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# Leading from Behind: The EU's Normative Power in the Multilateral Promotion of Human Rights in Africa

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## About the Author

Stephen T. Frain graduated with an M.A. in EU International Relations and Diplomacy Studies from the College of Europe in Bruges where he was a recipient of the Government of Ireland Scholarship. He also holds an LL.B. from Trinity College Dublin in Law and Political Science. During that period, he participated in a year-long exchange at the University of Helsinki. His research interests are mainly focused on multilateralism and human rights. He currently works at the EU Delegation to the Council of Europe in Strasbourg. This paper is based on his Master's thesis (Hannah Arendt Promotion).

### Editorial Team:

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Dijver 11 | BE-8000 Bruges, Belgium | Tel. +32 (0)50 477 251 | Fax +32 (0)50 477 250 |  
E-mail [ird.info@coleurope.eu](mailto:ird.info@coleurope.eu) | [www.coleurope.eu/ird](http://www.coleurope.eu/ird)

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## **Abstract**

The multilateral human rights policy of the European Union (EU) is predicated on the presumption that the human rights it promotes are universally understood. Yet, the liberal international order which underpinned these norms is in decline and the world is witnessing a shift to new modes of multilateral engagement – modes in which the EU’s vision of human rights is not necessarily the set standard. By analysing qualitative data from two case studies, this paper sets out to identify the conditions in which the EU can act normatively in these new modes of multilateralism. The paper identifies two major trends that have emerged in multilateral human rights promotion: new diplomacy and multilateralism 2.0, whose intersections form what this paper labels as rejuvenated multilateralism. It is this concept which serves as a conceptual basis for addressing the research question. This paper argues that conditions in which the EU can act normatively in configurations of rejuvenated multilateralism are determined by normative ethics. In more concrete terms, the degrees of accountability and civil society ownership shape the ability of the EU to normatively promote human rights. The findings of two case studies on multilateral human rights promotion in Africa demonstrate that the EU is best placed to act normatively when there are high levels of accountability and ownership by civil society organisations. These findings have implications both for the study of EU human rights promotion and for the EU approach to multilateralism more generally. They suggest that the EU must champion its causes by ‘leading from behind’.

## Introduction: EU Normative Ethics in a Time of Contested Universality

*"It is better to lead from behind and to put others in front... You take the front line when there is danger. Then people will appreciate your leadership."<sup>1</sup>*

Universal human rights have been enshrined as a guiding principle of the external action of the European Union (EU) and this is indicative of the EU's aspirations as a 'normative power' in global politics.<sup>2</sup> Yet, such an approach is prefaced on the understanding that normative power is based on the ability to promote principles that are accepted as universally applicable.<sup>3</sup> The increasingly attenuated status accorded to the liberal multilateral order has made the international environment increasingly less conducive to such approaches.<sup>4</sup> Therefore, the EU has been forced to adapt to novel ways to promote universal human rights in a world where not everyone sees them the same way.

This paper assesses the EU's normative power in promoting human rights in two of these new multilateral environments: transitional justice (TJ) and the Kimberley Process Certification Scheme (KP). These represent examples of rejuvenated multilateralism, that is the extension of traditional state-centric multilateral regimes to include civil society organisations (CSO) in the implementation of their work or even their recognition as partners at the decision-making table.<sup>5</sup> This raises the question: under what conditions can the EU act normatively when it must defend human rights in the new context of rejuvenated multilateralism? Whilst other studies have addressed the extent to which the EU can promote a norms-based agenda multilaterally, this paper intends to fill a gap by exploring the conditions in which the EU performs best in these more unorthodox multilateral fora.<sup>6</sup> Rejuvenated multilateralism is the intersection of

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<sup>1</sup> "Mandela in His Own Words", *CNN International*, 26-6-2008.

<sup>2</sup> M. Lerch & G. Schwellnus, "Normative by Nature? The Role of Coherence in Justifying the EU's External Human Rights Policy", *Journal of European Public Policy*, vol. 13, no. 2, 2006, p. 307.

<sup>3</sup> I. Manners, "The Normative Ethics of the European Union", *International Affairs*, vol. 84, no. 1, 2008, p. 66.

<sup>4</sup> J. Donnelly & D.J. Whelan, *International Human Rights: Dilemmas in World Politics*, New York, Routledge, 2018, p. 40.

<sup>5</sup> S.T. Frain, *Leading from Behind: An Appraisal of the EU's Normative and Multilateral Human Rights Promotion in Africa*, Master's thesis, Bruges, College of Europe, 2020.

<sup>6</sup> G. Crawford, "EU Human Rights and Democracy Promotion in Africa: Normative Power or Realist Interests?", in M. Carbone (ed.), *The European Union in Africa: Incoherent Policies, Asymmetrical Partnership, Declining Relevance*, Manchester, Manchester University Press, 2013, pp. 142-162; K.E. Smith, G. Macaj & J.A. Koops, "Inconvenient Multilateralism: The Challenges of the EU as a Player in the United Nations Human Rights Council", in J.E. Wetzel (ed.), *The EU as a "Global Player in Human Rights"*, London, Routledge, 2011, pp. 66-81.

new diplomacy and multilateralism 2.0. New diplomacy explains states' increased engagement as a response to the declining state-centricity in international relations. Multilateralism 2.0 accounts for the increased CSO decision-making powers in multilateral fora.<sup>7</sup> The best way for the EU to act normatively in the context of rejuvenated multilateralism is through 'leading from behind' – being able to reflect one's internal logics without being directly involved.<sup>8</sup>

To determine the conditions in which the EU can act normatively in rejuvenated multilateralism, one must understand what it means for the EU to be a normative power. The EU is a normative power in the sense that its external action is both informed by, and conditional upon a catalogue of norms which precipitates its very existence.<sup>9</sup> By virtue of these norms, this must also entail influencing the actions of its partners.<sup>10</sup> If the conditions are right, the EU can do so in the context of rejuvenated multilateralism. The EU does not necessarily need to be a 'frontline' leader to call itself a normative power. This is based on Ian Manners' analysis of the EU's deontological and consequentialist ethics. Deontological ethics refers to the promotion of and adherence to rules-based behaviour.<sup>11</sup> Consequentialist ethics affixes a high degree of importance on 'Other empowerment' as a means of taking into consideration the impact of the EU's actions on its partners.<sup>12</sup> The EU's deontological and consequentialist ethics are best measured by the degree to which the behaviour of an actor can be held to account (accountability) and the degree to which the EU's policies have been tailored to the values at a grassroots level in the country they are working in, that is ownership by CSO. Through two case studies on multilateral human rights promotion in Africa, this paper argues that the conditions in which the EU can act normatively are dictated by the EU's normative ethics. A high degree of accountability and a high level of CSO ownership allows the EU to act normatively. This is when the EU can 'lead from behind' – diffuse its norms without directly imposing its idea of human rights universality on the other actors in the forum.

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<sup>7</sup> J.R. Kelley, "The New Diplomacy: Evolution of a Revolution", *Diplomacy and Statecraft*, vol. 21, no. 2, 2010, pp. 286-305; L. van Langenhove, "The Transformation of Multilateralism Mode 1.0 to Mode 2.0", *Global Policy*, vol. 1, no. 3, 2010, pp. 263-270.

<sup>8</sup> M. Smith, "Beyond the Comfort Zone: Internal Crisis and External Challenge in the European Union's Response to Rising Powers", *International Affairs*, vol. 89, no. 3, 2013, p. 653.

<sup>9</sup> I. Manners, "Normative Power Europe: A Contradiction in Terms?", *Journal of Common Market Studies*, vol. 40, no. 2, 2002, p. 241.

<sup>10</sup> Manners, "Normative Ethics", *op. cit.*, p. 78.

<sup>11</sup> *Ibid.*, pp. 77-78.

<sup>12</sup> *Ibid.*, pp. 78-79.

As institutionalised multilateralism comes under strain, the challenge of exercising normative power in Africa is more pronounced than in other regions in the world.<sup>13</sup> For this reason, the paper focuses on this dilemma in the context of EU-Africa relations as 'least-likely cases' of the EU's normative power in rejuvenated multilateralism. The EU and the 'West' at large have long benefitted from a privileged position wherein their rights had been universalised as the human rights norms of global order.<sup>14</sup> Many post-colonial African nations are increasingly hesitant to be socialised into such a system, choosing to ally with each other rather than with EU or other Western countries in human rights fora. the prospect of Europe being a "key normative power" becomes more of a fading dream than an aspiring ambition.<sup>15</sup>

The EU's support for TJ and the KP were chosen because they represent the two strands of rejuvenated multilateralism: multilateralism 2.0. and new diplomacy. They underscore the cumulative importance of deontological and consequentialist ethics for the EU's ability to provide normative leadership. The success of the EU TJ policy in Sudan and Sierra Leone contrasted with the failure in the KP reveals the potential power and pitfalls of how the EU can 'lead from behind'.

What follows from here is an exploration of the reasons behind the rise of rejuvenated multilateralism and its relevance in the context of the EU's relationship with Africa. This is proceeded by the conceptual framework which is then applied in both case studies. Finally, the paper concludes by offering an assessment on what the contrasting results of both case studies mean for the future of EU normative power on human rights issues in Africa.

## **The EU and the Rise of Rejuvenated Multilateralism**

The EU is a multilateral structure whose interests and values are best served through multilateral relations.<sup>16</sup> The multilateral structures which emerged in the aftermath of the Second World War can be defined as "coordinating national policies in groups of

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<sup>13</sup> T. Benner, "What's Left of Multilateralism", *Internationale Politik*, London, Global Policy Institute, November 2019.

<sup>14</sup> O. Wæver, "A Post-Western Europe: Strange Identities in a Less Liberal World Order", *Ethics and International Affairs*, vol. 32, no.1, 2018, p. 82.

<sup>15</sup> Benner, *op. cit.*

<sup>16</sup> European External Action Service, *Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union's Foreign and Security Policy*, Brussels, 2016, p. 4.

three or more states, through ad-hoc arrangements by means of institutions".<sup>17</sup> However, the challenges of the twenty-first century have brought about fundamental changes in the way multilateral relations are conducted.<sup>18</sup> In particular, the EU's human rights promotion is conditioned by the fact that the EU now operates "in a post-Western world where new powers expect to be treated with equality".<sup>19</sup> In more concrete terms, the EU has had to make the idea of remaining committed to multilateralism "an attractive proposition" for other actors.<sup>20</sup> The EU's attempt to adapt to these challenges can be characterised as a pivot towards rejuvenated multilateralism. This paper conceptualises rejuvenated multilateralism as the extension of traditional state-centric multilateral regimes to include CSO in the implementation of their work or even their recognition as partners at the decision-making table. The greatest challenges arising in the wake of these structural changes have come from Africa. Here, the EU has found itself best placed to pursue its goals through vesting ownership of initiatives to CSO as a means of shaking off the baggage of a historically unequal relationship.<sup>21</sup> Only through assuring norms and a positive collaboration with CSO can the EU lead the causes it wants in such a way that its role expectation is one of a genuine human rights promoter.<sup>22</sup>

Rejuvenated multilateralism builds upon the CSO aspects of two important approaches: new diplomacy and multilateralism 2.0 (see Figure 1). New diplomacy is an approach proposed by J.R. Kelley which recognises the decline of state-centricity in international relations and the increasing need for further engagement with non-state actors.<sup>23</sup> The EU has over time made several adjustments to the way it engages in human rights diplomacy. One can see new diplomacy in the EU's 'effective

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<sup>17</sup> R.O. Keohane, "Multilateralism: An Agenda for Research", *International Journal*, vol. 45, no. 4, 1990, p. 731

<sup>18</sup> M.G. Schechter, "Systemic Change, International Organisations and the Evolution of Multilateralism", in J.P. Muldoon, J. Fagot Aviel, R. Reitano & E. Sullivan (eds.), *The New Dynamics of Multilateralism: Diplomacy, International Organisations and Global Governance*, New York, Routledge, pp. 23-41.

<sup>19</sup> Wæver, *op. cit.*

<sup>20</sup> O. Costa, R. Kissack & E. Barbé, "Accommodating or Entrenching? How the EU is Dealing with Changes in the Multilateral System", in E. Barbé, O. Costa & R. Kissack (eds.), *EU Policy Responses to a Shifting Multilateral System*, London, Palgrave Macmillan, 2016, p. 2.

<sup>21</sup> Council of the European Union, *The Joint Africa EU Strategic Partnership: A Joint Africa EU Strategy*, Lisbon, 2007, pp. 2-3; V.V. Miranda, N. Pirozzi & K. Schafer, "Towards a Stronger Africa-EU on Peace and Security: The Role of African Regional Organisations and Civil Society", *Istituto Affari Internazionali Working Paper*, no. 1228, Rome, Istituto Affari Internazionali, October 2012, p. 2.

<sup>22</sup> S. Schmidt, "Soft Power or Neo-Colonialist Power? – African Perceptions of the EU", *Review of European Studies*, vol. 4, no. 3, 2012, p. 103.

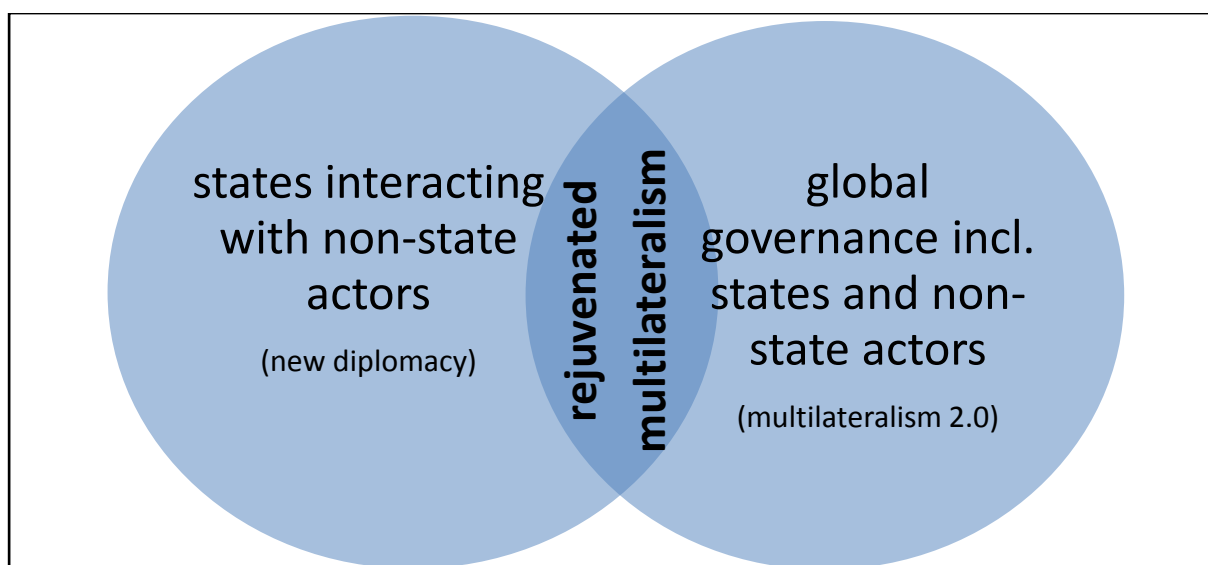
<sup>23</sup> Kelley, *op. cit.*



multilateralism' strategy. The EU supports changes in traditional modes of multilateralism which are implemented in order to stay relevant in the face of these changing dynamics and the need for "creating a greater stake for others".<sup>24</sup> Bringing CSO into the fold to achieve the objectives of traditional multilateral fora adds to the EU's normative credibility through its willingness to engage with local actors.<sup>25</sup>

Rejuvenated multilateralism is also composed of what is known as 'multilateralism 2.0'. This approach seeks to explain the redistribution of power to include non-state actors in the decision-making procedures of multilateral fora.<sup>26</sup> The significance of this transformation for the purpose of this study is that CSO are no longer dependent on the degree of autonomy or agency which state actors, or for that matter the EU, grant them. Whilst the EU aspires to be a 'champion' of the universality of human rights, this pretention has been tempered by the necessity to keep trust with "key actors in a networked world" through "more innovative forms of engagement".<sup>27</sup>

Figure 1: Visualising Rejuvenated Multilateralism



Source: compiled by the author.

<sup>24</sup> European Union, *The European Security Strategy: A Secure Europe in a Better World*, Brussels, 2003, p. 25; E. Drieskens, "Introduction: A Framework for Analysing Effective Multilateralism", in E. Drieskens & L.G. van Schaik (eds.), *The EU and Effective Multilateralism*, New York, Routledge, 2014, pp. 1-15.

<sup>25</sup> I. Manners, "Normative Power Europe Reconsidered: Beyond the Crossroads", *Journal of European Public Policy*, vol. 13, no. 2, 2006, p. 187, p. 192.

<sup>26</sup> van Langenhove, *op. cit.*, p. 267.

<sup>27</sup> European External Action Service, *Global Strategy*, *op. cit.*, pp. 17-18.

## Conceptual Framework

The EU's ability to exercise normative power in configurations of rejuvenated multilateralism is dependent on the normative ethics the EU displays, namely deontological and consequentialist ethics, in these fora. Deontological and consequentialist ethics dictate that accountability and ownership are key to measuring the normative power. Accountability, that is the degree to which actors must explain and justify their actions, ensures the normative consistency of human rights promotion. CSO ownership is about 'Other empowering' and tailoring policies to the CSO of the country in question. This is built upon the idea that a longer term, deeper relationship is more advantageous for shaping norms than to simply self-empower.

### *Accountability*

Accountability serves an important purpose in assessing the EU's normative power. It ensures that normative standards are enforced and that the behaviour of actors is held to account.<sup>28</sup> Accountability is vital for both the EU's input and output legitimacy.<sup>29</sup> However, one of the defining traits of both strands of rejuvenated multilateralism is that it deviates from the constraints of international human rights law.<sup>30</sup> Recalling the deontological ethics of the EU's external action, the ability to act normatively is contingent on the adoption of and respect for rules-governed behaviour.<sup>31</sup> In the case of rejuvenated multilateralism, the lack of a rules-based order means that the priority is to ensure that actions are normatively accountable.<sup>32</sup> The increased informality in these settings creates difficulties in ensuring that these standards are maintained. Greater accountability embeds the EU's deontological ethics and this in turn makes it easier for the EU to act normatively. For this reason,

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<sup>28</sup> M. Bovens, "Two Concepts of Accountability: Accountability as a Virtue and Accountability as a Mechanism", *West European Politics*, vol. 33, no. 5, p. 948.

<sup>29</sup> B. Kohler-Koch, "How to Put it Matters Right? Assessing the Role of Civil Society in EU Accountability", *West European Politics*, vol. 33, no. 5, 2010, p. 1124; I. Manners, "The Constitutive Nature of Values, Images and Principles in the European Union", in S. Lucarelli & I. Manners (eds.), *Values and Principles in European Foreign Policy*, London, Routledge, 2006, p. 37.

<sup>30</sup> G. Collantes-Celador, "The Defence of an Institution Under Challenge: The EU and the International Criminal Court", in E. Barbé, O. Costa & R. Kissack (eds.), *EU Policy Responses to a Shifting Multilateral System*, London, Palgrave Macmillan, p. 74; Human Rights Watch, "Human Rights Watch Statement on the Kimberley Process", *Statement*, 6-6-2016.

<sup>31</sup> Manners, "Normative Ethics", *op. cit.*, p. 77.

<sup>32</sup> Kohler-Koch, *op. cit.*, p. 1136.

accountability is one of the two key independent variables in estimating if the EU can preserve its normative credentials.

In order to assess accountability, this paper places emphasis on two equally weighted indicators – obligation enforceability and the level of CSO collaboration. Obligation enforceability is seen as the need for actors to “explain or justify his or her conduct”.<sup>33</sup> Obligation enforceability is pertinent to rejuvenated multilateralism as it ensures the expected deontological standard of accountability. The level of CSO collaboration refers to CSO ability and willingness to offer specialised knowledge in “evaluating executive behaviour”.<sup>34</sup> CSO collaboration ranges from outspoken voices of intransigent opposition to trustworthy yet critical partners.<sup>35</sup> Overall, high accountability translates to high deontological ethics and in turn creates a platform for the EU to promulgate its norms.

### *CSO Ownership*

Ownership means that the partnership must be tailored to the needs of the country in question, and that it is led by all stakeholders in that country.<sup>36</sup> If the EU’s norms are rights-based, that is based on human rights norms, then engaging with CSO who also subscribe to the universality of human rights is a very strong foreign policy tool.<sup>37</sup> Like accountability, the level of CSO ownership points to the EU’s ability to lead normatively. CSO inclusion is necessary to achieve a rights-based approach which does not disempower the Other.<sup>38</sup> Whilst other authors imply that the end goal of CSO ownership is not for the EU to act normatively, this paper and consequentialist ethics more generally questions the tenability of such arguments.<sup>39</sup> CSO participation falls into the domain of good governance, one of the EU’s normative principles.<sup>40</sup> To gauge ownership, this paper offers a framework of analysis built on the work of past studies

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<sup>33</sup> M. Bovens, “Analysing and Assessing Public Accountability: A Conceptual Framework”, *European Law Review*, vol. 13, no. 4, 2007, pp. 447-468; M. Bovens, D. Curtin & P. 't Hart, *The Real World of EU Accountability – What Deficit?*, Oxford, Oxford University Press, 2010, p. 35.

<sup>34</sup> *Ibid.*, p. 1122.

<sup>35</sup> Kochler-Koch, *op. cit.*, p. 1125.

<sup>36</sup> *Busan Partnership for Effective Development Cooperation*, Busan, 2011.

<sup>37</sup> H. Sjørnsen, “Values or Rights? Alternative Conceptions of the EU’s Normative Role”, in O. Elgström and M. Smith (eds.), *The European Union’s Roles in International Politics: Concepts and Analysis*, Abingdon, Routledge, p. 85.

<sup>38</sup> Manners, “Normative Ethics”, *op. cit.*, pp. 78-79.

<sup>39</sup> T. Diez, “Constructing the Self and Changing Others: Reconsidering Normative Power Europe”, *Journal of International Studies*, vol. 33, no. 3, 2005, p. 630.

<sup>40</sup> I. Manners, “The European Union as a Normative Power: A Response to Thomas Diez”, *Journal of International Studies*, vol. 35, no. 1, 2006, pp. 172-173.

on the role of CSO.<sup>41</sup> Simmons outlined four key factors, three of which indicate the strength of CSO in affecting multilateral activity: setting agendas, negotiating outcomes and implementing solutions.<sup>42</sup>

Simmons refers to setting agendas as putting issues on global politics' proverbial 'to-do list'.<sup>43</sup> In the multilateral context, agenda-setting is a competitive process which decides upon the placement and arrangement of issues on the agenda of multilateral talks.<sup>44</sup> Indeed, the EU has specifically referenced the inclusion of the views of human rights CSO as part of its roadmap to boosting ownership of local actors.<sup>45</sup> Without such capacity to play a role in setting the agenda, the ownership of CSO would be distinctly diminished.

The degree to which CSO views are reflected in the outcomes of the negotiation is emblematic of the sacrifice the EU and others have made to remain normative powers – the end of their monopoly on diplomacy.<sup>46</sup> If CSO can manage to share negotiation power with the EU and state actors, it goes a long way toward bolstering their normative credentials. CSO expertise can be the difference in whether or not a compromise or reconciliation is reached.<sup>47</sup>

The implementation of solutions is critical to understanding CSO ownership.<sup>48</sup> The amount of ownership CSO get through implementing an agreement contributes to the normative power of the EU because CSO have the power "to make the impossible possible by doing what governments cannot or will not".<sup>49</sup> This means that CSO can help prioritise rights-based approaches over state interests, especially when it comes

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<sup>41</sup> Simmons, *op. cit.*; R. Bejesky, "Pruning Non-Derogative Rights Human Rights Violations into an Ephemeral Sanction", *Loyola Law Review*, vol. 58, no. 821, 2012; R. Bejesky, "Pruning Non-Derogative Rights Human Rights Violations into an Ephemeral Sanction", *Loyola Law Review*, vol. 58, no. 821, 2012. Note, the fourth factor cited by Simmons, conferral of legitimacy, is as Simmons says himself, more related to the concept of accountability than ownership and is thus not included in this analysis.

<sup>42</sup> Sjursen, *op. cit.*, p. 84.

<sup>43</sup> *Ibid.*

<sup>44</sup> C. Albin & A. Young, "Setting the Table for Success – or Failure? Agenda Management in the WTO", *International Negotiation*, vol. 17, 2012, p. 38.

<sup>45</sup> Council of the European Union, "Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019", *Official Journal of the European Union*, 10897/15, Brussels, 20-7-2015, p. 9.

<sup>46</sup> Kelley, *op. cit.*, p. 287.

<sup>47</sup> Simmons, *op. cit.*, p. 86.

<sup>48</sup> *Ibid.*, p. 87.

<sup>49</sup> *Ibid.*

to addressing human rights abuses. African perceptions suggest that African actors are more amenable to engage with the EU when it is not the frontline leader.<sup>50</sup>

Together, these variables form the framework of analysis which will be used to examine each of the case studies. Table 1 provides an overview of the two variables and of their indicators. Each indicator carries the same weight, and the average value of each variables' indicators translates to the degree of the variable.

Table 1: Framework of Analysis

Variables	Indicators	Definition of indicators
<b>Accountability:</b> degree to which the behaviour of an actor can be held to account	Obligation enforceability	The degree to which actors must explain and justify their actions
	Level of CSO collaboration	The degree to which CSO have used their expertise to 'evaluate executive behaviour'
<b>CSO ownership:</b> degree of tailoring to needs of the country in question by CSO	Agenda-setting power	The power to decide upon the placement and arrangement of new issues on the agenda
	Negotiation power	The degree to which CSO can have their views reflected in negotiation outcomes
	Role in solution implementation	The intensity of involvement of CSO in the realisation of an agreement

Source: compiled by the author.

What follows from here is an application of the framework of analysis in the two case studies: EU support to TJ and its role in the KP. The paper will then use the findings of each case study to assess the conditions best suited for the EU to act normatively and how the degrees of each variable dictate this.

### **From Side-line Supporter to Standard Setter: EU Support for Transitional Justice**

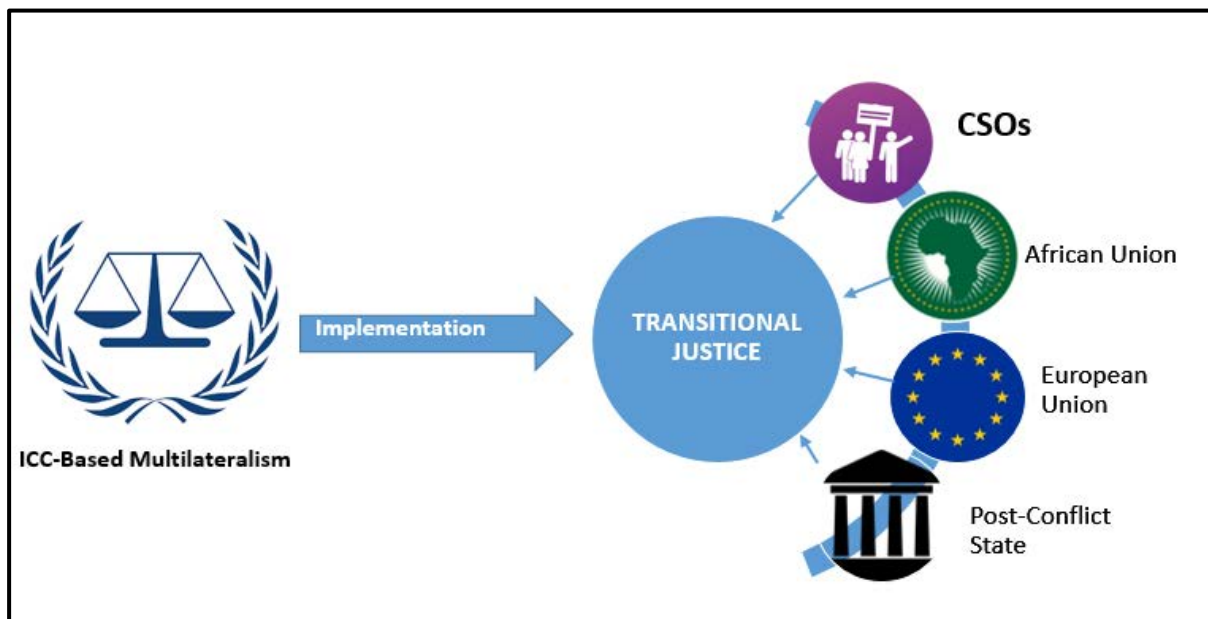
TJ can be defined as "the full range of processes and mechanisms associated with a society's attempts to come to terms with the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation".<sup>51</sup> The EU's support for TJ should be regarded as an extension of its multilateral work to ensure the universal protection of the human rights defended by International Criminal Court

<sup>50</sup> L. Fioramonti, "African Perceptions of the European Union: Assessing the Work of the EU in the Field of Democracy Promotion and Peacekeeping", Report, Stockholm, International Institute for Democracy and Electoral Assistance, 2009, pp.9-10.

<sup>51</sup> United Nations Secretary-General, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, New York, 2010, p. 28.

(ICC) (see Figure 2).<sup>52</sup> The EU's agenda with respect to the ICC is very much rights-based.<sup>53</sup> The agenda is firmly rooted in the participation of CSO, which the EU believes is essential to find redress for human rights violations.<sup>54</sup> In this sense, TJ falls into the first strand of rejuvenated multilateralism: new diplomacy. The EU's normative power in TJ has become somewhat of a success story for rejuvenated multilateralism. Whilst not a frontline actor, the EU's high normative ethics has allowed it to become a normative leader in this field.

Figure 2: Transitional Justice as a Case of Rejuvenated Multilateralism



Source: compiled by the author.

### Evaluating Accountability

Concerning obligation enforceability, the EU first of all benefits from significant rule of law protection. This means that there are laws and institutions in place to protect norms and community commitment.<sup>55</sup> The EU integrates rule of law standards into all aspects of its ICC-related work.<sup>56</sup> The African Union (AU) is similarly committed to making rule

<sup>52</sup> Interview with EEAS Official 1, via telephone, 20-4-2020.

<sup>53</sup> Manners, "Normative Ethics", *op. cit.*, p. 70.

<sup>54</sup> European Union, *The EU's Policy Framework Support to Transitional Justice*, Brussels, 2019, pp. 15.

<sup>55</sup> Rule of Law Project, "WJP Rule of Law Index 2020", *Report*, Washington D.C., 2020, p. 10.

<sup>56</sup> European Union, "Agreement between the International Criminal Court and the European Union on Cooperation and Assistance", *Official Journal of the European Union*, L115/50, 28-4-2006.

of law a guiding principle in coordination of all TJ projects.<sup>57</sup> However, even stable societies have immense difficulties in translating such ideational norms into concrete obligations.<sup>58</sup> That said, one interviewee remained confident that the EU's ambition for obligation enforcement through rule of law was a shared vision for many CSO who are better placed to realise this on the ground.<sup>59</sup> EU Special Representatives (EUSR) can also support TJ initiatives.<sup>60</sup> They act as a conduit through which the EU can assess obligation enforceability.<sup>61</sup> The interviews with EEAS officials emphasised the added value of the EUSRs' presence.<sup>62</sup> Whilst support for TJ can be explicitly referenced in an EUSR's mandate, no current mandate mentions such support. As such, although it has the potential to develop in future, it can be said that TJ has a moderate level of obligation enforceability.

Regarding the second indicator, the EU has benefited from cooperation with TJ-based CSO. CSO have been critical, but critical in such a way that it constructively helps to achieve TJ. In February 2020, a thematically cross-cutting coalition of 23 non-governmental organisations (NGOs) signed a joint letter calling for an extension of the TJ mandate in South Sudan with a list of proposals geared towards augmenting accountability through regular reports and updates.<sup>63</sup> The EU has agreed to help implement these standards through the EU Emergency Trust Fund for Africa.<sup>64</sup> A consistent track record of CSO collaboration helps ensure that those who give support in rejuvenated multilateralism are held to account as they would be in a more traditional multilateral setting.<sup>65</sup> Previous studies pointed to CSO disagreements with

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<sup>57</sup> African Union Panel of the Wise, "Peace, Justice and Reconciliation in Africa: Opportunities and Challenges in the Fight against Impunity", *The African Union Series*, New York, International Peace Institute, 2013, p. 2.

<sup>58</sup> P. McAuliffe, *Transitional Justice and Rule of Law Reconstruction: A Contentious Relationship*, London, Routledge, 2013, p. 17.

<sup>59</sup> Interview with ECDPM Official, via video call, 17-4-2020.

<sup>60</sup> European Union, *Policy Framework*, *op. cit.*, p. 14.

<sup>61</sup> Council of the European Union, Council of the European Union, "Council Conclusions – EU's Support to Transitional Justice", *Official Journal of the European Union*, 13576/15, Brussels, 16-11-2015, pp. 32-33.

<sup>62</sup> Interview with EEAS Official 1, *op. cit.*, Interview with EEAS Official 2, via video call, 2-4-2020.

<sup>63</sup> Human Rights Watch *et al.*, *Joint NGO Letter on the Mandate Renewal of the Commission on Human Rights in South Sudan*, Geneva, 6-2-2020.

<sup>64</sup> European Commission, "The European Union Emergency Trust Fund for Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa: Action Document for the Implementation of the Horn of Africa Window", *Action Document*, T05-EUTF-HOA-SS-61, Brussels, 2018.

<sup>65</sup> CIVICUS *et al.*, *Joint Letter to Human Rights Council: Upholding International Law in South Sudan*, Geneva, 23-2-2017; Global Centre for the Responsibility to Protect *et al.*, *Joint NGO Letter: UNHRC Should Renew and Strengthen Mandate of the Commission on Human Rights in South Sudan*, Geneva, 23-2-2017.

international actors on priorities such as in Sierra Leone on the number of prosecutions and the institutional legacy.<sup>66</sup> One should not forget, however, that the EU commits itself to a “no-size-fits all approach”.<sup>67</sup> African CSO are more aligned with EU values than one might think, it is a matter of improving coordination rather than a fault in collaboration.<sup>68</sup> As such, this would suggest a strong level of CSO collaboration.

### *Evaluating CSO Ownership*

First, regarding agenda-setting power, it is clear that CSO enjoy a privileged position in designing the agenda of TJ. The EU uses its Civil Society Dialogue Network (CSDN) as a mechanism for consultation.<sup>69</sup> The CSDN serves the EU as a vital means of receiving input from external CSO in the creation of the EU Policy Framework on Support to Transitional Justice.<sup>70</sup> On the African side, the Banjul Consultation of 2012 saw CSO sit alongside key actors from the AU, AU Commission and the United Nations among others, in an attempt to create a roadmap for addressing the contemporary challenges of TJ.<sup>71</sup> The EU’s and AU’s like-minded commitment to listening to the views of CSO increases the already significant degree of deference and a strong agenda-setting power on the part of CSO.

Second, concerning negotiation power, EU support to TJ processes is still closely linked to the multilateralism of the Rome Statute, which established the ICC. This means that it is national governments themselves who exercise leadership. Government intransigence is often at the expense of the CSO. In Rwanda, the Gacaca Courts were part of a post-genocide agenda for justice, which was supported by the EU.<sup>72</sup> Some CSO condemned the process for its reluctance to fully address the government’s past

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<sup>66</sup> E.E. Stensrud, “New Dilemmas in Transitional Justice: Lessons from the Mixed Courts in Sierra Leone and Cambodia”, *Journal of Peace Research*, vol. 46, no. 1, 2009, pp. 5-15.

<sup>67</sup> European Union, *Policy Framework*, *op. cit.*, p. 8.

<sup>68</sup> Interview with ECDPM Official, *op. cit.*

<sup>69</sup> European Commission, “Launch of Civil Society Dialogue Network”, *Press Release*, Brussels, 28-8-2010.

<sup>70</sup> L. Davis, “The European Union and Transitional Justice”, *European Peacebuilding Liaison Office Conference Paper*, Brussels, 3-4-2014.

<sup>71</sup> African Union, “The African Union Peace and Security Council and the Department of Political Affairs Consultations on Ensuring Greater Synergy Between the African Governance Architecture and African Peace and Security Architecture”, *Press Release*, Banjul, 10-9-2012; Centre for the Study of Violence and Reconciliation, “Enhancing the Role of the African Union in Transitional Justice in Africa”, *Briefing Note*, July 2013.

<sup>72</sup> L. Davis, *EU Foreign Policy, Transitional Justice and Mediation: Principle, Policy and Practice*, London, Routledge, 2014, p. 141.



human rights record.<sup>73</sup> The High Representative at the time acknowledged the disregard of CSO views in the decision-making process surrounding the Gacaca Courts, but emphasised that Rwanda adheres to fundamental norms of international human rights.<sup>74</sup> CSO inability to fully translate their agenda into reality is damaging, but is not necessarily an irreparable detriment to CSO ownership. The agency they hold in negotiations shows potential for improving the situation in the future. That said, as it stands, a moderate degree of their views is reflected in the outcomes.

Third, the role of CSO in the implementation of solutions is central to EU support to TJ.<sup>75</sup> The degree to which the EU can project its norms is contingent upon the extent to which their CSO partners are implementing TJ projects. South-Sudanese TJ is again emblematic of the EU's approach to favouring CSO ideas and perspectives on how to make TJ work. The EU Action Document channels funding towards certain CSO projects which it has earmarked as the best way towards implementation.<sup>76</sup> The fact that the EU remains one of the biggest donors means that the implementation plans it favours receive a significant deal of diplomatic clout and credibility.<sup>77</sup> All this infers a strong role in solution implementation.

Table 2 summarises the evaluation of accountability and CSO ownership with respect to EU support to TJ.

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<sup>73</sup> P. Gready, "‘You’re Either With Us or Against Us’: Civil Society and Policy Making in Post-Genocide Rwanda", *African Affairs*, vol. 109, no. 437, 2010, p. 641.

<sup>74</sup> Parlement européen, « Réponse donné par la Vice-présidente / Haut Représentante au nom de la Commission », *Questions parlementaires*, E-011459/2012, Bruxelles, 26-2-2013.

<sup>75</sup> Interview with EEAS Official 2, *op. cit.*

<sup>76</sup> On targeting measures see generally: European Union, "Action Document", *op. cit.* Examples of the projects listed include: South Sudan Council of Churches, *South Sudan Council of Churches Action Plan for Peace*, Juba, 4-10-2018. See also: Transitional Justice Working Group South Sudan, *Transitional Justice Working Group 2016 – 2021 Strategic Plan*, Juba, 2016.

<sup>77</sup> European Union, *Policy Framework*, *op. cit.*, p. 1.

Table 2: Transitional Justice Evaluation Grid

Variables	Indicators	Findings
<b>Accountability</b>	Obligation enforceability	<ul style="list-style-type: none"> <li>- Shared vision between EU and AU for rule of law (but difficult to ascertain at grassroots level or compare)</li> <li>- Presence of EUSR (but mandates infrequently specified)</li> </ul> <p><b>Overall: Moderate (with potential to become strong)</b></p>
	Level of CSO collaboration	<ul style="list-style-type: none"> <li>- Single voice for reform</li> <li>- Thematically crosscutting coalitions of both local and international CSO</li> <li>- Some difficulties in communicating priorities (Sierra Leone)</li> </ul> <p><b>Overall: Strong</b></p>
	<b>Total accountability</b>	<b>TJ exemplifies a strong level of accountability</b>
<b>CSO ownership</b>	Agenda-setting power	<ul style="list-style-type: none"> <li>- EU and its partners give a high degree of deference to CSO expertise</li> <li>- EU and AU hold to varying degrees institutionalised dialogues on TJ with CSO</li> </ul> <p><b>Overall: Strong</b></p>
	Negotiation power	<ul style="list-style-type: none"> <li>- States unwilling to address human rights abuses do not take on board CSO advice (but by-and-large TJ countries share the EU and CSO normative agenda)</li> </ul> <p><b>Overall: Moderate</b></p>
	Role in solution implementation	<ul style="list-style-type: none"> <li>- EU track record of only supporting projects in which CSO have implementation power – this increases consideration given to CSO implementation proposals significantly</li> </ul> <p><b>Overall: Strong</b></p>
	<b>Total CSO ownership</b>	<b>TJ exemplifies a strong level of CSO ownership</b>

Source: compiled by the author.

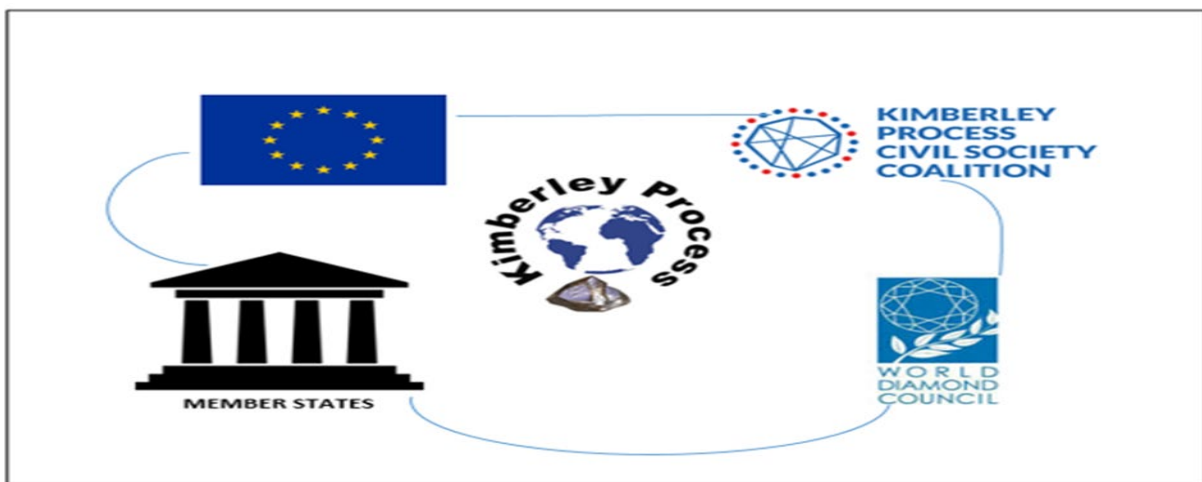
Overall, TJ highlights the potential for the EU to act normatively through rejuvenated multilateralism. The level of accountability is strong. Obligations are primarily enforced through the rule of law and CSO collaboration is present at a broad crosscutting level. There is potential for further accountability, given the fact that the EU and the AU share largely similar visions on mapping this to a grassroots level. TJ allows for a strong degree of ownership. The degree of deference accorded to CSO alludes to significant agenda-setting power. Transposing agenda-setting power into negotiation outcomes is not straightforward, but there is room for improvement if fundamental human rights norms have been established. CSO-based implementation projects also give EU-backed TJ more credibility than it could otherwise have. TJ plays a decisive role in helping revitalise the EU's aspirations to make human rights universality a reality. It illustrates the potential of the EU's normative power when both accountability and

CSO ownership are high. It gives the EU the chance to strengthen its normative identity and to influence standards, even though it is not a frontline actor in the process. This aligns with the idea that EU can be a normative leader from a marginal position.

### Normative Power in Paralysis: The Case of the Kimberley Process

At the time of its inception in 2003, the KP was initially hailed as an “unprecedented multilateral effort”.<sup>78</sup> It came about after CSO exposed endemic links between the trade of conflict diamonds and the violations of international human rights law in Angola and Sierra Leone.<sup>79</sup> The KP commits to be “inclusive of all concerned stakeholders, namely producing, exporting and importing states, the diamond industry and civil society” in the decision-making process (see Figure 3).<sup>80</sup> It is one of the first concrete realisations of ‘multilateralism 2.0’, the second strand of rejuvenated multilateralism. It has since been derided as a “watchdog without teeth” for failures to address systematic human rights abuses.<sup>81</sup> The KP’s paucity of effectiveness has impacted on the credibility of the EU to promulgate norms. This case study stands in stark contrast to that of TJ. Using the framework of analysis, this section evaluates the extent to which the conditions of the KP allow the EU to operate as a normative power.

Figure 3: The Kimberley Process as a Case of Rejuvenated Multilateralism



Source: compiled by the author.

<sup>78</sup> T.M. Price, “The Kimberley Process: Conflict Diamonds, WTO Obligations and the Universality Debate”, *Minnesota Journal of Global Trade*, vol. 12, no. 1, 2003, p. 1.

<sup>79</sup> Global Witness, Report, *A Rough Trade*, London, Global Witness, 1998; I. Smille, L. Gberie & R. Hazelton, *The Heart of the Matter: Sierra Leone, Diamonds and Human Security (Complete Report)*, Partnership Africa Canada, Addis Ababa, 2000.

<sup>80</sup> Kimberley Process, *Kimberley Process Certification Scheme Core Document Amended*, Gauteng, 2013, p. 1.

<sup>81</sup> *International Coalition Issues Kimberley Report Card*, 13-2-2002, quoted in T.M. Price, *op. cit.*, p. 12.

### *Evaluating Accountability*

First of all, KP obligation enforcement suffers from deficiencies in its peer review mechanism.<sup>82</sup> The starkest shortcoming is the fact that this mechanism operates on a voluntary and consensual basis.<sup>83</sup> This means enforcement is contingent on the state agreeing to a review and the potential penalties that could come with it.<sup>84</sup> Key CSO actors involved have described the peer reviews as “a parody of effective monitoring” in which human rights abuses are “ignored, and there is little or no follow up”.<sup>85</sup> The EU has admitted that it is not satisfied with the enforceability of the peer review mechanism.<sup>86</sup> In 2009, the EU found itself at the centre of an accountability debate which almost brought about the collapse of the KP. CSO raised the alarm after mining sites in Marange, Zimbabwe, had become the site of pervasive human rights abuses including arbitrary arrests, child labour and extrajudicial executions, as part of an attempt to seize control of the diamond mines in the region.<sup>87</sup> It proved impossible for the KP to collectively condemn Zimbabwe. Any action the EU or others risked a backlash from the Zimbabwean-backed coalition, who castigated attempts to enforce human rights standards as patronising assertions of colonial superiority.<sup>88</sup> The lack of obligation enforceability meant the EU could only stand by and watch. It is clear that obligation enforceability in the KP is too weak to be fit for purpose when it comes to human rights protection.

Second, with respect to the level of CSO cooperation, empirical evidence suggests that CSO animosity following the Marange crisis undermined the EU’s ability to cooperate with the KP. A number of human rights groups walked out on the KP completely. Global Witness, a founding member of the KP, was one of the most notable departures. It condemned the KP as “an accomplice” to diamond laundering and the abuses which stemmed from it.<sup>89</sup> Disconcertingly, in doing so, Global Witness

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<sup>82</sup> Kimberley Process, “Working Group on Monitoring”, <https://www.kimberleyprocess.com/en/monitoring-wgm>

<sup>83</sup> Kimberley Process, *2019 Administrative Decision on Peer Review System*, AD/Delhi/2019/02, New Delhi, 22-11-2019, p. 2.

<sup>84</sup> *Ibid.*, p. 4.

<sup>85</sup> I. Smilie, Chair of the Diamond Development Initiative, speech, New York, Rapaport International Diamond Conference, 10-9-2009.

<sup>86</sup> European Union, *Kimberley Process Communiqué Brussels Plenary*, Brussels, 2018.

<sup>87</sup> Human Rights Watch, Report, *Diamonds in the Rough: Human Rights Abuses in the Marange Diamond Fields of Zimbabwe*, London, 2009.

<sup>88</sup> Interview with EEAS Official 2, *op. cit.*

<sup>89</sup> Global Witness, “Global Witness Leaves the Kimberley Process, Calls for Diamond Trade to be Held Accountable”, *Press Release*, London, 2-12-2011.

discharged itself of its role and disregarded the structural premise of the KP. The tripartite nature of the KP foresees that not only states, but industry and CSO have a joint role to play. A cross-analysis of the most recent Annual Report of the Civil Society Coalition and the EU Chairmanship Communiqué seems to point to a re-emergence of common ground. Positive capacity-building cooperation with CSO in the Mano River Union (MRU) countries (Côte d'Ivoire, Liberia, Sierra Leone), suggests that there may still be hope of restoring a relationship built on a commitment to common norms, but the scars of the Global Witness walkout mean cooperation is still weak. The EU admitted that KP reform needs to address this.<sup>90</sup>

### *Evaluating CSO Ownership*

When it comes to agenda-setting power, the tripartite structure of the KP recognises the awareness-raising role of CSO. The EU and others rely on the CSO to sound the 'early-warning' alarm on human rights issues and it is their awareness raising which brings such abuses into the remit of the KP.<sup>91</sup> CSO together account for a formidable constituency in the KP: the Kimberley Process Civil Society Coalition (KPCSC). The KPCSC are present across the KP, having seats as either members or observers in all working groups and committees of the KP.<sup>92</sup> The KPCSC has been an impetus for reform, for instance, it spurred the establishment of the Ad Hoc Committee on Review and Reform.<sup>93</sup> There are some issues which the EU and other KP member states are unable to address alone, and the CSO agenda-setting power creates a platform for discussion which otherwise would not be possible.<sup>94</sup> CSO overall enjoy a moderate level of agenda-setting power in the KP.

Second, regarding negotiation power, CSO are significantly impeded from transposing their agenda points into concrete negotiation outcomes. The decision-

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<sup>90</sup> European Commission, *EU Chairmanship of the Kimberley Process 2018: Supporting Peace and Development through the Sustainable Use of Natural Resources*, Brussels, 2018, p. 2; European Union, *Kimberley Process Communiqué*, *op. cit.*

<sup>91</sup> Interview with EEAS Official 2, *op. cit.*

<sup>92</sup> Kimberley Process, "Working Groups and Committees", <https://www.kimberleyprocess.com/en/working-groups-and-committees>, accessed 30-4-2020.

<sup>93</sup> Kimberley Process, *2017 Administrative Decision on the Ad Hoc Committee on Review and Reform*, Brisbane, 14-12-2017.

<sup>94</sup> For general discussion on EU Civil Society Coalition cooperation for reform, see Kimberley Process Civil Society Coalition, "Civil Society Coalition Counting on EU to Push Kimberley Process Reform", *Press Release*, 1-3-2018.

making in the KP has marginalised their rights-driven approach.<sup>95</sup> The observer status held by the Civil Society Coalition prevents them from participating in the decision-making process which is done by the consensus of the full participants (states) only.<sup>96</sup> Thus, KP member states' interests take priority and precedence over those of CSO. CSO stumbling blocks in negotiations are most evident in the KP's attempt to resolve Marange. The 2009 Swakopmund Decision was devoid of references to CSO human rights concerns. The KP's failure to condemn the human rights abuses identified meant the Decision did not address the issues CSO had persistently raised.<sup>97</sup> The EU claims that it "actively supported actions by the KP to address serious human rights violations reported".<sup>98</sup> But if CSO seeking to address the human rights aspects of KP can be sidelined, then this claim lacks credible substance. From this, it can be concluded that there is a weak level of negotiation power.

Third, with regards to the role in the implementation of solutions, the EU benefits from the increased level of solution implementation by CSO as it creates a vital channel for the projection of norms at a local level. For example, the MRU regional approach promotes cross-border learning that is inclusive and allows values to take precedence over state interests.<sup>99</sup> However, the MRU regional approach is still emerging and has not fully gained traction across the continent. On the other hand, the AU's more widely used African Mining Vision reports have addressed the need for countries to give due regard to global human rights instruments in the implementation of the KP's certification process but are not as rigorous as the MRU regional approach. Whilst the African Mining Vision references "beneficial partnerships" with CSO, their share in ownership is much less extensive than envisaged in the EU's approach.<sup>100</sup> As such CSO

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<sup>95</sup> T. Vircoulon, "Time to Rethink the Kimberley Process: The Zimbabwe Case", *International Crisis Group*, <https://www.crisisgroup.org/africa/southern-africa/zimbabwe/time-rethink-kimberley-process-zimbabwe-case>, accessed 1-5-2020; A.A. Lidén, Permanent Representative of Sweden to the United Nations, speech on behalf of the European Union, New York, United Nations General Assembly, 11-12-2009.

<sup>96</sup> Kimberley Process, *Core Document*, *op. cit.*, pp. 9-10.

<sup>97</sup> Kimberley Process, "2009 Administrative Decision Zimbabwe and Work Plan Compendium", Swakopmund, 2009.

<sup>98</sup> European Union, "Statement by EU High Representative, Catherine Ashton, on the Agreement Reached in Kimberley Process Regarding Marange Diamonds", *Press Release*, A439/11, Brussels, 2011, p. 2.

<sup>99</sup> S. Mtisi, Coordinator of Kimberley Process, "Kimberley Process Civil Society Coalition Opening Statement at the Mano River Union Regional Meeting", speech, Freetown, 25-2-2020; M. Arnoldi, "World Diamond Council Lauds Regional Programme of Mano River Union", *Mining Weekly*, 3-3-2020.

<sup>100</sup> African Union, *African Mining Vision*, Addis Ababa, 2009, p. 12.

currently have a moderate role in the solution implementation. Table 3 summarises the evaluation of accountability and CSO ownership with respect to the KP.

Table 3: Kimberley Process Evaluation Grid

Variables	Indicators	Findings
<b>Accountability</b>	Obligation enforceability	<ul style="list-style-type: none"> <li>- The KP does not have the same binding nature as a normal international law agreement</li> <li>- The Peer Review Mechanism is voluntary and consensual</li> <li>- Expulsion from Process on human rights grounds does not have broad support (Marange crisis)</li> </ul> <p><b>Overall: Weak</b></p>
	Level of CSO collaboration	<ul style="list-style-type: none"> <li>- A number of key founding CSO have walked out on human rights grounds post-Marange</li> <li>- Common ground on regional approaches (MRU)</li> </ul> <p><b>Overall: Weak</b></p>
	<b>Total accountability</b>	<b>The KP exemplifies a weak level of accountability</b>
<b>CSO ownership</b>	Agenda-setting power	<ul style="list-style-type: none"> <li>- Tripartite structure contributes to CSO opinion recognition</li> <li>- Cohesive voice as part of KPCSC</li> <li>- CSO respected as an awareness raiser for human rights abuses</li> </ul> <p><b>Overall: Moderate</b></p>
	Negotiation power	<ul style="list-style-type: none"> <li>- CSO marginalised on human rights discussions by their observer status (Swakopmund)</li> </ul> <p><b>Overall: Weak</b></p>
	Role in solution implementation	<ul style="list-style-type: none"> <li>- EU supports CSO implementation through regional approaches (MRU)</li> <li>- Africa Mining Vision applies in states without regional approaches but CSO implementation not as high</li> </ul> <p><b>Overall: Moderate</b></p>
	<b>Total CSO ownership</b>	<b>The KP exemplifies a moderate level of CSO ownership</b>

Source: compiled by author.

Overall, the KP has fallen short of expectations as a regime for human rights promotion. It shows that rejuvenated multilateralism is not always conducive to the EU acting normatively. Human rights norms continue to be the Achilles' heel of the KP. The failure to create a concrete method of enforcing obligations left the Process without standardised norms of behaviour and several CSO even abandoned the process. If the KP cannot reform, the essence of rejuvenated multilateralism will disappear. The EU is working to re-facilitate CSO cooperation, but there is much to be done before

improvements can be analysed. The greatest weakness in CSO ownership is undoubtedly the low level of CSO views reflected in the negotiation outcomes. With only weak accountability and moderate CSO ownership. If this trend continues, the KP will begin to reflect a much more state-centric style multilateralism, rather than a rejuvenated multilateral process, furthering reducing any remaining opportunity for the EU to put norms ahead of interests. This case study also shows whilst CSO are watchdogs, they are much more than that too. They are necessary allies whose moral credibility is needed if the EU is to aspire to provide normative leadership.<sup>101</sup>

### **Conclusion: 'Leading from Behind'**

This paper set out to identify the conditions in which the EU can act normatively in these new modes of multilateralism in two case studies of multilateral human rights promotion in Africa. In doing so, it posited that conditions in which the EU can act normatively in configurations of rejuvenated multilateralism are determined by normative ethics and that the EU is best placed to do so when there are high levels of accountability and CSO ownership.

The preconception that European norms are universal norms can no longer apply and the state-centric multilateral institutions which they underpinned can no longer be relied upon. In response to this shift, this study probed a new conception of multilateral activity: rejuvenated multilateralism. The findings suggest that the EU can indeed act normatively and be a normative power in its rejuvenated multilateral engagement, even to a significant extent. The two cases examined in this paper show two very different results. TJ demonstrated how the EU is and acts as a normative power, whereas the KP reveals the potential pitfalls which the EU can face. Nevertheless, together both sets of findings demonstrate that the EU is best placed to act normatively in a system of rejuvenated multilateralism when there is a high level of normative ethics (high accountability and high CSO ownership), that is when the EU 'leads from behind'. If there is a low level of EU normative ethics (low accountability and low ownership), then the EU is on the frontline directly defending norms without CSO. This runs contrary to the African role expectations of the EU and helps explain the EU's inability to act normatively.

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<sup>101</sup> F. Bieri, "The Role of NGOs in the Kimberley Process", *Globality Studies Journal*, no. 20, 2010, pp. 2-3.



The first difference between the two case studies relates to the accountability levels. TJ was found to be more accountable to normative standards than the KP. The EU took active steps to ensure accountability when supporting TJ, whilst it hoped accountability would manifest itself in the KP. Obligation enforcements were ensured by interregional approaches to rule of law and active engagement on the ground with the help of the EUSR. Conversely, the EU set great store in a voluntary and consensual system in KP, assuming a universal standard would emerge in and of itself. On TJ, CSO rallied together and proved an effective watchdog ensuring standards were adhered to. Meanwhile, the KPCSC was dealt a serious blow when several founding members walked out in protest. Overall, the EU's weakened relationship with CSO diminished the KP's overall accountability.

It can be concluded that ensuring accountability matters, both for normative ethics and EU human rights leadership. Accountability has a heightened importance in rejuvenated multilateralism compared to state-centric multilateralism. The rules-based order embedded Western values as universal values, whereas rejuvenated multilateralism does not. That is not to say that others do not believe in the universality of human rights. However, their approach is generally different. When it comes to democracy and human rights promotion more generally, actors tend to use their own experiences to inform their external promotion of these values.<sup>102</sup> The values the EU promotes in its external action are informed by its own experiences too.<sup>103</sup> However, problems can arise when European values and norms are applied in foreign contexts. The EU was able to exercise its normative power in spite of actors' disparate values because all actors were held to account.<sup>104</sup> The absence of accountability in the KP was the reason that cultural sensitivities were able to impede the EU's normative power and why a non-Western country like Zimbabwe castigated the EU's stance as patronising or even neo-colonial. Accountability lays the groundwork for EU deontological ethics in rejuvenated multilateralism. The EU's normative human rights leadership is not defined by its ability to directly impose its view, but rather its ability to diffuse its norms by reflecting its internal logics on the forum in question.

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<sup>102</sup> T. Carothers & R. Youngs, "Non-Western Roots of International Democracy Support", *Carnegie Rising Democracies Network*, Washington D.C., Carnegie Endowment for International Peace, June 2014, p. 10.

<sup>103</sup> European Union, "Consolidated Versions of the Treaty on European Union and Treaty on the Functioning of the European Union of 13 December 2007", *Official Journal of the European Union*, C115, 9-5-2008, art. 21 TEU.

<sup>104</sup> Carothers & Youngs, *op. cit.*, p. 1.

The second major finding relates to CSO ownership. For the EU, ownership does not mean losing leadership. On the contrary, empowering the Other is vital to 'leading from behind'. The EU's support to TJ is anchored in its empowerment of CSO. The KP, whilst it began with great expectations, is now transpiring as more of a venue for Westphalian sovereigntist diplomacy than for rejuvenated multilateralism. Both TJ and the KP initially recognised the importance of bringing CSO on board. The divergence in approach is found in how their views are reflected in negotiation outcomes. When countries do not want to face their human rights record in TJ, the EU has still been able to voice CSO concerns with the country based on shared norms. In the KP, when CSO views are marginalised, the EU finds itself marginalised and competing against state-centric interests. Both case studies suggest positive strides in the direction of CSO implementation, but the KP, as of yet, continues to fall short in that its regionalised approach is not yet the recognised *modus operandi*. The KP continues to operate on a lower standard of CSO implementation.

The EU support for CSO ownership also reflects its internal logics. In fact, framing international negotiation in a way which reflects internal logics sets an actor up as a leader.<sup>105</sup> For this reason, the EU pushes human rights into post-sovereigntist settings like rejuvenated multilateralism. Vesting ownership to CSO meets African role expectations and imbues the EU with credibility that it could not otherwise have. The EU and CSO are more than the sum of their parts. That said, rejuvenated multilateralism is a newly conceived concept and the framework of analysis would benefit from further research in order to substantiate the findings that have been drawn from this study.

Rejuvenated multilateralism represents a burgeoning potential for the EU to act normatively. Although the author would caution against drawing global conclusions from these African case studies, this paper has nevertheless underscored the crucial role of accountability and ownership for the study of EU normative ethics. It can also be seen how important CSO are in this respect. Without them, normative action would not be possible. The future of human rights promotion will most likely include more rejuvenated multilateral approaches. In a world where it must promote universal human rights without the presumption of universality, the EU must rethink its role. Its role in Africa can still be one in which it champions human rights, but it must lead this movement 'from behind'.

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<sup>105</sup> M. Smith, *op. cit.*

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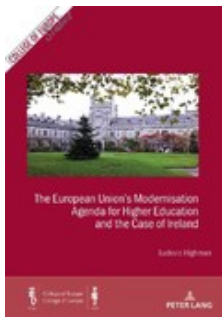
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