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International NGOs, the Arab Upheaval, and Human Rights: Examining NGO Resource Allocation

Gerald M. Steinberg*

“HRW blurs the boundaries between support for governments and human rights advocacy. The classic work of human rights organizations is to press governments on human rights issues, not drum up support for specific regimes.”¹

—Gita Sahgal, head of Amnesty International’s Gender Unit until 2010

¶1 When the unprecedented protests began in the Middle East (termed variously as the Arab spring, turmoil, upheaval, etc.), human rights issues were featured prominently. Journalists and social media reports emphasized demands to end the practices of the closed and totalitarian regimes that had controlled these societies and their populations for decades in countries like Tunisia, Libya, Egypt, Yemen, Syria and Bahrain. In their statements and interviews, protest leaders and participants highlighted democracy and human rights as major objectives.

¶2 However, by the end of 2011, after the toppling of some regimes and amidst the ongoing conflict in others, the hopes for significant and lasting human rights reforms in these countries and in the regions had receded. In Tunisian and Egyptian elections, the parties that received the greatest support were not associated with a strong commitment to the universal principles of human rights. The same situation exists in Libya and Yemen, where the post-dictatorship political systems are even more uncertain. The language of human rights in the discourse of the Arab revolutions had all but disappeared.

¶3 In this paper, we will explore some of the factors that have contributed to this disappointing outcome. We note that political, religious and cultural factors are likely to have been instrumental. However, the international structures and institutions most closely associated with promoting universal human rights also share responsibility for the failure to realize these values. In order to reverse the current situation, a sustained and principled engagement with powerful frameworks is necessary.

¶4 These institutions include the United Nations—particularly the UN Human Rights Council (UNHRC) and the Office of the High Commissioner for Human Rights (OHCHR)—as well as the numerous non-governmental organizations (NGOs) that have

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¹ *Women and Islam: A Debate with Human Rights Watch*, NYRBLOG (Feb 23, 2012), <http://www.nybooks.com/blogs/nyrblog/2012/feb/23/women-islam-debate-human-rights-watch>.

worked closely with the UNHRC. The Organization of the Islamic Conference (OIC) and its allies have been a major determinant to the agenda and activities of the UNHRC (until 2006, the UN Commission for Human Rights), consistently blocking any discussion of their own systematic human rights violations.²

¶5 In parallel, the publications, activities and campaigns of the international NGOs claiming a central role in promoting human rights reflect a similar failure to focus significant resources in building support in Arab societies. As will be illustrated in the following analysis of Human Rights Watch (“HRW”) and Amnesty International (the two international human rights NGOs with the largest budgets and corresponding visibility), for many years, these NGOs had devoted relatively limited resources and attention to systematic violations in Libya, Egypt, Tunisia, Yemen, Syria, and Saudi Arabia, among others. In the case of Libya, HRW and Amnesty actively promoted the regime, justified as necessary in order to further human rights objectives. In 2011, when the situation changed, the major increase in emphasis on these countries came too late to mitigate the years of neglect.

¶6 The protests that led to the revolutions against closed military and dictatorial regimes, beginning in Tunisia in January 2011 with the overthrow of Zine el Abidine Ben Ali, extending to the Tahrir Square demonstrations in Cairo and forced resignation of Hosni Mubarak, the ouster of the Gaddafi family in Libya, and Ali Abdullah Saleh in Yemen, cannot be attributed to NGO activities.³ These groups often did not have the resources required to report on human rights developments and violations during the course of the revolutions. As HRW’s special advisor Fred Abrahams acknowledged, “The west of Libya is a black hole . . . we have no idea what’s going on.”⁴ Similarly, on June 7, 2011, HRW Executive Director Kenneth Roth used his Twitter account to repeat a widely circulated tale of a Syrian blogger who had allegedly been “kidnapped by armed men. Had written on uprising, politics, being a lesbian.”⁵ This was revealed to be a hoax, and highlighted difficulty NGOs have in verifying claims and refuting unfounded rumors.⁶

¶7 This article applies a quantitative summary of HRW’s and Amnesty’s activities in the regions between 2005 and 2010 to measure and represent international NGOs’ focus on the Middle East and North Africa (“MENA”) regions. We will show that with the exception of Egypt, the countries involved in the Arab Spring were very low priorities for HRW, and, on this basis, suggest that this relative neglect contributed significantly to the absence of a foundation on which to build a human rights constituency. We will also examine the factors that lead NGOs in general, and HRW (and to a lesser case Amnesty)

² Don A. Habibi, *Human Rights and Politicized Human Rights: A Utilitarian Critique*, 6 J. HUM. RTS. 3, 9 (2007).

³ Revelations from U.S. State Department memos published by Wikileaks showed the State Department’s widespread opinion of corruption in Yemen, which were ascribed a leading role in fueling the Tunisian uprising. See Maha Azzam, *Opinion: How WikiLeaks helped fuel Tunisian revolution*, CNN (Jan. 18, 2011), http://articles.cnn.com/2011-01-18/opinion/tunisia.wikileaks_1_tunisians-wikileaks-regime?_s=PM:OPINION.

⁴ James Downie, *Why Isn’t There An Accurate Death Count In Libya?*, THE NEW REPUBLIC (Apr. 1, 2011), <http://www.tnr.com/article/world/86090/libya-death-toll-war-qadaffi>.

⁵ Ken Roth, Twitter (Jun. 7, 2011 12:35 am EST), <https://twitter.com/KenRoth/status/78002087052582912>

⁶ Melissa Bell & Elizabeth Flock, “A Gay Girl in Damascus” comes clean, THE WASHINGTON POST (Jun. 12, 2011), http://www.washingtonpost.com/lifestyle/style/a-gay-girl-in-damascus-comes-clean/2011/06/12/AGkyH0RH_story.html.

in particular, to consistently devote fewer resources to human rights in closed societies when compared to their activities and investment in open and democratic countries.

¶8 Three explanations (not mutually exclusive) will be suggested to explain this behavior: 1) NGOs' strategy and agenda are largely determined by media considerations, so that issues that were difficult to access and had low media profiles were neglected; 2) NGOs sought to avoid friction with Arab dictatorships in order to secure their cooperation in seeking to improve human rights practices; and 3) agenda is influenced by post-colonial political and ideological biases, which emphasize allegations against Western democratic societies and ignores others.

I. IMPACT OF HUMAN RIGHTS NGOS IN INTERNATIONAL POLITICS

¶9 NGOs (non-governmental organizations) or CSOs (civil society organizations) have become important actors in the "soft power" arena. In the United Nations system as of 2007, over four thousand NGOs are accredited to the Economic and Social Council (ECOSOC),⁷ giving them privileged access to many UN activities, including meetings of the Human Rights Council (HRC),⁸ the 2001 World Conference on Racism (also known as the Durban Conference),⁹ and special frameworks such as the Committee on the Elimination of Racial Discrimination¹⁰ and the Committee Against Torture. NGO officials speak at some UN sessions, meet with participating diplomats, and submit documents that are quoted in final reports.¹¹ Similarly, diplomats, journalists, academics, and other decision-makers and opinion leaders routinely quote NGO claims.

¶10 NGOs, both individually and through wider "transnational advocacy networks" or "global civil society" frameworks, are particularly influential in issues related to human rights and international law. Their moral claims are a major source of this influence, as reflected in Chandler's reference to NGOs as "[o]riented around universal beliefs and motivations."¹² Similarly, Keck and Sikkink argue that while "[g]overnments are the primary guarantors of rights, they are also their primary violators," leaving individuals or minorities with "[n]o recourse within domestic political or judicial arenas." On this basis, domestic NGOs are able to "[b]ypass their state and directly search out international allies to bring pressure on their states from the outside."¹³ Despite their uncontested influence, NGOs constitute an unregulated and nebulous sector described as "fuzzy at the edges."¹⁴

⁷ U.N. Econ. & Soc. Council [ECOSOC], List of non-governmental organizations in consultative status with the Economic and Social Council as of 17 October 2007, U.N. Doc. E/2007/INF/4 (Oct 17, 2007).

⁸ U.N. Human Rights Council, UNITED NATIONS, <http://www2.ohchr.org/english/bodies/hrcouncil/>.

⁹ United Nations, Durban Declaration, U.N. Doc. A/CONF.189/12 (Sep. 8, 2001), <http://www.un-documents.net/durban-d.htm>

¹⁰ *Committee on the Elimination of Racial Discrimination*, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www2.ohchr.org/english/bodies/cerd/>.

¹¹ RICHARD A. HIGGOTT, GEOFFREY R. UNDERHILL & ANDREAS BIELER, *NON-STATE ACTORS AND AUTHORITY IN THE GLOBAL SYSTEM* (1999).

¹² DAVID CHANDLER, *CONSTRUCTING GLOBAL CIVIL SOCIETY: MORALITY AND POWER IN INTERNATIONAL RELATIONS 1* (2004).

¹³ MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS 12* (1998).

¹⁴ CHANDLER, *supra* note 12, ¶ 1.

¶11 In examining the objectives and activities of human rights NGOs, the academic literature suggests four specific activities and indicators: 1) agenda setting; 2) creating norms or promoting policy changes; 3) building networks and coalitions in the target countries and regions; and 4) implementing solutions through “tactics of persuasion and pressure to change practices and/or encourage compliance with norms.”¹⁵

¶12 The objectives are consistent with the stated aims of HRW, which grew out of “Helsinki Watch,”¹⁶ founded in the 1970s as a research-oriented alternative to Amnesty International.¹⁷ HRW became one of the major international NGOs focusing on human rights issues, with an annual budget of approximately fifty million dollars and a worldwide reach. Over the years, they were joined by many other organizations based in Europe and other parts of the world which promoted human rights agendas in the national and international venues. In Blitt’s words, NGOs “[i]dentify their primary goals as monitoring and reporting of government behavior on human rights . . . building pressure and creating international machinery to end the violations and to hold governments accountable.”¹⁸ Due to their strong emphasis on research, their importance in the NGO community, and their global reach, global NGOs such as HRW and Amnesty provide appropriate case studies for examining allocation of resources and attention to different regions and issues.

¶13 In gaining influence, NGOs present images of being “above politics and ideology,” without interests or power considerations. Willet states that, “[t]here is a widespread attitude that NGOs consist of altruistic people campaigning in the general public interest, while governments consist of self-serving politicians . . . such an attitude should not be adopted as an unchallenged assumption . . .”¹⁹ Blitt demonstrates the degree to which NGOs that deal with human rights elicit “[i]nstantive support amongst the general public,”²⁰ and Heins examines the processes by which NGOs create “symbolic” victims while presenting themselves as altruistic rescuers.²¹

¶14 Following this pattern, in the Arab protests of 2011, international NGOs repeated and magnified the human rights demands of many demonstrators and highlighted reported violations, particularly by the regimes. Outside of the region, the mass media gave prominence to NGO statements and reports. However, within the Arab societies in which these demonstrations and revolutions took place, the impact of NGOs such as HRW and Amnesty was minimal, reflecting the lack of investment in an infrastructure to promote these principles, as detailed below.²² The lack of consistent NGO prioritization

¹⁵ Richard Price, *Transnational Civil Society and Advocacy in World Politics*, 55 *WORLD POLITICS* 579, 584 (2003).

¹⁶ *Our History*, HUMAN RIGHTS WATCH, <http://www.hrw.org/node/75134>.

¹⁷ Michael Minch, *Human Rights Watch*, in *ENCYCLOPEDIA OF GLOBAL JUSTICE* 500 (Deen K. Chatterjee ed., 2011).

¹⁸ Robert Blitt, *Who Will Watch the Watchdogs?: International Human Rights Nongovernmental Organizations and the Case for Regulation*, 10 *BUFFALO HUMAN RIGHTS LAW REVIEW* 261, 288 (2007).

¹⁹ PETER WILLETTTS, *THE CONSCIENCE OF THE WORLD* 11 (1996).

²⁰ Blitt, *supra* note 18, at 263.

²¹ VOLKER HEINS, *NONGOVERNMENTAL ORGANIZATIONS IN INTERNATIONAL SOCIETY: STRUGGLES OVER RECOGNITION* 24 (2008).

²² On the general difficulty of measuring humanitarian NGO impact on state practice, see D. L. Cingranelli & D. L. Richards, *Measuring the Impact of Human Rights Organizations*, in *NGOS AND HUMAN RIGHTS: PROMISE AND PERFORMANCE*, (Claude E. Welch ed., 2000). For the effectiveness humanitarian NGO strategy, see Amanda M. Murdie & David R. Davis, *Shaming and Blaming: Using Events Data to Assess*

in the allocation of resources and activities may have been an important factor in the failure to sustain the human rights agenda as the Arab revolutions proceeded.

II. METHODOLOGICAL ISSUES IN ASSESSING PRIORITIES OF HUMAN RIGHTS NGOS

¶15 In contrast to the growth of international human rights NGOs and the attention that they receive, there have been very few systematic efforts to assess the means by which these organizations select priorities, allocate resources, and the degree to which these decisions are reflected in impact. The use of case studies to analyze the roles and impact of human rights NGOs on developments in the Arab revolutions that began in 2011 requires an assessment of available methodologies and their relative limitations and strengths.

¶16 In assessing the comparative resources devoted by an NGO to specific countries, the main measure is the number and type of publications focused on each case, as well as visits made and reported by the NGO. While both HRW and Amnesty have produced a high volume of publications in different forms on human rights and related issues in the context of the Arab revolutions, there are some important differences in their structures and outputs. HRW has a highly centralized framework, with strong emphasis on research,²³ while Amnesty, although comparable in terms of international scope, is highly decentralized, and focuses on advocacy as well as on research.²⁴ Amnesty's most prolific format, "urgent action items" are basically one page alerts to their members calling for advocacy action. Urgent action items require few resources to produce and are often repeated on the same issue, making them relatively weak indicators of the organization's allocation of resources. Additionally urgent action items are targeted at Amnesty's member base and not the media or the public at large. Such items are a good indicator of Amnesty's ongoing focus on prisoners of conscience.²⁵

¶17 As a result of these differences, by using quantitative measures for assessing the focus, priorities, and impact of NGOs across issues, and comparing the result to independent indices of the relative human rights standings in each country, the quantitative evaluation of Amnesty's comparative activities across different countries involves different functions and hence necessitates more interpretation than is the case with HRW.

¶18 In the following analysis, documents published by HRW were assigned to the different country categories based on their classification on HRW's website. Broad multi-country publications were included in the country tally when a chapter or section was devoted to that country. Countries mentioned briefly in a small number of reports that surveyed global behavior on a specific topic such as human trafficking were not added to the country total.

¶19 The comparative analysis of Amnesty's publications by country focus applies the same methodology, taking into account the two different categories of documents. The

the Impact of Human Rights INGOs, 56 INT'L STUD. Q. 1 (2012); James C. Franklin, *Shame on You: The Impact of Human Rights Criticism on Political Repression in Latin America*, 52 INT'L STUD. Q. 187 (2008).

²³ Minch, *supra* note 17.

²⁴ STEPHEN HOPGOOD, *KEEPERS OF THE FLAME: UNDERSTANDING AMNESTY INTERNATIONAL* 127-131 (2006).

²⁵ *Id.* at 81.

first category parallels HRW's output and includes reports, press releases and other items (including newsletters and artwork). Unlike HRW, however, Amnesty also issues many urgent action items which are listed as a separate category. A summary of all Amnesty documents in both categories appears in Table 1B.

¶20 HRW's and Amnesty's *de facto* country priorities, as seen through the comparative extent of publications in each case, were then compared with the Freedom House index based on "The *Freedom in the World Survey*" covering the years 2005-2011.²⁶ When a state's Freedom House score reflects an open society, the expectation is that the number of publications by each NGO respectively would be relatively lower.

¶21 Freedom House, a U.S.-based non-partisan NGO funded primarily by the U.S. government, publishes an annual ranking and report (*Freedom in the World*) based on a consistent and transparent methodology to compare the status of political freedoms and civil liberties in 194 individual countries. This methodology relies on assessments of "experts" to grade each country according to a fixed list of questions and criteria, making the outcome somewhat dependent on the nature of the criteria, the choice of experts, and their individual perceptions. While a number of critical studies of this methodology have been published regarding the potential for systematic ideological biases,²⁷ the findings generally support the claim that the relative rankings are consistent and can be duplicated independently.²⁸ In contrast, groups such as Human Rights Watch and Amnesty International do not provide any methodological guidelines or information to explain their priorities.

¶22 The Freedom House comparative index seeks to operationalize and measure freedom via two broad categories: political rights and civil liberties using a checklist containing ten political rights and fifteen civil liberties questions. Together, these measures, as reported on each society, are deemed to reflect "the opportunity to act spontaneously in a variety of fields outside the control of the government and other centers of potential domination."²⁹ Analysts score each country using these questions, and the report is reviewed individually and on a cross regional basis by analysts, academic advisors with expertise in each region, and Freedom House staff. Each country is then given numerical ratings on a scale of one to seven for political rights and for civil liberties; a rating of one indicates the highest degree of freedom and seven the lowest level of freedom.³⁰

¶23 While there are other indices used to compare the state of human rights in different countries, such as the Political Terror Scale (PTS)³¹ and the Cingranelli and Richards

²⁶ *Freedom in the World Country Ratings 1972-2011*, FREEDOM HOUSE (2012)

http://www.freedomhouse.org/sites/default/files/inline_images/FIWAllScoresCountries1973-2011.xls.

²⁷ Adam Przeworski, *Freedom to Choose and Democracy*, 19 *ECON. & PHIL.* 265, 277 (2003); Scott Mainwaring, Daniel Brink & Anibal Perez-Linan, *Classifying Political Regimes in Latin America, 1945-1999*, 36 *STUD. COMP. INT'L DEV.* 37, 53-55 (2001).

²⁸ Raymond D. Gastil, *The Comparative Survey of Freedom: Experiences and Suggestions*, 25 *STUD. INT'L COMP. DEV.* 25, 41 (1990); Kenneth A. Bollen, *Political Rights and Political Liberties in Nations: An Evaluation of Human Rights Measures, 1950 to 1984*, 8 *H. R. Q.* 567, 586 (1986); Kenneth A Bollen & Pamela Paxton, *Subjective Measures of Liberal Democracy*, 33 *COMP. POL. STUD.* 58 (2000).

²⁹ *Freedom in the World 2012: Methodology*, FREEDOM HOUSE, <http://www.freedomhouse.org/report/freedom-world-2012/methodology>.

³⁰ See FREEDOM HOUSE, *supra* note 25.

³¹ Mark Gibney, Linda Cornett, & Reed Wood, *Political Terror Scale 1976-2006* (Dec. 12, 2012), <http://www.politicalterror scale.org>.

(CIRI) Human Rights Data Project,³² these are partly based on reports by Amnesty International.³³ This is problematic, as Amnesty's reports are not methodologically consistent or reliable, as discussed below.

III. EXAMINING HRW'S AND AMNESTY'S MIDDLE EAST PRIORITIES: 2005-2010

¶24 In examining HRW's relative emphases within the Middle East and North Africa (MENA) division, two quantitative indicators were selected: 1) the number of press releases, letters, and commentaries produced for each country in the years 2005-2010; and 2) the number and number of pages of major reports and briefings published on each country (Table 2A). Due to the high resource commitment required for major reports and the value assigned to them by HRW, as often reflected in accompanying press conferences and publicity campaigns, these documents are a significant indicator of the relative priority assigned to each country. Amnesty's emphasis was also measured by two quantitative indicators: 1) the number of press releases, reports, letters and other documents produced for each country in the years 2005-2010; and 2) the number of urgent action items released on each country. Urgent action items were reflective of Amnesty's priority for advocacy in each country.

¶25 Tables 1A and 1B list the number of documents and reports published by HRW and the number of documents and urgent action items from Amnesty in the years 2005-2010. In comparison, we list the scores given by Freedom House to each country in the same period (where lower score indicates a freer or more open society):

³² David L. Cingranelli & David L. Richards, *The Cingranelli-Richards (CIRI) Human Rights Dataset* (Dec. 11, 2011), <http://www.humanrightsdata.org>.

³³ For a survey of the methodological problems in translating PTS and CIRI data, see Emilie M. Hafner-Burton & James Ron, *Seeing Double*, 61 *WORLD POLITICS* 360, 377-379 (2009).

Table 1A: HRW Publication Ranking vs. Freedom House Scores³⁴

Press releases etc, 2005-10 (Excluding Reports)	HRW Number of Reports 2005-2010	Freedom House Score 2005-2010		Country
40	1	66		Algeria
47	1	62		Bahrain
163	11	66		Egypt
219	10	72		Iran
149	19	69		Iraq
259	20	Israel 18	Palestine ³⁵ 67.5	Israel and The OT
98	7	59		Jordan
29	1	50		Kuwait
106	7	52		Lebanon
84	6	84		Libya
74	5	54		Morocco
4	0	66		Oman
4	0	68		Qatar
142	9	78		Saudi Arabia
85	4	79		Syria
69	4	70		Tunisia
41	3	67		UAE
50	6	62		Yemen

³⁴ *Freedom in the World Country Ratings 1972-2011*, FREEDOM HOUSE (2012), http://www.freedomhouse.org/sites/default/files/inline_images/FIWAllScoresCountries1973-2011.xls; *Middle East/North Africa Reports 2005-2010*, HUMAN RIGHTS WATCH, http://www.hrw.org/by-issue/publications/11?date_filter%5Bvalue%5D%5Byear%5D=2010; *Middle East/North Africa News Releases 2005-2010*, HUMAN RIGHTS WATCH, http://www.hrw.org/by-issue/news-filter/11?date_filter%5Bvalue%5D%5Byear%5D=2010.

³⁵ Prior to 2010, Freedom House (FH) distinguished between the Palestinian Administered Territories and the Israeli Occupied Territories. For this period, we combined the scores, and divided by two to arrive at an average score. From 2010, FH distinguish between the West Bank and Gaza Strip. The average score was used for 2010. The data for the Palestinian Territories is available at *Freedom in the World*, FREEDOM HOUSE (2012), http://www.freedomhouse.org/sites/default/files/inline_images/FIWAllScoresTerritories1973-2011.xls.

Table 1B: Amnesty Publication Ranking vs. Freedom House Scores³⁶

Amnesty Urgent Action Items 2005-2010	Amnesty Press releases etc, 2005-2010	Freedom House Score 2005-2010		Country
28	85	66		Algeria
20	38	62		Bahrain
51	174	66		Egypt
570	408	72		Iran
78	233	69		Iraq
90	350	Israel 18	Palestine ³⁷ 67.5	Israel and the OT
1	58	59		Jordan
14	13	50		Kuwait
10	119	52		Lebanon
15	48	84		Libya
13	121	54		Morocco
8	1	66		Oman
6	9	68		Qatar
115	52	78		Saudi Arabia
175	129	79		Syria
38	121	70		Tunisia
25	26	67		UAE
65	49	62		Yemen

¶26 While Libya received the worst rating in the region from Freedom House, it was only eighth in terms of HRW's agenda, as reflected in the number of documents produced during the 2005-2010 period. Amnesty gave Libya an even lower priority in its agenda, thirteenth in terms of documents (excluding urgent action items) produced during the period, and twelfth in the number of urgent action items. Syria, Tunisia, and Yemen

³⁶ *Freedom in the World Country Ratings 1972-2011*, FREEDOM HOUSE (2012) http://www.freedomhouse.org/sites/default/files/inline_images/FIWAllScoresCountries1973-2011.xls; *Israel and Occupied Palestinian Territories*, AMNESTY INTERNATIONAL, <http://www.amnesty.org/en/region/israel-occupied-palestinian-territories?page=14>.

³⁷ *Id.*

received marginally less attention from HRW in this period, and also received very low ratings from Freedom House. As shown in this table, in general, there is an inverse correlation between the openness of a society (as measured by Freedom House) and the degree to which HRW emphasized the country in their publications and related activities.

¶27 In contrast, Amnesty's urgent action items show a closer correlation with Freedom House's scores. For example, Syria received the second worst score in the region from Freedom House and fifth in terms of Amnesty's overall publications, but second in the number of urgent action items. The same is true for Saudi Arabia, which ranked third on the Freedom House index, eleventh in terms of documents produced by Amnesty, but third in the number of urgent action items from Amnesty. Barring the glaring exceptions of Israel and Libya (discussed below), the pattern holds true throughout the rankings, with only minor differences between the Freedom House score and relative distribution of Amnesty's urgent action items.

¶28 Libya and Israel stand out as the two poles—Libya, the country with the worst Freedom House score, is grossly underreported by Amnesty, and Israel, the country with the best regional Freedom House ranking (even when considered with Palestine), is grossly over-reported. The very low emphasis given to Libya is particularly surprising since, as discussed below, both human rights groups sent delegations to the country twice during the period under examination.

¶29 The inverse correlation can perhaps be explained by the lack of access to closed societies, preventing effective monitoring by human rights NGOs.³⁸ However, this explanation can only partially account for the systematic discrepancy. Beginning with the outbreak of the Arab uprisings in early 2011, HRW dramatically increased its reports on the relevant countries. Data from *NGO Monitor* show that in 2011, HRW's coverage of the countries in the region increased significantly in comparison to its 2010 level: Libya (478%); Egypt (103%), Syria (416%), Bahrain (200%), Yemen (178%) and Tunisia (78%).³⁹ Such rapid dramatic changes cannot be explained as an instant worsening of human rights conditions in these countries due to the outbreak of violent conflict, or an immediate end to the closed structures of the regimes. Rather, the fact that HRW and other prominent NGOs immediately increased their focus, when access was still very limited, indicates that this was, at most, a minor factor in explaining the lack of interest and reporting.⁴⁰

³⁸ For example, 2009 data shows that the MENA region was the subject of the lowest regional visit total from Amnesty, and the lowest in terms of work hours related to those missions. Additionally, the region received the least amount of reports and shorter research documents than any other region. Notably, in 2009, the MENA region generated more urgent action items than any other region. Amnesty explains that "some countries (e.g., China, Cuba, Iran, Laos, Saudi Arabia, Turkmenistan, Vietnam) prohibit our entry to investigate human rights violations; others make entry for research purpose either rare or extremely difficult (e.g., India, Libya, Syria); and, in respect to some countries our research methodologies mean it is simply too unsafe to enter, both for our contacts in those countries and for our staff." *2010 Report to INGO Accountability Charter*, AMNESTY INTERNATIONAL 64 (2010), <http://www.ingoaccountabilitycharter.org/wpcms/wp-content/uploads/AI-2010-Report-to-INGO-Accountability-Charter-GRI-NGO-Level-C-v09.pdf>.

³⁹ *HRW in 2011: More Balance, Less Credibility*, *NGO Monitor* (Jan. 9, 2012), http://www.ngo-monitor.org/article/hrw_in_more_balance_less_credibility.

⁴⁰ Similarly, see Howard Ramos, James Ron & Oskar N.T. Thomas, *Shaping the Northern Media's Human Rights Coverage, 1986-2000*, 44 *J. PEACE RESEARCH*, 385, 395-96 (2007), <http://www.jstor.org/stable/27640537> (analyzing the relationship between the size of civil society and

¶30 It attempting to explain why Amnesty’s urgent actions had a higher correlation to Freedom House than their research publications and reports, one possible explanation is that the correlation reflects the reactive and internal nature of urgent actions. These are used by Amnesty tool to mobilize their members in response to a perceived immediate threat to human rights. As such, urgent actions do not reflect long-term resource allocations, but rather low-cost and real time responses. The lack of a strong correlation between Amnesty’s research documents and their urgent actions also demonstrates the lack of coordination between their publication agenda (such as research reports) and immediate advocacy issues.

IV. ANALYSIS OF HRW AND AMNESTY’S RESEARCH PRIORITIES

¶31 Tables 2A and 2B compare the number of country reports that HRW (Table 2A) and Amnesty (Table 2B) published during the period 2005-2010. As the two NGOs do not use the same categories for their publications, these distinctions must be taken into account in the analysis. HRW’s website marks documents as “reports” only when they are major research-intensive publications. Due to significant resources needed to produce these reports, they are good indicator of priorities.

¶32 Amnesty’s definition of “reports” is different from that of HRW, and includes documents such as press releases and even urgent action items. Similar documents (and on occasion the same document, listed twice) are sometimes marked as “stories” or “press releases” without significant differences. Therefore, in comparing Amnesty’s publications by country to HRW’s, we counted as “reports” only documents similar to HRW’s classification, meaning long and detailed research publications, which include recommendations. Short documents (fewer than five pages) were not included, with the exception of a few documents with the distinctive appearance characteristic of Amnesty’s larger reports, including front and back covers, and distinctive titles. Similarly, short Amnesty “reports” addressed to members via newsletters, were excluded from the total, due to the limited resources required. In addition, Amnesty’s submissions to UN agencies were also excluded from the number of reports.

media human rights reporting). The Ramos, Ron & Thomas analysis revealed only “qualified empirical support” for the claim that increased civil society increases human rights reporting. *Id.*

Table 2A: HRW Reports (Pages) Per Country 2005-2010

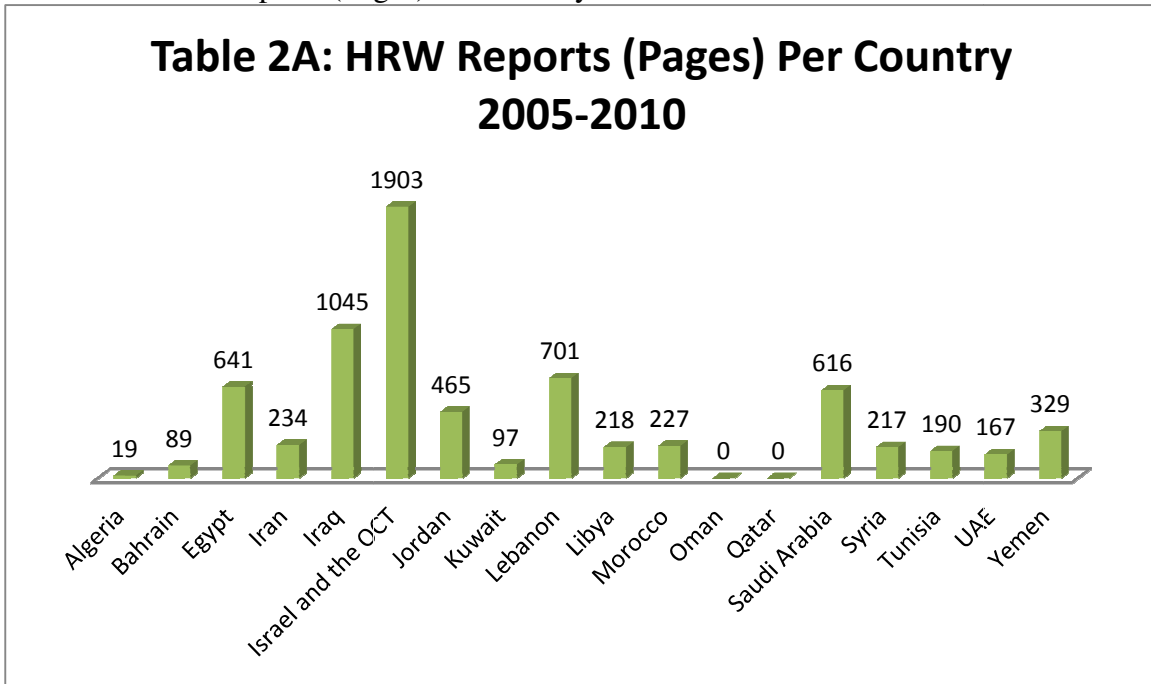
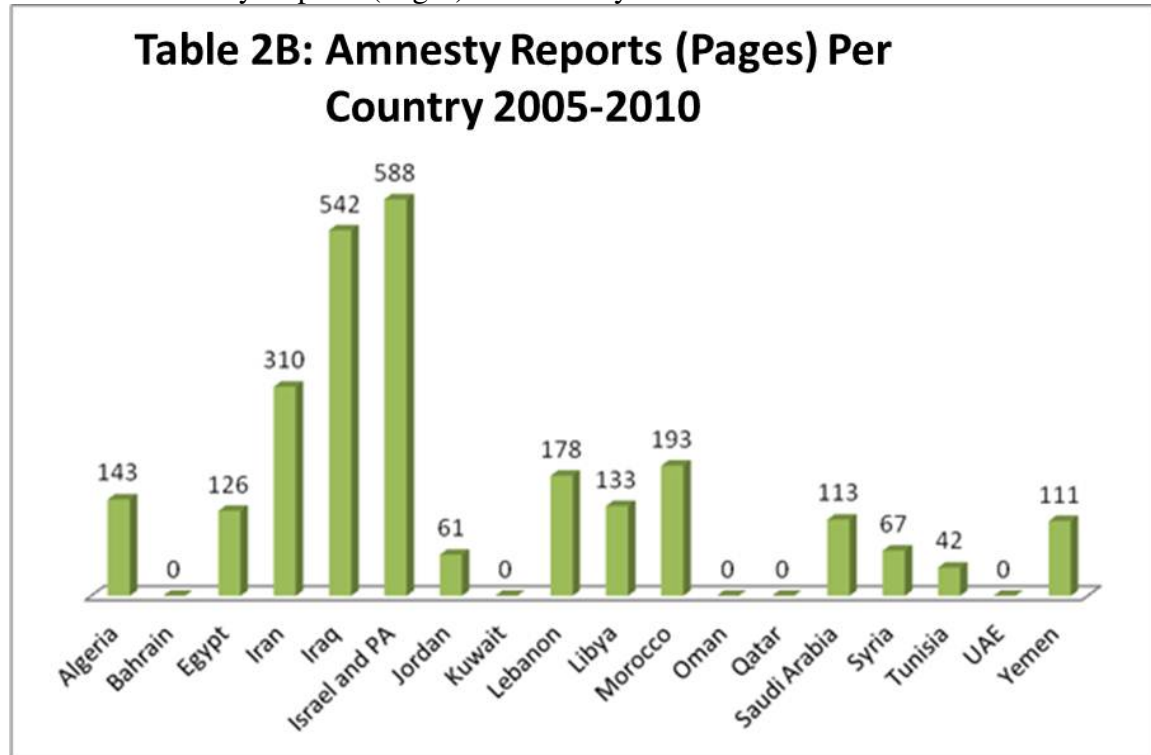


Table 2B: Amnesty Reports (Pages) Per Country 2005-2010



¶33

As can be seen in Table 2A and 2B, HRW’s and Amnesty’s reports on Libya, Syria, Tunisia and Yemen in this period of closed regimes were consistently short, supporting the premise that these NGOs assigned a low priority and devoted very limited

resources to documenting and publicizing abuses in these countries. Interestingly, in countries like Syria, Saudi Arabia, and Yemen, which scored high in the number of urgent action items, there is no corresponding emphasis on other publications as measured by the total number of pages.

¶34 In Syria, for example, HRW’s July 2010 report reviewing a decade of human rights abuses by the Assad regime resulted in a slim thirty-five-page publication titled “A Wasted Decade.”⁴¹ This was only HRW’s fourth major country report on Syria published since 2000. HRW’s 2010 report of five years of rule by King Abdullah in Saudi Arabia⁴² was also minimal, consisting of a mere fifty-two pages.

¶35 While HRW placed some emphasis on Saudi Arabia, as shown in Table 2A (616 pages of reports between 2005 and 2010), these were sporadic and limited to nine documents, in contrast to the 5 reports in the period of March-August 2009 alone focusing on the Gaza war (December 2008 to January 2009).⁴³ From 2005 to 2008, the NGO did not publish specific reports on Saudi Arabia at all, in part reflecting the difficulties of gaining access (see below on the issue of access and priorities).⁴⁴ After being allowed to enter the country, the subject that received the most attention from HRW was the discrimination against various sectors in Saudi society—foreign workers,⁴⁵ minorities,⁴⁶ and women,⁴⁷ as well as criticism of the justice system.⁴⁸

¶36 In analyzing Amnesty’s priorities, we note that Iran received a relatively large share of attention, but, as in the case of HRW and Saudi Arabia, this was also sporadic. Beyond reporting on the issues related to the death penalty, as part of Amnesty’s global “abolitionist” campaign on the issue,⁴⁹ much of other reporting was related to the protests which followed the Iranian elections of 2009, known as the “Green Revolution”, when media interest in Iran was at its peak.⁵⁰

⁴¹ HUMAN RIGHTS WATCH, *A WASTED DECADE: HUMAN RIGHTS IN SYRIA DURING BASHAR AL-ASAD’S FIRST TEN YEARS IN POWER* (2010),

<http://www.hrw.org/sites/default/files/reports/syria0710webwcover.pdf>.

⁴² HUMAN RIGHTS WATCH, *LOOSER REIN, UNCERTAIN GAIN: A HUMAN RIGHTS ASSESSMENT OF FIVE YEARS OF KING ABDULLAH’S REFORMS IN SAUDI ARABIA* (2010),

<http://www.hrw.org/sites/default/files/reports/saudi0910webwcover.pdf>.

⁴³ HUMAN RIGHTS WATCH, *RAIN OF FIRE: ISRAEL’S UNLAWFUL USE OF WHITE PHOSPHORUS IN GAZA* (2009), <http://www.hrw.org/sites/default/files/reports/iopt0309web.pdf>.

⁴⁴ *Christoph Wilcke Profile*, THE GUARDIAN,

http://commentisfree.guardian.co.uk/christoph_wilcke/profile.html.

⁴⁵ HUMAN RIGHTS WATCH, “AS IF I AM NOT HUMAN”: ABUSES AGAINST ASIAN DOMESTIC WORKERS IN SAUDI ARABIA (2008), http://www.hrw.org/sites/default/files/reports/saudiarabia0708_1.pdf.

⁴⁶ *Denied Dignity: Systematic Discrimination and Hostility toward Saudi Shia Citizens*, HUMAN RIGHTS WATCH (Sept. 2008), <http://www.hrw.org/sites/default/files/reports/saudi0909web.pdf>.

⁴⁷ *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia*, HUMAN RIGHTS WATCH (Apr. 2008),

http://www.hrw.org/sites/default/files/reports/saudiarabia0408_1.pdf.

⁴⁸ *Precarious Justice: Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia*, HUMAN RIGHTS WATCH (Mar. 2008),

http://www.hrw.org/sites/default/files/reports/saudijustice0308_1.pdf.

⁴⁹ See, e.g., *Iran: End Executions by Stoning*, AMNESTY INTERNATIONAL (Jan. 2008),

<http://www.amnesty.org/en/library/asset/MDE13/001/2008/en/81d4eda6-2e67-4f69-844d-5a1a60dba9a7/mde130012008en.pdf>.

⁵⁰ See, e.g., *From Protest to Prison: Iran One Year after the Election*, AMNESTY INTERNATIONAL (Jun. 2010),

<http://www.amnesty.org/en/library/asset/MDE13/062/2010/en/a009a855-788b-4ed4-8aa9-3e535ea9606a/mde130622010en.pdf>.

¶37 But these are minor exceptions to the general pattern. The inverse correlation between the Freedom House rankings and HRW's agenda and priorities, as reflected in the publication record, suggest that the level of openness of a society is not a determining variable in the allocation of resources by HRW.

V. HRW'S EXPLANATIONS FOR RESOURCE ALLOCATION

¶38 One effort to justify HRW's prioritization is posted on the organization's website:

[w]e try to strike a balance between working in countries where the most atrocious human rights violations occur and those where we can bring about the most change. In assessing trouble spots, we take into consideration the severity of the crimes being committed, the numbers of those affected, and our potential to have impact.⁵¹

¶39 This statement specifies two criteria for prioritization by HRW—the level of human rights violations and the perceived capability of HRW to exert an influence. HRW's *2011 World Report* offers additional criteria for their resource allocations:

¶40 The factors we considered in determining the focus of our work in 2010 (and hence the content of this volume) include the number of people affected and the severity of abuse, access to the country and the availability of information about it, the susceptibility of abusive forces to influence, and the importance of addressing certain thematic concerns and of reinforcing the work of local rights organizations.⁵²

¶41 A similar statement appears in almost all HRW *World Reports*. The *World Reports* actually present five separate criteria for deciding how global priorities are assigned, at least in theory, by HRW:

- Number of people affected and the severity of abuse.
- Access to the country and the availability of information about it.
- The susceptibility of abusive forces to influence.
- The importance of addressing certain thematic concerns.
- Reinforcing the work of local rights organizations.⁵³

¶42 Of these five criteria, only the first can be attributed to core human rights concerns and principles. The others reflect the ease or difficulty of collecting data, HRW's potential impact, and relations with other NGOs.

¶43 An entirely different explanation for HRW's departure from the universal foundations of human rights and for failing to focus on the worst abusers was offered by Tom Malinowski, HRW's Washington advocacy director, in testimony delivered in 2007 before a committee of the U.S. House of Representatives:

⁵¹ *Frequently Asked Questions*, HUMAN RIGHTS WATCH, <http://www.hrw.org/en/node/75138#5>.

⁵² *World Report 2011: Events of 2010*, HUMAN RIGHTS WATCH (2011), <http://www.hrw.org/sites/default/files/reports/wr2011.pdf>.

⁵³ *Id.*

There is a concern that speaking too loudly about issues like women's rights and religious freedom in Saudi Arabia could backfire, causing these issues to be perceived as exclusively Western attacks against a pristine Islamic culture. Care indeed needs to be taken in choosing how to speak to Saudis about human rights.⁵⁴

¶44 In a 2009 op-ed in the *New York Times*, Robert Bernstein, who founded HRW in 1978 and remains its founding Chairman Emeritus, strongly criticized this and other attempts to justify HRW's priorities:

[a]t Human Rights Watch, we always recognized that open, democratic societies have faults and commit abuses . . . When I stepped aside in 1998, Human Rights Watch was active in 70 countries, most of them closed societies. Now the organization, with increasing frequency, casts aside its important distinction between open and closed societies.⁵⁵

¶45 Speaking at the University of Nebraska, Bernstein added:

[t]he faults of democratic countries were much less of a priority not because there were no faults, obviously, but because they had so many indigenous human rights groups and other organizations openly criticizing them. . . . The organization . . . was founded to go after what I guess you would call "high-hanging fruit"—that is, closed societies, where it is hard to get in.⁵⁶

¶46 Yet another explanation for HRW's lack of emphasis on developing an infrastructure to support human rights in Arab countries is examined in research published by James Ron and Howard Ramos on the correlation between international media coverage of different regions and allocation of NGO resources. They conclude that

[c]ountries already covered by the media" consistently received more attention from NGOs. In contrast, areas and conflicts characterized by a high level of human rights violations but receive little or no media

⁵⁴ *Is There a Human Rights Double Standard?: U.S. Policy Toward Saudi Arabia, Iran, and Uzbekistan: Hearing Before the Subcomm. on Int'l Human Rights, and Oversight of the H. Comm. on Foreign Affairs, 110th Cong. 17-18 (2007)*, <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg36062/pdf/CHRG-110hhrg36062.pdf> (statement of Tom Malinowski, Washington Director, Human Rights Watch).

⁵⁵ Robert L. Bernstein, *Rights Watchdog, Lost in the Mideast*, THE NEW YORK TIMES (Oct. 20, 2009), http://www.nytimes.com/2009/10/20/opinion/20bernstein.html?_r=0&adxnlnx=1326636150-McWEM4/qtZfHJauWU4ezMg&pagewanted=print.

⁵⁶ Robert L. Bernstein, *Human Rights in the Middle East, The Shirley and Leonard Goldstein Lecture on Human Rights*, UNIVERSITY OF NEBRASKA AT OMAHA (Nov. 10, 2010) <http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1317489&ct=8884881&printmode=1>.

attention, such as Central Africa and North Africa (until 2011) are generally ignored.⁵⁷

¶47 Similarly, an HRW board member explained the disproportionate focus on Israel: “We seek the limelight—that’s part of what we do. And so, Israel’s sort of like low-hanging fruit.”⁵⁸ Based on these statements and the data reflecting the actual focus of HRW’s MENA division, the relatively minimal level of activities in the closed dictatorships for many years reflected HRW’s assessment that their reports on those countries would have received little media interest.

¶48 The phrase “low hanging fruit” also refers to the easy cases in which information is readily obtained, although the actual policy impacts (as distinct from the public relations claims) will be minimal because of the overall conditions of openness, democracy and rule of law. Additionally, there is no physical or other risk to NGO employees in open countries where they can travel widely and publish allegations of abuses and suffer no penalties for errors, no matter how egregious. Emily Williams, an American NGO official in the West Bank, examined the reason for the “proliferation of NGOs” dealing with Israel and the Palestinians:

[p]eople need field experience and Palestine sounds cool and dangerous because it can be described as a war zone, but in reality it’s quite safe and has all the comforts that internationals want. Quality of life here is so much higher than somewhere like Afghanistan, but we don’t tell anyone so that we are not replaced or reassigned.⁵⁹

¶49 There is no evidence that this proliferation of NGOs in relatively accessible and safe areas has a “spill-over effect” in the sense of using the impact in the easy cases as a springboard for reforms in the more difficult and closed countries. The introduction of new legal procedures for terror suspects in Canada or Israel, for example, has no visible impact on the lack of due process in the many dictatorships and closed societies in the Middle East.

¶50 The centrality of media interest in explaining HRW’s priorities and agenda has been explained by researchers and analysts as a business strategy, in the sense that NGOs use the press coverage and publicity to leverage increased donor funding.⁶⁰ Heins has documented the ways in which NGOs working in Afghanistan, Bosnia and other areas actively competed for funding by demonstrating that they were “supplying the goods”

⁵⁷ James Ron & Howard Ramos, *Why Are the United States and Israel at the Top of Human Rights Hit Lists?*, FOREIGN POLICY (Nov. 3, 2009),

http://www.foreignpolicy.com/articles/2009/11/03/are_human_rights_groups_biased.

⁵⁸ Ben Birnbaum, *Minority Report*, THE NEW REPUBLIC (Apr. 27, 2010),

<http://www.tnr.com/article/minority-report-2?page=0,0>.

⁵⁹ Kieron Monks, *Why Your Streets Are Full of Foreigners*, THIS WEEK IN PALESTINE (Apr. 2011),

<http://thisweekinpalestine.com/details.php?id=3385&ed=193&edid=193>; *see also*, Patrizia Schlosser,

Party-Feeling im Krisengebiet: Disco Ramallah, SPIEGEL ONLINE (Jan. 18, 2012),

<http://www.spiegel.de/unispiegel/jobundberuf/party-feeling-im-krisengebiet-disco-ramallah-a-806718.html>.

⁶⁰ Ramos, *supra* note 40, at 398-99.

regarding the issues at the center of media interest.⁶¹ Similarly, the conclusions of a study published by Ramos and others are reinforced by numerous examples of publicity-driven NGO activities designed to attract donors.⁶² For example, in the recent case of conflict in Mali, a reporter notes that the “director of one large NGO told me—himself critical of the response by agencies—“NGOs prefer to work in refugee camps where there is donor interest and NGOs can achieve visibility.”⁶³ This visibility takes the form of “ample photo opportunities with which to impress donors.”⁶⁴

¶51 The links between publicity, donor relations and NGO priorities are documented in detail by Linda Polman in *The Crisis Caravan: What’s Wrong with Humanitarian Aid?* According to Polman, “funding levels rise with the incidence of violence and media interest,”⁶⁵ and NGO officials are aware of this and arrive at disaster areas with “camera teams and photographers, so that their backers could see them.”⁶⁶

¶52 NGOs also set their priorities and agenda in order to obtain media coverage to enhance their own credibility. Carroll Bogert, an HRW official, acknowledges that, “Media coverage can also act as an informal ‘stamp of approval’ for international advocacy groups. When a prominent publication cites an NGO official in a story, it signifies that the reporter, who is supposed to be knowledgeable about the issue, has determined the NGO to be credible.”⁶⁷ This media exposure, in turn, also means that the NGO is seen to “carry greater weight with the policymakers.”⁶⁸ Hence, NGOs such as HRW choose to cover stories that are in the media spotlight in order to increase their credibility and their political capital.

¶53 By focusing on countries with high media interest, HRW and the wider NGO community receive the best return on their investments. According to this theory, NGOs focus on an issue that is already in highlighted by the media, which further multiplies the cumulative impact. Ramos and Ron note that, “With few journalists urgently demanding information about Niger, it made little sense to invest substantial reporting and advocacy resources there.”⁶⁹

¶54 This justification is problematic, both on normative and policy grounds. In principle, NGOs should not choose to ignore violations of human rights in countries or regions with low media profiles. The data presented by Ramos and his colleagues on Amnesty press releases show that such activities can influence media coverage of human

⁶¹ VOLKER HEINS, NONGOVERNMENTAL ORGANIZATIONS IN INTERNATIONAL SOCIETY: STRUGGLES OVER RECOGNITION 34 (2008).

⁶² Howard Ramos, James Ron & Kathleen Rodgers, *What Shapes the West’s Human Rights Focus?*, 5 CONTEXTS, 37-38 (2006),

⁶³ Afua Hirsch, *The international response to Mali’s crisis has been woefully inadequate*, THE GUARDIAN (July 13, 2012), <http://www.guardian.co.uk/commentisfree/2012/jul/13/international-response-mali-inadequate>.

⁶⁴ *Id.*

⁶⁵ Linda Polman, *The Crisis Caravan: What’s Wrong with Humanitarian Aid?* 157 (2010).

⁶⁶ *Id.* at 68.

⁶⁷ Carroll Bogert, *Whose News? The Changing Media Landscape and NGOs*, in, *Human Rights Watch, World Report 2011* 25 (Joe Saunders et al. eds., 2011).

⁶⁸ *Id.* at 26.

⁶⁹ James Ron & Howard Ramos, *Why Are the United States and Israel at the Top of Human Rights Hit Lists?* FOREIGN POLICY (Nov. 3, 2009), http://www.foreignpolicy.com/articles/2009/11/03/are_human_rights_groups_biased.

rights abuses,⁷⁰ but the impact is significantly greater when NGOs focus on areas and issues that receive relatively little media attention.⁷¹ They conclude that “the findings also warn that NGOs should think carefully about flocking to media hotspots, since their voice appears to get lost in the multitude.”⁷² It is arguable that if NGOs like HRW and Amnesty International had issued reports and held press conferences highlighting human rights abuses in Libya or Syria, media attention might have focused on those countries, leading to international pressure and significant changes to in-country behavior.

¶55 The wider impact of NGO campaigns, whether through the media or other forms of pressure, is subject to debate. Franklin, for example, has shown that NGO “naming and shaming” in Latin America was effective in forcing changes in regime behavior, but only for a short period of time.⁷³ Burton’s research, covering a number of regions, has found that naming and shaming was only partly effective in that “[g]overnments put in the global spotlight for violations often adopt better protections for political rights afterward, but they rarely stop or appear to lessen acts of terror.”⁷⁴ Wright and Escribà-Folch research suggests that naming and shaming may be more effective in personal authoritarian regimes than in non-personal authoritarian systems.⁷⁵ In the Middle East, this analysis suggests that “naming and shaming” was particularly suited to Libya, Syria, and Iraq under Saddam Hussein.

¶56 A third explanation for the selection of particular targets for attention by global human rights organizations is based on ideological factors, particularly the impact of post-colonial ideology,⁷⁶ whose adherents seek to redress the impact of Western imperialism and capitalism on non-European societies.⁷⁷ The centrality of post-colonial ideology in the NGO sphere is reflected in the language of reports and campaigns, which often demonstrate strong support for the pre-defined “victims” of colonialism and neo-colonialism. Thus, the leaders of broadly-defined “victim societies,” such as Arabs, Africans, and other members of the “Global South,” are not examined with the same human rights expectations and norms as those applied to American and European governments and leaders. A former HRW staffer pointedly reported that “[w]hen [I] reported on Georgia, [my] firm feeling was [I] could report whatever [I] wanted . . . when [I] was talking to headquarters, the feeling was, let the chips fall where they may. [I] did not feel that way dealing with the Middle East division.”⁷⁸ In examining HRW’s agenda

⁷⁰ Ramos, *supra* note 40, at 401.

⁷¹ *Id.*

⁷² *Id.* Their final conclusion is that NGOs should split their resources between “central and peripheral” countries, both to enhance their visibility and to attain the most impact.

⁷³ James C. Franklin, *Shame on You: The Impact of Human Rights Criticism on Political Repression in Latin America*, 52 INT’L STUD. Q. 187, 207-08 (2008).

⁷⁴ Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT’L ORG. 689, 707 (2008).

⁷⁵ Joseph G. Wright & Abel Escribà-Folch, *Are Dictators Immune to Human Rights Shaming?*, 25 IBEI WORKING PAPERS 3, 6 (2009), http://www.ibei.org/images/stories/papers/WP_IBEI_25.pdf.

⁷⁶ EDWARD W. SAID, *ORIENTALISM* (1979).

⁷⁷ *Postcolonial theory and the Arab-Israel conflict* 4-5 (Phillip Carl Salzman & Donna Robinson Divine eds., 2008).

⁷⁸ Ben Birnbaum, *Minority Report*, THE NEW REPUBLIC (Apr. 27, 2010), <http://www.newrepublic.com/article/minority-report-2#>.

in the Middle East, the impact of this ideological framework manifested itself in the consistently lower emphasis on closed dictatorial regimes until the revolutions of 2011.⁷⁹

¶57 The impact of ideology on HRW's priorities is illustrated not only in the sharp contrast between the emphasis on Israel (after 1967, no longer considered to be a "victim" of colonialism) and most of the other MENA countries, but also in the contrast between MENA and other regional divisions of HRW.

VI. THE STRANGE CASE OF AMNESTY INTERNATIONAL, HRW AND LIBYA

¶58 As noted above, one of the explanations offered for neglecting Arab dictatorships is that the avoidance of friction allows for quiet cooperation with the regime to human rights practices. In this section we will examine Amnesty International's and HRW's interactions with the Gaddafi regime, and the efforts to justify these cooperative relationships based on this prism.

¶59 After seizing power in 1969, the regime headed by Moammar Gaddafi became one of the most virulent and consistent violators of human rights and a major source of international terror.⁸⁰ Throughout this period, Libya was a very closed society and an extreme police state⁸¹ with one of the worst human rights records. Gaddafi was linked to major terror attacks, including planting an explosive on Pan Am flight 103, which exploded over Lockerbie, Scotland on December 21, 1988, murdering 270 people.⁸²

¶60 However, in 2003, following the US-led overthrow of Saddam Hussein in Iraq, Libya agreed to end efforts to acquire nuclear weapons technology and renounced terrorism. In return, the US, UK, and other European governments, as well as the Western media, began to embrace Gaddafi. This support increased further after Libya accepted responsibility for the Lockerbie bombings.⁸³ As a result, the Gaddafi totalitarian regime began to receive positive media coverage. HRW and Amnesty, as well as other NGOs, played a major part in this process, voicing criticism of human rights abuses while reinforcing the image of Libya as undergoing a positive transformation.

¶61 As part of this strategy, the regime sought to improve its image as a major human rights abuser. In December 1998, the Gaddafi International Charity and Development Foundation ("GDF") was founded, headed by Saif Al-Islam Gaddafi.⁸⁴ Through the Foundation, Saif al-Islam actively sought interaction with international human rights NGOs, and in 2004, he invited Amnesty International to send a delegation to Libya. This

⁷⁹ *Examining Human Rights Watch in 2008: Double Standards and Post-Colonial Ideology*, NGO MONITOR (Jan. 13, 2009), http://www.ngo-monitor.org/data/images/File/HRW_Annual_Report_2008_Appendix.pdf.

⁸⁰ *U.S. Relations with Libya*, U.S DEPARTMENT OF STATE (Jan. 15, 2013), <http://www.state.gov/r/pa/ei/bgn/5425.htm>.

⁸¹ *Worst of the Worst 2011: The World's Most Repressive Societies*, FREEDOM HOUSE 17 (2011), <http://www.freedomhouse.org/sites/default/files/WorstOfTheWorst2011.pdf>.

⁸² *1988: Jumbo jet crashes onto Lockerbie*, BBC (Dec. 21, 1988), http://news.bbc.co.uk/onthisday/hi/dates/stories/december/21/newsid_2539000/2539447.stm.

⁸³ Felicity Barringer, *Libya Admits Culpability in Crash of Pan Am Plane*, N.Y. TIMES (Aug. 16, 2003), <http://www.nytimes.com/2003/08/16/international/middleeast/16NATI.html>.

⁸⁴ *Libya: Time to Make Human Rights a Reality*, AMNESTY INTERNATIONAL (Apr. 27, 2004), <http://www.amnesty.org/en/library/asset/MDE19/002/2004/en/0f0c0416-d631-11dd-ab95-a13b602c0642/mde190022004en.pdf>.

was Amnesty's first official site visit to Libya in fifteen years.⁸⁵ Amnesty subsequently published a harsh report on the state of Libyan human rights. However the report also praised the GDF:

[w]hile it continues to be virtually impossible for independent human rights organizations to develop in Libya, there has been limited progress with regard to allowing work on human rights violations in the country. Since its establishment in December 1998, the Human Rights Society of the Gaddafi International Foundation for Charitable Associations, presided over by Saif al-Islam al-Gaddafi, one of Colonel al-Gaddafi's sons, has become increasingly active in the field of human rights.⁸⁶

¶62 Similarly, HRW sent a delegation to Libya in 2005—the organization's first such visit to the country. Prior to 2005, reports on Libya were very limited—the organization issued only eight press releases about Libya from 2000-2005, almost all dealing with Libya's selection for the U.N. Commission on Human Rights. The subsequent report of HRW's visit, while critical of Libya, noted that "a picture emerged of a country undergoing gradual change after years of strict repression and global isolation."⁸⁷ HRW's 2006 World Report, (covering the year 2005) stated,

[t]wo human rights groups exist in Libya, most prominently the human rights program at the Qaddafi International Foundation for Charity Associations, run by Muammar Qaddafi's influential son Seif. In 2005, the foundation ran campaigns against torture and called for the release of political prisoners. A quasi-official institution, it is also the most vocal domestic critic of the government.⁸⁸

¶63 Similar language appears in subsequent HRW *World Reports*, including the 2011 edition, published days before the beginning of the Libyan uprising⁸⁹.

¶64 Despite the positive publicity that Saif Al-Islam received from Amnesty and HRW, in October 2007, he attacked Amnesty as "trying to weaken Libya by following a political agenda."⁹⁰ The specific trigger to Saif's attack is not clear; it is possible that this was partially caused by Amnesty's submission in September to the United Nation Human Rights Committee, casting doubt as to whether newspapers owned by Saif could be

⁸⁵ *Id.* at 9.

⁸⁶ *Id.* at 8.

⁸⁷ *Libya: Words to Deeds: The Urgent Need for Human Rights Reform*, HUMAN RIGHTS WATCH 1 (Jan. 25, 2006), <http://www.unhcr.org/refworld/docid/43fb19d64.html>.

⁸⁸ HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 2006 467 (Joe Saunders et al. eds., 2006), <http://www.hrw.org/sites/default/files/reports/wr2006.pdf>.

⁸⁹ HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 2011 (2011), <http://www.hrw.org/sites/default/files/reports/wr2011.pdf>.

⁹⁰ Isabelle Werenfels, Qadhafi's Libya: Infinitely Stable and Reform-Resistant?, 5 SWP RESEARCH PAPER 5, 28 (2008), http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2008_RP05_wrf_ks.pdf.

considered independent of the regime.⁹¹ In 2009, both Amnesty⁹² and HRW⁹³ were again invited to Libya by the Gaddafi Foundation. Both organizations published reports critical of the Libyan regime, but with major differences in tone this time. Amnesty expressed caution and skepticism with regards to Saif al-Islam's role:

[s]ome political commentators on Libya have identified a struggle between reformist elements, exemplified by Saif al-Islam al-Gaddafi, and reactionary forces resisting change. Others, more cynical, believe that the struggle has been fabricated to gain popularity for Saif al-Islam al Gaddafi at home and legitimacy abroad.⁹⁴

¶65 Additionally, while Amnesty's report quoted the GDF claims and statistics widely, it also cast doubt on the validity of some of the claims of the GDF.⁹⁵ Subsequently, in 2010, Amnesty was refused permission to visit Libya.⁹⁶

¶66 In contrast, HRW's 2009 reports and related publications strongly embraced the GDF. In May 2009, HRW MENA director Sarah Leah Whitson authored an article in the influential US-based *Foreign Policy*, entitled "Tripoli Spring," subtitled "How Libya's behind-the-scenes reformer is actually, well, reforming."⁹⁷ Whitson's praise of the GDF was unequivocal: "the real impetus for the transformation rests squarely with a quasi-governmental organization, the Qaddafi Foundation for International Charities and Development."⁹⁸ On December 12, 2009, HRW held what was presented as a news conference in Libya (although there is no evidence that journalists were free to pose questions) in order to present their report. A leaked U.S State Department memo noted that this singular event helped to "solidify Saif al-Islam's reputation as a 'reformer.'"⁹⁹ According to reports, the event ended in pandemonium.¹⁰⁰

¶67 In addition, following the press conference, two op-eds written by HRW officials were published in the *Guardian* and in an Institute for Policy Studies publication. The

⁹¹ *Libyan Arab Jamahiriya Addendum To Briefing To The UN Human Rights Committee*, AMNESTY INTERNATIONAL (2007), <http://www.amnesty.org/en/library/asset/MDE19/015/2007/en/91d1fafc-d368-11dd-a329-2f46302a8cc6/mde190152007en.pdf>.

⁹² *Libya: Amnesty International Completes First Fact-Finding Visit in Over Five Years*, AMNESTY INTERNATIONAL (2009), <http://www.amnesty.org/en/library/asset/MDE19/003/2009/en/d226b133-691d-41dc-aabf-ca89038618e7/mde190032009eng.html>.

⁹³ *Libya: In Repressive Atmosphere, Pockets of Improvement*, HUMAN RIGHTS WATCH, <http://www.hrw.org/news/2009/12/12/libya-repressive-atmosphere-pockets-improvement>.

⁹⁴ AMNESTY INTERNATIONAL, 'LIBYA OF TOMORROW': WHAT HOPE FOR HUMAN RIGHTS? 24 (2010), <http://www.amnesty.org/en/library/asset/MDE19/007/2010/en/65e2d9ca-3b76-4ea8-968f-5d76e1591b9c/mde190072010en.pdf>.

⁹⁵ *Id.* at 19.

⁹⁶ AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2011: THE STATE OF THE WORLD'S HUMAN RIGHTS 212 (2011), http://files.amnesty.org/air11/air_2011_full_en.pdf.

⁹⁷ Sarah Leah Whitson, *Tripoli Spring*, FOREIGN POLICY (May 27, 2009), http://www.foreignpolicy.com/articles/2009/05/26/tripoli_spring.

⁹⁸ *Id.*

⁹⁹ *HRW Releases Report From Tripoli At Lively Meeting*, THE TELEGRAPH (Jan. 31, 2011), <http://www.telegraph.co.uk/news/wikileaks-files/libya-wikileaks/8294704/HRW-RELEASES-REPORT-FROM-TRIPOLI-AT-LIVELY-MEETING.html>.

¹⁰⁰ Michael Weiss, *Human Rights Watch and Libya*, THE WEEKLY STANDARD (Mar. 4, 2011, 5:33 PM), http://www.weeklystandard.com/blogs/human-rights-watch-and-libya_552923.html.

first was titled “Is Libya Opening Up?,”¹⁰¹ and the second, written by Whitson, was entitled “Postcard from . . . Tripoli.”¹⁰² Whitson’s article linked and embraced a report by the GDF. Parallel to these developments, in 2009, Saif Al-Islam launched another human rights organization, The Arab Alliance for Democracy, Development and Human Rights (“AADDHR”), whose mandate ostensibly consisted of tracking human rights abuses in the Middle East.¹⁰³ At the launch of the AADDHR, the organization announced that it had consulted with “Amnesty International and Human Rights Watch about how to be an effective human rights organization . . .”¹⁰⁴ It is unclear whether the organizations were paid by AADDHR or the Qaddafi regime for the consultation or if the consultation resulted in any substantive policies.¹⁰⁵

¶68 This framework was very short-lived, however, and on December 16, 2010 Saif announced that he “will no longer be involved in promoting human rights and political change in the North African country.”¹⁰⁶ This announcement was reported in Amnesty’s *2011 Annual Report*,¹⁰⁷ but notably was not reported by HRW (including in their *2011 World Report*, published in January 2011).

¶69 HRW’s influence in promoting Saif al-Islam as a reformer is further reflected in both the US State Department cable, quoted above, and in the explanations provided by officials at the London School of Economics (LSE) regarding the acceptance of a 2009 contribution from the Gaddafi International Charity and Development Foundation to LSE following the granting of a doctoral degree to Saif al-Islam by the school’s Centre for Global Governance. On March 3, 2011, LSE established an independent inquiry headed by former Lord Chief Justice Woolf to investigate links between the Libyan government and LSE. The Woolf report cited Saif al-Islam’s reputation as a reformer¹⁰⁸ though it did not attribute this directly to HRW or Amnesty. In a different forum, Professor David Held, Co-Director of LSE Global Governance, sought to justify LSE’s relationship with Saif al-Islam by citing his “reputation as a reformer” based on HRW’s endorsement and the related press conference, AADDHR interaction with both Amnesty and HRW, and Whitson’s *Foreign Policy* article.¹⁰⁹

¹⁰¹ Heba Morayef, *Is Libya Opening Up?*, THE GUARDIAN (Jan. 4, 2010, 9:00 PM), <http://www.guardian.co.uk/commentisfree/libertycentral/2010/jan/04/libya-human-rights-reform>.

¹⁰² Sarah Leah Whitson, *Postcard From...Tripoli*, FOREIGN POLICY IN FOCUS (Feb. 10, 2010), http://www.fpif.org/articles/postcard_fromtripoli.

¹⁰³ *Tweaking the Tiger’s Tail: Saif Al-Islam Opens New Human Rights Organization in Libya*, THE TELEGRAPH (Jan. 31, 2011), <http://www.telegraph.co.uk/news/wikileaks-files/libya-wikileaks/8294512/TWEAKING-THE-TIGERS>.

-TAIL-SAIF-AL-ISLAM-OPENS-NEW-HUMAN-RIGHTS-ORGANIZATION-IN-LIBYA.html

¹⁰⁴ *Id.*

¹⁰⁵ PETER A. GOUREVITCH & DAVID A. LAKE, THE CREDIBILITY OF TRANSNATIONAL NGOS: WHEN VIRTUE IS NOT ENOUGH 21 (2011) (noting that integrating into the community of NGOs is a strategy for increasing credibility).

¹⁰⁶ Ian Black, *Gaddafi’s Son Retreats on Human Rights in Libya*, THE GUARDIAN (Dec. 16, 2010, 11:14 PM), <http://www.guardian.co.uk/world/2010/dec/16/gaddafi-son-human-rights-libya>.

¹⁰⁷ AMNESTY INTERNATIONAL, *supra* note 84 at 210.

¹⁰⁸ THE WOOLF INQUIRY, AN INQUIRY INTO THE LSE’S LINKS WITH LIBYA AND LESSONS TO BE LEARNED 20, 22 (2011), <http://www.woolfse.com/dl/woolf-lse-report.pdf>.

¹⁰⁹ David Held, *Dealing with Saif Gaddafi: Naivety, Complicity or Cautious Engagement?*, OPEN DEMOCRACY (Mar. 16, 2011), <http://www.opendemocracy.net/david-held/dealing-with-saif-gaddafi-naivety-complicity-or-cautious-engagement>.

¶70 This strategy of cooperation was also highlighted in the case of Fathi Eljahmi, a prominent Libyan dissident, who was imprisoned in 2004, tortured, held in solitary confinement, and subsequently died in 2009 (during the visit of another Amnesty delegation to the country). His brother condemned HRW for hesitating “to advocate publicly for Fathi’s case” which he felt was because HRW wanted to avoid “antagonizing Gaddafi.”¹¹⁰

¶71 HRW continued to promote Saif al-Islam as late as January 24, 2011. In its 2011 *World Report*, HRW repeated the claim that “[t]he only organization able to criticize human rights violations publicly is the Human Rights Society of the Gaddafi Foundation, which is chaired by Saif al-Islam al-Gaddafi.”¹¹¹ This positive evaluation continued despite the Gaddafi Foundation’s announcement that it would no longer report on human rights issues, as noted above. Less than a month later, and only after the outbreak of fighting in the revolt against the Libyan regime, Whitson acknowledged that

Saif Islam in fact abandoned his nascent reform agenda long before the past week’s demonstrations rocked ‘Brother Leader’ Moammar Kadafi’s rule . . . Saif Islam last year announced his withdrawal from political life and said that his foundation would no longer focus on human rights and political affairs.¹¹²

VII. ANALYSIS AND IMPLICATIONS

¶72 An October 2011 HRW press release, in an understated tone, declared that “Western governments’ apparent eagerness to embrace Gaddafi for his support on counterterrorism, as well as lucrative business opportunities, tempered their criticism of his human rights record in recent years.”¹¹³ This belated recognition erases the evidence, presented above, that HRW and, to a lesser degree, Amnesty, had potentially contributed to this outcome. Furthermore, it ignores the strong possibility that Amnesty and HRW’s eagerness to interact with the Gaddafi regime also tempered their criticism of Gaddafi’s regime.

¶73 In participating in Gaddafi’s political and media campaigns, these NGOs compromised their own human rights agendas, including in their failure to speak out or organize campaigns against the execution of Fathi Eljahmi. Human Rights Watch researcher Heba Morayef explained and tried to justify this strategy of cooperation: “[w]e also realized that Saif al-Islam was susceptible to international pressure, that he was a good target for us as a human rights organization within the Libyan authorities because of

¹¹⁰Mohamed Eljahmi, *Don’t Let My Brother’s Death Be In Vain*, FORBES (June 6, 2009, 12:01 PM), <http://www.forbes.com/2009/06/15/fathi-eljahmi-libya-opinions-contributors-human-rights.html>.

¹¹¹HUMAN RIGHTS WATCH, *WORLD REPORT 2011: EVENTS OF 2010* 565 (2011), <http://www.hrw.org/sites/default/files/reports/wr2011.pdf>.

¹¹²Sarah Leah Whitson, *Libya: To oust a tyrant*, L.A. TIMES (Feb 24, 2011), <http://articles.latimes.com/2011/feb/24/opinion/la-oe-whitson-libya-20110224>.

¹¹³*Libya: New Era Needs Focus on Rights: Government Should Build Rule of Law After Gaddafi’s Death*, HUMAN RIGHTS WATCH (Oct. 20, 2011), <http://www.hrw.org/news/2011/10/20/libya-new-era-needs-focus-rights>.

his direct access to his father.”¹¹⁴ When choosing to cultivate links with Saif al-Islam, HRW and Amnesty created a relationship that limited their ability to effectively criticize the regime. This reliance on Saif al-Islam in order to gain some access to Libya, as well as on the GDF for information used in their publications, came at a very high price in terms of moral principles that these human rights organizations claim to promote.

¶74 During more than six years of cooperation (2005 through early 2011), there is little evidence that HRW or Amnesty’s activities led to an improved human rights environment or practice in Libya. As the case of the LSE demonstrates, HRW in particular promoted and reinforced the image of Saif al-Islam and his father as reformers, and shielded the regime from ongoing pressure and scrutiny.

¶75 The statistical analysis of HRW’s Middle East agenda is a clear example of a consistent pattern in which human rights groups chose not to give priority to promoting human rights in closed Arab regimes. In comparison, the data on Amnesty publications shows that while their member-based advocacy campaigns were largely focused on closed societies, this emphasis was not apparent in the press releases and reports aimed at the elite opinion makers, including journalists, diplomats and others. In addition, the statistical analysis shows that both HRW and Amnesty underreported on Libya—despite official visits to Libya twice during the period under examination. This decision is partially explained by the analysis, presented above, of HRW’s and Amnesty’s relationship with the Gaddafi regime. The NGOs made a decision to promote the dictatorial government, claiming that this would provide access to Libya and encourage the development of a foundation for human rights. Amnesty’s later caution came too late to impact the regime. The absence of sustainable human rights support groups in Libya, Egypt, Syria and other countries involved in the Arab uprisings indicates that this approach failed.

¶76 The lack of focus on closed societies and the interaction with the regimes arguably contributed to the absence of a normative foundation on which to build when the revolutions in these countries occurred. The evidence presented clearly indicates that prior to the unprecedented changes in these societies beginning in 2011, none of the four objectives specified for NGO networks—agenda setting, creating norms or promoting policy changes, building networks in the region, and implementing solutions to “encourage compliance with norms” —were given significant emphasis in this region of the world.¹¹⁵ This negative outcome reinforces the criticism voiced by HRW’s founder, Robert Bernstein, and others regarding the failure of the organization to focus on promoting human rights principles in the closed Arab societies.

¶77 Despite its record, HRW is continuing to accommodate some of their agendas and activities to the Islamist parties and leaders who have become the new wielders of political power in these countries. This accusation has been voiced by women’s rights groups. In response to Kenneth Roth’s call for cooperation with the Muslim Brotherhood

¹¹⁴ Marie-Louise Gumuchian, *Special Report: How Gaddafi Scion Went from Reformer to Reactionary*, REUTERS (Apr. 11, 2012), <http://www.reuters.com/article/2012/04/11/us-libya-saif-idUSBRE83A0DL20120411>.

¹¹⁵ Price, *supra* note 15, at 584.

in Tunisia and Egypt,¹¹⁶ the heads of seventeen groups published a highly critical letter. Addressing Roth, they wrote:

[y]ou are not a state. You are the head of an international human rights organization whose role is to report on human rights violations, an honorable and necessary task which your essay largely neglects. You say, ‘It is important to nurture the rights-respecting elements of political Islam while standing firm against repression in its name,’ but you fail to call for the most basic guarantee of rights—the separation of religion from the state. You . . . are so unconcerned with the rights of women, gays, and religious minorities that you mention them only once, as follows: ‘Many Islamic parties have indeed embraced disturbing positions that would subjugate the rights of women and restrict religious, personal, and political freedoms. But so have many of the autocratic regimes that the West props up.’ Are we really going to set the bar that low? This is the voice of an apologist, not a senior human rights advocate.¹¹⁷

¶78 In a separate response to Roth and HRW, Gita Sahgal, who had previously been Amnesty International’s gender rights unit until she was forced out for criticizing this organization’s policy of accomodating Moazzam Begg, head of Cageprisoners,¹¹⁸ wrote:

[i]n both his essay and this response, HRW blurs the boundaries between support for governments and human rights advocacy. The classic work of human rights organizations is to press governments on human rights issues, not drum up support for specific regimes.¹¹⁹

¶79 Similarly, Catherine Fitzpatrick, an HRW staff member for ten years, observed that HRW’s actions in the Middle East are taken

[i]n a highly politicized manner, not recognizing the essential ‘political’ act of picking and choosing cases and priorities, and engaging with or rejecting this or that regime. Human rights are universal and this universality dictates that all countries be equally subject to scrutiny . . . human rights groups would do better to ‘go where the violations are’ instead of endlessly balancing the saddle bags—which in the case of HRW has often meant especially focusing on Israel because it can . . .¹²⁰

¹¹⁶ HUMAN RIGHTS WATCH, *supra* note 89, at 20-21.

¹¹⁷ NYRBLOG, *supra* note 1.

¹¹⁸ See Tim Golden, *Jihadist or Victim: Ex-Detainee Makes a Case*, N.Y. TIMES (June 15, 2006), <http://www.nytimes.com/2006/06/15/world/15begg.html> (indicating that Moazzam Begg was accused by the US government of having trained at terrorist camps, and of being a sympathizer, a recruiter and a financier of Al Qaeda. He is alleged to have promoted a positive view of the Taliban and Islamic fundamentalism).

¹¹⁹ *Statement by Gita Sahgal on Leaving Amnesty International*, HUMAN RIGHTS FOR ALL (Apr. 12, 2010), <http://www.human-rights-for-all.org/spip.php?article54>.

¹²⁰ NYRBLOG, *supra* note 1.

¶80 In light of this pattern of behavior, it is important that these NGOs and the wider global human rights network, including United Nations structures, be subject to systematic and autonomous examinations of, and systematic reports on, their priorities, publications and related activities. The statistical methodology employed in this paper, which applied independent and consistent measures of state behavior (the Freedom Foundation index) to assess the allocation of resources and agendas of HRW and Amnesty in the Middle East, is a demonstration of this approach. In future analyses, different indices comparing the degree of openness, democracy and human rights across countries can be devised and applied, as can various measures of NGO priorities and their impacts.

¶81 In addition, appropriate evaluation procedures regarding the activities and agendas of human rights NGOs themselves are also needed in order to identify the successful efforts, as well as the mistakes, as clearly demonstrated in the case of cooperation with the Gaddafi regime. Organizations that promote moral agendas such as human rights have the responsibility to acknowledge and accept responsibility for actions that are inconsistent with the principles that they claim to espouse.