



## Mapping Non-Governmental Organization (NGO) Responsibilities in International Human Rights Law: From Existing Norms to Adaptation

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# Mapping Non-Governmental Organization (NGO) Responsibilities in International Human Rights Law: From Existing Norms to Adaptation

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## ABSTRACT

In recent years, there has been increasing demands for Non-Governmental Organizations (NGOs) to be held accountable for human rights abuses. Despite this, the UN and human rights literature have largely overlooked the human rights responsibilities of NGOs. There is currently no framework at the UN level outlining these responsibilities. Additionally, human rights scholars have primarily focused on holding states and other non-state actors accountable, such as corporations and terrorist groups. This paper aims to fill this gap by delineating the human rights responsibilities of NGOs based on international human rights law. It argues that existing international human rights law already imposes responsibilities on NGOs, covering areas such as right to health and human trafficking. Furthermore, it suggests that the existing human rights framework, particularly the business and human rights law designed for corporations, is versatile enough to be adapted to encompass NGO accountability, thus bridging regulatory and accountability gaps at the international level.

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## Introduction

In recent years, the calls for non-governmental organizations (NGOs) to be held accountable for human rights abuses have grown louder. However, the United Nations (UN) human rights machinery, as well as the human rights literature, have yet to address the human rights responsibilities of NGOs.<sup>1</sup> At present, no framework exists at the UN level outlining these responsibilities. Meanwhile, scholars have focused on studying and advocating international legal frameworks for the accountability of states and other non-state actors, including corporations<sup>2</sup> and terrorist groups.<sup>3</sup> As the era of blind trust in NGOs has ended with the rise of scandals at the sectoral level, coupled with allegations

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<sup>1</sup>Noam Schimmel, "The international human rights law responsibilities of NGOs", Oxford Human Rights Hub (2015) available at: <http://ohrh.law.ox.ac.uk/the-international-human-rights-law-responsibilities-of-ngos/>

<sup>2</sup>Nadia Bernaz, *Business and Human Rights. History, Law, and Policy: Bridging the Accountability Gap* (Routledge 2017).

<sup>3</sup>Hans-Peter Grasser, "Acts of Terror, 'Terrorism' and International Humanitarian Law" (2002) 84 (847) *Revue Internationale de la Croix-Rouge/International Review of the Red Cross* 547–70.

of poor performance in terms of aid delivery and services, addressing the consequences of NGOs having a negative human rights impact is a pressing societal need.

The central aim of this paper is to delineate the human rights responsibilities of NGOs as derived from the international human rights law regime. While the issue of NGO accountability has attracted significant attention across the social sciences and beyond,<sup>4</sup> this paper addresses a notable gap in legal literature and discourse by focusing on the international human rights responsibilities of NGOs, as derived both implicitly and explicitly from international human rights law at a normative level. So far, existing human rights literature has predominantly examined how international human rights law might provide a framework for moral or ethical responsibility for NGOs.<sup>5</sup> It has also focused on the responsibilities of NGOs advancing development in a post-genocide transitional justice context,<sup>6</sup> defining a human-rights-based approach for non-state actors in disaster management,<sup>7</sup> and in the area of the right to health.<sup>8</sup> Moreover, it has examined the potential extension of international human rights obligations — originally meant only for states — to non-state actors, including NGOs,<sup>9</sup> or the extension of the business and human rights framework — intended for corporations — to NGOs.<sup>10</sup> What is missing in the literature is a comprehensive study that unifies these diverse aspects and clarifies the role and human rights responsibilities of NGOs, beyond traditional human rights obligations for states and ethical considerations for non-state actors. This paper aims to address that gap. It is important to note that the scope of the paper is strictly confined to international human rights law and does not delve into the legal obligations of NGOs with regard to UN decision-making processes or international humanitarian law. These areas have been extensively explored in international legal scholarship.<sup>11</sup>

This paper advances two primary claims. First, it posits that international human rights law already establishes a series of NGO human rights responsibilities for NGOs through both treaty law and soft law initiatives, despite the absence of a unified framework specifically for the negative human rights impact of NGOs. Although fragmented into various frameworks (treaties, guidelines, declarations), these responsibilities cover multiple areas, including the right to health, the rights of the child, the protection of human rights defenders, and human trafficking. Second, the existing human rights

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<sup>4</sup>Some seminal books on the topic include: Lisa Jordan and Peter van Tuijl, *NGO Accountability: Politics, Principles and Innovations* (London Earthscan 2006); Michael Edwards, *NGO Rights and Responsibilities: A New Deal for Global Governance* (London -The Foreign Policy Centre 2000); Michael Edwards and David Hulme, *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold-War World* (London Earthscan 1996); Mary Kay Gugerty and Aseem Prakash, *Voluntary Regulation of NGOs and Nonprofits: An Accountability Club Framework* (Cambridge University Press 2010).

<sup>5</sup>Elizabeth Ann Griffin, 'The ethical responsibilities of human rights NGOs' (2013) 15 (2) *International Journal of Not-for-Profit Law* 5-23.

<sup>6</sup>Noam Schimmel, *Advancing International Human Rights Law Responsibilities of Development NGOs. Respecting and Fulfiling the Right to Reparative Justice for Genocide Survivor in Rwanda* (Palgrave 2020).

<sup>7</sup>Marlies Hesselman and Lottie Lane, Lottie, 'Disasters and Non-State Actors – Human Rights-Based Approaches' (2017) 26 (5) *Disaster Prevention and Management* 526-539.

<sup>8</sup>Mayhew, Susannah, Megan Douthwaite, and Michael Hammer, 'Balancing Protection and Pragmatism: A Framework for NGO Accountability in Rights-Based Approaches' *Health and Human Rights* (2006) 9 (2) 180–206.

<sup>9</sup>Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press 2006).

<sup>10</sup>Domenico Carolei and Nadia Bernaz, 'Accountability for Human Rights: Applying Business and Human Rights Instruments to Non-Governmental Organisations' (2021) 13 (3) *Journal of Human Rights Practice* 507-528; Rosana Garcíandia, 'Accountability of NGOs: The Potential of Business and Human Rights Frameworks for NGO Due Diligence' (2023) 34 (3) *King's Law Journal* 524-545.

<sup>11</sup>Claudie Barrat, *Status of NGOs in International Humanitarian Law* (Martinus Nijhoff Publishers 2014); McGaughey, *Non-Governmental Organizations and the United Nations Human Rights System* (Routledge 2021).

framework, particularly the business and human rights law designed for corporations, is versatile enough to be adapted to encompass NGO accountability for human rights, thus bridging regulatory and accountability gaps at the international level. The overall argument is that international human rights law is not only clear about the human rights responsibilities of NGOs, but is also capable of adapting and evolving to address these responsibilities comprehensively. Methodologically, this paper is doctrinal in nature and draws upon a wide range of primary and secondary legal sources. Structurally, the paper is structured into four main sections. Section 2 addresses the question of why NGOs should be subject to human rights responsibilities, then Section 3 examines the human rights obligations of NGOs, focusing on the major human rights treaties. Following this, Section 4 analyzes soft law by reviewing various international declarations and guidelines relevant to NGO human rights responsibilities. Finally, Section 5 explores how business and human rights frameworks, originally designed for multinationals, can be adapted and applied to NGOs as well, and Section 6 concludes.

For the purposes of this paper, the term ‘NGO’ is used in a broad and inclusive sense. NGOs are traditionally understood to be independent, non-profit, self-governing bodies that operate within civil society and sit outside both the state and the market.<sup>12</sup> Contemporary scholarship proposes defining NGOs less by fixed organizational attributes than by examining the outcomes of interactions between NGOs, as well as with states, inter-governmental organizations, businesses, and other actors.<sup>13</sup> NGOs may be formally registered or operate informally, and in some countries they work under alternative legal labels due to restrictive laws.<sup>14</sup> This broad category includes international NGOs such as Amnesty International and Médecins Sans Frontières, as well as domestic organizations and both service-delivery and advocacy groups working on issues such as discrimination, migration, and the rights of vulnerable groups. The paper therefore follows the wide understanding reflected in relevant international human rights instruments, recognizing that NGOs differ in mandate and structure and may engage in service delivery, advocacy, or even commercial activity linked to their mission. Within this broad framework, attention is directed to NGOs operating in the specific fields addressed by the human rights instruments under analysis.

## 2. Why Should NGOs be Subject to Human Rights Responsibilities?

This section maps out reasons that NGOs should be subject to human rights responsibilities. Before addressing why NGOs should bear human rights responsibilities, however, it is essential to consider how NGOs are regulated. Due to their lack of legal personality, international law neither binds NGOs directly nor makes them formally accountable for violations of its rules. NGOs are primarily governed by domestic law, having legal responsibilities under the national laws of their home countries and the nations in which they operate. Domestic laws regulate the creation and dissolution of NGOs, as

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<sup>12</sup>Anna C. Vakili, ‘Confronting the Classification Problem: Toward a Taxonomy of NGOs’ (1997) 25 *World Development* 2057, 2068.

<sup>13</sup>See, in general, Maryam Zarnegar Deloffre and Sigrid Quack (eds), *A Relational Approach to NGOs in Global Politics: Beyond Cooperation and Competition* (Oxford, 2025).

<sup>14</sup>See, for example, Kendra E. Dupuy, James Ron, and Aseem Prakash, ‘Who survived? Ethiopia’s regulatory crackdown on foreign-funded NGOs’ (2014) *Review of International Political Economy* 22 (2) 419-456; Suparna Chaudhry, ‘The assault on civil society: Explaining state crackdown on NGOs’ (2022) *International Organization* 76 (3) 549-590.

well as their ability to take part in political or economic activities. In recent years, there has been an increase in domestic legislation that restricts NGO activities and civil society space. Since 2019, the International Center for Not-for-Profit Law (ICNL) has tracked 270 proposed or enacted legal initiatives in 72 countries that limit NGOs: this global trend includes laws and regulations that hinder the formation of NGOs, restrict access to funding, and limit the freedom of peaceful assembly.<sup>15</sup> The Expert Council on NGO Law has similarly found that civil society space is narrowing, citing excessive reporting requirements, state interference, and broad ‘foreign agent’ legislation.<sup>16</sup> In terms of the international regulation of NGOs, there have been efforts to harmonize regulations amongst states, particularly at the regional level, such as the 1986 European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations.<sup>17</sup> Several scholars observe that NGO accountability is not adequately addressed under international law. Claudie Barrat notes that ‘International Law has not examined the accountability of NGOs’,<sup>18</sup> and adds that ‘the responsibility of NGOs is not clear.’<sup>19</sup> Likewise, Barbara Woodward highlights that NGOs have ‘few binding substantive legal obligations’<sup>20</sup> and that NGO responsibility ‘is largely a specialized bilateral matter’<sup>21</sup> arising mainly from conventions between NGOs and international organizations, which outline both the rights and obligations of NGOs. Anna-Karin Lindblom describes the legal accountability of NGOs as ‘a rather undeveloped area in international law.’<sup>22</sup> Math Noortmann identifies two reasons for this neglect: first, the lack of legal personality of NGOs under international law, and second, the reluctance to submit the international actions of NGOs to international legal scrutiny.<sup>23</sup> As documented below, this reluctance is progressively diminishing and is being replaced by a demand for greater accountability regarding their human rights impact.

*Open Democracy* published an article in 2019 asking ‘what happens when NGOs are accused of violating human rights?’<sup>24</sup> This was in the wake of allegations that the World-Wide Fund for Nature (WWF) had equipped and funded anti-poaching squads accused of abusing and murdering Indigenous people in conservation areas across six countries in Asia and Africa from 2002 to 2016.<sup>25</sup> Over the last decade, scandals in the NGO sector have been on the rise, ranging from the allegations of institutional racism and white supremacy against Médecins Sans Frontières by

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<sup>15</sup>International Center for Not-for-Profit Law, *The Civic Space Initiative*. Available at < <https://www.icnl.org/our-work/global-programs/the-civic-space-initiative>>

<sup>16</sup>Council of Europe – Expert Council on NGO Law. 2025. Non-Governmental Organisations: Review of Developments in Standards, Mechanisms and Case Law 2020–2024. CONF/EXP(2025)1.

<sup>17</sup>Council of Europe, Explanatory Report on the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, ETS 124, Strasbourg 1986.

<sup>18</sup>Barrat (n 11), 230.

<sup>19</sup>Ibid, 231.

<sup>20</sup>Barbara K Woodward, ‘Non-State Actor Responsibilities: Obligations, Monitoring and Compliance’ in Noemi Gal-Or, Cedric Ryngaert, and Math Noortmann (eds), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings* (Brill 2015) 53.

<sup>21</sup>Ibid.

<sup>22</sup>Anna-Karin Lindblom, *Non-Governmental Organisations in International Law* (Cambridge University Press 2006) 190.

<sup>23</sup>Math Noortmann, ‘NGOs in international law: reconsidering personality and participation (again)’ in Thomas Davies (ed.) *Routledge Handbook of NGOs and International Relations* (Routledge 2019) 187.

<sup>24</sup>Domenico Carolei, ‘What happens when NGOs are accused of violating human rights?’ *Open Democracy* (16 April 2019) <[www.opendemocracy.net/en/transformation/what-happens-when-ngos-are-accused-violating-human-rights/](https://www.opendemocracy.net/en/transformation/what-happens-when-ngos-are-accused-violating-human-rights/)>

<sup>25</sup>Thomas Warren and Katie J.M. Baker, ‘WWF funds guards who have tortured and killed people.’ *BuzzFeed News* (4 March 2019) available at <<https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death>>

members of its workforce in 2020<sup>26</sup> to the sexual exploitation and abuse of aid recipients in Haiti by Oxfam GB in 2018.<sup>27</sup> As a result, the presumption of inherent moral superiority associated with NGOs is diminishing. The International Council on Human Rights and Policy underlines in its report on human rights organizations, 'It should never be assumed, simply because an organization has a mandate to protect human rights, that those the organization was established to protect or represent are being given appropriate attention and respect.'<sup>28</sup> It further calls on human rights NGOs to 'avoid exploiting or further victimizing members of the constituency.'<sup>29</sup> The International Law Association similarly emphasizes the need to move beyond the classification of non-state actors as 'good' or 'bad' in international law literature.<sup>30</sup> NGOs are often considered 'good actors' due to their work in human rights and humanitarian aid, while violent actors such as terrorist groups and even non-violent entities like multinationals are often labelled as 'bad actors.'<sup>31</sup> Such a classification 'fails to reflect the plurality of roles that most non-state actors play. It is also subjective and arbitrary, making it difficult to rely on.'<sup>32</sup>

Another reason for making NGOs subject to international human rights responsibilities is that NGOs are powerful actors in global governance, and their power is evident in many ways. For example, NGOs actively participate in the development of prominent international treaties.<sup>33</sup> They manage and distribute social services, either supplementing or substituting state functions. The NGO sector is substantial and growing worldwide. In March 2023, over 168,000 charities appeared on the register of the Charity Commission of England and Wales.<sup>34</sup> In Bangladesh, NGOs operate as a parallel state providing more services than the local authorities.<sup>35</sup> Moreover, some NGOs have organizational capacities, budgets, and structures similar to those of multinationals and have a presence in several countries, operating both within and across borders. Oxfam, for example, has a global presence, operating in over 90 countries through a confederation of 20 independent organizations which collaborate on both global and local initiatives.<sup>36</sup> The Oxfam International Secretariat employs approximately 300 staff globally, with around 10,000 staff and nearly 50,000 interns and volunteers working for Oxfam affiliates worldwide.<sup>37</sup>

<sup>26</sup>Karen McVeigh, 'Médecins Sans Frontières is "institutionally racist," say 1,000 insiders' *The Guardian* (10 July 2020) available at <[www.theguardian.com/global-development/2020/jul/10/medecins-sans-frontieres-institutionally-racist-medical-charity-colonialism-white-supremacy-msf](https://www.theguardian.com/global-development/2020/jul/10/medecins-sans-frontieres-institutionally-racist-medical-charity-colonialism-white-supremacy-msf)>

<sup>27</sup>Sean O'Neill, 'Minister Orders Oxfam to Hand over Files on Haiti Prostitute Scandal' *The Times* (9 February 2018) available at <[www.thetimes.co.uk/article/top-oxfamstaff-paid-haiti-quake-survivors-for-sex-mhm6mpmgw](https://www.thetimes.co.uk/article/top-oxfamstaff-paid-haiti-quake-survivors-for-sex-mhm6mpmgw)>

<sup>28</sup>International Council on Human Rights Policy, *Human Rights Organisations: Rights and Responsibilities* (Final Draft Report 2009) pp. 32-33. Available at <<https://www.yumpu.com/en/document/read/22460350/human-rights-organisations-rights-and-the-ichrp>>

<sup>29</sup>Ibid.

<sup>30</sup>International Law Association, *Non-State Actors – Final Report*, Johannesburg Conference (2016) at para 36.

<sup>31</sup>Ibid.

<sup>32</sup>Ibid.

<sup>33</sup>See, for example, Barbara Woodward, *Global Civil Society in International Lawmaking and Global Governance: Theory and Practice* (Brill Nijhoff 2010).

<sup>34</sup>Charity Commission for England and Wales, *Annual Report and Accounts (2023)* available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1168460/Charity\\_Commission\\_Annual\\_Report\\_and\\_Accounts.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1168460/Charity_Commission_Annual_Report_and_Accounts.pdf)

<sup>35</sup>Saidur Rahman and Farhat Tasnim, 'The role of NGOs in ensuring local governance in Bangladesh: from the perception of other actors of governance' (2023) 7 *Asia-Pacific Journal of Regional Science* 1007–1034.

<sup>36</sup>See Oxfam website, "How we are organize" available at <<https://www.oxfam.org/en/what-we-do/about/how-we-are-organized>>

<sup>37</sup>Ibid.

These complex organizational structures and global reach have also been viewed in critical terms; as the former Secretary General of CIVICUS, a global alliance of civil society organizations and activists, stated: ‘The biggest NGOs today look and act like multinational corporations ... they have corporate-style hierarchies and brands worth millions. Saving the world has become a big business.’<sup>38</sup>

In light of their power, NGOs can impact the rights and opportunities of the communities they serve, depending on how this power is exercised. There are numerous examples of NGOs underperforming in service delivery, leading to a negative human rights impact. In Ghana, researchers studied the impact of a multi-sectoral participatory development programme run by NGOs that did not meet expectations and resulted in a worsening of socioeconomic wellbeing.<sup>39</sup> The 2007 Tsunami Coalition’s Report documented instances where houses were uninhabitable due to numerous faults, and fishing vessels were not seaworthy due to poor craftsmanship and sub-standard materials, which occurred because NGOs and aid agencies focused on completing activities without fully understanding the priorities and needs of local people.<sup>40</sup> Due to such cases, NGOs have been accused of being more accountable to donors and governments, who provide funding and the regulatory environment in which NGOs operate, while paying very little attention to the people they work with and for.<sup>41</sup>

Another reason behind the increased calls for greater accountability of NGOs regarding their human rights performance is the power imbalance between NGO workers and the people they serve. As NGOs operate in fragile contexts and with particularly vulnerable populations, the victims of NGO abuses, especially sexual abuse and exploitation, face numerous material, language, and cultural barriers in lodging complaints. In many cases, they might choose not to report incidents at all for various reasons, including fear of losing assistance from the NGO, lack of trust in the organization, and gender inequalities.<sup>42</sup>

Additionally, NGOs can easily evade accountability when they operate in multiple countries. The host country, where NGOs conduct their activities on the ground, may be unable to deliver justice to victims of NGO abuses due to the collapse of state machinery, including the judiciary system, as a result of internal conflict or natural disaster. This situation is common for NGOs working in conflict zones, humanitarian crises, or disaster management. In contrast, the home state, where the NGO is headquartered or legally

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<sup>38</sup>Dhananjayan Sriskandarajah, ‘NGOs losing the war against poverty and climate change, says Civicus head’ *The Guardian* (11 August 2014) available at <[www.theguardian.com/global-development-professionals-network/2014/aug/11/civicus-open-letter-civilsociety-professionalisation](http://www.theguardian.com/global-development-professionals-network/2014/aug/11/civicus-open-letter-civilsociety-professionalisation)>

<sup>39</sup>Kate Baldwin, Dean Karlan, Christopher Udry and Ernest Appiah, ‘How Political Insiders Lose Out When International Aid Underperforms: Evidence from a Participatory Development Experiment in Ghana’ (March 2020) Global Poverty Research Lab Working Paper No. 20-103.

<sup>40</sup>Tsunami Evaluation Coalition, *Synthesis Report: Joint evaluation of the international response to the Indian Ocean tsunami* (January 2007).

<sup>41</sup>On beneficiary accountability see, for example, Hugo Slim, ‘By What Authority? The Legitimacy and Accountability of Non-Governmental Organisations’ *The Journal of Humanitarian Assistance* 2002 (Electronic Version), Patrick Kilby, ‘Accountability for empowerment: dilemmas facing non-governmental organizations’ (2006) 34 (6) *World Development* 951; Mieke Berghmans, Maarten Simon and Joke Vandenabeele, ‘What is Negotiated in Negotiated Accountability? The Case of INGOs’ (2017) 28 *Voluntas* 1529.

<sup>42</sup>Mirela Shuteriqi, ‘Enhancing accountability SEA: Is a Sector Ombudsperson the next step?’ Discussion paper commissioned by ICVA (September 2018) 4; see also, Kirsti Lattu, ‘To complain or not to complain still the question: Consultations with humanitarian aid beneficiaries on their perceptions of efforts to prevent and respond to sexual exploitation and abuse’ (2008) Humanitarian Accountability Partnership, available at <[www.pseataaskforce.org/uploads/tools/tocomplainornottocomplainstillthequestion\\_hapinternational\\_english.pdf](http://www.pseataaskforce.org/uploads/tools/tocomplainornottocomplainstillthequestion_hapinternational_english.pdf)> last accessed 03/06/2022.

registered to operate overseas, may be a better option to provide victims with a range of judicial and non-judicial remedies to address grievances. Extraterritorial jurisdiction is difficult to exercise, however, due to jurisdictional issues, difficulties in gathering evidence, and affordability and accessibility for complainants.<sup>43</sup> Part of the problem is that NGO regulators in the home states, such as the Charity Commission for England and Wales, are often underfunded limiting their capacity to perform oversight and regulatory tasks.<sup>44</sup> Their geographical and jurisdictional scope is also restricted, making it challenging to assess NGO misconduct overseas.<sup>45</sup>

To summarize, there are several reasons why NGOs should be subject to human rights responsibilities. These include scandals revealing NGO accountability failures, their state-like functions, the complex organizational structures and increased size of the NGO sector, underperformance in service delivery resulting in adverse human rights impacts, the power imbalance between NGO workers and the people they serve, and the complexity of exercising legal oversight and accountability in both the home and host states.

The next section will outline the human rights responsibilities of NGOs as derived from international human rights law.

### 3. International Treaty Law

In a nutshell, international human rights law outlines rights for individuals (right-holders) and obligations for states (duty-bearers). It is state-centric: only states possess legal personality under international human rights law and can thus be subject to international obligations to respect, protect, and fulfil human rights. Two main UN human rights treaties, the International Covenant on Civil and Political Rights (ICCPR)<sup>46</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>47</sup> both refer to ‘each State Party’ as the entities required to undertake human rights obligations.

Non-state actors, including NGOs, cannot undertake human rights obligations and are only subject to human rights responsibilities. Not only do they lack international legal personality<sup>48</sup> — the Vienna Convention on the Law of Treaties makes clear that treaties bind states, without mentioning non-state actors<sup>49</sup> — but there is also a democratic shortcoming in applying the binding force of human rights treaties to them. To elaborate, non-state actors do not participate in the drafting of treaty norms, which

<sup>43</sup>Domenico Carolei, *Non-Governmental Organisations and the Law: Self-Regulation and Accountability* (Routledge 2023) at 115-117.

<sup>44</sup>Susan Phillips, ‘Putting Humpty Together Again: How Reputation Regulation Fails the Charitable Sector’ (2019) 10 (4) *Nonprofit Policy Forum* 1, 6.

<sup>45</sup>Ibid, see also Helmut K. Anheier and Stefan Toepler, ‘Policy Neglect: The True Challenge to the Nonprofit Sector’ (2019) 10 (4) *Nonprofit Policy Forum* 1.

<sup>46</sup>International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976).

<sup>47</sup>International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976).

<sup>48</sup>For a comprehensive examination of the legal personality and status of NGOs under international law, see Rephael Harel Ben-Ari, *The Legal Status of International Non-Governmental Organizations: Analysis of Past and Present Initiatives* (1912–2012) (Martinus Nijhoff Publishers 2013); Pierre-Marie Dupuy and Luisa Vierucci, *NGOs in International Law: Efficiency in Flexibility?* (Edward Elgar Publishing 2008).

<sup>49</sup>Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980); see Article 2 (a): “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

are intended to target states only. For these reasons, the accountability mechanisms which oversee compliance with international human rights treaties, specifically the UN treaty bodies and regional human rights courts, such as the European Court of Human Rights, can handle human rights complaints against states only. Indeed, the existing complaint procedures have been criticized for only allowing complaints against states, not against organizations or NGOs operating within those states.<sup>50</sup> This limitation becomes more obvious in those developing countries where non-state actors, including NGOs, take on roles ordinarily associated with the state, such as conducting clinical trials and providing health services.<sup>51</sup>

Nevertheless the general obligation on states to protect human rights requires them to protect individuals and groups against human rights abuses perpetrated by private actors. This obligation is enshrined in a number of human rights treaties, notably Article 20 of the ICCPR which requires states to explicitly regulate private actors. This obligation entails exercising due diligence by taking reasonable measures to prevent, punish, investigate, or redress actions by private actors that infringe upon the enjoyment of human rights by others.<sup>52</sup> The case law on the matter is consistent across the regional human rights courts, which have all affirmed the responsibility of the state for failing to prevent and protect right-holders from the harmful actions of private entities whether these are individuals,<sup>53</sup> corporations,<sup>54</sup> or persons that have not been identified.<sup>55</sup> Below is an in-depth examination of the regulation of non-state actors, specifically NGOs, under the obligation to protect as derived from international human rights treaties. This includes an explanation of their human rights responsibilities, beginning with the International Bill of Rights, which comprises the Universal Declaration of Human Rights (UDHR),<sup>56</sup> the ICCPR, and the ICESCR, before turning to the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination.

### **3.1. The International Bill of Rights: UDHR, ICCPR, and ICESCR**

The International Bill of Rights is a collective term for the UDHR, the ICCPR, and ICESCR, which together outline a comprehensive framework for the protection and promotion of human rights internationally.

Adopted by the United Nations General Assembly in 1948, the UDHR is not legally binding, but sets out a broad range of fundamental rights and freedoms to which all people are entitled, without specifying human rights obligations. It is the ICCPR and the ICESCR, adopted in 1966 and entered into force in 1976, that establish the obligations of states. These treaties are binding on their signatories and require them to respect,

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<sup>50</sup>Sharmeen Ahmed, 'Accountability of International NGOs: Human Rights Violations in Healthcare Provision in Developing Countries and the Effectiveness of Current Measures' (2017) 22 (1) *Annual Survey of International & Comparative Law* 33, 63.

<sup>51</sup>*Ibid.*

<sup>52</sup>UN Human Rights Committee, General Comment No 31 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 8.

<sup>53</sup>European Court of Human Rights, *A v United Kingdom* (1998) 27 EHRR 611.

<sup>54</sup>African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* Communication No 155/96 (2001).

<sup>55</sup>Inter-American Court of Human Rights, *Velásquez Rodríguez v Honduras* (Judgment) (1988) Series C No 4.

<sup>56</sup>UNGA, Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)).

protect, and fulfil these obligations, providing a basis for individuals to claim their rights. These treaties are often referred to as the ‘two UN Covenants.’

In a sense, the UDHR establishes the basis for the human rights responsibilities of non-state actors as its preamble states that ‘every individual and every organ of society ... shall strive by teaching and education to promote respect for these rights and freedoms.’ Article 30 of the UDHR goes on by stating that ‘nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.’ Similar wording is used in Article 5 of both the ICCPR and the ICESCR.

The above provisions are seen as directed to non-state actors, and thus also NGOs, because of the explicit reference to ‘every organ of society’ and ‘any State, group or person.’ To quote Barbara Alexander, ‘if the drafters of the [UDHR] intended to limit the scope of who should promote and recognize human rights to public, state actors, they could have used the phrase “every State” rather than “every organ of society.”’<sup>57</sup>

As the UDHR is not legally binding and does not contain the language of human rights obligations, it is worth exploring the normative content of the ICCPR and the ICESCR. While Article 20 of the ICCPR requires states to explicitly regulate private actors, the UN Human Rights Committee (HRC) has clarified that:

Obligations are binding on States [Parties] and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However, the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.<sup>58</sup>

In making such a clarification, the HRC has taken a very restrictive approach to the responsibilities of non-state actors under the ICCPR in contrast to the other treaty bodies which, through the adoption of General Comments, have shown a willingness to express views on the human rights compliance of non-state actors.<sup>59</sup> This is particularly the case of the UN Committee on Economic, Social and Cultural Rights (CESCR) which has addressed the human rights responsibilities of NGOs, amongst others, in General Comment No. 14 on the right to health, where it states that:

While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society — individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector — have responsibilities regarding the realization of the right to health. State parties should therefore provide an environment which facilitates the discharge of these responsibilities.<sup>60</sup>

<sup>57</sup>Barbara Alexander, ‘Lack of access to HIV/AIDS Drugs in Developing Countries: Is there a Violation of the International Human Rights to Health?’, *Human Rights Brief*, Vol.8, No.3 (2001), p.14.

<sup>58</sup>UN Human Rights Committee, (n 52), para 8.

<sup>59</sup>Clapham, (n 9), at 328; see also August Reinisch, ‘The Changing International Legal Framework for Dealing with Non-State Actors’ in Philip Alston (ed), *Non-State Actors and Human Rights* (OUP, New York 2005) 37, 86.

<sup>60</sup>UN Committee on Economic, Social and Cultural Rights, General Comment No 14: ‘The Right to the Highest Attainable Standard of Health (Art. 12)’ (11 August 2000) UN Doc E/C.12/2000/4, para 42.

General Comment No. 14 highlights that ‘in the course of its examination of States parties’ reports, the Committee will also consider the role of health professional associations and other non-governmental organizations in relation to the States’ obligations under article 12<sup>61</sup> and that ‘the role of ... non-governmental organizations ... is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies’.<sup>62</sup> Here, the CESCR formally acknowledges that the realization of the right to health is not solely dependent on the performance and fulfilment of human rights obligations by state parties, and thus by public bodies and state authorities. Private entities, including NGOs and international organizations such as the WTO and UNICEF, also play an important role in implementing the right to health, as noted in the General Comment. The role of NGOs is particularly significant during emergencies, disaster relief, and humanitarian assistance. In these situations, NGOs become key players in providing medical aid, as well as in the distribution and management of resources such as safe and potable water and food to the most vulnerable and marginalized groups of the population.<sup>63</sup> In that regard, the HRC states that ‘humanitarian organizations must strive to “do no harm” or to minimize the harm they may be inadvertently doing simply by being present and providing assistance.’<sup>64</sup>

A similar approach has been taken by the CESCR in relation to the right to food, whereby it notes in General Comment No. 12 that ‘violations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States’<sup>65</sup> and that ‘all members of society — individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector — have responsibilities in the realization of the right to adequate food.’<sup>66</sup> Because NGOs are involved in the distribution of potable water during humanitarian emergencies, they bear responsibilities in relation to the right to water as well. The CESCR has clarified that states should adopt measures to ‘restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.’<sup>67</sup> Equally, it asserts that ‘where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water.’<sup>68</sup>

Based on the above, it can be argued that the CESCR, compared to the HRC, has taken a more expansive approach in outlining the human rights responsibilities of non-state actors, including NGOs, in several areas (right to health, right to food, and right to water). The fundamental difference between the two approaches to outlining the

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<sup>61</sup>Ibid., para 64.

<sup>62</sup>Ibid., para 65.

<sup>63</sup>Ibid.

<sup>64</sup>UN Human Rights Council, ‘Final Research-Based Report on Best Practices and Main Challenges in the Promotion and Protection of Human Rights in Post-Disaster and Post-Conflict Situations’ (24 February 2015) UN Doc A/HRC/28/76, para 40 (g).

<sup>65</sup>UN Committee on Economic, Social and Cultural Rights, General Comment No 12: ‘The Right to Adequate Food (Art. 11)’ (12 May 1999) UN Doc E/C.12/1999/5, para 19.

<sup>66</sup>Ibid., para 20.

<sup>67</sup>UN Committee on Economic, Social and Cultural Rights, General Comment No 15: ‘The Right to Water (Arts. 11 and 12)’ (26 November 2002) UN Doc E/C.12/2002/11, para 23.

<sup>68</sup>Ibid., para 24.

human rights responsibilities of NGOs, as taken by the two treaty bodies, can be explained as follows: NGOs that focus on economic, social, and cultural rights are involved in the *fulfilment* of rights, while NGOs focused on civil and political rights tend to be more involved in the *promotion* of rights.<sup>69</sup>

### **3.2. Convention on the Rights of the Child and International Convention on the Elimination of All Forms of Racial Discrimination**

Beyond the two major human rights covenants, the human rights responsibilities of NGOs emerge particularly from the UN Convention on Rights of the Child (UNCRC).<sup>70</sup> Evidence that the UNCRC outlines NGO human rights responsibilities can be found in General Comment No. 5, where the UN Committee on the Rights of the Child (CRC) asserts that state parties must ‘respect and ensure the rights of children as stipulated in the Convention,’ which includes ensuring that non-state service providers follow these provisions, creating indirect obligations for these actors.<sup>71</sup> In essence, responsibilities for child rights extend beyond the state to children, parents, families, other adults, and non-state organizations such as human rights NGOs, child- and youth-led organizations, parent groups, faith groups, academic institutions, and professional associations.<sup>72</sup>

Importantly, Article 3(1) of the UNCRC states that the best interests of the child must be a primary consideration in ‘all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.’ The CRC clarified that ‘public or private social welfare institutions’ includes ‘all institutions whose work and decisions impact on children and the realization of their rights.’<sup>73</sup> This encompasses bodies related to economic, social, cultural rights (e.g., care, health, education, business, leisure, and play) and civil rights and freedoms (e.g., birth registration, protection against violence).<sup>74</sup> It also includes private bodies, both for-profit and non-profit, which provide services critical to children’s rights, acting alongside or as alternatives to government services.<sup>75</sup> As the list is extensive and includes a wider range of organizations, scholars have noted that extending these responsibilities to private social welfare organizations is rare in international human rights treaties.<sup>76</sup> Given its broad scope, it has been argued that the UNCRC can be leveraged to encourage effective government oversight of NGOs that interact with children.<sup>77</sup>

Additionally, what makes the UNCRC particularly unique is its emphasis on the role of NGOs in realizing the rights of the child, covering civil and political rights, as well as

<sup>69</sup>T. Jeffrey Scott, ‘Evolution of Development-Oriented NGOs’ in Claude E. Welch Jr. (ed) *NGOs and Human Rights: Promise and Performance* (University of Pennsylvania Press 2001) 208.

<sup>70</sup>Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990).

<sup>71</sup>UN Committee on the Rights of the Child, General Comment No 5 (2003) on ‘General Measures of Implementation of the Convention on the Rights of the Child’ (27 November 2003) CRC/GC/2003/5, para 43.

<sup>72</sup>*Ibid.*, para 56, and para 58.

<sup>73</sup>UN Committee on the Rights of the Child, General Comment No 14 (2013) on ‘the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)’ (29 May 2013) CRC/C/GC/14, para 26.

<sup>74</sup>*Ibid.*

<sup>75</sup>*Ibid.*

<sup>76</sup>John Eekelaar and John Tobin, ‘Article 3: The Best Interests of the Child’ in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 80.

<sup>77</sup>Afroz Kaviani Johnson and Julia Sloth-Nielsen, ‘Safeguarding Children in the Developing World—Beyond Intra-Organisational Policy and Self-Regulation’ (2020) 9(6) *Social Sciences* 98.

economic, social, and cultural rights. In doing so, the UNCRC blurs the distinctions drawn by the HRC and CESCR regarding the responsibilities of non-state actors under the two covenants (see the previous section). As noted by the CRC, NGOs often step in to provide essential social services and support in areas where government resources may be lacking, such as healthcare and education. NGOs may also provide support services in the realm of civil and political rights, such as aiding child victims of domestic violence or assisting with birth registration.

Another international treaty relevant to outlining the human rights responsibilities of NGOs is the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>78</sup> Specifically, Article 2(1)(d) of the ICERD requires each state party to prohibit racial discrimination by ‘any persons, group, or organization.’ The nature and the extent of this obligation was clarified by the CESCR in General Comment No. 16:

The obligation to protect requires States parties to take steps aimed directly towards the elimination of prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women. States parties’ obligation to protect under Article 3 of the ICESCR includes inter alia, the respect and adoption of constitutional and legislative provisions on the equal right of men and women to enjoy all human rights and the prohibition of discrimination of any kind; the adoption of legislation to eliminate discrimination and to prevent third parties from interfering directly or indirectly with the enjoyment of this right; the adoption of administrative measures and programmes, as well as the establishment of public institutions, agencies and programmes to protect women against discrimination.<sup>79</sup>

It goes on by stating:

States parties have an obligation to monitor and regulate the conduct of non-state actors to ensure that they do not violate the equal right of men and women to enjoy economic, social and cultural rights. This obligation applies, for example, in cases where public services have been partially or fully privatized.<sup>80</sup>

To elaborate, states are under a positive obligation to a) adopt legislation aimed at eliminating discrimination and preventing third parties from interfering directly or indirectly with the enjoyment of this right; and b) monitor and regulate the responsibilities of non-state actors, including NGOs, to respect the economic, social, and cultural rights of everyone without discrimination, particularly when such entities provide public services.<sup>81</sup> For instance, a state’s failure to prohibit racial discrimination in the admission of students to private educational institutions would clearly violate its obligation to protect the right to education.<sup>82</sup> Yet, there is debate about the extent to which NGOs can be allowed to discriminate under national equality laws, such as the Equality Act 2010 in the UK; the question whether an NGO can exclude a transgender woman from women-only

<sup>78</sup>International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969).

<sup>79</sup>UN Committee on Economic, Social and Cultural Rights, General Comment No. 16 (2005) ‘The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the International Covenant on Economic, Social and Cultural Rights)’ (11 August 2005) UN Doc E/C.12/2005/4, para 19.

<sup>80</sup>Ibid., para 20.

<sup>81</sup>Manisuli Ssenyonjo, ‘The Applicability of International Human Rights Law to Non-State Actors: What Relevance to Economic, Social and Cultural Rights?’ (2008) 12 (5) *The International Journal of Human Rights* 725, 733.

<sup>82</sup>Ibid.

services has been addressed by the UK Supreme Court which interprets “woman” under the Equality Act 2010 as biological sex, and has led some organizations, such as the Women’s Institute, to treat such exclusion as justified or necessary in light of potential legal challenges.<sup>83</sup>

Furthermore, Article 4 of the ICERD imposes a legal obligation that, although directed at state parties, directly concerns NGOs because it prohibits certain actions concerning the rights to freedom of association and freedom of expression conferred upon them by other international treaties dealing primarily with civil and political rights, such as the ECHR and the ICCPR.<sup>84</sup> Specifically, Article 4 requires states to ‘condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.’<sup>85</sup>

To eradicate all acts of, or incitement to, such discrimination, state parties are required to adopt immediate and positive measures and to prohibit such organizations. The UN Committee on the Elimination of Racial Discrimination, in General Recommendation No. 7, urged states to align their legislation with Article 4.<sup>86</sup> In its General Recommendation No. 15, it affirmed that prohibiting the dissemination of racially superior or hateful ideas is compatible with freedom of expression.<sup>87</sup> The General Comment reiterates that organizations promoting racial discrimination must be declared illegal and prohibited.<sup>88</sup> To summarize, the ICERD prohibits discrimination in the delivery of services related to economic, social, and cultural rights by NGOs. It is also relevant in the field of political rights, outlawing organizations that are founded on ideas that justify or promote racial or group superiority, racial hatred, and discrimination in any form.

#### 4. Human Rights Declarations and Guidelines

In addition to international treaty law examined above, a set of NGO human rights responsibilities derives from international declarations and guidelines — documents that, while not legally binding as international human rights treaties, are relevant to the operations of NGOs. These documents are the Vienna Declaration and Programme of Action,<sup>89</sup> the Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (known as the Declaration on Human Rights Defenders),<sup>90</sup>

<sup>83</sup>Jennifer Sigafoos, ‘When Should Charities be Allowed to Discriminate? The Case of Single-Sex Services and Transgender People’ in John Picton and Jennifer Sigafoos (eds), *Debates in Charity Law* (Hart Publishing 2020) 103–128; UK Supreme Court, *For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent)* [2025] UKSC 16; Alexandra Topping, ‘Women’s Institute will no longer accept trans women as members from April’ *The Guardian* (3 December 2025) – available at <<https://www.theguardian.com/uk-news/2025/dec/03/womens-institute-no-longer-accept-trans-women-members-april>> last accessed 01/04/2026.

<sup>84</sup>Lindblom, (n 22), at 190–191.

<sup>85</sup>International Convention on the Elimination of All Forms of Racial Discrimination, (n 78), Article 4 (b).

<sup>86</sup>CERD General Recommendation No. 7, Legislation to Eradicate Racial Discrimination (Art. 4), 25 August 1985, para. 1, in A/40/18, Report of the Committee on the Elimination of Racial Discrimination, 1985.

<sup>87</sup>CERD General Recommendation No. 15, Organized Violence based on Ethnic Origin (Art. 4), 19 March 1993, para. 6, in A/48/18, Report of the Committee on the Elimination of Racial Discrimination, 1993.

<sup>88</sup>Ibid.

<sup>89</sup>The World Conference on Human Rights, *Vienna Declaration and Programme of Action*, A/CONF.157/23, UN General Assembly, 12 July 1993.

<sup>90</sup>UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, 8 March 1999.

the Recommended Principles and Guidelines on Human Rights and Human Trafficking,<sup>91</sup> and the Guiding Principles on Internal Displacement.<sup>92</sup> Though, like human rights treaties, primarily intended to address states' behaviour, these documents have implications for NGOs. As discussed below, NGOs are encouraged to cooperate with states and international organizations in promoting human rights at all levels and contexts, with particular attention to xenophobia, racial discrimination, and the rights of vulnerable groups. Additionally, NGOs have a set of human rights responsibilities towards human rights defenders, contributing to a safe and enabling environment for them and supporting their work. NGOs also have responsibilities to tackle human trafficking by cooperating with law enforcement authorities, with due consideration to the specific needs of internally displaced persons. These responsibilities will be examined in detail below.

#### **4.1. The Vienna Declaration and Programme of Action**

The Vienna Declaration and Programme of Action is a comprehensive human rights document adopted at the World Conference on Human Rights in 1993,<sup>93</sup> reaffirming the universal nature of human rights and outlining a framework for promoting and protecting them globally. This declaration contains a number of provisions relating to the human rights responsibilities of NGOs.

First, the Vienna Declaration encourages NGOs to cooperate with states and international organizations to ensure the full and effective enjoyment of human rights. Such encouragement to cooperate is found in paragraph 13:

There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights.<sup>94</sup>

The Vienna Declaration then reiterates a responsibility to cooperate in the context of racial discrimination and xenophobia, stating that 'Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in cooperating and coordinating their activities against these evils.'<sup>95</sup> In a similar way, it encourages 'intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.'<sup>96</sup>

Finally, while appreciating the key role NGOs play in both the promotion of human rights and the standard-setting process, the Vienna Declaration emphasizes:

the importance of continued dialogue and cooperation between Governments and non-governmental organizations. Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law.

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<sup>91</sup>UN High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002.

<sup>92</sup>UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 22 July 1998.

<sup>93</sup>The World Conference on Human Rights, (n 89).

<sup>94</sup>*Ibid.*, para 13.

<sup>95</sup>*Ibid.*, para 15.

<sup>96</sup>*Ibid.*, para 18.

These rights and freedoms may not be exercised contrary to the purposes and principles of the United Nations. Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.<sup>97</sup>

#### 4.2. *The Declaration on Human Rights Defenders*

The Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms — known as the Declaration on Human Rights Defenders<sup>98</sup> — addresses both the rights and responsibilities of all people, ‘individually and in association with others’, thus targeting NGOs in its normative content. The declaration enumerates a series of rights that can be classified as organizational rights, typically exercised collectively by individuals in the form of NGOs. These include freedom of assembly and the right to form, join, and participate in NGOs, amongst others. However, despite its promising title, it does not address issues of human rights responsibilities with the same strength or clarity. It merely states that NGOs ‘have an important role to play in contributing to making the public more aware of questions relating to all human rights’<sup>99</sup> and a ‘responsibility in safeguarding democracy, promoting human rights and fundamental freedoms, and contributing to the promotion and advancement of democratic societies, institutions and processes.’<sup>100</sup> During the preparatory work on the declaration, there was significant debate over the inclusion of terms like ‘duties’ or ‘obligations’ for human rights defenders, with countries such as Turkey, Cuba, and Malaysia advocating for these terms, while Sweden, France, the Netherlands, and several NGOs were opposed.<sup>101</sup> Ultimately, Article 18 of the declaration included a vague reference to the ‘important role’ and ‘responsibility’ of various actors, instead of more legal terms such as ‘duties’ and ‘obligations’ reflecting a compromise between these differing viewpoints.<sup>102</sup> Based on this, Menno Kamminga concludes that ‘it is unlikely that any liability of international law could ever be based on these provisions, even if it were assumed that they contained legally binding obligations.’<sup>103</sup> Nonetheless, the work of the Special Rapporteur on the Situation of Human Rights Defenders has helped to shed light on the human rights responsibilities that human rights defenders owe to the communities they work with and to other human rights defenders. For instance, in the Country Report on Mexico, the Special Rapporteur details the threats faced by human rights defenders and NGOs and emphasizes the responsibility of NGOs to document and report human rights violations, while calling on the state to protect these defenders. The Special Rapporteur’s report emphasizes that human rights defenders contribute to

<sup>97</sup>Ibid., para 38.

<sup>98</sup>UN General Assembly, (n90).

<sup>99</sup>Ibid., Art.16.

<sup>100</sup>Ibid., Art. 18.

<sup>101</sup>Lindblom, (n 22), at 193; see also E/CN.4/1997/92, *Drafting of a Declaration on the Right and Responsibility of Individuals*, 25 March 1997, paras. 53–63 and E/CN.4/1998/98, 29 March 1998, para. 21; E/CN.4/1997/92, paras. 55 and 57; E/CN.4/1998/98, para. 41.

<sup>102</sup>Ibid.

<sup>103</sup>Menno T. Kamminga, ‘The Evolving Status of NGOs under International Law: A Threat to the Inter-State System?’ in Gerard Kreijen, Marcel Brus, Jorris Duursma, Elizabeth De Vos and John Dugard (eds.) *State, Sovereignty and International Governance* (Oxford University Press 2002) 402.

a safe and enabling environment by working professionally, peacefully, non-discriminately, and respecting international human rights principles.<sup>104</sup> Additionally, the Special Rapporteur found that several human rights defenders remained isolated from broader networks due to the specific nature of their work or their remote locations.<sup>105</sup> The report suggests that the Mexican human rights movement should strengthen networks outside the capital and metropolitan areas and reach out to rural and isolated human rights defenders, who are often more exposed to risk.<sup>106</sup> The report also documents instances where groups advocating for different sets of rights and interests have created hostile situations for certain rights-holders. Specifically, defenders of the rights of lesbian, gay, bisexual, transgender, and intersex persons, as well as sexual and reproductive rights advocates, have reported that religious groups have sometimes undermined their efforts to secure wider recognition of these rights.<sup>107</sup> Through their actions and statements, religious groups have created a climate of harassment, targeting advocates of such rights.<sup>108</sup> At the same time, the HRC has stressed the importance of the different types of responsibilities that organizations, including NGOs and their leaders, hold towards human rights defenders.<sup>109</sup> These responsibilities range from providing information about the environment in which human rights defenders operate — specifically in the context of the Universal Periodic Review and the work of treaty bodies — to openly supporting their work and legitimacy.<sup>110</sup>

### **4.3. Recommended Principles and Guidelines on Human Rights and Human Trafficking**

The Recommended Principles and Guidelines on Human Rights and Human Trafficking primarily target states, though they also reference NGOs.<sup>111</sup> Specifically, Guideline 2 on the ‘Identification of trafficked persons and traffickers’ is intended to address state behaviour but, ‘where possible’, it is directed at NGOs and inter-governmental organizations, requiring them to cooperate with the relevant authorities to facilitate the identification and provision of assistance to trafficked persons.<sup>112</sup> It further adds that ‘The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness’.<sup>113</sup> The wording ‘where possible’ could be interpreted as indicating that NGOs (and inter-governmental organizations) are encouraged to cooperate with the relevant authorities to the best of their abilities, considering their available resources and specific circumstances. The same wording, ‘where possible’, is used in the context of Guideline 5 on ‘Ensuring an adequate law enforcement response’, where NGOs are encouraged to facilitate processes and work in close cooperation with the relevant authorities to report traffickers, while ensuring the safety of trafficked persons.<sup>114</sup> However,

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<sup>104</sup>UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico*, A/HRC/37/51/Add.2, 12 February 2018, para 106.

<sup>105</sup>*Ibid.*, paras 107-108.

<sup>106</sup>*Ibid.*,

<sup>107</sup>*Ibid.*, para 103.

<sup>108</sup>*Ibid.*

<sup>109</sup>UN Human Rights Council, *Resolution 22/6. Protecting human rights defenders*, A/HRC/RES/22/6, 12 April 2013.

<sup>110</sup>*Ibid.*, paras 18-20.

<sup>111</sup>UN High Commissioner for Human Rights, (n 91).

<sup>112</sup>*Ibid.*, Guideline 2.

<sup>113</sup>*Ibid.*

<sup>114</sup>*Ibid.*, Guideline 5.

Guideline 10 on ‘Obligations of peacekeepers, civilian police, and humanitarian and diplomatic personnel’ is more onerous and stringent, directly targeting NGOs:

Nongovernmental organizations should, in appropriate cases, apply disciplinary sanctions to staff members found to be involved in trafficking and related exploitation in addition to and independently of any criminal or other sanctions decided on by the State concerned. Privileges and immunities attached to the status of an employee should not be invoked in order to shield that person from sanctions for serious crimes such as trafficking and related offences.<sup>115</sup>

This suggests that NGOs are responsible for holding their staff accountable for involvement in trafficking and related exploitation, ensuring that such individuals face internal disciplinary actions regardless of any immunities or additional state-imposed sanctions.

#### **4.5. Guiding Principles on Internal Displacement**

Additional human rights responsibilities of NGOs arise from the Guiding Principles on Internal Displacement, which address the specific needs of internally displaced persons globally.<sup>116</sup> These principles identify rights and guarantees relevant to protecting individuals from forced displacement and ensuring their protection and assistance during displacement, as well as during their return, resettlement, and reintegration.<sup>117</sup> This instrument lists NGOs amongst the addressees of its principles, along with states, inter-governmental organizations, as well as others.<sup>118</sup> To ensure the widest possible observance, Principle 2 states that ‘these Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction.’<sup>119</sup> It has been noted that by calling for observance by all authorities, groups, and persons irrespective of their legal status, this principle might go beyond typical human rights provisions, which usually impose obligations only on states and state authorities.<sup>120</sup> In a similar vein, Principle 5 stipulates that ‘all authorities and international actors’ (whether or not they are of a governmental nature) should respect norms of international law, including human rights and humanitarian law provisions.<sup>121</sup> This principle is based on the assumption that compliance with international law by all actors involved, regardless of their nature, inevitably reduces the risk of internal displacement in situations of tension, disturbances, or armed conflict.<sup>122</sup> Further, Principle 27 places a responsibility upon international humanitarian organizations, when providing assistance, to prioritize the protection needs and human rights of internally displaced persons by taking appropriate measures.<sup>123</sup> Fundamentally, this principle highlights that humanitarian assistance and the protection of the civilian population are two

<sup>115</sup>Ibid., Guideline 10.

<sup>116</sup>UN Commission on Human Rights, (n 92).

<sup>117</sup>Ibid., Introduction: Scope and Purpose, 1.

<sup>118</sup>Ibid., Introduction: Scope and Purpose, 3 (d).

<sup>119</sup>Ibid., Principle 2.

<sup>120</sup>Walter Kälin, *Guiding Principles on Internal Displacement Annotations*, The Brookings Institution – University of Bern - Project on Internal Displacement Studies in Transnational Legal Policy, No. 38, The American Society of International Law (Washington, DC, 2008, 2<sup>nd</sup> edition) 16. Available here <<https://www.brookings.edu/articles/the-guiding-principles-on-internal-displacement-annotations-2nd-edition/>>

<sup>121</sup>UN Commission on Human Rights, (n 92), Principle 5.

<sup>122</sup>Kälin, (n 120), at 25.

<sup>123</sup>UN Commission on Human Rights, (n 92), Principle 27.

faces of the same coin; it is aimed at securing respect for the rights of internally displaced persons, while the purpose of assistance is to provide material aid.<sup>124</sup>

## 5. Business and Human Rights Law

Although there is no specific instrument in international law that directly outlines the human rights responsibilities of NGOs, several frameworks in the domain of business and human rights have been developed to address the accountability of multinational corporations. These non-binding frameworks emerged from the recognition that globalization gives multinational corporations the ability to impact the enjoyment of human rights through their actions. The key initiatives aimed at defining the human rights responsibilities of multinational corporations include the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises,<sup>125</sup> the UN Global Compact (UNGC),<sup>126</sup> and the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>127</sup> These initiatives are interrelated. Following the adoption of the UNGPs in 2011, the OECD Guidelines were revised to incorporate the corporate responsibility to respect human rights, consistent with the formulation in the UNGPs. Similarly, the UNGC and the UNGPs complement each other, with the UNGPs establishing the standards and the UNGC offering a platform for their implementation.<sup>128</sup> The subsequent sections will illustrate how the legal frameworks for business and human rights, originally developed for corporations, can be adapted to address the human rights responsibilities of NGOs. The analysis will begin with the oldest instrument amongst the three, the OECD Guidelines, and will proceed to the more recent frameworks, first covering the UNGC and then the UNGPs.

### 5.1. The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises were established to promote responsible business conduct across borders.<sup>129</sup> The National Contact Points (NCPs) promote the implementation of the guidelines by offering mediation and conciliation for resolving issues arising from the non-observance of the guidelines. Historically, the OECD Guidelines have been predominantly applied to for-profit multinational corporations. However, recent complaints reviewed by NCPs, as examined below, suggest that the guidelines also extend to NGOs under three conditions: first, the NGO must operate in at least two countries; second, it must be active within a state that is signatory to the

<sup>124</sup>Kälin, (n 120), at 124.

<sup>125</sup>Organisation for Economic Cooperation and Development, Guidelines for Multinational Enterprises Annex to Declaration on International Investment and Multinational Enterprises, OECD Doc. C (76) 99 (Final) (1976) subsequently amended in 1979, 1982, 1984, 1991, 2000, 2011 and 2023.

<sup>126</sup>UN Global Compact, launched at UN Headquarters (New York, 26 July 2000), amended at 1st Global Compact Leaders Summit, UN Headquarters (New York, 24 June 2004).

<sup>127</sup>UN Human Rights Council, 17th Session, Agenda Item 3, Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie (21 March 2011) A/HRC/17/31.

<sup>128</sup>Ursola Wynhoven, 'The Protect-Respect-Remedy Framework and the United Nations Global Compact' (2011) 9 *Santa Clara Journal of International Law* 81, 88.

<sup>129</sup>OECD, (n 125).

OECD Guidelines; and third, the OECD Guidelines violation must have occurred in connection with the business activities of the NGO.<sup>130</sup>

The first time an NGO was subject to a complaint under the OECD Guidelines was in 2011 when a complaint was made against Norwegian Church Aid (NCA), requiring the Norwegian NCP to determine if an NGO could be subject to the OECD Guidelines for inadequate due diligence in managing a Kosovo refugee camp on contaminated land.<sup>131</sup> The complainants argued that NCA, despite being a non-profit, received substantial public funds and operated internationally, meeting the OECD Guidelines' transnational nature criterion.<sup>132</sup> However, after consulting with the OECD Investment Committee, the NCP determined that NCA did not qualify as a multinational enterprise and declared the complaint inadmissible, noting that the OECD Guidelines require a business nexus.<sup>133</sup>

In 2016, a complaint was lodged against Swiss-based WWF by Survival International, an Indigenous rights organization.<sup>134</sup> The complaint alleged that WWF's conservation activities in Cameroon resulted in human rights abuses against the Baka people, an Indigenous group. The OECD Guidelines were invoked to address issues related to stakeholder engagement, human rights, and the environmental impact of conservation efforts. Specifically, the complaint accused WWF of supporting anti-poaching patrols that allegedly committed acts of violence against the Baka. The Swiss NCP concluded that the OECD Guidelines applied to WWF due to its transnational nature, its market-based approach to conservation, and its commercial revenue streams, such as royalties and the sale of branded merchandise.<sup>135</sup> However, this complaint did not reach an outcome because the mediation talks between the two parties failed.<sup>136</sup>

Additionally, Fédération Internationale de Football Association (FIFA), the governing body of world football and a non-profit organization under Swiss law, has faced several complaints before the Swiss NCP. The first complaint related to human rights abuses in the context of the 2022 World Cup preparations in Qatar.<sup>137</sup> Filed by multiple human rights organizations, the complaint cited poor labour conditions and the exploitation of migrant workers. In this instance, the Swiss NCP applied the OECD Guidelines to FIFA, noting that while 'multinational enterprises' are not explicitly defined, the broad definition in Chapter I (4) includes entities operating internationally and coordinating their activities across countries.<sup>138</sup> The guidelines set legally non-binding principles for responsible business conduct, applicable to entities involved in commercial activities, regardless of their legal structure or industry.<sup>139</sup> A 2022 complaint by UNITE HERE

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<sup>130</sup>Domenico Carolei, 'Accountability beyond Corporations: The Applicability of the OECD Guidelines for Multinational Enterprises to Non-profit Organisations' (2022) 13 (1) *Nonprofit Policy Forum*, 31–47.

<sup>131</sup>National Contact Point Norway, Initial Assessment and Final Conclusion, 129 Roma in Kosovo v. Norwegian Church Aid (26 September 2011) p. 1.

<sup>132</sup>*Ibid.*, at pp. 5–6.

<sup>133</sup>*Ibid.*

<sup>134</sup>National Contact Point of Switzerland, Initial Assessment, Specific Instance regarding the World-Wide Fund for Nature International (WWF) submitted by Survival International Charitable Trust on 20 December 2016.

<sup>135</sup>*Ibid.* at pp.8–9.

<sup>136</sup>NCP of Switzerland, Final Statement, Specific Instance Regarding the World-Wide Fund for Nature International (WWF) Submitted by the Survival International Charitable Trust, 2017.

<sup>137</sup>National Contact Point of Switzerland, Initial Assessment Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers' International (BWI) on 28 May 2015.

<sup>138</sup>*Ibid.*, at pp. 4–6.

<sup>139</sup>*Ibid.*

Local 11, alleging FIFA's failure in due diligence for the 2026 World Cup venue selection, was accepted by the Swiss NCP, but then closed after the parties reached an agreement.<sup>140</sup> In a separate 2016 case, Americans for Democracy and Human Rights in Bahrain (ADHRB) claimed FIFA violated the OECD Guidelines by allowing Sheikh Salman Al Khalifa to run for its presidency without carrying out due diligence in relation to human rights, but the Swiss NCP concluded the alleged violations were unrelated to FIFA's commercial activities.<sup>141</sup>

Another significant decision involved the UK NCP in the complaint against Bonsucro, a multi-stakeholder initiative registered as a non-profit in the UK.<sup>142</sup> The NCP reasoned that the guidelines applied to Bonsucro due to its transnational operations and the commercial nature of its activities, which included membership fees from multinational companies and certification services.<sup>143</sup> A similar line of reasoning has been applied by the Swiss NCP in a complaint against another multi-stakeholder initiative, namely Roundtable for Sustainable Palm Oil.<sup>144</sup> Finally, several Tibetan associations filed a complaint against the International Olympic Committee (IOC) at the Swiss NCP in 2021, alleging insufficient due diligence and potential human rights violations related to awarding the 2022 Winter Olympics to Beijing.<sup>145</sup> The NCP determined that the IOC was a multinational enterprise with responsibilities under the guidelines, but the complaint ended without resolution due to a breach of confidentiality by one of the complainants.<sup>146</sup>

## 5.2. The UN Global Compact

The UNGC, established in 2000, is a non-binding initiative based on ten principles covering human rights, labor, the environment, and anti-corruption. It is a framework that applies to NGOs.<sup>147</sup> The UNGC is explicitly open to non-business participants, including NGOs, academic institutions, cities, labour unions, and other civil society organizations. This inclusivity underscores the normative relevance of the UNGC to NGO accountability. Over 3,500 global and local NGOs have joined the UNGC, committing to its principles and demonstrating the sector's willingness to engage with this framework.<sup>148</sup> A distinctive feature of the UNGC is the requirement for non-business participants to

<sup>140</sup>NCP of Switzerland, Initial Assessment, Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the trade union UNITE HERE Local 1, 2022; NCP of Switzerland, Final Statement, Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the trade union UNITE HERE Local 1, 2022.

<sup>141</sup>National Contact Point of Switzerland, Initial Assessment Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by Americans for Democracy and Human Rights in Bahrain (ADHRB) on 11 February 2016.

<sup>142</sup>NCP of the United Kingdom, Initial Assessment: Complaint from IDI, EC and LICADHO against Bonsucro Ltd, 2019.

<sup>143</sup>*Ibid.*, para 14; and para 29.

<sup>144</sup>NCP of Switzerland, Initial Assessment, Specific Instance Regarding the Roundtable for Sustainable Palm Oil (RSPO) Submitted by Transformation for Justice (TuK), 2018, p. 5.

<sup>145</sup>NCP of Switzerland Initial Assessment, Specific Instance regarding the International Olympic Committee submitted by the Swiss Tibetan Friendship Association, Tibetan Youth Association in Europe, Tibetan Community of Switzerland and Liechtenstein as well as the Tibetan Women's Association Switzerland, 2021, pp. 6-7.

<sup>146</sup>NCP of Switzerland, Final Statement, Specific Instance regarding the International Olympic Committee submitted by the Swiss-Tibetan Friendship Association, Tibetan Youth Association in Europe, Tibetan Community in Switzerland and Liechtenstein as well as the Tibetan Women's Association Switzerland, 2021.

<sup>147</sup>UN Global Compact, *supra* note 121.

<sup>148</sup>UN Global Compact website: "Our participants." Available at <<https://unglobalcompact.org/what-is-gc/participants>> last accessed 19/08/2024.

submit a Communication on Engagement (COE) every two years.<sup>149</sup> The COE is a disclosure tool where NGOs report actions taken to support the UNGC's principles amongst the business community and within their organizations too.<sup>150</sup> Indeed, NGOs are encouraged to integrate the UNGC principles within their organizational practices, ensuring that human rights, labour, environmental, and anti-corruption standards are embedded in their operations.<sup>151</sup> This dual role of the COE — adhering to principles and aiding businesses — enhances the collaborative effort to uphold global human rights standards across sectors, including the NGO sector.

### 5.3. The UN Guiding Principles

The UNGPs primarily target governments and businesses, articulating their responsibilities in protecting human rights.<sup>152</sup> However, there is a compelling argument that these principles can and should be applied to NGOs, particularly those engaging in business-like activities or that have significant operational reach. The UNGPs are built upon three pillars: the state's duty to protect human rights, the corporate responsibility to respect human rights, and the need for greater access to remedy for victims of human rights abuses. While the corporate responsibility pillar explicitly targets business enterprises, the term 'business enterprises' is broadly defined. Principle 14 of the UNGPs states that the responsibility to respect human rights applies to all enterprises, regardless of their size, sector, operational context, ownership, and structure. This inclusive definition provides a basis for arguing that NGOs conducting business activities can also fall within the ambit of the UNGPs.<sup>153</sup>

To respect human rights under the UNGPs, entities must adopt a human rights policy, carry out human rights due diligence, and implement remediation processes for adverse impacts they cause or contribute to. NGOs can operationalize these requirements in several ways. For example, NGOs should ensure their services in high-risk areas do not harm beneficiaries.<sup>154</sup> Likewise, they should evaluate the human rights impact of their socially responsible investments.<sup>155</sup> Contracts signed by NGOs with their partners should include human rights standards, obligating partners to comply and allowing termination if standards are breached.<sup>156</sup>

Evidence that the UNGPs apply to NGOs also emerges from organizational practices. FIFA has implemented significant organizational reforms, including its 2017 Human Rights Policy,

<sup>149</sup>UN Global Compact, "Global Compact Communication on Engagement Policy" available at <<https://unglobalcompact.org/library/1861>> last accessed 19/08/2024.

<sup>150</sup>Ibid.

<sup>151</sup>UN Global Compact Website, "Frequently asked Questions", where it says: "non-business participants are also encouraged to commit their organization to the ten principles and to report on progress made within their organization" available at <<https://unglobalcompact.org/about/faq>> last accessed 19/08/2024.

<sup>152</sup>UN Human Rights Council, *supra* note 122. See also, UN Human Rights Council, 8th Session, Agenda Item 3, Protect, Respect and Remedy: a Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie (7 April 2008) A/HRC/8/5.

<sup>153</sup>Carolei and Bernaz, (n 10), 517-520.

<sup>154</sup>Julie Wynne and Tomas Navarro Blakemore, 'The UN guiding principles on business and human rights and their role for non-profit organisations' *Philanthropy Impact Magazine* (7 June 2017) available at <<http://philanthropy-impact.org/article/un-guiding-principles-business-and-human-rights-and-their-role-non-profit-organisations>> last accessed 19/08/2024.

<sup>155</sup>Ibid.

<sup>156</sup>Ibid.

which integrates the UNGPs into its processes.<sup>157</sup> The former UN Special Rapporteur on Human Rights and the Environment advised WWF to overhaul its social policies using the UNGPs.<sup>158</sup> In a 2024 report on the rights of overseas students, Amnesty International emphasized that the UNGPs should guide universities, not just businesses, noting that: ‘there is a growing understanding that the UN Guiding Principles are an appropriate standard for assessing the human rights responsibilities of organizations that are not businesses.’<sup>159</sup>

NGOs have shown a growing willingness to adopt business and human standards, evidenced by their participation in initiatives like the UNGC, incorporating the UNGPs into their organizational policies, and accepting mediations within the OECD Guidelines system.<sup>160</sup> This commitment indicates a cross-sectoral consensus amongst NGOs on the importance of adhering to human rights standards designed for corporations.<sup>161</sup> NGOs also possess the expertise and organizational structures necessary to perform human rights due diligence, ensuring their operations align with established human rights responsibilities.<sup>162</sup> International bodies also support the application of business and human rights standards to NGOs. As documented above, the case law within the OECD system is consistent and has defined clear parameters for the application of the OECD Guidelines to NGOs. The Council of Europe’s expert body on NGO law of has maintained that, where possible, NGOs ‘should be put on equal footing with private businesses’ when it comes to reporting and disclosure obligations.<sup>163</sup> A 2023 study by the EU Parliament on the transparency and accountability of EU-funded NGOs considers the OECD Guidelines as an example of how a private sector-specific instrument has evolved to become applicable to NGOs as well.<sup>164</sup> The application of the OECD Guidelines to NGOs acknowledges the institutionalized and corporate nature of many NGOs and is also rooted in the lack of international regulation for NGOs concerning their human rights responsibilities.<sup>165</sup> Due to the regulatory gap at the international level, it has been suggested that the UNGPs could serve as a foundation for developing a framework outlining the human rights responsibilities of NGOs.<sup>166</sup> Beyond the realm of international law, it has been observed that domestic laws, such as the UK Modern Slavery Act and Australia Slavery Act, also impose mandatory human rights due diligence requirements on corporations, extending these obligations to some NGOs in line with the UNGPs.<sup>167</sup> Focus Rights has provided guidance on incorporating human rights due diligence into NGO operations.<sup>168</sup>

<sup>157</sup>Fédération International de Football Association, ‘FIFA’s human rights policy’ (2017).

<sup>158</sup>John H. Knox, letter sent to Pavan Sukhdev, President, Marco Lambertini, Director-General, WWF International Gland Switzerland (30 June 2021) available at <[www.mediafire.com/file/djd94a93rq79b24/Knox+Comments+on+WWF+Safeguards+-+30+June+2021.pdf/file](http://www.mediafire.com/file/djd94a93rq79b24/Knox+Comments+on+WWF+Safeguards+-+30+June+2021.pdf/file)> last accessed 19/08/2022.

<sup>159</sup>Amnesty International, ‘On my campus, I am afraid: China’s targeting of overseas students stifles rights’ (13 May 2024) at p. 54 (footnote n. 382).

<sup>160</sup>Carolei and Bernaz, (n 10), 520-522.

<sup>161</sup>Ibid.

<sup>162</sup>Ibid.

<sup>163</sup>Council of Europe, Expert Council on NGOs Law of the Conference of INGOs. Review of Developments in Standards, Mechanisms and Case Law Related to NGOs 2017-2019 (February 2020) CONF/EXP, para 38.

<sup>164</sup>European Parliament, Transparency and accountability of EU funding for NGOs active in EU policy areas within EU territory (September 2023) Study Requested by the CONT committee p. 102.

<sup>165</sup>Ibid., at p. 178.

<sup>166</sup>Schimmel, (n 6), 52.

<sup>167</sup>Rosana Garcíandia, (n 5), 532.

<sup>168</sup>Focus Rights, Human Rights Due Diligence for Non-Governmental Organisations – Working Paper (May 2022) available at <<https://static1.squarespace.com/static/5a6ede6f268b96417e62cba6/t/62b2b9daef9ba32836f84514/1655880156266/focusright±working±paper±HRDD±for±NGOs±May±2022.pdf>> last accessed 19/08/2024.

## 6. Conclusion

This paper has explored the landscape of NGO human rights responsibilities and accountability. Despite the growing influence and involvement of NGOs in global governance, there is no unified framework in international law that clearly defines their human rights responsibilities. However, as documented throughout this paper, international human rights law does impose certain responsibilities on NGOs through both treaty law and soft law initiatives. These legal instruments are quite comprehensive, covering areas such as the right to health, children's rights, the protection of human rights defenders, and human trafficking. This broad scope highlights the crucial role NGOs play in filling gaps left by states, particularly in providing essential services in fragile contexts, underscoring the importance of ensuring they adhere to human rights standards.

The paper further demonstrates that the existing human rights framework, particularly business and human rights law designed for corporations, is versatile enough to be adapted to encompass NGO accountability for human rights, thereby addressing regulatory and accountability gaps at the international level. The adaptability of business and human rights law reflects the increasing marketization and expansion of the NGO sector, with its emphasis on commercial activities and transnational operations, which in turn intensifies the need for robust accountability mechanisms for NGOs. Thus, it can be concluded that international human rights law not only clearly defines the human rights responsibilities of NGOs but is also capable of adapting and evolving to address these responsibilities comprehensively.

A key policy implication of these findings is that the creation of a dedicated framework for the human rights responsibilities of NGOs may not be necessary. This conclusion stems from the lack of consensus and the absence of a strong movement similar to the one behind the efforts to establish a business and human rights treaty, for which there is also not consensus at the UN level. However, beyond international human rights law, there may still be a need for an international institution to address broader NGO accountability issues in areas like sexual abuse, exploitation, transparency, and maladministration. Such an institution could enforce accountability through mechanisms such as an international ombudsman, specifically focusing on NGOs operating in high-risk contexts, including those working with children, in humanitarian crises, or as service providers acting as *de facto* states.<sup>169</sup> Likewise, it has been suggested that the rules regulating access to the UN human rights bodies contain clearer, transparent guidelines for accrediting human rights advocates: these should define which organizations qualify as non-state actors, include a basic pre-qualification check on legitimacy and expertise, and require transparency on funding and conflicts of interest, particularly for private law firms, to limit undue influence.<sup>170</sup>

Moreover, a framework outlining the human rights responsibilities of NGOs could be politically biased and perceived as an attempt to silence civil society due to the rise of restrictions on NGOs and civil society worldwide. Amid rising authoritarianism, shrinking civic space, funding constraints, and competition from other actors, one could

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<sup>169</sup>Dorothea Hilhorst, Asmita Naik and Andrew Cunningham, 'International ombuds for humanitarian and development aid scoping study' International Institute of Social Studies (Erasmus University Rotterdam, September 2018).

<sup>170</sup>See Nina Reiners, 'Hard (er) Times for Human Rights Advocacy in Global Governance: Ideological Capture and Illiberal Interests' (2025) *Ethics & International Affairs* 1, 12-13.

question whether accountability is the core problem facing NGOs, or whether the sector's challenges lie deeper in its structures and practices. As George Mitchell, Hans Schmitz, and Tosca Bruno-van Vijfeijken argue, NGOs operate in an increasingly complex environment and have often struggled to adapt, creating a gap between their transformational rhetoric and their more limited capacity to deliver; their argument that NGOs should realign their internal norms, strategies, and ways of working suggests that accountability debates need to be understood within this broader context of organizational relevance and effectiveness.<sup>171</sup> At the same time, the global trend of shrinking civic space and growing restrictions on NGO activity has prompted a parallel shift towards frameworks that both safeguard NGO autonomy and reinforce accountability. A central challenge for international human rights institutions is, therefore, to protect NGOs from expanding state-imposed constraints on their basic organizational rights. Recent initiatives point in this direction, such as the Inter-American Juridical Committee's Declaration of Inter-American Principles on the Legal Framework for Non-Profit Civil Entities, grounded in Article 16 of the American Convention on Human Rights, which sets out a rights-based framework to ensure non-profit organizations can operate freely throughout their lifecycle.<sup>172</sup> Similarly, the OECD Development Assistance Committee Recommendation on Enabling Civil Society underscores the need to create environments in which NGOs can exercise their autonomy while accountability is appropriately incentivized.<sup>173</sup> Ultimately, in recognizing that NGOs have human rights responsibilities, it is equally essential to defend their autonomy and to ensure that accountability mechanisms reinforce rather than weaken their ability to operate in an already challenging global context.

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<sup>171</sup>See, in general, George E. Mitchell, Hans Peter Schmitz, and Tosca Bruno-van Vijfeijken, *Between Power and Irrelevance: The Future of Transnational NGOs* (Oxford University Press 2020).

<sup>172</sup>Inter-American Juridical Committee, Declaration of Inter-American Principles on the Legal Framework for the Creation, Operation, Financing and Dissolution of Nonprofit Civil Entities (2023) CJI/Res 282 (CII-O/23 corr.3).

<sup>173</sup>Organisation for Economic Co-operation and Development, *DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance*, OECD/LEGAL/5021 (2021).