PAUL TIYAMBE ZELEZA & PHILIP J. MCCONNAUGHAY, EDS., *HUMAN RIGHTS, THE RULE OF LAW, AND DEVELOPMENT IN AFRICA* (PHILADELPHIA: UNIVERSITY OF PENNSYLVANIA PRESS, 2004)

ABDULLAHI AHMED AN-NA'IM, ED., *HUMAN RIGHTS UNDER AFRICAN CONSTITUTIONS: REALIZING THE PROMISE FOR OURSELVES* (PHILADELPHIA: UNIVERSITY OF PENNSYLVANIA PRESS, 2003)

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Human Rights, The Rule of Law, and Development in Africa raises some of the most topical issues in the discourse of human rights in Africa. Composed of seventeen chapters, the book is divided into three parts: universalism and relativism in human rights discourse, the economic and political dimensions of human rights, and Non-Governmental Organizations (NGOs) and struggles for human rights.

Part I consists of six chapters, all of which approach the universalism-versus-relativism debate from philosophical, historical, political, and economic perspectives. Together, these chapters overwhelmingly reject the Western appropriation of human rights and argue, instead, for a cross-cultural understanding of human rights. The authors argue that the preoccupation with the intellectual progeny of human rights by scholars does grave damage to the global human rights discourse and movement. By claiming that human rights are culturally specific to the West, these scholars homogenize and oversimplify the human rights traditions of both the West and the rest of the world, thereby undermining theoretical advances “that can come from serious and sustained intra- and intercultural comparisons and conversations”.¹ These chapters also draw attention to four analytical traps which bedevil the universalism-relativism debate. The debate tends to be *idealistic*: human rights are often reduced to ideas which have a life of their own unrelated to social struggles; it tends to be *legalistic* in the sense that courts, not culture, enjoy primacy of authority where the existence of human rights is the issue, while procedure, not practice, tends to be conclusive of the observance or respect for human rights; the debate is also *dualistic* in the way that it polarizes or prioritizes human rights into civil and political rights against social and economic rights and vice-versa despite the emphasis on interdependence and indivisibility of human rights in the Universal Declaration of Human Rights; finally, the debate is *ethnocentric*: the source of human rights is often located in the West by both the relativists and the universalists. The overarching argument of the chapters of this part is for a holistic view of human rights, for contextualization and intellectual openness, in the acknowledgement that “the construction of a universal human rights regime is a work in progress to which different societies have a role, indeed a right, to contribute.”² The chapters, thus, urge the reader to consider human rights as ideas and social practices which are not cast in stone, but which

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1 Paul Tiyambe Zeleza, “Introduction: The Struggle for Human Rights in Africa” in Paul Tiyambe Zeleza and Philip J. McConaughay, eds., *Human Rights: The Rule of Law and Development in Africa* (Philadelphia: University of Pennsylvania Press, 2004) 1 at 8.

2 *Ibid.* at p.15.

lend themselves to reconceptualization and reconstruction in response to “changing materialities, moralities, and mentalities at local and global scales, themselves connected in complex and mostly contradictory ways.”

Part II also consists of six chapters. This part attempts to draw the linkage between human rights and development. The authors condemn the uncritical purchase which the false dichotomy between social and economic rights and civil and political rights seems to hold among African governments. These governments, while they have been compelled by a combination of internal and external forces to open up political spaces, seem to accord social and economic rights a low priority in a context of generalized poverty. The chapters argue that while substantial gains have been recorded in Africa from the “third wave” of political liberalization which swept through the continent beginning from the early 1990s, the uneven and inconsistent nature of these gains threatens to sabotage the prospects of emancipating the populace from poverty. Widespread corruption and abuse of state power by public officials is probably the greatest threat to economic development on the continent. This part, therefore, draws on the central argument of the first part, namely, that human rights must be seen in a holistic way - civil and political rights and social and economic rights must enjoy a synergy – if they would be meaningful to the teeming population of the poor in Africa.

The role of NGOs in the promotion and realization of human rights and development is the subject of Part III of the book. There are five chapters in this part. All the contributors agree that African human rights NGOs are playing important roles in the processes of building a human rights culture from below by promoting the rule of law, advocating “even-handed treatment of all in accordance with impersonal legal standards, toleration of diversity, and respect for human dignity and equality.”³ These NGOs also document and publicize state abuses and monitor government performances. Compared to their numbers and impact in Africa some two decades ago, human rights NGOs have proliferated and become more influential in response to a changed continental and global climate for action. However, as the authors of this part acknowledge, African human rights NGOs contend with a crisis of legitimacy.⁴ They are mostly urban-based and elitist, the emphasis in their advocacy is mostly on civil and political rights to the almost complete exclusion of social and economic rights, and they are mostly dependent on external benefactors for their funding. This crisis has limited their impact considerably. Again, the common thread that runs through this part, as with the other parts, is a critique of the conventional orthodoxy which prioritizes human rights under the guise of universalism without regard for context.

Human Rights Under African Constitutions, on the other hand, is composed of selected country studies spanning all four regions – North, East, West, and South - of Africa. The book has 11 chapters, all of which examine the legal protection of human rights in the various selected countries. The overarching theme of the book is that the mechanisms and processes of legal protection

3 Claude E. Welch, Jr., “Human Rights and Development in Africa: NGOs” in Zeleza and McConaughay, *supra* note 1, 198 at 207.

4 See e.g., Makau Mutua, “African Human Rights Organizations: Questions of Context and Legitimacy” in Zeleza and McConaughay, *supra* note 1, 191.

ought neither to be pursued in isolation of the social, economic and political context of African societies nor assumed to be sufficient by themselves for the effective implementation of human rights standards. Each chapter of the book, therefore, proceeds on the assumption that international standards of human rights are universally valid and legally binding on states which have either ratified the relevant treaties or are subject to applicable customary international law principles. For these states, human rights provide “a common standard of achievement” as proclaimed in the Preambles to the Universal Declaration of Human Rights. The chapters then provide a detailed study of the context and resources available for the legal protection of human rights under the constitutions and legal systems of the selected African states.

The theoretical underpinning of each of the chapters is the time-honoured paradox of self-regulation which sits at the heart of the international human rights regime. While the necessity for human rights seems to be that no state can be trusted to protect the rights of its own citizens, the international human rights regime casts the responsibility for protection of the rights of citizens on states. Conceptually, an injury or harm is not a human rights violation unless it is perpetrated by the state or under the colour of state authority. Yet redress for a human right violation is only obtainable through the agency of the state. Much of the analysis of the chapters of this book attempts to mediate this paradox.

A point which all the contributors of the chapters seem to agree upon is that the mediation of this paradox is a task that must be undertaken by the oppressed people themselves, because it is through such mediation that the protection of human rights can be reconciled with the sovereignty and territorial integrity of the state. The authors rule out direct so-called humanitarian intervention by other states or the international community in the territory of any state in order to protect the human rights of an oppressed people as “problematic in principle and unascertainable in practice”.⁵ They agree, as well, that objecting to external intervention raises yet another paradox: states are unlikely to respect human rights where there are no effective mechanisms for accountability for their failure to do so; on the other hand, an oppressed people are unlikely to be in the position to demand such accountability of their state. All of the chapters attempt to proffer solutions to this latter paradox. First, the choice is not between precipitate action and passivity on the part of the international community where gross violation of human rights occurs in any state. The primary response must be to build local capacity for the observance of legal and political accountability of governments to their own people. External intervention, provided it is consistent and principled, must be exercised only as a last resort. Second, local capacity building should be done with due regard to context. External intervention must avoid imposing norms and models developed elsewhere; this would not only be objectionable as a colonial exercise in cultural imperialism, but would be unsustainable in practice. Finally, and in the final analysis, the chapters suggest that the ultimate resolution of this paradox is contingent on the willingness and ability of an

5 See e.g., Abdullahi Ahmed An-Na'im, “Introduction: Expanding Legal Protection of Human Rights in African Contexts” in Abdullahi An-Na'im, ed., *Human Rights under African Constitutions: Realizing the Promise for Ourselves* (Philadelphia: University of Pennsylvania Press, 2003) 1 at 2.

oppressed people to confront and oppose their condition to the maximum possible degree.

Taken together, these two books are a very important addition to the body of knowledge on some of the central issues implicated in the discourse of human rights and development in Africa. The books complement each other on several of these issues. One issue of common concern, obviously, is the state of human rights in Africa. A general point which the two books make is that lack of respect for human rights, conceptualized holistically, entails serious and real consequences for African peoples, and it is how to ameliorate these consequences, or to prevent them from eventuating at all, that merit intellectual exertion rather than the sterile debate on the progeny, universality or relativity of human rights. Both books, for emphasis, reject the prioritization of civil and political rights over economic and social rights, and recognize the linkage between the artificial dichotomization of civil and political rights over economic and social rights and the increasing human degradation in Africa. A second common point between the books is that context matters. The contemporary African context for human rights is conditioned by Africa's past history of colonialism and its present reality of subjugation to the forces of globalization for which it is least prepared. Finally, the role of the people in securing their rights is a common theme. Just as NGOs must derive their ultimate legitimacy by penetrating the grassroots, the ultimate protection of human rights is the involvement of the people in the struggle to secure these rights.

No one expects edited volumes of individual essays to cover all of the issues that would, at first glance, appear to come naturally under the cover of their titles. It is fair to say, however, that the contributors are outstanding and thorough in their research and illumination of the complex issues addressed in the books. It is also, perhaps, a testament to the intellectual rigor and acumen of the editors of these books – Paul Tiyambe Zeleza, Philip McConaughay, and Abdullahi Ahmed An-Na'im – all of them erudite scholars, that the broad themes covered in the books have since been taken up by other researchers who have drawn upon, broadened and validated most of the main arguments and conclusions of the books.⁶ These books are unquestionably a must-read for human rights scholars, activists, comparative development analysts, policy makers, and all those who desire to probe the links between lack of respect for human rights and generalized poverty in Africa.

6 See e.g., Obiora Chinedu Okafor, *Legitimizing Human Rights NGOs: Lessons from Nigeria* (Trenton, NJ: Africa World Press, 2006); Harri Englund, *Prisoners of Freedom: Human Rights and the African Poor* (Berkeley: University of California Press, 2006); Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Oxford: Hart Publishing, 2007); Mahgoub El-Tigani Mahmoud, *Human Rights in Africa* (Ceredigion, UK: Edwin Mellen Press, 2005); and Abdullahi Ahmed An-Na'im, *African Constitutionalism and the Role of Islam* (Philadelphia: University of Pennsylvania Press, 2006).