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## Human rights organizations and civil society

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### Introduction

Are human rights organizations potentially ‘foreign agents’, that is, spies, or ‘undesirable’, as two restrictive laws in the Russian Federation of the last decade would have it (European Parliament, 2017)? Or are they key for their “contribution to the advancement of human rights and the development of a pluralistic society”, as the Council of Europe – of which Russia was until recently a member by the way – solemnly stated (Council of Europe, 2018, III.C)? Civil society may be one of social science’s most contested and elusive concepts, as this book amply shows, but human rights organizations face a very different much more practical contestation in daily life. Very often, their work is criticized but also restricted by laws and policies or even violently threatened.

In this chapter, we will highlight the place of human rights organizations as a particular part of civil society. In our view, a number of specific features distinguish them from most organizations within civil society. First off, they are almost always policy-oriented organizations rather than service providers and their work thus by its very nature can be more visible, and unwelcome for state authorities, who are often the main targets of human rights critique (Buyse, 2018, p. 970). Second, one could argue that many of them are not just part and parcel of civil society, but that they also often work to defend the civic space of civil society as a whole. They do so by lobbying for human rights protection and promotion, both at the national level in the form of laws and policies and at the international level in the shape of standard setting and the adoption and enforcement of legally binding norms. In the case of the adoption of international treaties, from the United Nations’ Convention against Torture to the Convention on the Rights of Persons with Disabilities, much of the current international legal framework has materialized thanks to the lobbying and advocacy of human rights organizations. And they also do so by advocating the importance of freedom of expression, association, assembly and participation. It could be argued that many of these organizations are the guardians of civil

society's 'infrastructure' and civic space. Due to the impact of these activities, human rights organizations are more vulnerable to state efforts to reduce civic space than other sectors of civil society and they are often the target of specific measures in this regard.

In the following sections we will first delve into the different types of human rights organizations. Subsequently, we will identify a number of key challenges and dilemmas for these organizations, all necessitating further research. Finally, we will go into the specific connection between human rights organizations and normative frameworks, more specifically, international and domestic human rights law. We will end with a short conclusion.

## **The many shapes of human rights organizations**

From a global perspective, different types of human rights organizations are active and seen as part of 'global civil society'. Among the human rights organizations with a relatively broad scope of work (organizations without an explicit focus on a specific right or theme), there are, in the first place, large membership-based organizations, with constituencies in a variety of states, such as Amnesty International. Second, organizations with a global orientation, but functioning as expert-based advocacy organizations, of which Human Rights Watch is the most famous. Third, umbrella organizations, bringing together large groups of local organizations. Both the International Federation for Human Rights (IFHR) and the International Commission of Jurists (ICJ) are examples of these (Glasius, 2013, pp. 146–7). CIVICUS, based in South Africa, is a global network of cooperating civil society organizations and also has a strong human rights emphasis in its work around freedom of association and related rights. At the regional level, the Center for Justice and International Law (CEJIL) has been working for three decades in the area of strategic litigation before the Inter-American System, in association with numerous local organizations in the Americas. Among the more thematic human rights organizations, such varieties also exist. There are specific human rights non-governmental organizations (NGOs) active in the field of business and human rights, the fight against impunity, children's rights and much more. Some of these have evolved from ad hoc coalitions that came together for a specific campaign.

This expanse of regionally or globally active international NGOs, however much on the increase in the past decades, is dwarfed by the even larger growth of national or local groups. On the waves of what was dubbed a "global associa-

tional revolution” by civil society scholar Salamon as early as 1994, the number of local human rights organizations has also grown significantly (Salamon, 1994). The large majority of human rights organizations are thus currently active as national or local entities rather than at transnational level.

Apart from these human rights organizations in the stricter sense, there is an even larger group of organizations that are cross-overs between human rights and other themes or organizations that do identify as human rights players, but who may frame (part of) their endeavours as human rights work (Glasius, 2013, p. 147). For example, organizations of indigenous people, solidarity groups, climate activist organizations and others could be seen as human rights organizations in this looser, wider sense. At times they may invoke rights, and use legal frames, rights-based approaches or human rights procedures to further their cause without fully becoming human rights organizations.

This brings us to the issue of the connections between human rights NGOs proper and much wider social movements that have sprung up across the global, especially since the early 2000s, from social justice movements in Latin America, to the #MilkTea Alliance of democracy movements in South East Asia, the #BlackLivesMatter protests against racial discrimination and the #FridaysforFuture protests of children and teenagers against climate change in many places. As Lettinga and Kaulingfreks (2015) have shown, these forms of activism have been much more vocal, often more radical and certainly much more visible and locally rooted than the work of human rights NGOs. At the same time, their success has varied greatly, often because street tactics do not always easily translate into policy or legal changes and may be difficult to sustain. On the other hand, the traditional advocacy, lobbying and research work of human rights NGOs has been perceived by such movements as too slow, too moderate and too much intertwined with existing power structures. The professionalization of human rights organizations in the last few decades, including the preferred methods of action and a partial shift to paid staff as opposed to volunteers, may have increased their effectiveness within international institutions, but at the same time have widened the gap with grassroots movements (Schmitz, 2014, p. 357). The need for rootedness for human rights NGOs and the need for long-term effect for social movements makes for a plausible argument for more cooperation, also because many of the demands of social movements could be translated into and framed as human rights issues. However, the very different ways of organizing, the specific goals and the tactics used make for two uneasy bedfellows (Lettinga & Kaulingfreks, 2015). Their interconnections and concrete case studies of successful and failed cooperation certainly merit further research.

A final point of note is that, just like not all human rights work is *organized* in formal human rights NGOs, not all of it is *collective* either. Much human rights work is done by individual human rights defenders, who are not necessarily members of or speaking on behalf of organizations. They may speak up for a certain issue or community, but do so as an individual. Of course, most of these individual defenders do function in wider networks of support and solidarity. Acknowledging the continuum between collective and individual action for human rights, the United Nations adopted the human rights defenders' declaration as early as 1998 which covers all these different actors (UN General Assembly, 1999). In line with that, the Office of the UN High Commissioner for Human Rights (UNHCHR) speaks of civil society *actors* in recognition that both collectives and individuals are protected by the same human rights enabling their work within civil society (UNHCHR, 2014, pp. 3–4).

## Key dilemmas and changes

The shape, setup and activities of human rights NGOs are also closely linked to one of the current big debates on the issue: their independence and accountability. In this respect, many organizations have to walk various fine lines. The first is between gathering sufficient sources of income and other support and at the same time remaining critical and independent. To avoid the famous saying 'who pays the piper, calls the tune' becomes a reality, many human rights NGOs are at pains to set their own course and not to become too dependent on a single donor. In a reflection of civil society as a sphere of activity separated from the state and from businesses, some human rights organizations have an official policy not to accept funding from governments. An additional reason for this may be to avoid being perceived as the extension of specific governments' foreign policies. A separate phenomenon to note in that context is so-called GONGOs: Governmental Non-Governmental Organizations. These are NGOs in name and shape, but not in practice, as they are created by governments, usually to crowd the field in the interaction of civil society with international (human rights) mechanisms and to thus have government-friendly – in practice government-guided – voices to the detriment of speaking time and space for critical human rights NGOs (McGaughey, 2018).

For human rights NGOs, trying to remain independent from states moves the independence dilemma to private funding sources. There again, though in different ways, the preferences of funders play a role, both in the choices of which organizations to fund in the first place, but also by the fact that NGOs

may themselves adjust their thematic priorities in order to obtain more easily accessed funding.

Another fine line is that between setting one's own course and priorities and being accountable to the outside world. The issues of independence and accountability are closely linked, as often those who fund require some accountability from NGOs. But discussions have gone beyond this in a more general trend of requiring transparency, internal policies in line with the mission and vision of human rights organizations, and more democratic internal structures. Indeed, being transparent in one's functioning and operations may help to prevent being delegitimized by the state or in the media (ISHR, 2016, p. 14). The – in itself valid – call for transparency has already been abused by some states in order to restrict the space for civil society to operate by creating very strict and burdensome reporting obligations. An example is Hungary, where elaborate requirements on data of individual donors of organizations were imposed. These issues may be more palpable for donor-based organizations than for member-based ones. Indeed, member-based, bottom-up organizations are not just less dependent on large funders, whether public or private, but also more rooted in local and national communities. The model is not easily applied everywhere, however, as both global and domestic wealth disparities may make building up a base of thousands of donating members more difficult on some countries than in others. As a final note on this point, many human rights NGOs rely to some extent and sometimes entirely on volunteers.

A key and unavoidable global challenge for human rights organizations is the shrinking or closing of civic space since around 2005–06 in many states across the globe. In a nutshell, civic space is the room for civil society to act, to come together, to speak out and to participate. This shrinking space, which happens most severely in but is not limited to less democratic states, manifests itself normatively, in discourse, and in practice. First, normatively, many states have started to enact restrictive laws, ranging from setting up burdensome taxation and other reporting requirements to limiting cross-border funding or even banning certain types or fields of work entirely. Second, human rights organizations have been targeted by words, in the discourse of politicians or pro-government media or social media trolls, vilifying these organizations as traitors, extremists or even terrorists. Finally, the practical space to function has been directly affected by the prosecution of staff of organizations, by threats against family members or even by the killing of human rights defenders (Buyse, 2018).

Human rights organizations have struggled to react effectively to these increasing limitations and pressures. Some have gone underground or even

entirely left certain countries or shifted their work to less politically sensitive issues – one could summarize these as tactical or even strategic retreats. Others have tried to form new alliances with broader social movements to stand less on their own. Still others have actively sought to create new narratives on the positive value and importance of human rights to gain more public support for their work.

States have not only sought to limit national civic space, but also tried to limit access to international human rights mechanisms for NGOs, for example at the United Nations. It is crucial to further investigate how this affects not just these NGOs but also the mechanisms to which they contribute, as will be elaborated in the next section. After all, many of these international human rights bodies are to a large extent dependent on input from human rights organizations to function. This may explain why an increasing number of international mechanisms, either in their case law or in other monitoring, have spoken out on the shrinking civic space as a human rights issue affecting human rights organizations.

## The linkages with human rights law

As has been noted above, many human rights organizations seek to influence the adoption of domestic legislation and/or international treaties to further engrain human rights protection. This normative connection tends to be a central strategy within a wider array of advocacy, naming and shaming, mobilizing and lobbying, pursued in order to fulfil the goals of these organizations. The linkage with human rights is both normative and procedural.

From a normative perspective, it is evident that a number of rights are of particular importance to human rights organizations themselves. The freedom of association enables the founding of organizations. The freedom of expression protects advocacy work. The freedom of assembly makes mobilization in the streets and online a protected activity. And the right to participation creates entry points for involvement in decision-making by public authorities. The assessment by international human rights institutions, such as regional human rights courts, may also vary according to the activities and goals of specific organizations.

In the European context, for example, the European Court of Human Rights has declared inadmissible applications by organizations whose aims are contrary to human rights (*Hizb Ut-Tahrir and others* decision, ECHR, 2012). By

contrast, the same Court has recognized that when civil society organizations, including human rights organizations, function as ‘watchdogs’ by critically following the actions of the state or informing the general public of issues of general interest, they deserve a higher degree of protection under human rights law (*Vides Aizsardziˆbas Klubs* judgement, ECHR, 2004). To put it differently, when they perform such essential functions in a democratic society their freedom is wider.

In the Americas, the Inter-American Commission on Human Rights has highlighted the key role of human rights organizations and activists. With the increasing violence against human rights defenders in a number of national contexts in the 1990s – including internal armed conflicts, environmental and indigenous peoples’ protection vis-à-vis large economic interests, and LGBTQ+ advocacy, among others – the Commission focused on standard setting on the protection of human rights defenders and “the right to defend rights”. It also submitted cases to the Inter-American Court of Human Rights on the violation of the right to life and physical integrity of human rights defenders usually working in NGOs.

From a procedural perspective, it is important to emphasize that human rights organizations can play a number of roles (and are formally allowed to do so) in most existing international and regional human rights mechanisms. They can of course assist others – human rights victims – to lodge complaints or, under some systems, like the European Social Charter, litigate in the general interest. Next to this, they also have the possibility to complain about violations of rights that affect them, for example when an organization receives a fine, is threatened or even disbanded.

In the Inter-American System, the Inter-American Commission on Human Rights – early on in its mandate as a monitoring body in the 1960s and 1970s – established a strong relationship with civil society and human rights NGOs at the local and national level in the Americas. Historically, these organizations have been instrumental in providing reliable information on the situation of human rights during the Commission’s in loco visits and in special country hearings at headquarters. NGOs legally recognized in any member state of the Organization of American States can lodge petitions on their own behalf or on behalf of third parties (even without a proxy if the victim is disappeared or at risk) before the Inter-American Commission on Human Rights. An important number of human rights NGOs and umbrella regional networks in Latin America specialize in strategic litigation before the Inter-American System.

A number of human rights systems also allow for so-called third-party interventions – including for human rights organizations – in ongoing procedures, for example to provide background information or comparative analysis to regional courts. And once a regional court has issued a judgement, human rights organizations can provide input in the stage of monitoring implementation or use a judgement for agenda-setting and mobilization within a country (see e.g. Simmons, 2009).

While many of these procedures take years, sometimes action is urgently required. The Inter-American Commission on Human Rights has frequently issued precautionary measures requesting states to prevent irreparable harm to the lives and physical integrity of individuals working for NGOs under threat because of their human rights work. Precautionary measures have been issued in the context of pending claims – when the members of an organization are under threat because of their involvement as petitioners in a case – as well as in situations where the threat is unrelated to an individual case before the Commission.

## Conclusion

We have described above in broad strokes of the brush that human rights organizations are a specific yet crucial element of civil society more broadly. As applied as much of the research done by human rights organizations themselves is, all the more reflective should the academic study of these types of organizations be. We propose that at least the following issues would merit further research in this field. First, human rights organizations are just one piece within the wider mechanisms of international protection of human rights. Competition for funding does not just exist between NGOs but also between NGOs and international human rights mechanisms. For example, the European Union and a number of individual states have made available international cooperation funds both for human rights inter-governmental agencies or organs (UNHCHR, the Inter-American Commission and the Inter-American Court of Human Rights, among others) and for human rights NGOs petitioning those very same institutions. Does this hamper the functioning of the whole or not? Also related to funding, some human rights NGOs are very dependent on large donors, while others explicitly avoid them. At the same time, funding is often assigned to specific projects rather than to the organizations themselves (Pousadela, 2019). In those cases where NGOs fully depend on international donors will the benefactor's agenda impact the objectives, priorities and activities of the grant's recipients?



Another crucial aspect is cross-border connections. The acknowledged importance of international cooperation among human rights organizations can also be used against them. The increasing legal restrictions on cross-border funding as part of shrinking civic space can make all policy-oriented NGOs, including those focusing on human rights, weaker in operational terms and therefore more vulnerable to pressure. More research is needed on whether this affects different types of organizations differently.

Another element to be considered is the extent to which human rights organizations are networked (nationally, regionally, globally): how do the more formally established civil society organizations connect, or fail to connect, to local grassroots groups, indigenous peoples and afro descendant communities, confessional groups and new social movements, also in a Global North–South perspective?

Beyond the generally positive narrative about human rights organizations within, for example United Nations' discourse, the impact of the increasing diversification of human rights organizations warrants more research. For example, litigation before regional human rights courts is no longer the sole domain of progressive NGOs. Organizations and movements pursuing conservative agendas have also found their way to such forums and more generally use similar strategies to promote frames and world views contrasting with those of mainstream human rights organizations (Polizzi & Murdie, 2019, pp. 261–2). How does this affect the normative development of human rights law and its interpretation? And on a related point, how should we deal with and make sense of the rise of so-called GONGOs in the field of human rights? How does their advent affect the work and effectiveness of genuinely independent human rights organizations?

Finally, digitalization raises a whole range of new possibilities and challenges for human rights organizations. It has multiplied the amount of new human rights violations, ranging from privacy breaches and surveillance of human rights defenders to online censorship and the effects of discriminatory algorithms. But it has also enabled the fast spread of advocacy reports, mobilization across borders and much more. It also relates to issues of (in)equality, since connectivity and electricity are not resources to which everyone has equal access, thereby influencing the accessibility of organizations and influencing their reach. Civil and political rights also touch socio-economic rights aspects in the online world. The research question then becomes: how does the increasing emphasis on the digital sphere affect the work of human rights organizations?

Cross-cutting to all of this is the global trend of shrinking civic space. Here, the restrictions themselves, their spread and effects, as well as the counter-mobilization by human rights organizations, including counter-narratives, have spawned a whole new field of study for the years to come.

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