUSTICE IN AFRICA-A READER (Heyns & Stefiszyn edition, 2006) 186.

<sup>25</sup> *Id.*, at 186-187.

<sup>26</sup> Prof. Kivutha Kibwana in Kenya led the most extensive pro democracy movement in Kenya in the 90s- National Convention Executive Council- but with his appointment as government minister upon successfully contesting parliamentary seat, Kibwana turned foe to the very ideals he espoused as a human rights activist. Similarly, Kiraitu Murungi, another leading light of the pro democracy movement became a minister in charge of justice and constitutional affairs during Kibaki’s first term, and succeeded in scattering the human rights movement bend on securing a new constitution.

<sup>27</sup> It has been argued that such movements even if externally oriented “put norm violating states on the international agenda...and remind liberal states of their own identity as promoters of human rights” which would in turn occasion pressure to bear on the offending state. Risse T. & Sikkink K. *The Socialization of International Human Rights Norms into Domestic Practices: An Introduction* in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS & DOMESTIC CHANGE (Risse T., Ropp S. & Sikkink K. edition, 1999). The assumption for the realization of this proposal is that the offending state must somehow be vulnerable to international pressure. In the immediate post cold war years, this may have been feasible, as there was near unanimity on the part of the international community as to the direction of change desired. But with the entrance of China into the matrix of global governance, the equation has tilted again. The case of Zimbabwe exemplifies this challenge. In contrast, states such as Kenya for whom international opinion matters, such a strategy has registered greater success.

unexplained factor behind the reversal in the democratization trends in the continent. What does emerge is that the internal constituency, to wit a people based movement, was not the real drivers of the change, hence lack the tools and mechanisms to sustain it. A top down change is certainly lacking in foundational rootedness, and the resulting edifice, like Nebuchadnezzar's Babylon, collapses.

The other danger of elitism is that it reinforces the notion of cultural relativism tinged with the assertion that rights are western constructs, which can only be appreciated by those who have been schooled in western liberal thought.

b. Particularism

The dichotomization of rights into the three traditional classes has taken root among Africa's human rights movements. Rather than recognize the true premise of both the universality and interdependence of rights propounded at the Vienna Conference, the trend has been that those organizations/movements working on civil and political rights will not respond to the violation of a community's water rights issue or right to education violation. The result is that the capacity for inter-movement solidarity is grossly undermined and the overall impacts of these groups are weakened.

The success of TAC in South Africa has largely been due to its characterisation of HIV Aids as implicating all human rights, particularly the right to dignity, which is both a civil and political issue as it is a social and group right. Its mobilization has also gone beyond the traditional groups targeted by human rights organizations, including the very victims of the violation and those interested in the issue. Framing Amina Lawal's issue not as a religious tension, but more as a question of equality would have served a greater mobilization incentive.

Particularism not only weakens mobilization, but also emphasizes difference and exclusivism within the human rights community thereby promoting conflicts and non cooperation.

c. Risk Aversion

Related to elitism, it can be asserted that key actors within Africa's human rights movement are middle class individuals who have a stake in the stability of the state and markets, rendering them and the human rights movements more risk averse. This risk

aversion detracts from the nature of struggle, which often characterizes social justice groups' relations with the state.

The legitimacy of human rights struggle is recognized by the Universal Declaration thus:

It is essential, if man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...<sup>28</sup>

The Declaration, while not inviting untrammelled taking of risk, considers standing up to a belligerent state as an occupational hazard of the human rights movement, and the activist's default position. This view is supported by Christof Heyns who considers human rights as sustained by struggle. He argues: "the concept of human rights represents a countervailing force to the dominant role of the state and state like entities...As a result, human rights have a potentially revolutionary dimension."<sup>29</sup> More aptly, Adinkalu posits that:

People are acutely aware of the injustices inflicted upon them...what they need a movement that channels these frustrations into articulate demands that evoke responses from the political process. This, the [African] human rights movement is unwilling or unable to provide.<sup>30</sup>

#### d. Formalism

Most African movements are attached to the institutionalistic apparatus at the national and regional level. The strengths and limitations of these institutions, therefore markedly define the contours of contestation for human rights movements in Africa. In this regard therefore one may see movements in Africa as being steeped in formalism, since they strategically orient themselves to fit the narrow pigeon holes established by national and regional bodies, such as the African Union, Nepad, World Bank and others.

For some movements, such as the indigenous movement, for whom there are very limited political opportunity structures for engagement at national levels, the pursuit of

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<sup>28</sup> Universal Declaration for Human Rights Preamble.

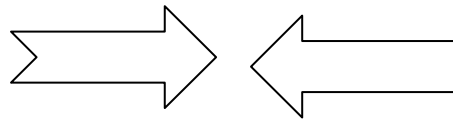
<sup>29</sup> Heyns C.H. A 'Struggle Approach' to Human Rights, in LAW & PLURALISM, 172 (A. Soetman edition, 2001).

<sup>30</sup> Adinkalu, Supra note 24 at 187.

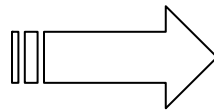
supra national arenas for the articulation of their issues may make sense in the short run.<sup>31</sup> For most issues, however, it behoves movements to wage a concerted war at national and community level. Moreover, the danger of adopting a formalistic approach is that most movements become victims of the very structural biases that they seek to challenge. These movements also become redefined, so that in the long run, they bear the same detestable marks of the institutions of the state, hence loosing out their popular appeal among communities. This situation further increase possibilities and opportunities for co-option by state and multi-state institutions.

#### IV Prospects

Domestication to Internationalization



Co-optation to Fragmentation



#### IV. Conclusion

This discussion has critically examined the main challenges of the human rights movement. Considering the state of flux within which most of these movements operate in Africa, traditional approaches utilized by western movements may not lend themselves to direct application as witnessed in the Amina Lawal Campaign. The need to champion the struggles of the people in a way that does not essentialize or patronize them, will perhaps sustain the respect for human rights rather than would ad-hoc large scale efforts designed, funded and sustained from Africa's or Northern metropolis.

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<sup>31</sup> See Jim Igoe *Becoming Indigenous Peoples: Difference, Inequality and the Globalization of East African Identity Politics*, 105 AFR. AFFAIRS 399 (2006). Igoe points out that the Maasai in Tanzania began to articulate and frame their struggle for recognition, political participation, and land ownership in terms of "indigenous rights" sometime after 1993. See also Moringe Parkipuny, *The Human Rights Situation of Indigenous Peoples in Africa*, 1 FOURTH W.J. 3, 4 (1989) (arguing that the experience of Maasai and other similar groups "match the plight of indigenous peoples through the world.").