

Podcast Series 3 – Reimagining politics through human rights

Episode 5 - Reimagining influence, monitoring as an enabling factor

Debbie Kohner

Hi, this is To The Righthouse, a new podcast series by the Global Campus of Human Rights. From scepticism to hope, from utopia to empathy, we discuss human rights, riding waves, but also signalling where the light is.

Graham Finlay (GF): Greetings from the Fundamental Rights Agency Forum in Vienna, where we are recording the new podcast series 'Reimagining politics through human rights'. This is the third series in the podcast To The Righthouse produced by the Global Campus of Human Rights, and I am Graham Finlay. In this episode, we're joined by Debbie Kohner, Secretary General of ENNHRI, the European Network of National Human Rights Institutions. And we're looking at 'Reimagining influence, monitoring as an enabling factor'. Welcome, Debbie.

Debbie Kohner (DK): Thank you so much, Graham. It's wonderful to be here.

GF: Well, I think it'd be useful for our listeners if you explained what ENNHRI is, what you do there, and what national human rights institutions are supposed to do, can do, and what they need to do to promote human rights.

DK: Well, ENNHRI, as you said, it's the European Network of National Human Rights Institutions. And I'll say NHRIs, as it's shorter. But NHRIs are state-mandated institutions that are independent of governments. And it might be difficult to understand how that is possible, but they follow the Paris Principles, which are international standards to make sure that they have both formal and functional independence, such as being set up by legislation or constitution, having an independent budget, not taking instructions from government and reporting to parliament. So, what these bodies all have in common is a very broad mandate to promote and protect human rights. And they are really the only institutions on (the) national level that have this very broad mandate, allowing them to have an overview of all groups or policy areas, and to use functions in a very mutually reinforcing way. So, they not only monitor and report on the human rights situation, they advise the government with an official mandate, they support individuals, some receive complaints, and they promote human rights, by creating a culture of rights through human rights education or training. And so really, they fill a gap; the European Commission has recognised that they really feel this protection gap that exists between duty-bearers and rights-holders. They have incredible potential to make a difference for human rights, really connecting up the international framework with implementation on the ground. And, yes, they exist all over the world. Since 1993, the UN General Assembly has been calling for the establishment in each and every UN member state, but we organise both globally and on a regional basis. So in Europe, currently, we have 49 members - which is a lot - and each NHRI is tested. It's tested to see: is it truly independent? And this is done

through an international committee. And so while we might speak about independent institutions, and yet there can be little trust, is it truly independent? How do we know? For NHRIs there is an accreditation system, and with an A status this means it is in compliance with the Paris Principles, and is a more credible institution.

GF: That's a really exciting mandate, in a way, because I was looking at some of the many activities of ENNHRI, and there seems to be a lot of maybe - if I can say it, and then you can contradict me - political action at European level, and between Europe and international organisations like the Council of Europe and like yourselves, you know, and individual states. And so it seems like one of the most effective interventions you can make is to criticise the state for its handling of, treatment of, of (European) National Human Rights Institutions. Do you get a lot of pushback from states when you make these comments?

DK: I actually think on the whole we've had quite a good reaction. Obviously, there are some states that have not responded well, but I would say in the vast majority we have had good reactions. We take very seriously any threats or attacks on NHRIs. And we've had for the last 10 years a policy in place to see how to react in order to respect the framework in place. So first of all, we will take a lead from our member institution that might have been attacked, it will know best what is happening in the state and of course, we want to respect the 'Do No Harm' principle, in the very first instance. As you said, NHRIs are operating in a political context. And so, we also have to be careful not to dive into this national context without sufficient understanding of what is happening in the country. The next really important principle is that we always refer to Paris Principles in our support: these are objective international standards, and it is not for us to speak about whatever political situation is going on in a country, we just make clear that these international standards should be respected; and we explain in more detail what respect of those standards could and should mean. And then, finally, we give indications of actions that they can take to support them, we found in many instances states do change their action. And I do believe there is still some, not as much, but there is still some impact of this international supervision or peer pressure approach. I find that with NHRIs, although they have an incredible potential to really look at a multiplier effect of improving the implementation of all human rights standards, they have actually not been very controversial in terms of establishment. And for all UPR - Universal Periodic Review - recommendations on NHRIs, they're always accepted by the state. And some might be a bit slower than others at establishment, some might not fully respect the mandate. But we are in place as a network to make sure that we encourage the establishment, and if there are any actions to try and interfere with the institution politically, we are ready. And I don't mean just a secretariat, as I am Secretary General, the whole network is ready in solidarity to stand up for that institution, and explain clearly the obligations of the state.

GF: That seems very interesting that they should be so successful at getting their recommendations put across. Obviously, with 49 countries you have a really wide variety of political contexts. And, you know, much of the politics we hear about in Europe specifically often involves different countries having very different visions of what justice requires, or what democracy requires, and what the people, the popular will want in a particular country. And to what

extent...I mean, it sounds like the standards are in a way minimalist enough that it would allow a wide variety of different local interpretations. I know, is that ever a problem? Is there a point at which, you know, NHRIs can either go too far in bowing to sort of local interpretations of what human rights require or what the urgency of the moment requires? Or that they might be induced to do so by the kind of people who are appointed? Or how they feel like they need to act to stay comfortable and effective in their society?

DK: Well, when you say minimalist, I wouldn't completely agree with that. They are the highest standards that exist for national institutions in terms of independence. But it is true that the way in which these standards are met can differ depending on each state, which I think is correct, as each state has a different institutional infrastructure already existing, they have different legal cultures, different legal systems. And so, it is important to allow, as long as the objective is fulfilled, it can be done in a different way. I was perhaps being a little bit too... sounding too optimistic when I said that our actions do have impact. They do, but of course not in every case. And the reality is that in some states across Europe it is just not possible to have a fully independent national institution, and it's very important that we accept that that is the case, because NHRIs would not have any credibility if we pretended that each and every one is independent. And that's why the accreditation system is very helpful, in recognising publicly that an institution is not independent, but in these cases, it doesn't mean that there is nothing that can be done. First of all, it's important - and we see it at ENNHRI as a network - it is very important to strengthen these institutions when times are good, to help them to be resilient for when the backtracking becomes even worse. We do this through strengthening the culture of independence in the staff, through peer exchange and leadership development to help the leadership, and the implementation of the standards not just the Paris Principles, but also the Council of Europe recommendations. For example, selection and appointment of the head of institution is incredibly important; And if a political appointment is taken, then, even if the institution is doing great work, it can be very difficult for that to come out and really have the full impact that one would like. So, if we do recognise that there is a period where the institution cannot be independent, well, first of all, as the deterioration of, say, rule of law develops in a country, we will react, will react quickly; and we will also engage with international partners to reinforce the message that this institution must remain independent. Then if it is accredited with B status, if it is recognised as not independent, we will help that institution to discover what actions that can take to help with promotion and protection of human rights. For example, with human rights defenders, it can be a very difficult situation in civil society. But in Azerbaijan, for example, the NHRI has the NPM - National Preventive Mechanism - mandate, which means it can access prisons without prior authorisation, it can visit prisoners, and it can report on the conditions, even if it is not able to actually get them out, which is, of course, what one would be working towards. So, that is just one example. And we will continue to support an institution to regain independence. But there is, of course, a line that one cannot cross. And if an institution is so co-opted that it cannot carry out any actions to support human rights, or is acting in a way that is actually contrary to human rights, then we would, in fact, request that institution to leave the membership, if they breach membership requirements, and the accreditation process now has the ability to remove accreditation altogether. And one example of that is with the Russian Federation, its institution, we

did have to ask it to leave our membership, our membership voted on it, it was a very participative process. And the Committee on Accreditation has recommended that its accreditation status be removed. While this helps to ensure that the standards of NHRIs are understood and respected, of course, one would dearly like to have an institution in the Russian Federation that is working for the promotion and protection of human rights. We can't give up altogether, we just have to recognise the realities of the now.

GF: That's really great to hear about how it works in practice, because you have these two classifications A and B, and certainly having an A classification is something for the B institutions to aspire to. But it's also good to know that not just anything will count as being a national human rights institution. To what extent does that track some of the regular operation - as it were - of European Human Rights, you know, derogable and non derogable rights and margin of appreciation and things like that, you know, there are some things which just violate - as it were - human rights, which must not be violated, it does, are those the kinds of things you're talking about when you're looking at, say, removing Russia from the network?

DK: Well, when it came to the Russian Federation, its NHRI, it was removed from ENNHRI's membership because it breached membership obligations, including to really further our overall objectives. And that came from various statements that were made by the institution, about ENNHRI, and at General Assembly meetings, that could also impact on other members' participation. When it comes to accreditation, that's very...that's for GANHRI, the Global Alliance of NHRIs under the auspices of the UN Human Rights team, and in that case, yes, it was looking at supporting actions that went against international law, as well as other items. So the whole report is there; and I think that, you know, I noticed in your question before you refer to human rights standards and the interpretation of human rights standards. And when I responded, I spoke more about the interpretation of the Paris Principles, which is quite a different matter. And it is important that each NHRI stays squarely within the human rights framework. And I say this, more broadly, I think, for any human rights actor, it's important that we do. But for NHRIs it's particularly important. First of all, they're operating in a political context, and how do they continue the conversation without being drawn into the political viewpoints? And the way in which they do this is that they speak only about these objective human rights standards. And they...it is not about which political party but it's about the lived experience of individuals, the potential impact of policies or legislation on individuals and their rights, including when looking at equality. And so, the reference to the human rights standards not only helps to allow the NHRI voice to be strong, even in this political context but beyond that it also helps human rights to have more meaning. Yes, human rights need to be applied in a local context, and this is why national human rights institutions are particularly strong; they are not reviewing it from Vienna, or Brussels, or Geneva or New York, but they must be these universal and objective standards. And if not, it will lose meaning, human rights cannot be everything to everyone, it must respect the legal framework that we have in place in order that it can continue to make a difference.

GF: And I was struck by how one of the most recent communications was about the National Human Rights institution of Ukraine. And it's really striking that these principles and these human

rights principles and systems are still, as they should be, you know, effective or, you know, being discussed and allow us to evaluate a country which is, of course, suffering from a terrible invasion, you know, so that seems to give me hope. I think that human rights are never fully absent, not even in the worst possible conditions. But I wanted to get back to what...you know, how you understand your work, in terms of opening up a space, both for human rights defenders, but also, I think, maybe for civil society. And you have quite a background in civil society, which you might want to tell us about as well. But, you know, I think one of the themes of this podcast is that you have individualist human rights approaches, and that might skew towards looking at individual human rights defenders or groups of defenders who are defending, you know, the human rights of individuals. But the civil society space is about collective action for human rights, and might have a slightly different role to play, but also maybe is even more political, in terms of, you know, those self determining groups are going to be setting their own goals, they may be organising around movements, which don't necessarily slot neatly into the human rights discourse. How do NHRIs protect civil society space?

DK: Well, NHRIs are often described as a bridge, a bridge between civil society and the state. NHRIs under the Paris Principles must work with civil society and also cooperate with the state, but remain independent of each. And with civil society often there are different groups that are focusing on specific areas - it could be a specific equality group or a specific policy area - NHRIs must consider all human rights across, and have this broad overview. But it actually makes them very well placed because they can reinforce the civil society voice, if it is, if they are speaking on human rights. As I said, they must work closely with them and this could even be in a structural way, where the civil society groups could be on a board or an advisory structure for the NHRI. The NHRI has privileged access to the state and to international bodies, and so they can reinforce the voice in that way. But fundamentally, the NHRI can help to ensure that there is sufficient democratic space for civil society to speak out themselves. An example would be...NHRIs could advise the state if there are new policies or laws, which we have seen a lot of across Europe, that could be impacting on civil society's opportunity to speak up; they could also...or it could be on funding, it could be on so many different items. They can also monitor, they monitor through human rights monitoring, looking at rule of law, looking at civic space, reporting on this, not only to Parliament, but also to international bodies. They can bring strategic litigation - if there are structural issues in place - they can also help individuals who have particular challenges in participating in the space in their country, they can finally promote the need for civic space. They can explain to the public - which so often doesn't understand - why the freedom of assembly, of expression, freedom of association, why these are essential tenets of, of democracy, of the society that we want to live in. And so why it is important, even if there is civil disobedience, is it that these individuals or civil society as a group, are unable to express freely in peaceful, of course, manner, the message that otherwise they cannot get through? And Graham, you were talking about new politics, in a way, this is new politics, we've had democratisation of information, but we still don't have full and equal participation in the processes at play. And it's particularly young people who are making it very clear that their voice does count and there needs to be a channel for them to speak out. And NHRIs through their

human rights monitoring and reporting and the other functions I explained can actually help to ensure this greater participation of all groups and society.

GF: Yeah, I think that's very interesting. There are all these sorts of well known threats to civil society space, whether they're, you know, registration as foreign agents laws or funding restrictions and things... and people we've seen in, even in European states, the internet shut down periodically in some elections. But I think your emphasis on young people is a really important one. Do you think there's a different form of participation we're seeing from young people in maybe Europe or in relation(ship) to civil society space around the world? And how would you reach out to young people to get them involved in their national human rights institutions?

DK: Well, I think it is incredibly important that young people are included, and NHRIs I've seen how they have set up, for example a youth forum, or they find different ways to ensure greater participation in what they are doing. Because also one must consider that when NHRIs are carrying out human rights monitoring, have they facilitated participation of different groups, including youth in looking at, for example, what it is they're monitoring, how the indicators are identified? I think that could really provide a big difference in understanding the full spectrum of society. Of course, there's so many different groups that need to be represented, and this is why there is a requirement on NHRIs under the Paris Principles to be pluralistic, representative of all society, and part of the way they achieve that is through creating these links with the groups. We've seen also how NHRIs have been really working on various issues, rule of law issues such as looking at execution of judgments from the European Court. And I'd say also that, while the real power of NHRIs is their national mandate and the fact that they're working locally and with the people who are experiencing or not their human rights on a daily basis, we also use the network to put more pressure on. So as a network, NHRIs can join together and they can express very clearly this is not just a human rights issue in country A or B, this is a human rights issue for all, all across the continent. And so they do that by, for example, putting together submissions - we have our annual rule of law reporting, which also looks at human rights; we make third party interventions before the European Court of Human Rights, which can show regional trends. And through this, I think it shows that human rights are universal, a human rights concern in one country is a human rights concern across Europe. And it also reinforces the multilateral and supervisory processes that we have in place, because while action needs to take place at the national and local level, sometimes that is not enough, and they need a voice at this higher level to come in and to help put pressure on, to follow up on the recommendations and make sure that human rights do become a reality for individuals across Europe.

GF: Yeah, that leads I think, to my last question, if I may, which is: I was really struck by your...- you've already sort of partly answered it but you know - the regional aspect of this, but also the international aspect. So as you say, there is an international, UN-led accreditation process, there are... there's an international network of national human rights institutions, and I know there's been a lot of leadership shown by ENNHRI in the international space, but also a lot of importance of regional organisations for human rights in many, many different ways. And so, given the variety of national human rights institutions in Europe - I mean, I think it ranges from ombudsman to

independent commissions and so forth, you know - and then the even greater variety of NHRIs around the globe, you know, how has that experience been for you trying to work at international level, from a regional basis, where, as you say, you already have a very diverse and active set of members to cope with here in Europe?

DK: Well, I think it is the final piece of the puzzle, looking then at the international level. And if human rights are truly universal, then it is so important that we do have common standards and principles going across the globe. And it is wonderful to engage and cooperate with the other regional networks as well and to understand what they are facing in their regions. What is always - and it shouldn't be - but always surprising is how common the challenges are, the same issues seem to arise each year we meet, and whether it is economic and social rights, migration, securitization, across the globe we are facing similar challenges. So we can learn from each other. And yes, Europe has done some incredible work through its NHRIs, through ENNHRI, but also in other regions there's so much that we can learn from them: in Africa on Business and Human Rights, in Asia Pacific looking at torture prevention, in the Americas, looking at support for those NHRIs under threat. And then globally, we can all come together and seek to really strengthen both the accreditation system, but also the standards that must be met to make sure that the whole NHRI model can continue to be effective, and actually fulfil the potential that is there. And Graham, there's one other thing I wanted to speak to you if you have time.

GF: Absolutely.

DK: You were asking me about Ukraine, and I just wanted to really acknowledge the incredible work that the Ukrainian NHRI has completed, already. We have been working with the Ukrainian NHRI since back in 2014, when the first incursions, and we at ENNHRI have done quite a lot of work looking at the role of NHRIs in situations of conflict, including post-conflict, conflict prevention, and we have seen how in a situation of conflict, of course, the incidence of human rights abuses, violations goes up. But at the same time, the NHRI is operating under very difficult context, in terms of resources, in terms of access - there could be temporarily occupied territory, there could be disputed territory - and then finally, when it comes to independence, it can also be a very difficult context in which to be clear about independence, as by its nature involves either divided society, polarisation, or in fact a very strong national interest. The work that we have done in identifying the role of NHRIs in this context has really shown the NHRIs can step up. And it's not that they can't operate in these spaces, it's that they become even more essential, and they can help individuals impacted by the conflict, including in the years and decades afterwards. So, right now we're looking at the role in international armed conflict, which, of course, brings up many other concerns and questions. And so, I believe it is important for the NHRI framework to function effectively, that we continue to interrogate, we continue to question and to find the best way for these institutions to really fulfil that important role of promotion and protection of human rights.

GF: I think that's very, very important. I think it's easy for people like myself who come from states which no longer have armed conflict of any sort in their context to try and understand and to support countries which are going through much, much harder things and it's really heartening to

hear that national human rights institutions are not just completely at sea, but are in fact part of addressing the problems in something even as fraught as the war in Ukraine.

DK: Yeah, it's essential to continue...not only to continue to monitor and report on human rights, but to ensure that human rights are at the heart of any recovery, reconstruction... But also through ENNHRI as a network, NHRIs have been able to speak with each other even across conflict lines, which means that actually the attention to human rights and finding ways to ensure respect of human rights, goes above politics, and it goes above conflict. And really, this is what our institutions are working for. And that remains always the primary and clear goal.

GF: Debbie Kohner, Secretary General of ENNHRI, thank you so much for talking to us today.

DK: Thank you, Graham. Pleasure to be here.