

# Human Rights Governance: Multistakeholderism Without States' Stake

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In the realm of human rights, global governance has moved beyond solely formal channels and intergovernmental organizations (IGOs) but cannot become utterly detached from them. Amol Mehra addresses examples pertinent to business and human rights more fully in an accompanying memorandum, but one especially good example deserves mention here—one in which both voice and responsibilities were accorded to actors other than states.<sup>1</sup> Flowing from a mandate established by the United Nations' primary human rights body, the Human Rights Council, a special representative of the secretary-general was minted in the form of John Ruggie to take elaborate soundings from state, private sector, and civil society voices. Ruggie produced principles on the respective and joint responsibilities of states and business to protect, respect, and remedy rights. Despite subsequent efforts by states, such as Ecuador, to form more formal intergovernmental arrangements (i.e., treaties), the greatest value of the Business and Human Rights Guidelines, which the UN General Assembly adopted in 2011, was their reaching to actors beyond states for input and explicit, if informal, commitments.<sup>2</sup>

This example reflects the current landscape of human rights governance, which involves a robust role for nonstate actors and informal channels. Without the buy-in of states and intergovernmental actors, though, the effort would have been and will be fruitless.

In a context of failed states and atrocities and of accelerating globalization, the late 1990s ushered in a trend of worthy innovations, including the International Criminal Court (ICC), the replacement of the Human Rights Commission with the Human Rights Council, and more robust human rights and peer-review mechanisms of regional IGOs such as the African Union and recently the Association of Southeast Asian Nations (ASEAN). Their greatest value has been where they have collaborated with and empowered nongovernmental actors, though they remain intimately connected to states and formality.

Three subareas of human rights provide compelling examples. First is the realm of traditional political and civil liberties—in particular, freedoms of expression, assembly, and association that have fallen under heightened duress in the last dozen years.<sup>3</sup> The establishment of the UN Human Rights Council in 2006 has deepened the role of special procedures (rapporteurs, special representatives such as Ruggie, and working groups) and created a new mechanism, the Universal Periodic Review (UPR). These mechanisms have provided significantly more room to civil society to highlight the conduct of governments.<sup>4</sup> A particularly dynamic mandate was the special rapporteur on the rights to freedom of peaceful assembly and of association—specifically devoted to civil society—a position held by Maina Kiai until April 2017.

Second is the area of human trafficking, which bridges traditional human rights concerns of rule of law and access to justice on the one hand, and economic and social rights considerations of poverty, migration, and marginalization on the other. Since the promulgation in 2000 of the Palermo Protocols

to the Convention Against Transnational Organized Crime and the U.S. Trafficking Victims Protection Act, numerous IGOs, secular and faith-based NGOs, and businesses in various sectors (e.g., apparel, electronics, and travel) have launched efforts to address trafficking in the twin spheres of sexual and labor exploitation. Overlap and duplication have characterized this innovative governance, at both the IGO (UN Office on Drugs and Crime, UN Children’s Fund, International Labor Organization, Organization for Security and Cooperation in Europe, Organization of American States) and NGO levels.

Third is the area of health and epidemics, which lies more squarely in the ambit of economic and social rights but involves dimensions of acute political-civil discrimination, notably the critical populations ostracized and marginalized before and after contracting HIV—men who have sex with men (MSM), persons in prostitution (PIP), and intravenous drug users. Since 2002, highly innovative institutions have been established to address acute health dilemmas and the creative financing of programmatic work. The United States and other Western countries have been distinctly uncomfortable with the notion of a right to health being given the same status as, say, to expression, assembly, and association. Hybrid arrangements crystalizing by the time of the 2005 Gleneagles Group of Eight (G8) Summit include the Global Fund Against AIDS, Tuberculosis, and Malaria (GFATM) and Gavi, the Vaccine Alliance. GFATM has mobilized faith-based actors and businesses as much in operational efforts, based on their comparative advantages, as in advocacy for public sector resource mobilization. GFATM focuses heavily on children—it has markedly reduced mother-to-child HIV transmission—and contributed to a 69 percent decline in malaria among children under age five in countries where it has funded bed nets.<sup>5</sup> Gavi focuses on inoculating children. It is striking that these innovative arrangements have gone further than the UN Children’s Fund, an already nimble and civil-society-inclusive IGO.

### *RESILIENCE AND DISRUPTION IN A CONTEXT OF POPULISM*

Despite their previous support, several states appear less enthusiastic about innovation in human rights governance in the wake of populism (e.g., the United States as of the 2016 election, the United Kingdom after the Brexit referendum, Poland and Hungary’s growing illiberalism, a corruption-fraught Brazil, African democracies threatening to withdraw from the ICC, and the Philippines’ populist turn). As powerful democratic states withdraw moral and possibly material support from inter-governmental projects—the UN Human Rights Council, the ICC, or the European Union as a values-based community—the future of bolder innovations is in question.

One is tempted to think that informal or hybrid arrangements uncorked in the 1990s and early 2000s have the momentum to continue their work and might even skirt the sovereigntist skepticism about human rights on the part of some retrenching major democracies. Yet, if democratic governments join autocratic governments in their skepticism of human rights, innovations can hardly thrive. If states do not have a stake in hybrid arrangements, they may soon question the value of implementation or further innovation.

In the area of political and civil liberties, the Human Rights Council’s amplification of the voices of an epistemic community of experts and of civil society may have enjoyed its peak period during active U.S. membership (2010 to 2015), buoying the European Union’s role as well.<sup>6</sup> Absent U.S. and EU

commitment, successes such as those of Ruggie and Kiai, the UPR, and a rebalancing in favor of freedoms of expression and for religious minorities over misused (Islamic) anti-blasphemy laws will likely stall.

Momentum to tackle human trafficking appears to be intact; the political parties in power in the United States and United Kingdom are committed to the mission. Nonetheless, progress in tackling human trafficking faces limits and threats: metrics on the extent of the problem and effectiveness of interventions not receiving the needed focus of states, businesses stopping short of antitrafficking efforts that would increase operating costs (e.g., costs of scrutinizing deeper layers of supply chains), and NGOs with charismatic leaders duplicating one another's work. Without cooperation and assistance from businesses and civil society actors since 2000, states and IGOs could not have hoped to reduce, much less abolish, this contemporary form of slavery. The obverse is even truer. If states are not committed to finding and rehabilitating victims, punishing perpetrators, and preventing trafficking, multi-stakeholder efforts will stall.

In the realm of health rights and epidemics, the GFATM has driven states to increase domestic investments in fighting AIDS, tuberculosis, and malaria by withholding 15 percent or more of its funding until the states where programs are implemented commit some of their own resources. GFATM's country coordinating mechanisms are hybrid governance partnerships in microcosm. Yet, absent state support, GFATM and its civil society partners cannot ensure that critical populations (MSM, PIP, and intravenous drug users) have access to treatment without ostracism to implement its Gender Equality Strategy for tackling the three diseases it seeks to curb. GFATM needs to elicit more action by states on gender issues. If, moreover, the resource mobilization by core global north democracies were to wane, the GFATM's leverage to promote health with a human rights lens would be diminished.

### *FUTURE INNOVATIONS*

Several follow-on innovations are desirable in human rights governance. In the area of political and civil liberties, a Global Trust for Rule of Law, based on the GFATM model, could transcend the scattered duplication of manifold UN-sponsored programs and the failure to evenly implement laws and ratified treaties.<sup>7</sup> In human trafficking, efforts promoted by Humanity United, the Walk Free Foundation, and the End Modern Slavery Initiative Act championed by Senator Bob Corker (R-TN), have all focused on creation of a focal foundation to forge compacts with governments (in the style of the Millennium Challenge Corporation) to scale anti-trafficking programming. In pandemic diseases, a new generation of innovations (e.g., wambo.org, a kayak.com analog that GFATM has set up for comparative-pricing purchase of vetted medicines) could make treatment available more widely. Moreover, organizations that form partnerships with international financial institutions to expand resources and engineer loan buydowns would empower developing countries' governments to fight the diseases. These innovations are "needed to move from the current progress of the GFATM and major bilateral programs, which have saved twenty million lives from three diseases in the last fifteen years, to ending the epidemic status of those diseases."<sup>8</sup>

And yet what is feasible in a context of the core liberal states of the global north becoming at best ambivalent about or at worst retreating from human rights is a different question. The wide array of informal action is unlikely to persist and prosper if core liberal states now pull back. The ideas above require states and IGOs as partners. None will bloom without states and IGOs' action, not to speak of

even more ambitious efforts. A multistakeholder initiative could use the internet to shine light on corruption and human rights abuses and to catalyze non-violent movements against governments steeped in those ills as well as the disinformation and surveillance that those governments purvey, restoring the hope for social media as a useful tool for democracy advocates worldwide. However, it remains to be seen if civil society would have the capacity and the corporate community the will to propel such an initiative if core liberal states themselves are succumbing to disinformation and the temptations of increased surveillance. A single clearinghouse of metrics, best practices, and policy coordination for combating human trafficking also would be useful but impossible without state support, which is unlikely to coalesce if Western states' leadership wanes. And a rationalization of intensive disease-specific efforts with a more general strengthening of health systems and access to them is unlikely if left to the leadership of business (e.g., the pharmaceutical sector) and specialized hybrid entities, absent a prioritization by advanced industrial democracies.

This assessment points to questions for the future: Is a reversal of the populist and sovereigntist trend in major democracies a prerequisite for informal institutional innovation in human rights? Should actors such as NGOs, faith-based organizations, and businesses counter that reversal so that a new generation of hybrid institutional innovation can move forward? Or is the whole point of the informalist trend since the late 1990s that states and IGOs are obstacles, and a new form of governance is possible without them as catalysts and partners? Fat chance. Take the example of the Ottawa process producing the international convention to ban landmines in 1997.<sup>9</sup> If there was no intergovernmental vessel or locus to reintroduce the arrangement nurtured by civil society and policy entrepreneurs elsewhere, the latter could have hardly made new norms stick. Supportive states are not just a sufficient condition for hybrid innovation; they appear to be necessary partners.

## ENDNOTES

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1. Amol Mehra, "Filling the Void: The New Architects of Human Rights," in *Innovations in Global Governance*, Council on Foreign Relations, September 2017.
2. "Human Rights and Transnational Corporations and Other Business Enterprises," Resolution adopted by the Human Rights Council, UN General Assembly, A/HRC/RES/17/4, July 6, 2011.
3. See Arch Puddington and Tyler Roylance, "Overview Essay: Populists and Autocrats: The Dual Threat to Global Democracy," in *Freedom in the World 2017*, Freedom House, <http://freedomhouse.org/report/freedom-world/freedom-world-2017>.
4. Ted Piccone, *Catalysts for Change: How the UN's Independent Experts Promote Change* (Washington, DC: Brookings Institution Press, 2012); Mark P. Lagon and Ryan Kaminski, "Bolstering the UN Human Rights Council's Effectiveness," Council on Foreign Relations, January 2017, <http://cfr.org/UNHRCPaper>. See also Mark P. Lagon and Ryan Kaminski, "Human Rights: Issue Brief," *Global Governance Monitor*, <http://cfr.org/global-governance/global-governance-monitor/p18985#!/human-rights>.
5. See: "FAQ: U.S. Support for the Global Fund to Fight AIDS, Tuberculosis, and Malaria," Friends of the Global Fight Against AIDS, Tuberculosis, and Malaria, May 15, 2017, <http://theglobalfight.org/faq-u-s-support-global-fund-fight-aids-tuberculosis-malaria>.
6. On epistemic communities, see Emanuel Adler and Peter M. Haas, "Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program," *International Organization* 46, no. 1, (1992): 367–390.
7. Mark P. Lagon, "A Global Trust for Rule of Law," Council on Foreign Relations, October 2, 2012, <http://cfr.org/report/global-trust-rule-law>; Camino Kavanagh and Bruce Jones, "Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda," Center on International Cooperation, New York University, November 2011, [http://cic.es.its.nyu.edu/sites/default/files/kavanagh\\_rol.pdf](http://cic.es.its.nyu.edu/sites/default/files/kavanagh_rol.pdf); Gary Haugen and Victor Boutros, "And Justice For All: Enforcing Human Rights for the World's Poor," *Foreign Affairs* 89, no. 3 (May/June 2010): 51–62; Gary Haugen and Victor Boutros, *The Locust Effect: Why the End of Poverty Requires the End of Violence* (New York: Oxford University Press, 2015).
8. "Impact," the Global Fund, <http://theglobalfund.org/en/impact>.
9. Michael Dolan and Chris Hunt, "Negotiating in the Ottawa Process: The New Multilateralism," *Canadian Foreign Policy Journal* 5, no. 3 (1998): 25–50, <http://tandfonline.com/doi/pdf/10.1080/11926422.1998.9673148?needAccess=true>.