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# The Importance of Coordination between Civil Society and Governments to Protect Human Rights at International and National Levels

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#### **Abstract**

The role of civil society is disputed and its relations with the government problematic. In addition, the legitimacy of civil society internally and internationally questionable. The agenda of the governments towards the issue of human rights vary and it is not clear.

However, protecting human rights is vital in every society.

The current research is an effort to highlight and discuss the nature of the relationship between civil society and governments to protect human rights.

It has been argued that threats to human rights come from different forces and actors. Handling and restraining these types of threats would be one of the tasks of governments and civil society. Despite that coordination between these two actors (governments and civil society) is vital to protect human rights, however, it is challenging.

Keywords: civil society, governments, human rights, international organizations and non-governmental organizations.

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#### Introduction

The status and treatment of human rights are vital political, moral and academic issues and this research intends to address the coordination between civil society and governments to protect human rights. Although there are significant numbers of NGOs, this study is concerned with investigating the role of the major ones. It examines whether coordination exists between civil society and states or governments, compares and contrasts the state's policies towards human rights, and outlines possible solutions for the successful inclusion and fair coordination between civil society and governments.

Contemporary international law and the international community have recognised the rights of human beings. However, the question remains whether these states coordinate with civil society. The level of success in the international arena and being a member of the United Nations does not guarantee state competency within its society. They cannot be considered democratic states without complying with the principles of democracy including managing their internal and domestic affairs according to the rule of law and basic principles of human rights.

Regarding the relationship between the state and its citizens, this research defends the argument that the rights of citizens, regardless of their colour, language and ethnicity, should be protected by the state in coordination with civil society. In addition, the state should represent the wishes and interests of its citizens. In response, citizens should respect the state and its apparatuses and not harm the interests of their state. To what extent has this hypothesis been achieved in protecting human rights? The second section will consider the enforcement of legal standards. It will look at monitoring and reporting of state compliance as the first step towards enforcement on an international level and will assess to what extent civil society leads international enforcement. This section will then assess the leadership potential of civil society in terms of legal enforcement on a national level. Section three will explore the potential of civil society to act as an agent for the promotion and protection of human rights and the main focus would be moral standards rather than legal standards in the context of local communities. Additionally, the central argument of this research would be on standard setting, monitoring and enforcement due to the preventative nature of these activities; they have the potential to stop further abuses from occurring and so serve to advance human rights. This is not to diminish the importance of civil society's actions directly related to the support of victims of human rights violations.

The last section sets out discussions and conclusions; the necessary discussions which surrounded the importance of coordination between civil society and governments is one of the conclusions. This section highlights the major and significant reforms and approaches needed to establish a state which guarantees equal rights of human rights. An investigation of the issue of absent or inactive NGOs should be taken seriously and further research is necessary. To achieve this aim, the conclusion addresses three issues and how they interact with one another.

#### Theoretical Framework: The issue of human rights

The concept of human beings, based on rights, was a Roman development with roots in Greek thought and practice. For the Greeks human rights were an inherited privilege and marked the boundary between non-citizens and citizens. From the very beginning, the term entailed exclusion since not everyone had it. It was restricted to a small group of privileged people and this led to inequality and injustice. For the Romans, citizenship became established as a strictly legal status defining membership of the Roman political community.



There have been different definitions and approaches for the concept of human rights, however, a general framework and universal standards exist to deal with the violations of human rights. One of the attempts is emerging civil society. Even though the sovereignty of the state has been an obstacle to protecting human rights, globally there have been some significant efforts to coordinate between the governments and civil society to protect human rights. The question of this research is: to what extent this coordination exists and is active?

The human being as a member of the political community brings with it certain rights and responsibilities that are defined in law, such as the right to vote, the responsibility to pay taxes and so on. It has been argued how and who is defending or protecting the rights of human beings at the international level.

Protecting human rights as a political fact and legal status, as an idea and an ideal, continues to be a problematic concept with no agreed-upon definition. Even within a single society, human rights have many dimensions and bear many meanings. Scholars of social science have analyzed the concept in a variety of ways. Four dimensions seem to capture human rights' essential, normative and positive meanings. These four dimensions are: political, legal, psychological, and sociological.

# Methodology, thesis questions and hypothesis

Modern societies and international order unfolded within the confines of nation-states, governmental and non-governmental organizations. On the one hand, the modern principles of democracy, citizenship, and popular sovereignty allowed for the inclusion of large sections of the population previously confined to the status of subjects and subordinates. On the other hand, however, new forms of exclusion based on ethnic criteria developed. Belonging to a specific ethnic group determines access to the rights and services which the modern state is supposed to guarantee for all its citizens. Wimmer (2002:123) states "The main promises of modernity- political participation, equal treatment before the law and protection from the arbitrariness of state power, dignity for the weak and poor, and social justice and security- were fully realized only for those who came to be regarded as true members of the nation. The modern principles of inclusion are intimately tied to ethnic and national forms of exclusion".

By contrast, pre-modern empires integrated ethnic differences under the umbrella of a hierarchical, yet universalistic and genuinely non-ethnic political order, in which every group had its properly defined place. This pyramidal mosaic was broken up when societies underwent nationalization and ethnic membership became a question of central importance in determining political loyalty and disloyalty towards the state.

The research attempts to pose questions that are in direct relation to the different aspects of human rights and then to provide research-based answers to the posed questions. The following questions are part of the central argument of the present research: Why should human beings be protected? To what extent the international system is active to protect the rights of human beings? Would it be possible for governments and civil society to coordinate to protect human rights?

This study uses the comparative approach and document analysis. This part analyses the relevant articles and documents which have been articulated internationally to protect human rights. Furthermore, the role of civil society and governments will be investigated.



# 1. Standard-setting – the creation of international human rights law

#### i. The importance of international law in human rights work

If a certain action is defined as a "crime" it becomes objectively illegal rather than subjectively "immoral" or "wrong". In reality, law-making is a subjective process; only a limited number of people can upgrade activity from "immoral" to "illegal" according to their ethics. Moral standards become legal standards through a process of consensus, however, and thus they gain their authority. In signing international treaties, governments explicitly state their agreement to certain legal definitions. Though some might dispute the value of international instruments while states continue to implement domestic policies that undermine them, this research will consider the creation of legal standards to be the first and vital step in human rights work. These legal documents provide the groundwork for much of the work done in human rights whether by governments or by civil society actors. It is important then to look at how international human rights legislation came into being and the actors who were involved in the process; who were the "leaders" and who were the followers"?

#### ii. Human rights provisions in the U.N. Charter - a government-led initiative

William Korey argues that American non-governmental organisations (NGOs) were key to the inclusion of human rights in the United Nations Charter (1945) (Korey, 1998). This view is popular among human rights scholars such as Gaer (1995), Breen (2005), Florini (in Gready, 2004: 7) and Risse (ibid.). It was only American NGOs, however, who were involved in any way in the creation of the U.N. Charter; global civil society certainly played no part in the creation of this preliminary document.

It is important to stress the precise role that American public and civic organisations played in 1945. The 42 organisations acted as "consultants" to the U.S. delegation before the founding conference of the U.N.; their unofficial opinions only became official and authoritative statements through the filter of government. Moreover, American civil society may have signposted a certain pathway but their government would not have followed had they not been convinced that this route would be beneficial to the state; which in turn would allow for "international co-operation in solving international problems of an economic" nature which was vital after the economic losses of two world wars (U.N. Charter, Article 1 in Gandhi, 2006: 14). Subsequently it was down to U.S governmental diplomacy, not civil society action, that other nation states also signed up to these provisions. None of this is to deny the influence of the American NGOs in 1945; it seems that their advice and opinions did filter through the U.S. delegation and into global human rights discourse. What should be rejected, however, is the notion of civil society as powerful leaders while governments passively followed.

Perhaps if left to governments alone, human rights would not have featured so prominently but, despite the important role played by civil society, the inclusion of human rights provisions in the U.N. Charter was a government-led initiative. It was the U.S. government that initiated discussion with American NGOs and granted them a voice and it was the U.S., which ultimately led the practical and diplomatic action necessary to include human rights provisions in the U.N. Charter.

## iii. Subsequent United Nations Treaties

Though civil society participation in the drafting of international treaties may have increased (Breen: 106-108). In describing NGO participation in the drafting of the 1989 UN Convention on the Rights of the Child (CRC), Breen suggests that the influence of civil society was unprecedented but the language of 'accredited' NGOs being



permitted to speak at meetings of the Working Group 'subject to the approval of the Group and its Chairman' (Breen: 107) suggest that participation was not so much more advanced in the 1980s than in 1945.

Ratification will still only take place when individual states are convinced of the practical benefits to their domestic situation and governments' concerns about state sovereignty still prevent the signing of international human rights treaties. Despite the heavy involvement of NGOs in the ten-year process of drafting the CRC, the U.S., the original governmental leader on human rights, still refuses to ratify. Any increased capacity of civil society to act as a leader in the drafting of treaties becomes somewhat impotent in the face of state non-ratification.

Although the role of NGOs as legal standard setters has increased, the notion that civil society actors can be leaders in this area remains somewhat unrealistic. NGOs only participate in treaty drafting when they are permitted to do so and it is up to government discretion to what extent they choose to incorporate NGO advice, opinions and consultations into the content and language of international treaties. After the creation of human rights treaties, civil society actors can campaign for individual state ratification but their influence in this respect is limited. If left to governments alone perhaps we would not have done much in terms of legal standard-setting but, if left to civil society alone, we would have done nothing; civil society does not have the power to pass legislation, governments do.

- 2. Enforcement of international human rights law compliance monitoring, reporting and enactment of legal remedies
- i. The importance of monitoring state compliance with international treaties in human rights work

The setting of legal standards should act as a deterrent against certain activities as states have agreed to abide by the conditions. In reality, laws will be broken and for this reason, in addition to legal classifications of "crimes" are legal remedies to be enacted in the event of violations. This section will consider compliance monitoring as the first step towards enforcement; there must be proof of violations before legal remedies can be executed. This section will look at monitoring and reporting of state compliance on an international level and will assess to what extent civil society are leaders of international enforcement in these terms. This section will then assess the potential of civil society to enforce legal standards on a national level.

#### ii. The International Level

In terms of international enforcement, power lies with governments, in particular with the U.N. Security Council and more particularly with its permanent members. In cases of massive violations by a particular state, it is only through the machinery of the U.N. that official action can be taken, either through economic sanctions (Article 41) or military force (Article 42). Diplomatic action may also be used between states.

Article 71 of the U.N. Charter allows NGOs to provide information to the Economic and Social Council (ECOSOC). There is a formal role for civil society within the U.N machinery but again it is limited. NGOs may only speak when spoken to and are two steps removed from decision-making. Civil society is the child of governmental parents as illustrated by ECOSOC resolution 1996/31 which explicitly states that consultative status may be granted, suspended and withdrawn by governments, through ECOSOC (Breen: 104).

Civil society actors, however, may also submit country-specific "shadow reports" to the various treaty bodies



that exist. Breen points to the example of the New Zealand country report to the Committee against Torture in May 2004 which omitted discussion of domestic legislation allowing parents to make the defence of 'reasonable chastisement' in cases of child abuse. Shadow reports by the Human Rights Foundation of New Zealand and the Association for Children and Youth in Aotearoa both raised this as an issue of concern. There seems to have been a clear influence on the U.N. treaty body which recommended that New Zealand should amend domestic legislation regarding corporal punishment (Breen: 115-116)1.

NGOs with consultative status may lobby government officials within the corridors and canteens of the U.N. and civil society actors, no matter their status as organisation representatives or unaffiliated individuals, may campaign against their governments to take action at an international level. No matter how many protests are held outside government buildings or how many letter-writing campaigns are carried out, it is ultimately governments that have the decision-making power regarding enforcement measures. Despite Amnesty International's internet campaign to muster public support for U.N. peace-keeping forces to enter Darfur, the U.N. Security Council still has not reached a decision that is supportive of civil society suggestions and it seems that the power of civil society is weak in the face of government inaction.

Civil society compliance monitoring is not limited in itself by the U.N., though admittedly it may be by individual states. The limitations lie in NGOs' ability to communicate their findings directly to the decision-makers at the U.N. and to persuade them to enact legal remedies. If left to governments alone, the level of compliance monitoring on an international level would undoubtedly be far less but, if left to civil society alone, the translation of these findings into enforcement measures would be non-existent due to the supreme power of the Security Council and its permanent members.

#### ii. The National Level

As NGO "shadow" reports submitted to the U.N. treaty bodies focus on points of law, on a national level, various civil society actors (NGOs, CBOs, GROs, individual independent activists) also campaign against their own government's non-compliance by locating their arguments within a legal framework.

It is only due to the existence of legal discourse that the Treatment Action Campaign (TAC) was able to argue that the government of South Africa had acted illegally in restricting the availability of drugs proven to reduce the risk of mother-to-child transmission of HIV and in failing to implement a national health programme in the same regard. Though TAC themselves did not have the power to enforce the law, they were able to bring a lawsuit which resulted in the South African judiciary ordering the Government to take the precise action requested by TAC (Treatment Action Campaign, 2002).

In another example, the U.K. Refugee Council's campaigns against Section 55 of the U.K. Nationality, Immigration and Asylum Act 2002 led to Court of Appeal rulings that the Home Office was in breach of Article 3 of the European Convention on Human Rights in specific cases where asylum seekers had been denied basic state support if they had not submitted their asylum application 'as soon as reasonably practicable'. As a result, many asylum seekers gained the right to appeal against previous decisions that had denied access to support (Refugee Council, 2004).

<sup>1</sup> The enforcement power even of the U.N. treaty bodies is limited by its reliance on states to implement such "recommendations".



This is not to say that campaigning against domestic policy or legislation on a national level will always result in victory for civil society. This approach can offer civil society more of a direct leadership role in terms of enforcement than is possible on the international level. In the example above, where the TAC led, the government of South Africa were forced to follow. The level of leadership available to civil society actors on a national level will of course vary from country to country and is dependent on the existence of an independent judiciary.

#### 3. Non-state actors, non-legal remedies - challenging attitudes, ending violations in local communities

So far this research has assumed that human rights violations originate from the state. The enforcement measures discussed have related, firstly to monitoring and reporting of state compliance to international legal norms, followed by the legal challenges that can be made to remedy state violations. It could be argued that, due to its failure to enact domestic legal enforcement measures against non-state violators. This section, however, will look at domestic violence and female genital cutting (FGC) to explore the possibility of setting non-legal standards and enforcement measures that can be led, without the need for government support, by civil society to combat such human rights abuses by non-state actors.

Laurie Wiseberg states that "civil society actors have an enhanced ability to monitor the economic, social and cultural rights, as they have a position of trust at the grassroots level". (Claude and Weston, 1992: 374). The advantage of this unique position could, by extension, be applied to the setting of moral standards at the grassroots level. This section will argue that a change in local attitudes could lead to community-led enforcement of these new moral standards in addition to the governmental enforcement of legal standards.

The Pakistani NGO, Sindh Development Society (SDS), is currently implementing a community project entitled Ending Violence Against Women (EVAW) (Sindh Development Society, 2006.). Alongside other activities, SDS ran a seven-day theatre training workshop for members of CBOs in February 2006. After the training, the group performed a play on the theme of "honour killing" to an audience of 50 people from all sectors of the local community. Local people themselves questioned local attitudes, customs and beliefs through a form of traditional theatre to which local people could relate, using cultural references relevant to the community. By engaging the local community, such approaches to human rights challenge and question local attitudes rather than dictating morals through the authoritarian language of the governmental legal discourse.

Though there is certainly a strong argument for legal interventions against domestic violence, where such abuses are so entrenched in societal attitudes, encouraging the re-evaluation of local morality may act as an enforcement measure in itself. In communities where domestic violence and murder are acts of "honour", it is clear that reputation and respect within the community are of utmost importance to violators of women's rights. If it becomes shameful to commit such acts in the eyes of the local community, this reversal of attitudes could help to decrease such violations; through the moral leadership of civil society actors, the community itself becomes the moral enforcer.

It seems that in the case of FGC, it is a change in attitudes more than a change in the law that will serve to protect women's human rights. Gemma Richardson explains that the threat of legal enforcement has not effectively stopped the practice of FGC but simply forced it underground in some communities in Kenya (Richardson, 2005). Employing similar methods to those used by SDS to campaign against domestic violence in Pakistan, the Tanzanian NGO Women Wake Up (WOWAP) work to eradicate harmful traditional practices by working with communities through songs, dances, video shows and public meetings (Mwanjisi, 2002). By encouraging alternative initiation rites, rather than simply criminalising the practice of FGC as would be the official route available



to the government, WOWAP has had some success in eradicating FGC.

When left to governments alone, it seems that progress made to secure women's rights has been very slow, evidenced by the vast number of state reservations from every region of the world to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the unwillingness of states to upgrade the 1993 Declaration on the Elimination of Violence against Women to the legally binding status of a Convention. In terms of the promotion and protection of human rights (at least of women's rights) within local communities, it is civil society actors that appear to be the more effective leaders. The non-legal routes available to civil society in counteracting non-state violations within local communities are not even routes that governments may be equipped to follow due to the unique position of trust enjoyed by civil society that is not available to state actors.

#### Conclusion

Governments have played an active leadership role in the setting of international legal standards. The attempts of civil society to act as leaders of legal standard-setting should be noted but their ability to do so should not be overstated. If left to governments alone, perhaps less would have been done in terms of law-making but, if left to civil society alone, nothing would have been done in this respect; civil society does not have the power to pass legislation and must work in partnership with governments exert influence in this area.

At the international level, civil society must also work with governments to enforce human rights; evidence of state non-compliance is useless if not reported to the relevant enforcement authorities (i.e. governments). Without civil society input, compliance monitoring would be less but without governments, enforcement would be nil.

If left to governments alone human rights work on a national scale would certainly be less; it is necessary, that civil society acts as a monitor to the implementation of domestic laws (or failure thereof). In terms of national enforcement, civil society has a much stronger and more direct leadership role in holding governments accountable. This is dependent upon an independent judiciary but, under the right conditions, civil society can lead where governments are legally impelled to follow.

At the local level, civil society actors can finally work independently; they need not rely on the judiciary as they do at the national level or be government partners as they must be at the international level. The ability of civil society actors to work directly with communities to change local attitudes and empower members of the community to become enforcement agents themselves can result in a situation where the governmental following is not possible or even desirable.

# Moreover, to improve the coordination between civil society and governments to protect human rights, these steps would be taken into account:

First: the sovereignty of the state is one of the major obstacles to coordination between governments and civil society to protect human rights, therefore redefining the concept of sovereignty of the state is an urgent and



necessary step. Protecting human rights should be a priority not the sovereignty of the state.

Second: Representation and recognition of civil society is another challenge. The legitimacy and the source of civil society authority and performance are disputed. Thus, civil society needs to address whose representing, additionally recognizing the civil society by state actors and international organizations is significant to cooperate between them and the governments.

Third: In monitoring human rights records, a mechanism and organisations have to deliver coordination between civil society and governments, while recognising the human rights violations. Safeguarding human rights records globally can be achieved in three steps. Firstly, monitoring the human rights records of UN members and organisations that have the power of prosecution to identify the perpetrators; secondly, ensuring the punishment is proportional to the crime that has been committed; and, thirdly, ensuring that the violation is not repeated. This leads to further promotion of the protection of human rights.

The UN, the EU Parliament, democratic parliaments and human rights organisations such as Amnesty International and Human Rights Watch identify states and organisations perpetrating human rights abuses. While these institutions are promoting good human rights practices and norms, monitoring alone is not adequate, as the perpetrators, whether they are state or non-state actors, are not transparent in their human rights records. Consequently, a great part of these atrocities are left in the dark and the perpetrators continue to deceive the international community. These states breach international laws, treaties, conventions and norms to which they are signatories.

Although the UN has promoted some useful concepts to safeguard human rights values globally, it has fundamentally failed to enforce the powers of its watchdog organisations or to implement a constitution that would punish crimes and human rights abuses as solutions. The failure to enforce may currently discredit the UN, however, what undermines it is its selectivity in prosecuting war criminals such as in Yugoslavia and certain nations in Africa (most recently, the Sudanese President), yet turning a blind eye to crimes committed in Syria since 2011. The failure of the UN's institutions in monitoring human rights would not encourage civil society to coordinate with the governments.

# پوخته

روّلْی کوّمه لّگهی مهده نی جیّی مشتوم و پهیوه ندییه کانی له گه ل حکومه ته کاندا کیّشه داره. جگه لهوه ش رهوایه تی کوّمه لگهی مهده نی لهسه ر ئاستی ناوخوّ و نیّوده و له تیدا، جیّی پرسیاره. کارنامه ی حکومه ته کان به رامبه ر به پرسی مافی مروّق جاوازه و روون نسه.

به لام ئاشکرایه که پاراستنی مافه کانی مروّق له ههموو کوّمه لگایه کدا زوّر گرنگه. بوّیه ههماهه نگی نیّوان کوّمه لگهی مهده نی و حکومه ته کان بو پاراستنی مافه کانی مروّق یه کیّکه له پرسه سهره کییه کانی تیوّری سیاسی هاوچه رخ و پروّسهی حکومپانی. ئهم لیّکوّلینه وه یه ههولّیکه بو تیشک خستنه سهر سروشتی ئه کته ره جیاوازه کانه وه. مامه له کردن و سنووردارکردنی ئهم جوّره هه په شانه یه کیّک ده بیّت له ئهرکه کانی حکومه ته کان و کوّمه لگهی مهده نی. سهره پای ئهوی مهده نی مروّق زوّر گرنگه، که ههماهه نگی نیّوان ئهم دوو ئه کته ره (حکومه ته کان و کوّمه لگهی مهده نی) بو پاراستنی مافه کانی مروّق زوّر گرنگه، به لام پوبه پوی ئالنگاریه کانیش ده بیّته وه.

کلیپله وشهکان: کۆمه لگهی مهده نی، حکومه ته کان، مافی مرؤف، ریکخراوه نیوده وله تیپه کان و ریکخراوه ناحکومیپه کان.



#### الملخص

دور المجتمع المدني متنازع عليه وعلاقاته مع الحكومات إشكالية. إضافة إلى ذلك ، فإن شرعية المجتمع المدني مشكوك فيها داخليًا ودوليًا. تختلف أجندة الحكومات تجاه قضية حقوق الإنسان وهي غير واضحة

ومع ذلك ، من الواضح أن حماية حقوق الإنسان أمر حيوي في كل مجتمع. لذلك ، فإن التنسيق بين المجتمع المدني والحكومات لحماية حقوق الإنسان هو أحد القضايا الرئيسية للنظرية السياسية المعاصرة والحكم.

البحث الحالي هـو محاولة لتسليط الضوء ومناقشة طبيعة تلك العلاقة لحماية حقوق الإنسان. لقد قيل أن التهديدات التي تتعرض لها حقوق الإنسان تأتي من قوى وفاعلين مختلفين. سيكون التعامل مع هذه الأنواع من التهديدات وضبطها إحدى مهام الحكومات والمجتمع المدني. على الرغم من أن التنسيق بين هذين الفاعلين (الحكومات والمجتمع المدني) أمر حيوى لحماية حقوق الإنسان ، إلا أنه عثل تحديًا.

## الكلمات المفتاحية: المجتمع المدني ، الحكومات ، حقوق الإنسان ، المنظمات الدولية والمنظمات غير الحكومية

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