THE PARADOX OF PARTNERSHIP: 
AMNESTY INTERNATIONAL, RESPONSIBLE ADVOCACY, AND NGO ACCOUNTABILITY

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“The legitimacy of international NGOs to act is based on universally-recognised freedoms of speech, assembly and association, on the trust people place upon us, and on the values we seek to promote. NGOs are playing an increasingly prominent role in setting the agenda in today's globalised world. This places a clear responsibility on us to act with transparency and accountability. The Accountability Charter clearly shows that NGOs are willing to adhere to a code of conduct, lead by example, and encourage others to follow.”

- Irene Khan, Secretary General of Amnesty International, on the launching of International NGO Accountability Charter, June 6, 2006

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I. INTRODUCTION: THE STORY OF GITA SAHGAL, MOAZZAM BEGG, AND AMNESTY INTERNATIONAL

On February 7th, 2010, Gita Sahgal, then head of the Gender, Sexuality and Identity Unit at Amnesty International, sparked a very public controversy about Amnesty International’s approach to its Counter Terror with Justice campaign when she spoke to the UK’s Sunday Times.² She argued that Amnesty International (“AI” or “Amnesty”) had gone too far by establishing a partnership with Moazzam Begg, a UK citizen whose ties to the Taliban were unclear. She told the Times, “I believe the campaign fundamentally damages Amnesty International’s integrity and, more importantly, constitutes a threat to human rights . . . . To be appearing on platforms with Britain’s most famous supporter of the Taliban, whom we treat as a human rights defender, is a gross error of judgment.”³

In response, AI’s Interim Secretary General,⁴ Claudio Cordone, told the Sunday Times it was “preposterous” to link Amnesty with the Taliban, noting, “Amnesty International works with Moazzam Begg as a former detainee of Guantánamo Bay and as a victim of the human rights violations suffered there . . . . Moazzam Begg has never been tried or convicted of any terrorism-related offences and has publicly rebutted accusations against him in this respect.”⁵

Sahgal does not question the legitimacy of AI’s using Begg’s testimony as a victim to advocate against incarceration without trial and against torture, but she believes, “as a supporter of the Taliban

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³ Id.
⁴ Amnesty International’s Secretary General is Salil Shetty, who began his post in June 2010. He replaces Irene Khan who left at the end of 2009 after eight years in the position. In the interim, Claudio Cordone, Senior Director for Research and Regional Programmes, acted as Interim Secretary General. It seems fair to assume that most of the practices that Sahgal was concerned about were put into place under Khan’s tenure. See Secretary General—Amnesty International, http://www.amnesty.org/en/who-we-are/our-peopleSECRETARY-GENERAL (last visited Sept. 19, 2010) (listing the duties and qualifications of Salil Shetty).
it was absolutely wrong to legitimise him as a partner.” Of the reasoning behind collaborating with Begg, Amnesty has stated, “Begg speaks powerfully from personal experience about the abuses [at Guantánamo]. He advocates effectively for detainees’ rights to due process, and does so within the same framework of universal human rights standards that we are promoting.”

How best to characterize and understand Begg’s history and sympathies remains a subject of disagreement among the various players in the AI controversy. What is known is that Begg is a UK-born citizen of Pakistani descent who has played a very public role in the discussion of the treatment of Guantánamo prisoners since his release in 2005.

After his release from Guantánamo, Begg authored Enemy Combatant: My Imprisonment at Guantánamo, Bagram, and Kandahar, a book in which he mentioned his visit to a Mujahedeen camp in Afghanistan in 1993, which he termed a “life changing experience.” He also describes becoming interested in Islamic politics in his twenties and later running a bookshop that stocked Islamist writing. Begg’s book details his harsh treatment in US custody, recounting his experience being repeatedly interrogated while at Guantánamo, and documenting his experience in solitary

8. Anne Fitzgerald, Policy Director of Amnesty’s international secretariat, said Amnesty had associated with Begg because he was a “compelling speaker” on detention, and that he had been paid expenses for attending AI events. Kerbaj, supra note 2. When asked if she thought Begg was a human rights advocate, Fitzgerald said: “[i]t’s something you’d have to speak to him about. I don’t have the information to answer that.” Id. In 2008, a board member of Amnesty’s U.S. division opposed Begg’s appearance at its annual general meeting, but was overruled. Id.
12. See id. at 224–57; Moazzam Begg, CagePrisoners, Jihad & Terrorism: a War of the Words (July 15, 2008), http://old.cageprisoners.com/articles.php?id=25420 (stating Moazzam Begg was “interrogated well over 300 times”).
confinement, where he states he was routinely dehumanized and psychologically and emotionally tormented.\textsuperscript{13}

In addition to authoring \textit{Enemy Combatant}, Begg became the primary spokesperson for the non-governmental organization (NGO) Cageprisoners, which was founded in October 2003 with the mission to “raise awareness of the plight of the prisoners at Guantánamo Bay and other detainees held as part of the War on Terror.”\textsuperscript{14} Questions remain about alleged links between Cageprisoners and radical fundamentalists, including cleric Anwar al-Awlaki, who is commonly called “the most prominent English-speaking advocate of violent jihad against the United States.”\textsuperscript{15} For his part, Moazzam Begg denies having jihadist sympathies, although he is on record as having stated that, “[t]he Taliban were better than anything Afghanistan has had in the past twenty-five years.”\textsuperscript{16} He has also admitted to giving money to Muslim combatants, “but denies being involved in any fighting himself . . . .”\textsuperscript{17}

By 2010, Begg was working on the \textit{Counter Terror with Justice} campaign with AI, which included his taking part in a European tour to ask governments to offer safe haven to Guantánamo detainees.\textsuperscript{18} It is this campaign to which Sahgal

\begin{itemize}
  \item \textsuperscript{13}See Begg, \textit{supra} note 9, at 192–223; see also \textit{Return of the ‘Enemy Combatant’—An Interview with Moazzam Begg} (July 21, 2007), http://www.cageprisoners.com/articles.php?id=21158 (describing his treatment in solitary confinement).
  \item \textsuperscript{14} \textit{About Us}, Cageprisoners, http://www.cageprisoners.com/page.php?id=2 (last visited Sept. 19, 2010).
  \item \textsuperscript{15}See Anwar al-Awlaki, N.Y. Times, http://topics.nytimes.com/topics/reference/timestopics/people/a/anwar_al_awlaki/index.html (last updated Aug. 4, 2010). Cageprisoners is also alleged to have ties to Khalid Sheikh Mohammed, alleged mastermind of the 9/11 attacks, Abu Hamza, a cleric facing extradition from Britain to US on terror charges, and Abu Qatada, a preacher who has been described as Osama Bin Laden’s “European ambassador.” See Kerbaj, \textit{supra} note 2.
  \item \textsuperscript{16}Begg, \textit{supra} note 9, at 214.
  \item \textsuperscript{17}See Driscoll, \textit{supra} note 5.
objected. In an interview with The Observer, Sahgal claimed that she first aired concerns over Amnesty’s alliance with Cageprisoners in 2008 and “was completely ignored.”

Sahgal’s story, including her suspension from Amnesty and eventual dismissal on April 9, 2010, garnered significant media attention. Soon an international petition calling for her reinstatement gathered more than 1,500 signatures, including signatures from former UN representatives, globally recognized women’s rights activists and experts, esteemed persons working on human rights in South Asia, as well as novelists and philosophers of note.

Sahgal’s supporters were varied and likely reflected a range of concerns about AI’s relationship with Cageprisoners. Based on who signed the petition, and public statements that have been made, at least two general concerns emerge: the concern that Begg may be (and this is a factual question very much in dispute) a proponent of violence against civilians and that as a result AI’s close relationship with Begg is unacceptable and has the potential to undermine the whole human rights agenda; and the concern that AI’s work with...
Cageprisoners has the potential to undermine AI’s work around women’s rights in South and Central Asia and elsewhere.\textsuperscript{23}

A. Purpose of This Article

This Article will explore questions raised by the Sahgal-Begg-AI controversy (“the AI controversy”) specifically those that relate to human rights lawyers’ obligations to their clients and other stakeholders. It will look to literature about how to best make NGOs more accountable, with a focus on the recent push to define and elucidate an understanding of “responsible advocacy.” It will seek to apply some of the core insights from the NGO accountability debate to human rights lawyering, concluding with suggested principles that could help to expand our understanding of the ethical and

decades. Christopher Hitchens, Suspension of Conscience: Amnesty International Has Lost Sight of Its Purpose, Slate, Feb. 15, 2010, http://www.slate.com/id/2244802/. As he sees it, Amnesty went wrong when its focus strayed from prisoners of conscience—inprisoned for their views and the expression of their views. Id. Hitchens states, “Amnesty International was not set up to defend everybody, no matter what they did. No organization in the world could hope to do that . . . . The entire raison d’être of the noble foundation was to defend and protect those who were made to suffer for their views.” Id. The implication appears to be that questions such as treatment of prisoners generally (and a range of related questions about how people are detained and tried) are outside the scope of what AI should be concerned about. Ironically, if one extrapolates from Hitchens’ understanding of what Amnesty should be working on, it is safe to say that Gita Sahgal’s Gender, Sexuality, and Identity division, which works to end violence against women “both in peace and in war, at the hands of the state, the community and the family,” would not be found to be within AI’s proper scope or work. Amnesty Int’l, Stop Violence Against Women, http://www.amnesty.org/en/campaigns/stop-violence-against-women (last visited Sept. 19, 2010).

professional obligations that human rights lawyers may owe their “clients” and other stakeholders.

The Article proceeds from the premise that the NGO accountability literature can provide a useful nudge to human rights lawyers by inviting them to look beyond the very helpful and well documented literature about the ethical obligations that public interest and cause lawyers owe to their clients and toward a notion of human rights organizations’ obligation as organizations to acknowledge and attend to their multiple accountabilities.

First, this Article provides a brief background of the NGO accountability field. This section provides definitions of some key terms in the NGO accountability literature, including legitimacy,

24. The Model Rules of Professional Conduct, written by the American Bar Association, define most terms critical to understand the lawyer-client relationship; however “client” is not defined. See Model Rules of Prof’l Conduct R. 1.0 (2000). This presumably deliberate omission lends itself to a broad understanding of the word.

25. According to Austin Sarat and Stuart Scheingold, when considering the notion of justice, the ethical responsibilities of traditional lawyers are conceived in a narrowly legal way. For cause lawyers, the concept of justice is more expansive, and is defined in political, social, and economic terms. “Cause lawyers trouble traditional conceptions of lawyering and the institutions which support and reproduce them. They push the boundaries of the profession, seeking to overcome alienation with belief and to break down the barriers between vocation and commitment.” Austin Sarat & Stuart Scheingold, Something to Believe In: Politics, Professionalism, and Cause Lawyering 124 (2004). Across the spectrum of goals, cause lawyers tend to work using political advocacy or legal strategies. Legal cause lawyering is focused on bringing change via litigation in the courts. Strategies may include class action suits, amicus briefs, or raising issues in the name of a particular client. Political cause lawyers focus on bringing change via political mobilization, lobbying, or participation in social movements as both activists and attorneys. Though politically motivated cause lawyers are able to present a united front with their clients, there are dangers as noted by Sarat and Scheingold. They say, “The logic and the trajectory of solidaristic representation leads inevitably to privileging cause over legal and ethical constraints.” Id. at 19.

26. Three types of accountability include “agency,” “representative,” and “mutual accountability.” In a relationship defined under agency, the organization is accountable to traditional notions of stakeholders, and expected to produce specific outputs. Representative accountability requires an organization to be accountable to constituents and thus requires constituents to have an effective voice and prolonged interest. Mutual accountability is defined as accountability among autonomous actors that is grounded in shared values and visions and in relationships of mutual trust and influence. These relationships involve shared goals, identities, and interests and as such, there is a capacity and desire to address challenges. See Global Accountabilities: Participation, Pluralism, and Public Ethics 98 (Alnoor Ebrahim & Edward A. Weisband eds., 2007).
upward accountability, and downward accountability. It also
describes the movement to make NGOs more accountable and briefly
notes the range of voluntary NGO accountability mechanisms
currently in existence.

Second, this Article introduces the 2006 International NGO
Accountability Charter (INGO Charter), which for the first time
among international organizations defined and committed
signatories to an understanding of responsible advocacy. As it so
happens, Amnesty was one of the INGO Charter’s champions,
playing a major role in its drafting and promotion. This section
quickly lays out the Charter’s history and highlights the language in
the Charter that relates to responsible advocacy. Notably, AI’s
signing and promotion of the INGO Charter has not been mentioned
publicly by any player in the Sahgal-Begg-AI controversy, although
it would seem to speak, at least indirectly, to the question of how
such controversies might be avoided and how they should be handled
once they arise.

Third, this Article will look at how the NGO accountability
debate and the INGO Charter can enhance our understanding of
responsible human rights advocacy and lawyering. Concepts such as
responsible advocacy, conflicts of interest in human rights work,
voice accountability, and partnership will be looked at in greater
detail and applied to the AI controversy. This section will finish with
a discussion of a paradox that lies at the heart of partnership in
human rights advocacy. Finally, this paper will propose some
principles that could be of use in applying NGO accountability
principles to the practice of human rights lawyering.

II. THE NGO ACCOUNTABILITY DEBATE

In the past two decades, both national and international non-
governmental organizations (NGOs or INGOs) have blossomed as the

28. Parts of this section were previously published in a working paper by
Diana Hortsch, Case Study: Defining Responsible Advocacy: The International
NGO Accountability Charter 36 app. B (2009) (working paper, on file with the
Columbia Human Rights Law Review) (discussing the creation and
implementation of the International NGO Accountability Charter).
“operational arm of civil society” and have also provided a backbone for the international human rights movement. There are estimated to be more than 50,000 INGOs in existence that draw on volunteer labor from several million people and are disbursing at least $7 billion annually, which is more than the United Nations.

Simultaneously with their increase in size and power, there have been challenges to the legitimacy of NGOs and calls for greater accountability among the sector as a whole, including human rights organizations. As articulated by Michael Edwards, organizational legitimacy can be understood as the perception that an organization is, “lawful, admissible, and justified in its current course of action . . . .” Hugo Slim has further refined this definition to include an organization’s ability to justify its “voice” and prove its effectiveness. The bases for an organization’s legitimacy can be


30. As noted by Claude E. Welch, Jr., a SUNY Distinguished Service Professor of Political Science and Director of the Human Rights Center and Program on International and Comparative Legal Studies, “the proliferation of nongovernmental organizations, or NGOs, is one of the most striking features of contemporary international politics. While states remain the major protectors—and abusers—of human rights, NGOs such as Amnesty International have emerged as central players in the promotion of human rights around the world.” See NGOs and Human Rights, http://www.upenn.edu/pennpress/book/13418.html (last visited Oct. 23, 2010) (summarizing the premise of the book); see generally NGOs and Human Rights: Promise and Performance (Claude E. Welch Jr. ed., 2000) (identifying and analyzing the goals and strategies of prominent NGOs and the resources necessary to implement them effectively in order to show that such organizations can exert pressure on states and shape public opinion and bring about improved protection of human rights around the world).


33. As Hugo Slim observes, [NGOs] had long recognized that to be credible and legitimate they were required to meet two main requirements. First, they had to justify the voice with which they spoke in their campaign materials, press conferences and private lobbying. Secondly, they had to prove the effectiveness of the things they
rooted in a range of factors, including its expertise, its political standing, its legal status, its claims about the normative basis for its actions, and whether or not the organization is considered accountable.\textsuperscript{34}

The concept of accountability is relational, asking whether and how an organization is responsible to a range of stakeholders for its performance, and for its commitment to and conformity with its ideals.\textsuperscript{35} As the desire for organizations to prove and improve their accountability grew, a range of self-regulatory mechanisms were developed. Currently, there are as many as 320 self-regulation initiatives worldwide, concentrated in the United States, Canada and Western Europe, but increasingly extant in the Global South and internationally.\textsuperscript{36}

Under these schemes, accountability is generally based on a framework including loyalty to a mission statement, transparency,\textsuperscript{37} good governance, monitoring, reporting, evaluation, and the existence of a mechanism to receive complaints and issue sanctions if an organization is found to be behaving improperly.\textsuperscript{38} In recent years, notions of accountability have been expanded to include an increased actually did in slums, villages and refugee camps around the world.

\textsuperscript{34} L. David Brown, Creating Credibility: Legitimacy and Accountability for Transnational Civil Society 34 (2008).
\textsuperscript{35} Id. at 36.
\textsuperscript{36} See Robert Lloyd & Shana Warren, Civil Society Self-Regulation: The Global Picture, One World Trust, at 2 (June 2009) (defining self-regulatory schemes as “two or more organizations coming together to either define common norms and standards to which they can be held to account or share good practices so as to improve programme effectiveness”), http://www.oneworldtrust.org/index.php?option=com_docman\&task=doc_download\&gid=377\&Itemid=55. Self-regulatory mechanisms typically involve aspirational principles, codes of conduct with set standards, or certification schemes where compliance with standards is verified by an independent third party. Lucy De La Casas & Robert Lloyd, NGO Self-Regulation: Enforcing and Balancing Accountability, One World Trust, http://www.oneworldtrust.org/index.php?option=com_docman\&task=doc_download\&gid=113\&Itemid=55. These efforts are generally voluntary, meaning that they are administered and enforced by the organization or sector whose behavior is under scrutiny.
\textsuperscript{37} To be transparent means to collect information and make it available and accessible for public scrutiny. Global Accountabilities, supra note 26, at 5.
\textsuperscript{38} See Songco, supra note 29, at 5 (citing Michael Edwards & David Hulme, Too Close For Comfort? The Impact of Official Aid on Nongovernmental Organizations, World Dev. 24 (1996)).
emphasis on so-called downward accountability to INGOs’ partners, beneficiaries, staff, supporters, and other stakeholders.\textsuperscript{39} This approach is still in its infancy and is currently less institutionalized than upward accountability mechanisms to donors and, perhaps to a lesser extent, governance structures.\textsuperscript{40}

The calls for increased accountability for INGOs were the result of a number of factors in the 1990s: 1) increased government funding for INGOs, 2) well publicized scandals involving INGOs, 3) a donor shift that emphasized the use of metrics and other forms of impact assessment, and 4) a strategy shift among major INGOs to emphasize advocacy. The final factor that fed the call for greater INGO accountability was the success of INGOs themselves in their advocacy campaigns.\textsuperscript{41} By impacting the agendas of international organizations and multinational corporations (often via loud criticism of these entities), INGOs exercised their growing power and became targets for greater scrutiny.\textsuperscript{42}

Looking at the final factor, it is important to understand that NGOs became vulnerable to challenges to their accountability as they increasingly moved away from “charity work” and toward political and human rights advocacy, putting them squarely in the accountability business. As independent organizations that sometimes act as issue advocates and public service providers, some INGOs occupy an uncomfortable space between state forces, the global governance system, and the private sector.\textsuperscript{43} In the 1990s,

\textsuperscript{39} See id. at 4.
\textsuperscript{41} See Lisa Jordan & Peter Van Tuijl, eds., NGO Accountability: Politics, Principles & Innovations 6 (2006). The Global Reporting Initiative (GRI) NGO Sector Supplement defines NGO advocacy to include “a range of activities such as public campaigning and mobilization, efforts to influence and participation in legislative processes, research, and litigation.” Global Reporting Initiative, Indicator Protocols Set Program Effectiveness (PE), in NGO Sector Supplement §1 at 6 (Global Reporting Initiative 2010), http://www.globalreporting.org/ReportingFramework/SectorSupplements/NGO/ (click on “NGOSS Program Effectiveness Indicator Protocols” link for PDF) [hereinafter NGOSS Effectiveness Indicators]. GRI is the entity responsible for creating the GRI NGO Sector Supplement (GRI NGOSS) which provides reporting guidance for non-governmental organizations to report on sustainability performance at their organizational level. The INGO Charter is among the organizations that use the GRI NGOSS.
\textsuperscript{42} See Jordan & Van Tuijl, supra note 41, at 6.
\textsuperscript{43} Id.
critics, often but not exclusively coming from the political right, began to question the INGO sector’s claim of the moral high ground in the public conversation and challenged their legitimacy as actors in a democratic system of governance. For some large INGOs such as Oxfam, an emphasis on this kind of advocacy work was relatively new, and public criticism often accompanied the shift in strategies.

A crucial aspect of the increasing criticism of NGOs in the 1990s was their successful mobilization of their supporters and stakeholders at the global level. INGOs increasingly demonstrated the power of the nonprofit sector, and by extension, their own power, via their ability to influence policy conversations at the United Nations, shadow conferences, international summits, and in the area of domestic policy. Substantial gains were made via advocacy on issues such as women’s rights, the environment, HIV/AIDS, and the banning of landmines. As Lisa Jordan and Peter van Tuijl write, “NGOs have tested the boundaries of political systems by assuming the right to mobilize and serve a public, the right to organize, and the right to monitor and comment on the governance process.”

44. See John R. Bolton, Should We Take Global Governance Seriously?, 1 Chi. J. Int’l L. 205 (2000); Kenneth Anderson & David Rieff, “Global Civil Society”: A Skeptical View, in Global Civil Society 2004/5 1.2, 1.5 (Helmut Anheier, Marlies Glasius, & Mary Kaldor eds., 2005). Anderson and Rieff challenge the notion that a global civil society exists in the traditional understanding of how civil society operates:

The analogy between civil society and global civil society rests on the assumption that the NGOs bearing these conceptual labels can and do play similar roles in very different settings . . . . They [NGOs] do not stand for office. Citizens do not vote for this or that civil society organization as their representatives because, in the end, NGOs exist to reflect their own principles, not to represent a constituency to whose interests and desires they must respond.

Id.

45. Oxfam International was famously subject to attack by The Economist with the fateful headline, “Who Elected Oxfam?” in an article about the ongoing threat of demonstrations at annual IMF and World Bank meetings after 1999’s “Battle in Seattle.” The article, entitled “Angry and Effective,” called into question exactly who Oxfam represents and how such organizations have built such a level of political power. Angry and Effective, The Economist, Sept. 23, 2000, at 85, available at http://www.economist.com/business/displaystory.cfm?story_id=374657.

III. RESPONSIBLE ADVOCACY AND THE INTERNATIONAL NGO ACCOUNTABILITY CHARTER

All of the factors mentioned above (funding, media scandals, a new focus on metrics, and a successful shift of strategies by INGOs towards advocacy work) fed the call in the 1990s for increased INGO accountability. This call was directed at a range of INGO work, but was primarily targeted at INGOs involved in advocacy.

Before going on to look at the language of the INGO Charter, this section will briefly address in more detail some of the common accountability issues that can arise in the context of INGO advocacy work.

Within the advocacy arena, notions of accountability are often understood to include two imperatives: 1) the imperative that information an INGO uses in advocacy campaigns be accurate (veracity), and 2) the imperative that an INGO be clear about on whose behalf it is speaking (authority).

To show veracity, an organization must be able to answer the question: “Can you prove it?” NGOs must be able to demonstrate the scientific and/or other legitimate bases for their claims. This can be challenging for organizations that seek to base their advocacy positions on their experience “on-the-ground,” as this may be another way of saying that many organizations rely on anecdotal evidence when developing their advocacy positions. Challenges to the veracity of fatality data published by the Save Darfur Coalition is
one example where the truthfulness of an NGO’s advocacy claims were publicly and loudly called into question at possible risk to its reputation and its mission, and perhaps to the wider cause.  

Voice accountability is often understood as the requirement that an NGO be clear on whose behalf it is speaking. As Hugo Slim points out, “[a]rguments of NGO voice accountability are essentially prepositional and hinge on the nature of their relationship with the poor or the victims of human rights violation.” This issue is demonstrated by the question: Are you speaking as, speaking with, or speaking for the effected group or individual in question? Without clarity on the question of voice, INGOs leave themselves open to the claim, perhaps accurately, that they are misrepresenting the views of the population they claim to serve.

government officials who they believe have the political power to change the lives of the men and women living in the region. According to their Unity Statement, Save Darfur works towards “[e]nding the violence against civilians; Facilitating adequate and unhindered humanitarian aid; Establishing conditions for the safe and voluntary return of displaced people to their homes; Promoting the long-term sustainable development of Darfur; and Holding the perpetrators accountable.” Save Darfur Unity Statement, http://www.savedarfur.org/pages/unity_statement (last visited Oct. 23, 2010).

53. Though Save Darfur is generally considered a legitimate organization, it has experienced real setbacks due to questions of veracity in its campaigning. In August 2007, Britain’s Advertising Standards Authority ruled that Save Darfur breached acceptable standards of truthfulness when the coalition reported that the death toll in Darfur had reached 400,000, when in fact reliable studies confirmed the death toll to be closer to 200,000. ASA Adjudication on Save Darfur Coalition, Advertising Standards Authority (August 8, 2007), http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2007/8/Save-Darfur-Coalition/TF_ADJ_42993.aspx. In a New York Times article, Sam Dealey argued that Save Darfur exaggerated statistics to gain press for the cause, and by doing so may have, “hampered aid-delivery groups, discredited American policy makers and diplomats and harmed efforts to respond to future humanitarian crises.” Sam Dealey, An Atrocity That Needs No Exaggeration, N.Y. Times, Aug. 12, 2007, at 10, available at http://www.nytimes.com/2007/08/12/opinion/12dealley.html?_r=1&scp=1&sq=An%20Atrocity%20That%20Needs%20No%20Exaggeration&st=cse.

54. Slim, supra note 32, at 6.

55. Id. at 6.

As attacks on INGOs increased, and other internal pressures made greater organizational accountability an attractive concept, four major INGOs—Greenpeace International, Amnesty International, Oxfam International, and International Save the Children Alliance—emerged as the driving force behind the creation of an INGO Charter to articulate principles of responsible NGO behavior, especially advocacy. The Charter was born out of deliberations that began in 2003, and was “launched in recognition of the need to create a platform for collective reflection, personal learning and strategic thinking to facilitate individual and collective action on common challenges and opportunities facing [INGOs] working for the promotion of public goods in diverse regions and environments.”

On June 6, 2006, a press conference was held at the Amnesty International Offices in London announcing the first eleven signatories to the Charter and launching the INGO Charter formally. Since then, the INGO Charter has moved slowly into operation. Four years later, a standardized reporting system was launched in May 2010.

57. For example, neoconservative groups such as the American Enterprise Institute (AEI) attacked the NGO sector, claiming it lacked transparency. In June 2003, AEI and the Australian think tank the Institute of Public Affairs (IPA) sponsored a conference in Washington, D.C. entitled “Non-governmental Organizations: The Growing Power of an Unelected Few.” They went on to create the NGO Watch campaign, an effort to monitor and critique organizations they claimed were using advocacy and public opinion to interfere in government negotiations and trade agreements. NGO Watch has been criticized as “right-wing campaign designed to monitor and critique ‘liberal’ UN-designed NGOs.” See Elizabeth Furdon & Jean Hardisty, Policing Civil Society: NGO Watch, The Public Eye. Spring 2004, at 1, 3, available at http://www.publiceye.org/magazine/v18n1/hardisty_ngo.html.

58. About the Charter, supra note 27.

59. In May 2010, the Global Reporting Initiative (GRI) launched the first uniform reporting system known as the NGO Sector Supplement, Sustainability Reporting Guidelines & NGO Sector Supplement. The NGO Sector Supplement provides reporting guidance for non-governmental organizations to report on sustainability performance at their organizational level and is intended to be generally applicable to a range of organizations within the sector. The full final version of the NGO Sector Supplement is available at http://www.globalreporting.org/ReportingFramework/SectorSupplements/NGO/. For 2009, an Interim Reporting Framework was used by some INGO signatories, and for the two years prior there was no uniform reporting system in place.
A. What the INGO Charter Says About Responsible Advocacy

The INGO Charter is a five-page document that lays out general aspirational and managerial principles for the INGO sector. The Charter is organized in five sections: Who We Are; How We Work; The Charter’s Purpose; Our Stakeholders; and Principles.  

Generally, the Charter reads as a fairly unremarkable statement of principles of good NGO management. Most of the standards and concepts addressed in the Charter do not veer much from generally accepted principles of good management, transparency, and good governance for nonprofit organizations that have been developed over decades of practice, particularly in the North.

On the topic of responsible advocacy, however, the Charter broke some new ground for an international agreement. The Charter addresses the question of advocacy from three points-of-view: 1) it

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61. Over the past two decades, a wide range of domestic and international organizations have agreed upon and elucidated standards for nonprofit management and governance. According to One World Trust (OWT), an NGO that conducts research, develops recommendations, and advocates for reform to make policy and decision-making processes in global governance more accountable, accountability should be understood to have four dimensions: transparency, participation, evaluation, and complaint and response mechanisms. Principles of Accountability, http://www.oneworldtrust.org/index.php?option=com_content&view=article&id=70&Itemid=72 (last visited Oct. 23, 2010). OWT estimates that today there are 320 voluntary, civil society self-regulation mechanisms around the world. “One World Trust Launches Portal on Civil Society Self-regulation,” http://www.oneworldtrust.org/index.php?option=com_content&view=article&id=245 (last visited Oct. 23, 2010). Notable organizations that put forth such standards early on include: InterAction, an organization that developed Private Voluntary Organization (PVO) standards in 1994 which act as a financial, operational, programmatic, and ethical code of conduct for member agencies, see About InterAction, http://www.interaction.org/ (last visited Oct. 23, 2010); the Australian Council for International Development (ACFID) which created a code of conduct for member organizations in 1995, see About ACFID—Australian Council for International Development, http://www.acfid.asn.au/about-acfid (last visited Oct. 23, 2010); and the Sphere Project, a code of conduct that was created in 1997 to improve the quality of assistance to people affected by disaster, and improve the accountability of states and humanitarian agencies to their constituents, donors and the affected populations. See Sphere, Humanitarian Charter and Minimum Standards in Disaster Response—About Us, http://www.sphereproject.org/content/view/91/58/lang,english/ (last visited Oct. 23, 2010).
spells out the sources of legitimacy for INGOs as they take part in advocacy and political processes, 2) it defends the INGOs’ right to act as advocates on the global stage by citing universally recognized principles, and 3) it defines what responsible advocacy should look like for INGOs.

First, in the section entitled *Who We Are*, the Charter makes an argument for INGO legitimacy, stating:

- Our right to act is based on universally-recognised freedoms of speech, assembly and association, on our contribution to democratic processes, and on the values we seek to promote.
- Our legitimacy is also derived from the quality of our work, and the recognition and support of the people with and for whom we work and our members, our donors, the wider public, and governmental and other organisations around the world.
- We seek to uphold our legitimacy by responding to inter-generational considerations, public and scientific concerns, and through accountability for our work and achievements.
- By signing this Charter we seek to promote further the values of transparency and accountability that we stand for, and commit our INGO to respecting its provisions.62

Second, in a section entitled *Respect for Universal Principles* the Charter defends the importance of INGO advocacy work, grounds it in international human rights principles, and calls attention to the proper role of INGOs in advocating for legal reform when necessary, stating:

INGOs are founded on the rights to freedom of speech, assembly and association in the Universal Declaration of Human Rights.

We seek to advance international and national laws that promote human rights, ecosystem protection, sustainable development and other public goods.

Where such laws do not exist, are not fully implemented, or [are] abused, we will highlight these issues for public debate and advocate appropriate remedial action.

In so doing, we will respect the equal rights and dignity of all human beings.63

Finally, in the *Principles* section, the Charter defines responsible advocacy, stating in full:

63. *Id.* at 3.
We will ensure that our advocacy is consistent with our mission, grounded in our work and advances defined public interests.

We will have clear processes for adopting public policy positions, (including for partners where appropriate,) explicit ethical policies that guide choices of advocacy strategy, and ways of identifying and managing potential conflicts of interest among various stakeholders.\textsuperscript{64}

IV. HUMAN RIGHTS LAWYERING AND ADVOCACY: AN NGO ACCOUNTABILITY LENS

This section will look at how the NGO accountability debate and the INGO Charter can enhance our understanding of responsible human rights advocacy and lawyering. Concepts such as responsible advocacy, conflicts of interest in human rights work, voice accountability, and partnership will be looked at in greater detail. This section will use the AI controversy as a tool for discussion, highlighting a paradox that lies at the heart of partnership in human rights advocacy, and laying the ground work for this paper’s suggested Principles for Human Rights Lawyers and Organizations in Section V.

A. Responsible Advocacy

When looking to controversies such as the one surrounding Gita Sahgal’s suspension and eventual dismissal from Amnesty, a primary question is whether the organization in question lived up to its obligations to engage in responsible advocacy.

The language of the INGO Charter can be read to have two components, one of which I will call the substantive obligation and the other I will call the procedural obligation. Signatory INGOs have made the substantive obligation to: “ensure that our advocacy is consistent with our mission, grounded in our work and advances defined public interests.”\textsuperscript{65} They have also made the procedural obligation to “have clear processes for adopting public policy positions, (including for partners where appropriate,) [sic] explicit ethical policies that guide our choices of advocacy strategy, and ways

\textsuperscript{64} Id.

\textsuperscript{65} Id.
of identifying and managing potential conflicts of interest among various stakeholders. 66

From AI’s meager public statements (to date) on the question of its relationship with Moazzam Begg and Cageprisoners, it is very difficult (if not impossible) to discern if the organization’s responsible advocacy obligations under the INGO Charter were met. As noted previously, no party in the AI controversy has made reference to the INGO Charter. 67 Nonetheless, it is helpful to review what may be required under the INGO responsible advocacy standard when applied to cases of human rights advocacy, such as the AI controversy.

1. Substantive Obligations

On the question of substantive obligations under the INGO Charter, it can be argued that Sahgal’s complaints go to the question of whether AI’s work with Begg and Cageprisoners is “consistent with [Amnesty’s] mission” and “grounded in [Amnesty’s] work.” 68 Certainly, a crucial aspect of the public discussion of this controversy has focused on whether Begg’s views are “antithetical to human rights.” 69 Perhaps more central to understanding this controversy, however, is the question of whether and/or how Amnesty met its procedural obligations under the INGO Charter. Only by going

66. Id.

67. Amnesty International’s website prominently displays its commitment to the INGO Charter. Under the “Who We Are” tab there is a link to “Accountability.” Here, visitors will find a formal system of accountability as set out in the AI statute as well as a statement that reads: “We are also committed to meeting best practice standards in operational excellence, confidentiality, public reporting and transparency.” Who We Are—Amnesty International, http://www.amnesty.org/en/who-we-are/accountability (last visited Sept. 20, 2010). See also About the Charter, supra note 27. Who We Are—Amnesty International, http://www.amnesty.org/en/who-we-are/accountability (last visited Sept. 20, 2010).

68. INGO Charter, supra note 60, at 3.

69. Interim Secretary General of Amnesty International, Claudio Cordone has been quoted as saying, “Now, Moazzam Begg and others in his group Cageprisoners also hold other views . . . for example on whether one should talk to the Taliban or on the role of jihad in self-defense.” “Are such views antithetical to human rights?” Cordone asked. “Our answer is no, even if we may disagree with them—and indeed those of us working to close Guantanamo have a range of beliefs about religion, secularism, armed struggle, peace and negotiations.” Abe Selig, Amnesty Secretary-General Ignores Row, Jerusalem Post, Apr. 7, 2010, http://www.jpost.com/International/Article.aspx?id=172534.
through the process required can the substantive questions about Amnesty’s obligations be resolved, as we will see below.

2. Procedural Obligations

Under the procedural obligations in the INGO Charter, AI has committed to having “clear processes for adopting public policy positions (including for partners where appropriate), explicit ethical policies that guide choices of advocacy strategy, and ways of identifying and managing potential conflicts of interest among various stakeholders.”

a. Stakeholders

For those engaged in human rights lawyering and advocacy, it is important to keep in mind that the concept of stakeholders used in NGO accountability literature is much broader than what is commonly associated with “client” in literature about lawyering. Traditionally, a client is understood under legal ethics to be an autonomous and sophisticated adult who is able to competently interact with her lawyer to exercise control and authority in the matter of concern, and who is free of adverse influences from other people. At its most broadly understood, stakeholders in the NGO accountability literature include anyone “who can affect or be affected by an organization’s action.” Under the INGO Charter, stakeholder is defined broadly and includes:

70. INGO Charter, supra note 60, at 3.
71. See Geoffrey C. Hazard, Jr. et al., The Law and Ethics of Lawyering 516 (4th ed. 2005) (citing Model Rule 1.2 for this characterization); Charles W. Wolfram, Modern Legal Ethics 147–48 (1986) (noting that this traditional image of a client as autonomous and in control is ‘antique’ and does not adequately acknowledge the diversity of modern clients, which can include corporations, the poor, and government, among others).
72. Caroline Neligan, et al., An Overview of International Organisations and Their External Stakeholder Engagement, One World Trust, at 12, http://www.oneworldtrust.org (click on “Publications” from the top menu bar, then click “publications by project,” then click “principles of accountability” and scroll down to article) (Jan. 1, 2004) (citing R. Edward Freeman, Strategic Management: A Stakeholders Approach (1984)). This definition is used by One World Trust, an independent think tank that conducts research, develops recommendations and advocates for reform to make policy and decision-making processes in global governance more accountable to the people they affect now and in the future, and to ensure that international laws are strengthened and applied equally to all. See One World Trust, About Us, http://
Peoples, including future generations, whose rights we seek to protect and advance; Ecosystems, which cannot speak for or defend themselves; Our members and supporters; Our staff and volunteers; Organisations and individuals that contribute finance, goods or services; Partner organisations, both governmental and non-governmental, with whom we work; Regulatory bodies whose agreement is required for our establishment and operations; Those whose policies, programmes or behaviour we wish to influence; The media; and the general public.\(^{73}\)

Thus, it is clear from the NGO accountability literature and the INGO Charter, that Sahgal is a legitimate stakeholder of AI. She has this status in at least two ways: as an employee of Amnesty, and as a person who is affected by Amnesty's policies. On the latter point, Sahgal has voiced her personal stake in a number of ways: as a women's rights activist and expert, as a person of South Asian descent who is concerned about religious radicalization in Central and South Asia, and as a person who supports secular government.\(^{74}\)

b. Conflicts of Interest

The INGO Charter requires that signatory organizations have “ways of identifying and managing potential conflicts of interest among stakeholders.”\(^{75}\) This section will look at two different ways to read the potential conflict of interest in the AI controversy, and then it will look at what procedural requirements the INGO Charter may indicate for managing potential conflicts of interest.

i. Conflicts of Interest Between Management and Program Staff

First, the AI controversy can be understood as a question of whether management at AI takes the concerns of senior program
From this point of view, the question is whether the program staff member’s interest (in this case, Sahgal’s interest in advancing or protecting AI’s work on women’s rights in South and Central Asia) conflicted with management’s interest (in this case, Amnesty’s interest in utilizing Begg as a powerful and effective speaker on behalf of Amnesty’s work for Guantánamo detainees). From the point of view of human rights advocacy, this question is more than just a matter of management styles, since one of the core substantive obligations under the INGO Charter is that advocacy be “grounded in [the organization’s] work.” This “grounded in our work” prong of the INGO Charter can be read as another way of saying that field-based knowledge and expertise of staff is important not only for an organization to be effectively run, but also for an organization’s advocacy to be responsible. Without the link to the field and expertise of its work (which requires listening effectively to staff as well as a range of other stakeholders including beneficiaries and rights holders) an NGO is hard pressed to prove its legitimacy.

76. It is worth noting that Sahgal has argued that “debate is suppressed and staff are cowed into accepting the prevailing line” at AI, while AI has dismissed this allegation and said, “We are an organisation of activists with strong and different views on how best to achieve our common goals; dissent is inevitable, indeed welcome. Decisions are reviewed.” Townsend, supra note 7.

77. Sahgal has referred to this as the management’s interest in, “the continued promotion of Moazzam Begg as the perfect victim.” Press Release, Gita Sahgal, Statement by Gita Sahgal on Leaving Amnesty International, Human Rights for All (Apr. 11, 2010), http://www.human-rights-for-all.org/spip.php?article54.

78. INGO Charter, supra note 60, at 3.

79. Hugo Slim notes, An organisation’s legitimacy is also generated from its knowledge and its relationships. What an organisation knows and whom it knows is a major source of its legitimacy. That a human rights group knows certain facts about human rights law and patterns of human rights violation is extremely important, giving it a legitimate expertise. Because NGOs know people who experience human rights violation, poverty and extreme suffering (like IDPs in protracted war), or people who are in a position to do something about it (like politicians, military leaders and TNCs) also gives these organisations legitimate contacts. The fact that an NGO has relationships with people at some or all levels of a problem of human rights violation means that it generates legitimacy from knowing such people directly. In this way, precise knowledge and the right relationships are an important and quite tangible source
ii. Conflict of Interest Between Those Concerned With Different Substantive Rights

The AI controversy can also be viewed as a question of what to do when a possible “rights conflict” emerges at an organization that endorses a broad human rights agenda. The conflict of interest here could be seen as between those stakeholders primarily concerned with different substantive rights—which goes directly to the question of Amnesty's mission.

The relevant stakeholders for human rights organizations facing this situation could be internal, external, or both. So, if this controversy is read to highlight a possible disparity of power or of legitimacy. These legitimacy assets might be summed up as valuable expertise and connections.

Slim, supra note 32, at 8–9.

80. It is worth noting here that Amnesty International came somewhat late, when compared to peer organizations, to fully embrace a broad understanding of human rights. Amnesty was slow to adopt social and economic rights as an important part of its work, and it was not historically a leader on women’s rights. In its 1998 Annual Report, Amnesty admits its mandate is “geared primarily to civil and political rights” and that AI has been a part of the imbalance between civil and political rights and economic and social rights. The report notes, “Amnesty International is now engaging in broader human rights debates and seeks to promote the full spectrum of human rights in its campaigning and human rights education activities.” Amnesty Int'l, Amnesty International Report 19 (1998). Critics of Amnesty International, including Professor Philip Alston, currently the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, have noted that AI previously spread a partial view of human rights. Specifically, Alston believes that “the result, albeit not the intention, of Amnesty's efforts is the widespread dissemination of a conception of human rights which is partial (in the sense of being incomplete) and is not a faithful reflection of the Universal Declaration and the assumptions underpinning that document (from which the Declaration derives its strength and standing).” See Philip Alston & Henry Steiner, International Human Rights in Context: Law, Politics, Morals 970 (2nd ed. 2000). He has also noted,

the great majority of Amnesty members and activists would, if pressed, provide a rather distorted list of basic human rights which would reflect the list of core ‘mandate’ issues pursued by Amnesty and little more. This distortion is essentially a consequence of the enormous success of the organization’s determination not to be diverted from the core issues as it sees them.

prestige between those senior program staff who work within AI on Guantánamo and prisoner treatment, and those who work on women’s rights and/or issues arising in South and Central Asia, then a substantive question of rights conflict emerges. In such a reading, the conflict within the organization between program staff can be seen as a proxy for a more fundamental question—which program area of work is “most important?” Which set of abstract rights should trump in this case? Do some stakeholders matter more than others? Thus, looking at the procedural obligations of a human rights organization to engage with a range of stakeholders and deal with conflicts of interest, we have gone full circle to the substantive question, enshrined in the INGO Charter, of whether Amnesty’s advocacy work with Begg and Cageprisoners was “consistent with [Amnesty’s] mission.”

To briefly unpack the mission question in the AI controversy, we must return to the two broad concerns that were expressed by supporters of Gita Sahgal. First, there is the argument that Begg’s alleged support for violence against civilians and alleged links to radical clerics such as Anwar al-Awlaki are strong enough to indicate that AI should not have a close relationship with Begg or Cageprisoners. Under this line of thinking, this relationship was wrongheaded not only because Begg is believed by some to be a proponent of violence, but also because the association undermines the legitimacy of Amnesty and its mission.

Second, there is a concern that Begg’s alleged support of the Taliban and radical Islamists undermines Amnesty’s work on women’s rights in South and Central Asia, and perhaps elsewhere. The impressive group of women’s rights activists and experts (many from the region in question) who have signed Sahgal’s petition collectively make this argument quite loudly, and give the impression that this concern may be a topic worthy of further discussion at Amnesty.

81. INGO Charter, supra note 60, at 3.
82. Sahgal herself has made this argument. On February 7th, 2010, she stated, “I believe the campaign fundamentally damages Amnesty International’s integrity and, more importantly, constitutes a threat to human rights.” Kerbaj, supra note 2.
83. The Women Human Rights Defenders International Coalition released a statement saying, “AI bears the burden of closely scrutinising that its partners do not use its platform to condone fundamentalist groups that are accountable for gross violations of women’s human rights, the rights of minorities and indiscriminate attacks on the civilian population in Afghanistan. Amidst the
In response to these two concerns, AI’s interim Secretary General, Claudio Cordone, responded in the press. He told the Sunday Times it was “preposterous” to link Amnesty with the Taliban: “Amnesty International works with Moazzam Begg as a former detainee of Guantánamo Bay and as a victim of the human rights violations suffered there... Moazzam Begg has never been tried or convicted of any terrorism-related offences and has publicly rebutted accusations against him in this respect.”

Of the reasoning behind collaborating with Begg, AI states, “Begg speaks powerfully from personal experience about the abuses there. He advocates effectively detainees’ rights to due process, and does so within the same framework of universal human rights standards that we are promoting.” Amnesty has argued that its association with Begg does not compromise its legitimacy, and points out that the organization routinely works with individuals and organizations with which it does not entirely agree.

c. Ways of Identifying and Managing Conflicts of Interest

The INGO Charter further requires that signatory organizations have “ways of identifying and managing potential conflicts of interest among stakeholders.” The standard appears to growing tendency of privileging religion and culture at the expense of women’s human rights, we must be vigilant not to undermine the extensive work we have done in exposing religious fundamentalisms and draw attention to the lack of mechanisms for accountability of non-state actors such as powerful fundamentalist forces, which have further empowered religious extremists groups such as the Taliban.” Statement by Women Human Rights Defenders International Coalition, supra note 23.

84. Driscoll, supra note 5.
85. Townsend, supra note 7.
86. Amnesty’s Widney Brown explained that AI must often work with groups with whom it disagrees:

The Catholic Church...[is] not good on women’s rights. They are horrible on gay rights. And frankly, if you look at what they say about HIV and condoms, they have blood on their hands.

Does that mean that we do not continue to work with the Catholic Church against the death penalty? Of course not... [But] we would never allow someone to use an Amnesty International platform to attack human rights.


87. INGO Charter, supra note 60, at 3.
be that a process of some sort must exist, with little guidance for human rights organizations as to what exactly it should entail. At a minimum, it would seem reasonable that when possible conflicts emerge that have serious policy implications or go to the heart of an organization's mission, then the governance structure of the organization should be utilized to make sure that policy-setting bodies are aware of the situation and can decide how to proceed.

Since Amnesty has avoided making public statements about the process it went through once management became aware of Sahgal's concerns, it is impossible to know if the organization satisfied its obligation to “manage” the potential conflict of interest. For example, it is not clear whether AI's International Executive Committee or other aspects of its governance structure were made aware of Sahgal's concerns and/or whether there was a policy-level discussion of the potential conflict or the facts in dispute.

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88. The Global Reporting Initiative NGO Sector Supplement, which is used by INGO Charter signatories for reporting, states, “[r]eporting on this indicator allows an organization to demonstrate the extent to which it has: clear processes for deciding on public policy positions (and choosing partners); explicit ethical policies to guide choices of advocacy strategy; and ways of identifying and managing potential conflicts of interest among various stakeholders.” See NGOSS Effectiveness Indicators, supra note 41.


[G]overnance implies addressing the issue of NGO vision, mission and strategy; it focuses on future directions and long-term strategic considerations; it addresses the issues of policy in relation to internal programming, staffing and resources . . . [and] focuses on defining the external positions that are consistent with the overall thrust of the NGO as an institution in civil society.

Id.

90. Note that Sahgal claims she began raising concerns in 2008. As recently as May 26, 2010, Sahgal made a public statement calling on Amnesty to raise the question of what happened with Moazzam Begg and Cageprisoners with its Executive Committee. She said: “In his reports to the International Executive Committee circulated for ‘transparency,’ the Interim Secretary General Claudio Cordone, has airbrushed out any mention of the concerns that I forced Amnesty International to face when I went public with my complaint that the organisation has sanitized the reputation of Moazzam Begg, a former Guantánamo detainee.” Gita Sahgal, Amnesty: working against oblivion?, OpenDemocracy.net (May 26, 2010), http://www.opendemocracy.net/5050/gita-sahgal/amnesty-working-against-oblivion. Amnesty has since commissioned a report which looks at the Begg case and makes general suggestions about Amnesty's partnerships. Conducted by
B. Voice Accountability

As noted previously, for NGOs to be thought of as legitimate (and thus to be effective), they need to be clear about the voice with which they speak. In short, human rights NGOs need to account not only for what they do but also for what they say and how they say it.

As Hugo Slim has usefully noted:

This sort of “voice accountability” had to respond to two areas of interrogation: the veracity of what they said and the authority with which they spoke. Although obviously linked, questions of veracity were essentially empirical (can you prove it?) while questions of authority were essentially political (from where do you derive your power to speak?).

To think seriously about voice accountability, NGOs must identify their relationship to the people for whom they advocate. The central question becomes: are you speaking as, speaking with, or speaking for the group in concern? How NGOs answer this question impacts the type of legitimacy they can claim as organizations.

1. Speaking For

When Amnesty speaks about those imprisoned in Guantánamo and campaigns on their behalf, the organization is speaking for a severely marginalized group, a group that truly cannot speak for itself. Speaking for can be thought of as the most traditional form of human rights campaigning; it is at the heart of Amnesty’s founding as an organization that historically worked on behalf of prisoners of conscience. Of course, Begg himself was in this “voiceless” group of detainees until his release in 2005. Although essential in many circumstances, the concept of an NGO speaking for those who have no voice carries within it the risk of the NGO

external consultants, the report concludes that, “Although deficiencies are present both in existing processes and in their application in the small number of cases we examined, we assess these to be within the normal limits of the complexities and imperfections of organisational life within the HR and wider NGO sector.” See Mindy Sawhney & Ravindran Daniel, Amnesty International Working with others: an independent view 11 (2010).

91. Slim, supra note 32, at 5 (original emphases omitted).
92. Id. at 6.
93. Id.
possibly harming the ability of the group in question to speak for itself.\footnote{Id. Slim explains that this issue “must be treated with great caution as it can be argued that it is in the organisational interests of middle class NGO people to keep lower class people voiceless. In other words, some voiceless-ness may be the result of NGO oppression as well as government or other violent oppression.” Id.}

2. Speaking As

After Begg was released, wrote his book, joined Cageprisoners, and began a series of public appearances, he was very clearly speaking as a former Guantánamo detainee. As Amnesty has consistently noted, Begg is a powerful voice on behalf of prisoners and their families. He is able to bring the story of Guantánamo detainees, and the story of victims of cruel, inhuman and degrading treatment, directly to the public. Speaking as is a form of advocacy that is highly legitimate because there is no intermediary in the communication—when a victim of a rights violation speaks about her own experience, the authority for her to speak is derived from the human right to speech.

3. Speaking With

The AI controversy, this paper argues, is perhaps most about whether or not AI was speaking with Moazzam Begg and Cageprisoners in the Counter Terror with Justice campaign.

There are factual disagreements between Sahgal and AI about the extent of Amnesty’s relationship with Begg and Cageprisoners. Questions such as who paid for the European tour in question, whether AI and Cageprisoners were “co-sponsors” of events, whether organizational logos shared space on public materials, and whether AI acknowledged Begg as a “human rights defender” and/or Cageprisoners as a “human rights organization” are all relevant to this speaking with analysis. Perhaps a useful question is: when Begg joined Cageprisoners and began the Counter Terror with Justice Campaign did he become more like a colleague to Amnesty than a client? For human rights lawyers and organizations, it is essential to understand that the accountability formula and considerations may
change as the nature of the relationship between a “client” or stakeholder and the organization changes.95

4. Refraining From Speech, So That Others May Be Heard

Another useful way to think about voice is to ask when a human rights lawyer or organization should refrain from speech. Kate Gilmore, former Executive Deputy Secretary General of AI, has argued that a modern approach to human rights campaigning must seek to reframe the question of voice to move beyond the “victim-savage-savior” model that she believes has been at the heart of traditional INGO human rights work for many years.96 Under Gilmore’s formulation, a poor person in the developing world is the traditional “victim,” the government is traditionally the “savage,” and Amnesty itself (and by extension its Northern donors and letter writing activists) is the “savior.”97

Under Gilmore’s understanding of the history of human rights work, the job of a major organization such as Amnesty International in the North is to now become “more of a listener and less of a talker” so that those most directly impacted can better advocate for themselves.98 Thus, Amnesty should try to sometimes be quiet, so as to not drown out the voices of partners on the ground.99 Another way of thinking of this obligation is that large human rights organizations must try to help rights-holders speak as marginalized groups whenever possible.

From this point of view, AI’s work with Begg and Cageprisoners could be seen as a significant success because this

95. The accountability literature makes it clear that as there is a shift in organizational strategies, there is a related shift in the accountability analysis. David Brown notes that NGOs sometimes seek to enhance their legitimacy by constructing new understandings of legitimacy. Brown, supra note 34, at 107. This process “requires articulating arguments for new standards, participating in the debates required to integrate them into existing discourses, creating new standards and expectations out of the discourses, and inventing ways to implement and assess them.” Id. Legitimizing new concepts and standards often requires engagement of many stakeholders and may involve months or years of debate to articulate standards and test their validity in practice. Id.


97. Id.

98. Id.

99. Id.
collaboration gave legitimacy to the *Counter Terror with Justice Campaign*—it allowed those most impacted by Guantánamo policies to speak for themselves. The counter-argument from Gita Sahgal and her supporters, of course, is that this partnership went too far, and as such threatened the universal nature of human rights.\(^{100}\) This brings us to the paradox of partnership.

C. The Paradox of Partnership

Voice accountability analysis helps to explain the AI controversy as a cautionary tale about the possible limits of partnership in human rights work. The INGO Charter commits organizations to a procedural requirement for partnerships, stating “[w]e will have clear processes for adopting public policy positions, (including for partners where appropriate).”\(^{101}\) Although on its face this language is vague, the recently finalized reporting guidelines for the INGO Charter have clarified that INGO Charter signatories are committing themselves to having a clear process for selecting partners.\(^{102}\)

The question of partnership is more than simply a question of process, however. There is a paradox at the heart of partnership for

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100. On the *Human Rights for All* website, Dr. Amrita Chhachhi of the Women, Gender and Development Program at The Hague, along with Sara Hossain, Advocate, Supreme Court of Bangladesh and Sunila Abeysekera of INFORM Human Rights Documentation Centre in Sri Lanka, comment on organizations and individuals who stand for and support the universality of human rights. They note, “it is crucial for human rights defenders and organisations to clearly define principles and core values that are non-negotiable.” They further state, “What is needed is democratic debate, internally as well as in the public sphere, on the human rights principles that should guide Amnesty International and all of us in determining our alliances. We have to ensure that the partnerships we form are true to the core human rights values of equality and universality. Our accountability in this area, internally as well as externally, to all our diverse constituencies, cannot be put at risk.” Global Petition to Amnesty International: Restoring the Integrity of Human Rights, Feb. 13, 2010, http://www.human-rights-for-all.org/spip.php?article15.


102. NGOSS Effectiveness Indicators, *supra* note 41, at 6. It is worth noting, however, that the NGOSS reporting guidelines seem to be written more with an eye toward “support[ing] partnerships between organizations” rather than with identifying potential conflicts. *See id.* at 7 (noting that “Coordination between NGOs . . . supports partnerships between organizations, which potentially can improve cost effectiveness, enhance impact, promote learning within and between organizations, and enable NGOs to develop programs that take into account best practice.”).
human rights lawyering and advocacy. Two important values can at times be in tension: the goal of empowering clients, partners and communities, and the goal of guarding and advancing the universal nature of human rights.

There is a great deal of support in the tradition of public interest and cause lawyering for the goal of empowering clients and communities. Just one example, “[client-voice lawyering]” places a premium on allowing clients to speak for themselves and to set their own agendas. In this literature, partnerships between lawyers and marginalized individuals are valued as a way to ensure that both the client and the client community have a voice. As with Kate Gilmore’s example from human rights campaigning, client-voice lawyering seeks to overcome the common power disparity between lawyer and client and put the views and voice of the client at the center of the relationship.

This goal, to listen to clients and communities and to seek to empower them, is in itself an important human rights value. The ideal of participation has long been a core concept in human rights. Basing human rights campaigning on the experience of people “on the ground” has been central to human rights work for decades, and

103. See generally Austin Sarat & Stuart Scheingold, Cause Lawyering: Political Commitments and Professional Responsibilities (1998) (defining and elucidating a range of approaches to lawyering including public interest lawyering, client-centered lawyering, impact lawyering, mobilization lawyering, client-voice lawyering, and traditional lawyering).

104. Id. at 186 (noting that “rather than translating an individual’s case into a ‘universal legal narrative,’” client-voice lawyers focus on their client’s ability to “express their own, untranslated personal narratives.”).

105. Id. (noting that Anthony Alfieri, Steve Bachman, and Gerald Lopez believe “client voice is a vital part of any true mobilization of the client community.”).


States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: . . . c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.
it remains an important aspect of NGO authenticity, which is one reason that the INGO Charter enshrines the principle that responsible advocacy must be “grounded in our work.”

The goal of empowering clients and partners at times conflicts, however, with the goal of reinforcing and defending the universality of human rights norms. Human rights norms do not work as intended if they are not recognized as universal, although the correct form of these universalist claims are the source of continual debate. The power of human rights law and institutions similarly derive from their universalist claims. The power and legitimacy of human rights organizations to exist have also been found in universal principles, specifically the freedoms of association, speech and assembly. This basis for NGO legitimacy is something that the INGO Charter both acknowledges and promotes.

107. See Slim, supra note 32, at 3 (noting that “NGOs knew instinctively that their authority came essentially from their presence in that mysterious place they call ‘the field.’”).

108. INGO Charter, supra note 60, at 3.

109. “The question of the ‘universal’ or ‘relative’ character of the rights declared in the major instruments of the human rights movement has been a source of debate and contention from the movement's start.” Philip Alston & Henry Steiner, International Human Rights in Context: Law, Politics, Morals 192 (2nd ed. 1996), “One of the intense debates in the human rights movement involves the ‘universal’ or ‘relative’ character, related to the ‘absolute’ or ‘contingent’ character, of the rights declared. The contest between the universal-relative positions and between the absolute-contingent positions is an old one.” Id. at 192.

110. “On their face, human rights instruments are surely on the ‘universalist’ side of this debate . . . . Even the vital limitations of certain rights on grounds of ‘public health or order’ or ‘national security' are cast in universal terms, although their interpretation will surely differ among cultures and states. The text of these basic instruments makes no explicit concession to cultural variation.” Id. at 193.

Thus, the procedural commitment in the INGO Charter to evaluate partners should be understood as a question of substance that goes to organizational mission. The question of with whom to partner and how far to let such relationships proceed must be understood in human rights work as one that is central to an organization’s ability to be effective and fulfill its purpose.

V. PRINCIPLES FOR HUMAN RIGHTS LAWYERS AND ORGANIZATIONS

Reflecting on what the AI controversy may teach human rights lawyers, I start with the proposition that the ethical and professional obligations that human rights lawyers owe to their “clients” extend beyond traditional notions of professional responsibility for lawyers. Looking at this controversy from an NGO accountability point of view, lawyers in human rights NGOs have organizational obligations that extend to the way an organization functions, how it determines advocacy positions, and how it negotiates among a range of stakeholders, including staff members, partners and “clients.” Thus, potential conflicts of interest for human rights organizations cannot be fully informed by looking to the Model Code of Professional Responsibility alone.113 Similarly, such

http://www.icnl.org/knowledge/pubs/ICNL-WMD_Defending_CS.pdf. See generally Patricia Armstrong, The Limits and Risks of Regulation: The Case of the World Bank-Supported Draft Handbook on Good Practices for Laws Relating to NGOs, in NGO Accountability: Politics, Principles & Innovations 61, 68–79 (Lisa Jordan & Peter Van Tuijl eds., 2006) (going into greater detail about the debate over whether NGOs, as organizations, have a right to exist separate from the individual’s right to associate).

112. INGO Charter, supra note 60, at 1 (“Our right to act is based on universally-recognised freedoms of speech, assembly and association, on our contribution to democratic processes, and on the values we seek to promote.”).

113. For a very helpful discussion of how human rights norms could possibly be incorporated into the ABA’s Code of Professional Responsibility, see Martha Davis, Human Rights and the Model Rules of Professional Conduct: Intersection and Integration, 42 Colum. Hum. Rts. L. Rev. 157 (2010). Davis writes:

Incorporation of human rights norms into the ABA’s professional code could begin with a review of the ways in which such norms might inform and infuse attorney-client relationships. Rather than focusing on human rights ends, this approach to incorporation of human rights norms would emphasize the means, or processes, of human rights and their relevance to the processes of legal representation. Human rights principles with substantial relevance to process include respect for human dignity, participation (and leadership) of
controversies cannot be informed solely by the current (and very useful) literature on “cause lawyering” or the conventional notion of conflicts between client and cause.\textsuperscript{114} 

To really grasp the AI controversy, it is essential to look at Amnesty as an advocacy organization and recognize such organizations as essential, fundamental, and powerful in the development and expansion of human rights law and norms.\textsuperscript{115} Had Amnesty placed more emphasis on the responsible advocacy aspects of its commitments under the INGO Charter, perhaps this controversy could have been minimized or averted. Nonetheless, it will never be too late for Amnesty and its colleagues in the world of human rights advocacy and law to engage with the underlying policy issues and conflicts at the heart of their work. Perhaps through such a process, Amnesty could help to build the field’s understanding of how to have uncomfortable conversations and navigate difficult choices among various parts of the human rights agenda.

The following principles suggest specific ways that NGO accountability concepts (and the INGO Charter) can be understood to expand or refine the obligations of human rights lawyers by focusing on the organizations where they work.

\textbf{Principle #1: It is crucial for Human Rights lawyers and organizations to be clear about their “voice.” }Human rights organizations must be clear about whether they are speaking for, speaking with, or speaking as the group in question. They should also be clear on when it is best to refrain from speaking so others may be heard.

\textbf{Principle #2: It is essential for Human Rights lawyers and organizations to make policy decisions and choices among clients (and/or stakeholders) and to make sure those choices are explicit and transparent. }Human rights

\begin{quote}
those most affected in crafting solutions to their problems, and recognition of the interrelationships between the full range of human rights.
\end{quote}

\textit{Id.} at 178.

\textsuperscript{114} See Sarat & Scheingold, supra note 25.

\textsuperscript{115} As Alston & Steiner note, NGOs are often the driving force behind international instruments, procedures, and support for the recognition of human rights norms. “NGOs pervade and are a vital part of the broader human rights movement. Above all, human rights NGOs bring out the facts. They also contribute to standard setting as well as to the promotion, implementation and enforcement of human rights norms.” Alston & Steiner, supra note 80, at 456.
organizations must prioritize among their various stakeholders and they must ensure that these priorities are made available to their stakeholders and the general public. This mandate includes the need to be explicit in partnership decisions.\footnote{“We will have clear processes for adopting public policy positions, (including for partners where appropriate,) [sic] explicit ethical policies that guide our choices of advocacy strategy, and ways of identifying and managing potential conflicts of interest among various stakeholders.” About the Charter, supra note 27, at 3.}

**Principle #3: As roles change, and client relationships and partnerships emerge and fall away, the accountability framework also changes.** Human rights organizations must understand that their accountabilities are multiple and will change over time. In this case, the accountability analysis may have changed at a number of points: when Begg was released from Guantánamo Bay, when he joined Cageprisoners as its primary spokesperson, when AI entered a joint campaign with Cageprisoners, and/or when the two groups arranged a joint tour lobbying governments in Europe. Thus, policy decisions about partnership must be open for continual reassessment and organizations must show both vigilance and flexibility in the way in which they approach possible accountability concerns.\footnote{This need for flexibility in partnership relationships is reminiscent of (and informed by) Michael Edward's often-quoted statement that accountability relationships between clients and the organizations who serve them must never move overly towards bureaucracy, noting, “the problem with systems of accountability is that they ‘professionalize’ a relationship between NGOs and primary stakeholders that should be continuous, immediate and human. More technical accountability mechanisms may mean less communication and relationship building between an organization and its stakeholders.” Slim, supra note 32 (citing Michael Edwards, Future Positive 204–19 (1999)).}

**Principle # 4: Because human rights principles are universal, human rights lawyers may be more constrained in their relationship(s) with clients and partners.** Human rights organizations should not overlook the potential paradox of partnership.

The universality of human rights will, and should, push organizations to look closely at their partnerships and make sure that there is robust internal and external debate when serious potential policy conflicts arise. By keeping an eye on the organizational mission in question, and the value of human rights organizations as institutions to support the larger human rights
system and development of its norms, lawyers must keep in mind exactly how much is at stake in each partner relationship.

In the case of Begg, where questions remain about whether AI’s partnership with Cageprisoners may harm other human rights principles—such as the principle of women’s equality, the principle that civilians must never be targeted for violence, and the principle of political participation—the discussion must go farther than simply asking whether Begg is a true victim of the war on terror and whether his testimony about his treatment in custody is valuable to the cause of freeing prisoners from Guantánamo Bay.

Begg’s status as a victim of the war on terror is not in question nor even truly at issue in this case. Far more challenging is the question of the nature and extent of AI’s partnership with Begg and Cageprisoners and whether Amnesty struck the appropriate balance. Interrogating the facts around Begg’s and Cageprisoners’ advocacy and the possible links to violent clerics is a challenging conversation that many at AI, and in the human rights movement as a whole, understandably might not relish. It does not help matters that the topics in need of discussion (women’s rights, the war on terror, democratic participation and religious intolerance) are quite sensitive.118

Within AI, such a conversation risked pitting departments against each other (which appears to have happened in this case, where the leader of the Gender, Sexuality and Identity Unit disagreed with those leading up AI’s Guantánamo work) and risked opening the organization up to external criticism about its foundational understanding of human rights. In this way, a range of AI stakeholders could have become aware of, and weighed in on, the policy issue under discussion.

Fear of such public exposure ended up in this case raising a far more serious question for Amnesty—what does it mean when the world’s largest human rights organization appears to be silent in the face of a possible conflict of rights? From its press releases and public statements, AI has been hesitant to admit to internal hand-wringing or policy review after Sahgal initially questioned the partnership with Begg.

118. AI likely did not want to be seen to be persecuting Begg via “guilt by association,” a concern that has been borne out in some of the writing about this controversy. See Guttenplan & Margaronis, supra note 86, at 24–25.
This is surprising for an organization that has taken a public lead on the issue of INGO accountability. Under the INGO Charter, AI had an obligation to pursue responsible advocacy, and such advocacy includes looking closely at partnerships and how they might impact AI's mission.

Whether human rights organizations attend to their multiple accountabilities, and whether they champion a nuanced understanding of human rights that acknowledges the potential for conflict within the human rights agenda, is not simply a public relations question. In the case of the AI controversy, it is a question that goes to the heart of the organization's mission and legitimacy.

To shy away from this inquiry (and to possibly keep the discussion away from policy-setting levels of an organization, such as the AI International Executive Committee) is to do damage to a far more important principle: the universal and jointly-owned nature of human rights themselves.

Potential partnerships will often bring out this paradox in human rights lawyering that we see in the AI controversy: we want to empower clients and communities to speak for themselves but we also must protect and nurture the universal nature of human rights norms. Thus, simply being “silent so that others may speak” is not always sufficient to protect and advance human rights in the context of organizational partnerships. For this reason, human rights organizations must be careful to protect their own organizational legitimacy when they enter partnerships, lest they sacrifice something even more sacred in the name of listening to and having solidarity with victims of human rights abuses.