



Why Human Rights Law Should Apply to Non-Governmental Organizations along with States and Corporations

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Non-governmental organizations – called NGO's for short – are often powerful and influential actors, operating in many countries and across national borders. Yet there exists no framework in international human rights law to regulate or hold them accountable to respect human rights law.

Though states are ultimately held legally responsible for NGOs such as non-profits, aid organizations, and voluntary citizens' groups that operate inside their borders, this should not prevent NGOs from being held socially and morally responsible when things they do – or fail to do – violate peoples' rights. NGOs currently enjoy the freedom to operate in a legal vacuum where human rights law is not applied to them. As Chris Jochnick of Oxfam America writes, "the narrow focus of human rights law on state responsibility is not only out of step with current power relations, but also tends to obscure them."

Non-Governmental Organizations in International Law

Although NGOs are generally considered to be benign, perceived as always working to advance human welfare and human rights, the reality is far more complicated. And international human rights law has not caught up with this reality.

Despite good intentions and formal missions, NGOs have an extensive history of failing to uphold human rights – whether in the context of responding to disasters or in their contributions to ongoing development projects. Many NGOs are forced to make compromises in order to operate freely in non-democratic countries where authorities only selectively welcome their efforts.

Countries often severely constrict the ability of NGOs to provide development and humanitarian aid in ways that show respect for international human rights law. Yet, until now, the resulting tensions and compromises have usually been handled by NGOs with little transparency or public accountability. Only after major failures – such as with humanitarian aid in Goma, Congo in 1994 and the aid offered to Haiti after the earthquake in 2011 – does the public learn about NGO actions that undermine human rights. By the time they come to light, such failures cannot be rectified. Lessons may be learned for the future, but enormous human costs have already been paid.

Lack of Oversight and Its Consequences

NGO failures became an extreme and catastrophic problem in Rwanda between 1990 and 1994, leading up to the Rwandan genocide in which the Hutu ethnic majority killed one million members of the country's Tutsi minority. In his book *Aiding Violence*, the development scholar Peter Uvin analyzes how many international

NGOs submitted to the Hutu supremacist regime that ruled Rwanda prior to the 1994 genocide. NGOs operating in Rwanda acquiesced to gain access from the government. In order to promote development for the Hutu majority, NGOs tacitly accepted violations of Tutsi rights by participating in overtly racist plans and social programs. This emboldened the regime and reinforced its structural domination of the Tutsi minority. By tacitly or explicitly accepting discriminatory practices banned in international human rights law, NGOs contributed to the political and social preconditions for genocide.

The current system of international human rights law rests on principles of state responsibility to respect, protect, and fulfill human rights. But given obvious gaps and shortfalls, calls to extend human rights law beyond states are beginning to gain traction, as demonstrated by United Nations efforts to make international human rights law legally binding for corporations. Extensions nevertheless face opposition from immensely powerful corporations and state actors.

Possible Ways Forward

A significant and extensive body of soft law called the “United Nations Guiding Principles on Business and Human Rights” was developed between 2006 and 2011 to encourage and assist corporate efforts at protecting human rights. Called “Ruggie Principles” after their creator, UN Special Representative John Ruggie, these tenets are not legally binding, but they do articulate social and moral obligations and encourage greater corporate respect for human rights. As an expression of the possible rather than the ideal, the pragmatic Ruggie Principles reflect one of the ways in which international law typically develops. Over an extended period, what began as soft law may later crystallize into treaty law or customary international law.

NGOs were major players in the development of the Ruggie Principles and they continue to play a central role in efforts to increase the accountability of corporations. Ironically, however, NGOs have made a paradoxically selective commitment and show no eagerness to subject themselves to a similar body of soft law. They push for regulating corporations, but resist applying a similar framework of human rights accountability to their own activities.

Indeed, given that international human rights law is almost exclusively binding on state actors, internationally operating NGOs are not subject to the same obligations and responsibilities. Yet, just as non-state actors, like corporations, can increasingly affect human rights across the globe, so too can NGOs. Parallel questions about accountability and regulation arise.

To their credit, NGOs have recently started developing their own voluntary regulations. Guidelines such as the Red Cross Code of Conduct and the International Non-Governmental Association Accountability Charter set standards for some of the world’s largest NGOs, including CARE, Oxfam, Save the Children, PLAN, and World Vision. But such first steps are not sufficient. There needs to be an independent framework and monitoring system through which the United Nations sets out minimum moral and social standards for NGOs. As NGOs advocate for the application of international human rights law to corporations as well as states, they should be willing to move beyond voluntary self-regulation and work with the United Nations to apply human rights rules backed by effective oversight to their own operations.

Read more in Noam Schimmel, “Failed Aid: How Development Agencies are Neglecting and

Marginalizing Rwandan Genocide Survivors” *Development in Practice* 20, no. 3 (2010): 407-413.

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