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**COMMEMORATIVE ISSUE
HUMAN RIGHTS IN MOTION**

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HUMAN RIGHTS

Human Rights in Motion

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HUMAN RIGHTS IN MOTION: A MAP TO A MOVEMENT'S FUTURE

Lucia Nader (Executive Director, Conectas)
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Sur Journal was created ten years ago as a vehicle to deepen and strengthen bonds between academics and activists from the Global South concerned with human rights, in order to magnify their voices and their participation before international organizations and academia. Our main motivation was the fact that, particularly in the Southern hemisphere, academics were working alone and there was very little exchange between researchers from different countries. The journal's aim has been to provide individuals and organizations working to defend human rights with research, analyses and case studies that combine academic rigor and practical interest. In many ways, these lofty ambitions have been met with success: in the past decade, we have published articles from dozens of countries on issues as diverse as health and access to treatment, transitional justice, regional mechanisms and information and human rights, to name a few. Published in three languages and available online and in print for free, our project also remains unique in terms of geographical reach, critical perspective and its Southern 'accent'. In honour of the founding editor of this journal, **Pedro Paulo Poppovic**, the 20th issue

opens with a biography (by João Paulo Charleaux) of this sociologist who has been one of the main contributors to this publication's success.

This past decade has also been, in many ways, a successful one for the human rights movement as a whole. The Universal Declaration of Human Rights has recently turned 60, new international treaties have been adopted and the old but good global and regional monitoring systems are in full operation, despite criticisms regarding their effectiveness and attempts by States to curb their authority. From a strategic perspective, we continue to use, with more or less success, advocacy, litigation and naming-and-shaming as our main tools for change. In addition, we continue to nurture partnerships between what we categorize as local, national and international organizations within our movement.

Nevertheless, the **political and geographic coordinates** under which the global human rights movement has operated have undergone profound changes. Over the past decade, we have witnessed hundreds of thousands of people take to the streets to protest against social and political injustices. We have also seen emerging powers from the South play an increasingly influential

role in the definition of the global human rights agenda. Additionally, the past ten years have seen the rapid growth of social networks as a tool of mobilization and as a privileged forum for sharing political information between users. In other words, the journal is publishing its 20th issue against a backdrop that is very different from that of ten years ago. The protests that recently filled the streets of many countries around the globe, for example, were not organized by traditional social movements nor by unions or human rights NGOs, and people's grievances, more often than not, were expressed in terms of social justice and not as rights. Does this mean that human rights are no longer seen as an effective language for producing social change? Or that human rights organizations have lost some of their ability to represent wronged citizens? Emerging powers themselves, despite their newly-acquired international influence, have hardly been able – or willing – to assume stances departing greatly from those of "traditional" powers. How and where can human rights organizations advocate for change? Are Southern-based NGOs in a privileged position to do this? Are NGOs from emerging powers also gaining influence in international forums?

It was precisely to reflect upon these and other pressing issues that, for this 20th issue, SUR's editors decided to enlist the help of over 50 leading human rights activists and academics from 18 countries, from Ecuador to Nepal, from China to the US. We asked them to ponder on what we saw as some of the most urgent and relevant questions facing the global human rights movement today: 1. Who do we represent? 2. How do we combine urgent issues with long-term impacts? 3. Are human rights still an effective language for producing social change? 4. How have new information and communication technologies influenced activism? 5. What are the challenges of working internationally from the South?

The result, which you now hold in your hands, is a **roadmap for the global human rights movement** in the 21st century – it offers a vantage point from which it is possible to observe where the movement stands today and where it is heading. The first stop is a reflection on these issues by the founding

directors of Conectas Human Rights, **Oscar Vilhena Vieira and Malak El-Chichini Poppovic**. The roadmap then goes on to include **interviews** and **articles**, both providing in-depth analyses of human rights issues, as well as **notes from the field**, more personalized accounts of experiences working with human rights, which we have organized into **six categories**, although most of them could arguably be allocated to more than one category:

Language. In this section, we have included articles that ponder the question of whether human rights – as a utopia, as norms and as institutions – are still effective for producing social change. Here, the contributions range from analyses on human rights as a language for change (**Stephen Hopgood** and **Paulo Sérgio Pinheiro**), empirical research on the use of the language of human rights for articulating grievances in recent mass protests (**Sara Burke**), to reflections on the standard-setting role and effectiveness of international human rights institutions (**Raquel Rolnik, Vinodh Jaichand** and **Emílio Álvarez Icaza**). It also includes studies on the movement's global trends (**David Petrasek**), challenges to the movement's emphasis on protecting the rule of law (**Kumi Naidoo**), and strategic proposals to better ensure a compromise between utopianism and realism in relation to human rights (**Samuel Moyn**).

Themes. Here we have included contributions that address specific human rights topics from an original and critical standpoint. Four themes were analysed: economic power and corporate accountability for human rights violations (**Phil Bloomer, Janet Love** and **Gonzalo Berrón**); sexual politics and LGBTI rights (**Sonia Corrêa, Gloria Careaga Pérez** and **Arvind Narrain**); migration (**Diego Lorente Pérez de Eulate**); and, finally, transitional justice (**Clara Sandoval**).

Perspectives. This section encompasses country-specific accounts, mostly field notes from human rights activists on the ground. Those contributions come from places as diverse as Angola (**Maria Lúcia da Silveira**), Brazil (**Ana Valéria Araújo**), Cuba (**María-Ileana Faguaga Iglesias**), Indonesia (**Haris Azhar**), Mozambique (**Salvador Nkamat**e) and Nepal (**Mandira Sharma**). But they all share a critical perspective on human rights, including

for instance a sceptical perspective on the relation between litigation and public opinion in Southern Africa (**Nicole Fritz**), a provocative view of the democratic future of China and its relation to labour rights (**Han Dongfang**), and a thoughtful analysis of the North-South duality from Northern Ireland (**Maggie Beirne**).

Voices. Here the articles go to the core of the question of whom the global human rights movement represents. **Adrian Gurza Lavalle** and **Juana Kweitel** take note of the pluralisation of representation and innovative forms of accountability adopted by human rights NGOs. Others study the pressure for more representation or a louder voice in international human rights mechanisms (such as in the Inter-American system, as reported by **Mario Melo**) and in representative institutions such as national legislatures (as analysed by **Pedro Abramovay and Heloisa Griggs**). Finally, **Chris Grove,** as well as **James Ron, David Crow and Shannon Golden** emphasize, in their contributions, the need for a link between human rights NGOs and grassroots groups, including economically disadvantaged populations. As a counter-argument, **Fateh Azzam** questions the need of human rights activists to represent anyone, taking issue with the critique of NGOs as being overly dependent on donors. Finally, **Mary Lawlor and Andrew Anderson** provide an account of a Northern organization's efforts to attend to the needs of local human rights defenders as they, and only they, define them.

Tools. In this section, the editors included contributions that focus on the instruments used by the global human rights movement to do its work. This includes a debate on the role of technology in promoting change (**Mallika Dutt and Nadia Rasul,** as well as **Sopheap Chak** and **Miguel Pulido Jiménez**) and perspectives on the challenges of human rights campaigning, analysed provocatively by **Martin Kirk** and **Fernand Alphen** in their respective contributions. Other articles point to the need of organizations to be more grounded in local contexts, as noted by **Ana Paula Hernández** in relation to Mexico, by **Louis Bickford** in what he sees as a convergence towards the global middle,

and finally by **Rochelle Jones, Sarah Rosenhek and Anna Turley** in their movement-support model. In addition, it is noted by **Mary Kaldor** that NGOs are not the same as civil society, properly understood. Furthermore, litigation and international work are cast in a critical light by **Sandra Carvalho and Eduardo Baker** in relation to the dilemma between long and short term strategies in the Inter-American system. Finally, **Gastón Chillier and Pétalla Brandão Timo** analyse South-South cooperation from the viewpoint of a national human rights NGO in Argentina.

Multipolarity. Here, the articles challenge our ways of thinking about power in the multipolar world we currently live in, with contributions from the heads of some of the world's largest international human rights organizations based in the North (**Kenneth Roth** and **Salil Shetty**) and in the South (**Lucia Nader**, **César Rodríguez-Garavito**, **Dhananjayan Sriskandarajah** and **Mandeep Tiwana**). This section also debates what multipolarity means in relation to States (**Emilie M. Hafner-Burton**), international organizations and civil society (**Louise Arbour)** and businesses (**Mark Malloch-Brown).**

Conectas hopes this issue will foster debate on the future of the global human rights movement in the 21st century, enabling it to reinvent itself as necessary to offer better protection of human rights on the ground.

"WE DID NOT CREATE SUR JOURNAL BECAUSE WE HAD CERTAINTIES, BUT BECAUSE WE WERE FULL OF DOUBTS" – PROFILE OF PEDRO PAULO POPPOVIC

By João Paulo Charleaux – Conectas Human Rights

In a publishing world where analysts, writers, academics and journalists have their ideas rated by the number of "likes" conferred upon them by social networks, it is rare to come across someone with the kind of analogue knowledge such as that possessed by Pedro Paulo Poppovic, the São Paulo sociologist who for over 10 years edited *Sur-International Journal on Human Rights*, published by Conectas. He is also one of the few editors that can boast of a remarkable achievement: transforming the works of Greek philosophers such as Plato and Socrates into national bestsellers in the 1970s, when he was in charge of the *Os Pensadores* (The Thinkers) collection at the giant Abril publishing house. With their distinctive blue covers, these books still flood the shelves of bookstores across the country, disproving the myth that Brazilians are no longer interested in philosophy and literature.

Poppovic is anything but virtual. Tall, well-built and reassuring, he makes himself comfortable in a solid armchair beneath an array of bookshelves reaching to the ceiling of his apartment in a traditional neighborhood of São Paulo. Calmly holding the visitor in his line of vision for a good two seconds more than usual, he starts by reaffirming the importance of pen and paper, clearly rowing against the tide in a world increasingly steeped in fast virtuality. Poppovic speaks as a person with time on his side. "The book, physically speaking, is something that is almost sacred, filled with symbolic values that transcend the mere transmission of knowledge." Despite this forthright assertion, he sighs as if seeking confirmation of the phrase or preparing himself to give an opposite view – which never materializes.

Few intellectuals feel at ease when confronted by doubt. When he joined the SUR editorial team ten years ago, Poppovic was an island of ideas surrounded by an ocean of question marks. "We thought a lot about whether the Global South existed or not as a generator of academic knowledge. But the Global South is a comparative, relative concept. Despite these doubts, we pressed on with this very

pretentious idea of giving voice to what the Global South could be, and we ended up by accepting the thesis that it does indeed exist."

This conceptual decision, combining intuition, practical experience and political judgment, was the cornerstone on which SUR was founded. "We were in the South, a long way from the Rule of Law as interpreted by certain northern countries, where most academic publications dedicated to discussing human rights issues originated"*, Poppovic recalls in an article co-authored with the current Conectas' Program Director Juana Kweitel in the issue 15 of the journal (December 2011).

The same spirit is reflected in a comment by Conectas' Executive Director, Lucia Nader, in a 2013 video commemorating the organization's 12 years of existence: "Although you were not based in Europe or the United States, or you could aim to be a regional organization."

This "dogmatic" decision to advocate the existence of the Global South resolved the question, and the Journal's editors were thereafter able to define their scope of action, presenting a logical explanation for what the Journal is, what it does and what its contribution in the field. Once the problems of a conceptual order were overcome, the group came face to face with a second, more practical obstacle: the shortcomings of many of the academic papers produced in the Global South. While the conceptual debate could be resolved with a coherent approach to the way the world was structured, there was no doubt that the Global South lagged behind in technical, academic and intellectual terms.

Poppovic candidly acknowledges that "most of the articles we received from the North were better than those we received from the Global South. Work produced in the Global South often contained excellent ideas but failed to conform to the academic standards of the time."

Categorical statements like this can be interpreted in different ways: as, for example, harsh self-criticism, or a certain kind of prejudice blurred by a Eurocentric or Americanized view of the world. It all depends on who is making the statements. To understand why Poppovic took it upon himself to criticize some of the contributors to the journal, we have to go back 40 years to when Poppovic was a young sociology student at the University of São Paulo's Faculty of Philosophy, Letters and Human Sciences.

Brazil was going through one of the darkest periods of its entire history. The military dictatorship, established in 1964 by the coup that overthrew President João Goulart, tortured, arrested and "disappeared" political dissidents, and also directed its persecution and anticommunist paranoia against university teachers and scholars working in the humanities. This was particularly the case with sociologists, philosophers and anthropologists who dared to criticize the oligarch, slave-owning and patrimonial traditions that had marked Brazil's 500 year history and which continued to determine the way the military government, widely supported by conservative sectors of society,

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*See full article available at: http://www.surjournal.org/conteudos/getArtigo15.php?artigo=15, arti-go_11.htm. Last accessed on: 20 July 2014.

businessmen and industrialists ran the country at that particular moment in our history.

As a young student, Poppovic was the assistant to one of the greatest academicians of the time, the sociologist Florestan Fernandes. Accompanying him was another young university sociology colleague, Fernando Henrique Cardoso. Up to the 1990s Cardoso served as a senator and minister, and finally became President of Brazil for two terms (1995-2003). During these two mandates, Poppovic, as Secretary for the Ministry of Education, coordinated an innovative distance education plan for government-run schools in the vast interior of Brazil.

Poppovic's criticism of the quality of the Global South's academic production can be understood more as a lament about his own academic condition and of his colleagues and as a desire for change and improvement than as contempt for those resigned to the status quo. Faced with this limitation, Poppovic decided to risk trying out a remedy for the very evil that SUR had set out to combat in a metalinguistic way. "We decided to publish the articles anyway. We selected the best, even if sometimes we had to put up with some shortcomings. We were sent 80 articles, with no payment requested. We were never short of papers."

Given that the expectation of receiving top-class articles was obviously unrealistic, the editors of the journal then began to look for solutions to improve the editorial level of the contributions. A solution was found, together with the staff of the Carlos Chagas Foundation, that consisted of "coaching"—a challenging program designed to encourage good academic writing by young Brazilian researchers and activists.

"It immediately became clear to us what this challenge involved. It was not simply a question of printing a journal containing a few articles. The task of creating a journal with thinkers from the Global South took on an ambitious educational and training character. Again, the willingness to question our own certainties and to be prepared to delve into the unknown guided the editorial board's decisions. We never strove to be dogmatic. And although we worked on the journal with people from the same academic area, they were never from our own organization. We had no intention of using the journal to express our own points of view."

A group of editors governed by the prospect of profit, increased circulation and competition for sales might have regarded this as a non-starter in such circumstances. At this point, Poppovic began to speak more slowly, with increasing silences between phrases while he pondered the weight of each idea. He is perfectly aware of the current challenge faced by the journal. With such rapid changes in the publishing world, with questions being raised about the paper form of production and the high costs of translation, printing and mailing, it is inevitable that the publishers have, over the years, given thought to how SUR will survive into the future, with the virtual world encroaching ever closer on that of paper.

Poppovic sighs and looks around him as if searching for a non-existent window. After hours of discussion, the evening draws to a close and in the library of his apartment, surrounded by books in the half-light, the journal's editor appears to want to say that the future has arrived too fast, as fast as the approach of the end of the day. "I'm a reactionary. I like the print form, even though it more than doubles

the price of a publication," he says, as if asking forgiveness. "The publications that are restricted to the internet lose substance. The idea that people only want to read short texts is far from the truth. Look at the United States, where 1,000 new books are printed every day. Look at São Paulo, which has more bookstores opening every day. I believe that SUR, after publishing 200 articles, needs to evolve. It needs to deal with more current issues. It needs to appear more regularly, and it needs a bigger budget. It must remain open, but as a typical academic journal. Its outlook and language are academic."

Over ten years the journal has continued to reinvent itself. And even today, still solidly afloat, with 20 editions published in three languages and distributed to over one hundred countries, SUR is still seeking to innovate. The original group of editors, under Poppovic's leadership, addressed the doubts and uncertainties of the time. The same is now happening with the new generation that has shouldered the same challenge of swimming against the tide to give a voice to the Global South. The synergy between the lessons learned in the past and bets on the future is producing one of the most worthwhile and interesting experiences of knowledge production aimed at action on human rights beyond the US-Europe axis.

MALAK EL-CHICHINI POPPOVIC

Malak El-Chichini Poppovic, currently Coordinator of the Business and Human Rights Group of *FGV Direito SP*, was the Executive Director of Conectas from 2005 to April 2011. She was Senior Consultant in the Peace, Security and Human Rights area of the United Nations Foundation (2001-2004). She was Senior Researcher at the Center for the Study of Violence, University of São Paulo (1989-1994). She also served at the Office of the UN High Commissioner for Refugees - UNHCR, (1975-1988). She holds a postgraduate degree in Economics and International Relations awarded by the Graduate Institute for International Studies, Geneva. Malak has written several articles on refugee, human rights and humanitarian issues.

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ABSTRACT

In this article, the two authors answer questions put to them by the editors of this issue of Sur Journal. On the representativity of human rights NGOs, the authors argue that the organizations' legitimacy springs not from their majority support but from the integrity of their approach. With regard to new ways of improving NGOs' current performance with a view to better long-term impacts, the authors suggest that the prospects for enhancing respect for human rights will improve only if there is greater diversity both among the organizations themselves and their action strategies in particular. As for the language of human rights, the authors believe in its current transformative potential, arguing that human rights have made, and continue to make, a substantial contribution in terms of discourse and practice. With regard to new forms of technology, the authors consider that the challenge faced by the organizations is to try to understand what their new role is. Finally, they analyze North-South interaction on the international stage, arguing that the Global South increasingly questions the perception that only the organizations of the North are truly international, while those in the South remain focused on the local agenda.

Original in Portuguese. Translated by John Penney.

REFLECTIONS ON THE INTERNATIONAL HUMAN RIGHTS MOVEMENT IN THE 21st CENTURY: ONLY THE ANSWERS CHANGE

Malak El-Chichini Poppovic
Oscar Vilhena Vieira

Many of the questions asked by the editors of Sur Journal have much in common with the many different questions we asked ourselves in the course of establishing Conectas Human Rights, an international organization based in the South, over ten years ago.

The editors' questionnaire asked us to try and identify the changes that have influenced the policies of human rights organizations over the past decade. The famous justification presented by Albert Einstein is apposite. When asked why he would give the same test to the same students two years in a row, he replied, "the questions are the same, only the answers change".

This aphorism rings even truer today. The basic issues are still highly relevant, while the answers have been enriched with everyday learning, experience, errors, achievements by new actors and causes that have gained visibility and recognition.

Perhaps the most striking change has been the increasing democratization and participation of civil society. This is true even of the emerging countries that now play a key role in the globalization process. The emergence of countries that define themselves as the "Global South" has led to new demands and a new *modus operandi* in the language of human rights.

Over a decade ago, we were already beginning to realize that the advent of democracy did not necessarily coincide with universal respect for human rights. We asked ourselves what was needed to protect "vulnerable groups" and to monitor the proper functioning of the institutions that sustain democracy and ensure compliance with laws that should apply equally to everyone?

There is always a degree of dissatisfaction with the inability of new democracies to overcome obstacles and the legacy of arbitrary rule. Persistent and growing social inequality, unfulfilled promises of a better life and the lack of accountability of public policies create frustration not only within political regimes but also in the human rights organizations themselves. This has led to new forms of participation and protest, as can be seen by the street demonstrations that have

mushroomed in Brazil and throughout the world over recent years. The most significant achievement has undoubtedly been the beginning of a discourse of greater plurality and tolerance.

What is the role of NGOs in this new scenario of growing popular demand? NGOs are essentially goodwill organizations that renounce the interests of the market, which is mainly interested in maximizing profit, and of political parties, who aim to maximize power. In this sense NGOs are "micro-powers" that can "destabilize" traditional policies and create difficulties for the leaders of both democracies and autocracies when it comes to demanding justice based on rights. However this does not mean that they have the power to pursue or implement a broader agenda.

Perhaps the new restlessness of human rights NGOs nowadays has something to do with redefining their roles when faced by the proliferation of the different types of micro-powers. How can a human rights NGO make itself visible, to significantly influence public policies, and at the same time retain a crucial role by knowing how to listen, see and dialogue with these new forms of protest?

1 Who do we represent?

Human rights organizations are not "representative", in the strictest sense, insofar as they are not delegated to act on behalf of individuals or collectives. Human rights organizations are by nature identity-based. They are established to promote a wide range of legal, political and moral rights with which their members identify. The legitimacy of these organizations is not the same as that required by the membership of political parties, movements, trade unions or governments. These, claiming to exercise power on behalf of others, aim to be regarded as representative. In the case of human rights organizations, however, their legitimacy is of a different kind, deriving from the integrity with which they seek to promote the rights that have been politically recognized by the international community throughout history.

Integrity means, in the first place, the inseparability between the goals that should guide the actions of human rights organizations and the means employed to achieve these goals. Given that the goals are necessarily linked to promoting, protecting and defending human rights, these activities cannot involve actions that would affront or undermine such rights. It follows that human rights organizations have less leeway than other organizations operating in a social and political context. The concept of integrity must also be linked to the accuracy, clarity and transparency with which the organizations pursue their actions, to avoid destroying the very idea of human rights.

Human rights organizations may have many different types of relationships with the community. However, when any organization makes representation its core mandate, it necessarily assumes a different nature, which can be legitimate and commendable, but this type of organization is not to be confused with a human rights organization in the strict sense.

Human rights organizations obviously need to build channels of dialogue with society, be sensitive to the concerns of the community and, among their multifarious action strategies, include communication tools that are essential for determining

priorities and increasing their prospects of success. In many circumstances, such as in the struggle against authoritarian, discriminatory, colonialist regimes and so on, the actions of human rights groups were, and remain, on the side of social movements and of the majority of the people in the societies where they operate. The mandate of a human rights organization should not however depend on the will of the majority, or of those in power— in a political party, a movement, the State, an economy or even in a community. Because if the majority is in favor of torture and racial discrimination at a particular place and time, it does not mean that human rights organizations should take up this cause. Being in tune with society and with the majority living in that society is an excellent way to advance human rights, but at times these rights are mechanisms that work against the majority.

Such an approach can turn human rights organizations into ineffective bodies that in some circumstances can be very vulnerable indeed. Their legitimacy depends, above all, on the integrity with which they fulfill their mandates.

It would appear therefore that human rights organizations should not be concerned with transforming themselves into full-blown "human rights political parties". At the same time, this does not mean that they should not seek to influence political parties to work in favor of human rights or exert pressure for human rights to become state policies.

2 How to combine current and long-term impacts?

Once the idea of integrity of mandate has been accepted as a key factor that distinguishes human rights organizations from others, we should look at more diversified ways to implement this mandate, for a number of reasons. Given the enormous complexity of society and the links between social phenomena, there is no way that we can predict the outcome of a particular action pursued by a human rights organization. Losing a lawsuit can bring about unexpected effects: for example, an opportunity to bolster human rights in the wake of anger caused by some injustice. On the other hand, a brilliant report on a series of barbaric practices is simply left on the shelf. Thus, the chance of successfully enhancing respect for human rights will increase in line with growing diversity among the organizations and their action strategies. Opportunities for advancing human rights can emerge from a set of short- and long-term actions, from structural and economic actions or from actions with a public and diplomatic impact. Rather than trying to pursue a line of conduct that is theoretically more efficient than the rest, NGOs should establish their strategies on the basis of what they believe to be necessary and feasible, according to the human, financial and political resources at their disposal. It is vital to bear in mind that persistence, consistency and integrity are the secret keys to success.

While planning, organization and evaluation are certainly important, it must be remembered that an exaggerated level of professionalism can generate endless problems, such as bureaucracy, lack of flexibility and greater dependence on financial resources. Civil society organizations in general and human rights organizations in particular should not be too concerned about attempting to mimic

more complex organizations—commercial firms, political parties, trade unions and so on. Much of the success of many organizations stems from their ability to take risks, set goals, change plans, test multiple strategies and embrace opportunities. Excessively regulated civil society organizations, lack of flexibility and growing dependence on unwieldy professional, financial and organizational resources can undermine the autonomy and vitality of human rights organizations.

The most appropriate way to deal with extreme social complexity, low predictability and diminishing control over the outcome of actions is to seek, in the first place, to boost the plurality of organizations. Rather than engaging in a fratricidal contest for reputation, a thematic monopoly, media exposure and financial resources, organizations should act in a more concerted way, because changes can often be brought about by a combination of factors and not by a single organization. As for the internal functioning of organizations, they should be more pluralistic in staffing terms at the board and management level. Presenting action proposals to groups of people with multiple talents, backgrounds and outlooks can lead to a more positive approach in the field of human rights, to increase the range of partnerships and to reduce errors.

3 Is the language of human rights still effective for producing social changes?

The language of human rights, as well as the ideas of democracy, the Rule of Law and transparency constitute an ideological repertoire that has helped to bring about rapid social emancipation in recent decades. While democracy and the Rule of Law are ideas that are more associated with the functioning of formal institutions, human rights have also succeeded in establishing emancipatory standards in the political, social, community and family contexts. Thus it would not be incorrect to say that human rights have made, and still make, a meaningful, practical contribution to the lives of all those whose dignity has been constrained by the authorities of the state or as a result of their own social environment. The true Velvet Revolution that we have experienced over the past decades, using the language of human rights as foundation, does not allow us to undermine the conceptual strength of human rights, particularly where socialism, as an ideology of social change, has proved wanting in its ability to convince, and where neoliberalism has proved incapable of transforming the fate of the most vulnerable groups in society.

It is difficult to say whether the systematic use of the language of human rights erodes its authority and impact or whether, on the contrary, it transforms human rights into a basic standard to justify what can and cannot be done.

It is even more difficult to answer this question one-dimensionally. While in some societies rapid structural changes appear to have taken place using the language of human rights, others appear to have regressed. Other competing languages or ideologies such as religious fundamentalism, extreme forms of nationalism, market supremacy or anachronistic developmentalism clash with the very logic of human rights in a variety of circumstances.

It is wrong to assert that there is no longer a need for standard-setting rights,

as if history had come to an end. We are constantly faced with the emergence of new struggles for recognition and new demands for well-being and a better life. Technological and environmental change is already powerfully influencing how we relate to one another and organize ourselves as a society. These changes also demand a constant need for the renewal, expansion and rebuilding of mechanisms that provide moral support to guide social interaction as well as society's relationship with the various forms of power to guarantee respect and concern for all human beings.

The normative approach to human rights clearly should not distract us from their political and social dimensions. Rigorous standards of equality and strident demands for freedom and dignity undoubtedly come up against obstacles that characterize the power structures of all kinds of societies. Hierarchies and abuses exist in all societies to a greater or lesser extent. It follows that any process of change involving human rights as a goal should consider the need to operate within both social structures and political institutions. In other words, the human rights ideal needs to be expanded through education and culture. Furthermore, human rights need to be established as non-negotiable for those seeking the legitimate exercise of power within society.

4 How do the new information and communication technologies influence activism?

The new information and communication technologies obviously have an impact on the field of human rights, as on virtually all other sectors of life. The monopoly over information is being substantially eroded and the time factor is increasingly truncated. Both these phenomena are extremely positive for the process of social emancipation in which the universal moral grammar of human rights competes. The big challenge for organizations now is to seek to understand what their new role is and to find ways of repositioning their programs to aid those who seek social change through human rights.

If we consider the recent street protests around the world that used social networks as a communication platform, the presence of human rights discourse was notable: demanding better quality public services, democracy and equality. The point at issue is whether human rights organizations still play a central role, as was the case in the closing decades of the last century. As with the print media and communication networks, our organizations need to find a new space for themselves or perish.

Positive changes are to be welcomed. There exists for example the real possibility today of mobilizing, at very low cost, large numbers of people to engage specific issues and topics. Technology is also invaluable for recording all types of human rights violations and bringing them rapidly to the notice of the entire world. These new developments are however no substitute for the need for our NGOs to galvanize the debate. The artificial, fragmented and cross-thematic way in which people appear to coalesce through the internet provides a vast new opportunity for the organizations to generate more systematic and consistent ideas which, if properly

disseminated, could well be leveraged in a new field of human rights activism.

5 What are the challenges of working internationally from the South?

Given that human rights are the result of a particular historical context and of a set of decisions taken at a particular time and place, they do not necessarily have the same impact on different cultures and societies. Politically, however, human rights have become a kind of moral anchor. Despite systematic violations by many governments, reluctant to address cultural and other tensions in their own countries, it has become very difficult for a regime or government to argue that such breaches of rights are legitimate.

This new consensus on human rights as a precondition for the legitimate exercise of power does not mean, however, that arguments between nations about their content, or the ways in which they are implemented, have ceased. Strains between individualistic and communitarian approaches to human rights issues divide East and West. More liberal and social interpretations divide the North and the Global South. Although efforts are made to reduce these paradoxes and construct a more flexible discourse arguing for the inseparability and interdependence of "generations of rights", the fact is that separate blocks of countries only focus on what they regard as convenient for them in this broad universe of human rights.

While this tension may be a sign of legitimate differences between nations, it can also be a mere subterfuge by countries that interpret human rights more broadly and selectively, to gloss over their lack of commitment to the cause. In short, states are selective when referring to and employing the tools of human rights.

Human rights NGOs, when defining their mandates, are to a certain extent also required to restrict their activities to specific spheres in the broad field of human rights. Since most organizations have carved out an international role for themselves from their base in the westernized countries of the North, they have tended to work toward an agenda more focused on civil and political rights, faced with the specific challenge of fighting arbitrary authoritarian right and left regimes around the world. Notwithstanding the enormous importance of these organizations, their activities began to be questioned, not only rhetorically by those who sought to evade their human rights obligations, but also by those whose criticisms were more legitimate and who realized that the one-dimensionality and control of the human rights agenda were undermining the cause of human rights.

With the third wave of re-democratization, which started in Spain and Portugal, passed through Latin America and then later embraced Eastern Europe and a number of African countries, a huge, vibrant mass of movements and organizations accepted the language of human rights as a guiding principle for their actions. As a result of the UN conferences of the 1990s and the advent of the new century, many of these organizations savored the chance to become more cosmopolitan, paving the way for the emergence of genuinely international movements with their roots in the South.

These organizations bring to the international agenda new demands and

political practices. They question not only the conduct of their own states, but also that of the "core" democracies. They also raise questions about the more traditional and hegemonic organizations of the North.

The most tangible result has been the incorporation of some of these new demands into the international agenda through new mechanisms such as the Millennium Development Goals and various platforms to combat poverty, AIDS and so on.

While the international human rights policy agenda expanded, more traditional hegemonic organizations such as Amnesty International and Human Rights Watch were obliged to qualify their discourse and activities by broadening the scope of protected rights and changing the pattern of their relations with so-called regional and local organizations.

These changes also gradually had an impact on the philanthropic and international cooperation field. The prevailing ideas that international organizations were necessarily rooted in the North and that the South should busy itself with its local agenda were robustly questioned by the Global South.

This was not a purely instrumental critique, aimed at increasing the power of organizations in the South, but a major shift designed to give a more cosmopolitan and integral dimension to human rights. In due course the rhetoric of civil rights came to be regarded with suspicion on account of its use by the liberal countries. On the other hand, the social rights discourse also began to be regarded as a hypocritical device used to conceal violations of civil rights.

The burst of optimism on the human rights front that occurred in the 1990s, mirrored in the Rio Conference (1992) and Vienna (1993), gradually faded as it became apparent that the commitment of the new democracies was partial, especially that of the new major international player, China, which has obdurately refused to commit to the imperatives of human rights. On the other hand, the extremely selective posture of the United States and some of its allies has also contributed to a less than constructive environment, internationally. The heated arguments over the inclusion of clauses related to justice, Rule of Law and security in the new Millennium Development Goals (particularly the resistance showed by the countries of the South to include these goals to benefit their own peoples) clearly demonstrates the level of tension.

North-South or East-West rhetoric has been used in many circumstances to conceal violations, exclusion and arbitrary acts or simply to boost hegemonic interests.

The challenge faced by local, regional or international organizations, whether North or South, West or East, is to focus on the foundational human rights dimension, which is to regard each person as an end in him/herself, and to treat individuals with equal respect and consideration within the many different contexts in which they find themselves.

sur

Human Rights in Motion

Language

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ABSTRACT

In the past several years, the world has been shaken by protests, peaceful and otherwise. Findings of recent research indicate that the leading cause of protests around the world is a broad set of grievances related to economic needs. However, the single demand that exceeds all others is what prevents progress toward economic justice: a lack of what protesters increasingly frame as "real" democracy. This holds true in political systems of all types, from the authoritarian to representative democracies old and new. Rights-based grievances are the driving force behind significantly fewer protests than those related to economic need, and the demands for economic justice that have dominated world protests in recent years have not been formulated in the language of rights. This article explores both why this might be so and how human rights practitioners might better understand the drivers of social unrest and the importance this holds for their work.

Original in English.

KEYWORDS

WHAT AN ERA OF GLOBAL PROTESTS SAYS ABOUT THE EFFECTIVENESS OF HUMAN RIGHTS AS A LANGUAGE TO ACHIEVE SOCIAL CHANGE

Sara Burke*

In recent years, the world has been shaken by protests, peaceful and otherwise. The Arab Spring, the anti-austerity protests throughout Europe, Occupy and the movement of the Squares around the world are well known to us because of the extensive international media coverage they have received. These protests were largely non-violent, but recent years have seen violent protests as well, with a particular spike in 2007–08 due to riots over food prices; these protests are less well covered in international news. Compounding recent years of unrest, in which hot spots of civil war and armed conflict have also continued, there has been an increasing failure of existing political arrangements at the local, national and global levels to address grievances raised by protesters in a peaceful, just and orderly way. It is therefore of the utmost importance to understand what is driving recent protests, and in particular to do so on a global level.

This was the contention behind research contributing to "World Protests 2006-2013"[1], which queried over 500 local and international news sources available on the Internet to analyse 843 protest events (both non-violent and violent, organized and spontaneous), occurring between January 2006 and July 2013 in 84 countries covering over 90% of world population. Researchers looked for evidence of main grievances and demands, who is protesting, what methods they use, who their opponents or targets are and what results from protests, including achievements and repression. The objective of the study was to document and characterize manifestations of protest from just before the onset of the recent world economic crisis to the present, to examine protest trends globally, regionally and according to country income levels, and to present the main grievances and demands of protesters in order to better understand the drivers of social unrest. The objective of the present article is to ask what light the findings of this study may shed upon one of the existential questions for human rights as posed

by the editors of this 10th Anniversary issue of *SUR*: Is human rights (still) an effective language for producing social change?

"World Protests 2006-2013" finds that the trend of outrage and discontent expressed in protests may be increasing worldwide. The leading cause of all protests is a cluster of grievances related to economic justice and against austerity policies that includes demands to reform public services and pensions; to create good jobs and better labour conditions; make tax collection and fiscal spending progressive; reduce or eliminate inequality; alleviate low-living standards; enact land reform; and ensure affordable food, energy and housing. Although broad demands for economic justice are numerous and widespread, the single demand that exceeds all others is found in a cluster of grievances pointing to a failure of political representation. It points to the very issue that prevents progress toward economic justice: a lack of real democracy (See **Figure 1** for detailed list of grievances and demands found in the study).

As the key grievance in a widespread crisis of political systems, the demand for real democracy is counter-posed by many protesters to formal, representative democracy, which is increasingly faulted around the world for serving elites and private interests. The study found demands not just for better governance and wider representation, but also for universal direct participation and a society in which democratic principles—liberty, equality, justice and solidarity—are found not only in the laws and institutions but in everyday life (ERREJÓN, 2013; HARDT; NEGRI, 2004; RANCIÈRE, 2006). This demand comes from protesters in a variety of political systems, and protest patterns indicate that not only authoritarian governments, but also representative democracies, both old and new, are failing to hear and respond to the needs of a majority of citizens.

Grievances expressed as rights-based by protesters are one of the main groups identified in the study, but they are significantly fewer in number than those related to economic justice. Rights-based grievances and demands are also behind fewer protests than grievances related to failure of political representation or global justice. In the study, rights-based grievances are identified for human rights, civil and political rights such as freedom of assembly, speech and the press, and also for the social and cultural rights of ethnic groups, immigrant groups, indigenous, LGBT, prisoners, racial, religious and women's groups (including protests for the revocation of existing rights). The study also notes some protests for rights that are both economic and civil/political, namely labour rights and the right to the Commons (digital, land, cultural, atmospheric). However, the economic justice demands that have dominated world protests since 2006 have not formulated themselves primarily in the language of rights or sought their realization primarily through national legislation of international norms, according to the findings of the study. Why might this be? Both a realpolitik examination of the powers and interests on both sides and a critical examination of the framing of economic rights, as compared to civil and political rights, offer some insight.

With regard to the realpolitik issue of power dynamics, the study finds that middle-class protesters of all ages, from students to retired pensioners, are increasingly joining activists from various movements. Not only in sanctioned marches and rallies, but in a new framework of protest that includes acts with greater potential consequences, including civil disobedience and direct actions such as road blockages, occupations of city streets and squares, and mass educational events and "happenings" to raise awareness

about issues like debt, fair taxation for public services and inequality. The impact of people's feeling about inequalities should not be underestimated in understanding what has driven many protests, particularly of the middle classes, in recent years. Even in a country which has seen policy-driven success in combating high inequality, such as Brazil, it has not proven enough to satisfy people's demands, as seen during the summer of 2013 with the evolution of protests from localized demands for affordable public transportation to national demands for sweeping changes in social protection, distribution of wealth and government corruption.

FIGURE 1

GRIEVANCES AND DEMANDS DRIVING WORLD PROTESTS, 2006-2013*
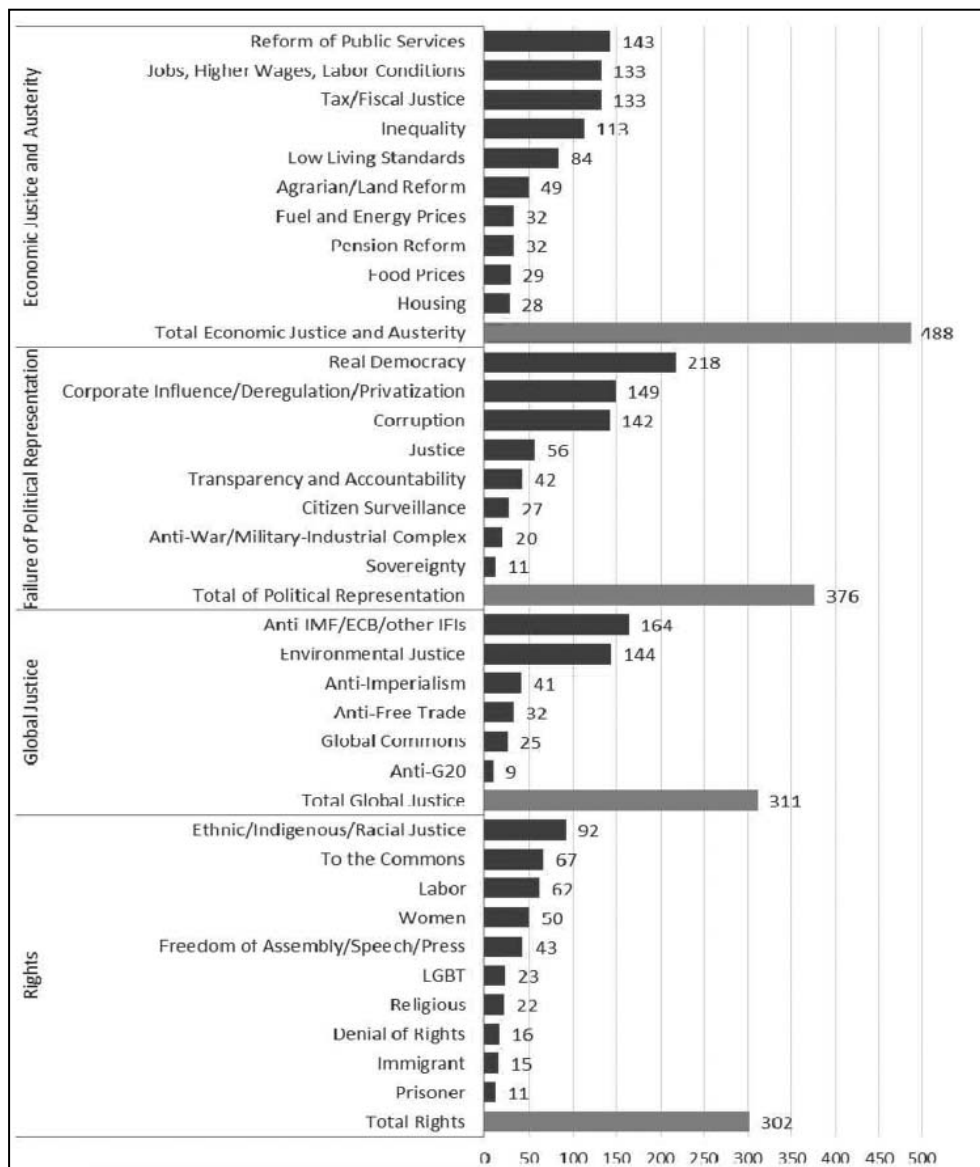
Source: (ORTIZ; BURKE; BERRADA; CORTÉS, 2013)
*As of July 31st 2013

The other side of the power dynamic concerns the opponents of these protesters (**Table 1** "Top 10 Targets"). The study finds, not surprisingly, that the target of most protests is the national government in the country where the protest occurs.[2] Many protests also explicitly denounce the international political and economic system, the influence of corporations and the privilege of elites, including the financial sector. A large number of protests against austerity implicate the International Monetary Fund and European Central Bank, which are widely perceived as the chief architects and advocates of austerity. The challenge faced by protesters, concisely captured by Table 1, is achieving not just social change, but social *justice*. And doing it against the interests of a powerful nexus of poorly-representative governments and captured international financial institutions dominated by private corporate and financial elites, all of which are complicit in upholding an economic system that produces and reproduces inequality (of great concern to the middle classes) and privation (of ongoing concern to the world's poorest). The repression experienced by protesters seeking economic justice offers further insight into the challenges they face and therefore the modes and methods of protest they have adopted. Not only riots, but more than half of all protests, experience some sort of repression in terms of arrests, injuries or deaths at the hands of authorities, or subsequent surveillance of suspected protesters and groups–surveillance that is carried out by both governments and private corporations.

This state of affairs has been long in the making. Falling wages and shrinking pensions led to decades of rising inequalities and decreasing opportunities for decent work and full engagement in society, especially for youth, which has paved the way for the joining of middle class protesters with unemployed and precarious workers over this period. Of the protests linked to economic policy—either arising in response to a policy implementation or law or demanding policy changes—the greatest number are in relation to subsidies, typically a threat to remove a subsidy

TABLE 1

TOP 10 TARGETS OF PROTESTS, 2006-2013	
Opponent	**% of protests targeting opponent**
1. Government	80%
2. Political/economic system	44%
3. Corporations/employers	29%
4. IMF	20%
5. Elites	17%
6. EU	16%
7. Financial Sector	16%
8. ECB	10%
9. Military/police	9%
10. Free Trade	9%

Original data source: (ORTIZ; BURKE; BERRADA; CORTÉS, 2013).

for fuel or food (**Figure** 2). A great number also relate to labor compensation and regulation of safety in the workplace, taxes and financial regulation, and fiscal and social security policies. A smaller number pertain to attempts at non-financial regulation and international tax cooperation. These protests are largely a response to the unravelling of the social contract that formerly bound the world's middle classes more tightly to the policies of elites, including remnants of the welfare state. This unravelling contributes to a mounting failure of existing political arrangements at the local, national and global levels to deal with problems and protests peacefully and justly. The world's people are roiled by economic needs that go unaddressed because they are, in ever greater numbers, shut out of the political processes in which decisions about the economy are made. Furthermore, they are shut out by the very elites who benefit directly from those decisions.

Can human rights norms and agreements be an effective weapon against such an adversary when its economic interests are at stake? Inequality, to a degree world protests indicate is unacceptable, is this adversary's stated intention. This adversary counters all objections with imperatives: to prioritize growth and deregulation, low debt-to-GDP ratios, the rights of creditors and the privileged role owed to private interests in the economy and government. Could it be that the success of the Occupy and *Indignants* movements in changing the discourse around inequality lies in their resistance to formulating demands as a list of policies to be put to such authorities?

This was philosopher Judith Butler's contention in a 2012 essay entitled, "So What Are the Demands?", referring to the question repeatedly directed to the Occupy movement, which resisted giving a straight answer. Butler points out that even the most comprehensive list of demands—including for example, jobs for all, an end to foreclosures and forgiveness of student debt and so on—cannot but fail to express the

FIGURE 2

NUMBER OF PROTESTS LINKED TO ECONOMIC POLICY, 2006-2013*
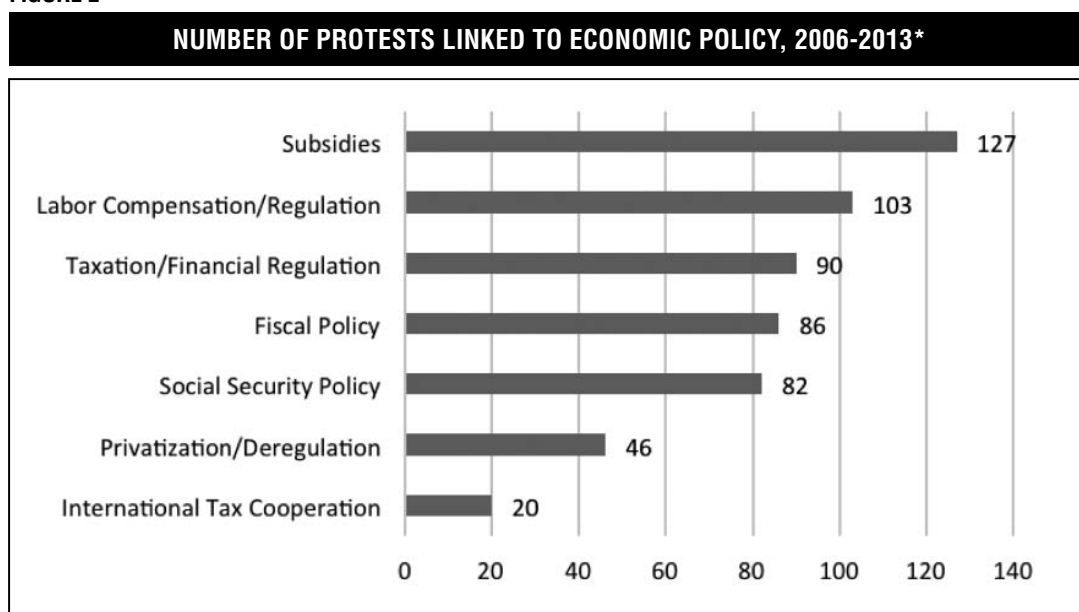
Source: Data set created by Ortiz, Burke, Berrada and Cortes (2013).
Initiative for Policy Dialogue and Friedrich-Ebert-Stiftung New York. *As of July 31st 2013

movement's ultimate ambition to resist inequality. This is so, she argues, because such a list can never communicate how those demands are related, and an end to inequality cannot be seen as simply one demand among many, but as the overarching frame. The problem requires instead a unifying and systemic approach (BUTLER, 2012).

Ironically, in spite of the principle that all human rights are indivisible and interdependent, the human rights field lacks a unified approach to economic, social and cultural rights, on the one hand, and civil and political rights, on the other. Progress in civil and political rights, the so-called "first-generation" human rights, such as the right to assembly, speech and religion, is largely based upon monitoring the relatively unambiguous presence or absence of negative outcomes (e.g. incidences of wrongful incarceration or censorship), whereas progress in economic, social and cultural rights, the "second-generation" of human rights, monitors their progressive realization over time (UNITED NATIONS, 2012). In the case of economic rights, this is done via economic indicators that many protesters would find inaccessible because of their technical nature.

Excellent work has been done by a number of economists to rethink macroeconomics from a human rights perspective, including the model audits of US and Mexican economic policies conducted by Radhika Balakrishnan, Diane Elson and Raj Patel in 2009 for compliance with human rights obligations (BALAKRISHNAN; ELSON; PATEL, 2009), and the Outcomes, Policy Efforts and Resources to make an overall Assessment (OPERA) Framework developed in 2012 by the Center for Economic and Social Rights and their partners to create an overarching way for advocates and activists to build a well-evidenced argument about a state's level of compliance (CORKERY; WAY; WISNIEWSKI, 2012). Despite this work, doubts remain about the usefulness of using human rights to fight economic injustice precisely because these are legal and policy-based goals that require responsive democracies with meaningful citizen participation, which is the very problem blocking progress toward more equitable economic systems. Perhaps this is why these path-breaking human rights economists are also modest in their goals, aiming less for radical change than to "move economic policy in a better direction by identifying which policies are at least likely to be inconsistent with human rights obligations" (BALAKRISHNAN; ELSON; PATEL, 2009). While their work remains an excellent guide for economic policy in real democracies, as a tool for the kind of system change that would actually fight further inequality, its value is sharply limited by political will.

The findings of the "World Protests 2006-2013" research and other efforts to map and understand the components of global protest—who is protesting and where, against which entities and with which methods, enduring what sort of repression and with what end results—should be of keen interest to those in the human rights field. They show that many protests that have shaken the world in recent years have framed their grievances as rights-based, but that the majority of protests, and those aiming specifically at changing the economic system—in particular its production and reproduction of inequality—have not pursued their aims in terms of rights, but instead in terms of economic justice and the need for real democracy. In conclusion, it is hoped that far-reaching and strategic thinkers within these protest movements, particularly those with the capacity to strategize on both a national and international level, will realize nonetheless that the advancement of human rights is necessary (if not sufficient) for the ultimate attainment of their goals.

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NOTES

1. September 2013 working paper by Isabel Ortiz, Director of Global Social Justice Program at Initiative for Policy Dialogue (IPD), Columbia University; Sara Burke, Senior Policy Analyst at Friedrich-Ebert-Stiftung New York (FES-NY); and research assistants Mohamed Berrada and Hernán Cortés, Ph.D. candidates in economics and international relations, respectively. Research was funded jointly by FES-NY and IPD. The paper can be downloaded at <http://policydialogue.org/files/publications/World_ Protests_2006-2013-Complete_and_Final_4282014. pdf.> Last accessed on: 15 Aug. 2014.

2. Note: many protests have more than one target.

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ABSTRACT

In this article, the author inquires whose "voice" is the loudest and most persistent when
it comes to international human rights law, questioning whether human rights is still an
effective language for producing social change. In order to do so, the author scrutinizes the
selectivity of the States Parties' non-enforcement of their binding obligations derived from
the ICESCR and ICCPR. Furthermore, the author looks at how States' self-interest plays
out in relation to the development of new standards under international law, including
the right to protect, right to development and migrant workers' rights, as well as vis-à-vis
multinational corporations. In conclusion, the author highlights that it is about time to
revisit the notion of an international human rights court.

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KEYWORDS

International Human Rights Court – States' Obligations – Corporations – Standard-setting

AFTER HUMAN RIGHTS STANDARD SETTING, WHAT'S NEXT?

Vinodh Jaichand

In answer to the question of whether human rights is still an effective language for producing social change, we need to inquire whose "voice" is the loudest and most persistent. That voice, at the United Nations Human Rights Council in Geneva, for example, is of the governments of the States Parties to multilateral international human rights treaties. However, the voice of victims is less vocal and heard indirectly through civil society groups with the relevant standing at this international forum. There is little doubt that the international human rights system is state-centric. There can be no improvement on the past grand scholarly exchanges on state practice, from Louis Henkin's view, articulated thirty-five years ago, that most States observe international law and undertake their legal obligations most of the time (HENKIN, 1979) to Koh's treatise on the subject that sought to explain the behavior of States (KOH, 1997). Apart from the time that has elapsed since, not much has changed in the record of obligations of some States under international human rights law. That indicates that social change is pedestrian at best if total reliance is placed on the international mechanisms.

　　Some of loudest voices of States are usually the ones who point to the violations of human rights of other States while ignoring their own practices on the international conventions to which they are a party. These multilateral treaties are usually the product of negotiation some might describe as "horse trading" amongst the various States, including those which frequently make the loudest noise. As a result the language contained in these treaties cannot be assessed for consistency in the same way one would assess domestic legislation, the latter usually crafted accurately by well-trained lawyers whose business is the making of sound law. Indeed, some States have adopted the strategy of contributing language that is deliberately unclear and vague during the negotiation process, so as to create ambiguity to avoid the enforcement of their obligations under that multilateral treaty.

Notes to this text start on page 42.

The voice less heard, or perhaps suppressed, is that of the beneficiaries of human rights, which is totally absent at the point of negotiation of the treaties. It is trite that the system of international human rights law was established to benefit the marginalised, vulnerable and indigent people of the world who appear to be voiceless in their own States and outside. The clear impetus for this was found in World War II, when millions of the voiceless were slaughtered in the name of Germany's policies, or their national self-interest. This is not exceptional. Under some principles of international relations, States Parties are expected usually to act in their self-interest, often couched in the benign language of "national interest". That national interest may not always be compatible with human rights norms and is sometimes referred to as *real-politik*. Indeed, national interest is sometimes the recipe for undermining laws and re-establishing the view that might is right by so-called "civilized nations".

Today, there is little doubt that some States have a tendency to interpret their obligations under international human rights law with fluctuating inconsistency because of national self-interest. International human rights law grew from public international law in which certain principles were accepted by States from the outset. There is the orthodox view that a State could not have obligations under public international law where that State had not consented. Indeed, the principle of *pacta sunt servanda* has been cited by a number of States to deny that an obligation can arise, for example, over the fluxion of time for a non-ratifying State to a treaty. A long-standing practice of all States created international customary law as evidence of a general practice accepted as law, we are informed.[1]

1 States Parties' non-enforcement: ICESCR and ICCPR

When one examines the States Parties to the International Bill of Rights, however, it is clear that there is a contradiction of the well-established principle of *pacta sunt servanda* when it comes to some States Parties' non-enforcement of their obligations under the International Covenant for Economic, Social and Cultural Rights (ICESCR). This international treaty has nearly the same number of ratifications of States Parties as the International Covenant for Civil and Political Rights (ICCPR), and opened for ratification on the same day and year, 16 December 1966.[2] Yet in the enforcement of the obligations contained therein, the ICCPR outstrips the ICESCR in the number of States that interpret the norms as legally binding, and has often become a part of domestic legal systems. From an international customary law perspective, this is confounding, as there appears to be a deliberate practice not to enforce the obligations arising from the ICESCR by States Parties. This appears to have created a "customary practice" of some States avoiding their obligations that have been freely entered into.

There are various reasons for this, we are told. A number of States Parties regard civil and political rights as the only real rights, despite being a party to the ICESCR. If one applies the principle of *pacta sunt servanda* as a cardinal rule of public international law, then a number of States Parties have either misunderstood their obligations or ignored them. This is a clear violation of international human

rights because an omission of one's obligations incurs the same liability as an act. A few reasons have been posited for this practice.

One is that some of the wording in the ICESCR is vague and unclear; therefore State Parties cannot enforce them, it is alleged, as they would with domestic legislation. Indeed, State Parties are not expected to enforce the exact language contained in the ICESCR. Instead each is expected to enact legislation that will enable the enforcement of the rights in their domestic jurisdiction under this international treaty. The strategy of avoidance of obligations by some States Parties is to point to the language of the ICESCR, a product of negotiation amongst states anyway, as unenforceable because it was alleged to be vague and unclear. This approach clearly shows a lack of understanding of the purpose of that international treaty, or is simply disingenuous, because the articulations of numerous General Comments by the Committee on Economic, Social and Cultural Rights have clarified many of the states' obligations under this treaty. However, the suspicious states do not want to acknowledge these General Comments because doing so might imply that they accept the articulations of a non-law-making authority, which might be binding on them. Most flaws in the language in the ICESCR are capable of being corrected at the stage of domestic legislation, in any case. Indeed, some regard this type of unilateral interpretation as a violation of the Vienna Convention on the Law of Treaties, which provides that every treaty is binding on the States Parties and there is a duty on them to perform the obligations therein in good faith.

The other reason is historical, in a selective understanding, as it was the US President Roosevelt who stated in 1944 that "necessitous men are not free men" when he spoke about economic security for all (ROOSEVELT, 1944). The ICESCR in the Cold War period was regarded as anti-capitalist and accepted as such, without a full interrogation of President Roosevelt's utterance. Despite the fact that the Cold War ended around 1986, there has been slow movement from the various State Parties to enforce their obligation under the ICESCR through the enactment of domestic legislation. Until the Optional Protocol on Economic, Social and Cultural Rights came into force in May 2013, some 37 years after ICESCR had entered into force, there was no individual complaints' mechanism for citizens whose social, economic and cultural rights were violated. In contrast, the ICCPR came to force also in 1976, with the Optional Protocol on ICCPR in that same year. These lapses in time are indicative of States' failure to observe their legal obligations and therefore undermine the value of public international law and international human rights law.

2 States' Self-Interest: Right to Protect, Right to Development and Migrant Workers' Rights

Occasionally, a "right" emerges not from the language of treaties or international human rights law, but from the indignation of a group of States at some rights that have been violated in some States. At this stage, the absence of consent via a ratified multilateral treaty, all objections to unenforceable language of rights, any reference to a customary practice accepted by all States Parties, or any other that

might be seen as a bar to their intervention in other states are dismissed or not even raised. The innocuously named "Right to Protect" seeks to protect the rights of citizens of a State that violates their rights. One would have thought the accepted objective of *all* human rights was indeed to protect, perhaps through persuading rogue States through good practice to uphold their human rights obligations all the time. After all, that objective underpinned the creation of the International Bill of Rights. It turns out, however, that this is not the case.

The "Right to Protect" purportedly protects such citizens where there are human rights violations such as genocide, ethnic cleansing war crimes and crimes against humanity, but not other human rights violations. It is argued that these are gross violations of human rights and require intervention from other States, ostensibly to protect the victims. The reason for this action lies in the realisation by some States that they have a responsibility to protect in such cases, and only in these cases. It is doubtful that this can be labeled a "human right" because the "right" justifies the invasion by one State of another State perceived to be violating the human rights of its citizens. In that act of invasion, all casualties, usually the very victims the act sought to protect, might be dismissed as "collateral damage". Thus it fails to protect the marginalised, vulnerable and indigent. This is a very reactionary course of action, one which might be regarded as "uncivilized" in the language of the United Nations Charter, and simply underscores the collective self-interest of the invaders. The practice of apartheid in South Africa for 46 years, however repugnant, never led to the exercise of the "Right to Protect" by any State. The Right to Protect, also, has never been invoked by protagonists against States violating the social, economic and cultural rights of their citizens.

In contrast to this rapid development of the "Right to Protect", the Right to Development is not acknowledged as a right by many of the supporters of the former, despite the celebration of twenty-five years of the Declaration on the Right to Development by the United Nations Office of the High Commissioner for Human Rights. All the well-trod arguments denying this as a right emerge from the opposition: a declaration cannot give rise to a right; there is no convention on this right to bind states; nor is there any international customary practice to this effect, we are informed.

Another clear indicator of the national or continental self-interest of State Parties is the International Convention on the Protection of the Right to All Migrant Workers and Members of their Families, adopted twenty-four years ago by the United Nations General Assembly, which has no European State Party (UNITED NATIONS, 1990). The website of the United Nations High Commission for Refugees states: "…economic migrants choose to move in order to improve the future prospects of themselves and their families".[3] That definition would appear to fit any European colonial leader, from Columbus to Rhodes, because they left Europe to improve their future prospects, ostensibly on behalf of their countries. But they are not called "economic migrant" but "pioneers". They also had the might of their States to back up their ambition. On that logic, again not much has changed today. Today, it appears to be the practice of some European States not to rescue refugees in sinking vessels because caring for them will be an

economic burden on the rescuing State. National self-interest, not the saving of lives, appears to be the emerging norm.

Notwithstanding history, today more proactive steps are necessary for the nurturing of all international human rights by all States Parties so that a predictable course of action can be realised for all violators through an understanding of a common language of international human rights law. After all, the international standards have already been set, even though some might be contested.

One justification of the emergence of the "Right to Protect" might lie in the weak enforcement measures against violating States, the only means being to cause embarrassment for them. Where, for example, the Optional Protocols to ICESCR and ICCPR granting individual petitions to aggrieved citizens have not been acceded to, the violating state is "named and shamed" in the oversight bodies of the various multilateral human rights treaties. Indeed, this is the full extent of enforcement of State obligations today for all international human rights treaties. The effect is not always salutary, nor is it immediate. It is also possible that frequent violators are accepting of their tags as violators and thereafter disregard the language and consequences of embarrassment. The result is that the violation of human rights continues. In these circumstances some indignant States might take on the self-appointed role and language of enforcers of human rights. If one examines the composition of which potential or frequent enforcers might be, against their own human rights records, it is likely that the States' rhetoric might not match their purported human rights record. It is at this stage that international human rights appear to be remote and disconnected from the very persons they seek to protect. Their voice is therefore silenced while deference to the State continues.

3 Multinational Corporations

Apart from States or their citizens, another entity with a very powerful influence, and, some may argue, many proxy voices, are multinational corporations, who are not subjects of public international law. Their influence on all decisions of States is immense and labyrinthine. They resist all attempts to make them accountable under international human rights law despite making huge profits that exceed the national budgets of many UN States Parties. At best multinational corporations are cajoled into upholding some principles of good practice, which are not based on human rights norms. Others embark on massive public relations exercises, in the guise of corporate social responsibility, that conceal their real practice of making profit at all costs.

The oil company British Petroleum, while responsible for one of the largest degradations of marine life in the Gulf of Mexico, continued its advertisement campaigns of being a source of corporate good practice. Any attempt at regulating them is met with much outrage and financial threats, as profit appears to be sacrosanct and valued above human rights. The British Prime Minister complained that any compensation British Petroleum might have to pay, eventually $4.4 billion, would erode the shareholders' profit. Another example was the mayhem that unregulated banking created in the northern hemisphere, and all of the

planned reaction at the time has slowly receded from the legislative plans of the European Union or the United States. Rather than setting binding standards for multinational corporations, who are not subjects of public international law, they are coaxed into behaving better.

Some States are the defenders of multinational corporations because they are purported to be the source of taxation. A close study of this assertion may expose the fact that with the various tax breaks, and a plethora of laws that support the non-location of such a corporation in any one country, including the repatriation of profits to the incorporating state, most multinational corporations pay a lower percentage of tax than individual taxpayers in that State. The duty to regulate the behavior of multinational corporations to ensure that they do not violate human rights lies with the State. In fact few do, because the corporation threatens, and sometimes follows through on that threat, to relocate their enterprise.

4 Public Interest Litigation

Ten years ago I wrote in the first volume of this journal that when regional and international human rights were subsumed into the domestic law, either through legislation or through enactment in the constitution of a country, fertile grounds existed for public interest litigation (JAICHAND, 2004). It is here that the voice of the victim is heard, because domestic courts are the only sites of this struggle. Since then, more States have taken this route, but their numbers are limited. Even when they had not taken this route, civil society with the legal NGO community sought accountability in any forum they could find. Indeed, civil society megaphoned the concerns of the disadvantaged, marginalized and vulnerable beyond their own borders. With the changing pace of technology, it is possible to publicise a local issue as an international one within seconds of its occurrence.

However, grand victories cannot be claimed here because not all States appear to be held sufficiently accountable. Some might say the larger, more powerful States and their allies are untouchable and continue to operate outside any set of standards. While many creative legal solutions have been found, including the principle of universal jurisdiction in international criminal law as one example, some States have participated in the development of the emerging norms but are not bound, as they do not ratify the resultant convention. These gambits are then imitated by others. Some gains are rendered nugatory when a killing is aided by remote technology, such as drones, and the pulling of the trigger is not even undertaken on the territory of those killed. The standard-setting bodies of international humanitarian law are left helpless as the weapons technology outstrips any standards. Multilateral treaties on these new approaches to killing are absent and all other sources of international law are impotent.

5 Conclusion: Towards a International Human Rights Court?

Perhaps it is the time for us to focus on the enforcement of human rights because the current limited progress being made by States on implementation of their human

rights obligations is costing thousands of lives daily. The main contribution of the international human rights system has been standard setting that has preoccupied everyone since inception. However, there is rigidity in the approach of some States to their obligations that is proving time-consuming to overcome. The glaring absence of enforcement of those standards is the weakness of the system. About the time the Universal Declaration of Human Rights was mooted, two enforcement mechanisms were suggested. One has been established after much debate at the then UN Human Rights Commission: the establishment of the Office of the High Commissioner for Human Rights. The other has not: the establishment of an International Human Rights Court. It is time now to revisit that notion.

One of the strongest proponents of the establishment of such a court over the years has been Professor Manfred Nowak, who maintained that this is a key institution for ensuring that States Parties met their obligations under human rights treaties, which in 2009 he called the World Court of Human Rights (NOWAK; KOSMA, 2009). The main features of this system provide for a permanent court to be established through a treaty. States Parties to this treaty will establish domestic systems to enforce all human rights treaties on the basis of complementarity, as established under the Rome Statute for international criminal justice. The Court will become a part of the UN structure and be funded by that body. This court will have jurisdiction over non-state actors such as multinational corporations and the UN Office of the High Commissioner for Human Rights will oversee the judgments of the Court (NOWAK; KOSMA, 2009, p. 8).

While this will go a long way to addressing the gap in implementation of State obligation, it is important to note that this can only be implemented in a country where that State Party has ratified such a multilateral treaty. That means those States who do not can only be "named and shamed". While this is a move in the right direction, the consent of States is vital. The alternative to this would be a replication of the domestic system with a police force. At the international level, that might add to our dilemma because only the more powerful States are capable of fulfilling that role. That might present us with new set of problems that we might regret in the future.

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NOTES

1. Article 38 (1) of the Statute of the International Court of Justice, annexed to the UN Charter, which cites what might constitute the sources of public international law. They include international treaties, international custom, the general principles of laws and the teaching of the leading scholars in the field. Available at: <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>. Last accessed on: 15 Aug. 2014.

2. ICCPR has 167 state parties and ICESCR has 161 state parties. Available at: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>. Last accessed on: 9 March, 2014.

3. Available at: <http://www.unhcr.org/pages/49c3646c125.html>. Last accessed on: 15 Aug. 2014.

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ABSTRACT

Global power shifts are only one of many trends likely to impact the future of efforts to
secure the protection of human rights. A burgeoning 'global trends' literature points to
both risks and opportunities for human rights advocates, as they will work in a world that is
increasingly more urban, more connected, and better educated, while at the same time under
greater environmental and political stress.

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GLOBAL TRENDS AND THE FUTURE OF HUMAN RIGHTS ADVOCACY*

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What is the future for human rights? In recent years, as global economic and political power is perceived to be shifting, and as western power appears to be in decline, this question is increasingly discussed. For the most part, however, the discussion takes place only within a narrow framework that weighs the importance of this power shift, both for emerging threats to human rights and for advocacy efforts.[1] Yet the perceived global power shift is only one of many trends that might shape the 21st century, and arguably not of primary importance when considering the future of human rights. Trends in the areas of population growth, migration, education, poverty levels, women's empowerment, global economic integration, urbanization, technological development and many more will all shape profoundly the future of human rights. A burgeoning literature is devoted to identifying these trends, produced by a range of actors.[2] While its predictive value is contested,[3] the various studies do point to a number of likely scenarios that pose both opportunities and challenges for the protection of human rights. The purpose of this paper, therefore, is to summarize the trends identified in a range of studies, and draw out the points that are likely to be of most interest to those considering the future of human rights.

1 Global trends – a snapshot

By way of introduction, it is worth noting that across a range of studies there is convergence on a surprising number of points. Looking ahead 20-30 years,[4] the world is almost certainly going to be more urban and more middle class, better educated and better connected (to information, but also to each other), more migratory and, individually, more empowered. It is also likely to be a world where traditional forms of government (whether authoritarian or democratic) are

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*Graeme Cook provided valuable research and writing assistance.

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challenged, and where security concerns will continue to dominate. It will be a hotter world, and, absent major technological breakthroughs, with fewer of the natural resources that sustain human life.

Such a future, even if sketched out at this macro level, will obviously have many consequences for the protection of human rights, some clearly positive, such as increased education levels, and others, like resource scarcity, apt to lead to gloomier outcomes. The following paragraphs will summarize these key trends in more detail. Following that, a concluding section suggests a number of issues emerging that are of most immediate relevance to those pondering the future of human rights advocacy.

Looking first at technology, progress in four areas will be important: information and communications technology (ICT); automation and advanced manufacturing technology (that may dramatically alter existing global supply chains); resource technologies (for example, breakthroughs in securing food, water and energy supplies through new technologies or advancements in agriculture); and life sciences and health technology (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 83). The enormous impact in the past two decades of ICT technology suggests that breakthroughs in any of these areas may have truly global and far-reaching impacts. Some predict a wave of technological development in the area of life sciences (ROLAND BERGER STRATEGY CONSULTANTS, 2011, p. 94). New technologies in the areas of biotechnology, nanotechnology, and genetics will likely raise profound ethical questions, including about what it means to be 'human'. Increasing diffusion of ICT will mean both individuals and governments become more able and adept at manipulating information on the Internet, even as rights to privacy and free expression come under new and increased pressures.

Turning to social issues, all major studies identify key trends in education, urbanization, migration and demographics. Education and literacy rates will continue to rise, along with the global average of years of education completed. By 2030, studies suggest 91% of the global population will complete primary education, and 55% will complete secondary or higher education (ROLAND BERGER STRATEGY CONSULTANTS, 2011, p. 105). Women are also narrowing the educational gap around the world.[5] A growing global middle class will drive the demand for education; and it will be more easily met as demographic pressures on education are falling almost everywhere, as the size of the school-age population declines relative to the working age population (HUGHES; DICKSON; IRFAN, 2010, p. 79).

Increased educational levels, of course, impact positively on social and economic outcomes; higher education rates for women, for example, lead to greater labour force participation (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 74). Further, a more literate world, and one that is better educated, suggests more people will be more aware of their rights, and perhaps better equipped to claim and defend them (a point returned to below).

Growing urbanization is also noted by all of the major studies. By 2030, the majority of the population in most countries will live in cities, as urbanization

rates grow (especially in Africa and Asia) to approximately 60% worldwide, from 40% only a few years ago (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 26; EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 134). Large cities will carry increasing economic and political clout (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 134). As cities grow so too will slums; there will be an estimated two billion slum-dwellers by 2040, double the number today (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 46; UNITED KINGDOM, 2010, p. 12).

Migration from the countryside will drive urban growth, but migrants will also cross borders. It is estimated 405 million people (not including refugees) will live outside their country by 2050, more than double the number today (INTERNATIONAL ORGANIZATION FOR MIGRATION, 2010, p. 1). There will also be a significant increase in temporary and circular migration. Labour shortages in many developed countries (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 24), wealth disparities across countries (INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, 2007, p. 46) and political instability and climate change will all drive migration. The number of those displaced (mostly internally) due to climate change may reach 200 million by 2050, though it could be much higher (INTERNATIONAL ORGANIZATION FOR MIGRATION, 2010, p. 2).

By 2030 the global population will have reached approximately 8.3 billion people, up from 6.9 billion today (INTERNATIONAL ORGANIZATION FOR MIGRATION, 2010, p. 20). Widespread population ageing will accompany this growth as life expectancy increases; the median age of the population in most countries in the world (with the exception of sub-Saharan Africa, and possibly South Asia) will rise. Most population growth will be in the global south – by 2030, roughly seven billion people will live in developing countries, comprising 85% of the world's population (ROLAND BERGER STRATEGY CONSULTANTS, 2011, p. 22).

Population ageing may have several impacts including: labour shortages that pull migrants to developed countries; the privatization of government services as pension liabilities and the rising costs of medical care create fiscal challenges for governments; an increased burden on caregivers, who will be predominantly female; and increased demand for migrant carers, who are not always well-protected in law.

In considering these social and technological trends, many of the reports suggest the result will be increasing individual empowerment, an idea that describes the growing importance of the individual relative to the State, organizations and society as a whole. This importance stems from the proliferation of ICT technology, already noted. It is projected, for example, that the number of mobile-only Internet users will rise from roughly 14 million in 2010 to close to 5 billion in 2030 (ROLAND BERGER STRATEGY CONSULTANTS, 2011, p. 86). But individual empowerment will also be driven by a rapidly growing global middle class – estimated to rise from 1 billion today to 3 billion or more by 2030 (depending on one's definition of 'middle class') (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 8). The diffusion of ICT is closely related to income, thus another driver of individual empowerment is the changing consumption patterns of the growing middle class (NATIONAL

INTELLIGENCE COUNCIL, 2012, p. 30). Increasing access to education and rising literacy rates will also lead to greater individual empowerment (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 28). Further, rising education rates fuel economic development, which in turn fuels demand for more education (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 10).

Turning to economic and political trends, clear outcomes are perhaps less certain. The rise in the economic and political power of countries in the global east and south (BRICs plus many others) has been widely noted. Continued global economic integration is also likely (ROLAND BERGER STRATEGY CONSULTANTS, 2011, p. 38),[6] and that means global economic instability may increase too. Most trend reports agree that while abject poverty will decrease as economies develop and middle classes grow, economic inequality (a relative measure) will grow. Additionally, while abject poverty will decrease in Africa, Asia and Latin America, this will not necessarily reduce the absolute number of 'new poor' (SCHINAS, 2012, p. 271). Although many African countries stand to benefit from a large demographic dividend, extreme poverty levels in sub-Saharan Africa will remain high to 2050 (CILLIERS; HUGHES; MOYER, 2011, p. 32). The causes of increased inequality include weak and unequal education systems, as well as the prevalence of disease and corruption in many developing countries (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 77). Shrinking budgets will curtail the ability of governments to redistribute wealth. Inequality could further be exacerbated by migration patterns, as cheap labour flocks to cities and across borders. There will be inequalities too in access to resources, including food and water.

The diffusion of economic and political power, the increasing importance of regions (like the European Union (EU)) in global governance and the increasing growth and hence power of cities are all likely to contribute to the waning importance of centralized state power (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 54). This may lead to the reform of the major international organizations, including the UN, the WTO and IMF as well as their increasing cooperation with regional institutions in the realm of global governance (INSTITUTE OF WORLD ECONOMY AND INTERNATIONAL RELATIONS, 2011, p. 10). Regions, and regional institutions, may become more important building blocks in global governance. As regional integration grows, some of the trend reports see the creation of more regional institutions of supranational sovereignty such as the EU. As cities grow in influence, they will pull political and economic power away from the traditional state level to the sub-national level (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 54).

Demographic pressures and increasing budget deficits will contribute to the failure of governments to deliver on the demands of an increasingly interconnected citizenry; more disillusionment in central government is likely. Corruption, privatization and the slow responsiveness of state institutions will exacerbate this trend (INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, 2007 p. 48). Some studies suggest an emerging "governance gap" will result, and the importance

of traditional party politics and governance structures will decline (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 14). Governments will be challenged to modernize and respond to increased demands for participation, while facing diminished capability to regulate public life and redistribute resources. Some governments may meet this challenge, but worst-case scenarios predict instead the breakdown of state structures and the advance of organized criminal networks (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 97).

Increasing economic and social inequality, marginalization, and disillusionment with central government may exacerbate conflicts related to self-determination, political autonomy and self-government (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 39). Tensions may be spread and shared through the diffusion of ICT, and the waning importance of traditional and central state authority may make it easier for new States to break away.

As regards security trends, it is likely that many aspects of government policy will continue to be thought of and formulated in terms of security. This will especially be driven by the wider access of non-state actors to lethal and disruptive technologies, including chemical, biological, radiological and nuclear (CBRN) weapons (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 64). Further, a well-executed cyber-attack could cripple economies and disrupt global interactions in trade and finance. As systems become more interconnected, the costs of such an attack will only increase (WORLD ECONOMIC FORUM, 2013, p. 6). States will most likely use increasingly sophisticated ICT to monitor their populations and control and censor information (as is already apparent). The military balance of power in some regions may shift as more States gain access to CBRN.

Finally, turning to environmental and resource trends, the most obvious (and most commented on) is anthropogenic climate change, acknowledged as a real and growing risk in almost every report studied, including forecasts from the energy sector. The consequences of a warmer planet and more severe natural disasters are grim. Food and water pressures will increase. Threats to public safety will increase too and living standards may decline in hard-hit areas due to rising temperatures and severe storms, general environmental degradation and an increase in humanitarian disasters (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM; INSTITUTE FOR SECURITY STUDIES, 2012, p. 81). These effects will be felt most severely in China, South Asia and the Sahel, where resource pressures will also be highest.

By 2030, demand for food will rise by at least 35%, demand for water, by at least 40%, and at least half of the world will live in areas suffering from severe water stress (NATIONAL INTELLIGENCE COUNCIL, 2012, p. 10). States in Africa and the Middle East are the most vulnerable to food and water shortages, but China and India could be affected as well. Demand for energy is expected to rise by 50%, due to changing consumption patterns as the global middle class grows and consumes more (ROLAND BERGER STRATEGY CONSULTANTS, 2011, p. 75). Additionally, growth rates in world agricultural production will slow and may even fall due to climate change. Agricultural production will also be threatened

due to water scarcity (ROLAND BERGER STRATEGY CONSULTANTS, 2011, p. 62).

Access to safe water will improve (to 86% of all people by 2015), but there will be an enormous gap between rural and urban areas: eight out of ten people without access to safe drinking water will live in rural areas (ROLAND BERGER STRATEGY CONSULTANTS, 2011, p. 59). High levels of water pollution in developing countries, caused primarily by rapid urbanization and unsustainable agricultural practices, will only be partially mitigated by 2030. This is particularly important, as dirty water is the source of up to 80% of the total disease burden in some developing countries (WATER…, 2009).

2 The future of human rights

The foregoing is only a partial look at key trends, largely ignoring, for example, important developments in the diffusion of global political power and trends in relation to the prevalence of violence and armed conflict. Nevertheless, even this partial analysis suggests a number of important issues that ought to be considered by human rights organizations when formulating plans for future work. As noted at the beginning, identifying a trend does not necessarily translate into predicting a definitive outcome. Many of the trends identified might have either beneficial or detrimental consequences for human rights, and most likely—for a number of trends—it will be a combination of both. For example, urbanization may improve access to education and basic health care, but where it entails living in slums, it will likely expose people to new forms of violence and insecurity.

Two sets of issues arise: first, what do the trends suggest about emerging human rights concerns, and second, what impact might they have on advocacy efforts? A particular trend may pose a new threat to human rights, even as it provides new opportunities for those working to protect human rights—for example, the advances in ICT.

Looking first at impacts on the enjoyment of human rights, positive outcomes include increased access to education, because it is the fulfilment of a basic human right, but also because there is a strong correlation between education levels and development gains, especially where girls are completing school. Further, education equips individuals to be much greater masters of their own fate—better able to engage in political life and better able to find shelter, food and employment security. The notion of the 'empowered individual'—because of education, but also because of the availability of and access to ICT—captures this sense of being less at the mercy of traditional and political authority. Linked to this, of course, is the likelihood that the proportion of people living in extreme forms of poverty will decrease; and increases in life expectancy point to improved access to the right to health.

Other positive outcomes may arise from the growth in the urban population, which may improve access to basic human rights, including secondary education and health care. Even if much of the growth in urban population will be in marginal and sub-standard housing and in slums, it will be easier to provide such services than it would be in rural areas.

Enhanced access to ICT may make it easier for people to exercise basic civil and political rights—to organise, associate and assemble, and to free expression. Certainly access to information will be easier, even if governments grow more sophisticated in forms of censorship.

If power is decentralised to sub-state levels, in theory political participation should be enhanced as decision-making moves closer to the people affected. Too many human rights demands are placed on central state authorities and it would likely improve the realisation of many rights if sub-state authorities (regional, provincial, municipal) were identified more explicitly as duty-holders (and engaged as such by national and international actors).

Other technological advances, for example in the life sciences, may dramatically improve our ability to diagnose and treat disease, but whether this will produce overall positive effects will depend on the extent to which there is equitable access to such technology.

Regarding negative outcomes, security, environment and resource trends are all particularly worrying regarding their likely impacts on the enjoyment of human rights. The human rights impacts of climate change seem clear enough—forced displacement, increasing difficulties in access to basic necessities, threats to lives and livelihoods (from natural disasters and degraded or lost agricultural land)—although the precise timescale and the areas of highest impact are debated.

Increasing attention to security, and advances in ICT that make surveillance easier, will challenge rights to privacy and basic civil rights like expression and assembly. There is likely to be a continuing expansion of the situations in which people who pose perceived threats can be killed rather than arrested, as the rules normally applicable in war are increasingly applied whenever state security is threatened. Threats posed by the diffusion of CNBW to non-state actors mean it is likely States will resort more often to derogation and the use of exceptional powers.

If trends in resource depletion are accurate, and climate change looks likely to accelerate these, then the question of equitable access to these resources will grow in importance. Where such resources are essential to support and maintain human life, then it is similarly likely that the debate will implicate rights to water, to land, to food—and to access to advances in technology that mitigate or overcome the effects of depletion.

In relation to demographic issues, perhaps the most significant will be the doubling of the population living in slums. As noted, the growth of slums is not uniformly negative for human rights, but there are numerous human rights challenges arising for people living in slums, far beyond the narrow issue of their inadequate housing. These include the threat of criminal and domestic violence, denials of basic rights to water, sanitation, etc., inequitable treatment by municipal authorities, arbitrary treatment by the police, denial of public participation rights, arbitrary interference with property rights and more. If demographic and migratory predictions are accurate, over 20% of humanity will live in a slum by 2030. This suggests a clear prioritization for human rights work.

Forecasts in relation to migration suggest a doubling of those who will be living outside their country of citizenship by 2040 (not including refugees nor

those displaced across borders by climate change), and the debate will intensify over the permissible limits on the rights of non-citizens. It is likely that a significant proportion of these new migrants will be temporary or irregular. Most often irregular and temporary migrants are excluded in important ways from the normal, domestic constitutional guarantees, and thus international human rights protections are of crucial importance to these groups. There will likely be an increase in the human rights abuses associated with temporary and/or irregular migration: discrimination in employment and access to services (education, health, social security); denial of political rights; arbitrary detention; denial of rights to privacy and family life, questions of equality before the law, etc. Within migrant populations, women, children and visible minorities will be most at risk. Human trafficking may grow, simply because more people will be on the move and it will be harder for governments to counter.

In terms of the groups most affected, one can expect that disadvantaged and discriminated groups will be most at risk in any scenario involving declining resources and conflict. The rights of the elderly will grow in importance. Slum populations, migrants and the displaced will all be at particular risk. Though the number of people living in extreme poverty will decline, significant pockets will remain, even in the new middle-income countries.

Secondly, what do these various trends point to, in terms of work to promote and protect human rights? Will it be easier or harder to win acceptance for human rights claims? As noted, advances in education, especially at post-primary levels, a growing middle class, and greater access to information and the means of communication could all point to greater individual empowerment. This could improve the individual capacity (and proclivity) to know, claim and defend rights—and this might be true for hundreds of millions of people. If accurate, the projection that 5 billion people will have mobile access to the Internet by 2020 is particularly breath-taking in the possible implications it will have on social change and mobilization. Greater access to information, and the greater difficulties those in power will face in restricting this access, could signal major new exposure to and interest in human rights.

Urbanization trends may further increase the interest in human rights and the capacity of people to organise in defence of their rights, as will increasing migration, as migrants too often fall outside domestic legal protections and must look to international standards (and 'human'—not citizen—rights) for protection.

Yet, a greater interest in and demand for the protection and fulfilment of human rights might arise precisely at a time when central governments have a weakened capacity to respond effectively. Human rights are claims on power and as power diffuses so too must human rights advocacy. This is already apparent in the way human rights NGOs have placed demands on armed groups, development agencies, religious authorities and transnational corporations, and this 'advocacy beyond the state' is likely to grow in importance. But even within the state, work to promote and protect human rights will increasingly need to shift its attention to sub-state levels of authority—provincial, regional, municipal—where power is actually being exercised. Further, where regional economic and/or political bodies,

like the European Union, assume real powers of decision, then they, too, will need to be the objects of greater advocacy efforts.

Although this paper has not addressed the impact on human rights advocacy of global power shifts, it should be said that these shifts—and the multipolar world they point to—will likely deepen tension, mistrust and animosity between North and South, West and East. This will certainly impact the manner in which human rights issues arise and are resolved in international relations. In short, for those working to promote and protect human rights at an international level, it is unlikely to get any easier.

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NOTES

1. The author addressed this question in a previous issue of the journal, see David Petrasek (2013).

2. Large global trend reports are published by intelligence agencies in the United States (US), the European Union (EU), Russia, and elsewhere, by a range of think tanks and by specialized international organizations in their fields of concern. Corporations, especially energy companies, also engage in forecasting and scenario planning exercises. The quality of these reports varies. The US's National Intelligence Council's (NIC) *Global Trends 2030* is one of the most cited and most comprehensive, and is relied on heavily in this report (NATIONAL INTELLIGENCE COUNCIL, 2012), as are two other reports: the European Policy and Strategy Analysis System (ESPAS), published with the support of the European Union (EUROPEAN STRATEGY AND POLICY ANALYSIS SYSTEM, 2011); and, as it pulls together trends identified in dozens of other reports, the *Trend Compendium 2030*, published by Roland Berger, a corporate consulting business (ROLAND BERGER STRATEGY CONSULTANTS, 2011). Material is drawn from many other reports and papers (see bibliography).

3. There are some clear limits to the *predictive* value of these reports. First, some trends are much more certain and evidence-based than others, and second, identifying a trend is not the same as predicting an outcome. As regards the first point, global demographic trends are fairly certain, as is a trend towards greater urbanization; the same cannot be said for the likelihood or not of wars over scarce resources, or of global pandemics, or the continued advance of democratic governance. As regards the second point, the knowledge that 60% of the world's population will live in cities by 2030 may be predicted with a fair degree of certainty, but it may or may not result in increased rates of violence against women who are part of that migration, or in the spread of criminal gangs in the slums to which most will migrate.

4. The 20-25 year timeline is that adopted by most global forecasting–far enough ahead to identify what might be truly surprising and novel.

5. Globally, however, full gender parity in education levels will not be achieved until closer to 2060. See Hughes, Dickson and Irfan (2010, p. 83).

6. Two key indicators of economic globalization, FDI growth over GDP growth and exports as a percentage of GDP, will increase. These rates are highest in the developing world, however, as developing economies integrate into the global economy at a faster rate than the developed world. Asia, for example, is expected to overtake the EU as global export leader by 2023. See Roland Berger Strategy Consultants (2011, p. 38).

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ABSTRACT

This essay summarizes the author's argument for the recent genesis of international human rights and asks what implications for the future that argument has. The essay lays emphasis on the mobilizational origins of current human rights, and insists on the need to reorient them away from the historically specific and politically minimalist compromise between utopianism and realism that human rights current represent.

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KEYWORDS

THE FUTURE OF HUMAN RIGHTS*

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I have long been fascinated by the hold of international human rights on the utopian imagination. Precisely when did a concept so central to the moral consciousness of so many idealists today become the supreme cause?

Finding an answer to this question required looking back at prior meanings of rights claims - which certainly were made before, but generally worked very differently. It was also crucial to carefully examine eras in which the notion could have spread in a broad-based movement, and could have become a touchstone, but failed to do so: notably the aftermath of World War II, when many people dreamed of a new deal, and during the decolonization that followed.

The conclusion of this study was an unexpected one: human rights as we understand them were born yesterday. Human rights crystallized in the moral consciousness of people only in the 1970s, whether in Europe, Latin America, or the United States, and in transnational alliances among them, chiefly as a result of widespread disappointment with earlier, hitherto more inspirational forms of idealism that were failing. In other words, human rights emerged as the last utopia, but not from scratch: they appeared only after other, perhaps more inspiring utopias failed (MOYN, 2010).

It seems odd to say that the utopian imagination has to start from the real world, but, when it comes to international human rights, it is clear that utopia and reality do not so much exclude but depend on each other. At least, the hope embodied in human rights norms and movements, which germinated in the last part of the twentieth century, emerged from a realistic assessment of what sort of utopianism might make a difference.

One possible response to this finding of mine could be a proposal to return to the utopian imagination in its pure form, divorced from attempts to institutionalize it. When Plato earned Niccolò Machiavelli's scorn for dreaming of a politics based on a different sort of men than in fact existed, perhaps the Florentine neglected the value of thought experiments, even if they prove entirely useless. If the utopia

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*This essay originally appeared in somewhat different form in an art catalogue: (Gregos; Sorokina, 2012)

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of human rights emerged out of a historic compromise with reality, then perhaps the very attempt at compromise was a mistake: a better utopianism would proceed from the refusal to pay reality the respect of conforming to it.

In my view, this stance is mistaken. Human rights at least answered to the need to begin reform of the world — even utopian reform — from the way it is now. I worry, however, that human rights may have conformed *too much* to reality. Human rights proved so minimalist in their proposals to change the world that they easily became neutered, and have even been invoked as excuses—for example, in wars serving other interests—for choices that their original advocates did not intend.

<p style="text-align:center">***</p>

Surveying both the scholarly and popular history of human rights, I found a shocking mismatch between common attempts to attribute the concept to the Greeks or the Jews, early modern natural law thinkers or French revolutionaries, and the far more recent conjuncture that my evidence suggested. One book even went back to the Stone Age! (ISHAY, 2004). Now, it is true that many historical ideologies across the millennia make morality and humanity central. But they do so in starkly different ways than in human rights movements today.

Even as late as the revolutionary era of European and American history, after which "the rights of man" became a watchword, it was universally assumed that the goal was that a State—even a nation-state—would protect them. Then there were disputes within these States to define the entitlement of membership. For this reason, if one likes, there was a "rights of man" movement before there was a human movement, and it was called nationalism. Yet, human rights today are neither revolutionary in their associations nor offer entitlements based on common membership in a space of protection, whether within or beyond the nation-state.

Furthermore, while it is true that a critique of national "sovereignty" bloomed before, during, and after World War II, when the Universal Declaration of Human Rights (1948) was framed, I also found the extraordinary attention this era gets among scholars and pundits to be misplaced. It is not even clear how many people who talked of human rights in the 1940s had in mind the creation of the supranational sorts of authority on which "human rights" are now based. In any case, almost no one appealed to human rights then, either in an old or new version. The victorious ideology of World War II, in fact, was what I would call "national welfarism" — the commitment to update the terms of nineteenth-century citizenship to include social protection, an obligation that was unfailingly undertaken within the terms of the nation. It was no accident that it was precisely in this era that the nation-state globalized and finally, after centuries, became the dominant political form of humanity. If human rights were resonant at all, it was as one synonym for the sorts of new entitlements States would offer their citizens: hence the Universal Declaration's self-description as a "common standard of achievement for all peoples and nations."

But if national welfarist politics globalized through decolonization, it was not thanks to the notion of human rights. Indeed, that idea was introduced in the

midst of World War II as a *replacement* for the liberation from empire of which most around the world dreamed. Early in the war, Franklin Roosevelt and Winston Churchill formulated their war aims – before the United States even entered the conflict — in the famous Atlantic Charter (1941). One of their promises was "the right of all peoples to choose the form of government under which they will live," and so the document was celebrated the world over as effectively a promise of decolonization. But Churchill — who successfully convinced Roosevelt — had meant that promise to apply only to Adolf Hitler's empire in Eastern Europe, not empire in general, and certainly not Churchill's empire. During the war, as the promise of colonial self-determination fell, human rights became more popular—as a kind of consolation prize, that was therefore spurned. And no wonder: not only did human rights not imply the end of empire, indeed the imperial powers were their most significant proponents. Those living under empire resolved to struggle for the self-determination they had originally been promised (MOYN, 2011).

Meanwhile, in the north Atlantic world, contests over a fraying wartime welfarist consensus took pride of place. The pressing problem, as most people understood it, was not how to move beyond the State, but what sort of new State to create. And, in this situation, the fiction of a moral consensus of "human rights" provided no help. Instead, everyone accepted the political battle. It is obvious why: if I say I have a right, and you say you have a right, there is no alternative when we share citizenship except to struggle with each other for victory or compromise, legislation if possible and revolution if necessary, which is what modern politics are about. As Hannah Arendt put it, it was for these very reasons that those committed to spreading citizenship in modern times began to talk less rather than more about rights: "If the laws of [your] country did not live up to the demands of the Rights of Man, [you] were expected to change them, by legislation … or through revolutionary action" (ARENDT, 1973, p. 293).

Ironically, in the 1970s, the same consensus around moral principles that once provided no help offered salvation. With the exhaustion of reform schemes behind the Iron Curtain and the collapse of student dissent in the West, it did not seem feasible to dream of a better world the old way: that is, by proposing a genuine and controversial political alternative. In the East, dissidents recognized that such programs would be crushed. A morality of human rights provided an 'anti-politics' to resist and indict the communist State. In the West, a moral alternative beckoned too—especially for idealists who had tried other things first, including leftist commitments, and found them equally wanting. It also made sense in an America seeking recovery from the self-imposed disaster of Vietnam. For a brief moment, and to liberals most of all, American president Jimmy Carter's moralistic criticism of politics—as he chastised his country in terms of sin for its Vietnamese catastrophe—resonated with voters.

<p style="text-align:center">***</p>

In view of the historical claims, some foundations for political argument now seem stronger than before, and others weaker. Clearly, thinking that international human rights have been God-given or naturally occurring, or even that they were

a legacy of continuous moral insight following the genocidal horror of World War II is mistaken.

Human rights came to make sense in a world of decolonized States (but in which not all States are trusted to exercise their sovereignty equally.) Outrages against humanity, such as the slave trade, once justified empire, as in the "scramble for Africa" after 1885; now they justify opprobrium against States that spent the first decades after World War II winning independence from empire. And even for Westerners—especially for Westerners—human rights were discovered by masses of people only after they had first tried other things, like socialism, and given up on them in despair. Our idealism is one born of disappointment, not of horror or of hope.

But this suggestion does not translate easily into a set of specific consequences. History shows that even the most cherished beliefs are always up for grabs. They may settle for a while, but they are never stable. This also means that the burden falls on the present not to turn to the past for reassurance, but to decide for itself what to believe and in what way to change the world. History, at its best, liberates, but it does not construct. Yet perhaps it offers a lesson about what sort of idealism people should, or at least can, seek.

For the longest time in modern history, programs for bettering the world mattered most when they were politically controversial—such as when they sought to overturn the *status quo*. The achievement of the nation-state required dispensing with kings and aristocrats, just as the "rights of man movement" of the decolonized Twentieth Century demanded that empires should finally end. In the 1940s, human rights were bypassed because they offered the mere fiction of a moral consensus that plainly did not match the need for political choice.

As mentioned before, the 1970s inaugurated an exceptional period in which the morality of human rights made sense; if and when that period ends, the need for contestatory political options may once again seem the most relevant one to meet. Of course, every, or almost every, political agenda appeals to transcendent moral norms. But programmatic politics is never about those moral norms alone. It assumes that the other side—for politics always has at least two sides—can likewise appeal to moral norms. So politics becomes a battle, hopefully waged through persuasive means, from advertising to arguments, to gain power and enact programs.

Strangely, it is still a taboo to think this is also what should occur in international affairs. Partisanship acceptable at home—the ordinary contest for power amongst parties—is not openly available abroad, except through the alliance or contention of States alone rather than of broader parties or movements. Instead, thanks in large part to human rights, agendas for the world are argued in terms of morality.

For contemporary international human rights, there is only one side. The invasion of some country is demanded as if it follows from the moral norm of the responsibility to protect, while a philosopher burning with shame at the poverty of the globe insists that morality requires economic redistribution. Humanitarian militarism is not defended as a highly political agenda, while the moral principle demanding redistribution does not by itself tell us how to realize it—though it will necessarily involve a potentially violent agenda of taking wealth from the powerful and giving it to the wretched of the earth.

Of course, the struggle for power is equally operative at the global level. But because no one has discovered a way to constrain partisanship in international affairs—which has so frequently led to military hostilities—it has seemed preferable to argue in absolute or sentimental moral terms. But to those who express this fear of "politicizing" world affairs, one must point out that the global space is already a realm of power politics. Because of this reality, invoking moral principles will either have no effect, like the philosopher's complaint about poverty, or will mask the realities of power, as when humanitarian invasions occur. Pretending everyone already agrees with invoked moral norms does not change the fact that nobody does, or that people interpret them under the pressures of interest and partisanship.

The conclusion is that we can and should risk the development of more openly partisan enterprises in international affairs. The choice is not between whether to have them or not, but whether they are explicit or not. Another way to put this claim is in terms of Friedrich Engels's old contrast between utopian socialism and scientific socialism. His distinction was confused—if Marxist socialism was anything, it was utopian. But Engels was right to draw a distinction between utopias that acknowledge that they are controversial and oppositional, and therefore need to descend into the programmatic contest for power, and those that pretend that wishful thinking alone will change the world. The former approach needs to be recovered for utopia's sake, because the latter constantly proves ineffectual. "Human rights," in short, need to become more scientific.

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It is here that the puzzle of contemporary human rights as a set of global moral principles and sentiments becomes clearest. In the way that they are generally presented, they do not intervene in power politics. But, precisely for that reason, they often seem to make little practical difference, amounting to an ornament on a tragic world that they do not transform. Because they are not realistic enough, they end up accommodating reality too much. A better compromise between utopianism and realism is required. How to find this compromise is anything but obvious. But it may help to conclude with a list of theses that indicate the sort of compromise I have in mind.

A politics of human rights must involve a transformation in steps. Radical politics have long been torn between the options of reform and revolution; but, if anything has been learned by the Left, it is the need to reject this dichotomy. Instead, the goal should be to start with international human rights ideas and movements as they currently exist, and radicalize them from there.

A politics of human rights must acknowledge that it is mobilizational. No casebook of international human rights law contains a section on human rights as a global movement. Instead, human rights norms are presented as norms to be enforced by judges. Realists know this presentation is not only historically false; it also avoids scrutiny of the conditions in which movements succeed (MOYN, 2012). For the sake of the non-partisanship that judging seems to demand, the role of contemporary judges depends on suppression of the fact that they are in league with a global movement of opinion. An occasional judge, like Antônio Augusto Cançado Trindade (who sits on the International Court of Justice), is more honest

about his desire to affiliate with "humanity" as the source of human rights law.[1] But the moment judges are recognized as mobilizational agents, hard questions about whether they are the right agents start to be posed.

A politics of human rights must transcend judges. History shows that movements relying on judges alone are weak. In American history, judges succeeded in forcing genuine political change in the name of moral norms only when they allied with grassroots political movements, as the history of the American civil rights movement of the 1950s and 1960s shows. As the grassroots lost strength, judges did too, as the collapse, truncation, and destruction of America's civil rights revolution just when "human rights" became prominent shows. In any case, judges today have power to mobilize for human rights only in highly specific institutional contexts: in domestic polities that give them a role, or regional courts gathering together nations that have already agreed to cede some sovereign prerogatives to judicial elites. For human rights to make more of a difference, the movement has to be more honest about the fact that its success depends on its own mobilizational strength and grassroots penetration. For this reason, Amnesty International's recent decision to return to its mobilizational roots and cultivate local centers of authority is a promising step in the right direction. But few other NGOs work in this way.

A politics of human rights must seek power over the real conditions of enjoyment of formal entitlements. What a global politics of human rights will look like will follow from prior domestic experiences in developing contestatory programs. When a transatlantic progressive movement coalesced in the nineteenth century to challenge the misery of unregulated capitalism, it realized that invoking formal rights was insufficient—especially since the defenders of unregulated capitalism also commonly appealed to natural rights, such as the sanctity of the property entitlement. So progressives deformalized rights, suggesting they were not absolute metaphysical principles but contingent tools of pragmatic social organization (FRIED, 1998). The same move needs to happen at the global level now.

A politics of human rights will move away from framing norms individualistically and will cease to privilege political and civil liberties. In the same vein, and for the sake of targeting the world's worst miseries, human rights must move in the same direction as prior domestic progressives did. Just as they deformalized rights, they attacked the individualist character of rights for the sake of the common good or social solidarity, and insisted that the real conditions for the enjoyment of any rights are to be sought not simply in the possession of personal security but also in the entitlement to economic welfare.

Some movements—like Marxism—moved away from individualism and indeed rights altogether, but a politics of human rights will not do so. Yet, it will have to move far from the classic concerns of the human rights movement since the 1970s, based as it has been on the campaign for political and civil rights against the totalitarian and authoritarian State (and now, most frequently, the postcolonial State). While it should not totally abandon its concern with evil States, it will need to make what has been an obsession, a peripheral element in a larger campaign. Ultimately, it should engage in the programmatic concern with designing good States, for the sake of global economic welfare.

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One might fairly ask what the incentive is to transform human rights in this way. The answer, I think, is that if the human rights movement does not offer a more realistic and politicized utopia, something else will take its place.

The geopolitical situation is changing rapidly. Human rights as depoliticized moral norms ascended far and fast in a particular world-historical situation, between the bipolar era of the Cold War and the multipolar era that is surely coming. In the immediate aftermath of the Cold War, before 9/11 intervened, Europeans flirted with the idea that American power needed to be balanced. Today, most people think that China will become the agent of balance.

A return to a geopolitics of contest inevitably brings about a world in which appealing to moral norms will no longer seem paramount. Human rights can retain their current prominence by becoming an open language of partisanship, so that other realists, for whom universalist justice is at best a secondary concern, do not hold the field.

But history also teaches us that partisanship is bittersweet. Human rights will descend into the world as a language of contest and struggle, but the other side will no longer be forced to defer to them as binding—a morality above politics. The other side may also offer its own interpretations of rights. We are fast departing from a world in which human rights became prominent, precisely because they seemed an alternative to contest and struggle, a pure utopia where others failed. Some people will view the descent of human rights into programmatic contest as too high a cost for relevance. But if the alternative is irrelevance, it is a small price to pay.

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NOTES

1. Consider this remarkable language from an advisory opinion when Antônio Augusto Cançado Trindade sat on the Inter-American Court of Human Rights: "*It is not the function of the jurist simply to take note of what the States do, particularly the most powerful ones, which do not hesitate to seek formulas to impose their 'will' ... [The law] does not emanate from the inscrutable 'will' of the States, but rather from human conscience. General or customary international law emanates not so much from the practice of States (not devoid of ambiguities and contradictions), but rather from the 'opinio juris communis' of all the subjects of International Law (the States, the international organizations, and the human beings). Above the will is the conscience. ... Law is being ostensibly and flagrantly violated, from day to day, to the detriment of millions of human beings, among whom undocumented migrants all over the world. In reacting against these generalized violations of the rights of undocumented migrants, which affront the juridical conscience of humankind, the present Advisory Opinion of the Inter-American Court contributes to the current process of the necessary humanization of International Law ... In so doing, the Inter-American Court bears in mind the universality and unity of the human kind, which inspired, more than four and a half centuries ago, the historical process of formation of the droit des gens. In rescuing, in the present Advisory Opinion, the universalist vision which marked the origins of the best doctrine of International Law, the Inter-American Court contributes to the construction of the new 'jus gentium' of the XXIst century*" (INTER-AMERICAN COURT OF HUMAN RIGHTS, 2003).

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ABSTRACT

The Global Human Rights Regime, an amalgamation of law, permanent institutions,
global campaigns and funding, is a remarkable achievement. Since the mid-1980s and
particularly after the end of the Cold War, human rights have been embedded in numerous
conventions, organizations and courts, at the domestic, regional and international levels,
all of which now encircle states in a world of law. Yet, in this article, the author questions
how much nowadays the international human rights movement, given its internal diversity,
displays a political and moral economy that mirrors inequalities within and between
societies more widely? He focuses on three deeper underlying shifts in the world of global
politics, namely: the decline of Western influence and the emergence (or re-emergence)
of new powers; the politicization of human rights language; and pushback against human
rights on principle, particularly in cases of religious belief. Those arguments, the author
warns, remind us that the Global Human Rights Regime risks ignoring the complexities
derived from diverse regional, national and local politics.

KEYWORDS

CHALLENGES TO THE GLOBAL HUMAN RIGHTS REGIME: ARE HUMAN RIGHTS STILL AN EFFECTIVE LANGUAGE FOR SOCIAL CHANGE?

Stephen Hopgood

The profound question of whether human rights are still an effective language for producing social change, asked by SUR 20 on its tenth anniversary, is the right question being asked at the right time. If I answer no in this article—human rights are an increasingly *ineffective* language for social change—this is a very qualified no. It does not mean that human rights activism has achieved nothing or that we must abandon hope for social change; it does not mean that the language of human rights is no longer useful and it does not mean it will cease to exist. If anything, there will be more talk about human rights. If I suggest that that's largely all it will be—talk—this is not to say that talk does not have its long term, positive effects, by changing the narrative about who counts as human and how they can legitimately be treated. To be wary of the liberatory potential of human rights in 2014 is simply a reality check in a world that has changed beyond all recognition since the 1970s, when human rights began their global ascent. If we want rapid change, human rights will not be the way to achieve it, I argue. In fact, things are less promising now than they have been for decades. If we want long term change, then the discourse of human rights can still help us, but only if we put front and centre a further SUR 20 question: who is it the international human rights movement represents? Who or what is *the Global South*?

Why would I—why would anyone—argue that human rights have had their day? After all, the extent of the law and institutions dedicated to human rights is overwhelming. There is hardly a person on the planet, certainly in the North and increasingly through the South as well, who will not encounter the phrase 'human rights' on a fairly regular basis, whether in person, on the radio, via satellite television, or on social media. Since the mid-1980s and particularly after the end of the Cold War, human rights have been embedded in numerous conventions, institutions and courts, at the domestic, regional and international levels, all of which now encircle states in a world of law. Building on international covenants on civil and political, and economic, social and cultural rights ratified in the mid 1970s, on conventions on discrimination against women (1981), against torture

(1987) and on children's rights (1989), the UN secretary-general Boutros Boutros Ghali's *Agenda for Peace* of 1992 announced a new era where human rights would increasingly impose conditions on legitimate sovereignty. 'The time of absolute and exclusive sovereignty has passed,' he declared (UNITED NATIONS, 1992).

Following 1993's UN Conference on Human Rights in Vienna, the UN's Office of the High Commissioner of Human Rights was established, followed by the Rome Statute (1998), the International Criminal Court - ICC (2002), the Responsibility to Protect – R2P (2001/2005), the new Human Rights Council (2006) and Universal Periodic Review (2008). There is even a proposal to establish a World Court for Human Rights. These are all significant developments in the law and compliance regime of human rights. Many other agreements and institutions have been set up or revitalized and now almost all of those who seek improvements in their protection and entitlements—from migrants to indigenous people to the disabled to those fighting against female genital mutilation (FGM)—can express their demands in the language of human rights. Even humanitarian relief and development organizations like Oxfam have followed suit. These institutional achievements are mirrored in global surveys that show a majority of the public in countries worldwide support the idea of human rights (POLLS…, 2011).[1]

Most recently, the UN's report on the appallingly repressive conditions in which people live in North Korea, released in February 2014, uses human rights and their most far-reaching legalized international expression—crimes against humanity—as the framework for demanding both referral to the ICC and even the use of coercive pressure under the label of R2P (UNITED NATIONS HUMAN RIGHTS, 2014). In other words, far from being an infringement on sovereignty, human rights are seen by their advocates as integral to the exercise of legitimate government. In 2014, human rights are no longer marginal; in other words, they are mainstream. High-profile campaigns—for example to free members of the Russian feminist rock band Pussy Riot—create huge global publicity. Human rights advocacy is now funded to the tune of hundreds of millions of dollars a year and human rights are part of the discourse of humanitarian intervention under R2P. This amalgamation of law, permanent institutions, courts, global campaigns and funding is the Global Human Rights Regime. As political scientist Beth Simmons says, we now have 'an increasingly dense and potentially more potent set of international rules, institutions, and expectations regarding the protection of individual rights than at any point in human history' (SIMMONS, 2009, p. 3).

There are, nevertheless, a series of concerns about the present and future of human rights effectiveness shared by scholars and advocates alike. One set of questions concerns current effectiveness. For example, how much impact do human rights campaigns, laws and institutions really have and why is there so little convincing evidence of their positive effects? The ICC has been in operation for 12 years, and has only just convicted its second defendant, and then only on a lesser charge and with a dissenting judge. All ICC indictees so far have been African

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* For more sceptical data, see James Ron, David Crow and Shannon Golden (2013).

men and the most prominent, President Uhuru Kenyatta of Kenya, is leading the charge for an African Union breakaway from the court. Even in what we might think is the clearest case—torture—which is against positive, customary and *jus cogens* law, the evidence for a reduction, let alone elimination, is thin. Some scholars even argue that when states sign conventions like that against torture they are more likely to torture, or to be inventive about the forms of torture they use (HATHAWAY, 2001-2002; REJALI, 2009; FARISS, 2014). We need no reminding of the use of torture by the United States under the President George W Bush administration, of course. What evidence there is suggests, moreover, that human rights work best in societies that need them least (HAFNER-BURTON, 2013). What, then, about the 'hard cases,' those in areas of limited statehood where even national governments lack power? (RISSE; ROPP, 2013).

Pressing questions also concern how much the international human rights movement, if there is such a singular entity, displays a political and moral economy that mirrors inequalities within and between societies more widely? How much are human rights advocates 'all in it together'? And also: How will changes in demography and technology change human rights work? Do young people really want to campaign for human rights and, if so, is online activism an effective way to do so? Furthermore, will security concerns clash with civil and political rights, and how will social justice demands (to food, shelter, medicine, healthcare) fare if international NGOs continue to prioritize issues like torture, the death penalty, freedom of religious belief and freedom of expression? Will a cutting-edge focus on women's rights and LGBT rights increase the salience and effectiveness of human rights or will it doom any wider alliance with other social movements, especially those with a religious dimension to them? With a new, more progressive Pope in the Vatican, might the Catholic Church be a better bet for social activism around poverty and social justice than a human rights NGO? What would this mean for the LGBT, and women's, rights?

While these questions are not new, they are growing greatly in significance because of three deeper underlying shifts in the world of global politics. It is here that we find the real cause of the growing ineffectiveness of human rights as a movement for social change. They are: the decline of Western influence and the emergence (or re-emergence) of new powers, the politicization of human rights language, and pushback against human rights on principle, particularly in cases of religious belief. All these put intense pressure on the idea of an international human rights movement and force us to ask: Who is in this movement and who is not?

First, the decline of the West and the rise of new powers. Human rights came to global prominence in the 1970s in a world where the Soviet model was already stagnating. Initial human rights gains were boosted by the end of the Cold War and nearly two decades of Western dominance, particularly that of the sole remaining superpower, the United States. This was a period, as we have seen, of great innovation in terms of human rights law and institutions. A symmetry existed for much of this period between the dreams of global justice shared by human rights advocates and the goals of US foreign policy—manifest in ad-hoc international criminal tribunals on Bosnia and Rwanda. Although this symmetry

barely survived 9/11, core institutions of the Global Human Rights Regime—the International Criminal Court and the Responsibility to Protect—were formally established *after* the twin towers came down, as was the UN Human Rights Council and Universal Periodic Review. Yet beneath the surface, the distribution of power was already changing.

The United States is slipping, not from its status as preeminent but to one where it is increasingly first among near-equals, or better, near-equal, given it is China that promises to turn the unipolar system into a bipolar one. The importance of American leadership remains pivotal to the success of the Global Human Rights Regime. Even when it explicitly rejected the ICC, the commitment in principle of the United States to global liberal norms was not in doubt (even if the means of realising them were). If this implicit commitment to human rights multilateralism vanishes from American foreign policy goals, no other power has the capacity or will to replace it. To enforce even *the idea of* minimally universal global human rights norms takes significant power. Recognizing this fact, Human Rights Watch executive director Kenneth Roth recently talked about 'Obama the disappointment,' castigating the president for a failure of leadership. Obama lacked resolve and was forsaking American ideals, said Roth (2014). If this is true, as I think it is, then there is no other state that can substitute for US power. And no other state that wants to.

The US still has preponderant military and economic power, of course, but the trend is one of decline, especially in relation to China but also rapidly growing societies like India. Moreover, how usable is this military superiority? In Syria? In Ukraine? Could the United States really confront both Russia and China if their vital interests were at stake? Europe is declining in influence consistently at the UN despite still footing much of the bill (GOWAN, 2012; GOWAN; BRANTNER, 2011). Internally riven, and damaged by the unending EU crisis and the inability to coordinate a meaningful foreign policy, Europe has less and less to offer politically as new powers emerge. Given its 'pivot' to Asia, to contain China and grow trade links, and its historical ambivalence about human rights multilateralism, the idea the United States will redouble its efforts to promote human rights worldwide is fanciful to say the least. It has more important economic and security concerns to prioritize now. The Europeans have been the prime movers in decades of international human rights innovation at the global level anyway, particularly over the ICC, but with little prospect that China, the United States, India or Russia will ever join, the apex institution for global human rights actually embeds permanently unequal justice.

This brings us to the second point, politicization. The language of human rights is just too contaminated in many places, as well as suffering from a kind of familiarity and vagueness that makes almost any demand for equal treatment, justice or freedom expressible in rights language, whether or not such a demand is truly justified. For the first time in more than two decades, human rights is being openly rejected in the name of the fundamental organizing principle of world politics: sovereignty. The achievement of numerous emerging and re-emerging powers in at last getting a larger say in world political deliberations is not about to

be sacrificed to the dictates of a global governance regime based around sovereignty-infringing rights demands. Brazil's scepticism about R2P as a mechanism for NATO-led regime change, alongside the fury of its political elite that the United States was hacking the phone calls and emails of the Brazilian President Dilma Rousseff, merely adds Western hypocrisy and untrustworthiness to the list of reasons why human rights language increasingly rings hollow when it emerges from the West. In India, to take another example, human rights are seen as an inherently politicized language because they attack the state and many are sceptical about them for that reason. As Ajaz Ashraf puts it: "The human rights critique alienates many Indians who perceive these activists as unabashedly 'political,' rather than 'charitable'." They are right; human rights work is political' (ASHRAF, 2014). But this political stance raises difficult questions of funding and support in a context when rights are not taken to be neutral.

And India and Brazil are states that are more sympathetic to human rights language. China and Russia, in contrast, remain implacably opposed. Perhaps China might sign on to an international language about 'values' or 'a just social order' but it has been vehemently against human rights language for so long it is unthinkable it will capitulate and adopt it globally. Its growing middle class show few signs that they want to pick up the global human rights banner either. Russia leads the way in direct attacks on human rights organizations and ideas in principle, followed by states as diverse as Sri Lanka, Cambodia, Uganda and Uzbekistan. Saudi Arabia, one of the world's most systematic human rights abusers, even rejected its Security Council seat using the language of rights while ASEAN's human rights declaration accepts as legitimate constraints on human rights, 'national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society' (ASEAN..., 2012, art. 8). All of which makes a mockery of the legal protections that individual rights are supposed to provide. In other words, human rights language will be acceptable where it is diluted of all significance, and resisted or ignored where it still carries weight. In a Chinese-American world, the language of international norms will need to be transformed into one more tolerable to Beijing than that of human rights. This not capitulation, it is political reality.

Third, a different class of 'hard cases' (than authoritarian backlash) frequently involves deep seated commitments to social and cultural norms, often backed by religious faith and behaviour, that do not fit neatly into universal human rights boxes. Some are obvious: the Catholic Church and the Muslim Brotherhood together contesting women's rights at the Commission on the Status of Women in 2013, for example. In terms of LGBT rights, recent setbacks in India, Jamaica and particularly Uganda, let alone in Eastern Europe and Russia, show how little impact decades of human rights work has made to non-discrimination on the basis of sexuality.

Even where there is progress, this may not take place in the way the Global Human Rights Regime expects or prefers (that is, through the law and compliance with it). According to one recent report on Indonesia, for example, while abortion remains technically illegal, it is tolerated both socially and religiously (Islamic

authorities are more progressive here than the Catholic Church in the nearby Philippines) (HUNDLEY, 2014). Indonesian politicians are loath to deal with the question by changing the law for fear that they will antagonize people and politicize the issue (thereby hardening positions and eroding the functioning compromise that exists). But many of those who support this de facto pro-abortion status quo do not want to advance what they call 'Western values,' a term connoting loose public morals and sexually uninhibited lifestyles. They are determined not to undermine norms of social propriety in Indonesia. This is not a binary Orientalist story of Western secular progress vs. regressive religious beliefs, but one where the assumption that the basket of human rights, liberal freedoms and the relegation of religion to the private sphere all go together is open to question. Where the extension of human rights meets stern resistance, compromise will be the only option. Working with faiths and traditions, rather than against them, will be a necessity. A pivotal issue here is whether the classic modernization hypothesis that development equals secularism turns out to be true in a globalizing world.

Even on deeply emotional topics like female genital mutilation/cutting (FGM/C), the aggressive posture Western advocates take outside Africa is belied by the success of more subtle, long-term and culturally sensitized approaches within many African countries (UNICEF, 2013). Furthermore, evidence of success in the reduction of FGM/C in many cases tells us relatively little about the causal mechanism (which might be increased affluence, urbanization and/or female education rather than anti-FGM advocacy campaigns), and it doesn't help us tackle the hardest cases, largely associated with rural Islamic communities. Elimination efforts have made little difference in countries like the Sudan for a century. Those whose cultural practices are slated for change cannot be 'forced to be free,' they must opt for this version of freedom for themselves.

Why does religion matter so much? Because universal human rights are constitutively secular, I argue. They have as their starting point the moral equality of all human beings regardless of any aspect of their identity. Nothing could be more foundational to the idea of human rights. Religions are not like this. They legitimate themselves according to transcendental or spiritual principles, not human legal constructions, they distinguish between believers and non-believers, they have strong and deeply held views about the sanctity of life, legitimate violence, appropriate social structure and conduct, and they command billions of followers of greater or lesser intensity. Even if religious leaders selectively engage in certain contexts with the demand for specific rights, like against torture or poverty, they are not building the power-base nor the normative foundations of global human rights. They constitute a standing challenge to secular moral and legal authority unless they recognize the superiority of human-made law.

What difference should these arguments make to our understanding of the ambiguous future of human rights? They argue for diversity, variability, what some have called 'multiple modernities,' whereby there are various forms of being modern, not all of which are in alignment with the benchmark standards of universal and

inalienable human rights (EISENSTADT, 2005; KATZENSTEIN, 2010). The idea of the 'Global South' and the 'Global North' was an advance on the mere geographical expression South and North. It spoke to persistent inequality even where there was increasing integration of production, trade, finance and labour markets across what were formerly the first, second and third worlds. There was a South in the North (poor migrant workers living on low wages with few protections, no insurance, no job security and no rights) and a North in the South (e.g., a growing Brazilian, Chinese and Indian middle class with disposable income, Western-style consumption patterns, social and geographical mobility, and an interest in the sorts of rights that protect their assets rather than dilute their wealth or influence). Structural transnational inequality is a defining feature of this world everywhere. How will the Global Human Rights Regime help tackle such inequality when it relies on funding and support from the very middle classes which stand to lose most from policies of social justice that would redistribute its economic and political power? The Global Human Rights Regime has hitherto prioritized international criminal justice, not social justice.

Yet these middle classes are also the best hope for social change under a human rights umbrella. In Iran, for example, it is the expanding middle class which is pushing for an end to the death penalty (ERDBRINK, 2014). But such advances will remain context-dependent and national struggles. These human rights campaigns rights have lower case 'h' and 'r' because they do nothing to fortify the Global Human Rights Regime. They are just one part of a complex domestic political, cultural and social struggle over legitimate state policy and action. The answer will come out differently in different places, as will the language used and the arguments made. All may make use of the umbrella of 'human rights,' but they will either be used so loosely as to provide no solace to global advocates, or they will be used so selectively as to undermine in practice the principles of universality and indivisibility.

The use of this language at all is testament of course to the achievements of global human rights advocates in creating laws, norms, courts and awareness. But the Global Human Rights Regime is not synonymous with diverse regional, national and local politics. Here, even if human rights are cited, they may contribute nothing to further the idea of rights universally nor to bolster the foundational claim of human moral equality that underlies them. If the middle classes do not advance human rights in a multilateral way—pushing their governments to observe human rights themselves, adopt human rights foreign policies and support multilateral human rights institutions, as well as joining human rights campaigns themselves—any number of local political engagements that involve the notion of human rights will not embed the Global Human Rights Regime. At a time of declining Western power, more pushback against hypocrisy, new rising and re-emerging powers, authoritarian backlash and the persistence of other highly-valued social norms, there is little to suggest that further progress is on the horizon in the manner to which we have become accustomed. We must all wait it out, through a period of multipolarity and reciprocal, not hierarchical, international relations, to see which language of global norms, if any, will succeed in getting leverage in world politics as a whole.

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ABSTRACT

Human rights are not only an effective way to bring about social change; they are also an
indicator of a state's governmental administration and democratic governance, such that
they also constitute an indicator of social change. From this perspective, the challenge is to
achieve social change wherein the enjoyment and exercise of human rights are in full force.
Thus, it is important that the design and implementation of public policies simultaneously
address both the new and old agendas that are still outstanding, which requires the
involvement of various actors, including the Inter-American Human Rights System.

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HUMAN RIGHTS AS AN EFFECTIVE WAY TO PRODUCE SOCIAL CHANGE

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It is not easy to answer the question of whether human rights are still an effective way to bring about social change, because it requires undertaking a more extensive and comprehensive analysis of their role in society. Nevertheless, without lapsing into a reductionist view, we can say that they are, in themselves, an indicator of social change, which will be discussed in more detail throughout this article.

First of all, it is important to remember that human rights, besides being a legal category, must be understood as a social construction that has been developed and demonstrated in many different ways throughout human history – although, it wasn't until the second half of the last century that they were recognized as a paradigm of modern democracy.[1] This explains why it is possible to speak of a democratic society once human rights are regulated and fully in effect. Through this lens, the great challenge of our time is making these rights a reality for everyone.

To respond to this question, we must recall that a comprehensive vision of human rights was first mentioned in 1993, with the Vienna Declaration and Program of Action, which established that they are universal, indivisible, interdependent, and interrelated. It also signaled that the international community should treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis (UNITED NATIONS, 1993).

This means that the violation of any one right impacts the others, leading to the impairment or restriction of people's lives or quality of life.

However, the comprehensive exercise of human rights depends on the needs of each person, and on the context, because the rights are not exercised in the same way, nor at the same time. In other words, the equality of human rights lies in human dignity, which goes beyond the regulatory framework.

Thus, every State must identify the deficits that exist in the enjoyment and exercise of every person's human rights, as well as design and apply differentiated

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public policies, based on the understanding that there are different demands and problems within a society.

From this point of view, human rights are an ethical-political demand for policymakers, as well as a fundamental indicator to help assess the administration and democratic governance of a State.

Today, the public administration of human rights is discussed as part of the political debate, which was impossible just a couple of decades ago. This new reality represents a political and ethnical triumph, as well as a challenge to set aside the authoritarian culture which is still not fully eradicated.

With this vision of human rights, it is possible to simultaneously address both old and new agendas, as well as societal demands. A clear example of this can be found in the rights of people deprived of liberty[2] and the rights to a private and family life and the formation of a family—*in vitro* fertilization—, respectively (CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Artavia Murillo et al. ("Fertilización in Vitro") vs. Costa Rica, 2012*).

Without a doubt, meaningful attention to human rights agendas is a critical part of social change in the second decade of the twenty-first century. However, just as there are new agendas, there are also new protagonists and actors, including the Inter-American Human Rights System through the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights ("the Court").

In the 55 years since its creation, the IACHR has worked to fulfill its mandate to promote and defend human rights in the region, which has implied constant attention to both new and old agendas to ensure justice and state responsibility for human rights violations.

To do this, the Commission has developed mechanisms, procedures, policies and practices over time in order to confront a series of human rights violations in the Americas. This is done through the systems of petitions and cases, the monitoring of the human rights situation within the member states, and attention to priority topics through its rapporteurs.

Through these actions, the IACHR is and has been a leader that addresses deficits in the exercise of civil, political, economic, social and cultural rights, and therefore it can now be asserted that it contributes to development and social change in the countries in the region.

As an example, we only have to remember that, after its visits to Argentina in 1979 and Peru in 1998, the IACHR issued reports in which it determined that the amnesty laws regarding serious human rights violations were themselves in violation of international human rights law. In doing so, the Commission established that even in the context of transitions to democracy in the Americas, states still have an irrevocable duty to investigate such violations and guarantee justice for the victims.

Thus, in a subsidiary and complementary way, the IACHR helps eliminate exceptions that still prevail and that prevent people from exercising their rights in the ways that sovereign states have agreed in regional human rights instruments.

In this way, by carrying out its mandate, the IACHR seeks to guarantee

processes of democratic consolidation on the American continent, which in turn serves as a clear example of how human rights now constitute an effective means – though not one free of difficulties, obstacles, and sometimes even unfortunate reversals – to produce social change.

Despite these complex dynamics, the most significant moment is when different social actors appropriate human rights as a tool for social, political, and cultural change. It is worth examining advances made by various social movements, as evidence of these transformations in process. Among others, it is worth highlighting the women's movement; the indigenous peoples' movement; that of lesbian, gay, bisexual, transgender, and intersex (LGBTI); and that of children and adolescents. In every one of these cases, progress is being made in the design and implementation of public policies that emphasize human rights.

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NOTES

1. The approval and proclamation of the Universal Declaration of Human Rights on December 10, 1948, marked a new paradigm by trying to build a global community that would agree on rules to protect people; it also became the basis of international human rights law for the twentieth and twenty-first centuries.

2. Visits to detention centers have been ongoing, with more than 90 site visits carried out by the Inter-American Commission on Human Rights in the past 40 years. See: http://www.oas.org/en/iACHR/pdl/default.asp. Last accessed in: March 2014.

RAQUEL ROLNIK

Urbanist and Professor at the Faculty of Architecture and Urbanism of the University of São Paulo, Brazil, Raquel Rolnik was Director of Planning of the City of São Paulo (1989-1992), Coordinator of the Urbanism Program of the NGO Polis Institute (1997-2002), and National Secretary of Urban Programs of the Ministry of Cities (2003-2007). Rolnik has authored several books and many articles on urban issues and in particular the struggle for the right to adequate housing. As UN Special Rapporteur on the Right to Adequate Housing, she was interviewed by Conectas shortly before completing her six-year term at her post as Rapporteur.

Rolnik says that her UN work was an "absolutely incredible" experience, but one that revealed to her at close quarters the limitations of the Special Procedures system (rapporteurs and experts) of the Human Rights Council, which she describes as "a system designed to be ineffective."

The use of the "coded language" of human rights, and the *de facto* blocking of complaints and allegations [of human rights violations], means that the work of the rapporteurs is confined to a small specialised circle. "It [the Special Procedures system] is designed to avoid being universally known. It is specifically organised to avoid generating widespread public debate on the real issues. The whole idea is to keep the system enclosed within the human rights circle."

Rolnik therefore decided to expand the list of themes that normally form part of a Special Rapporteur's remit (i.e. 'traditional' human rights issues), to include other key problems on the public agenda, such as financialisation of housing and the impact of mega-events on the right to housing. She also broke with tradition (and brought upon herself much criticism) by making country visits not only to developing countries but also to the US and UK in the course of her work.

According to her, the major deciding factor in the Human Rights Council is that of geopolitical interests. "In many of the situations that I found myself in, North-South geopolitics took precedence over the real issues under discussion; what was really important was how countries were geopolitically aligned."

Regardless of the institutional frustrations of her work, Rolnik also detects in the recent historical trends – especially the financialisation of capital and States' loss of power – a crisis assailing the democratic rule of law as a model of political representation and, consequently, of the language of human rights focused on the accountability of States and the individual approach to rights. This does not mean that human rights have lost their relevance: on the contrary, human rights still play an important role as a tool of resistance to the economic order and to "the very concept of the hegemony of individual property and liberalism."

The following is a transcript of the full interview with Raquel Rolnik. It covers issues such as the 'right to the city'. It also provides an insight into her interesting experiences during a country visit to the UK, at the hands of the British tabloid press.

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UN SPECIAL PROCEDURES SYSTEM IS "DESIGNED TO BE INEFFECTIVE"

Interview with Raquel Rolnik

*Conectas Human Rights: In an analysis of the recent street demonstrations, commented by Sara Burke in this edition, researchers at Friedrich Ebert Stiftung (FES) and Columbia University came to a number of interesting conclusions. One was that in the course of the protests, grievances were expressed mainly in terms of **economic justice** rather than in terms of **rights**, including the demand for housing. Another was that the profile of the protesters had changed significantly: the proportion of 'traditional' protesters (unions, NGO activists, etc.) gave way to people who were not previously politically engaged. This was especially seen in the protests, with demonstrators ranged against the "lack of democracy and 'real' representation".*

Raquel Rolnik: These protesters are basically raising an important question: what is the best model for providing political representation for citizens? This is because, the world over, the model of representative democracy is totally in the hands of the economically powerful. While globalised capitalism becomes the predominant language of economic relations between peoples – and in the realm of capitalism the owners of the money are naturally those who give the orders – the power of States to control this process is increasingly restricted. In the latest phase of capitalism – the growing hegemony of finance, financial capitalism, or financialisation of capitalism – this is even more blatant. It seems to me therefore that the protests taking place worldwide, despite their narrow agendas and the fact that they have to be seen from the historical perspective of each country involved, have clearly shown that this particular model [democratic rule of law] is exhausted in terms of both political representation and as a model of economic organisation.

However, this is a model of representation that has been formulated, developed and operated over centuries. Utopias which resisted this model, such as those of socialism and communism, were also tried out and, today, we already have strong means for criticising them. Our current models of representative democracy took centuries to develop and be experienced. Thus it will also take long for new utopias to be formulated and matured through real practices. The idea of a different kind of model of representation for society will not come about overnight... it will take quite a time.

Conectas: In this scenario, do you think that the language of rights is still legitimate? Can the language of rights bring about social justice effectively? You spoke, for example, about the State's role being constrained by a world where money and finance predominate – and, in the language of human rights, the State is always the responsible party. Is that correct?

R.R.: I have three main impressions gained from my experience as UN Special Rapporteur over these past six years.

Firstly, the construction of human rights runs parallel to the construction of the idea of the democratic rule of law. At present, we have a crisis with the democratic rule of law as an ideal model for representing citizens. The question of human rights is bound up with this, it is an integral part of it. One of the problems is precisely the loss of power by States – and the State is basically the responsible for human rights protection.

The second dimension that seems to be at risk as far as human rights are concerned is that these rights – and the way they were formulated at the time of the Universal Declaration, their covenants and their subsequent evolution – are very much locked into liberal thought: the right of a human being as an individual, the power of the individual. It is almost as if the right were the private property of the individual. This relates strongly to the question of private property, and with the model of private property in the capitalist system. It is clear that economic, cultural and social rights are permanently straining this, by affirming collective, common rights, but individual freedom, the power to vote, etc., is indeed structured around the idea of the individual – a fundamental pillar sustaining this concept of the democratic rule of law.

In practice human rights, in common with all the other issues between States at international level, are shot through with geopolitics. On many occasions during my work it became crystal clear to me that North-South geopolitics was of greater importance than the issues under discussion. Content was totally irrelevant. What was vastly more important was how countries aligned themselves, with whom, or against whom. There are, for example, countries or groups of countries in the UN Human Rights Council, that say "no" to everything. In view of the historical, ideological and political hegemony that Europe and North America have exerted in global terms – even extending ideologically to the field of human rights (the main international NGOs come from there, the main action starts there, the formulas and the discourse in defence of human rights originate there) – the reaction of the South is to be against the North. But, reacting against the North does not mean that the South is anti-human rights! This duality could constantly be observed in the Human Rights Council: dominant, hegemonic countries *versus* the South. In fact, with the economic crisis in Europe, and with the emergence of new powers (e.g. China), that particular brand of geopolitics is over and done with, although some of the Brics countries currently display 'imperialist' attitudes, reproducing in African markets, for example, exactly what the Northern countries have done in the past in Latin America. But this South resistance to the North still exists: let's face it, imperialism and colonialism were not a fairy tale; they were very real, exerting a powerful influence on the constitution of nation States. Human rights ended up becoming a hostage to all this.

But there is also another side to it. While working as Special Rapporteur on Adequate Housing, I realised how rights can also be used to resist this economic order, and the very concept of the hegemony of individual property and liberalism.

My views were forged over many years of exposure to my own special subject – the right to adequate housing. This is an area that encompasses economic, social and cultural rights. When I was involved in the rights to food, water, poverty and health (I had the closest contact with their respective Rapporteurs) I soon realised that this was also true for them [i.e. rights used for resisting the economic order]. Communities do indeed resist. My final task, drafting the Guiding Principles on Security of Tenure for the Urban Poor, led me to deeply question the idea that private property is the safest type of property – and one which people should aspire to – leading to imagine a 'plurality' of forms of ownership from the legal standpoint... A plurality of ways in which individuals relate to territory, also leading, philosophically speaking, to a plurality of forms of social and political organisation.

Conectas: Do you think that, in this scenario, the right to the city (not yet a component of human rights) would be one way of combining this 'plurality' of needs?

R.R.: The 'right to the city' is a notion that has been researched in Sociology and Political Science since the days of [Henri] Lefèbvre, and given a boost in the works of David Harvey and Peter Marcuse, who gave contemporary meaning to the idea of the right to the city. From the point of view of human rights, one of the leading civil society networks, the *Habitat International Coalition*, which has strong links with social movements and NGOs in the area, has insisted on defending the right to the city as a human right.

I have spent six years working on housing rights and, from my point of view, the concept of the right to adequate housing involves precisely that: the right to the city. If we read the formal instruments issued since the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, and especially the UN General Comments, the set of thematic reports and resolutions submitted by Miloon Kothari, and my own subsequent work, we can easily see that the concept of 'adequate' housing is not restricted to the right to a house. It is not a matter of having a place with a roof and four walls, but a stake in the territory which can serve as a base for accessing other rights: the right to education, the right to health, the right to protection, the right to freedom of expression, the right to non-discrimination. It is, in short, the right to the city, to the urban space. It is of course also the field of rights of the groups most vulnerable to human rights violations. Within these groups there are the rights of those living in informal squatter settlements, the *favelas*, the homes of the urban poor, where ambiguity exists with regard to these people' status in the city, and which experience the worst violations. But abuses are not confined to these groups. We have, for example, recently witnessed a mortgage, real-estate crisis during which individual freedom was suddenly exchanged for total and absolute insecurity for many Spanish, Irish and American families who lost their homes due to a rash of foreclosures... and ended up homeless on the street.

Conectas: Your time as UN Special Rapporteur was marked by something very interesting: human rights organisations criticised the question of selectivity by Rapporteurs – especially in the Human Rights Council. Moreover, you visited, as part of your job, the United States, the United Kingdom, where you were...

R.R.: Yes, attacked!

Conectas: Can you say a few words about that experience?

R.R.: The strategy I adopted was intentional. It was not by accident. From the beginning, I was fairly certain I should try, in my role as UN Special Rapporteur, to strike a balance not only between regions, by visiting countries in different regions (Western Europe, Asia, Africa, Latin America, North America, etc.,), but also between developed and less-developed countries. Incidentally, I would have liked to have done more in Africa and Asia than I was able to.

That was my initial strategy… but what happened? At the beginning of my mandate, just my luck, the real-estate/mortgage crisis burst in the US. I was appointed to the job in 2008, and the crisis erupted in late 2008, early 2009. My immediate idea was to focus on the United States, where thousands of people were being thrown onto the streets. By closely watching and studying events in the United States, I started monitoring the financial crisis and its effect on the right to adequate housing. From that I discovered the world. Indeed, I discovered that the hegemonic model had been imposed on the entire planet, and that it was creating crisis after crisis in different countries as it rolled out from its original site in the US. At the same time, I felt it was important for me to go to England, because England and the United States were the chief formulators of this hegemonic model of *commoditisation*, of housing financialisation.

I concentrated on this theme of 'financialisation of housing' precisely because this was in the eye of the crisis. This was important to my job as rapporteur. And it was interesting to see that, to an extent, the issue affected the North-South equilibrium in the Human Rights Council. It was particularly useful for me because it gave me a much broader view of the entire process.

But so far – still debating the Resolution to be voted by the Council, renewing the mandate of the Housing Rapporteur and commenting on security of tenure – my impression is that people are still acting as if the housing problem were confined to poor countries. In other words, simply a question of countries having the cash to build more houses.

My experience was extremely valuable. However, I do think that while the UN Special Procedures System is important, it is in my view a totally controlled system. It is a system designed to be ineffective. It is a system designed to avoid being universally known. It is specifically organised to avoid generating widespread public debate on the issues. The whole idea is to keep it confined within the human rights circle.

Conectas: "Controlled" meaning what precisely?

R.R.: To keep everything within the confines of the Human Rights Council, of the human rights NGOs, of the human rights groups. The human rights language itself… reports written in a virtually incomprehensible code. For example, the phrase 'interactive dialogue' is constantly heard, but has nothing interactive about it, and least of all 'dialogue'. Everything in the Council is preordained… you can only read what has already been written… there is no exchange of views, no interaction, no dialogue.

I was all the time convinced that it was vital to break out of this straightjacket, this controlled environment, to go into the streets, to win the hearts and minds of ordinary people. So I adopted a deliberate strategy, selecting a number of issues and themes that were already on the public agenda, and working on them

to try to give them some form of human rights meaning and appeal. I worked with mega-events and housing rights, and I think that overall the strategy paid off in terms of what we were able to do with the media worldwide – and with the financial crisis. I had zero space (for obvious reasons) in the media for talking about the financial crisis, but I did make an effort to try and broaden it, producing a range of materials, guides, booklets, translating brochures, creating a new website, and so on. In this respect, my official 'country visit' to England – which turned out to be highly controversial – was an eye-opener in that I, as UN Special Rapporteur on the Right to Adequate Housing, was suddenly cast into the limelight and became known the world over. Before my visit, nobody knew this subject even existed... and people certainly began to take an interest when I landed there. I was not too happy having to face personal attacks and a certain amount of aggression from the press. But I think that, on the whole, the visit was highly positive.

Conectas: Do you think that this reception in England had something to do with your being from the South?

R.R.: Absolutely. There was a combination of different factors. The first big problem was that from the very first minute of my visit, and without any encouragement from me, I gained a very high media profile.

Statements are always released to the international press when a Rapporteur is about to pay an official visit somewhere: "Rapporteur *so-and-so* will be visiting *such-and-such* country to examine the Right to Housing." But the media normally keep quiet... and the Rapporteur enters the country totally incognito.

The day after my arrival in England the tabloids screamed "the UN is sending somebody to investigate the *bedroom tax*"*, a major talking point on the public agenda at the time. Obviously I had not gone there to investigate any *bedroom tax...* this was not the goal of my visit... But from my very first day I was thrown into, and remained in, the uncomfortable spotlight. I gave no interviews to the press until my final statement, but by then all the press were talking about it, given that it was an extremely expensive political issue for the UK government, and it got a lot of coverage as a result.

The Government's strategy was clearly to shoot the messenger. And how was this to be done? Historical discrimination came floating to the surface. Number one: the fact that I am a woman and "a *Brazilian* woman" at that; Number 2: *Brazilian* <u>and</u> *Latin American*. "How dare a Latin American, Brazilian, woman come and talk about housing policy in a country like England, having just come straight from the slums of Brazil?" Discrimination in spades! Then an ideological clash: people among the neoliberal conservative groups saying that I was a left-winger. I was even accused on being Jewish! I was discredited because my grandparents disappeared in the holocaust! I was truly shocked: Brazilian, Jewish and sympathies towards African-Brazilian religious rites... suggesting 'second-class folk, black, slave'. A massively colonialist view of the world.

Luckily, I had a lot of support from civil society in England. But I have to say that all this made a very strong impression on me. I had never come across this kind of reaction in any of the other 10 countries that I had visited.

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*'Bedroom tax'=cuts in social benefits in the UK if beneficiaries had a spare bedroom in their homes. [N.E.]

Conectas: Still on the subject of the job of Rapporteur, and especially its relationship with civil society, how do you think the mechanism for receiving the grievances of civil society helps a Rapporteur to come to a decision following an investigation?

R.R.: We have a very serious problem in the system. There is a blockage. We were only permitted to operate when we had received formal complaints containing all the information (as always required), and in the English language.

Why were we unable to operate like that? Basically because of a human resource problem in the Office of the UN High Commissioner for Human Rights. What do they have available in terms of human resources for working with the Rapporteurs? At best, one official per Rapporteur. The Rapporteurs, like me, go around trying to set up projects, as if we were an NGO, in order to obtain more visibility and therefore more resources. I have a team here at the University to provide support to the Rapporteur, currently aided with funding from the Ford Foundation today and, at other times, from the Germans. You cannot work with only one assistant. Impossible. The employee is pressed for time: he or she has to prepare the country visits, has to draft visit reports, help with thematic reports, and so on. There is no time to investigate complaints or allegations. And there are language limitations: typically, [these officials] are highly qualified individuals who speak English and at least one other language, but none of them speak all the languages on earth.

We have a problem of response capacity. I get complaints, mainly because the Rapporteur has begun to be better known, at least five times a day (every day!), from different places, in different languages. I get documents in Russian, Arabic, Portuguese. The latter basically because I am a Portuguese-speaking Brazilian, but it is obviously not possible for me to deal with everything.

Only international and Anglophone NGOs that operate within this system are able to break through the blockade and reach the Rapporteurs. This is a very serious problem.

Conectas: Once you have decided to organise a country visit, how do you relate to local civil society? Do you establish contact with organisations?

R.R.: That is a very important point. We learned plenty over time. Every country visit has two agendas. The first is organised entirely by the government of the country concerned, in response to what we say we wish to visit that town or city hall, talk to this or that Ministry, that Secretariat, and so on. Then we have a parallel agenda, unknown to the government, involving contact with civil society.

You might ask how the second agenda is organised, and by whom? Formally, we seek to make contact with human rights institutions, especially those that are in accordance with the Paris principles, a good benchmark. They also sometimes help us find particular cases and situations, as well as other institutions.

In addition, we usually try to locate civil society institutions working on the right to housing in the country we are visiting. We make contact with them and ask them first to organise a program for us, always keeping in mind the short time available when planning the number of meetings and, secondly, to accompany us on field visits. It is essential that the agenda is not confined to meetings. It should allow time for us to meet people in the community. Normally, these latter are supported by civil society organisations working on human rights. The best

country visits we experienced were those where civil society was organised on a countrywide basis and therefore able to open up discussion spaces for everyone, call public hearings, etc. In the United States the Legal Clinics are an amazing innovation, collecting and transcribing testimonies from people. So when we arrived in each city, we were presented straightaway with a bundle of written testimonies.

The main thing is to prepare well for a visit: the more active the civil society groups are, the better the country visit. Secondly, it is vital to follow up. If there is an organised civil society this occurs naturally. But if civil society is nonexistent, you can have a good country visit, but followed by virtually nothing.

We had that impression on a number of occasions. In Rwanda, for example. I went to the country, the visit was important, we did what we could, but still I am unaware of what is likely to happen as a result, if anything. This is a good example of the problem. It is a country where no organised civil society exists and nobody is working on the right to housing issue. This is understandable. We are talking about a post-genocide situation. Not easy. Totally different from the United States or Argentina, incredibly efficient from the viewpoint of civil society organisation and follow-up. These are just two examples, but there are plenty of others too.

Some of my missions focused on the subject I was working on: the financialisation agenda. I undertook others because I wanted to explore other themes, such as mega-events, climate change, and so on. Other missions were generated by the agenda preordained by the Office of the UN High Commissioner for Human Rights. Other themes came up because the UN High Commissioner or some other UN agency needed someone to investigate them. This was extremely important. Anyway, I succeeded in developing strong links with the entire humanitarian and post-disaster reconstruction sector. I worked a lot with NGOs and the UN offices operating in these sectors. My story began in Haiti and continued through Israel and Palestine. In due course I forged strong links with the humanitarian/post-disaster sector. It was with the 'humanitarian' NGOs that I reflected and discussed a part of the Guiding Principles on Security of Tenure. It goes without saying that NGOs are crucial in this context, but they cannot be everywhere... involved in every situation.

Conectas: One last question, related to the street demonstrations and the perception that civil society, legitimacy and **representativity** *of human rights organisations are being questioned, partly because the existing mechanisms are so difficult to use...*

R.R.: The mechanisms are very formal, controlled, coded... and using codes, to my mind, represents exclusion.

Conectas: Yes. It is for that reason and because the recent protests are addressing the problems in other, different terms – focusing on social justice as opposed to rights – and these protests are not organised by trade unions or social movements. My question therefore is: what place is there, in civil society, for the human rights movement? Is it going to be relegated to a complementary role?

R.R.: I am only keeping abreast of a few movements. Those that deal robustly

with the themes of 'right to housing' and 'right to the city'. These ended up arriving on my desk as Rapporteur.

It is true that some human rights NGOs have also begun to occupy some of these spaces, translating and recycling their own agendas, drawing on what is happening in the streets. In Brazil, for example, there are several organisations. I can give you an example: that of the NGO Justiça Global (Global Justice), an organisation closely linked to and supportive of the demonstrations and movements. It is an example of an organisation that has rethought its role and its place in what is happening here and now. Turkey also provides an example: NGOs working on the right to housing have staged well-attended protests, and continue using, as far as possible, all available means to draw attention to the subject. We Rapporteurs also seek to respond to the demonstrators' concerns and take a view on the events as they unfold. The problem is that the human rights universe is full of NGOs: from corporate social responsibility foundations that have absolutely nothing to do with human rights, to more specialised NGOs. I think what will happen to them, and to the previously-existing social movements, depends essentially on these NGOs and movements recycling and repositioning themselves in the new context.

There is no doubt that there is much debate about forms of representation, which includes discussing the very civil society organisations. Not a shadow of doubt that the Trade Union Movement is in deep crisis. The social movements in Brazil, including the one I have been interested in since the late 1970s, early 80s – the housing movement – are virtually extinguished. A new housing movement has emerged.

And why? Brazil's historical cycle has something to do with it. I believe that the entire scenario derives from the fact that social movements and unions, while being constructed, were at the same time constituting the new political parties (e.g. the PT, PCdoB, PSB) that emerged from the re-democratisation process in Brazil. These parties took hold of the inclusion agenda and – due to the historic evolution of the democratisation process in the country – failed to break with both the prevailing political logic – called by many *PMDBismo* – and with the traditional power structures, because they were forced into establishing coalitions with these in order to govern. As a result, progress was certainly made on the inclusion, income distribution agenda, etc., but it was all about 'inclusion *via* consumption'. The parties failed to think in terms of a much broader question, precisely the right to the city, the public dimension, good quality public services, good quality public amenities. Worse still, the social movements embraced this agenda and are now an integral part of this triumphant hegemonic political scheme.

A new generation, with young people not even born in the 1980s, has already started another trajectory, another story. It is a story emerging from different circumstances and addressing different issues. This is all part of a historic cycle. I see it as very positive. Hangovers from the past need to be reassessed, recycled and redirected to new horizons. When and how to do this is a whole new discussion. It will certainly not happen as a result of the forthcoming elections in October 2014. What we have there is 'more of the same' (i.e. the same old coalitions and models). But I do believe that [the protest] movement is an interesting and important one that, though very specific, finds echoes around the world.

PAULO SÉRGIO PINHEIRO

Paulo Sérgio Pinheiro has already taken on numerous roles as a defender of human rights. As an activist against the military dictatorship, he founded the Teotônio Vilela Commission. As an academic, he created the Center for Studies on Violence (NEV) at the University of São Paulo (USP), from which he recently retired as a professor of political science. He has also lectured at the universities of Notre Dame, Brown and Columbia (United States), Oxford (United Kingdom) and the École des Hautes Études en Sciences Sociales (France). In the Brazilian government, Pinheiro served as Secretary of State for Human Rights during the presidency of Fernando Henrique Cardoso and was the rapporteur of the first National Human Rights Plan. More recently, he was a member of, and coordinated, the National Truth Commission. In the United Nations (UN), he has served as special rapporteur for Burundi (1995-1998) and Myanmar (2000-2008) and as the independent expert appointed by Kofi Annan to prepare a report on violence against children around the world, published in 2006. He has also designated and served as rapporteur on children's rights at the Inter-American Commission of the Organization of American States (OAS). Since 2011 he has served as chairman of the Human Rights Council's independent international commission of inquiry on Syria.

Perhaps on account of his vast experience in various different positions, examining such diverse situations, Pinheiro is disinclined to make generalizations and categorical predictions. He does not see anything new in the demonstrations that filled the streets of countries from the Middle East to South America, for example, nor does he consider them a threat to current political models. "This [model of protests, demonstrations] is an old model and in some ways necessary and inevitable, since the political system cannot resolve all the contradictions," he said in an interview given to Conectas in March this year. "[But] it is not that political parties no longer have any meaning, or that parliaments no longer represent anything." Neither is the language of law – or of rights – as a means of effecting social change under threat. As far as Pinheiro is concerned, the State is *incontournable*: "There is no escaping the necessary side of the State, the side that regulates conflicts and assures rights. And the law is an integral part of the negotiations. The solution to conflicts will always have to be something formalized [by the State]."

Within the realm of the State and the law, he claims, there is no other language besides the language of human rights, which, "given the universal diversity, can set fundamental standards for human beings to live with dignity and respect". According to Pinheiro, the importance of human rights lies in their capacity to place the victims of violations at the center. "[This language is centered] not on the discourse of the State, not on nationalism, not on the discourse of competing for power, for reputation or for prestige, but on knowing whether we are really being efficient [in the defense of the victims]."

Therefore, he considers the main goal of the human rights movement for the 21st century to be to ensure the monitoring and the real implementation of the norms already established in the international system. Read the full interview below.

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Original in Portuguese. Translated by Barney Whiteoak.

Interview conducted in March 2014 by Maria Brant (Conectas Human Rights).

"BESIDES HUMAN RIGHTS, I DON'T SEE A SOLUTION FOR SERVING THE VICTIMS"

Interview with Paulo Sérgio Pinheiro

Conectas Human Rights: How do you view the recent protests, mainly since the Arab Spring, such as the Occupy movement, the recent protests in Brazil etc.? Do you think they can be seen as a challenge to the role of the more traditional civil society organizations, including human rights organizations, as mediators between the demands of the population and governments? Do you think the protests pose a threat to the modus operandi and the representativeness of these organizations? What role is left for the human rights movement?

Paulo Sérgio Pinheiro: These demonstrations cannot be considered either in isolation or as any kind of new approach. Ever since the dawn of industrialization, there have been demonstrations, by machine workers and unionists or anarchists protesting against working conditions, and marches... This is an old model and in some ways necessary and inevitable, since the political system cannot resolve all the contradictions. The novelty today owes a great deal to what has occurred in communications since the end of the 20th century. Who would have thought that a telephone could also be a camera? Facebook and all these new social media also help with the organization. But the model is very old. It has been used in every revolution, if we consider those that occurred in Europe, from 1848 to May 1968.

It should be remembered, too, that in May of 1968, during almost an entire month of demonstrations in Paris, there was not a single death. Not one! And there were various different social classes marching and protesting—sometimes violently, too. So, this matter of police violence, the unpreparedness of the police in many countries—this is an ingredient specific to certain societies, such as ours, along with several northern countries.

Each type of demonstration has different elements. We can't put everything in the same bag: the so-called Arab Spring has elements specific to the region, to the unusually long authoritarian systems that, at a certain moment, given the access that the world's young people have today to news and social networks, lead them to start making new demands. But you can't look at what happened in Libya and expect to understand Syria. One has very little to do with the other. Tunisia, for example, has decades of parliamentary experience. Historically, it is a

less repressive regime than Egypt or Libya, where a charismatic tyrant destroyed the army, destroyed the government and, to a certain extent, oversaw the running of the State. You can't put Occupy Wall Street and Egypt's street demonstrations in the same bag. It is absolutely essential, to understand the context, to take the specifics into account. Are there aspects in common? One common aspect is the use of new social media tools.

The question of representativeness is a red herring. Since the UN is an organization of States, civil society participates in a quite restricted manner—less so since the end of the 20th century, but still very limited. I don't think these street demonstrations that we have seen since the Occupy movement, including the protests in Spain, the June protests in Brazil and those that are still taking place, are illegitimate because they are not channeled through civil society organizations. But there are several contradictory and supplementary roles: you have the people in the streets, you have the demonstration, you have the civil society organizations and you even have the party system. Just because there is a street demonstration doesn't mean that the party system ceases to exist; even though the party system is often disconnected from the reality of these movements. It is not that political parties no longer have any meaning, or that parliaments no longer represent anything. Obviously there are many parliaments (such as the Brazil's) that are disconnected from these new demands, but this does not mean that we need to shut down Congress and imagine another society in which the street protest movements run the government.

Conectas: There is an interesting criticism that claims that the language of rights, of international norms, depoliticizes grassroots social movements, taking everything along the path of litigation...

P.S.P.: I don't believe in this depoliticization, because one of the dimensions of politics is confrontation, as well as debate and mobilization. There is a time for conflict, but at some point you need to move on to another stage. States are *incontournables.* There is no way of avoiding the necessary side of the State, the side that regulates conflicts and assures rights. And the law is an integral part of the negotiations. The solution to conflicts will always have to be something formalized [by the State]. For example, the Free Fare Movement – the Free Fare policy would have to be implemented by decree, in a response by government to what the movement is demanding, which is free public transport.

Besides human rights, I don't see any other solution for serving the victims. In politics and civil society there are several fields of power, and in these fields there are different stages of the struggle, stages in terms of content and also stages in terms of the evolution of time.

But I believe that within the context of the United Nations, it is essential to work with grassroots organizations, like I did, for example, when I worked for the UN General Secretary with UNICEF for four years, when I prepared the world report on violence against children. We carried out nine regional consultations with the active participation of NGOs, and a consultative council of NGOs monitored the entire preparation of the report (their member even wrote a preface recognizing the participation of civil society).

Conectas: As rapporteur, how did you know what civil society organizations to talk to?

P.S.P.: As rapporteur, I had direct contact with the organizations. My staff discovered who to talk to. But my work with civil society never involved the authorization of the State. Not once did a State tell me who to go and see. Obviously in places like Burundi, for example, which was in civil war, there was an excellent Secretary of State for Human Rights who I spoke to. But there is a time for the State and a time for civil society. I never mixed things up.

Now, it is clear that in the UN, which is an organization of States, the mandates are created by the members of the Human Rights Council. This is a fact of life. I submit to this because I don't think there is any other alternative organization for furthering these agendas. Perhaps these are my own contradictions, because I also consider dealing with States to be a challenge—I think the State is fascinating. I like being able to say things, make demands and complain to rulers in a manner I wouldn't be able to under any other circumstances. But first you need to believe [in what you are doing], then not get overwhelmed by yourself, and not forget who matters most: the victims. The victims, you must never forget them. They should always be on your radar, even when you are at a dinner ceremony with rulers.

Conectas: In terms of agendas, the agenda of human rights organizations was, until recently, highly geared towards standard setting. There are still some matters that need new standards, that need streamlining, but lots of organizations now think that standards have already been set for most human rights agendas and that it's now time to find ways to implement these standards...

P.S.P.: I couldn't agree more. Ever since the Universal Declaration, the progress has been impressive in terms of the specialization of human rights agendas. But it's not time to say, "That's enough! No more conventions". I don't subscribe to that position. I share the opinion that we shouldn't meddle with what we already have. I am opposed to revising any of the conventions, because making changes to a convention means all the States will have to vote again. There was a time when the UN was considering an overhaul of the treaty bodies and the creation of one single treaty body for all the conventions. I always thought this was delusional, and fortunately the idea went nowhere. Even the latest conventions, on people with disabilities and immigrants, have treaty bodies. The Convention against Torture is another outstanding example and it has excellent national mechanisms that are being implemented all over the world. Fortunately, nobody wants to revise the Convention on the Rights of the Child. But we can't say: "That's enough". In 1948, we could never have predicted... Even myself, when I started working in this field in the 1960s, I could never have predicted that we would have such well-defined international standards. This is done one step at a time. Other claims will appear. LGBT rights, for example, are not included in any convention. International treaties can be used, but... Who knows? Perhaps one day they will be.

I also completely agree that what's missing is monitoring. The democratic States haven't made full use of the potential of the standards established by the United Nations and its mechanisms. Brazil and Mexico, for example, are part of a group of dozens of countries that most frequently receive special rapporteurs. They have what we call a standing invitation. This special procedures mechanism—about which I may be biased, because for many years I was special rapporteur for various countries and causes—is, within the United Nations, one of the most decisive mechanisms to help civil societies conduct monitoring. Not only does it monitor

those countries that ratified the conventions, but it also interacts with civil society. For example, Catarina de Albuquerque, from Portugal, who is one of the best special rapporteurs on the right to water, and the Brazilian Raquel Rolnik, rapporteur on the right to housing—everywhere they go they work directly with civil society. It is also a way of reinforcing the role of civil society in the dialogue with States.

In other words, we have made enormous progress in standard setting, but this doesn't mean that there's nothing more to be done. And the United Nations' own mechanism for monitoring human rights has evolved, both in the sphere of States and in the sphere of the international community, but there are still limitations that need to be addressed. I think that this is the agenda for the 21st century: implementation and monitoring.

Conectas: One pressing question for Conectas is how organizations from the South can influence the human rights agenda, particularly in multilateral forums. In your time at the UN, do you have an example of an organization, some specific strategy that you've seen work?

P.S.P.: There is a problem, because the big international organizations are in the North, and many of them operate out of New York or Geneva or other European capitals. The system of special thematic rapporteurs has established a certain link with the South, because they too take care of the countries of the North and they have taken advantage of the rise of these civil society organizations in the South.

In terms of specific agendas, I don't believe there to be a problem, although I don't know all that well but on the environment and health I know there is a permanent dialogue with spokespeople from the State. But when a mandate's agenda is very broad and unspecific, it's harder to act. But the problem with civil society organizations' work in the South, frequently, is one of access to resources.

In the more specific case of Central and South America and the Caribbean, what's needed the most is more coordination in the South. Recently there has been a trend I see as positive: the formation of conglomerates or platforms of different entities working on the same theme, such as the rights of the child or foreign policy. There are some successful examples; Indian NGOs have been extremely successful in the international community. And there are some States in the South—Senegal, for example—that practice a very strong activism, and that are perhaps even more present, internationally, than Brazil.

Conectas: Based on all your experience, do you think that human rights is still an effective language for producing social change?

P.S.P.: Since I've been involved in this for 30 years, I wouldn't want to shoot myself in the foot. I do believe that there is no other language, no other set of principles that allow, given our universal diversity, the respect for a few fundamental standards for human beings to live with dignity and respect. Until now, no other reference has been found. Human rights are still the guiding force for the 21st century, precisely because the agendas have become so well defined, so universalized. Nobody spouts that nonsense anymore about human rights being imposed by the imperialism of the North, and civil societies have helped universalize human rights, since they confront their concrete realities and require the use of human rights as a reference. There are various discussions about reports and rapporteurs; they say that

nobody reads these reports. That doesn't matter. What matters is that, for the victims, they are important. In my experience at least—and I've written dozens of reports—the victims appreciate the work of the special rapporteur, the work of the commissions of inquiry. For me, the activity of human rights is concentrated on the victims.

If I could cite a pedantic quote... There is a story about Mahatma Gandhi in which a colleague approaches him, very anxious and upset, and says, "I don't know if what I'm doing is right, if I'm on the right path." And Mahatma replies, "Whenever you're in doubt, apply the following test: recall the face of the neediest people you've ever seen, and ask yourself if the step you are taking will have some use for them. Will this decision contribute to restoring their control over their life and destiny? Will they get something out of this? Your doubts will then disappear."

The fantastic thing about human rights is that the victims of violations are at the center. It is not the discourse of the State, not nationalism, not the discourse of competing for power, for reputation or for prestige, but knowing whether we are in fact being efficient for the victims. Hence the importance not only of international standards, but of monitoring their implementation. We must serve the best interests of the victims. This is the term that is used in the Convention on the Rights of the Child: the *best interests* of children. I would say the question is: are we serving the best interests of the victims? There is no better way of meeting these needs than through the language, the principles and the doctrine of human rights, in other words through the reference of international human rights treaties and conventions.

KUMI NAIDOO

Kumi Naidoo possesses a unique perspective on what it means to work
internationally from the South. And from the North. Born in South Africa in 1965,
Naidoo has been Greenpeace's executive director since 2009, being the first African
to head the international environmental giant. Prior to joining Greenpeace, he has
been an activist against *apartheid* in his home country, headed an international
organization based in the South – Civicus – and led global initiatives such as the
Global Call to Action Against Poverty and the Global Call for Climate Action.

Never one to be content working from behind a desk, Naidoo has been arrested,
imprisoned and deported several times while fighting for human rights and environmental
justice, most recently for occupying an oil platform in the Artic in 2011. Perhaps surprisingly,
he has also always had much transit in the highest circles of those who he combats, having
been invited many times to participate in meetings such as the UN and the World Economic
Forum. But he has not been awed by this. In the interview below, which he has granted
Conectas last May, Naidoo calls on human rights defenders to engage in civil disobedience and
questions civil society participation in high profile meetings and even challenges consecrated
concepts such as the rule of law.

"The rule of law consolidated all the injustices in the world that existed before the rule of
law", he says. "We need a new, nuanced, more critical reading of exactly what the rule of law
means in a context of extreme injustice, in which the powerful in society are literally able
to get away with murder, with regard to ensuring that the majority of people aren't denied
justice."

But how to achieve change? For him, strategies such as high profile advocacy have
limited chances of success. A regular in high profile gatherings in New York, Geneva and
even Davos, Naidoo warns against organizations "confusing access for influence" – that is,
being used solely to grant legitimacy to these meetings. "Some official is ticking off some
box that says 'civil society consulted', 'civil society input achieved' because some of us were
at the meeting. But too often, we might have the right to speak, but we don't have the right
to be listened to properly."

His solution is combining advocacy and direct action. "If you put all your eggs on
the advocacy basket, and you do not have a constituency and you cannot engage in civil
disobedience, politicians will continue to do what they have been doing for decades and
decades, which is: they make nice speeches, they listen to us, and then they ignore us."

For him, the answer is civil disobedience. "Whenever humanity was confronted with
great injustice or challenges – women's right to vote, slavery, colonialism, civil rights in the
United States, *apartheid* in South Africa –, these issues only moved forward when decent
men and women stood up and said 'Enough is enough, and no more!'. People were prepared
to go to prison if necessary; they were prepared to put their lives on the line if necessary."

Read below the complete interview with Naidoo, where he also speaks about issues such
as the right to peaceful protest, the corporate capture of democracy and Greenpeace's
member participation strategies.

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Original in English.

Interview conducted in April 2014 by Maria Brant (Conectas Human Rights)

"THE RULE OF LAW HAS CONSOLIDATED ALL THE INJUSTICES THAT EXISTED BEFORE IT"

Interview with Kumi Naidoo

*Conectas Human Rights: You were born in South Africa, you worked for a long time for **Civicus**, which is a southern-based international organization, and then worked for **Greenpeace** – which is a Northern international organization. What would you say were the main challenges that you faced while working internationally from the South, and what's the difference now that you are working from the North?*

Kumi Naidoo: Good question. I think the big challenge is that we still live in a world where a lot of the key intellectual developments in our fields – the cutting-edge in human rights, in environmental science and so on – is still fairly dominated by the North, by developed countries. When you have civil society organizations located in southern locations like *Conectas* in Brazil and *Civicus* in South Africa, it turns things on their head, and it sort of says that, actually, the majority of the people live in the Global South anyway, and in fact that's where the engine of thinking, ideas, conceptual understandings and so on need to be coming from. So while I think there are huge benefits of working from the Global South. I think that still there is a perception that actually excellence only comes from the North, and we still need to break that.

Working now in the North, I would say that there are really some excellent skills here, but those skills are not necessarily contextually relevant. People might have a conceptual understanding of a particular issue, and might be very, very good in the analysis at a theoretical level, but actually how that plays out in a country where the governance is different… Certain notions of democratic space are taken for granted in some places, but actually don't play out like that in many countries. This is extremely challenging and different. One of the things that international organizations, including NGOs, sometimes do is that they underestimate the importance of contextual knowledge. Take Brazil: You can be a theoretical expert on forests, but if you have not lived in the Amazon, if you do not breathe the Amazon, if you don't really engage with the indigenous communities in the Amazon, to understand how to organize things, you can have theoretical knowledge, but not in practice. So we need folks from the Global South to be more assertive about the power and the importance of contextual knowledge. What I'm saying is that I think – yes, there are some good technical

skills that we have in large international NGOs, but they are not necessarily the ones that are rooted in the contextual understanding, in a clear and strong manner for successful campaigns sometimes.

*Conectas: Do you find any difference in terms of your ability to influence the agenda internationally, or access places like the UN, or a big international **fora** now that you work from the North?*

K.N.: Historically, I think that the UN was more accessible to folks that were located where the UN is located, in New York, in Geneva, in Vienna; and previously, the UN and other international organizations like the World Bank were pretty comfortable to have representatives of Oxfam and Save the Children and Action Aid, and CARE, and so on, to be their major interlocutors. What is changing is that, increasingly, also because some of us from the South have argued for it, those institutions are recognizing the need to have much more diverse voices represented in those fora. I am seeing a great effort by people organizing various UN conferences to bring the Southern perspective into them. And increasingly even international NGOs, if they are going to do a big push at the UN General Assembly, they're bringing more Southern leaders to it, whereas in the past the thinking was "well, we have five people here in New York – they can just do it." They are recognizing a little bit more the symbolic importance, as well as the content importance, of having people who are most affected by the issues that we are talking about to be able to have the ability to express those opinions.

Conectas: About representation: Greenpeace is one of the main member-based civil society organizations in the world, but at the same time I understand you do receive donations not only from individuals but also from foundations…

K.N.: The majority of our resources comes from individual citizens. And we don't take any money from government or business. We do take some money from foundations and trusts, but only from those that meet certain ethical criteria. For example, we probably wouldn't take money from the Gates Foundation, even though it is a foundation, because they support GMOs (Genetically Modified Organisms) and all of that. If a foundation got its money from fossil fuels, for example, or from ocean destruction, or forest destruction, then we wouldn't accept it. So, for us, foundation money is a bit more difficult.

Conectas: And how do you communicate with your members? Can members influence Greenpeace's plans or agenda? And how does that work?

K.N.: Yes, they can influence it, but I will be honest with you: not as much as I would like them to, and that is one of the changes that we are facing as part of our new strategy. We are trying to give more voice to our members, volunteers and supporters.

     It varies from country to country, so in Spain and in France the supporters have a big role, formally voting for the board and so on. In Germany, supporters and volunteers are consulted on key elements of the program. But if I'm brutally honest, I'd like to see a much more systematic way of getting supporter input.

The difficulty is that it is a lot of people. If you just take financial contributors, there are more than 3 million of them. If you take all the cyber volunteers, we are talking about 20 million people. So it is a little bit hard. We do a lot of surveying members on specific issues. Sometimes, if I want to get input on something, we do a sample. We send a survey on an issue to 10,000 people, and then I get their feedback on it. If I send it out to everybody, it would take about three months to process the feedback.

But it is really not as good as I think it needs to be and could be. As part of our new strategy, we are working to improve that.

Conectas: How do you combine direct action and long-term goals? Is it possible? Using long-term goals and strategies to work in agenda setting – what is the place of direct action and what the place of advocacy?

K.N.: Excellent question. I think both are important and both are necessary, but the issue is that action speaks louder than words.

Quite often, civil society organizations make the mistake of confusing access for influence. Just because we get access to the UN or to the Human Rights Council etcetera, does that really mean we have influence? Quite often, we are going to these gatherings and providing legitimacy to them but we are not necessarily getting the outcomes that we want. Some official, either some intergovernmental official or some national governmental official, is ticking off some box that says "civil society consulted", "civil society input achieved" because some of us were at the meeting. But too often, we might have the right to speak, but we don't have the right to be listened to properly and we don't have the right to be heard properly.

I have spoken at so many high-level advocacy things at the UN – where, if there are heads of State involved, they come, they give their speech and they leave. And usually their speech is written by some official, and they just read it. We, on the other hand, sometimes get really orgasmic about it - "oh, wow! We are with the heads of State, and blah, blah, blah" - when in fact it's just a theater, it's just a game.

I'm not saying that we should not be talking, that we should not be engaging in dialogue. I believe that when we bring both those strategies together it is when in fact, advocacy works best.

Say, at Rio+20, if I were in a meeting with Ban Ki-moon, where I raise the issue of the need to give more voice to indigenous peoples in these conversations, because indigenous peoples actually have had more wisdom about how to take care of the environment than the so-called civilized parts of the world. (If you and I were the last two people on this planet, and if we were to write the history of the planet, we would probably say that, actually, the most civilized people on this planet were indigenous peoples, and those who have tried to so-call civilize them, were actually the uncivilized ones). So, on an issue like that, on trying to encourage the UN to do the right thing with regards to the indigenous peoples, for example, the best scenario is when there are also people outside demonstrating, who are organized. This is what is called insider-outsider strategy. We are stronger in the inside when we are more visible and stronger on the outside. Because they can easily ignore us, if they think like "these two, three people are just intellectuals who have good ideas, and are well-meaning, but we can ignore them, because they don't really have a constituency".

On direct action itself and the need to engage on civil disobedience: if you look

at history, whenever humanity was confronted with great injustice or challenges – women's right to vote, slavery, colonialism, civil rights in the United States, *apartheid* in South Africa, - these issues only moved forward when decent men and women stood up and said "Enough is enough, and no more!". People were prepared to go to prison if necessary; they were prepared to put their lives on the line if necessary.

Now, in this moment of history, we have seen a convergence of crises – ongoing poverty crisis, deepening climate crisis, financial crisis, gender equality crisis, crisis around basic services – in a very short time span. Some have called this "the perfect storm". In a book that I wrote in 2010 I called it "the boiling point". If you look at any of the other crises or injustices that I mentioned, slavery affected people from countries that were conquests of slavery, colonialism affected countries that were colonized, *apartheid* affected the people in my country, lack of civil rights affected the people in the United States. But when we look at the current threats, particularly when you add the climate threat, the challenges that we now face are more important than all the previous ones because, yes, it is true that it is a terrible injustice that the people that are facing the first and most brutal impacts of the climate are from the developing world, and often are from very low consumptive and low-carbon-emission realities, but the reality is we have to get it right, as rich and poor countries acting together, to secure the future of all our children and grandchildren.

We have that reality, and who are the people we celebrate today as historical figures that we should be inspired by? Mahatma Gandhi, Nelson Mandela, Rosa Parks, Martin Luther King. They are people who went to prison for long times, people who got assassinated in the course of their work. As an American grandmother once said: "If you want to make an omelet, you gotta break some eggs".

By the way, it's not about saving the planet, because actually the planet doesn't need any saving. If humanity runs up to the point where it can no longer exist on the planet, the planet will still be here. It will be scarred and battered by the human crimes against it, but it would actually be in better shape, because the forests would grow back, the oceans will replenish and so on. The struggle is not about saving the planet, the struggle is about ensuring that humanity can coexist with nature in a mutually interdependent way for centuries and centuries to come. Put differently, the struggle is about securing our children and grandchildren's futures.

One thing with which human rights communities do help with a little bit more is strengthening this whole body of knowledge around what I would call intergenerational solidarity and intergenerational rights. Our current generation of [herald] leaders is leading as if we did not have other generations coming after us, our consumption patterns are already one and a half times what this planet can currently endure.

In that sense, just to go back to where we started. I am not saying that advocacy is not important, and that only actions are important. Both are important, in different ways. However, if you put all your eggs in the advocacy basket, and you do not have a constituency and you cannot engage in civil disobedience, politicians will continue to do what they have been doing for decades and decades, which is: they make nice speeches, they listen to us, and then they ignore us.

The only changes that we are seeing, whether it was the overthrow of Mubarak or the overthrow of the Yemeni government and so on, is when citizens said "Enough! We are prepared to occupy the squares, and shoot us if you want, but we are not leaving". That's the spirit we need to see in all the areas of social endeavor, whether it be gender equality, indigenous rights or certainly climate.

Conectas: Last year we had many street protests in Brazil, and the problem is that if human rights organizations are engaged in direct action, the government says "you are vandals, you are criminals, you are breaking the law - how do you want us to respect the law if you yourselves are not respecting it?" It doesn't make it illegitimate, but it is a lot harder to justify to the general public why you are doing that.

K.N.: We in the human rights community have a dilemma about the rule of law and how we engage with the rule of law. To a large extent, we are slaves to the rule of law, but the rule of law is not a thousand-year old concept. The rule of law was introduced by the powerful. Some of us fought for certain things – in South Africa, we fought for the Constitution, to be progressive etcetera -, but governments must know that we are not going to accept that the right to peaceful protest is illegitimate.

It is critically important that these protests remain peaceful. Governments tend to paint everybody with the same brush. This is totally unacceptable. In many, many cases, even in so-called democratic countries like Canada, I can provide you with evidence which shows that when there have been demonstrations of violence, such as in Quebec, a couple of years ago, when the Three Amigos meeting* took place, it was proven beyond doubt that the person that was instigating the violence was an employee of the Royal Canadian Mounted Police. He got discovered because he had police shoes. You can see it on a video. He is the one saying: "Let's throw stones!". People then were saying: "No, no, no! This is a peaceful protest, please put those stones away". And some said: "Hey! Look! He's wearing police boots!" He then runs, and the police just opens up a corridor and take him. They denied it for a few days, but eventually they had to concede it.

So, let us say to governments: "We believe that the right to peaceful protest is a right that we will not give up". Let us say to president Dilma and everybody else: "Don't go celebrating Mandela, Martin Luther King and Gandhi and so on, and then deny the very thing that they fought for, which was democracy". Democracy is not about casting a ballot once every four or five years. It is about the right to be able to participate actively in public life, including in between election periods, in a way that allows us to show our support or our opposition to policies being pursued by our governments.

Coming back to the rule of law: basically, the rule of law consolidated all the injustices in the world that existed before the rule of law. The rule of law has become the darling of the powerful, and almost a threat to the powerless. Because, if you take the O.J. Simpson trial, it is an example of how, if you are wealthy, you can use the legal system and get away with murder. My best example: HSBC was engaged in massive money laundering for the drug cartels in Mexico. All the evidence was found, and the U.S. government could have taken them to court and convicted the managers and directors who were engaged in it. But they just made it into a US $1 billion fine, which is not even like one week's worth of profit for HSBC. But then, a young African-American or a Latino kid in California gets caught three times with a joint in his pocket and he spends years in prison. For years, if anybody asked me if I supported the rule of law, I would say: "Of course I do." But I'm not saying that we have to throw out the rule of law lock, stock and barrel. I think we need a new, nuanced, more critical reading of exactly what the rule of law means in a context of extreme injustice, in a context where the powerful in society are literally able to get away with murder, with regard to ensuring that the majority of people aren't denied justice.

*Editor Note: North American Leaders' Summit between Canada, Mexico and the United States.

Conectas: My last question was going to be exactly about that: whether human rights are still an effective language to deal with injustices and promote social change. For example, if the main violators are not State actors, but big business, human rights are directed at States, how do we address this kind of injustice and promote social change? We have this in common with the environmental movement, no?

K.N.: This is a complicated answer.

Firstly, what is democracy? Democracy was supposed to balance the wallets of wealthy people by the ballots. The ballots were supposed to balance the wallets, to equalize the voice of ordinary people with those who have power. Today, to be brutally honest, our democracies have been captured by the powerful economic interests in society.

The United States can best be described today, in my judgment, as the best democracy money can buy. There are three types of people that can run successfully for national political office in the U.S.: the rich, the extremely rich, and the obscenely rich. Our electoral systems have been captured. The money of the corporate sector has polluted American democracy to the point that, if we look at it from a climate perspective, even though we are seeing serious climate impacts in the United States, what you see is… For every member of Congress in the United States, there are between three to eight full-time lobbyists paid for by the oil, coal, and gas industries to make sure no progressive climate legislation goes through. They are basically buying off the politicians who need that money to run for political office.

In too many countries around the world today our elected political officials are completely powerless. They are dependent on the power of corporations to exist. We have to get big money out of democracy, out of our democratic politics. We have to go back to some of the basic tenets of democracy, one of which is the equality of voice, which certainly does not exist in most political systems across the world today. In many countries, we have the form of democracy without the substance of democracy. Many things that we call today democracies are really not democracies, but liberal oligarchies - that means that they have the form of elections. Yet, elections, I believe, don't equal democracy anymore. When women couldn't participate fairly, when working class perspectives are not listened to, when indigenous are marginalized, you cannot call that an effective working democracy that listen to various voices - and today I would say that elections have become a preordained elite-legitimation exercise. Think about it, today, when people go to vote, they are not going to vote for the best candidate, they are going to vote for the least bad candidate. That's the situation in many, many countries. What does that mean for activism? For activism and for civil society, it means that we do not have luxury of saying: we just focus on corporations, or we just focus on some governments. We have to focus on both, and if we fail to focus on the role of corporations, I think that we will not be fulfilling our full potential and mission as civil society.

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Human Rights in Motion

Themes

JANET LOVE

Janet Love has been the National Director of the Legal Resources Centre (LRC) since January 2006 and a Commissioner on the South African Human Rights Commission since 2009. She has been an anti-apartheid activist since 1974 and was involved in the Trade Union movement and the African National Congress prior to and during the 10 years she spent in exile. She has studied at both the University of the Witwatersrand and of London and has post-graduate qualifications in public administration, development management and economics.

ABSTRACT

This article focuses on the international debate on business and human rights, in order to scrutinize whether the human rights language that is currently used is able to produce social change by remedying economic injustices. The author criticizes the current international guidelines in this area for their failure to result in greater business accountability in practice; the absence of remedy, restitution and reparation for victims and, in particular, the lack of state sanction; and the non-recognition of businesses as social actors with power which ought to be associated with primary human rights duties rather than voluntary good conduct. As a consequence, the author outlines some of the alternatives and/or additional mechanisms sought by human rights defenders and some states to deal with the tremendous growth in economic inequality, including recent proposals of a binding treaty. The author concludes the article with questions for the future of human rights defenders' work with business and human rights.

ARE WE DEPOLITICISING ECONOMIC POWER?: WILFUL BUSINESS IRRESPONSIBILITY AND BUREAUCRATIC RESPONSE BY HUMAN RIGHTS DEFENDERS

Janet Love

The question of engaging business is clearly an issue that dominates the work of human rights organisations from the global south. Less clear is what some of the key issues that relate to this front of struggle involves. This article seeks to raise some of those issues, having especially in mind the international debate on standard setting in the area of business and human rights. Ultimately, this article scrutinizes whether human rights language, as used until now in this international debate, is able to produce social change by remedying current economic injustices.

To be clear, human rights defenders have a crucial role to play in promoting corporate respect for and realisation of human rights, including in exposing and seeking remedy for corporate human rights violations. Despite this, there is a worsening response from State and non-State actors that includes threats to forbid and/or restrict the work of civil society organizations (CSOs), failure to respect the rule of law and abide by court decisions, and threats and attacks against defenders who work on issues of business and human rights. With this scenario in mind, this article firstly sketches the international and regional framework regarding business and human rights. Secondly, it briefly outlines some of the challenges faced by human rights defenders in fighting against economic injustice. Finally, it reveals some of the alternatives proposed by human rights defenders and states to increase accountability of business.

1 International and regional human rights framework

the United Nations Guiding Principles on Business and Human Rights (UNGPs) state that they apply to all business enterprises, including trans-nationals, "regardless of their size, sector, location, ownership and structure" (UNITED NATIONS, 2011,

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principle 14). Yet the focus is to create a positive obligation on States – rather than on business – to implement those principles in a manner that pays attention to the rights and needs of individuals or groups that are at heightened risk of becoming vulnerable or marginalised due to business conduct. It urges businesses to avoid infringing on human rights as articulated in international law and to address adverse human rights impacts that they may be involved in. At no point is there any sense of clear obligation with possible sanction that is placed on business. And it is not as though international mechanisms are without possibilities to exercise sanctions against businesses as has been clearly demonstrated, for example, through the actions and decisions taken by the World Trade Organisation (WTO) and by financial institutions as part of the 'global war against terror'.

The UNGPs recognise that businesses should consult with human rights defenders about the design and impact of projects. They also recognise that businesses should ensure that 'the legitimate and peaceful activities of human rights defenders are not obstructed' (UNITED NATIONS, 2011, commentary to principle 26).

The African Commission on Human and Peoples' Rights (ACHPR) adopted a resolution in 2012 (THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, ACHPR/Res. 224, 2012), emphasising the impact of human rights abuses on the rural communities in Africa and called for maximum and effective participation of local communities in the development on their land. In 2013, the ACHPR also adopted a resolution (THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, 2013), noting in its preamble that illicit capital flight from Africa "leads to the loss of billions of US dollars every year" and called for a study on the impact of illicit capital flight on human rights in Africa.

Notwithstanding this, social conflicts involving the oil, gas and mining (or extractives) industries have led to calls by ACHPR – and the UN High Commissioner for Human Rights (UNHCR) – for interventions by government; but there appears to have been little or no effort to bring pressure to bear on businesses to fulfil their obligations (COLLINS; FLEISCHMAN, 2013). Instead, international discourse on business and human rights has focused primarily on understanding the obstacles that prevent victims from securing an effective remedy, rather than on removing such obstacles (AMNESTY INTERNATIONAL, 2014). The defenders of these communities against rights abuses are particularly vulnerable. In many instances, where victims have attempted to make use of both judicial and non-judicial mechanisms in seeking an effective remedy, they remain unsuccessful and, consequently, continue to suffer the abuse. Furthermore, the time that lapses results in access to a remedy becoming less likely.

2 Human rights defenders and economic power

The experiences of human rights defenders working on business and human rights and the obligations to promote and realize rights both by State and non-State actors, and the reports from international NGOs and UN experts, point to a worsening of abuses against them, increasing difficulties for their operations and increases in restrictions and reprisals against them.

These human rights defenders are framing issues within a rights context highlighting the disparities in access to justice, agency and voice. This disparity is brought about primarily through the increasing gap between rich and poor. The question of the extent to which human rights defenders can and/or should frame and situate human rights struggles as part of the struggles around the structures of economic power is something that needs further discussion. The current discourse around human rights and democracy enables broad alliances and does not necessarily require clarity about what would constitute economic justice and how this could come about. It thereby often fails to provide a basis for engagement by activists or to constitute a rallying call that encourages people to hope for an end to the disparities.

For example, mining has historically been the mainstay of the South African economy and has shaped both its social and environmental fabric. The urban and industrial landscape has been dramatically influenced according to the location of minerals. The mining industry remains important to the economy and has a critical role to play in supporting the aspirations of development and growth. However, notwithstanding the advent of democracy 20 years ago, in this period the sector has not only had negative impacts on the environment, but is also notorious for unequal, seemingly sacrosanct practices that have resulted in human rights violations (of communities and employees) and in the loss of lives. Instead of contributing to broad economic empowerment especially of the directly involved and affected workers and communities, it has enriched very few individuals.

Land ownership in South Africa has long been a source of conflict. Its history of conquest and dispossession, of forced removals and a racially skewed distribution, has left it with a complex and difficult legacy. Currently, the South African Government is obliged by the country's Constitution to implement land reform processes and enact and implement legislation to realise "the nation's commitment to land reform and to reforms to bring about equitable access to all South Africa's natural resources" (SOUTH AFRICA, 1996, Section 25(4)). A number of laws placing obligations on business to ensure sustainable environmental management, full participation in transparent planning processes by affected communities and safe, fair working conditions have been enacted. Companies fail to comply and the South African government fails to enforce. All of this has a direct bearing on issues pertaining to business and the economy and relate to the extent to which business actors perceive themselves as being primary 'duty bearers' as a consequence of their power. Very often business hides behind the absence of effective enforcement by the State for its failures but arguments of this nature appear predicated on the view that the problem lies not in the violation but only if and in being caught.

Generally, transnational corporations generate and provide foreign direct investment to the host State. This frequently results in businesses exerting an inordinate amount of influence on public policy thereby influencing the independent decision-making authority of the State. Often host countries lack the capacity for effectively dealing with these issues. In addition, the impact of business involvement in public policy is seldom transparent and therefore creates

an environment where companies are not held accountable for the human rights
impact of subsequent economic policy choices. The lack of transparency and
accountability measures contributes to the growth of corruption and impunity
which, in turn, undermine the very fabric of democracy and human rights.

The potential impact of the State's relationship on transnational corporations
is mainly viewed on the basis of the location of the company's domicile. However,
the activities of companies, based throughout Africa, yet domiciled in South Africa,
reveal that such companies opportunistically take advantage of undemocratic,
weak regimes to further burden poor and oppressed people in these countries.
Currently, there are no extraterritorial mechanisms in place to hold these companies
accountable for human rights abuses perpetrated in such host countries[1].

> *Coupled with this, corporate legal principles such as 'separate legal personality', which
> effectively separate the legal personalities between parent companies (often situated in
> the Global North) and their subsidiaries (situated in the Global South), means that
> parent companies will not be held liable for violations caused by their subsidiaries
> despite amassing significant profits from their conduct. This becomes of grave concern
> when victims are unable to prosecute subsidiaries in their own jurisdiction due to weak
> judicial mechanisms governing their countries.*
>
> (INTERNATIONAL COORDINATING COMMITTEE
> OF NATIONAL HUMAN RIGHTS INSTITUTIONS'
> WORKING GROUP OF BUSINESS AND HUMAN
> RIGHTS, 2014).

Notwithstanding the willingness with which businesses are comfortable to
capitalise on their status as having 'separate legal personality' when it comes to
accountability and tax avoidance, it is virtually impossible to engage either States
or businesses about the duties that go with legal personality and, in particular,
creating opportunities to pursue criminal liability charges and claims against
business through international criminal court mechanisms in the event that local
remedies are exhausted or unavailable.

While the UNGPs assert that States are neither required nor prohibited
to regulate extraterritorial activities of businesses, it also recognises that the
extraterritorial state duty to protect remains unsettled in international law
(BILCHITZ, 2013). Although victims may have had access to legal avenues which
allow for civil claims such as the Alien Tort Claims Act (ATCA) of the United States,
the recent judgment of *Kiobel v. Royal Dutch Petroleum Co.* (UNITED STATES, 2013)
that effectively restricts the application of the ATCA in cases involving allegations
of abuse outside of the jurisdiction of the United States, is a setback for holding
businesses that are either directly or indirectly complicit in the commission of
human rights violations accountable.

3 Searching for alternatives

the failure of the UNGPs to result in greater business accountability in practice
- notwithstanding the fact that they have been picked up in various plans and

agreements (RUGGIE, 2014); the absence of remedy, restitution, reparation for victims and, in particular, the lack of State sanction; and the non-recognition of businesses as social actors with power which ought to be associated with primary human rights duties rather than voluntary good conduct – are the key drivers of the search for alternatives and/or additional mechanisms and for finding other approaches to deal with what is seen as having driven the tremendous growth in inequality.

It is in this context that a number of developing countries have given their support to calls within the United National Human Rights Council (UNHRC) for the development of a binding treaty to hold businesses accountable for human rights violations at an international level. During its June 2014 session in Geneva, the UNHRC adopted three resolutions around business and human rights. One resolution (UNITED NATIONS, 2014a), led by Norway, Argentina, Ghana and Russia, focuses on national implementation of the UNGPs, renewing the mandate or the UN Working Group on Business and Human Rights. That resolution was adopted by consensus. In addition there was a further consensus decision to extend the mandate of the Expert Working Group which the Council established in 2011 to promote and build on the UNGPs, and it requests the High Commissioner for Human Rights to facilitate a consultative process with states, experts and other stakeholders to explore "the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses" (UNITED NATIONS, 2014a, para. 7).

The other resolution (UNITED NATIONS, 2014b), led by Ecuador and co-sponsored by Bolivia, Cuba, South Africa and Venezuela, establishes an inter-governmental process to begin the development of a treaty 'to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'. The resolution was adopted by 20 votes (including a majority of African members and China, India, and Russia) to 14, with 13 abstentions. Apart from the co-sponsors, other Latin American countries, notably Brazil, abstained. The EU and the US indicated that they will not participate in the treaty negotiating process. Critics of this resolution are quick to characterise it as neither innovative nor constructive because of 'being divisive'.

The implicit assumption that innovation and/or consensus have constituted motive forces of the work of the UNHRC is highly questionable.[2] However there are a number of issues and concerns with this resolution. Negotiations are expected to convene sometime next year but the resolution does not stipulate any timeframes and stipulates a wide mandate with a very varied range of actors and activities that consequently is unlikely to realise its objective of a formulating a single, binding treaty. The fact that the US and the EU have excluded themselves is a concern – but not surprising given the nexus of political and financial power that resides in these jurisdictions. On the other hand, knowing that China and Russia are on board does not suggest any certainty that the debate will be robust or that the outcome will advance even discreet instruments to address particularly egregious violations by business – let alone that with their presence there will be progress towards a wider legislative framework.

In the debate, there were suggestions that business is somehow open only to the force of national legislation and 'rule of law'. Why this should be the case any more than migration or trade and investment, for example, is not clear as noted by Ruggie:

> *But if national law and domestic courts sufficed, then why do TNCs [transnational corporations] not rely on them to resolve investment disputes with states? Why is binding international arbitration necessary, enabled by 3,000 bilateral investment treaties and investment chapters in free trade agreements? The justification for this has always been that national laws and domestic courts are not adequate and need to be supplemented by international instruments.*

(RUGGIE, 2014).

However, they are mainly the motive force behind the importance of generating further scope for debate.

Issues relating to State procurement processes also highlight the problems of non-competitive behaviour and collusion (in addition to violation of environmental, health and other rights) which, at times, are domestic but in the case of large-scale developments (arms deals; nuclear power facilities; fracking) and mega-events (such as FIFA World Cup) are replicated in different parts of the world and involve transnational business interests. Clearly the arena of 'social safeguards' and 'social licence to operate' relate to investment decisions and related risk. The problem in the context of democracy and human rights that surrounds much of State procurement does not only relate to corruption in government but also to the rampant greed and individual enrichment that occurs benefitting those in business at the expense of the taxpayers and to the detriment of those most vulnerable and marginalised in society.

The potential and actual involvement of business in the abuse of its power to the detriment of human rights is undeniable – and yet it is not met with a response that is able to relate to this power within a political discourse without being cast into the realm of polemics. The direct involvement of business in slavery and forced labour generate public outcry often without any action being taken by either the State or civil society. Areas of private security and the production, distribution and use of mass surveillance equipment are areas of non-State actor power wielded by business, which can be and are used in direct violation of human rights of citizens and, in many instances, are used in trans-boundary interventions. From a consumer perspective, the destructive impact of the financial sector in promoting reckless lending and spending is part of a number of violations that have been widely documented – such as Nestle products that relate to baby food – and a range of ways in which health rights and food security is undermined by producers has received attention such as in relation to intellectual property rights and the pharmaceutical industry. In this regard, the absence of human rights engagement with and by those involved in the negotiations around trade and investment such as the WTO is clearly a problem.

4 Conclusion

Human rights defenders who engage around issues of business and human rights in the global arena have tended to place primary emphasis on engaging around the questions of human rights and business in a manner that places undue emphasis on legislative instruments including "hard" and "soft" law. While there is recognition and use of other tools – including social movement mobilisation such as 'Occupy Wall Street', boycotts of products and naming-and-shaming – business and human rights constitutes our soft underbelly. Our thinking lacks coherence and strategy. We are reliant on old concepts of business which have not been renewed within the framework of today. For example, social media is one part of the current reality that has challenged the structure of industrial relations organisation and bargaining and there are huge questions around the future of these mechanisms which have long provided a focus and a basis for the mobilisation of workers into unions. Add to this, the complexity of a rapidly changing 'world of work' and the related challenges for inclusion of the 'informal sector' and the realisation of the right to work. The legislative instruments represent an opportunity to formalise and create some degree of certainty: false comfort when it is about a mercurial socio-economic and political realm.

Engaging around policy, convention, agreement and domestic legislation is clearly something that human rights organisations like the LRC are involved with both nationality and beyond their borders. But a number of questions arise when focusing on the issues relating to business and human rights which are less certain:

1. Tackling a business in one jurisdiction: does it have automatic impact on related businesses in the sector and/or parts of the same company elsewhere? Is it necessary for any broader impact to involve similar actions being mounted in other jurisdictions?

2. To what extent does the interplay and interconnectedness of state power and business need to become the focus of actions by human rights civil society organisations? How can issues of transparency and accountability that arise in one jurisdiction be tackled from another vantage point?

3. How do human rights organisations move the battles waged against human rights violations perpetrated by business from the level of elite/boardroom to popular movement/street mobilisation? Without the latter, the impact is destined to be stunted.

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NOTES

1. As noted by the former UN Special Representative to the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, "extraterritoriality is not simply the binary matter that it is often depicted as. It comprises a range of measures from public policies through to regulation and enforcement measures, which can be implemented through both domestic measures with extraterritorial implications as well as exercises of direct extraterritorial jurisdiction" (UNITED NATIONS. 2010, paras 46 – 50).

2. When Ecuador first advocated the step in September 2013, it was supported by around 600 NGOs (with some of the larger international NGOs standing back) and this too is referred to in way that is designed to reflect negatively on the sector.

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ABSTRACT

Over the last decade we have seen new and diverse coalitions being created to drive change in business behaviour. In this article, the author analyses whether human rights language still retain their potential to promote social change. While analysing the business and human rights movement, his answer is a "yes, but". The author argues that human rights remain a vital tool for social change. But, he adds, when social movements are bolstered with a diverse coalition of actors to achieve a common goal, then the opportunities to achieve transformational and systemic change are greatly multiplied. As an example, the author describes the advocacy made around the Dodd-Frank conflict minerals' bill in the United States and its special relevance to victims in the Democratic Republic of Congo. For the author, human rights often lend a vital inspirational role (endorsing the rightness of the struggle); a powerful and universal language (understood nationally and globally and bringing diverse interests together); and a compelling rationale for fair treatment in the face of injustice.

ARE HUMAN RIGHTS AN EFFECTIVE TOOL FOR SOCIAL CHANGE?: A PERSPECTIVE ON HUMAN RIGHTS AND BUSINESS

Phil Bloomer

Are human rights an effective tool for change? The answer must be a resounding 'yes, but'. Human rights have inspired and underpinned some of the greatest movements for change in our world. They express some of the highest aspirations of humankind. And their implications for our present societies are transformational. The 'but' refers to the need for human rights movements to evolve and be relevant to the evolving drivers of human rights abuse in our world. One I'd like to consider here is the rising inequality in our societies.

We live in a time of hyper-inequality: seven out of ten of the world's population live in countries where inequality has risen in the last three decades. Oxfam recently stunned many of us with the calculation that the population of one double-decker bus (85 people) own the same wealth as the poorer half of the world's population (3 billion) (SLATER, 20014).

This rise in inequality is across the world: in the USA, after one of the deepest recessions in its history, the richest 1% have captured 95% of all income gains since 2009 (SAEZ, 2013). In India, the wealth of the billionaire community increased twelvefold in 15 years (INEQUALITY…, 2014). This same wealth could have eliminated absolute poverty twice over in India, with all its attendant violation of basic rights such as education, health, water, food, housing. And in Africa, according to Ventures Africa magazine, the number of billionaires has more than doubled in the last decade to 55 billionaires, with a combined wealth of US$143bn (THE RICHEST…, 2013).

The dangers of this hyper-inequality are now recognised as unsustainable, a source of human rights violations, a waste of human potential, an economic inefficiency and a threat to political participation, by diverse leaders: Pope Francis, the International Monetary Fund (IMF) chief, Christine Lagarde,

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the World Economic Forum, US President Barack Obama, Brazilian President Dilma Rousseff and the Central Committee of the Chinese Communist Party have all recently devoted speeches and meetings to inequality. Unsurprisingly, the proposed solutions often remain anaemic and insipid, though more recently the taboo 'R' word (redistribution) has been heard in the halls of the IMF.

What is new is that movements for human rights and broader social justice are increasingly combining their narratives to drive action on inequality. After all, the achievement of the right to a livelihood, health, and education is often profoundly redistributive—both in terms of wealth and power. Our own organisation, the Business & Human Rights Resource Centre, has a portal devoted to tax avoidance since 2009—a simple recognition that if companies and elites can avoid fair taxation, then a State's aspiration to realise the rights to health, education and water, for instance, will be still-born.

The rise of inequality of power and wealth has developed, not through fate, but through our societies' ideas and systems. Human rights are one of the most powerful shared, universal counter-concepts we have to tackle injustice and inequality.

1 Business and human rights

Traditionally, the State has been seen as the primary duty bearer, held responsible for realising the human rights of their citizens as well as protecting their rights from violation. Most of the international human rights treaties are aimed at States. However, the Universal Declaration of Human Rights' preamble calls on "every individual and every organ of society" to promote and respect human rights, which, according to Professor Louis Henkin, a leading international law scholar, "excludes no one, no company, no market, no cyberspace" (HEINKIN, 1999, p. 25). Human rights are based on the inherent dignity of every person; they are those basic rights and freedoms to which all humans are entitled. They have been spelled out in internationally agreed standards. The international community has declared all human rights "universal, indivisible, interdependent and interrelated."

Yet, companies are now some of the most powerful actors in our world. Our rapidly globalising economy over the last thirty years has led to many transnational corporations becoming larger economic entities than whole nation-States. Their power and wealth have brought them increasingly to the centre of the human rights stage. Regarding human rights, these companies do not get to pick and choose, from a smorgasbord, those issues with which they feel comfortable.

In many ways the State rightly remains the primary duty-bearer for human rights, but a growing number of international and national companies know they are increasingly being held to account for their human rights performance. Unfortunately this accountability is still increasingly exercised through the court of public opinion, more than the court of law.

Corporate legal accountability for human rights abuse has not been moving in the right direction. In 2013, the opportunity for victims of abuse to demand

extra-territorial corporate accountability and remedy diminished significantly through the US decision in *Kiobel v. Royal Dutch Petroleum Co.* (UNITED STATES, 2013), and in 2012, the removal of legal aid to extra-territorial cases in the United Kingdom. But in the same year, we had the apparel companies reacting collectively, if far too late, to begin to ensure workers' safety in their supply chain after the Rana Plaza factory collapse in Bangladesh that killed over 1,100 people;[1] Coca-Cola announcing a "zero tolerance" to land grabs in its supply chains (supplemented in March 2014 by PepsiCo[2] announcing a similar policy), and electronics giants continuing to lobby for action to ensure "conflict-free minerals" in their supply chain.[3]

The court of public opinion for companies is intimately linked to a company's social licence to operate. And the social licence to operate is closely connected to a company's respect of human rights. Many major companies understand that they increasingly need to demonstrate public benefits that deliver aspects of the common good through good-quality jobs, products, services and proper taxation, for instance. If these are compromised by poverty wages and abusive working conditions, massive tax evasion, or irresponsible legacies, their social licence to operate is compromised. For example, in Peru, India and Brazil, mining companies have faced months of paralysis due to protests for their irresponsible practices that have compromised their social licence to operate at huge financial cost. Equally, Google, Starbucks and Amazon have all felt considerable heat from revelations of their highly-creative tax avoidance in the UK.

Increasingly, companies are being judged by their record on human rights. There are increasing demands and action for transparency on companies' human rights performance. Business & Human Rights Resource Centre's website[4] tracks reports on the human rights impacts (positive & negative) of over 5,600 companies in 180 countries. The site is updated hourly, and receives over 1.5 million hits per month. Users include companies, NGOs, investment firms, governments, consumer organizations and journalists. We also have a rising number of "Rankings" of companies in key sectors: Access to Medicines Index and Behind the Brands Index, to name two.

The concern about the extraordinary economic power and reach of transnational corporations and the need to set out their responsibilities led, in 2011, to the establishment of the UN Guiding Principles for Business and Human Rights (UNITED NATIONS. 2011). These are voluntary principles that set out the duty of States to "protect" human rights, of business to "respect" human rights and of both to ensure there is adequate "remedy" for those whose rights are abused. They are an important advance in setting out what is expected from business—the floor rather than the ceiling of standards of behaviour. They have created a powerful dynamic in some companies and States which has spurred internal advocates of human rights to push for change in core business models. Nevertheless, it remains a disappointment that, after almost three years since their adoption, only two States (UK and Netherlands) have an official National Action Plan on business and human rights and only a handful of companies

have an implementation plan (including Rio Tinto, Adidas and Microsoft). As John Ruggie said in September 2013, "The stakes are high; the time is short; the cost of getting [business and human rights] wrong is incalculable while the opportunities from getting it right are legion" (RUGGIE, 2013).

2 The Movement for Business and Human Rights

Human rights only become a tool of substantial social change when they are in the hands of movements for social change. If the current State of business and human rights is not transformational, it will require a movement to shift it. Over the last decade we have seen new and diverse coalitions being created to drive change in business behaviour. Their strength often lies in their networked approach, keen sense of communications and agility (all of which have been strengthened by new communications technology).

One powerful aspect of business and human rights is that it naturally brings together an analysis based on the political economy of human rights: i.e. understanding which are the political and economic forces that are defining our currently unsustainable path and how can we re-direct them to the goals of human rights and shared prosperity. In this way, the issue of "business and human rights" can increasingly contribute to diverse movements for change based on a common cause. It requires our human rights movement to sometimes be humble in working with other movements and also creatively tactical in working with media and social media, as well as individuals and sections of companies or States which share the same specific goal.

This approach is regularly being applied to diverse struggles: the dispossession of peasants through land grabs by governments and agribusiness; environmental damage by mines; access to medicines for the poor in the face of some pharmaceutical giants drive to assert their universal patents; living wage and safe working conditions in apparel supply chains; collusion of tech companies with repressive governments to censor the web; and tax evasion and avoidance by international companies.

These same causes increasingly bring together actors who have only infrequently collaborated before: trade unions; human rights organisations; women's, development and environmental organisations; as well as grassroots and community organisations and progressive companies and governments.

One recent example would be the effort to implement the Dodd-Frank conflict minerals' bill (SEC ADOPTS…, 2012). This ground-breaking legislation in the USA seeks to stymie the flow of wealth to despots in the Democratic Republic of Congo (DRC). Section 1502 of the Dodd-Frank Act requires companies registered with the U.S. Securities & Exchange Commission (SEC) to demonstrate due diligence in their supply chain for any minerals sourced from one of the most terrible killing fields in our world: the DRC and its neighbours.

The need for this legislation was made evident by the immense courage and resilience of human rights and social justice activists in the Kivus region of DRC. Local civil society, working with international organisations like

Global Witness, set out how the mines sustained the militias. These messages were amplified by national and international media, often cajoled and fed by national and international civil society. There was a simple message: this volcanic region is blessed with deposits of rare earth minerals, essential to our mobile phones and computers. These minerals should be a platform for shared prosperity and security for the people of the Democratic Republic of Congo. But the mines that exploit these deposits are usually informal, often using child or slave labour, and are too often controlled by the ruthless tyrants and warlords that lead militias who prey upon the local population through violence and intimidation. These tyrants have become rich and bought their arsenals through exploiting shady business deals through unregulated and unreported trade of their mineral output. But now, with the more regulated and transparent trade by US companies as foreseen by the Dodd-Frank Act, their illicit source of wealth and power may wither and die.

As always, there was long and loud self-interested opposition at the stage of designing the implementation of the Act. The National Association of Manufacturers and the US Chamber of Commerce both opposed implementation, citing infeasibility of reporting and potential economic damage to the poor of eastern DRC. In May 2012, Global Witness, which led much of the international work on conflict minerals, requested the involvement of the Business & Human Rights Resource Centre in seeking responses from eleven companies, the US Chamber of Commerce and the National Association of Manufacturers regarding industry lobbying to undermine implementation of the U.S. Dodd-Frank Act's section 1502.

Seven companies and one business association responded and four declined to respond. Microsoft, General Electric, and Motorola Solutions took a stand and separated themselves from the Chamber's position on conflict minerals. These three wanted their machines to use conflict-free minerals, as part of their global social license to operate, to demonstrate their commitment to removing egregious human rights abuses from their supply chain. It was a great occasion therefore when the SEC voted to adopt rules to implement these conflict minerals provisions on 22 August 2012. And in January 2014, Intel joined in and announced its chips would be "conflict-free" (re: DRC) and invited the entire industry to join them. The bold move by major companies to step out from the "business as usual" position of their business association was critical. The companies have been praised for this specific action and the business associations have lost credibility, but most importantly, the people of eastern DRC may become a little safer in their communities in the not too distant future. This was a diverse and tactical alliance which has achieved this transformational and systemic change in conflict minerals in DRC.

The success has now inspired a similar and more ambitious move in Europe to demand due diligence on imports of minerals and timber from all conflict areas of the world. Again this simple demand for transparency has become a battle royal, with mining interests organizing to stymie any legislation and demanding a weak and non-regulatory approach to transparency.

3 Human rights and the vulnerable

For the poor and vulnerable of our world, human rights often represent one of the very few weapons they have in their highly unequal negotiations for fairness and justice with big business and States. I have met many, many communities of poor, vulnerable and dispossessed who knew nothing of their basic rights and accepted the abuse they received from business and State as inevitable and immutable. Equally, I can think of very few organizations and communities of poorer and more vulnerable people who have defended their assets, gained prosperity and ended repression who have not at least been informed heavily by a human rights framing. Most have used human rights explicitly as an inspiration and justification of their cause and a tool to demand better treatment by government and business. Human rights often lend a vital inspirational role (endorsing the rightness of the struggle); a powerful and universal language (understood nationally and globally and bringing diverse interests together); and a compelling rationale for fair treatment in the face of injustice.

For this reason alone, human rights remain a vital tool for social change. But when these social movements are bolstered with a diverse coalition of actors to achieve a common goal, then the opportunities to achieve transformational and systemic change are greatly multiplied.

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ABSTRACT

The end of the "Ruggie's Peace" is defined by a new trend of questioning the voluntary standards for transnational corporations that, after more than 40 years of debate, still govern international law. The need for binding rules has been raised anew by governments and social organizations in response to failures to implement the Guiding Principles and growing evidence that the concentration of economic power in the hands of transnational companies (some of them *multilatinas*) leads to greater human rights violations and to weaker and more unequal democracies.

ECONOMIC POWER, DEMOCRACY AND HUMAN RIGHTS. A NEW INTERNATIONAL DEBATE ON HUMAN RIGHTS AND CORPORATIONS

Gonzalo Berrón

We live in a time of global capitalism where certain trends appear to be converging, which, gathered, conspire against the ability of several generations to exercise democracy and human rights. On the one hand, the growing concentration of private wealth is superimposed on the old North-South geopolitical divide, and is now expressed at the global scale through transnational "megacorporations" (companies that own companies that own companies and so on) and the arrival of "multilatina" corporations and others based in the "emerging" economies. On the other hand, there is a new kind of interdependence between the financial world and the political world, which manifests itself through what some call "corporate capture" – or the capture of politics/democracy by economic powers, a phenomenon that cannot be summarized as just the participation of the "rich" in politics, or the old Weberian plutocracy. Rather, they speak to a greater promiscuity facilitated by politicians' condition of financial dependence in competitive democratic systems. In other words, politicians' chances of getting elected depend on the amount of money they have to carry out election campaigns, and their performance in executive or legislative positions is influenced by the commitments they make to ensure their future re-election or a "dignified withdrawal" from public service; as an example of the latter, several illustrious former European premiers now serve as consultants for large corporations.

The growth of economic power resulting from its concentration also has impacts on the international level; these mechanisms of capture can also be found in international institutions[1]. Furthermore, in addition to the traditional geopolitical power calculations on the international scene, we must now add the economic calculations of business agents who have penetrated the so-called global governance mechanisms. They do so actively through the construction of

what some call the "architecture of impunity" (BERRON; BRENNAN, 2012) – a web of agreements, treaties, and laws that expand the rights of "businesses" - or by directly occupying positions in international institutions, or by exerting pressure via national governments that defend the economic interests of their corporations (STIGLITZ, 2014).

1 Hyper-concentration, the "1%" and rights

Popularised after the 2008 crisis as the "1%", the high concentration of wealth, property and decision-making power in the hands of an increasingly smaller number of actors has been illustrated in a growing number of studies published in recent years. If we examine each of these three dimensions, starting with the concentration of wealth, we find recent studies showing that 1% of the population in the United States has 45% of the total wealth.[2] According to ECLAC, in Latin America, the "richest quintile owns on average 46%, which ranges from 35% (in Uruguay) to 55% (in Brazil)" (CEPAL, 2014). In Europe, in 2012, the income of the richest 20% of the population was 5.1 times higher than that of the poorest 20%; in 2003, this ratio was 4.6.[3] As for the ownership of corporations, the famous ETH Zurich study showed that the global network of companies is currently managed by 147 mega-corporations (VITALI; GLATTFELDER; BATTISTON, 2011). The vast number of mergers and acquisitions has put us on an unstoppable trajectory; for many companies, the logic of "merger/acquisition or death" seems to be the cornerstone of globalization. Meanwhile, several publications and websites list the new "billionaire" rankings and describe how just a few executives sit on the boards of several companies or funds simultaneously (PROJETO…, 2013).

Similarly, the intensification of certain changes in the morphology of corporate management and ownership has implications for decision-making processes, increasing the probability that human rights violations or omissions will occur. For one thing, investment funds and the idea of *mega-corporations* render responsibility for decision-making increasingly invisible, and further distance those who make decisions from those who are directly affected by them. Moreover, outsourcing the management of corporations by hiring CEOs and executives has the added effect of diluting responsibility and immunizing corporations' real owners against the illegal acts of their managers. The other aspect of this new structure is the pressure to earn profit. This may be either through the economic performance of the funds – and, paradoxically, the active and retired workers who own bonds - or the performance of executives whose success depends on their ability to generate more and more profit.

2 Political and social actions and responses

We are not dealing with an entirely new phenomenon, but rather a reconfiguration of contemporary capitalism that, in its new morphology, generates different effects and reactions. In the process of defending their rights, people historically or newly

affected - workers, users and consumers, people in general, communities and even States - identify the different types of responsible agents involved. They also help to elaborate on the type of problems, gaps and shortcomings that exist in the legal systems that are supposed to protect them. In countries like ours, there is a growing social awareness of the role of the abuses of international economic power, beginning with the privatisations in the 1990s, the globalisation of investments, emblematic cases of corruption, environmental disasters, layoffs and the flexibilisation of labour through relocation (or the threat to relocate). More recently, it has also included the aggressive role of investments and corporations in the "extractive"[4] industries (agricultural or mineral) and pressure on the environment and natural resources.

In Brazil, the clearance of genetically modified organisms (GMOs), reforms to the Forestry Code, the debate over the Mining Code, initiatives to change the method used to demarcate indigenous land, the construction of massive infrastructure projects, and tax exemptions are but some of the manifestations of economic pressure on the State that affect people's rights. The recent case of hosting the World Cup exposes some of the most perverse forms of this phenomenon: violations of State sovereignty by obliging the State to reform laws and by demanding tax exemptions exclusively for FIFA (laws 12.663 and 12.350). In addition, the explosion of infrastructure projects and the pressure to meet deadlines left public administrators at the mercy of construction firms; authorities were forced to accept exorbitant overpricing, while the supposed beneficial legacy of these works - that is, new social and transportation infrastructure and benefits for urban areas in general - took a back seat. Government authorities also failed to stop the displacement of neighbourhoods and major increases in stadium entrance fees, which resulted in the privatisation of access to sports stadiums that previously were accessible to the public.

This increase in social conflict is an expression of the new contradictions emerging in this recent phase of global capitalism. These contradictions are also present in countries whose governments emerged as a political response in the period – immediately prior to the current one – dominated by the hegemony of the so-called Washington Consensus. Though not entirely distinct from the resistance movements of that period, the new struggles can be characterised as being in direct confrontation with the capital, whose systemic responsibility was emblematically exposed by the crisis that erupted in 2008. And, as in the previous period, this conflict is developing on several levels: within States and on the international scene, which I will address below.

3 The "Ruggie's peace" lasted only 3 years: new tensions in the international debate on human rights and corporations[5]

Not long after the victory of corporate interests in the last major round of discussions on the issue of "human rights and business" in the UN, the system is in the midst of a new debate that gives hope to those who advocate for binding

rules for corporations. Currently, the "Guiding Principles" (GPs) are in force; these were adopted by the UN Human Rights Council in 2011 following receipt of the report "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", which was drafted by the Special Representative of the UN Secretary General, John Ruggie, based on a consultation process undertaken between 2006 and 2011. Defended by "optimists", these Guiding Principles are general guidelines on human rights and corporations, organised into the three now famous pillars: "protect, respect and remedy". In 2011, in addition to adopting the guidelines, the Council resolved to implement a program to promote them. This program includes various activities and the creation of a Working Group composed of 5 experts (chosen according to the usual UN criteria and balancing "business" affinities with academic and social ones). Activities worth highlighting include the national implementation plans and annual and regional forums. The resolution gave the Working Group a three-year mandate, which ends in June 2014 (NACIONES UNIDAS, 2011).

The Working Group began its work in what appeared to be a period of calm surrounding the "implementation" of the GPs. However, the "Ruggie's peace" came to an abrupt end: in September 2013, Ecuador, together with 80 other governments[6], presented a declaration, which asserted that:

> The endorsement by the UN Human Rights Council in June 2011 of the "Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect, and Remedy Framework" was a first step, but without a legally binding instrument, it will remain only as such: a "first step" without further consequence. A legally binding instrument would provide the framework for enhanced State action to protect rights and prevent the occurrence of violations.
>
> (DECLARACIÓN…, 2013).

This declaration reopened the 40-year debate on the need to effectively regulate the conduct of corporations and protect people and communities from the violations perpetrated by corporations. In this dispute, corporations and the governments that protect them have won all of the battles so far, blocking attempts to get initiatives on binding standards approved[7] and, as a way to draw attention away from what really matters in terms of protection, promoting various initiatives on soft or voluntary codes. Like "corporate social responsibility", these codes offer a response to society that aims to downplay both the exorbitant wealth that corporations obtain from their activities as well as the violations they often carried out to do so.

Those who defend the Ruggie process argue that one has to give the Guiding Principles time and that now is not the time to start discussing this issue again. They try to deny that Ecuador's declaration expresses a demand, always present in society, for the establishment of control over those whose irresponsible actions are seen as being responsible for the global crises (social, economic, energy, environmental and food). To defend their position, they use four main arguments, almost all based on practical or pragmatic issues:

1. Possible consensus: The GPs represent important progress in relation to what there was before. For the first time, the UN unanimously adopted norms on "business and human rights". This was the agreement that was possible to attain and we must respect it. It is not possible to go further.

2. Complexity: Generating binding rules for corporations is a Herculean task and, due to the complexity of the international system, it is practically impossible to do.

3. Implementation!: Since this is such a complex task, initiating a negotiation process that could take years would hinder efforts to effectively implement the Ruggie principles and, thus, also inhibit the concrete, albeit voluntary, enforcement of human rights when they are violated.

4. Responsibility lies with nation-states: It is ultimately states that must ensure that human rights are respected in their jurisdictions. The role of the international community, as the Guiding Principles indicate, is to help strengthen their capacity to enforce them. Therefore, these voluntary principles are sufficient.

One can add to this list the arguments that diplomats in New York or Geneva do not reveal in public, which are undoubtedly much more pragmatic and real than the ones listed above, and are related to the obstacles that this type of legislation could create for the free circulation of investment and increasing market liberalisation. As for the receiving countries, the majority being the poorest or developing countries, they are concerned that corporations may be discouraged from investing in their countries if binding obligations are adopted. It is clear that these kinds of binding rules would go against the logic that allowed the construction of what we referred to earlier as the "architecture of impunity", as they would imply reversing the excessive expansion of mechanisms that protect the "rights" of foreign investors (i.e., transnational corporations and funds).

Not only do these arguments run counter to the tradition of robust theoretical debates and the principles that have historically characterised the discussion on human rights in international forums; their weaknesses are staggering. This should shame the international community, most of all the members of the UN Working Group, who—whether to cling to the past (a certain patrimonialism) or to defend their own jobs—have defended the Ruggie principles as if they were the keystone rules on human rights and corporations.

The first issue we should address is that, by definition, there is no measure to indicate when it is an appropriate moment to address an initiative like the one led by Ecuador. Political timing is determined by a set of factors, such as the will of the actors involved. In this case, even though the debate had apparently ended in 2011, there are a significant number of States and social organisations that want to put the issue back on the agenda. Therefore, we can say that we are facing a new "moment" - one that demands that the debate on this issue be reopened. The fact that other actors do not want to do so reveals that they are

comfortable with the same status quo that many have been questioning for the past four decades. What is more, there is nothing preventing efforts to advance on both processes simultaneously. In other words, it is possible to discuss a treaty with binding obligations for corporations and to promote the Ruggie principles at the same time. The argument surrounding the "consensus that was possible" is also dynamic and depends on the historical context. There are no indications that the time is not ripe to reach a consensus on stricter rules on human rights. Or, to put it differently, public tolerance of the human rights violations of major corporations and their exorbitant profits has fallen, and therefore, there is now less political space to sustain a global *laissez faire* policy for corporations.

The task of developing such a treaty is indeed complex. It implies making decisions on what crimes are to be judged; who will judge them; what the penalties are; how to organize the various branches of human rights and select the level of applicability and detail; the extraterritorial application of the law; who is responsible; how to combine this kind of treaty with those already in effect; identifying judicial gaps; and many other issues. It is, without a doubt, a complicated task, yet its complexity does not eliminate the need for it. Protecting people and communities, defending their rights, and providing remedies when violations occur are also complex tasks, but they are just as complex and vital for humanity as the development of a vaccine against AIDS, for example, or finding a cure for cancer. The complexity of these tasks does not make them less urgent or necessary for people.

The issue of States' responsibilities has been examined at great length. Everyone knows that where the nation-state falters, only international norms and/or the international community can protect people. Moreover, as Martin Kohr from the South Center[8] argues in relation to the abuses of transnational corporations, the asymmetry is greater due to the fact that developed countries possess the institutional means to more effectively prosecute violators of the law and human rights, and, therefore, they are able to better enforce the rule of law. Powerful States have a greater capacity to exert control over powerful economic interests in their territory. As for poor countries, with low levels of institutionality and States that are weak in comparison to transnational mega-corporations, for example, the defense of peoples' rights and access to justice are limited. Economic powers are able to use various extra-judicial mechanisms to circumvent the law, escape punishment or make it difficult to enforce sanctions. In the case of the contamination of the Gulf of Mexico, the United States government ordered British Petroleum to pay several billions of dollars in fines. In contrast, the Bophal disaster in India or the recent Chevron case in Ecuador provide telling examples of the difficulties that communities affected by human rights violations face in States with less economic power.

4 "Shielding" the rights of people, not of corporations

An international shield is needed to help protect people from the asymmetry of power produced by the accumulation of wealth and the political advantages it

creates. For this, we must overturn the system created through the international arbitration tribunals that protect investors' rights (ICSID and WTO dispute panels) - that is, the rights of major transnational corporations, which are responsible for the majority of international trade and investment flows.

Creating a legal framework that, through one or more treaties, can serve as an international reference for a new perspective on economic relations and rights in today's world is essential. By doing so, the fight for human rights can provide a fundamental tool that - when complemented by the mobilisation of affected communities and social organisations, movements and networks - can expand the frontier of the applicability of human rights throughout the world.

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4. For an analysis on "extractivism", see Eduardo Gudynas (2009).

5. This article was written prior to the 24th Session of the UN Human Rights Council, which, on June 26, 2014, approved resolution A/HRC/26/L.22/Rev.1, which launched the negotiation of a treaty to establish a legally binding international instrument on Transnational Corporations (TNCs) with respect to violations of human rights. The resolution, co-sponsored by South Africa and Ecuador, was supported by 20 countries and rejected by 14 (European Union, United States, and Japan), and 13 abstained (many of them from Latin America, such as Brazil, Argentina, Chile, Peru). A broad social coalition, the Treaty Alliance, mobilized in favor of this resolution, garnering the support of more than 600 organizations around the world. For more information, go to www.treatymovement.org.

6. African Group, the group of Arab Countries, Pakistan, Sri Lanka, Kyrgyzstan, Cuba, Nicaragua, Bolivia, Venezuela, Peru and Ecuador.

7. The initiative of a UN Code of Conduct for Transnational Corporations (1983) and the Draft Norms on the responsibilities of transnational corporations approved in 2003 by the UN Sub-commission on the Promotion and Protection of Human Rights are of particular importance.

8. Intervention in the Seminar on Transnational Corporations and Human Rights, March 11 and 12, 2014, Palais des Nations, Geneva.

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ABSTRACT

Based on his own experience with migration issues in Mesoamerica, the author reflects on the situation of the region's movement for migrant rights, identifying challenges, criticisms, and recommendations to help strengthen the social struggle necessary to implement the rights of migrants and refugees.

ISSUES AND CHALLENGES FACING NETWORKS AND ORGANISATIONS WORKING ON MIGRATION AND HUMAN RIGHTS IN MESOAMERICA

Diego Lorente Pérez de Eulate

1 Introduction

Perhaps the title of this article is somewhat pretentious. Describing the human and organisational reality of something as broad as social action for migration in Mesoamerica runs the risk of falling back on generalizations, particularly in an area where there are so many projects and processes underway on different topics related to the human rights of migrants— projects and processes that are not all well known or even in communication amongst themselves.

Nevertheless, I believe that my experience in recent years with organisations and networks that work with migrants in Mexico and the Caribbean allows me to comment on some of these things. I can also comment on challenges that I have observed in the way these entities function, which result from the political and social context in which they carry out their activities and develop their internal dynamics. Therefore, this article aims to describe and analyze those realities—both those that are external to these organisations and those on the inside—and how their interaction characterizes the processes that develop in this complex world of organisations dedicated to human rights and migration.

To this end, I believe it is important to first describe my experience in this field, so that readers can better understand the perspective and background that I have when writing these lines, and where my analyses and proposals come from. I have spent more than 15 years dedicated to social and organisational issues, always focusing on the situation of migration and human rights. I believe that migrants are one of the populations for whom discrimination and exclusion are most relevant, and injustices are particularly severe. This is an area where my training as a lawyer can be useful, after having broken through the individualistic and closed-minded education one receives in pursuing a law degree; it can allow the promotion of a sense of justice in the treatment of migrants, in a context where the exception to the rule of law has become the rule.

My 15 years of experience were divided between the Spanish government, where I worked on issues related to discrimination and racism, and then in Latin America, where I moved in 2008. In places like Mexico and Guatemala, discrimination against migrants and refugees takes very different shapes have very similar dynamics. This change gives me an interesting comparative perspective in the identification of challenges and recommendations. I have been in this region for nearly seven years, and I have had very close contact with migration networks that operate primarily in central and southern Mexico, Guatemala, El Salvador, and Honduras.

From a critical perspective, though always with the intent to help strengthen the social struggle necessary to effectuate the rights of migrants and refugees, I have been able to get to know different organisations that work on this topic from a number of various perspectives. Some help migrants that are in transit while others work with migrants who have been settled for years but remain invisible or with migrants who have been forced to leave their communities and are suffering the consequences.

This experience has allowed me to observe how factors both internal and external to these organisations can interact and effect the way in which they develop their activities and projects. External factors are not linked directly to their work, but are related to the context in which they operate. This article attempts to describe the current situation in the region, looking at both internal and external factors, and the way they interact to create challenges. At the end, I share some recommendations that again emphasize the importance of seeing how these factors are interrelated.

I apologize in advance if anyone feels that my reflections are too general and inexact. It is hard to cover all existing projects and processes, given how scattered the pro-migrant organisations are; there are many projects and processes that are only known at a very local scale. I have great respect and admiration for these activities, and those of all of the organisations. No one can doubt their commitment or their energy; at the same time, self-criticism is important to help us advance our work.

2 Characterization of current migration and human rights organisations in Mexico and Central America

2.1 *External factors that affect the work of these organisations*

One essential factor for human rights organisations—whatever their focus—is the immense problem they are trying to address. It is critical to look at this in contexts like the Mesoamerican one, where the very structure of the State is affected by corruption and impunity.

There, they live and work in situations where complex and difficult problems never cease to appear. These problems are the result of structural configurations that develop differently in each context, but that are always associated in these countries with chronic inequality in the distribution of wealth;

corruption and impunity among the authorities; and discrimination and racism in large parts of society.

This situation is particularly common in the context of migration because of how migratory patterns are evolving in the region and because of how the issue cuts across other social problems that affect migrants—be it in their hometown, along the migration route, at their destination, or when they voluntarily or forcibly return to their community of origin. In my view, the forced migrations observed in Latin America are one of the clearest signs of how the social, economic, and political situation is deteriorating in our countries. This is attributable to a classist, undemocratic, patriarchal, and unequal model of development.

Addressing this broad and complex social reality, where so many elements and problems come together, is often exhausting and overwhelming. It is hard to see an end to the action that is carried out; on the contrary, the more that is done, the more issues there are to address. That frustration becomes a factor to consider, and it explains how many processes of social action begin with great strength and end up falling apart and wearing out their proponents. This psycho-emotional impact is one of the internal factors that affect organisations, though it is also caused by external factors. However, little attention is paid to this issue within organisations, even while it exhausts both individuals and teams.

Even as the organisations multiply in order to deal with this intense social issue—for which they continually face a scarcity of resources—another emerging factor relates to the slow but steady efforts to delegitimize their work. There are news stories in the mass media that criminalize their activities; there are mistakes, scandals, and incidents of corruption committed by individuals in the social movement; there are efforts by some political parties, such as in Mexico, to co-opt the social sector; and there are public institutions that try to discredit those who criticize their policies. Those challenges have not been sufficiently countered by the affected organisations, and that has left the public with a feeling of general distrust towards non-governmental organisations. This bias is particularly visible among youth between the ages of 15 and 25, who express feelings of disdain and distrust of the human rights movement and doubts about its social purpose.

This segment of the population, who could come to take our place in the social movement, often makes reference to the lack of transparency in our actions, and their distrust toward the processes we undertake, among other complaints. The work and commitment that it takes to join a human rights organisation and confront such complex issues often distances us from a large section of society; meanwhile, our efforts go unknown. This means that in today's society, where there is more information than ever but it is confusingly managed, prejudices against the culture of human rights organisations have increased and prevented the consolidation of a social base to support and promote our actions. In addition, the doubt cast upon us reaches the ears of the authorities and economic actors that we must face, and impairs the effectiveness of our advocacy efforts.

Donor policies and priorities are another external element that affects organisations' work. These policies are often decided in places that are very different from the places where the activities are undertaken, which can lead

to duplication of efforts and fuel existing differences such as those between organisations from the centre of the country and those from the periphery/ provinces. This creates unequal power relationships between donors and recipients, and between different donors. Ultimately, this affects which projects are launched. It can mean that people and organisations who may not be the most prepared to address the social issue in question still receive support.

This creates excessive competition for donor resources, particularly now, when less and less money is going to social struggles. It can sometimes prevent a well-formed, concerted effort. It particularly impinges on the world of migration organisations in Mesoamerica, as the principal problems develop far from the centres of power. The distance can be fatal to efforts to confront complex issues, and it can contribute to the discrediting of social organisations in the eyes of society.

One last external factor that must be kept in mind, and that continues to complicate the activities of human rights and migration organisations, are the condoned or extra-legal acts of intimidation by a repressive State. Threats against the defenders of migrant rights have increased in recent years as this issue has risen on the political agenda, and groups with power are showing more interest. Additionally, organized crime has emerged in this area, perceiving the extortion and abuse of migrants to be a lucrative business.

The risks are clear, and caused by the presence of organized crime on migration routes, in collusion with a State that is corrupt either by action or omission, and by the fact that groups with humanitarian origins are increasing their social action and turning from welfare to politics. As a result, public officials and politicians that look at the topic of migration from a perspective of control and so-called "national security" have upped their attacks on defenders of migrant rights in order to maintain their status in zones that overlap with northward migration routes.

2.2 Internal factors that wear down organized civil society

All of these factors that are external to the social movement are at the forefront of the minds of those who work on migration issues in Mesoamerica. They have a corresponding effect on the internal dynamics of social organisations. Some effects already been mentioned, like emotional stress. This combines with other factors, which I will list below, that rise from the dynamic interactions of people who try to organize.

First, the aforementioned intensity of the social and political context in which migration occurs in this region not only complicates decisions about actions and their implementation, but also puts a constant and heavy burden of work on the organisations. It is very difficult to distinguish between what is urgent and what is important, and to establish appropriate priorities. This affects social movements like the pro-migrant groups that in many cases grew out of Christian charity efforts. This historical foundation influences the types of activities and analyses that these organisations carry out; they tend to be humanitarian in nature

and provide social responses to the crisis rather than confronting the structural causes of the symptoms they are attending to.

Such a commitment to helping those who most need support, during transit or after arriving at their destination, is admirable. But it does not contribute to more sustainable processes to defend human rights, nor does it facilitate progress towards a more political and more comprehensive view of migration. A humanitarian focus can, in the long term, cause frustration, because it never ends. As a result, there is constant turnover of staff who carry out this work, with the exception of people associated with religious ministries who continue to fulfil the assigned mission but do not look out for their own emotional wellbeing.

There are important exceptions to this lack of structural work, namely in projects associated with the Catholic faith, which come from a more politicized religious background. However, the Church is more likely to work on other human rights issues, and is not often among those who are dedicated to defending migrants. This difference, along with the charitable humanitarian attitude that prevails in many pro-migrant sectors, makes it even harder to bridge the gap between the struggle for migrant rights and the broader human rights movement.

This dynamic is essential to understanding the current social response to the problems faced by migrants and refugees. For instance, we can not forget that the worst violations of migrant rights are committed in relatively unknown parts of Mexico, Guatemala, El Salvador, and Honduras, which are scarcely populated and hard to access. In such places, the parish or other religious community is often the only group organized with a social purpose.

In these remote areas, we find social groups with a strong sense of humanitarianism. They tend to be linked to some church, but have done little political or strategic analysis. These humanitarian groups are complemented by other groups that work in more formal organisations, often located in the capital city or another large city. These more structured institutions, despite working on the migration issue from afar, sometimes take advantage of their relative power and ability to access information and get in touch with key actors in order to get funding.

Organisations that emphasize project implementation rather than processes tend to have staff with impressive educational credentials; they may even be academics, but with limited social and political awareness. Coming from comfortable backgrounds, and making use of their academic training and working as project managers, they do not question the classist approach to their education. They tend to establish unequal power relationships with "field" organisations and with the migrants whose rights they defend.

Whether these groups lack a strong political vision because of their humanitarian origins or because of the training they received, it often results in a set of pro-migrant activities that don't have a clear end goal or careful political analysis. The work is overly centralized and lacks a long-term strategic approach, which I believe is necessary to confront an issue as complex as migration. These factors often prevent the activities that are implemented from taking into account important things like a gender perspective and respect for the ethno-cultural

diversity of Mesoamerica. This leads to strategies and actions that I believe to be incomplete and counterproductive for achieving the ultimate justice that is being sought.

The unwillingness to criticize or self-criticize those who work this way, and all of us who dedicate ourselves to social issues—despite all the work and commitment we dedicate towards our activities—often prevents a serious analysis of the situation and the identification of lessons learned. It stops us from correcting mistakes that end up discrediting and devaluing us in the eyes of those we want to influence, be they politicians or society in general.

The sum of the personal and emotional elements found in organisations wears on projects, processes, and the people who are trying to drive them. This is especially true because the management approach of organisational leaders is limited; they are more accustomed to managing projects and processes than managing pure human resources. As a result, there can be sharp deterioration within teams, which is almost always addressed too late, when activities are already underway and the teamwork or networking necessary for success has not materialized.

Emotional wear and tear affects those who have often given everything, thinking that their actions would be more effective than they actually were. This frustrates people, and leads them to abandon both the social work they are carrying out at the time, as well as the intention of continuing to work collectively on social processes. It is a kind of exhaustion caused by a lack of understanding between groups of people, due to different experiences and different ways of analysing social problems. This is added to the fear felt as a result of intimidating actions carried out by the State or by organized crime.

This situation becomes more complex given that people who are new to social organisations do not have human rights defenders or related processes that can serve as examples and that can, based on their experience, share a more collective and integrated form of social struggle. We must not forget that we are in a period in history where many political figures no longer exist. Some wore themselves out until they disappeared; some are not relevant to the situation today. This has happened in countries like Mexico, where the PRI system co-opted the social movement for many years, and disappeared those who did not follow its guidelines. The same has occurred in Guatemala and El Salvador, where the armed conflict eliminated many of the most active people. In addition, the signing of the peace agreements led to the disintegration of progressive political alternatives, and heightened tension and distrust. This breakdown or absence of a social fabric has meant a lack of trustworthy references that can help guide people in organisations in thinking about what direction to go in. As a result, people turn to academic processes, or to organisational processes that do not have a social goal, where personal interests supersede collective ones.

Despite the aforementioned factors and obstacles, it is not all bad. In the big picture, as with every social process, pro-migrant organisations and networks are slowly building their policy proposals and social networks, as well as their connections to the broader human rights movement. They are strengthening

their analyses, and, in facing the risks, they choose to raise the political cost for those who attack them. At the same time, they are enlarging their strategic and political vision to better confront these risks. Nevertheless, every week there are new threats that imperil the interesting processes that are afoot in the region. As stated earlier, the fact that migratory issues arise in remote places makes it harder to reduce the risks or strengthen the pro-migrant social movement's policy and strategy formulation process. But, step-by-step, progress is being made.

Finally, another very important factor to cover in terms of the organisational context of migration is the frequent absence of those who are affected. Not only are they not represented in the organisational leadership; they are also completely absent on the inside. The vulnerability that migrants experience, whether in transit, at their destination, or upon returning to their place of origin, often prevents them from being able to participate in organisational processes. Nor are the social organisations in the region very prepared to include those who are far from their home among their members. Cultural, organisational, and language differences do not help.

Their absence affects all of the advocacy efforts, which are unable to include the feelings of those most affected, or their perspective on the problems that they face. The dynamic therefore differs from what occurs in other human rights movements. The leaders of the process are those who defend migrants' rights out of solidarity or charity, not the affected individuals themselves.

Even so, progress has also been made in this area in recent years. Committees have emerged, comprised of family members of migrants who have disappeared in Central America. Latino organisations in the United States have a more comprehensive vision of the political reality of migrants' places of origin. There are organisations comprised of people who have been deported and of migrants who have disabilities acquired as a result of their migratory journey. Organisations and networks of domestic workers in Latin America, many of which are comprised of or led by migrant women, have become more outspoken.

It is important to continue to reinforce the efforts of migrants to demand their rights, because the migratory situation becomes more complex every day, with more intense cases of human rights violations affecting more and more people. It is not impossible; despite their vulnerabilities and the difficulties they face, these groups have been able to organize and gain increasing visibility. These organisational processes are still developing, and they are still weak in terms of leadership and strategic vision. But they are giving greater prominence, with the accompanying successes and failures, to those who are most directly affected by forced migration.

3 Suggestions for addressing issues and challenges in the organisations

The sense of self-criticism and reflection in the preceding sections of this article is not at all intended to end in frustration or a feeling of disappointment. On the contrary, the aforementioned critiques aim to help generate pathways and

recommendations for addressing the situation more effectively, and to help identify actions and strategies that could improve efforts on behalf of migrants and refugees in Mesoamerica. Thus, I can not end this article without turning these criticisms into challenges that can be confronted, and without making some suggestions that I believe, based on my experience, could help to improve the outlook.

My primary proposal, which I feel should always be the first step when facing such a complex situation, is for organisations and networks to put more effort toward reinforcing their political-strategic analysis of the context they are working in. This will create opportunities to investigate the structural causes of the problem in more depth. With a more comprehensive understanding of the issue, including a better comprehension of the structural causes behind migration, they can develop an ideology for their actions and proposals.

Reinforcing the analysis in this way can only bring about benefits. Based on what has happened in other social movements, we know that it can strengthen strategies, giving them a longer-term view, and thereby reducing the exhaustion and frustration that can come from addressing such complex social and political issues. It can build a sense of belonging and collective struggle necessary for true complementary teamwork. It can bring the pro-migrant movement closer to other human rights defenders, by helping them to identify areas of overlap where they can collaborate. Finally, it can improve security and protection for human rights defenders, by giving them more tools and protective networks against the attacks and threats suffered in their work, which may be perpetrated either by the State or by illegal actors.

Based on my experience, I see an advantage to expanding the space for analysis and adopting more political and longer-term strategies for social action. To do so, social organisations must take the time—even in the intense contexts in which they work—to create such spaces for internal analysis and training. This does not often occur. The training need not be formal, but it should, I believe, be complemented by teaching moments that are centred on the exchange of experiences with organisations that have a longer history defending human rights, and with members that have more experience. Doing so would generate more collective and committed points of reference for those who lead organisations' activities.

If there is anywhere where such exchanges—both one-off and long-term—are particularly important, I think it is in the world of migration, because of the similar dynamics of discrimination experienced by migrants in different parts of Mesoamerica, Latin America, and the rest of the world. Moreover, the work is often centred around helping people who are on the move, who could be in one place one day and elsewhere in the region a few weeks or months later. The exchanges would also help overcome what are sometimes very local views of migration, and help to identify common ground where the work could be strengthened through networking. Coordinated work always has greater influence and impact on politicians, who make the decisions that either improve or worsen the human rights situation for migrants.

Expanding networks, views, and perspectives is critical, in my experience, not only to build social organisations' capacity for responsiveness and impact, but also, and in particular, to ensure that the discourse inherent in those actions reflects the causes and effects of forced migration. The social phenomenon of migration is constantly growing due to the impacts of the neoliberal model. Joining this broader perspective to one that focuses on human rights is important in order to avoid resorting to partial or incomplete solutions that ignore the social and political sides of migration.

Having skilled staff and more stable policy proposals would also create more sustainable processes, where leadership is transferred more often. One should keep in mind that addressing social issues from this perspective will be harder for society and even donors to understand. Still, if we can adequately explain the "whys" behind forced migration in the region, we can gain a stronger social base to support and understand our actions. We can also convince donors and politicians of the need for a mental shift and a new development model.

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ABSTRACT

LGBTI people around the world have faced various forms of violence and discrimination. This requires an analysis of the social role of sexuality, and how that definition has enabled recognition of the rights of different social groups. The struggle for the protection of LGBTI rights also leads us to analyze intergovernmental dynamics by looking at the discourse used in political and economic negotiations, among others, as well as at the interests and forces at work.

THE PROTECTION OF LGBTI RIGHTS: AN UNCERTAIN OUTLOOK

Gloria Careaga Pérez

The struggle to gain respect for LGBTI[1] rights has a long history. Sexual orientation has been recognized in theory as a fundamental element of the private life of every individual, which should be free from arbitrary or abusive interference by public authorities (COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, *Karen Atala e Hijas vs. Chile*, 2010, párra. 111; *Marta Lucía Álvarez Giraldo vs. Colombia,* 1999). The right to an identity has been the fundamental basis for recognition of the right to a gender identity and to the free development of an individual consistent with that gender identity. Nevertheless, alternative sexual orientations and gender identities continue to be the targets of legal and/or social persecution in many countries around the world. This is due, first and foremost, to confusion between the terms and to where sexuality is situated in the discourse.

The different approaches to sexuality in each of the regions of the world have led to the development of different views about its practices and expressions. We have seen that when there is more religious interference and less open discussion about sexuality, stigmas and prejudices become more evident. They are then accompanied by fear and by a rejection of any expressions that fall outside the restrictive framework in which sexuality has been placed.

In most countries, the characterization of sexuality as just another dimension of human life has been rejected. Its role has even been distorted to relate it specifically to reproduction, condemning its real function, which is sexual pleasure. The distortion of sexuality has been underway since the 18th century, when the reproduction-sexuality link was created, placing any sexual practice that did not have a reproductive motive outside what is "normal"; this marked the realm of legitimate sexuality and defined anything that was unfruitful or that did not aim for reproduction as illegitimate.

Based on this conceptualization, *perversions* have been embedded in the

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human mind that determine and describe the irregular aspects of our sexuality. Some see these perversions as sins, while others see them as illnesses. And, some have been labeled illegal. Science has created sexual categories, determining ranges for each, and defining the outliers through the medicalization and judicialization of sex as well as through psychiatric analysis and the punishment of its non-genital forms (ÁVILA FUENMAYOR; ÁVILA MONTAÑO, 2010).

Gay and lesbian people are made to feel vulnerable and disgraced when they are labeled as being outside of social normalcy; in the past, they have been associated with sin, illness, or criminality. Even male effeminacy and the masculinization of women have been linked to this condition, based on ignorance of the fact that these are distinct phenomena related to the representation of gender; such individuals therefore suffer from the same stigma placed on gay and lesbian people. Thus, identifying LGBTI people by their assumed sexuality can place them in highly vulnerable situations.

An expression that is often used to refer to the rejection of sexual and gender nonconformity is *homophobia*.[2] This phenomenon is perpetuated through socialization, particularly through families, the school system, the media, and churches, but the State is also definitively responsible. That is to say, the discrimination that LGBTI populations suffer, based primarily on moral arguments, limits their access to social benefits. The State should be respecting and guaranteeing the full exercise of their rights because states are obliged to protect the life, integrity, development and dignity of all persons.

Five countries – Saudi Arabia, Iran, Mauritania, Sudan and Yemen – and parts of Nigeria and Somalia condemn homosexuals to death (INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, 2014) and over 70 countries punish homosexuality with imprisonment or corporal punishment. Surveys have shown that over 70% of the LGBTI population has suffered from discrimination, but many incidents go unreported. Homophobic crimes are also kept hidden, and when complaints are made, the authorities re-victimize the victims. Many of the attacks are classified as "crimes of passion" or the result of provocations, a legal approach that seriously limits the availability of information about such cases.

Fortunately, more and more new institutions and organizations are releasing data about these crimes. This points to the urgent need for a methodology that can objectively and precisely document this situation in order to gauge the true extent of this social phenomenon.

In this regard, the 2006 report by the Inter-American Commission on Human Rights (IACHR) made clear that many of the people who needed protective measures were LGBTI rights activists, who had been threatened and attacked because of their activities (COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, 2006, párra. 252). Since then, the IACHR has documented an increase in the number of attacks, incidents of harassment, threats, and even smear campaigns against defenders of LGBTI rights; these acts are perpetrated by government officials as well as by private citizens. Other systems of human rights protection already share this concern.[3]

The General Assembly of the Organization of American States (OAS) issued several resolutions (ORGANIZACIÓN DE LOS ESTADOS AMERICANOS, 2008; 2009; 2011) after the 2006 report, indicating that states should "ensure adequate protection for human rights defenders who work on the issue of acts of violence and human rights violations committed against individuals because of their sexual orientation and gender identity" (ORGANIZACIÓN DE LOS ESTADOS AMERICANOS, 2009, par. 3). Still, reports of aggression – including assassinations, threats, criminalization of advocates' activities, as well as discourse aiming to defame defenders of these rights – continue to be a concern for LGBTI organizations in the region.

Inadequate investigations make it impossible to do a detailed analysis of the possible causes of these crimes. Furthermore, the lack of specialized records among these populations is an indicator of their vulnerability. There is a high probability that in the absence of an effective judicial system, these acts will continue.

Even so, LGBTI organizations' increased activity around the world is not only demonstrative of the daily violations that they face, but it also highlights the bravery and commitment that increasing numbers of people are bringing to the fight for their rights. Despite the risks, more and more groups and organizations are being formed, providing a more complete picture of the harassment that LGBTI people face and the challenges to decriminalizing and protecting their status. Even in places where this status is not criminalized, some organizations have stopped operating under the radar and have made themselves more visible, registering their organizations and negotiating with the authorities.

This situation has also meant that the complaints of people who are discriminated against based on their sexual orientation or gender identity increasingly resonate, not only within their own countries, but also in intergovernmental arenas. According to Girard (2007), this should not surprise us: the UN is one of the most prominent spaces for the creation of norms and international discourse, so it seems inevitable that it would serve as a key forum for debating sexuality. Still, the path to developing this presence has been bumpy.

We could say that the debate around the status of homosexuality began, indirectly or tangentially, at the International Conference on Population and Development, held in Cairo in 1994, where there was an attempt to recognize sexual rights. However, it turned out to be impossible, due to the fear of the Vatican and some governments that it would include aspects of homosexuality. The negotiations became difficult, and the opposition of the Vatican and some Latin American allies to *sexual and reproductive rights* resulted in the exclusion of the phrase *sexual rights*, leaving only *reproductive rights*. The acceptance of reproductive rights was the result of a strong push by feminists.

Moreover, the Vatican's rejection of the term *gender*, in favor of using the binary categories and pre-established social roles of men and women (CAREAGA, 1995) opened an unexpected debate. In the end, this actually resulted in an important precedent for the recognition of fluid or multiple gender identities or expressions (transgender), due to the need to discuss gender as a social construct with different representations.

It is worth noting that in these prolonged negotiations, Argentina, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua and Peru supported the Vatican's moralistic and biologistic position – noting their opposition to the mention of reproductive rights – and the position of the United States – under the pressure of their debt obligations and economic adjustments to financial aid. At the same time, the Organization of African Unity, under the leadership of Senegal, supported the inclusion of language on sexual rights at a regional preparatory meeting.

Even more clearly, at the World Conference on Women held in Beijing in 1995, a better strategy placed sexual rights and sexual orientation in the center of the debate. It was a critical time to change thinking around sexuality, and concepts were further developed during a long and intense dialectic process. Nevertheless, although sexual orientation was explicitly linked to sexual rights, health activists made a strategic decision not to highlight it. The intense discussion around sexual orientation even led to an informal extension of the Conference; the four days of debates finally ended at 5 a.m. the morning after the agreed end date.[4]

In the end, sexual orientation and sexual rights were left out of the text, but paragraph 96 (NACIONES UNIDAS, 1995) clearly establishes an individual's right to have control over and decide freely and responsibly on matters related to sexuality, free of coercion, discrimination and violence.

This result emerged after the Vienna Tribunal for Women's Rights, held on 1993, on violence against women raised awareness and highlighted violations related to sexuality. There was strong support from Sub-Saharan Africa, the Caribbean, Egypt and Iran, and various Latin American countries, such as Brazil and Mexico (GIRARD, 2007).

We can say that the systematic efforts to include sexual orientation and gender identity in the international agenda have continued through the United Nations Council on Human Rights, where in 2003 the government of Brazil argued for the need to issue a resolution that recognized the daily discrimination faced by LGBTI populations and identified actions to address it. The fact that a Latin American country raised its voice on this topic was a new milestone in protecting the rights of LGBTI people. Even though the government of Brazil withdrew the proposal – likely due to its economic negotiations with the Arab countries – this did not close off opportunities to draft and present new Resolutions and Declarations.

Interestingly, as long as women have occupied the seat of the Office of the UN High Commissioner for Human Rights, the debate over sexual orientation has not only continued, it has also grown. Indeed, the discussion has even reached the General Assembly, where sixty-seven countries supported a 2008 declaration. More countries have since signed on to that declaration. Nevertheless, or perhaps precisely because of this, the election of a woman to that post is now at risk.

Furthermore, introducing the topic of people's status based on their sexual orientation and gender identity has not only been constant in the UNHRC, but

it has also given rise to the insertion of a discussion around sexuality in each of the sessions of the Council. At the same time, it has motivated UN rapporteurs and agencies to take measures to protect LGBTI rights.

But we cannot claim victory yet. As I mentioned before, the daily experience of LGBTI people around the world is deplorable and bloody. Even in the recent negotiations to define the Post-2015 Development Agenda, we have seen a realignment of the conservative forces that not only aim to prevent progress, but also to eliminate any consideration of these issues in development plans.

The social, economic and political panorama has changed. The European Union, North America, Latin America, and some Asian countries have drafted more advanced proposals to guarantee human rights related to sexuality. Meanwhile, the African Union and Caribbean countries, influenced by new religions, and economic and market pressures, have joined Russia's leadership, the Vatican, and some Muslim countries to prevent recognition of the legitimacy of efforts to defend LGBTI rights, and even to try to reverse the gains made in women's rights.

Conclusions

The different ways of subjugating bodies and regulating populations have been key tools of the modern state in the development of economic and political processes. This is clearly manifested in different forms of control, and in public, scientific and legal discourses and religious beliefs – both preexisting and renewed ones.

Even though the status of LGBTI people has taken center stage in intergovernmental debates, it often continues to be framed only in terms of sexuality. This view, colored by moral stigma and prejudice, significantly limits the treatment of LGBTI people as citizens in their daily lives. It makes them vulnerable, shames them, prevents them from exercising their fundamental rights, and even criminalizes them.

The inclusion of sexuality in scientific, legal, and religious regulations illustrates how the religious authorities, such as the Vatican and evangelical groups, have used their perspective on sexuality to define international politics.

The discussions that have taken place on sexuality in intergovernmental forums show that beyond just being controlled by silence, sexuality has been constructed and regulated through a variety of discourses and power strategies. By analyzing the mechanisms through which this power is deployed within the UN, we can better understand the demands and arguments at play between the progressive and conservative forces.

There are many dynamic interests involved in the recognition of sexuality and LGBTI rights. If the struggle for the defense of these rights is to someday be successful, it will have to be attuned to constant economic and geopolitical reconfigurations.

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NOTES

1. LGBTI is a common acronym used to name people who are lesbian, gay, bisexual, transgender, and intersex.

2. The word "homophobia" refers to an obsessive aversion to men or women who practice homosexuality. It generally also includes other expressions of sexual or gender diversity, such as transgender people (i.e., men with female gestures or characteristics, or women with male gestures or characteristics). Some authors also prefer to differentiate between those who reject each of these expressions of sexuality or gender: homophobia, lesbophobia, transphobia.

3. The UN Special Rapporteur on the situation of human rights defenders has said he is "deeply concerned about the continuing denigration campaigns and the violent threats against defenders of lesbian, gay, bisexual and transgender rights" (NACIONES UNIDAS, 2009, par. 49).

4. A comprehensive description of the process can be found in Girard (2007).

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ABSTRACT

This paper will consider whether LGBT rights are best seen as drawing from a wider notion of struggle. To make this point, the present paper will first map the role that pioneers of democratic struggle, whether Luis Gama in Brazil, Mahatma Gandhi in India or Nelson Mandela in South Africa, have played in setting in place an understanding of transformative democracy. It will be argued that this foundational struggle has had an imprint upon the constitutional framework in those countries and hence makes it possible for the Constitution to be transformative. This paper then argues that a successful LGBT articulation in each of these countries draws upon these histories of resistance, be they against colonialism in India, racism and military rule in Brazil or apartheid in South Africa.

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KEYWORDS

BRAZIL, INDIA, SOUTH AFRICA: TRANSFORMATIVE CONSTITUTIONS AND THEIR ROLE IN LGBT STRUGGLES

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Twelve voices were shouting in anger, and they were all alike. No question, now, what had happened to the faces of the pigs. The creatures outside looked from pig to man, and from man to pig, and from pig to man again; but already it was impossible to say which was which.
George Orwell (1945)

1 Introduction

The BRICS states (Brazil, Russia, India, China and South Africa) are increasingly viewed as a new power bloc, with the potential to displace the hegemony of the global north. The key question is: If there is a transition, what kind of transition will this be? Will it amount to a substantive change from the past, or will it be merely what Orwell described at the end of *Animal Farm*, when the pigs take over from the humans and exploit the other animals just like the humans before them?

The BRICS have the potential to become the pigs Orwell warned against. They already possess elements of domination based on economic power. The footprint India and China have left across Africa is a testament to the economic power exerted by the BRICS, and their enormous potential for causing widespread harm.[1] While this is the world of real politics, as activists the concern would be whether there is another kind of connection which can be forged between the BRICS' peoples, between social and political struggles by movements in each of these countries.

Activists in each of the BRICS nations have very different challenges based upon the degree of authoritarianism of their respective states. Each country has its own political trajectory—India, South Africa and Brazil are democracies (to varying degrees), while Russia and China suffer from authoritarianism (of

differing degrees). This paper examines the possibilities and inter-connections opened up through people's struggles in the three democracies (i.e. Brazil, India and South Africa).[2] First I discuss whether the history of democratic struggles in each of these countries provides the foundation for a widening and deepening of democracy. To make this point, I focus on the role that pioneers of democratic struggle—Luis Gama in Brazil, Mahatma Gandhi in India or Nelson Mandela in South Africa—have played as emblems of a collective resistance and mappers of a collective future. I then argue that the constitutional framework adopted in each of these states bears the imprint of these struggles and hence has the potential to be transformative. Finally I make the point that a successful LGBT articulation in each of these countries has depended on its ability to draw upon these histories of resistance, whether against colonialism in India, racism and military rule in Brazil or apartheid in South Africa.

2 Fleshing out the idea of freedom: Nelson Mandela, Mahatma Gandhi and Luis Gama

The biographies of three figures—Nelson Mandela in South Africa, Mahatma Gandhi in India and Luis Gama in Brazil—symbolize the struggle against racial and colonial domination. Their lives serve to articulate some of the dimensions of what freedom means and provide something akin to a 'freedom roadmap'.

In his autobiography, *A Long Walk to Freedom*, Mandela details what it meant to live under a regime of daily humiliation. In a country which is overwhelmingly black, the African child discovered that he or she had no place:

> *An African child is born in an Africans-only hospital, taken home in an Africans-only bus, lives in an Africans-only area and attends Africans-only schools, if he attends school at all [...]*

> *When he grows up he can hold Africans-only jobs, rent a house in Africans-only townships, ride Africans-only trains and be stopped at any time of the day or night and be ordered to produce a pass, without which he can be arrested and thrown in jail. His life is circumscribed by racist laws and regulations that cripple his growth, dim his potential and stunt his life.*

> (MANDELA, 1994, p. 109).

It is this realization spurred by "a steady accumulation of a thousand slights, a thousand indignities and a thousand unremembered moments" which, according to Mandela, fed "an anger, a rebelliousness, a desire to fight the system that imprisoned my people" (MANDELA, 1994). The struggle against the apartheid system waged by the South African people and symbolized by the twenty-seven years Mandela spent in prison could easily have perverted the meaning of democracy. However as early as 1962, in the course of the Rivonia trial, Mandela articulated a broad and encompassing notion of what democracy would mean in post-apartheid South Africa. As he put it,

I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die.

(MANDELA, 2014).

This experience of indignity and collective humiliation suffered by the black people of South Africa and by Mandela finds a precursor in the struggle of Mahatma Gandhi. The ideas of satyagraha, or non-violent action, actually took shape in Gandhi's head in South Africa (where he lived for twenty-one years). When he arrived in South Africa for the first time to work as a lawyer for an Indian merchant, Gandhi quickly realized that his Indian colleagues survived in South Africa only by "[making] it a principle to pocket insults as they might pocket cash" (GANDHI, 1968, p. 57). And this is precisely what Gandhi refused to do.

The incident at the city of Pietermaritzburg, South Africa in 1893, where Gandhi was thrown off a train due to his insistence that he had a first class ticket and hence as much right to be there as any white person, has justly become famous. On being thrown off the train, Gandhi contemplated his future course of action:

I began to think of my duty. Should I fight for my rights or go back to India, or should I go on to Pretoria without minding the insults, and return to India after finishing the case? It would be cowardice to run back to India without fulfilling my obligation.

(GANDHI, 2010, p. 107).

As we know, the train incident hardened Gandhi's will to challenge racist domination.

After the Pietermaritzburg incident, Gandhi attempted to resume his journey by coach; with great difficulty he finally obtained a ticket, but only on the condition that he sit outside, next to the coachman, and not inside the coach where there were only white people. As Gandhi was sitting outside, next to the coachman, the leader of the coach came out from inside the coach and confronted him. Gandhi described the ensuing scene:

Now the leader desired to sit where I was seated, as he wanted to smoke and possibly to have some fresh air. So he took a piece of dirty sack cloth from the driver, spread it out on the footboard and addressing me said, 'Sami, you sit on this, I want to sit near the driver.' The insult was more than I could bear. In fear and trembling I said to him, 'It was you who seated me here, though I should have been accommodated inside. I put up with the insult. Now that you want to sit outside and smoke, you would have me sit at your feet. I will not do so, but I am prepared to sit inside.'

As I was struggling through these sentences, the man came down upon me and began heavily to box my ears. He seized me by the arm and tried to drag me down. I clung to the brass rails of the coachbox and was determined to keep my hold even at the risk of breaking my wristbones. The passengers were witnessing the scene, the man swearing

at me, dragging and belabouring me, and I remained still. He was strong and I was weak. Some of the passengers were moved to pity and exclaimed: 'Man, let him alone. Don't beat him. He is not to blame. He is right. If he can't stay there, let him come and sit with us'.

(GANDHI, 2010, p. 109).

Gandhi further describes another incident: when walking on the street, he was ordered to leave the footpath and was pushed and kicked into the street (GANDHI, 2010, p. 125). On another occasion, upon his return to South Africa from India in 1897, he was pelted with 'stones, brickbats and rotten eggs' (GANDHI, 2010, p. 186).

So if freedom is to mean anything at all, at the least it must mean that this regime of insults and humiliations is overthrown. Formally the struggle of Gandhi, which began in South Africa in the 1890s, culminated in India with independence in 1947. However while external freedom might have been won, the struggle against regimes of humiliation continues for vast sections of the Indian population.

The importance of narrating in great detail the humiliations faced by Gandhi is to underscore the idea that if freedom is to mean that one is liberated from a regime of humiliations, such a freedom is not yet the reality for a section of Indian people including LBGT persons and the minority Dalit community.[3] At the same time, its important to note that the struggle against untouchabilty as well as the struggle for LGBT rights could draw inspiration from one who in his own life questioned the humiliations which still are heaped upon both Dalits and LGBT persons.[4]

While Gandhi and Mandela are iconic figures whose fame has travelled far beyond their shores, the Brazilian anti-slavery activist, poet, lawyer and journalist Luis Gama is a relatively lesser-known figure outside Brazil. Gama's life was even more eventful than that of Gandhi and Mandela.

Gama was born on June 21, 1830 to a Brazilian father and African mother. He was sold into slavery by his father at the age of 10 and spent eight years in bondage as a houseboy. During his time as a houseboy, he formed a friendship with Antonio Rodrigues do Prado, a law student who was staying with his owner and who taught him how to read and write.

In 1848, using his newly acquired knowledge, Gama then escaped from his owner along with certain legal documents and used those documents to make an argument before the court that he was not a slave and his detention was illegal.[5] The argument was accepted and Gama became free and went on to gain an education and become a lawyer. As a litigator, he was an unwavering fighter for the emancipation of Brazil's slaves, waging his struggle through the law courts as well as the media. His remarkable work ensured that many Negro slaves were freed. As James H. Kennedy notes,

Unlike other talented Brazilians of colour who, once achieving fame and consequential social ascension, ignored the situation of their less fortunate brothers, Luiz Gama, after having won acclaim as a poet, dedicated the rest of his life exclusively to a personal struggle to abolish the institution of slavery in Brazil. He began his campaign by

defending in court blacks who had been illegally enslaved and by purchasing the freedom
of the individual slaves with funds obtained from private sources. Very often he received
financial contributions for his cause as a result of his anti-slavery lectures.

(KENNEDY, 1974).

His aim was to achieve the ideal that "the land of the Southern Cross [Brazil] [be] without a king and without slaves" (KENNEDY, 1974). Gama's story points us to a history of Brazil wherein the resistance to oppression based on colour is key. To treat human beings as slaves, to deny them their dignity, equality and autonomy, is anathema to the Brazilian history of struggle for equality. Gama's often lonely fight for equality, emancipation and dignity through the creative use of the courts is a pivotal aspect of Brazilian history and an inspiration for subsequent progressive social movements.

The stories of these three figures form part of the history of the global struggle against domination; considered together, these three figures draw attention to another possible history for the BRICS. Humiliation and second-class citizenship were anathema to these great figures, who symbolize in their own persons a collective history of struggle against imperialism and racism. Looking forward, the question is how to connect these struggles to more contemporary contexts.

3   National liberation and LGBT activism: Some connections?

The links between the anti-apartheid struggle and the struggle for the rights of LGBT people are best illustrated through the iconic story of Simon Nkoli, an activist against both apartheid and institutionalised homophobia. Simon's story is well known in South Africa, but must become more widely known in the global LGBT community. His struggle exemplifies a new and inspirational model for activism, neither sectarian nor singular, but embodying the widest notion of a suffering humanity.

Tseko Simon Nkoli's anti-apartheid activism began with his arrest in the student rebellions of 1976. In 1979 he joined the Congress of South African Students (COSAS); this student activism led him to join the African National Congress and the United Democratic Front (UDF). In 1984 he helped establish the Vaal Civic Association, charged with organising tenants in the township of Delmas, east of Johannesburg.

Nkoli and 21 others from the UDF were arrested after a march protesting government-imposed rent hikes. They were charged with 'subversion, conspiracy and treason', crimes subject to the death penalty. The 'Delmas Trial' lasted four years.[6]

While in the Pretoria Central Prison, Nkoli came out to his comrades when a love letter written by his fellow prisoner to a convict was discovered by the warden; the warden informed the other inmates of this. In a meeting among the accused to discuss this letter, Nkoli discovered general outrage and strong sentiments prevailing against homosexuals.

As Nkoli tells it, Terror, a cellmate, announced: "'Comrades, I've got this

love letter. It's disgusting [...]'" Hearing this range of negative opinions expressed about homosexuals, and witnessing the physical violence visited upon the letter's author, Nkoli found himself overcome by rage. As he says, "The next thing I heard was my own voice, interrupting, 'What about me?' Terror was dumbstruck: he had only ever had political discussions with me" (GEVISSER; CAMERON, 1994, p. 254). As Nkoli continues, "But then others started interjecting. One guy said, 'We should have our own trial. I'm not going to stand accused with a homosexual man'. I stood up and said, 'I think I should leave this meeting now. This is including me as well. Here you are not talking about the person who committed this act. You're actually talking about homosexual men and I am one'" (GEVISSER; CAMERON, 1994, p. 254).

What followed was an intense period of discussion on whether Nkoli should stand trial with the other Delmas accused. Finally the intervention of the progressive lawyers defending the accused decided the matter—the lawyers were unequivocal in stating that they would pull out if there were more than one trial. As Nkoli puts it, these intense debates and discussions, combined with the strong support that he received from the anti-apartheid movements in Britain and Europe, resulted in a change in attitudes.

This action, and the debates it inspired, prompted UDF leaders (such as co-defendants Popo Molefeand Patrick Lekota) to recognize homophobia as a form of oppression. Terror Lekota, now national chair of the ANC and fellow Delmas defendant, said that, despite initial hostility,

> *All of us acknowledge that Simon's coming out was an important learning experience [...] How could we say that men and women like Simon, who had put their shoulders to the wheel to end apartheid, should now be discriminated against?*
>
> (DAVIS, 1999).

In Simon Nkoli's own words,

> *I'm sure that my continued involvement with the African National Congress after my acquittal has helped to gain credibility for gay rights within the liberation movement, and it has also helped many other gay and lesbian people within the liberation movement in their coming out. It's difficult for me to tell exactly what the relationship is between my anti-apartheid activism and my gay activism, but there are two things I know for sure. The first is that my baptism in the struggles of the township helped me understand the need for a militant gay rights movement. The second is that this country will never protect the rights of its gay and lesbian citizens unless we stand up and fight–even when it makes us unpopular with our own comrades.*
>
> (GEVISSER; CAMERON, 1994, p. 256).

In India, there is no inspirational presence like Simon Nkoli, who straddles the worlds of anti-imperialism and the freedom to define one's sexual identity. However, there is another iconic figure who, much like Simon Nkoli, not only struggled against external (imperialist) domination but equally against internal

(caste) domination. The figure I want to recall is Dr. B.R. Ambedkar – the first untouchable leader of modern times and a politician, lawyer and statesman who ceaselessly fought against the discriminatory attitudes of upper caste India towards the Dalit community.[7]

Much like Luis Gama in Brazil and Gandhi in South Africa, Dr. Ambedkar struggled throughout his life to overthrow the regime of daily humiliations he experienced as a Dalit person. The majoritarian ethic prevailing in India imposed apartheid-like restrictions on Dalits: where they could live, what kind of work they could do, whom they could marry and what they could eat. Any disobedience of these series of prohibitions, enforced by the sanction of the caste system, was treated with severe consequences, even murder.

Though there is no direct connection between the struggle of the Dalit community and the struggles of the LGBT community, there is one in terms of principle. Dr. Ambedkar's struggle was fundamentally one against the majoritarian ethic, as with the struggle of LGBT people. In Dr. Ambedkar's thinking, morality could never be the basis for depriving a minority of their rights. The fact that the majority considered it immoral to dine with Dalits, or to live in the same quarters as Dalits, did not mean that the majority opinion should prevail. Dr. Ambedkar's life exemplified the struggle against a morality which sanctified the customs and thoughts of the majority as the law of the day. It is precisely this struggle against a majoritarian ethic which embodies the struggle of the LGBT community in India today.

In Brazil, the iconic struggle against the military dictatorship of 1964-1985 serves in many respects as the founding narrative for social movements. As Glenda Mezarobba puts it,

> *Among the most frequently adopted penalties were exile, suspension of political rights, loss of political mandate or removal from public office, dismissal or loss of union mandate, expulsion from public or private schools and imprisonment. Just as arbitrary detention was commonplace, so was the use of torture, kidnapping, rape and murder [...] To eliminate its opponents, the government instead carried out summary executions or killed its victims during torture sessions, always behind closed doors.*
>
> (MEZAROBBA, 2010).

The struggle to end the myriad practices of cruelty which constituted the dictatorship forms the heart of the Brazilian impulse toward democratization. It is this same impulse LGBT activists in Brazil draw upon in their struggle.

4 Transformative Constitutions

These struggles—whether in South Africa against apartheid, in India against colonial domination and caste domination, or in Brazil against military domination—have profoundly influenced the nature of the states that arose in their wake. The constitutions of India, South Africa and Brazil, adopted and shaped in light of their painful pasts, are what Professor Upendra Baxi calls 'transformative constitutions'. In his words,

> *The BISA (Brazil, India, South Africa) project constitutes a momentary, and even perhaps, momentous, pursuit of the politics of human hope. It postulates the idea that constitutions are necessary and desirable and further that they may, in some contexts of history, carry a transformative burden, character, or potential.*

<div align="right">(BAXI, 2013, p. 30).</div>

The transformative aspect of a constitution may come not from its official interpretation, but rather from 'the voices of human and social suffering of the right-less' or 'communities of resistance' (BAXI, 2013, p. 27), once they become interpreters of the constitution. It is in this context that a remembrance of the many histories of struggle that resulted in the constitution become deeply relevant. The narratives of Gandhi, Gama, Ambedkar and Mandela—among many others—would be vital in bringing to bear an understanding of the constitution as a document not of the past, but with deep meaning for a future based on respect for the inherent dignity of all persons.

> *The idea of a transformative constitution is also addressed by (former) Chief Justice Mahmood of the South African Constitutional Court in a 1995 case where the death penalty was declared unconstitutional: It [The South African Constitution] retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive, and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos expressly articulated in the Constitution. The contrast between the past which it repudiates and the future to which it seeks to commit the nation is stark and dramatic.*

<div align="right">(SOUTH AFRICA, S v Makwanyane and Another, 1995,
para. 262).</div>

What marks Brazil, India and South Africa is that the constitutions of these three countries set in place a normative framework of rights which had the ability to speak to the future. The constitution did not lock in place dead and fossilised institutional arrangements but, on the contrary, opened the door to the future.

The constitutions of Brazil, India and South Africa, in the hand of imaginative judges, have the potential to speak to the situation of the oppressed. Justice Vivian Bose, one of India's finest judges, best expressed this sentiment when he said that the words of the constitution are not "just dull lifeless words static and hidebound as in some mummified manuscript", but rather a "living flame intended to give life to a great nation and order its being, tongues of dynamic fire potent to mould the future as well as guide the present" (INDIA, *State of West Bengal v. Anwar Ali Sarkar*, 1952, para. 84-85).

The reason it is possible to think of a constitution in these terms is because these constitutions have behind them a rich history of struggle. The challenge is how this rich history of struggle transmutes the constitution from 'dull lifeless words' to 'tongues of dynamic fire potent to mould the future'.

5 Transforming norms of gender and sexuality:
The Constitutional experience of Brazil, India and South Africa

LGBT activism must address the question of how this notion of a transformative constitution can be extended and advanced in order to address the humiliations suffered by the LGBT community.

In South Africa, the struggle against racism encompassed within its fold a conceptualization of the struggle against discrimination on the grounds of sexual orientation. As a result, the Constitution itself expressly recognized sexual orientation as a prohibited basis of discrimination in the new South African state:

> 9. Equality [...]
>
> (3)The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
>
> (SOUTH AFRICA, 1996, p. 1247).

The judiciary has read the equality provisions along with the provisions guaranteeing dignity[8] to effect a progressive jurisprudence on LGBT issues: these provisions have served to invalidate anti-sodomy laws (SOUTH AFRICA, *National Coalition for Gay and Lesbian Equality v. Ministry for Justice,* 1998) and have allowed the Constitutional Court to powerfully assert that only the legal recognition of marriage on par with heterosexuals would stand the test of equality and dignity (SOUTH AFRICA, *Minister of Home Affairs v. M.A. Fourie*, 2005).

> In Minister of Home Affairs v. M.A. Fourie, where the Court held same sex marriage to be on par with heterosexual marriage, the Constitutional Court declared as follows: The acknowledgement and acceptance of difference is particularly important in our country where for centuries group membership based on supposed biological characteristics such as skin colour has been the express basis of advantage and disadvantage.... Accordingly, what is at stake is not simply a question of removing an injustice experienced by a particular section of the community. At issue is a need to affirm the very character of our society as one based on tolerance and mutual respect.
>
> (SOUTH AFRICA, *Minister of Home Affairs v. M.A. Fourie*, 2005, para. 60).

The judges expressly drew from the history of the struggle against apartheid as they fashioned a new series of rights. In the judges' conceptualization, the struggle for equality for LGBT persons flowed from the struggle against racism.

While South Africa's Constitution includes the recognition of sexual orientation, by comparison in India the only legal recognition of LGBT people is the Indian Penal Code of 1860, which criminalizes what it calls 'carnal intercourse against the order of nature'.[9] This provision has stood for over one hundred and forty years uninterrupted and functioned as a tool to harass the LGBT community.

Most recently on December 11, 2013, the Supreme Court of India ruled that the law which criminalized homosexual acts was constitutionally valid, signalling a failure to apply the norms of equality, privacy and dignity to LGBT persons (INDIA, *Suresh Kumar Koushal v. Naz Foundation*, 2014). This decision constituted a huge failure of the Court, not only to recognize that LGBT persons have rights, but more importantly that the Indian Constitution might be transformative. This becomes even more marked when one views the decision which the Supreme Court overruled, namely that of the Delhi High Court in *Naz Foundation v. NCR Delhi* (INDIA, *Naz Foundation v. NCR Delhi*, 2009).

When the history of the LGBT movement in India is written, the Delhi High Court's decision, which took four years, will represent a landmark moment of great transformation. This was because in 2008, after fifty-eight years of constitutional silence (The Indian Constitution came into force in 1950), the Delhi High Court struck down the provision of the Indian Penal Code (IPC) in light of the constitutional promise of equality, privacy and dignity. The judgement itself drew from both the experience of the LGBT community and from deep constitutional wellsprings. The creativity of the judgement lay in its use of a philosophical approach to the Indian Constitution as a document of 'inclusivity' in order to redress the history of violence and humiliation suffered by the LGBT community.

The Delhi High Court in *Naz Foundation v NCR Delhi* struck down Section 377 of the IPC, thereby effectively decriminalizing the lives of LGBT persons. What is remarkable is that the judges, in arriving at their conclusion that Section 377 was in violation of the right to equality, privacy and dignity, chose to place this case within a transformative constitutional tradition.

They cited Dr. Ambedkar's notion of constitutional morality to clarify and emphasise that the vision of a democracy in India was not merely majoritarian in nature. Even if the majority of Indians disapproved of LGBT persons, or even if Parliament, with three strokes of the legislative pen, chose to deprive LGBT persons of all rights, the judges would not stand idle. Constitutional morality imposes a responsibility to protect those who could be at the receiving end of a majoritarian public morality.

While affirming that India is, at its core, a democracy that guarantees rights to all (especially the minority), the Delhi High Court also observed that inclusivity serves as a wellspring of Indian democracy. In support of this conclusion, the Delhi High Court drew upon Jawaharlal Nehru's moving speech on the Objectives Resolution in the Constituent Assembly on December 13, 1946, in which Nehru declared that the House should consider the Resolution not in a spirit of narrow legal wording, but rather in terms of its underlying spirit. In Nehru's words,

> *Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation's passion […] [The Resolution] seeks very feebly to tell the world of what we have thought or dreamt of so long, and what we now hope to achieve in the near future.*
>
> (INDIA, *Naz Foundation v. NCR Delhi*, 2009, para. 129).

Drawing from Nehru, the judges from the Delhi High Court concluded that,

> *If there is one constitutional tenet that can be said to be the underlying theme of the Indian Constitution, it is that of 'inclusiveness'. This Court believes that the Indian Constitution reflects this value deeply ingrained in Indian society, nurtured over several generations. The inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognising a role in society for everyone. Those perceived by the majority as 'deviants' or 'different' are not on that score excluded or ostracised.*
> (INDIA, *Naz Foundation v. NCR Delhi*, 2009, para. 130).

The judges in *Naz Foundation* drew upon the spirit of the Constitution, in justifying the principles of inclusiveness and against majoritarianism, thereby linking the current travails of the LGBT community to the values embodied in the Indian struggle for independence.

Similarly, Brazil has applied its transformative Constitution, borne of its history and the ashes of military rule, to the indignities suffered by LGBT persons. In 1985 Brazil emerged from a regime of military dictatorship, slowly transitioning towards democracy. This process resulted in a new constitution, Brazil's eighth since its independence. This new constitution, dubbed the 'Generous Constitution', was drafted in reaction against Brazil's long history of social injustice, rampant inequality and the arbitrary exercise of state power, recognizing and protecting individual and social rights (FRIEDMAN; AMPARO, 2013).

In a case regarding the constitutional validity of permanent same sex unions, the Supreme Federal Court of Brazil (STF, in its original language) unanimously ruled in 2011 that, according to the Federal Constitution of Brazil, same-sex unions are equal to opposite-sex unions and should be extended the same rights and duties. The Court recognized that same-sex public and lasting unions, like opposite-sex unions, are also the nuclei of families and should be correspondingly protected (FRIEDMAN; AMPARO, 2013).

In ruling thusly, the Court confronted the obstacle of Article 226 of the Constitution:

> ***Article 226.*** *The family, which is the foundation of society, shall enjoy special protection from the State.*
>
> *Paragraph 3–For purposes of protection by the State, the stable union between a man and a woman is recognized as a family entity, and the law shall facilitate the conversion of such entity into marriage.*
> (BRASIL, 1988, p. 37).

The Court concluded that 'The Constitution's words cannot be used against its intention', thereby drawing upon the ideal of a 'transformative constitution'. According to the Court:

[P]eople's sex and sexuality are not valid grounds of discrimination. If used for that purpose, those grounds would collide with Brazil's constitutional objective of 'promoting the well-being of all' (article 3, IV), eroding the principles of socio-political-cultural pluralism and material democracy with the respectful co-existence of differences.

(FRIEDMAN; AMPARO, 2013, p. 275).

In the substantive reasoning, Britto J's ruling concluded:

[Britto J] said that the right to sexual freedom is an elementary part of one's human dignity and autonomy, in their personal pursuit of a meaningful life. It is also based on the rights to freedom, privacy and intimacy, resulting, in fact, in an individual right to personality, which is both immediately applicable (article 5, § 1) and irrevocable (article 60, § 4, IV). That considered, there are no licit grounds for unequal treatment of homoaffective and heteroaffective people.

(FRIEDMAN; AMPARO, 2013, p. 275).[10]

The Superior Court of Justice (STJ in its original language), the highest court of appeal in matters of federal law in Brazil, built upon the STF decision in a judgement later in 2011, recognising the right of a same-sex couple in stable union to get married, like that of a heterosexual couple.[11]

6 Towards a conclusion

From this account of the history of struggle for LGBT rights in Brazil, India and South Africa, the following conclusions may be drawn:

Firstly, there is a connection between LGBT rights and wider struggles for dignity, equality and human rights. Campaigns for LGBT rights in all three nations have built upon each nation's history of struggle against previous forms of oppression. The concepts of dignity and equality are central to the histories of Brazil, South Africa and India; these principles form a part of the normative architecture of each constitution. It is this striving to achieve equality, and to be treated with dignity, which is at the foundation of the political demands of the LGBT community. The advances made by the notions of equality and universal dignity in all three societies have been fundamental to achieving the demands of the LGBT community.

Secondly, while it is true that the LGBT struggle for rights depends for its normative sustenance on the constitutional wellsprings of equality and dignity, it does not therefore follow that these principles will be observed in relation to the rights of LGBT persons. Unlike the struggle against imperialism (which frequently bore an external face), the enemy, in the case of the LGBT struggle, is very often in social attitudes and institutional arrangements which form an unquestioned part of the national culture. The struggle against this opposition, which frequently appropriates the symbolism and rhetoric of 'nationalism', often leads LGBT persons to be depicted as 'anti-national' or 'traitorous'. These attempts to corral and isolate LGBT persons must be defeated; LGBT activists must draw

upon the national heritage of the right to be treated with equality and dignity and claim this proud history, along with a broader cosmopolitan vision, in the name of their own struggles. The struggle for LGBT rights, while drawing from individual national roots, cannot be limited to the struggles of individual national LGBT communities; it is essential that creative and sensitive international solidarity networks be established and strengthened in order to widen the support base of the LGBT community.

Thirdly, judicial decisions can, at key points, become initiators of national conversations. They can serve as important turning points in the struggle for rights. The constitutional tradition continues to play a strong role in each of these countries in relation to LGBT rights. One of the shortcomings of any democratic government is that the majority view may prevail without any regard for the legitimate rights of the minority; however, in each of these three countries, the Courts have, at points in time, served as defenders of the rights of unpopular minorities, refusing to surrender their essential role in protecting the rights of all citizens from the majoritarian will (as expressed through parliamentary process).

Finally, the task still at hand is to provide an account of activism in both China and Russia as well, so that the idea of the BRICS from the point of view of people's struggles can be further developed. It is only a notion of BRICS nourished by the voices of 'people in struggle and communities in resistance' which can develop a new imagination.

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NOTES

1. See <http://china.aiddata.org>; see also Sundaram (2013).

2. For BRICS to mean anything at all to the struggle for a democratic future, the work of building a connection with activism in Russia and China is vital.

3. For both communities everyday humiliation and violence is the order of the day. See Human Rights Watch (1991). This report puts together a searing account of the everyday humiliations faced by the Dalits until today; see also PUCL-K (2003).

4. One should also note that there has been a rich debate between Gandhi and Ambedkar on how to deal with the problem of caste. Ambedkar was the leader of the Dalit community and he felt that Gandhi's method of dealing with caste was unsatisfactory. However there are other accounts which have sought to reconcile the perspectives of Gandhi and Ambedkar. For a discussion of the debate between Gandhi and Ambedkar, see B.R. Ambedkar (2014). For an attempt to reconcile Gandhi and Ambedkar see D.R. Nagaraj (1993).

5. The legal argument which Gama successfully advanced was that the transaction by which he had been sold into slavery by his father was doubly unjust: as Gama was born of a free woman, and as he had no legally recognised father, his biological father held no title to ownership of the child. Further, the slave trade had been prohibited by Brazilian law since 1831. Cf. Kennedy (1974, p. 255-267 at 260).

6. See <http://www.csa.za.org/blog/item/94-simon-

nkoli>. Last accessed on: 1 August 2014.

7. See generally Gail Omvedt (2004). The word Dalit, which means 'oppressed', is a self description of what were called the 'untouchable' communities.

8. Section 10 of the South African Constitution: "*Human dignity*: *Everyone has inherent dignity and the right to have their dignity respected and protected.*"

9. Section 377 of the Indian Penal Code: "*Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in the section.*"

10. "*Maria Berenice Dias, jurist and former Rio Grande de Sul High Court Judge, is known for her academic research and litigation for gay rights in Brazil. She started to use the term homoaffective instead of homosexual to stress that homosexuality is not only about sex or eroticism, but also–and perhaps mainly–about love and affection. The word gained mainstream use and has even been included in dictionaries*" (FRIEDMAN; AMPARO, 2013, p. 274).

11. See <http://stj.jusbrasil.com.br/jurisprudencia/21285514/recurso-especial-resp-1183378-rs-2010-0036663-8-stj>. Last accessed on: 1 August 2014.

SONIA CORRÊA

Ever since the late 1970's Brazilian expert Sonia Corrêa has been involved in research and advocacy activities related to gender equality, health and sexuality. She has a degree in Architecture and a post-graduate degree in Anthropology. She is the founder of SOS-Corpo – Instituto Feminista para Democracia (Feminist Institute for Democracy), and member of the board of CCR – Comissão de Cidadania e Reprodução (Commission for Citizenship and Reproduction) in Brazil. Since 2002, with Richard Parker, she co-chairs Sexuality Policy Watch (SPW), a global forum comprising researchers and activists engaged in analyses of global trends in sexuality related policy and politics. In 2006, she co-chaired the expert meeting that issued the Yogyakarta Principles. She has lectured in various academic institutions and extensively published in Portuguese and English. Her writings include, among many others, *Population and Reproductive Rights*: Feminist Perspectives from the South (Zed Books, 1994) and *Sexuality, Health and Human Rights*, co-authored with Richard Parker and Rosalind Petchesky (Routledge, 2008).

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ABSTRACT

The article examines how emerging powers – namely, Brazil, Russia, India, China and South Africa – have behaved in multilateral debates around human rights, gender and sexuality, especially at Ibsa and Brics fora. The arguments presented are derived from the first round of conversations held in 2013 by the Sexuality Policy Watch, a forum of researchers and activists which invited partners based in the Global South to launch a cross-country effort to contribute to sexuality related global policy debates. After exposing the distinct foreign policies of the five countries regarding sexuality and gender, the paper analyses their performance and shifting alliances both within the Ibsa and Brics blocks and across North-South relationships in several multilateral fora. Although the frequent use of the terms Brics, Ibsa or 'emerging powers' might lead to forming an image of cohesion, the article concludes by highlighting their heterogeneity, still more pronounced in relation to sexual and reproductive rights, for these formations are comprised by States whose interests do not fully coincide and which, not rarely, compete with each other in a variety of fronts.

EMERGING POWERS: CAN IT BE THAT SEXUALITY AND HUMAN RIGHTS IS A 'LATERAL ISSUE'?

Sonia Corrêa

1 Where does this theme come from?

The world is witnessing the emergence of geopolitical shifts and novel political economic and ideological formations, foremost amongst which are the Brics (Brazil, Russia, India, China and South Africa) and Ibsa (India, Brazil and South Africa) blocks. The presence and influence of these 'rising' powers are rapidly increasing, politically and economically, in various regions of the Global South. Ibsa and Brics now inhabit the political imagination of States, of the private sector and also of civil society actors, South and North of the Equator. In all these quarters, questions are being raised about the meaning of these shifts in terms of development patterns, bilateral and multilateral arenas and cooperation systems. Among civil society actors, expectations and questions are also emerging in regard to how these trends intersect with the ongoing global and national politics of gender, sexuality and rights. However, these domains of social, political and personal life are not being addressed in the academic debates devoted to understanding and intervening in the dynamics of the Ibsa and Brics formations, much less in conversations and agreements emanating from the interactions of these new blocks.

This absence inspired Sexuality Policy Watch, a global forum of researchers and activists, to invite partners based in the Global South to initiate a cross-country effort aimed at better understanding this gap and, eventually, expanding the visibility of these topics in ongoing debates on emerging powers, development and geopolitics.[1] This paper shares ideas discussed in this project's first round of conversation, which was held in Rio in July 2013, and includes an analysis – originally presented at a panel at Conectas' 13th International Human Rights Colloquium, held in São Paulo in the same year – on the way rising powers, since their emergence, have behaved in multilateral debates around human rights, gender and sexuality.

Notes to this text start on page 178.

2   The emperor's clothes

Even a quick bird's eye view of gender and sexuality politics in Brazil, China, India, Russia and South Africa reveals that – whether or not the leaders of these emerging powers would like to directly address them in their negotiations –, these are dimensions of social and political life that cannot be easily skirted around. Even in 2014, one only needs to glance at the media and internet to verify that the effects of political power on gender and sexuality, and vice-versa, are not to be found at the extremities, as it was suggested by Foucault few decades ago. They are rather matters visibly at play in the centre of political stages in the most diverse contexts around the world; therefore these are not dimensions that can be avoided in global policy debates (CORRÊA; PARKER; PETCHESKY, 2008). Given that, the silencing of gender and sexuality matters that prevails in the formal discourses of the emerging powers on development and social justice evokes the Danish tale of the emperor's new clothes: they reveal what one may be trying to conceal.

Paul Amar's research on the shift from the neoliberal paradigm of the 1980's and 1990's towards a new model of governmentality – now organised around human security, which is directly linked to the 'emerging powers phenomenon' – demonstrates in detail how the new modalities of governance articulate measures of State protection, human rights and securitisation that, more often than not, revolve around gender, sexuality and family arrangements.[2] When the lenses are shifted to the four emerging powers being scrutinised by the project – Brazil, China, India and South Africa –, gender and sexuality politics are also very difficult to conceal.

China – As noted by Cai Yipping, in the Rio meeting mobilisation on LGBT issues, gender-based violence and marriage laws has rapidly expanded in China in recent years, as an effect of economic growth, higher levels of education and access to Internet, despite State restrictions on political demonstrations. Also examining the Chinese scenario after the 1970's market reforms, Huang Hinging (2013) describes how a renewed sexual politics has been developing around three overlapping areas: sexology, revised gender claims and what she portrays as a "sexual revolution".

Furthermore, as also described by Cai Yiping, flagrant gender and sexual tropes can now be detected in the discourses of high level Chinese authorities. Speaking at the press conference of the Fifth Round of China-US Strategic and Economic Dialogue held in Washington DC, the Vice Premier Wang Yang used the metaphor of a happy marriage to describe the relation between the two countries in the following terms: "We are partners who cannot afford to separate, because our relation is embedded in family responsibilities". Wang Yang went on to say that he and the US Secretary of Treasury Jacob Lew were the "newlyweds", and added: "I do know that same-sex marriage is allowed in US, but this is not what me and Jacob wanted it to mean."[3] On the other hand, it should be noted that sex work is still criminalised in China and quite often it becomes an easy target of State repression. This happened in early 2014, when the police stroke down sexual markets in various cities across the country as part of a national anti-corruption

campaign (CHINA'S…, 2014). Some observers noted that images of these operations revived the memories of moralising campaigns implemented during the Cultural Revolution in the 1960-1970.

India – The trajectory of a livable politics around gender and sexuality cannot be circumvented in India either, as it can be tracked back to long standing feminist debates on population control, marriage laws, gender-based violence, prenatal sex selective abortions[4] that began being articulated in the 1970's. This ultimately unfolded into the complex and rich fabric of the 2000's queer politics that, among others, has coalesced around the struggle against Section 377 of the Penal Code, inherited from the colonial times, that criminalised "unnatural sexual acts", or the practice of sodomy, to use a canonical term (SANDERS, 2009). This mobilisation led to the 2009 Delhi High Court decision on the unconstitutionality of the Section 377 (RAMASSUBBAN, 2007; KIRBY, 2011). Another important feature of the Indian landscape is a vibrant and vocal sex workers rights movement.

The politics of sexuality in India gained wider visibility after the large social mobilising and protests that followed the gang rape of a young woman in Delhi in December 2012, which must be understood within this broader context. One year later, Indian sexual politics was once again on the screens and front pages, when the Supreme Court stroke down the 2009 decision of Delhi High Court. Following this decisions, new protests mushroomed all over India, and also in a number of cities worldwide (KHANNA, 2013). In the Rio discussions in July 2013, both Nitya Vesudevan and Akshay Khana strongly underlined that Indian sexual politics cannot be disconnected from caste and class. Akshay, in particular, observed that Indian sexual politics must also be understood in relation to the emergence of new middle classes and certain constructions of masculinity. These factors must be taken into account when examining the emergence of India as a potential new super power.

Brazil – Brazil is another country in which the trajectory of gender and sexuality politics has been extensively documented (DE LA DEHESA, 2010; VIANNA; CARRARA, 2007). In fact the 'progressive" features on Brazilian policies in these domains, particularly its responses to HIV/AIDS, have in the past been widely acclaimed. Although no globalised headlines have been registered recently, the last ten to fifteen years have seen the intensification of political skirmishes and battles around gender and sexuality matters (KAOMA; QUEIROZ, 2013; VITAL; LEITE LOPES, 2013). Abortion and same-sex marriage were central topics of the 2010 presidential election and have once again flared up in the 2014 campaign underway as this paper was being finalized (DUARTE, 2014; DUVIVIER, 2014). Since 2010, even though some legal gains have been registered – such as the Supreme Court decision recognising same-sex unions (2011) and granting the right to abortion in the case of anencephaly (2012)– regression prevails, such as prohibitionist legal proposals on abortion, censorship of a number of sexuality and HIV-related educational materials; and, in 2013, a dogmatic evangelical pastor was elected head of the Committee on Human Rights and Minorities of the House of Representatives (DE LA DEHESA, 2010).[5] In May 2014, Pedro Chequer, who directed the National HIV/AIDS Program in the 1990's and early 2000's, classified the

country's current sexual politics as a "Brazilian made Bush era, a belated copy of what happened in the United States during the last decade". According to Chequer, sexual politics is now characterised, in Brazil, by a striking 'subservience' of the Federal Government to conservative groups. In his words: "campaigns and educational materials have been prohibited and official voices are often silent in relation to sexual matters as to 'avoid irritating the conservatives'. Principles of *laicité* have been waning since the signing of the diplomatic agreement with the Vatican in 2009" (EM ENTREVISTA…, 2014).[6]

South Africa – In South Africa, one important feature of gender and sexuality political dynamics is the gap or contrast between laws adopted after the end of the apartheid – internationally acclaimed for their commitment to equality and anti-discrimination in all domains, including in respect to gender and sexuality – and the harsh realities of daily life, where it is not exactly easy for these formal rights to be realised (BERESFORD; SCHNEIDER; SEMBER, 2007). One blatant illustration of this gap is the high incidence of rape, in particular of "corrective" rapes and murders of black lesbians, and the obstacles experienced to investigate, indict and judge perpetrators. Against this backdrop, Dawn Cavenagh, the South African participant in the SPW Rio meeting in July 2013, also noted that the 2006 judgment of Jacob Zuma for rape is indelibly printed in the trajectory of national gender and sexual politics (RATELE, 2006). Cavenagh also noted that sexual communities and their political agendas are inextricably caught by the dynamics propelled by these old and new patterns of inequalities, as illustrated by the bifurcation between gentrified LGBT pride parades, where white participants are the majority, and the popular demonstrations called by the Black queer movement.

Russia – Although Russia is not included in the SPW project, in this context of analysis it is also worth recalling that its internal sexual politics has also been for sometime in the front pages of international media, as since the mid 2000's pride parades have been systematically attacked by secular and religious authorities as well as by extreme nationalist and anti-LGBT rights groups in society. Regressions have also been observed in relation to the access to safe abortions. Then in 2013, a legislative reform banning the promotion of homosexuality and of non-traditional forms of family was approved, triggering a trail of international protests, including demonstrations during the 2014 Sochi Winter Games.

3 Rising powers as global players on human rights and sexuality in multilateral arenas

Having sketched above the incomplete cartography of domestic politics, this section briefly examines how emerging powers have been performing since 2004, when Ibsa was created, in multilateral arenas where human rights sexuality and gender have been negotiated. Before entering the topic, however, it is important to recall that, for the last twenty years, gender and sexuality matters have been increasingly debated in United Nations arenas, this being one main effect of the 1990's cycle of conferences on social issues, in particular the 1993 Vienna Conference on Human Rights, the 1994 Cairo Conference on Population and Development, the 1995

Beijing IV World Conference on Women and their periodical reviews. In all of these cases, it was never easy to achieve consensus in respect to these matters as they were fraught and traversed by "moral" polemics but also affected by sharp South-North tensions (CORRÊA; PARKER; PETCHESKY, 2008; GIRARD, 2007; SAIZ, 2004).

It is also worth noting that, in the early days of negotiations, Brazil, China, India and South Africa were part of the Group of 77 (G77) and that South Africa, barely emerging from apartheid, was entering for the first time inter-State negotiations. Debates on gender and sexuality were never easy within G77, due both to cultural relativism arguments and to the Vatican's great influence on many of the group' States. Because of that, in many critical occasions, agreements were reached within G77, usually pushed by Brazil and India, to the effect that the group should retain its consensus in respect to economic matters, but that members could have individual positions with respect to other policy areas. This mode of functioning was a key factor beneath the consensus reached in the 1990's negotiations in international conferences (SEN; CORRÊA, 1999). On the other hand, Russian, Eastern European countries and the former Soviet republics of Central Asia were all clustered under what was then called the "countries in transition" group, and were mostly silent on a wide range of issues, including gender and sexuality matters.

While this geopolitical cartography has been substantially transformed in the past decades, tensions in regard to gender, and particularly sexuality, have not exactly receded. By examining more specifically how emerging powers are behaving today, observers –who have been consulted in this regard by this author – by and large consider that Brics and Ibsa do not usually operate cohesively.[7] But, observers also note that the individual positions of these States are today less predictable than in the past.

One of these informants, for example, noted that, at least until mid-2013, no consistent sign of Brics and Ibsa as solid blocks in relation to gender and sexuality was seen neither at the UN Human Rights Council (HRC) nor at the Economic and Social Council (Ecosoc) or at the General Assembly. Even so, there are moments, in New York, when these States position themselves as the 'big block" (Brics), and in other occasions, at the HRC, they appear as the "tiny block" (Ibsa). But, in the view of the informant consulted by the author, these moments of ephemeral aggregation do not configure a "pattern of behaviour", as in most cases emerging powers are not moving alone but in partnership with other countries (predominantly from the Global South, but not always). On the other hand, at the HRC, distinctions are palpable between Russia and China and the other three Ibsa countries. This shall be examined more closely further ahead.

Most observers agree with the view that the main novelty of the last few years is not so much Brics or Ibsa operating as solid blocks, but rather the flagrant and expanding role of Russia, which was almost absent from these arenas until the mid 2000's. Russia's conduct has been one of predominant regressive positions on human rights, broadly speaking, and particularly on civil society participation at the HRC, especially in regard to rights related to sexuality (homosexuality tout

court). It has continuously advanced multiple attacks on rights related to gender and sexuality, as strongly illustrated by the resolution on traditional values that the country tabled in 2010.

As for China, the prevailing perception of these privileged informants is that, to a large extent, it keeps doing business as usual. China has always been reluctant in relation to human rights, as illustrated by the many obstacles it created in the 1993 Vienna Conference on Human Rights and in the initial stages of the HRC's institutional development. Furthermore, China has never been particularly vocal on issues of gender, sexuality and reproductive rights, not even in the 1995 Beijing Conference itself. Yet, one observer worryingly noted that there are signs that a 'division of labour' between China and Russia is at work at the HRC in regard to strategies aimed at weakening rules of the UN human rights system: Russia usually attacks the epistemology of human rights and the special procedures mechanisms, while China is devoted to attacking the treaty bodies. Both States often take positions aimed at restricting the overall autonomy of the human rights system and limiting the participation of civil society in Human Rights Council debates. In doing so, China often drags behind itself a number of African States. Though worrying, this emerging pattern of behaviour cannot, however, be portrayed (yet) as a Brics coordinated action.

No strong patterns of cohesion can be identified in the behaviour of the three Ibsa countries either, which seems to be mainly determined by circumstances. As noted by Julie de Rivero from Human Rights Watch in her presentation at the Conectas' 13th International Human Rights Colloquium, in September 2013, though India constantly aligns itself with China and Russia to argue for respecting countries' sovereignty, until recently, it had never openly opposed special procedures or NGO participation. However, in the September 2013 Session of HRC, the Indian delegation aligned itself with China and Russia in a resolution aimed at restricting the participation of NGOs in the HRC procedures. Brazil usually abstains from an adamant position on the primacy of sovereignty, but systematically reacts to calls for more substantive human rights positions or interventions by insisting on 'cooperation'. South Africa waivers quite a lot, and this makes it more difficult to grasp its rationales and motivations.

In respect to sexuality matters, with few exceptions, the current behaviour of the Ibsa countries both in New York and Geneva tend to follow past scripts. Brazil remains the most open of the three States in relation to these matters, particularly in relation to LGBT rights, as recognised by member States and civil society organisations. In its support for LGBT rights, Brazilian diplomacy works jointly with Latin American and European countries, as well as with the US, being usually able to move without much difficulty across the North and South divide, sometimes even functioning as a mediator. In hindsight, in the first round of revisions of the Cairo and Beijing conferences (1999 and 2000) and in a few sessions of the Commission on Population and Development, South Africa and India were aligned with the Latin American and Caribbean countries, mainly led by Brazil and Mexico, in fierce resistance against conservative efforts aimed at undoing the previous consensus (SEN; CORRÊA, 1999). But neither China nor Russia have been part of these coalitions.

On the other hand, three recent episodes indicate that the Brazilian current option for aligning with the South, or with fellow emerging powers, appears to be changing this long-standing pattern of clear support to sexual and reproductive rights. In the Rio+20 negotiations in 2012, Brazil did not defend the retention of language on reproductive rights in the final document, a position formally justified by the priority to keep the cohesion of Group 77. This was publicly regretted by well-known voices such as Gro Brutland and Mary Robison, and feminist activists from various countries.

Then, also in September 2013, another inconsistency was detected in Brazil's diplomatic behaviour regarding discrimination against LGBT persons, this time more directly attributable to Brics internal 'solidarity'. On 29 September, in New York, Brazil co-sponsored a joint declaration against human rights violations on the basis of sexual orientation and gender identity. In this occasion, the ambassador made a strong public statement on the subject, which was highly welcome, given the high levels of violence experienced by LGBT persons in Brazil (BRASIL, 2012). Yet in the same month during the Human Rights Council session, in Geneva, Brazil avoided voicing concerns about the exclusion of sexual orientation and gender identity as a basis for discrimination from the text of the resolution proposed by Russia on the Olympics and human rights. Lastly, as this paper was being finalised during the 26th Session of the Human Rights Council, in June 2014, the Brazilian delegation abstained in the final voting of a Resolution on the Protection of the Family that failed to include language on the diversity of family formations.

India, for its part, has been historically supportive of gender equality, reproductive and maternal health, HIV/AIDS prevention and treatment, and, to a lesser extent, reproductive rights. It has never openly opposed sexual matters, but it has never been quite vocal either, except in relation to the listing of vulnerable populations affected by HIV. India became more comfortable with the topic of sexuality and LGBT rights after the decision of the High Court of Delhi on Article 377 and it began supporting the inclusion of sexual orientation in UN annual resolutions on extra-judicial executions. According to the same informer, the India trade basket is so wide that quite often it does its best to please almost everyone: from the U.S. to China, from Israel to Iran. Such a breadth of interested bargains makes it very hard to detect more clearly what its positions are in relation to those issues that in the past India had easily led in multilateral arenas, such as gender, maternal mortality, reproductive rights and abortion, or even HIV/AIDS. It is yet to be seen how this behaviour will be affected by recent legal and political developments: the December 2013 Supreme Court decision that re-criminalized same–sex relations and, most importantly, by the landslide election of the Hindu Nationalist Party (BJP) in May, 2014, whose records in what concerns gender and sexuality matters are far from progressive (CORREA; PARKER; PETCHESKY, 2008; APOORVANAND, 2014).

The position of South Africa is considered by many to have been erratic over the years and to remain unclear today. It was very vocal in the 1990s, but regressive and silent in the 2000s. Since 2011, however, it has placed itself once again as a

protagonist in relation to sexual matters, as illustrated by a major step forward it took in tabling a resolution on sexual orientation and gender identity. This move has been correctly interpreted by a wide range of actors as the new chapter in the long saga around sexual orientation and gender identity issues inaugurated by 2003 Brazilian resolution. In March 2013, the country took on a very positive position in a difficult discussion around gender-based violence that took place at the Commission on the Status of Women, in New York, openly championing the inclusion of language on lesbians. Then, in June of the same year, South Africa retreated from tabling the second resolution unfolding from the 2011 text. This retreat was interpreted as a strategic move by South Africa aimed at not losing regional support for its candidacy to a seat in the Security Council. Others say this is not exactly the case, because it would have the seat in any case. This particular move on the part of South Africa must be placed against the wider and much complex politics that involved the resolution debate, including sharp differences of view between Southern and Northern civil society voices in relation to the pace and unevenness of regional consultations around the resolution and, most importantly, on what was the main goal of the resolution (COALITION OF HUMAN RIGHTS DEFENDERS, 2013).[8]

In the case of South Africa and Brazil, one must also analyse their role in their respective regions. The regional preparatory processes regarding the +20 Review of the International Conference on Population and Development (ICPD), which has been underway since 2013, illustrate the importance of their positions in regional negotiations. In the preparatory African Regional Conference, in Addis Ababa, when extremely regressive positions were expressed by both North African and sub-Saharan States, for example, South Africa consistently supported sexual and reproductive rights, including in respect to sexual diversity, or LGBT rights. Brazil, after the regrettable setback on reproductive rights in the Rio +20 conference in 2012, has also played a positive role in the negotiations of the First Latin American Regional Conference on Population and Development (Montevideo, August 2013), which delivered the best final document of the various ICPD + 20 regional rounds. The Montevideo Consensus is consistent with Cairo and Beijing definitions, in fact going further in relation to some aspects, as in the case of LGBT and sex workers' rights (ABRACINSKAS et al., 2014).

The Cairo + 20 process as a whole provides a good illustration of the Brics performance in relation to gender and sexuality matters. Despite the positive outcomes of regional conferences, the negotiations of the 47th Session of the UN Commission on Population and Development (CPD), in April 2014, designed as the key moment of the review of implementation of the ICPD policy recommendations at the global level, were extremely difficult, and its outcomes were publicly criticised by feminist organisations (RESURJ…, 2014).[9]

In the negotiations, considered by many as the most difficult in two decades, the African and Arab groups and the Vatican were the key voices sustaining regressive positions. But, once again, neither Brics nor Ibsa behaved cohesively,[10] even though a Brics Inaugural Seminar of Officials and Experts on Population Matters had met in Hazyview, South Africa, in early March, recommended as

thematic areas of potential cooperation, dialogue and collaboration: "Social issues in general and in particular, gender and women's rights and sexual and reproductive health and reproductive rights" (BRICS, 2014). During the 47th CPD session, Russia was very discrete and China remained entirely silent. Brazil and South Africa worked closely on sexual orientation and gender identity, one of the hardest topics of the negotiations, and India expressed support to safe abortion, even if it was not vocal on other difficult matters.

But undercurrents and unexpected movements were also noted. Though discreet, Russia was evidently aligned with the most regressive voices. Furthermore, the adamant and aggressive positions expressed by the African group, in the view of some experienced observers, cannot be fully understood if not properly situated within the context of the expansion of Chinese cooperation and investment in the continent. The close collaboration between South Africa and Brazil inevitably caused tension with the African regional group. Most importantly, perhaps, Brazil, breaking its tradition of engagement in cross-regional groupings as a strategy to overcome deadlocks around gender and sexuality matters, in CPD 2014, declined from participating in the group of likeminded countries led by Argentina as an attempt to surpass difficulties that were blocking the process.

4 Conclusion

The pattern of behaviour described in this article resonates with Peter Konijn's view that the frequent use of the terms 'Brics' and 'Ibsa' – or even 'emerging powers' – contributes to crystallising an image of homogeneity and cohesion among the five member countries, when in fact these formations are comprised by States whose interests do not fully coincide and which, not rarely, compete with each other in a variety of fronts. The contours of this heterogeneity are still more pronounced in relation to sexual and reproductive rights. On the other hand, the novel Brics collaboration on population and development and the undercurrents observed in CPD 2014, indicate, perhaps, that these differences may also be diluted in the medium run, depending both on internal dynamics and on global trends of sexual politics. In any case, nothing suggests that it is wise to bet on emerging powers' formations as platforms that may easily deliver on an agenda articulating social, gender and erotic justice (KAPUR, 2005).

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NOTES

1. This project, named *Rising powers, sexuality, politics and human rights*, is supported by Hivos. For developing it, SPW has invited partner institutions, such as Amnesty International (Brazil), Conectas Human Rights (Brazil), Ibase (Brazil), Institute of Development Studies (United Kingdom), Knowing Emerging Powers (The Netherlands), as well as individual activists and researchers. The following participants have attended the first meeting: Alana Kolundj (Sexuality Policy Watch); Cai Yiping (DAWN Executive Committee, China); Dawn Cavanagh (Coalition of African Lesbians and Sexual Rights Initiative, South Africa); Laura Waisbich (Conectas Human Rights, Brazil); Nitya Vasudevan (Centre for the Study of Culture and Society, India); Mariana Britto (Ibase, Brazil); Mirijam Munsch (Hivos, The Netherlands); Paul Amar (Global Studies Program, University of California, Santa Barbara, US); Peter Konijn (Knowing Emerging Powers, The Netherlands); Rafael de la Dehesa (City University of NY, SPW collaborator); and Sonia Corrêa (Abia, Brazil, and Sexuality Policy Watch).

2. In his own words: "[the] term the human-security state emerged as a node of four intersecting logics of securitisation: moralistic (rooted in culture and values based on evangelical Christian and Islamic

piety discourses); juridical-personal (focused on rights, privatised property, and minority identity); workers (orbiting around new or revived notions of collective and social security and postconsumer notions of participation and citizenship); and paramilitary (a masculinist, police-centred, territorially possessive logic of enforcement)[...] They all explicitly aimed to protect, rescue, and secure certain idealised forms of humanity identified with a particular family of sexuality, morality, and class subjects, and grounded in certain militarised territories" (AMAR, 2013, p. 6).

3. See the detailed report on Southern Weekend, July 20 2013, <http://www.infzm.com/content/92494>.

4. The high rates of sex selective abortions that eliminate female foetuses is a highly palpable phenomenon in India, China, Korea and, to a less extent, Vietnam. It results from the perverse intersection between modernisation as manifested in novel medical technologies, in this particular case intra womb ultra sound, and the deep-rooted culture of son preference. The practice results among others in unbalanced sex ratios in the overall population.

5. The huge reaction triggered by the 'wrong findings' of a research conducted by the federal institute of research Ipea on perceptions about sexual violence, which said that 65 percent of people interviewed considered that a woman could be raped depending on what she was dressing, also indicate that sexual matters can not be easily circumvented in Brazilian politics and human rights debates. The figure was wrong as the report inverted the findings (in fact 25 percent of people have that perception and this is still very high). But the first post of Facebook campaign launched to countervail this perception got 11 million hits in 24 hours.

6. With the proclamation of the Republic in 1889 the Brazilian State sharply severed the intimate relation with the Church that had prevailed during the Empire. Since then Brazil has been one of the few Latin American countries that did not sign a formal diplomatic agreement with the Holy See to establish the parameters grounding the relations between the two entities. In 2009 this long established tradition of *laicité* was left behind when such an agreement was signed that was not subject to the necessary broad based process of democratic deliberation (CUNHA, 2009).

7. The persons who have been heard requested not to be identified. Then in the panel where this

assessment was presented Julie Rivero from Human Rights Watch did present a mapping of the overall Human Rights Council dynamics in which Emerging Powers featured prominently. Some elements of her cartography were also incorporated in this version of the note.

8. The statement in relation to this matter made public by Global South organisations, right before the 2013 June session of the Human Rights Council, reads as follows: "We are concerned that establishing a special mechanism on SOGI [sexual orientation and gender identity] at this point, whether a Special Rapporteur, Independent Expert or Working Group, may render the mechanism ineffective: it is likely to be dismissed and ignored by some States and actively resisted and immobilised by others with serious consequences for the possibilities of change at a national level and increasing focus on name, blame and shame processes; this will in effect reinforce the opposition to the protection of the human rights of LGBTI individuals and set back existing gains as a major international tussle ensues within the Council and elsewhere. We believe that such an intervention will for some time to come strengthen the divides amongst States on this issue and will narrow the range of effective measures to address the violations; it will reduce the possibilities of real change at a local, country/national level" (COALITION OF HUMAN RIGHTS DEFENDERS, 2013).

9. As put by the RESURJ Network, "the Cairo Plus 20 process has failed not only us, but all women and girls. Women's sexuality continues to be stigmatised, oppressed, and considered 'dangerous' to the prevailing patriarchs who are in power. Unsafe abortion is still a leading cause of maternal mortality and morbidity. It is still a social justice demand for billions of mostly poor, young, and disadvantaged women. Access to safe abortion 'where legal' is no longer sufficient. Hundreds of women are being imprisoned in Latin America for terminating their unwanted pregnancies, and their health and lives are at risk. Abortion is not a crime and no woman or girl should be punished for it. The attempt by the few governments that tried to push for this language was quickly dismissed or unsupported by the majority in every region" (RESURJ..., 2014, p. 1).

10. A number of activists and observers have been heard for this particular assessment: Alessandra Nilo, Beatriz Galli, Gita Sen and Marcelo Ferreyra.

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ABSTRACT

This article questions whether transitional justice can deliver social change. The author discusses
the importance of re-assessing expectations so that transitional justice processes and the legal
framework that drives them, including international human rights law, are used to achieve
what they are able to deliver. By classifying social change in three categories, namely: ordinary
changes, structural changes and fundamental changes, the author argues that a fundamental
social change happens when social struggle is able to put forward a new dominant ideology
inspired by radically different values to those that allowed the repression or the conflict to take
place. While it is not realistic to expect transitional justice to deliver development, democracy,
rule of law or peace, the author argues, transitional justice, when properly conducted, can
indeed contribute to deliver fundamental change but it cannot deliver it on its own.

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TRANSITIONAL JUSTICE AND SOCIAL CHANGE

Clara Sandoval

1 Introduction

International human rights law has become one of the languages of social change of our time. It has gained such a prominent role in States' political agendas that over almost six decades, several international human rights and related treaties have been adopted and work continues on new ones. Domestic systems have also been active in this area, engaging in the dynamic incorporation of such treaties and other international obligations into their domestic law. New constitutions and legislation have been enacted and institutions (judicial and non-judicial) have been created in order to apply this new language of change. Even in the majority of relevant political discussions today, international human rights law appears to set the limits or possibilities for change.

Transitional justice has also become a language of social change. While it is not a branch of international law, as international human rights law is, it is a field deeply influenced by the power of this law and of other branches of international law. Indeed, they constitute its normative framework, dictating the types of changes that are needed in society to reckon with the legacy of mass atrocities. Indeed, stake-holders are turning to it in the hope that through its various processes and mechanisms (justice, truth, reparation and guarantees of non-recurrence), all of which are intimately related to the existence of international obligations, it might deliver lasting peace, reconciliation, democracy, human rights protection and even, for some, development and poverty eradication.[1]

However, a few decades have passed since transitional justice began in the Americas region (Chile, Argentina, Guatemala, El Salvador and others) and in other parts of the world (South Africa), and legal and social operators are still waiting to enhance human rights protection and achieve these social goals. South Africa, for example, despite its very well-known truth and reconciliation commission's work, and despite various other measures taken to deal with the legacy of apartheid, remains

a highly unequal State, poverty continues to be rampant (TERREBLANCHE, 2002, p. 5) and key human rights like the right to reparation of justice appear to be more theory than a social reality. So, what happened? Did transitional justice processes and mechanisms fail? What did South Africa do wrong?

If we look at other States that have engaged with transitional justice, the story is not that different. Consider, for example, Guatemala, Sierra Leone or East Timor. Therefore it is prudent to consider whether transitional justice can deliver social change and to re-assess expectations so that we use transitional justice processes and the legal framework that drives them, including international human rights law, to achieve what they are able to deliver.

This article shares some thoughts on this pressing question. Given space constraints, some issues cannot be explored in great detail but it provides the reader with some provocative thoughts so that all those interested and working in the field of transitional justice can take stock of what we have done and learned during these decades of work and project that into the future, with vision and realism about what is possible. It is there that the real potential of transitional justice for social change is to be found.

2   The normative framework of transitional justice

Transitional justice is a relatively new field. It is only a few decades old and it has emerged out of practice. Some of this practice is the result of strong campaigning carried out by human rights lawyers around the world to resist gross human rights violations and/or serious violations of humanitarian law (ARTHUR, 2009). That is how it began in countries like Argentina or Chile. At the time there was (and there still is) a strong need to fight impunity, and human rights law constituted a suitable tool to this end. Human rights lawyers began to advocate, quite strongly, that under international human rights law and other branches of public international law, there was an obligation to investigate, prosecute and, if applicable, punish perpetrators of human rights violations and serious breaches of humanitarian law (MENDEZ, 1997; ORENTLICHER, 1991, 2007) that there was a right to know the truth of what happened (HAYNER, 2001; UNITED NATIONS, 2006) and a right to reparations for harm suffered (SHELTON, 2005; UNITED NATIONS, 1997, 2005). It was also said that States had an obligation to adopt and implement guarantees of non-recurrence and institutional reform measures to ensure that what happened would not happen again (SHELTON, 2005; UNITED NATIONS, 1997, 2005).[2] Therefore, as can be seen, transitional justice processes (justice, truth, reparation and guarantees of non-recurrence) respond to and are driven by an international legal framework that includes international human rights law, international refugee law, international humanitarian law and international criminal law (UNITED NATIONS, 2004). Customary law and treaty law support the existence of these obligations under public international law. Therefore, any consideration of the potential of transitional justice to bring about social change is also a consideration of the potential of this legal framework to help towards that end.

3 The meaning and the possibility of social change and transitional justice

It is often taken for granted that States have the quality to free themselves from anything that oppresses them or keeps them from developing. This idea is based on the assumption that changes and progress are possible. This is a key belief of modernity. This idea is also present in international human rights law and the transitional justice field. It is believed that a process by which the attainment of a certain objectives, be they reckoning with the legacy of mass atrocities, establishing the rule of law, achieving peace, human rights, democracy and others, enabling perpetrators, victims and society as a whole to move forward, is achievable. This means that it is possible to transform the social, economic and political conditions and behaviour that made the atrocities possible. This possibility of social change, however, is very often taken for granted, while the capacity of social conditions to remain unchanged is usually overlooked.[3] Yet this is not to suggest that change in the field of transitional justice does not occur. As with other social elements, change and fixity are present in the field of transitional justice and they can set limitations or possibilities on the former.[4] These elements should be carefully scrutinised. This point is of extreme importance when approaching transitional justice, as we have to deal with different types of changes occurring in different tempos, which suggests that there are certain transformations which are natural to the system and others which conflict with the nature of the system transitional justice ought to transform. However, for the purposes of this article, it can be said that because the social conditions, broadly speaking, are susceptible to change, progress is possible, without all change implying progress.[5] Indeed, change can take place in the middle of contradictions and complex transformations, which does not imply progress as a consequence, much less that the objectives of transitional justice have been achieved.

Three types of social changes are present in social struggles in the field of transitional justice and more broadly: *ordinary changes*, *structural changes* and *fundamental changes*. The key to distinguish each one of these forms of change is their relationship between what changes and the ideology that allowed atrocities to happen. If the change taking place in the field of transitional justice does not transform the ideology that supported the conflict or the repressive regime, we have ordinary or structural changes. For example, the enactment of an amnesty law or statutes of limitation constitutes a form of ordinary change that often happens during a transition. These laws are enacted and, most of the time, drafted in order to maintain the ideology that made the atrocities possible. They might be the result of a strong political struggle and might face a lot of resistance but at the end of the day, they do not threaten or transform the existing regime. They perpetuate it.

A structural change is a bit more complex and can give the illusion that fundamental change is at stake. For example, the enactment of a new Political Constitution, as happened in South Africa with the Interim Constitution of 1993 or the Political Constitution of 1996 (post-apartheid) or with the Colombian Constitution of 1991, is often considered to be a fundamental change, given that the foundational piece of the legal system has been transformed. However, this is

far from being the case. These *structural* transformations might be necessary but are not sufficient for the production of this type of change. The enactment of a new Constitution, an important guarantee of non-repetition, will not constitute a fundamental change unless it is able to transform the ideology that supported the old system and this does not simply happen with the enactment of a new foundational law. The case of South Africa is again illustrative in this respect. An important interim and a new constitution were enacted that established civil, political, economic, social and cultural rights, along with various remedies for individuals and important social institutions to transform the status quo established by the apartheid regime. Still, despite the significant work carried out by institutions like the South African Constitutional Court to protect rights, the majority of South Africans do not have their rights protected and it remains a deeply unequal society, which was entrenched already during apartheid. Therefore, important elements of the apartheid ideology remain present in South Africa's society today.

The establishment of transitional justice mechanisms such as truth commissions, commissions of enquiry, civil and criminal tribunals as well as reparation programmes could also be seen as structural changes. While often they have such a nature, this is not the case in all situations, given that some of these mechanisms are established not to achieve the aims they seek—truth, justice and reparation or prevention—but to give the illusion that things are changing, when in reality, the objective of those in power is to maintain the *status quo*.

A fundamental social change happens when social struggle is able to put forward a new dominant ideology inspired by radically different values to those present during the repression or the conflict. It is hard to think of an example to-date where a change has been so fundamental in a society undergoing a transition that the old ideology has been defeated. Transitional justice, in my view, is due to provide us with such example. This also means that the majority of changes happening in the transitional justice field are ordinary, with some structural ones also taking place. Once again, look at South Africa. While apartheid and racial discrimination were defeated—key tenets of the dominant ideology until then—inequality is still present at various levels and particularly, but not only, affects the black population.

This does not mean that change in the transitional justice field is not important or that it is not possible. Indeed, transitional justice is only possible in States where the old ideology has been weakened, is under threat and has lost legitimacy, as happened with the apartheid regime or with the dictatorships in the Southern Cone. This constitutes a unique moment, a unique window of opportunity, even if small, to contribute to the transformation of that old ideology that permitted or consented to the atrocities that took place. Therefore, transitional justice offers important opportunities that are not often present in other political struggles.

3.1 What kind of change is achievable in the field of transitional justice?

While change (ordinary, structural and/or fundamental) in the field of transitional justice is possible, as has been suggested, it is important to remember that most often the expectations about what it can deliver are without grounds. To expect transitional

justice to deliver development, democracy, rule of law or peace is beyond what it can achieve, even if it might contribute to some of these goals. It is better to see the field of transitional justice in *realistic terms* without over dimensioning its potential. In such terms, transitional justice is about reckoning with the legacy of mass atrocities, and in that context, it is about achieving justice, truth, reparation and setting the grounds for such atrocities not to happen again. This is meant to contribute to a fundamental transformation of the ideology that allowed such atrocities. These are goals that transitional justice can work to deliver, using the various forms of change already indicated. This is not to set the bar too low. Indeed, transitional justice has struggled for decades to deliver this realistic view.

Transitional justice also delivers change at the individual level. For example, certain victims or perpetrators may feel that things have changed for them and that those changes are more than significant, as happens when a State recognises international responsibility for what it has done, apologises to the victims or finds the whereabouts of a disappeared family member. Others can feel and believe that changes have not happened at all, despite evidence that some things have changed. While the views and feelings of those who have been part of the repression or conflict, or suffered their consequences, are relevant to considering issues of social change, in this article I am concerned with changes of a universal nature, changes that affect society as a whole and not only few of its members. For example, from a justice perspective, structural change would mean that the majority of perpetrators (intellectual and material) have been investigated, prosecuted and punished, even if some of them were not, because their crimes were not proven beyond reasonable doubt.

3.2 How to maximise the potential of transitional justice processes to deliver social change?

Pablo de Greiff, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence reminds us that transitional justice is not a package of processes from which States can pick and choose (UNITED NATIONS, 2012, paras. 22-27). All processes of transitional justice should be used as they complement each other and are interdependent (UNITED NATIONS, 2012, paras. 22-24). Also, the success of these mechanisms in achieving their aims depends strongly on their capacity to co-exist and reinforce each other. However, States have been very selective about the processes they are ready to engage with and even if they implement some of them, they do so with various limitations (financial, legal and human). For example, truth is usually prioritised in order to avoid justice and or reparation as was the case of El Salvador. Reparation is often neglected, as has happened in East Timor, despite the recommendations made by CAVR (The Commission for Reception, Truth and Reconciliation) and very few examples exist where States have taken seriously the need to redress victims. Guarantees of non-recurrence are the missing part of the puzzle in almost every State undergoing a process of transitional justice.

Persuading States of the need to consider the aggregate value of all transitional justice processes and mechanisms is a challenge. Various questions remain outstanding about how to link the various mechanisms in a way that enhances their potential to

achieve their aims. There are also questions about whether sequencing is necessary. However, as the field of transitional justice evolves and new experiences take place, we continue to learn about the value added using all of these measures together. Even more, the will of States to reckon with the past can be tested by their capacity to engage in a holistic way with transitional justice mechanisms. The less mechanisms of transitional justice they are willing to engage with, the more that their will to deal with the legacy of mass atrocities can be questioned.

Equally, transitional justice processes cannot be used in isolation from other important public policies that are adopted in a State moving away from conflict or repression, something De Greiff has also noted. Transitional justice should find ways to complement and enhance development projects, to work closely with DDR (disarmament, demobilisation and reintegration) and with other similar policies or programmes that take place in parallel to transitional justice, always aiming to maximise its lasting impact (UNITED NATIONS, 2012, para. 50). Transforming in a fundamental way the ideology that made the atrocities possible requires sustained social, economic, cultural and political efforts that use transitional justice processes but that go beyond them.

Aiming to reckon with the legacy of mass atrocities is a big challenge. Removing ideologies that have been present and that have allowed and have consented to such atrocities is not a task for a few years or days. It takes generations to change ways of thinking about humanity, what is right and wrong, and what goals should be pursued in society. Unfortunately, transitional justice mechanisms and processes continue to be thought of as extraordinary mechanisms that are only needed for a few years, after which, the work is done. This approach is a tremendous error. While it might be the case that they do not need to be permanent mechanisms, for social change to take place, of the kind that transitional justice can deliver, it is essential to invest in it in a holistic way for various years. But the reality is that States moving away from repression or conflict, with or without international cooperation, only back up such processes for a short period of time and then abandon the projects, as if the goals had been achieved. Sustained investment (human and financial) is essential in countries reckoning with their past. It is not only that structural and particularly fundamental change takes time to materialise, but also that States engaging with transitional justice have to constantly adjust their policy interventions in this area.

Chile is a good example of the decades involved in moving forward and transforming ideologies. In the case of Chile, more than 24 years have passed since Pinochet left power and Patricio Aylwin assumed as president of the country. Nevertheless, the Chilean Constitution is the same constitution of Pinochet from 1980 (although it has been amended on various occasions), and the amnesty law (Decree 2191/1978) remains part of the legal system. This is not to suggest that ordinary and structural changes have not taken place. Without a doubt, Chile has had an important experience with transitional justice processes that includes reparations, memorialisation, truth and, lately, justice measures. However, it did not deliver on these fronts right from the beginning. Indeed, while its first truth and reconciliation commission was established in 1990 to clarify the truth about the disappearances and killings and related violations to such atrocities like torture (CHILE, 1990), it

was not until September 2003, thirteen years later, that the Valech Commission was established to identify the victims of detention and torture for political reasons (CHILE, 2003). This means that even in States like Chile, where transitional justice has been an on-going project, the achievement of transitional justice goals remains an objective to be pursued.

Finally, transitional justice processes should always aim to empower victims and those most vulnerable from the conflict or period of repression. Only by getting them to understand that they matter for society and that they are agents of social change will they help transform old ideologies. Otherwise, they will always be marginalised and victimised. Therefore, all transitional justice mechanisms should see victims not as objects to achieve aims, as often happens with criminal investigations, but as rights holders. In this regard it is particularly relevant to empower women, children, minorities, the elderly and the disabled, among others (UNITED NATIONS, 2012, paras. 29-35).[6]

4 Conclusions

Without a doubt the field of transitional justice has articulated the language of social change. However, it is important to re-dimension its real potential to bring about any kind of change in society. In the transitional justice field, we find examples of ordinary and structural changes, and it is even possible to consider that it can contribute towards fundamental social change.

To be able to understand what changes take place in transitional justice and to be able to measure its ability to achieve them, it is necessary to clarify the kind of goals that could be pursued through transitional justice processes and mechanisms. In this regard, it has been suggested that a realistic approach is more likely to deliver changes. It is reasonable to expect transitional justice processes to deliver justice, reparation, truth and non-recurrence and to contribute in important ways to fundamental social change by helping to transform the ideology that permitted atrocities to happen. It is there that their potential for social change should be sought, and it is in the summation of the various tools it offers (truth, justice, reparation and non-repetition) that its real ability to deliver social change has to be pursued.

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NOTES

1. See for example, Roht-Arriaza; Mariezcurrena (2006), Teitel (2001), Minow (1998), Arthur (2009), Turner (2008).

2. Updated Set of principles for the protection and promotion of human rights through action to combat impunity.

3. Nisbet, in his book Social Change and History, develops a powerful argument to show the priority of fixity over change in the social reality. He claims that, "Change is, however, not 'natural', not normal, much less ubiquitous and constant. Fixity is" and then continues, "In the realm of observation and common sense, nothing is more obvious than the conservative bent of human behavior, the manifest desire to preserve, hold, fix and keep stable. Common sense tells us that, given the immense sway of habit in individual behavior and of custom, tradition, and the sacred in collective behavior, change could hardly be a constant, could hardly be ubiquitous" (NISBET, 1969, p. 271).

4. Just think, for example, how difficult it is to enact a new constitution, especially inside rigid legal systems, or to enact a new treaty in the international arena. Most of the changes in the law are gradual changes that have to follow certain patterns not to violate the essence of the system where they are taking place.

5. For interesting insights into the concept of emancipation within modernity, see: Leader (1998), Berman (1983), Laclau (1996), Santos (2002) and Nisbet (1969, 1980).

6. In this report De Greiff reminds us of the importance of recognition and trust for victims. They are goals that transitional justice should aim to achieve.

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Human Rights in Motion

Perspectives

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ABSTRACT

When it comes to controversial judicial cases, is human rights still an effective language for
producing social change? This article sheds light on this question by examining litigation
strategies in the African context. The author focuses on three issues: lack of public support
to the death penalty case decided by the Constitutional Court of South Africa; loss of
States' support to regional courts such as the Southern African Development Community
(SADC) Tribunal; and, finally, judicial self-restraint in a case involving customary law in
Botswana. By exploring these issues, the author argues counter-intuitively that, as civil
society organisations seek effective rights protection and promotion, occasionally such long-
term objective requires short-term eschewal of a rights discourse in favour of a more populist
approach. While arguing this is not always the case, the author contextualises the potential
for social change of public interest litigation vis-à-vis the need to gain and maintain public
and States' support to human rights.

HUMAN RIGHTS LITIGATION IN SOUTHERN AFRICA: NOT EASILY ABLE TO DISCOUNT PREVAILING PUBLIC OPINION

Nicole Fritz

I have been asked to provide some thoughts in response to the question: is human rights still an effective language for producing social change? As the director of the Southern Africa Litigation Centre (SALC), an organisation that seeks primarily to support human rights and public interest litigation in the Southern Africa region, I am principally interested in that question as it relates to litigation. And of course, when we litigate human rights and public interest–related issues we do so chiefly within parameters provided by rights provisions we find in domestic Constitutions and regional and international instruments applicable even in places as undemocratic and seemingly rights-hostile as Swaziland. So one would assume that my answer, necessarily, would be an easy "yes, human rights are still an effective language for producing social change".

Yet I want to argue, counter-intuitively, that as we seek effective rights protection and promotion, occasionally that long-term objective requires short-term eschewal of a rights discourse in favour of a more populist approach. Put differently, social change – in the sense that human rights are advanced and achieved – sometimes requires a reference, even deference, to prevailing social and political mores.

1 Death penalty and public opinion

To begin with, it is worth examining the much acclaimed death penalty judgment, *S v. Makwanyane*, delivered by South Africa's Constitutional Court in 1995. In soaring, poetic language the Court made plain that the death penalty offended a raft of rights provisions contained in the then recently enacted Interim Constitution of 1994. It was, as a matter of principle, unconcerned for the fact that public opinion strongly supported retention of the death penalty. As Judge Chaskalson explained:

> *Public opinion may have some relevance to the enquiry, but in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions*

without fear or favour. If public opinion were to be decisive there would be no need for constitutional adjudication. The protection of rights could then be left to Parliament, which has a mandate from the public, and is answerable to the public for the way its mandate is exercised, but this would be a return to parliamentary sovereignty, and a retreat from the new legal order established by the 1993 Constitution. By the same token the issue of the constitutionality of capital punishment cannot be referred to a referendum, in which a majority view would prevail over the wishes of any minority. The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process. Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and the weakest amongst us, that all of us can be secure that our own rights will be protected.

<div align="right">

(SOUTH AFRICA, *S v. Makwanyane and Another*,
1995, para. 88).

</div>

Yet while the articulation of the role of the courts is undeniably correct and the judicial reasoning of Chaskalson cannot be faulted, had the Court's judgment and its rejection of public sentiment on this issue triggered an enormous public backlash, the Court and its legitimacy might have been imperilled, and with it the entire constitutional enterprise.

As it was, no such dangerous outrage was directed at the Court and the Court knew that it was unlikely to provoke any legitimacy crisis because while public opinion supported (and continues to support) retention of the death penalty, the African National Congress (ANC), South Africa's majority party, does not. Of course the ANC might have instead legislated on this matter rather than allowing the controversial issue to be tested by the new court. Nevertheless, the court could issue its judgment against the death penalty, secure in the knowledge that it would not incur the enmity of the ruling party.

2 Regional courts and States' acceptance

Another example, in a different context and with a far less happy outcome, is that of the Southern African Development Community (SADC) Tribunal – an issue on which we at SALC have long worked. The treaty was established as part of the regional economic community and intended to resolve disputes between States as well as between States and inhabitants of the region. Unsurprisingly, in the Tribunal's short life-span the only disputes referred to it were those of individuals referred against States.

Some of the very earliest cases filed before the Tribunal concerned the contested land expropriation process in Zimbabwe. In 2007, the Tribunal ruled against Zimbabwe in the case of *Campbell (Pvt) Ltd and Others v. The Republic of Zimbabwe and Others* (SOUTHERN AFRICAN DEVELOPMENT COMMUNITY TRIBUNAL, 2008), holding that the Zimbabwean law ousting the domestic courts' jurisdiction to rule on the lawfulness of land seizures violated the rule of law in

that it denied claimants the right of access to the courts and the right to a fair hearing. The Tribunal also held that the impugned law, in targeting white farmers alone, regardless of other factors, amounted to indirect racial discrimination and was accordingly unlawful. The Tribunal emphasised that its ruling would have been different had the land expropriations been conducted in a reasonable and objective rather than arbitrary manner (NATHAN, 2011, p. 126).

Zimbabwe refused to comply with the rulings compelling the applicants to bring several applications before the Tribunal – in 2008, 2009 and 2010 – requesting that it hold Zimbabwe in breach and contempt of the 2007 order. The Tribunal ruled for the applicants in all instances, finding that Zimbabwe had failed to comply with its rulings and noting that it would report these findings to the Summit for its appropriate action.

In September 2009, Zimbabwe announced that it did not recognise the Tribunal's jurisdiction – despite having nominated a judge to be appointed to the Tribunal and having appointed a counsel to represent it before the Tribunal. It also circulated a legal opinion arguing that the Tribunal had not been legally established, that its rulings were of no binding force and effect and that member States were under no obligation to observe its jurisdiction. In addition, Zimbabwe undertook intensive lobbying of other SADC member States in an attempt to win their support for this position.

Meanwhile, the SADC Summit had received the Tribunal's report regarding Zimbabwe's non-compliance and the accompanying call that it adopt "appropriate measures" to enforce its compliance. The Summit might have adopted sanctions or suspension. But, instead of suspending Zimbabwe, the Summit preferred to suspend the Tribunal, under the guise of a review process – announcing at its August 2010 Summit meeting that the Tribunal's role, functions and terms of reference would be reviewed, and coupled this announcement with an instruction to the Tribunal not to take on any new cases. It also failed to renew the terms of Tribunal judges, so denying the Tribunal quorum. In a subsequent decision in 2012, the Summit announced that a new Tribunal protocol would be negotiated and that any new Tribunal would only be authorised to entertain disputes as between member States.

With hindsight, it seems clear that the Zimbabwean land cases should ideally never have been among the first cases heard by the Tribunal. All courts will find it difficult to withstand sustained political pressure but new courts – domestic, regional or international – are particularly fragile creatures. They hold neither a sword nor a purse and depend for their survival on something much more ephemeral: an acceptance of their legitimacy and authority. As new courts cultivate, in their early years, this culture of acceptance, they can ill-afford to take on the most politically contentious matters – unless they can be assured, as was South Africa's Constitutional Court, that the backlash provoked will be controlled.

As law scholars Garrity-Rokous and Brescia (GARRITY-ROKOUS; BRESCIA, 1993, p. 560) explain:

> *While negative publicity may influence a State to comply with an adverse judgment, a human rights court or commission can exert pressure on a State only at the risk of*

> *jeopardizing the State's voluntary support for the system itself. Regional systems thus are caught in a tension between maintaining political unity and protecting individual rights.*

For judges of new regional courts, it is not enough to contend themselves purely with the legal domain. They will have to "balance the protection of human rights in individual cases against the potential long-term consequences of their decision, a balancing that requires a constant assessment of the social and political milieu" (GARRITY-ROKOUS; BRESCIA, 1993, p. 562). They will also have to understand how far the rights at issue "can be realised under prevailing conditions" and how best "to encourage the governments and societies of their member States to accept rights – a necessary condition for the effective establishment of any right, regardless of its content" (GARRITY-ROKOUS; BRESCIA, 1993, p. 562).

Because of this conflict between political unity and the protection of individual rights, Garrity-Rokous and Brescia propose that regional human rights tribunals employ procedural mechanisms such as admissibility and standing to abstain from deciding politically contentious cases most likely to puncture political unity, thus preserving the opportunity for the tribunal at a later date, when it is better established or governmental and public support for the right has grown, to issue a substantive ruling on a similar matter (GARRITY-ROKOUS; BRESCIA, 1993, p. 564).

Of course, it is those most politically contentious cases for which access to justice is most difficult to obtain. And, as Garrity-Rokous and Brescia also observe, excessive concern on the part of regional tribunals for political unity may equally undercut long-term legitimacy for the system. This might occur when due process rights, including the right of access to the system's tribunals, are disregarded, leading the public to completely lose faith in the system, "thus vastly reducing the system's ability in the long-term to protect both substantive and procedural rights" (GARRITY-ROKOUS; BRESCIA, 1993, p. 565).

But again this speaks to the need on the part of regional tribunals, and those who seek to utilise them, of undertaking constant assessment of the surrounding political and social milieu. Still if the need for such assessment is most acute in respect of regional tribunals, it is nonetheless an assessment which must be undertaken also by other domestic courts.

3 Customary law and judicial self-restraint

Here then is one final example and happily a more successful one. Recently, the Southern Africa Litigation Centre (SALC) supported a case in Botswana brought by three sisters challenging a customary law rule which allegedly provided only for male inheritance of the family home. At the High Court level, the judge ruled that the customary law rule denying women the right to inherit the family home infringed the right to equality, noting the supremacy of the Constitution over all other law including customary law.

The High Court of Botswana found the consequence of the customary rule was that women had limited inheritance rights in comparison to their male siblings

and that this meant that daughters could be evicted from their family home. The Court held that:

> [T]he law [at issue] is biased against women [...] This gross and unjustifiable discrimination cannot be justified on the basis of culture [...] It cannot be an acceptable justification to say it is cultural to discriminate against women [...] Such an approach would [...] amount to the most glaring betrayal of the express provisions of the Constitution and the values it represents [...] [the law at issue] has no place in a democratic society that subscribes to the supremacy of the Constitution – a Constitution that entrenches the right to equality.
>
> (BOTSWANA, *Mmusi & Others v. Ramantele & Another*, 2012, para. 200-202)

Notably, the Court also unequivocally rejected the view that a declaration of unconstitutionality would be against the public interest as public opinion was not in support of equal rights for women, stating that

> this court also rejects outright any suggestion [...] that this court must take into account the mood of society in determining whether there is violation of constitutional rights as this undermines the very purpose for which the courts were established.
>
> (BOTSWANA, Mmusi & Others v. Ramantele & Another, 2012, para. 197).

Using language which human rights activists would only applaud, the judge went on to pronounce that "it seems to me that the time has now arisen for the justices of this court to assume the role of midwives and assist in the birth of a new world struggling to be born, a world of equality between men and women as envisioned by the framers of the Constitution" (BOTSWANA, *Mmusi & Others v. Ramantele & Another*, 2012, para. 217).

On appeal, the Court of Appeal of Botswana, like the High Court, ruled in favour of the sisters, finding that they could not be disturbed in their possession of the family home, but they did so by a route very different from that of the High Court. In fact they chided the judge in the High Court for potentially giving the:

> wrong signal to those who are not cognizant of the primary role of a judge, namely to resolve disputes before him/her and interpret the law to be applied in the dispute before him/her. It is not for the judge to traverse issues that do not directly arise from the case being dealt with however important they may be.
>
> (BOTSWANA, *Ramantele v. Mmusi & Others, 2013, para. 74).

They determined that the case might be decided without having to refer to constitutional rights: that among other things, the alleged rule – being unfair, inequitable and unconscionable – did not meet the requirements for recognition as a customary law. Unquestionably, it was a judgment less soaring in its rhetoric than that of the High Court and yet, arguably, it was stronger for it.

Its narrow, conscientious reasoning – concerned more for the particular facts

of the case than was the High Court judgment, less couched in the language of human rights – means the outcome is far less likely to be the subject of attack, is far more likely to meet with social acceptance in still fairly conservative Botswana than had the High Court had the last word.

4 Conclusion

In this short paper, by reference to some examples, I have sought to argue that in the sphere of public interest litigation, the language of human rights is not always the most effective tool for producing social change, or rather that the language of human rights – if inattentive to prevailing social and economic realities – may often fail to produce the social change we seek. That is not to say that we should only look to using the language of human rights when the prevailing political and economic forces are congruent – if that were the case too many people and causes would never receive legal support. But it does require that those of us who undertake public interest litigation are keenly appreciative of the relevant social, political and economic contexts in which we bring legal action, even if ultimately we choose to discount them.

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MANDIRA SHARMA

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ABSTRACT

The present article reconstructs Advocacy Forum's trajectory in combating torture in Nepal as an example of the human rights language's capability to produce social change. As the article shows, Advocacy Forum's strategy, called "Integrated Intervention Strategy" (IIS) and developed during the conflict and in the post-conflict period, has been effective in reducing the practice of torture in Nepal. The organization's approach is holistic, based on a three tier-intervention – local, national and international. Furthermore, in addition to promoting legislative change as well as filing writs of habeas corpus and torture compensation cases, AF's strategy encompasses attitudinal and practical transformations as well as institutional reforms in order to promote change on the ground. Advocacy Forum, the article argues, believes that the strategy developed by the organization can be applied in other contexts as well, because of its holistic nature and effectiveness.

KEYWORDS

MAKING LAWS WORK: ADVOCACY FORUM'S EXPERIENCES IN PREVENTION OF TORTURE IN NEPAL

Mandira Sharma

The question of whether human rights are an effective language for producing social change is a critical and contemporary one. The present article uses the experience of the Advocacy Forum (AF) in combating torture in Nepal as an example of the human rights language's capability to produce social change. AF's experience also provides significant evidence that, to uphold this capability, the human rights movement should determinedly seek for holistic ways of realising human rights, such as constructively engaging with stakeholders and struggling for attitudinal and practical changes as well as institutional reforms.

1 Background

Advocacy Forum (AF), set up by a group of lawyers in 2001, has since then been championing prevention of torture and of other human rights violations in Nepal. Considering the problem of routine and widespread practice of torture in pre-trial detention facilities, it started paying systematic visits to government detention facilities and monitoring and documenting the status of the detainees. The findings of the detention visits were shared and discussed with the stakeholders of criminal justice system to seek out ways to end the practice of torture in detention and provide justice and redress to victims. Also, these findings were reported to various national and international human rights organisations and bodies to garner support for the torture prevention work in Nepal and make people aware of the extent of the problem.

Nepal lived a decade of armed conflict between 1996 and 2006, initiated by the ultra-left party known as the Communist Party of Nepal (CPNM). In this period, Nepal experienced extra-judicial killings, enforced disappearances, torture, sexual abuse, abduction, extortion etc. perpetrated by both sides of the conflict. The warring parties (the government and the Maoists) both used torture for various purposes. The conflict reached a peak in 2001, when the government

Notes to this text start on page 211.

declared state of emergency, branded the Maoists as terrorists, and introduced the Terrorist and Disruptive Activities Ordinance (TADO). The ordinance provided sweeping powers to security forces to keep suspected members of rebel groups under preventive detention for up to 6 months without judicial scrutiny.[1] It was then that AF started its work. Though AF focuses on monitoring and documenting five categories of violations — torture, extra-judicial killings, enforced disappearances, sexual violence, use of children in armed forces —, this article focuses on AF experiences in dealing with the cases of torture.

Amid a situation where arbitrary arrests and detentions were considered normal, state of emergency was imposed, access to government detention facilities was almost impossible. Generally pre-trial detentions were closed for outside world in Nepal. Determined to prevent torture, ill-treatment and illegal detention and to put constitutional rights of detainees into practice, AF was able to negotiate the access to police detention centres, using the law.

Torture in Nepal has been used as a criminal investigation tool to coerce detainees into confessing the crime, to destroy the personality of individuals and to impose authority on the victims, among others. Historically, it has also been used as a form of punishment. Despite having signed international commitments for absolute prohibition of torture in its territory by ratifying international instruments such as the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment (CAT), and the International Covenant on Civil and Political Rights (ICCPR), Nepal's domestic implementation of this promise has been either inchoate or poor. The domestic laws are not on a par with the international prohibitions of torture. This discrepancy is further aggravated by the non-existence of independent monitoring mechanisms in the realm of preventive detention and by the virtual lack of impartial investigations into allegations of torture. Moreover, the existing legal system in Nepal is inadequate to provide justice and reparation to the victims and hold the perpetrators accountable for torture and other human rights violations (ADVOCACY FORUM; REDRESS, 2001). Although the 2007 Interim Constitution of Nepal[2] establishes torture as a criminal offence and the Supreme Court of Nepal (NEPAL, *Ghimire & Dahal v. the Government of Nepal*, 2007) has issued directives to pass a legislation criminalising torture, no legislation has been passed that specifically recognizes torture as a criminal offense and provides legal framework to bring those perpetrators to justice. This culture of impunity and lack of an accountability system is severely affecting the rule of law, respect for human rights, sustainable peace and development and efforts to strengthen democracy.

Against this backdrop, AF is doing its best to reduce and prevent the practice of torture, illegal detention and ill-treatment in places of detention by developing an innovative strategy called "Integrated Intervention Strategy" that focuses on holistic action addressing various gaps and inadequacies that overtly or subtly contribute to the institutionalisation of torture. The present article discusses AF's experience in combating torture in Nepal, by describing the evolution of the aforesaid strategy, the challenges AF encountered and how law and advocacy measures can be coordinated and strategically used to achieve concrete and positive results in reducing the practice of torture in detention.

2 Integrated Intervention Strategy

As mentioned above, the experience of AF in combating torture during the conflict and in the post-conflict era led to a gradual development of a strategy, which has been named as "Integrated Intervention Strategy" (IIS). ISS is a pragmatic framework that is built upon and reinforced by the lessons learnt during regular interventions to prevent torture. It includes all possible means of sensitising and collaborating with allies and potential allies, as well as strategies to co-opt and neutralise adversarial stakeholders, guided by evidence-based advocacy. It focuses on documentation and advocacy, filing suits for medical intervention, legal challenges to illegal detention, and collecting evidence for wider policy reform.

The strategy is a synthesis of previously defined conceptual paradigms and best practices internationally employed to prevent torture, on the one hand, and direct first-hand experience of AF attorneys in their daily engagement with torture survivors and dealings with Nepal's criminal justice system. AF's experience has shown that influencing justice system stakeholders, through evidence-based advocacy and daily responsible participation in the justice system, is the basis for sustainable change. Legislative change without practical implementation is of little comfort to those suffering injustices within the Nepal criminal justice system, thus the need of an integrated approach that brings out necessary attitudinal and practical changes as well as institutional reforms.

The strategy is implemented in three levels – local, national and international. Implementation is basically guided by four principles: 1) indivisibility (all strategic interventions must be harmonised and implemented simultaneously); 2) prevention (torture prevention is key to all strategic interventions); 3) immediacy (rapid response and proactive action); 4) legitimacy (interventions are carried out within the parameters of existing national and international laws, keeping the consistency and accuracy of the information collected).

Since torture and ill-treatment usually occur in places of detention that are inaccessible to any form of public scrutiny, monitoring detention centres is an integral part of any strategy aimed at protecting persons who are deprived of their liberty. This monitoring must be more rigorous than occasional visits by independent bodies to places of detention, followed by reports and recommendations. Visits must be regular and unannounced. Based on the very idea that such visits are one of the most effective ways to prevent torture, AF has been visiting detention centres on a daily basis in the districts in which it operates. Currently, AF visits 57 detention centres in 20 different districts across the country, though the organization's reach was limited during the conflict era. AF lawyers visit custody centres every day to observe the situation of detainees, interview them and document their cases. Moreover, AF has developed a detailed questionnaire to record important information on a person's detention, to support and defend the individual's case as well as to challenge any illegal practices by the authorities. However, as AF lawyers face serious limitations (such as lack of separate and confidential place for the interview, denial of access to some cells, only one third of the detention being monitored) the organization's current data can only provide a glimpse into the full extent of the practice of torture and ill-treatment in places of detention in Nepal. The data, however, provides consistent and clear evidence as to its existence.

Furthermore, AF, recognizing the importance and positive consequences of transnational advocacy networks in fighting impunity, has been continuously seeking to establish effective working partnerships with the international and domestic human rights community. As detailed later below, AF has contributed to increased involvement with the UN treaty and charter-based mechanisms on Nepal, which has helped to reduce the practices of torture in detention facilities.

Political interference in policing practices by powerful individuals and groups means that the most socially, politically and economically weak members of society are most vulnerable to abuses, including torture and ill-treatment. As presented later below, one way AF has fought against it is by pressuring the UN in its peacekeeping operations,[3] as well as the US in its training activities, to take into consideration the record of alleged perpetrators. Moreover, in line with AF's experience that, unless represented by a strong legal aid service, the courts, public prosecutors and police frequently fail to adequately ensure that detainees' rights are respected, the organisation provides legal assistance to all victims of torture wanting to claim compensation through the courts. It also helps victims to file petitions for medical examination and medico-legal documentation, or *habeas corpus* if the detention is illegal. By providing free legal aid, from prosecution to adjudication, to the detainees and torture victims who are unable to afford an attorney due to poverty, illiteracy and other disadvantages, AF finds victims to be more encouraged to fight for their rights.

Past experiences of AF have shown that health professionals also take part in torture either by act or by omission, falsifying medical reports of failing to give appropriate treatment or medical report. As the Nepalese courts give greater weight to medical evidence, it is crucial to have proper medical examination and medical documents in allegations of torture or ill-treatment. While increasingly torture is carried out without leaving signs or with signs resolving within days, leaving no permanent traces, experienced doctors can nevertheless evaluate testimony, accounts of post-trauma symptoms and physical and mental *sequelae* and draw conclusions from these. It is vital that health professionals are able to promptly and impartially document and assess injuries. In some instances, medical health professionals are unable to do this due to fear, threats and intimidation by law enforcement officials. In other cases, doctors might have a vested interest in hiding evidence of torture and ill-treatment. Medical officers who carry out examinations of detainees are effectively subordinate to the police and subject to influence exerted by the police, especially within the precinct. Often police are present during medical examinations or post-mortems.

To address the problem of medical evidence and effective medico-legal documentation, AF has contributed to develop expertise at the national level in providing training for medico-legal professionals. It has been regularly providing training for doctors at the national and regional levels in line with the 1999 Istanbul Protocol (UNITED NATIONS, 2004), which provides detailed medical and legal guidelines for the assessment of individual complaints of torture and ill-treatment as well as for the reporting of such investigations to the judiciary and other bodies.

Moreover, AF has felt the need to constructively engage with stakeholders of criminal justice system such as police, public prosecutors, judges and defence

lawyers. AF's experience shows that the practice of torture in custody can be reduced if the actors such as the courts, prosecutors and defence lawyers start scrutinizing the treatment of detainees in places of detention. Capacity-building, training and technical support to relevant stakeholders is crucial to sensitise them. By organising a regular stakeholders' forum, AF provides opportunities for these to discuss the challenges, and to find ways in a collective manner to address them.

In addition, AF believes that sustained advocacy initiatives around key laws and regulations relating to torture can result in tangible changes in law and practices. The relevant laws and policies need to be reviewed and the organisation intends to persistently advocate for amendments that ensure that the legislation complies with international human rights standards. For the purpose of advocacy and lobbying, it is of utmost importance to work in tandem with local media.

3 Results

Advocacy Forum (AF) has seen encouraging results in preventing torture in Nepal with the implementation of the above strategy. At the local level, there are clear indicators that the existing laws are being implemented and there have been promising results in their compliance by stakeholders within the criminal justice system.

AF efforts have contributed significantly to reduce the frequency of torture and ill-treatment in government detention facilities. According to Advocacy Forum (2004), in the last 13 years, torture was reduced from 44.5 % (2001) to 16.7 % (2013) in government detention facilities in districts where AF is present (Graph 1). In 13 years, AF has visited 34,421 detainees. There have also been clear improvements in some crucial trends, such as illegal detention (Graph 2) and physical and mental check-up examination of detainees (Graph 3), which have contributed to a gradual reduction of torture and ill-treatment.

GRAPH 1

PERCENTAGE OF TORTURE IN GOVERNMENT DETENTION FACILITIES IN DISTRICTS WHERE AF IS PRESENT

GRAPH 2

PERCENTAGE OF ILLEGAL DETENTION

GRAPH 3

PERCENTAGE OF PHYSICAL AND MENTAL HEALTH CHECK-UP EXAMINATION OF DETAINEES
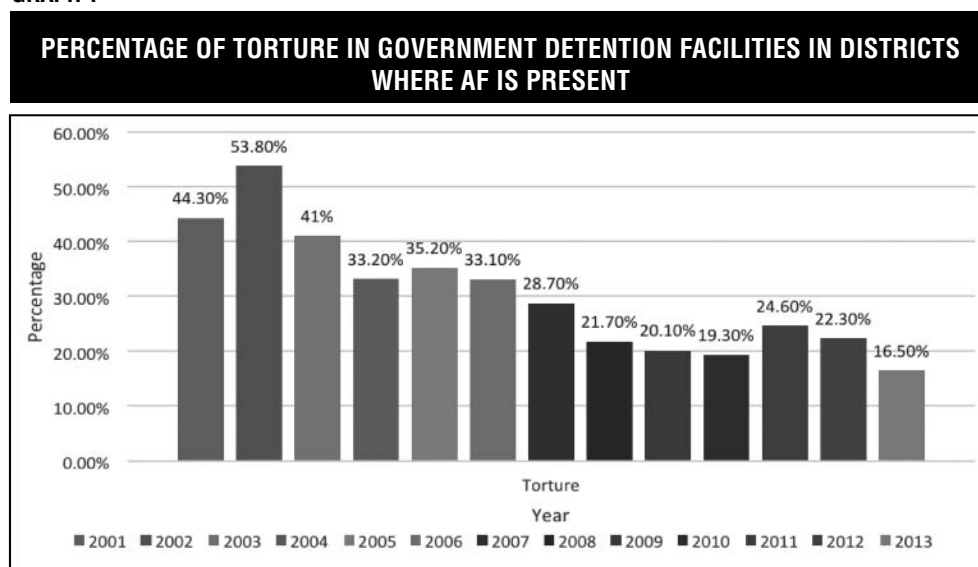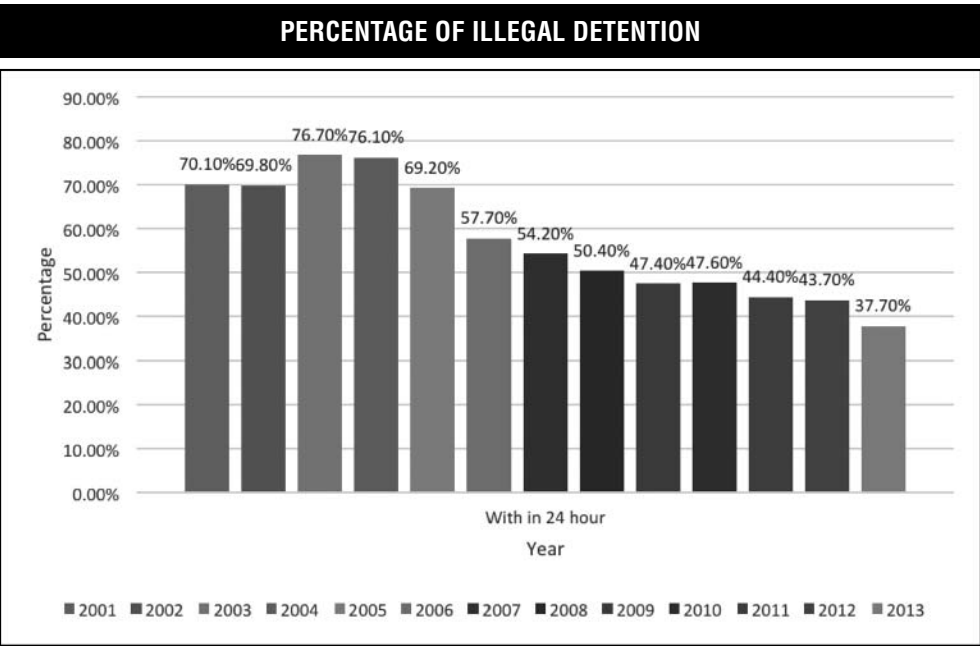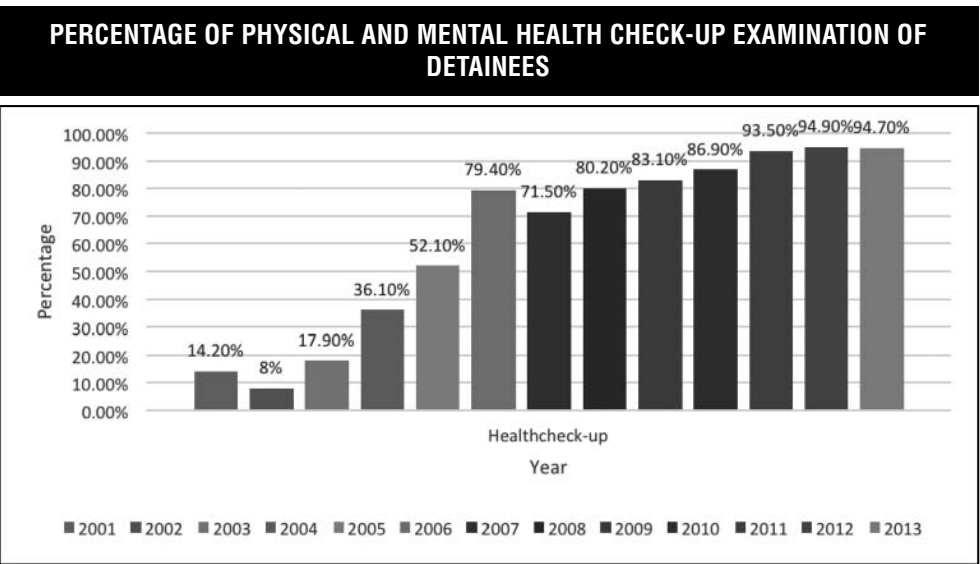
In addition, stakeholders in the criminal justice system are more sensitised about their legal obligations, which is reflected in their everyday work. During consultations, they have come forward, chaired the proceedings and even presented papers discussing different ideas to prevent torture. They have also asked AF lawyers for materials and other deliverables relating to international practices on prevention of torture. Our pressure to include human rights in general and prohibition of torture in particular as part of the curriculum in the training of the different actors in the criminal judicial system has led to the inclusion, in the training courses for

judges provided by the National Judicial Academy, of issues such as the international standards against torture and the role of judges in the prevention of torture. This has resulted in judges not allowing hearings of criminal cases in the absence of defence lawyers, not extending the remand of detainees if medical reports are not incorporated and so on.

A general consensus on the need to pass comprehensive legislation criminalising torture has been built up, and the government has unveiled a draft bill in this regard. Engagement with local media and awareness-raising efforts (including placing billboards in the premises of the police stations outlining the rights of detainees) also have had positive implications in sensitising both police and civilians about detainees' rights. The police have started to feel the pressure and to realise that they are not above the law and can be held responsible for the crime of torture they commit.

One of the outstanding transformations brought by AF efforts at the national level is the successful challenge of unconstitutional legal provisions that granted judicial powers to quasi-judicial authorities, including the Chief District Officer (CDO). On September 22, 2011 the Supreme Court issued a directive in order to review the quasi-judicial power granted to the CDO by various laws including the Public Security Act 1970, Arms and Ammunition Act 1962, and many more acts that gave CDO immense power; under such laws, the CDO was authorized to hear criminal cases. Challenging this jurisdiction of the CDO, Advocacy Forum (AF) had filed a writ on December 31st, 2009. In its ruling, the special Bench issued an order to review the provision and also issued a mandamus order for its immediate implementation. We had challenged the jurisdiction of CDO for sentencing people without a fair trial. We were concerned with the immense power vested in administrative authorities like the CDO, who could sentence a convicted detainee to up to seven years of imprisonment in certain cases, while a judicial authority gives punishments of up to six months of imprisonment in petty theft cases. This is in clear violation of right to equality of the accused. Furthermore, the CDOs do not possess theoretical or practical knowledge of the law, yet they were arbiters of justice.

After hearing AF's arguments, the Apex Court found that granting powers to the CDOs had indeed violated the right to fair trial. The Court, however, refrained from declaring such provisions unconstitutional as requested by AF, stating that it would create a legal vacuum in the absence of other alternative bodies to undertake the said jurisdiction. In its directives the SC has ordered the government to form a research committee comprising legal and administrative experts to amend the existing laws providing the aforesaid power, and submit its report within six months. Following the order of the Supreme Court, the government of Nepal has initiated its task. It has formed a committee under the Office of the Prime Minister and has held consultation meetings for reviewing the powers of the CDO in 2012. This has resulted in the proposal of the government to amend a number of pieces of legislation and to provide three months of intensive legal training to administrative authorities, including the CDO.

AF also took the initiative to draft model anti-torture laws, leading a

coalition of a number of civil society organisations. This draft was prepared after a series of reviews and consultations with victims, as well as national and international experts; the model legislation was made public on June 26, 2009, along with a report on torture titled "Criminalize Torture" (ADVOCACY FORUM, 2009). Besides, this initiative has played a significant role in triggering a debate on the urgent need to adopt anti-torture legislation and other legislation on transitional justice mechanisms. The annual analysis of the information gathered from detention centres and its presentation provides basic knowledge on the issue of torture in Nepal.

Involvement with the UN treaty and charter-based mechanisms has increased in Nepal. Even after a decade of ratification of the first Optional Protocol to the ICCPR, there was no skill and know-how to bring communications before the Human Rights Committee. AF has therefore been assisting torture survivors to submit individual communications to the United Nations Human Rights Committee (UNHRC).[4] Furthermore, AF has played a significant role in the recent confidential inquiry of the CAT Committee (UNITED NATIONS, 2012); it makes regular submissions to the CAT Committee[5] and the UN Special Rapporteur on Torture.[6] Also, AF has been successful in lobbying the diplomatic missions for implementing visa vetting – in which the host country denies giving visa to perpetrators of human rights violations (including torture) who intend to attend training, conferences, meetings or for personal visits (ADVOCACY FORUM; HUMAN RIGHTS WATCH, 2010, p. 10). Likewise, AF has been able to repatriate Nepali security officers implicated in human rights abuses from the UN Peacekeeping Mission. Leveraged by such international interventions, AF's initiative has been able to lay ground for and open new possibilities in reducing the practice of torture in detention facilities.

4 Challenges

AF has faced numerous hurdles and obstacles in its crusade against torture in Nepal. Both practical and institutional challenges have caused repeated interferences in its work. Foremost, the challenge AF is currently facing is the security of its lawyers/ defenders. With the political transition still intact and continual deterioration of law and order situation amid the prevailing state of impunity, there is an emerging pattern of threats to lawyers. Regularly subjected to intimidation, AF lawyers are taking up cases of torture against police officers and advocating against impunity by building case dossiers against individual perpetrators. AF faced instances of infiltration in the organisation and stealing of case files, of a staff member being lured to spread dirt against leadership of the organisation and to make complains of irregularities in the organisation so the government might intimidate and harass it.

AF believes that detainees' access to legal representation in the pre-trial phase is important to ensure fair trials and prevent human rights violations in detention, since police personnel may coerce detainees into signing doctored confessions by employing various methods of torture as well as threats of reprisal. Furthermore, the right to consult an attorney is also enshrined as a fundamental right in the

Interim Constitution. But as AF lawyers provide legal aid to detainees from the pre-trial stage, they are more vulnerable to physical assaults and intimidation. AF constantly receives reports of our lawyers being denied access to detention centres. This happens mostly when cases of torture and illegal detentions are challenged. Regular attempts by police authorities to deny AF attorneys' access to detention centres constitute a persisting problem. In other instances, AF lawyers and torture survivors have been threatened to refrain from registering the First Information Report (FIR) that demands criminal investigation in the cases of human rights violations and the writ of mandamuses that victims file in challenging lack of investigation in their cases. Also the victims withdraw cases because of intimidations and threats of reprisal.

Another challenge that AF has been facing is the overwhelming nature of the work performed by its staff - such as representing victims in courts, listening to their scary stories, being constantly involved in advocacy and lobbying and facing regular threats from state agents and other groups – and the detrimental impact that this has on their mental health. AF provides lawyers and other staff regular psychosocial counselling.

Political instability has also been an issue of concern. There is increasing frustration among victims and defenders alike, as impunity remains unfettered and unchallenged in relation to the crimes, including torture, committed during Nepal's conflict. Despite concerted attempts by victims and civil society, the proposed transitional justice mechanisms have yet to materialize.

Most importantly, AF has been regularly harassed by the Social Welfare Council (SWC), a government body responsible for regulating non-governmental organisations. This Council has harassed AF either by not approving AF projects or by creating obstacles in the yearly renewal of the organisation's legal status, which is a mandatory legal requirement for all NGOs in Nepal.

But the most serious challenge faced by AF is to keep up the momentum of its work on torture. To carry out such holistic work, AF needs to have adequate resources and receive continuous support, on a long-term, strategic basis. Vagaries in donor funding have negatively impacted AF's work. A project-based approach can sometimes cause harm, by losing the momentum in projects like the one on prevention of torture. As our efforts are intended to bring systemic changes, they will necessarily take years to produce concrete results.

The lack of understanding of the political nature of human rights work and the risks involved in it among some funding partners also create problems. When funding partners change their priorities, they often force NGOs to shift their priority too. Funding partners often forget that their funding is for addressing the human rights deficit in Nepal through us and that NGOs are drivers of change. Non-recognition of the years of experiences and knowledge of activism in this field and giving too much weight to 'expert' 'consultants' can undermine the sustained impact of the NGOs' work. Funding partners also have to be mindful that dragging activists and movements into the bureaucratic framework that have been created in developed countries and trying to impose it on local organisations impact negatively on preventing torture and other human rights violations.

5 Conclusion

When AF started its work, the country was immersed in the maelstrom of conflict, and torture by the security forces was widespread. Though the National Human Rights Commission (NHRC) had been established then, it lacked teeth and was practically and resource-wise not ready to deal with the overwhelming frequency of human rights violations. Other civil society organisations were busy reporting violations, but the issue of torture was left on the back burner. In such a scenario, AF took the responsibility of monitoring detention facilities to prevent torture. Overcoming the fear of being branded as rebels by the security forces for helping suspected Maoist terrorists, AF attorneys continued to challenge illegal detention and torture by filing writs of *habeas corpus* and torture compensation cases.

AF's strategy, developed during the conflict and in the post-conflict period, played a significant role in reducing the practice of torture. Further, AF's three tier-intervention – local, national and international – has widened the scope of human rights work in Nepal. AF believes that the strategy developed by the organisation can be applied in other contexts as well, due to the holistic nature of its interventions and to its effectiveness.

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NOTES

1. Section 9 of TADO read:

If there is reasonable ground for believing that any person has to be prevented from committing any acts that could result in terrorist and disruptive acts, the Security official may issue an order to detain such a person in any particular place for a period not exceeding ninety days.

If it appears to detain any person for a period of time in excess of the period referred to in sub-section (1), the Security Official may, with the approval of His Majesty's Government, Ministry of Home Affairs, detain such person for another period of time not exceeding ninety days.

2. Article 27 of the 2007 Interim Constitution of Nepal provides:

Right against Torture: (1) No person who is detained during investigation, or for trial or for any other reason shall be subject to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. (2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.

3. Quantitatively, "Nepal is the sixth in rank among the highly contributing nations to UN peace missions in the world", according to *The Himalayan*, 19 March 2013. Available at <http://www. thehimalayantimes.com/fullNews.php?headline=Nep al+Police+in+UN+Peace+Keeping+Operations&Ne wsID=369951>. Last accessed on: 25 July 2014.

4. Available at <http://advocacyforum.org/hrc-cases/index.php>. Last accessed on: June 2014.

5. Available at <http://advocacyforum.org/ publications/un-submissions.php>. Last accessed on: June 2014.

6. Ibid.

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ABSTRACT

In this article, the author reviews the recent challenges to the human rights movement in Angola. On the national level, despite the approval in 2010 of the new Constitution of Angola, the government continues to persecute human rights defenders. The author tells, in particular, of restrictions on the exercise of the right to assembly and protest in the country. On the international level, Angolan civil society organizations have used international instruments to pressure for greater respect for human rights by the government. The article argues that even in a hostile context like Angola, human rights are an effective language for producing social change, particularly when they are used as an instrument of external pressure on governments to observe them internally, and when there are large social movements trained in human rights. Despite the challenges faced by human rights defenders, the author argues that the vision of a more just and equal country for all Angolans is what keeps the will to fight for social change alive.

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HUMAN RIGHTS AND SOCIAL CHANGE IN ANGOLA

MARIA LÚCIA DA SILVEIRA

1 Introduction

The rights and fundamental freedoms of Angolan citizens are constitutionally guaranteed. There are numerous legal instruments for the protection of human rights on the national level as well as international treaties incorporated into the internal legal order. However practice has shown that these documents alone do not guarantee respect for these rights. Several factors contribute to this.

First, the idea still prevails in Angola that human rights are incompatible with the country's ethnic, cultural and religious differences. Moreover, the violation of rights is one of the methods used by political rulers to impose their will, inhibit citizen participation and, as a result, cement and perpetuate their power as the main obstacle to the process of democratization in the country.

As a result of the context of war, which the country lived through for 30 years, all analysis of social problems is conducted from two distinct angles: that of the party in power and that of the parties in opposition. Human rights activists and leaders of the struggle for equality in Angola are, therefore, labeled as sympathizers of one opposition party or another and are generally viewed as being "opposed" to the government and in the service of foreign powers. In other words, a partisan culture has arisen in Angola, to the detriment of civic awareness for the defense of human rights. The problem with this situation is that there will always be someone to judge everything one does with the same ferocity they confront their political adversaries with, even though the intention of human rights defenders is only to criticize something that is wrong and to point out the best way to satisfy and protect the common interest. We spend too much time policing one another and have lost sight of what really matters, which is the struggle for the democratization of the country and, consequently, for more tolerance and respect for human rights.

Even in this hostile context, however, human rights are an effective language for producing social change, particularly when they are used as an instrument of external pressure on governments to observe them internally. I present here my arguments from the perspective of a human rights defender.

2 Progress in the law, setbacks in practice

Angola approved a new constitution in 2010 that revoked the Constitutional Law of 1992. The new Constitution made some positive legislative changes, particularly in the chapter on the rights and fundamental freedoms of citizens. For example, the number of articles increased from 35 in the Constitutional Law to 59 in the current Constitution. It is also worth mentioning that the current constitutional text is far better organized with regard to the generations of rights. However, this is no more than a technical observation that is merely decorative, since there is a gulf that separates constitutionally protected rights from their actual realization.

The government still persecutes human rights defenders, just as abductions and killings of activists and political adversaries continue to occur. In other words, despite progress in the law, in practice things have remained suspended in time—to say nothing of the areas where matters have got markedly worse. For example, it is currently almost impossible for citizens to exercise their constitutionally guaranteed right to assembly and protest,* although this right is respected by the police and government bodies if the events are organized by the ruling party or by support groups. The arbitrary detention of people with opinions that contrast with the interests of ruling party members is still a current practice. The job of the Angolan police is to maintain order, assure public safety and uphold the constitutionally protected fundamental rights and freedoms of citizens, but instead this agency of the State continues, in many cases, to intimidate, use force and firearms against citizens, make arrests and detentions without observing legal procedures, and engage in the torture and cruel and degrading treatment of citizens who protest peacefully and without arms. These illegal practices have generally been accompanied by detentions and the criminalization of journalists who cover them.

One recent example of this contradiction between legislation and practice began on September 3, 2011 (CLUB-K, 2011), when a group of young people took to the streets to demonstrate peacefully against the undemocratic way the country was being run. National Police officers used disproportionate force and arbitrarily detained 18 demonstrators. On September 12, less than 10 days after their detention, the young people were summarily tried. Five of the organizers of the demonstration were sentenced to three months in prison and payment of damages of US$1,400 for the alleged crimes of disobedience, resistance and "corporal offenses". In addition to violating rights during the repression of this protest and the summary trial of the young demonstrators, the authorities again curbed the right to assembly and protest two weeks later, when another 80 young people took to the streets to demand the release of the five detainees. This time, according to the demonstrators, State security agents infiltrated the crowd near the Santa Ana cemetery in Luanda. The march was blocked by National Police

*"*Freedom of assembly and peaceful, unarmed demonstration shall be guaranteed to all citizens, without the need for any authorization and under the terms of the law*" (Political Rights, Article 47, Item 1 of the Constitution of the Republic of Angola).

officers 20 minutes later, some 800 meters from its starting point by the Congolese market area, where it remained for three hours.

Another example occurred in 2013. Demonstrators organized a protest on September 19 against what they called, according to reports, the authoritarian regime of President José Eduardo dos Santos. At the time, seven protesters were arrested and, the next day, three journalists who were covering their release were assaulted and detained by the police.

Outside a courthouse in Luanda, police officers from the Angolan Rapid Intervention Unit surrounded the journalists Rafael Marques de Morais, editor of the independent news website *Maka Angola;* Coke Mukuta, a freelance correspondent for Voice of America, funded by the U.S. government; and Alexandre Neto. According to Rafael Marques de Morais (MORAIS, 2013), the police ordered the journalists to lie down on the ground and then shouted threats while kicking them repeatedly. Marques de Morais said he was struck on the head with an unidentified object, while Alexandre Neto claimed that the officers put them in a car and took them to the police station, where they were released with an apology after being detained for five hours. Rafael Marques said the police returned their equipment that had been confiscated, with the exception of his camera, which was worth nearly US$2,000, because it had been destroyed. In spite of the aggression they experienced, the journalists revealed that they did not suffer any serious physical injury. The brutality of the Angolan police was clearly intended to intimidate and prevent any reporting on the actions carried out during the demonstrations.

While Angola was ratifying, in New York, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, on September 24, 2013, the police were torturing Angolan citizens for exercising their right to assembly and peaceful demonstration that is protected by the Constitution of the Republic of Angola.

3 International action

The effectiveness of human rights in producing social change is closely related to the effectiveness of the Judiciary in enforcing these rights. Just as we do not give up on the justice system to resolve social conflicts, even though it is not always just, I am convinced, as a human rights defender in Angola, that the human rights approach is still the best means we have to effect social change, namely: greater freedom of expression, access to justice and rights, greater freedom of assembly and protest and many other rights guaranteed by the Constitution and international treaties signed by Angola.

In other words, the language of human rights is indeed an effective language for generating social change, provided we know how to use it in accordance with each context. For it to work, we need large social movements that are trained to play an educational role, in the sense of creating the habit of exercising rights, and to exert pressure on the rulers, who are usually the main perpetrators of human rights violations, for not enforcing the law and upholding rights.

One of the methods used by Angolan civil society organizations to pressure for more respect for human rights by the government is international action, through periodic reports to the UN Periodic Review mechanism and the African Commission, as well as complaints to the international community.

Angola is currently one of Africa's major economic powers and has often been cited in other countries as an example of peace and national reconciliation, which has been used by the government to promote its image abroad. Since there is still a great deal to be done in terms of human rights, considering the systematic violations being committed in the country, a number of Angolan rights organizations have stepped up their actions in defense of human rights beyond national borders. The most effective organizations are less than fifteen years old, as they came into existence during the wartime period. In the context of war, the human rights approach is less effective, but it is different than the approach in peacetime. Still, we have noted that things are starting to change in the field of human rights, albeit tentatively, as citizens grow more aware of how important it is for they themselves to be the protagonists in the promotion and defense of their rights.

The strategy of civil society organizations has been to appear in regional and international forums to denounce cases of systematic human rights violations. Angola, for example, has been a State-Party to the African Commission on Human and Peoples' Rights since its creation on June 12, 1989, but it only began sending reports on good practices in human rights in 2007, after Angolan human rights organizations became observer members of the Commission and started to submit their own reports on the human rights situation in the country. This served to put pressure on the government to also send its reports on good practices in human rights.

In Angola, we now have a State Secretariat for Human Rights, the Ministry of Justice is now called the Ministry of Justice and Human Rights and an Ombudsman Office has been established. Although these institutions have barely started their promotion and defense of the fundamental rights and guarantees of citizens, the truth is that they emerged thanks to the language of human rights, which was used by civil society as a tool to exact social change through their civic education, advocacy and lobbying work using the various internal and external human rights mechanisms, and by establishing partnerships with the government to respond to cases of rights violations and political intolerance that came to light in the country.

4 Conclusion

After the Luena Memorandum of Understanding was signed in 2002 between the government and the National Union for the Total Independence of Angola (UNITA), all Angolans wanted to leave the atrocities of war behind them. However there was some resistance on the part of the ruling party to concentrate on the consolidation of democracy and respect for the fundamental rights of citizens. Instead, it preferred to focus on the evils of the war and used this as

justification to not work towards the realization of economic, social and cultural rights nor the civil and political rights of citizens. At one point, the President of the Republic went so far as to say in one of his speeches that "human rights don't put food in your belly." But civil society felt it was indeed time to leave behind the traumas of war and move forward with the development and democratization of the country with everyone's participation.

All the work conducted by civil society, churches and the international community has led the Angolan government to reconsider its positions. Breakthroughs have included its candidacy for non-permanent membership on the United Nations Security Council, the invitation for various UN rapporteurs to visit Angola to observe the country's human rights situation, and the periodic review to which Angola is subject within the UN Human Rights Council and the African Commission on Human and Peoples' Rights, confirming an openness to comply with the responsibilities arising from regional and international human rights mechanisms. For this reason, there is no doubt that the language of human rights is indeed an effective language for generating social change. Material conditions are in place to further develop this valuable "instrument"; all we have to do is develop the subjective conditions or the insightfulness of the actors and social movements so that they truly become drivers of social change, influencing lawfully constituted politicians and rulers with a view to achieving the common good.

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ABSTRACT

This article deals with the issue whether human rights are still an effective language
for promoting social change. In this article, the author begins with a brief analysis on
the main developments in the human rights field all over the world, later focusing on
the trajectory of the human rights movement in Mozambique, in order to identify the
movement's impacts on the legal and institutional level and on governance. The author
concludes that while the human rights movement in Mozambique has made several
advances, especially in legal and institutional spheres, the main challenge it faces today
in the country is in the area of governance. The challenge lies in how to apply the human
rights language contained in the spirit of the laws approved and the institutions created to
the day-to-day activities of all levels of public administration, from top to bottom.

THE STRUGGLE FOR THE RECOGNITION OF HUMAN RIGHTS IN MOZAMBIQUE: ADVANCES AND SETBACKS

Salvador Nkamate

1 Introduction

As we make major strides towards the 70th anniversary of the Universal Declaration of Human Rights and the 40th anniversary of the African Charter of Human and Peoples' Rights – instruments that have left an indelible mark on the recognition of human rights in the international context and African regional context – we are confronted with great turmoil. This turmoil is composed of various forms of systematic human rights violations, and raises the following question: *Are human rights still an efficient language for generating social change*?

The answer to this question is undoubtedly yes. Even though the efficiency of the human rights language is constantly being questioned – as it is measured according to whether or not one has obtained a given result in a short period of time, using the least amount of resources possible – the force of the human rights language cannot be denied. This is true even if systematic violations of human rights continue to be committed all over the world.

Ever since the initial attempts were made to systematise and internationalise human rights, they have produced important social changes focused on improving human dignity.

Nonetheless, the process of incorporating international human rights standards at the national level and adapting governance practices to the directives of these norms has gone back and forth between advances and setbacks. This had led to questioning the efficiency of the human rights language and to growing scepticism on the social change it is able to generate.

In the Mozambican context, an analysis of the impacts of the main human rights organisations' activities on the country's existing legal and institutional framework confirms that the human rights language continues to be effective in bringing about social change. However, in terms of the implementation of public

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policies and measures to combat institutional violence, a noticeable and justifiable scepticism remains, on the impact of civil society organisations' (CSOs) advocacy work vis-à-vis the entities responsible for the promotion and protection of human rights.

In this article, we begin with a brief analysis on the main developments in the human rights field all over the world (1). We then focus on the trajectory of the human rights movement in Mozambique (2), addressing the movement's impacts on the legal (3.a) and institutional levels (3.b), and on governance (3.c), in order to respond whether or not human rights are still an efficient language for generating social change.

Our findings show that substantial progress has been made in terms of the impacts of the human rights movement's actions on legal and institution change in Mozambique. However, we do not see equally important advances being made in relation to the human rights movement's impact on government practices in the country. Nonetheless, the overall balance is still positive.

2 The human rights context around the world

The recognition of human rights through the creation of the United Nations (UN) in 1945 and the subsequent approval of the Universal Declaration of Human Rights in 1948 led to a significant decline in human rights violations, which had reached catastrophic levels during the Second World War.

These important international events gave impetus to the decolonisation process around the globe, and in Africa, in particular. They made memorable contributions to the emergence of a regional human rights system on the African continent. The landmarks of this system were the creation of the Organisation of African Unity in 1965 and the approval of the African Charter of Human and Peoples' Rights in 1981. The latter is the main instrument for promoting human rights in Africa.

International and regional conventions – both general and specific ones – came later, together with their respective mechanisms for evaluating States' fulfilment of their human rights obligations. The contribution of these instruments to the recognition of the human rights language is undeniable.

Yet, even today, in the 21st century, one can "identify the fragility of human rights as a grammar of human dignity" (SOUSA, 2013, p. 13). Indeed, systematic human rights violations persist on the global scale in both the field of civil and political rights and the field of economic, social and cultural rights. As a result, a large part of the world population continues to live in an undignified manner, far from the aspirations that led to the institutionalisation of international and regional human rights systems.

Regarding civil and political rights, one still witnesses the indiscriminate killing of civilians, of which Syria and Southern Sudan are dramatic examples. Discrimination on the grounds of sexual orientation is starting to reach alarming levels in Africa. Nigeria and Uganda have approved very severe "anti-gay" laws, showing unacceptable levels of intolerance for States that claim to be egalitarian and to respect the rights of all their citizens.

Concerning economic, social and cultural rights, "neoliberal globalisation as the new face of socioeconomic injustice, cognitive (including epistemic injustice), sexual and racial injustice, and historical injustice" (SANTOS, 2013, p. 13) prevents important advances from being made in regions of the Global South. As a result, the fulfilment of economic, social and cultural rights is incipient, as extremely high levels of illiteracy, undernourishment and infant mortality continue to exist in this part of the world (FUNDO DE POPULAÇÃO DAS NAÇÕES UNIDAS, 2013), among other evils.

Even so, since it is opposed to all of these ills, the human rights grammar has fuelled the existence of a perseverant movement that demands changes so as to elevate humanity – a demand that is undoubtedly bearing fruit. Despite the extremely slow pace of advances in some cases, one can affirm that it is indeed worth insisting and continuing to work on human rights issues.

3 The impact of the human rights movement's activities in Mozambique

The human rights movement in Mozambique arose at the time when the country was opening up to a multi-party system, marked by the introduction of the Constitution of the Republic in 1990. The Mozambican Human Rights League (*Liga Moçambicana dos Direitos Humanos*) was a forerunner of the movement. The democratisation process in Mozambique – of which key moments were the approval of the Constitution of 1990, the signing of the General Peace Agreements in 1992, and the holding of the first legislative and presidential elections in 1994 – coincided with an important moment on the global scene. In the human rights field, the Vienna Declaration and Programme of Action were approved in 1993.

On July 25th, 1993, in Vienna, a Declaration and Programme of Action were adopted by consensus and therefore, with no vote and no reservations. In its preamble, the Declaration reaffirms "the commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights". It also emphasizes:

> *that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.*
>
> (NAÇÕES UNIDAS, 1993)

Through their participation in the Vienna Conference, a group of Mozambicans became more aware of the need to promote the human rights language in Mozambique as a way of fostering change in a society deeply marked by the effects of nearly 16 years of civil war. The war resulted in approximately one million deaths, the destruction of economic and social infrastructure, and a series of

disruptions that are typical of countries in conflict. In 1993, part of that group founded the Mozambican Human Rights League. The organisation obtained legal recognition in 1994, under the 1991 Law of Association,[1] becoming the first organisation for promotion and defence of human rights in Mozambique.

Today, one can affirm that the nearly 5,000 civil society organizations (CSOs) in the country – many of which belong to the human rights movement in Mozambique – have already fostered numerous changes on the legal (a) and institutional (b) levels, and in the area of governance (c). These changes, which have undoubtedly contributed to raising the level of respect for human rights in the country, are analysed below.

3.1 The role of the human rights movement in changes to the legal system

Civil society organisations' activities in Mozambique have already led to numerous improvements of the State's legislative action in relation to both the ratification of international human rights instruments and the approval of national legislation in this area. Here, one can highlight the interventions of journalists in the approval of the National Press Law in 1991 and the role of the feminist movement in the adoption of the Law on Domestic Violence against Women in 2009.[2] The Mozambican Human Rights League's interventions in the passing of the Law against Trafficking in Persons in 2008, and more recently, in 2012, the Centre for Public Integrity's role in the approval of the Law on Public Probity should also be noted.

While it is recognised that the existing legal framework in Mozambique for the protection of human rights must continue to evolve, one can clearly affirm that significant advances have been made since the institutionalisation of democracy in the country. CSOs can rightly claim an active role in this process of improving the legal framework.

3.2 The role of the human rights movement on institutional change

The activities of civil society organisations in Mozambique have also produced important institutional changes in the country. One can highlight the struggle for the institutionalisation of the Ombudsman's Office and the National Human Rights Commission. To get these institutions up and operating, civil society organisations had to engage in intense advocacy and lobbying efforts. Their target included the United Nations' Universal Periodic Review, a mechanism used to assess the human rights situation in all UN member states. This helped to launch the operations of these two institutions.[3]

CSOs also played a decisive role in the process of institutionalising the National Human Rights Commission. They worked to ensure that the institution was established according to the standards set by the Paris Principles. Adopted by the UN in 1992, these principles seek to guarantee the independence of national human rights institutions.

3.3 The impact of human rights movement on government action

In this area, despite the important changes CSOs can claim an active role in – whether in the fight against institutional violence or the enforcement of economic, social and cultural rights – one can affirm that their activities have not produced the desired effects, or at least not as quickly as one would hope.

In fact, in spite of all the changes made on the legal and institutional levels, the practices and behaviour of government agents have remained the same, or are changing at a very slow pace.

For instance, phenomena like torture, summary executions and arbitrary arrests still exist in the country. While human rights organisations have already fought and continue to fight against these violations, they persist as unstable cyclical behaviour. Between October 2013 and April 2014, the Mozambican League received denunciations of four summary executions in the province of Nampula and five executions in the city of Maputo. The number of this kind of incident had declined considerably since 2008, after the first police officers had been convicted for summary executions in the "Costa do Sol" case, in which three people had been killed by armed officers.

The Law on Domestic Violence against Women provides another example. Even though the law was approved and has come into effect, the problem of domestic violence against women continues to be a challenge for Mozambican society, due to the complicity of the institutions responsible for combatting this violence – including the Support Centres for Women and Children – with this phenomena. Domestic violence continues to be tolerated by criminal justice institutions; many of them establish reconciliation processes to resolve the cases submitted to them, which is contrary to the law. The law stipulates that crimes of domestic violence are public in nature.

The territorial expansion of the National Human Rights Commission and the Ombudsman's Office is also a challenge, since these institutions are only present in the country's capital. Many Mozambicans are not aware of their existence or their mandate, which is why they do not resort to them.

The biggest concern, however, is how to produce changes that lead the country to become a truly democratic State within the rule of law, in which compliance with the law is mandatory. Indeed, the 'Achilles heel' of the enforcement of human rights in Mozambique are the attitudes of government agents whose actions are often contrary to national and international standards of respect for human dignity.

Therefore, political, economic and social reforms of the democratic governance model that Mozambique has been adopting are needed – ones that guarantee the existence of an effective and efficient public administration based on the rule of law.

4 Conclusion

The human rights language is a language that produces results and changes normally at a very slow pace. Sometimes, these transformations may not even take place. Even so, looking back on all that has been won by demanding human

rights on the global level, and more concretely, in the African and Mozambican contexts, one can safely say that the human rights language is still an efficient language for generating social change.

Despite difficulties in obtaining immediate results from social measures implemented to enforce economic, social and cultural rights, and although governments of various States' persistently act against civil and political rights, important gains have been won by human rights movements.

The major challenge for the human rights movement today – especially in Mozambique – is how to apply the human rights language contained in the spirit of the approved laws and the created institutions to the day-to-day activities of all levels of public administration, from top to bottom.

This is the struggle that is needed today – one that reaffirms that human rights are an efficient language, as they allow for the expression of constant outrage against all kinds of atrocities committed against the human person.

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NOTES

1. The approval of Law n° 8/91 of May 11th (the Law on Association) concretised the 1990 Constitution, which enshrines the freedom of association.

2. In 2008, the draft for the Law on Domestic Violence against Women was presented to the Assembly of the Republic by Fórum Mulher, a network of organisations working on women's human rights issues.

3. Details on the Universal Periodic Review for Mozambique are available at: http://www.ohchr.org/EN/HRBodies/UPR/PAGES/MZSession10.aspx. Last accessed on: 25 July 2014.

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ABSTRACT

After the fall of Suharto's authoritarian regime, in 1998, human rights have only been formally recognized in Indonesia, both by law and in the Constitution. Yet, civil society in that country has managed to overcome their past fear of authoritarianism, and have been very vocal and vibrant, including the media, in what has been called a democratic opening. In this article, the author describes the challenge of impunity for human rights violations in present Indonesia, the role of civil society organizations at national and international levels to resist the perpetuation of human rights abuses, and finally the author reflects on the role of Indonesia at the international scenario as emerging power and what it means for human rights protection on the ground.

KEYWORDS

THE HUMAN RIGHTS STRUGGLE IN INDONESIA: INTERNATIONAL ADVANCES, DOMESTIC DEADLOCKS

Haris Azhar

Human rights have only been formally recognized in Indonesia, both by law and in the Constitution, after the fall of Suharto's authoritarian regime, in 1998. Civil society has managed to overcome their past fear of authoritarianism, and have been very vocal and vibrant, including the media, in what has been called a democratic opening. Several entities have been outspoken in this situation, from government agencies to NGOs and international actors, including international NGOs that shifted their focus to South cooperation.

The achievements of the government of Indonesia in dealing with human rights are limited to formal respect for, and recognition of, human rights in the national law. This was started during the consolidation process soon after the transition period, in the early years of post-Suharto regime. Human rights have been "re-recognized" in an Amendment to the Constitution of Indonesia in 2000 (INDONESIA, 2000a).[1] This recognition can be seen as in accordance with the international conception of human rights standards where the State has the duty to protect the rights of every citizen. Civil liberties, which had never been respected during the Suharto regime, now became 'constitutional rights'. This constitutional promise has backboned and enriched the setting of human rights protection in Indonesia (SYA'FEI, 2012, p. 687). Indonesia is a State Party to eight core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (IESCR) since 2005 (INDONESIA, 2013). At the national level, laws on issues related to human rights started to be enacted, the basic one being Law No. 39/1999 on Human Rights. In the context of criminal law, a law was enacted that created the Human Rights Court, which is considered as *lex specialis* to try genocide and crimes against humanity (INDONESIA, 2000b). These standards led to setting up [new] institutions to carry out human rights policies.

Notes to this text start on page 234.

The national human rights commission (Komnas HAM) was granted power and authority by Law No. 39/1999, a Constitutional Court was established to protect people's constitutional rights (SYA'FEI, 2012, p. 706), and other auxiliaries bodies known as commissions were created, like the National Police Commission, the National Law Commission, etc.

1 Impunity and recurrence of violations

The progress as described above was instrumental to Indonesia's achievements on discussing human rights issues during the reformation era. It was partially an reaction in the early years to the past violations, where hundred of thousands of people suffered and were sacrificed for the sake of 'development' by the military and corrupt regime, since 1965 (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 11). However, such achievements do not necessarily provide protection to the people. They confirmed that all repression, injuries, and suffering needed to be repaired. Any violation, harm or abuse of individual rights and social justice should be punished according to the law. However, this seems to be held mostly on paper, not in practice. Many victims of past or current human rights violations have tried to utilize human rights-related laws and institutions. Unfortunately, the victims' efforts have failed to drive the institutions to initiate legal processes for the protection of human rights. During the transition period, laws and institutions failed to deal completely with the past (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 11) and were overridden by other actors in the new political battle dealing with human rights abusers. The legislative reform in the transition period often ignored laws that contradict human rights standards, such as repression of the rights of women.

Currently, civilians do have democratic control in the parliament but are reckless. Indonesia is facing the dilemma of human rights protection in the form of a gap between policy and practice. Although the country has laws on human rights, violations and violence have increased year by year, without remedies. The lack of punishment for perpetrators and land grabbing for business interest is highly widespread. Local residents or indigenous groups were killed and jailed for their resistance and complaints. Minorities are unprotected. Corruption spreads out among local governments. Injustice is the norm in conflict areas such as Aceh, Papua, and East Timor. The UN Human Rights Committee expressed their concern about the aforementioned situations during their session with Indonesian government in July 2013. The Committee concluded, inter alia, that Indonesian government and its officers were unable to understand and refer to the International Covenant on Civil and Political Rights (ICCPR) for human rights violations in Indonesia (UNITED NATIONS, 2013). Thus, the problem is not merely impunity being derived from the State's unwillingness, but also from its inability.

2 Resistance and deadlock

The government tends to forget many important aspects of human rights protection. The more the State performs unduly and maintains impunity, the more people struggle to find justice for their rights which were violated. When the number of violations – and hence the number of victims – increases, solidarity, resistance and advocacy for compensation are strengthened. The feeling of disappointment toward government officials and judicial decisions is widespread. People resort to legal mechanisms, massive campaigns and strikes, including social media campaigns, rely on international pressure, and can count on a handful of journalists (while big media is at the most indifferent), to no or scarce results. Perpetrators' and the State's contra-advocacy, and government's attitudes lead to deadlocks, which disseminate widespread desperation among people.

The human rights law and other related laws provide complaint mechanisms, which victims use to report their cases or situations. Regrettably, these mechanisms have shortfalls to act appropriately and require a lengthy time.[2] Courts, in many regions, have similar poor performance. On the other hand, NGOs, civil society organizations, and survivors have scarce means to defend themselves and often lack concrete evidence. Satisfactory results are very few. The most successful case was the trial of crime against humanity in East Timor (Timor Leste), but in the end the wrongdoers were acquitted (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 49-50).

International mechanisms, lobby and pressure are other possibilities to be used (JESTKE, 1999, p. 148-150). With regard to the "Munir case", where a leading human rights activist was killed by poisoning by an Intelligence operation in 2004 on a flight from Indonesia to Amsterdam, Suciwati, Munir's wife, received an enormous support from governments, international organizations, and international NGOs. The European Parliament issued a Declaration [No.98/2007] (EUROPEAN PARLIAMANT, 2008), so did 68 members of U.S. Congress (2005), exerting pressure on the Indonesian president, Susilo Bambang Yudhoyono, to fairly uphold justice in this case.[3]

The United Nations also provides mechanisms that can alternatively be used. During the 2nd cycle of the Universal Periodic Review (UPR) session on Indonesia, the country was bombarded with many questions and recommendations from members of the UN Human Rights Council, including on religious intolerance (EVANTY, 2013). The Indonesian government replied and argued selectively at the international fora. Its responses varied in tone and intensity, according to its interests, from active answers on religious intolerance, through proudly presenting the legal and institutional reform in the country, to silence – which usually happened for impunity cases, like in relation to the Munir one.

Public intervention also took the form of symbolic campaigns, massive strikes, land or sea occupation[4] by local or indigenous residents. Artists were involved in solidarity events and art groups voiced social problems and injustice (SARI, 2014). Social media was used as a tool to spread slogans and demand changes. Twitter,

Facebook, Instagram and online petition sites like Avaaz.org and Change.org have offered more options for people to express their concerns. Social media eases the way for people to engage in campaigning; and Jakarta is the world's most active city in terms of posted tweets (LIPMAN, 2012).

Massive demonstrations were used by labour groups or groups of stakeholders in natural resources issues like farmers, indigenous peoples or fishermen (KONSORSIUM PEMBARUAN AGRARIA, 2013), in an attempt to attract the government's attention, in view of poor mediation or negligence by official institutions. Frustration and disrespect have led some to the use of force; some reclaimed a disputed land, blocked big ships of a fish company in the traditional water zone or conducted strikes in many industrial areas. Sadly, in many occasions the police, or security officers, or thugs, or intolerance groups opposed to the manifestations. The leaders or followers of the actions were criminalised and considered provocateurs in the public space. They were arrested and subjected to harmful treatment.

A pacific demonstration, in turn, has been running for more than seven years (YUNIAR, 2014). In an initiative to institutionalize memory, a group of people, wearing black shirts and umbrellas, silently stand facing the presidential palace every Thursday for one hour, from 4-5 pm, in a demonstration known as *Kamisan* (*Kamis* means Thursday). They protest against a range of human rights abuses, such as the mass killings in 1965-66, and the disappearances and murders of activists in 1998, prior to the fall of former president Suharto, in an effort to stop the nation forgetting these past abuses. Some families also attempt to keep alive the memory of human rights abuse: Munir's family has set up a human rights museum related to him and other murdered or disappeared activists (HEARMAN, 2014); the mother of Hafidin Royyan, a student who was shot to death in a big rally at Trisakti University ten days before Suharto resigned in 1998, has kept his room untouched.

Government and Parliament have shown resistance by adopting legislation that limits freedom and demand 'responsibility and respect' for human rights. In addition, to speak of human rights has been named "anti-religious". The use of social media also faces some challenges. Beside the new law on Electronic Information and Transaction (INDONESIA, 2008), the minister of Communication and Information has repeatedly shown his unwillingness in speeding up access to the internet (WAHYUDI, 2014). So, legally and technically, information is free but its access is liable to be infringed.

As far as mainstream media is concerned, it has hardly been attested to play the watchdog role for the public. Nevertheless, many journalists have been harassed or mistreated by police or government agents, as well as by organized crime or businessmen (COMMITTEE TO PROTECT JOURNALISTS, 2014). One way or the other, they succeeded in turning information part of the democratic debate. The media has a key role in promoting human rights. On the other hand, in general it has also distorted the meaning of human rights. There are exceptions but most media outlets operate using the business logics, apparently moved primarily by commercial interest. An increasing number of them belong to very few owners (NUGROHO, 2012, p. 7, 12).

Human rights are not on the headlines, but are still an issue of interest. It's the language and the exercise of many people, especially those who were impacted by extensive and persistent abuses. It is the language of freedom and claims for justice, truth and remedies. Although people at large are aware of their rights, there is skepticism when human rights mechanisms do not present an urgent and quick response to the situation. On the other hand, we can see how many alternatives have been taken by victims to survive and maintain the hope for justice.

On the State side, it is well proven that, as far as standard setting is concerned, although it does use the universal 'human rights' language, in reality it shows lack of sufficient willingness and ability. Therefore, the State's obligations as stipulated in many international conventions become meaningless. Interesting to note, the current government does not have the same grip on society as did the military regime, when so many human rights violations occurred and deprivation of rights was widespread. Now, instead, violations of rights occur less as directed by central government policy and more due to a generalized corrupt, abusive and violent mentality among both the public and high level or security officials, in what can be seen as derived from government's weakness or unwillingness to uphold human rights. Aspinnal (2010) underlines a pervasive disenchantment towards "the entrenchment of corrupt and authoritarian actors and practices within the new, formally democratic State".

3 Human rights in Indonesia and international relations

It is important to locate the human rights situation in Indonesia in the global human rights scenario. While local processes are weak and slow, foreign contribution is complementary and welcome; Indonesian human rights promoters got much encouragement at this level. However, the country has undergone striking changes, with implications to the way it is internationally seen, to the kind of assistance it receives, and to the internal humans rights situation.

In general, changes within Indonesia are internationally seen as a fascinating development of democratic process. Abuse survivors and civil society organizations are highly praised. Millions of dollars, expertise and knowledge have been made available to foster the democratic transition.[5] The world, through technology, is being opened for Indonesia.

For the Indonesian government, this situation makes it more comfortable to talk about human rights, especially with the foreign affair diplomats abroad. International actors, such as the U.S. government and the EU, have pointed to Indonesia as a key player or champion of the biggest Muslim democratic country. Within ASEAN, Indonesia led the accomplishment of two important goals, namely the adoption of the ASEAN Charter and the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR). At the international level in the United Nations, Indonesians get more recognition and some managed to be elected to key posts: Mr. Makarim Wibisono was elected president of the Human Rights Council (2005) with the support of countries that have dubious human rights records, like China and India; other individuals were chosen as special rapporteurs.

Indonesia has taken an advanced position on Myanmar (Burma) and on Middle East issues. The country has been recognised as a great economic power and joined the G20, the extension of G8, along with Mexico, South Africa, Brazil, Argentina, India and other countries. These internationally acclaimed achievements overshadow human rights issues. The government's understanding and dealing with human rights is the same. When the Indonesian president spoke at the United Nations Post-Millennium Development Goals forum, he proposed the idea of an international standard for religious slander. At the ASEAN forum, Indonesia signed the ASEAN Human Rights Declaration, which contains many flawed provisions – on national security, cultural relativity, national interest, consensus principles, non-interference (CIVIL…, 2012). These provisions undermine the Constitution and international human rights conventions.

Due to the country's growing weight in world affairs and to the economic growth — the country made the transition from poor to middle-income status —, the world is looking at Indonesia as a new key player. The pattern of foreign assistance has changed. Big donor agencies shift their assistance from civil society to government offices. Some foreign NGOs operating in Indonesia often produce sophisticated reports without having an influential advocacy inside the country, or with loose collaboration with local entities. They end up by competing with local NGOs to gain support from donors.

Abuse impunity and the government weakness do not drive international attention. In fact, in the case of Indonesia, after 16 years of political transition, some international entities are looking at the Indonesian government as a key player to deal with others' 'worst' situation, like Burma. Imagine that Indonesia —with its unsolved businesses on democratisation— should export the democratic transition experience to another country. They seem to forget the millions of victims and the survivors who still lack compensation. In the case of Indonesia, it is very clear that the rights of people are still ignored and neglected, both internally and internationally.

Can we expect a humanitarian intervention to put an end to steady impunity? Which would be the best way to mitigate the unrecognized, but persisting violations of human rights in Indonesia?

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NOTES

1. Chapter XA is dedicated to human rights.

2. For a criticism on Indonesian National Human Rights Commission, see Wiratraman (2014).

3. A suspect was brought to trial and convicted, but the conviction was later invalidated. In 2007, a court found that the state-owned airline owed the widow a compensation, but this was never paid.

4. Indonesia is an archipelago (13,466 islands) where 2/3 of the jurisdiction are coastal and sea areas. Many people, mostly indigenous residents, access the sea for their daily survival.

5. For an interesting description on the assistance for the democratization panorama in Indonesia, see Aspinnal (2010).

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Han Dongfang is the founder and director of China Labour Bulletin (CLB), an organization that seeks to defend and promote the rights of workers in China. He has been a leading advocate for workers' rights in China for more than two decades since helping to form China's first independent trade union during the Tiananmen Square protests of 1989. He plays a leading role in guiding and directing CLB's overall development.

ABSTRACT

The article briefly reviews the development of the workers' movement in China over the last two decades, and the evolution of the *China Labour Bulletin*'s (CLB) role in defending workers' rights and promoting workplace democracy. By sustaining that collective bargaining is the best way to promote dialogue and resolve labour disputes, the author addresses the criticism that such an approach would not be viable given the lack of independent trade unions in China. In conclusion, he argues that, in the long-run, the Chinese Communist Party will have no option but to form an alliance with the workers' movement, and that this alliance will in turn allow the Party to transform itself from an authoritarian, highly centralised institution into a broadly social-democratic party that tolerates and appreciates the development of grassroots democracy and civil society.

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KEYWORDS

A VISION OF CHINA'S DEMOCRATIC FUTURE

Han Dongfang

Nearly a decade after the Orange Revolution, Ukraine is still struggling with democracy. It was obvious to me back in 2008, when I visited Kiev for a meeting of the World Movement for Democracy, that this country, which had been hailed three years earlier as an example of peaceful protest and democratic change, had not yet fully embraced democratic values. On arrival at the airport, the Ukrainian border control agents selected every single black person from our delegation and made them stand in a special line for processing.

This shocked me into thinking again about the definition of democracy. Is it an end in and of itself or a journey, a process that can help solve problems in the daily lives of ordinary people? Since 1997, I have been talking to ordinary Chinese workers on my Radio Free Asia radio show about their very real and pressing problems. These very personal interactions had no room for political slogans. Those workers focused on finding solutions within the existing system. And this brought me to the realisation that democracy is not just about presidential elections and political banners. It is not an event that happens every four years or so, it is a constantly evolving process that involves everyone in society. It is, I believe, a process by which social inequality is eroded and through which different interest groups can resolve their differences by peaceful dialogue and compromise. It is important to ask: Aside from elections, what can we do? And, before elections, what can we do to cultivate the spirit of democracy?

In this brief article, I will attempt to address these questions by focussing specifically on the work of China Labour Bulletin (CLB) as part of the wider struggle for democracy and human rights in China. CLB started out in 1994 as a newsletter reporting on and exposing incidents of labour rights violations in China. But in 2002, we at CLB decided to not just report the news but to get actively involved in it. We established a legal assistance program that would allow workers to seek redress for rights violations through legal and judicial process. In fact, many of the cases I discussed on my radio show eventually became our legal cases. However, we immediately encountered an embarrassing ideological and political problem. Providing legal assistance to workers might reduce the anger felt towards the ultimate cause of those rights violations – the Communist

Party. Even if the worker was not successful, the process could still allow them to see legitimacy in a non-democratic system and thus inadvertently bolster the Communist regime. You could say that working inside the system in this way is a bit like pretending to criticise people while actually supporting them.

In spite of all the challenges involved in providing legal assistance to workers in need, we resolved to continue based on the logic that enforcing existing legal standards was in itself substantial progress. Moreover, regardless of whether or not legal actions are successful, they can help highlight important legal issues and stimulate discussion about legal reform. Gradually, more and more workers will be aware of the law and use it to seek redress. This will then enhance the self-confidence of other workers seeking to defend their rights. Put another way, even though it has limited impact in promoting democracy, providing legal assistance to workers can at least promote the rule of law and create momentum for change.

Concerning occupational diseases, for example, it used to be the case that before workers could get an official diagnosis of the deadly lung disease pneumoconiosis, their employer had to issue a certificate saying that they were employed in a high dust environment. Even if a regular hospital diagnosed the disease, the occupational disease clinic would not sign off on the diagnosis without that certificate from the employer. To make matters worse, the vast majority of workers with pneumoconiosis were miners and construction workers who never had an employment contract and who were often fired after they contracted the disease, making it very difficult for them to prove they had an employment relationship. Of course, it would be very easy to lay the blame for all these problems at the door of the Communist Party but instead, in 2008, we started to help those workers with pneumoconiosis who had been refused a diagnosis by occupational disease clinics to sue their employer in both the civil and criminal courts, sue the local authorities for nonfeasance, and to sue the clinics and the employer for conspiracy to commit fraud. The courts rejected most of these cases and, of those that were accepted, the vast majority were unsuccessful. However, we never gave up and have so far filed dozens of pneumoconiosis-related lawsuits in 13 different provinces all across China.

Since these pneumoconiosis cases focused on purely legal and economic issues, the Chinese media was able to get involved and report on them at length. This media coverage generated a lot of public discussion on who should be responsible for workers who have contracted occupational diseases, and this public debate helped put even more pressure on the government to change the law. Eventually, in 2011, the Ministry of Health did amend its *Occupational Disease Diagnosis Regulations* and removed the need for workers to get a certificate from their employer saying they were employed in a high dust environment, as well as provide proof of an employment relationship. In some provinces, the local government even took an extra step by covering workers' medical expenses and paying them subsistence allowances. Although these changes are nothing compared to what the workers should be entitled to, they still illustrate how individual cases, whether they are won or lost, can put pressure on the government.

Furthermore, these pneumoconiosis cases have also helped in the development of civil society in China. Love Save Pneumoconiosis, a voluntary organisation that was established by a renowned journalist a few years ago, has, for example, grown rapidly and now acts as a showcase for the increasing awareness and activism of ordinary people across China. It has helped push the boundaries of such civil society organisations well beyond simple charity. It has set up several regional centres across China and developed a high-profile nationwide network that delivers practical help to those in need and lobbies the central government in Beijing for change.

But despite the success we have had in getting compensation for workers and changing laws, it was obvious from the very beginning that there were simply too many labour rights violations for any organisation to deal with. So what could we do? Again, we decided not to take the easy way out and just blame the Party for everything. Instead, we actively looked for practical remedies on the ground; how to prevent rights violations in the first place, how to save lives, how to save judicial resources and how to develop systematic and long-term solutions.

One thing I have learnt after two decades of work in the Chinese labour movement, whilst in semi-exile in Hong Kong, is that there are only two situations in which highlighting the failings of government makes any sense: in an absolute dictatorship and in a democracy. As should be clear from the examples above, China is somewhere in between those two points. It is an authoritarian regime but it is also subject to public pressure. And that is why it is important to stay positive and look for workable solutions.

In 2005, around the same time as the World Trade Organisation held a meeting in Hong Kong, CLB held its own seminar in which we announced a new program that had the potential to nip all labour rights violations in the bud. The centrepiece of that program was the promotion of a collective bargaining system in Chinese factories. I still remember the disbelieving grins and wishes of "good luck" from my friends in labour rights groups and trade unions at that meeting. Back then, no one saw the possibility of setting up a collective bargaining system under the Chinese Communist Party regime that denies workers the right to free association, and my wild thinking cost me a number of friends in the international labour movement; friends who had been very supportive ever since 1989 and whose friendship I valued a lot.

I understood completely why they were so sceptical; at that time, the Communist regime, scared of an anti-government Polish Solidarity-type movement developing in China, was routinely sentencing workers' leaders to long jail terms. But it seemed to me that one way to prevent more worker activists and strike leaders from being thrown in jail was to establish a mechanism that could resolve disputes between labour and management peacefully and at the same time get the government off the hook. Those striking workers who had been arrested by the Communist regime in the early 2000s had not been asking for political change. They had only asked for their economic grievances to be resolved. Those grievances were related to fundamental livelihood issues like having enough food on the table for their family and as such they could never be

eradicated by political suppression. Moreover, as the Chinese economy liberalised and developed and became more firmly integrated into the world economy, labour rights issues became much less problematic for the government. We reasoned that the government's repression of workers' rights could not last and that a new opportunity for the workers' movement would open up if we could take the initiative to de-politicise labour issues. In other words, at this important juncture, when the Party was beginning to realise that its previous position on the workers' movement was misguided, should we continue to highlight the political nature of workers' rights or focus on the basic economic issues of how to ensure that workers get their fair share of the wealth they help to create?

However, back in 2005, this idea was absolutely politically incorrect. People could easily point fingers at us and say CLB had been brainwashed by the Chinese Communist Party, or even that CLB is selling out the workers and is undermining the Chinese labour movement! From every aspect, it seemed that our new approach was political suicide. Again I understood the accusations but I was certain that the need for a collective bargaining system is driven by fundamental demands on the factory floor. After all, collective bargaining is not just good for the workers; it benefits the employer and the government as well, creating a triple win for the parties involved. In the long term, no matter if it is in China or the rest of the world, in an autocratic regime or in a democracy, a healthy labour-management relationship is absolutely necessary and can only be sustained on the grounds of equality and mutual respect. Regardless of the consequences for CLB, we stuck to our beliefs and never shied away from explaining them to government leaders, policy makers, trade unionists, labour activists, academics and journalists. Later, collective bargaining did become widely discussed and was even touted as a possible win-win-win solution to the problems inherent in labour relations in China.

Then in May 2010, not long before the Arab Spring, workers all over China showed the world that they were ready for change. It started at a Honda auto-parts factory in Guangdong, when several hundred employees went on strike to demand a wage increase (MITCHELL; SOBLE, 2010). Although the workers were successful and their demands were basically met, the dispute was actually resolved by intellectuals and public figures brought in from the outside rather than the workers themselves. In other words, although the strike was initiated by the workers it was resolved by people with a 'higher social status'. People may ask, why didn't the government just deploy the police to smash the strike rather than send in these outsiders to broker a deal? I don't know, and I don't want to speculate on why. All I do know is that the government did so and it seemed to work. At CLB, we saw this as a historical moment and as an opportunity to move forward. It was clear that not only were the workers ready to move forward, the government was also ready for change.

The following year there was another important development. Several hundred workers at a Citizen Watch factory in Shenzhen (THE DEVELOPMENT…, 2012) went out on strike and this time they democratically elected their own representatives, engaged in collective bargaining with management, and

successfully negotiated their own settlement. The workers had a long-standing grievance related to the non-payment of overtime from 2005 to 2010. During that period, management did not include the employees' daily 40-minute break as part of their normal working hours and refused to pay overtime until employees had made up the 'lost' 40 minutes. The strike failed to resolve the issue, so the workers hired a local law firm that specialised in collective bargaining to work for them and help them negotiate a deal with management. After a week of face-to-face negotiations, on 17 November 2011, the workers agreed to a management offer to pay 70 percent of the overtime arrears. At this time, one of questions most commonly asked in the media coverage of this case was "Where is the trade union?"

Again, it is worth noting that we could have simply focused on the fact it was the Communist Party that had created the conditions that allowed Citizen to exploit the workers and cheat them out of their overtime. There would be no political risk for us in taking this approach – condemning both capitalists and Communists – but we took the politically incorrect approach of working inside the system to find a solution. After all, these abuses by trans-national corporations happen all over the world in democracies as well as autocracies. The political system is not the only issue; the immediate issue in China's case is finding a solution to real problems on the ground – even if we have to put politics to one side for a while and just focus on day-to-day economics.

The bad news is that soon after the collective bargaining deal at Citizen, the worker representatives were sacked, so you may think it was all for nothing but, for us, all this did was highlight the issue that every labour movement faces, namely how to protect workers' leaders and keep the momentum of the healthy dialogue going. So the fight continues. In more recent cases in Shenzhen (SHENZHEN..., 2014) and Guangzhou (WORKERS'..., 2014) we now have a situation where several workers have been prosecuted by the authorities for their protest actions. And again you may well see this as yet another example of government repression but if you look at the support these workers have received from their co-workers and labour rights groups in Guangdong, you will see that workers are now ready to stand up and push forward a strong and vibrant workers' movement in China.

In Chinese the word for "crisis" (危机) consists of two characters, "danger" and "opportunity." This ancient wisdom emphasises that there are two sides to everything. In any situation you can focus on the dark side or the light side. We at CLB always try to see the positives, and grasp opportunity when it arises. As noted above, the Citizen strike and the collective bargaining that followed raised a very important question: Where is the trade union? Everyone in China knows that the trade union is controlled by the Party and protected by the Party. The leaders of the All-China Federation of Trade Unions sit on high chairs far away from ordinary workers. But after the Citizen case, the local trade union federation in Shenzhen could no longer stand the heat and in mid-2012 it decided to show it really was on the workers' side when it got involved in a strike at the Japanese-owned Ohms electronics factory in the city and then arranged a democratic election at the factory union (RAMZY, 2012). The federation chairman

publicly stated that the union is a workers' organisation and it should be elected by the workers themselves. This proclamation tied the issues of strikes, collective bargaining, and the role of trade unions altogether, so much so that today strikes are no longer taboo for the official trade union, and more and more workers are asking for democratic union elections.

It is important to note that such statement did not come from some dissident like me. They came from a leader of an official trade union. And it does matter. It gives the official trade union the chance to do something good for the workers, while the result of that action is good for the bosses and the government too. In addition to supporting the trade union, when necessary, we have also supported the government, as was the case when we published a half-page advertisement (CHINA…, 2010) in a major Hong Kong paper entitled "Support Guangdong's efforts to establish a collective wage negotiation system: a win for labour, employers and the government". The advertisement was a response to attempts by Hong Kong business owners to derail a bill in the Guangdong legislature that would have given workers and management the chance to negotiate pay and working conditions on the basis of equality and mutual respect. So yes, we openly supported the legislation proposed by the Communist Party-controlled Guangdong government because in this case the intended legislative change would benefit everyone concerned and again because by doing so it would help us to focus on solving the labour problems on the ground, rather than on party politics.

During the past decade, CLB's strategies have changed in response to and in accordance with the shifting landscape of the labour relations in China. We did not follow any political agenda, we looked at what was happening on the ground and acted accordingly, grasping opportunities as and when they arose, identifying the path to follow and sticking to that path. Looking back, we were lucky enough to push the right button at the right time before the opportunity to do so vanished. Looking to the future, I am sure many more people will disagree with me, but I am confident that we will have other opportunities like this. On the road ahead, I can see the Chinese Communist Party transforming into a broadly social-democratic party and see social-democratic values becoming the mainstream. In other words, China will become the developing world's version of Europe's Nordic countries.

Why do I think this could possibly happen? Over the last decade or so, we have seen the dramatic rise of the workers' movement in China. Workers have shaken off the mantle of victims and emerged as a strong, determined and increasingly active collective force. We have also seen the Communist Party move away from the blind pursuit of economic growth and focus much more on resolving basic livelihood issues, raising incomes and tackling social inequality as a way of strengthening its own political legitimacy. In the future, in order to further realise its goals, I believe the Party will eventually have to forge an alliance with the workers' movement. To many, this will be an outrageous suggestion. Some will ask how I could even dare suggest it. Well, if it is necessary, if such an alliance can help facilitate the peaceful transition to a better regime and a better country, then why not say it, and, more importantly, why not do it?

It is not about whether Party officials are nice people or not. It is simply that I believe that it is in the Party's interest to form an alliance with the workers' movement. And there are signs that the new leaders of the Party and government recognise this too. They have made it clear in recent policy statements (CHINA'S OFFICIAL...., 2013) that one of their top priorities is to improve the standard of living of ordinary workers and that moreover it is the responsibility of the trade unions to make that happen. It is difficult to see why there should be any conflict between the workers and the Party on this issue, either in the short-term or in the long-run. A strong worker-led trade union that can negotiate better pay and working conditions on the ground is obviously good for the Party in that it contributes to its stated goals. Moreover, workers need political muscle or backup to make sure their interests are protected and promoted by the government. If you think about, the basic language of the Party and the workers is the same; it is only out-dated political blinkers that prevent us from seeing that.

In the long-run, an alliance between the workers' movement and the Party will help to raise living standards and enhance social justice. It will also allow the Party to transform itself from an authoritarian, highly centralized institution into a broadly social-democratic party that tolerates and appreciates the development of grassroots democracy and civil society. I believe it is inevitable that the Communist Party will eventually split into two camps, those who believe in law of the jungle and those who believe in social democracy. And the only way for the social-democratic camp to prevail is if it allies itself with the workers. This might seem fanciful but if you look at the values of traditional Chinese culture that stress the importance of social equality, you will see how they can be aligned with ideals of social democracy. These values have emerged in political movements throughout Chinese history but sadly, they have always been smashed and corrupted by violent revolution. But the situation is different now. The Cold War ended a quarter of century ago and the world is no longer divided into different political camps. On the contrary, it is now intimately connected through trade and commerce and shared economic interests. The over-politicised and partisan discourse of the Cold War has little relevance today. I believe the Chinese Communist Party recognises this too and will have to get ready to embrace social democratic values, not because it is the politically correct thing to do but simply because it is in its interests to do so. Allowing China's hundreds of millions of workers to share in the fruits of 35 years of economic development is good for China and good for the Party. The alternative scenario, where political suppression is the norm, where might is right, does not bare thinking about. It would be a catastrophe, not only for China but for the whole world if its second largest economy becomes another Russia. No one knows for sure how the democratic process will unfold in China but one thing is for sure: the process is already underway and we have no choice but to get involved.

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ABSTRACT

Providing an overview of the role of organized civil society in Brazil since the end of the
dictatorship, this article examines fundamental issues in the debate on the country's social
problems, such as the connection between violence and inequality. By pointing out that,
although the Brazilian economy has been performing well in recent years, we are a long way
from eliminating the causes of social, racial and gender inequality, the article exposes the
contradictions of a country that is growing at the same time that its human rights situation
is deteriorating. It also includes an analysis of the growing responsibility of human rights
organizations as a result of the commitments made by the country on the international
stage and how the strengthening and sustainability of these organizations is essential for the
consolidation of democracy.

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CHALLENGES TO THE SUSTAINABILITY OF THE HUMAN RIGHTS AGENDA IN BRAZIL

Ana Valéria Araújo

The year 2014 marks the passage of 50 years since the establishment of the military dictatorship in Brazil on March 31, 1964. It could be said that the legal landmark that ended this period was the promulgation of the Federal Constitution on October 5, 1988, or just over 25 years later. While the military dictatorship was characterized by the suppression of individual guarantees, such as freedom of expression and the brutal repression of anyone who opposed government acts, the new Constitution not only re-established these classic democratic rights, but also embraced a range of new possibilities, by recognizing the rights of collective subjects, such as social movements, indigenous peoples and quilombo communities.

However, like in many emerging democracies, the end of the dictatorship did not put a stop to the human rights violations that mainly affect the most vulnerable sectors of the population. Indeed, these groups have never really been considered and recognized as rights holders. They are invisible. And while respect for fundamental rights forms the bedrock of the Constitution of 1988, the State has not been effective in preventing the violation of the interests of these groups, who also suffer the consequences of the impunity that still exists in the country to this day.

1 Disrespect for human rights, a constant feature of our democracy

One might ask why this situation has remained constant throughout Brazil's transition to democracy, and why it endures despite the advances made. The answer is quite simple: Brazilian society has not changed as quickly as the country's economy. Brazil's growth in recent years has placed it among the world's 10 largest economies, causing it, for example, to assume a more prominent role in agriculture, where it is already the world's leading producer of animal protein. Given the abundance of arable land and water, the country is considered the breadbasket of the world.

Meanwhile, corruption, violence and inequality still persist as major problems. In particular, there is no recognition that inequality goes beyond the purely economic aspect, with structural causes grounded in a legacy of social, racial and gender discrimination.

Broad income distribution policies have lifted millions of people out of poverty and contributed to Brazil's image as a country that can quickly overcome social injustice using democratic channels. Nevertheless, despite all the positive indicators, Brazil is still one of the world's most unequal countries, where the economic and social divide is supported by political and cultural factors. The richest 10% of the population earn half the total income, while the poorest 10% receive just 1.1%. Even though more than half the population owns less than 3% of the farms in Brazil, indigenous peoples and traditional communities, when they claim land to assure their survival, are often seen as obstacles to progress.

For Oscar Vilhena Vieira, the fragility of our rule of law is related to the inequality "that shapes our identities and structures our social relations", distorting "the perception that we are all equally subjects of the same rights and obligations" (VIEIRA, 2014). In practice, however, the perception is that some people are greater subjects of rights than others. According to Vieira, another aspect is of institutional nature and has to do with the corporatist and patrimonial culture of "our law enforcement agents, who appear to be more concerned with the advancement of their own interests and group privileges than with achieving the mission of the institutions they serve" (VIEIRA, 2014).

2 New dimensions of intolerance to human rights

Thus the country's current economic and social situation poses new challenges for the debate on human rights in Brazil. Firstly, there is a growing hostility towards people who defend human rights on account of the escalation of urban violence in the country, precisely when the Brazilian economy is not doing too badly. Coupled with an ongoing crisis in public security, the combination—still not properly analysed and understood—of increased violence and robust economic indicators has unleashed a new wave of intolerance against human rights defenders and their organizations.

Indeed, there has been a rise in conservative voices seeking to use low unemployment figures and high crime rates, and shallow arguments on how to solve the problem of violence, to justify a push for harsher laws and punishments. Unfortunately, this type of attitude has led some to support the actions of vigilantes, such as the incident in January 2014 in the city of Rio de Janeiro, when a 15-year-old alleged thief was tied to a street light after being severely beaten. What's more, this episode actually served as encouragement for other similar vigilante acts across the country in an absurd and alarming series of events.

It is essential to reflect on this situation and its outcome to assure the legitimate continuity of human rights organizations' work. These new challenges require innovative and alternative approaches to the problem of violence, beyond invoking the basic and universal principles of protection of the human person. A

huge effort is needed to change the public perception of what human rights are, a perception that becomes even more distorted in times of worsening violence.

We need to face up to the fact that, regardless of how well the economy fares, we are still a long way from eliminating the causes of our social ills, which were also the spark that ignited the wave protests that began in June 2013 and threaten to go on indefinitely. Quality public services in the areas of health, housing and transport cannot be accessed in the private market.

For an idea of what the drama of poor quality public services really means for low-income populations and how it impacts a number of aspects of their lives, it is worth noting what Aline Kátia Melo and Bianca Pedrina have to say in an article entitled "Os direitos avançam para todas as mulheres? Não" (Have rights advanced for all women? No), on the struggle for home ownership in the outskirts of Brazil's cities:

> *The right to adequate housing is essential for the realization of all the other rights afforded to women. For women who live in the outskirts of cities, the distance makes transport an ordeal. Traveling along unlit streets makes the journey frightening. Not having a home in your own name is like being hostage to an abusive husband or, in this case, to high rents.*

> (MELO; PEDRINA, 2014).

3 Perpetuation of inequalities and violence

There is no way of delaying the debate over whether it is possible to solve the problem of epidemic violence without first eliminating the roots of social, racial and gender inequality that exist in the country. And, in this discussion, it will be necessary to affirm and reaffirm that this inequality is also a form of violence as serious as any other, in that it institutionalizes and perpetuates the enormous disparity between the different segments of the population.
One question we shall have to ask is whether we want to drastically reduce violence across the board, or whether we are only talking about keeping it away from the more privileged pockets of society. The answer will reveal to us the type of development we shall have, as well as the quality of the civilizing process that will guide our country's future projects.

When answering this question, we should remind ourselves what happened in South Africa under apartheid, when the neighbourhoods occupied by whites were like an island of tranquillity while the *bantustans*, where the blacks lived, were hellholes of unending violence. We need to realize that we are facing a similar situation, if we compare police actions in wealthy areas of the city of São Paulo to what happens in distant neighbourhoods like Jardim Ângela, at the city's impoverished southern tip.

We should also consider the economic impacts of the slaughter of black youth in the outskirts of Brazil's major cities, which, aside from the pain and suffering inflicted on their families, represents a waste of human capital that is vital for the country's future. As early as 2020, Brazil could face a sharp decline in its

population replacement rate, which will lead to problems such as labour shortages and, possibly, the need for solutions that involve restoring an immigration policy to attract more foreigners.

It needs to be shown that defending human rights is also about exposing the folly of a country that is unconcerned about the extermination of a portion of its youth, causing untold economic damage. Apart from being a racist country, we are also economically short-sighted.

A study by the Applied Economic Research Institute (IPEA) conducted in 2013, entitled *Vidas Perdidas e Racismo no Brasil* (Lost Lives and Racism in Brazil), examined the extent to which the differences in violent death rates are related to economic and demographic disparities and even racism. The study revealed that:

> *Considering only the range of individuals who suffered violent deaths in the country between 1996 and 2010, we find that, in addition to socioeconomic characteristics— such as education, gender, age and marital status—the skin colour of the victim, when black or brown, makes increase the likelihood of this victim to be killed by about eight percentage points.*

<div align="right">(CERQUEIRA; MOURA, 2013, p. 14).</div>

Considering only those individuals who died a violent death between 1996 and 2010, the IPEA found that, besides socioeconomic characteristics such as schooling, gender, age and marital status, the skin colour of the victim, when black or brown, increased the likelihood of them being murdered by nearly eight percentage points.

In the state of Alagoas, for example, homicides reduce the life expectancy of black men by four years. Among non-blacks, the figure stands at just three-and-a-half months. The murder rate among the black population in the state, in 2010, was 80 for every 100,000 individuals. There, 17.4 blacks were killed for every one victim of a different skin colour, making Alagoas the state with the worst result anywhere in the country.

What causes an even greater impact is the study's assertion that "life expectancy upon birth is one of the main indicators associated with the socioeconomic development of countries". A country where being born black comes with as many life-threatening risks as living through a civil war in the Middle East still has a long way to go on its journey toward civilization. In this context, the work of human rights organizations is essential and needs to be strengthened.

4 The urgency of now

This is why the protests of June 2013 stressed the urgency of meeting the demands placed on public and private decision-makers on a wide range of problems. The population that protested in the streets demanded immediate solutions, which brings to mind Martin Luther King's legendary "I Have a Dream" speech, given more than 50 years ago, when he spoke of the "fierce urgency of now" to solve the racial problems of the United States, declaring that "this is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism" (KING, 1963).

This also seems to be the perception of André Singer, when he states,

New and old social movements, such as the Passe Livre (Free Transitfare) Movement on the one hand and the Homeless Movement on the other, decided not to keep waiting any longer. They realized that the centre-left government will only bow to the demands of the subjugated class under pressure. Encouraged by the results of June, they are taking to the street.

(SINGER, 2014).

5 The impact on traditional populations and the environment

If the context above deals with the new dynamics of pressure on the human rights situation in their most common forms, we should also note that the resumption of economic growth has unleashed a new wave of pressure on traditional populations and the environment in which they live. This has been caused by the planning of large-scale infrastructure projects, particularly roads, ports and hydroelectric dams. To have an idea, of the 50 largest infrastructure projects being designed around the world, 14 are located in Brazil.

These projects include the construction of large hydroelectric dams that cause massive social and environmental damage. Since companies do not have to account for social and environmental impacts in their production costs, hydroelectric power is currently Brazil's cheapest source of energy. As a result, industry is putting enormous pressure on the government to speed up the construction of large dams in the Amazon, particularly now that, in the first half of 2014, there is talk about the need for another round of electricity rationing as low rainfall has caused water levels to recede in reservoirs in the southeast of the country.

Since most of these projects will have significant impacts, civil society organizations are confronted with the difficult task of identifying, from among the many being planned, which ones deserve priority attention, considering the limited human and material resources that most of these organizations have to work with.

The establishment of these priorities will require a complex reading of the perceptions of Brazilian society about the need for infrastructure expansion, in order to define the best strategies for addressing the problem. It is also essential to change the impression held by many people that civil society organizations unreasonably oppose efforts to correct the shortcomings in the country's infrastructure.

The organizations working in this field need to be prepared to present consistent criticisms of the projects developed by governments or private companies, based on studies that clearly indicate their negative effects and the alternatives available to meet the real needs of society without harming traditional populations or the environment. This serves as a powerful antidote to fend off accusations that civil society organizations are opposed to progress and the enemies of development.

It is the quality of the criticism of infrastructure projects that violate human rights that will legitimize, in the eyes of society, the role of human rights organizations, considering that exercising social control over the government and private initiatives is part of democracy. And it is also what will allow organizations

to win over more allies to human rights causes. This is because the notion of progress as an absolute value has long been relativized, precisely on account of the environmental crisis generated by the accelerated development throughout the world since the industrial revolution.

For Tzvetan Todorov,

the people, freedom and progress are constitutive elements of democracy (...), but if one of them breaks free from its relationships with the others, thereby escaping any attempt at limitation and rising up alone and absolute, they turn into threats: [beginning to constitute the real] inner enemies of democracy.

(TESTEMUNHAMOS..., 2014).

6 The paradox of a more autarkic Brazil

The growth of the Brazilian economy has also allowed the country to step up its presence in international forums. Over the past 10 years, during the governments of Luiz Inácio Lula da Silva and Dilma Rousseff, an intense diplomatic agenda strengthened the country's influence over various different blocks of nations. This prompted Brazil to exponentially increase its leadership, exemplified by the appointment of Brazilian ambassador Roberto Azevêdo as director-general of the World Trade Organization (WTO).

While this means that Brazil is an important enough player to influence debates in multilateral forums, it also means that the country, paradoxically, on account of the rise of its international status, is less susceptible to pressure from other countries to change practices that may violate human rights.

This requires internally stronger human rights organizations in order to seek, inside the country and in parallel to what is done on the international stage, the changes that could previously have been achieved with an expression of concern by multilateral organizations or by European countries and the United States.

There is no doubt that the greater autarky has been driven by the country's new pattern of trade relations, which used to be concentrated in Europe and the United States, but which in recent years have been diversified. Indeed, China is now an important economic partner of Brazil, particularly for its exports of mineral and agricultural products. One consequence of this diversification has been to reduce the weight that Brazilian agricultural exports to Europe and the United States used to have on the trade balance. As a result, the pressure that European and U.S. organizations can exert on Brazil to change practices that violate human rights will also tend to diminish.

The fact that we are viewed as the breadbasket of the world, at a time when food prices are rising due to growing demand, makes the country even more important and powerful in the complex game of trade and diplomatic relations. After all, it could be a long time before Brazilian organizations can rely on allies in China, for example, to denounce human rights violations by companies that export goods to that country.

On the other hand, the greater presence of Brazilian companies operating

overseas, particularly in Africa and Latin America, has placed on Brazil the burden of being considered a country that violates human rights outside its borders. This further increases the responsibility of local human rights organizations, because we now need to do to African and Latin American partners what we used to get from European and U.S. organizations. To make matters worse, human rights organizations are currently facing enormous funding challenges and they have been weakened.

7 The emerging agenda

The year 2014 will be of key importance for the promotion of human rights in Brazil, precisely on account of the escalation of tensions that began with the protests of June 2013. The so-called "June protests" swept the country into a whirlwind of events that made social movements, politicians, the media and other sectors of society embark on a tough and painful debate that is still far from reaching any consensus that would permit the formulation of an agenda of solutions.

One might say that the country is even more uneasy than usual, as if all the problems brewing under the surface, apparently forgotten on account of the improvement of the economy, had erupted at once, challenging us to address them all at the same time and, just like the Sphinx and its riddle, threatening to devour anyone who cannot decipher them.

It is against this backdrop of uncertainty and high emotions—exacerbated by the imminence of the presidential elections and renewed appeals for authoritarian solutions, like the kind that led the National Congress, for example, to discuss a law to combat terrorism—that we need to work ever more diligently so that Brazilian society does not allow human rights to be left behind, like an unwanted burden to be discarded because it holds back economic growth.

We need now more than ever to expose the contradiction that a country cannot be considered rich, developed and accepted as a member of the first world while it contends with the chilling statistic that a woman is killed every 90 minutes, whether in São Paulo or in the more remote regions of the country.

Therefore, it is our job to demonstrate that denouncing the racism manifest in income inequality is an effective way of working for the development of the country on fair and sustainable grounds. Using the safeguards of human rights to protect those who are in conflict with the law serves, for example, to revitalize the workings of the state institutions that assure the proper functioning of a democracy, such as the judicial branch, without which there can be no strong and prosperous nation.

This is the work that human rights organizations need to bring to Brazil's attention, in order to legitimate their work and ensure that they can count on the indispensable financial support of the population, which is essential for them to operate independently. There is obviously a long way to go to build a culture of donating to civil society organizations. However, there are already some successful initiatives along these lines in Brazil that positively indicate the need for strong investment, in addition to the experiences of independent funds—the Brazil Human Rights Fund being one such example—that are committed to strengthening the

rights advocacy organizations that can lead the transformation process to make Brazil a better country.

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MAGGIE BEIRNE

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ABSTRACT

There is a risk that the otherwise welcome move to challenge the northern hegemony over elements of human rights activism can be pursued to an extreme. The author draws on experiences of working internationally and domestically on human rights protection to offer some reflections about how such efforts complement each other and the importance of not undermining—albeit quite inadvertently—the primacy of domestic human rights efforts.

KEYWORDS

ARE WE THROWING OUT THE BABY WITH THE BATHWATER?: THE NORTH-SOUTH DYNAMIC FROM THE PERSPECTIVE OF HUMAN RIGHTS WORK IN NORTHERN IRELAND

Maggie Beirne

1 Introduction

Human rights activism in Northern Ireland (NI) could be portrayed as a purely 'northern' endeavour: the jurisdiction forms part of the United Kingdom, a former colonial power and a permanent member of the Security Council; the population benefits from universal primary and secondary-level education, a majority mother-tongue that is an important world language, and one that is relatively rich with easy access to modern communications; and NI has all of the trappings of a society governed by the rule of law (an independent judiciary, a vocal media, democratic elections and a vibrant civil society). What could human rights activism in Belfast have in common with Beirut, or Bangalore, or Bogota, or Bangui? Yet, it could equally be argued that these places do share some common concerns: for more than thirty years, NI's political, economic and social divisions were deepened by violent conflict arising from and contributing to discrimination and inequalities (WHYTE, 1990). Human rights activism itself was seen as contentious and controversial and domestic human rights groups in Northern Ireland saw many parallels between their work and that of sister groups in the southern hemisphere, and fruitful exchanges in both directions occurred.

2 North-North cooperation[1]

Before turning to the richness that can flow from south-north exchanges, it may be useful to reflect briefly on how a human rights group based in NI tried to lever out pressure from other northern-based entities. Taking as a case-study the human

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rights NGO the Committee on the Administration of Justice (CAJ),[2] it is clear that support was sought from at least three external[3] (northern) sources: NGOs in neighbouring jurisdictions, NGOs with an international brief and third-party governments and inter-governmental bodies.

CAJ's first decade of work was largely inward-looking, with an emphasis on data-gathering, publicising abuses and trying to mobilise *domestic* actors (media, politicians, civil society) to effect change. But in the words of a former chairperson, "It is becoming increasingly obvious that the only way positively to influence the government is through international pressure – CAJ therefore needs to build up its work in this area".[4] Accordingly, the organisation started to reach out beyond its immediate networks and to deepen its contact with neighbouring NGOs in England, the Republic of Ireland and Scotland. All these NGOs were members of the *Federation Internationale des Droits de l'Homme* (FIDH), so together they formed an FIDH "British Irish Panel", organised regular meetings and strategized closely together, particularly in the lead-up to the negotiation of the 1998 NI peace agreement.[5] These cooperative endeavours were soon complemented by outreach to international NGOs beyond FIDH: there had long been links to Amnesty International, and a visit to New York to seek the active support of groups such as the Lawyers Committee on Human Rights (now Human Rights First) and Human Rights Watch proved very productive. CAJ urged that they give greater priority to work on NI on the grounds that well-respected human rights groups, which could not be accused of having either a "British" or an "Irish" agenda coming to their own independent conclusions about the human rights situation in Northern Ireland, could bring great leverage to internal debates.

This proved to be the case, and the strong working relationships that developed between national and international NGOs opened up powerful new opportunities for exerting influence on third-party governments and inter-governmental organisations.[6] For example, CAJ's affiliation to FIDH gave it direct access to the various UN scrutiny bodies;[7] the LCHR/HRF's contacts led to the holding of several US Congressional hearings on different human rights aspects of the NI conflict at which CAJ routinely testified;[8] and Amnesty International, HRW and others sent missions, collaborated in the monitoring of contentious public order events, and published seminal reports which were widely distributed beyond NI itself.

3 North-South cooperation

Work to uphold and promote human rights in Northern Ireland benefited importantly from north-south as well as north-north cooperation. For example, though the different UN scrutiny bodies were referred to earlier (in part, because offices and meetings in Geneva and New York imply a "northern" perspective), it was their roots (in membership, staffing and activities) in southern experiences that was the most important. Committee members frequently empathised with the testimony they received from NI human rights victims, found parallels with

abuses going on in very different parts of the world and were (normally) unafraid to challenge urbane government delegations.[9] For their part, most committee members involved in regular critiques of southern abuses of human rights were pleased to be provided with reliable information highlighting problems in a northern hemisphere power: such material allowed the UN to evidence its own impartiality, but also highlighted the hypocrisy of those member states who were willing to criticise the records of others, but often rejected any serious scrutiny of their own behaviour.

In terms of bi-lateral relations, states are often more amenable to interventions by those perceived to be their friends and allies, and in the case of the UK, this led to a CAJ focus on litigating before the European Court of Human Rights, lobbying for human rights provisions in EU grants, and mobilising the US Administration and other similar political actors. However, even if efforts to deploy southern states were rare,[10] their nationals were seen to have much to offer and CAJ invited numerous foreign guests to speak at its events over the years.[11] UN rapporteurs and human rights activists came from Guatemala, Malaysia, South Africa and the former Yugoslavia to share their know-how and experience, both about the contribution of human rights violations to conflict and how addressing those issues could contribute to peace building. At other times, delegations of visitors to the UK visited NI under the auspices of local universities, trade unions or associations like the British Council: participants frequently commented on how valuable the NI leg of their visit was, since it offered many more direct parallels with their experience on the front line of human rights defence in their home countries.

In turn, CAJ was invited to work with groups and organisations in the south, sharing its challenges and responses and exploring together the wider learning. The author served for several months on an official policing commission in Guyana; colleagues attended conferences and shared information sessions with lawyers in the Middle East and Asia; yet others served as members of international observation missions. Without fail, southern partners expressed their appreciation of exchanging learning with people who faced similar problems albeit in a very different part of the world.[12]

In a number of instances, CAJ's partnership with southern academics and human rights NGOs was more extensive. For example, with the initial ceasefires in 1994, the organisation wanted to move beyond the traditional tactics of "naming and shaming"[13] and study good practice policing models from elsewhere, so a piece of international comparative research was commissioned. CAJ's researchers concluded that "the policing problems in NI are similar to those that confront other countries, and differ more in degree than in nature" but found an examination of the major political, constitutional and legal changes discussed or introduced in El Salvador and South Africa to be of particular value (CAJ, 1997). In the highly toxic and divisive political debates in NI, some argued that the old policing arrangements should be completely disbanded whilst others argued for minimal change. CAJ's researchers examined the radical overhaul of policing arising from the El Salvador peace accords and the more gradual adaptations undertaken in South Africa and returned to NI to argue that the "disband/no change" dichotomy was unhelpful and

indeed irrelevant. Instead, CAJ used the Salvadorean and South African experiences
to argue that any transition from violent conflict to peace would inevitably require
that the people in NI (regardless of their political stance) discuss and agree on
how best to recruit from previously under-represented groups; whether or not
to introduce a vetting system for new recruits and long-serving officers; what
training would ensure human rights-compliant policing in future; and how we
should transform a highly militarised, disproportionately male, hierarchical and
weapons-dependent police *force* into a policing *service*?

Experience from the south and southern-based human rights NGOs
was even more relevant when CAJ and other NI NGOs decided to increase
the priority they accorded to the fulfilment of economic, social and cultural
rights. Conferences were organised and partnerships were established with
socio-economic activists in Brazil, Nigeria and further afield. Despite the very
different material conditions on the ground, NI activists found that there were
important lessons to learn from the legal, campaigning and other tactics which
had long been in use in the global south but which were relatively new to many
northern-based human rights NGOs.

4 International cooperation

Most would agree that the best long-term defence and promotion of human rights
rests ideally at the domestic level, and therefore logic requires that the primary
goal of *all* human rights defenders ought to be to build and reinforce the work
done at that level. There are, of course, parts of the world where there is no local
tradition of human rights work or where local human rights defenders exist but
are isolated and under extraordinary attack: in such instances, the global human
rights community clearly has a particularly vital role to play. [14]

Indeed, the NI experience highlights that, even in jurisdictions with a
reasonably well-developed, indigenous human rights community, great support
and help were offered by human rights defenders in neighbouring jurisdictions,
in south-north links, and by way of "international" human rights NGOs.
What learning can be distilled from this experience? Firstly, if domestic NGO
pressure is non-existent or inadequate, the support of other NGOs with different
political and other levers at their disposal must be worth exploring. Secondly,
the intervention by "external" actors can require a conscious effort to arouse
their interest, so that they understand the unique contribution that they alone
can make. Thirdly, the experience of NI suggests that external involvement
can be ill-targeted, or even counter-productive, if it is not expertly guided by
domestic actors. Success requires that all involved show respect for the different
but complementary roles to be performed.

The cooperation worked as well as it did in NI because the emphasis on
local ownership of the human rights agenda ensured that the short-term decisions
and initiatives of external actors could be rendered most effective and that long-
term change was underpinned by the existence of strong domestic mechanisms
for accountability. In current research into CAJ, the author concludes that the

changes that have come about in the course of NI peace-building would not have happened if there had been no indigenous expertise about human rights; equally, the changes could not have come about if that indigenous expertise had not been informed and enriched by the support of the wider human rights community.

The human rights environment is however changing and new challenges confront front-line human rights defenders. One of the newer developments is the fact that so-called "international" human rights groups (by which I refer to those organisations which often, but not exclusively, operate from the north whilst seeking to have a global reach) appear to be under pressure to radically change their *modus operandi*. The pressure to be more physically present in the south (by way of membership, staffing, offices, programmes, governance arrangements) stems from numerous sources—some worthy, others less so. There is rightly a growing awareness of the changing power relationships at the global level and increasing respect for indigenous expertise and experience; but there is also a demand for change being imposed on those organisations by their own members (in the case of Amnesty International) and/or by their traditional funders.[15] Some of this trend is entirely appropriate, but some problems could well arise.

One concern is that well-established international groups, by changing their focus, may no longer be able to play the useful role that they played previously in support of domestic and regional human rights groups, and it is not yet self-evident who will fill any gap that they leave. Another concern is that currently a number of organisations can offer know-how across all world regions: will a dramatic push towards greater diversity at regional and sub-regional levels not simply reduce over-centralisation (a good thing) but also result in excessive fragmentation? Might this move "closer to the ground", deliberately or inadvertently, undermine further the concept of the universality of human rights? Worse still, will international groups developing strong presences in the south actually displace or undermine local efforts?[16] It is of grave concern that some groups based in the north do not appear to have consulted effectively with local groups prior to deciding to parachute in.[17] Yet once such groups are visibly on the ground, is it not likely that funds will migrate to those newly-arrived but better-known groups rather than to small, untested domestic human rights activists? Will the priorities and programmes established by the "international" presence not risk dominating, rather than complementing, domestic efforts?[18]

The Northern Ireland experience suggests that domestic and international efforts can be all the more effective by working in a complementary fashion; any trend that ignores the distinct contribution to be made by different actors or, worse still, risks undermining the primacy of domestic human rights efforts should be of grave concern.

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NOTES

1. It is not the purpose of this article to query the very notion of a dichotomous "North" and "South" global split; the distinction is being used in very general terms to raise questions of solidarity across both real and imagined divides.

2. See the website of the Committee on the Administration of Justice – CAJ, available at: <www.caj.org.uk>. Last accessed on: 22 July 2014. The author is currently writing a book on the work of the Committee on the Administration of Justice, winner of the 1998 Council of Europe Human Rights Prize.

3. For discussion of coalition building *within* Northern Ireland see Beirne, 2013.

4. The quote is taken from a CAJ planning paper (January 1992) on file with CAJ and the author which went on to *"we need to think in terms of a five year strategy, identifying the international pressure points and working out how information/submissions prepared for one forum can be re-circulated in others to increase the compound effect."*

5. For full text of the agreement, see CAIN (Conflict Archive on the Internet) website, which contains information and source material on the politics of Northern Ireland, including text of the peace agreement, available at: <www.cain.ulst.ac.uk/events/peace/docs/agreement.htm>. Last accessed on: 22 July 2014.

6. CAJ's chairperson wrote in a planning document (January 1992) on file with CAJ: *"networking this time at the international NGO level is vital"*. Later that year, CAJ reported back internally about a visit to the UN in Geneva *"to get Amnesty International, the Lawyers Committee for Human Rights and other respected NGOs to refer to NI, we need to lobby them better. The FIDH dropped an opportunity to speak on NI but our presence at the meeting gave CAJ special access which proved very valuable"*.

7. This access immediately produced positive results; CAJ later testified to the UK Parliament that *"It is our belief that after interventions made to UNCAT in 1991, the Committee made*

a number of extremely important findings with regard to NI. We are on record as reporting that, following the release of these findings, there was a marked decrease in the numbers of complaints of ill-treatment made by detainees" (UNITED KINGDOM, 2005/6). CAJ also credits strong interventions by the UN Committee on the Elimination of Racial Discrimination (CERD) for the (albeit very belated) UK government decision to extend important British anti-race discrimination legislation to NI.

8. See CAJ website (www.caj.org.uk) for listing of submissions to the US Congress; informed interventions from the US (given its close friendship with both the Irish and UK governments) were considered particularly influential.

9. The UK government routinely 'flattered' scrutiny bodies by submitting timely reports that were exhaustive (if often obfuscatory), and by sending high level delegations to the formal examination; on occasion, anglophile committee members appeared unduly impressed.

10. Indeed, on occasion, CAJ tried to avoid statements being made by certain UN delegations (if they were thought "unfriendly" by the UK) on the grounds that this might undermine rather than reinforce attempts to influence government policy.

11. In a 25th anniversary leaflet, CAJ lists examples of the many experts invited over the years to its events – South Africa figures several times with visits by luminaries such as Justices Richard Goldstone and Albie Sachs, Assistant Police Commissioner Zelda Holtzman and Archbishop Desmond Tutu. Anniversary edition of *Just News* available at: <http://www.caj.org.uk/files/2006/01/01/2006october.pdf>. Last accessed on: 25 July 2014.

12. CAJ was invited to speak at an EU-Iran human rights event in Tehran in 2004 and reported "*Iranians were eager to learn about the human rights abuses experienced in Northern Ireland and were interested in the fact that a major European power was being held to account by local NGOs, domestic media and regional and international human treaty mechanisms.... It was useful to have an opportunity for non-governmental groups from the different countries of the EU and Iran to exchange ideas and information (albeit in a carefully controlled environment)."* Available at: <http://www.caj.org.uk/files/2004/01/01/June2004.pdf>. Last accessed on: 25 July 2014.

13. Numerous CAJ policing publications over the years had in turn addressed questions of accountability, counter-terrorism powers, discriminatory practices, public order policing, the use of lethal force, etc.

14. Time does not permit for a critique of the argument that no such thing as a global human rights community exists (or will in future) – see Hopgood, 2013. The author instead shares the view expressed in a post from the Global Initiative for Economic, Social and Cultural Rights to the online OpenDemocracy forum that "*...there are many actors working in solidarity, and while it is healthy in any movement to have different points of view, there is still one human rights movement. We aren't going anywhere. Without the human rights framework, these tools—rights with corresponding obligations set out in clearly articulated standards, accountability and remedies—would not be available to social justice movements of all kinds, in all parts of the world. The truth is that we need human rights now more than ever"* (GLOBAL INITIATIVE FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 2014).

15. Traditional funders (just like Amnesty's membership) are predominantly based in the north, yet both charitable foundations and government agencies have recently started to privilege grants to "international" groups on the condition that they have offices/presences in the South.

16. In NI, some individuals were both members of CAJ (for domestic human rights concerns) and of Amnesty International (for wider campaigns); if, in the 1970s and 1980s, Amnesty had allowed/encouraged members to work on domestic issues, or had had a local office/presence to carry out such work, it is highly unlikely in my opinion that a "CAJ" or any other effective domestic human rights movement would have been established.

17. See undated e-mail (c. December 2012, on file with the author) to Amnesty's Secretary General from a number of Latin American human rights NGOs querying the impact of proposed regional hubs when, previously, "*Amnesty International's role has been to accompany and complement our work globally*".

18. Imagine the pressures that might arise if international groups want, for their own internal reasons, to emphasise issues that are not seen as an immediate priority by local human rights groups; alternatively a local group could become dangerously isolated if it chose to speak out on divisive issues—e.g. the rights of gays, refugees or other national/religious minority groups—when this was not a priority for the international human rights colleagues working alongside them in the field.

MARÍA-ILEANA FAGUAGA IGLESIAS

María-Ileana Faguaga Iglesias knows firsthand about human rights activism in Cuba. A historian and anthropologist, Faguaga is an associate professor at the University of La Habana and Director of the Inter-Cultural and Inter-Religious Dialogue Project from CEHILA-Cuba (Commission to Study the History of the Church in Latin America). An activist in the rights of the Afro-Cuban population, her main focus of research are the Afro-Cuban women, Afro-Cuban religions, power and authority relations, as well as the possibilities for a dialogue among Afro-Cuban religions and the Roman Catholic Church, race, gender, and health.

In this interview given to Conectas, María-I. Faguaga Iglesias explains the background of the human rights organisations in Cuba, besides speaking about the difficulties faced by activists and academics on the Island, among which is the lack of access to technology. During the interview, the activist highlights how "the concrete reality of activists and scholars concerned should be taken into account and, above all, that of the affected populations, even if not directly involved in activism. If this is not done, the work will lack substance and reach."

Based on this perspective, Faguaga emphasises how important it is for NGOs to focus their work on the axis of human rights, both in the South and in the North in its work with the South, to take into account the idiosyncrasies; among these is Cuba, whose situation is not always properly understood.

<p align="center">***</p>

Interview conducted in March 2014 by Juana Kweitel (Conectas Human Rights).

Original in Spanish. Translated by Amy Herszenhorn.

"THE PARTICULARITIES IN CUBA ARE NOT ALWAYS IDENTIFIED NOR UNDERSTOOD BY HUMAN RIGHTS ACTIVISTS FROM OTHER COUNTRIES"

Interview with María-I. Faguaga Iglesias

Conectas Human Rights: Human rights organisations have re-thought their strategies for action, taking into account local demands. Large organisations in the North have increased their presence in the Global South. And organisations in the Global South, besides their ever-growing international action, have reflected on their strategies within a framework in which mass protests and other ways of questioning representative institutions gain greater space. In your opinion, which is the difference between working with human rights from the vantage point of the Global South, particularly from Cuba?

María-I. Faguaga Iglesias: In the debate fostered by work in human rights from the perspective of the South, there are fundamental aspects of the present-day world context that are often *not* taken into account. There is a lack of understanding of the realities and the specific needs of countries that are part of the South, so that human rights activists and scholars, as well as those who study other sociopolitical issues, can adequately face the obstacles and challenges that are not necessarily those of the capitalist world. Not to consider these differences limits the studies carried out by national, international and transnational instances devoted to scrutinising, analysing and informing, or limits the very human rights activism.

For example, the absence of street protests is not a verifiable index, *ipso facto*, that there is no activism advocating for human rights. The lack of opportunity to publish results of intellectual work or fieldwork is not an index of passivity or of lack of interest. These misguided simplifications point to the need for international and/or multinational organisations to take into account the different social realities of each country and look beyond mere appearances.

Due to all this, these organisations must necessarily maintain a constant dialogue with the realities that are the object of their study and/or intervention. The concrete reality of activists and scholars concerned should be taken into account and, above all, that of the affected populations, even if not directly involved in activism. If this is not done, the work will lack substance and reach.

Conectas: You have a vast experience working with human rights organisations in Cuba. What are the circumstances in which human rights advocates carry out their activities on the Island? What are the opportunities and challenges?

M-I.F.I.: The panorama of activism in fundamental rights on the Island has changed considerably since the beginning, from the late 1970s to the present. At that time, a small group of former political prisoners founded what would become the Cuban Pro-Human Rights Committee (*Comité Cubano Pro Derechos Humanos*) in 1976. This small organisation brought together intellectuals, former diplomats, university professors and other people who had had an active and direct participation in the Castro government.

Their possibilities for survival were almost null. These people were exposing their own safety and that of their families, in a country where one of the most stringent and effective control mechanisms used was the separation of families, due to political reasons. Under such conditions, isolated from the world, these pioneer activists in human rights began that path of contacting embassies and the foreign press. This was their sole possibility of having any repercussion beyond the borders of the Island. These activists operated in a context that lacked both economic resources and legal protection, with harassment by the political police, amidst the lack of understanding by their families, isolated from the nation.

That initial core would later become larger and more diversified, until it too became fragmented. As a result, in the 1980s what arose were the Cuban Commission on Human Rights and National Reconciliation (*Comisión Cubana de Derechos Humanos y Reconciliación Nacional*) and the Pro-Human Rights Party. The 21st Century witnessed the birth of the Lawton Foundation for Human Rights and the Health and Human Rights Centre (*Centro de Salud y Derechos Humanos*). This unrecognised hub of activity, which would sociologically represent the 1980s, was the breeding ground for the expansion of independent activism in Cuba, even if it could not become visible – this is where other organisations stemmed from. All of them, like their predecessor, the Committee, submitted to the intense and broad work of the political police.

Gradually, activism extended to the hinterlands of the country. During the first years, there were less activists there, given the ease the forces of repression had in exerting greater control; possibly today there are more activists there than in the capital. It is difficult to precisely mention the date when all of this took off. It would not be wrong to locate that process chronologically as part of a psychological opening and a change of mindset that has been taking place since there began to be an increase in material penuries, at the beginning of the 1990s.

Slowly but sustainably, young intellectuals and artists would join this movement, and the presence of Afro-Descendants grew as well. Professionals, workers, housewives and students, heterosexuals, bisexuals, gays and transgender persons, whites, mestizos and blacks, from all generations now nurture this activism. The number of women grew, possibly because of the example given by the known Ladies in White (*Damas de Blanco*). The already numerous organisations that existed expressed the multiple cultures and the multiracial nature of the Cuban nation.

Among these new groups, some became materialised as what could be deemed parties, or at least that was their purpose. All of them, based on Cuban conditions, identified with human rights activism. It should be mentioned that not all share the same priorities, nor have the same human capital or material resources. Additionally, in those groups that have greater material resources, not

all of the members are in the same situation. Humble people whose rights have been violated, for example, rights to inheritance or to a change of job or position; a person who has been run over by a police car; people whose labour rights were infringed and could find no support in unions; artists whose art and life were not understood and were censored by authorities; some former military who accused the head of the army of undeserved treatment; intellectuals suffering censorship and/or protestors, though in small numbers, all joined forces with activists. The initial claims were expanded to the rights of political prisoners and government opposers. This is an ongoing process at present.

Conectas: That is precisely what we would like to ask you about. In your opinion, how has the human rights panorama changed in Cuba in the last decades? What is the role of international players in the local Cuban scenario?

M-I.F.I.: The national panorama has changed, moderately becoming more favourable to civic activism. Human rights activists (but not all of them, as already noted) nowadays have new material resources to carry out their task. In many cases, that old typewriter has given way to computers; and, instead of the earlier cuts in telephone landlines (if one had one, as the percentage of people with phones is negligible), now mobile phones are blocked, leading to lack of communication.

Abroad, this allows for visibility of only a part of what is happening on the Island, all the way from day-to-day reality lived by the majority of Cuban men and women, up to the extraordinary protests that have been taking place; from the particular case of someone fired from his/her job to the lack of care for the elderly, children, women and people with different disabilities; all the way from domestic violence to constant political repression.

Nowadays some activists manage to publish in papers and magazines abroad. Some send their videos abroad, so they can be used on television. Others yet tape their television or radio programs in Cuba, so they can be launched overseas.

Several people have received grants from prestigious universities, such as Harvard. Others are granted international awards with their ensuing economic benefits. Since January 2013, when the government put in force new migration regulations, there has been an increase in the number of people going abroad to deliver conferences, to present their books and/or exhibitions and to participate in international events, or to contact their co-nationals that live in other countries, for exchanges with activists in other regions of the world, to follow courses and even to interview renowned leaders, such as the founder of the paradigmatic Polish union Solidarity (Lech Walesa) and presidents like Barack Obama. Prior to this, very few were able to obtain those loathsome "exit permits" and "re-entry permits".

Notwithstanding, at present the political, cultural, economic and sociologic particularities of Cuba are not always identified nor understood by human rights activists from other countries. The need for independence in positioning and thought of men and women of Cuba today is not understood, expressed very often in the exacerbated desire for a more leading role.

Conectas: One of the questions of the current issue of the Sur Journal is how the new information and communication technologies have influenced human rights activism.

You have already spoken somewhat about that; however, how is the situation of access to technology for activists in Cuba at present?

M-I.F.I.: Although this is not often mentioned, the material scarcity on the Island also affects activism day-to-day. The possibility of having a PC or a MP3, or a flash or a camera, a mobile phone and enough foreign currency to be able to hire and maintain a line, and the very expensive access to internet – which was recently allowed for Cubans in a few authorised centres –, are not within the reach of most of the opposition.

Furthermore, you have to consider the high cost of the hour on internet in the Island, which varies between 4.50 and 12 CUCs.* As 1 CUC is purchased in currency exchange stores for 25 pesos and the average wage is of about 300 pesos, connection prices are grotesquely abusive; and, besides, they do not guarantee full navigation, as many web sites have been banned in Cuba.

Those who do have this and have the backing of foreign embassies to be able to access internet do not have this service available 24 hours a day; and hotel managers, where the few and highly heralded and controlled internet centres have been set up, are free to allow or refuse this service to Cubans.

During the 1970s and the 1980s, manuscripts or notes written on old typewriters were delivered by activists to foreign press agencies and embassies. Agencies did not always pass these forward. Not all of the embassies received them. It was impossible to resort to diplomats from the former socialists countries, whose practices were similar to those of the Cuban government. Not all of the Western countries acknowledged them. Some governing officials had very strong complicity relations with their equivalent on the Island.

Later there were press conferences, evidently without the presence of the national media. They created an internal structure and a logotype to grant certain legitimacy to their documents. Their houses were, and continue to be, the venues for meetings.

It is under these conditions that activists broadened their pursuits and interests, with the ever-growing harassment, pressure and police repression. Ever since the initial claims linked to government change and the ensuing change of political regime and economic system, denunciations may be said to have shifted from an individual to a collective nature.

It is essential to consider the existence of what we could call *cyberpolice.* That is to say, a political police sector that monitors and controls virtual communications. Unofficial, politically protected agents were arbitrarily granted powers to invade users' mailboxes and take over their communication, all the way from their contacts to content, and to block accounts or slow down communication for specific users. Content of e-mail messages exchanged by opposition members has been aired on national television in campaigns geared to discrediting them.

These are the conditions under which activists work in, when gaining access to internet or to telephony. They are aware that their communication is being traced and that they can be tapped, intercepted and interrupted, that their messages may not reach their destination or that they may not receive mail. They know that there are rules through which the government can legally declare them "enemies", sue them and sentence them to prison.

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*Reviser's Note: One CUC – Cuban convertible peso – is equivalent to one US dollar. The CUC is one of two official currencies in Cuba and is officially exchangeable only within the country. The other currency is the Cuban peso.

Conectas: In your opinion, which is the role of scholars in Cuba at present? What is the relationship between them and human rights activists?

M-I.F.I.: The case of Cuban scholars in human rights deserves an analysis on its own. For now, suffice it to say that the organisms whose focus is on human rights should identify and distinguish between what we could call the *diploscholars* and the others. The former are authorised by the government and stimulated to set up international contacts. The latter carry on with their work, despite multiple difficulties, the first of which is institutions refusing to accept their presence or the result of their research, alongside with the harassment by the political police.

It is from the latter, those condemned to ostracism, that results that are more in accordance with reality come from. Evidently, there are exceptions, and we should not reject nor accept any analysis *a priori*, based solely on the researcher's position. Known scholars have been adapting the results of their research over a period of time. And there are intellectuals, opposers, who are outside the system and whose research on occasion seems remote from the scenario in which they carry out their exploration.

In any case, the key lies in constantly seeking that very difficult balance. Not get tied down to appearances nor to characters. Leave the doors open to knowledge and to the experience of activists and scholars, of those who live on the Island and abroad as well, be these Cuban or not, without forgetting that information should always be comparative.

Agencies worldwide that are responsible for monitoring the human rights situation should continue to fight for the Island's government to ratify international covenants it has subscribed to, enabling monitors to enter the country officially. Because sending their delegates with subterfuges (for example, pretending they are tourists), submits them to the possibility of being detected and expelled by the Cuban government.

Human rights bodies could perhaps set up an international protection mechanism for activists and scholars on the Island. Up to present, the sole and scarce protection that activists and scholars enjoy in Cuba is their international recognition and their contacts abroad.

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Human Rights in Motion

Voices

FATEH AZZAM

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ABSTRACT

The question of "who do we represent?" has dogged the global human rights community for some time now and a recent flurry of articles have appeared that question the legitimacy of human rights and other NGOs by juxtaposing them against social or grassroots movements. Several authors have noted that because of NGO dependence on donors, their agendas and political outlook are necessarily affected and even subjugated and their links to the community are weakened. Having been involved in these debates in the Arab region for over twenty years and taking the example of Palestine as an extremely aid-dependent and politically volatile society, the author of this article takes issue with some of the assertions made, whether they concern human rights or civil society organizations more generally. Rather than pose either/or propositions, this article posits that it is important to adopt a more inclusive attitude that recognizes the diversity of approaches as enriching the creative and mutually supportive components of civil society. In Palestine, it is the very multiplicity and variety of civil society that is perhaps the only glimmer of hope in a grim political environment.

Original in English.

KEYWORDS

WHY SHOULD WE HAVE TO "REPRESENT" ANYONE?*

Fateh Azzam

One of the queries posed for this anniversary issue of the Journal is "who do we represent?" This is a question that has dogged the global human rights community for some time now and a recent flurry of articles have appeared that question the legitimacy of human rights and other NGOs by juxtaposing them against social or grassroots movements and accusing them of corruption (DANA, 2013), criticizing "NGOisation" (JAD, 2014), and extolling the virtues of volunteerism vs. "professionalism" (SURESH, 2014). The authors note that because of NGO dependence on donors, their agendas and political outlook are necessarily affected and even subjugated and their links to the community are weakened. They propose that civil society should move away from "NGOisation" towards some idealized and more "politically correct" form of mobilized grassroots movement in order to gain legitimacy. Interestingly, nearly all of those articles focus on civil society efforts in the Global South.[1]

Having been involved in these debates in the Arab region for over twenty years, I take issue with some of the assertions made, whether they concern human rights or civil society organizations more generally. This discussion will focus more on the experiences in Palestine, an extremely aid-dependent and politically volatile society where these concerns take on heightened importance and where the advocacy for human rights is tightly interwoven with the politics of resistance and liberation. Rather than pose either/or propositions, this article posits that it is important to adopt a more inclusive attitude that recognizes the diversity of approaches as enriching the creative and mutually supportive components of civil society. In Palestine, it is the very multiplicity and variety of civil society that is perhaps the only glimmer of hope in a grim political environment.

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*This article is a combined edited version of two previous online articles by the author: "In defense of 'professional' human rights organizations," published on 13 January 2014 in OpenDemocracy/OpenGlobalRights, and "NGOs vs. Grassroots movements: A False Dichotomy," published on 6 February 2014 in Al-Shabaka Palestinian Policy Network. See list of sources for original articles.

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1 Are NGOs wrong by definition? And how Popular are People's Movements?

In Palestine, an issue regularly raised is that one of the results of the 1993 signing of the Oslo Accords between Israel and the Palestine Liberation Organization (PLO) was a shift in civil society organizations from grassroots committees "deeply-rooted in the national liberation movement" to NGOs as aid-dependent intermediaries between the global and the local (DANA, 2013). The picture, however, is more nuanced and complicated, and our understanding of it must begin with questioning whether the idealized "mass-based" movements were indeed "mass-based" and represented a popular national agenda rather than that of the competing political actors behind them.

NGOs were already active long before Oslo. A great many of the development, human rights and women's rights NGOs were established in the early 1980s and were already doing very good work long before the post-Oslo increase in funding. The Palestinian "popular committee" phenomenon of the 1970s and 1980s, such as the volunteer committees initiated by Birzeit University, the Medical Relief and Agricultural Relief committees and others, also did excellent work and helped to prepare the ground for the first popular Intifada. Political actors, especially the Communist Party, initiated many of those committees, but eventually the various political parties of the PLO established rival committees as well. At one point we had three medical relief committees and three "grassroots" women's committees, as well as others in other fields. Despite the good work these committees did, they were not free from political elitism and manipulation of nationalist sentiment for purposes of partisan political party mobilization. Moreover, the success of those mobilization efforts can also be questioned, evidenced by the weak state of those movements today. The reasons for that weakness must be studied in the context of their own history and modes of operation, rather than simply be blamed on the proliferation of better-funded NGOs.

Another more difficult question, given the current political fragmentation of Palestinian society, is whether or not there is a unitary or coherent "national agenda" beyond the general one that all agree on: liberation from occupation. The various political forces and currents in Palestinian society, including Fateh in the West Bank, Hamas in Gaza, the Left in general and even the "new globalized elite," do not necessarily share the same vision of future Palestinian society. They certainly should be able to articulate those visions equally and offer the general public competing agendas and pathways to achieve them. In that sense, advocates for human rights or the public good should also have the right to adhere or not to any of those interpretations of a "national agenda." Some political actors may disagree with a human rights vision of a future where internationally recognized universal standards of human rights and the rule of law may conflict with narrower definitions of rights and liberties based on other criteria.

Then there's the criticism that NGOs have hierarchal structures where power is concentrated in the hands of a few individuals who are only accountable to their Boards (if Boards do indeed exist or operate as they should) and not to their

community. This is not a new phenomenon in Palestine, or in the region for that matter, and it is not limited to the NGOs. Civil societies almost always reproduce the leadership models they are accustomed to. In Palestine and elsewhere, it is not only the director of many NGOs who has been in their post for 30 years, but also the head of state or a local committee or council, political party, and workers' organization, among others. To see this as a problem unique to NGOs is misplaced.

The assumption that social movements somehow can be free of political manipulation and simply operate on higher moral or ethical grounds is not necessarily well founded. In the Arab region, many human rights groups started as membership organizations with a social movement model in mind. Very quickly, and probably because of the lack of real political participation in the region, struggles for political control took place within those organizations, leading to paralysis and ineffectiveness.

Accusations are occasionally levied at NGOs for corruption, misappropriation of funds or over-spending on salaries and administrative expenses, as opposed to "help[ing] a rape victim or torture survivor" (SURESH, 2014). Corruption does happen and it requires daily vigilance, but it is not a problem unique to those professionalized organizations dependent on foreign funds. We see it in social movements, trade unions, political parties (of course), grassroots development organizations and, yes, in donor organizations as well (LEBANON DEBATE, 2013). Corruption is a human trait that must be fought with higher ethical human traits and with accountability and transparency mechanisms. But to point the finger at donor-dependent organizations and single them out as endemically corrupt seems unfair.

2   Donor agendas and other criticism

Another over-simplified juxtaposition is pitting the presumed donor-driven globalized agendas of NGOs against the (again presumed) more homegrown national agenda of popular social movements. There have certainly been a host of issues associated with foreign funding of local efforts, including the matching of donor and national priorities, the "black lists" established by the United States, growing dependency and many others, and funding can of course have an effect, since donors do come with their own agendas and priorities.

Indeed there are politics in social justice philanthropy (AZZAM, 2005), which is one of the reasons that, five years ago, a number of us established the Arab Human Rights Fund, the first such regionally owned philanthropy for human rights, which takes its funding cues from concerns on the ground and also seeks to educate international donors.[2] To date, however, we still are unable to reach anywhere near the volume of funding provided by European and North American donors, as potential national donors continue to fear being associated with what is perceived as a "political" issue. In many countries in our region, governmental authorization is required even to raise funds locally, let alone receive them from the outside. These issues, however, are symptoms of broader social and political problems, not those of the organizations themselves.

Donors often focus their funding priorities for their own reasons, some of which are strategic, some programmatic and some even political, and this does affect what issues get funded in any given year. No doubt, NGOs must research donor organizations' priorities before submitting their proposals and many make decisions accordingly. Sadly, not all NGOs are able to negotiate with their donors to gain support for what they feel are priority issues. But to say that donors' priorities eroded the capacity of Palestinian NGOs to produce plans based on national priorities—again, assuming we have the same national priorities—is unfair and sidelines the commitment and hard work of Palestinian NGOs. To give only one example, how is it a foreign agenda for the Palestinian Center for Human Rights in Gaza and al-Haq in Ramallah to use foreign funding to file war crimes cases against Israeli officials in Europe? Because of Palestinian NGOs' creative and courageous efforts in that regard, and despite cowardly diplomats and courts in Britain and elsewhere changing their laws to avoid war crimes cases, Israeli officials periodically cancel travel for fear of prosecution (PFEFFER, 2012).

In fact, the power of donors to actively impose their own priorities or views on NGO work is more limited than is often assumed. For donor organizations, it's damned if you do and damned if you don't (WAHL, 2014). If donors are lax about the lack of institutional accountability, they are blamed for supporting inefficiency, undemocratic NGO structures and elitism. Yet if they become too insistent or "pushy," they are accused of interfering in the work of national NGOs and imposing their agenda. Our attention should be focused instead on organizations' own responsibility to be accountable and operate effectively and efficiently and be clear and insistent on their own agenda.

The argument that NGOs become implementers of foreign agendas, and that this happens at the expense of other, more indigenous forms of civil society formation, requires much clearer evidence; a cause-and-effect connection is not so easy to discern. It is true that some people choose to go after the money by forming NGOs, but that does not mean that every NGO is thus formed, nor does it explain why thousands of others have not joined or have abandoned "mass movements."

3 Aid and political activism

Certainly the aid on which Palestine has become dependent is a harsh reality and the consequences this has had on the discourse and direction of development and politics deserve much evidence-based research. However, we need to dig deeper into whether or not the de-politicization of specific funded projects necessarily leads to the de-politicization of the NGOs or of Palestinian society as a whole as has been claimed (DANA, 2013), or whether the international development discourse or adherence to a universality of standards, as human rights require, perforce de-legitimize what should be Palestinian-specific discourse and priorities.

Human rights organizations have come in for much of that criticism, but the evidence is to the contrary. This is precisely because their starting point is the universality and international standards of rights and the moral and legal power to claim them against the Israeli occupation, the Palestinian Authority and Hamas.

Should women's claims for equality be subordinated to the national struggle for liberation (the usual "not now, we have to fight the occupation"), or will women's rights organizations be accused of "de-politicization" if they undertake a project—funded by an international donor—to bring Palestinian practices in line with international standards for women's rights?

Even if some NGOs do become de-politicized—and this is not *ipso facto* a bad thing—it does not mean that the entire society does, as well. The work and sacrifices of the Palestinian-inspired International Solidarity Movement, or the organizations documenting settlements and settler violations or house demolitions and the effects of the Apartheid Wall, all funded by international donors, attest otherwise.

It is sometimes asserted that knowledge production has also shifted towards a neoliberal or neocolonial "taming" of Palestinian society into accepting the peace process, and that we need to reinvigorate "anti-colonial" and liberating research. Knowledge is crucial, and the more that can be produced to inform policies and construct liberation approaches and methodologies of resistance, the better. But we do need to be careful of our value judgments. Knowledge must be based on truth and on credible analysis, whether that analysis is based in colonial, anti-colonial or neo-colonial frameworks. To demand that knowledge production and research should be directed or follow a particular model or analysis is a serious mistake and a form of suppression of and limitation on free inquiry. The world of ideas and debate requires creativity that can only come from freedom of scientific inquiry away from prescriptive ideological requirements.

4 Room for all approaches

The criticism of NGOs is well meaning and much of it, well placed. The desire to see civil society organizations as people-centered, participatory, democratic and representative in a legitimate and sustainable manner is laudable and certainly supportable. But it is inaccurate and unfair to tar all components of civil society with the same brush and to dismiss "professional" NGOs as simply tools in the hands of funders and implementers of a post-Oslo political agenda. The alternative of idealizing "popular movements," without taking a serious look at some of the political and organizational issues they have had, is seriously problematic. Subjecting NGOs to a more historical and empirical approach is a correct and important idea (JAD, 2014) but it should be applied to popular movements, as well. There is a lot to learn from the history of those movements and the reality of their work today, and if we can learn those lessons, perhaps then we can build social movements that can represent and advocate for the interests of their communities, free of political manipulation with or without funding.

Civil society organizations should not be subjected to such binary analysis or to prescriptive solutions. The struggle for social justice can be strengthened when grassroots social movements take up human rights as advocacy tools towards social justice, democratization and a more just and balanced social order. Indeed, such a social movement approach can exist side by side with more "professionalized" rights

defenders working on specific cases of torture, land rights, forced evictions, violence against women or freedom of expression. They play different and complementary roles.

Expecting human rights organizations to become social movements may be more difficult, however. What distinguishes human rights from other moral, political, religious or social systems and modes of work is that they are legal. They *require* law and legal advocacy in defense of individuals and communities. While it is certainly important to inculcate human rights *values* in all aspects of social and political life, what makes them *rights* is law and accountability, notwithstanding the personal political views of the advocates or the authorities. This requires a different set of skills, which are equally important as social mobilization skills. To say that either skill-set is better, more legitimate or more important than the other would be fundamentally wrong. We choose where to focus based on our proclivities and preferences, personal assessments of what is more effective and yes, even our political views.

There is room—indeed a desperate need—for a variety of approaches. Civil society actors do not all have to be the same or have the same goal, political outlook, or methods of work. Rather, creative ideas and solutions for today's extremely complicated political, economic, legal and social problems can come from different arenas, different methodologies and from open debate, especially between conflicting points of view.

We should trust that the power of ideas and putting them into practice will uncover what makes the most sense or what works best at any given point in time. The success of the boycott, divestment and sanctions movement (BDS) is that a few people had a great idea and it has become a global movement because of the power of that idea.[3] However, to say now that this or any other idea is the *only* way to liberate Palestine, and that other work by "institutionalized" NGOs in areas such as legal research, litigation, development or capacity building are simply the product of donor-inspired agendas, is not only wrong but a serious mistake. The malaise and failure of Palestinian national politics and mobilization strategies should not be blamed on others; neither the outside donors who do what they do nor the national organizations who may be supported by them.

Palestinian human rights actors opted for the "professional" institutional model, with a self-selecting board of directors or trustees, where they can go about their work free of partisan political interference. Despite doing very good work, debates continue as to their "failure" to establish or motivate social movements for human rights. At the same time, we have seen more and more development organizations at the regional level, such as the Arab NGO Network for Development, adopt human rights language and the rights-based approach.[4]

The Arab revolts since early 2011 have reinvigorated the social and political movements of the region, particularly with the participation of youth and the technological tools they brought. Those movements, however, have not yet succeeded in creating a democratic alternative to the dictatorships of the past, although they are still trying. On the contrary, they have been under increasing threat and their leaders are being imprisoned for speaking out and demonstrating, particularly in Egypt (REUTERS, 2014). Meanwhile, the "professional" human

rights organizations continue to defend them and to articulate a law-based vision of social, political and legal justice. They are "professional organizations" and may not match social movements' mobilizing capacity, yet they provide the legal analyses and support necessary for social movements to take up. Social movements need to ally themselves to these organizations, rather than compete with them; they need each other.

A self-critical engagement with the above questions is necessary but it seems to me that some (not all) of the criticisms are misdirected and indeed contradict other values that we should hold dear: the freedom to express views and operate in any way we see best to serve our communities, and to trust in the power of ideas to influence change as well as public culture. Legitimacy should be gained as a natural outcome of what one does, not from some imposed criteria or set of representational notions that dictate one form or another of how acceptance should be granted. We should not have to "represent" anyone to gain legitimacy or to engage in work for the public good in human rights or other fields of endeavor.

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NOTES

1. As far as I'm aware, no one has raised the representational legitimacy of Human Rights Watch, for example, or Article 19, or the Center for Constitutional Rights, except perhaps some irate governments.

2. See The Arab Human Rights Fund, available at: www.ahrfund.org. Last accessed on: 31 July 2014.

3. See Boycott, Divestment and Sanctions Movement, available at: www.bdsmovement.net. Last accessed on: 31 July 2014.

4. See ANND, available at: www.annd.org. Last accessed on: 20 July 2014.

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ABSTRACT

Based on our own experience in litigation before the Inter-American System of Human Rights, in this article we argue that the primary strength of the Inter-American Court has been and will continue to be providing a forum where victims can make the moral weight of their words heard. They are the ones who turn from victims into victors when they tell their stories.

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VOICES FROM THE JUNGLE ON THE WITNESS STAND OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Mario Melo

1 Introduction

Who do we represent? That is one of the fundamental questions that SUR asks in this edition. A question – challenge.. It is something that we human rights defenders from the Global South often fail to ask.

Do we represent, before the high courts of international justice, the voice of mute victims of human rights violations? Do we act, as in reverse ventriloquism, by saying what we would like our clients to say?

Based on personal experience in the proceedings before the Inter-American System of Human Rights, in this article we argue that we haven't done either one. We have not lent our voice to the victims, because they have their own. We don't speak for them, but rather with them.

We also maintain that the primary strength of the Inter-American Court has been and will continue to be providing a forum where victims can make the moral weight of their words heard. They are the ones who turn from victims into victors when they tell their stories.

The role of human rights defenders is simply to open up a space so that this can happen, and, at most, to join our voices to those of the victims in order to call for justice.

Rather than call ourselves representatives, we should call ourselves partners.

2 The Inter-American Court and the new voices of human rights

In its 35 years of history, the Inter-American Court of Human Rights (hereafter Inter-American Court) has become a regional space where the most pressing issues

Notes to this text start on page 290.

of American continent reality are discussed from the perspective of rights. Its legal advances have allowed for new developments in human rights theory and practice, and they draw on the contributions made by the parties during litigation.

The Inter-American Commission and the Inter-American Court base their decisions on methods of interpretation that follow the *Corpus Iuris* of international human rights law, and the legal arguments of the parties, in general, are grounded in frequent references to the standards generated through the jurisprudence of the same Inter-American System and other systems for the protection of rights.

It is no less relevant to point out, however, that the Inter-American Court offers victims of human rights violations on the American continent an opportunity for their cases to be verbally and publicly argued before a court. The hearings allow fresh air to come in where topics that are uncomfortable for societies and states have been guarded. The fact that cases are aired in the presence of the Court and under the gaze of the media and any spectators who wish to follow the hearings either there in the room or through the webcast, which is now a requirement in the Inter-American System of Human Rights, helps to reveal situations that are often otherwise hidden from public scrutiny in order to protect those responsible.

Just the fact that a hearing is held is, by itself, restorative for the victims (BERINSTAIN, 2009).

When the Inter-American Court holds a hearing, it opens up a privileged space where people whose human dignity has been undermined by the violation of their rights, as recognized in the American Convention on Human Rights, can appear before that high court and tell their truth.

For example, a particularly significant moment in the history of the fight for justice for the victims of the dictatorships in the Southern Cone was Macarena Gelman's declaration before the Inter-American Court, in a hearing held in Quito in November 2010.

She described the circumstances of her birth, which happened while her mother was being held by her oppressors, the suppression of her real identity when she was given by the perpetrators to a new family to be raised as their own daughter. Her encounter as an adult with her grandfather, her continued ignorance of her mother's whereabouts, and the impacts these have had on different dimensions of her life (CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Caso Gelman v. Uruguay*, 2011).

No less powerful it must have been, years before, in 2004, when the mothers of three children killed in the fire at the "Panchito Lopez" child re-education center in Paraguay spoke at the hearing before the Inter-American Court. With how much pain they must have told the judges who then comprised the Court about the overcrowding and extreme abuse that their children suffered in that institution, until a fire put an end to the ancient building and to the lives of nine children, including their own (CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Caso Centro de Reeducación del Menor v. Paraguay*, 2004).

In every one of the cases that has had a hearing in the Inter-American Court, there must have been people who, with broken hearts, uncovered the recesses of human evil through their testimonies. The voices of the victims, which are, without

a doubt, the new voices of human rights on our continent, have been heard by the judges with respect and empathy. Just by doing this, the Inter-American Court has justified its existence before history.

3   The spirits speaking through the mouths of the wise

In July 2011, the author of this article had the privilege, together with Viviana Krsticevick, the Director of Center for Justice and International Law - CEJIL of representing the Kichwa people of Sarayaku, in the Ecuadorian Amazon, in a hearing before the Inter-American Court, as part of a case against the State of Ecuador.

The facts of the case are related to the concession granted by the Ecuadorian state for an oil project that affected 65% of the peoples' ancestral land. The community of Sarayaku was not informed, consulted, or asked for consent in the granting of this concession.

The presence of the oil company in Sarayaku brought violence, pain, and sacrifice for the people of the village, and the destruction and deterioration of parts of nature that were particularly significant for the worldview and spirituality of their ancestors. Sacred trees were felled, and the very soil of the jungle, across 20 square kilometers, was drilled and planted with explosives in order to conduct seismic explorations in search of oil.

It is hard to imagine a scene less familiar to the daily lives of the indigenous peoples, whose traditional home is the Amazon jungle, and whose culture and worldview set them apart from modern white-mestizo society, than the courtroom of an international tribunal. Nevertheless, a delegation of 20 Sarayaku people, including men, women, youths, the elderly, and a baby born only a few months prior, made it there, overcoming all kinds of difficulties, in order to be there at the key moment when the representatives of the Ecuadorian government would answer for everything the community had suffered.[1]

To reach that point, they had to pursue a seven-year process before the Inter-American Commission of Human Rights, and another year and a half before the Court. But for Sarayaku, awaiting justice was worth the trouble.

In my opinion, the most important moment in the litigation of *Pueblo Kichwa de Sarayaku v. Ecuador* was when Don Sabino Gualinga, *yachak,* the spiritual leader of Sarayaku, got up on the witness stand to give his declaration before the Court, with steady steps despite his 92 years of age.

Don Sabino had to testify in order to reveal to the judges something that his people do not like to talk about. Only he could show the court the most painful and disturbing side of the drama that resulted in the unwanted presence of an oil company in their territory. No other type of evidence used in the Court could attest to the deepest dimension of the damage committed against the village: when strangers entered, protected by armed military personnel, to plant in Mother Earth – in 467 places, 12 meters down, and 100 meters apart – a total of 1,433 kilograms of high explosives, in order to set them off in search of oil (CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Caso Pueblo Indígena Kichwa de Sarayaku v. Ecuador,* 2012, para. 101).

When the witness responded to questions about the impacts of the oil company activities on Sarayaku territory, Don Sabino said that half of the "lords of the jungle were no longer there. Sarayaku is a living land", he said,

> *it is a living forest. There are trees and medicinal plants and all kinds of beings… Many hid, others died when it burst. They are the ones who maintain the jungle, the woods. If there is too much destruction, the mountains will also collapse … All of those who wish to cause damage, they don't understand what they are doing. We do understand it, because we see it.[2]*

He also told the story of another *yachak*, the old man César Vargas, whose tree of power, known as Lispungo, was destroyed by the oil workers:

> *Mr. Cesar Vargas had his lands in a place called Pingullo, and he lived there with his trees; there, woven like threads was his way of curing. When they felled this Lispungo tree it made him very sad (…) When they cut down that big Lispungo tree that he used as threads, he became very sad, and his wife died, then he died, and a son also died, and after that another son died, and now only two daughters are left.*
>
> (CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Caso Pueblo Indígena Kichwa de Sarayaku v. Ecuador,* 2012, nota 290).

The Court weighed his testimony and determined that *for the Sarayaku, the company's destruction of sacred trees, such as the "Lispungo" tree, was a violation of their worldview and cultural beliefs.* The damages caused by the oil operation in Sarayaku territory meant that "according to the beliefs of the People, the spirit owners of that sacred place left the site, thereby bringing sterility to the place and the permanent disappearance of the animals from that area, until the spirituality of the place is restored" (CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Caso Pueblo Indígena Kichwa de Sarayaku v. Ecuador,* 2012, para. 218).

That was not the first time that a witness explained to the Court the impacts that human rights violations have on the spirituality of traditional peoples. For example, in the hearing for *Moiwana v. Surinam*, witness Erwin Willemdam recounted how community members would be able to return to live in a place once there was justice for the family members who were killed in a massacre.

> *The community members believe that while those who died at Moiwana are not vindicated, their souls will not be at peace. Furthermore, as long as their bodies do not receive a proper burial, this will bring negative consequences upon the living. The witness is fearful of these angry spirits.*
>
> (CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Caso Moiwana v. Surinam,* 2005).

It is not often that those who administer justice in Western judicial systems hear from witnesses who maintain that the damages also include the death or disappearance of spiritual beings, or the angering of the spirits of their ancestors. The judges of

the Inter-American Court not only listened, but also tried to understand and gauge the pain that it caused people to feel that the spiritual beings in whom they place their faith and trust to maintain harmony and order have abandoned them, or that the violent, unjust, and unpunished death of their loved ones makes the spirits of their ancestors angry and turns them into a threat. In those cases, the Court considered those elements when declaring the states' responsibilities for having violated human rights, and when determining reparations.

In the Sarayaku case, the Court recognized

the importance that sites of symbolic value have for the cultural identity of the Sarayaku people, and for their worldview, as a collective entity; several of the statements and expert opinions presented during the proceedings indicate the strong bond that exists between the elements of nature and culture, on the one hand, and each member of the people's sense of being.

(CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Caso Pueblo Indígena Kichwa de Sarayaku v. Ecuador,* 2012, para. 219).

(…) The Court considers that the failure to consult the Sarayaku people affected their cultural identity, since there is no doubt that the intervention in and destruction of their cultural heritage entailed a significant lack of respect for their social and cultural identity, their customs, traditions, worldview, and way of life, which naturally caused great concern, sadness, and suffering among them.

(CORTE INTERAMERICANA DE DERECHOS HUMANOS, *Caso Pueblo Indígena Kichwa de Sarayaku v. Ecuador,* 2012, para. 220).

4 The Court goes to the jungle

It was a historic moment when, after the public hearing held in 2011, the Inter-American Court decided to go to the village of Sarayaku on April 21, 2012. It delegated its Chief Justice, Diego García Sayán, and Judge Radhis Abreu to go to the community and hear the testimonies of the residents in their own territory. That was the first time that the judges had gone to the homes of victims to talk with them.

The visit was extraordinary. José Gualinga, *Tayak Apu* (President) of Sarayaku, put things in perspective in his welcoming remarks when he said that his people had been waiting for that day since time immemorial, because when the *tayak*, or the mythical founders of the community, came down the Bobonaza river to the place where the village sits today, they took *ayahuasca* and had a vision that one day some wise chiefs would come there to resolve a serious problem facing their people. That is why they founded Sarayaku on that site.

The Court heard the declarations of the residents of Sarayaku, men and women of all ages. For the first time in its history, the highest court of justice

in the Americas heard from indigenous victims in their own territory. In doing so, the Inter-American Court took a leap forward in fulfilling the principle of immediacy. There, the Ecuadorian state also acknowledged its responsibility, and the community of Sarayaku held an assembly the same day to determine its response to the judges and to the state, accepting and acknowledging the admission, but asking the Court to issue the expected ruling.

5   The end of a cycle

It requires tremendous effort for a victim to take legal action at the national and international level. The first victory is in filing a complaint, overcoming the feelings of fear, shame, and helplessness that often weigh on those who have suffered acts that cause serious harm to their own human dignity or that of their loved ones. Activities like denouncing the perpetrators before the authorities and following up on the case help the person reconstitute their personality after a violation of their rights.

When there is a group of victims, like in the Sarayaku case, the process of standing up for their rights has helped the members of the group to strengthen social cohesion and hold on to their ethnic identity.

When the oil company personnel and the soldiers came into the jungle between 2002 and 2003 to place explosives, the people of Sarayaku had to face an armed invasion of their territory. To do so, they formed Camps of Peace and Life: small groups of community members, including mothers with small children, who went through the jungle to intercept parties of oil company workers and armed personnel, risking their lives in order to try to prevent them from destroying their land.[3]

The misery they suffered, the insults, threats, aggressions, and relentless pressure from the oil company and from different state authorities who did not overlook any opportunity to pressure, belittle, and discredit them for their anti-oil position, which was portrayed as being against the "national interest", undoubtedly left a deep mark on both their individual and collective identities.

The proceedings before the Inter-American judicial system helped Sarayaku to channel the need for recognition and justice in a positive, creative and non-violent manner, thanks to the leadership role assumed by their leaders, and the permanent engagement of their members.

The hearings that were held in the Court headquarters in San Jose, Costa Rica, and in the community of Sarayaku, felt, somehow, like an end point. Pursuing the case for almost a decade without being defeated by the costs, the distances, or the difficulties, felt justified at that moment when the people of the village could tell their truth while looking into the faces of the representatives of the state that could not protect them, and that turned over their sacred lands behind their backs to a company that would turn it into an oil field.

My impression is that the significance of that act, of bringing an end to the cycle through a ritual of saying before the judges what one had carried inside for almost an entire lifetime, is best illustrated through the story of Rumi.

When Rumi's mother, a leader of the community in 2003, stood up to lead

a group of women in the Camps of Peace and Life, Rumi was only eight years old and would walk through the jungle with his hand in hers. Another young man in Sarayaku was an amateur filmmaker studying communication; he managed to document the militarization of his village with a video camera, turning it into the documentary *I am the defender of the jungle* (SOY DEFENSOR…, 2003), which was used as evidence before the Inter-American Court, and which has also won several international prizes. The documentary ends with an image of a small boy who has the phrase that became the film's title written across his bare chest.

Nine years later, in the Assembly House of Sarayaku, where the Inter-American Court heard the case, a 17-year-old boy was called to the stand. Like most of the boys his age in the community, he was dressed in jeans, a t-shirt, and sneakers. Only his face paint and the *llauto* or headband that he wore revealed his ethnicity. As he took the five steps from where he was sitting to where he would testify, face to face with the judges, with the state representatives on his left and his community's lawyers on the right, he paused and before a crowd of photographers, took off his t-shirt and prepared to make his voice heard. Like that, with a bare chest, just like the camera captured him when he was a boy accompanying his mother to defend their territory.

He didn't say it and didn't need to, but that virile, ancestral gesture tuned us in to the significance that moment had for him. Without a doubt, that declaration, being able to say what he was thinking and feeling after a young life full of struggle, represented the end of a cycle and an opportunity to move forward.

6 Final reflections

Since the beginning, the Inter-American System of Human Rights has been a meeting place. Judges, commissioners, and lawyers who have been trained in the common law tradition meet and work shoulder-to-shoulder with colleagues who have been trained in the continental European legal tradition.

States and victims meet there, in a difficult, conflictive, but always fruitful dialogue mediated by the bodies of the System, the Commission and the Inter-American Court.

Languages meet there. The legal language of the lawyers and judges comes together with the language of experts from other disciplines—psychologists, anthropologists, doctors, economists, etc… – that help resolve the cases. The languages of activism and of the press are also found there.

But most of all, we find the language of the victims, those who speak firsthand about their pain, their suffering, their cry for justice. The language of those who were tortured, of the family members of the disappeared, of the elderly who unjustly lost their pensions or their jobs, of the indigenous and those from other traditional communities. The language of women and that of men. That of adolescents and that of children. All of them are the languages of human rights.

The richness of this exchange of experiences strengthens the victims by making them feel that they are not alone. Their defenders are there with them, less to represent them than to be their comrades in the struggle.

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Jurisprudence

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_____. 2005. Sentencia de 15 de junio, **Caso Moiwana v. Surinam**.

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NOTES

1. To learn more about the presence of the Sarayaku delegation at the Inter-American Court hearing in July 2012, I recommend that you watch the documentary "Children of the Jaguar" (LOS DESCENDIENTES..., 2012).

2. We recommend that you watch Don Sabino Gualinga's complete testimony in the video posted by the Inter-American Court. Available at: <http://vimeo.com/26136863>. Last accessed in: Feb. 2014.

3. See the testimony of Marlon Santi in the hearing before the Inter-American Court in San Jose, Costa Rica. Available at: <http://vimeo.com/28835695>. Last accessed in: Feb. 2014.

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ABSTRACT

The debate on the conditions of legitimacy of the work of human rights NGOs has garnered
an increasing amount of attention in recent years. Speaking out on behalf of groups that
cannot delegate or constitute their own representation is an old dilemma, but coming up
with contemporary answers requires a starting point that does *not* assume a synonymity
between political representation and representative government. Broader criteria now exist
for determining the legitimacy or illegitimacy of the work of these actors. There are no easy
answers, and this article analytically clarifies the challenges to be faced by any attempt to
provide an answer, while also shedding light on the historical circumstances that give meaning
to this issue.

KEYWORDS

NGOS, HUMAN RIGHTS AND REPRESENTATION*

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Non-governmental organisations (NGOs) that work in the defence of human rights have been pondering – more often in recent years – on the conditions of their work legitimacy, and have sometimes been asked to justify it to donors or sceptical or critical voices. Something has changed in the perspective of these actors, which have been confronted with more demanding legitimacy requirements. After all, advocacy has been a common practice at least since the 19th century, but demands over the fundamental legitimacy of the work of those who advocate have gained prominence in more recent years. What has changed exceeds the boundaries of the sphere of defending human rights and relates to the growing debate on the pluralisation of extra-parliamentary and non-state forms of representation. Therefore, this discussion is a rich source for finding answers to the demands of legitimacy of civil organisations in the field of human rights.

This article addresses the discussion on the legitimacy of practices of representation without consent. The first section demonstrates that these practices still confront an old dilemma: representing the silenced. It draws on the formulation of this dilemma made by Joaquim Nabuco, in the 19th century, and the answer that he gave: the oxymoron "unconscious delegation". Based on this analysis, it is considered more productive, instead of resorting to a new oxymoron, to analytically clarify the challenges to be faced by any attempt at an answer, while also shedding light on the historical circumstances that give meaning to the question surrounding the legitimacy of representation practices. This is the intention of the second and third sections.

The second section focuses on the conceptual aspect, using, as a convenient argument, the model of acting in someone's interests developed by Hanna Pitkin. The convenience lies in the fact that it is not only a model that is well-known and influential in the field of theories of representation, but also one of the few

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widely recognised models that does *not* assume a synonymity between political representation and representative government – centred in electoral representation. The assumption of this synonymity would result in a judgment of extra-parliamentary forms of representation with criteria that are suited to the assessment of the actions of political parties. We know, *a priori*, that civil organisations are not functional or institutional equivalents of political parties, thus any assessment of the political representation of the former based on parameters suited to the latter leads to predictable and sometimes trivial conclusions.

The third section examines some of the implications of the Pitkin model for the defence of fundamental rights and its perspective in the national and international arenas. In conclusion, it is noted that the debate on the pluralisation of political representation constitutes a good starting point for analysing representation by human rights organisations.

1 An old dilemma: representing the silenced

Speaking out in public to protect the fundamental interests of someone who cannot raise their voice to defend themselves – but who, if they could, hypothetically, would do so – is both a noble and disconcertingly dilemmatic occupation. Civil society organisations committed to the defence of human rights sometimes find themselves in the uncomfortable position of having made this choice.[1] The dilemma precedes them and, in Brazil, it was given a dramatic formulation more than a century ago, in one of the most notable political texts to come to light in the 19th century: *O Abolicionismo* (Abolitionism), written in its entirety in London and published in 1883. In order to publicly justify the political mission of the abolitionist party, and based on respect for liberal principles, Joaquim Nabuco undertook the difficult task of identifying the real source of the authority that allowed him to advocate on behalf of others: on the one hand, universal values confer dignity to a humanitarian discourse; but, on the other, political action requires, on the part of the "represented", the knowledge and the express acceptance of these values and the rights derived from them, as well as some mechanism of delegation – even though hypothetical. The response he offered is remarkable: "The abolitionist mandate is a two-fold delegation [by slaves and their children], unconscious on the part of those who do it, but in both respects interpreted by those who accept it as a mandate that cannot be renounced" (NABUCO, 2000 [1883]). Even in defence of the realisation of the practical imperatives of modern universalist ideas – act in defence of freedom and equality – the abolitionist is required to resort to ingenious methods to demonstrate the legitimacy of his purpose and to escape the perverse paradox of representing silenced men, without public opinion that can be mobilised to legitimise any delegation of interests – much less substantiate processes of authorising representation.

The concept of "unconscious delegation", whereby the slaves and their children – the *ingênuos* (ingenuous) – presumptively vested the advocates of the abolitionist cause with irrevocable powers, encompasses all the elements that make the work of human rights organisations a dilemma in the contemporary world. In certain circumstances, working with noble purposes can attract hostility, even by

the beneficiaries of these purposes. However, keeping quiet is not an empathetic option in relation to those who have been silenced or who, hypothetically, would condemn their own situation if they had the real conditions to do so.

There are at least three elements contained in this concept that are of interest here. First, and unlike the direct defence of interests that can genuinely be said to be private, advocating on behalf of others in public requires the use of public reason, i.e. arguments that are factually sustainable and morally reasonable.[2] *O Abolicionismo* examines the deleterious consequences of slavery – facts – and condemns its immorality; however, the concept of "unconscious delegation" is proposed with a different purpose, namely dealing with the question of legitimacy.

Second, it follows that the use of public reason is insufficient when the sphere in which the facts presented and the moral persuasion proposed requires a legitimacy that cannot be justified only because the empirical diagnosis is correct or because the causes or the interests being defended are morally right. In other words, there are crucial differences between advocacy and representation, since only the latter requires a form of legitimacy derived from the consent of the represented. The dissatisfaction aroused by "unconscious delegation" derives precisely from the fact that consent without the awareness of the consenting party constitutes an oxymoron.

Third and last, although advocacy and representation both employ public reason in the defence of causes and interests, the perspective differs in each of these cases; in the latter one, it is more institutionally structured and by definition directed at formal public spheres – notably, but not only, legislative houses.

There are no easy answers to settle the problem of the legitimacy of representation without consent. However, instead of resorting to a new oxymoron – even though it may be ingenious – it is analytically and politically more worthwhile to clarify the terms that seem better suited to find plausible answers, as well as the historical circumstances that make the search for these answers a pressing one. The next section analyses the model of acting in someone's interests developed by Hanna Pitkin, one of the most widely used theoretical formulations in the literature for contemplating political representation and also one that demonstrates the inherent limits of political representation – regardless of whether it is provided by political parties or other actors, such as human rights organisations. Finally, the third section examines some of the implications of the Pitkin model for the defence of fundamental rights by civil organisations in the field of human rights at the national and international levels, as a result of the scenario of pluralisation of political representation.

2 Acting on someone's behalf

International non-governmental organisations committed to the defence of human rights have been active promoters of the defence of minority rights, broadly recommending the institutionalisation of mechanisms for representing these social groups – as groups – in their respective societies, although they themselves could not claim an identity-based legitimacy for their work – like women or blacks can when they publicly defend gender equality or their opposition to racial discrimination.

They embody the figure of an agent that acts on behalf of or in the best interests of someone, within the moulds of political representation examined by Pitkin (1967) in her seminal book *The concept of representation*. Claiming affinity, solidarity or a commitment to the cause of human rights could be a persuasive argument to justify the exercise of advocacy activities, but, even though they might very well be genuine, these motives are insufficient when advocacy becomes representation. As already mentioned, something changed in the perspective of the civil organisations and, as a result, it is vital to come up with other answers. This "something", the pluralisation of political representation, shall be addressed in the next section, but first we need to explain the requirements and challenges of political representation.

Pitkin categorises the different notions and manifestations of representation into three main models – 'formalistic', 'standing for' and 'acting for' – each containing several visions and theories of representation. The greatest diversity of notions is contained in the 'acting for' model – the most complex of the three – to the extent that the author offers five families of metaphors,[3] while she only systematically lays out two theories of representation as acting in someone's interests, both developed in the 18th century and antagonistic in nature, and present in the work of Edmund Burke and the Federalists.

The internal elements shared by the various notions of representation present in the third model of 'acting for' can be clarified through the characterisation of what I call the *correspondence regime* inherent to the model. This regime consists of the criteria that govern the relationship between the representation and the represented, and make representation an admissible expression of the represented, conferring it representativeness. In other words, this set of criteria defines the terms in which representation is expected to correspond, explicitly or implicitly, to the represented, establishing what may or what may not be properly considered representation. For Pitkin, the correspondence regime is characterised as the balance of the comparison between manifestations, linguistic uses and metaphors of representation in search of clues to judge in what terms the action of one party – human rights NGOs, in this case – can be plausibly considered an act of representation.

The metaphors and notions of representation that refer to someone acting on behalf of an agent or in the care of a patient are characterised by Pitkin as active and substantive forms of representation, since what makes them specific is the attention to both the practice and the actions expected from it, and the substance or content that should be realised – namely, acting in the best interests of the represented. This is what characterises political representation – that the representation, clearly exerted through the intermediation of a representative, considers the well-being of the represented and their preferences. The commitment to acting in the best interests of the represented specifies a canon regarding the content, and, as a result, political representation in Pitkin is substantive.

The "substance of the activity of representing", observes Pitkin (1967, p. 155), seems to suppose the action of a representative who acts independently, with discretion and judgment, but also responsively and making the action coincide with the wishes of the represented, who, meanwhile, is also considered independent and capable of judging the action of the representative and, in some cases, disagreeing

with and objecting to it (PITKIN, 1967, p. 155, 209). Although this dual independence is a potential source of conflict, it cannot be permanent or, more precisely, "conflict must not normally take place [...] or if it does occur, an explanation is called for. He [the representative] must not be found persistently at odds with the wishes of the represented without good reason in terms of their interests" (PITKIN, 1967, p. 209).

The model of political representation that rests on a potential source of conflict – dual independence – comes with a correspondence regime that is explicit and demanding, but complex to enforce. After all, it seeks to reconcile the wishes of the represented with the discretion of the representative in a relationship that preserves the autonomy of both. A definition of representation conceived in this mould presents two serious limitations quickly identified by Pitkin: the corrosive effects of the conflict and its overly permissive character concerning what counts as representation – which simultaneously implies a weak capacity to establish that which may or may not be considered representation.

First, this model makes representation a particularly fragile phenomenon that is always close to breaking down as a result of the conflict, unless some reconciliation is possible between the wishes of the represented, which are always volatile, and some more solid manifestation of well-being – typically, interests – that can serve as a yardstick for the considerations of the representative. Second, even if the reconciliation between the wishes of the represented and the actions of the representative are deemed plausible, the definition only widens the boundaries within which political representation can occur, by embracing more varied concepts, including some that are antagonistic or incompatible from a normative point of view – such as conceptions that are surrogate or paternalistic, technical or scientistic, democratic or plebeian. In other words, the correspondence regime of political representation lacks parameters to separate the undesirable forms from the desirable. Note that this situation is inherent to political representation, and not to the group of actors that provide it – whether they are political parties or not.

3 Acting in defence of fundamental rights and the perspective of the actors in the national and international arenas

As Pitkin herself rightly understood, the boundaries of political representation are wide and cover various forms of representation. The variety of these forms can abide by, as Pitkin points out (1967, pp. 210-215), what appear to be secondary aspects from the point of view of the abstract definition of the concept, but by no means trivial considering their consequences on the quality of the representation. This is the understanding embraced by a number of different authors and actors of three crucial aspects: what is or should be represented, the alleged qualities of the representative and the represented, and the characteristics of the class of decisions taken by the representatives. Therefore, despite being forms of political representation, certain perceptions that emphasise "objective" or general interests – "the nation", for example – credits to the representative a wisdom or some distinctive superior quality, or else they consider that the nature of the decisions to be taken is essentially technical or scientific. As a result, they are more likely to encourage or provide surrogate or

paternalistic forms of representation, in which the representative believes that he knows the interests of the represented better than they do and, therefore, that he does not need to consult them, only take care of them.

The work of NGOs that defend human rights differs in regard to these three aspects, on account of the prominence and priority unconditionally given to fundamental rights. The logical reconciliation between representative and represented follows this prominence and priority. The parameter of well-being of the represented, therefore, acquires a remarkably solid footing – indeed, almost cast-iron, since human rights are considered inherent to human dignity, regardless of contextual and contingent considerations, such as the country of origin or the culture of a given community. However, although the existence of an "objective" parameter tends to loosen the relationship of consultation and the need for the consent of the represented – as Pitkin points out – the focus on fundamental rights subordinates the actions of the representative, severely limiting them from making arbitrary choices. Subordinating the actions of the representation to the promotion and defence of human rights introduces criteria of a demanding correspondence regime. It limits the discretion of choice, on account of a 'hard' definition of what is being represented, minimising the role of any alleged virtues on the part of the representative or the alleged lack of them on the part of the represented. Human rights, obviously, can broaden the range of choices of the represented, but from the representative's point of view, it limits the range of possible choices. Respect for the right to life, for example, implies opposing the death of civilians during wartime, regardless of the assessment of the merit of the warring parties. Neither is there any leeway, for the same reason, for technical or scientific interpretations of the decisions to be taken; first, the defence of human rights is associated with a constant thematisation and politicisation in the public sphere and in various institutional arenas. Moreover, Pitkin herself (1967, pp. 156-166) assumes that, without any formulation like the understanding of the "true interest" in question by the representative, the balance between them and the represented may only follow the path of the wishes and opinions of the latter.[4]

When NGOs committed to the defence of human rights are questioned about the legitimacy of the representation they provide, it is not the general model of political representation that serves as analytical scrutiny, but representative government and, more specifically, electoral representation. This is a specific institutional framework that constitutes the most important form of political representation of the past two centuries. In it, the reconciliation of the dual independence of the represented and the representative is resolved through a single device with three functions: authorisation, mandate and sanction. Indeed, the vote performs this three-fold function, since it is the mechanism that permits the voter to choose a representative, express preferences for certain programs or policies, and also replace rulers when their performance or ability to deliver on campaign promises is unacceptable.

Judging the defence of human rights based on the responses established by electoral representation to address the harmonising of the dual independence and its potential conflicts is an ineffective analytical operation, since it ignores essential characteristics of the work of NGOs engaged in this defence. These organisations often promote causes against the majority. Mechanisms of authorisation in contexts

in which majorities exercise some form of oppression over minorities would be equivalent to condemning these causes. Meanwhile, as in Nabuco's case, there is an 'unrenounceable' mandate for those who are committed to the defence of human rights, although it resides in very widely accepted general principles. Undoubtedly, the 'narrative' of human rights can be criticised in genealogical, deconstructivist and postcolonialist terms (MUTUA, 2001), but it would be careless to overlook that it is a political grammar (with proven capacity to rationalise power) which has nowadays various institutions for its promotion – at the international and national levels – that are unavailable for other grammars with broad pretensions, such as postcolonialism. Finally, the absence of a vote and a clear constituency is accompanied by the absence of sanction by vote, but this does not mean a complete lack of control and sanction on the work of these NGOs. The debate on the accountability of civil society has explored various forms of control over the work of civil organisations.[5]

Another broader phenomenon underlies the issue on the legitimacy of the demands of human rights NGOs, that has changed the stand of these actors: their presence on the international stage as relevant agents in defining international norms, in monitoring compliance with these norms, in developing international mechanisms to encourage compliance and in activating sanction mechanisms has grown markedly since the 1990s (SMITH; PAGNUCCO; LOPEZ, 1998). Such growth is not the unilateral product of a 'unstoppable' activism; the United Nations system, the European Union and multilateral organisations have altered their position in relation to States, which are no longer viewed as the unified and *a priori* legitimate voices of the population living in their territories. As a result, the institutional arenas of the exercise of political representation on the international level have changed, attracting civil actors to more central positions. Meanwhile, and having both driven and capitalised the reconfiguration of the institutional arenas, human rights NGOs gradually professionalised their representation at the United Nations, leaving behind them the times when this type of representation was conducted on an honorary basis by volunteers in their free time, often associated with the image of "politicians on a downward slope" or "little old ladies in tennis shoes" (MARTENS, 2006).[7]

On the national level, the phenomenon is two-fold. On the one hand, the favourable international environment, the adherence of States to new norms, the democratic transitions and the creation of institutions to exorcise the horrors of the systematic human rights violations committed during the dictatorships has also prompted a rearrangement of the position of the actors committed to the cause of human rights in the domestic arenas. On the other, and on different scales in the two hemispheres, democracy itself has undergone a process of pluralisation of representation in which new functions, bodies and actors of representation acquire parallel and/or complementary functions to those of electoral representation, pluralising the very institutional repertoire of democracy (DALTON; SCARROW; CAIN, 2006; GURZA LAVALLE; HOUTZAGER; CASTELLO, 2006a).

The search for more appropriate ways to address the challenges of legitimacy raised by the multiplication of extra-parliamentary forms of representation in order to deal with this requirement is today at the heart of the leading edge analysis of the new generation of theories of representation. The challenge is two-fold: be attentive

to the emergence of new forms of representation through meticulous descriptive studies and, at the same time, shed light on the conditions of legitimacy of these forms, breaking loose from the strict paradigm prescribed by the canonical model of electoral representation and its leading actors – political parties.

As such, representation provided by *citizen representatives* (URBINATI; WARREN, 2007), such as the case with the British Columbia Citizens' Assembly (WARREN, 2008), not only assigned a body of citizens to review and express an opinion on important legislative bills, but it also observed a criterion of legitimacy other than electoral authorisation. In this case, representativeness follows a statistical correlation, i.e. the fact that citizens had been randomly chosen for the purpose of expressing the preferences and opinions of the average citizen.

Other cases have allowed developing concepts to explore possibilities of legitimacy in forms of representation that are neither authorised nor random, but self-authorised, in which the commitment of representatives, their position in a network of actors marked by strong affinities, the nature of the cause being represented, or other factors, ensure that the representative acts, to some extent, in the interests of the represented. The growing conceptual repertoire is symptomatic of both the emergence of new forms of representation and the difficulty of applying consensual criteria of legitimacy to them.[9] This does not mean, however, that the proposed criteria are arbitrary or trivial. After all, the rethinking of representation reflects the changes going on in the world, which constitute a scenario of pluralisation of representation.

4 In conclusion

In more central positions in the domestic and international arenas, the cause of human rights and of the actors that promote it are no longer considered merely bona fide advocacy practices and have taken on implications in a larger institutional game, within which the question of legitimacy is more demanding and pluralistic. New concepts have emerged in order to understand and give meaning to the pluralisation of representation that is occurring in the domestic and transnational arenas – a pluralisation in which human rights NGOs are included. Therefore, in seeking to understand the conditions of the legitimacy of NGOs' stand, they are not alone, but in good company.

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NOTES

1. The first paragraph revisits arguments developed elsewhere and reformulates them to explore the relationship between human rights and representation (GURZA LAVALLE, 2004).

2. The idea of the use of public reason comes from Rawls (2005). It is used here loosely, but it preserves the emphasis between the people from whom the use of public reason is expected and the civil society governed by a particular collective logic.

3. The five groups of metaphors and notions may be summarized in the following terms: i) representation by agency, ii) representation by taking care of something or someone, iii) representation by substitution, iv) representation by mandate, and v) representation by expert decision (PITKIN, 1967, pp. 112-143).

4. The introduction of the "true interest" in Pitkin aims to assure the possibility of acting in someone else's best interests, even when the action contradicts their wishes or opinions. It is a classic question associated with the problem of the independence of the representative in theories of representation. To this independence corresponds the responsibility of representing the "true interest" of

the voter, and not his opinions – much less his wishes (BURKE, 1942 [1774]).

5. See, for example, Jordan (2005), Alnoor & Weisband (2007), Gurza Lavalle & Isunza (2010). More specifically, for a review of the perception of human rights NGOs' accountability in Latin America, see Kweitel (2010).

6. Martens uses quotes taken from Archer (1983).

7. In this recent and growing semantic repertoire, the extra-parliamentary forms of representation have been characterized as being *surrogated* by Mansbridge (2003), *self-authorised* by Urbinati & Warren (2007), performed by *affinity*, according to Avritzer (2007), *virtual or assumed* by Gurza Lavalle, Houtzager & Castello (2006a, 2006b, respectively), as *mediated politics* by Peruzzotti (2006), as *non-electoral political representation* by Castiglione and Warren (2006), as performed by *citizen representatives* by Urbinati and Warren (2007) or simply as *advocacy* by Urbinati (2006a) or Sorj (2005). These terms are the result of a study on the analytical shifts in the concepts of representation and participation in the field of democratic theory – see Gurza Lavalle & Isunza (2011).

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ABSTRACT

This article proposes to examine how human rights organizations from Latin America,
working on the national level, are addressing the demand for accountability. The field
research was conducted through interviews with five human rights organizations from
Argentina, Brazil, Chile, Mexico and Peru. The academic research on the accountability
of civil society organizations has been concentrated on the normative grounds of the need
for more accountability, while very few studies analyze the matter from the perspective of
the actual actors involved. In this article, based on this diagnosis, the author works with
a specific group of national human rights organizations, with a view to analyzing what
five organizations have done on the subject. The result of the research demonstrates that,
unlike what is claimed in the literature, human rights organizations from Latin America
are sufficiently concerned about the topic that they have adopted a complex idea of their
accountability to civil society. Moreover, these organizations have developed incipient and
innovative practices in this field, paying special attention to the particular type of work
they do. The article concludes by asserting that further theoretical debate is needed on the
question of the legitimacy of these organizations, in light of the fact that they have, indeed,
adopted practices of representation.

EXPERIMENTATION AND INNOVATION IN THE ACCOUNTABILITY OF HUMAN RIGHTS ORGANIZATIONS IN LATIN AMERICA

Juana Kweitel

This article[1] aims to examine how human rights organizations from Latin America working on the national level are addressing the demand for accountability. This aim is a response to the call made by Gurza Lavalle and Castello, who highlight "the usefulness of documenting the different answerability models of civil organizations and of examining them in search of any internal control and sanction mechanisms that encourage them" (GURZA LAVALLE; CASTELLO, 2008, p. 71).

The discussion on the accountability of non-governmental organizations is part of the broader debate on the accountability of institutions in general. In the field of political science, the idea of accountability was revived in Latin America following the work of Guillermo O'Donnell – an author who addressed the topic in several articles, inserting into the regional debate the old idea of checks and balances of American constitutionalism (O'DONNELL, 1998; 2002).[2]

The concept of accountability is a complex one and different authors have given it distinct meanings. Andreas Schedler attempted to recreate the concept based on its use by different actors. As such, he claims:

> *[…] the notion of political accountability carries two basic connotations: answerability, the obligation of public officials to inform about and to explain what they are doing; and enforcement, the capacity of accounting agencies to impose sanctions on power holders who have violated their public duties.*
>
> (SCHEDLER, 1999, p. 14).

Alnoor Ebrahim (2010) also emphasizes that most discussions on the concept pose three central questions: **accountability to whom, accountability for what** and **accountability how.**

Notes to this text start on page 321.

It is important to mention that, for many authors, the concept of accountability has been stretched so much that it now lacks precision. As Newell and Bellour claim, "accountability has become a malleable and often nebulous concept, with connotations that change with the context and agenda" (NEWELL; BELLOUR, 2002, p. 2). It is what Ebrahim and Weisband call the "accountability panacea" (EBRAHIM; WEISBAND, 2007).

As we shall see in this article, the academic research on the accountability of civil society organizations has been concentrated on the normative grounds of the need for more accountability, while very few studies analyze the matter from the perspective of the actual actors involved. Moreover, the literature does not differentiate much between the various types of organizations (for example, between national and international organizations and between organizations that provide services and organizations that engage in advocacy).

As a result of this diagnosis, this article focuses on a specific group of organizations: **national human rights organizations**.[3] The research concentrated on the vision of accountability by five national human rights organizations. In this vein, it sought to tackle some of the dominant ideas in the literature on the topic based on the perception and the practices of the organizations themselves.

The field research was conducted through interviews with five human rights organizations from Argentina, Brazil, Chile, Mexico and Peru.[4] These organizations engage primarily in advocacy activities for a wide range of beneficiaries.

It is important to point out that many of the national human rights organizations work in opposition to the State; some of them were founded during periods of authoritarian rule, which is reflected in their resistance to disclose certain information that, in their view, could be used unfavorably or detrimentally against the victims. This article demonstrates, however, that this resistance is gradually being overcome.

This article is structured into three main sections. The first section, below, makes an overall analysis of the subject of the accountability of civil society organizations, including the particularities of the organizations that engage in advocacy and work with a broad public. The second section is restricted to the field of research, with a view to describing the factors that specifically define human rights organizations, the practices adopted by these organizations and their visions of accountability. The article finally reflects on the conclusions of this study, pointing out that human rights organizations from Latin America have adopted some innovative accountability practices.

1 Accountability of civil society organizations

This section describes the growing debate over accountability in the literature on civil society organizations and examines two issues: the difficulty of evaluating advocacy activities and the challenges of working with a broad public. In the next section, based on research with national human rights organizations from Latin America, this literature will be evaluated in light of the practices already existing in these organizations.

1.1 "The mantra of greater NGO accountability"[5]

The discussion on accountability has grown exponentially in the academic literature on social organizations and also in the mainstream media. A number of theoretical articles on the topic have started by citing a piece in the magazine *The Economist* from September 2000 that succinctly summarizes the discussion. The British publication stated that, "They may claim to be acting in the interests of the people – but then so do the objects of their criticism, governments and the despised international institutions. In the West, governments and their agencies are, in the end, accountable to voters. **Who holds the activists accountable?** (ANGRY..., 2000).[6]

Using other words, the International Council on Human Rights Policy (ICHRP) claims in the first version of its report on accountability: "[some] people feel that NGOs are out of control, have acquired an ability to influence public opinion and the public agenda but have no corresponding **duty to take responsibility for the effects of their advocacy or the conduct of policy**" (INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, 2003, p. 3).[7]

These questions ultimately pose a threat to the legitimacy of a type of organization that, unlike representative governments, are not subject to periodic elections by popular vote. The criticisms are leveled against organizations that do not generally represent either the interests of a specific group (like peasant organizations, for example) or the interests of their members (like unions).

Dagnino clearly articulates these criticisms:

> *[...] the political autonomization of NGOs creates a peculiar situation in which these organizations are responsible to the international agencies that finance them and to the State, which contracts them as service providers, but not to civil society, whose representatives they claim to be, nor to the social sectors whose interests they bear, nor to any other organ of a truly public character. For as well-intentioned as they might be, their activities express, fundamentally, the desires of their directors.*
>
> (DAGNINO, 2004, p. 101).

According to Jordan and Van Tuijl, criticisms like these have started to gain visibility since 2001, after the time, at the end of the 20th century, when NGOs used to be viewed – somewhat naively – as "inherently good", as agents of development and as indispensable for democratization (JORDAN; VAN TUIJL, 2006, p. 3). Institutions such as the World Bank, during the 1990s, played a key role in the expansion of the work of civil society organizations. Against the backdrop of the end of the Cold War, many donors considered NGOs to be more reliable recipients of financial support than governments. Accordingly, as their role expanded, the criticisms over their legitimacy also grew.

These criticisms were leveled in particular at the actions of a particular kind of organization, one that worked primarily on a transnational level for development. They were organizations whose head offices are located in countries in the North (where they raise funds) but that develop their work in the South (in programs that support development) or for the South (through international advocacy actions).

One of the main reasons for demanding more accountability from civil society organizations stems from the fact that many of them use precisely this "lack of accountability" as a weapon to criticize States. The challenge for the organizations, says Edwards, is to demonstrate that they themselves can apply the same principles of accountability that they demand of others (EDWARDS, 2000).[8]

Many authors claim that civil society organizations do not discuss this subject in any depth. Jordan and Van Tujil claim that "a discourse on accountability has been lacking among NGOs, perhaps out of a defensive reflex towards immediate political threats and addressing immediate needs, but also because seriously engaging accountability is expensive for almost any type of organization" (JORDAN; VAN TUJIL, 2006, p. 5). The specialized literature also asserts that, of all civil society organizations, it is the human rights organizations that are most behind the curve in this area (INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, 2009, p. 24).

However, there have been some recent examples of self-regulation, one of which is the adoption of the Accountability Charter, in June 2006, by 11 international organizations.[9] The Charter represents an innovative effort to establish common rules. It deals with issues such as transparency, clarity of governance rules and combating corruption. It also includes the requirement for member organizations to submit an annual report to the Charter Secretariat and, since 2010, these reports have also been reviewed by an Independent Panel.[10]

As the literature on accountability grows, some authors have started to draw attention to the need to inquire **whether more accountability is always best**. Ebrahim raises the question of "whether there is a danger of too much accountability" (EBRAHIM, 2003b). This danger is associated both with the possibility of donors abusing their powers to manipulate the organizations, and with the risk that excessive control could limit their creativity, diversity and experimentation.

In recent years, the literature has focused on practical solutions to promote greater control of organizations by their beneficiaries.[11] This literature is partly based on concepts developed in the private sector for the management of companies. Accordingly, the idea of the stakeholder approach, which gives visibility to various different groups and individuals that may be affected by the actions of a company, has been gradually incorporated into the debate on non-profit organizations.[12]

Therefore, according to this stakeholder approach, and within the discussion on non-governmental organizations, the following concepts have been created that are now part of the debate on accountability and that are necessary to further the discussion proposed here:

- **Internal accountability**: refers to the accountability of the organization to its mission and its staff;
- **External accountability**,[13] which can be divided into:
- **Upward accountability**: generally refers to the relationship with donors,

foundations and governments. It aims to demonstrate that money is used for the purposes for which it was donated;

- **Downward accountability**: refers to the relationship with customers and with the groups for which the organization provides services (beneficiaries);
- **Horizontal accountability**: refers to the relationship with other organizations in the same field.

Several voices have drawn attention to the excessive amount of proposed tools that prioritize short-term aspects instead of paying attention to long-term variations related to complex issues of social and political change (EBRAHIM, 2003a). They emphasize that what is lacking is a systemic vision in which it is possible to see, within a given thematic niche, the part played by each organization in jointly effecting the desired social change (EBRAHIM, 2014).

1.2 Accountability and the problem of assessing advocacy activities

Many proposals guided by the stakeholder approach recommend participatory processes in which the organizations at least explain their ideas and strategies to the beneficiary groups (BENDELL, 2006, p. 23).

However, accountability, when interpreted in this way, is particularly problematic in the case of organizations that engage in advocacy. There are at least four factors for this: 1) the success of an advocacy action depends on cooperation (and not on the individual action of one organization); 2) the impact of this action is not linear (there is no clear causality between result and advocacy); 3) since advocacy is eminently conflictual, it is unlikely that the results will be attributed to the work of one organization; and 4) the timeframes for assessing the impact need to be considerable.

In other words, first, the "performance assessment" is particularly complex in the case of advocacy organizations, since it is questionable to attribute specific results directly to the individual action of certain organizations. An effective advocacy action requires cooperation between several organizations, which is why, generally, the impact cannot be attributed only to the action of one actor.[14]

Second, political and institutional changes occur non-linearly, in response to multiple factors and, often, unexpectedly.[15] An organization that is effective in its advocacy, for example, will know how to take advantage of political opportunities even when this means straying from its original plans (which makes it difficult to assess the performance comparing planning versus results).

Additionally, in third place, advocacy often involves influencing a decision-making process that is hostile to external interventions. In these cases, generally, the public official who was targeted by the advocacy action will not acknowledge that the change resulted from the organization's work.[16]

Finally, the time frames for assessing the results of the advocacy action need to be long, which makes it difficult to maintain a permanent information channel with the potential beneficiaries. For example, there may be long periods in which no result is obtained despite the ongoing action of the organization.

1.3 Accountability and the problem of organizations that work with a broad public

Human rights organizations generally operate for the "public interest" (JAICHAND, 2004).[17] As such, they try to change public policies using a range of strategies that includes litigation, lobbying, public opinion campaigns and the creation of alliances.[18] In these cases, which form most of the actions of these organizations, there is no beneficiary public that can easily be consulted to apply the stakeholder approach model.

When looking from the perspective of the alleged beneficiaries, there are three types of roles played by human rights organizations – each raising a number of challenges when it comes to questioning their accountability:

- **Express mandate – Control through an ability to "opt out":**[19] in the case of organizations that engage in litigation (for which there is an express mandate of representation), the "customers" can choose to withdraw the case from the organizations. They can, therefore, exercise some control given their ability to "opt out". In this case, since there is an express mandate, the problem of implicitly assuming representation (often called assumed or virtual representation) – which is the principal challenge when acting on behalf of a broad public – does not arise;
- **Legal mandate:** in other cases, the legitimacy (or representation) is based on the law (for example, in some types of consumer organizations). The question of accountability in these cases is also more specific and less problematic than when acting on behalf of a broad public (without authorization);
- **No express mandate:** it is this third type of role, involving cases in which there is no express authorization or consent, that is of interest to this article. It consists of cases of collective litigation (for example, on behalf of the prison population) or pubic action in support of a broad-ranging law. Situations such as these, that benefit a broad public or that have no authorization, pose the most interesting challenges to the analysis of the accountability of these organizations.

The next section addresses the relationship that these organizations with no express mandate, considered by the literature as "new actors of representation", have with the beneficiaries on behalf of whom they speak and exercise this representation (GURZA LAVALLE; CASTELLO, 2008, p. 67), and the ability of the beneficiaries to impose some type of sanction on their "representatives".

2 Accountability of human rights organizations specifically

2.1 Human rights organizations: values, agenda, governance and resources

The International Council for Human Rights Policy (ICHRP) has made one of the most consistent efforts to define human rights organizations and the values they defend. As such, it highlighted as **core values** of these organizations:

"loyalty to the universality of human rights and commitment to impartiality, independence and true and accurate communication of information" (2003, p. 38). It also stated that these organizations express their commitment to non-violent methods of action.

The organizations, meanwhile, consider that their mission is to "strengthen the democratic system", "contribute to the democratic transition" or "promote and defend human rights". They generally claim that they are promoting the implementation of human rights as they are recognized internationally in the Universal Declaration of Human Rights.

Many human rights organizations from Latin America emerged in authoritarian contexts or during the period of transition to democracy. Concerning the activities they engage in, there has been an important shift in recent years that has led to the **expansion of their agendas** (ABREGÚ, 2008, p. 7).

If, during its early years, the human rights movement consisted primarily of organizations of victims and relatives and of organizations of lawyers who supported the demands of these groups, these days it is formed by **professional organizations that rarely identify with a specific cause**. They are not associations that defend the interests of their members, but that instead defend the "public interest" or "human rights" in general.

In many cases, the organizations are **governed by a Board of Trustees**, which chooses an executive director responsible for overseeing the daily activities of the organization, which are developed by a professional, remunerated team (that does not generally participate in the governance of the organization).[20]

In most countries in our region, national human rights organizations raise **funds** from international foundations or international cooperation institutes. Generally speaking, it is to these actors that the organizations submit their detailed activities reports, often in English.

2.2 The practices and opinions of the organizations on four key topics

This section will present the results of the research conducted with five human rights organizations from Argentina, Brazil, Chile, Mexico and Peru.

2.2.1 Accountability of NGOs in general

There is a consensus among the surveyed NGOs that the concept of accountability applies to civil society organizations, although their vision is somewhat nuanced. Some believe that, while it is recommendable for civil society to incorporate accountability practices, it is not an obligation like it is for the State.

All the interviewees affirmed that the idea of accountability applies to civil society organizations. However, they were less precise when referring to the "accountability of civil society" than when describing the "accountability of the State". Concerning the State, the interviewees could provide more details on the aspects of accountability, and they included within the concept the

question of transparency, the explicit justification of the reasons for its decisions, the presentation of results, the fulfillment of campaign promises, access to information, accountability between the different branches of government and dialogue with civil society. When it came to civil society organizations, however, even though none of the interviewees limited their view of accountability to the question of transparency or financial accountability, they did not provide more details of the obligations imposed by accountability (nor did they mention the component of answerability/sanction).

During the interviews, it was also mentioned that civil society organizations ought to be accountable to their mission. Although the idea of accountability to the mission is interesting, since it resolves the problem of the difficulty of creating accountability mechanisms in the case of organizations that work with a broad public, it is also problematic, since it does not satisfy one of the central aspects of the idea of accountability: the question, *accountability to whom.* On this point, if there is no "principal" agent, i.e. someone to demand accountability to the mission, then neither can there be sanctions in the event of non-compliance. To claim that an organization should practice "accountability to the mission" without also clearly identifying who is responsible for assessing the accountability is contradictory to the very idea of accountability, for which sanctions for non-compliance are a central element.

The vision of the organizations gathered during the interviews refutes the literature that claims that human rights organizations are unconcerned about the subject of accountability (JORDAN; VAN TUJIL, 2006; ICHRP, 2009). The responses demonstrate that there is a growing interest in the issue. They also reveal that the organizations have a complex grasp of accountability that is not limited to the question of transparency and an acknowledgement that accountability also applies to civil society organizations. As we shall see in the pages ahead, the organizations are also exploring new mechanisms, albeit slowly, to improve their accountability.

2.2.2 Accountability of human rights organizations that engage in advocacy

On the question of whether human rights organizations differ from other civil society organizations, some conflicting arguments appeared in the responses. Some interviewees affirmed that the nature of human rights organizations requires more transparency while others justified less transparency.

The justification for "less transparency" was given mainly by organizations that permanently denounce human rights violations and therefore have a particularly tense relationship with the State, namely in Rio de Janeiro, Mexico and Peru. In these cases, the possibility of putting their staff or the victims at risk was used to justify less transparency, particularly in relation to the information that could be released on the Internet.

The demand for "more transparency" was also associated with various different arguments. The risk of paternalism was mentioned, emphasizing that in

the case of human rights organizations – which do not have an express mandate (to act as representatives) – the demand for accountability is even greater. Similarly, they also mentioned that "the ethical component of working with human rights" requires more accountability.

Analyzing the issue from this angle clearly demonstrates the difficulty of applying generic criteria of accountability without analyzing the specifics. In the case of national human rights organizations, it is essential to analyze the context before formulating generic demands for greater accountability. As already mentioned, it is not possible to apply the same requirements for organizations that work in democratic environments to those that work in authoritarian contexts.

When discussing accountability, the organizations expressed concern over the matter of impact assessment. Several interviewees stressed the difficulty of finding instruments to measure the effectiveness of the work of their organizations. This is one of the aspects in which greater and more in-depth theoretical research would help the organizations.

2.2.3 Practices adopted to improve accountability

As can be seen from the transcripts below,[21] the research with the interviewed organizations shows that they have either already taken concrete steps or are discussing what steps to take to improve their accountability. Most of them have discussed the need to increase the amount of information available on the Internet. On this point they identified the need to publish financial information as well as additional information, such as priority actions, annual reports and the decisions of their internal decision-making bodies.

Publicity of information – Website

The organization has made an effort to publicize the information on its priorities (which topics), strategies and how the decisions are made. [...] We have also increased our use of press statements and electronic tools, and the website has the institutional history.

Improvement in reporting on activities

We used to have activities reports for each project and each person did what they thought was best, and it was rather informal. We wanted to establish a uniform system, so someone from one area can see what someone else from another area does. It is in the experimental stage. It generates opportunities for collaboration and more uniform reports.

Expansion of the council of partners

The organization has made an effort to expand the council of partners, to count on a broad base of partners, not for the resources, but for the diversity, the partners propose other partners. A broad and pluralistic base of partners serves as a mouthpiece to be

*accountable [...]. Among the partners, there are members of other organizations, of
parties, of unions. We view the council as a place of accountability and suggestions.*

Explanation/Consultation with external actors

*Whenever we are going to make a controversial decision, we call on the beneficiaries
and other organizations to explain. For example, a mining company asked us to audit
a social fund and we decided not to accept. We considered it to be too polemic. When
we embark on a controversial topic, we hold meetings to listen.*

*In the case of a study on social policies, meetings were held with groups of different
actors, beneficiaries and academics to discuss the work before it was published.*

Opinion poll

*To improve its accountability, the organization conducts an opinion poll. [...] The
poll is seen as a matter of legitimacy, to create political substance for the NGO. In the
past 3 polls (in which only women were interviewed), the approval rating for abortion
when the mother's life is at risk and due to rape has risen to 80%. The organization
has been working on the topic (in memorandums to Congress, op-eds, etc.). Today,
the topic is being debated by presidential candidates. [...] We view the opinion poll
as a form of building a "mandate".*

The research illustrates that these organizations are concerned about the topic of
accountability and that they are developing incipient and innovative practices.
The research also demonstrates that there are nuances and that a more in-depth
analysis of these practices is necessary in order to understand more clearly the
position of human rights organizations in relation to civil society organizations
in general on the subject of accountability.

2.2.4 Ways of building legitimacy: discussion on representativeness

The question of the legitimacy and representativeness of the organizations is
closely linked to the debate on accountability. Some institutions consider that
defending international human rights standards gives legitimacy to human rights
organizations. This, however, does not resolve the problem of whom they should
be accountable to – as one interviewee affirms:

*We represent a perspective, internationally recognized and mandatory standards.
The vote is not the only form of legitimacy.*

For others, the organizations can assume the representation of unorganized
groups that cannot give an express mandate. In these cases, the obligation to be
accountable is even greater. This interpretation is similar (but not identical) to
the argument of Gurza Lavalle and Isunza (2010), who believe that authorization
can come from accountability over time. According to one of the interviewees:

There is no need for an express mandate. The concept of representation can be built; you are within your right to do it, to protect a group or society in general. There are groups that are not organized as actors and cannot give a mandate, but the organization can assume the responsibility and engage based on the interests of this group. If you find yourself in this situation, you need to be concerned about making the information as public as possible. There is an obligation to give publicity so your achievements reach the group for which you are engaging. There should be, as a political and normative strategy, the obligation to make sure the information reaches them. The most marginalized groups in society cannot air their grievances; they are so debilitated that they do not present their demands. These groups are not going to grant you a mandate, since they cannot even defend their own rights on their own. The risk is that a relationship of paternalism is established. I am responsible for avoiding this; when you are the representative agent, there is an immediate obligation to be accountable to this sector. Otherwise, what is it all for?

This response is one of the few that recognizes the existence of representation (called "assumed representation") and the need for accountability, without resolving, however, the matter of answerability. How could these represented groups control the representative and hold him or her accountable in the event that they are dissatisfied with their representation?

One possible solution, given the lack of an express mandate, is to increase the obligation to be accountable to society in general, regardless of the interest:

If our organizations are not representative, then there has to be some kind of link with the social base. [...] We are well aware that we are not like any ordinary citizen; an ordinary person could not act like we do; we have a lot more power than an ordinary citizen, which is why society has the right to know who is doing this (like the way you ask the State and political parties).

Some of the interviewees call into question the idea that the only way to create representativeness is through the vote. There are, therefore, two arguments that work in different spheres. On the one hand, some organizations use the knowledge argument: something like "I have the legitimacy to act because I know the topic". In this case, therefore, legitimacy does not stem from proximity or intermediation, but from a technical knowledge of international human rights standards, or what Avritzer calls "affinity" (AVRITZER, 2007). Other organizations appear to be suggesting the possibility of building authorization through accountability over time (GURZA LAVALLE; ISUNZA, 2010). These organizations refer to the obligation to provide information both to the sectors on behalf of which they are acting (in the case of vulnerable groups) and to society in general (in the case of broader agendas).

Both in the literature and in the reality of the organizations, these two arguments on building legitimacy are recent. From a theoretical viewpoint, they represent a necessary deepening of the theory of representation, geared towards observing and analyzing democratic innovations. From a practical viewpoint, they

demonstrate that the organizations are concerned with the question of legitimacy and accountability and that they are developing new arguments similar to those raised in the specialized literature.

3 Conclusion

This article sought to examine how national human rights organizations from Latin America are addressing the demand for greater accountability based on the perspective of the actors themselves.

The result of the research demonstrates that human rights organizations from the region are increasingly concerned about the topic. It also reveals, at least on the conceptual level, that the organizations are currently prioritizing matters of justification (giving reasons for their actions) and monitoring (being transparent and providing information) over matters of stricter control (that include answerability/sanction).

However, it demonstrates that the organizations are adopting new practices that we might call "experimental", aimed at resolving the question of accountability with special attention to the particular type of work they perform. On this point, they mentioned the following concrete steps: the inclusion of information on the website; an improvement in reporting on activities; the expansion of the council of partners; consultation with external actors; and, also, the taking of opinion polls. These practices, it is worth repeating, demonstrate that there is a concern about the topic, albeit incipient, within these organizations.

The result also demonstrates that, in the vision of the organizations, it is important to be accountable to the beneficiaries – and, on this point, the organizations are in agreement with the literature. At the same time, however, it reveals that, at least in the case of the organizations surveyed in this research, there are no concrete criticisms from the beneficiaries concerning their activities.

Regarding the theoretical debate, further reflection is still necessary. In the case of Gurza Lavalle and Isunza, for example, it is necessary to answer how what they call "accountability over time" – which would be transformed into "authorization for representation" – would work.

This article also illustrates the difficulty that the organizations encounter in their accountability and in evaluating the effectiveness of their advocacy for a broad public. In this regard, it is worth pointing out, as noted by Charnovitz (2006), that this difficulty does not mean that the organizations operate in a context without any forms of control. In the specific case of national human rights organizations, accountability mechanisms exist that are different from those applied by other types of organizations. Therefore, it is important to draw attention to the risk of applying standards that ignore the differences between political contexts to organizations working on the national level, in particular concerning the risks of working with human rights in repressive or highly polarized regimes.

In the case of national organizations, therefore, a growing importance is being attributed to evaluation by peers, or what Stark *et al.* (2006, p. 328) call embeddedness: the creation of forms of collaboration with peer organizations ends

up creating a form of horizontal accountability in a field of action or community of practice. In other words, the organizations need to maintain their good reputation, which implies taking into consideration accountability to their peers (GRANT; KEOHANE, 2006).

However, the difficulty of specifically identifying the broad public or the vulnerable beneficiaries, who do not have the capacity to organize or represent themselves, does not mean that the organizations should not find ways of notifying them clearly about their work. When an organization works for the benefit of a group that has not given it an express mandate, it should be careful to publish the greatest amount of information possible, thereby avoiding the risk of paternalism. As Edwards (2010) recently pointed out:

> If the "public interest" is too vague and amorphous a concept to be useful in any operational sense, then at least one can ensure that activities that are claimed to be charitable in nature are openly disclosed and accessible for public questioning. The opportunities to know what an organization does and to ask questions as a result are surely the bedrock of accountability.

On this point, the practices of the organizations are incipient, and it is still not entirely clear how the information should be presented for it to be a real tool of accountability (for example, whether it is necessary to tailor the information for different publics).

Finally, this article shows that the organizations are accountable, in the most demanding sense of the concept (answerability/sanction), only to the State and to their donors (who can withdraw their support as punishment for their dissatisfaction with the results). This fact increases the responsibility of the donors to maintain an ongoing dialogue with the field in which they intervene, to ensure that the activities they fund effectively respond to real needs and contribute to a systemic change.

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NOTES

1. This article is a highly abridged and updated version of the conclusions of the Masters dissertation in Political Science defended by the author at the Faculty of Philosophy, Arts and Human Sciences of the University of São Paulo (FFLCH–USP), Brazil, in September 2010.

2. In the Anglo-Saxon sphere, however, the most recent literature on the topic cites the article by Goetz and Jenkins (2002) as one of the decisive works for putting the topic back on the debate agenda.

3. Between the time the research was conducted and the present day, the categories for classifying organizations have become less clear. These days, it is less common to talk about national/international, human rights/development, litigation/advocacy. The distinction, however, is still relevant here as we shall see over the course of the article, as national organizations usually have mechanisms of accountability to their local peers and quite strong roots in the society where they work primarily.

4. In each of the five organizations, four people were interviewed. The interviews were conducted by telephone, using a semi-structured questionnaire.

5. Expression used by Steven Charnovitz (2006, p. 40).

6. Emphasis added. Also cited by Slim (2002).

7. The ICHRP, a Geneva-based think tank focusing on human rights policy that existed between 1996 and 2012, published in 2003 the report, "Deserving Trust. Issues of Accountability for Human Rights NGOs, Draft for Consultation". This report broadly discusses the issues of accountability of human rights organizations. The first version was released for consultation in 2003, but due to criticisms and a lack of consensus on the content of the document, the final version was never published. The ICHRP abandoned its plans to publish a study of the topic and created, in February 2010, an online discussion forum. In the quotation, the emphasis is added.

8. Also cited by Schmitz and Bruno (2007).

9. ActionAid International, Amnesty International, CIVICUS World Alliance for Citizen Participation, Consumers International, Greenpeace International, Oxfam International, International Save the Children Alliance, Survival International, International Federation Terre des Hommes, Transparency International and World YWCA (at the time of the submission of this article to SUR Journal, the Charter had 17 member organizations).

10. See the Accountability Charter Review Process,

available at http://www.ingoaccountabilitycharter. org/home/review-process/. Amnesty International and Article 19 are the only two human rights organizations to have signed the Charter.

11. See, for example, Keystone (no date) and Action Aid (2006).

12. Ebrahim (2003a, p. 814) emphasizes "much of the early work in this field is credited to Edward Freeman's (1984) writing on a 'stakeholder approach' to strategic management among private sector firms, in which stakeholders are defined to include not only stockholders but also other individuals and groups who can affect, or are affected by, a particular business". See also Ebrahim and Weisband (2007).

13. In the literature, approaches that focus on upward accountability are often called "hierarchical accountability" and approaches that prioritize downward and horizontal accountability are called "holistic accountability". See, for example, O'Dwyer and Unerman (2008).

14. See Coates and David (2002). See, also, Chapman and Wameyo (2001) cited by the ICHRP (2003).

15. On the difficulties of Human Rights Watch to prove the impact of its advocacy work, see Gorvin (2009).

16. Analyzing the issue in the light of the advocacy practiced by the U.S. organization Human Rights Watch, Gorvin comments, with some irony, that: "It is rare indeed that an abusive government will come out and tell us: 'we saw the error of our ways, thanks to you, and we have changed'" (GORVIN, 2009, p. 480).

17. See Jaichand (2004).

18. See Abregú (2008).

19. See Hirschman (1970).

20. A whole other study would be necessary to analyze the transformation of these and other organizations into their current format (a non-remunerated Board of Trustees, a remunerated staff and volunteers), which appears to be strongly inspired by the practices of organizations in the United States.

21. Editor's Note: The quotations from this point on, unless otherwise specified, refer to the interviews that the author conducted with five human rights organizations as part of her research. See footnote 4 above.

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ABSTRACT

Across the globe, there is growing debate about and enthusiasm for re-thinking citizen relations with the legislative and executive branches as a result of the gap between 19th century democratic institutions and 21st century societies. There is significant potential to transform and expand democratic participation through new tools and approaches. However, this is not without risk, as democratic majorities can abuse their power and oppress democratic minorities. The debate about the need to re-envision the judiciary and other mechanisms for safeguarding the rights of democratic minorities is much less advanced. A number of human rights organizations and individuals are actively thinking about what the new checks and controls to advance the rights of democratic minorities in 21st century societies should look like. But, there is still substantial resistance in the human rights field to revisiting existing structures and approaches for protecting human rights. While there is an understandable apprehension that changing the way we think, talk about and advocate for human rights might weaken existing frameworks, such changes and experimentation will be essential for advancing the rights of democratic minorities in 21st century democracies.

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DEMOCRATIC MINORITIES IN 21st CENTURY DEMOCRACIES

Pedro Abramovay and Heloisa Griggs

When hundreds of thousands of people took to the streets last year in Brazil, one of the most common refrains was "we want to be heard." Beyond Brazil, recent protests across the globe have called for government responsiveness and a departure from "politics as usual," revealing across-the-board frustration and impatience with the opacity and impermeability of the political system itself (KRASTEV, 2014, p. 21). Use of social media was essential in the planning and wildfire expansion of these protests, allowing individuals to join other individuals to press for change directly. Beyond these enlarged protests that now can be organized simultaneously across many cities, there are a broad range of tools, as analyzed below, that allow individuals to monitor, question, and engage with governments in ways that were inconceivable not long ago.

1 19th century democratic institutions and 21st century societies

The major innovation of modern democracies was not establishing institutions to represent majorities, which ancient democracy had experimented with long before, but rather designing institutions that allowed for the incorporation of minorities into public debate. The founders of the United States were concerned that a majority might abuse its powers to oppress a minority, even though majority rule was necessary to represent popular will. Alexis de Tocqueville was struck by the ability of U.S. democracy to check the tyranny of the majority. Modern democracies recognized fundamental human rights, as with the U.S. Bill of Rights, and established independent judiciaries to act as a check on the executive and legislative branches.

Of course, in actuality these 19th century institutions were designed in ways that protected the power of male property owners of European descent. But the design of these institutions created a framework and discourse around the protection of minorities that facilitated the significant advances in rights during the 20th century. Accordingly, a core aspect of modern democracies is their ability to combine universal suffrage with checks and controls to protect human rights.

Both the mechanisms for representing the majority and for integrating the perspectives of democratic minorities were designed for societies that looked

completely different from those we live in today. When these modern democratic institutions were designed, societies were shaped by the Industrial Revolution, with hierarchical structures and comparatively static systems for representing both majority and minority groups.

Our 21st century societies have changed dramatically, with tremendous capacity for the exchange of information and communication among citizens. Individuals have a larger number of identities and membership in diverse groups. Rapid technological change has contributed to the decline of traditional power structures. Power structures conceived in the 19th century are becoming weaker and more constrained in a broad range of areas including politics, business, war, religion, culture, philanthropy and the power of individuals (NAÍM, 2013).

The executive and legislative branches of our democracies were designed at a time when it seemed feasible to think that the main interaction of individuals with governments would be deciding whether to elect or reelect officials every few years. But with the rapid pace at which we now generate, receive, and engage with information, individuals can and want to do much more than check in on the progress of government every few years. This significant disconnect between 19th century democratic institutions and 21st century societies is something to which governments across the globe have yet not adapted.

As a result of this increasingly glaring gap between 19th century democratic institutions and 21st century societies, there is a consensus developing in many parts of the globe about the need to re-think citizen relations with the legislative and executive branches. There is significant potential to transform and expand democratic participation through new tools and approaches. But there is still no clarity on what these changes (or even an institutional reform agenda to bring about such changes) might look like.

Conditions for piloting new models of democratic participation that could catalyze global debate on the nature of democratic institutions and state-society relations vary substantially, and Latin America is particularly well-positioned. The region's new, but relatively stable, democracies have experienced historic reductions in poverty over the last decade, and citizens' expectations have been raised in much of the region and other emerging economies across the globe (FUKUYAMA, 2013). Over half of Latin America's population is under 30 years old, and these young adults are the first generation to grow up under democratic governments. While democracy has taken root and advanced further than in many parts of the Global South, democratic culture and institutions are relatively young and still malleable compared to more static democracies in the United States and much of Europe. With the region's economic growth and accompanying increase in global influence, Latin America is now in a position to determine its own future, rather than being shaped primarily by external actors and events.

The sizeable protests in Brazil and elsewhere mean key actors in governments may be more open to reconsider the design of institutional processes. The challenge now is to transform the recent burst of citizen engagement into citizen involvement in shaping new policies, processes and institutions. With increased focus on changes in behavior, political culture, and institutional processes, information

and communication technologies can offer new channels for citizen engagement with government and strengthen government responsiveness. This is an opportune moment for experimenting with reforms to make democracies more effective and open to citizen engagement.

2   Democratic minorities in 21ˢᵗ century democracies

Expanding democratic participation in Latin America or elsewhere in the globe is not without risk, as democratic majorities can abuse their power and oppress democratic minorities. Democratic minorities can include racial, ethnic, national, gender, sexuality, religious or other minority groups with little power or representation relative to other groups in a society. Democratic minorities are not a fixed category, and can be comprised of different groups of people depending on the issue at hand and change over time, as has been the case with drug policy reform efforts. In some instances, such as women's rights, groups may even constitute majorities in terms of absolute numbers in a society, but still be democratic minorities as a result of their lack of influence relative to other groups in a democracy.

There is substantial public debate and enthusiasm for re-thinking citizen relations with the legislative and executive branches as a result of the gap between 21st century society and 19th century democratic institutions (ITO, 2003). By contrast, the discussion about the need to re-envision the judiciary and other counter-majoritarian mechanisms for safeguarding the rights of democratic minorities is much less advanced. Several human rights organizations and individuals are starting to think about what the new types of checks and controls to advance the rights of democratic minorities 21st century societies should look like. But, despite the often poor record of institutions responsible for safeguarding the rights of democratic minorities, much of the human rights field is not eager to revisit existing human rights norms and mechanisms.

As a result of significant efforts to weaken or roll back human rights advances in many parts of the globe today, many in the human rights field worry that substantial changes in the approaches, language, and structures will weaken or undermine existing human rights frameworks. For example, in the Inter-American Commission on Human Rights reform process from 2011 to 2013, members of the Organization of American States raised a number of longstanding challenges and relevant questions for discussion. However, proposals during the reform process by some member states were perceived as efforts to weaken and limit the autonomy of the Inter-American Commission, putting many advocates for the Inter-American Commission on the defensive and limiting the possibility for frank and constructive discussion of these challenges.

Yet, precisely because of the significant changes underway in today's democracies and in the global balance of power, we need to experiment with new strategies and mechanisms to advance the rights of democratic minorities. As a field, we are often focused on righting past wrongs, and sometimes more likely to be looking backwards than forward. Our answer to the question SUR 20 poses about whether human rights are still an effective language for producing social change is a resounding yes, so long

as we are willing to entertain significant changes to existing human rights structures and approaches. This conversation about and experimentation with new approaches and institutions for advancing the rights of democratic minorities may appear at odds with much of what we think of as core human rights norms and processes at times, but will be essential to the continued relevance and influence of the field.

3 Experimenting with new approaches for advancing the rights of democratic minorities

Updating the checks and controls of 19th century democratic institutions to make them relevant for 21st century societies can involve minor adjustments or more substantial re-envisioning of role and work of these bodies. Concretely, what types of experimentation with new mechanisms and strategies to advance the rights of democratic minorities are we referring to?

3.1 National judiciaries

In the national context, judiciaries are the central counter-majoritarian institutions responsible for protecting the rights of democratic minorities. Based on the premise that preserving judiciaries' independence and ability to act as checks on the executive and legislative branches requires them to be isolated from public opinion and influence, judiciaries often have remained more secretive and less transparent than other branches of government. For example, a recent assessment of the implementation of the access to information law by all three government branches in Brazil found that the judiciary lagged the most in implementation (MONITORAMENTO…, 2014, p. 56). Rather than enabling the judiciary to advance the rights of democratic minorities, efforts to insulate it from public opinion and public scrutiny tend to make the judiciary less accountable, responsive and accessible.

At the same time, despite the constitutional design aim that judiciaries primarily act as a check on popular will, it appears judiciaries are often strongly influenced by public opinion. In the United States, for at least seventy years, public opinion has influenced the Supreme Court and the two have come into alignment over time, even when the Supreme Court gets ahead of the public on some issues or lags on others (FRIEDMAN, 2009, p. 14-15). The public and elected representatives have exerted pressure on the Supreme Court at various points in time, and Supreme Court Justices have acknowledged the Supreme Court's dependence on public opinion (FRIEDMAN, 2009, p. 370-371).

Debate about Supreme Courts' interaction with and frequent affirmation of public opinion is underway in many places around the globe. For example, a similar debate about the relationship between the Supreme Court and public opinion is underway in Brazil, with arguments in support of public opinion informing the deliberations of the Supreme Court, highlighting the importance of this relationship for the legitimacy of a Supreme Court in a democracy (FALCÃO, 2012).

21st century information and communication tools have rapidly accelerated the ways in which public opinion can influence the judiciary. Rather than

continuing to pretend we can and should isolate judiciary from public opinion, we should acknowledge this relationship and explore what it means for how we seek to advance the rights of democratic minorities. Experimenting with ways to change the interaction of the public with the judiciary may be easier in democracies in the Global South, where judiciaries are still newer and perhaps somewhat less averse to change.

For example, there has been a debate underway in several countries about whether Supreme Court proceedings should be televised. In the United States, there has been significant public debate about the televising Supreme Court proceedings, with arguments supporting the benefits in terms of increased transparency and public interaction with the Supreme Court, and legislative proposals to encourage or require televising Supreme Court proceedings (YOUR REALITY..., 2010; CHEMERINSKY, 2014). However, the argument that televising the Supreme Court would be a threat to judicial independence appears to have prospered so far, despite significant public support for televising Supreme Court proceedings (MAURO, 2010).

By contrast, in Brazil, the judiciary created "Justice TV" in 2002. After initial controversy about whether to televise court proceedings live, with concerns that transmitting proceedings live would influence legal decisions, all Supreme Court hearings started being transmitted live. "Justice TV" set out to increase communication and understanding with the general public, and there has been an important increase in public interest and debate about Supreme Court decisions in recent years. There is significant debate and experimentation about televising court proceedings underway across the globe and it is certainly not the case that such innovation will only take place in the Global South, but this is an interesting example of how it may be easier for judiciaries to try different approaches in newer democracies.

In discussing whether to televise Supreme Court proceedings, we are admittedly discussing whether to bring judiciaries into line with a 20th century technology rather than the much more interactive forms of communication tools now available, but that in itself provides a sense of how resistant to change judiciaries have been. The issue of televising Supreme Court proceedings is a small example of how it increasingly makes sense to acknowledge the influence of public opinion over judiciaries, and factor this into our strategies to advance the rights of democratic minorities. There are certainly many new ways to adjust and modify how judiciaries operate. Some of them will incorporate the possibilities for public participation today and help advance human rights.

3.2 International Human Rights Mechanisms

In the international context, there are substantial opportunities for international human rights mechanisms to change in ways that make them more responsive to 21st century human rights challenges and more effective in advancing the rights of democratic minorities in this context. In the Inter-American Human Rights System, which is the regional human rights system we follow most closely, the Inter-American Commission is well-positioned to experiment with new forms of interacting with governments and civil society to address present-day human rights challenges.

While the Inter-American Commission has both adjudicatory and broader policy functions, it has often focused much of its attention on its role of receiving, analyzing and issuing recommendations on individual petitions. With respect to individual petitions, there are important possible changes to current procedures being debated or piloted, such as consolidating cases involving substantially similar factual or legal issues or, more controversially, prioritizing cases (OROZCO, 2014). Such modifications could help the Inter-American Commission reduce its substantial backlog, which has considerably affected its ability to fulfill its key role.

Yet, the possibilities for the Inter-American Commission to develop and expand its public policy role are the most interesting opportunity for the Inter-American Commission to increase its impact and its ability to advance the rights of democratic minorities in Latin America and the Caribbean today. Of course, the Inter-American Commission has had a substantial impact on policy matters in the region through its non-adjudicatory roles in the past, as with the well-known and widely recognized visit to Argentina in 1979 (SIKKINK, 2011, p. 65-66). However, the most effective approaches for the Inter-American Commission to influence human rights outcomes in the context of today's imperfect, but evolving democracies will certainly look very different from the approaches adopted during a period when many of the hemisphere's governments were dictatorships.

Increased engagement by the Inter-American Commission with different parts of national governments, bolstering those government leaders or institutions interested in advancing the rights of democratic minorities, may help advance rights on the ground in ways that individual petitions are ill-suited to and lead to broader, more structural policy changes. While petitions are primarily a way of interacting with governments in an adversarial manner (except perhaps in the case of friendly settlements), public policy engagement by the Inter-American Commission with governments through collaboration on human rights issues of mutual interest, including through visits, technical assistance, and joint projects, could help strengthen implementation of human rights norms at the national and local level.

This is not to say that there will not be challenges in a more collaborative approach to engaging with governments in the hemisphere, and presumably concerns by some actors in the human rights field about the ability of the Inter-American Commission to maintain its independence. However, in the same way that human rights organizations are increasingly engaging with governments in meaningful ways to build human rights policy agendas, while remaining critical and independent, the Inter-American Commission also stands to benefit tremendously from such an approach to its relations with governments in the hemisphere.

Meaningful change will involve complex public policy reforms and not only short-term reparations. The Inter-American Commission already has substantial experience bringing about important policy reforms, as in the Maria da Penha case, where the Inter-American Commission concluded that the violation of Maria da Penha's rights were part of a pattern of discrimination that involved condoning domestic violence against women in Brazil (INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Maria da Penha v. Brazil*, 2001). The Inter-American Commission's decision, combined with significant civil society advocacy and engagement with

government, contributed to the enactment of the "Maria da Penha Law" (Law number 11,340/2006) and the adoption of other public policies to address omission and tolerance in connection with domestic violence against women. Building on past experiences influencing human rights policies in the hemisphere, the Inter-American Commission is to be commended for its current deliberation on and discussion on how to expand and strengthen this public policy function. Hopefully, the region's human rights field will be able to support the Inter-American Commission in rethinking this aspect of its functions.

In both the national and international context, we have discussed smaller and larger changes in the ways counter-majoritarian bodies approach their work, but not fully new structures or mechanisms. It is our hope that these conversations about how to start changing existing institutions may lead to ideas about entirely new institutions or processes, but it is admittedly difficult to anticipate what these might consist of currently. The most important aspect at this point is the willingness to revisit existing mechanisms and approaches to see where that may lead, rather than allowing the human rights field to be bound and constrained by the current structures.

3.3 Influencing public opinion and working with governments

New approaches for advancing the rights of democratic minorities that can help create different checks and controls will involve substantial efforts to communicate with and win over public opinion on human rights issues. As outlined above, the notion that courts, traditionally charged with defending the rights of democratic minorities, can be isolated entirely from public opinion probably has not been true for a long time, and this is increasingly the case with the pace and volume of public debate made possible by information and communication technologies. Beyond that, despite their absolutely fundamental role, there are many other limitations to the extent to which the judiciary can advance the rights of democratic minorities, and engaging with the executive and legislative branches is essential.

Acknowledging that counter-majoritarian institutions have been and likely increasingly will be influenced by public opinion has important implications for how we seek to advance the rights of democratic minorities. Significantly, it means we should not expect that judiciaries and human rights mechanisms alone will be able to safeguard the rights of these groups. Instead, we should engage much more proactively in efforts to shape public opinion, using the rapidly expanding tools and channels for democratic participation. Seeking to influence public opinion does not mean human rights organizations will have to yield to public opinion or that the path forward on any given issue will always involve trying to win over the opinion of the majority.

New strategies also will require working closely with government in ways that recognize its complexity and the multiple, often competing perspectives within government that can be engaged effectively to advance human rights. In many countries, the human rights movement emerged during challenging periods of dictatorship or conflict, when there were grave human rights violations and the human rights context was characterized by extremes and absolutes. While conflict

and autocratic leaders persist in some parts of the globe, imperfect and often messy democracies require much more multifaceted engagement.

Many examples of such new strategies and approaches are underway. Drug policy reform is an example of an issue where, despite extensive, longstanding rights human rights violations resulting from the drug war, neither majoritarian nor counter-majoritarian democratic institutions were able or willing to address this pressing human rights challenge. The drug war paradigm became ubiquitous and even discussing alternatives to the current regime became impossible for a long time. Political leaders sought to outdo each other in terms of who could be toughest on drugs, raising penalties for drug offenses and allocating vast sums of money to the drug war. While human rights organizations and some counter-majoritarian institutions in Latin America have long addressed the consequences of the drug war in the form of abuses by military forces and law enforcement, lack of due process, and over-incarceration, changing drug policy was generally seen as a marginal, taboo topic.

But the drug policy reform movement has gained tremendous momentum in the Western Hemisphere in recent years, having been built up from the ground outside of traditional channels and involving unlikely alliances. There have been substantial efforts to engage former political leaders, with the Latin American Commission on Drugs and Democracy involving three former presidents from Brazil, Colombia, and Mexico playing an important role, as well as to engage current political leaders open to discussing or exploring reform options in Uruguay, Colombia, Guatemala, and other countries. There have been creative campaigns to influence public opinion on drug policy, as in the lead-up to the legalization of marijuana in Uruguay. A growing number of human rights organizations are incorporating drug policy reform into their policy agendas, and human rights bodies, such as the Inter-American Commission on Human Rights and the Mexico City Commission on Human Rights, are focusing on drug policy reform for the first time. As the issue has moved from the margins to the mainstream, real public debate about alternatives to the currently drug prohibition regime has become possible.

There is also innovation underway on issues long considered part of the human rights agenda, such as criminal justice. Many organizations are carrying out interesting campaigns to try to win over public opinion on challenging human rights issues. For example, the "No a la Baja" campaign in Uruguay is aimed at preventing the lowering of the age of criminal responsibility in a constitutional referendum in late 2014 (COMISIÓN NACIONAL NO A LA BAJA, 2014).

As the potential for and influence of public participation increases, it will increasingly make sense to experiment with ways to influence public opinion on human rights issues we have usually looked to the courts to defend. Strategic human rights organizations are more and more focused on building and expanding local constituencies for their work, seeking to collaborate with new sectors that have not necessarily identified with human rights frameworks in the past. The approach of the human rights movement to working with governments to advance human rights in Latin America has changed substantially already, with important levels of collaboration in the design and implementation of policy, while maintaining independence and a critical outlook.

4 Drivers of change

This is an ambitious agenda for change in how we think about and advance human rights in 21st century democracies, and a key question is who will drive these changes? The answer touches on one of the central questions SUR 20 poses: who do human rights organizations represent?

Resilient, innovative human rights organizations around the globe, and especially in the Global South, will be at the center of these changes and experimentation. New communication tools and the mass protests of recent years have generated an impression that individuals are now able to interact with governments and bring about change directly. But a number of observers, including Ivan Krastev and Pierre Rosanvallon, warn of the limitations and pitfalls of democracies where the distrustful individual is at the center untethered by organizational ties and overly focused on oversight and limiting government, rather than building democracy. Individuals can question, monitor, and limit governments, but they cannot build agendas and propose constructive paths forward. Robust civil society organizations have a vital role to play in this more proactive democratic function.

Loosely organized and structured protest movements in several countries have generated significant energy and attention, but fallen flat and been unable advance reform agendas. In fact, an increasingly common critique of this new wave of protests is that it appears to be primarily an outburst of moral outrage without leadership or strategic goals (KRASTEV, 2014, p. 13).

During such recent mass protests, many human rights organizations and other parts of organized civil society, including foundations, have often been outside the thick of the action and sometimes been bewildered about how to engage with such bursts of citizen engagement that reject all formal organizations. The relationships and collaboration between the often fluid protest movements and organized civil society are not easy or straightforward. But they will be essential to building reform agendas with broad constituencies and advancing them.

In this context, human rights organizations and other parts of organized civil society can play a crucial role by acting as a hub that empowers democratic minorities and builds and sustains their influence over time. Organizations are better able to develop proposals and dialogue with governments than individuals. They are well-positioned to interact with government in complex ways, recognizing the plurality and heterogeneity of government, and the need to engage with those actors within government pressing for change, while remaining critical. Rather than acting on behalf of or representing democratic minorities, such hubs will serve as channels for advancing the rights of democratic minorities, remaining open to constant dialogue with these democratic minority groups, different parts of government, media and public opinion at large.

This hub function and regular interaction with government allowing constant monitoring and participation, rather than only through elections every few years, is of vital importance in a modern democracy. Serving as a channel for diverse constituencies and engaging with varied parts of government will likely involve changes in how organizations understand and advocate for human rights, and several

human rights organizations are already experimenting with these new approaches. As advancing human rights takes on new forms and channels, key actors in advancing the rights of democratic minorities may well include organizations that do not think of themselves as human rights organizations primarily.

This change and innovation in the human rights field is likely to take many different forms across the globe, and there will certainly be many blunders and failed experiments along the way. While SUR 20 rightly asks about the challenges of working on human rights internationally from the south, there is at least one way in which doing so has significant advantages. Democratic institutions and culture in the Global South, while often fragile, are still flexible and open to change in ways that longer-established democracies in the Global North are not. This is especially true in Latin America, and generates conditions for experimentation with new approaches and ideas that might not be possible in the Global North.

5 Conclusion

Pluralism and experimentation are not concepts we immediately identify with the human rights field, with its historic focus on universality and jurisprudence. The development and rapid expansion of the human rights in recent decades has been dramatic and impressive, with the adoption of large numbers of international human rights agreements and the incorporation of human rights into national constitutions and laws. The lack of implementation and steps backwards in some areas in recent years have led to significant frustration and arguments that the global human rights regime is on the verge of decline (HOPGOOD, 2013). But, in the same way that the human rights movement emerged and expanded in unforeseen ways, it can and should now change and adapt to the human rights challenges and context of 21st century societies. There will be mistakes along the way and adjusting to the idea that the way we talk, think and advocate for human rights may start to look very different across the globe may not be easy.

If universality defined human rights in the 20th century, pluralism may well define it in the 21st century. Pluralism will include diversity in terms of human rights actors and leaders, and where they come from in the globe. It also will include heterogeneity in the type of rights we want and how they look in practice. For example, Joey Fishkin urges us to reconceive our approach to equal opportunity, setting aside our focus on literal equalization and focusing instead on opportunity pluralism and loosening bottlenecks that constrain access to opportunities (FISHKIN, 2014). Finally, it will include experimentation and innovation in how we seek to advance the rights of democratic minorities across the globe.

The institutions designed to protect democratic minorities two hundred years ago are no longer able to fulfill this role today. There is an opportunity to build new checks and controls that take into account both the new tools and challenges of contemporary societies to deepen the inclusion of democratic minorities in public debate and protect their rights more effectively. The human rights movement has a core role in helping to build those new checks and controls through much deeper engagement with public opinion and different parts of government.

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ABSTRACT

After decades of mobilization and advocacy, how familiar are ordinary people with human rights, and how is this familiarity shaped by socio-economic status? We explore these questions with new data from the *Human Rights Perception Polls*, representative surveys conducted in four countries. We find that public exposure to the term "human rights" is high in Colombia, Mexico and parts of Morocco, but more moderate in and around Mumbai, India. The public's rate of personal contact with rights activists, workers and volunteers, however, is much more limited. For both indicators, moreover, socio-economic status is a meaningful statistical predictor. People who are more educated, wealthier, reside in urban areas and enjoy Internet access also tend to be more familiar with the term "human rights," and to have met a human rights worker, activist, or volunteer. These findings should concern human rights strategists keen to promote ties with the poor. To address this challenge, human rights groups should develop more popularly oriented models of engagement and resource mobilization.

HUMAN RIGHTS FAMILIARITY AND SOCIO-ECONOMIC STATUS: A FOUR-COUNTRY STUDY

James Ron, David Crow and Shannon Golden

1 Introduction

Although there are no formal mechanisms linking human rights actors with specific constituencies, many rights-based actors believe they represent the interests, needs and aspirations of society's most disempowered and vulnerable. Up until now, however, these beliefs have been unsupported by much systematic evidence. For reasons of cost, inclination and feasibility, human rights researchers rarely ask ordinary people for their views on—and experience with—human rights language and organizations. This article addresses this knowledge gap with original public surveys in four countries. We asked thousands of people how much they had heard the term "human rights," and whether they had ever met a self-identified human rights worker, activist, or volunteer. Armed with this data and aided by statistical analysis, we investigate the prevalence and correlates of public human rights familiarity.

We find that familiarity with human rights terms and representatives increases with socio-economic status. This finding is of concern, we believe, because familiarity with human rights is an indicator of the movement's representational success. Human rights organizations cannot persuasively claim to represent ordinary people if those individuals have neither heard their message, nor met their representatives. Rights groups cannot credibly claim to represent society's poorest sectors, moreover, if public outreach in these communities is systematically and meaningfully undermined by low socioeconomic status.

We conducted our *Human Rights Perceptions Polls* in 2012 in Colombia, India, Mexico and Morocco. We selected these countries for their diversity across multiple indicators, including distinct world regions (Latin America, North Africa and South Asia), colonial histories (Spain, France and Britain), world religions

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(Christianity, Islam and Hinduism) and linguistic traditions (Spanish, Arabic, French and Hindi). This diversity boosts the generalizability of our findings.

Conducting public surveys in these four countries also makes sense because, in each, significant numbers are exposed to human rights terminology and workers. Although all four countries have serious human rights problems, they all enjoy a modicum of political and civil liberties, including some freedom of speech, movement and association. Most importantly, each country has an active civil society and a vibrant domestic human rights sector.

1.1 Familiarity with human rights: how deep can it go?

Human rights discourse is ubiquitous in global media, diplomatic and policy circles (MOYN 2010; RON; RAMOS; RODGERS, 2005), provoking comparisons with other transnational *lingua franca,* such as mathematics or statistics (CMIEL, 2004). Important questions remain, however, about the ability of human rights terms and activists to break out of elite circles and penetrate mass publics (HAFNER-BURTON; RON, 2009). Many worry that human rights, like other transnational and cosmopolitan ideas, are little more than the "class consciousness of frequent travelers," destined to languish forever among the upper global crust (CALHOUN, 2002).

These concerns are intimately connected to questions of political representation. Which communities, and interests, do human rights organizations speak for? Whom do they really represent? The most "wretched of the earth" (FANON, 2005), as many hope, or the global middle class, as many fear? Public familiarity with human rights is not the only indicator of representation, of course, but it is important. No self-respecting Communist would ever have laid claim to representing the working class if laborers had never met Party members, and no self-respecting evangelist would claim success amidst popular ignorance of Christ or Muhammad. Familiarity both with the Word and its Messenger may not be *sufficient* for representation, but does seem rather *necessary*.

What, then, did we expect to find? On the one hand, the poorest and most disempowered are often likely to suffer most from all manner of human rights violations (KHAN; PETRASEK, 2009). As a result, they should, in theory, have the most incentive to acquire human rights knowledge and contacts. Human rights activists, for their part, should be keenly motivated to reach out to this demographic. As many advocates argue, the human rights movement's most pressing task is to work with and alongside the poor, often through the rights-based approach to development. If true, then people situated at the lowest rung of society's socioeconomic ladder should have more human rights familiarity than those located higher up.

Yet many observers would predict the precise opposite (AN-NA'IM, 2000; ENGLUND, 2006; HOPGOOD, 2013; ODINKALU, 1999; OKAFOR, 2006). The human rights movement's stated aspirations aside, wealthier and better-educated people always have more access to resources and information and often find greater value in abstract, cosmopolitan ideas such as human rights. Historically, moreover, it

was often the urban, middle or organized working classes who expressed the most interest in individual rights, rather than the disorganized, under-educated or rural poor (HUBER; RUESCHEMEYER; STEPHENS, 1993; LIPSET, 1959; MAMDANI, 1996). Although human rights activists may *hope* the poor are more familiar with their work, some experts would argue that sociological and political realities suggest otherwise.

Happily, these different expectations can be adjudicated with the help of well-designed, statistically representative public surveys.

2 Data & methods

In the publication, we describe our *Human Rights Perception Polls* (RON; CROW, forthcoming). Briefly, we gathered our Mexican and Colombian data in collaboration with the *Americas and the World* survey team at the Center for Economic Research and Teaching (CIDE) in Mexico City.[1] We collected our Moroccan and Indian data in collaboration with local survey companies.

Mexico: Our Mexican data includes a nationally representative sample of 2400 adults aged 18 and over, along with a smaller sample of 500 persons drawn from Mexico's "power elite" (MILLS, 2000), including business executives, elected officials, high-ranking bureaucrats, journalists and academics. This second poll of elites is illustrative, not statistically representative.

Mexico is a good case for investigating popular human rights familiarity. Systematic rights violations abound, but Mexico's growing democracy and socio-demographic profile afford opportunities for human rights debate and citizen involvement. Mexico's population is wealthier, better educated and more exposed to global ideas than many, its press and political system are relatively free and its population has strong ties to a U.S.-based diaspora. The country has had a vibrant domestic rights sector since the early 1990s and the government's policy rhetoric is favorable to human rights concerns (ANAYA MUÑOZ, 2009). Human rights are intensely topical, moreover, because of the country's brutal internal drug war (INTERNATIONAL CRISIS GROUP, 2013). Criminals and security forces have killed over 70,000 and disappeared thousands more since 2006.

Colombia: Our Colombian data also includes a nationally representative sample of 1,700 adults. Like Mexico, Colombia is a strong case for investigating public human rights familiarity. Decades-old violence between security forces, leftist guerrillas and state-sponsored paramilitary groups—all variously tied to drug cartels—has generated multiple rights violations. The government frames the country's conflict as a war on terrorism, and many Colombians regard the government's security policies as effective. But these policies have also exacted a high civilian toll, including 30-50,000 forced disappearances and a series of "parapolitics" scandals linking politicians and military officers to right-wing paramilitaries (HUMAN RIGHTS WATCH, 2012). Like Mexico, Colombia has an active domestic human rights community comprising many hundreds of groups organized in dense networks, along with strong transnational ties (BRYSK, 2009; OIDHACO, 2013).

Morocco: Our Moroccan data includes a sample of 1,100 adults and is representative of the population residing in Rabat and Casablanca, the country's adjacent political and financial capitals, and of rural residents living up to 70 kilometers from either city. Morocco also offers fertile ground for investigating rights familiarity (RON; GOLDEN, 2013). The country's worst violations of civil and political rights occurred during the 1970s and 1980s, known as the "Years of Lead." Morocco began liberalizing in the 1990s, included human rights commitments in a new constitution and accelerated the liberalization process under a new king in the 2000s. Gender-based rights activists have made particular progress. Although restrictions and abuses continue against Islamist and Western Sahara activists, the domestic Moroccan rights sector is vocal, self confident and comparatively effective (SLYOMOVICS, 2005).

India: Our Indian data includes a sample of 1,600 adults and is representative of residents of Mumbai, the country's cultural and financial capital, and the adjoining rural areas of Maharashtra State.

India's population is similar to Morocco's in terms of income and education and poorer and less literate than Mexico's or Colombia's. India has the longest democratic tradition of all four, however, as well as a cacophonous domestic press and long history of rights-based activism, including path-breaking legal advances in social and economic rights (GUDAVARTHY, 2008; JHA, 2003; RAY, 2003). These include the 2005 Right to Information Act, the 2009 Right to Education Act and the 2013 National Food Security Act. Mumbai is home to India's first civil liberties groups and is a center for local efforts to protect the rights of women and slum dwellers, improve communal relations and advocate for housing and food security rights.

2.1 Our statistical variables

We use two variables to measure the public's familiarity with human rights. To assess **respondents' exposure** to human rights terminology, we ask, "In your daily life, how often do you hear the term 'human rights'?" [Daily; Frequently; Sometimes; Rarely; Never]. To assess **respondents' personal contact** with human rights workers/volunteers, we asked, "Have you ever met someone who works in a human rights organization?" [Yes; No].

We measure **respondents' socioeconomic status by** assessing their education, place of residence, income and Internet access. For **education**, we asked, "What is the highest level of education you have completed?"[2] For **urban residence**, we coded the area where respondents lived with accepted Moroccan census classifications. For **income**, we used a subjective perception of income relative to expenditures, asking, "With total family income, which statement best describes your income status?" ["My income allows me to cover expenses and save"; "My income can just cover expenses, without major difficulties"; "My income cannot cover expenses, and I have difficulties"; "My income cannot cover expenses and I have major difficulties"].[3] For **Internet use**, we asked, "Do you use the Internet?" [Yes; No]. We also include two control variables, **sex** and **age** [in years].

3 Findings

We begin with the Mexican case, as it is the only one of our four cases with both a public and an elite sample.

Figure 1 demonstrates that the prevalence of human rights terminology among both Mexican elites and general public is high, but that elite exposure is much higher. Some 90 percent of elite Mexicans told us they heard "human rights" (*derechos humanos*) either "daily" or "frequently," compared to almost 40 percent among the general public. Yet even this figure of 40 percent seems extraordinarily large; extrapolating, it suggests that some 30 million Mexican adults are exposed to the words *derechos humanos* on a daily basis.

Figure 1. Exposure to "Human Rights" Highest Among Mexican Elites

"In your daily life, how often do you hear the term 'human rights'?"

☐ Public (N=2,381)   ▇ Elite (N=534)
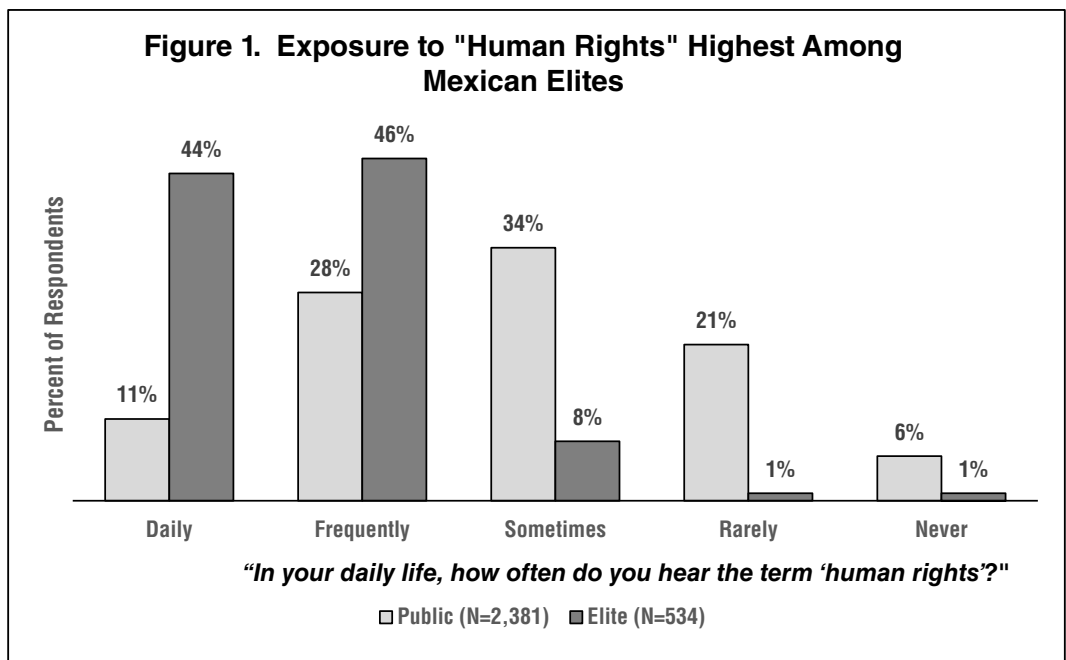
Remarkably, human rights exposure in Colombia and Morocco is even higher. As Figure 2 notes, 49 percent of Colombian adults say they routinely hear the term *derechos humanos* while 54 percent of adults living in and around Rabat and Casablanca reported regularly hearing the French, *droits de l'homme* or the Arabic *hukuk al insaan*. And while our Indian survey reveals lower rates of public exposure—only 20 percent of adults living in and around Mumbai reported regularly hearing either the Hindi *mānava adhikāra* or the Marathi *mānavī adhikāra*—even this comparatively low exposure rate seems high.

Personal contact with human rights workers, unsurprisingly, was much lower. In Mexico, moreover, our separate elite and mass samples were very different. As Figure 3 notes, 86 percent of Mexican elites report having met someone active with a human rights organization, compared to only 11 percent among the general public. Mexican human rights activists circulate far more frequently and intensively in their society's upper realms.

Figure 2. High Exposure to "Human Rights" in Three of Four Public Samples

"*In your daily life, how often do you hear the term 'human rights'?*"

□ Daily or Frequently   ▨ Sometimes   ■ Rarely or Never

Figure 3. Mexican Elites Far Likelier to Have had Personal Contact with Human Rights Worker

Have you ever met someone that works in a human rights organization?

▨ Public (N=2,367)
■ Elite (N=534)
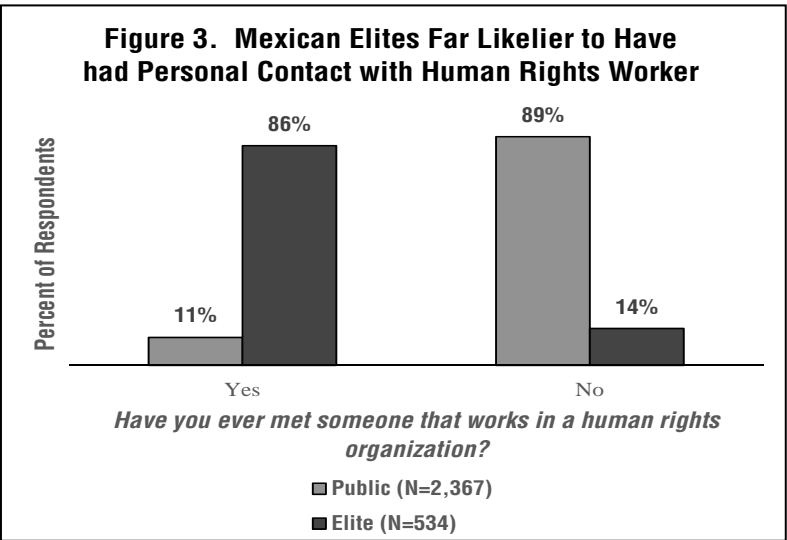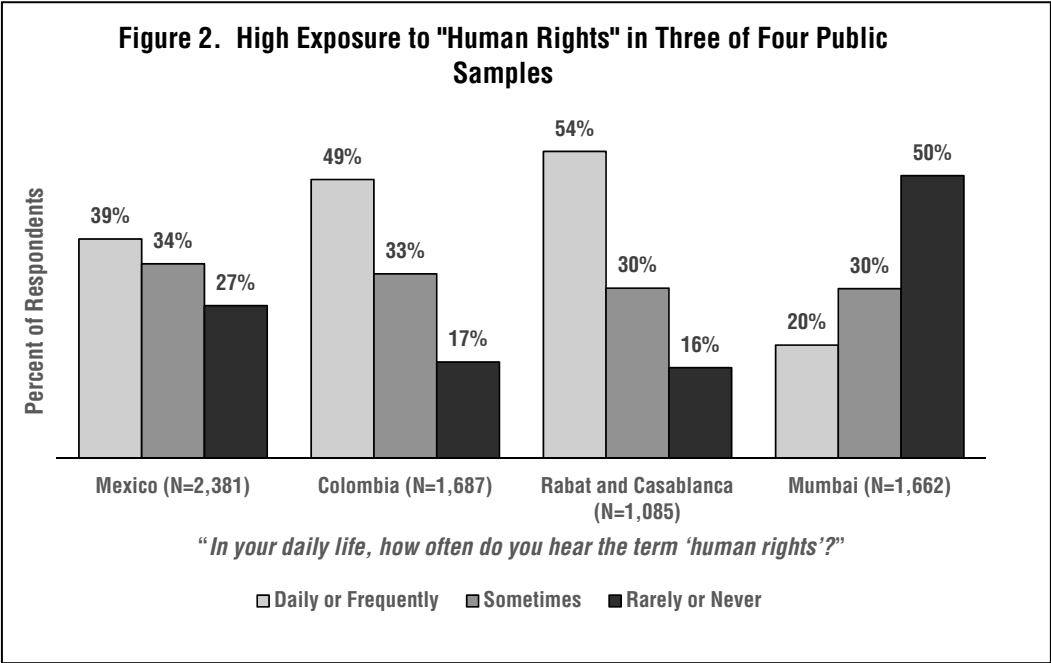
Yet here, too, the Mexican and Colombian glass is half full, since 11 and 18 percent of their general population *has* met a human rights worker. In Mexico, this would suggest an overall figure of eight million (see Figure 4). These high rates likely stem from the two countries' drug-related internal conflicts, population displacements, government rhetoric and strong activist outreach.

In Morocco and India, by contrast, the public's contact with human rights personnel is far lower. Only 7 percent of adults living in and around Rabat and Casablanca report having met a human rights worker, while in Mumbai and its rural environs, only one percent have.

Figure 4. Colombians Most Likely to Have Met a Human Rights Worker
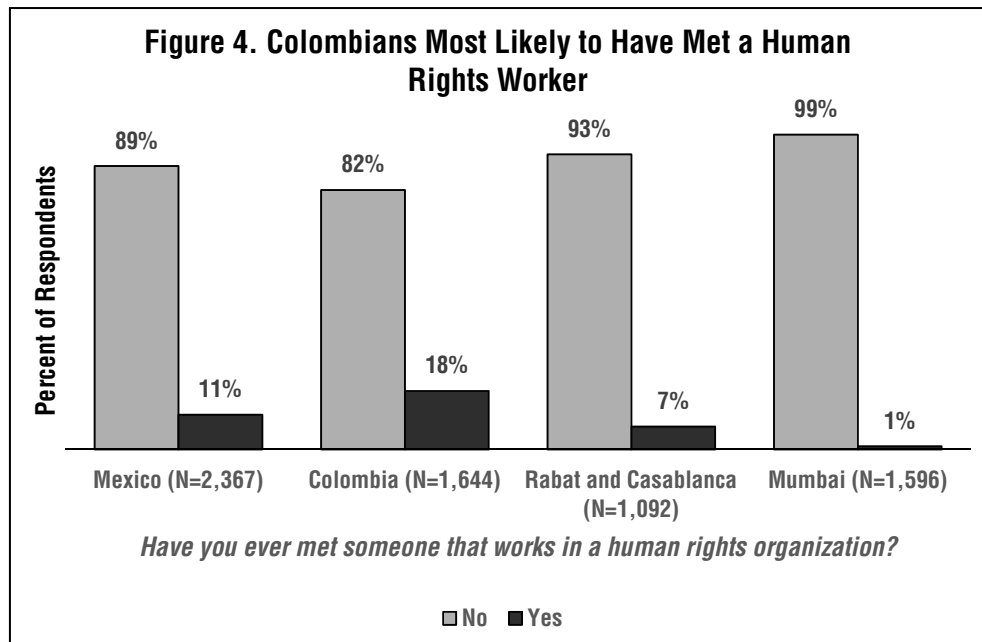
3.1 Statistical analysis: higher socioeconomic status, more human rights familiarity

Our methodology allows us to assess the link between socio-economic factors and the public's human rights familiarity. We find that in all four countries, higher socioeconomic status (SES) is correlated with more exposure to human rights terms and workers. Table 1 presents an overview of our findings. A plus sign (+) signifies a positive and statistically significant relationship between one of our four SES variables (education, urban residence, income and Internet use) and our two measures of human rights familiarity, namely: respondents' exposure to human rights terminology, and respondents' personal contact with human rights workers/activists/volunteers; a minus sign (-) signifies a negative relationship between SES and familiarity; and "n.f.," or "no finding," signifies no statistically significant relationship.

Table 1. Summary of Findings: Relationships between SES and Familiarity with HR Discourse and Practitioners

	Colombia		Mexico		Mumbai		Rabat/Casablanca	
	Exposure	Contact	Exposure	Contact	Exposure	Contact	Exposure	Contact
Education	+	+	+	+	n.f.	n.f.	+	+
Urban Residence	—	n.f.	+	+	+	n.f.	n.f.	n.f.
Income	+	+	+	+	—	n.f.	n.f.	n.f.
Internet Use	+	+	+	n.f.	+	+	n.f.	+

"+" = Positive relationship

"—" = Negative relationship

"n.f." = No finding

In all countries, *some* SES measures are meaningfully associated with greater human rights familiarity and in some countries, all four measures are associated with greater human rights familiarity. **Education** and **Internet use** were the leading correlates, as they enjoyed positive statistical associations with the public's human rights familiarity in six of eight possible cases. **Income** was next, with a positive association in four of eight cases, while **urban residence** had a positive association in three. Cumulatively, these findings suggest that higher social standing is reliably associated with human rights familiarity in all four countries.

Table 2 contains our full regression results. Since the dependent variable **respondent exposure** is ordinal – that is, arranged in a well-ordered set–we modeled its effects with ordinal logistic regression, a commonly used statistical technique that estimates the net effects of various independent factors, or variables, on a single, ordered, "outcome" factor, or variable. In these models, the coefficients should be interpreted as the strength of the effect an independent variable has on the odds of belonging to "higher" categories (e.g., hearing human rights "daily" or "frequently"), as opposed to the odds of belonging to "lower" categories (e.g., hearing human rights only "sometimes," "rarely" or "never"). And since the dependent (or outcome) variable **respondent personal contact** is a dichotomous, or "yes/no" response, we used simple binary logistic regression. Here, coefficients should be interpreted as the effect of an independent variable on the odds of a respondent's having ever met a human rights worker.

Table 2. Determinants of Frequency of Exposure to Phrase "HR" (Ordinal Logit) and Contact with HRO Worker (Logit)

	Colombia		Mexico		Mumbai		Rabat/Casablanca	
	Exposure	Contact	Exposure	Contact	Exposure	Contact	Exposure	Contact
Education (Yrs.)	0.075***	0.052**	0.078***	0.070***	0.000	-0.004	0.026†	0.125***
	(0.000)	(0.003)	(0.000)	(0.000)	(0.989)	(0.921)	(0.068)	(0.000)
Urban (Yes=1)	-0.316***	-0.266	0.176***	0.580***	0.492***	-0.065	0.008	-0.099
	(0.020)	(0.202)	(0.038)	(0.001)	(0.000)	(0.872)	(0.953)	(0.746)
Income (Perceived)	0.228***	0.182***	0.089†	0.226**	-0.209***	0.050	0.007	-0.040
	(0.000)	(0.046)	(0.061)	(0.007)	(0.000)	(0.749)	(0.925)	(0.780)
Uses Internet	0.541***	0.642***	0.181†	-0.006	1.021***	1.000**	-0.197	0.838**
	(0.000)	(0.001)	(0.060)	(0.973)	(0.000)	(0.003)	(0.218)	(0.006)
Sex (Male=1)	0.191***	0.187	0.036	0.162	0.461***	0.393	0.169	0.175
	(0.039)	(0.163)	(0.633)	(0.221)	(0.000)	(0.198)	(0.141)	(0.448)
Age	0.015***	-0.001	0.004	0.010***	-0.004	-0.015	0.006	0.019***
	(0.000)	(0.787)	(0.148)	(0.023)	(0.189)	(0.163)	(0.187)	(0.028)
N	1585	1567	2325	2309	1535	1562	1046	1059
Log-likelihood	-2156.33	-723.41	-3344.41	-806.37	-2271.96	-216.49	-1453.03	-287.52
χ^2 LR Test	159.15	63.18	128.35	61.37	154.73	16.36	8.24	59.65
p-value	0.000	0.000	0.000	0.000	0.000	0.012	0.221	0.000
Pseudo-R2	0.036	0.042	0.019	0.037	0.033	0.036	0.003	0.094

p-values in parentheses
† $p < 0.10$; *** $p < 0.05$; **$p < 0.01$; *$p < .001$

3.2 Education

Better-educated respondents hear the phrase "human rights" far more frequently and are likelier to have met a human rights worker than their less-educated counterparts in Colombia, Mexico, and Rabat/Casablanca (see Figure 5).

To gauge the impact of education on **respondent exposure** to the words "human rights," we combined the two highest responses, "frequently" and "daily." The association between education and exposure is strongest in Colombia (shown by the three leftmost bars above the "Exposure" category label) and Mexico (the three middle bars in "Exposure"). Some 64 percent of Colombians with a doctorate or equivalent degree (21 years of education, white bars) hear often about *derechos humanos,* compared to only 48% of Colombians who have completed high school (light gray bars) and 27 percent with no formal education (dark gray bars). The same is true for Mexico, where about 58 percent of respondents with 21 years of schooling hear about human rights often, compared to only 40 percent who have completed high school and 21 percent with no schooling. The association with education is not as pronounced in Morocco (the three rightmost bars in "Exposure"), because a high proportion of Moroccans with no education (50 percent) already hear frequently about human rights.

Figure 5. Association Between Education and Exposure to HR Discourse / Contact with HR Workers in Colombia, Mexico, and Rabat/Casablanca
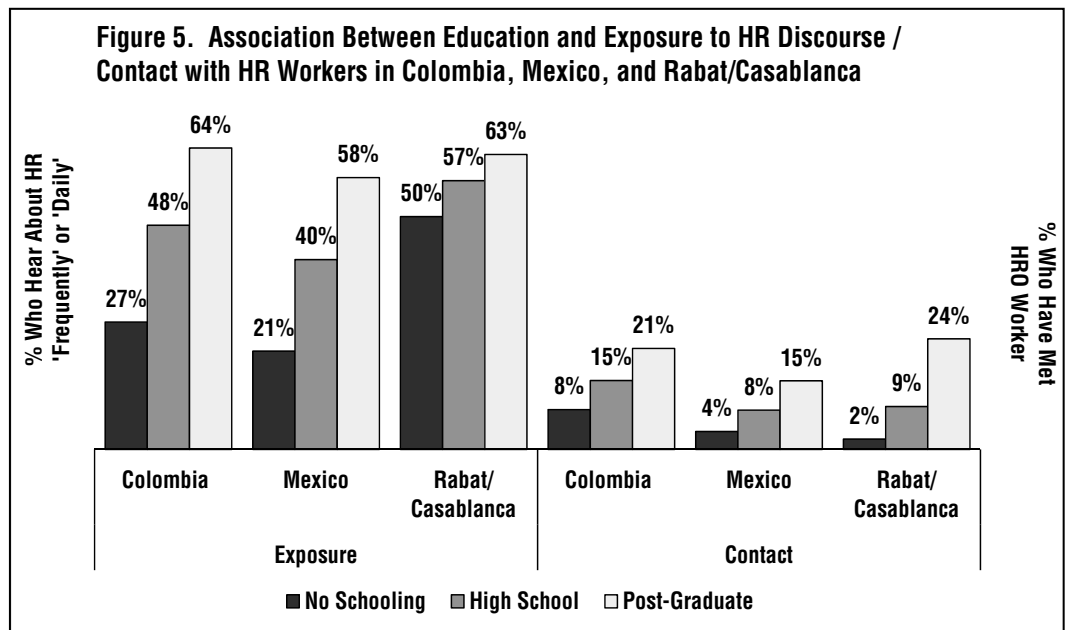
The three sets of bars to the right of Figure 5, above the "Contact" category label, track education's association with the probability of **respondent contact** with a human rights worker. The link is most pronounced in Rabat/Casablanca (the three rightmost bars), where going from the minimum to the maximum of the education range is associated with an increase in the probability of **respondent contact** with a human rights worker from two to 24 percent. The association is more modest,

but still important, for Colombia (the three leftmost bars in "Contact," rising from eight percent to about 21 percent) and Mexico (the three middle bars in "Contact," which increase from four percent to about 15 percent).

3.3 Internet Use

Figure 6 depicts the estimated probabilities of **respondent exposure** and **contact** for Internet users (dark gray bars) and non-Internet users (light gray). The positive association with **respondent exposure** is strongest in Mumbai, where 27 percent of Internet users hear about human rights often, compared to only 12 percent of non-Internet users. In Colombia, 59 percent of Internet users are often exposed to human rights discourse, compared to 45 percent of non-Internet users. The difference in Mexico is smaller but still statistically significant, at 39 versus 35 percent.

Figure 6. Association Between Internet Use and Exposure to HR Discourse / Contact with HRO Workers in Colombia, Mexico, Mumbai, and Rabat/Casablanca
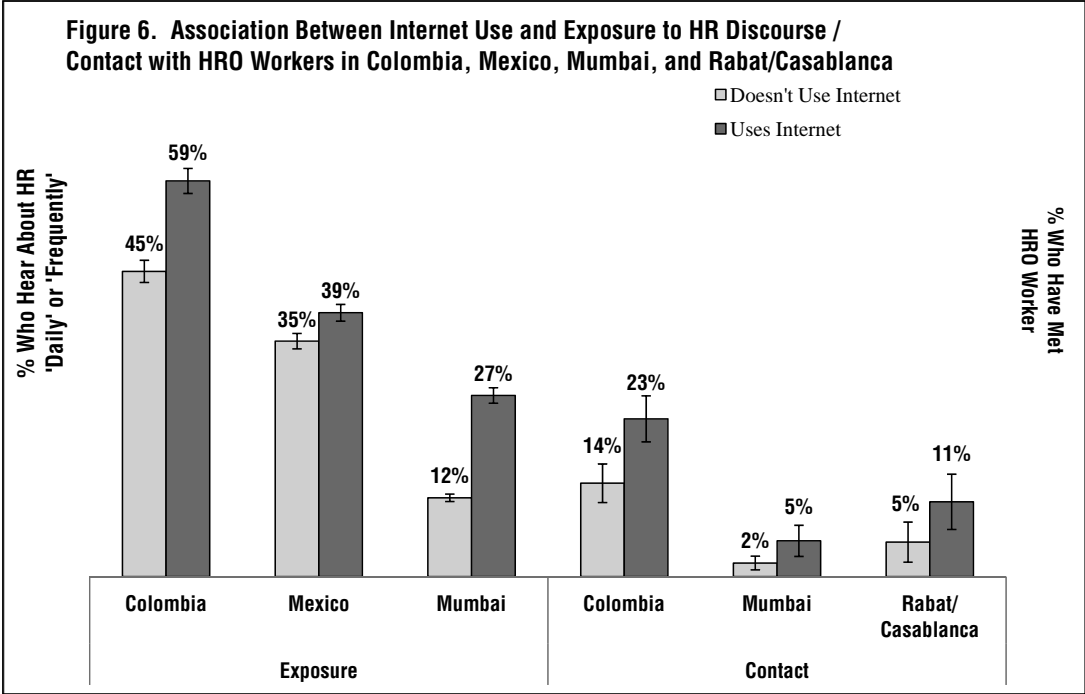
The data evince a similarly positive association between **Internet use** and **respondent contact** with human rights workers. In Colombia, the odds of a respondent having had **personal contact** with a human rights worker increase with Internet use from 14 to 23 percent, while in Rabat/Casablanca and Mumbai, it more than doubles.

3.4 Income

Figure 7 depicts the association of **respondent exposure** and **respondent contact** with income. We assess the size of these effects by comparing those at the

maximum and minimum of our perceived income scale. In Colombia, those who "cannot cover expenses" and have "major economic difficulties" (the dark gray bars) have about a 37 percent chance of hearing about human rights often (the leftmost, dark gray bar above the "Exposure" category label) and a 11 percent chance of having met a human rights worker (the leftmost, dark gray bar above the "Contact" category label)). These figures rise to 53 percent and 17 percent, respectively, for Colombians whose income allows them "to cover expenses and save" (light gray bars immediately to the right of the dark gray bars for "cannot cover expenses/major difficulties").

Figure 7. Association Between Income and Exposure to HR Discourse / Contact with HRO Workers in Colombia, Mexico, and Mumbai
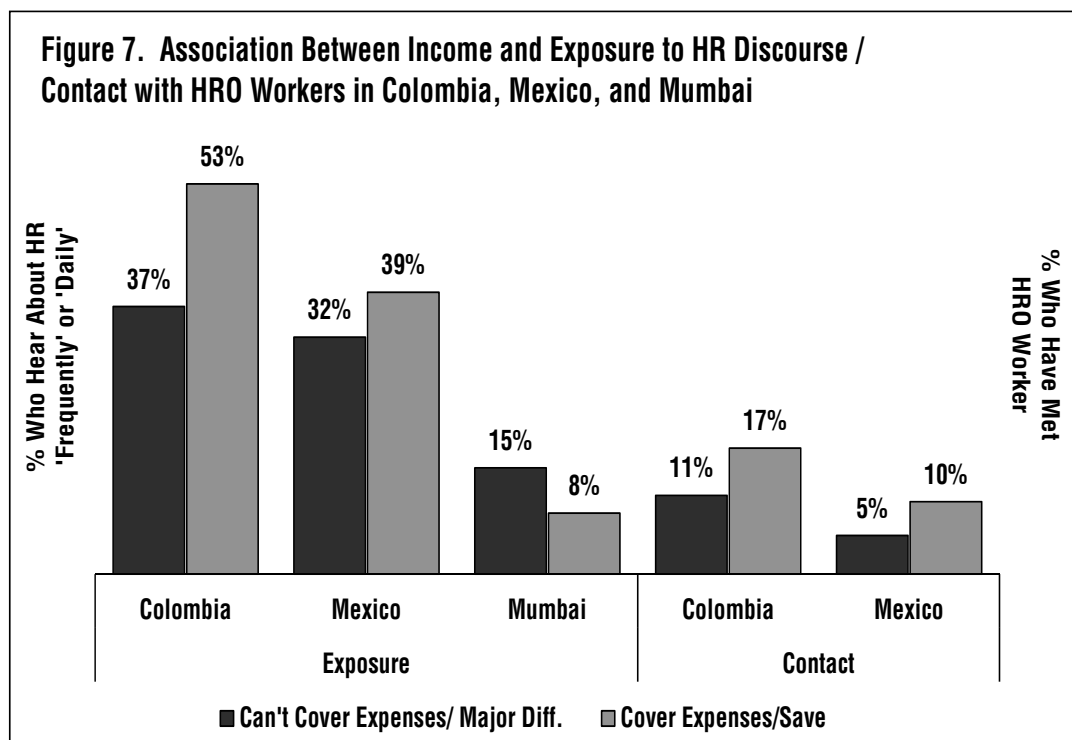
In Mexico, these same associations are statistically significant, albeit less dramatically so. Poorer Mexicans have a **respondent exposure rate to human rights** of 32 percent (the second dark gray bar from left to right), as well as a 5 percent **personal contact rate** (the rightmost dark gray bar). Their wealthier counterparts, by contrast, have higher exposure and personal contact rates (39 and 10 percent, respectively, as shown by the second light gray bar from left to right and the rightmost light gray bar).

In Mumbai, however, exposure to the phrase "human rights" *decreased* with income (two bars above the "Mumbai" category label). The data suggest that wealthy people living in and around Mumbai hear human rights "often" about seven percentage points less than the poor. Intriguingly, human rights workers and messages circulate more heavily among the poor in this part of India. Although this individual finding does not undermine our overall argument, it does suggest that something rather different is going on in that context.

3.5 Urban Residence

Finally, city residence tends, overall, to be associated with greater **respondent exposure** and **contact**. Urban residents in Mexico, for example, are more likely to hear about human rights often (39 percent) and to have met a human rights worker (12 percent) than their rural counterparts (35 and 7 percent, respectively). Similarly, city-dwelling Mumbaikars have higher rates of **respondent exposure** (18 percent) than rural Marathis (12 percent).

Once again, however, there are some puzzling differences. In Colombia, for example, rural Colombians have more **respondent exposure** than urbanites (45 to 38 percent) and the explanation may be linked to Colombia's war on drugs, counterinsurgency campaigns and attendant rights violations, much of which occurred in rural zones. Once again, this counter-intuitive finding reminds us that careful, country-specific data collection is vital.

These two exceptions notwithstanding, the positive relationship between socioeconomic status and human rights familiarity is a strong general finding, robust to different measurements of familiarity (as **respondent exposure** and **respondent personal contact**) and socioeconomic status (**education, income, Internet use** and **urban residence**).

3.6 Controls

Our two control variables, age and sex, are also statistically significant, in some instances. Men are more likely than women to frequently hear the phrase, human rights, in Colombia and Mumbai (see Table 2), while rates of **personal contact** with human rights workers increase with age in Mexico and Morocco. **Respondent exposure**, moreover, increases with age in Colombia.

4 Discussion

Our *Human Rights Perception Polls* show that ordinary people across regions, linguistic divides, religions and colonial traditions often hear the phrase "human rights." Personal contact with human rights activists, however, is much less frequent. The data also show that both the human rights Word and its Messengers circulate more heavily among wealthier, better educated and more Internet-savvy respondents. Although this finding may disappoint human rights activists keen to stand in solidarity with the poor, it should not surprise. After all, many observers have long suspected as much, although none, until now, have provided systematic evidence.

There is no reason to suspect that higher human rights familiarity guarantees good deeds or intentions, of course. Although our study shows that elites are more exposed to human rights terms and activists than the poor, elites are also the source of many persistent human rights problems. Our study does not claim that human rights familiarity changes behavior for the better. The more important issue, in our view, is that of representation. If familiarity with

human rights terms and activists declines with socio-economic status, human rights organizations' claim to represent the poor and disempowered is dramatically weakened. One cannot claim to "represent" people whom one has never met, or who only rarely hear one's message.

Must human rights groups seek to represent the poor? The question cuts to the heart of many long-standing debates. Some view the human rights movement as appropriately elite-oriented, arguing that rights groups' chief mission is, and should be, supporting high level reform, often of a technical, policy or legalistic nature (GONZÁLEZ, 2013). If true, comparatively low human rights familiarity among those from lower socio-economic backgrounds offers little cause for concern; it is elites who are the true target audience. Still others suggest that human rights groups' chief contribution is serving as connectors between grassroots communities, activists and elites (ANSOLABEHERE, 2013; GALLAGHER, 2013). Human rights activity, in this view, is not a popularity contest but rather a back-stage networking effort that promotes the concerns of marginalized groups from a distance.

For many others, however, the proper role of human rights groups should be to represent and stand in solidarity with the poor. This, for example, is the view of those who write about the "rights-based approach to development," an approach that has gained much policy traction of late (KINDORNAY; RON; CARPENTER, 2012). It is also popular among those concerned with promoting human rights as a form of mass-based activism, rather than a professional practice of policy and legal advocacy (BANYA, 2013; BROWNE; DONNELLY, 2013; ZIV, 2013). Analysts and activists of this sort will be concerned by our results, and perhaps use them to press rights groups to make more and better contact with poorer and broader populations.

It is possible, of course, for human rights groups to play both roles, working both with elites *and* with people from more modest socio-economic backgrounds (AZZAM, 2014). Still, if they want their claims of representation to have legitimacy, human rights activists must expand their reach and engage more seriously, widely and genuinely with ordinary people. These outreach efforts must guard against the condescending, foreign-funded and top-down approaches described so alarmingly by critical anthropologists such as Harry Englund (ENGLUND, 2006). Outreach with the poor cannot be reduced to a development-style logframe, in which useless visits to rural communities and poor neighborhoods are ticked off on spreadsheets to satisfy donors.

To ensure their engagement with ordinary people is positive and genuine, human rights groups must recruit more volunteers and dues-paying members and enhance their ability to mobilize resources among individuals and communities of modest means (ASHRAF 2014; SURESH 2014). Greater human rights representation and familiarity among the poor will be enhanced by a more popularly-oriented approach to resource mobilization (RON; PANDYA, 2013).

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NOTES

1. The *Americas and the World* survey reports and data are available freely online at: <http://lasamericasyelmundo.cide.edu>. Last accessed on: 21 July 2014.

2. We adapted this question to the peculiarities of each country's system.

3. We have traditional monetary income measures, but these are prone to error.

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ABSTRACT

This paper argues that human rights are a relevant language and effective framework for social change, particularly when it is recognized as historically emerging from grassroots struggles, and remains closely connected to the lived realities of people around the world and ongoing movements for social justice. While providing a basis for unity and moral and political legitimacy, human rights advocacy confronts unequal social relations, economic conditions and political structures. In this regard, who we represent— in terms of the scope, nature and leadership of "the human rights movement"— is a vital question if our ultimate aim is to make social justice a reality for all. Despite different roles, approaches, and geographical locations, we ideally recognize ourselves as part of a common movement for social justice, necessarily led by the poor, oppressed, exploited, and others who have made a commitment to make human rights a reality for all.

TO BUILD A GLOBAL MOVEMENT TO MAKE HUMAN RIGHTS AND SOCIAL JUSTICE A REALITY FOR ALL

Chris Grove

"Who do we represent?" "Are human rights still an effective language for producing social change?" These two questions posed to human rights organisations, among the several raised by *Sur* for their twentieth issue, seem particularly relevant in light of the popular uprisings that have spread from Tunisia to Egypt to Spain, Chile to the US, India to South Africa to Brazil. In Egypt, the common demand was for "bread, freedom and social justice". In Chile, tens of thousands of students challenged for-profit education, which excluded many from quality secondary or university education, under the slogan "*Chao, lucro*!" ("Goodbye, profits!"). In Spain, the *indignados* protested against high unemployment and an electoral system dominated by two parties that no longer represent their interests. They practiced direct democratic methods that were soon echoed in renewed anti-austerity protests in Greece and in the Occupy movement in the US. For several years, Abahlali baseMjondolo, centred in Durban, South Africa, has joined the Landless Peoples' Movement, the Western Cape Anti-Eviction Campaign, and other movements of poor people in boycotting elections under the slogan: "No Land! No House! No Vote!" Protesters in each of these locations have tended to combine demands for economic rights, greater participation, and dignity, while often learning from and expressing solidarity with one another. At an even more basic level, they have challenged deepening inequality, whether manifest as impoverishment amid abundance or lack of political voice in systems oriented towards the benefit of a few (DAVIES et al., 2008; FUENTES-NIEVA; GALASSO, 2014).

This reflection argues that human rights are a relevant language and effective framework for social change, particularly when they are recognised as historically emerging from grassroots struggles and remain closely connected to the lived realities of people around the world and ongoing movements for social justice. While providing a basis for unity and moral and political legitimacy, the human rights framework and related advocacy confront unequal social relations, economic conditions and political structures, which often reflect interests other than common economic well-being and meaningful democracy. In this regard, I suggest that who we represent— in terms of the scope, nature and leadership of

"the human rights movement"— is a vital question if our ultimate aim is to make social justice a reality for all.

Like the *Sur Journal*, ESCR-Net (International Network for Economic, Social and Cultural Rights) is celebrating its tenth anniversary and emerged from a similar vision to strengthen connections between NGOs, social movement activists, and academics across the Global South, as well as between the South and North, facilitating stronger engagement at the international level. For ESCR-Net, this was driven by the realisation that transnational corporations, international trade and investment agreements, as well as other global challenges were affecting communities around the world, who were often unable individually to impact these trends or forces. Working "to build a global movement to make human rights and social justice a reality for all", ESCR-Net has attempted to create a platform for strategic exchange and joint advocacy, now led by over 200 organisational and 50 individual members across 70 countries. As current director of the ESCR-Net Secretariat, while the following are my own reflections, they benefit from regular dialogue and collective work with these members, several of whom are cited throughout this paper.

1 Human rights, a relevant language

Echoing the stories of various social movement members, the argument for human rights 'from below' or emerging from common aspirations and struggles for justice is reinforced by multiple histories, which trace origins to philosophical schools of thought, social struggles, and religious traditions from across the world. In this regard, human rights originate as moral and often political demands, which have been incorporated into human rights standards at particular historic moments. In one account, the abolition movement, slave rebellions, and the Haitian Revolution, in its radicalisation of the narrow conception of rights informing the US and French Revolutions, gave birth to human rights based in "freedom, equality and common humanity", which were codified in the wake of World War II, with China and Latin American States calling for both political and economic rights (BLACKBURN, 2011, p. 477). Tracing another narrative, the US NAACP– National Association for the Advancement of Colored People, formed in 1909 –, guided by W.E.B. DuBois, submitted an "Appeal to the World" to the United Nations in 1947, decrying racial subordination as a human rights violation, embracing both civil and economic rights, and linking African American equality to decolonisation (ANDERSON, 2003). In 1955, the Universal Declaration of Human Rights was affirmed by the Non-Aligned Movement in Bandung (INDONESIA, 1955). In still another narrative, representing one of many anti-colonial struggles for the right to self-determination, Amilcar Cabral, Secretary-General of the African Party for the Independence of Guinea and the Cape Verde Islands (PAIGC), spoke of "inalienable rights" and "the legitimate aspirations of the African people to live in dignity", reinforcing a call to convince the Portuguese "to respect international morality and legality", in his final speech to the UN General Assembly in 1972 (CABRAL, 1973, p. 16-17).

Analysing movements of the poor organising the poor in the US, most recently through their co-leadership of the Poverty Initiative, Willie Baptist and Liz Theoharis (2011) highlight three reasons why they and other grassroots leaders have utilised the human rights framework. First, following the lead of Rev. Dr. Martin Luther King, Jr., and his move to human rights and the Poor People's Campaign in the final years of his life, they suggest: "economic human rights offer a framework to unite poor and working people across color lines into a common struggle, appealing to certain core values of the US tradition and culture". Secondly, demanding "Economic human rights for all!" has allowed them to raise fundamental questions about "why poverty exists in the richest country in the world, and to raise another basic question on the relation between the growth of poverty in the United States and its growth worldwide". Finally, drawing on the international recognition of human rights, foremost in the Universal Declaration of Human Rights, has brought moral and political legitimacy to these movements (BAPTIST; THEOHARIS, 2011, p. 172-173).

Struggling to secure the human rights of their communities in the face of powerful transnational forces, indigenous leaders have similarly looked to "international standards, not just local solutions". These leaders committed two decades to the arduous task of building common demands, playing an unprecedented role in drafting and negotiating to finally secure the UN Declaration on the Rights of Indigenous Peoples, on 13 September 2007 (GELBSPAN; PRIOSTE, 2013, p. 86-103). When opening the 2013 Peoples' Forum on Human Rights and Business, Legborsi Saro Pyagbara, president of the Movement for the Survival of the Ogoni People (in Nigeria), emphasised the importance of building a global network for human rights, which had been vital to the struggle in Ogoniland but also to securing international human rights standards that benefit numerous struggles. He emphasised:

> *"No matter the strength of the forces that we may contend with, I still believe strongly that with our collective effort, with our collective power […] we can get the objective of getting an internationally binding regulation for companies. […] We can change our world"*

> (PYAGBARA, 2013).

These and related grassroots struggles have been central to the codification of human rights at the international level and continue to guide their ongoing evolution, whether reinforcing the rights of indigenous peoples, women and persons with disabilities or the extraterritorial obligations of States to regulate the activities of corporations and private investors abroad. In the wake of the Great Depression, fascism, and genocide, drawing on diverse philosophical traditions and struggles for justice, the Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly in 1948 affirming "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people". Arguably resonating with peoples' lived experience, the UDHR has been translated into

418 languages (UNITED NATIONS, 2014). In the 1993 Vienna Declaration and Programme of Action, representatives of 171 States and more than 800 grassroots groups and other NGOs reaffirmed: "All human rights are universal, indivisible and interdependent and interrelated" (UNITED NATIONS, 1993, art. 5). The Vienna Declaration led to the creation of the High Commissioner for Human Rights; called for examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights, which led to an international remedy mechanism for ESCR violations; and urged the domestic incorporation of human rights standards, with the South African Constitution providing an important model the following year (UNITED NATIONS, 1993, art. 18, 75, 83).

The above begins to answer the question: "Are human rights still an effective language for producing social change?" Yet the question might be reframed as: Is social justice becoming a reality for growing numbers of people due to human rights advocacy? I argue for a qualified "yes". After more than a decade of renewed advocacy on human rights and business at the UN, few major corporations, particularly with brand recognition, can avoid addressing corporate social responsibility, at least giving a nod to human rights and environmental safeguards. Current UN processes have produced the UN Guiding Principles on Business and Human Rights, a mandate for a thematic UN Working Group to "make recommendations at the national, regional and international levels for enhancing access to effective remedies" (UNITED NATIONS, 2011, art. 6e), and over 20 States calling for development of a legally binding standard at the Human Rights Council in 2013 (ECUADOR, 2013). Similarly, the Declaration on the Rights of Indigenous Peoples has deepened recognition of the right to free, prior and informed consent to business investments in their land, via the right's inclusion in both the UN Human Rights Council's Universal Periodic Review and in the International Finance Corporation's Performance Standard 7*; the right has been further alleged in successful arguments before regional human rights bodies (for instance, see INTER-AMERICAN COURT OF HUMAN RIGHTS, *Pueblo Indígena Kichwa de Sarayaku v. Ecuador*, 2012). Furthermore, in one recent case, media coverage and political pressure intensified on 1 October 2013, when eight UN mandate holders issued a press release on the letters that they had sent to India, South Korea, and the South Korean corporation Posco, outlining the human rights obligations of each actor in relation to the largest foreign direct investment project in India's history (UNITED NATIONS, 2013). However, despite these successes, widespread violations involving corporations continue in the face of voluntary standards and weak remedies.

Building on the South African Constitution and the country's independent Constitutional Court, the Legal Resources Centre and Community Law Centre, among other human rights organisations, were central to securing positive precedents in early and vital ESCR cases, including the obligation to respect the right to housing, requiring government to take reasonable steps to ensure access

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*The IFC – a branch of the World Bank's group directed to the private sector – has established standards that its clients must meet during IFC's investment. Performance Standard 7, on Indigenous peoples, now details the circumstances that require affected communities' free, prior and informed consent to intended developments.

to adequate housing and provide relief for those in most desperate needs, and the right of access to healthcare, forcing government to make available nation-wide a drug that helps to prevent mother-to-child transmission of HIV/AIDS (SOUTH AFRICA, *Government of RSA* & *Others v. Grootboom* & *Others* 2000; SOUTH AFRICA, *Minister of Health* & *Others v. Treatment Action Campaign* & *Others*, 2002). In 2013, the Centre for Human Rights and Development brought a case to the Supreme Court of Mongolia, which set an important precedent in ruling illegal two extraction and six exploration licenses for a mining corporation based on the constitutional right to live in a healthy and safe environment (MONGOLIA, 2013). The Centre suggested that Mongolia's ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) and the possibility of a complaint to an international treaty body helped to ensure a fair hearing and ultimately justice for the herders involved in the case. Yet, while the justiciability of economic, social and cultural rights has been demonstrated via cases at all levels, litigators and advocates must now grapple with the frequent lack of implementation of positive decisions. Further, despite monumental legal victories, poverty and substantive inequality still plague South Africa, twenty years after the end of apartheid, while the extractive industry continues to reshape Mongolia in ways that frequently undermine human rights.

Human rights offer a relevant language for building unity, providing legitimacy, and framing internationally recognised demands, while securing justice in many individual cases. However, the above paragraphs suggest that the "effectiveness" of human rights confronts vastly unequal power relations. As the long-contested Belo Monte Dam in the Brazilian Amazon moved forward in late 2013, Padre Claret Fernandes, a leader of *Movimento dos Atingidos por Barragens* (MAB, movement of people affected by dams), reflected: "The incredible speed of capital and its priorities run over everything […] The indigenous population was not consulted […] the day of evictions in Altamira is a stark reflection of this historical pattern of the violation of human rights prompted by the construction of dams" (FERNANDES, 2014). Frederick Douglass, former slave and abolitionist, was clear: "The whole history of the progress of human liberty shows that all concessions yet made to her august claims have been born of earnest struggle. […] Power concedes nothing without a demand. It never did and it never will" (DOUGLASS, 1950 [1857], p. 437). The abolition movement involved moral and even physical struggle, political negotiation, legislative change and legal battles, and ultimately the end of slavery was the first of many steps towards formal equality in the US, which has not yet consolidated into full substantive equality. This arguably leads to and adds urgency to the question: Who do we represent?

2 Who we represent

In part, we hopefully represent ourselves, our families and friends, our own communities facing different forms of injustice, the grassroots movements to which many of us belong in our own countries, and the political or moral commitments we have made. ESCR-Net's Board is elected by members from

members, based on principles of regional diversity, gender balance, and inclusion of social movements.

Two of our seven current board members are social movement leaders; the rest are officially representatives of NGOs. However, this perhaps offers too simple of a picture. All of the board members have spent the majority of their lives politically committed to and struggling for human rights. At our most recent board meeting, we began with the questions: What led you to become an advocate for human rights? Why are you committed to leading and helping to build a global network or movement to advance ESCR? Two of our board members—one from a social movement and one from an NGO— became politically engaged in college struggling against repressive governments, spent time underground, and dedicated their lives to advancing human rights. Another NGO representative spoke of watching the loss of a small family farm and then becoming aware of wider trends impacting both the Global North and South.

Yet there are substantial differences and periodic tensions between many social movements and NGOs, as well as between different types of movements. Social movement leaders are directly accountable to their communities, usually emerging from them and facing similar impoverishment, dispossession, discrimination or repression. Academics— not necessarily emerging from a given movement— often offer useful analysis, and many established NGOs provide needed legal or media expertise or access to decision-makers. However, the strategic analysis, decision-making processes, and political importance of social movements are sometimes undervalued or disregarded. From their earliest protests challenging dispossession and displacement in Durban, South Africa, the movement Abahlali baseMjondolo has been accused of being led by a 'Third Force' of outside agitators. The term was originally used to describe covert support from white security forces to Zulu nationalists fighting against the ANC in the final years of apartheid in South Africa. Today, the term suggests white manipulation and lack of agency of the poor. S'bu Zikode, a shack dweller, gas station attendant and first Chairperson of AbahlalibaseMjondolo, powerfully challenged several NGOs, academic and government critics, who had not seriously engaged with the movement but chose to speak about or for it:

> I must warn those comrades, government officials, politicians and intellectuals who speak about the Third Force that they have no idea what they are talking about. They are too high to really feel what we feel. They always want to talk for us and about us but they must allow us to talk about our lives and our struggles. [..] The Third Force is all the pain and the suffering that the poor are subjected to every second in our lives. [..] We are driven by the Third Force, the suffering of the poor. Our betrayers are the Second Force. The First Force was our struggle against apartheid. The Third Force will stop when the Fourth Force comes. The Fourth Force is land, housing, water, electricity, health care, education and work. We are only asking what is basic – not what is luxurious. This is the struggle of the poor. The time has come for the poor to show themselves that we can be poor in life but not in mind.
>
> (ZIKODE, 2006, p. 185).

Despite this critique, AbahlalibaseMjondolo has formed strong alliances— vetted by movement members— with the Socio-Economic Rights Institute of South Africa to serve as legal counsel, with Sleeping Giant to create the documentary Dear Mandela, and with academics like Richard Pithouse.

Instead of 'who do we represent,' the question might as well be: who must be central to our movement? In part, the answer of ESCR-Net, *SUR*, and a growing number of human rights actors over the past decade has been civil society organisations from every region of the world, with particular attention to the Global South, which has often faced dispossession and exploitation via the policies of governments and international financial institutions from the Global North. However, inequalities also exist within countries and regions. Some civil society organisations have access, even if imperfect, to national and international opinion and decision makers while others remain marginalised. More importantly, an individual civil society organisation, regardless of its profile or location, usually has minimal ability to affect societal change and secure human rights at a systemic level, when working in isolation. This argues for a growing and interconnected movement of grassroots groups and established organisations from all regions of the world.

In calling for a Poor People's Campaign to march on Washington, DC, months before his assassination, Rev. Dr. Martin Luther King, Jr. outlined his analysis of how societal change would occur:

> *The dispossessed of this nation— the poor, both white and Negro— live in a cruelly unjust society. They must organise a revolution against the injustice, not against the lives of the persons who are their fellow citizens, but against the structures through which the society is refusing to take means which have been called for, and which are at hand, to lift the load of poverty. There are millions of poor people in this country who have very little, or even nothing, to lose. If they can be helped to take action together, they will do so with a freedom and a power that will be a new and unsettling force in our complacent national life.*
>
> (KING, 1967, p. 59-60).

This dispossession and impoverishment has grown in the US and most of the world, and many from among the poor and precarious have begun to decry the injustices perpetuated by existing economic and political systems. The centrality and leadership of this social group was vital for Dr. King, yet he also imagined that many "from all groups in the country's life" would join and ultimately become leaders, like himself, in this movement to end poverty and injustice. Secondly, he understood that this movement must ultimately become international, noting that "we in the West must bear in mind that the poor countries are poor primarily because we have exploited them" and calling for unity with Latin American movements and anti-apartheid struggles in South Africa (KING, 1967, p. 62).

A recent study, mapping "World Protests 2006-2013", documented 843 protest events across 87 countries, suggesting that the largest number (488) challenged economic injustice and austerity, followed by grievances with the

failure of political representation. Many utilised the language of rights, and 70 were 'global' or organised across regions. After noting the growth and size of these protests as "another period of rising outrage and discontent" comparable to 1848, 1917, or 1968, the authors suggest:

> *Although the breadth of demand for economic justice is of serious consequence, the most sobering finding of the study is the overwhelming demand (218 protests), not for economic justice per se, but for what prevents economic issues from being addressed: a lack of 'real democracy', which is a result of people's growing awareness that policy-making has not prioritized them— even when it has claimed to— and frustration with politics as usual and a lack of trust in existing political actors, left and right.*
>
> (ORTIZ et al., 2013, p. 5-6).

I would echo the gravity of recent protests, both their scope and substance. The economic inequality and systemic issues that led to many protests remain. As uncertainty, falling currency values, and dwindling capital plague emerging economies, the tepid recovery in wealthier countries appears primarily to be a recovery of the financial system, which has avoided public takeover or even substantial regulation despite widespread condemnation and taxpayer bailouts. Where unemployment rates are falling, this is often due to a decrease in labour force participation rates and the growth of temporary, lower-paying jobs. Revolutions in computing and robotics may offer benefits that could be allocated widely in the future, yet seem to promise an extended period of dislocation, redundant labour, and growing inequality under our current economic model. Further, across many countries, there has seemingly been an increase in criminalisation, defamation and repression of human rights defenders and social protest, closing space for participation that is central to "real democracy" and attempting to silence public debate about the nature of our shared future.

To be relevant to popular uprisings and movements, my sense is that we must embrace the potential of human rights to raise critical questions about our economic and political systems via an internationally recognised framework, which emerged from social struggle and embodies demands for a just society. Even as many of us call for legislative and policy reforms, greater accountability, and international cooperation in line with evolving human rights standards, our origins as human rights organisations encourage an ongoing connection to the moral outrage that decries poverty amid global plenty, embraces substantive equality, and elevates common good above the privilege of a few. Similarly, despite different roles, approaches, and geographical locations, we ideally recognise ourselves as part of a movement for social justice and human rights, led by the poor, oppressed, exploited and the rest of us who have made a commitment to make human rights a reality for all. This is not a movement for someone else in a distant place. From the forces of technological change and global capital to the impacts of climate change and military conflict, our deepening global interdependence suggests that this must become a movement for our common future and collective human dignity and well-being.

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MARY LAWLOR AND ANDREW ANDERSON

Like Amnesty International and Human Rights Watch, Front Line Defenders is an international organization based in the Global North working to defend the human rights of people all over the world. Differently from other large human rights NGOs, however, Front Line's main work is not documenting or exposing human rights violations itself, but rather offering practical support to human rights defenders at risk working at the local and national levels. As Front Line's deputy director Andrew Anderson puts it, the organization's stance is not only a practical one, but also a philosophical one. For Front Line, human rights defenders working locally and nationally are the ones who actually bring changes forward. "It is the human rights defender who knows best what it is they need. They're also the most expert in the situation they are facing and the situation on the ground that they are trying to alleviate. So why would you try to barge in, instead of just supporting them to do their work?" asks Mary Lawlor, the organization's director, in an interview granted to Conectas last June.

Former director of the Irish section of Amnesty International, Mary Lawlor created Front Line Defenders (International Foundation for the Protection of Human Rights Defenders) in Dublin in 2001 to "literally try to protect defenders so that they could do their work without persecution". The decision to found the organization came after she attended a summit on human rights defenders and realized that there was no organization dedicated specifically to protecting human rights defenders at risk. "I was mostly interested not in human rights defenders who were working with human rights without running any risks but in those extraordinary people that have that special kind of courage to work, at great risk, to improve the lives of other people," she says. "There weren't any lofty ideals behind it. It was all about how to get practical, round-the-clock support to human rights defenders when they most needed it."

Front Line Defenders' work consists of supporting human rights defenders at risk by granting them what they themselves say they need to improve their security and ability to do their work. The organization, which has an emergency 24-hour phone line for human rights defenders operating in Arabic, English, French, Spanish and Russian, offers grants for urgent security measures, temporary relocation, medical and psychosocial counselling, and other services that defenders may need. Front Line also carries out international advocacy and offers networking and training opportunities for human rights defenders.

In this interview, Anderson and Lawlor speak about the origin of Front Line Defenders, the potential tension between large international organizations and "increasingly sophisticated" and influential local ones, as well as the difficulty of measuring impact in the human rights field.

* * *

Original in English.

Interview conducted in June 2014 by Maria Brant (Conectas Human Rights).

"ROLE OF INTERNATIONAL ORGANIZATIONS SHOULD BE TO SUPPORT LOCAL DEFENDERS"

Interview with Mary Lawlor and Andrew Anderson

Conectas Human Rights: During the opening of the last Dublin platform in 2013, you said that the main role of organizations in the North is to help support the work of defenders working in the field – not trying to set the agenda, but just supporting their work. Can you speak a little bit about how you got to this conclusion, given that you came from a large international organization like Amnesty, and also about what motivated this transition – leaving Amnesty to found Front Line?

Mary Lawlor: The reason I set up Front Line Defenders was because we wanted to work with human rights defenders at risk. Human rights defenders at risk are, in our eyes, the people who help build peaceful and just societies. They are agents of social change. Apart from that, I think they are the most amazing people out there, they are those who are willing to risk their security and, in many cases, their lives, not for themselves or their families, but for the rights of their fellow citizens. For me, that has always been a very motivating and inspirational sort of compass.

As you said, I did come from a big international organization, which has its own way of doing things. [When I worked at Amnesty], there was obviously a large, worldwide membership, and ICMs (International Council Meetings) where everything would be debated, but the work of the [Irish] section was basically to get the members to act on human rights violations around the world, wherever they were occurring, in accordance to whatever the priorities Amnesty were at that time, be they a certain campaign or a theme or something like that.

With Front Line Defenders, we just wanted to make it easier and safer for defenders to do their work, to support them in whatever way we could, because, at that time, although there were organizations working on human rights defenders, none were concentrating all their efforts on human rights defenders at risk, and on trying to find *from them* what they thought they needed to help protect themselves. And so that has always been our *modus operandi*.

Everything that we have done in Front Line, since we have started, has been at the request of human rights defenders. It is the human rights defender who best knows what he or she needs. They are also the most expert in the situation they are facing and the situation on the ground that they are trying to alleviate. So why would you try to barge in, instead of supporting them to do their work? We felt that was our job.

Conectas: And personally, how did you get the idea for Front Line, and how was the decision to leave Amnesty after so many years to do this?

M.L.: I was with Amnesty for a very long time. I was in the board for 14 years, and then I was chair for four years. Then I stepped out, and a year later I applied to be director and I remained director for 12 years. Then, in 1998, there was the Paris Summit on Human Rights Defenders, which was done as a cooperation initiative between Amnesty International, FIDH, France Libertés - Fondation Danielle Mitterrand and ATD Quart Monde, and I went to that. I was most interested not in human rights defenders who were working with human rights without running any risks but in those extraordinary people that have that special kind of courage, who were working at great risk to improve the lives of other people. So it was there really that the idea first sparked.

And I knew *one* rich person, so I approached this rich person with the idea of trying to protect human rights defenders at risk so that they could do their legitimate work. I got 3 million euros from this person to set up Front Line. So it all worked out very well! And then I was very fortunate and recruited Andrew Anderson from Amnesty. He was the Head of Campaigning for the International Secretariat, had huge experience, had been very involved in the Paris Summit and knew the issue of human rights defenders very well. And he is a great strategic thinker, so I was very lucky that he agreed to come and work with Front Line Defenders

Conectas: But do you think there is still a role for large international organizations?

Andrew Anderson: The first thing, as Mary has said, is that the people who make the most significant contribution to the better realization of human rights around the world are people working at the local and national levels. And Front Line's work is to support the security and protection of those human rights defenders working at the local and national levels. And that is a practical thing, but it is also a philosophical thing: we think they are the people who really make a difference in terms of moving human rights forward.

Of course, historically, international NGOS have done a lot of work and have made a large contribution in terms of international standard setting and campaigning about human rights issues in countries from which there was no information coming out. The traditional model of Amnesty International and Human Rights Watch was one of documenting and exposing human rights violations in countries around the world that people in those countries could not safely speak about, whether they were living under dictatorships in Latin America or in the former communist countries in Eastern Europe or other regimes.

I think their challenge now is that more and more human rights organizations in the Global South have the space to speak out about human rights in their own countries and also increasingly want to represent themselves in regional and international organizations. So there is an overlap or a potential for tension between increasingly sophisticated human rights organizations working at the local and national levels and the likes of Amnesty and Human Rights Watch and other international human rights organizations. One of the responses to that, from the side of Amnesty, has been to go more into different regions, to try to work more alongside human rights organizations at a national and some regional level. You can understand why they are moving in that direction. But, there seem to be challenges in terms of the cooperation between those organizations, in relation to space for funding, media attention, and representativeness and so on.

Yet, I would not like to say that what X is doing is wrong or what Y is doing is right. I think there is a role for international human rights organizations, but I do think that they should be careful about their interaction and their responsibility to human rights activists working an the local and the national levels.

Conectas: How do you decide which regions to concentrate your work? Do you have a quota for issues or regions? How does it work? And how do you incorporate the demands from the defenders themselves into your programs?

M.L.: We have a global reach; that is what we strive for. We obviously have regional strategy papers on different regions, in which we try to identify what the trends are, what risks human rights defenders are facing etc. But if a human rights defender comes to us for assistance, we take them. We do not say, "Well, you're outside our region or country or whatever set of countries that we prioritize." We do try to build up expertise on countries as they become more oppressive, but we do not have a country or set of countries or a geographic region that we focus on.

The program that has developed over time has been one in which we try to do the research on who the human rights defenders at risk are, where they are, what risks they face, especially marginalized groups such as women, LGBTI, indigenous peoples, and those working on economic, social and cultural rights, as well as civil and political rights. That is the broad framework.

And then, the first thing we do is we offer grants to human rights defenders at risk needing to take security measures. It could be anything: legal assistance to fight a spurious law charge, or defamation charge etc.; medical treatment if someone has been injured; unarmed body guards; money for buying CCTVs or building walls to make an office or a home more secure or for mobile phones or laptops so that people can communicate. We often pay for psychosocial counselling, because the stress is absolutely terrible, particularly for women human rights defenders facing issues such as sexual violence and all of that.

The second thing is advocacy. We try to do a lot of advocacy in the UN. We had an independent evaluator survey with human rights defenders that we had assisted in 52 countries and international advocacy came up very high up on their list of priorities. Defenders like to have their cases taken up. We take up all the cases to the UN Special Rapporteur for human rights defenders. We have had a rolling intern in the office of the UN Special Rapporteur for human rights defenders for years. The intern comes to stay with us for three months to get trained and then goes to the UN special rapporteur office for six months and then comes back to us. The program has given some capacity to the office to be able to take on more cases. We also have a rolling internship in the office of the Special Rapporteur for Human Rights Defenders in the African Commission; so all of the cases from Africa go to the African Commission as well. After we successfully lobbied the Irish Presidency of the EU for the EU Guidelines on Human Rights Defenders, and wrote the draft consultation paper, we set up an EU office to follow their implementation.

Third, then comes training, which, again, came about at the request of the defenders. [We offer three types of training.] The first is on personal security and risk assessment. The model is to train people in each region so that they will then go on to train their colleagues and others in the region. We also have trainers on digital security in the regions who work in English, French, Spanish, Chinese, Russian and Portuguese, and now we are moving into a second level as we are taking on digital security consultants who can do more one-to-one mentoring with groups on an

ongoing basis. We also do training on the E.U. guidelines twice a year, bringing together diplomats and human rights defenders. They have separate sessions and then they come together and discuss what are the possibilities and limits - what defenders can hope for and what diplomats are willing to do. It is a way of getting them to know each other as well.

Then we have add-ons, such as rest-and-respite programs for human rights defenders if they are burn out, if they have been in great danger and need a break, or for people who want to improve or develop a skill. We have these fellowship programs for them to come and acquire some sort of skill, such as learning English, or just to have a break from the relentless pressure they live under. We also have an agreement with the Irish government for temporary humanitarian visas of up to three months for people who are in extreme danger and need to get out quickly for a while. And we have the Dublin Platform every two years. Last year there were 135 defenders from over 90 countries. They come to learn from each other and share experiences, acquire new strategies, have a rest and also, hopefully, a bit of fun as well. And every year we give an award to a human rights defender who has shown exceptional courage.

So that is how the program has grown, based on the demands of defenders. Moreover, since the beginning, we have invited two defenders from each region for a two-day meeting to give input into our strategic plan. So this input, plus the input that we get through the trainings and through the Platform, become part and parcel of the next strategic plan.

Conectas: Could you provide an example of such input received from human rights defenders in your strategic plan?

M.L.: In our last strategic plan, which was 2011-2014, the big issue that we took by request of defenders was visibility, recognition and credibility. So we took on somebody who is very good with video and developed a YouTube channel with interviews with human rights defenders. Another thing we did is create a web page for every defender that we interact with, which has their biography and a short synopsis of who the defender is and what they are there doing and, if we have it, an interview or some video footage – obviously, always with the permission of the defender. We also do a lot of campaigns online, such as on Sochi or on the World Cup – these are new ways of bringing out the cases of human rights defenders and tying them to events. Additionally, we did public service announcements last year in Colombia in conjunction with MOVICE, and that worked well, so we're doing it this year again in Honduras, and are moving to television too. It is all about trying to bring out the voices of human rights defenders and have them speak for themselves and give them visibility, and recognize them, as an international organization. That, in turn, brings credibility and legitimacy they tell us.

Again, anything that we do is because someone has asked us to do it. A few years back, there was this whole issue of families. The defenders were saying that we could not ignore the families, that we had to give grants to cover the living expenses of the families if the defenders were imprisoned, or if there is some terrible tragedy and the whole family needs counselling. Obviously, we cannot take on families and just pay infinitely for their living expenses, but we do give grants for family support now, which we used not to. That is another direct response.

The program evolves almost organically. One thing leads to another. Once we have one thing in place, there is another idea from a defender or a deepening of a current idea, and we try and respond to that. But, of course, it all depends on resources and money.

*Conectas: What is the main **modus operandi** of your organization? If you could name the DNA of your work, what would that be?*

M.L.: I think it makes sense that organizations try to be as close as possible to the people that they are working with. Our informal DNA is that we are "fast, flexible and furious". The model that we developed was literally trying to protect the defenders so that they could do their work without persecution. That was it. There were not any lofty ideals behind it. It was all about how to get practical, round-the-clock support to human rights defenders when they most needed it, when they were at risk. At that time there was a slight hiatus before the bigger international organizations were able to kick in – and if someone is in danger, they need an immediate response.

The very first person that we helped relocate temporarily was this man from Congo. We help a lot of defenders temporarily relocate. Last year, we helped with more than a hundred relocations. Anyway, this man had been to the first Dublin Platform and had gone back to Congo. He just rang me one day. At that time, there were just two of us in the office – this young administrative assistant and myself. He said to me that the authorities were closing in on him and that he had to get out. He had gone to a friend's house but he figured that they would catch up with where he was. He asked me what he could do, and of course I did not have a clue about what he should do. He was in Lubumbashi and I did not even know where that was, I had to go look on the map. So I didn't know what to do, and this turned out to be the best learning experience for me at that time, because I said to him: "You talk to your colleagues and try to work out what is the best thing for you, how can you get out, where can you go and I'll ring you back in half an hour." And I did ring him back after half an hour. He had talked to one of his colleagues in the organization and they had decided that, if they could get money to rent a car, they would drive over this little known border that night. So they had come up with the solution. We sent the money over and they picked it up, left that night, got over the border and all was well. And that is what I mean by acting in support of the human rights defenders, but they decide what is best for them.

Conectas: The last question I would like to ask is /how to combine urgent issues with long-term impacts? Front Line is more concerned with urgent issues, but you also do some advocacy work with the human rights rapporteurs, and you have an intern in the UN and so on. So how do you combine these two types of work and how do you measure impact?

A.A.: That is very difficult. Much of the advocacy we do is on urgent cases, so it is kind of linked to urgent responses or reactive support for the human rights defenders at risk. So, the individual cases we submit to the UN or to the African Commission or to the Inter-American Commission or anybody else are largely reactive work. But, we also do some lobbying around more policy related issues. We were involved with promoting the adoption by the European Union of the guidelines on the protection of the human rights defenders in 2004, and we have an advocacy office in Brussels, which seeks to push and press the European Union to live up to the commitments they made. We have been pushing for a similar initiative in the context of the OSCE, the Organization of Security and Cooperation in Europe, to try to strengthen the priority and the practical measures for the protection of human rights defenders in the OSCE region. We don't do much work of that kind in the Americas region because the Inter-American system has been better established at an earlier stage. In

Asia, at the moment most of human rights defenders are a little bit fed up with what is happening with ASEAN, but there was initially some interest in pushing ASEAN to be more engaged with the issue of human rights defenders. If that came back on the agenda from the side of the human rights defenders on the ground, then we might look to support that in some way, but we would see our role as supporting the defenders in the region, rather than setting up a priority or an agenda in that regard.

But most of the advocacy we do is case-focused; it is not specific to longer-term objectives. And how do we measure that? It is very difficult. We do our own tracking and monitoring of what has happened to the individual and to the organization, but you are not really measuring if what you have done has had an impact, you are measuring whether, for the human rights defender concerned, their situation has improved. And that may have happened because of what local human rights defenders did or it might be because of some story that got into the media, rather than because of what Front Line Defenders did. Or it might be totally random that they were released or that their situation improved or whatever. Hopefully, we will have contributed.

Even for a local for a national human rights organization, it would be very difficult to measure whether a specific action has had a specific result, because those responsible for oppression against human rights defenders do not generally give honest answers on about why they have taken particular decisions. I mean, if you look at the release of a number of people in Russia in the run up to the Olympics in Sochi, we've heard different explanations. Some said it was a PR exercise by Putin to try to deflect attention from their human rights record down there. Somebody else said that it was because Khodorkovsky had some financial connections to somebody else, and that had to agree to a deal whereby he would not speak about some things. You get different people saying different things, and you can never be absolutely sure why anyone has done anything. I think probably the international pressure on the Greenpeace and on the Pussy Riot cases did have some impact on the context of Olympics release but you can't be absolutely sure if that's what caused it, if there were domestic issues or something else. It is a challenge. More and more donors want to measure impact, and think that human rights are like development, and if you dig a drill for clean water and have a beneficial impact for fifty people and you can measure it. But it doesn't really work like that.

Conectas - Yes, it is very difficult. But working with urgent issues is a little bit easier than just with pure advocacy.

A.A. - Yes, and that being said, human rights defenders from 52 countries responded to an anonymous questionnaire in our 2013 independent evaluation where they said our advocacy was the most important – slightly ahead of grants. The most important feedback for us is the feedback from the human rights defenders themselves. And many times they say that they feel that the support from us and from others has made a difference. One human rights defender has said that you can never be certain that the support [we gave] has had an impact on the government, but it always has had an impact on the human rights defender and their family, because the act of solidarity in itself has a positive impact.

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Human Rights in Motion

Tools

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ABSTRACT

The following article analyses the changes generated in the global human rights movement in recent decades by the resurgence of alliances of organisations from countries of the Global South. Based on the perspective of a national human rights organisation in Argentina, we reflect on our strategies and analyse developments in the processes used to define international agenda on human rights. We also examine the effects on mechanisms and institutions and on the capacity to implement the decisions made.

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THE GLOBAL HUMAN RIGHTS MOVEMENT IN THE 21ST CENTURY: REFLECTIONS FROM THE PERSPECTIVE OF A NATIONAL HUMAN RIGHTS NGO FROM THE SOUTH

Gastón Chillier and Pétalla Brandão Timo*

1 Introduction

The global human rights movement (GHRM) has undergone significant changes over the past 65 years. Since the adoption of the Universal Declaration of Human Rights in 1948 – both a landmark and the foundational symbolic framework for the movement - socioeconomic and geopolitical processes have led the GHRM to experience numerous changes. The founding of a series of human rights organisations in the United States and Europe consolidated the movement in the 1960s. These organisations, like civil liberty activists, became an important actor on the political scene (NEIER, 2003). Until the late 1980s, a specific model of transnational activism was consolidated within the GHRM. This model established a division of labour in the movement whereby local organisations worked to collect reports on human rights violations in their countries, while international organisations sought to give them greater visibility and force on the global scene.

Now, at the end of the first decade of the 21st century, there is broad consensus among members of the GHRM – social organisations, academics and experts, international officials, etc. – that a new scenario has emerged. This new context has led actors to rethink the model that has guided the GHRM's forms of organising, tactics and strategies for many years.

By GHRM, we refer to a conglomerate of social actors who coalesce around common values and discourse and that work together on the international level to meet a common goal: to defend, promote and protect human rights, and strengthen

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the systems and institutional mechanisms created for this purpose. Some studies emphasize the absence of top-down leadership in the GHRM and conceptualise it as a "transnational support network" – a kind of activism characterised by the establishment of horizontal, voluntary and reciprocal relations of exchange.

The increase in number and diversity of organisations in the GHRM in recent years has generated a more complex scenario. For example, some national human rights organisations increased their presence on the global scene, expanded their operations and strengthened their work agenda on the regional and international level. Organisations with years of experience in using international protection mechanisms to deal with human rights violations in their own countries diversified their actions to take on new roles in the global discussions that define agendas and in debates on institutional issues.

In this article, while basing ourselves on our work at the Centre for Legal and Social Studies (*Centro de Estudios Legales y Sociales* - CELS), we reflect on the context and the experience of this national human rights organisation from Argentina in reformulating and broadening its international scope of action. We also examine the implications of these changes for its local and global work.

2   Changes in the Global Human Rights Movement

A succinct overview of the history of the GHRM allows us to identify four main periods: the 1950s; from the 1960s to the 1980s; the 1990s, and from 2000 on.

After the adoption of the Universal Declaration, the international scene was dominated by diplomats and officials who coalesced around the ideal of preventing atrocities like those committed during the not so distant Second World War. At the beginning of the 1960s, there was an incipient opening for civil society participation. This participatory space was broadened during the 1970s (POSNER, 1997) due to the creation of some of the main international human rights organisations, including *Amnesty International, the International Commission of Jurists, the Centre for Legal and Social Policy, the Washington Office for Latin America,* and *Human Rights Watch.* The GHRM adopted a particular model of transnational activism in which the actions of these international organisations prevailed.

Their main actions were focussed on the elaboration of regulations and on institutional development, which meant intervening in processes for the codification and ratification of international human rights treaties. Practices that violate human rights were exposed primarily through public reports denouncing the situation and holding States accountable before the international community, according to the "name and shame" logic. This kind of campaign follows a pattern that Keck and Sikkink (1999) call the "boomerang effect", which refers to the triangulation between international NGOs from the Global North-West and local actors from the "underdeveloped South". This dynamic, which aimed to generate international pressure in order to influence the actions of the States, made a decisive contribution to exposing massive and systematic human rights violations, such as those committed by dictatorships, namely between the 1960s and the 1980s in various Latin American countries.

During the 1990s, the socioeconomic and geopolitical changes of the post-Cold War era and socio-environmental concerns brought major transformations to the GHRM. The distinction between civil, political, economic, social and cultural rights was questioned and re-conceptualized. In Latin America, after years of democracy, the movement felt the need to complement its analysis on and denunciations of States' actions and omissions with work on other relevant dimensions, like inequality and the actions of non-State actors. It is important to remember that these shifts in paradigm arose at a time when neoliberal tendencies based on the concept of a minimal State were gaining ground. The GHRM had to balance its emphasis on denunciations with elements related to the prevention of human rights violations and thus, the elaboration of public policies aimed at strengthening the role of the State as the protector of rights.

Also in the 1990s, local social movements underwent important changes, which affected the GHRM as well. The "major international conferences" - including the well-known World Conference on Human Rights in Vienna in 1993 – were held, with the participation of a wide range of non-governmental organisations. In Latin America, in the context of the return to democracy in the region, social movements diversified and were revived, while civil society gradually became more organised. As the sphere of public participation at the local and global level continued to slowly broaden, it revealed new opportunities for civil society, as well as the need for different actors to coordinate and cooperate on various levels in order to respond adequately to complex human rights issues.

A series of events at the beginning of the 2000s gave rise to a new era: changes in the weight of regional economies in the world,[1] the impacts of the "war on terror" led by the United States on human rights and the intense incorporation of communications technology into research, documentation and communication work,[2] among other factors. Changes in the distribution of power at the global level generated pressure on governance structures, which raised questions on legitimacy, representation and participation in an increasingly multipolar world. Furthermore, especially after September 11th, 2001, the global leadership that actors from the North exercised in the area of human rights was questioned and it became a source of geopolitical tensions.

In recent decades, democratic regimes in Latin America in particular are experiencing a period of stability – albeit one with nuances, tensions and exceptions. This has created the need to rethink relations between States and international human rights bodies.[3] What is more, governments with strong social agendas and their own views on human rights have come to power in the region, which has been reflected in their priorities for public policies and socioeconomic development. The mark these States are leaving is making it more complex for the GHRM in terms of its strategies and legitimacy.

In short, these factors have had important impacts on the GHRM in relation to its systems and mechanisms, how it relates to States, and the legitimacy of its main actors. The current context challenges the effectiveness of its traditional intervention model on several levels. Several questions have been raised regarding political legitimacy in terms of the basis of one's interventions: What is the basis of

our actions? Who are our allies? What has our participation and dialogue with the actors we are seeking to influence been like in the past?

Questions also exist on the way thematic agendas and the hierarchy of the issues on them are defined: What are the factors at play that determine why some issues and/or situations are given priority over others? Is the idea merely to point out the disconnect between "universal" human rights priorities and what is happening in the real world? The often volatile and asymmetric relation between international NGOs and local actors, in many cases, does not help the movement to establish processes that integrate the strategies, issues and nuances of locally sustained practices.

Finally, there is a need to reflect on the concrete impacts of the GHRM's strategies based on its commitment to implementation processes on the local level. These processes are essential for ensuring that the conditions needed to prevent human rights violations or to effectively protect such rights are met. In democratic contexts, the chances of implementing the decisions made at the international level depend on the organisations' capacity to sustain long and tedious processes at the local level, and to participate in the bodies overseeing the operationalization of commitments made by regional and international offices. It also involves keeping up-to-date with the actors and issues in order to grasp the changes brought on by the processes themselves. This is especially true when organisations seek to address the structural conditions that facilitate rights violations, by using strategies of dialogue aimed at strengthening the role of the State as the guardian of human rights, and to go beyond merely denouncing emergencies or intervening in grave crises.

This necessary commitment to the effective realisation of human rights demands that social organisations have the capacity to engage state actors not only in relation to denunciations, but also as stakeholders in the transformation processes. This requires an understanding of the State as a heterogeneous entity, full of contradictions and fissures.

3 Changes in the international work of a national human rights organisation from the South

Since its creation, CELS has worked in the international human rights protection systems in alliance with other local and international actors, with the goal of fostering change at the local level. Denouncing violations and building transnational solidarity networks has been one of our institution's main strategies since its inception. CELS was founded in 1979 during the preparations for the Inter-American Commission on Human Rights' visit to Argentina. This visit constituted a decisive step in the work to expose the violations perpetuated by the military regime in the country at the time.

However, in the midst of all the changes occurring in the GHRM at the beginning of this century, some international actions proved to be no longer effective for intervening in domestic affairs. At the same time, the legitimacy of international human rights protection systems were being seriously questioned, as recent processes to reform and strengthen them at the Inter-American level and within the UN have shown. In addition, the GHRM's traditional model of intervention proved to be inadequate and too weak to respond to these approaches and to address contemporary

human rights issues on the ground.[4] Furthermore, the local human rights movement in Argentina has been undergoing changes since the economic, social and institutional crisis that affected the entire socio-political background in 2001.

In this context, in order to regain its efficiency, our international work had to respond to both the global changes described earlier and the way we understand our activism on the national level. Knowledge acquired on the international strategies' positive results maintained the institution's interest in seeking innovative forms of lobbying. We also realised that some of these weaknesses could be counterbalanced by a process in which national work and knowledge on human rights issues generate input for regional and international mechanisms and standards; and then these, in turn, are used to intervene on the local level.

CELS was originally founded with the goal of working on the litigation of individual and collective test cases; [5] documenting and investigating human rights violations; and creating alliances with other national and international social actors. After the return to a democratic system in Argentina in 1983, the organisation responded to the need to expand the scope of its work to include the protection and promotion of human rights in democracy. In addition to continuing its work to denounce violations, the institution directed its focus toward intervening in the elaboration of public policies, promoting legal and institutional reforms to improve institutional quality, and defending the most vulnerable sectors of society's right to exercise their rights.

Therefore, in addition to its ongoing work to demand memory, truth and justice and an end to impunity for the crimes committed during the last dictatorship, CELS expanded its agenda in two directions. For one, it incorporated new issues, which include economic, social and cultural rights; the justice system; migration; prisons and criminal justice; mental health, and armed forces. Secondly, its work on these issues now involves both denouncing violations and intervening on the conditions that give rise to such problems. For example, denunciations of institutional violence have always been accompanied by work on the logic behind the way the bureaucracies in charge of public safety function, studies, and the identification of possible areas for intervention and lobbying.

After the 2001 crisis in Argentina, human rights organisations, social movements, trade unions and other civil society organisations experienced profound change. The scenario created new challenges for building alliances and raised new questions on how to advance human rights activism vis-à-vis the new government, which had incorporated the national human rights movement's historical demand for "truth and justice" into the centre of its agenda, in alliance with various actors. The government's position affected the way we selected and defended strategic lawsuits, gained access to the field, and produced knowledge on our lines of research and for all of our lines of work in general.

CELS, therefore, broadened and intensified its international work based on this vision of its place in the country and in the world.

This also meant that the organisation had to assume institutionally the need to work with strategic alliances to restore legitimacy to international protection mechanisms and make them more efficient according to our understanding of

this new phase. The processes to reform and strengthen these mechanisms both at the Inter-American level and within the UN involved a wide variety of actors and interests at stake. Here, criticisms of these bodies' performance were mixed with proposals that questioned their scope and jurisdiction. Meanwhile, the number of new political decision-making institutional spaces with potential impacts on human rights multiplied, especially on the sub-regional level – for example, within MERCOSUR and UNASUR processes. At the same time, non-specialized political forums proved to be increasingly open to human rights rhetoric. In sum, these factors brought to light the lack of strategic complementarity between the work being done in the different forums and instruments created with a human rights mandate on the regional and international level.

The importance of CELS' international work as a national organisation also demands that we reflect further on the nature of the link between local issues and those that we share with allies from other countries. In some cases, we are dealing with transnational phenomena or local manifestations of global issues for which analyses and proposals on this level are needed – such as, for example, migration issues. In other cases, we find regularities or coincidences for which we are not always able to identify the causal ramifications that link them to convergence processes; even so, they indeed call on us to share our experience in addressing similar problems – as is the case of the abusive practices of security forces. It is critical that we refine these analyses in order to elaborate effective strategies that enable us to obtain concrete results on the local level with our allies from other countries.

We describe below some aspects and examples of actions that are illustrative of the wider process that is transforming CELS' international work.

In regards to the international agenda, CELS strives to coordinate its local work – while respecting the activist preferences of its staff in Argentina at the time – with the regional or international vision the organization builds with peers from other countries while taking into account the issues in their respective national contexts. Regulatory developments and the way protection systems' mechanisms work are also taken into consideration. Working in horizontal coalitions is indispensable in the multipolar context, as the geopolitical changes we referred to in the previous section force us to revisit how we coordinate within the GHRM and how to strengthen the voices of local organisations from the South in the international arena.

A key step in this direction was the decision CELS, *Conectas Direitos Humanos* from Brazil, and *Corporación Humanas* from Chile made in 2010 to establish a representative/team in Geneva in order to participate directly in debates on human rights in the United Nations (UN)[6]. Prior to 2010, this participation had always been mediated by international human rights organisations. As a compliment to this, CELS also decided to participate in a network of organisations called HRCNet. This network is composed of international and national organisations from various regions that coordinate their efforts to monitor and intervene in the activities of the UN Human Rights Council.

Another important step was the creation of the International Network of Civil Liberties Organisations (INCLO), established officially in 2012 after years of meetings and efforts to coordinate among its members. The INCLO is a pioneering

initiative, as it brings together ten national-level human rights organisations from Europe, South and North America, Africa and the Middle East to take on coordinated international work. As organisations with a long history of work in their respective countries, each one of them has a record of sustained work and strong local alliances.

In terms of substance, one example of an impact on the agenda that goes beyond the traditional institutional world of human rights is the contributions we made, mainly from 2013 on, together with Conectas, to the process of revising the Standard Minimum Rules for the Treatment of Prisoners.[7] This process was conducted by the UN Commission on Crime Prevention and Criminal Justice. The participation of national organisations with experience in implementing these rules on the local level brought to light issues that were not being contemplated in the revision of these standards, yet are of extreme importance for prison and criminal justice systems in Argentina, Brazil and throughout the region. Among other aspects, issues like prison overcrowding and body-cavity searches were raised, which demonstrates the importance of using practical experience in implementing these regulations to influence the discussion process.

CELS is part of several other processes at the regional and sub-regional level, such as efforts to coordinate among various organisations on issues like transitional justice and human rights at the borders. Working with allies is fundamental for monitoring and intervening in institutional strengthening processes – both the ones we are following up on and the ones we contributed to during recent processes undertaken to strengthen the IACHR at the Inter-American level and the UN treaty bodies.

In the end, the nature of the relation, the modes of dialogue and the construction of alliances with other local actors – victims, social movements, political operators of the State –guide the coordinated deployment of local and international strategies. Experience with and knowledge of specific tools, like strategic litigation and international actions, constitute one of our organisation's main contributions to building strategic alliances with other actors.

Having professional and specialised knowledge can put an organisation into a position of leadership that is said to be "damaging and counterproductive to achieving the desired change" (BUKOVSKÁ, 2008, p. 8). This is why it is necessary to promote the collective construction of common knowledge, strategies and goals for change. In this context, currently, relations with other actors are moving away from the traditional approach of acting as the "legal representative" in a lawsuit or as "sources" for the elaboration of a report, and even doing coordinated work with allies. In concrete terms, when engaging in international actions, we work hand in hand with allies and local peers in Argentina and from other countries. One example of the kind of approach we are referring to here is CELS' relation with the *Movimiento Nacional Campesino Indígena* (MNCI), which is the current executive secretary of the Latin American Coordination of Rural Organizations (*Coordinadora Latinoamericana de Organizaciones del Campo, CLOC- Vía Campesina*).[8]

Sustained work at the local level also demands – and builds – greater capacity to engage State agencies in dialogue. It also allows us to grasp the nuances of different situations and to avoid generalisations that do not lead to real changes, nor are able to address certain circumstances.

Our experience in this position concretises our effort to work on several levels at the same time, negotiating between local, regional and global systems with the goal of applying discourses from the international law arena to concrete cases of rights violations, on one hand, and, on the other, framing local demands in terms of global human rights principles and practices. Some authors have referred to these processes as "vernacularisation" (MERRY, 2006).

The ultimate goal of all of CELS' international actions is to have an impact on the ground. For us, the fact that an international action cannot be justified on its own means that an ongoing process of collective construction and follow-up, in constant dialogue with state authorities, is necessary. This is, beyond any doubt, one of CELS' valuable contributions in terms of implementation capacity. One symbolic example of CELS' work in this area is its involvement in the process of implementing the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Argentina.[9]

4 Final remarks

CELS has been actively employed a wide range of strategies in local, regional and international human rights bodies since its creation in 1979. Different kinds of global changes have had repercussions on and called into question the legitimacy and the effectiveness of international bodies for the protection of human rights. Some of these processes have also brought about changes in the local movement. CELS took note of these changes and strengthened both its strategic alliances in the country and its international work. The expansion of the organisation's international work, in this sense, also has to do with the process that is needed to restore the legitimacy of these international spaces from a national perspective from the Global South.

The GHRM has shown that it has the power to resist and to bring change to the world. Actors engaged in the movement must help it to increase its impacts. To do so, they must reflect on the roles and strategies that best suit the movement's different components – national and international organisations, mechanisms of the system, States –to sustain the networks that are the most effective in extending the possibility of exercising rights to all people.

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NOTES

1. As the United National Development Programme's most recent Human Development Report pointed out, "for the first time in 150 years, the combined output of the developing world's three leading economies—Brazil, China and India—is about equal to the combined GDP [Gross Domestic Product] of the long-standing industrial powers of the North," and although "some of the largest countries have made rapid advances (...) there also has been substantial progress in smaller economies" (PROGRAMA DE LAS NACIONES UNIDAS PARA EL DESARROLLO, 2013. pp. 1 - 2).

2. The revolution in telecommunications technology has affected the GHRM in terms of both the means used for research and coordination, and the issues arising from the use of this technology – for example, the recent controversy sparked by revelations on the use of surveillance and espionage at the global level.

3. See Kletzel, G.; Timo, P. & Cárdenas, E. (2014) *Sistema Interamericano, el principio de subsidiariedad revisitado en el escenario actual de la región*. Capítulo del Informe Anual 2014 del Centro de Estudios Legales y Sociales (CELS). Argentina: Editorial Siglo Veintiuno. [printed].

4. One can affirm that other actors share a similar interpretation of this overview, which brought, for example, changes to the international funding scene. In pragmatic terms, this element allowed CELS to expand its work on the international level.

5. See Centro de Estudios Legales y Sociales – CELS (2008) *La lucha por el derecho*, 1a ed., Buenos Aires: Siglo XXI. Editores Argentina.

6. In 2012, CELS obtained the consultative status

with the Economic and Social Council of the United Nations.

7. See *Documento de Aportes del CELS y Conectas para el Proceso de Revisión de las Reglas Mínimas para el Tratamiento de los Reclusos de Naciones Unidas*, available at http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM_Brazil_Jan_2014/IEGM_Vienna_25-28-March-2014/CELS-S-VMTG.pdf

8. Thanks to the alliance between CELS, MNCI and CLOC-Vía Campesina, a thematic hearing was held at the IACHR's 149th regular session, which was the first time the issue of the economic, social and cultural rights of peasant farming communities in the Latin American and Caribbean region was addressed. Another example is the success of efforts to coordinate among 14 organisations in the region – including CELS and organisations of individuals with mental health problems and their family members – to have a thematic hearing at the IACHR on the legal capacity and access to justice of people with disabilities, especially psychosocial ones. The hearing was held during the IACHR's 150th session. Users of the mental health system participated in the event and presented the issue for the first time before this regional mechanism.

9. See: *Explicación del Proyecto presentado por las organizaciones de la sociedad civil para la implementación del Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes (OP-CAT) ratificado por Argentina en 2004*, available at: http://www.cels.org.ar/common/documentos/opcat_explicacion.pdf

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ABSTRACT

Eighty-six years on from the adoption of the Universal Declaration on Human Rights,
how are we doing? Are we getting better at managing this chaotic planet and "protecting
the human"? And, given that, what does the future hold for human rights advocates and
campaigners? In this article, the author attempts to address these questions. By focusing
on a systems-level analysis, the author looks at the planetary system in three parts. First,
the biosphere, upon which the life of our fragile species depends; then, the economic and
financial systems that now largely dictate our fate; and finally, the morass of international
bodies whose job it is, technically speaking, to promote and protect human rights into the
future. The author concludes in an optimistic note, giving five recommendations primarily
addressed to the human rights sector in their campaigning activities.

SYSTEMS, BRAINS AND QUIET PLACES: THOUGHTS ON THE FUTURE OF HUMAN RIGHTS CAMPAIGNING

Martin Kirk

Eighty-six years on from the adoption of the Universal Declaration on Human Rights, how are we doing? Are we getting better at managing this chaotic planet and "protecting the human"? And, given that, what does the future hold for human rights advocates and campaigners?

This article is my attempt to address these questions. I am going to go off-road a bit, by which I mean that rather than building a case on traditional policy analysis or statistical trends (although there will be some of that), I will focus on a systems-level analysis. Three systems in one, actually: the biosphere; the economic and financial systems; and international bodies. This will lead to five recommendations for human rights campaigning and a short reflection on what to do with the fact that rationality and reason can only take us so far.

I premise everything on an idea eloquently captured by Susan George:

> *Study the rich and powerful, not the poor and powerless.... Let the poor study themselves. They already know what is wrong with their lives and if you truly want to help them, the best you can do is give them a clearer idea of how their oppressors are working now and can be expected to work in future.*
>
> (GEORGE, 1976 apud STATE…, 2014).

The poor and powerless in this quote can easily be switched to the abused and oppressed; they are often the same people and even when they're not, the same forces of oppression apply.

I am not going to pull any punches. I present my case in a way that would be unlikely to convince a general public audience: using stark, to-the-point analyses and making the strongest appeals I can muster. We've learnt from experience that using doomsday scenarios and fear to engage the public is a counter productive strategy (CROMPTON; KASSER, 2009) but this piece is written for professionals, people fully capable of considering all realities, however unsettling.

Notes to this text start on page 396.

1   How are we doing?: A Systemic Look

So, how are we doing? No sane analysis could conclude anything other than that we have driven ourselves into a state of deep and urgent crisis. It's not hyperbole to suggest that the magnitude of the problems we face is almost beyond imagining. And what's more, we're driving ourselves further and faster into danger with every day that passes.

In this article, I'm going to side-step some traditional human rights concerns and look at the planetary system in three parts. First, the biosphere, upon which the life of our fragile species depends; then, the economic and financial systems that now largely dictate our fate; and finally, the morass of international bodies whose job it is, technically speaking, to promote and protect human rights into the future.

It is only through this grand, systemic perspective that we can understand why we are about to enter a phase of chronic and widespread human rights abuses, and how we might best protect what we can. It's in the changing climate, the economic chaos and political norms that the seeds of systemic human rights abuse are sown and watered. If we want to do more than fiddle while Rome burns, we must focus more of our attention at these systems and, critically, at what holds them together.

There are discernible and predictable patterns within any complex system. The full earth system may be far more complex than we can understand but it obeys certain laws. It has inputs and outputs, stocks and flows, control and feedback, and most of them are beyond the predictable influence of any individual or government. This is one of the paradoxes of the age: governments have never been more powerful but, at the same time, have never been less able to deliver peace and justice. It's also an unpalatable fact for human rights advocates because, like any power broker, we must believe in the potential of our influence. In our quests to make things better, we pick campaigns that we think—albeit often with considerable optimism—our power can achieve. But all the optimism in the world has not managed to drag our focus to the system in its entirety. We – the human rights professionals – subdivide. We select, prioritise and focus. We choose campaigns according to pre-prescribed categories of issue, expertise and competence. Of course we do! How else could we face Monday mornings? The enormity of the task would crush our spirits. So we adopt this managerial approach, like our leaders above us. It is how we have been taught.

The problem is that this managerial approach locks us into understanding and effecting only technical changes, at best. It rewards us for using categories that separate and as much as they focus. It's like we're trained to tinker with the carburetor in an internal combustion engine when what we really need to do is change the fact that it internally combusts. We are trained to see as separate things that are profoundly linked: NSA spying and the abuse of LGBT rights in Uganda, for example; the epidemic of suicides amongst farmers in India and the destruction of the Amazon rainforests; the explosion of student debt in the US and rising food prices in Kenya. Because we see from this fragmented perspective,

we are constantly dazzled and horrified by what the system logically spews out in the guise of brutality, mass poverty and conflict. We behave as if each atrocity was somehow a single, even natural, aberration, to be fixed with the reigning in of this dictator, the passing of that law or the signing of these international goals. We see so many Syrias; we live for so long with the Gaza Internment Camp; and we are asked so often to give money, time or space for an unending stream of starving children, death row convicts, and pitiful migrants that it can feel indulgent to spend time thinking in what can feel like unduly abstract terms, or in ways that contradict so much of the wisdom we received at school, from our parents, from our leaders. And so they, our leaders, get away with failure on a colossal scale: the failure of not being honest about how trapped they are in systems they cannot possibly understand, control or diverge from.

Furthermore, we tend to have very short memories when it comes to cause and effect—just think of how quickly a new government is blamed for the state of a nation, or how loudly we laud, or blame, the people we see immediately before us in revolutions—but the hard truth is we almost always give undue weight to what is immediately in front of us, and we are largely incapable of achieving all the insight into, let alone control of the forces that clothe some of us in luxury while damning many more to penury and pain. But what's certain is that we are limiting the insight we could have with many of our current practices. The only sensible, appropriately humble approach is to study the forces and principles inherent in the whole system.

2 Biosphere

So let's start with a look at the system that permits all other systems: our life-sustaining biosphere. It's been brutally evident for a while now that this system is adapting to significant pressures. The stock of CO_2 in the atmosphere is producing dangerous effects and we are doing worse than nothing to address the cause. Climate change has been known about since the 1960s. World leaders first took serious note of it at the Rio Earth Summit in 1990. Since Rio, we have increased the amount of CO_2 we pump into the atmosphere every year by 61%. We are not just failing to reduce global emissions, we are increasing them every single year, save for a small decrease after the economic stagnation caused by the 2008 crisis.[1] Once all the sound and fury of public relations and politics is stripped away, our simple failure is stark.

Now, assuming that a 2 degree Celsius rise in global temperatures is the point where things turn from bad to worse for humans, and a point we therefore want to avoid, we can pump roughly 565 gigatonnes more CO_2 into the atmosphere by mid-century. At current best estimates, the reserves of oil already located and scheduled for burning[2] will pump out 2,795 gigatonnes. So, bye-bye 2 degrees, and probably 3 and, very possibly, 4 degrees (MCKIBBEN, 2012). No one knows exactly what will happen with temperature changes, but according to Thomas Lovejoy, once the World Bank's chief biodiversity adviser, "If we're seeing what we're seeing today at 0.8 degrees Celsius [rise], two degrees is simply too much" (MCKIBBEN, 2012).

By "what we're seeing today," he means, in the words of the Global Humanitarian Forum, "[M]any communities face multiple stresses with serious social, political and security implications…. Millions of people are uprooted or permanently on the move as a result. Many more millions will follow" (GLOBAL HUMANITARIAN FORUM, 2009, p. ii). He means the increase in extreme weather events,[3] and the 14% increase in incidence of conflict we are seeing that seem attributable to rising temperatures (HSIANG; BURKE; MIGUEL, 2013).

I don't need to belabour this point; the statistics are readily available. It is, however, worth repeating just a sample of the IPCC's most recent predictions, to underline the point that what we are seeing now is tame compared to what is coming. In Latin America, they predict the "[G]radual replacement of tropical forest by savannah in eastern Amazonia; significant changes in water availability for human consumption, agriculture and energy generation". In Africa, "[B]y 2020, between 75 and 250 million people are projected to be exposed to increased water stress; yields from rain-fed agriculture could be reduced by up to 50 percent in some regions; agricultural production, including access to food, may be severely compromised". In Asia, "freshwater availability [is] projected to decrease in Central, South, East and Southeast Asia by the 2050s; death rates from disease associated with floods and droughts are expected to rise in some regions" (THE CURRENT…, 2014). And bear in mind, the IPCC has a history of overly conservative predictions.

Sir Martin Rees, holder of The Albert Einstein World Award of Science and the Isaac Newton medal and former President of the Royal Society, routinely now asks the question, "Is this the last century of humanity?" (REES, 2005). In a book he published in 2003, he argued that the human race has a 50/50 chance of making it through to 2100.[4] And then there's James Hanson, perhaps the planet's most prominent climatologist, who, after years of polite research and lobbying, is now more likely to take to the streets to protest, and saying that if some of the planned projects to exploit new sources of fossil fuels, like the tar sands of Canada, go ahead, it could spell "game over for the planet" (MAYER, 2011).

You can take issue with either one of these or the many other similar opinions by highly credentialed scientists, but you can't reasonably discount them all. Even if one of them is half-right, we're headed for the rapids. And as practically all of history teaches us, in times of stress, human beings are quick to turn on each other. In the extreme stress we are about to face, is it possible that we will even find the living ideal of universal human rights wiped off the map entirely? Can such things withstand permanent stress and conflict between mammoth corporations, governments and economic blocs? As the old Kikuyu proverb says, "When elephants fight it is the grass that suffers".

3 Financial and Economic System

We'll loop back to the climate later, but now we turn to the financial and economic system and the trajectory that is setting for us.

Oxfam made a great splash recently by drawing attention to the fact that the richest 85 people on the planet have the same wealth as the poorest 3.5 billion

combined (OXFAM, 2014). We need to acknowledge just two simple facts to see what this means for the future of human rights. First, that it didn't come about by accident; it is the logical outcome of our economic and financial system. The most immediate cause is the deliberate and uncompromising neoliberal policies that have been dominant in the West and forcefully imposed on much of the developing world since the 1980s. So, whereas inequality always has, always will and always must, at some level, be part of human society, what we see today is a very modern phenomenon, borne of the logic with which a particular—and, I would argue, extreme—ideology has infected the economic system. And the grip this ideology has on global power structures is being consolidated daily (MONBIOT, 2013).

The second fact is that inequality causes social disharmony, to put it mildly. Kate Pickett and Richard Wilson more than adequately proved the point in their seminal 2009 study of wealth inequality within and between nations, The Spirit Level (WILKINSON; PICKETT, 2009, 2014). Pick an indicator of social well-being and inequality makes it worse. Higher homicide rates, teenage pregnancy, incarceration levels, obesity, child mortality and lower educational attainment are all correlated with rising inequality. Studies since the publication of the book[5] have reinforced everything it said and added a few impacts for good measure: rising inequality also fuels consumerism, adds to personal debt and even increases levels of narcissism. In other words, an unequal society is an unhealthy society. At the levels we are seeing globally today, to foster, or to not fight to reduce, systemically driven inequality is akin to giving a free pass to abuse of the species.

To put it another way, anyone concerned with levels of human rights abuses in the future must work to change the logic driving this inequality-causing economic system in the present, not because of some overlapping values imperative or political allegiance with other social justice campaigners, but because the latter is creating all the causes and conditions—on a planetary scale—necessary for the former to sky-rocket. The cause and the effects may or may not end up being closely linked in time, but at the level of the planetary system, a die has been cast.

It's not difficult to pinpoint some of the structures and decisions that this infection has caused. Any list of the top ten must include tax havens; corporate exceptionalism under the law (think about the idea that corporations are "too big to fail" to see the sharp end of that trend); the flooding of politics with money, particularly in the US; and trade rules heavily rigged in favour of those with the most money and lawyers—trade rules, furthermore, that are even now being redesigned, in the guise of the Trans Pacific Partnership (TPP) and similar deals, to invest even more power in corporate, profit-driven hands (MONBIOT, 2013). And supporting it all is the creation of the hyper-consumer, whose compassion is dulled and whose competitive instincts are permanently primed[6] thanks to ubiquitous demands to buy, buy, buy and then continuous glorification of the idea that happiness is what you own. What else is the $ 500 billion advertising industry for? Taken all together, the global economy is essentially now a wealth extraction system; ruthlessly efficient at drawing financial and resource wealth away from the majority of people.

The reasons for all this are, of course, many and complex. But stand far enough back and it is also quite simple. Essentially it boils down to the fact that the structural incentives and rewards that drive this corporate capitalist system are unable to directly register anything but economic value. The system is deaf, dumb and blind to climate destruction and mass human suffering. It is, at this stage, far bigger than any government or corporation. It is, to all intents and purposes, a living force. It's not alive in any traditional sense, of course, but it is undoubtedly possessed of an energy beyond our control. Unless the logic driving it is changed, the future is pretty much set in stone.

What's rather strange to consider is that the system has a powerful immune system made of human beings with which it fights off attacks. A part of this is the small army of apologists we are all very familiar with, the extreme examples being the likes of the Fox News network. Dangerous and regressive though they are, however, conservative talking heads are far from being the most pernicious enemy. The real white blood cells in the bloodstream are the rank and file employees, those decent, well-meaning people who follow their conscience, with integrity, to promote Corporate Social Responsibility (CSR) programmes, supply chain upgrades and recycling schemes; NGO employees who unwittingly distract people from seeing the horror of the system by promoting the false solution of charity; and a mainstream media trained, and sometimes forced, to see and describe only so much. Good intentions are being exploited, and workers, used, as little more than human shields to protect the ability of the system to push onwards, "business as usual". Even the governing class is only accountable to a degree; as long as they work within the system—which they must to get to be the governing class; or, as John Ralston Saul describes it, "[T]hey are precisely the people whom our system seeks out" (SAUL, 2013, p. 26)—their power is limited. If it's starting to sound like I'm invoking an evil sentient force, just remember: the system is only doing what all complex systems do: protect and grow itself.

4 International System

Finally, before we turn to the good news, a look at the third part of the international system: the constellation of institutions that are, at least in principle, about more than generating capital.

The United Nations is as central a node of this system as there is—the United Nations in its broadest sense, that is, and thus including the World Bank and the International Monetary Fund (IMF).[7] Until recently, corporate influence over these bodies has been kept somewhat contained and out of sight. That's not to say corporate interests weren't always a big part of the West's global development plan: the structural adjustment plans of the 1980s and 90s were a clear example of the hammers used to beat down the walls of protection developing countries needed to develop industry of their own (just as the West had done at a corresponding stage in its development) so that big Western corporations could set up shop. Still, there was a time when corporations and private interests were rarely seen at the public policy-making table.

That is all changing now. Close observers will know that we are witnessing the slow corporate infection of the whole UN system. It's not too outlandish to suggest that we could be witnessing the initial stages of the privatisation of the United Nations. To take just one example: a figure no less than Ban Ki-Moon, the Secretary General, is making it his personal mission to usher in a new era of "partnerships" with the private sector. In doing so, he is picking up and super-charging an initiative launched by Kofi Annan in 2000, the Global Compact. According to official literature, The Compact is "a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption" (BAN, 2013).

To help him in his mission, Mr. Ban has broken with protocol and appointed a new Assistant Secretary General without General Assembly approval. He could only make this off-budget move because the post is paid for by Bill Gates. And, as it happens, it has been filled by Robert Orr, a long-standing affiliate of Mr. Gates (LEE, 2012). So now we have this private, unaccountable individual who, by dint of the fact that he hoarded the greatest amount of personal wealth the world has ever known, is allowed to finance the highest levels of the UN.

The small, if pointed, example of Gates and Orr aside, the pragmatists amongst us might reason that bringing big business into the UN tent and getting it to commit to such lofty principles is an excellent idea, as is channeling the oceans of wealth they control towards the beleaguered UN. The problem with this view was neatly summed up by former UNICEF Director Carol Bellamy: "It is dangerous to assume that the goals of the private sector are somehow synonymous with those of the United Nations, because they most emphatically are not" (DEEN, 1999).

The case of KPMG is just one example of what these emphatically different goals look like in practice. KPMG is built to generate profit and grow, as the system demands. That is its purpose, neither good nor bad. The problem comes when we forget that that is its overriding purpose and give it influence over structures that are built for other things. Here's why.

KPMG has been involved in the Global Compact since the beginning. Its commitment to the Compacts' ten principles, however, has not stretched to stopping it from setting up illegal tax shelters for its wealthiest clients. In 2003, an investigation by US attorneys found that, by actively creating illegal tax heavens, KPGM had deprived US citizens of $2.5 billion in taxes. Once caught, KPMG admitted wrongdoing and paid $456 million in penalties.[8] Clearly, then, signing the Compact's 10th principle to "work against corruption[9] in all its forms" was more of a symbolic act for KPMG, and not something that need interfere with its core business. To add insult to injury, KPMG has since joined the 10th principle's working group, whose job is "to provide guidance for work plan of the Global Compact Office on the 10th principle"[10]—talk about foxes in the henhouse!

KPMG is behaving in a way that is entirely consistent with the logic of a neoliberal system; it is doing what any large economic entity would do. How

else have we got to the stage where one third of all privately held wealth—at least US$26 trillion[11]—is held in tax havens? By being selective about how they interpret the rules, private interests are able to help build a deeply exploitative system behind the scenes, while still appearing as generous global citizens, helping smooth the edges of that system in public.

So, to summarise that brief tour of the three central systems within the larger global operating system that are bearing down on human rights, we have a biosphere careening inevitably towards violent unpredictability, if not catastrophic collapse (catastrophic for humans and some plants and animals, that is). We have a corporate capitalist economic system that can only recognise financial value and is incapable of hearing the screams of desperation echoing back at it as a result of the chaos it causes. And the closest thing we have to a global governance system is both weak and increasingly falling prey to that same neoliberal logic.

The changing climate will likely dry up vital natural resources in such a way as must pit countries against countries and powerful interests against powerful interests. Scarcity is on the horizon and we know from long and bitter experience that scarcity leads to tension and conflict. As British philosopher John Gray points out, scarcity and the attendant evils it brings, such as wars fought over access to rivers and fertile land, are in fact the norm in history.[12]

5 Recommendations

You'd be forgiven for feeling pretty bleak at this point. If so, I hope I can steer you back to hope and passionate resolve by the end. I am actually an optimist. I believe that just as we built the logic of the world's operating system, so we can change it. I believe Martin Luther King when he reputedly said, "the arc of the moral universe is long, but it bends towards justice".

My first recommendation for the human rights sector is to get radical. By which I mean, see the forces around us for what they are and do everything we can to change their fundamentals. A radical is someone who thinks or acts outside the Overton Window of the day, what is today generally accepted. And who, or rather what, determines today's Overton Window? Contrary to received wisdom, it is very rarely the mainstream leaders of the day; all they do is vie for power within it. In truth, the Overton Window is an articulation of the imperatives of the system. When the system prioritises economic growth above all else, as ours does, anything that seriously questions this will be labelled radical and ejected from polite society. Do we really believe that the best way to achieve change in the short lives each of us has on the planet is to be led by the nose in this way? It is the antithesis of that most precious of human rights: freedom of thought. Once you perceive the system in its entirety and recognise the inevitability of what it means for human rights, I challenge you not to find yourself thinking radical thoughts. Embrace them. Speak them. And remember what George Orwell is reputed to have said: "in times of universal deceit, telling the truth is a revolutionary act".

My second recommendation would be to find and align with the many

others who are thinking radical thoughts. The crowds in Zucotti Park, Tahrir Square, Gezi Park and the street of Rio de Janeiro thought and spoke radical ideas. They didn't put access and manners before the imperative for justice. If we want to challenge the system, they are our guides and inspiration far more than the latest CSR initiative or tepid politicians. The day we see Amnesty International banners painting the sky alongside Occupy Wall Street, *La Via Campesina*, Idle No More and the Chilean students is the day we will be witnessing a truly powerful chorus of people whose eyes are open and whose minds and spirits are awake. Better that, by far, than ploughing time and energy into the UN Post-2015 agenda that, because it is a direct product of the system, can only ever work to prolong "business as usual".

My third recommendation is to learn about brains. This battle will be won or lost in the human mind. The world we've created is a reflection of our consciousness, so if we want to change the world, we need to change the way our brains work. That's not as Orwellian as it sounds. Our brains are never the same from one minute to the next; they are being constantly influenced by our environment. So when I talk about changing how our brains work, I am really talking about affecting the direction in which they will evolve. Help them see the big picture, rather than be distracted by the small, shiny or grotesque. We know so much more about why people believe and act as they do than even ten year ago. We should be looking to insights from this learning and hiring people trained in understanding these things. I'm talking about linguists, cognitive scientists and social psychologists. We're a long way behind the times in this; Edward Bernays wrote his seminal book Propaganda in 1928 (BERNAYS, 1928) and got the top echelons of corporate America to take the psychology of public opinion seriously.[13] If the human rights sector could get up to speed with his 1928 insights, that would be an excellent development. But we can do much better than that, if we just recognise and invest in the expertise we need.

My fourth recommendation is to get serious about systemic thinking. It's how Microsoft got to be Microsoft. But they were only ever thinking small time; we need to think big. We need to make reading the systemic flows and understanding genuine pressure points — which are often very different from the ones traditional policy analysis will lead us to —second nature. We need to be able to identify the ventilation shafts in the Deathstar of the neoliberal system, and systems analysis is the way to do that.

My fifth and final recommendation is to re-imagine what the Internet is good for. Sending emails and writing blogs is all well and good, but the Internet is also essentially a giant ear. With modern analytics tools, we can calibrate our laptops to hear what the world is saying in the grandest and the most granular detail. We can listen to the collective mind as it processes thoughts. And with the right experts on hand, we can make sense of it. We can move beyond firing opinions into dark cyberspace and hope they hit something, or someone, useful. We can ride the waves of belief and opinion, rather than be tossed here and there in constant reactive mode. And, of course, we can organise on a previously unimaginable scale.

Done with well-informed mindfulness and consideration, I believe all this will help us work with the grain of human nature. It's easy to miss the fact that neoliberal hyper-consumerism is a phenomenally expensive and difficult boat to keep afloat, because it relies on constantly priming some of humanity's least productive values. Of course people are selfish and greedy in part, but in greater part we are compassionate, empathetic and kind, and these are far more powerful motivators. Empirical science says so (CROMPTON, 2010). It takes a $500 billion[14] a year advertising industry, massive communications infrastructure (what else is the Rupert Murdoch empire?) and untold amounts spent in greasing political wheels to keep us entranced with this system. It's about as natural as plastic–which leads me to my final half point.

The scale of the case I've made here is outrageously grand. For me, it all boils down to who we are, as humans. What are our short lives for? We have the answers everywhere we look. We have each been taught them according to our own traditions and cultures, but even a brief glance at what the wisest, most astonishingly brave and inspiring people throughout history have told us gives us an answer. Buddha, Socrates, Plato, Jesus, the Prophet Mohammed, Rumi, all the way to Mary Woolstonecraft, Mary Seacole, Eleanor Roosevelt, Mahatma Gandhi and Nelson Mandela: at the beating heart of what each one said was the truth that the highest purpose of any life is the striving for the happiness and well-being of others. It is in the quiet places within each of us that we will find the answers and the strength needed, and so the connection to our true nature is the final source of understanding and hope. We must each go about this in our own way, but if we do, I have no doubt that we can change the direction of this world.

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NOTES

1. See: <http://co2now.org/Current-CO2/CO2-Now/global-carbon-emissions.html>. Last accessed on: 12 Aug. 2014.

2. Scheduled for burning here meaning that it has been factored into the economy via shares and stock prices. In other words, some of the biggest economic entities on the planet have already cashed in on the value of burning these massive reserves.

3. See: <http://www.nasa.gov/centers/langley/science/climate_assessment_2012.html>. Last accessed on: 12 Aug. 2014.

4. See: <http://www.theguardian.com/books/2003/jun/14/featuresreviews.guardianreview10>. Last accessed on: 12 Aug. 2014.

5. See: <http://www.theguardian.com/commentisfree/2014/mar/09/society-unequal-the-spirit-level>. Last accessed on: 12 Aug. 2014.

6. See e.g. Tim Kasser (2002); also Tom Crompton (2010).

7. See: <https://www.imf.org/external/np/exr/facts/imfwb.htm>. Last accessed on: 12 Aug. 2014.

8. See: <http://www.irs.gov/uac/KPMG-to-Pay-$456-Million-for-Criminal-Violations>. Last accessed on: 12 Aug. 2014.

9. I'm using the definition of corruption the UN—and indeed the Global Compact—use: "The abuse of entrusted power for private gain". See: <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle10.html>. Last accessed on: 12 Aug. 2014. By acting to set up illegal tax shelters, in my opinion, KPMG clearly abused the power entrusted to it, and used it for private gain—albeit not always their own.

10. See: <http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2008_06_10/Background_Materials.pdf>. Last accessed on: 12 Aug. 2014.

11. See: <http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf>. Last accessed on: 12 Aug. 2014.

12. See: <http://pypaik.wordpress.com/2009/11/02/the-ethics-of-scarcity-on-john-gray-and-j-g-ballard/>. Last accessed on: 12 Aug. 2014.

13. For a wonderful exploration of this, watch the BBC Documentary "The Century of the Self" by Adam Curtis.

14. See: <http://www.nielsen.com/us/en/insights/news/2013/global-ad-spend-grows-3.2-percent-in-2012.html>. Last accessed on: 12 Aug. 2014.

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ABSTRACT

Contemporary women's rights organizations and movements work in a challenging context of fewer resources, more risks, increasing violence and inequalities, and environmental uncertainty. As a 'movement support' organization, The Association for Women's Rights in Development (AWID) is responding to this context with a model of collaborative movement building - building our collective power, expanding the base of individuals and organizations engaged in women's rights struggles, and jointly articulating inclusive and transformative agendas for change both in the world around us and in our own practices. This article illustrates how AWID's 'movement support' model – based on collaboration and channels of dialogue with our membership and broader constituency – is helping to advance our shared goals of human rights, peace, gender justice and environmental sustainability worldwide.

A 'MOVEMENT SUPPORT' ORGANIZATION: THE EXPERIENCE OF THE ASSOCIATION FOR WOMEN'S RIGHTS IN DEVELOPMENT (AWID)

Rochelle Jones, Sarah Rosenhek and Anna Turley

1 Introduction

A cursory glance at the history of human rights and its intersection with gender issues over the past 25 years elucidates the important role that social movements, and women's rights movements in particular, have played in continually expanding the framing and conceptualization of human rights and gender justice. These expansions of the human rights framework were not the result of a sudden enlightenment on the part of governments nor the United Nations – but rather of the concrete demands for recognition of claims emerging from the collective struggles of indigenous people, domestic workers, sex workers, Lesbian, Gay, Bi, Trans, Queer and Intersex (LGBTQI) movements, migrants, rural people, youth, ethnic and religious minorities, and others, and their consistent engagement with the human rights system at national, regional and international levels.

Few movements have changed the human rights framework more fundamentally and radically than women's rights movements[1] around the globe. Women's rights organizations play both a catalytic role in promoting women's rights and gender equality as well as in advancing other critical development and human rights goals, contributing to structural and legislative changes, sustaining communities, engendering institutions and normative structures, and transforming behaviour and attitudes. Enabling conditions that do not address the challenges faced by women's rights organizations, whose status in many respects serves as a bellwether for broader civil society, will undermine the progressive realization of human rights for all people.

Through 30 years of participation in women's rights organizing, we have

learned that sustainable transformation to ensure that women's rights and gender equality are a lived reality for women and girls around the world is possible only when we work together through our organizations and movements and when these organizations obtain the meaningful funding they require. Recent research by AWID, for example, demonstrates the huge reach and transformation that is possible when organizations working to build women's collective power for change receive serious resources for an extended period of time (BATLIWALA; ROSENHEK; MILLER, 2013). As an 'infrastructure' organization, AWID is responding to this need to work together with a model of collaborative movement building – building our collective power, expanding the base of individuals and organizations engaged in women's rights struggles, and jointly articulating inclusive and transformative agendas for change, both in the world around us and in our own practices.

2 Context of women's rights organizing

Contemporary women's rights organizations and movements work in a challenging context of fewer resources, more risks, increasing violence and inequalities, and environmental uncertainty. In addition, valuable energy and resources are expended fighting regressive forces that seek to roll back hard-won rights. Several trends shape the context of work for women's rights organizations in general and AWID in particular:

The existing economic paradigm with its strong focus on market-based development, privatization and growth is increasingly recognized globally for its role in perpetuating inequality and poverty. This model often raises the costs of basic services, leading to clear gendered impacts and inequalities, while women's unpaid work, both in domestic subsistence, reproduction and in unwaged household production, continues to be exploited. Alongside this are multiple and concurrent systemic crises (energy, food, finance and climate), which continue to pose challenges for governments, donors, development practitioners, activists and policy-makers to reinvent the system in the long term, and mitigate the negative impacts in the short and medium terms.

Discussions and intergovernmental negotiations on a post-2015 development framework are well underway as we near the end of the Millennium Development Goals in 2015. The disappointing outcome of the Rio+20 conference and the agreement made there to develop a new set of 'sustainable development goals' (SDGs) marked the beginning of a complex process for a new development agenda at the UN post-2015. Women's rights groups[2] have expressed their concerns about the narrow set of goals outlined in the report from the High Level Panel of Eminent Persons to the UN Secretary General and continue the struggle to advocate for a rights-based approach with women's rights at the center of a post-2015 development agenda. Other UN intergovernmental negotiations are already making evident the complexity and challenges women's rights organizations and movements will face in the coming years to defend what has been achieved, avoid backlash and put new ideas and proposals on the agenda.

The private sector, particularly corporations and individual philanthropists, have become central players in the development and philanthropic sectors. We have seen an increase in funding from new private sector actors towards women and girls, often instrumentalizing their contributions to economic growth. 'Investing in women and girls' has been heralded as a new key strategy by diverse actors such as the World Bank, Newsweek and Walmart (THE WORLD BANK, 2012; VERVEER, 2012; WALMART, 2011) – but this rhetoric has not necessarily translated into real resources for women's rights. AWID's recent research (MILLER; ARUTYUNOVA; CLARK, 2013) illuminates key characteristics of 170 different partnership initiatives focused on women and girls, with 143 of them collectively committing USD 14.6 billion dollars. At the same time, the research finds that 27% of the 170 initiatives supporting women and girls engaged women's organizations as partners, and only 9% directly funded them. The results illustrate a complex panorama of new actors and new resources for women and girls that defies simplistic categorizations and brings with it new opportunities and challenges.

Religious fundamentalist movements are continuing to gain power. Increasing violence by state and non-state actors towards the general population, and particularly against social movements and activists, undermines and seriously challenges democracy, peace and human rights. In many regions, this is directly linked to the growing influence of fundamentalisms with arguments based on religion (as well as culture, tradition and nationalism) used to violate and deny the rights of women, LGBTQI people, and religious, ethnic and cultural minorities. Fundamentalists and their supporters have also been successfully advancing arguments based on cultural relativism in multilateral processes as occurred at the 56th UN Commission on the Status of Women in 2012.

Violence against women human rights defenders (WHRDs) continues to grow. This increase in the number and severity of attacks on WHRDs by both state and non-state actors has serious impacts on the sustainability of women's rights movements. In the past year, important advances have recognized WHRDs and the violence they face because of their role in defending women's rights, the environment and their communities. This includes greater attention by international human rights mechanisms; in particular, the inclusion of WHRD language for the first time in the CSW57 agreed conclusions[3] and the November 2013 adoption of the first-ever resolution on women human rights defenders by the United Nations General Assembly's Third Committee[4].

Despite the challenges this landscape presents, there are important opportunities, openings and signs of hope for advancing women's human rights agendas. Progressive social movements have been organizing to withstand and respond to these trends. At the forefront have been women's rights activists and young people demanding structural change, protecting their communities, opposing violence and holding the line on key achievements. Women's rights movements and organizations however are facing significant challenges. Access to adequate financial resources continues to affect the sustainability of women's rights organizations and their capacity to protect themselves if needed. Many women's rights activists

and their organizations are also working within a context of increasing risks and security concerns. As highlighted above, attacks on women's rights defenders and activists are on the rise, with extreme forms of violence dramatically increasing. Against this backdrop of fewer resources and more risks, women's rights organizing remains fragmented with the diverse expressions of women's organizing still not coming together in the most strategic ways as movements to collectively address pressing challenges. Building our collective power and increasing our capacity to work together are key strategies to address this.

3 AWID as a 'movement support' organization

AWID seeks to be a driving force within the global community of feminist and women's rights activists, organizations and movements, strengthening our collective voice, influencing and transforming structures of power and decision-making and advancing human rights, gender justice and environmental sustainability worldwide.

As a 'movement support' organization, our work serves to support, resource and strengthen women's rights organizations and movements so that they in turn can be more effective in their work and struggles at different levels. We do this by filling strategic gaps (for example in knowledge production or information dissemination), by leveraging our access to key spaces and influence with relevant actors where few other women's organizations are present or where we have added value to contribute, and by providing different kinds of direct support (bridge-building, capacity development, strategic convenings, resource mobilization). AWID's commitment to building stronger and more effective women's rights organizations and movements is supported through our membership model. As an international feminist membership organization, we have 4,546 members from 156 countries (595 institutional members and 3,951 individual) – mostly from the global South. Having a large and diverse constituency is central to effectively advancing our mission and, at the same time, is integral to our identity, legitimacy and credibility as a global women's rights 'infrastructure' organization. Our members play an important role in our governance – nominating and voting for members of our Board of Directors. We also engage our members in our research, knowledge building and solidarity actions. We value and work towards building a broad constituency, including but not limited to AWID members, to strengthen collective awareness, action and solidarity on women's rights and gender equality. This includes bringing together organizations and activists from different social movements and different levels of organizing (local-global), further expanding and sharpening our analysis and agendas, and above all, exploring new ways of working together, bridging the divides of our issues, sectors, constituencies and movements.

AWID's experience and work priorities serve as examples of how we can create mechanisms for local participation in defining women's rights agendas – we play multiple 'movement building' roles, which are then brought to life through our various program areas[5], combining strategies ranging from knowledge building and

multilingual information dissemination, action-research, advocacy and engagement with influential actors, fora and institutions, alliance building among women's organizations and movements and with other civil society sectors, convening strategic dialogues on specific issues, and resource mobilization to support women's rights organizing. Following is an outline of these primary movement building roles, with concrete examples from our programs that demonstrate how we engage our diverse members and broader constituency to meet our collective goals.

3.1 Knowledge-builder & agenda setter

With our members, AWID collectively builds knowledge from a feminist perspective of the forces, trends, processes and institutions undermining or impacting women's human rights as well as strategies and innovations used to counter these influences and advance our agendas. We contribute as a provocateur to putting new issues or analysis on the agendas of women's organizations and movements and other influential actors and provide an ongoing feminist critique of development and human rights trends – producing multilingual research publications and weekly analysis through our 'Friday Files'[6]. Responding to the need expressed by our members and broader constituency to build knowledge on how to counter the tactics and strategies used by religious fundamentalist actors, for example, AWID produced *Religion, Culture and Tradition: Strengthening Efforts to Eradicate Violence Against Women* (GOKAL; DUGHMAN MANZUR, 2013) – providing women's rights activists with key arguments and excerpts from human rights instruments that affirm that religion, culture and tradition cannot be used to justify non-compliance with international human rights standards. This briefing note was successfully used by AWID and its members at the 57th Commission on the Status of Women (CSW57), Commission on Population and Development (CPD46) and at the Economic Commission for Latin America and the Caribbean conference (ECLAC) to challenge the cultural relativist arguments of fundamentalist actors in these international human rights venues.

Our research on funding trends[7] and actors influencing women's rights organizing has been built on participatory research and a dialogue with our members and constituency. AWID's 'Where is the Money for Women's Rights?' project has surveyed members and other women's organizations over the past eight years on their funding situation, with the resultant publications shared back with members for their own advocacy with donors. For instance, our report, *Watering the Leaves and Starving the Roots: The status of financing for women's rights organizing and gender equality* (ARUTYUNOVA; CLARK, 2013), is based on a survey of over 1,100 women's organizations in every region of the world. Since its launch in October 2013, the report has been widely disseminated amongst our members and constituency. AWID members have been specifically supported through convenings in this process. For example, three webinars in conjunction with Catapult[8] were held in 2013 to introduce members to the results of our funding research and the concept of crowdfunding as a potential method of resource mobilization for their work.

3.2 Clearinghouse for global feminist information and analysis

Recognized as a key 'go-to' source for multilingual information and feminist analysis on current and emerging trends, AWID serves as a clearinghouse for information to and from our members and broader women's rights movements. In doing so, we contribute to increasing the visibility of women's rights groups, perspectives, places and issues that are commonly excluded in the work of mainstream organizations and encourage connection among issues and actors. AWID's trilingual website (http://www.awid.org) and e-newsletters feature information, analysis and resources produced by both AWID and our members and constituency, equipping a global subscribership of over 48,500 women's rights advocates with the latest information and analysis. AWID also disseminates members-only information and resources and increasingly engages our membership through social media platforms such as Facebook and Twitter[9].

AWID's partnership with the Guardian Online and Mama Cash and the launch of a new women's rights and gender equality in-focus section of the Guardian's global development website[10] opens an important new channel of dialogue for women's rights organizations. AWID and Mama Cash aim to act as a bridge to a significantly larger and more diverse audience on the pressing issues affecting women, girls and trans people while also focusing a lens on the critical work being carried out by women's rights and feminist movements.

3.3 Convener & connector of diverse actors and constituencies within and outside women's movements

AWID's significant convening power is used to promote dialogue, build bridges, help overcome fragmentation and strategize on key issues. We organize and facilitate constructive spaces for our members and other diverse women's organizations, donors, development agencies, human rights and other CSOs to explore and strengthen connections within and across diversities of generations, issues, regions and sectors and to bring together groups that have not yet found common ground. For example, through our Young Feminist Activist (YFA) program, we connect our YFA members with other young women from around the world, raising awareness of their different forms of organizing and facilitating their meaningful engagement with key international processes and events.

AWID's International Forum on Women's Rights and Development is the largest recurring event of its kind, responding to emerging challenges, filling gaps and promoting stronger and more coordinated alliances. AWID's 2012 Forum, *Transforming economic power to advance women's rights and justice,* brought together 2,239 women's rights activists from 141 countries – 65% from the global South and 15% young women under 30. Members attend the Forum at reduced rates. The Forum convenes diverse groups to learn from each other and influence the agendas of women's movements and other related actors. Beyond the Forum space, follow up initiatives strengthen the connections and ideas created: for example, the 2012 Forum website (http://www.forum.awid.org/forum12/) was transformed into a resource and learning hub, which builds on content generated by participants.

We also supported 24 Forum Seed Grants[11] from 19 countries across all regions with $5,000 each to implement innovative activities related to the Forum theme. Grantees represent both commonly excluded sectors from – and the diversity within – women rights movements, including sex workers, young women, garment worker trade unionists, home-care workers, environmentalists, rural agriculture and fisherfolk, grassroots, economists, Roma and trans people.

3.4 Advocate and Mobilizer

AWID is actively engaged in policy advocacy to collaboratively develop positions with members and other allies and advance those positions in relevant international spaces. In addition we use general influence strategies to transform the practices and agendas of powerful institutions such as large human rights and development organizations and other CSOs. We believe that women's organizations must have a stronger knowledge of and voice in development policy-making to ensure that it is responsive to their needs, rights and realities and that resources being allocated in the name of women and girls are effectively reaching those groups. AWID is active in processes such as the SDGs, the UN post-2015 development agenda, the Global Partnership for Effective Development Cooperation, CSW and other fora, collectively strategizing with and amplifying the diverse perspectives of our members and broader constituency.

Given the increasing violence and severity of aggressions against WHRDs in most regions, we aim to improve the responses offered by international institutions, UN mechanisms, and human rights NGOs and work with regional and international networks to help strengthen protection mechanisms and responses to WHRDs at risk. For example, as a member and in coordination with other members of the Women Human Rights Defenders International Coalition (WHRD IC) and the Norwegian government, AWID contributed to joint advocacy that resulted in the adoption of the first-ever resolution on protection of WHRDs[12] by the UN General Assembly's Third Committee. To mobilize our members in support of WHRDs, we use AWID-alerts[13]: an online urgent action alert that invites members to act in solidarity with WHRDs who are facing threats and violence. Online mobilization is an important way we engage with our diverse and global constituency. For this year's 58th session of the Commission on the Status of Women (CSW 58)[14], AWID used its increasing social media presence to send a strong message that women's rights needs to be at the core of the new development agenda[15]. AWID members, partners and allies from over 50 countries joined our social media mobilization, reaching 1.7 million people through our Twitterthon.

4 Conclusion

AWID's multiple 'movement support' roles illustrate how a collaborative approach with our members and broader constituency is at the heart of our work and reflect our belief in the power of movements to create momentum for change. The current and upcoming UN processes (post-2015, +20 reviews, Sustainable Development

Goals – SDGs) will be key moments for women's rights movements, beyond the intergovernmental process, to come together to continue strategizing and debating new proposals and ideas on alternative economic and development models, and to ensure the integration of gender equality and women's rights as central to the agendas being developed. There is an urgent need, therefore, to build shared agendas across a broad array of actors and sectors, strengthening and deepening those connections in order to act together for a more just social order. We believe that deep, sustainable change for women's rights requires women's collective action and power, so to that end, supporting and strengthening diverse women's rights movements is essential.

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NOTES

1. For an understanding of how we define 'movements' please refer to our publication: Batliwala (2012).

2. The Women's Major Group (www.womenrio20. org) brings together 400 organizations and individuals working on sustainable development from a women's rights perspective at local, national, regional and global levels. Their critical analysis of the High Level Panel Report can be found here: <http://sustainabledevelopment.un.org/content/documents/3767women3.pdf>. The High Level Panel Report can be accessed here: < http://www.post2015hlp.org/the-report/>. Last accessed on: 30 Apr. 2014.

3. Refer to the CSW Agreed Conclusions, Point A. Strengthening implementation of legal and policy frameworks and accountability, Paragraph (z) "Support and protect those who are committed to eliminating violence against women, including women human rights defenders in this regard, who face particular risks of violence" (UNITED NATIONS, 2013).

4. See AWID's article about the adoption of this resolution (TOLMAY; VIANA, 2013).

5. AWID's programs are divided into Core and Thematic areas. Core programs represent permanent priorities for the organization that are central aspects of our role as a 'movement support' organization, supporting and strengthening the infrastructure and capacity of women's rights organizations and movements globally: 1) International Forum on Women's Rights & Development; 2) Membership and Constituency Building; 3) Bridging Knowledge and Practice; 4) Women's Rights Information & Communication; 5) Young Feminist Activism. Our thematic programs relate to themes that are closely linked to the dominant contextual trends mentioned earlier: 1) Challenging Religious Fundamentalisms; 2) Economic Justice & Financing for Women's Rights; and 3) The Right to Defend Rights: Women Human Rights Defenders.

6.Friday Files are weekly analyses and interview pieces related to women's rights issues at the international, regional and national levels and on current trends and timely events from a feminist perspective, produced in English, French and Spanish. They are available at <http://www.awid.org/News-Analysis/AWID-s-Friday-Files>. Last accessed on: 30 Apr. 2014.

7. AWID's publications on funding for women's rights, spanning 2005 to 2014, are available at: <http://www.awid.org/AWID-s-Publications/Funding-for-Women-s-Rights>. Last accessed on: 30 Apr. 2014.

8. Catapult is an online crowdfunding platform specifically focusing on projects that benefit women and girls. See: <http://www.catapult.org/>. Last accessed on: 30 Apr. 2014.

9. AWID's Facebook page can be accessed at: <https://www.facebook.com/pages/AWID/351068122677> and Twitter: <https://twitter.com/AWID>. Last accessed on: 30 Apr. 2014.

10. The website can be accessed at: <http://www.theguardian.com/global-development/series/womens-rights-and-gender-equality-in-focus>. Last accessed on: 30 Apr. 2014.

11. The full list of 2013 Seed Grant winners can be found at: (ASSOCIATION FOR WOMEN'S RIGHTS IN DEVELOPMENT, 2012).

12. Members of the Women Human Rights Defenders International Coalition: AWID, Amnesty International, Just Associates and the International Service for Human Rights released a statement about the resolution (ASSOCIATION FOR WOMEN'S RIGHTS IN DEVELOPMENT, 2013c).

13. See <http://www.awid.org/Get-Involved/Urgent-Actions>. Last accessed on: 30 Apr. 2014.

14. For more information about the fifty-eighth Session of the Commission on the Status of Women, see: <http://www.unwomen.org/en/csw/csw58-2014>. Last accessed on: 30 Apr. 2014.

15. See the original (ASSOCIATION FOR WOMEN'S RIGHTS IN DEVELOPMENT, 2014).

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ABSTRACT

Through concrete examples of the Fund for Global Human Rights' grant-making experience
in Mexico, the article discusses the importance of supporting both large organizations with
national and international reach as well as locally rooted groups that have direct and ongoing
contact with communities affected by human rights violations. Locally rooted organizations
face an upward battle in obtaining resources, yet they play a vital role in 1) identifying and
responding to community needs, 2) enabling affected communities to advocate on their
own behalf, and 3) bolstering national and international policy campaigns by mobilizing a
grassroots constituency and monitoring the implementation of human rights protections.
Diversifying funding and ensuring resources reach both front-line activists and larger
organizations contributes to a more effective civil society and brings us closer to the critical
social change that funders were created to support.

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KEYWORDS

SUPPORTING LOCALLY-ROOTED ORGANIZATIONS: THE WORK OF THE FUND FOR GLOBAL HUMAN RIGHTS IN MEXICO

Ana Paula Hernández

1 Introduction

As international organizations, donors, and activists, we are all looking for the most effective ways to foster critical social change. Those of us in the human rights field work to transform the structural issues at the core of rights abuses: impunity, corruption, inequality, lack of transparency and accountability, discrimination, and racism, among others. To that end, we aim to strengthen the international and regional standards and mechanisms that promote and protect rights, while at the national level, we press for policy change to recognize and implement those standards. All the more crucial to this work is the development of local constituencies with 1) the credibility to inform the development of policies and practices that respond to community needs, and 2) the broad, grassroots power to demand changes and monitor their implementation. It is vital that we support and nurture these on-the-ground movements to play this role.

More resourceful, flagship, organizations continue to have additional needs for funding, but with the benefit of larger budgets and dedicated fundraising staff, they have had considerable success in securing international resources. With staff dedicated to writing funding proposals and reports and maintaining connections with donors, these flagship organizations can both secure significant funding and demonstrate to donors their ability to effectively manage large budgets. This positions them on a path towards long-term growth, as most donors value the size of organizational budgets and the ability to secure other sources of funding.

For smaller, state-level and community-based organizations, obtaining funding continues to be an upward battle. They lack the initial resources to retain staff to conduct their core activities; often, one person is doing the work

of three or more. Severely understaffed, they are challenged to make fundraising a priority when faced with ongoing human rights emergencies that demand a response. As their budgets fail to grow, they lose the opportunity to show donors they are capable of managing large projects and find it difficult to demonstrate a track record. Few donors are willing to take the risk in providing these groups with seed funding to begin to reverse this cycle, and they rarely are put on the path to grow.

As the Fund for Global Human Rights's Program Officer for Latin America based in Mexico City, in the next sections, I will draw on our grant-making experience in Mexico to demonstrate the importance of supporting smaller, local groups and how we have been able to incorporate them into our grant program in that country.

2 The work of the Fund for Global Human Rights in Mexico

The Fund for Global Human Rights (hereafter, the Fund) is an international human rights organization that provides funding, technical resources, and strategic support to frontline human rights organizations in eighteen countries around the world. Founded on the core belief that on-the-ground activism is the bedrock on which respect for human rights is built, the Fund started with the simple but pioneering approach of directing financial resources to locally-rooted rights groups, and since 2003, we have awarded more than $45 million in grants to more than 200 groups. When the Fund was launched, few resources were making their way to frontline groups. Most of our first grants were awarded to relatively established, capital-based organizations that lacked the necessary resources to implement their programs. In response to emerging needs and opportunities, we quickly expanded our portfolio to reach more grassroots and community-based groups, many of which had little to no experience applying for funding. Both types of organizations are critical to moving human rights forward, but while flagship organizations can access resources with relative ease, grassroots groups struggle to secure the funding necessary to expand their efforts and impact.

As the entire sector of those grassroots groups remains severely under-resourced, it is urgent that we move to address this need. When the Fund began its grant program in Mexico in 2003, the country already had a vibrant human rights community that had first emerged in the late 1980s. By the early 2000s, the movement was challenged to adapt to an unprecedented opening for engagement with the government after an opposition party, the National Action Party (*Partido Acción Nacional* - PAN), won the presidency following seventy-one years of single party rule by the Institutional Revolutionary Party (*Partido Revolucionario Institucional* - PRI). Many of our first grants were awarded to relatively established organizations, the majority based in Mexico City, which were well positioned to use unrestricted, general support grants from the Fund to press for legislative reform and improved human rights policies.

Early in the development of our grants program, the Fund placed the same importance on local organizations, expanding our portfolio to reach smaller,

grassroots and community-based groups based outside Mexico City in states that suffered particularly high rates of human rights abuses like Guerrero, Oaxaca, Chiapas, and Chihuahua. One of the many reasons to support these organizations is to break the cycle in which groups fail to adequately demonstrate a track record of impact for donors that would otherwise position them for institutional growth.

Above all, however, we have incorporated local groups in our grant-making strategy because of the vital role they play in three aspects: first, in identifying and responding to community needs; second, in enabling affected communities to advocate on their own behalf, and, finally, in bolstering national and international policy campaigns by mobilizing a grassroots constituency and monitoring the implementation of human rights protections. In the next sections, I will develop separately each of those roles, although they are extremely intertwined in practice.

3 Identifying and Responding to Community Needs: the experience of the Tlachinollan Human Rights Center

Locally-rooted organizations have direct and ongoing contact with the communities affected by human rights violations. Their proximity to and relationships with local communities provides them with an accurate assessment of the situation as well as the ability to identify the most pressing needs. Recently in the state of Guerrero, a tropical storm combined with a hurricane devastated the already marginalized Mountain Region of the state, home to the country's two poorest municipalities with a population that is 90 percent indigenous. The destruction of houses, roads, schools, and clinics will take many years to repair, but the greatest devastation involved the destruction of thousands of hectares of crops on which over 20,000 families depend for survival.[1] As the federal and state governments focused relief efforts on reconstruction of the tourist center of Acapulco, they continued a pattern of diverting attention and resources from the Mountain Region.

Fund grantee Tlachinollan Human Rights Center[2] is a locally-rooted organization that has been working to promote and defend indigenous rights in the municipality of Tlapa de Comonfort, located in the heart of the Mountain Region of Guerrero. Following the storm, its staff walked for days to assess the damage, to see conditions in the communities, and to begin formulating immediate and long-term plans to address the emergency. Tlachinollan's team mounted an ambitious media campaign to bring attention to the devastation of the Mountain Region; this outreach succeeded in attracting significant national and international attention to this often overlooked area. In the months since the storm hit, they have been working with sixty communities, helping them come together to form the Council of Affected Communities of the Mountain Region. Tlachinollan quickly realized that the most imminent threat to the region was hunger and starvation due to the destruction of the crops. The Council, with Tlachinollan's mentoring and assistance demanded that the government guarantee their right to food and negotiated a special program to provide these families with sufficient corn, the basic staple of their diet, for the next six months.

4 Enabling affected communities to advocate on their own behalf: the experience of the Comprehensive Processes for the Self Determination of Peoples (PIAP)

Frontline organizations are also positioned to strengthen communities fighting for their own livelihoods, health, and security. Such organizations enable communities to become the key stakeholders in this process, therefore allowing greater possibilities for these communities to maintain their unity in litigation processes or political struggles that often take many years to produce any tangible results. As the Fund has increased its support to the defense of land and resource rights, which are increasingly violated not only by states but also by private sector actors, including huge multinational companies, the importance of supporting locally-rooted organizations that have direct and ongoing contact with the communities has become even more evident.

Canadian company Goldcorp has operated the Los Filos gold mine in the state of Guerrero since 2005, which has impacted the health and livelihood of the local community of Carrizalillo. Fund grantee Comprehensive Processes for the Self Determination of Peoples (PIAP), a small organization working directly with communities in the states of Guerrero and Oaxaca, has provided technical assistance to the community and agrarian authorities of Carrizalillo for the past five years. They formulated a community development plan through a participatory process with the authorities and community members that allowed them to form the basis for their contract with Goldcorp, establishing not only fair prices for the rent of their lands, but other aspects such as ensuring community members would be hired to work on the mine with full guarantee of their labor rights. Soon community members started falling ill and blamed the open pit mining operations that pollute the water, soil, and air. The community now suffers from unusually high rates of premature deaths, skin lesions, and respiratory and eye problems.[3]

Last year, PIAP's staff spent months in Carrizalillo training community members how to document these health hazards. They worked with the community agrarian assembly, the decision making authority for all agrarian affairs in the community that is officially recognized by Mexican Law, to establish the right to health as a priority in its negotiations with Goldcorp over contract renewal. In April 2014, the assembly demanded that Goldcorp recognize the health hazards of its operations, work with the community to prevent future damages and pay for those it had already caused, and appropriately increase payment of rent on their lands.[4] When the company refused, they blocked the entrance of the mine and temporarily shut down operations. If the company refuses to accept the terms presented by the community, they will proceed to legally demand that Goldcorp return the lands to the community and begin the implementation of its closure plan for the mine.

The capacity building, technical assistance, and mentoring provided by PIAP has been key in empowering this community to defend its lands and demand its rights despite the overwhelming economic power of the private actor they are facing. As the Fund accompanies similar processes not only in Mexico but also in other countries in the region including Guatemala and Honduras, it is clear that in the defense of land and resources it is essential for communities to know their rights and have a common voice regarding the future development they want for their population. This

is key in maintaining unity in the face of threats, harassment, defamation campaigns, and the use of bribes to attempt to divide the community and buy the support of its authorities, all of which are common strategies local activists have seen employed by mining companies throughout Mesoamerica.

5 Bolstering national and international policy campaigns: the experience of the Fund's Corporate Accountability Project (CAP)

The work of these front line organizations is vital, but often can be limited in scope precisely because of its local focus. To have the broadest possible impact, this work can be amplified by organizations with national, regional, and international reach. This is one of the reasons the Fund continues to support a number of the large, flagship organizations that were some of the first to be included in our portfolio. In the past year for example, the Comprehensive Processes for the Self Determination of Peoples (PIAP), mentioned above, has partnered with another Fund grantee PODER,[5] a Mexico City-based organization with vast experience in corporate research, to educate community members about Goldcorp's corporate practices and establish patterns of human rights abuse that could be useful in the negotiation of greater rights' protection. Moreover, the Fund has supported PIAP to participate in the Mesoamerican Movement against the Extractive Mining Model (M4), a coalition catalyzed two years ago by the Fund's Corporate Accountability Project (CAP).

Since its inception, CAP has sought to increase the impact of frontline human rights advocates working on the ground to defend their land and resources that are threatened by corporate-led development projects, particularly the extraction of natural resources. The challenge facing affected communities is enormous given the tremendous economic power of these industries and the strong support they receive from governments that have aligned national legislation to favor them. At the outset, the Fund recognized that human rights organizations and local groups have been fighting these battles community by community.

Two important strands of work were being developed. First, locally-rooted and community-based organizations were educating communities on the effects of mining and empowering them to demand they be consulted and have the opportunity to make informed decisions regarding mining projects on their lands – the clearest example being over 60 community consultations that took place in Guatemala, where over 1 million people said they did not want mining on their lands. Second, larger organizations with regional and international reach were employing a range of legal and international strategies – such as taking cases to the Inter-American Human Rights Commission and advocating with the companies' shareholders - to hold mining companies accountable. While there were some successful cases, frontline activists could not easily transform community awareness and empowerment into binding decisions, rights-respecting standards, and accountability for abuses. Likewise, regional and international organizations were unable to ensure that successes were effectively implemented and had a positive effect in the struggles on the ground communities were leading against the companies.

With this project, the Fund sought to connect these strands of work and reinforce important, ongoing efforts by providing resources for groups working at different levels to develop joint actions. We engaged activists at the local and community levels as well as national and international organizations to work together to identify and implement comprehensive solutions, campaigns, and tactics that combat abuse on the ground and build rights-respecting standards at the global and national levels. The Fund began the project in Mexico and Guatemala, and the work quickly and organically grew to include Panama, El Salvador, Nicaragua, Costa Rica, and Honduras, resulting in the creation of the Mesoamerican Movement against the Extractive Mining Model (M4), mentioned above. Over the past two years, the project has evolved from the Fund driving the process to the frontline groups taking the lead in managing a coalition that supports members' work across borders, so that national successes could bear fruit internationally. Presently, the members are working together within the formal coalition to engage in joint activities and support each other's work.

Last year the M4 focused its efforts on a campaign to hold Goldcorp accountable for violations of the right to health in communities where three of its mines are located: the San Martin Mine in Honduras, the Los Filos Mine in Mexico, and the Marlin Mine in Guatemala.[6] To generate media coverage and create awareness of massive health rights violations associated with these three Goldcorp mines, the M4 organized a public "tribunal" with over 600 people in which human rights luminaries from the region served as "judges," hearing testimonies from community members and reviewing evidence of pollution and health effects. The panel of judges found Goldcorp, Canada, and the states in which the mines operated guilty, and recommended that the participants peacefully organize to stop Goldcorp's operations, through both community action and the utilization of national and international law.[7]

In 2014 the M4 will develop common tools to document health harms in the communities surrounding these three mines to gather solid evidence that could support a legal claim against Goldcorp. In this regard and through its participation in the M4, PIAP's training of community promoters in Carrizalillo to document health harms is not only aimed at negotiating the renewal of the community's contract with Goldcorp, but of working with Fund grantees that will document health harms in Honduras and Guatemala. Together, the group will develop strategies to use the information to hold Goldcorp accountable for violations to the right to health. They will work closely with Canadian organization Mining Watch,[8] an important ally to the M4 since its inception, in exploring strategies with shareholders and investors and the use of mechanisms contained in commercial and free trade agreements. They will also explore innovative strategies before the Inter-American Commission on Human Rights (IACHR) with the Due Process of Law Foundation (DPLF),[9] which in 2013 spearheaded the first ever thematic hearing before the IACHR on the "Human Rights of Peoples Affected by Mining in the Americas and Mining Companies' Host and Home States' Responsibility."[10] Hopefully, the hearing will be an initial step toward the IAHRC admitting a concrete case on this issue. In the future, the M4 will explore possibilities with DPLF to examine if this case of health violations perpetrated by Goldcorp at its mines in Mexico, Honduras and, Guatemala, could be presented before the IACHR.

The M4 provides a powerful example of what can be achieved when a diverse civil society working on many levels has the resources to coordinate community-level, national, and international campaigns. The work in Mesoamerica has been even more successful than anticipated precisely because it takes advantage of existing momentum and provides the resources and guidance necessary to take the campaign to the next level. We believe this has successfully broadened and organized the frontline response to hold corporations accountable for abuses related to resource rights and environmental justice while also connecting those efforts to regional and global coalition advocacy.

6 Conclusion

The development of the Fund's CAP program, as well as the other experiences explained above, have highlighted the importance of aligning the Fund's grant-making and technical assistance with the priorities and strategies of on-the-ground activists and affected communities. As funding becomes ever more scarce, it is vital for funders to remember the key role locally-rooted organizations play in identifying and responding to community needs and enabling affected communities to advocate on their own behalf. Most importantly, it is these organizations that can ensure the effectiveness of work to establish and strengthen standards at the regional and international levels, bolstering it through grassroots constituencies that can press for their passage and meaningful implementation. Diversifying funding and ensuring resources reach front-line activists as well as larger organizations both contributes to a stronger civil society and brings us closer to the critical social change our institutions were created to support.

NOTES

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2. See: <www.tlachinollan.org>. Last accessed on: 12 Aug. 2014.

3. Through a census conducted with local medical staff and health promoters in Carrizalillo, PIAP has documented that 27% of the population suffers from nausea, diarrhea, and parasites; 39% from headaches and exhaustion; 45% from pain, irritation and/or inflammation in their throats; 57% from colds, coughs, bronchitis, asthma or pneumonia and an indefinitely high number of cases of skin lesions and diseases due to the hydrocyanic acid produced as a result of the evaporation of cyanide used in the cyanide leach mining for gold extraction. Data on file with the author.

4. See: <http://www.miningwatch.ca/blog/local-community-shuts-down-goldcorps-los-filos-mine-mexico-company-claims-it-was-suspended-purp>. Last accessed on: 12 Aug. 2014.

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ABSTRACT

This article offers two arguments about the opportunities that technology presents for the human rights agenda. The first refutes one of the main criticisms of promoting the Internet as a tool for human rights work: large sections of the population do not have access. The second discusses the role of processed information in the context of social behavior. The article discusses the diverse ways in which technology can be used to increase the effectiveness of human rights organizations, in terms of communication. To show its potential, the author describes communication alternatives in terms of new formats for dissemination and using alternative information sources.

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KEYWORDS

HUMAN RIGHTS ACTIVISM IN TIMES OF COGNITIVE SATURATION: TALKING ABOUT TOOLS

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1 Introduction

The centrality of technology in human interactions is a distinguishing feature of our time. Political agendas, legal relationships, knowledge, struggles for social transformation, and, as a result, one of the fields resulting from the intersection of these spheres: human rights, are no exception to this phenomenon, nor should they be. I refer not only to the emergence of a range of rights associated with the ability to communicate freely without state intervention (ORGANIZACIÓN DE LOS ESTADOS AMÉRICANOS, 2011) when the use of the Internet or cell phone is at stake, the redefining of ideas (i.e. privacy, intimacy, and confidentiality) (STOP…, 2012), or to the conceptualization of new positive obligations on states to assure universal access to information technologies (UNITED NATIONS, 2011), but also to the opportunities that technology presents for human rights activism.

This article seeks to develop two central arguments related to the new opportunities that technology (and Internet use in particular) presents for the human rights agenda. The first argument is based on a supposition. One of the main criticisms of the promotion of the Internet as a tool for human rights work is that large swaths of the population do not have access. In other words, it is argued that while the Internet may offer a lot of possibilities, the so-called digital divide (VOLKOW, 2003) works against it and makes the strategies that use it either elitist or exclusive. In this article, without questioning the factual existence of that divide, I aim to refute the validity of the argument that says that because many people have limited or no access to the Internet, under the most radical interpretations, its use should be set aside.

The second argument discusses the role of processed information in the context of social behavior. The way our societies produce information has

transformed how we relate to one another (CASTELLS, 2000). That is, it is not longer only the way we connect; it is the intensity of that exchange. Today we are able to exchange information more quickly and reach new stakeholders (SOTO, 2014), but we are saturated with data every day, causing cognitive overload. The foundation of the second argument, therefore, is the need/opportunity for human rights organizations to participate in this phenomenon by taking on the task of selecting and processing information (WORLD ECONOMIC FORUM, 2013) in order to effectively keep their audience's attention. To this end, I will focus on the diverse ways in which technology can be used to increase the effectiveness of human rights organizations' communication efforts. By themselves, information (or computer science) technologies do not have any impact. It is often said, but sometimes forgotten, that they are just tools. Just like a hammer, technology will make the work easier – but if used without skill, we will puncture the wrong parts of the board faster. It depends on us. In order to demonstrate its potential, I will describe communication alternatives related not only to new formats for dissemination, but also those using alternative sources of information.

2 What can we do about the digital divide?

Statistics on Internet access[1] have changed over the last 12 years. For example, data from Internet World Stats shows that the percentage of the population in Latin America that has Internet access went up by 10% between 2000 and 2012.[2] True, that increase could be considered moderate. Nevertheless, its use and its influence on the political agenda, and its emergence as an instrument of change, continues to grow. That is also attributable to the fact that users' habits have changed,[3] so it is not just about greater access, but also the fact that it is more central to human activities. The Internet has become a key way to disseminate information, and more groups and sectors are incorporating its tactics or using it as a tool for their work.[4] The same is happening with other technologies and telecommunications tools. Today we have new categories, like citizenship and digital activism, but also solutions like Mobile Health (M-Health) or crowd sourcing (BRADLEY, 2013), to name just two of hundreds or thousands of examples. To what can this be attributed?

One reasonable answer to this question is that, despite its limits in terms of accessibility, the use of technology and the leading role of the Internet, is truly one of the most powerful ways to reverse social asymmetries (LEADBEATER, 2013). For example, mobile health solutions (where people receive relevant information on their telephones)[5] democratize access to medical knowledge.[6] If the argument is that few people have access to digital cell phone technology, let's remember how limited access is to hospital infrastructure and to personalized attention from a doctor or nurse. In the field of knowledge,[7] if we think that only "x" percent of the population has access to the Internet, we forget that even fewer people have access to libraries or technical literature (MARGOLIN, 2014). Compared to what have traditionally been niche markets, even though those may use means that are more popular by definition (such as direct consultations with medical staff, or reading a printout of an academic treatise), the Internet is a more practical form of communication

that can transmit essential information for the exercise or promotion of rights.

The digital divide is only an expression of other gaps that exist within our societies. Human rights organizations traditionally work on behalf of disadvantaged populations, who experience firsthand the consequences of marginalization or restricted or differentiated access to goods and services (with no legal duty to put up with it). Unequal access to rights is an expression of structural asymmetries in the distribution of symbolic and material goods. A person in the countryside is effectively isolated from government offices. But, in many instances, the Internet is more accessible than paying to travel from one city to another, such as when processing paperwork for a government support program. The Internet has a greater penetration capacity than any printed publication, and disseminating and accessing a video that denounces human rights violations is much easier over the Internet than through traditional media.[8] A few spectators is always better than none.

As we have said: the digital divide is an expression of other structural gaps. Therefore, a question continues floating in the air: How can organizations that deal with scarcity and work with limited resources take advantage of this technology? The good news is that in this context, many organizations have started to generate technology,[9] resources, and solutions[10] that can be shared (sometimes at no charge)[11] with other organizations, thereby mitigating some disadvantageous conditions and reaching broader audiences. The DNA of the technological solutions of our time is free, community-based, and participatory.[12] Due to their genetics, many projects tend towards cost reduction, exchange, peer-to-peer learning, complementarities, and a lack of owner control. In this vein, the use of the Internet is one of the most consistent ways to include traditionally excluded groups in efforts to disseminate information or knowledge. Of course human rights organizations are among those who can benefit from this trend.

Now, it is appropriate to make use of usual caveats like "however" or "nevertheless", because civil society organizations confront different challenges. First, for this to work, we have to identify the digital, strategic, and tactical tools that are most useful for taking advantage of the technological moment. Solutions emerge very quickly, and there is a huge supply of alternatives, not all of them equally useful or relevant for specific cases. The risk is that the "what" may be confused with the "how", or that the solutions that are chosen may be impractical, unnecessary, or cosmetic.

Furthermore, we have to change the way in which we use resources and prioritize the use of tools. It is not about simple willingness or a decision to add technologies to our area of work, but rather about filling an equipment and resource gap (both human resources and technical capital) within many of our organizations. Sometimes the problem is very concrete: there is no correlation between the decision to innovate (partly a result of a realization by some activists of the potential use of these tools) and the set of actions that would be required. Deciding to use technology and the Internet requires having the resources to do so, and that in itself is a challenge.

In summary, we are clear that using technology presents challenges, such as the need for a cultural change within institutions, and the absence of technical

know-how among activists and civil society organizations' staff. Still, the alternative is a reality.

3 How to participate in cognitive saturation

Currently, data and information flow at dizzying speeds. The availability of sources has undergone radical transformations, both with regard to overcoming distance barriers, as well as in the capacity for storage, processing, and dissemination. Eric Schmidt (creator of Google) suggests that every two days we create the same quantity of information that was generated from the beginning of human history until 2003 (SIEGLER, 2010). In an equation that practically comes from the market, the communication challenge of our time is to capture the attention of audiences that are more and more saturated with an incommensurable supply of messages.

In other words, a large part of the challenge for sending (assertive) and receiving (effective) information is in the ways in which data is presented and visualized.[13] Thus, the application of technology, fed with processed information and applied to specific contexts, improves the interaction between information providers and the general public. If human rights activists want to communicate in this context (to inform, to advocate, to mobilize, to generate solidarity, etc.), technology is an ally with great potential. To use it, it must be understood that the phenomenon implies changes not only in the start of the communication (how we send messages) but also in the way we construct it.

I will first give an example of how the current context has radically changed the availability of information sources, adding new ones. Given the way in which data and information are processed, the idea of freedom and the relationships between citizens and their governments also underwent changes. One example is the reinterpretation of historical concepts like open government (HOFMANN; RAMÍREZ-ALUJAS; BOJÓRQUEZ, 2013). Described as an analytical category (not as a result or factual description), an *open government* is generally one that embraces and promotes transparency, stimulating accountability and citizen participation using innovation and new technologies to establish a dialogue between citizens and the government.[14] Now, one final characteristic of an open government is that it connects citizens and rulers through open data, open innovation, and open dialogue. Here the important element is how the term "open" is characterized (POLÍTICA DIGITAL, 2012), and it must be noted that available information is not the same as accessible information, which can be handled and manipulated.

The key point that I want to develop is that regardless of whether it is out of conviction or government inattention, today we have much greater access to the information that is in the hands of public institutions. In many instances, these sources are made public using standard formats[15] that allow any individual to use the information for any purpose. These formats can be freely copied, shared, combined with other material, or re-issued, allowing new users to explore, analyze, or transform them again into new products. The evidence shows that there has been a clear increase in access to statistical government databases,[16] budget information,[17] parliamentary newsletters[18] and the geographic locations of public services like

schools, hospitals,[19] etc. It is an expansion of the information inventory that can be transformed into many uses for human rights agendas, again, from the complaint through to the proposal, and including the mobilization of public opinion and fundraising (CROWDFUNDING…, 2014).

I will focus on a particular item: drafting reports on a human rights situation using new evidence (ARTICLE 19, 2014) (budget information,[20] indicators, audit reports,[21] synthesized citizen reports,[22] etc.). In these cases, the value added from the work of these organizations is in using the data with a methodology that leaves aside long systematized content and abstract narratives. The data is sorted, double-checked, and compared, and as a result, not only does the analysis grow, but it is also presented in more accessible ways. It's not about substituting form for substance, but achieving a comprehensive understanding of the context of information overload in which we live, and proactively engaging in it.

This is the second relevant aspect: dissemination. The criterion that governs the development of a new range of materials (which does not replace the drafting of papers and other articles, but rather complements it) is the practical application of the knowledge. It's about more people hearing the message, which arrives more quickly and mobilizes people or serves as a foundation for advocacy activities regarding public policy. The impact can be much deeper if activists also use information technologies in their research and analyses. The key factor is that the data is used and then presented through web sites, creative visualizations, info graphics, pivot tables, interactive maps,[23] reports that are developed collaboratively, platforms that link users facing similar problems, etc. Human rights organizations have messages that are politically timely, socially relevant, and with a legal basis, and these new dissemination formats help ensure that the data backs up the complaints[24] or the proposals, and that it is presented in a dynamic way.

Finally, it is worth briefly including another argument in favor of the use of technological tools, with a philosophy grounded in better exploitation of data and capturing audiences: the positive effects of Internet communication are not only valuable for their vertical reach (the audience that is reached through direct use of this medium) but also for their horizontal impact (the influence on traditional media and thus a literal multiplier effect). The latter is extremely important because even conventional radio stations, television programs, and magazines or other printed media can take up discussions that happen in social networks, or increasingly use new materials developed by organizations as information sources.

That said, I think the original claim is valid; we live in times when the emergence of new tools and technologies, particularly those associated with multimedia and the Internet, are transforming citizen participation, organizational structures, and the spheres of action of civil society organizations, and ways of engaging in politics in general. Their understanding and reach necessitates much more analysis and study, but denying it is an anachronism, while thinking it is the be-all and end-all is excessive, something like digital populism.

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ABSTRACT

Latest advancements in digital technologies have radically transformed the human rights advocacy landscape. The purpose of this article is to examine some of the ways in which technology presents opportunities, risks and challenges for the human rights field. As new technologies provide new forms of engagement and community building, they change the way in which organizations and individuals act together to preserve human rights and drive social change.

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RAISING DIGITAL CONSCIOUSNESS: AN ANALYSIS OF THE OPPORTUNITIES AND RISKS FACING HUMAN RIGHTS ACTIVISTS IN A DIGITAL AGE

Mallika Dutt and Nadia Rasul

1 Introduction

Digital technology has revolutionized the field of human rights. New forms of information and communication technologies (ICT) have not only enhanced traditional forms of activism over the past decade, they have changed the very nature of advocacy. By bringing the voices of multiple communities, identities and geographies into the public square, digital technology has transformed the opportunities, challenges and risks for everyone in the human rights field, including victims, advocates, and those who violate rights.

Digital technology now enables people to directly advocate for fundamental human rights, providing new models for engagement and community building. The Internet, mobile phones, satellite television, and other digital technologies provide platforms on which individuals and organizations employ combinations of images, audio, video and text to raise awareness about social, political and economic struggles, mobilizing global audiences. For example, bloggers and journalists fueled recent Egyptian uprisings by exposing police brutality through videos and images posted online and shared in real-time on Twitter. In Mexico, the Internet has served as a key tool in reporting on drug cartel violence. Across Africa and South Asia, mobile phones facilitate rural healthcare service delivery.

This article begins with an examination of how digital technology has accelerated the human rights agenda. It then addresses the privacy challenges that accompany this new technology, and how they can pose security risks. Finally, the article weighs the unprecedented access to information that digital technology brings against a continued need for place-based activism, even in a digital world.

2 Advancing human rights: transforming the advocacy and campaigning landscape

Online platforms and social media networks are powerful tools for engaging global audiences. Affordable access to multimedia tools to produce interactive websites, documentaries, games and music has changed the way advocates raise consciousness. The impact of compelling, high-quality images from disasters like Hurricane Katrina and violent conflicts in Syria and Libya build empathy. Social networks and online platforms provide ways to immediately translate that emotional connection into meaningful action. In this way, people share experiences more broadly than ever before.

2.1 Transformed relations between human rights organizations and constituents

The use of digital technologies has altered the relationship between advocacy organizations and their constituents. Digital media, especially social media networks, has changed dialogue not just among peers, but also between publics and institutions.

Due to affordability and open access, new media has lower barriers to participation and encourages public dialogue, leading to an increase in the number of people who are politically vocal. Almost every international, national and grassroots organization uses some form social media to engage directly with their communities. Organizations immediately gather data and feedback to analyze impact and audience size. This allows institutions to more nimbly adjust messages, targets and tactics to efficiently deploy resources for maximum impact.

Lowered barriers to participation also give users access to more platforms to raise their voices. From sharing messages with their personal social media networks to creating globally distributed digital petitions, individuals and human rights advocates can align and interact with multiple interconnected causes in a variety of ways.

2.2 Redefining who can be an activist

Digital technologies have also lowered barriers to entry for activists themselves, allowing individuals from a much broader range of backgrounds and geographies to bring attention to human rights issues in their lives and communities and propel social change movements. With a plethora of digital resources now available, people can mobilize communities to take action without relying on the formal structures of traditional advocacy organizations. While formal organizations sometimes continue to play a significant role in scaling up movements, the fact that individuals can more easily become change agents drives collective action and sustains long-term movements.

2.3 Giving voice to marginalized people

The rise of the networked public sphere means that we are now seeing new fora for public dialogue and testimony. Digital technologies have given marginalized people around the world a new means to organize, communicate, tell their own stories and create change.

Take indigenous rights: the Zapatistas adopted these tools early, using the Internet more than a decade ago to reach beyond Mexican borders and spark a series of global indigenous rights movements (MARTINEZ-TORRES, 2001). They overcame authoritarian and often biased mainstream media by directly sharing their struggle for indigenous land rights online. In this way, they exposed Mexican corruption and dispelled false government claims that Zapatista autonomy would threaten the integrity of the Mexican nation (CLEAVER, 1998). In addition to communicating with existing supporters and allies, the Zapatistas aligned themselves with other anti-capitalist movements and coordinated global action.

The online world has given rise to a new wave of feminism, allowing grassroots movements and organizations to proliferate and collaborate to amplify their voices, reach larger audiences, bring visibility to women's rights issues and lead social change. Although many women still face obstacles to active participation online, the rise of social media means that feminists from Africa, South Asia, Latin America and the Muslim world can often raise issues in ways that used to be reserved for feminists from the global North. In the United States, women of color have used social media to challenge mainstream feminist narratives and create nuanced conversations. In August 2013, feminist blogger Mikki Kendall started a Twitter hashtag #SolidarityIsForWhiteWomen to express her concerns about women of color's exclusion from the mainstream feminism movement in the United States. Despite generating a backlash from white feminists, Kendall generated other conversations such as #NotYourNarrative to address Muslim women's portrayal in Western media (JOHN, 2013).

Digital activism has also shaped immigration rights dialogues, especially in the United States. A *Journal of Computer-Mediated Communication* study by Summer Harlow and Lei Guo (2014) shows that immigration activists rely on online and multimedia tools to raise consciousness, collect donations, influence legislation and coordinate and mobilize people online and offline. In the United States, the face of immigration is increasingly female, yet their voices and unique struggles had remained largely unheard. Leading up to the 2012 Presidential election, my organization Breakthrough launched *#ImHere*, a digital campaign targeting young Americans who have the power to vote and are active on the social media. The centerpiece of the campaign was a short narrative film, *The Call*, portraying the negative impact of US immigration policies on immigrant families. The campaign's intent was to raise awareness and establish empathy and compassion among young audiences. With the help of social media and the short film, Breakthrough connected directly with youth in a familiar context—by sharing a short video filmed in a way its audience could relate to. Culminating on Election Day, the *#ImHere* campaign mobilized thousands of Americans into a critical mass of supporters and created powerful new conversations online that propelled the human rights of immigrant women onto the national agenda at a pivotal moment in American politics.

2.4 New methods for delivering help

The number of mobile phone subscriptions reached 6.8 billion globally in 2013. The mobile phone penetration rate is 96% of the world, 128% in developed countries

and 89% in developing countries. Human rights organizations are harnessing this broad market penetration of affordable mobile phones, using them as tools to propel culturally-sensitive local action. Mobile applications like *Circle of 6* in the United States and India and *Self Help* in Nepal assist people who are at risk of violence by sending short text messages and geolocation data to the police and to a handpicked group of family and friends with the push of a button (KUMAR, 2013).

Similarly, with the use of free, open source digital platforms like Ushahidi, people can generate accountability in crisis situations. Initially developed for gathering and sharing reliable data during the violent Kenyan elections in 2008, Ushahidi has since been used in multiple conflict and natural disaster situations such as the earthquake in Haiti, floods in Pakistan and violence in Syria. Ushahidi allows organizations to map eyewitness reports of violence submitted online or via mobile phone in real-time. Admittedly, new media technologies come with their own challenges—it can be difficult to verify the validity and authenticity of reports. Platforms like Ushahidi respond to this challenge by employing fact-checking teams of citizen journalists and activists on the ground. Moreover, GPS-enabled devices can help verify a report's location, and sets of multiple reports on the same incident provide nuance and corroboration for a story.

The value of the collaboration and citizen power of platforms like Ushahidi is worth risking an occasional errant report. In countries where mainstream media is hamstrung by lack of access or government constraints, crowdsourced maps can create transparency, accountability and rapid resource deployment by identifying violence hot spots and the type of intervention they require.

2.5 *Transforming how human rights abuses are documented and monitored*

Traditionally, formal organizations have documented, monitored and reported human rights abuses. This system faces challenges in accurate representation, financial resources, access to regions where violations are occurring, and staff capacity constraints. With lightweight cameras and smartphones, any concerned citizen can now document and report on human rights violations. Citizens less frequently rely on media organizations, non-governmental organizations or international organizations to raise their voices or share their stories.

The nonprofit organization WITNESS has harnessed the power of compelling personal storytelling for human rights advocacy by using citizen-sourced videos as integrated campaign tools. They train citizens and activists around the world to safely film human rights abuses. These stories have been used as testimony before human rights commissions, legislative bodies and executive bodies to bring human rights violators to justice.

3 Risks and challenges presented by digital technologies

While digital tools provide efficient, low-cost and innovative ways of advancing the human rights agenda, the same digital tools can perpetuate abuse. The following sections examine how new technologies at times enhance global inequalities, violate privacy and threaten individual and organizational security.

3.1 Privacy and security risks

Technologies that give human rights activists worldwide new tools to fight abuse, expose corruption, change government policies and bring human rights abusers to justice simultaneously pose security risks. Social media, blogs, mobile phones, videos and images can be appropriated by governments and non-state actors for surveillance in order to extract sensitive information, collect personal citizens' data and intercept communications. As recently revealed in National Security Agency (NSA) documents leaked by Edward Snowden, the US government has been involved in massive data collection and surveillance activities worldwide with little oversight. In Egypt, the former military government and the newly-formed democratic government have identified and targeted online activists. These infringements on privacy and freedom pose a serious threat to human rights defenders. While the digital technologies for creating and sharing information—along with tools developed for mass surveillance—have advanced significantly, the policies and international standards governing their use lag dismally behind.

As citizens become more aware of global human rights abuses through information shared online, digital technologies can simultaneously perpetuate violence. Digital technologies enable human rights abusers by making it easier for them to distribute child pornography, conduct human trafficking and practice modern-day slavery. A March 2014 report by Najat Maalla M'jid, United Nations' Special Rapporteur on the sale of children, child prostitution and child pornography, warns that children are at more risk than ever to be sexually exploited or sold online (CHILD…, 2014). Digital abuse is not limited to the egregious abuses of trafficking and slavery—each day, women and minorities face harassment, bullying and threats online.

The increased use of digital technologies for data collection and surveillance has put technology firms under public scrutiny. These companies face dueling pressures and expectations to be transparent and to respect the privacy of their users. The right to privacy is a basic human right, and as technologies evolve, activists and human rights organizations throughout the world are calling on governments to create policies that ensure transparency and accountability when it comes to security surveillance and collection of personal data of their citizens.

3.2 A digital divide in access to technology, information and education

From social media to mobile phones to wearable technology, digital connectivity drives daily life. With such widespread use of information and communication technologies, we tend to overlook the gaping global digital divide. In a digital age, many basic freedoms and fundamental human rights are inextricably linked to the right to digital access. As a result, the United Nations declared access to the Internet a basic human right (KRAVETS, 2013), due to its ability to provide access to information, allow freedom of expression, allow citizens to take part in the political process of their country and allow them to actively take part in the cultural life of their communities.

And yet only 39 percent of the world's population has Internet access. Seventy-five percent of Europeans are online, while only 16 percent of Africans have Internet access (INTERNATIONAL TELECOMMUNICATION UNION, 2013).

The digital divide also cuts through both developed and developing nations, due to both limited access to technology and low literacy rates. Only 37% of the women in the world are online, versus 41% of men. Based on local cultural norms regarding women, literacy rates and gender inequalities, there also exists a significant gender gap in access even when digital technologies are available in the region. As women's rights consultant Clara Vaz (2014) points out, part of the challenge is gendered distribution of information. Men create the majority of the online content. For example, on the open-source encyclopedia Wikipedia, only 16% of the editors are women—and they contribute only 9% of the changes to Wikipedia entries (LAM; UDUWAGE; et al, 2011). Since Wikipedia relies on volunteers to add content, this has serious implications. Often, information relating to violence against women is absent or inaccurate. During a hackathon hosted by Breakthrough in December 2013, one group of activists and journalists identified and edited a set of key Wikipedia entries that left out important information regarding sexual violence against women, such as an article on Indian guidelines regarding sexual harassment in the workplace and an article explaining a landmark rape case judgment.

Government censorship and corporate policy also limit digital access. After all, government censorship means people throughout the world do not experience and access the Internet and digital tools in the same way (MACKINNON, 2014). In some cases, national governments and large corporations control how certain populations experience the Internet, resulting in inequality in freedom of access to information. In order to operate in certain countries, companies like Google have to exercise self-censorship and limit some of the information that they allow users to access.

4 Other impacts on the human rights field

This section considers some additional impacts that digital technologies have in enhancing the work of human rights advocates through innovation, creativity and collaborations between online and offline activism.

4.1 Driving innovation to bridge the digital gap

In places where Internet access is scarce, the constraints drive innovation in the ways mobile phones and radio can be used to generate social change. Gram Vaani, a Delhi-based technology company, uses mobile phones to create a community-powered social network. Mobile Vaani relies on an intelligent interactive voice response system where people can call a number to record messages about their community or listen to messages left by other members of their community.

In December 2013, Breakthrough partnered with Mobile Vaani in Jharkhand, India to raise awareness about the devastating impact of early marriage on young girls. Nearly 223 people called to contribute content, and 15,000 callers dialed in to hear these messages. Short compilations of the messages received aired as eight

episodes over a period of four months. Similar to other social media, the Mobile Vaani content gives space for multiple types of messages. People expressed opinions, shared useful information about government programs related to early marriage and exchanged entertaining content such as stories, poems, dramas and songs.

In this way, Gram Vaani's community-based network creates a system of accountability as people demand access to needed resources and make policymakers aware of the problems they face, while also generating solutions that are grounded in the context of their community.

4.2 New forms of presenting information for impact

At a time when audiences regularly digest information while quickly scrolling through tweets of no more than 140 characters each, organizations must continuously innovate to capture and hold audience attention. Long-form analytical reports, policy papers and research studies are certainly still relevant ways to convey more complex, nuanced arguments. As a result, organizations must creatively integrate digital tools in their campaigns and understand the best ways to build an argument and reach audiences using the range of tools at their disposal.

After all, the same report can exist in different forms. Based on the audience an organization is expecting to reach, content should be tailored for maximum viewership and shareability. In the past, organizations would generate reports that would sit as printed materials in their offices or housed as PDF documents on their websites. The ability to present information in multiple and engaging formats means that organizations can now share their reports and research with an even broader public, including audiences that would typically not have sought out reports published and distributed in a traditional manner. Recently, The Barnard Center for Research on Women published a report on the future of online feminism on their website. The Center also created a visually-engaging infographic based on their major findings that could be shared across social media and generated online discussion during the launch event with the use of #FemFuture on Twitter (MARTIN; VALENTI, 2013).

4.3 Digital action and place-based activism

Online human rights campaigns are often dismissed as "slacktivism" and criticized for not translating into real change. However, this criticism assumes that digital activism replaces place-based activism. In reality, the success of human rights campaigns stems from a balance of online consciousness-raising and offline action to drive meaningful social impact. *Dynamics of Cause Engagement*, a 2011 study from Georgetown University's Center for Social Impact Communication, demonstrated that while social media activism still ranks lower than traditional activism, nearly 6 in 10 Americans believe that social media are important in bringing visibility and support for causes. Furthermore, "slacktivists" were twice as likely as others to engage in activities like volunteering, donating and recruiting others for a cause. Their social media support supplemented offline activism.

Though a single video can capture the attention of millions of online viewers, real change comes only when that attention is channeled into meaningful action.

Twitter, Facebook, YouTube and online petition platforms like Avaaz and Change raise awareness and mobilize physical action, acting as milestones along the journey towards social transformation.

Similarly, while Breakthrough has engaged more than 130 million people and our media and toolkits have been used by organizations worldwide, we firmly believe in keeping our work grounded in physical communities. For example, in India, women's access to public transportation is limited due to rampant sexual harassment and abuse. In order to encourage women to reclaim public spaces, Breakthrough's "Board the Bus" campaign urged women in Delhi who rarely use buses to join regular female bus commuters as a sign of solidarity on March 8, 2014. In the weeks leading up to the event, Breakthrough relied heavily on social media, radio and flash mobs not only to spread the word and encourage women to travel by bus, but also to share experiences of women who have faced harassment on public transportation. Still, the underlying intent was to drive our audience to physical, collective action.

5   Conclusion

Digital media have fundamentally transformed the landscape of human rights advocacy and campaigning. Despite the serious risks and challenges that these technologies can pose, their power to drive social change cannot be denied. As digital technologies continue to evolve and become ubiquitous, human rights advocates must understand them, adopt them and leverage them to preserve and advance human rights. Digital media can bring together groups of people in a collaborative environment to create and sustain meaningful change. People who previously did not consider themselves activists, such as journalists, technologists, scientists, designers and policy experts, are now applying collective intelligence to create holistic solutions to critical human rights issues facing our societies. These collaborations rely on co-creation, collective action and public dialogue that can spread through popular culture and social media to generate the long-term transformation needed to realize human rights.

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ABSTRACT

This paper examines the impact of new ICTs on activism in Cambodia and the effect this has had on human rights organisations, drawing upon experiences of CCHR, the Cambodian Center for Human Rights. It first examines the context of new ICTs and the status of freedom of expression in Cambodia. Subsequently, the impact of new ICTs in the country is assessed, in particular the impact on activism. The shifting role of human rights organisations in an era of digital media is then addressed and finally the future of online activism in Cambodia is considered. Essentially this paper contends that whilst there remains a crucial need for human rights organisations to engage in traditional forms of action, ICTs have shaped a new era of online activism, to which organisations must respond.

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KEYWORDS

NEW INFORMATION AND COMMUNICATION TECHNOLOGIES' INFLUENCE ON ACTIVISM IN CAMBODIA

Sopheap Chak

1 Introduction

New information and communication technologies (ICTs) are increasingly recognised as having a potentially positive influence on activism in the developing world. This is particularly true for Cambodia, where traditional forms of media are stringently censored and fundamental freedoms frequently denied. Growing internet penetration and the development of new ICTs have contributed to increased youth involvement in social, political and economic activism. Though ICTs are not yet available to all, they are essential, providing much needed access to information, resources and the wider international community.

In Cambodia, online activism as a form of engagement is imperative when considering the lack of civic education and widespread human rights abuses. Ruled by one of the world's longest serving leaders, the country suffers from widespread land grabs by powerful elites, the suppression of workers' rights and from excesses by security forces to quash unrest. Although Cambodia has one of the lowest internet penetration rates in Southeast Asia, disenfranchised citizens are increasingly utilising online activism to challenge these abuses. Despite concerns that censorship of the internet may become a reality, online activism will continue to play an important role in the country.

Although new ICTs have had a largely positive impact on online activism, there are also effects for human rights organisations such as the Cambodian Center for Human Rights (CCHR), a non-aligned, independent, non-governmental organisation that works to promote and protect democracy and respect for human rights throughout Cambodia; they have also impacted the methods and tactics other organisations have traditionally employed. As with individual activists,

human rights organisations also enjoy the benefits of new ICTs and the speed and efficiency at which information can be shared. However, particularly in developing countries where ICTs are not available to all, organisations need to bear in mind the importance of traditional forms of action, as well as consider the risks involved in communicating online.

This paper seeks to explore the effect new ICTs have had on activism in Cambodia. The first section discusses the context of ICTs in the country and the second, the impact new ICTs have had on social, human rights and political activism. The third section examines the shifting role of human rights organisations in the context of digital activism, while the conclusion considers the future of online activism in Cambodia.

2 ICTs in Cambodia

2.1 Limited but fast growing access to ICTs

Social and political upheaval in Cambodia's turbulent history made early ICT endeavours impossible; the Khmer Rouge destroyed the country's vital infrastructure, including telecommunications. However, in recent years, the government has been proactive in allowing the private sector to provide mobile services. A 2004 report by the United Nations Economic and Social Commission for Asia and the Pacific observed that Cambodia became the first country in the world to have more mobile than landline telephones (UNITED NATIONS, 2004, p. 60). Such efforts have had a considerable effect: according to the Ministry of Post and Telecommunication, mobile phone subscriptions exceeded 20 million in 2012, surpassing a population of about 15 million (RENZENBRINK, 2013).

Although Cambodia suffers from one of the lowest internet penetration rates in Southeast Asia, there has been a rapid proliferation of internet users in recent years, especially since the emergence of wireless broadband services in 2006. According to recent estimates, 18% of the population have access to, and use the internet, an increase of 17.5% from 2009 (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2013a, p. 1). Increased access to the internet results in greater access to social and new media, the apparatus for online activism. Cambodia has approximately 1,120,000 Facebook users, with 1,100 new users joining every day (SOCIAL MEDIA CAMBODIA, 2014). While factors such as Cambodians having multiple Facebook accounts and foreigners living in the country undoubtedly distort these figures, the statistics indicate that a growing proportion of Cambodians have access to social media, 50% of whom are between 18 and 24 years old (SOCIAL MEDIA CAMBODIA, 2014). While less popular than Facebook in Cambodia, Twitter has also contributed to growing online activism and was used during the 2013 general election and subsequent protests to quickly spread information.

Despite such encouraging statistics, there remains a notable digital divide between urban and rural areas. Adding to the costs involved in purchasing technical equipment, the lack of electricity and computer access means that access to new

ICTs is considerably concentrated in urban centres. Bearing in mind that 79.8% of Cambodia's population is rural (UN DATA, 2014), this is a considerable issue. Nonetheless, due to the affordability of mobile phones, inhabitants of Cambodia's most rural, poverty stricken areas are now increasingly using text-messaging technology. Furthermore, the growing popularity of smartphones and the gradual expansion of 3G coverage in the country enable many of those in remote areas to access the internet, without the cost of purchasing a computer.

2.2 Locked down traditional media

New ICTs are crucial for Cambodia when considering the government's tight grip on traditional forms of media. Rigorous censorship is commonplace, despite guarantees of the right to freedom of expression in Cambodian and international law. Article 41 of the Constitution of Cambodia specifically states that all citizens shall be entitled to freedom of expression, and, in 1992, Cambodia ratified the International Covenant on Civil and Political Rights (ICCPR).

   Laws regulating the media in Cambodia are vague, unevenly enforced and stifle the right to freedom of expression (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2014a, p. 4). Television, radio broadcasters and newspapers require a license from the Ministry of Information, effectively providing the government with total jurisdiction over these media. In 2012, The Committee for Free and Fair Elections in Cambodia (COMFREL) report confirmed that all eleven TV stations and more than 100 radio stations are either owned by the government itself or by those affiliated with the ruling party (THE COMMITTEE FOR FREE AND FAIR ELECTIONS IN CAMBODIA, 2012, p. 30). Only four independent radio stations were identified.[1] Similarly, Freedom House found the same conclusions regarding Khmer language newspapers, determining the status of Cambodia's press as 'not free' (FREEDOM HOUSE, 2013a). Such stringent censorship makes new ICTs the only media accessible to dissenting opinions and free from executive influence.

2.3 New media: a space to protect from censorship

Unlike traditional media, new media in Cambodia enjoys moderate freedom, especially in relation to other countries in the region such as Thailand and Myanmar, notorious for internet censorship. However, despite this relative freedom and Freedom House deeming the internet as 'partly free' (FREEDOM HOUSE, 2013b), the Government has made sporadic attempts to control internet usage. For instance, in November 2012, the Government issued a circular demanding the closure of all internet cafes within 500 meters of educational facilities – effectively all existing internet cafes. The proposed ban was eventually reversed in December 2012 due to popular outcry.

   It is also reported that the Government has routinely requested that Internet Service Providers (ISPs) block certain websites, in particular those critical of the government, such as the Khmerization blog, which is inaccessible on certain ISPs. Additionally, in two cases members of the public have been threatened with

defamation charges due to criticising police on Facebook.[2] More recently, Duong Zorida, actress and TV presenter, was convicted on charges of defamation over a dispute on Facebook with another salon owner. This case underscores, underscoring the courts' willingness to criminalise online content (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2014b, p. 3). The perceived possibility of arrest could lead some bloggers and social media users to self-censor due to fear of reprisal (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2013c, p. 3).

Of additional concern is the impending Cyber Crimes Law, the first of its kind in Cambodia, announced in May 2012 and likely to be passed in the first half of 2014. According to the government, the law is being drafted solely to protect internet users from hacking and the destruction of online data, in accordance with European Union guidelines. However, civil society requests to review the draft to ensure it does not encroach on the right to freedom of expression have been denied (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2014b, p. 1) and there are concerns that the law will be used as yet another tool for government censorship, especially as Deputy Prime Minister Sok An said the law was being drafted in order to put a halt to the spreading of "false information" online.

3 Impact of ICTs in Cambodia

New ICTs offer a wide range of opportunities to advocate for democracy and human rights. Digital communication has the potential to improve transparency and accountability, as individuals are able to access information more easily and quickly; share information about human rights violations and methods of resistance; express their concerns; and access a wider international audience (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2012, p. 14).

3.1 Accessing and sharing diverse and independent information

The most obvious way in which new ICTs have the potential to influence activism is through the ability to share and access information instantaneously. The internet affords users access to a wealth of knowledge and resources. All major newspapers and radio programs in Cambodia have comprehensive websites where broadcasts, articles and videos can be accessed. They are also often connected to social media platforms such as Facebook, Twitter and YouTube, through which they further disseminate news. This also holds true for independent newspapers such as *The Cambodia Daily* and *The Phnom Penh Post*, effectively allowing internet users greater access to unbiased information.

In addition, advances in mobile phones and other devices with video and photography capabilities have allowed online activists to document and record human rights violations and share them online. Once this information is out, it has the potential to go viral and it is impossible to prevent this occurrence (KHOURY, 2011, p. 80-83). This phenomenon has become increasingly prevalent in Cambodia and violations are frequently posted on the internet. Surya P. Subedi, United Nations Special Rapporteur on the situation of human rights in

Cambodia, has remarked: "'access to online videos of incidents of shooting and forced evictions has increased […] as the use of social media and the ability to record such incidents and promptly display them on the internet has developed" (UNITED NATIONS, 2012, p. 49).

A noteworthy example is Venerable Luon Sovath, a Cambodian Buddhist monk who has successfully documented human rights violations throughout the country using his mobile phone. Despite being regularly threatened and even detained, Sovath, also known as the 'multimedia monk,' has become a prominent presence at major land protests and evictions. In 2009, as local authorities forcibly evicted villagers from their homes in Siem Reap province, Sovath captured video evidence on his mobile phone of police shooting at defenceless villagers and submitted the footage to a local human rights NGO (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2013b, p. 24). Such captured evidence is hard to deny and as such, increases accountability.

3.2 Mobilising and organising the opposition

A major way in which new ICTs have had an effect on activism in Cambodia is that they have been used as an effective organising tool. As previously noted, the majority of Cambodians – even those living in rural areas – possess mobile phones; as such, Short Message Service (SMS) has become a widespread method of communication in Cambodia and is becoming an indispensable advocacy tool.

Effective organisation through social media was evidenced during the run-up to the 2013 general election. The Cambodian National Rescue Party (CNRP), despite having limited resources, was able to amass vast crowds to advocate for political change through social media. According to CNRP parliamentarian Mu Sochua, "85 to 90 percent of [CNRP] youth in the city areas were able to mobilise everyday, and they were all organising on Facebook" (WILLEMYNS, 2013). In spite of allegations of election irregularities, the opposition made significant gains in the National Assembly, winning 55 seats out of 123, most likely due to their organising strategy.

3.3 Bringing forth new forms of activism

Cambodia has a burgeoning blogging community, known as 'cloggers', who employ blogging to exercise freedoms that are denied within conventional media. Emphasising the pervasiveness of blogging in Cambodia was the 2012 BlogFest Asia, which was hosted in Siem Reap (BLOGFEST ASIA, 2012). Furthermore, due to the late development of Khmer Unicode (computer font for Khmer language), most blogs in Cambodia continue to be written in English, affording greater accessibility to the international community.

Common forms of online protests are campaign blogging and online petitions, which have become a popular advocacy tool. In Cambodia, the renowned 'Save Boeung Kak' blog provides updates on developments at Boeung Kak Lake in Phnom Penh, which has seen numerous land rights violations. Additionally

the blog urges visitors to sign a petition demanding compensation for the victims of the eviction, as well as a halt to continuous land right violations in Cambodia (SAVE BOEUNG KAK, 2014).

In Cambodia computer networks and the anonymity of the internet has led to another, more contentious form of activism directed at the government, known as 'hacktivism'. These attacks have been led by Anonymous Cambodia, a branch of the notorious international network. On 15th September 2013, Anonymous Cambodia 'declared war' on the ruling party in response to violent post-election clashes. They have since launched numerous Distributed Denial of Service (DDOS) attacks against several government websites. While hacktivism as an effective or even legal form of activism has been widely debated in the literature, it leads us to consider how technology transforms 'ordinary' transnational activism (WONG; BROWN, 2013, p. 1016).

Although digital media in Cambodia is still largely used for entertainment purposes, in recent years ICTs have had a growing impact on online activism. In this context, many commentators have questioned whether Cambodia will see its own 'spring'. Writing for Al Jazeera, CCHR former President Ou Virak argues that:

> *All the necessary ingredients [for a 'spring'] are present. First, it has one of the youngest populations in the world [...] Second, very rapid urbanization has taken place over the past decade [...] with economic growth, widespread availability of cheap smartphones, internet coverage and more than a million Facebook users, Cambodian citizens are increasingly eager to express themselves.*

> (VIRAK, 2014)

Although he concludes Cambodia is not quite ready for a 'spring', the fact that the 'necessary' factors for such an event are present points to the huge potential impact of new ICTs and new media for the country in the future, as access to such technologies continues to increase.

4 The role of human rights organisations in the new media era

As shown above, new ICTs have enabled young Cambodians to access and share information on human rights violations and advocate for change online. As individuals can now access information and organise autonomously through social networks, the role of human rights organisations in this shifting context must be critically re-examined.

4.1 New opportunities for human rights advocacy

ICTs and the internet in particular have enabled NGOs to disseminate information and highlight human rights violations at an accelerated rate and to a wider audience. CCHR for instance, posts all its publications on the CCHR and Sithi websites and via social media to its 126,000 fans on Facebook and 3,869 followers on Twitter.[3] Sharing information via social media also allows organisations to reach

an international audience. Among CCHR's followers on Facebook, 63% are from Cambodia, 13.4% from Indonesia, 7.3% from Vietnam and 2.8% from Laos.[4] In addition to using social media, CCHR's Human Rights Defenders Project created a smart phone application which serves as a source of legal information providing legal factsheets, case analyses, step-by-step guides and answers to FAQs on the most pressing legal threats to civil society. Sharing information online not only ensures it will reach a wider audience, but allows to reducing spending within an organisation: rather than being printed it can be shared online. Additionally, blogs and social media allow a greater online audience to actively engage with human rights organisations, as social media users can easily share petitions and comments on posts. It also allows followers to have an interactive experience with organisations who are able to respond to comments.

With the advent of online activism, there is now a space for human rights organisations to provide capacity building to online activists. CCHR has adapted to address this need with the Sithi Hub, a physical space providing a platform for young innovators and human rights advocates to converge, where they can share ideas and exchange information about applying ICTs to human rights. CCHR also empowers Sithi Hub members through on-going training and capacity-building activities related to new ICTs and tools for human rights documentation and information sharing. For instance, in December 2013, the Sithi Hub members received training on strategies for using Facebook for human rights. Young activists can also download ICT resources to build upon their capacity, such as the *Social Media Best Practices Booklet for Activists* (SITHI HUB, 2013).

4.2 ICTs shortcomings

The speed at which information is now disseminated via SMS and online means that statements and press releases issued by human rights organisations are no longer breaking news. However the speed with which information is shared generates a risk of inaccuracy. For instance, in February 2014, during a bail hearing for 21 workers and human rights defenders who were arrested the previous month during garment workers' protests, one individual tweeted that all 21 were to be released prior to the judges rendering their judgment, when in fact none were awarded bail. This inaccurate information was re-tweeted several times as people trusted the person tweeting the information. It is important to note information shared online can often be unreliable, and there is still a need for more in-depth, detailed, verified reporting and analysis by human rights organisations.

Moreover, while Facebook and other forms of digital media are effective in disseminating information, they cannot substitute movement building and strategic planning (VIRAK, 2014). Activism ought to be taken as a whole; there should be no differentiation between traditional and digital activism, which must enhance each other (KHOURY, 2011, p. 84), rather than making each other redundant. As such, CCHR employs both traditional and new forms of action, to ensure the greatest impact possible. For instance, CCHR still uses radio broadcasting as an effective way of raising awareness on human rights issues affecting people throughout

the country; it has been estimated that the seven radio stations CCHR users have a combined potential audience of up to 85% of the Cambodian population (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2012, p. 7).

It is also vital that organisations consider who benefits from its actions. CCHR's traditional forms of action, centred on the production of detailed reports and analysis, are necessary and useful for practitioners, academics and other NGOs, but are not so useful in engaging the general public. On the other hand, CCHR's more recent forms of action such as sharing videos, leaflets and factsheets via social media not only ensures engagement, but also that vital information will be disseminated to a much wider audience.

Furthermore, human rights organisations have to consider the consequences and risks involved with the use of ICTs and to ponder how they can assist activists in increasing their online security. Digital means of communication cannot be relied upon to ensure that sensitive information linked to human rights violations and potential perpetrators remains private and secured, especially when used by activists who may have been targeted for surveillance by the authorities. Although activists in Cambodia consider their physical security, their digital security is often overlooked. As such there is a need for organisations to provide awareness and training on how to secure sensitive digital communications and data storage.

Finally, along with an increasing use of the internet and social media comes the potential rapid propagation of threats and offensive or racist discourse, thanks to the anonymity offered by internet. For instance, CCHR President Ou Virak received death threats after CCHR issued an open letter online which condemned the derogatory remarks made in a speech by CNRP leader Sam Rainsy towards women and the Vietnamese community in Cambodia. The anonymity of the internet and social media enabled staunch racists to relay their xenophobic views with alarming speed in reaction to the letter and led to a personal smear campaign against Virak.

5 Conclusion

The advancement of new ICTs in Cambodia has had a mobilising effect amongst a largely youth population in an environment blighted by widespread human rights abuses. The internet has enabled Cambodians to actively advocate for change online through various forms, including blogging, online petitions and hacktivism. New media has empowered citizens to access information, express themselves, and participate in public debate more than ever (UNITED NATIONS IN CAMBODIA, 2011). The effect of ICTs on online activism has the potential to break traditional barriers and reach new frontiers for freedom of expression (CAMBODIAN CENTER FOR HUMAN RIGHTS, 2013b, p. 22).

The future of online activism in Cambodia faces several challenges, the greatest being the looming Cyber Crimes Law, which has the potential to severely infringe upon citizens' right to freedom of expression and provide the government a legal basis to crack down on online activists. Moreover, for online activism to move forward, it is of great importance that the digital divide between urban and

rural areas is bridged. This is particularly true when considering that many of the most serious human rights violations, especially those related to land, occur in remote rural areas.

Although it is difficult to measure tangible impacts of ICTs on human rights, it may be said that, judging by the proliferation of Facebook users in Cambodia, it is undeniable that ICTs and social media play an intrinsic role in the lives of many young Cambodians. As such, the human rights community cannot ignore the huge potential of ICTs as an advocacy tool; if organisations wish to move forward they must ensure they adopt strategies that support and build capacity of online activists.

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NOTES

1. Beehive Radio, Radio Free Asia, Radio Voice of America and Radio France International.

2. The teacher Phel Phearun, after criticising police, was summoned and threatened with defamation in February 2013. Cheth Sovichea was arrested in November 2013 for a post that was critical of the police. He was also threatened with defamation charges.

3. As of 28 February 2014.

4. As of the end of 2013.

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ABSTRACT

This article will discuss strategic human rights litigation in the Inter-American Human Rights System from the experience of a Brazilian organization. It begins with the conceptualization of strategic litigation and how it can be developed in the Inter-American context, with Brazil as a backdrop. The theoretical formulation of strategic litigation deals with how an organization engages with the other actors in the field and, primarily, with those from the area where the violations have taken place, proposing a dual typology for the issue and presenting the general outlines of two case studies.

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STRATEGIC LITIGATION EXPERIENCES IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

Sandra Carvalho and Eduardo Baker

1 Initial considerations on strategic litigation

Let us start with the following problem: how to balance short and long-term actions in the field of human rights, particularly in relation to advocacy in the international human rights protection systems. The balance between urgency and long-term impacts is a difficult equation, and one that can be addressed in a variety of different ways. This article draws on the work of a Brazilian human rights organization, Global Justice, specifically its experience in international human rights litigation in the Inter-American Human Rights System (IAHRS).

Consequently, theoretical and jurisprudential aspects of the international systems are not relevant here. We could discuss the different forms of reparation and prevention ordered by the Inter-American Court of Human Rights and how they were processed by the different States. This article, however, is not an analysis of the effectiveness of the international protection systems. Instead, it focuses on how things unfold on our side—for the organizations and movements that use these instruments.

What role can or do these actors play in an international protection system? What views of the subject are possible and how do they appear in litigation before this multilateral rights protection mechanism? Some points will be important in this debate, such as the selection of cases and how triangulation occurs between the petitioners or representatives of the victims, the international body and the State responsible.

Obviously, any answer is provisional. Every day we learn a great deal about the possibilities and limitations of this type of work and, often, the limitations seem to far outweigh the possibilities. However, perhaps one of the main jobs of a human rights organization should be precisely to look for these possibilities

and create new ones—besides just using international human rights law, actually creating from it and with it.

By considering the possibilities for advocacy in the IAHRS as the main focus of analysis, the first important point is interdisciplinarity. Litigation in the Inter-American Court and Commission does not require professional registration as a lawyer. Registration with the Brazilian Bar Association (*Ordem dos Advogados do Brasil* - OAB), in Brazil's case, is not necessary to petition or to appear before the Inter-American System. Article 46 of the American Convention on Human Rights, which deals with the minimum requirements for a petition to be admitted; article 23 of the Rules of Procedure of the Inter-American Commission, which deals with the presentation of petitions; and article 28 of the Rules of Procedure of the Inter-American Court, which deals with the presentation of written material, are some of the articles that make this lack of restriction clear.

This does not mean that no legal knowledge is needed to engage with the Inter-American System—it is, in fact, essential—but it points to another advocacy requirement in this area: integrated and interdisciplinary work. Human rights violations always involve other issues besides the breaking of an international legal norm. While this may be the minimum requirement for holding States internationally accountable, in human rights it is not possible to adequately address international wrongdoing without a holistic understanding of the problem. Human rights violations are part of a political, historical, economic, social and cultural context that needs to be studied for advocacy via these mechanisms to produce the desired results.

For example, in the debate on business and human rights, an important challenge is to understand the role of the governmental and international development agencies, such as the Brazilian Development Bank (*Banco Nacional do Desenvolvimento - B*NDES) and the International Bank for Reconstruction and Development (IBRD) in the financing of mega-projects that impact human rights. Similarly, when we talk about the policy of compulsory drug rehabilitation for crack cocaine users, the mental health angle cannot be overlooked if we are to understand how this practice violates people's rights.

In order to have these debates, there needs to be a diversified dialogue. Psychologists, sociologists, journalists and economists are examples of professionals who can contribute a great deal to human rights litigation. Without this diversity, the work can be severely impaired and even derailed, depending on the case.

Furthermore, there should be no "pure advocacy" in the debates. The discussion about what legal activism is and how it should be conducted in the field of human rights can be viewed as a dialogue with a broader strategy, commonly called strategic litigation.

In Brazil, unfortunately, there is very little literature or practical experience on the topic. Strategic litigation is closely associated with legal education and with the emergence of the so-called human rights "clinics" in Europe, the United States and some Latin American countries, such as Chile, Argentina and Colombia.[1]

Over the past few years, Brazil has started to introduce, albeit tentatively, a few initiatives in some higher education institutions. However, some civil society

organizations have already been working for more than a decade with strategic litigation, even though they rarely actually use the term itself.

One possible definition of strategic litigation can be found in the *Litigation Report* (SKILBECK, 2013) of the Justice Initiative, a program of the Open Society Foundations that focuses specifically on the field of strategic litigation. According to the report: "Strategic human rights litigation seeks to use the authority of the law to advocate for social change on behalf of individuals whose voices are otherwise not heard" (SKILBECK, 2013, p. 5). In the United States, the terms *high impact litigation* and *public interest litigation* are also used.

A book published by the Columbia University School of Law contains the following description:

> *First, public interest litigation persuades the judicial system to interpret the law; public interest litigation urges courts to substantiate or redefine rights in constitutions, statutes, and treaties to better address the wrongdoings of government and society and to help those who suffer from them. In addition, public interest litigation influences courts to apply existing, favorable rules or laws that are otherwise underutilized or ignored.*
>
> (REKOSH; BUCHKO; TERVIEZA, 2001, p. 81-82).

The emphasis on the legal aspect is sometimes softened. For example, in an article that analyzes typologies of the concept of strategic litigation in the Americas, we find four forms of definition of the term: focusing on the judicial defense of human rights; based on the high impact results of strategic litigation; according to the timing of the intervention (preventive or corrective); or according to the human rights to be protected (CORAL-DÍAZ; LONDOÑO-TORO; MUÑOZ-ÁVILA2010, p. 49-76).

Strategic litigation should be capable of drawing attention to human rights abuses and violations and emphasizing the duty of the State to fulfill its national and international obligations. This does not mean that every rights violation can, or should, be handled with strategic litigation. On account of its versatile character, involving legal litigation and political advocacy, the Mexican Commission for the Defense and Promotion of Human Rights lists the four situations in which the strategy is applicable:

> *1. The law is not observed (whether substantive or procedural law); 2. There is a discrepancy between domestic law and international standards; 3. The existing law is not clear; 4. The law is repeatedly applied in an erroneous/arbitrary manner.*
>
> (CONTRERAS, 2011, p. 25, free translation).

But this characterization raises a difficulty, which is exemplified by the topic of torture in prisons. We know that torture is widespread in Brazilian prisons, and that the right of detained persons to their physical and psychological integrity is not respected. It is not clear where to draw the line that distinguishes mistreatment from torture in the application of the law by Brazilian courts, nor is it possible to identify from this application any dialogue with the sources of international laws

and jurisprudence. The law that deals with torture is very rarely used in practice in criminal investigations and charges. In theory, therefore, the topic could fit into any one of the four above mentioned categories.

This, however, poses two problems: why litigate this topic instead of, for example, the non-demarcation of the land of traditional peoples? After all, it would be equally possible to justify the inclusion of that topic in the same four categories. And which case should be chosen to conduct the litigation?

The same text, when addressing the choice of the paradigmatic case, raises the following considerations:

> *the opportunity, the evidential quality of the case, the relationship with the victim(s), the exhaustion of domestic jurisdiction remedies, or the sum of these factors, or any other situation that, once analyzed, allows us to identify a possible situation that, given its merit, is worthy of national or international litigation.*
>
> (CONTRERAS, 2011, p. 31, free translation).

But this does not really get to the bottom of the problem. The main reason is that, in this approach to strategic litigation, all the reflection and judgment comes from a position that is relatively detached from the problem. This is why the relationship with the victim is so important, and why we need to work for the benefit of those individuals whose voices are not heard. The job of litigating is to empower others.

The distance between the litigator and these others becomes even clearer when we find recommendations for litigators in the specialized literature, such as: "It is always advisable to be aware of the 'market' need for the services provided" (EUROPEAN ROMA RIGHTS CENTER; INTERIGHTS; MIGRATION POLICY GROUP. 2004, p. 38) and "Perceived need on the part of potential clients (the 'client' market) is a key consideration" (EUROPEAN ROMA RIGHTS CENTER; INTERIGHTS; MIGRATION POLICY GROUP. 2004, p. 37). From a client market, it is a logical step to a donor market, where human rights litigation starts to be managed more like a business. In the corporate world of human rights, our role, for example, is to identify *stakeholders*. Our "old" terminology has long disappeared from the jargon.

But before delving into this debate, we need to take a brief detour. Related to the topic of strategic litigation, but sometimes hidden from the discussion, is the matter of the political agenda of the donors. First, it is important to distinguish between a case to be litigated involving a broad activity and one to be conducted as part of a project. When looking for funding, it is not uncommon for the donor to have a hand in setting the agenda. The simple decision to allocate funding for one issue and not for another in itself signals an ethical and political position by the donor.

We also know that this is not exclusive to human rights organizations. It is not rare, for example, for universities to provide scholarships for specific subjects with the financial support of companies and development agencies. Not wanting to go into too much detail, it is enough to say that this is something we all have to live with, in one way or another.

Based on this situation, we can consider two models for selecting cases. The first follows the straight line: donor => organization => victim. The second is a two-way street: partners <=> organization <=> donor; noting that this last element, the donor, is not always present.

In the first model, the donor provides funding to address a particular topic, use a particular international mechanism or research a given subject. After obtaining the funds, the organization looks for cases and/or victims that fit the funding profile or rejects or accepts the cases they receive based on this filter. From there they develop a litigation strategy.

In the second model, the organization already has partners with which it works regularly and has developed an institutional track record. Through their joint action, they propose to work on a particular topic and/or case using litigation, which may involve, for example, the Inter-American Human Rights System. Once the joint agenda is set, if possible they seek funding for the project or use existing funding, although in some cases—or in many cases—they act without obtaining any direct support.

Obviously the models are exaggerated and reductionist. But it is important to have a clear understanding of this distinction in conducting human rights work. The problem is the starting point: whether or not it is underpinned by a real commitment to social struggles.

2 Two advocacy experiences

At the authors' organization, there is a recent example of such advocacy in the Inter-American System involving the struggle of the Guarani-Kaiowá indigenous people for access to land and territory in the Brazilian state of Mato Grosso do Sul. We first started working on this case after liaising with the Missionary Council for Indigenous Peoples (Cimi), with which we have had a long-term partnership.

In November 2011, Chief Nísio Gomes, leader of the Guaiviry village, was murdered. After talking to lawyers and members of Cimi, a proposal was drawn up to request a precautionary measure from the Inter-American Commission. Due to the urgency and the risk of new attacks, this looked like the best way to achieve the outlined goals.

The intention was to give visibility to what was happening in Mato Grosso do Sul, which was nothing new. For many years, the Guarani-Kaiowá and the Terena peoples from the region have been victims of negligence by the State and the actions of gunmen, although the lack of demarcation of their territories is the main reason for the violence, including internal violence. Suicide and murder rates among indigenous people are extremely high in Mato Grosso do Sul. Between 2004 and 2010, 55.5% of the murders of indigenous people in Brazil and 83% of the suicides occurred in the state.[2]

Using the precautionary measure approach, we planned to debate this very problem of access to territory, which could not itself be the direct subject of the precautionary measure. Two main forms of litigation are available in the Inter-American System: the presentation of individual petitions and the request

for precautionary and provisional measures. This second category is intended for urgent and serious situations that could result in irreparable harm. The seriousness, urgency and irreparability of the harm was demonstrated, we argued, by the killing of Chief Gomes and the large number of threats, attacks and violent acts against these communities in recent years.

In the request, we tried to show the relationship, which for us is indissociable, between the violation of the right of access to traditional lands and the threats, violence and killings that the Guarani-Kaiowá people endure to this day. The material produced by Cimi over the years was essential in this debate, since it contained an extensive and careful analysis of this relationship and other impacts caused by the deprivation of land.

The combination of legal arguments and historical and social contexts serves a very important purpose in requests for precautionary measures. It is necessary to show, in order to help persuade the Commission, how the seriousness, the urgency and the harm fits into a broader pattern of rights violations and how the precautionary measure, even though it will obviously not solve the underlying problem, could play a vital role in the preservation of some other rights that are essential in the wider struggle: in this case, the wider struggle for access to traditional lands.

This political dimension, however, works both ways. The relationship between Brazil and the Inter-American Commission, at the time, was not at its best. The Belo Monte incident was still fairly recent and perhaps the Commission did not want to open another flank for possible further attacks. Both cases involved indigenous peoples, even if from very different perspectives. After several exchanges of information, the progress of the request came to a standstill.

Nevertheless, the presentation of the request improved ties between the parties involved, strengthening the partnership, and pressured the State to take action, albeit very tentatively. For example, Brazil formulated and approved a Security Plan for part of Mato Grosso do Sul to protect some indigenous villages, although this has yet to be effectively implemented.

Over the course of these months, other actors came on board and joined the cause to use international human rights law to protect the Guarani-Kaiowá indigenous people of Mato Grosso do Sul. On either a temporary or permanent basis, the organizations *Advogados Sem Fronteira* (Lawyers without Borders), *Associação de Juízes pela Democracia* (Association of Judges for Democracy), Amnesty International and FIAN have worked, or still work, on this front. This last organization, both as FIAN Brasil and FIAN International, became more closely involved with the development of these initiatives, primarily because it had already been working for years with the Guarani-Kaiowá from the perspective of food security. We then started to formulate other international advocacy strategies.

Within the framework of the Inter-American System, we started to focus on thematic hearings as another possible form of international pressure. In addition to receiving individual petitions and issuing precautionary measures, which we might describe as direct protection, the Inter-American Commission also has the task of promoting and monitoring human rights in the Americas. One of the ways in

which the Commission performs this role is by holding thematic hearings during its sessions. Any organization or group can request a hearing on a human rights issue it deems particularly relevant. The Commission receives these requests and chooses those it views most relevant in the context—at least in practice, because there are other political factors that influence the decision of the Commission to grant or not grant a hearing.

We requested a thematic hearing at the end of 2012 to address access to land by the Guarani-Kaiowá indigenous people of Mato Grosso do Sul. If, on the one hand, the precautionary measure would be an indirect way to address the topic, since it would be difficult to secure such a measure directly dealing with access to land, on the other the thematic hearing would give us just that freedom. Unfortunately, however, the hearing was not granted.

The organizations involved in the request concluded that it would be problematic for the Commission to directly address the issue of access to land by indigenous peoples, even in a thematic hearing. Just as we had worked on the precautionary measure as an indirect way to tackle the problem, we decided to use the same approach to obtain a thematic hearing, and so we requested, for the last period of sessions scheduled for October and November of 2013, a hearing on the situation of human rights defenders in Brazil, while indicating in the request itself that we intended to deal specifically with those defenders who work in the field of land and territory.

This time, the hearing was granted and we were able to address the violence against the Guarani-Kaiowá and the lack of a diligent policy for demarcating land by the Brazilian State. We shall not go into the details of the hearing—everything is available on the website of the Inter-American Commission.[3] The important thing about this story is to note how an apparent failure, from a technical legal standpoint, can produce positive results, one of the most important of which is perhaps the better cooperation between organizations and movements that come together to advocate and litigate on an issue.

A second example of strategic litigation demonstrates another type of possibility: the Urso Branco case, also involving precautionary measures. The Urso Branco Prison, officially called the José Mário Alves da Silva Detention Center, was opened in 1996 in Porto Velho, in the Brazilian state of Rondônia, with an initial capacity of just 360 pre-trial detainees.

In December 2001, Criminal Sentencing Judge Arlen Silva de Souza ordered the then warden of the prison, Weber Jordiano Silva, "that all so-called 'cela livre'[4] detainees be placed in cells until further notice from this court, under penalty of liability". From that date on, it was not permitted for any detainee to have "cela livre" status.[5]

The guards responsible for enforcing the order, on December 31, 2001, decided to separate the most dangerous prisoners, mainly because they posed a threat to the lives of prisoners held in the so-called "safe house", where detainees are kept who have been threatened with death. On the following evening, January 1, 2002—due to the fact that prisoners from rival gangs had been placed in the same cell—there ensued a long riot that caused dozens of deaths.

One week later, forty-seven of the prisoners who survived the massacre and whose lives had been threatened were transferred to cells which, once again, contained inmates from different gangs. On February 18 of the same year, three prisoners were killed while they were transferred to the "safe house".

As a protective measure, the Justice and Peace Commission of the Archdiocese of Porto Velho submitted a request for precautionary measures to the Inter-American Commission on Human Rights (IACHR) asking for the forty-seven surviving prisoners whose lives had been threatened to be transferred to another facility[6] and for a reform of the prison. As a result, on March 14, 2002, the IACHR granted precautionary measures in favor of the Urso Branco inmates.

Following the non-compliance with these measures, the Commission requested that the Inter-American Court of Human Rights issue provisional measures to protect the life and personal safety of the inmates. This was granted on June 18, 2002, and required measures similar to those previously requested in relation to the prison system, such as the adoption of "all necessary measures to protect the life and personal safety of all incarcerated persons", but also including a more concrete request: "the confiscation of all weapons that are in the hands of the inmates" (COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS, 2002). This different treatment in relation to the Urso Branco case is an important precedent that would be repeated in later resolutions of the Court.

In its second resolution on the case, the Inter-American Court of Human Rights requested the State and the Inter-American Commission on Human Rights to take the necessary steps to establish a mechanism to coordinate and oversee compliance with the provisional measures. The decision of the Court strayed from its usual standard for handling prison issues.

Due to state inertia, the Inter-American Court of Human Rights reiterated its previous requests in its third resolution, on April 22, 2004, emphasizing the need for the State and the Commission to take steps to "coordinate and oversee compliance with the provisional measures ordered by the Court" (COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS, 2004).

It was not until 2006 that a mechanism responsible for this oversight, the Urso Branco Special Commission, was created. Formed by representative of the State—from the federal and state level—and by the organizations that petitioned the Inter-American System, its work was severely criticized by these organizations. Its initial inefficiency was evidenced by the repetition of its agenda in the first two years of its work, which culminated in the petitioning organizations withdrawing from the commission in 2008.

In the same year, however, after pressure from the organizations that litigated the case in the IAHRS, the Brazilian Attorney General filed a request for federal intervention with the Supreme Court, which led to the declaration of a state of emergency in the state of Rondônia. The request was filed in October of that year. In response, the governor of Rondônia declared a state of emergency and the subsequent partial closure of the prison in December, by decision of the 1st Criminal Sentencing Court of Porto Velho.

Concerning the administrative and judicial processes related to the Urso

Branco prison, the first two most significant breakthroughs came in 2009. One was an indictment for the 2002 massacre and the other was a favorable ruling in a civil action filed by the Public Prosecutor's Office of Rondônia in 2000, requiring reforms be conducted and new staff be hired at the Ênio Pinheiro and Urso Branco prisons.

In 2010, after the first trial for the 2002 massacre that resulted in the death of at least twenty-seven people, in which there were ten acquittals and eight convictions, the petitioning organizations started to take part once again in the meetings of the Special Commission, and in August 2011 the Court issued one of its most important resolutions, deciding to lift the provisional measures on August 25, 2011. The backdrop was the public hearing held during the 92nd Regular Period of Sessions of the Inter-American Court, which occurred on the same day.

On the day before, representatives of the Brazilian federal government, the state government of Rondônia, the Public Prosecutor's Office, the Public Defender's Office and the Judicial Branch of the state of Rondônia signed the *Agreement for the Improvement of the Prison System of the State of Rondônia and the Lifting of the Provisional Measures Granted by the Inter-American Court of Human Rights*, with the intervention of the Justice and Peace Commission of the Archdiocese of Porto Velho and of Global Justice.

The agreement proposed five courses of action that were broken down into approximately fifty individual actions. The courses of action are: investments in infrastructure; measures for the hiring and training of personnel; an inquiry into the facts and determination of responsibilities; improvement of services, mobilization and social inclusion; and measures for combating the culture of violence.

In a paper on the Urso Branco case, Camila Serrano Giunchetti addresses the effectiveness of the Inter-American System, starting with an analysis of the interrelation between it and the national jurisdictions. According to the author, the Court functioned like a sphere of influence, never overriding national jurisdiction, but also not accepting the omissive attitude of the State (GIUNCHETTI, 2010, p. 184), which was illustrated by the creation of the Special Commission. The author points out that one of the contributions of the case was the creation of an oversight mechanism, which only features in two other cases: the sentence in the Mapiripán Massacre case, in Colombia, and the provisional measure in the Penitentiary Center of the Central Western Region (*Uribana Prison*) case, in Venezuela.

3 Final considerations

In the balance between urgency and long-term impacts, what kind of approach in the international protection systems can we consider, based on these experiences? Perhaps one of the first contributions is the perception that the long-term is a given. In the relationships built up over the course of the different institutional histories, including civil society organizations and social movements, these goals emerge naturally from debates and exchanges before the occurrence of a potential emergency.

The immediate reality of the Urso Branco prison and the murder of the chief

of the Guarani-Kaiowá only illustrate the underlying problems that were already envisaged by the organizations involved with these issues: mass incarceration and neglect of the country's prisons; and non-demarcation of indigenous lands and increasing violence against indigenous peoples. Strategic litigation starts to be planned in a place where the final commitments—a new security and prison policy or the demarcation of the Guarani-Kaiowá territory—cannot be negotiated or debated.

Focusing on urgency does not mean leaving the establishment of long-term goals for a later date. On the contrary, it is an opportunity to examine and advance measures towards these goals, at least within the vision of human rights work defended in this article.

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NOTES

1. For a more detailed discussion of these roots: Coral-Díaz, Londoño-Toro e Muñoz-Ávila (2010).

2. For more information, see the report "As Violências contra os Povos Indígenas em Mato Grosso do Sul" (CONSELHO INDIGENISTA MISSIONÁRIO, 2011).

3. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=132>.

4. "Cela livre" (free cell) is the name given to those inmates who are allowed to work in the prison, on jobs such as cleaning, and are deemed trustworthy by the prison authorities. The name varies depending on the state. In the state of Pernambuco, for example, the term is "chaveiro" (keymaster).

5. Notice No. 4794/01/VEP, of December 20, 2001.

6. At this point, the request for a precautionary measure was made on behalf of a specific list of individuals.
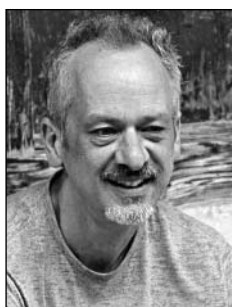
FERNAND ALPHEN

"Get off your pedestal!" This was the title suggested, without a moment's hesitation, by Fernand Alphen for the text of his interview with Sur Journal. Fernand is Head of Strategy at JWT - Brazil (Thompson), the fourth largest advertising agency in the world, established in the United States in 1864 and currently with offices in 90 countries.

Fernand hails from France and defines himself as "the result of an improbable liaison between a French Jew with an Indiana Jones reputation and a Brazilian blonde with dreams of becoming Esther Williams." After studying Business Administration and History, he started in the advertising business at age 22." Now I'm over 50, a dinosaur —an Internet dinosaur— and fell flat on my face by prophesying the apocalypse of the traditional media."

In the few hours when he is not advertising, Fernand writes for a blog and other publications, collects indigenous art, struggles with his piano and listens to baroque music and opera. "I don't know how to dance," he adds. It is clear that he has no idols, nor even a preferred brand.

Interviewed by Lucia Nader, Executive Director of Conectas Human Rights, Fernand does not shy from controversy, stressing that human rights organizations need to forget their prejudices if they want to communicate better." Communicating is all about engaging people to spread a cause" he says, adding that advertising can in no way be "ideological" in terms of forcing people to believe in something unless you take account of all the thoughts that have previously gone through their minds. He argues that human rights are more important than any other cause, but that human rights organizations should stop believing that they have a "monopoly over good."

After hearing Fernand's suggested title "Get off your pedestal," the interviewer adds: "without compromising your values." Both agree, and the interview gets underway.

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Original in Portuguese. Translated by John Penney.

Interview conducted in May 2014 by Lucia Nader (Conectas Human Rights)

"GET OFF YOUR PEDESTAL"

Interview with Fernand Alphen

Conectas Human Rights: Are human rights still an important tool for social transformation? This is one of the core questions in this commemorative edition of SUR. Many would agree that they are certainly important in this respect, but we believe nevertheless that we need to communicate human rights better. Do you think that communication—and more specifically, advertising—can play a decisive role in the struggle for human rights?

Fernand Alphen - Not a decisive role, but I do think that advertising can collaborate with the cause of human rights. Whether you are dealing with a product or a cause, I believe that the function of advertising is to spread a message as widely as possible, and not to try and create a particular movement or a preference for this or that. Advertising can be a fiendishly difficult way of trying to create something from nothing, or to change someone's opinion of something. Some classic examples of ideological propaganda throughout history are abundant proof of this. Take religion for example. If you say "I will make people believe in God," this is a not a good way to advertise. To some extent, the same applies to partisan political propaganda. It might work, but I do not think we should go down that road, and anyway, in my view, this is not the real purpose of advertising.

Conectas: But is this because advertising tries to force ideas into people's heads?

F.A: Yes, and without considering the opinions or thoughts that they might already have. In such cases, advertising is manipulation *par excellence*. In the case of human rights, good advertising should involve spreading the message and the cause more widely, and not by trying to force people to adopt a perception of what these rights are.

Conectas: Is there anything that a human rights organization can do to spread its message better? Organizations usually work with a large number of subjects while developing many different approaches. Is there any way that they can communicate all these elements consistently and effectively?

F.A.: I think the first step is for you to identify some kind of sensitive subject that can be given wider exposure. You should do this by selecting your target audience, the approach you want to take, the language you want to use, and so on. Within the broad spectrum of the organization's activities, you need to deliberately choose a single topic, an activity or a cause to reflect and draw attention to the bigger, overarching cause. This can also be done by choosing a particular audience group to focus on, ideally one that is already familiar with the issues involved. Even for profit-seeking companies, not everything needs to revolve around advertising. You simply have to choose what you want to communicate, and select the flag you wish to fly.

Another basic thing to remember is to be an open organization and have a clear understanding of what advertising is all about. NGOs often see themselves "doing good against all the villains of the capitalist world, including communicators and advertisers." Any dialogue therefore is frequently out of the question. The same happens in reverse: advertisers have a limited understanding of what NGOs are, and they are sometimes prejudiced against them as a result.

Conectas: Some critics of advertising suggest that it is impossible to use marketing and advertising tools that pursue so-called **extrinsic** *values (status, power, social conformity, capitalism) to promote causes that depend on precisely opposite or* **intrinsic** *values (cooperation, altruism, community affiliation). Do you think these values are paradoxical?*

F.A.: Not necessarily. This discussion might be interesting, but it is very theoretical and not the kind of subject you should discuss with an advertiser, because advertisers are pragmatist, or at least should be pragmatist. As I have said, I believe in non-ideological advertising. This type of advertising needs to be pragmatic. Forget talking about "I am going to focus on extrinsic or intrinsic values." Using terms such as *extrinsic* and *intrinsic* sounds odd. These are advertising terms for defining other things. The *extrinsic* values of a brand are the emotional values linked to it, whereas the *intrinsic* values are the functional elements related to that brand.

Conectas: What are the intrinsic and extrinsic values that can be used for a cause or a human rights organization?

F.A.: I do not know. I cannot give you a reply, because to my mind this approach simply does not apply. This parallel is difficult, and I do think that when we get into advertising particular causes we have to keep our feet on the ground and, above all, be cautious.

Conectas: Cautious and pragmatic? But how can pragmatism be applied to a social cause?

F.A.: Well, advertising a cause must necessarily be more informative. It is estimated that a single person nowadays is bombarded with around 7 to 10,000 advertising signals a day. This is not a value judgment, but you really need to think about how your message can stand out from the others. A person is getting

all these messages, making no kind of value judgment, but he or she will choose which to pay more attention to, often depending on the type of language in which the message is couched.

Advertising for a cause means stating something and using types of language, format and advertising techniques that will make this message stand out from all the rest. This is genuine advertising. I highlight and broaden the message. This is the core of the battle. I have to make my message more relevant, ensure that it is widely disseminated and, above all, transmit a message that will have more effect than all the others out there.

Conectas: Can a comparison be made between advertising a product—made to be sold and generate money—and advertising for a not-for-profit social cause?

F.A.: It is all about engaging! It is what we call "commercial advertising" today. The purpose of a trademark is to engage people. It's a bit artificial, but at the same time it means something. Brands, incidentally, like to claim that they also serve a cause.

The goal of any cause should be to get people to change, to be transformed in some way. Two or three steps are involved: the first is to highlight, to attract attention in the midst of this maelstrom of polluting messages entering people's brains every day. Next, after using my advertising techniques to highlight the message, I get the recipient to take more notice, to be more aware. When this is done, my aim is to get the person hooked, and once hooked, I believe that we have created a potential scenario for his transformation.

Conectas: But we have the impression that the subject of human rights causes more "rejection" than "engagement". In Brazil, for example, anyone working on human rights is often seen as an advocate of impunity, responsible for urban violence, and so on. We are labeled as "defenders of criminals". Somehow, fighting for human rights means setting oneself against the majority—not a popular stance. How do we reconcile that with better communication?

F.A.: It is a challenge. But there is also a certain amount of sensitivity to these causes that we are defending. I am not sure that I agree with you about always being unpopular or "against the majority". It is true that no real cause appeals to the majority: a cause would not be a cause if everyone believed in it. However it is true that the goal of any cause is to be a majority cause. By "majority" I believe that this is something along the lines of the word "popular" that you just mentioned.

Conectas: Yes, but what are the boundaries between being more "popular", "engaging", and not compromising your core values?

F.A.: I dare say that this tension exists in any cause. Embracing trees is a "cause" that also goes against the majority. There are also millions of pressures against ecological causes that are not easy to digest. Sometimes people hide behind their real intentions. When you talk to some old man who has invested his life savings in British Petroleum, for example, he has done this as a business proposition; but

on the other hand he is perhaps thinking "for God's sake, let's preserve the sea and its natural resources." In other words, regardless of his ecological pretensions, he also wants his shares to rise in value, which means betting on British Petroleum's business scheme: perhaps even involving polluting the North Sea.

I think human rights amounts to the same thing. There is a certain amount of blackmail involved: "If they point a handgun at your mother's head, do you shoot that person? Do you want the death penalty applied to the aggressor? What if your daughter gets raped? What should be done with the rapist? Forgive him?." It is typical blackmail. It's the same with the British Petroleum shareholder. He says, "I am against pollution of the North Sea, *but* please keep my shares rising." "I am against the death penalty, *except* of course for the guy who raped my daughter." All causes have questions like these in common.

Conectas: But do you see a specific way forward? What strategy would you use to make human rights better known and more amenable to people?

F.A.: I can only respond as a person, not as a professional. I believe the cause of human rights is ten times more important than any other social cause. These are the Rights of Man, of Humanity with a capital "H". They are my rights, my right, my defense.

These rights are the backbone of humankind. They are what makes us develop as a society, as a civilization. Your assertion that people do not value human rights is a bit frightening. But I wonder if and why this should be so.

Conectas: In the Brazilian scenario, human rights are often related to crime. But in other countries, this type of resistance also exists. In France, for example, concerning the rights of migrants; in the United States, with the war on terror, etc. What strategies can we use? Should we adopt a more emotional approach or somehow try to convince those still on the margins, around the edges?

F.A.: We should take tiny steps around the edges. The issue of human rights, in the broadest sense, is a highly complex and technical issue. Most people do not want to think of philosophical, complex, grandiose affairs. The complexity puts them off. Al Gore's film (*An Inconvenient Truth*), for example, was amazing, award-winning, struck many a chord. But at the same time, it was so scary and complex that it immobilized people. In my opinion nothing has changed since the film was aired.

We have to start with small themes: subjects that are easy to understand, easy to equate, easy to achieve, and go on from there. It is no use saying "This is a human right", "I'm against strip searches in Brazilian prisons," "I am against the Belo Monte dam in the Amazon." Let's keep it simple.

Conectas: Do you think that advertisers might be able to play a key role in the work of this organization? Why, given the complexity and multiplicity of the different subjects involved, does our organization find it difficult to know where to begin?

F.A.: Yes I think they do have a role. This is a general criticism, but I believe that the dialogue between advertiser or the media and the human rights organizations

is fraught with difficulties because you place yourself in a somewhat over-bearing position: you seem to believe that you have a monopoly over "knowledge." You are tempted to say: "It's a complex, huge subject and we have a divine right to own it."

It is a tricky, difficult dialogue, and one that even I (working for you) fail to understand. Even I harbor a certain antipathy. So you often end up only preaching to the converted, you end up talking to yourselves.

Conectas: In short, if we want to create an impact and attract allies to the cause, we need...

F.A.: We need to simplify our causes.

Conectas: And to break this "monopoly for good"? Are there opportunities for advertisers to enter the arena?

F.A.: Yes, we have to break that particular monopoly. It is probably a little easier now that many organizations are adopting a more self-critical approach. This is quite common now. I've heard of other organizations facing the same type of dilemma that you have with the human rights cause.

As for the advertising world getting involved... advertisers only want to talk about the war on drugs and protecting whales, because it's easier, more straightforward. What the advertising industry likes is to deal with topics such as ecology, children, cancer, drugs and so on.

Conectas: Why are these causes more attractive?

F.A.: I cannot answer that one. I think I might, as an advertising practitioner, be failing to understand what human rights are, although I am working here alongside you. Let's face it, an advertising professional needs a *briefing.* When I worked in the creative department of the advertising agency, I was always saying to people, "Okay, but what do I have to say?" All that I wanted to know was *what I had to say.* This was my job, but I needed to know what I had to say. It is up to you, the customer, to tell me what to say.

We are talking "human rights", but *I do not know what to say*. Maybe I'm afraid... but the fact is that I do not know what to say. Now, if you say: "They are forcing women to open their legs to see if they have phones in their vaginas before visiting their relatives in prison" and that that is wrong, then I know what to say—and I have to say it in advertising jargon. It's all about communicating.

So when you come to talking about human rights, as a "broad set of values," do tell me in one sentence *what I should say* about that vague concept. You are not going to be able to tell me. It's too difficult.

Conectas: To close, could you perhaps suggest a title for this interview?

F.A.: If I were to be provocative I would say: "Get off the pedestal." But rather than being provocative, I would say something like...

Conectas: Could I make it "Get off the pedestal without giving up your values?"

F.A.: Yes, it could. Another title might be, considering that there are people who really want to engage, but need to understand: "Help me to help you." This is the core of the problem... "Help me to help you, because it will turn out well, it will be OK, we are going to change." Obviously because I believe in advertising.

Conectas: You have almost convinced me that advertising is not a tool for spreading unfettered capitalism. You are acting as a good advertising...

F.A.: But advertising is not just the slave of the capitalist world, it is used by all sorts of different regimes. Even anarchists. For example, during the Spanish Civil War, the anarchists were the best advertising merchants. They had the best posters, the best slogans, engaged in a real advertising battle with the other sides. Great advertising involving communists, fascists and anarchists —all of them rooting for their side in the conflict. Yes, anarchists (anti-institutional by definition). Advertising is blind when it comes to taking sides.

As for the continuing relevance of advertising, you probably know the famous story of Eleazar de Carvalho. He was a great Brazilian conductor, founder of the São Paulo State Symphony Orchestra (OSESP), and a very active person, very unusual, very humorous. A remarkable figure. He conducted a symphony orchestra sponsored by Coca-Cola. Every year he appeared before the marketing director of Coca-Cola in Rio de Janeiro to renew his contract, obviously dependent on sponsorship. The art world is very much like the NGO world. "How long shall I sell myself for?", "How much do I think I am worth?," etc. One year the marketing director said: "Look, Mr. Eleazar, this year Coca-Cola has decided not to renew its contract with the orchestra because, as you know, Coca-Cola is a huge, powerful, expanding brand and we do not exactly need more publicity." But at that very moment a church bell rang near the Coca-Cola offices and Eleazar looked up and said: "Do you hear that bell, Director? The Church is 2000 years old and she is still advertising, by ringing bells to attract the faithful." The Coca-Cola man signed the check.

INTERVIEW WITH MARY KALDOR

Mary Kaldor has a long-standing involvement with civil society in the UK and beyond. She is currently Professor of Global Governance at the London School of Economics (LSE) where she is also the Director of the Civil Society and Human Security Research Unit. She has been a key figure in the development of cosmopolitan democracy. She writes on globalisation, international relations and humanitarian intervention, global civil society and global governance.

In an interview with Conectas Human Rights, Kaldor reveals a persistent confidence in the potential of the human rights language and its use by civil society. She notes that "using the language of human rights in relation to social justice is a huge step forward, because it means that you no longer think in statist terms. You talk in terms of individual rights, replacing the collective approach that is often rather repressive".

Nevertheless, Kaldor acknowledges the current challenges that civil society organizations face. She recalls being "particularly struck that, when there were all the demonstrations in the Middle East and elsewhere in 2011, nobody used the term civil society. For them civil society was to do with NGOs and money, and so my question really was: is it still a useful term?" Yet, even in light of those challenges, Kaldor prudently highlights that "recent street protests are much more a sign that people do not feel represented by their members of parliament, who they actually voted for."

So, what is the role of civil society in this scenario? For Kaldor, as she noted elsewhere, "by civil society I mean the medium through which people participate in public affairs outside formal institutions. In a global era, where force and diplomacy are less important in relations between states, the role of civil society in bringing about political change is much more salient." This, combined with digital technology, makes Kaldor think that "we are now in an era of incredible revolutionary change." Read the interview below to understand more about the current role of civil society, the potential of human rights language and who civil society represents.

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Original in English.

Interview conducted in March 2014 by Fabiana Leibl (Conectas Human Rights)

"NGOS ARE NOT THE SAME AS CIVIL SOCIETY BUT SOME NGOS CAN PLAY THE ROLE OF FACILITATORS"

Interview with Mary Kaldor

Conectas Human Rights: For the past ten years you've been publishing the Yearbook on Global Civil Society and you have explored different meanings of global civil society. In a 2012 piece for OpenDemocracy you stated that one way in which you chose to interpret civil society is as "the medium through which individuals participate in public affairs". From a historical perspective, we see the human rights movement as having achieved some very interesting steps toward the promotion of justice and especially in standard setting in the international arena. Do you think human rights are still an effective language for civil society organizations to employ in the quest for social transformation and for social justice?

Mary Kaldor: My initial answer is yes. Human rights are very important and I think that there are several aspects to this. One is that human rights take the debate to a global level, just because of the very term *human rights*. People struggled for rights in individual countries but those rights were for the citizens of a particular country. So the very term *human rights* implies that the struggle goes beyond borders. That is the first point to make.

The second point is that human rights struggles have tended to focus on political and civil rights. When it comes to social justice, it's rather interesting that social justice always tends to be discussed much more in collective terms. So the language of the left and of social justice tends not to be the language of human rights, it tends to be the language of class and collectivity. Very often that is linked to statism because people who struggle for social justice see the state as providing welfare. These people generally approach the state, whereas human rights activists tend to see the state as being oppressive.. So there is usually quite a contradiction between those who struggle for social justice and those who struggle for human rights, and certainly during the Cold War period that was rather institutionalized. People in Eastern Europe, and in places like China and the Soviet Union, would say that they have social and economic rights, while in the West there were civil and political rights. I don't think they [those people under Communism] had rights at all because you can't have social and economic rights without human rights.

Using the language of human rights in relation to social justice is a huge step forward, because it means that you no longer think in statist terms. You talk in terms of individual rights, replacing the collective approach that is often rather repressive.

In addition, a lot of human rights activities do not do enough on social justice and likewise people who campaign for social justice do not do enough on political and civil rights. There's much more to be done. The Chinese may say they have economic and social rights but they don't. When economic and social rights are fought for, as they have been in countries like Britain, France or in Western Europe, then it becomes very difficult to overturn or change them.

Conectas: In the Global Civil Society Yearbook 2009, you explored the role of global society in relation to poverty eradication, asking whether "global civil society [is] in practice dominated by the ideas and values of rich countries purveyed by international NGOs and other institutions organised and funded in the Global North?" In this sense, what do you think might be or is already the impact of the greater diversity of voices within the international human rights movement?

M.K.: When we wrote that yearbook on poverty, we kept saying - and this was certainly my idea when we started the project in 2001 - that global civil society is a platform that offers opportunities to previously unheard voices because it's somehow meant to be respectable.

Civil society was the word that East European and Brazilian activists used, and it became a respectable term. So if you said I am a peace activist you were nowhere, but if you said I am a member of civil society you suddenly became an important person. And so I thought civil society was a really good platform, but in reality it has become increasingly associated with international NGOs, and in that sense a term which the Global North has dominated.

Yet, I was particularly struck that, when there were all the demonstrations in the Middle East and elsewhere in 2011, nobody used the term civil society. For them civil society was to do with NGOs and money, and so my question really was: is it still a useful term? I like to use it partly because of its association with my work, but also because it has a long conceptual history which we can engage with.

For all those reasons, I think it is a useful term. But on the other hand, if one wants to reach a broader set of people – we certainly try to do that within the Global Civil Society programme – and if one thinks about something like the World Social Forum, then it becomes very much South-led. The World Social Forum, or transnational peasant movements, or the Zapatistas are really interesting. But would they have called themselves global civil society? I am not sure that they would've done.

This has a double side to it. On the one hand, because civil society is a term that everybody accepts, it gives you an opportunity to talk. For example, does the IMF talk to civil society? Shouldn't they talk to us? I am civil society. On the other hand, and that of course is the contradiction that Gramsci pointed out, civil society is an expression of power relations. Gramsci's point is that civil society was about hegemony rather than domination. So, yes it's about the hegemony of the North, but it is not about the domination of the North, and precisely because it's about hegemony rather than domination it gives people an opportunity to participate.

Conectas: Considering the definition of civil society as the realm and a space for different voices to rise, who do human rights organizations represent? Most organizations – unlike representative governments – are not subject to periodic elections.

M.K.: There is a rather nice piece from 2003 by a writer called Michael Edwards who says "civil society is a voice, not a vote." I don't think civil society organizations represent anybody but themselves, unless they have members, in which case they can say they represent their members. Human rights organizations might campaign on behalf of the Rakhine people in Burma, or other oppressed peoples, in which case the organizations can say they represent the peoples' voice, but not their vote.

Conectas: Do you think it is possible or recommendable that such organizations create mechanisms of participation to define their agendas? Should organizations create channels of dialogue with society to discuss their priorities and strategies?

M.K.: I think that is incredibly important, but it is very difficult to think how to do it. Human rights organizations are typically funded by rich donors from the North and their beneficiaries are oppressed people that don't get to participate in discussing how the money should be spent. When I was on the board of the Westminster Foundation for Democracy, which is a British government foundation for supporting democracy, I kept suggesting that we should hold meetings with the people who are affected, to discuss how we should spend the money. But it's quite difficult to do that, especially if it's voluntary. It's really difficult, I think, unless it is a state, where people pay taxes and expect to get services back. I think the more you can do both through establishing these kinds of mechanisms and through the media and publicity, the better.

Conectas: In relation to that, do you think the recent street protests all over the world are a sign that people do not feel represented by NGOs?

M.K.: I think recent street protests are much more a sign that people do not feel represented by their members of parliament, who they actually voted for. And I think there is a huge crisis of political representation at the moment. I think it has to do with several things, one of them concerns the technology of elections. While all the focus of accountability is on the actual moment when you cast your vote in a ballot, in elections nowadays there is such a technology of focus groups, of going for the middle floating vote. In this sense, parties don't express what people want them to express, they express what they think that a small narrow margin of people in the middle want them to say. And the result is that there isn't a serious public debate and people feel there is no one in parliament who actually represents what they think. And, in addition, it's partially the problem that in the era of globalization some of the key decisions like neoliberal decisions or policies about debt are not taken by the government, anyway. Yet, I still think there is certainly a huge crisis of representation at the moment. But, in general, I would say people tend to trust NGOs more than they trust the governments.

Conectas: And how do you see the role of different NGOs in relation to the street protests? How do you see their contribution to the protests worldwide?

M.K.: I think it depends on the NGO. NGOs are not the same as civil society. Civil society is about participation. One way to understand NGOs is as 'tamed' social movements. They have often evolved from social movements but they have become professionalized and bureaucratized and they compete with each other for funds so their behavior both reflects their past history and their present logic. There are a lot of different NGOs, but I do think some NGOs really play the role of facilitators. I am going to a meeting in Sarajevo in June, and there, the World Social Forum and another NGO, Helsinki Citizens Assembly, are providing a place where many of the protesters can participate.

Conectas: So the mediator role is still very present?

M.K.: Yes, and it is interesting that NGOs do that now. When I was young and participating in protests, labour movements did that, and they still do actually.

Conectas: In the Global Civil Society 2012 report you also argue that civil society means a place where manifestations occur, where people can talk, discuss and act freely - and that the concrete manifestations of civil society – from meetings at coffee shops to Facebook - vary according to time and place. In your opinion, how has new information and communication technologies influenced activism?

M.K.: There are lots of different answers. First of all, it facilitates activism. It is just much easier to mobilize and to organize using social media and twitter. Secondly, I think it has enormously accelerated our awareness of what goes on in other parts of the world, which I think is really important. There is no question that social media, mobile phones and twitter and so on have all been tremendously important.

On the other hand, you can also point to very negative aspects. I think it fosters extremism. It's much easier to be extremist on Facebook than it is face to face. I think it also encourages clicktivism, the idea that you just sign an online petition and you feel that you've done something.

But having said those pros and cons, this is an enormous revolution, as important as printing was. The history of the world should probably be told through the history of communication technologies, from talking to writing. I read something about St. Augustine of Hippo, and somebody comments that he was reading a book sitting by himself and not opening his mouth. It was always assumed before that time, that you were reading aloud. With printing you get vernacular languages, you get the rise of nationalism; with novels, newspapers, you get the rise of secularism. And I think we are now in an era of incredible revolutionary change! And I just don't think we have begun to think, to understand what it's leading us to.

LOUIS N. BICKFORD

In the multi-polar world where the international human rights movement operates today, Louis Bickford is able to observe and influence different facets of the human rights landscape from an advantaged viewpoint. Bickford manages the Ford Foundation's Global Human Rights program, assisting both well-established and emerging groups to bolster the global human rights movement. Prior to joining the Ford Foundation in 2012, he was on the executive leadership team of the Robert F. Kennedy Center for Justice and Human Rights and, before that, was a program director at the International Centre for Transitional Justice (ICTJ).

Bickford's experience with activism dates back to his time as student activist in the 1980s and then his work in Chile in the early 1990s on issues related to memory and accountability in the Southern Cone. Later in the ICTJ, Bickford's primary job was to facilitate partnerships with national NGOs in countries as diverse as Bosnia, Burma (Thai border), Ghana, Mexico, Morocco, Nigeria, and South Africa, and to collaborate with these partners on peer exchanges and joint field-building activities. These experiences gave him a deep understanding of the challenges and opportunities that international NGOs can bring to the international human rights field.

Making use of this valuable experience, in an interview given to Conectas in September 2014, Bickford offers a critical assessment of the current stage of the international human rights movement. While recognising that international NGOs are seeking to be closer to the ground and national NGOs to participate directly in the international arena, which Bickford calls "convergence towards the global middle", he conclusively states "international human rights movement has too seldom been able to frame its work in ways that resonate with poor and marginalised communities."

In this sense, in order to keep growing, for Bickford, the "movement needs to be relevant to more people more often in order to thrive". In his answers, he offers examples of organisations that have been trying to do just that and the challenges they face.

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CONVERGENCE TOWARDS THE GLOBAL MIDDLE: "WHO SETS THE GLOBAL HUMAN RIGHTS AGENDA AND HOW"

Interview with Louis Bickford

Conectas Human Rights: You have been working in various ways with civil society organisations in every world region for over 20 years now. In your opinion, what has changed from the early human rights activism, focused on documenting civil and political rights violations and centred in international NGOs, to the current stage of human rights activism?

Louis N. Bickford: The human rights system has become increasingly complex in recent decades. Part of this complexity is an expansion of the international human rights movement to encompass a much broader array of rights and activities than in the 1970s and 1980s. This happens along two axes. First, the content of rights has expanded. Since the Vienna Conference in 1993, there has a been a significant broadening of the frame from a narrower set of rights claims during the Cold War (mostly civil and political rights) to claims that run the gamut of the Universal Declaration. This is evidenced by the long list of Special Procedures of the High Commissioner for Human Rights, which demonstrates the breadth of the rights claims that are now considered legitimate by the international community.

The second way that the international human rights movement has expanded is in relation to its network architecture. This refers to how the movement is structured in terms of size, location of key actors, and relationships among actors. Perhaps the single most important change here is simply the vast increase in the number of organisations that self-identify as "human rights organisations" over recent decades. Equally important is where these organisations are headquartered. During the 1970s and 1980s, for example, the international human rights NGOs became a vitally important breed of organisation, given that national/domestic NGOs in countries such as Chile, South Africa, and Russia were under extreme threats to their daily existence, and given that these national organisations – in cases where they actually existed at all – tended to be small and underfunded. The international players, from the relative safety of New York or London, were able to attract the world's top law school graduates and others to the cause, not to mention identify and raise funds. They were able to exert real influence in Washington or at the United Nations. Working through international institutions based largely in the US and Europe,

they were also able to focus on the development of norms, creating a jurisprudential revolution in human rights law that is hardly matched in any other field, and building a global system of laws, norms, and institutions that constitutes, today, a powerful force for human rights. These INGOs remain important. But there have also been real changes in the other side of the equation: the national/domestic NGOs which have become so strong, professional, and ubiquitous. These national NGOs – groups like DeJusticia in Colombia or the Legal Resources Centre in South Africa – are increasingly involved at the international and global levels, which is creating some significant shifts in the ecosystem of the human rights movement.

Conectas: While recognising the gains of international human rights organisations, as you have just mentioned, is the division of labour between national and international NGOs still an accurate depiction of how the international movement is structured today? Northern NGOs have moved their headquarters to the Global South and Southern organisations have increasingly worked at the international level. Recently, you have called this phenomenon 'convergence towards the global middle'. What do you mean by that?

L.N.B.: The distinction between international and national organisations is not always useful (there are many organisations that are not so easily categorised) but it can be helpful in differentiating various niches and components of the international human rights movement. It is especially relevant in terms of different theories about how the human rights movement "works". What is the movement trying to achieve and what is the best way to achieve these goals? At the heart of these questions are the ways in which the human rights movement defines its global priorities and, in turn, how it generates support from various constituents. The distinction between national/domestic organisations, which operate in their own societies, and international organisations, which focus mostly on the international system or on countries other than the ones in which they are based – and tend to be based in capital cities in the Global North, including New York, London, Geneva, and Paris –, makes a difference. Because the international organisations have deeper connections with funding communities, decision-makers, elite universities, and a cosmopolitan network of opinion leaders in the North, and because they are genuinely working internationally, and therefore have higher budgetary demands, they tend to have significant power and authority in defining the agenda.

However, there is a major countervailing trend, as you mentioned, which I have called *convergence towards the global middle*. Two important and complementary tendencies are at play with each other. The first tendency is for international human rights NGOs to move to the Global South in an effort to be "closer to the ground" (in Amnesty International's words). For the international NGOs, it is more important than ever to demonstrate real and direct linkages with the Global South. In this sense, Amnesty is moving its international secretariat to be relocated in "hubs" in various Southern countries.

The second tendency is for *national* NGOs to move upward and engage more directly with the international human rights system, often beyond their own regions and/or often engaging with human rights issues in countries other than their own. This trend does not – and should not – characterise *all* national NGOs or all international ones, but it does capture a significant subset of both. Consistent with the idea of "rooted cosmopolitanism" in social movement theory, the leaders

of these national groups see no reason why they should not be directly involved in determining the future of the international human rights movement.

These two trends are complemented by the existence – both historical and new – of networks of deeply grounded national organisations which create horizontal alliances in order to strengthen their influence and advocacy at the international level.

This convergence towards the global middle is really about where power is located within the human rights movement. For instance, in relation to who sets the global agenda and how. Should there be another major global institution like the International Criminal Court? How should international principles such as the Responsibility to Protect be developed? Might certain rights, like right to education or housing, be worthy of more global attention? These questions are put under a different light once the current trends of convergence towards the global middle are taken into consideration.

This convergence is more of an evolutionary trend than a brand new development. Groups like FIDH and the Bangkok-based Asian Forum for Human Rights and Development (FORUM-Asia) have always been intimately linked to national (and South-based) NGOs. Organisations like the Business and Human Rights Resource Centre (BHRRC) and Witness are premised on an operating model requiring deep partnerships with South-based NGOs. In the women's rights field, groups like the Association for Women in Development (Awid) have been both international and based in the Global South since being founded. The international network for social and economic rights (ESCR-Net) and the new International Network of Civil Liberties Organisations (Inclo) are examples of international networks of deeply grounded national organisations. And many organisations – including BHRRC and Awid – are actively translating their materials into multiple languages, recognising the importance of communication with widely diverse constituencies.

Conectas: Also in relation to national NGOs, several factors have challenged the representativeness of national NGOs in their own countries. As seen in recent mass demonstrations in Brazil, Ukraine, US and Middle East, just to cite a few, street protests and not NGOs have taken the primary role as promoters of social change. Do you think that the internationalisation of local NGOs brings up the danger of disconnecting them from their own local context?

L.N.B.: Social movements have framing power, and these movements are able to compete with human rights discourse and, potentially, are able to "win on the terrain of imagination" as Samuel Moyne wrote once. This challenge, then, concerns how potent human rights is and will be in the 21st century as a *discursive frame* for new and future social movements as they arise nationally, regionally, and globally.

Telling a story about Egypt, a well-known figure in the human rights world explained to an audience that during the 1980s, being a human rights activist in Egypt was dangerous and frustrating. It was difficult to achieve change. But human rights organisations nonetheless played key roles in articulating a vision for a better society. They galvanised people and provided a framework for societal transformation. One part of the strategy of these actors was to use the international system and to work in Geneva, New York, Brussels, London, and Washington to achieve their goals. This was both less dangerous and in many ways less frustrating than working in Egypt. They contributed to creating international pressure on

Egypt and the more general formation of international norms. They generated strong solidarity movements and cultivated allies in other countries and regions, including in their own diaspora. They began to spend more and more time working in the international sphere. Back at home, they slowly came to be seen as 'those people who go to conferences and cocktails in London and New York'. When the Arab Spring happened, the human rights framework and many of the activists associated with it were not a central inspiration. They had less standing in Egypt on questions of societal transformation than other, newer actors who were able to harness the imagination of the protesters.

The main point of this story has to do with building dynamic national organisations that are deeply rooted in domestic experience and speak to the relevant local constituencies. If one of the main challenges facing the movement is its ability to inspire and frame broader social change goals, then probably national level organisations, if they are able to do so (considering safety concerns, etc.), should strengthen the movement based on national experience of combatting abuse and implementing rights. Indeed, in this sense, organisations like CELS in Argentina, the Legal Resources Centre (LRC) in South Africa, or the Kenyan Human Rights Commission in Kenya ought be the driving force of innovation and change on the national level, first and foremost, where they need to earn their reputation and legitimacy.

Conectas: One of the reasons Southern NGOs have turned more and more to the international arena is the rise of the emerging powers' influence in their own regions, transnationally and globally. The rise of Brics is an example of that. In that context, some have called upon those Southern countries to act as leaders in this newly multi-polar world, while mindful of their own (often problematic) human rights record. In your opinion, what is the role of NGOs from the South in this scenario?

L.N.B.: The convergence towards the global middle could potentially help the international human rights movement to confront the challenge of adapting to the ostensible emergence of multi-polarity that includes the Brics (Brazil, Russia, India, China, and South Africa) and the Mints (Mexico, Indonesia, Nigeria, Turkey) – or other formulations – and that represents important potential shifts in the human rights system. Although it seems clear that US influence is declining globally, it is not as clear how these emerging powers will engage with global human rights policy debates. That said, there might be opportunities in terms of the foreign policies of emerging powers. Theodore Piccone has made similar arguments, suggesting that countries such as Brazil, Turkey, and Indonesia can potentially play strongly constructive roles as international actors, including through leadership on various issues related to human rights.

The key element of this challenge is how the international human rights movement pressures the foreign policy apparatus of emerging states to engage with other states or the international system. In this sense, Conectas is one of the NGOs that is setting an example of this new strategy, which seeks to put pressure on the Brazilian government's foreign policy. Similarly, international NGOs such as Amnesty International, Crisis Action, FIDH, and Human Rights Watch are increasingly focusing on the foreign policies of emerging powers. The concrete outcomes of such strategies are yet to be seen but are already promising due to the multi-polar world we are likely heading to.

Conectas: A last question. Traditional human rights NGOs have had the challenge of better communicating their work. Often, the legalistic nature of human rights language, as well as the widening of the agenda of human rights movement (as you mentioned before) tend to make such communication even harder. In your opinion, how could the work of NGOs better serve the communities where they are situated?

L.N.B.: This issue brings us back to the question of human rights as a discursive frame: is the human rights framework a powerful one? If so, for which constituencies? How can the movement remain dynamic and resonant into the 21st century, mobilising young people and others? In this sense, I would argue that the international human rights movement has too seldom been able to frame its work in ways that resonate with poor and marginalised communities. From the favelas of Brazil to the slums of Nairobi and New Delhi, millions of people's lives continue to be desperate. Indeed, the human rights movement has not always provided the necessary tools for these communities to achieve their rights, including very basic rights of life, personal security, and livelihood. It would be an exaggeration to say that the movement has failed these communities, but the truth is that it has not gone far enough in identifying – and fighting for – their needs. Indeed, the most urgent challenge that the movement needs to address is the reality that the most poor and marginalised populations in the world are consistently denied their basic political, civil, social, and economic rights.

This may or may not refer to the realisation of economic and social rights, in a narrow, legal sense. The important point is that the international human rights movement needs to be *relevant* to more people more often in order to thrive. This may have as much to do with methods as with which categories of rights get prioritised. In other words, people need to understand how movements can help them make their lives better. The human rights movement is not always so good at explaining that. Having achieved a series of successes, the movement must now demonstrate how and why it is relevant to facing the challenges of extreme poverty and marginalisation, and show how it can contribute to giving voice to the voiceless, power to the powerless, and some resolution to the most pressing needs of people around the world.

For me, the answer to this lies in movement-building: how to make the human rights movement more powerful as a movement. Movements engage with norms as political opportunity structures. This is the best reason for the movement to continue to put energy into norm development, especially in certain areas, such as LGBT rights and disabilities rights, to name a few. Similarly, the movement can engage constructively with political opportunity structures such as the UN Human Rights Council, the Special Procedures, and the regional systems. In this sense, the energy of the Human Rights Council in Geneva is an indication of the importance of standard-setting and norm development among the community of nations. The Council can sometimes feel exciting, and victories of norms development and adoption are often celebrated with enthusiasm.

But standards and norms are not enough. We know from empirical research such as the work of Beth Simmons and Emilie Hafner-Burton that norms can only take us so far. Of course at some point rights must be realised in a very real way on the ground. More than ever, the movement needs to focus on what 'works' in terms of realisation, such as strategic litigation using national courts, new policy instruments, changes in budgetary allocations, etc. And in relation to the international system, the movement needs to leverage the power of the international system to real problem-solving at home.

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Human Rights in Motion

Multipolarity

LUCIA NADER

Lucia Nader has been the Executive Director of Conectas Human Rights since
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powers not emerging?" (*Open Democracy*, 2013), and "Reflections on Human Rights in the
Foreign Policy of the Lula Government" (Heinrich Böll Foundation, 2011).

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ABSTRACT

In view of the recent worldwide wave of street protests challenging current modes of
democratic representation, and drawing on the author's years of experience leading the
NGO Conectas Human Rights, along with conversations held with partners in Brazil and
other countries, this article mulls over human rights organisations' stance and role in the
21st century. Such street mobilisations point to the diversification of actors and struggles,
mistrust in public institutions, and the empowerment of the individual as a political actor.
In this article, the author briefly discusses: (i) the context of multiple struggles, interlocutors,
and levels of action to be engaged in by human rights organisations; (ii) how these
organisations are related to the crises of representation and effectiveness of State institutions;
and (iii) how they interact with and strengthen individuals as activists and political actors.
By drawing on the distinctions between organisational activism and selfactivism, it points
to the need for human rights organisations to strike a balance between their solid presence
with long-term mindset, and fluidity to adapt and take advantage of the opportunities that
contemporary society provides.

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Street protests – Bauman – Selfactivism – Representation – Human rights organizations

SOLID ORGANISATIONS IN A LIQUID WORLD

Lucia Nader

(…) Change is the only permanence, and uncertainty the only certainty. A hundred years ago, 'to be modern' meant to chase 'the final state of perfection' – now it means an infinity of improvements, with no 'final state' in sight and none desired.

(Zygmunt Bauman, Liquid Modernity, 2012)

"You people are the before and the after of the streets." That was the response I got from Bruno Torturra, the journalist now well-known for transmitting live, from his mobile phone, the Brazilian protests that mobilised millions, as of June 2013. We had been talking about the future of human rights organisations – solid, professional – that seemed to have become dispensable overnight. A similar conversation was taking place at the table beside ours, among people who seemed to belong to political parties, trade unions or other civil society entities. We were asking ourselves about the role of organisations that seek social transformation in this increasingly agitated landscape.

I have no doubt that the struggle for rights is the best way to transform the world we live in and that continuous and persevering efforts from structured organisations are fundamental in this aim. The protests that recently spread across the world – from Cairo to Istanbul, from Madrid to Santiago, from Tunis to São Paulo and Bangkok – showed that hundreds of millions of people seek more just, dignified and humane societies. An analysis of recent protests in 90 countries demonstrates that "real democracy" is the major theme of those who took to the streets to demand change.[1]

It would be naïve to believe that the protests' infinite demands are all directly related to human rights and to minority rights. Nor do I believe that the fervent cries 'from the streets' signify a definitive break with the current forms of social organisation and their institutions. But what remains undeniable is that the recent mobilisations unlocked features ever more prevalent in contemporary society: the diversification of actors and struggles, unrest owing to certain aspects

of public institutions and the empowerment of the individual as a political actor. Reflections on similar concerns have been commonplace in human rights organisations for at least a decade and have started to have significant impact on the goals, strategies and structures of these organisations.

Thus, in my mind, to reflect on the international human rights movement's perspectives in the 21st century, the subject of this anniversary edition of *Sur Journal*, means to analyse **three central issues:** (i) the context of multiple struggles, interlocutors, and levels of action to be engaged in by human rights organisations; (ii) how these organisations are related to the crises of representation and effectiveness of State institutions; and (iii) how these organisations interact with and strengthen individuals as activists and political actors. These issues are related to other questions for the present *Sur* issue, such as who we, as human rights organisations, represent; how to combine immediate concerns with long-term impacts; how new information and communication technologies influence activism; and whether the language of human rights is still effective for social change.

Any ambition of reaching conclusive answers would be, at the very least, premature. From the perspective of my experience as the head of Conectas Human Rights, I would only venture preliminary comments, anchored in the Brazilian reality and enriched by productive talks with partners from other countries.[2] The hope is to spur the debate in order to strengthen the impact of organisations who have been, and continue to be, essential in the construction of a more just world.

1 Multiplicity

Human rights organisations face a wide variety of options on which paths to follow and decisions to make. Flows of communication and information have, in unprecedented ways, accelerated our encounters with this multiplicity of struggles, interlocutors and levels of action.

Now, in addition to the traditional agenda of human rights organisations, such as freedom of expression and combating torture and discrimination, there is the need to defend 'new' rights. The right to the city is one example, which includes mobility and urban policies, or the right to privacy in the digital world and in relation to new technologies. The multiplicity of subjects and violations which organisations are called to act upon and which they can impact is enormous. Meanwhile, despite worthy successes in some areas, many of our historical struggles haven't been overcome, while our agendas grow increasingly broad and diversified every day.

This diversification occurs in relation to our interlocutors as well, who now include more than just the State. For instance, human rights organisations now have to deal with private business. For a long time we have known that commercial and financial interests are the source of abuses and violations. But the notion that private entities have obligations derived directly from international human rights norms is still an emerging debate (BILCHITZ, 2010). Added to this is the growing difficulty, often due to companies' transnational nature, of

finding the precise territory of their violations, in order to litigate if necessary. If a Chinese multinational firm, whose main businesses take place in Europe, uses public funding to commit violations in yet another region – such as the forced displacement of local communities in Angola – who is responsible?

Human rights organisations also face a multiplicity of choices on the scopes where to operate. There is an ever-growing tension between focusing fully and exclusively on national issues or expanding to include regional and international affairs. As with other issues, this isn't an easy choice. In certain cases we see that taking a stance that goes beyond national borders has become increasingly important. Think, just to illustrate, about an organisation that seeks to structurally impact the human rights issues in the 'war on drugs'. It is very likely that it must take into consideration the regional and international dimensions of the issue. That doesn't necessarily mean that it must act directly in different countries, but it will need to stay informed and maintain connections or partnerships. Otherwise it may not achieve the desired impact.

On the one hand, navigating this multiplicity of struggles, interlocutors and levels of action encourages organisations to constantly update, developing innovative strategies and rethinking old issues. On the other, however, it imposes several challenges, such as the difficulty of remaining faithful to the identity and mission of the institution, cultivating expertise and the necessary resources to expand its area of involvement, developing a healthy means of working in partnership with other institutions, combining short- and long-term action, among other issues.

2 Centre of gravity

A growing lack of trust may be felt nowadays as to the State's capacity to assure rights, as well as the difficulty of State institutions in modernising and continuing to serve their strategic roles in the complex societies in which we live (NOGUEIRA, 2014).

The very concept of the nation-state has come under attack, a consequence of the intensification of international movements and the emergence of issues that transcend national borders. Its power also wanes as that of other entities, private and non-governmental, grows.

But perhaps the greatest challenge comes from within these States' very societies, in a reaction to what are perceived as the failings of representative institutions. That is the case of the legislative system, for example, often held hostage by party politics that many citizens do not identify with (THE ECONOMIST, 2014). As the *indignados* in Spain say, "our dreams don't fit in your ballot boxes",[3] making this perceived failing even clearer. There is a wide gap between the promises that legitimate State institutions and that which they are truly capable of delivering.

This disillusionment with States' effectiveness challenges human rights organisations in at least two ways. The first, and most direct, concerns the risk that these organisations be seen by the population with the same distrust

they often have for public institutions, thus affecting their credibility. While serving as a channel of dialogue with a dysfunctional State apparatus, organisations can find their legitimacy compromised. The 2013 Confidence Barometer showed that, in Brazil, NGOs and the government are "less trustworthy" than the media and private corporations, in the opinion of those interviewed (EDELMAN, 2013).

And more importantly, a second challenge relates to the point of reference around which human rights organisations orbit. Rights comprise a grammar built around this logic, with the State as its 'centre of gravity', determining what the State should or not do. When the credibility of State institutions is put in check, human rights organisations feel their centre of gravity weakened.

I'm not saying that the State ought to abandon, or has already abandoned, its role as the main responsible party for guaranteeing rights and, therefore, the central focus of human rights organisations. But I can affirm that organisations can feel somewhat disoriented when the representative character and effectiveness of State institutions to guarantee these rights are severely questioned. Various effects in this sense can already be noted in certain strategies used by organisations, such as strategic litigation, legislative advocacy and the tools for influencing public policies.

3 Selfactivism

Historically, most if not all human rights organisations have sought to represent, or act for the sake of, vulnerable groups with specific interests, therefore constituting a means of participation in political life.

The empowerment of the individual as a central actor in contemporary society defies this logic. Today there is the perception that anyone can be one's own spokesperson and carry out deep social transformations, doing without institutions and their unified campaigns, organised demands and representation of common causes. For some, we live in a time of "hypermodernity" (LIPOVETSKY; CHARLES 2004) or "liquid modernity" (BAUMAN, 2001).

There thus emerges selfactivism – "authorial activism" (SILVA, 2013) or "multi-focused activism" (NOGUEIRA, 2014) – in which each individual simultaneously and ephemerally champions diverse causes. Alliances and relations with organisations are sporadic and intermittent, based on specific causes and not the totality of values and mission of an institution.

Digital activism, through social media and new means of communication, strengthens this phenomenon. "Where activists were once defined by their causes, they are now defined by their tools" (GLADWELL, 2010). On the one hand, this favours access to information and provides constant stimuli for taking positions. On the other, there is a dilution of long lasting or institutional connections that feed the perseverance necessary for long-term social transformation. They are, respectively, weak ties and strong ties (MCADAM, 1990; GLADWELL, 2010).

Creating typologies that define this new activism might seem like a contradiction in terms. The measure of its impact is also no easy task. However,

coming back to prior experiences with public protests and daring to define a certain notion of "ideal types", one might establish the comparisons as in Table 1.

Table 1

Differences between *organisational activism and selfactivism*		
	organisational activism	***selfactivism***
Structure and hierarchy	Leadership and governance	No formal leadership
Demands	Indivisibility of rights	Fragmentation of causes
Processes	Planned	Spontaneous
Desired results	Structural changes	Urgent transformation
Network building	Off-line and lasting	On-line and intermittent
Stimuli	Recurring violations	Specific events
Timeframe	Long term	Short term
Representativeness	Collective causes	Individual self-representation
Language	Technical	Different narratives

It seems that human rights organisations today act and try to expand public support for their causes by transiting between organisational and independent activism, as tentatively characterised in the preceding table. In order to navigate this new landscape, it is essential that organisations understand the diverse nature of selfactivism – and I make no value judgement here. In selfactivism, decentralisation, fragmentation, spontaneity, transience, and radicalisation dominate the social change discourse. Individuals, self-represented, and not organizations predominate.

It must be remembered, of course, that the legitimacy of organisations doesn't necessarily derive from whom or how many people they represent, but rather from the right of association and expression and the credibility and impact of their public interest objectives. However, greater public support seems to be more and more vital for organisations, both to increase their impact as well as to be synchronised with the societies in which they act.

4 Final considerations

We find ourselves then with numerous inquiries into the paths that the struggle for rights might follow along and the breadth of the steps needed. In this brief article, three of these issues were analysed: the multiplicity of struggles, interlocutors and levels of actions taken by human rights organisations; the interaction of these organisations with the crises of representation and effectiveness of State institutions; and the impact of the strengthening of the individual as activist and political actor on the actions of these organisations.

History is testament to the numerous successes achieved by human rights defenders and organisations. They have positively impacted the lives of millions, transformed institutions, influenced public policies and contributed to the creation of the norms and values that guide humanity today.

A human rights organisation has responsibilities stemming from its principles and values that advance its mission, its efforts and impact, and the way it operates its activities (INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, 2009). These responsibilities are related to good governance, effectiveness,

quality and independence, and these attributes demand perseverance and organisational solidity.

At present there seems to be a tension between caring and striving for what has been achieved and built, and deconstructing, innovating, reinventing and transforming. But these forces need not necessarily be opposites.

We must be solid enough to persist and have the desired impact and yet "liquid" enough to adapt, take risks and take advantage of the opportunities that contemporary society provides. It is on this difficult balance that the path seems to lead toward the guarantee of rights for human beings – those of flesh and bone. This is the unwavering point of reference for our daily struggle.

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NOTES

1. Friedrich Ebert Stiftung (FES) analysed 843 protests in 90 countries, from 2006 to 2013, and found that the greatest assortment of issues (218 protests) was for real democracy and greater representation. See ORTIZ; BURKE; BERRADA; CORTÉS (2013).

2. Some ideas found herein were discussed with activists worldwide during the 13th International Human Rights Colloquium on "A new global order in human rights? Actors, challenges and opportunities" sponsored by Conectas Human Rights (October, 2013 – São Paulo, Brazil); also at the meeting "Different Moment, Different Movement(s)" held by the Ford Foundation (April, 2014 – Marrakesh, Morocco).

3. See: http://www.movimiento15m.org. Last accessed in July, 2014.

KENNETH ROTH

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ABSTRACT

The partnership between international and national groups has always had its moments of difficulty, but the typical geographic divide between the two types of groups has usually led to a natural and healthy division of labor. This article analyzes several factors that are now challenging this equilibrium, e.g., these days the largest international groups are placing more of their staff outside the West, and the people conducting research and advocacy for international organizations are increasingly from the global South. Tensions between international and national groups occur primarily in relation to media attention and fundraising. Yet, there are ways to strength partnerships between national and international organizations, such as by active strategizing together, sharing information and resources that may more readily be available to international groups, establishing staff exchange programs, sharing donor prospects and fundraising leads, and speaking and publishing jointly, and assisting each other with the promotion of work through tools like social media.

WHY WE WELCOME HUMAN RIGHTS PARTNERSHIPS

Kenneth Roth

The global human rights movement has long been a partnership between international groups and their national and local counterparts (which for brevity I'll refer to as "national" groups). That partnership is a source of tremendous strength, and it is all the more important as the issues we address become more complex and our adversaries, more sophisticated.

National groups bring an intimate knowledge of their country, closer connections to victims and witnesses and greater access to their country's journalists and officials. They are the first source of advice and strategy for international groups as they set their agendas and carry out research and advocacy. National groups are also better placed to provide direct support over time to victim communities, whether through legal action or educational programs.

International groups, for their part, bring the credibility that comes from having long conducted investigations in many countries and situations around the world. They often have greater access to the international media as well as the Western governments that have been important, if inconsistent, external supporters for human rights concerns. These international connections enable international groups to speak out publicly when security threats might force national groups to be more cautious and to defend national colleagues when they face persecution.

When it comes to foreign policy, international groups have the resources and geographic reach to know about abuses abroad that a national group or its government might want to address. The international groups also frequently have more knowledge about debates in international fora in which national counterparts might want to engage. It is rare that a foreign ministry, let alone a national group, has the resources to know in any detail what is happening on the ground in such disparate places as Syria, Burma, the Central African Republic, North Korea, the United States or any of the scores of other countries that warrant international attention and where international groups like Human Rights Watch regularly work.

The partnership between international and national groups has always had its moments of difficulty—misunderstandings born of different perspectives, priorities and resources. But the typical geographic divide between the two types of groups has usually led to a natural and healthy division of labor.

Several factors are now challenging this equilibrium. To begin with, the

largest international groups are placing more of their staff outside the West. Human Rights Watch, for example, has long sought to locate researchers in the countries that they address. We believe this greater intimacy will produce a closer working relationship with national groups, a more nuanced understanding of rights problems, greater contacts with the government officials whose policies we hope to change and a positive influence on the direction and effectiveness of Human Rights Watch, itself.

Moreover, long gone are the days when international groups were presumptively staffed by Westerners. The people conducting research and advocacy around the world are increasingly likely to be from the country in which they are based, native speakers of the country's language, and fully immersed in its culture. The Human Rights Watch staff of 415 consists of 76 nationalities based in 47 countries. Amnesty International's core staff of 530 includes 68 nationalities based in 13 countries.

That staff diversity eases communication between international and national groups and ensures that international groups are informed of national concerns not only through external partnerships but also through internal discussion. Staff members from the global South have contributed to the gradual evolution of international groups with their greater attention, for example, to economic and social rights as well as to people whose rights traditionally were neglected, such as women, children or people with disabilities. But this change in staff composition also means that, in any given country, international and national groups are less immediately distinguishable, which can complicate a clear delineation of roles.

In addition, as certain governments outside the West grow in influence, Human Rights Watch is making a greater effort to influence their human rights policies, not only at home but also in their relations with other governments, much as we have traditionally worked to influence the foreign policies of the major Western powers. Meanwhile, human rights groups based outside the West are themselves growing in stature and skill, and like Conectas in Brazil, are increasingly interested in addressing human rights issues beyond their national borders.

Despite the obvious partnerships that these developments encourage, the evolution requires new negotiations about the roles of international and national groups, changing the division of labor that had long governed their relationship. There is still enormous complementarity but also the potential for friction.

At a national level, the presence of international groups still tends to be modest—in the case of Human Rights Watch, usually little more than one or two researchers or advocates, possibly supplemented by an assistant. In immediate numerical terms, this limited international presence is dwarfed by most national groups. However, this modest presence is backed by the resources and reach of the international groups—typically far more than a national group can muster.

This evolving relationship has meant a stronger movement, but it has also given rise to certain tensions. The most obvious ones can arise over the currencies for building any rights group—donor and media attention.

The concern over donors is obvious enough. If there were only a fixed number

of donors with an interest in a country—traditionally, institutional foundations—adding another rights group to the mix could force a further division of a finite pool of resources. However, our experience at Human Rights Watch is that neither the number of donors nor the quantity of available donor funds is fixed, particularly in the case of individual donors.

In the Western countries where Human Rights Watch does the bulk of our fundraising, we find that a substantial portion of our revenue comes from first-time donors to the human rights cause. Indeed, this extension beyond an existing donor base has been the primary reason Human Rights Watch has been able to grow. And when the donor pool expands, it does so not only for international groups, but also for others. In several cases in Europe, for example, Human Rights Watch has helped to develop or deepen a donor's interest in the human rights cause, and the donor in turn has become a significant funder of national groups outside the West, as well.

Human Rights Watch has not yet done enough fundraising in the global South to establish a track record there, but I have every reason to believe that as we do so, our experience will be similar. The target of any fundraising effort would not be the institutional foundations that are already funding our national partners, but individual donors who are not yet contributing to the human rights cause. Just as we have drawn on our global network of existing donors to identify prospective new ones in Western countries that we enter for the first time, so we would proceed in any Southern country where we started to raise funds. Because most national groups have made little headway attracting major individual contributors, there is every potential for mutual benefit.

As for media attention, the situation is more complicated but not as black and white as some fear. If the issue is simply who is quoted in a human rights story that journalists are already primed to cover, adding a spokesperson from an international group to the mix could reduce the media opportunities for national colleagues. However, by investigating rights conditions in the country, we try to increase media reporting on rights issues. And by highlighting a government's position on rights issues abroad, we try to generate media attention to issues that were typically ignored. In each of these cases, the effect is to expand media opportunities, not to carve up existing ones.

At the program level, I have found that international and national groups are eager to work together and greatly benefit from the partnership, but there is at least a potential for tension that is worth noting. Although my experience has been that international and national groups consult extensively, and well, in setting priorities and developing advocacy positions, the two types of groups do indeed consider a different set of factors in making their decisions.

The issue is not fact-finding. Everyone in the human rights movement understands that careful, objective, honest fact-finding is essential to our credibility and effectiveness. However, I see the potential for that unanimity of perspective breaking down on other matters.

In Egypt, for example, tensions arose on the question of whether Human Rights Watch should advocate a cutoff of US military aid in light of the July 2013

coup and subsequent brutal crackdown on the Muslim Brotherhood and other critics of the government. Conscious of the fact that Human Rights Watch had advocated a cutoff of military aid in comparable circumstances in other countries (as well as desirous of avoiding US complicity in and support for such a severe, violent crackdown), some members of the Human Rights Watch staff felt it important to advocate a similar cutoff of military aid for Egypt. However, because the Egyptian government was so successful in shutting down independent media in the country and thus portraying its actions as a defense against "terrorism," there were fears in Egypt—shared in this case by some Human Rights Watch staff—that advocating a cutoff of US military assistance would lose the sympathy of potential allies in the country. In the end, Human Rights Watch delayed its advocacy and Washington suspended some military aid without our involvement, although we later came out against a threatened resumption of military aid so long as the crackdown continued.

I can imagine similar differences of perspective arising when the members of a national group felt they had a right as citizens of their country to express an opinion on an issue but an international group believed that human rights principles did not provide a clear enough answer to justify its intervention. An example might be with respect to competing ways of achieving economic or social rights, such as two different kinds of health-care or educational schemes, each of which might be considered a conscientious effort to achieve the right in question.

Perhaps the biggest source of tension concerns institutional resources. Groups such as Amnesty International and Human Rights Watch are simply much bigger and more established than any of our national counterparts. The front line of an international group in any given country may look thin, but it is backed by a formidable organization with capacities and expertise that can dwarf what is available to national counterparts.

Yet admitting these differences need not mean resignation to fraught relations. I am certainly committed to ensuring that they do not. Rather, in each case, with the proper sensitivity, antidotes exist that can ease tensions and smooth relations.

For example, awareness of fears about competition for donors can be met by active sharing. International groups can also help national counterparts by vouching for their good work with potential donors.

Concern about competing for media interest can be met by active efforts to speak and publish jointly, whether with joint news conferences or simply by quoting national partners in an international group's news releases or multimedia productions, as Human Rights Watch regularly does. Similarly, our multimedia productions often include the voices of national activists. With the emergence of social media like Twitter, it has also become easy to promote the work of national groups without a formal news release.

National groups will also naturally be more in the media spotlight as newly empowered governments take the lead on global rights issues—as Brazil has done on electronic surveillance and South Africa on LGBT rights. There are often good strategic reasons for such non-Western leadership—namely, the importance of demonstrating that concern about these issues is global, not just Western. The

same factors will encourage national groups to play a leadership role, which will increase media interest in their voices.

The greater institutional resources available to the big international groups are easy to share. My experience is that my colleagues are eager to offer legal, policy, advocacy, research, fundraising and operational advice based on the expertise that they have acquired as staff members of a well-resourced international group. Although Human Rights Watch does not undertake formal "capacity building" programs—other groups and funding streams are devoted to that purpose—we see a strong movement as essential to our common success. An important part of our joint work is its effect in facilitating the transfer of skills and expertise in both directions.

One useful example of such sharing is HRC Net, a network of international and national rights groups that address the UN Human Rights Council. On the one hand, it is a vehicle for an international group like Human Rights Watch, with permanent staff in Geneva addressing the work of the council, to share information about developments and advocacy opportunities there with national counterparts, many of whom do not have staff in Geneva. On the other hand, we all emerge stronger because it has also become a vehicle for national voices to be heard in Geneva, rebutting accusations from abusive governments that council initiatives are pushed by only international groups or the West.

Human Rights Watch recently supplemented that partnership with the establishment of a "Votes Count" website to record how various governmental members of the Human Rights Council vote on key resolutions. This transparency about actions in Geneva that traditionally have remained obscure helps national groups and journalists to address this key element of their government's foreign policy.

Another example is a program that Human Rights Watch has begun in which we invite colleagues from partner organizations in the global South to spend time in one of our main offices. Beyond benefiting us all by facilitating a sharing of perspective and analysis, the program permits the visiting colleague to become personally acquainted with a range of specialized staff whom they can more easily draw on in the future.

Another example can be found in the Democratic Republic of the Congo, a large and diverse country in which there were obvious advantages for Human Rights Watch to work with many national groups. To facilitate coherent and strategic advocacy, particularly on the need for a national tribunal with significant international involvement to provide accountability for serious abuses in eastern Congo, we helped to organize a Congo Advocacy Coalition involving some 200 human rights and other groups.

The coalition has helped international and national groups to speak with one voice while addressing decision makers at various levels. It has been a superb vehicle for raising media attention to these issues and generating the governmental will to address them. Human Rights Watch has joined similar partnerships with national groups on such varied issues as defending LGBT rights in Cameroon and ending the practice of institutions forcing orphans to beg in Senegal.

Sometimes these partnerships require Human Rights Watch to take a back seat to our national colleagues. We do not enter conversations with our partners with the presumption that we will take the lead, but rather seek to determine the most effective ways to accomplish our common goals. For example, in combating certain African governments' attacks on the International Criminal Court, the voices of African groups were most important. When President Omar al-Bashir of Sudan, facing an ICC arrest warrant, traveled to Nigeria in 2013, Nigerian groups led the effort to seek his arrest while Human Rights Watch and other international groups played a secondary, reinforcing role. The result: Bashir left the country hurriedly to avoid the ignominy of a local arrest effort.

It is often best for national groups to take the lead when national governments try to portray a human rights concern as a foreign imposition. That has been the case for LGBT rights in Uganda, for example, and is often the case in efforts to combat female genital mutilation. Addressing a government's foreign policy will frequently be done most effectively with national groups on the front line.

The tension between idiosyncratic advocacy pressures in a given country and the desire of international organizations to remain relatively consistent in their positions over many countries requires, in my view, a certain flexibility. Again, the accuracy of fact-finding should never be questioned, but international groups should be able to tolerate a degree of variation in advocacy positions from country to country, such as the particular sanctions that we might seek in the face of serious abuse.

After all, the reason for advocacy consistency is a matter not of fundamental principle but of pragmatism—to make it harder for target governments to deflect pressure on the grounds that they are being singled out unfairly. That is a real concern, but because it is a pragmatic one, it must be weighed against other pragmatic considerations such as whether the consistent advocacy position is that one that will work best in a particular country. In this weighing of pragmatic concerns, it is not clear that advocacy consistency will always be the dominant consideration.

Perhaps the most important thing that international groups should do is to treat national colleagues with appropriate deference and respect. International groups should seek out as much as possible the considered views of our national partners, on the understanding that they have an immediate experience of a rights problem that we often lack. The deference to their experience and expertise does not have to be unqualified, but assuming a unity of views among national groups, it should be presumptive. In situations of inevitable difference of resources and capacity, the basic respect implied in carefully listening and deferring to our national colleagues can go an enormous way toward easing any possible tensions.

It is a sign of our movement's strength that both international and national groups are capable of projecting a presence beyond their traditional domains. It is also a positive and healthy sign that we can talk about the evolving nature of our relationships honestly and dispassionately. Above all, we must recognize that despite occasional differences in perspective, any resulting misunderstandings are dwarfed by the values and cause that we serve in common.

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ABSTRACT

The international human rights movement faces a context of uncertainty due to: (i) the rise of a multipolar world with new emerging powers, (ii) the emergence of new actors and legal and political strategies, (iii) the challenges and opportunities presented by information and communication technologies, as well as (iv) the threat posed by extreme environmental degradation. The author first reviews the critical literature on human rights, highlighting how these transformations are unsettling prevailing structures and practices in the human rights field such as: the hierarchical nature of traditional human rights discourse and movement, asymmetry between North and South organisations, over-legalisation of human rights language, and the lack of concrete assessments of human rights outcomes. The author identifies two responses to these critiques among human rights practitioners: denial that defends traditional boundaries and gatekeepers, on one hand, and reflexive reconstruction that reimagines practices and boundaries to generate productive symbiosis among diverse human rights actors, on the other. Overall, the author favours the latter approach, arguing that human rights practitioners should strive to create a human rights ecosystem. This approach seeks strengthen the collective capacity of the human rights movement by harnessing its diversity. Thus, a human rights ecosystem prioritizes collaboration and symbiosis with a much more varied range of actors and issues coupled with more decentralised and network-based forms of collaboration than that of previous decades.

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KEYWORDS

Human Rights Criticism – Gatekeeper – Symbiosis – Civil Society – Global South

THE FUTURE OF HUMAN RIGHTS: FROM GATEKEEPING TO SYMBIOSIS*

César Rodríguez-Garavito

Uncertainty seems to be the dominant mood in human rights circles these days. A new wave of scholarship debates foundational issues about the human rights movement (DOUZINAS; GEARTY, 2014), and wonders whether we have now entered its "endtimes" (HOPGOOD, 2013). Leading NGOs and activists sense that the ground is shifting under their feet. "Mountains of new information and rapid changes are coming at us from different directions at dizzying speed," as one of my roundtable companions put it at a thought-provoking meeting of human rights NGOs and funders from around the world, which the Ford Foundation convened in Marrakesh in April 2014 to discuss the contours and challenges of the current moment.

The sense of disorientation stems from the convergence of four structural transformations that are pulling the human rights field in different directions. First, the rise of emerging powers (such as the BRICS countries – Brazil, Russia, India, China and South Africa) and the relative decline of Europe and the United States point to a multi-polar world order. Together with the proliferation of soft-law and hard-law international standards, this trend results in a legal and political arena that is both broader and more fragmented (DE BÚRCA; KEOHANE; SABEL, 2013). In this new context, states and NGOs in the Global North no longer have sole control over the creation and implementation of human rights standards, as new actors (from transnational social movements to transnational corporations to Global South states and NGOs) emerge as influential voices.

Second, the range of actors and legal and political strategies has expanded considerably. Time-honoured strategies such as naming and shaming recalcitrant States into compliance with human rights are being complemented with new strategies for transnational advocacy that involve a host of actors and targets of activism, including social movements, online media outlets, transnational corporations, inter-governmental organisations, universities, and virtual activism networks (RODRÍGUEZ-GARAVITO, 2014a).

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*This article is partially based on Rodríguez Garavito (2014a, 2014b).

Third, information and communication technologies (ICTs) present new challenges and opportunities for human rights. As shown by the mobilisations associated with the Occupy Movement around the world, tools such as social networks, video documentaries, digital reporting, online learning, and long-distance education have the potential to accelerate political change, reduce the informational disadvantages suffered by marginalised groups, and bring together national, regional and global groups capable of having a direct impact on the protection of rights (ZUCKERMAN, 2013).

Fourth, extreme environmental degradation – climate change, water scarcity, the rapid extinction of species and forests, uncontrolled pollution – has become one of the most serious threats to human rights. After all, human rights mean very little if what is at risk is life on earth itself. Thus, ecological questions are central to global discussions regarding human rights, from those that question the traditional conception of economic development to those that seek to connect environmental justice with social justice, and including those looking for new conceptions that make human rights compatible with the rights of nature (SANTOS, 2014).

The resulting uncertainty is an uncomfortable position for the human rights community, which has courageously confronted dictatorships, corporate abuse, socio-economic injustice, ethnocide, and environmental degradation for decades. Being left with more questions than answers is disconcerting for NGOs that have come to be expected to provide clear-cut legal solutions to complex moral and political dilemmas.

Yet I believe we should welcome this discomfort. For transitions – between strategic models, intellectual paradigms, governance structures, technologies, or all of the above— represent moments of creativity and innovation in social fields. In human rights circles, where we have erected such high organisational and ideational walls that it has become difficult for us to be reflexive and self-critical, this raises an unprecedented opportunity to reconsider some of our core assumptions: who counts as a member of the human rights movement, what the disciplinary bases of human rights knowledge should be, what strategies can be most efficacious in a multi-polar and multimedia world. For the first time, important tensions and asymmetries – South v. North, elite v. grassroots, national v. global— are being openly discussed with a view to overcoming such divisions and strengthening the collective capacity of the movement.

In order to contribute to this collective reflection regarding organisational forms and strategies, this paper has both critical as well as reconstructive components. I will begin by briefly reviewing the criticisms that, in my view, are most relevant and useful in current debates about human rights. Then I characterise two types of reactions of human rights organisations in the face of these criticisms: on one hand, the defence of traditional boundaries and gatekeeping mechanisms of the field; on the other, reflexive reconstruction and expansion of the boundaries of the field. In the final section of the text, I adopt the latter position and argue that the above-mentioned structural transformations point towards a much more diverse, decentralised and network-like human rights field than that of previous decades. I maintain that, although actors and strategies that have dominated the field of

human rights will remain relevant, the movement is shifting toward the structure and logic of an ecosystem. As in ecosystems, the field's robustness will depend on the collaboration and complementarity among different forms of organisation and diverse strategies. Thus, I conclude by proposing that practitioners and organisations will need to spend less time on gatekeeping and more on symbiosis; less on guarding conventional strategies and boundaries, and more on finding more horizontal and effective modes of collaboration across borders.

1 Five Problems with Human Rights

The critical bibliography about human rights is extensive and quite varied. It includes philosophical and historical objections as well as geopolitical and cultural deconstructions[2]. Given that the emphasis of this paper is on current discussions regarding organisational forms and strategies of the movement, I will concentrate on criticisms regarding this specific angle of the debate.

First, critics have rightly pointed out that human rights as a discourse and a movement tends to be vertical and rigid. Perhaps the best example of this criticism is international criminal justice (HOPGOOD, 2013). Those of us who practice human rights in societies that are trying to overcome long periods of armed conflict, like Colombia, experience the well-known tension between the dictates of international criminal law on the one hand, and the political negotiations necessary to transition from conflict to peace on the other. While we collaborate with global NGOs on this and many other issues, we note with surprise the inflexibility of some of their positions regarding transitional justice, stemming from a seemingly unconditional prioritisation of criminal justice over other forms of justice and reparations. And the International Criminal Court, with its preliminary investigations into transitional justice processes like those in Colombia, has tended to solidify even more this message. This is detrimental in contexts where peace negotiations with actors such as the FARC (Revolutionary Armed Forces of Colombia) require greater flexibility and an appreciation of national issues, without granting impunity for crimes against humanity (UPRIMNY, SÁNCHEZ; SÁNCHEZ, 2014). Yet the rigid interpretation of international justice that some global organisations espouse leaves little room for alternatives – for instance, reduced prison sentences and restorative justice – and instead, tends to present their interpretation as the definitive content of international criminal and humanitarian law.

A second critique pertains to the over-legalisation of human rights. This relates not only to the emphasis on legal standard-setting that characterise human rights, but also to the disproportionate role given to lawyers in the movement. Although the international legal framework for human rights is a historic achievement, the over-legalisation of the field has had two counterproductive effects. First, as Amartya Sen (2006) has argued, viewing human rights claims exclusively through the lens of legal rules may reduce their social efficacy, as a large part of their power lies in the moral vision they embody regardless of whether they have been translated into legal rules. Second, technical legal knowledge is a barrier to entry into the field that alienates grassroots activists and other professionals (from experts in information

technology to natural scientists and artists) that make invaluable contributions to the human rights cause. This is particularly worrisome when it comes to fundamentally important topics such as climate change, which profoundly affect human rights, but cannot be understood or acted upon without the participation of professionals from other fields. It may also alienate key new constituencies like citizen e-activists, who are already using human rights frameworks but feel distanced from the technical language and tools of the traditional movement.

Over time, the closed nature and legal specialisation of the field has led to another difficulty: the tendency to adopt the defence of legal frameworks as an end in itself, instead of as a means to improving the living conditions of those who suffer violations of human rights. The current international debate about business and human rights provides a clear illustration of this. As those of us who have participated in regional and global consultations convened by the UN Working Group (WG) (responsible for implementing the UN Guiding Principles on Business and Human rights) have seen, this is a highly polarised debate in which both sides staunchly defend their positions. On the one side, there are those who defend a soft law approach to the Guiding Principles. On the other, there are those who refuse to use the Principles and demand a binding international treaty. What is clear is that a good part of the polarisation and unproductiveness of the debate is due to the fact that both the WG and the law-oriented NGOs tend to concentrate on defending a regulatory paradigm, instead of focusing on the difference that such a paradigm could make in practice (RODRÍGUEZ-GARAVITO, forthcoming).

A fourth critique that needs to be taken seriously is the obvious asymmetry between the Global North and South in the human rights field. Organisations in the North receive over 70% of the funds from philanthropic human rights foundations (FOUNDATION CENTER, 2013). They continue to have disproportionate power when it comes to setting the international agenda. And too often they define this agenda based on internal deliberations, rather than through collaborative processes with NGOs of the Global South, social movements, activist networks, and other relevant actors.

Finally, critical voices inside and outside the movement have rightly singled out a particularly complex problem: how can we measure the impact of human rights and calculate the opportunity cost of the resources and efforts dedicated to their advancement? For a movement dedicated to creating legal standards and dominated by those of us with legal training, the question of the actual impact of these norms does not come naturally. For foundations and NGOs that are used to talking in terms of outputs instead of outcomes, the question of how to measure the latter remains elusive. This is a conversation and an ongoing task that I believe should concern the entire movement.

2 From Gatekeeping to Symbiosis

Faced with these critiques, the response could be celebration, denial, or reconstruction. Celebration tends to be the response of some sectors of academia which, after having turned towards what Santos (2004) calls "celebratory postmodernism," are content

with deconstructing human rights discourse and practice (KENNEDY, 2012).

Since human rights practitioners cannot afford to simply celebrate criticism and rejoice in uncertainty, their responses oscillate between defensiveness and reflexive reconstruction. Defensiveness tends to be the reaction of NGOs and some lawyers who are highly invested in the dominant model of human rights advocacy. Reflexive reconstruction is the response of those who recognise the value of such critiques, but believe that they do not represent the end of an ideal and the struggle for human rights, but rather the need for new ways of thinking about and practicing them.

The contrast between these two approaches is typical of moments of transition and shifting paradigm within social fields. In those situations, actors engage in "boundary processes" (PACHUCKI; PENDERGRASS; LAMONT, 2007), whereby they seek to redefine the contours of the field. While those on the defensive argue that it is necessary to keep the traditional boundaries of human rights, those favouring reflexive reconstruction try to redraw the boundaries to accommodate criticisms. I characterise these two approaches as gatekeeping and symbiosis, respectively.

2.1 Gatekeeping and Its Woes

Guarding the traditional boundaries of the field takes up a disproportionate amount of time and energy. For example, in some academic and advocacy circles there are continued efforts to build a wall between "core" human rights and other rights, such as social and economic rights (NEIER, 2013). This happens despite the fact that, as we will see, social movements, NGOs, courts, international treaties and contemporary theories of justice effectively tore down this fence during the last two decades.

Similar to what happens in cities, gatekeeping efforts multiply in times of uncertainty and insecurity such as that which the human rights field is experiencing. The human rights neighbourhood is changing: the gatekeepers and traditional guards (Northern governments and NGOs) no longer have the same power as before in an increasingly multi-polar world. Trespassing has become the norm as new actors (from e-activists to local NGOs) circumvent the gates by directly networking with each other across borders and contest the very borders of the field (North v. South, elite v. grassroots, legal vs. non-legal).

Given this context, ideas and strategies that try to provide clarity amidst the haziness are necessary. For example, questions regarding the priorities of the movement and its excessive emphasis on the creation of legal standards are timely. However, these analyses become problematic, both empirically and strategically, when they reinforce the conventional contours of the field – such as when Hafner-Burton (2014) argues that "we need to set more priorities based on the likely consequences of success", which implies "prioritising some rights and some places over others".

From an empirical point of view, proposals of this type are at odds with the above-mentioned transformations in the geopolitical, social, and technological context in which human rights work takes place. They imply that there is a group of actors that set the priorities, and therefore, act as gatekeepers who determine the

international agenda of human rights. Thus, the key actors are a limited number of "steward States" willing to promote human rights around the world through their foreign policy (HAFNER-BURTON, 2013). The protagonists – the "we" of the proposal – are these States and, probably, the international NGOs with direct access to them.

If this proposal sounds familiar, it is because it describes the predominant way in which the international human rights agenda has traditionally been set, with disproportionate influence from Washington, Brussels, Geneva, or London (BOB, 2010, CARPENTER, 2014). Yet, looking forward, it is increasingly out of pace with a less uneven international order, a fragmented governance system, and a human rights movement that is much more diverse and decentralised than in past decades.

The centrifugal pressure in the field of human rights is also brought on by ICTs, and the rise of "network societies" (CASTELLS, 2009). Priority setting is a fundamental task in forms of organisation characterised by hierarchical structures and centralised decision-making. But they become less relevant and feasible in the network-like structures that key actors in the field have increasingly adopted, from inter-governmental governance bodies to transnational social movements and multinational corporations.

As noted, the cumulative effect of these transformations has led to an explosion of actors who use the language and the values of human rights, but have broken down the fences of the gated community. Among them are grassroots groups, online activists, religious organisations, think tanks, artists' collectives, scientific associations, film makers, and many other individuals and organisations around the world. They are mobilising for human rights not just through traditional legal advocacy tactics, but also through new ones like online campaigns that have put effective pressure on States and private actors to comply with human rights. This is what is happening in the most successful cases, such as the 2013 campaign against sweatshop labour in the Bangladeshi apparel industry, which involved the transnational labour movement, national and international NGOs, and virtual activist networks like Avaaz.

In this new context, the idea of 'prioritising some rights and places over others', if taken as a prescription for the human rights movement as a whole, is also problematic from a strategic point of view. First, who would set the priorities in such a plural and decentralised field? What criterion and practical procedures would be used to ascertain "core" rights and distinguish them from other rights, or to assert that "discrimination on grounds of sexual orientation and gender identity" is "the one big, and urgent" issue in need of international regulation (HAFNER-BURTON, 2014). How can such a statement stand when NGOs and communities around the world are mobilising for equally important regulations with regard to such issues as indigenous peoples' rights or the right to food?

Second, while scholars and practitioners like Hafner-Burton rightly criticise too little attention being given to the implementation of legal standards, even as new ones are proposed, it is equally important to realize that gatekeeping has costs of its own. A loss of legitimacy is not the least of them. Gated communities, by definition, operate with a double standard: one that applies to insiders and another to

outsiders. In a world moving toward multi-polarity, the traditional exemption from international scrutiny that steward States have enjoyed has become a fundamental problem for the legitimacy and effectiveness of human rights. With increasing confidence and supporting evidence, emerging powers and other Southern states cite such an asymmetry in order to effectively deflect criticisms for their human rights violations and demand similar exemptions.

This was clear, for instance, for those of us who participated in a campaign to counter the efforts by several Latin American States to weaken the enforcement powers of the Inter-American human rights system (DUE PROCESS OF LAW FOUNDATION, 2012). In response to our campaign, several States forcefully countered that the United States was demanding compliance with decisions of the Inter-American Commission and Court, even as it ignored the Commission's recommendation to close down Guantánamo; and that the US has not ratified the American Convention on Human Rights.

In sum, the call for priority setting is important at the organisational level — although even at that scale its results are far from clear, as the likelihood of success is not the only relevant criterion for determining priorities (LEVINE, 2014). But when extrapolated to the human rights field as a whole – to the "we in the international human rights community" that Hafner-Burton and others write about – it is unfeasible and even counterproductive.

2.2 Towards a human rights ecosystem

As noted, the main trait of the contemporary human rights movement is its striking diversity. The twenty-first century has witnessed a true explosion of actors who use the language and values of human rights and surpass, by far, the traditional boundaries of human rights.

In light of this, I have argued that instead of reinforcing the traditional boundaries of the field, human rights theory and practice must be expanded, so as to open spaces for new actors, themes, and strategies that have emerged in the last two decades. To capture and maximise this diversity, I have suggested elsewhere that the field should be understood as an ecosystem, rather than as a unified movement or institutional architecture (RODRÍGUEZ-GARAVITO, 2013, 2014a). As with every ecosystem, the emphasis should be on the highly disparate contributions of its members, and the relationships and connections between them.

Just looking around we see examples of this ecosystem in motion. With regards to the diversity of *actors*, current human rights campaigns involve not only (and often, not mainly) professional NGOs and specialised international agencies, but also many others. For example, I have witnessed this diversity in action in a recent campaign to ensure compliance with the Inter-American Court ruling that condemned the Ecuadorian government for illegally authorising the exploitation of oil within the territory of the indigenous people of Sarayaku in the Amazon (INTER-AMERICAN COURT OF HUMAN RIGHTS, *Sarayaku indigenous people v. Ecuador*, 2012). The campaign includes the Sarayaku people, social movements (mainly the Ecuadorian indigenous movement), local NGOs (like the Pachamama Foundation),

international NGOs (Cejil), national NGOs from other countries who work internationally (Dejusticia), and online activists networks and citizen journalism outlets (like Change.org). While in these and other campaigns power differentials persist (between North and South, professionals and non-professionals, etc.), efforts to mitigate them through different forms of collaboration are also evident.

A similar ecosystem approach is required with regard to the expanding range of *topics* that the human rights movement is taking up. This is clear, for instance, in the realm of socio-economic rights. Although initially raising doubts among scholars (SUNSTEIN, 1996) and advocates (ROTH, 2004) in the North, efforts by NGOs, movements and scholars in the South have successfully incorporated them into the legal and political repertoire of the field. As a result, socio-economic rights are recognised in international law and in constitutions throughout the world, and have become the focal point of large sectors of the human rights field, giving rise to new theories of justice and human rights (SEN, 2011).

Activists, academics, and courts in countries including Argentina, Colombia, India, Kenya, and South Africa have developed sophisticated legal doctrines and theories that have improved compliance with socio-economic rights (GARGARELLA, 2011, GAURI; BRINKS, 2008, LIEBENBERG, 2010). International human rights agencies such as the UN Special Rapporteurs, the African Commission, and the Inter-American Court are busy creating content and effectiveness for these rights (ABRAMOVICH; PAUTASSI, 2009, LANGFORD, 2009). They do all this without diluting the idea of human rights into social justice, and without weakening civil and political rights.

An equally open and pluralistic approach is required with regard to the *strategies* in the field. Classical, "boomerang effect" strategies (KECK; SIKKINK, 1998) – whereby organisations like Amnesty and Human Rights Watch have successfully pressured Northern States to use their influence on Southern States to get the latter to comply with human rights – will continue to be important. But multi-polarity makes it increasingly difficult for strategies centred on Europe and the United States to be effective, as the current crises in Syria and Ukraine bear witness. Thus, human rights organisations are trying new approaches. The above-mentioned campaign to preserve the powers of the Inter-American Commission of Human Rights is a case in point. Through what I describe as a "multiple boomerang" strategy, Latin American NGOs (CELS, Conectas, Dejusticia, DPLF, IDL and Fundar) forged a successful coalition in defence of the Commission when it came under attack from governments throughout the region between 2011 and 2013 (RODRÍGUEZ-GARAVITO, 2014c). Since the United States was part of the problem (it never ratified the Inter-American Convention on Human Rights), and its regional influence has declined, lobbying the US government to put pressure on its Latin American counterparts to back off would have been useless, even counter-productive. Thus, national NGOs chose to put pressure on their national governments to support the Inter-American Commission, with the Brazilian government ultimately tipping the balance in favour of the Commission. Thus, it was a coalition of national organisations, lobbying their national governments and the emerging power of the region, which ultimately made the difference.

3 Conclusion

As in any ecosystem, the strength of the human rights field will depend on symbiosis, that is, the interaction among its different actors, to the advantage of the latter and the broader cause they share. Collaboration and complementarity will thus become even more important to the survival and thriving of the field as a whole.

Nurturing collaborations is easier said than done. For dominant human rights organisations like Human Rights Watch and Amnesty, this implies a difficult challenge: transitioning from the vertical and highly autonomous *modus operandi* that has allowed them to make key contributions, to a more horizontal model that would allow them to work with networks of diverse actors. For the time being, their efforts to globalise their operations by opening offices in new centres of power in the Global South have failed to translate into new forms of engagement, so as to interact with local, national and regional organisations on an equal footing in terms of initiative, decision-making and authorship. For domestic organisations, adjusting to the new ecosystem entails pursuing strategies that allow them to link up with each other, and use the new leverage points created by increased multi-polarity, as well as opening themselves up to non-legal professionals, social movements, and online activists.

In sum, we need to see the human rights field as a diverse ecosystem, rather than as a hierarchy. In a more complex and interdependent world, our questions need to be informed by biology as much as by law and politics. We need to spend less time on gatekeeping and more time on symbiosis.

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NOTES

1. For recent overviews of this literature, see Douzinas and Gearty (2014) and Gearty and Douzinas (2012).

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ABSTRACT

This paper examines the imbalance between northern and southern civil society
organisations (CSOs) in their engagement at international forums. It delves into some of
the internal and external factors that inhibit southern CSOs from playing a bigger role in
global governance discussions and in shaping the agenda of intergovernmental organisations.
Finally, it makes some recommendations towards creating a "multipolar" civil society in line
with the contemporary realities of a changing world order.

KEYWORDS

Multipolarity – Civil society – Emerging democracies – Global governance

TOWARDS A MULTIPOLAR CIVIL SOCIETY

Dhananjayan Sriskandarajah and Mandeep Tiwana

In a speech delivered at Stanford University in 2013, UN Secretary General, Ban ki-moon dubbed the present a time of "Great Transition." He urged his listeners to become global citizens as "we move increasingly and irreversibly to a multipolar world order" (KI-MOON, 2013).

Almost everywhere we look — from economics to demography to air travel to innovation — this shift to the so-called "emerging" markets is palpable. But when it comes to the civil society landscape, the transformation is less visible. Many of the largest, most visible and most vocal civil society organisations (CSOs), especially those working explicitly on human rights, were founded in the global north and remain headquartered there. While some of these organisations are decentralising (e.g. Amnesty International) or have relocated to the south (e.g. Action Aid International), the overall pace of transformation in civil society seems much slower than in other areas. Indeed, there is a real possibility that northern CSOs will continue to have a higher profile, disproportionate influence and control over resources in the civil society sector for some time yet, bucking the trend of restructuring of global power relations.

This is a particular concern for the organisation we both work for. Headquartered in Johannesburg, South Africa and with members all over the world, CIVICUS was founded twenty years ago to nurture a healthy and independent civil society, especially in places where freedom of association and participatory democracy were under threat. One of our key priorities is to empower civil society in the global south to play its rightful role on the local *and* global stages.

In our experience, there is a range of internal and external factors that limit the ability of southern CSOs to engage on the global stage, whether it is to raise the issues that matter to them most, to influence international affairs or to access funds. In this article, we discuss some of these impediments, as well as some opportunities to enhance southern civil society's participation in global debates. We argue that the global human rights agenda would be strengthened significantly if southern civil society actors themselves do more to look beyond their national boundaries and become global citizens in today's interconnected, multipolar world.

Notes to this text start on page 517.

1 A disenabling operating environment

The first major impediment is the very conditions that many southern CSOs work in. Despite international law and constitutional protections, the legal and policy environment for CSOs remains a contested space in much of the developing world. CIVICUS' 2013 State of Civil Society Report highlights this trend, which is most prevalent in the Global South, although there has been regression in civil society freedoms in developed countries, too (CIVICUS, 2013). Given the ground realities, it is thus very difficult for CSOs in the south to shine on the international stage when their position at home remains tenuous due to restrictions imposed on their activities.

For instance, in Zambia, NGOs are required to obtain approval of their areas of work from the government-dominated NGO Board as well as harmonise their activities in accordance with the national development plan (MORE THAN…, 2013). Bolivian NGOs and foundations are required to contribute to the economic and social development of the country taking into account guidelines laid in national plans and sectoral policies (ERÓSTEGUI, 2013). Algeria's law on associations limits the scope of activities for civil society groups to "professional, social, scientific, religious, educational, cultural, sports, environmental, charitable and humanitarian domains," thereby indirectly preventing them from undertaking activities relating to human rights, democracy promotion and gender equality (NGO…, 2013). Indonesia's law on mass organisations prevents CSOs from propagating ideology that conflicts with "Pancasila," the state philosophy (INDONESIAN…, 2013). Nigeria's anti-gay law potentially criminalises the entire community of progressive civil society groups and human rights defenders by making it illegal to support gay clubs and organisations (NIGERIA…, 2014). In Saudi Arabia's extreme example, civil society groups don't even have legal cover for their programmatic and fundraising activities through an associations law (CIVIL…, 2013).

So, a first priority for strengthening the global role of southern CSOs will be to ensure that they operate in a stable legal and policy environment in which they are free to expand the scope of their activities without unwarranted state interference.

2 The challenge of raising funds

A second challenge relates to the inability of southern activists and CSOs to receive financial backing from local sources, often forcing them to look abroad for funding. This, in turn, often reduces their credibility locally (e.g. they are accused of being "foreign agents") or locks them into hierarchical relationships (e.g. where they become local "implementing" partners to northern CSOs, who control the policy and purse strings). Notably, the reliance on foreign funding also gives governments powerful leverage over groups that expose corruption and state complicity in human rights violations.

India's Foreign Contributions law requires CSOs to get official clearance before they can receive funds from international foundations and development agencies. Because the authorities have discretion to designate an organisation as

being of "political nature" and thereby prevent it from receiving foreign funds, a number of human rights groups in the country remain in a perpetual state of uncertainty with regard to their future activities (RAZA, 2013). In Ethiopia, human rights advocacy groups that previously relied on international funding due to scarcity of resources within the country have been severely decimated due to the restrictive charities and societies law, which puts restrictions on various types of activities for organisations that receive more than 10% of their funds from abroad (ETHIOPIA…, 2012). Russia's government has gone so far as to require CSOs receiving funding from abroad to designate themselves as "foreign agents," a derogatory term that undermines their credibility with the public (MOVES…, 2012).

Despite these challenges, there are two potential reasons for hope. The first is an expectation of sharp growth in local philanthropic bases in the global south due to an improvement in standards of living. A recent report by the Charities Aid Foundation argues that philanthropic giving by the expanding middle class in the global south holds great potential to transform societies especially because the share of developing countries in global GDP will exceed that of the traditionally rich industrialised OECD countries by 2030 (after purchasing power parity adjustments) (CHARITIES AID FOUNDATION, 2013). Another reason for optimism is that some funders, including official agencies and private foundations, are starting to recognise the need to fund southern CSOs directly, rather than through northern-based intermediaries. Initiatives such as NGOsource[1] make it easier to verify the credentials of southern-based organisations and campaigns such as Fund the Front Line[2] are trying to build donor interest in directly funding the activities of smaller CSOs on the ground.

3 Barriers to access global governance institutions

A third key factor that inhibits southern CSOs from engaging in global governance debates is their lack of access to major intergovernmental institutions, the overwhelming majority of which are based in developed countries. On a practical level, discriminatory visa regimes and the high cost of the travel and accommodation at these locations act as a major deterrent for southern CSOs. Hence the participation of southern CSOs when major debates take place at the United Nations (UN) and other intergovernmental organisations can be lopsided vis-à-vis northern CSOs. A report on the role of civil society in global governance published by Bertelsmann Stiftung estimates that a third of the 3345 ECOSOC registered NGOs with a specific headquarters were based in Europe and a further quarter in North America (FRIES; WALKENHORST, 2010). Despite being home to three-quarters of the world's population, Africa and Asia only accounted for a quarter of UN-accredited NGOs.

The role of cultural capital, which can be described as the concentration of knowledge and access with regard to global governance institutions by a handful of well-resourced CSOs, most of whom are often based in the global north, cannot be understated. Over time, these CSOs and their staff (some of whom are employed just to do UN liaison) build up the cultural capital that gives them the access to

policymakers and opinion-formers. Cultural capital elevates some sections of global civil society whilst purposefully or inadvertently discriminating against citizens from a particular geographic location or class, or simply those who cannot travel often enough to New York or Geneva to build relationships with key actors. In a recent perception survey carried out by CIVICUS, CSOs based in Africa expressed much lower levels of satisfaction with the CSO outreach of intergovernmental organisations in comparison with their peers in Europe (CIVICUS, 2014). Despite efforts to improve the working practices of these institutions, there is widely agreed to be a bias in favour of those citizens who have been socialised in similar structures.

Although, this situation is a product of broader historic forces, it nevertheless contributes to reinforcing the status quo. It is also a reminder that any radical democratisation of whose voice is heard in global governance processes will require a concerted effort—by civil society itself and by intergovernmental institutions—to overhaul who gets access.

4 Preoccupation with domestic issues

Finally, the most disappointing factor of all is the fact that, for many CSOs in the south, the vastness of the challenges at home and in their immediate vicinity is the overwhelming priority—so much so that they find it hard to have the time or resources to engage on global issues. Additionally, resources from international donors to support initiatives on human rights and social justice are usually for in-country programmes, as opposed to influencing global debates and agendas. Thus involvement in international agendas remains restricted to a relatively limited number of well-resourced southern CSOs.

In our own experience, we have seen how difficult it can be to build southern-led campaigns on human rights issues. For example, when the Ugandan government was in the process of passing the draconian anti-homosexuality law, we wanted to canvass African CSOs to speak up against this, in part to provide an African-led complement to the countless western voices that were speaking up on this issue. We managed to get a respectable 25 signatories to our open letter to President Museveni (OPEN…, 2011) but it was clear that very few CSOs had the time or inclination to respond.

This example also demonstrated the need to find new ways in which southern-based civil society can speak up on issues beyond its borders. Many of our colleagues are concerned about what is going on in other parts of the world but are reluctant to issue public condemnations, often with the familiar caution that this is not the "African way" or the "Asian way." Yet, when it comes to attacks on universal human rights, there is a positive obligation on all of us—including southern civil society actors—to speak up. We may well need to find more nuanced and appropriate ways, but we still have to speak up.

Additionally, we need to engage our governments on their foreign policies. Far too many southern civil societies have given their official representatives a free pass to carry out actions undermining human rights at international forums. Every regressive statement and every negative vote should be exposed at home to public

scrutiny. An effective way to enable this is to build national coalitions focusing on international affairs. CIVICUS is a founding member of the South Africa Forum for International Solidarity (SAFIS), a group of CSOs and activists committed to positively influencing South Africa's foreign policy to mirror constitutional principles and the values that underpinned the struggle against apartheid. In the coming years, we hope to be able to incubate such like initiatives where they don't exist and learn from experiences where they do.

In summary, we know the global civil society landscape needs to change to reflect the emerging multipolar world, and that more southern voices need to be present in the public sphere, in international governance discussions and so on. But this will not happen unless we redouble our efforts.

First, a good beginning would be for southern CSOs to prioritise advocacy at international forums such as the UN Human Rights Council (UNHRC) for a better and more enabling legal and regulatory framework which also encourages local philanthropy through tax breaks and other fiscal incentives. The UN Human Rights Council (UNHRC) recently organised a discussion in its March 2014 session on a safe and enabling environment for civil society, which will be followed by a report by the UN High Commissioner for Human Rights later this year (25TH SESSION…, 2014).

Second, we need to place greater emphasis through media and public awareness campaigns on the centrality of human rights and social justice so that attention can be focused on these areas by southern foundations and philanthropists who traditionally support initiatives related to poverty alleviation, education, health, etc., where results are more tangible. A number of southern countries, including emerging democracies like India, Brazil and South Africa, are in various stages of setting up development partnership agencies and financial institutions to support development. It is critical that southern CSOs are involved in focusing the agenda of these institutions towards the protection and promotion of human rights as well as ensuring that the resources from these institutions are also channelled to southern civil societies and not just government departments.

Third, southern CSOs need to make a concerted push towards becoming global citizens in today's inter-connected world by developing programmes on regional and international governance. They need to equip themselves with the skills and experience required to negotiate select international arenas which have been the traditional preserve of international NGOs based in the north. There has to be a realisation that the local is increasingly being impacted by the global and that it is necessary to engage in the region and beyond to do full justice to an organisational mandate.

In another twenty years, when Sur publishes its 40th edition and CIVICUS turns forty, let's hope that civil society is as multipolar as the political economy is likely to be.

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EMILIE M. HAFNER-BURTON

Many human rights activists and scholars fear state power – and justifiably so. Often with the powers of a Leviathan, States are responsible for massive human rights abuses at national level and also abroad. Yet, others, like Emilie M. Hafner-Burton, author of the 2013 Princeton University Press-published book *Making Human Rights a Reality*, argue that "States are at the center of the human rights problem and so they have an important role to play in the solutions." In sum, human rights activists, scholars, and policy-makers ought to make the best use of state power, including promoting human rights abroad.

Hafner-Burton, in a thought-provoking interview with Conectas' director, Lucia Nader, strongly defends what she calls a 'steward' role for States at international level. While being cautious in not defining stewardship as an "entitlement or privilege" of only certain Western countries, Hafner-Burton, herself critical of US foreign policy including Obama's, assigns an important role to Southern countries as well as human rights organizations from the South in promoting human rights abroad. As she argues in this interview, "human rights promotion will gain more traction if more governments get into the business of responsibly promoting human rights in their region, launching more power for human rights from beyond North America or Europe."

Her interest in issues of state power and international law is not new. As seen in this interview with Conectas, Hafner-Burton cares deeply about finding ways to narrow the gap between international human rights norms on paper and their reality on the ground. Two decades ago, Hafner-Burton moved to Geneva, Switzerland and started working for an international nongovernmental organization dedicated to promoting human rights and disarmament. From that moment on, she had the opportunity to take an inside look at how the United Nations functions, experiencing first hand the difficulties of human rights advocacy. Ever since, she has been working to craft more effective solutions to the persistence of human rights abuses globally.

Emilie Hafner-Burton's academic experience reflects this concern. She is a professor at the UC San Diego's School of International Relations and Pacific Studies and is the Director of the School's new Laboratory on International Law and Regulation. Looking across a wide array of issues, including human rights and security, the Laboratory explores when (and why) international laws in fact operate. Additionally, Hafner-Burton's academic background extends to other renowned universities, such as Princeton, Oxford, and Stanford.

In the following interview, Hafner-Burton reflects upon the legitimacy of international human rights system, the role of States and international human rights organizations in it, as well as presents a critical view of the US foreign policy in human rights. With a realistic yet encouraging tone, Hafner-Burton makes clear that "in an ideal world States would stay out of each other's business. We don't live in that world." And, as much as the United States' human rights record has been constantly criticized whenever the US promotes human rights abroad, Hafner-Burton warns that Southern countries, such as Brazil, India, and South Africa, need to mind their human rights record at home too if they want to promote human rights abroad responsibly.

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Original in English.

Interview conducted in July 2014 by Lucia Nader (Conectas Human Rights)

"AVOIDING USING POWER WOULD BE DEVASTATING FOR HUMAN RIGHTS"

Interview with Emilie M. Hafner-Burton

*Conectas Human Rights: You mention in your book **Making Human Rights a Reality** that the international human rights system, particularly the UN, is facing today a crisis of legitimacy and relevance because it is packed with countries that have no intention (or ability) to honor its norms. Some other experts would argue that this crisis is mainly due to the fact that this same system suffers a crisis of representation. Its lack of legitimacy would come not from "bad States" but because "western countries" manipulate the system to get only what they want from it.*

Emilie M. Hafner-Burton: We agree that the UN is facing a crisis of legitimacy and relevance. One reason is precisely that States—all States, not only "western countries"—manipulate the UN system to get what they want from it. That politicking helps explain why the track record of states' compliance with international human rights norms is quite low. Its central human rights body—the UN Human Rights Council—is responsible for the promotion and protection of all human rights around the globe. That council is by design highly representative, open to balanced participation (through election) by countries from all of the world's main regions.

Yet that Council is routinely staffed by governments—including some "western countries"—that cannot or do not want to promote even the most basic human rights at home or abroad. The UN's human rights laws are open to voluntary participation by any country. They too are regularly violated. Laws and rules that are routinely broken lack legitimacy and authority. They risk becoming another venue for cheap human rights talk.

Conectas: As an example of such risk of cheap human rights talk, as you put it, one could mention the Western selectivity in picking only those issues and countries they want to deal with. What is your opinion about this selectivity?

E.M.H.: We agree that the UN has a serious crisis of global representation—the UN Security Council is a case in point. And we agree that countries are selective in the human rights issues they raise and the countries they deal with. This is as a general (and inevitable) problem, not only a western one. When you look at the track record for which countries have been most targeted by the UN's main human rights body, you see a complex picture. Powerful countries—"western" and non-western alike—have been the favored targets. These countries are also better able to avoid paying consequences for their wrongdoings. Additionally, countries that sit on the UN Human Rights Council are also getting political favoritism: they are less likely to be targeted for human rights violations than their neighbors.

These patterns of favoritism are prevalent at the UN. Another example is the UN Human Rights Committee. This is a treaty body responsible for reviewing claims filed against States (under the first optional protocol to the International Covenant for Civil and Political Rights). Victims file claims seeking help, but not all victims get a favorable ruling or compensation. Claims that a government has violated due process rights, civil liberties, or political freedoms have been the most likely ones to lead to a ruling in the victim's favor. Claims about suffrage or the rights of women or children have been much less successful—for some reason, the committee has ruled less often for these victims, who are often among the most underprivileged and underrepresented in society. The UN Human Rights Committee has also found democratic countries (both "western" and non-western) to be in violation more often than other countries—including those where abuses were worse. In short, decision making within the key UN human rights institutions is based not solely or even mainly on the extent of violations of human rights but also on other factors including national and interstate politics. There is no such thing as neutrality in this system and that fact leads to inequalities not only among countries but also among issues and victims.

Conectas: You argue that, in order to protect human rights, we need "steward states" and that they must find ways to use power more effectively. One of the assumptions of this issue of Sur is that, over the past decade, we have seen emerging powers from the South assume an increasingly influential role in the definition of the global human rights agenda. Some might say we are now in a multipolar order, where power is not so clearly divided. Do you agree with it?

E.M.H.: I agree entirely. States are at the center of the human rights problem and so they have an important role to play in the solutions. "Stewards" are actors that have a strong interest in advancing human rights abroad, for whatever reason. Let me be very clear: stewardship is not an entitlement or privilege. It is a nonaligned description of a foreign policy decision that *any* State or organization can make to use its power in an effort to promote human rights. For a lot of different reasons, many States are already in the business of stewardship outside of the UN system.

While there are potential benefits in using power in the service of human rights, there are also great dangers. Power badly performed can backfire and cause harm, especially to the most vulnerable. And efforts to promote human rights from the outside—whether through brutal means such as war or more peaceful means such as funding—are often seen as foreigners imposing their interests on the rest of the world. Too often, the use of power to promote human rights is illegitimate, based on external motivations or understandings that are out of synch with the needs and perceptions of the people—including the victims— states' policies are supposed to benefit. That helps explain why so many current efforts by stewards to promote human rights flop—even at times catalyzing anti human rights sentiment.

The solution is not for stewards to avoid using power altogether. That would be devastating for human rights and also unrealistic—states do this because it is in their interest and they are probably not going to stop. The solution is to find ways to use power more effectively and fairly. To partner with, rather than to lecture at, local communities. Steward states need to develop congruence with local beliefs and practices. And they need to engage willing local entrepreneurs, such as NGOs, religious leaders and national human rights institutions over sustained periods.

Conectas: How does the rise of emerging powers affect your "stewardship" argument? What could be the role of countries such as Brazil, India and South Africa in promoting

human rights? These countries have serious violations occurring at home – would this prevent them from promoting human rights abroad?

E.M.H.: The emergence of rising powers from the South provides a critical opportunity for human right stewardship to become more representative. Right now, stewards disproportionately target the developing world. The West tells the rest what to do, imposing norms, policies, and even laws. And telling others what to do undermines the legitimacy behind the messages. Illegitimate advocates can't effectively promote human rights. Human rights promotion will gain more traction if more governments get into the business of *responsibly* promoting human rights in their region, launching more power for human rights from beyond North America or Europe. Nothing prevents States in other regions or with less than fully democratic political systems from choosing stewardship. This is a decisive moment for countries like Brazil, India and South Africa to reshape the global human rights agenda through more active participation as stewards in their regions. If they decline stewardship, the status quo will continue. Nevertheless, like all stewards, these countries will face the same challenges of promoting rights responsibly faced by Western countries, or they too will cause more harm than good.

Conectas: With Obama's administration, maybe people thought we would see radical changes in the US foreign policy regarding human rights. As an American citizen, how do you evaluate this? Was there any substantive change? If any, what were the main positive and negative aspects?

E.M.H.: When Obama was elected, there was the hope among many in the human rights community in the US that things were going to change in some fundamental way. And there have been a great many substantive changes compared to his predecessor, George W. Bush. Yet there have also been a great many shortcomings. Obama inherited a country in crisis, with America's self-image as a global human rights leader in decline. Obama promised big changes that he and his administration have yet to deliver: closing the prison in Guantanamo Bay, ending wars in Iraq and Afghanistan, reigning in the use of torture and illegal violations of civil liberties by the US government and military. Guantanamo is still open, the US supported the invasion of Libya, Iraq has collapsed into an intractable civil war with devastating effect on millions of innocents, and Afghanistan is not far behind and little progress has been made on protections for basic liberties in the US or elsewhere. On all of these fronts, the US continues to face serious challenges.

Obama has made some genuine efforts to rebuild America's image as a world leader on human rights. His administration has taken steps toward improving US credibility through greater engagement on democracy and human rights promotion in some places—think Honduras after the coup in 2009 or Cote d'Ivoire after the election crisis in 2010-11—with a softer, less "preachy" tone than his predecessor. In 2009, the US joined the UN Human Rights Council with an eye toward reform and engagement. And total US government spending in support of democracy and human rights promotion has gone up under Obama.

But his administration also continues to downplay—sometimes altogether ignore—human rights issues in places where the US has prioritized other interests. It is not clear if that is a good or bad thing, but it is entirely consistent with predecessors before him. What is clear is that, partly in response to the rise of emerging powers from the South, the US under Obama no longer displays a "one-size fits all" approach to human rights promotion through its foreign policy. It has taken a softer stance. Democracy and human rights promotion through war is no longer a central doctrine.

And his administration has openly recognized the important role for emerging powers in the new global order, focusing more attention and resources to support the development of democracy and civil society in places like Indonesia, more through common commitments than threats.

Conectas: How does the US human rights record affect its legitimacy to promote human rights abroad or, in your terms, to act as a steward?

E.M.H.: We must be very realistic about what a better strategy for stewards like the US can and can't do. It can make efforts to promote human rights a bit fairer and a bit more effective. It can't erase the politics from human rights. And it cannot solve the problem of hypocrisy: that steward states are often guilty of abuses themselves. The United States is frequently a target of this criticism, as it leaves its fingerprints around the world in ways that sometimes cause rather than alleviate suffering. There is no excuse for human rights abuses committed by US troops and leaders in Afghanistan and Iraq, or anywhere else, including at home. But just because the United States must do more to prevent human rights violations and punish citizens (including government agents) who commit human rights crimes does not mean it has forfeited its ability to act as a steward—for better or worse it is still trying, if not always successfully, to promote human rights around the world.

Conectas: In your book, you say that local organizations could "broadcast, endorse, and legitimize foreign efforts within their communities." This is a pragmatic and potentially effective strategy. However, some could argue this is quite a "patronizing" view, as if local organizations were instruments of "superior States'" foreign policies. How do you respond to this criticism?

E.M.H.: This is an astute and important observation. Most victims of human rights abuse need help, and many cannot find that help from their own government or society because the government or society is the source of the problem. Sometimes, movements to protect rights emerge and succeed internally. Other times, help from the outside can make the difference—that, at least, is the idea behind most human rights foreign policy and international activism. But one of the big barriers to human rights promotion is that stewards (whether they are foreign States or organization) are seen as imposing their own interests on the rest of the world, and this imposition is not only unfair, it is often ineffective.

Foreign involvement usually works best when there is local support from human rights stakeholders, not when outsiders impose policies. That means that partnerships with local organizations are usually essential for effective human rights foreign policy. NGOs and other local organizations can attract, shape and help implement these promotion efforts, while raising the odds that those policies resonate with local issues, customs, and practices. They can broadcast, endorse, and legitimize human rights within their community and appeal to local stakeholders without whose support foreign efforts will likely fail. This strategy poses a great threat to human rights abusers because it can unite their local and foreign adversaries and boost the legitimacy of human rights by championing them at the domestic level.

But there are tremendous risks here too. One is that local organizations become instruments of "superior States." This is the opposite of what is necessary for an effective foreign policy, which is for stewards to partner with—not control—local organizations on their own terms. When local organizations depend on foreign support they must walk a fine line. That support, on the one hand, is a signal that can

raise an organization's status and influence. On the other hand, it can also compromise their reputation or ability to operate in the local settings. Organizations can find their influence diminished when foreign funding or affiliation creates perceptions of collusion. Dependence on foreigners can also distort local social movements by introducing external agendas.

Another danger is that a large role for foreign funding and cooperation can make local governments feel insecure. Aggravated by a rise in local community activism and afraid of losing control, local governments can respond with intimidation that undermines the ability of local organizations to operate safely or effectively. The effects can be felt not only in organizations but also among citizens who, fearing revenge or other consequences, disengage from the movement.

Conectas: Working internationally from the Global South – some organizations, including Conectas, have been working to influence the foreign policies of their countries and other countries. How do you see the role of southern-based groups in working with foreign policy issues? Should this be limited to their "own" countries or they have the legitimacy to monitor and influence other countries' foreign policies? What challenges do you see for them doing this work? Furthermore, how do you see the relation between organizations created in North (e.g., Human Rights Watch, Amnesty International, among others) and those created and rooted in the South?

E.M.H.: Southern-based groups have a central—and increasingly pivotal—role to play in the promotion of human rights, including through working with foreign policy issues in their own countries and abroad. If a strategy of better stewardship is ever to work, it will depend heavily on the activities of organizations like Conectas to mobilize support for Southern governments to make human rights a local policy priority but also a foreign policy priority. Without the actions of these organizations, stewardship will flounder.

Yet, as far as North-South partnerships are concerned, the many difficulties of partnering across borders are well known. There is no perfect method for managing the tension between the need for foreign stewards to link their efforts into local organizations and communities, and the fact that those very linkages are a potential source of suspicion and misaligned incentives. Yet there may be a few rules of thumb for establishing successful partnerships to ensure that local organizations are not made into instruments of "superior States" but act as autonomous partners. One is resonance between policy goals. Local organizations and stewards should only partner when they seek to advance the same objective—foreigners, whether they be States or activist organizations, should not buy local support. Resonance helps guide the creation of shared interpretations of a norm that legitimates and inspires community support rather than imposing foreign concepts that feel alien. Another is community buy-in. If organizations are entirely funded by external actors, that is where their accountability lies. When some backing comes from the local community, the organization represents that community.

In an ideal world there would be no need for stewards and States would stay out of each other's business. We don't live in that world. We need stewards because human rights are not adequately protected. And States are not going to stay out of each other's business. Stewards are going to keep making efforts, for better or worse, to promote human rights—that is not going to stop. But stewardship can become better, less harmful on innocents, more effective for victims. It can benefit from stronger engagement by the global South, on their own terms, and closer voluntary partnerships with local civil society who are on the front lines in the fight for human rights.

MARK MALLOCH-BROWN

Mark Malloch-Brown was formerly Minister of State in the UK Foreign
Office, covering Africa and Asia, and was a member of Prime Minister Gordon
Brown's cabinet. He had previously served as Deputy Secretary-General and
Chief of Staff of the United Nations (UN) under Kofi Annan. For six years he
was Administrator of the United Nations Development Programme (UNDP),
leading the UN's development efforts around the world. Other positions have
included vice-chairman of George Soros's Investment Funds, as well as his Open Society
Institute (OSI), a Vice-President at the World Bank and the lead international partner in a
political consulting firm. He began his career as a journalist on The Economist.

He serves on a number of non-profit and advisory boards. He is a member of the House
of Lords and was knighted in 2007.

In this interview, Mark Malloch-Brown explains how he began to promote the concept of
South-South cooperation in UNDP and also the limits of its application. Despite a modest
beginning, countries like India, Brazil and South Africa - with their ability to focus on global
economic policy – have helped to give new impetus to South-South cooperation. Malloch-
Brown also discusses the strength of civil society in bringing a Human Rights agenda for
South-South cooperation. At the end of the interview, Malloch-Brown also addresses the
role and possible performance spaces in a new multipolar scenario.

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Original in English.

Interview conducted in April 2014 by Maria Brant (Conectas Human Rights).

"WE ARE VERY MUCH A MULTI-POLAR WORLD NOW, BUT NOT ONE COMPRISED SOLELY OF NATION STATES"

Interview with Mark Malloch-Brown

Conectas Human Rights: How has the issue of South-South cooperation changed over time?

Mark Malloch-Brown: When my colleagues and I started promoting South-South cooperation at UNDP, it was still very much a new approach to development cooperation. There was, for example, very little Brazilian technical assistance outside Brazil. I worked on a project addressing social media and social behaviour involving Brazil and Mozambique. It was quite novel for Brazil, at that time, to be involved in such work. Two things have changed since then. Firstly, countries such as Brazil, India and most notably China, have become major donors in their own right. And, secondly, South-South economic links have become dramatically increased and enhanced, particularly for a commodity producer like Brazil and other countries in the South. These factors have overtaken the modest beginnings that I saw when I was at UNDP. Changes in the pattern of global political economy have meant that South-South cooperation has become a much more normal part of the development agenda.

Conectas: Could you give examples of where the South-South cooperation has worked well and also where it has not?

M.M.: One can consider government-to-government cooperation, or citizen-to-citizen cooperation. I think that government-to-government cooperation has had limited impact. Obviously, when countries such as Brazil, South Africa and India share advice at a policy level, it's useful - their policy experience is much more similar than that of North and South countries. But equally, the impact of that can be quite limited. Policy dialogue still tends to be in the hands of the big bi-laterals, or of the international development banks, like the World Bank or the Inter-American Development Bank. Where the impact has been greater in South-South cooperation is civil society-to-civil society collaboration. In fact, the value of South-South cooperation at the level of citizen-citizen, is, in many ways, much greater. There is the spark of an understood common experience. What is perhaps most notable about this citizen-to-citizen collaboration it is

not a strictly NGO-to-NGO, or Not-to-Profit to Not-to-Profit collaboration. There is a lot of business involved as well. You see, for example, multinational or international companies with an Indian, Brazilian or Chinese background engaging in agriculture, infrastructure and energy projects in other developing countries. This results in a significant transfer of know-how and experience. I, for example, chair an agriculture business, social enterprise in Ghana, where the middle managers are Brazilians. In West Africa there is a growing interest in Brazilian rice farming techniques, because of their apparent relevance to the agricultural conditions of West Africa, in terms of soils, water, etc. Therefore, it is this people-to-people level of South-South cooperation which is probably producing the most striking results.

Conectas: You talk above about businesses from the Global South and how there has been a positive sharing of know-how and expertise. However, some of these big businesses from the South have been criticized heavily by civil society because they are doing exactly what other Northern multinationals are doing in other Southern countries. How do you think human rights defenders can challenge violations caused by non-state actors? Is human rights language enough or is it out dated now that some of the main human rights violators are no longer states?

M.M.: Human rights language certainly needs re-thinking and re-positioning for this reason. One reason why South-South state cooperation has been disappointing is because the southern states are not willing to weave a human rights dimension into their development partnership with other countries. For example, a country like Brazil is much less willing than a country like Norway to raise human rights concerns when it provides assistance to an African country. This issue is compounded when a lot of the companies which are entering southern markets are operating with the development experience from their Indian or Brazilian background, in particular, the availability of cheap labour. This is often an issue where the labour is migrant based and where the labour force doesn't enjoy a high degree of human rights protection. This is the uncomfortable flip slide of importing relevant experience. Although relevant, this experience is stripped of the kind of protection and rights-based assumptions that are present in northern development thinking. There is a genuine problem here. Does this mean that human rights defenders need to rebuild what they are doing? Certainly, they need to broaden their work and engage in a much more thoughtful discussion about the economic and social agenda. There needs to be an appreciation and recognition of the trade-offs - the arriving business may bring crops and livelihoods which were not there before. Equally, however, there may be a loss of political rights and poor labour conditions. The human rights defender needs to be very focused on this. Often both are missed because not enough attention is paid to the economic and social issues, and also because the focus often remains on the state being the persecutor, not the corporate employer. This is a new lens, which has many more fronts to it.

Conectas: What do you think could be the role of institutions such as the G-8, G-20, World Economic Forum for the protection of the human rights?

M.M.: I think they've got a role in promoting norms, but no role at all in policing or enforcing those norms. These are business institutions with a business or governmental agenda. They are, by design, the property of all of their members. As a place for a dialogue about norms, they're useful, but as a new sort of alternative network of human rights compliance, they are not of much value.

Conectas: How do you think grievances and demands from the Global South could be heard and integrated into the policies and activities of those groups? Or do you think they are not the right place for that to happen?

M.M.: These institutions are often overrated for their ability to drive this kind of agenda. Take the World Economic Forum. It was driven in part to adopt concern for human rights issues as a competitive response to the World Social Forum. However, since the World Social Forum has rather lost its global impact, the World Economic Forum has slipped back to a less human rights-focused agenda. While it remains very interested in economic development issues, and is incredibly important in this regard, it doesn't have any real human rights voice, nor would it want it.

Conectas: Southern Human Rights institutions are still funded by Northern institutions (OSF, Ford). What do you think this means for Global South organizations? How could these southern organizations influence the agenda of their Northern funders?

M.M.: This is a nice problem to have. Organizations like O.S.F., where I serve on the Board, and Ford really work very hard to try and make sure that they understand and are sensitive and responsive to a southern agenda. O.S.F doesn't think of itself as American and I'm sure Ford doesn't either. Even though O.S.I. has more of its money and people in the U.S., it has really been focusing on expanding into other places and on having a network of foundations in many parts of the world. George Soros, its founder, was an immigrant from Communist Hungary. Therefore, there's a real attentiveness to southern agendas. While it's not ideal and it is no substitute for a new generation of foundations from the South, this isn't the biggest problem. These organizations want as much southern street credibility as they can get.

Conectas: Do you think we are living in a multipolar world? If so, do concepts like North and South still apply?

M.M.: We are very much part of a multi-polar world. We are part of a world where there are a handful of countries that can project political and military power at a global level - but they can do so with much less effectiveness than in the past. Almost every situation requires regional partners, as well as global partners to resolve it. A Syrian solution needs Iran and Saudi Arabia as much as it does the U.S. and Russia, for example. One can go on and on listing the regional actors and power-brokers of particular conflicts or situations. We are very much a multi-polar world now, but not one comprised solely of nation states. The private sector, civil society and other groups are also power sharers in this new formula. So, does that make North-South a useful division? Much less so than it used to

be. But still a more useful term than 'East-West' is. While North-South is no longer a strict geographical line in the sand through the Equator and through the oceans, the fact remains that there are development challenges and income disparities which, still, are very much a feature of southern life, in a way that they are less so in northern life. So, there are still some useful defining characteristics of North and South, but you can no longer use that North-South template as the only way to group countries in the world. There are so many other factors which enable us to do so – whether it is integrated internationally, a trading economy, democratic in character, market oriented, you name it.

Conectas: You´ve mentioned when we were talking about South-South cooperation, and also linking to what you´ve just said, it seems that new powers or new poles have a more important role in the international sphere. What do you think that means for human rights? Brazil, China, India, South Africa, in terms of their concerns with human rights and how do you think it will change?

M.M.: In the short term, it's a net deficit because you have countries which are prioritizing other agendas above the human rights agenda in terms of their international engagement. But, over time, I hope it will lead to a broadened ownership and commitment to the human rights agenda. Hopefully, the human rights agenda will escape the label of being a set of northern preoccupations which are imposed on the South. A more multi-polar global political economy means, ultimately, a more multi-polar human rights system of compliance, as well.

SALIL SHETTY

Human rights work can be seen as a journey. A journey from North to South, from local to international, from street protests to the elite, and the other way around. And, in this journey, Salil Shetty fears that "we [human rights organizations working at the macro level] missed the bus." In a critical yet hopeful interview with Lucia Nader, Conectas' Executive Director, Salil Shetty, who joined Amnesty International ("Amnesty") as the organisation's eighth Secretary General in July 2010, reveals how human rights organizations can again catch the bus of change: by rooting themselves more in their societies and working closely with victims themselves.

In this interview, Shetty does not hide the magnitude of the challenge for such international organizations as Amnesty, which currently has more than three million members worldwide. "We need to be in as many of these places [in the Global South] as is practicable, engaging on a day-to-day basis with key partners, responding within the region and in real time to rights violations, and following our longer-term research, campaigning, and advocacy interests," he sums up. According to Shetty, having a "closer pulse to the ground" can be more effective than what he calls the "old-style fly-in/fly-out mission from London."

In the interview below, Shetty speaks with the valuable experience of a long-term activist. Currently, he is the head of the Amnesty International, the largest human rights organization in the planet. Prior to joining Amnesty, Salil Shetty was Director of the United Nations Millennium Campaign from 2003 to 2010. He played a pivotal role in building the global advocacy campaign for the achievement of the Millennium Development Goals. From 1998 to 2003, he was chief executive of ActionAid, and is credited with transforming the organization into one of the world's foremost international development NGOs.

Drawing on this background, Shetty maps out the journey human rights organizations have currently been pursuing – and how to change it. In that regard, he shows a hopeful view of the future of activism. Shetty sees the increasing power of states as well as of corporations as "strengthen[ing] the case for stronger human rights work" rather than weakening it. Furthermore, he strongly believes in collaborative human rights work, where North-based international organizations such as Amnesty International engage in dialogue with local as well as other international organizations in the Global South. More importantly, he is emphatic in saying that no matter what Amnesty does or how big Amnesty is, its "core DNA" is to give space for victims to speak for themselves.

Yet, even within the process of rethinking activism, Shetty casts out the idea that the journey of traditional human rights work is over. "There's no substitute for offline activism. Online activism cannot replace offline activism, citizenship and participation. It can help but it can't substitute", he concludes.

In a challenging interview, Shetty talks to Conectas' Executive Director about Amnesty's relationship with grassroots organisations, the need for human rights organisations to respond to changing trends in the struggle for human rights, and who Amnesty really represents – its millions of members.

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Original in English.

Interview conducted in July 2014 by Lucia Nader (Conectas Human Rights).

"HUMAN RIGHTS ORGANISATIONS SHOULD HAVE A CLOSER PULSE TO THE GROUND" OR HOW WE MISSED THE BUS

Interview with Salil Shetty

Conectas Human Rights: There is a very old criticism that human rights organisations do not represent victims and the more professional we become the more distant we grow from the victims. We also face criticism that we are not in touch with general citizens – we represent either the elite or we are closer to the state than to the streets. Can you comment on both these points?

Salil Shetty: Once you work at the international level and in more than 100 countries, each of these criticisms could mean very different things in different places. You would only rarely hear these criticisms in Europe, or in the North generally. If you are closer to where the violations are occurring, this might be a criticism you would hear. However, it depends on what segment of the population you are hearing criticism from. It is my approach, and I think Amnesty is quite careful about this, not to claim to represent victims or grassroots movements – we are careful not to position ourselves like this because that would not be true. If there's anyone we can say we represent, it is our members. We are very careful not to say that we are representing or advocating on behalf of anyone, because how do you arrogate to yourself that status? Having said that, we would never say anything about the victims without directly voicing their views. This is a core research methodology - if you are talking about victims then they should speak for themselves. It is not for us to interpret what they are saying. Of course, there is a legal interpretation of what the impact on them is and how state responsibilities need to be brought to account. Without fail, we start by meeting the victims and listening to them and their families. This is core DNA for Amnesty.

One of the things that is important to understand is who are the actors on the ground, whether it is grassroots movements, victims, or victims' organisations. If you don't operate in a way that recognises their agency, respects it, and acknowledges the key role that actors on the ground are playing, that is very problematic. There have been criticisms of Amnesty historically of coming in and parachuting in and not recognising and acknowledging the contribution of local actors. It has happened sometimes, there is no question about that. However, we are very careful about that and I am personally very sensitive about that question.

Conectas: How do you deal with victims when they disagree with each other? Sometimes we have this challenge at Conectas – for example, Syria. Some of our partners would like a military intervention, some don't. How do you deal with this?

S.S.: I don't know if the victims disagree. I think the victims of human rights violations would agree that actually there is no difference between most of the actors. The actors change but the violations continue. In terms of whether it is a coup or not, we stay clear of such issues because that becomes a political labelling question. We look at who is perpetrating violations. It could be anybody and we hold them to account. In Syria, initially it was very clear it was a peaceful protest; it was really the ruling regime of Assad who was causing most of the violations. However, it was quite soon the case that all sides were involved in the violations. At times you need to make some tricky judgments, but by sticking to the facts you try and avoid the question of political interpretation.

Conectas: But how can you not be political in today's world?

S.S.: When I say we can't take a political position, it can't be a partisan position. If you take our position on Palestine or Syria for example – if everyone criticises Amnesty then that is a good sign. But if we get criticism from only one side then I would be worried that maybe we are taking a partisan view, which is different from a political view. Human rights and politics are so interlaced you can't really separate the two.

Conectas: You mentioned earlier grassroots movements. When we are talking about dealing with movements locally we are not always talking about grassroots organisations. In the Global South we have grassroots organisations but we also have groups that don't describe themselves as grassroots, but rather as international. How do you deal with these groups that have been working for a long time? How do you deal with them if they are not grassroots?

S.S.: It is important not to get caught up in the terminology of it. If we are doing something in Brazil, whether it is with a national organisation that is capital based, which is not membership based and not claiming to represent grassroots or whether it is with something like the landless workers' movement (*Movimento dos Trabalhadores Sem Terra – MST*), we simply map out who the actors are, and we are respectful of the roles that they play and the contributions they make. The only way to work is to talk to people and be open and honest. You also have to be careful who is representing Amnesty locally and whether they are sensitive to the local realities.

Conectas: In Brazil, for the moment, you have been doing this very well – talking to people, not trying to overshadow the groups that are here. At the same time, there is still a very big difference between the groups' financial and technical capacity. You have been doing research for many years, you have a big budget, and you have been hiring people that used to work for national groups. How do you deal with this?

S.S.: If you look at it crudely, there is a set of people who are not interested in human rights and are against human rights and there is a set of people like us – Amnesty or Conectas – who are fighting for human rights. We need to be clear who is on which side of the argument. The forces against human rights are much more powerful, so we need to work in a way that both respects and strengthens each other's organisations in a practical way. The example you gave of salary differentials and the fact that staff moves from local to international organisations are problematic. We need to be very conscious of that. It doesn't mean that Amnesty can suddenly lower its salaries to operate like a local NGO, because that's not who we are. But if we are recruiting someone from a local organisation, we always ask the person whom we are thinking of hiring whether they are definitely planning to leave the local organisation, particularly if they are key to that organisation. We cannot ignore that factor.

Conectas: Apart from the relationship between large international organizations such as Amnesty and local NGOs, there is also a current trend by international organizations of consolidating their own presence in the Global South. What motivated Amnesty International to rethink its presence in the South?

S.S.: Amnesty International and other international groups have been conscious for years that we need to work both on and from the Global South and North alike. Amnesty has had national sections in the Global South for decades, but until recently most of our professional research, campaigning, and communications staff have worked from our offices in London or our other offices in the Global North. Over the last few years, we have begun to realign our resources to identify and locate more of this expertise in the Global South. These efforts aren't just optics; they're fundamental responses to the way the world now works.

The BRICS (Brazil, Russia, India, China, South Africa) and MINT (Mexico, Indonesia, Nigeria, Turkey) countries are increasingly significant regional and international players, and partner organisations are taking on a more important role in setting the international agenda. We need to be in as many of these places as is practicable, engaging on a day-to-day basis with key partners, responding within the region and in real time to rights violations, and following our longer-term research, campaigning, and advocacy interests in a more sustained way than if our main mode of working is the old-style fly-in/fly-out mission from London.

Are these changes simple? No, clearly not. Are they necessary, for a global human rights organization in the twenty-first century? Yes, absolutely. We need to stand alongside those whose rights are violated, and the social movements and organizations working with them. Everything that we do should strengthen those who are already confronting violations locally – and if we fail in that aim, then we have failed more broadly.

Conectas: There is a large debate about whether or not we need big, medium, or small organisations. This can challenge the way in which these organizations relate to each other today and questions whether we need a leader in this movement. How do you see the role of Amnesty in leading the movement? Is this still valid or are we moving towards a human rights movement without a "conductor", without a leader?

S.S.: What is truly distinctive about Amnesty is that a significant proportion of urban people in almost every region of the world can recognise Amnesty International's name. This high level of public recognition has been built up on the credibility of solid work over the last 50 years and it is not easy for younger and smaller local organisations to acquire this quickly. There are of course some notable exceptions at the national level in some countries but this is a unique feature which I think should be put to broader use for the human rights movement as a whole. For example, there is a whole debate over whether Amnesty should do public fundraising for human rights in countries like India or Brazil. My answer is that we should, because Amnesty can reach out to the general public more than many local organisations can. If we are successful in raising significant resources and building public awareness for human rights, I think that should benefit the broader population.

Conectas: How? By sharing the funds?

S.S.: Yes, by sharing the funds. We are nowhere near to that but if that works, why not? Why is it that the money can't be distributed to other organisations working on the same issues, to partnerships, or whatever other practical mechanisms we can think of? I think Amnesty's value is to widen the public support for human rights. That will be a big contribution and I think Amnesty is well placed for doing that.

Conectas: During the protests in Brazil last year, we had people claiming rights to, for example, health and transport. Some of these were issues we don't usually deal with and that don't necessarily have the concept of minority in mind. Is this something we have to worry about i.e. dealing with broader audiences that are claiming for rights that are not necessarily victims?

S.S.: I think there is a real issue here. The Brazilian case is slightly different because the protests were focused on economic rights and then they quickly became about the right to peaceful protest. But in the Middle East, Northern Africa, or Ukraine, it is literally a fight for life and death. I think it is true that human rights organisations, not just Amnesty, have been a step removed from this. If you take what happened in Egypt, which was really two or three revolutions, what was the role of the human rights community there? I have been told time and time again that the work that the human rights organisations did there was important, it created a base, together with the trade unions, it gave accountability and gave a foundation for people to stand up. But it's also true that we have been a little cut off from the popular uprisings, in some ways.

Conectas: Why do you think this happened?

S.S.: I don't know - there is all kind of speculation as to whether anybody could have predicted it. Why are we only picking on human rights organisations? Even astute political commentators and analysts did not predict this and in some ways we have complementary roles to other actors. But human rights organizations should have a closer pulse to the ground. We and many others, I think, missed the bus…

Conectas: Arguably the role of organisations like ours is really to try to give voices to those that don't have it, or do you think that is an old-fashioned way of seeing things?

S.S.: To take the example of the Tunisian man who committed self-immolation, Mohamed Bouazizi, these are people who don't have a voice. As you say, it's not a minority group whose rights have been abused. The numbers are massive. We need to recalibrate why that is not seen as a human rights issue.

Conectas: How are you doing this concretely at Amnesty?

S.S.: We are now looking at our goals for the next 5 years but we don't have easy answers. We are reflecting on this question. How do you engage with the street outrage? We need to find a better way of doing this but we don't have the answer yet.

As I mentioned earlier, Amnesty represents its members. We have a structured process of democratic decision-making that happens at both the national and global level, which can slow us down. We are trying to simplify it slightly; but those members who are interested in defining Amnesty's agenda have enough opportunity to do so.

Out of the more than three million paying members, maybe 10 or 20 per cent want to be more actively involved, depending on the country. A lot say, "we trust you, you should do what is right for human rights." But there are those that want to come to Annual General Meetings (AGMs), who say they want to participate in decision-making, they want to be on the board. So we have physical meetings where people show up and vote on issues - it is a very democratically run organisation internally.

Keeping all our members and supporters updated about our agenda is not easy but we have quite effective mechanisms in place. There are of course some situations where an individual or a small group push for their own agendas not in line with the movement as a whole. We put in a lot of checks and balances to make sure the integrity of the democratic process remains intact.

Conectas: Citizens all over the world are now able to express themselves without structured institutions or organisations – due in part to social media and the concept of "netizens". How do you think this affects the role of organisations like Amnesty?

S.S.: Quite fundamentally. We have a great offline activist base in many countries particularly in Europe and North America, but our social media and web presence is weak. The growth of netizens in my view is partly generational but on the whole a good thing. We need more not less voices fighting for human rights. It comes with some challenges but we should not be purist. Online organisations like Avaaz have activated so many people, particularly in the South, and that is very welcome. Mobile phones in particular have had a transformational impact in organising people. Having said this, it's not the case that this phenomenon is suddenly going to create massive policy shifts in governments and institutions in favour of human rights. There is no substitute for mobilising people offline. Online mobilisation cannot replace offline action, citizenship, and participation. It can help, but it cannot be a substitute.

Conectas: How do we segment the human rights cause? If we try to convince people about the whole human rights discourse we sometimes lose people because it is difficult to find someone who supports all the issues. Today, to engage the individual you need to fragment the cause and sometimes your core values can be challenged. How do you deal with this at Amnesty?

S.S.: That is a classic problem we have to deal with the whole time. When we are looking for general public support for Amnesty's work, we embark on a journey – a journey of understanding the issues. You bring people in by understanding their topic of interest – for example, someone is very anti death penalty – they may not have the same views about some other issues but over time they understand that the underlying questions are very similar. I'm not saying that everybody then subscribes to all of Amnesty's views but it is an educational process. It's a journey. I wouldn't call it fragmenting the support. You start with where people are, what is their understanding, and you build up from there.

Conectas: With a worldwide crisis of representation of the state, human rights organisations seem to have lost their "centre of gravity." We used to represent something (the human rights agenda paved on universal principles) or someone (victims), either holding the state accountable or demanding action from the state against rights violations. Is this still the effective way of doing things? How does the crisis of representation affect the work of human rights organisations such as Amnesty and the work of the International Human Rights System, particularly the UN?

S.S.: There is certainly disillusionment. People want real-time accountability and people want results more quickly. They want more participatory deliberative democracy. That's a challenge to democracy more than to human rights organisations. What does it mean for us? I think it is a great opportunity because it is a little bit the street anger we talked about. It represents a real opportunity to increase the accountability of the state. I am not of the view that states have become weaker. There is the discussion that corporations have become much more powerful. I think both have become more powerful, and unfortunately the media has also become so corporatized. We therefore have a whole series of external trends that we have to come to terms with. I think that all of this strengthens the case for stronger human rights work. The more states lose their legitimacy, the more our call for their accountability is strengthened. Are we making full use of this opportunity? I'm not sure, that's a different question. It's the same with the UN system – it has its problems but that's what we have. We should keep seeking alternatives and I don't think we are doing enough in that respect.

LOUISE ARBOUR

Louise Arbour has an extensive history as a human rights defender. She has served for the Supreme Court of Ontario, was Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda (1996-1999), and Justice for the Supreme Court of Canada (1999-2004). In 2004, Arbour became the United Nations High Commissioner for Human Rights, a position she occupied until 2008. Since 2009, she serves as President and CEO of the International Crisis Group—an independent, non-profit, non-governmental organization committed to preventing and resolving deadly conflict.

For someone with such an extensive "institutional" record, Arbour is surprisingly critical of the international human rights framework, which, for her, is "very weak," and stuck in a "norm-setting addiction" instead of focusing on implementation. The problem, according to Arbour, is that "[The Human Rights Council] is a body of States, which invariably is driven by each State advancing its own interests, by alliances and tradeoffs and so on." In this context, she regrets that there is not enough development in establishing an eventual international court of human rights, while concluding with pragmatism that such court "is so far down the road, and very unlikely to happen". She has recently called for a "New York and Geneva Spring," "something that challenges the entire system much more profoundly, the same way that starting in Tunisia and then right through the Arab world we have seen an actual civil society-based challenge to a total political order."

The pragmatic former High Commissioner, however, thinks institutional reform should not be made a priority by human rights defenders, since "it is so far down the road, and very unlikely to happen." But she warns: "there may come a time when people will have turned their backs on the human rights agenda because it is too slow to deliver, or take it on in a much more radical fashion."

According to Arbour, international NGOs must "be careful not to get drawn into this doctrinal and normative environment and should remain extremely anchored in fieldwork." For her, organizations in the North should be willing to share their resources with their counterparts in the South, who "have a much better claim at understanding the context in which human rights promotion and protection has to take place." This North-South solidarity would not only help actual human rights protection, but also "pushback the claim that the human rights movement, despite its universality, is really a Western concept advancing Western cultural views of the world."

Read below the complete interview with Arbour, where she also touches upon issues such as the need for human rights defenders to work on "cutting-edge" issues such as LGBT rights and focus on advancing the agenda of human rights with nations that are open to refining the norms, as opposed to naming and shaming violators or working to bring the standards down to include resistant countries. "If you had to find the model that would make North Korea become a fully human rights-based country - I wouldn't hold the entire system hostage waiting for that to happen."

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Original in English.

Interview conducted in May 2014 by Maria Brant (Conectas Human Rights)

"NORTH-SOUTH SOLIDARITY IS KEY"

Interview with Louise Arbour

Conectas Human Rights: You have recently said that, despite the constant challenges to universality in our contemporary multipolar world, one of the great unifying forces has been the international human rights framework. Does it mean you believe human rights are still an effective language for producing social change?

Louise Arbour: Yes. I think the international human rights framework has been very useful. It has actually inspired, in some cases very directly, constitutions and the laws in many countries. So it has had an impact. Its call for sort of universality and non-divisibility of rights has also forced a very unifying international conversation. But it has had some drawbacks. The most important one is that, in the last decade, the international human rights framework, as opposed to in-country human rights defenders, has been stuck in a norm-setting addiction. And, in some ways, I think this not all that useful, particularly since everything is done at the cost of something else.

There have been some important new normative initiatives, like, for instance, the Convention on the Rights of Persons with Disabilities. So I don't want to be completely negative about the normative environment. But, in Geneva, there is a vast disproportion of efforts towards the refinement of norms and tools and protocols and so on, to the detriment of the actual implementation of rights of people on the ground.

A second remark, and that is probably the biggest remaining challenge – and will be a challenge for a very long time - is the fact that the international institutions for the protection of human rights are very weak. They are essentially the Human Rights Council, with its various mechanisms, and, to some extent, the Security Council of the UN, in the most extreme cases. Both of them are bodies of States, where States trade interests. So, if you compare that to real human rights protection institutions, like courts – not only national courts, but also the European Court of Human Rights and the Inter-American Court – there is nothing like that in the international scene. And, as long as that remains the case, the actual implementation will always be deficient.

And I think the great strength of the international human rights framework is the civil society community of human rights defenders, of various NGOs, both international and domestic ones. I think that is the heart and lungs of the human rights movement.

Conectas: How do you think those organizations and defenders can influence the international human rights framework to work more with implementation than with standard-setting? What is the role of civil society in the international human rights framework? Is there a role?

L.A.: I think there is a role, obviously. The international NGOs have to be careful not to get drawn in to this doctrinal and normative environment and should remain extremely anchored in fieldwork. That is key. And, for large international human rights NGOs, the partnership with national actors is critical. That is where the real impact can start being felt. Not just because violations of human rights are very contextualized and very local and it's the local actors that have the best understanding of how to move forward, how to address these issues, but also, if there is more cohesion between the international and the local NGOs, this will go a long way to dispel the claim by some that the human rights movement is essentially a Western-dominated agenda that serves a lot of Western interests, cultural interests and possibly economic ones. I think partnerships and more North-South solidarity will help to pushback this claim that the human rights movement, despite its universality, is really a Western concept advancing Western cultural views of the world.

Conectas: Do you think the Universal Periodic Review (UPR) mechanism has been able to incorporate civil society views into the UN Human Rights Council? NGOs have been complaining that their feedback is not really taken into consideration. What is your view on that?

L.A.: I was the High Commissioner when the UPR system was brought into place. The real driving idea behind the UPR was the idea of universal scrutiny. Before the Human Rights Council and the UPR existed, part of this claim that the human rights system was really a Western-dominated system came from a lot of countries that felt that the Human Rights Commission had been very selective and biased. Another idea that was floating at the time was the idea of universal membership in the Human Rights Council, but this didn't attract a lot of interest. So the tradeoff was: with the UPR, every country, not just Belarus and Cuba, should be object of scrutiny. Everybody's human rights' record should be examined. And my position has always been that is not useful to compare one country to another; it is not useful to compare Norway to Venezuela or Russia to Bolivia. What is useful is to compare each country against its own record to see if we can measure progress, regression or stagnation. That was the spirit of it. And, of course, the participation of civil society was a vehicle by which this assessment could be made reliably, measuring a country against its own record.

I have also always said that we are going to need two full cycles of UPR before we can measure whether it is having any impact, because the first time around, countries make commitments and so on and you take it as face value. It is when they come back the second time that we can really start measuring whether it worked.

At the end of the day, it comes back to what I said at the beginning: the Human Rights Council is a body of States, which invariably is driven by each State advancing its own interests, by alliances and tradeoffs and so on. And that is an inherent limitation to the usefulness of that entire exercise. And it will never overcome that.

Conectas: With regards to the standard-setting, it has been very important and still is – you have mentioned the Convention on the Rights of Persons with Disabilities. However, there was a recent study that concluded that standard-setting mechanisms are put into practice only in countries that are already sympathetic to the causes or that already had internal human rights mechanisms into place, and it doesn't really make a difference in countries that are completely impermeable to these issues. These results are disputed and some argue that, even though it doesn't produce concrete results, it does advance the agenda and creates a fertile ground for civil society to pressure the next government to sign those mechanisms. Would you have anything to comment on that?

L.A.: I think the question is: compared to what? In the case of countries that are completely resistant to making any kind of progress on human rights, whether it is on civil and political rights or economic and social rights, there are limits in the international political and juridical system vis-à-vis these countries. Apart from Security Council Chapter 7 action as guardian of international peace and security, there is no serious coercive enforcement mechanism, even for countries that have actually ratified treaties and so on. And there is a reasonable debate as to whether you are more likely to make countries do something that they really do not want to do by some form of political coercion, like naming and shaming, isolation and sanctions and so on, or by trying to find ways to make it more attractive for them to join some consensus, to be part of a community. These are basically different strategies to compensate for the fact that you just cannot force countries to live up to commitments that they have actually made.

I think that, on balance, it is probably more productive to try to refine the standards and reaffirm them and try to entice others to join them. And it is true that it only happens amongst communities or countries that are already committed to the general agenda. In a sense, I think it is better to advance everybody within this positive agenda, even if it means that we don't have a lot to show for those who are completely left behind. If you had to find the model that would make North Korea become a fully human rights-based country… I wouldn't hold the entire system hostage waiting for that to happen. And if you take the issue of indigenous rights, for instance, I think it's is better to work with those trying to engage and refine the thinking, with countries that have at least publicly expressed a positive disposition towards progress. That is a better investment.

Conectas: The next question is about North-South solidarity. We sometimes see a competition between Northern and Southern human rights organizations on who is the most influential, who gets more funds etc. How do you think organizations from the North and South can work in a complementary manner rather than compete for resources and influence?

L.A.: First, I think this competition for resources is very real - it is just a reality that NGOs have to get funded – and, on balance, is very damaging. And the aggressive pursuit of resources plays in the hands of many governments, in the South in particular, many in Africa, who claim that the work done by human rights NGOs - particularly by international NGOs, and even by some humanitarian actors - is basically just a kind of self-propelling initiative. That is,

that you need to show that the country is bad in order to generate more money, to hire more people to do more work, who will then say the country is still very bad in order to get more money... They see that as an industry. And I think that the aggressive competition for resources feeds into that narrative. That is very unhelpful.

And the second thing is I think, frankly, that at the end of the day the main sources of funding are in the North. And it is therefore incumbent on NGOs who come from the North and have access to these funds to be very open to partnerships and share and support those who are much closer to the ground, whom I think have a much better claim at understanding the context in which human rights promotion and protection has to take place.

The bottom line is, for this kind of North-South solidarity, the burden is on the international Northern NGOs to be much more attentive to the necessities… I hate the expression "capacity-building," because it is always used by governments to avoid doing anything they don't like to do, but within civil society movements the sharing of skills and of resources to the benefit of those who would have a lot more impact if they had more capacity, is a burden that the North should assume.

The flipside of that is that NGOs in the South, I fully understand the limitations on their capacities, but I think at the same time an effort to internationalize their efforts would come some distance, because the more parochial they remain, the more difficult it is to have these partnerships with a broader community.

I'll give you an example that I am currently sort of working on, not strictly speaking as a human rights issue but as a conflict prevention issue, but it comes down to the same thing. It is the case of Sri Lanka. Here in Crisis Group we published a report in 2010 in which we documented massive war crimes, crimes against humanity, maybe 30,000, 40,000 people killed in Sri Lanka when the government finished the war against the LTTE – Liberation Tigers of Tamil Eelam. We have been working on that case ever since, really trying to push for proper accountability, an International Commission of Inquiry. The government has always said they would do it themselves, but of course they have done absolutely nothing. The issue comes up in the Human Rights Council every year, but is very difficult to mobilize countries of the South. The government of Sri Lanka has a very aggressive diplomatic campaign to try to rally the brotherhood of the South to support them. So this is an example where it is made a lot harder because most of the NGOs who work in the South work on domestic issues. They don't know about Sri Lanka, they just can't. So, to me, this is a very big shortcoming. Because then it looks again like that it is all the big Northern international NGOs who are picking on poor small little Sri Lanka. And it is very difficult to mobilize the Global South through its civil society human rights actors to engage on this issue.

Conectas: We do feel that usually Northern scholars and NGOs feel entitled to speak about issues all over the world, even if they are not on the ground and are not very experts on the issue. If it is about human rights, for example, and they get reports from a local organization, or however they get the information, they feel that they can speak about it and pressure governments to work on that. Whereas scholars from the South and NGOs feel uneasy to speak about violations in another country. We have a lot of difficulty trying to find scholars from the South that want to generalize

*concepts or give names to trends and speak about issues that are not strictly domestic.
From Brazil, to speak about Sri Lanka - what do we know about it? We would need
to have a much stronger network to know what is actually going on in Sri Lanka.
And that is what we try to do, but it is difficult.*

L.A.: Yes. Again, I think that it is a real challenge for NGOs from the South to
develop South-South partnerships. There are some terrific NGOs if you want
to understand Sri Lanka, or at least feel sufficiently confident that you can be
mobilized in support of human rights defenders in Sri Lanka. All you have to do
is identify partners that you trust. Now, it takes time to build these partnerships,
but you don't have to rely just on Human Rights Watch, Amnesty International
or the big international ones.

I know it is very difficult because in lots of regions of the world, in Asia in
particular, there are very few regional organizations. So you go from Geneva,
basically from the international framework level, straight down to the country
level. There is very little at the regional or sub-regional level. There is a little
bit more in Africa. And Latin America has enough language homogeneity – not
completely, I understand Brazil is different – and a reasonably sort of coherent
recent narrative, particularly about civil and political rights. And there's a lot
to do.

So I understand fully why it is not happening, but, as we talk more and
more about the interconnected world and so on, it undermines the credibility of
particularly Western international NGOs who speak on Afghanistan, Pakistan,
Sri Lanka and Guinea-Bissau and so on, to never ever have the voice of their, for
instance, Latin American or Asian friends to mobilize on these issues.

Governments are very good, they don't have any difficulty mobilizing
support, and you see lots of governments supporting Sri Lanka. They don't know
any more than you do about what is actually happening in the country. They
just decide to believe what the government of Sri Lanka tells them.

So I think developing this capacity would go a long way to help the
advancement of human rights in countries where is particularly difficult for
local human rights defenders to do it on their own. Let's put it another way: it
is a lot easier for the government of Sri Lanka to pushback against Europe with
the usual claims of neocolonialism than it is to pushback against communities
from the South.

*Conectas: But one can find a bit of resistance within one's country in the sense that,
for example, Conectas has been doing work on North Korea, Iran, and Syria more
recently, and we find resistance within Brazilian civil society because they say "we
have so many problems, why are you worrying about North Korea? Let's look at our
own problems, let's pressure the government to deal with prisons, torture, instead of
using your influence to talk about Iran."*

L.A.: If you engage with smaller issues, you might actually be very surprised at the
fact that you can actually show impact. For instance, some of the West African
countries where Brazil - economically and politically as a country - has a very
big footprint… I mean, it is a real presence, so if Brazilian civil society actors
started agitating on issues where your own government and your own private
sector industry have an interest, then all of the sudden you have an impact much,

much larger than that some countries like Canada or Norway, say, on Guinea-Bissau or the Golf of Guinea generally or Nigeria.

So you don't have to go all the way to North Korea is my point. You could start with something where your impact could be demonstrable.

Conectas: What do you think are the main challenges that will need to be addressed by human rights organizations and defenders in the next decade?

L.A.: On the one hand, as we discussed before, human rights organizations and defenders in countries that already have at least a political commitment and a legal framework for the advancement of human rights will want to work on what you can call cutting-edge issues, such as LGBT rights. Just keep advancing the agenda, standard-setting and refining standards. Surprisingly, we have to reclaim some territory: the challenges in the last decade against the Torture Convention, even questioning the universality of the prohibition against torture; women's rights in some parts of the world, such as Afghanistan, we are going to see… it's starting already, potentially wiping out all the gains that have been made, surprisingly, when you think that gender equality rhetorically at least seems to be acceptable to most governments. So I think there is still a lot to do just in terms of advancing the agenda and maintaining some of the gains.

Some of the most challenging issues are going to come from a revival of calls of cultural and religious specificity. I think we see an increasing and very constant rejection of human rights universality in the international scene. I don't know how much of that is penetrating, for instance, in Brazil, but globally, I think it is going to be the calls for cultural or religious values that come and clash with the human rights agenda. It is going to be a very big issue.

And, finally, there is a question of institutional reform that one I don't see any potential progress, for instance, towards the establishment of a reform of the treaty-body system towards eventually an international human rights court. At this point I would not make that a priority because it is so far down the road, and very unlikely to happen.

Conectas: Finally, at the time of the so-called Arab Spring, you mentioned the need of a "New York and Geneva Spring". What did you mean by that? What would that entail?

L.A.: What I had in mind is exactly that denouncing the shortcomings of the institutional international human rights protection framework - the Human Rights Council, the Security Council - as opposed to treating it as business as usual – you know, just trying to get a better voice in the UPR and so on… Asking whether we are poised for something that challenges the entire system much more profoundly, the same way that starting in Tunisia and then right through the Arab world we have seen an actual civil society-based challenge to a total political order. Again, I don't think we are there yet. And maybe we'll contend that there is still progress that could be made inside the box. But there may come a time when people will have turned their backs on the human rights agenda because it is too slow to deliver, or take it on in a much more radical fashion. I'll leave that with you.

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