

Teaching, Promoting, and Implementing Human Rights Instruments in Africa: The Need to Contextualize

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Africa's human rights movement suffers an intellectual and material dependency that is injurious to both its legitimacy and efficacy.¹

I. INTRODUCTION

Since 1981, the Organization of African Unity² has gradually established a holistic human rights system, including comprehensive legal instruments³ and

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1. Chidi Anselm Odinkalu, *Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa*, 47 J. OF AFR. L. 1, 34 (2003).

2. Charter of the Organization of African Unity, May 25, 1963, 479 U.N.T.S. 39, available at http://www.au.int/en/sites/default/files/OAU_Charter_1963_0.pdf. The Organization of African Unity ("OAU") was adopted in Addis Ababa, Ethiopia, by the Heads of State and Government of Africa. The OAU was created during the decolonization process in Africa. *Id.* Its main objective was to unify the independent states and to facilitate the end of colonialism on the continent. *Id.* See generally Immanuel Wallerstein, *The Early Years of the OAU: The Search for Organizational Preeminence*, 20 INT'L ORG. 774 (1966). In 2001, the OAU transformed into the African Union ("AU"). Corinne A.A. Packer & Donald Rukare, *The New African Union and Its Constitutive Act*, 96 AM. J. INT'L L. 132 (2005). See generally The Constitutive Act, AFRICAN UNION, http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm (last visited Dec. 11, 2013); Tiyanjana Maluwa, *The OAU/African Union and International Law: Mapping New Boundaries or Revising Old Terrain? Proceedings of the Annual Meeting*, 98 AM. SOC'Y OF INT'L L. 232 (2004); Kofi Oteng Kufuor, *The Collapse of the Organization of African Unity: Lessons from Economics and History*, 49 J. OF AFR. L. 132 (2005).

3. See generally African Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58, available

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institutional organs⁴ to ensure the promotion and protection of human rights in Africa. Yet, despite this protective arsenal, Africa continues to be the continent where gross human rights abuses are the rule rather than the exception.⁵ This paradox between institutional protection and the realities of daily life is created in part by the lack of a widespread human rights culture, which was created by the political and economic conditions on the continent.⁶ The purpose of this Article is not to delve into these factors, but to demonstrate that the implementation of human rights in Africa cannot be achieved without restoring and disseminating the humanist legacy of Africa's past.

Indeed, in much the same way as a person who has suffered violent trauma does not remember anything preceding that shock, Africa has amnesia about its pre-slave past⁷ and still nurtures a "colonial hangover."⁸ In a brutal and barbarous

at <http://www1.umn.edu/humanrts/instreet/z1afchar.htm>; see generally The African Charter on the Rights and Welfare of the Child, July 11, 1990, CAB/LEG/24.9/49, available at <http://www1.umn.edu/humanrts/africa/afchild.htm>; see generally Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, CAB/LEG/66.6, available at http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.

4. See, e.g., AFR. COMMISSION ON HUM. & PEOPLES' RTS., <http://www.achpr.org/> (last visited Nov. 15, 2013); AFR. COMMITTEE OF EXPERTS ON THE RTS. & WELFARE OF THE CHILD, <http://acerwc.org/> (last visited Nov. 15, 2013); see, e.g. *The African Court on Human and People's Rights*, AFR. CT. ON HUM. & PEOPLES' RTS., <http://www.african-court.org/> (last visited Dec. 11, 2013).

5. Makau Mutua, *The African Human Rights System: A Critical Evaluation*, HUMAN DEVELOPMENT REPORT 2000, 1-2, available at <http://hdr.undp.org/en/reports/global/hdr2000/papers/MUTUA.pdf>; George Mukundi Wachira, *African Court on Human and Peoples' Rights: Ten Years on and Still No Justice*, MINORITY RTS. GROUP INT'L 5-6 (2008), available at <http://www.unhcr.org/refworld/pdfid/48e4763c2.pdf>. See generally Adama Dieng, *Introduction to the African Court on Human and Peoples' Rights*, 15 INTERRIGHTS 1, 3 (2005), available at <http://www.interights.org/document/49/index.html>; Ben Kioko, *The African Union and the Implementation of the Decisions of the African Court on Human and Peoples' Rights*, 15 INTERRIGHTS 1, 7 (2005).

6. See Mutua, *supra* note 5, at 35-38; Wachira, *supra* note 5; Kathryn Birdwell Wester, *Violated: Women's Human Rights in Sub-Saharan Africa*, TOPICAL REV. DIG.: HUM. RTS. IN SUB-SAHARAN AFR. 1, available at <http://www.du.edu/korbel/hrhw/researchdigest/africa/WomensRights.pdf>.

7. Historical evidence suggests the hunting and selling of African men, women, and children went on unabated for centuries on end, and that the trans-Saharan slave trade started as early as the 7th century. J. Alexander, *Islam, Archaeology and Slavery in Africa*, 33 THE ARCHAEOLOGY OF SLAVERY 44, 46 (2001). See generally also MALEK CHEBEL, *L'ESCLAVAGE EN TERRE D'ISLAM—UN TABOU BIEN GARDÉ* (2007).

8. K. Mathews, *The OAU and Political Economy of Human Rights in Africa: An Analysis of the African Charter on Human and Peoples' Rights, 1981*, 34 AFR. TODAY 85, 87 (1987). "Africa is perhaps the worst hit by colonial and imperialist exploitation. Its productive forces were the least developed by colonialism and imperialism. It was outright plunder of the most rapacious kind. Further, it is the last continent to be decolonized. These circumstances had tremendous negative impact in terms of human and economic development. Other countries developed on account of this process. Human rights violations during the colonial era and their part in colonial economic re-organization, as well as their continuation in the post-colonial era, are now fairly well known." *Id.* at 87. "Most of the laws, institutions and attitudes that underwrote the egregious violations of human rights that were habitual during colonialism did not just survive independence, they prospered thereafter." Odinkalu, *supra* note 1, at 8. He continues, "[m]any countries have adopted new constitutions with new and improved Bills of Rights. In nearly all cases, however, the adoption of new Bills of Rights has not been followed with the review or repeal of the insuperably oppressive raft of legislation that African countries inherited from colonialism. In effect, many elected African governments still find themselves

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colonial context, many African communities become harsher and increasingly insensitive to human rights; the rule of might replaces the rule of right in many kingdoms. The economy is no longer geared towards satisfying the needs of the local population, but instead becomes ruthlessly predatory.⁹

The argument in this Article is that it is possible to retrieve from much older African traditions the rules and concepts that are in total harmony with modern human rights standards.¹⁰ Hence, the object of this Article is to demonstrate that it is important not only to identify and date the installation of a human rights' hostile culture in Africa, but also to highlight the multi-millennia-old African humanist tradition that preceded it and stood its ground against it as long as it could. The ignorance of, or indifference to, African humanist traditions fuels the idea that the concept and practice of human rights are exclusively European.¹¹ This Eurocentric method of presenting human rights is counterproductive in

able to exercise dictatorial and arbitrary powers under the appearance of both constitutional and electoral legitimacy." *Id.* at 11. This appalling situation is explained by Odinkalu quoting Abdullahi An-Na'im: "it is unrealistic to expect the postcolonial African state to effectively protect human rights when it is the product of colonial rule that is by definition the negation of these rights. However one evaluates precolonial African political regimes from the point of view of human rights, it is clear that colonialism was incapable of creating and sustaining the institutions and processes necessary to protect rights." *Id.* at 2. For example, the Family Code of Senegal is a copy of the French Civil Code of the sixties, except for the provisions on polygamy and inheritance under Islamic law (although Senegal is a secular state). Fatou Camara, *Women and the Law: A Critique of Senegalese Family Law*, 13 SOCIAL IDENTITIES 787, 790 (2007). Thus despite the signing and ratification of CEDAW and of the African Women's Protocol, the concepts of marital power ("puissance paternelle" - the husband is chief of the family) and paternal power ("puissance paternelle" - the father has sole exercise of parental authority) remain in force. *Id.* at 792.

9. See Odinkalu, *supra* note 1, at 9-10 ("[t]he focus today on human rights in Africa is against the background of a long history of colonial and post-colonial repression, political instability and economic pauperization of the continent and its peoples. The colonial background is important because its legacies continue to determine, often conclusively, the contest for rights and access to power in Africa and the long and painful history of instability that has accompanied the transition from independence").

10. See James F. Searing, 'No Kings, No Lords, No Slaves': *Ethnicity and Religion Among the Sereer-Safèn of Western Bawol, 1700-1914*, 43 J. OF AFR. HIST. 407, 409-10 (2002); Heidi J. Nast's, *Islam, Gender, and Slavery in West Africa Circa 1500: A Spatial Archaeology of the Kano Palace, Northern Nigeria*, 86 ANNS. OF THE ASS'N OF AM. GEOGRAPHERS 44, 51-52 (1996). Pay particular attention to the section concerning the Maguzawa people, "[t]he term Maguzawa designates: 1) those 'pagans' expelled from Kano in the fourteenth century; 2) those who resettled in nearby out-lying regions; and 3) more generally those who never accepted Islam." *Id.* at 52.

11. Cf. Makau Mutua, *Human Rights in Africa: The Limited Promise of Liberalism*, 51 AFR. STUD. REV. 17, 18 (2008). "Third World scholars like myself come to the study of human rights with a considerable degree of discomfort and an in-built sense of alienation. Neither human rights, nor liberalism, has been germinated in the African garden." *Id.* Similarly, noting the absence of representatives of Africa in the Drafting Committee of the Universal Declaration of Human Rights (UDHR), Mutua deduces the alien nature regarding Africa of the UDHR. *Id.* at 24. Geoffrey Best, *Whatever Happened to Human Rights?*, 16 REV. OF INT'L STUD. 3, 4 (1990); Jack Donnelly, *The Relative Universality of Human Rights*, 29 HUM. RTS. Q. 281, 284-85 (2007). According to Donnelly, "non-Western cultural and political traditions, like the pre-modern West, lacked not only the practice of human rights but the very concept." JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 71 (2d ed. 2003). For Cole also, the recognition of the existence of fundamental rights of the human being is directly related to capitalism and the Western theory of economic liberalism. Wade M. Cole, *Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999*, 70 AM. SOC. REV. 472, 473 (2005).

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Africa. It enables the assimilation of human rights instruments into Trojan Horses, thus making it easy for African politicians to refuse to implement the conventions their states have signed and ratified. All state officials have to do is activate the justified¹² wariness of Africans toward Westerners bearing gifts.

As a matter of fact, member states of the OAU were initially quite indifferent on the issue of human rights; their concern was the complete decolonization of the continent and the end of apartheid.¹³ Eventually, the OAU agreed to address the calamitous situation of human rights in Africa. Consequently, in 1979, at the request of the Assembly of Heads of States and Government of the OAU, the General Secretary of the OAU in 1979 appointed a committee of experts to draft a regional human rights convention.¹⁴ The first meeting of this committee of experts was held in Dakar, Senegal.¹⁵ At the opening session, the President of the Republic of Senegal, Leopold Sedar Senghor, made an inspirational speech.¹⁶ According to the African Commission:

It is important to note that the work of the Expert Committee was greatly influenced by the opening address of the host president, President Senghor, who enjoined the Committee to draw inspiration from African values and tradition[,] and also to focus on the real needs of Africans, the right to development and the duties of individuals.¹⁷

Judge Kéba Mbaye, then president of the Supreme Court of Senegal and of the U.N. Commission on Human Rights,¹⁸ presided over the Committee of Experts and enforced these injunctions, giving birth to a truly African Charter on Human and Peoples' Rights.¹⁹ The charter was adopted June 28, 1981 at the Conference of Heads of State and Government in Nairobi, Kenya.²⁰ It entered

12. See Desmond M. Tutu, *Religious Human Rights and the Bible*, 10 EMORY INT'L L. REV. 63, 63 (1996). First president of Kenya, Jomo Kenyatta's famous quote: "[w]hen the missionaries came to Africa. They had the Bible and we, the natives, had the land. They said "let us pray," and we dutifully shut our eyes. When we opened them, why, they now had the land and we had the Bible." *Id.*

13. See Rose M. D'Sa, *Human and Peoples' Rights: Distinctive Features of the African Charter*, 29 J. OF AFR. L. 72, 72-73 (1985); see also K. Mathews, *supra* note 8, at 85-86; Odinkalu, *supra* note 1, at 9.

14. *History of the African Charter*, AFR. COMMISSION ON HUM. & PEOPLES' RTS., <http://www.achpr.org/instruments/achpr/history/> (last visited Jan. 26, 2013).

15. *Id.*

16. See generally *id.*

17. *Id.*

18. Press Release, International Court of Justice, *Solemn Sitting in Memory of Judge Keba Mbaye, Former Judge and Vice-President of the Court*, ICJ Press Release 2007/15 (June 4, 2007), available at <http://www.icj-cij.org/presscom/files/4/13874.pdf>.

19. B. Obinna Okere, *The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems*, 6 HUM. RTS. Q. 141, 145 (1984); D'Sa, *supra* note 13, at 73.

20. *History of the African Charter*, *supra* note 14.

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into force on October 21, 1986.²¹ By 1999, the Charter was ratified by all member states of the OAU.²² In the wake of the adoption of the African Charter, the African Charter on the Rights and Welfare of the Child (Children's Charter) was adopted by the OAU in 1990 and was entered into force in 1999.²³ In November 2010, all member states of the AU²⁴ had signed the Children's Charter, and all but eight²⁵ had ratified it. Since then, a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) has also been adopted by the African Union in 2003.²⁶ It entered into force in 2005.²⁷ All these human rights instruments put forward their respect for positive African values.

To silence the fear that an "African conception" of human rights would lead to human rights abuses on account of exemption from international standards for cultural reasons,²⁸ the various African human rights instruments very clearly specify that states have a duty to eliminate practices, be they religious or cultural, that affect the human rights of man, woman, or child.²⁹ Cultural specificity cannot be used under the African Charters, or the Protocol, to justify any infringement of the fundamental rights of the individual or the collective.

This unambiguous stand on the elimination of any religious or customary practices that violate the rights of individuals is accompanied by an equally clear statement that Africa has a civilization based on positive values, which state parties must promote. The African Charter on Human and Peoples' Rights paves the way by stating in its preamble that its provisions are adopted by the state parties: "[t]aking into consideration the virtues of their historical tradition and the

21. *Id.*

22. *Id.*

23. African Charter on the Rights and Welfare of the Child, *supra* note 3, at pmb1.

24. The OAU became the African Union in 2002. How can we interpret the collapse of the OAU and the decision to replace it with the AU? See generally Kofi Oteng Kufuor, *The Collapse of the Organization of African Unity: Lessons from Economics and History*, 49 J. OF AFR. L. 132 (2005). What does the transformation of the Organization of African Unity into the African Union in 2002 mean for human rights?; Bronwen Manby, *The African Union, NEPAD, and Human Rights: The Missing Agenda*, 26 HUM. RTS. Q. 983 (2004); Amanda Lloyd & Rachel Murray, *Institutions with Responsibility for Human Rights Protection under the African Union*, 48 J. OF AFR. L. 165 (2004); K. Mathews, *Renaissance of Pan-Africanism: The African Union*, 31 INDIA INT'L CENTRE Q. 143 (2005).

25. The eight member states that have signed but not ratified the Charter are: Central African Republic, Djibouti, Democratic Republic of the Congo, the Sahrawi Arab Democratic Republic, Somalia, Sao Tome and Principe, Swaziland, and Tunisia. *Ratification Table: African Charter on the Rights and Welfare of the Child*, AFR. COMMISSION ON HUM. & PEOPLES RTS., <http://www.achpr.org/instruments/child/ratification/> (last visited Oct. 8, 2013).

26. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *supra* note 3, at art. 32.

27. *Id.*

28. See D'Sa, *supra* note 13, at 74.

29. See, e.g., African Charter on Human and Peoples' Rights, *supra* note 3, at 58; see also, e.g., African Charter on the Rights and Welfare of the Child, *supra* note 3, at pmb1., art. 1, § 3. See generally Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *supra* note 3.

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values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights."³⁰

The Preamble also declares that state parties are "[f]irmly convinced of their duty to promote and protect human and peoples' rights and freedoms[,] taking into account the importance traditionally attached to these rights and freedoms in Africa."³¹

The African Charter on the Rights and Welfare of the Child embraces the same approach by stating in its preamble that the Articles of the Charter were adopted by the states: "[t]aking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child."³²

Despite the repeated provisions putting forward African values,³³ this aspect of the African human rights instruments is, so far, insufficient or not at all exploited. When dealing with African tradition, the emphasis is exclusively placed on harmful traditional practices.³⁴ This way of teaching or disseminating the content of these conventions actually puts off the very people they are meant to protect.³⁵ Human rights teachers and activists in Africa must do as politicians do to attract voters in democratic states.³⁶ They must speak the language the people understand by integrating human rights in their audiences' cultural and linguistic universe.³⁷ This means discussing with them, in their own languages, the purpose of each provision, and looking for parallels in local traditions, sayings, or practices.³⁸ As Makau Mutua points out, drafting conventions on human rights in non-African languages is part of what distances them from the

30. African Charter on Human and Peoples' Rights, *supra* note 3, at 58.

31. *Id.*

32. African Charter on the Rights and Welfare of the Child, *supra* note 3, at pmb1.

33. The African Children's Charter also considers that the education of the child shall be directed to "the preservation and strengthening of positive African morals, traditional values and cultures." African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 11 sec. 2 (c). In the Women's Protocol, the preamble recognizes "the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity[,] and democracy." Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *supra* note 3, at pmb1.

34. See generally James Lassiter, *African Culture and Personality: Bad Social Science, Effective Social Activism, or a Call to Reinvent Ethnology?*, 3 Afr. Studies Q. 1 (1999).

35. See generally *id.*

36. See Fatou Kiné Camara, *The Know Your Rights! Project: Putting Community Service and Outreach in the Heart of the Law School and in the Heart of its Graduates*, FACULTÉ DES SCIENCES JURIDIQUES ET POLITIQUES, UNIVERSITÉ CHEIKH ANTA DIOP DE DAKAR SENEGAL, available at <http://alma.matrix.msu.edu/know-your-rights>. The Know Your Rights ("KYR")! Project was initiated in 2006 by the African Commission for Human and Peoples' Rights, the West African Research Association and Center ("WARA/WARC"), and Brandeis University. *Id.* It sought to disseminate information about human and peoples' rights through the medium of African languages, with a focus on "lingua francas" and cross-border languages. *Id.*

37. See *id.*

38. *Id.*

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African cultural world.³⁹ Zeleza clearly explains the crucial importance of linguistic rights in protecting and promoting human rights as a whole:

At the heart of the drive for human rights in Africa is a linguistic conundrum, the continued supremacy of European languages and the relative marginality of local languages in official human rights discourses. Two issues are at stake, the language of law, that is, the language of politics, the courts, and human rights instruments and documents, and the question of linguistic rights—the rights of languages and to languages—that are crucial for the exercise of freedom of speech and the import of that freedom. Alamin Mazrui (2004) has deplored the fact that the entire discourse on human rights is trapped in a European linguistic idiom, which has grave consequences for African human rights culture and consciousness.⁴⁰

The way to disseminate human rights conventions and protocols in African languages has been successfully tested in Senegal with the “Know Your Rights!” project.⁴¹ Research methodology of traditional African standards attentive to human rights has been the subject of previous scholarly work.⁴² Hence, the purpose of this Article is to invite law schools, civil society, and African human rights bodies to give substance to the provisions of the African instruments on human rights that refer to positive values of Africa. This can be done by using examples and arguments taken from African tradition in the analysis, in the comments, and in the dissemination of the content of the African human rights charters and protocol.⁴³ In so doing, law schools, civil society, the African Commission, the African Committee, and the African Court for Human and Peoples’ Rights will provide their member states with the means to comply, in a human-rights-friendly way, with Article 17.3 of the African Charter of Human and Peoples’ Rights which unequivocally states: “[t]he promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.”⁴⁴

39. See Mutua, *supra* note 5, at 18. “My alienation comes not from these facts, but from the particularized historical, cultural, and intellectual traditions and tongues in which both human rights and liberalism law are steeped. It is in that sense that I am an outsider.” *Id.*

40. Paul Tiyambe Zeleza, *Struggle for Human Rights in Africa: Rethinking Rights in Africa: The Struggle for Meaning and the Meaning of the Struggle*, 41 CANADIAN J. OF AFR. STUD. 474, 494 (2007).

41. *See id.*

42. *See generally* Fatou K. Camara, *From Contemporary African Customary Laws to Indigenous African Law: Identifying Ancient African Human Rights and Good Governance Sensitive Principles as a Tool to Promote Culturally Meaningful Social-Legal Reforms*, in *THE FUTURE OF AFRICAN CUSTOMARY LAW* 494-517 (Jeanmarie Fenrich et al. eds., 2011).

43. *See infra* Part III.B.

44. African Charter on Human and Peoples’ Rights, *supra* note 3, at art. 17.

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Consequently, in Section II, the Article will explore how to effectively imbed human rights in African culture. Section III will focus on the issue of duties of individuals as it is specified in both the African Charter on Human and Peoples' Rights⁴⁵ and the African Charter on the Rights and Welfare of the Child,⁴⁶ with the aim of showing how linking human rights and individual duties can be used to maximize the protection of human and peoples on the African continent. The methodology employed consists of analyzing the doctrines on human rights in Africa and elsewhere, and comparing the indigenous African jurisprudence of human rights that are based on ancient African texts or ancient rules and principles brought to us by oral tradition.

II. RESURRECTING ANCIENT AFRICAN HUMAN RIGHTS TRADITIONS

Harsh winds have scattered and blown away the African way of life. To gather the scattered pieces and make whole the puzzle of human rights in pre-slave trade and pre-colonial Africa, there is a path and a protocol to follow.⁴⁷ Already existing material provides useful concepts as starting points.⁴⁸

A. *The Protocol*

When interpreting or implementing African human rights instruments, state officials, law schools, civil society, and African human rights bodies should develop a jurisprudence highlighting positive African traditions.⁴⁹ It means unearthing the concepts and practices that uphold the rights and dignity of human beings.⁵⁰

For this purpose, state officials, the Commission, the Committee of Experts, and the African Court may solicit from NGOs amicus briefs, explaining and documenting African practices in accordance with the values espoused by the African human rights instruments.⁵¹ These groups can organize colloquiums in partnership with university study centers and grassroots civil society organizations to collect information on customary laws and practices that are conducive to the promotion and protection of the rights of children, women,

45. *Id.* at arts. 27-29.

46. African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31.

47. *See infra* Part II.A.

48. *See infra* Part II.B.

49. *See, e.g.*, African Charter on Human and People's Rights, *supra* note 3, at art. 29(7), 31(d).

50. *See* African Charter on Human and People's Rights, *supra* note 3, at pblm.

51. *See The African Charter: Words Are Not Enough*, 23 REV. OF AFR. POL. ECON. 453, 456-57 (1996). The African Commission has put in place an efficient system of collaboration with NGOs. *Id.*

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refugees, and persons with disabilities, amongst others in various African communities.⁵²

Judges or members of parliament at the national level, the African Commission, the Committee of Experts, and the African Court may also take the initiative to directly interact with the communities where human rights abuses occur in the name of tradition.⁵³ The purpose of these meetings will be to promote inclusive and participatory intra-community dialogues on culture-based strategies to implement human-rights-friendly practices.⁵⁴ The goal is to have practices that the community agrees to absolve or to maintain in a fashion that will be consistent with human rights standards.⁵⁵

In his commentary on the Charter of Kurukan Fuga,⁵⁶ writer Tidiane Diakite, rightly reminds his readers of the need to collect information at the grassroots level.⁵⁷ He affirms that in so doing, the following conclusion will inevitably be reached: “[t]he universal values of freedom, justice, equality[,] are not the sole preserve of Westerners. They are shared by other peoples of the world, since forever. Just go to the grassroots level, watch[,] and listen with modesty.”⁵⁸

Bernedette Muthien, executive of an NGO (Engender)⁵⁹ that provides research and capacity-building for communities of people on gender, sexualities, justice, and peace, demonstrates that such an approach is not expensive as it is mainly based on respect for others, humility, and the ability to listen:

I have gone directly to source: asked women elders across the Northern Cape especially, of the !Xun and Khwe in Platfontein (near Kimberley), and of the Khomani San in Upington and the Kalahari, as well as in Riemvasmaak, and a good many other places too. Each ouma (grandmother) recounted stories of women’s strength and power, of goddesses (feminine deities), of sacred femininity that is so powerful it moves mountains. Each ouma acknowledged that women have the potential to create life, that life creation is sacred, and hence women are sacred (creators). Each ouma asserted that women and men are equal, and

52. *See id.* at 457.

53. *See e.g.* Zeleza, *supra* note 40, at 457-8.

54. *See e.g. Id.*

55. *See e.g. Id.*

56. Enacted in 1236 by the emperor of Mali and his allies, the Kurukan Fuga has been transmitted from generation to generation by oral tradition. *See generally* SAHEL AND WEST AFRICA CLUB, INTER-GENERATIONAL FORUM ON ENDOGENOUS GOVERNANCE IN WEST AFRICA 71-82 (Nov. 2006), *available at* <http://www.oecd.org/swac/events/38516561.pdf>.

57. *See* Tidiane Diakite, *African and Human Rights, Then and Now*, LE BLOG DE TIDIANE DIAKITE, <http://ti.diak.over-blog.com/article-afrique-et-droit-de-l-homme-hier-et-aujourd-hui-63917764.html> (last visited Aug. 27, 2013).

58. *See id.*

59. *See generally* *Transform Your Thinking. We Can Help You Do It.*, ENGENDER, <http://engender.org.za/> (last visited Dec. 11, 2013).

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each must respect the other; that no one should rule over the other. Each ouma spoke of inter-generational respect, beyond nuclear families, especially of youth for elders (the idea that all children are governed by all elders in a community). Each ouma referred to the KhoeSan's ancient principles of nonviolence as norm. Each ouma spoke of Khoe!na, of interconnectedness, of interdependence, of sharing and caring and gifting.⁶⁰

Information collected in this way can be used to inform the decisions of the African Commission, the Committee of Experts, and the African Court on traditions that should not simply reflect African men's points of view, even if men are community leaders.⁶¹ Such information will focus on the traditions that reflect positive values, i.e. values that uphold human rights.⁶² The development and dissemination of African case law based on positive African human rights traditions will entrench human rights culture in Africa.⁶³ This is how the language of rights will truly impact the lives of individuals and the peoples of Africa.⁶⁴ The legitimacy of a cultural-based approach is emphasized by Murithi, who stresses "the importance of reviving cultural attitudes and values that can promote education in order for peace to flourish."⁶⁵ He accurately points out the following facts:

People derive their system of meaning from their own culture. What does it mean to be human? What is—or ought to be—the nature of human relations? These notions feed into the attitudes and values that we choose to embrace, which in turn determine how we interact with each other. Cultural attitudes and values therefore provide the foundation for the social norms by which people live. Through internalising and sharing these cultural attitudes and values with their fellow community members, and handing them down to future generations, societies can—and do—re-

60. Bernedette Muthien, *Egalitarianism and Nonviolence: Gifts of the Khoe-San*, 38 OFF OUR BACKS 57, 60 (2008). She summed up her views on the accessibility of this knowledge: "Yet the ancient knowledge of women's strength and power, of gender egalitarianism and normative nonviolence, is routinely recounted by these women elders and still practiced in various ways, especially in deep rural areas as well as among homeless people in urban areas." *Id.*

61. Compare *id.* with *cf.* Fatou K. Camara, *The Temple for Women Initiates Project: A Framework for Culturally Meaningful Feminist Expression in Rural Areas*, in GENDER, RELIGION, AND FAMILY LAW: THEORIZING CONFLICTS BETWEEN WOMEN'S RIGHTS AND CULTURAL TRADITIONS 267-92 (Lisa Fishbayne Joffe & Sylvia Neil eds., 2012).

62. See African Charter on Human and People's Rights, *supra* note 3, at art. 61.

63. See Tim Murithi, *An African Perspective on Peace Education: Ubuntu Lessons in Reconciliation*, 55 INT'L REV. OF EDUC. 221, 231-32 (2009).

64. See *Id.*

65. *Id.* at 225.

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inform and re-construct themselves on the basis of a particular cultural image.⁶⁶

The culture of human rights abuse that has developed in Africa is sustained by discriminatory laws inherited from the colonial period, a school system that is also a colonial legacy, and customary practices that have gone unchallenged since the slave trade created a widespread climate absent of the value of humanity and human life.⁶⁷ Human rights conventions need to be domesticated and effectively implemented. To attain that objective, it is necessary to mainstream human-rights-friendly attitudes from the grassroots.⁶⁸ Pressure from citizens in urban and in rural areas will eventually force state officials to commit to honoring their international and regional engagements toward their own population.⁶⁹ Although successful examples exist to prove that culture is the key to mainstreaming human rights, it is up to researchers to revive existing materials in various African communities.⁷⁰

B. The Existing Material / The Starting Points: Useful Concepts

Useful concepts exist and can be effective in promoting human rights culture in Africa.⁷¹ One famous example is the concept of “*ubuntu*,” which has been unearthed by Archbishop Desmond Tutu, former President Nelson Mandela,⁷² and others for the very purpose of popularizing the idea of reconciliation as a legitimate follow-up to the end of apartheid.⁷³ *Ubuntu* can help illustrate the concept of the human family when it is referred to in the Uniform Declaration of Human Rights (“UDHR”).⁷⁴

66. *Id.* at 224.

67. See Odinkalu, *supra* note 1, at 2.

68. See generally *id.*

69. See generally *id.*

70. See generally *id.*

71. See Claire E. Oppenheim, *Nelson Mandela and the Power of Ubuntu*, 3 RELIGIONS 369, 370 (2012), available at <http://www.mdpi.com/2077-1444/3/2/369>.

72. Oppenheim, *supra* note 71, at 369. Nelson Mandela describes *ubuntu*:

A traveler through a country would stop at a village, and he didn't have to ask for food or for water. Once he stops, the people give him food, entertain him. That is one aspect of *ubuntu*, but it will have various aspects. *Ubuntu* does not mean that people should not enrich themselves. The question therefore is: Are you going to do so in order to enable the community around you to be able to improve?

Id.

73. See Murithi, *supra* note 63, at 225-27.

74. See, e.g., Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) pmbl. (Dec. 10, 1948). “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” *Id.*

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Desmond Tutu provides his explanation of *ubuntu* in a detailed account of what being part of the human family truly means:

[U]*ubuntu* is very difficult to render into a Western language. It speaks to the very essence of being human. When you want to give high praise to someone we say, “*yu, unobuntu*”; he or she has *ubuntu*. This means that they are generous, hospitable, friendly, caring and compassionate. They share what they have. It also means that my humanity is caught up, is inextricably bound up, in theirs. We belong in a bundle of life. We say, “[a] person is a person through other people” (in *Xhosa Ubuntu ungamntu ngabanye abantu* and in *Zulu Umuntu ngumuntu ngabanye*). I am human because I belong, I participate, and I share. A person with *ubuntu* is open and available to others, affirming of others, does not feel threatened that others are able and good; for he or she has a proper self-assurance that comes with knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are.⁷⁵

The definition Geoffrey Best gives to the concept of human rights (while placing its origin in the Western world) is exactly the same as the one the people of South Africa give to the concept of *ubuntu*:

The idea at the heart of human rights—the idea that humankind is in some basic way one and that the well-being of one part of it is legitimately of concern to others, and that each human being has something uniquely valuable about him and her—became part of the mental furniture of those who thought of themselves as civilized and world-conscious people.⁷⁶

Bernedette Muthien has also been able to convey in a few sentences the essence of *ubuntu*: “I am because I belong; my humanity is inextricably connected to yours; I cannot be happy unless we are all happy.”⁷⁷ Or, “all humans are interconnected, interdependent—the principle of *ubuntu*. If one person is harmed, we are all harmed.”⁷⁸

This idea that we are all inextricably and inexorably linked is well-captured by this Wolof saying: “*loo mey sey mbeñ ngay mey sey soppe*” (“you are going to

75. Murithi, *supra* note 63, at 226.

76. Best, *supra* note 11, at 5.

77. Muthien, *supra* note 60, at 57. She goes further by providing examples that demonstrates “[t]he concept of *ubuntu* exists, arguably, in all societies.” *Id.*

78. Muthien, *supra* note 60, at 60-61.

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treat the people you love in the same way that you treated those you hate”).⁷⁹ The saying conveys the idea that we need to treat each other, even the individuals or groups we do not like, with the same care, respect, solidarity, generosity, and compassion we give to close and cherished family members. This favored behavior is again encapsulated in a Wolof⁸⁰ proverb: “*nit nitay garabam*” (“the remedy for a human is human behavior”).⁸¹ According to the oral tradition, this philosophy inspired the solemn oath against slavery⁸² and toward universal human rights for all human beings⁸³ that was implemented by the Brotherhood of the Mande hunters in 1222.⁸⁴

The concept of human family that is reflected by *ubuntu* and *nité*⁸⁵ does not mean that the African individual loses rights at the expense of the community.⁸⁶ It

79. Cf. Murithi, *supra* note 63, at 226-27. Tim Murithi’s explanation of *ubuntu* provides a more detailed description of human interconnectivity:

As human beings whose identity is defined through interactions with other human beings, it follows that what we do to others eventually feeds through the interwoven fabric of social, economic and political relationships to impact upon us as well. Even the supporters of apartheid were, in a sense, victims of the brutalising system from which they benefited economically and politically: it distorted their view of their relationship with other human beings, which impacted upon their own sense of security and freedom from fear. As Tutu . . . observes, ‘in the process of dehumanising another, in inflicting untold harm and suffering, the perpetrator was inexorably being dehumanised as well.

Id.

80. African language used mostly in Senegal and The Gambia. *Official and Spoken Languages of African Countries*, NATIONSONLINE.ORG, www.nationsonline.org/oneworld/african_languages.htm (last visited Oct. 19, 2013).

81. Another way the proverb is said: “*nit, niteey garabam*” meaning “the remedy for a human is human behavior.” *African Philosophies–Major Themes*, SCIENCE ENCYCLOPEDIA, <http://science.jrank.org/pages/10652/African-Philosophies-Major-Themes.html> (last visited Nov. 16, 2013). These proverbs are the complete opposite of the Latin phrase: “*homo homini lupus est*” meaning “man is a wolf to [his fellow] man.” Cf. *Homo homini lupus*, NATIONMASTER.COM, <http://www.nationmaster.com/encyclopedia/List-of-Latin-proverbs#H> (last visited Dec. 1, 2013).

82. In 1236, the emperor Sundiata and his allies enacted the Charter of Kurukan Fuga, which includes language denouncing slavery. See SAHEL AND WEST AFRICA CLUB, *supra* note 55, at 72-3. See also Diakite, *supra* note 56.

83. The conclusion of the oath is an unmistakable indication that it is meant to be a universal address to the “human race” for all times and all places, without distinction of origin, geographic, ethnic, or religious affiliation:

[C]hildren Sanéné of Kontron and declare:
 Everyone now has his person,
 Everyone is free to act,
 In compliance with the forbidden
 By the law of his country.
 This is the Oath of Mande
 Directed to the ears of the whole world.

Id.

84. Sundiata Keita, the founder of the Mali Empire, was a member of the Brotherhood of Hunters. Diakite, *supra* note 56.

85. Wolof term to indicate the behavior expected of a human being. See e.g. African Philosophies, *supra* note 81. The term for human being is “nit,” “nité” means to behave in a humane, calm, and considerate way. *Id.*

86. See Murithi, *supra* note 63, at 226-27.

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means that individuals have rights not only to assure their happiness but also that of all those around them.⁸⁷ The duty to care for others is explained by *ubuntu* and *nité*.⁸⁸ But, as Muthien rightly points out, this concept of a human family where we all share the duty of caring for our fellow human beings, whatever their gender, skin color, religious affiliation, or geographic origin, is universal:

The concept of *ubuntu* exists, arguably, in all societies, and a deep examination of all societies will evince at least one word for it, if not many words, to describe it from society to society, including *unhu* in Zimbabwe (“I am well if you are all right too”), *Khoe!na* in the Kalahari, among Native Americans, and even in the 16th-17th century (metaphysical) poetry of John Donne.⁸⁹

In his well-known poem, *No Man Is an Island*, John Donne wrote:

No man is an island, entire of itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friends or of thine own were: any man’s death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bell tolls; it tolls for thee.⁹⁰

“I am well if you are all right too”⁹¹ and “[n]o man is an island, entire of itself” express very well the inherent capacity of every human individual to feel a connection with all human beings. However, to really emerge, this feeling of interconnectedness has to be brought to life and nurtured by human-rights-oriented education and by human rights jurisprudence that incorporates specific examples from each person’s tradition.⁹² For that reason, in Africa, human rights cannot be properly taught without parallel teaching about individual duties.⁹³

III. POINTING TO HUMAN DUTIES

Two African human rights charters, discussed below, impose human duties in a very deliberate way.⁹⁴ The inextricable link between rights and duties in

87. *See id.* at 227.

88. *See id.*

89. Muthien, *supra* note 60, at 57.

90. *Id.*

91. *Id.*

92. *See infra* Part III.B.

93. *See infra* Part III.B.

94. *See infra* Part III.A.

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African traditions is the basis of these charters.⁹⁵ This link will be showcased with practical applications and examples of the promotion of human rights and freedoms through the imposition of duties.⁹⁶

A. The Inextricable Link Between Rights and Duties in African Traditions

The UDHR and the international conventions for the protection of human rights adopted by the United Nations place duties on states to respect the rights of individuals, but there are no strongly marked correlative duties of the individuals toward the state, other groups, or individuals.⁹⁷ Western conventional understanding only sees human rights vertically and not horizontally.⁹⁸ This means that the duty to promote, protect, and respect human rights falls exclusively on the states.⁹⁹ Individuals are the creditors of human rights and states are the debtors of the same rights.¹⁰⁰ Such a principle guarantees that states are the ones who have to be held accountable for any human rights violation occurring on the territory they control.¹⁰¹ They are not allowed to foist that responsibility on anyone else or claim that they cannot get involved.¹⁰² While embracing this principle of states' responsibility,¹⁰³ the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child have each provided a paragraph where duties are assigned to individuals:

- the duty to promote, safeguard, and reinforce “mutual respect and tolerance;”¹⁰⁴

95. See *infra* Part III.A.

96. See *infra* Part III.B.

97. The UDHR makes a very brief reference to duties in Article 29, section 1: “[e]veryone has duties to the community in which alone the free and full development of his personality is possible.” UDHR, *supra* note 74, at art. 29. There is also an equally timid reference to individuals' duties in the preamble of the International Covenant on Civil and Political Rights: “realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.” International Covenant on Civil and Political Rights pmb1., Mar. 23, 1976, 999 U.N.T.S. 171, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

98. Cf. John H. Knox, *Horizontal Human Rights Law*, 102 AM. J. INT'L L. 1, 1 (2008). Human rights treaties by the western world, such as The European Convention and the American Convention, mainly focus on the limits placed on governments' conduct, and refuse to specifically “list converse duties owed by individuals to society.” *Id.* at 34. These treaties create a “horizontal human rights regime”. *Id.* at 23.

99. See *id.* at 1, 47.

100. See *id.*

101. See *id.*

102. Cf. *id.* at 47.

103. See e.g., African Charter on Human and Peoples' Rights, *supra* note 3, at arts. 17-8; African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 1(1).

104. African Charter on Human and Peoples' Rights, *supra* note 3, at art. 28; African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31(d).

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- the duty of children toward their parents “to maintain them in case of need;” the duty to “preserve the harmonious development” and “cohesion” of the family;¹⁰⁵
- the duty to serve the “national community by placing” one’s “physical and intellectual abilities at its service;”¹⁰⁶
- the duty to “preserve and strengthen the national independence and the territorial integrity of” one’s country;¹⁰⁷
- the duty to “pay taxes imposed by law in the interest of the society;”¹⁰⁸
- the duty to “preserve and strengthen positive African cultural values;”¹⁰⁹
- the duty to contribute “to the promotion and achievement of African unity.”¹¹⁰

One of the most important criticisms addressed to the Charter on the Rights of the Child is that it has imposed duties to the child.¹¹¹ But this is part of a conception of education, which must aim to socialize the individual in African values of solidarity and respect for elders.¹¹² Assane Sylla summarizes it this way:

Thus, throughout their lives, from childhood, Wolof citizens are educated, praised or blamed, not as isolated units, but as members of a society that expects from them understanding and cooperation in the limit of their possibilities. Still an indulgent society, it also can, to some extent, overlook the weaknesses of one another as required by the notion of *suturë*,¹¹³ take into account particular circumstances and, most importantly, the society knows how to protect and assist those in need.¹¹⁴

105. African Charter on Human and Peoples’ Rights, *supra* note 3, at art. 29; African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31(a).

106. African Charter on Human and Peoples’ Rights, *supra* note 3, at art. 29; African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31(b).

107. African Charter on Human and Peoples’ Rights, *supra* note 3, at art. 29; African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31(e).

108. African Charter on Human and Peoples’ Rights, *supra* note 3, at art. 29.

109. *Id.*; African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31(d).

110. African Charter on Human and Peoples’ Rights, *supra* note 3, at art. 29; African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31(f).

111. ASSANE SYLLA, *LA PHILOSOPHIE MORALE DES WOLOF* 175 (2d ed. 1994).

112. *Id.*

113. A Wolof word meaning “to conceal” or “keep secret.” *See id.* at 94.

114. *Id.* at 175.

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The Charter on the Rights of the Child took care to specify that the duties that affect children are subject to their rights under the Charter.¹¹⁵ For example, the duty of children “to work for the cohesion of the family” and to in all circumstances respect their parents, elders, and superiors¹¹⁶ cannot serve to justify the legalization of child marriage¹¹⁷ or any other harmful practice.¹¹⁸

Even if the scope of individuals’ duties is not as clearly delineated in the African Charter on Human and Peoples’ Rights, it is implicit that duties cannot be implemented in a way that will cause a human rights abuse.¹¹⁹ In the African tradition, assigning duties to individuals serves to remind them of their responsibilities as members of a family, a community, a state, and a world.¹²⁰ It is that principle which is conveyed in the preamble of the African Charter in no uncertain terms: “[c]onsidering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone.”¹²¹

Thus, everyone’s rights are necessarily limited by the need to recognize the rights of others and also by the ethical duty to think of others.¹²² As B. Obinna Okere aptly put it, “[t]he conception of an individual who is utterly free, such as to be irresponsible and opposed to society, is not consonant with African philosophy; accordingly, the African Charter specifies the duties of the individual toward the community in which he lives, more particularly toward the family and state.”¹²³

The oath of Mande follows the same pattern by linking the rights and duties of the individual.¹²⁴ The duties are enunciated first according to an African philosophy that teaches that not doing wrong precedes doing right.¹²⁵ Because the individual has rights, including the fundamental rights to “see what [he/she] wants to see, say what [he/she] wants to say and do what [he/she] wants to do,”¹²⁶ the individual must remember to use freedom wisely. Individuals must keep in mind that they are part of the human family, without which they would not exist.¹²⁷

115. See African Charter on the Rights and Welfare of the Child, *supra* note 3, at arts. 1(2), 31.

116. *Id.* at art. 31(a) (“[t]he child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty; (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in cases of need”).

117. *Id.* at art. 21.

118. *Id.* at art. 21(1).

119. See generally African Charter on Human and Peoples’ Rights, *supra* note 3.

120. See *id.* at art. 27; see Okere, *supra* note 19, at 145 (discussing the African concept that a person is not an isolated individual but rather a member of a group that has certain duties to the group).

121. African Charter on Human and Peoples’ Rights, *supra* note 3, at pmb1.

122. See *id.*; Okere, *supra* note 19, at 145.

123. Okere, *supra* note 19, at 145, 148-49 (discussing the African concept that a person is not an isolated individual but rather a member of a group that has certain duties to the group).

124. See SAHEL AND WEST AFRICA CLUB, *supra* note 55, at 75-77.

125. See *id.*

126. See Diakite, *supra* note 56.

127. See *id.*; Murithi, *supra* note 63, at 221, 226-27.

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By solemnly reminding individuals of their duties to the community and to fellow human beings, they are taught to constantly keep in mind a series of prohibitions aimed to guarantee a society of peace, solidarity, and harmony.¹²⁸ Just as roadside signs are not placed to restrict the freedom to come and go where people please, but are posted to allow people to move freely in safety for themselves and others, the duties assigned to individuals serve the purpose of safeguarding everyone's well-being.¹²⁹

To point to the duties of individuals before mentioning their rights is an effective way to teach human rights in Africa because it is deeply imbedded in African culture.¹³⁰ As a matter of fact, the oldest traces of this philosophy can be found in ancient Egypt, in the sacred texts which compose what is commonly called The Book of the Dead.¹³¹ It portrays the deceased making a negative confession before the tribunal in the afterlife.¹³² This list highlights, by contrast, the rights that every human being is entitled to, whatever the geographic origin, social status, age, gender, religion, amongst other factors.¹³³ The few following examples speak to the way the dignity of all human beings was upheld by everyone's duty to treat their fellow humans, whomever they might be, with respect, care, and kindness:

I have not slain men and women

I have made none to weep

I have not been an eavesdropper

I have not slandered [no man]

I have terrorized none

I am not a man of violence

I have wronged none, I have done no evil

I have never raised my voice

I have not acted with arrogance.¹³⁴

128. *See id.*

129. *See id.*

130. *See Rights Commission Seeks Abrogation of Decree*, NIGERIA MEDIA MONITOR, Oct, 5 1998, http://www.africa.upenn.edu/Urgent_Action/apic_102598.html (last visited Dec. 11, 2013).

131. *See generally* U. OF PA.-AFR. STUD. CTR., THE PAPYRUS OF ANI: THE EGYPTIAN BOOK OF THE DEAD (Ali B. Ali-Dinar ed., E.A. Wallis Budge trans., 1994), available at <http://www.scribd.com/doc/166839299/Egyptian-Book-of-the-Dead>.

132. *See generally Id.*

133. *Id.* at 42-3.

134. *Id.* at 43.

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The same method can be found in the Charter of Kurukan Fuga.¹³⁵ A series of provisions set out duties for individuals.¹³⁶ Some duties are formulated in the negative, as prohibitions:¹³⁷

11. When your wife or your child runs away[,] stop running after her/him in the neighbour's house¹³⁸
13. [N]ever offend the Nyaras.
14. [N]ever offend women, our mothers
21. Do not [give] your constant attentions [to] the wives of the chief, of the neighbour, of the marabout, of the priest, of the friend and of the partner
23. [N]ever betray one another. Respect your word of honour.
24. Never do wrong to foreigners
31. We should help those who are in need
40. Respect the kinship, the marriage and the neighbourhood
44. All those who will transgress these rules will be punished. Everyone is bound to make effective their implementation.¹³⁹

The last provision makes it clear that everyone, and not just state authorities, is responsible for the implementation of the whole Charter.¹⁴⁰ Thus, secular norms of conduct are established in a way that is quite similar to the modern codes of ethics.¹⁴¹

Rose M. D'Sa views in a similar fashion the provisions of the African Charter, which assign duties to individuals.¹⁴² She considers that they are not at all threatening, and explains her opinion: "it appears that the section on 'duties' generally, whilst reflecting African cultural values is probably not to be strictly

135. *See generally* SAHEL AND WEST AFRICA CLUB, *supra* note 55, at 75-77.

136. *Id.*

137. *Id.* While some articles establish rights of individuals, such as the right to life and to the preservation of physical integrity (Article 5), the majority of the forty-four articles in the Charter target individuals using the formulas "should," "have to," or begin with "[n]ever" or "do not." *See generally id.*

138. Running away triggers a mediation procedure between the spouses or between the child and parent. *See Camara, supra* note 8, at 796. The runaway is never forced to go back to the conjugal or parental home. *See id.*

139. SAHEL AND WEST AFRICA CLUB, *supra* note 55, at 75-77.

140. *Id.* at 77.

141. *See* Josie Fisher, *Social Responsibility and Ethics: Clarifying the Concepts*, 52 J. OF BUS. ETHICS 391, 393 (2004) (explaining that code of ethics sets standards of good or bad and right or wrong in order to guide the behavior of individuals or groups).

142. *See* D'Sa, *supra* note 13, at 77.

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regarded as capable of effective implementation but as a code of good conduct for all citizens of African countries.”¹⁴³

Although a Universal Declaration of Human Responsibilities has yet to be adopted by the United Nations, the existence of a draft is a strong indication that the international law of human rights will eventually come to terms with the idea that human and peoples’ rights are more effective when associated with an individual’s duties.¹⁴⁴ In this philosophy, the tie that binds individuals to their fellow human beings, family, community, state, and beyond is not solely hierarchical but also horizontal.¹⁴⁵ The family, the social group, and the state are all aimed at ensuring the protection and the complete well-being of the individual.¹⁴⁶ For that reason, the individual cannot enjoy total well-being and protection without a strong family, social group, and state. Each entity is mutually responsible for the prosperity of the other. Hence, the moral of “every man for himself” is unequivocally frowned upon in many African communities.¹⁴⁷

Thus, there is a certain consistency in the African tradition that binds human rights to the duties individuals have toward themselves, family, and the community. Instead of breaking this coherent system of human rights protection, law schools, civil society, and the African bodies responsible for the promotion and protection of human rights should take advantage of this linkage of rights and duties in order to effectively teach and promote human rights in Africa. However, that cannot be effectively done without researching local human-rights-friendly concepts and practices relating to the individual’s duties that the targeted community can understand.

143. *Id.*

144. See *A Universal Declaration of Human Responsibilities: Introductory Comment*, INTERACTION COUNCIL, <http://interactioncouncil.org/universal-declaration-human-responsibilities> (last visited Dec. 11, 2013) (“The proposed declaration points out that the exclusive insistence on rights can lead to endless dispute and conflict, that religious groups in pressing for their own freedom have a duty to respect the freedom of others. The basic premise should be to aim at the greatest amount of freedom possible, but also to develop the fullest sense of responsibility that will allow that freedom itself to grow.”).

145. *Id.*

146. See e.g. African Charter on Human and Peoples’ Rights, *supra* note 3, at art. 18.

147. Tales serve as education, they illustrate the codes of conduct valued by society. In a tale narrated by Assane Sylla, the benefits of solidarity are colorfully highlighted as well as the dangers of individualism:

One day Rice invited Bean to join him. “Cooked and eaten together, our fate will be less painful,” Rice said. However, Bean declined. Couscous made Bean the same proposal, but Bean still refused. However Bean fell into the hands of a donut seller who soaked Bean in water overnight. “What torture,” thought Bean. Then Bean was cast into the bottom of a mortar where he was pounded into dough. “Is this the last torment?” Bean asks himself. No, he was cooked in hot oil to become a donut. And, that is not all, before the donut is eaten, it is dipped in a hot pepper sauce.

SYLLA, *supra* note 111, at 172.

*Global Business & Development Law Journal / Vol. 27**B. Practical Applications and Examples of the Promotion of Human Rights and Freedoms by the Imposition of Duties*

Whether within an individual's community or outside of it, the individual should find protection and care.¹⁴⁸ The subsequent duty to care for every human being served is to promote, if not respect, at least tolerance of differences.¹⁴⁹ Article 28 of the African Charter gives that very message: "every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding, and reinforcing mutual respect and tolerance."¹⁵⁰

Assane Sylla explains the religious tolerance of the Wolof in the following way: "this tolerance of the Wolof is the result of an ethic that emphasizes, above all, the human being and human relationships."¹⁵¹ For him, the Wolof moral philosophy is geared toward ensuring the triumph of an ethic, based on the dignity of the human being.¹⁵²

As a matter of fact, the Wolof have the word *jom* to express the high, even exalted, sense that all people should have their own dignity. There is not one word in French or English that can translate it accurately. Assane Sylla offers "sense of honor" but with the following details: "[*jom*] rather relies on the awareness of a certain nobility of the human being, it is linked to the sentiment of the human being's ontological excellence, the high rank he/she occupies in the hierarchy of beings."¹⁵³

In Senegal, teaching this concept of "*jom*" to every child would give them a much-needed sense of their own importance and the respect that they are due as a human being.

148. See SAHEL AND WEST AFRICA CLUB, *supra* note 55, at 76-77. See Oppenheim, *supra* note 71, at 369.

149. Nehushtan Yossi, *The Limits of Tolerance: A Substantive-Liberal Perspective*, 20 *RATIO JURIS* 230, 232 (2007):

[T]olerance is to be understood as not harming the other although the tolerant person thinks there are good reasons for harming the other because (a) the other's values as expressed in his behaviour, way of life, or speech seem to the tolerant "wrong," i.e., dangerous, evil, immoral, unjust, useless, irrational, and so forth, or (b) because the other's personal characteristics (colour of skin, sex, manners, physical appearance, physical disability, and so forth) seem to the tolerant to be repulsive or disgusting, or these characteristics imply the other's inferiority in the eyes of the tolerant. . . . [B]y saying that being tolerant means not harming the other, I refer to a broad definition of harm (or offence). This harm can be emotional, mental, physical, or economic, and can be caused by condemning the other, insulting him, making him feel uncomfortable, avoiding his presence, discriminating against him, and so forth.

Id.

150. African Charter on Human and Peoples' Rights, *supra* note 3, at art. 28. See also African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31.

151. SYLLA, *supra* note 111, at 12.

152. *Id.* at 164.

153. *Id.* at 181. *Jom* entails the duty of all individuals to strive for excellence in all their endeavors. *Id.*

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Article 31 of the Charter on the Rights of the Child makes it a duty for the child to “preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue, and consultation and to contribute to the moral well-being of society.”¹⁵⁴

To interpret and implement this provision in a way that is consistent with the respect and promotion of the child’s human rights, the African Committee of Experts on the Rights and Welfare of the Child¹⁵⁵ should verify when it examines state reports whether the state has engaged in policies aimed at teaching children the cultural practices or concepts conducive to a spirit of tolerance, dialogue, and consultation in relationships with other members of the society. When examining reports from West African states, it would be useful to remind the states of the existence of kin-based joking relationships,¹⁵⁶ which are precisely based on the need to teach mediation or the peaceful settlement of disputes as a privileged method of conflict resolution, tolerance, dialogue, and solidarity as a human duty.¹⁵⁷ With this kin-based joking relationship, children are taught, through laughter and humorous role-play,¹⁵⁸ how to internalize the principles of conduct that lay the basis for peaceful and harmonious relationships in all areas of life (conjugal, familial, and within the community).¹⁵⁹ Despite the reservations of those who forecast the risks of allocating duties to individuals in international human rights law,¹⁶⁰ one must admit that making individuals, in addition to states, accountable for the obligations contained in human rights charters sends a powerful message. The message is that the promotion of peace and harmony in the family, community, state, and the world is everyone’s business and, therefore, the duty of all.

This message is particularly important in Africa for two main reasons. First, the many violations of human rights by the state (discriminatory laws, impunity,

154. African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 31.

155. African Charter on the Rights and Welfare of the Child, *supra* note 3, at art. 32. “An African Committee of Experts on the Rights and Welfare of the Child hereinafter called ‘the Committee’ shall be established within the Organization of African Unity to promote and protect the rights and welfare of the child.” *Id.*

156. *See generally* Rachel A. Jones, “You Eat Beans!”: Kin-based Joking Relationships, Obligations, and Identity in Urban Mali, MACALESTER COLLEGE ANTHROPOLOGY REPORTS (2007), available at http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1001&context=anth_honors.

157. *See id.* at 16.

158. For instance, in many West African communities, grandparents, and grandchildren have a duty to call each other “husband” or “wife” according to the sex of the individual. *See id.* at 43. The aim is to first teach the child how a married couple should behave toward each other. *Id.* at 80-1. The second objective is to give the child a confidant who will defend the child whenever necessary, even against the child’s parents (whose duty it is to obey their own parent, the child’s grandparent). *Id.* at 43.

159. *See SAHEL AND WEST AFRICA CLUB, supra* note 55, at 75.

160. *Cf. Knox, supra* note 98, at 16-18 (critiquing the allocation of responsibilities to individuals in the charters dedicated to the promotion and protection of human rights).

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etc.) and by individuals are carried out under the guise of religion or tradition.¹⁶¹ The Charter must address these individuals to tell them they will be held directly responsible for the human rights violations in their community or state. Second, whether by state officials or by private individuals, it is always individuals who, by action or omission, abuse human and people's rights (voting for discriminatory laws, ruling in indifference to or ignorance of international and regional human rights laws, fostering impunity and discriminatory behavior, etc.). Hence, it is important to make them aware of their actions or omissions, and that they are responsible for promoting human rights.

In Africa, it is becoming a particularly pressing concern to make multinational corporations answerable to international or regional human rights courts for grievous human and peoples' rights abuses.¹⁶² Does that mean they can be brought to trial in an international or regional court for human rights violations? That could and should be the next step.¹⁶³ But in the meantime, teaching individuals about their human rights responsibilities is a huge improvement in the way human rights are effectively taught.

IV. CONCLUSION

The purpose of this Article was to put forth a new method of teaching and implementing human rights in Africa by imbedding the concept of human rights in African tradition and by giving full effect to individuals' human duties. Such a task demands a complete shift in the way the concept of human rights are viewed

161. See, e.g., Gad Barzilai, *Law and Religion*, in *The International Library of Essays in Law and Society* xx (Austin Sarat ed., 2007).

162. See, e.g., *Counting the Cost: Corporation and Human Rights Abuses in the Niger Delta*, PlatformLondon, Oct. 3, 2011, <http://platformlondon.org/2011/10/03/counting-the-cost-corporations-and-human-rights-abuses-in-the-niger-delta/>.

163. See *SERAP v. Nigeria*, ECW/CCJ/APP/08/ (2010), available at http://www.worldcourts.com/ecowascj/eng/decisions/2010.12.10_SERAP_v_Nigeria.htm. This possibility was found by the ECOWAS Court of Justice in a case brought by a Nigerian NGO against defendants the State of Nigeria and various oil companies. The Court established as a fact that "[t]he Defendants individually and/or collectively are internationally obligated to respect, protect, promote, ensure[,] and fulfill the right to an adequate standard of living in the Niger Delta." *Id.* at 3. The Court also established as fact that the "government's failure to protect rights does not absolve the non-state actors (Defendant [oil companies] herein) from responsibility for their actions and the human rights impact thereof." *Id.* Although the Court did not have jurisdiction to try the oil companies. *Id.* at 70. The Court established that it had jurisdiction to try the State of Nigeria to "ensure the protection and respect for the Human Rights allegedly violated" since the "international regime of Human Rights imposes obligations on States." *Id.* at 72. The final decision in the case *SERAP v. Nigeria* was the conviction of the State of Nigeria. See also Press Release, Amnesty Int'l, *Ground-Breaking ECOWAS Ct. Judgment Orders Gov't to Punish Oil Cos. Over Pollution* (Dec. 16, 2012), available at <http://www.amnesty.org/en/for-media/press-releases/ground-breaking-ecowas-court-judgment-orders-government-punish-oil-company> ("[t]he Court unanimously found the Nigerian government responsible for abuses by oil companies and made it clear that the government must hold the companies and other perpetrators accountable."). See generally U.N. Special Representative John Ruggie, *The UN "Protect, Respect and Remedy" Framework for Business and Human Rights* (2010), available at <http://198.170.85.29/Ruggie-protect-respect-remedy-framework.pdf>.

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and taught in Africa.¹⁶⁴ It should no longer be seen as a “Trojan Horse” or a Westerner’s gift to Africans. It should be lived as an African concept and taught as such in the school system, both formal and informal, as well as within broad public education campaigns.¹⁶⁵ State officials, law schools, civil society, advocates, lawyers, and judges should also promote research aimed at resurrecting African human rights traditions and implement them in a way that will honor the humanist and multi-millennial African tradition.

164. *Supra* Part II.A.

165. *Supra* Part II.B.