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English Edition

● **Ziba Mir-Hosseini**

Criminalising Sexuality: *Zina* Laws as Violence Against Women in Muslim Contexts

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● **Interview with Denise Dora**

Former Ford Foundation's Human Rights Officer in Brazil (2000-2011)

IMPLEMENTATION AT THE NATIONAL LEVEL OF THE DECISIONS OF THE REGIONAL AND INTERNATIONAL HUMAN RIGHTS SYSTEMS

● **Maria Issaeva, Irina Sergeeva and Maria Suchkova**

Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Current Challenges

● **Cássia Maria Rosato and Ludmila Cerqueira Correia**

The *Damião Ximenes Lopes* Case: Changes and Challenges Following the First Ruling Against Brazil in the Inter-American Court of Human Rights

● **Damián A. González-Salzberg**

The Implementation of Decisions from the Inter-American Court of Human Rights in Argentina: An Analysis of the Jurisprudential Swings of the Supreme Court

● **Marcia Nina Bernardes**

Inter-American Human Rights System as a Transnational Public Sphere: Legal and Political Aspects of the Implementation of International Decisions

● **SPECIAL ISSUE: CONECTAS HUMAN RIGHTS - 10 YEARS**

● The Making of an International Organization from/in the South



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CONTENTS

ZIBA MIR-HOSSEINI	7	Criminalising Sexuality: <i>Zina</i> Laws as Violence Against Women in Muslim Contexts
LEANDRO MARTINS ZANITELLI	35	Corporations and Human Rights: The Debate Between Voluntarists and Obligationists and the Undermining Effect of Sanctions
INTERVIEW WITH DENISE DORA	57	Former Ford Foundation's Human Rights Officer in Brazil (2000-2011)
IMPLEMENTATION AT THE NATIONAL LEVEL OF THE DECISIONS OF THE REGIONAL AND INTERNATIONAL HUMAN RIGHTS SYSTEMS		
MARIA ISSAEVA, IRINA SERGEEVA AND MARIA SUCHKOVA	67	Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Current Challenges
CÁSSIA MARIA ROSATO AND LUDMILA CERQUEIRA CORREIA	91	The <i>Damião Ximenes Lopes</i> Case: Changes and Challenges Following the First Ruling Against Brazil in the Inter-American Court of Human Rights
DAMIÁN A. GONZÁLEZ-SALZBERG	113	The Implementation of Decisions from the Inter-American Court of Human Rights in Argentina: An Analysis of the Jurisprudential Swings of the Supreme Court
MARCIA NINA BERNARDES	131	Inter-American Human Rights System as a Transnational Public Sphere: Legal and Political Aspects of the Implementation of International Decisions

SPECIAL ISSUE

153	Conectas Human Rights - 10 years
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PRESENTATION



SUR issue number 15 is a very special one. For the first time, it encompasses three different sections. One comprises a thematic dossier on the national implementation of regional and international human rights systems. Additionally, this issue brings two non-thematic articles involving relevant contemporary human rights topics (business and human rights and women's rights in Islam), as well as an interview with Denise Dora, from the Ford Foundation (2000-2011).

Finally, celebrating the 10th anniversary of Conectas Human Rights, issue No. 15 is published with the same cover color as No. 1, and brings a dossier by Conectas's current and former staff members, who share their experience and lessons learned. This last section is presented in more detail in the letter to the readers, later in this issue.

Thematic dossier: Implementation at the National Level of the Decisions of the Regional and International Human Rights Systems

Since the adoption of the Universal Declaration of Human Rights in 1948, the international and regional human rights systems have been fundamental in the definition and protection of human rights, and have contributed substantially to the improvement of the Rule of Law in various different regions. These mechanisms, in many cases, have been the final remedy available to victims when local institutions failed or were unwilling to protect their rights. Accordingly, in addition to a protection mechanism, they represent a source of hope in adverse local political contexts.

Many human rights defenders and experts, however, claim that decisions and recommendations issued by these mechanisms are not currently being implemented satisfactorily at the national level. The lack of implementation is a serious threat to the very mechanisms themselves, which lose credibility in the eyes of the victims and the States, and fail to provide remedies to those who need them. *Sur – International Human Rights Journal* issue number 15 brings a thematic dossier to tackle this problem, i.e. to promote a critical debate on the national imple-

mentation of decisions and recommendations derived from regional and international human rights systems. This section encompasses four articles, three on the Inter-American, and one on the European system.

The first article highlights the interplay between the European human rights system and Russia. *Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Current Challenges*, by Maria Issaeva, Irina Sergeeva, and Maria Suchkova, examines the interaction between the Russian legal system and the Strasbourg Court, exposing the European human rights available mechanisms to enforce its decisions as well as criticizing the obstacles in Russia for the implementation of measures adopted by the European Court, particularly those of a general nature.

The dossier's second article, *The Damião Ximenes Lopes Case: Changes and Challenges Following First Ruling Against Brazil in the Inter-American Court of Human Rights*, written by Cássia Maria Rosato and Ludmila Cerqueira Correia, presents a general overview of the implementation of the recommendations expressed in the first ruling of the Inter-American Court against Brazil, in 2006, dealing with mental health institutions. The authors expose how, by developing international jurisprudence and strengthening the actions of Brazil's *Anti-Asylum Movement*, the Court had a positive impact on the country's public mental health policy and the rights of persons with mental disabilities, although further policy changes are still required.

Thirdly, SUR presents another article discussing implementation in the Inter-American system, this time exploring the Argentinean case. In *The Implementation of Decisions from the Inter-American Court of Human Rights in Argentina: An Analysis of the Jurisprudential Swings of the Supreme Court*, Damián A. González-Salzberg reviews a series of legal cases involving Argentina before the Inter-American Human Rights system and analyzes the lack of compliance of the State regarding Inter-American Court decisions. Through his case-by-case analysis, the author shows how the Argentinean Supreme Court has been inconsistent

in its recognition of the binding nature of Inter-American Court decisions, despite international and national legal imperatives requiring the Supreme Court to fulfill its obligation to prosecute those responsible for human rights violations.

The final article of this dossier presents a theoretical discussion on how regional human rights systems can contribute to build a transnational public sphere. In *Inter-American Human Rights System as a Transnational Public Sphere: Legal and Political Aspects of the Implementation of International Decisions*, Marcia Nina Bernardes argues that the Inter-American system contributes to Brazilian democracy by providing a transnational litigation forum for discussing issues often underrepresented in the domestic public sphere. The author also states that Inter-American system loses its credibility particularly in cases where national authorities and the legal community fails to take into account international human rights norms at the national level. In this case, implementing regional decisions and recommendations is a key element, not only to strengthen the system itself, but also to improve Brazilian democracy.

Non-Thematic Articles: Violence against Muslim Women and Corporations and Human Rights

Apart from the thematic dossier, this issue brings two other articles that present a critical debate on pressing topics. The Journal's opening article, *Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Contexts*, was written by Ziba Mir-Hosseini and discusses how political Islam has rehabilitated *zina* laws and its impact on women's rights. This normative body exists in many Muslim countries and forbids sexual relations outside marriage, sanctioning it with cruel punishments that violate international human rights. It criminalizes consensual sexual activity and authorises violence against women, involving, inter alia, death by stoning. The author argues that this issue should and can be solved within Islamic tradition. She also presents a critical analysis on how activists can be effective in challenging those practices

by engaging their governments through "naming and shaming" strategies as well as a process of dialogue and debate.

Our second non-thematic article features a discussion on business and human rights. Leandro Martins Zanitelli's *Corporations and Human Rights: The Debate between Voluntarists and Obligationists and the Undermining Effect of Sanctions* discusses the contemporary debate on corporate behavior responsive to human rights. The author analyses two sets of competing arguments: the voluntarists and obligationists, the former pushing for voluntary commitments by States to promote corporate social responsibility, while the latter affirm the need of legal sanctions against corporations, as a necessary step to adapt their behavior to norms of social responsibility. The author defends a voluntarist approach, arguing that, despite the fact that the imposition of sanctions on companies can indeed lead to progress in the protection of human rights, it might pose an obstacle to the development of more genuine practices in social corporate responsibility.

Interview with Denise Dora

We have included an *Interview with Denise Dora*, Human Rights Program Officer of the Ford Foundation in Brazil from 2000 to 2011. She analyzes the human rights organizations in Brazil, particularly focusing on the challenges faced by Brazilian society to build a strong civil society needed to guarantee human rights in the country and abroad, arguing that there still is room for capacity building in Southern organizations and for the reduction of global asymmetries.

This is the fourth issue released with the collaboration of the Carlos Chagas Foundation (FCC). We thank FCC for their support to the Sur Journal since 2010.

Finally, we would like to remind our readership that our next issue, edited in partnership with the *Latin American Regional Coalition on Citizen Security and Human Rights*, will discuss citizen security from a human rights perspective.

The editors.



CONECTAS 10 YEARS

HUMAN RIGHTS

CONTENTS
Special Issue

CONECTAS HUMAN RIGHTS - 10 YEARS

LUCIA NADER, JUANA KWEITEL
AND MARCOS FUCHS

155 Letter to our Readers

MALAK EL-CHICHINI
POPPOVIC AND LUCIA NADER

157 Conectas Human Rights:
The Making of an International Organization From/In the South

OSCAR VILHENA VIEIRA AND
ELOÍSA MACHADO DE ALMEIDA

181 Strategic Advocacy in Human Rights: Conectas' Experience

PEDRO PAULO POPPOVIC
AND JUANA KWEITEL

207 A Journal from the South with a Global Reach



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ABSTRACT

This article seeks to analyze Conectas' experience in human rights advocacy, carried out between 2003 and 2011. Beginning with the historical influences of public interest advocacy in Brazil, of the adoption of the bill of rights of the 1988 Federal Constitution and the internationalization of human rights, this article describes Conectas' main lines of operation, strategies, challenges and successes in overcoming systemic violence and unjustified exclusions in the context of its human rights advocacy experience.

KEYWORDS

Litigation – Human rights – Violence – Constitutionality



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STRATEGIC ADVOCACY IN HUMAN RIGHTS: CONECTAS' EXPERIENCE

Oscar Vilhena Vieira and Eloísa Machado de Almeida

1 Introduction

Conectas Human Rights was conceived at the beginning of the previous decade in São Paulo as an international organization with the goal of contributing to the strengthening of the human rights movement in the southern hemisphere. We started from the determination that it was necessary to strengthen and integrate a new generation of human rights militants who emerged after the fall of the authoritarian regimes in Latin America and the end of racial or colonial segregation in Africa. The emerging democracies in the southern hemisphere did not necessarily bring with them an immediate solution for the longstanding practices of human rights violations, such as institutional violence, racial and gender discrimination and the lack of access to basic rights such as health and education.

On the other hand, new issues such as access to knowledge, intellectual property and the violation of human rights by corporations, seemed more distant from the agendas of traditional rights organizations. For this reason, it was necessary for us to create new work methods in our platforms, including new modes of organization for the human rights movement. Among the core challenges were: How can we foster the formation of new solidarity between organizations around the world? How can we facilitate the sharing of experiences and inspiration associated with combating human rights violations in one country with militants in other countries with similar problems? And, in what way can we increase the autonomy of organizations so that they can contribute to an effectively cosmopolitan human rights discourse?

The emergence of new communication technologies left us optimistic with respect to the possibility of creating an extensive network of partners, through which knowledge and solidarity would naturally flow. We soon perceived that in addition to merely having communication channels, it would also be necessary

Notes to this text start on page 204.

to build trust between people and organizations as well as to identify platforms that would actually awaken the interest of such people and organizations in acting collectively. The International Human Rights Colloquium and soon thereafter the *Sur – International Journal on Human Rights* proved to be extremely efficient instruments for the construction of inter-subjective trust, in part by allowing for a more cosmopolitan dialogue surrounding human rights.

Located in Brazil, however, Conectas Human Rights could not persist without responding to local and national tragic human rights issues. In spite of Brazil's reliance on a network of vibrant human rights organizations, few of such organizations were using the legal instruments created by our new constitutionalism or those established by the International Bill of Human Rights, in order to advance their causes. Having emerged in an environment of widespread distrust of law enforcement institutions, most Brazilian human rights organizations were opting, and still opt, for political interventionist methods, ranging from mobilization and public denouncement of violations, to community empowerment. Even though throughout the course of our history many groups have used legal strategies to enlarge the force of political actions in favor of excluded or persecuted groups, at the beginning of the current decade it seemed to us that the use of public interest litigation could be more deeply explored. In this way, joining arms with the then-recently created Pro Bono Institute, we decided to organize an office for strategic human rights advocacy. The primary goal of this initiative was to challenge law enforcement agencies in Brazil to implement the broad array of rights that were recognized by the 1988 Constitution and its complementary legislation, as well as those rights that are set forth by international treaties to which Brazil became a party when it underwent democratization.

This article seeks to analyze Conectas' initiatives throughout the past decade in the field of justice. Conectas' actions, nonetheless, only make sense if we first understand the institutional framework in which they were applied, as well as the tradition of public interest advocacy that inspired them.

2 The context of human rights advocacy in Brazil

The current stage of development of human rights advocacy in Brazil is strongly influenced by at least three fundamental factors: 1) the legacy of cutting edge advocacy sectors (liberals/Catholics/the political left), which began to form during the fight for abolitionism and operated in a remarkable manner in the protection of civil and political rights during past authoritarian regimes (1937-1945; 1964-1985), in addition to being prominent in the struggles for workers rights throughout the past century; 2) the second essential factor for understanding the operation of Conectas is related to the building process that occurred at the end of the transition to democracy, which culminated in the adoption of the 1988 Constitution, as characterized by a generous bill of rights; and 3) finally, the process of globalization and internationalization that occurred with the expansion of a more cosmopolitan discourse surrounding rights and sustainability, cannot be overlooked.

2.1 *The Brazilian tradition of human rights advocacy*

With respect to the first of these factors, the actions of progressive advocacy sectors were mobilized in three waves up until 1988, in which lawyers used the justice system as an instrument of rights protection and social change.

Initially, between 1850 and 1950, there was intense advocacy of a predominantly liberal nature. The campaign for the abolition of slavery and the actions of lawyers such as Luiz Gama were responsible for inaugurating public interest advocacy in Brazil (MALHEIRO, 1944). By using an adversarial legal structure, Luiz Gama created a solidarity network of lawyers and organizations, in addition to forging innovative advocacy strategies, in order to free African slaves who either: were transported illegally to Brazil during or after 1831, were born of slave parents during or after 1871 or had attempted to purchase their own freedom in accordance with the 1871 decree.

Ruy Barbosa, who also participated intensely in the abolitionist campaign, side by side with individuals such as Joaquim Nabuco, represents the second step toward the construction of our liberal tradition in the fight for rights. As a Senator and journalist, Ruy promoted the rights of political dissidents, including those who opposed Ruy himself. Furthermore, in the capacity of a lawyer, Ruy Barbosa worked intensely with the Supreme Court, defining a role for himself in the Brazilian institutional arrangement at the time, particularly through the filing of innumerable habeas corpus, in the defense of political dissidents, of victims of the will of successive states of emergency and even of commoners who fell into the meshes of the precarious justice system of the First Republic (RODRIGUES, 1965). Within this same tradition, Sobral Pinto and Evandro Lins e Silva distinguished themselves in the new state, in the fight for civil and political rights of those who opposed the Vargas regime (DULLES, 2007).

A third moment of this liberal progressive wave, which prevailed during the military regime (between 1964 and 1985), was comprised of lawyers who were predominantly connected to the leftist sectors of the Catholic Church and its large network of human rights centers throughout the country. In 1973, the Justice and Peace Commission of São Paulo was founded, under the auspices of Don Paulo Evaristo Arns, archbishop of São Paulo. During those years, the Justice and Peace Commission formed a network of lawyers to defend the rights of political prisoners and their family members (CANCIAN, 2005). These lawyers worked specifically with Military Justice, which is where the cases involving those persecuted by the regime were concentrated.

During this period, there also emerged a stream of lawyers with a more radical direction, whose actions were connected to the unions and to movements of rural landless workers. Many of these lawyers were also linked to the Catholic Church, but under the influence of liberation theology – as they also cooperated with leftist political parties. MST (the Landless Workers' Movement), for instance, which is now even more active in the Brazilian political arena, was founded by religious progressive groups (STÉDILE, 1997). This movement emerged in response to the rigid restrictions imposed on social movements by the military regime. MST created its own legal department with the objective of supporting its activities and protecting its leaders who were systematically involved in confrontations with the police and landowners.¹ During this process, RENAP was also established, which continues to operate today

and is comprised of lawyers, whose work is based on and who are responsible for building legal strategies and providing legal assistance to MST throughout Brazil (CAMPILONGO, 1991).

Finally, another important part of the advocacy movement as well as of the public interest law movement, which was highlighted before the 1988 Constitution, is represented by the urban workers' movement. An early element of this consisted of the National Labor Pool, established by more than sixty young labor lawyers, who were of the most diverse political backgrounds but were predominantly leftist Catholic, and who provided legal assistance to independent unions throughout Brazil (JESUS, 1967). Many of these lawyers, together with lawyers from the leftist party, contributed to the organization of a legal department within the Union of São Bernardo and, thereafter, within the CUT.

Not only did these trends influence the imagination and establishment of our public interest advocacy tradition, but they also influenced the very restoration of our constitutional fabric in 1988. Under the new text, there was a reconfiguration of both normative expectations, in the field of rights, and new institutional actors, who began to operate in the field of public interest advocacy.

2.2 The impact of the Constitution on human rights advocacy

The 1988 Constitution is characterized by the adoption of an extensive bill of rights, the provision of innovative procedural instruments, a close proximity to international human rights law and the reconfiguration of some institutions connected to law enforcement, such as the Public Prosecutor's Office and the Public Defender's Offices. These factors significantly altered the trajectory of public interest advocacy in Brazil. Accomplishing much more than filling in the gaps of the law and fighting for changes in the legislative framework, public interest advocacy began to focus on the effectiveness and implementation of the rights protected by the 1988 Constitution.

It is important to mention that the 1988 Constitution was challenged by a recent history characterized by an authoritarian government and a long history of social injustice and inequality in Brazil. Furthermore, the 1988 Constitution adopted a clear, principal bias toward the goal of guiding social, economic and political change. In this regard, the Constitution gave the State a central role in the promotion of social welfare and economic development (BONAVIDES; ANDRADE, 1991).

The most important innovation of the 1988 Constitution, in terms of the goals set forth by this article, is its extremely generous and comprehensive bill of rights, which includes civil and political rights, as well as economic, social and cultural rights, aside from conceding rights to vulnerable groups such as indigenous people, the elderly and children. The Constitution also recognized a new set of rights relating to the environment and consumer relations, and it followed the guidelines of the International Bill of Human Rights, of 1948. The Constitution's language and scope, however, maintain the strong tradition of social intervention by the state, dating back to the *Vargas Era*.²

There are a few important characteristics of the Brazilian fundamental rights regime that should be mentioned here. According to Article 5, paragraph 1, all fundamental rights have immediate application, thus improving upon a traditional constitutional

doctrine and finding support in international human rights law, according to which economic and social rights ought to be viewed as programmatic and complementary devices. When combined with Article 5, XXXV, which sets forth that the law may not exclude any injury or threat to a fundamental right from review by the judicial branch, it becomes clear why the judicial branch began to play such an important political role after the 1988 Constitution was adopted. Both the positive actions by the legislative and executive branches, and the absence of any implementation or regulation of these rights, came to be objects of review by the judicial branch. An important aspect of the architecture of our fundamental rights consisted of the special protection imparted by Article 60, paragraph 4 IV, which is now threaten by constitutional amendments.

In spite of these advances, it is necessary to recognize that an important array of rights failed to be addressed by the 1988 Federal Constitution, particularly those relating to a more contemporary agenda that is connected to the question of gender. Topics such as reproductive rights, civil homosexual union and abortion were not addressed by the Constitution because of the influence of religious sectors in the constitutional process.

Furthermore, constitutional engineering by Brazilian federalism has proven to be, in many circumstances, an obstacle to the full implementation of human rights, particularly with respect to civil rights. As originally intended by the 1988 Constitution, the jurisdiction for investigating crimes against civil rights – homicides and tortures, for example – remained concentrated in the states. For a human rights crime that is committed by a state police officer, for example, the police officer who is “investigated” is the same person in charge of the investigation. Aside from the confusion existing between the perpetrating institutions and the institutions responsible for investigating and sentencing these crimes, this close proximity has been one of the factors contributing to impunity for human rights violations.

Only in 2004 did the 45th Constitutional Amendment, entitled Judicial Branch Reform, implement a constitutional provision that allowed for the federalization of cases involving grave human rights violations, or, in other words, a shift of jurisdiction over sentencing to the federal judiciary. In spite of this provision constituting an instrument that is absolutely central to the protection of human rights and being a significant advancement in the institutional arrangement intended for such a protection, the Federal Supreme Court has jurisdiction to authorize any such shift, and, therefore, only the Attorney General may issue such a request. The consequences of this limitation on the provision’s use are evident: since 2004, only two cases have given rise to the use of federalization by the Attorney General, of which only one was accepted by the court.³

The 1988 Constitution also set forth new legal instruments capable of allowing for the implementation of such rights, including the writ of injunction and habeas data, in addition to establishing new contexts for the use of other already-consecrated legal instruments, such as the writ of mandamus and class actions. It furthermore recognized equally traditional instruments such as the habeas corpus.

In addition to these specific constitutional instruments for rights protection, the Constitution redefined the mission and jurisdiction of both the Public Prosecutor’s Office and the Public Defender’s Office. Such changes caused these institutions to become central actors in the promotion of public interest law in Brazil.

In accordance with what is affirmed by Article 127 of the 1988 Federal

Constitution, the Public Prosecutor's Office became a "permanent institution, essential to the judicial function of the State, delegated with the defense of the legal order, the democratic regime and social interests and unavailable individuals," or, in other words, the defense of the public interest and fundamental rights (MACEDO JR., 1999). In the past two decades, which followed the adoption of the 1988 Federal Constitution, members of the Public Prosecutor's Office participated in various networks involved in public interest cases, mainly with respect to environmental rights, consumer rights and the rights of children and indigenous people. The majority of the public interest cases that reached the Brazilian judiciary passed through this channel (ARANTES, 1999). With the passage of time, however, the high expectations surrounding the role of the Public Prosecutor's Office, as the quintessential defender of the public interest, diminished among civil society organizations. In fact, there is no effective mechanism through which civil society organizations can pressure agents of the Public Prosecutor's Office to act in any given circumstance. For this reason, the Public Prosecutor's Office cannot be viewed as the sole option for resolving public interest cases.

On the other hand, the Public Defender's Offices, established after the 1988 Constitution, constitute the second set of public agencies directly charged with promoting public interest law in Brazil. Article 5, LXXIV of the 1988 Constitution sets forth that the "State shall provide full and free legal assistance to those who prove they have insufficient resources," and, in order to ensure fulfillment of this law, the Constitution sets forth that the state and federal governments must establish Public Defender's Offices. Such institution is considered "essential to the judicial function of the State, delegated with the legal direction and defense, in all degrees, of the needy, in accordance with Art. 5, LXXIV."

Precisely because of their constitutional character of providing legal assistance to the needy, the Public Defender's Offices act in various areas of the law, such as in family, property, criminal and civil law, with an exorbitant volume of cases in the face of few and scarce physical and human resources (CUNHA, 2001). This scarcity has frequently prevented the Public Defender's Offices from concentrating on activities of strategic human rights advocacy, which tend to significantly alter the institutional practices that violate human rights. Nonetheless, even in the face of these difficulties, it is necessary to recognize both the importance of the Public Defender's Offices and the advances that have been achieved through their operations including, for example, their emblematic action against forced evictions in Rio de Janeiro.⁴

The Constitution, moreover, expressly incorporates the international language of human rights. Article 4 sets forth that the Brazilian government must take human rights into consideration in its foreign policy; Article 5, § 2 requires that the rights expressed in the constitutional text not preclude others resulting from the principles and rules adopted thereby, nor those listed in international treaties to which Brazil is a party, thus opening up the possibility of incorporation of international human rights law into the Brazilian legal order.

In fact, only after the end of the military regime in 1985 and the indirect election of the first civil president did the Brazilian government become party to the main human rights treaties. Ratification of these treaties, however, was only achieved subsequent to the adoption of the new Constitution.

With Brazil's ratification of the American Convention on Human Rights in 1992, as well as the acceptance of the jurisdiction of the Inter-American Court of Human Rights in 1995, many nationally and internationally-based organizations began to use international mechanisms – as a means to overcome the inertia of the Brazilian justice system in dealing with systematic violations of human rights committed by the new democratic government – a fact which helped change the landscape of public interest advocacy in Brazil.

In the path to the new constitutional moment and with the inspiration of normative advances in the international arena, movements for the defense of rights pressured Congress to produce a series of legislative changes in the field of human rights. These infra-constitutional standards address important issues such as, for instance, the rights of children and adolescents (1989), the rights of disabled persons (1989), crimes of racism (1989), the health system (1990), social security (1991), the right to education (1990), unrestricted access to medication for the treatment of HIV (1996), torture (1997) and agrarian reform (1993), among other equally relevant subjects.

Notwithstanding the existence of this significantly protective normative framework in the constitutional, international and infra-constitutional arenas, human rights violations continue to be a part of the country's reality.

In the field of social rights, using education as merely an example, figures from 2009 show that 52% of the students from first to fourth grade are functionally illiterate or, in other words, are either illiterate or possess a rudimentary level of literacy⁵ (INSTITUTO PAULO MONTENEGRO, 2011). Of the students from fifth to eighth grade, 24% are functionally illiterate. With respect to health, diseases such as malaria, for instance, affect five hundred thousand people per year in the Amazon's endemic region; almost one million people contracted dengue in 2010; and tuberculosis causes approximately five thousand deaths per year (BRASIL, 2010).

With respect to civil rights, police violence and summary or arbitrary executions are still “widely practiced” (UNITED NATIONS, 2010). Meanwhile, torture and degrading detention conditions are present in a large part of the adult and youth prisons in Brazil. Recent visits by the National Justice Council to the youth prisons throughout the country confirmed that overcrowding and the practice of torture are still a sad reality (BRASIL, 2011a).⁶

Incidents of violence and human rights violations, furthermore, affected certain societal groups that are considered to be vulnerable in Brazil. Blacks, women, children, indigenous people, ex-slave community members, persons with disabilities and the LGBT community are most likely to be victims of human rights violations.

As an example, the black population in Brazil is the poorest and has the least amount of access to essential services and to education. In order for one to have an idea of the force with which racism exacerbates inequality, a white Brazil would have a high Human Development Index (HDI) of 0.814, while a black Brazil, including the population of all people of color, would have an HDI of 0.703. If these were two distinct countries, they would be separated by 61 places in the human development ranking (CICONELLO, 2008). Aside from receiving lower salaries for equivalent work, black women have been shown to receive medical care of the lowest quality, being given minimal anesthesia and gynecological attention, for example (LEAL; GAMA; CUNHA, 2005).

The constitutional process of expansion of rights, intended to contribute to overcoming the arbitrary and various forms of creation of social hierarchies, directly impacted litigation in Brazil. This does not, however, mean that there was a proportional expansion of access to justice: the national average for the relation between persons in need of services of free legal assistance and their defenders is of one Public Defender to every thirty-two thousand people (1:32,044) (BRASIL, 2009). Pro bono advocacy, which could be shown as an alternative to the grave problem of access to justice, is greatly restricted by the Brazilian Bar Association, whose current regulations permit free advocacy merely for disadvantaged civil society organizations of public interest.⁷

The rise in litigation that has been seen in recent years in Brazilian society, increasing from 5.1 million new cases in the state, federal and labor courts in 1990 to 24.5 million new cases in 2010, does not represent a full democratization of access to the judiciary. Research recently revealed that the biggest litigants in the Brazilian courts consist of state and federal public agencies and private banks (BRASIL, 2011b),⁸ in spite of the fact that a significant portion of these cases arise from consumer demands.

The fact is that the normative advance for human rights, which began in 1988, has not generated a significant movement for litigation in its defense. With the exception of the relevant but not systemic operations carried out by the Public Defender's Offices and the Public Prosecutor's Offices, very few civil society organizations have dedicated themselves to litigating for human rights.

2.3 Impact of the International Agenda on Human Rights Advocacy

It is difficult to comprehend the recent trajectory of human rights advocacy in Brazil without first taking into consideration the debates, movements and treaties that have developed in the international arena during the past two decades. Even though public institutions had already acquired great prominence in the field of human rights litigation, beginning in 1988 various organizations began to dialogue intensely with the international human rights movement.

Although the human rights movement gained strength after the end of the Second World War with the creation of the United Nations (UN) in 1945, it was the adoption of the Universal Declaration of Human Rights in 1948 and several other international human rights treaties that caused the objectives already expressed in the Universal Declaration to become legally binding; in Brazil, the international language of human rights began to be used only after the military regime ended. This is due as much to the isolation generated by the authoritarian regime, as to the impact of the Cold War. In the context of the United Nations, the logic of the Cold War contributed to the weakening of the operations of most human rights movements. The Inter-American Commission on Human Rights, established by the Organization of American States, was the sole international mechanism that was active in the American continent. It is important to underscore that, up until that time, Brazil had not yet ratified any of the principal international human rights agreements, not even the American Convention on Human Rights of 1969.

Only at the end of the military regime in 1985 and the indirect election of the first civil president did the Brazilian government finally sign the principal human

rights treaties. Ratification of these treaties, however, only took place after the adoption of the new Constitution. The entire movement for the Brazilian government to ratify the principal international human rights treaties, and the partnerships between international human rights organizations that began to operate in the country following the end of the military era, inspired the creation of new organizations with missions that were more clearly geared toward the promotion of human rights.

With Brazil's ratification of the American Convention on Human Rights in 1992 and the acceptance of the jurisdiction of the Inter-American Court of Human Rights in 1995, many nationally and internationally-based organizations began to use international mechanisms as a way to overcome the inertia of the Brazilian justice system in dealing with the systematic violations of human rights committed by the new democratic government (SANTOS, 2007).

Several United Nations conferences occurring in the 1990s stimulated, in the global context, a new flow of ideas that influenced both social movements and the practice of human rights organizations in Brazil. The 1992 Earth Summit, the 1993 World Conference on Human Rights, the 1995 World Summit for Social Development, the 1995 World Conference on Women, the 1996 Conference on Human Settlements and the 2001 World Conference Against Racism – each fomented distinct ways for ideas to be exchanged and flow internationally, among social movements, organizations and even state agents throughout the world. These international conferences, which were distinct from those that had been previously carried out, mobilized thousands of civil society groups and human rights defenders from all around the world, each with the goal of not only participating in such meetings, but also articulating civil society proposals and demanding that the States position themselves around such issues. During preparatory meetings for the conferences, human rights organizations and defenders, which had operations in their own country's domestic spheres, began to interact with organizations and defenders of other countries and regions, thus opening up new opportunities for international dialogue, in addition to allowing for new forms of engagement in international politics to emerge – forms of engagement which were not monopolized by the States or controlled, in the civil society context, by large transnational organizations of the northern hemisphere (NADER, 2007).

Starting from the exposure of Brazilian organizations to this new stage of human rights internationalization, which was not limited to State agents, many Brazilian organizations, including Conectas, began taking into consideration international institutions and even the strategies of similar organizations in the formulation of their own lines of action.

3 Conectas' Justice Program: Artigo 1º

It was in this political institutional context and under the influence of these different traditions that Conectas decided to organize a program of strategic advocacy⁹ in June 2003, called Artigo 1º (“Artigo 1º – Conectas”), which refers to Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”¹⁰

Since the beginning of Artigo 1º – Conectas, two main operational focuses

were chosen: i) intensive strategic advocacy, with the goal of destabilizing institutional systemic practices of human rights violations; and ii) constitutional strategic advocacy, geared toward protecting legislative advances surrounding threats of setbacks in the Federal Supreme Court, as well as litigation aimed at enlarging the scope of rights for groups that have been unjustifiably excluded from the constitutional text itself.

3.1 Systemic litigation and persistent human rights violations

Systematic human rights violations, entrenched in longstanding institutional practices, present enormous challenges to alteration, as much for social actors engaged in their change as for the authorities themselves who do not agree with such violations.

The decision to use a large number of different kinds of actions, although directed at attacking a specific question also aimed to destabilize the consolidated practices of systematic violations, in order to confront persistent human rights violations. This decision furthermore aimed at changing the practices that are imbedded in Brazilian institutions, thus seeking, by means of lawsuits, to require these institutions to perfect their procedures for control, transparency and participation. The systematic practice of these institutions in violating human rights presupposes the poor functioning of control mechanisms, such that impunity becomes a central element in the perpetuation of violations.

For this, a double strategy was designed, involving: actions geared toward directly testing and questioning institutional control and transparency procedures; and actions geared toward ordering high damages verdicts against such institutions, including victim reparations, thus exploring the pedagogical nature of indemnifications.

The thematic area initially selected among the persistent human rights violations was that of institutional violence against adolescents in the youth prison system in the state of São Paulo.¹¹ There were several motivations for choosing this issue: institutional violence related to an area with notorious and deep human rights violations, recognized nationally and internationally through the reports of organizations and the public sector; the centralized management of these prisons would favor systemic action by Conectas; and partnerships had already been established in the middle of 2003, with organizations of victims and family members of victims,¹² most notably with Amar – Association of Mothers and Friends of Children and Adolescents at Risk, which was built into projects then managed by Ilanud.¹³

Working closely with organizations acting in the defense of the rights of children and adolescents, Conectas began to conduct periodical visits to and inspections of the youth prisons, obtaining, directly from the adolescents, information and findings surrounding the human rights violations occurring therein. Between 2003 and 2008, these visits covered approximately 70% of the youth prisons in the state of São Paulo.

Based on its visits to and inspections of the youth prisons, Conectas began to file lawsuits against the official bodies responsible for investigating human rights violations, thereby seeking to coax the existing control instruments into working properly, so as to allow for institutional restructuring. By observing the precariousness and inefficiency of the institutional control mechanisms – as originally expected – in specific cases of human rights violations monitored by Conectas, it was possible to design lawsuits aimed at perfecting these mechanisms.

In this respect, we highlight three sets of legal actions, which, through litigation and court rulings, successfully improved and established mechanisms for control, transparency and participation in youth prisons in the state of São Paulo.

The first set of legal actions refers to the writs of mandamus that were filed by the family members of victims of human rights violations, with regard to the administrative rulings that had denied them access to the internal investigation procedures, which were being retained by the Internal Affairs Division of Febem (currently the Central Foundation for Adolescent Socio-educational Care – CASA Foundation),¹⁴ surrounding the liability of public agents who perpetrated the human rights violations.

These writs of mandamus aimed to affirm the right of adolescent victims of human rights violations, as well as their family members, to have access to and to participate in such investigation procedures.

In its ruling, the Brazilian Court affirmed:

Clear legal right fully supported by writ of mandamus. Moreover, the existence of a constitutional guarantee of access to information that was also damaged. State failed, it seems, to preserve the life of the adolescent held in its custody and put forth undue obstacles to his family members, preventing them from accessing information surrounding the investigation of the death in question. Unacceptable obstacle that cannot be perpetuated by reason of excessive formalism or adherence to legal filigree. Aside from the right of the appellant to access information pertaining to the death of her son, there is a true obligation of the state to provide necessary clarifications. Ruling that must be reformed so that the mandamus may be conceded, thus giving the appellant access, the extraction of copies and the obtainment of certificates of inquiry pertaining to the death of her son. Appeal provided so that the order is granted.

(SÃO PAULO, 2005).

After the repetition of similar such lawsuits and court rulings, both the CASA Foundation and the Judge of the São Paulo Children's Court reformulated their understanding and began to guarantee, to victims and their family members, access to and participation in administrative procedures. The use of this pathway by victims may yet cause other effects in the institutional practices of the CASA Foundation, particularly with respect to a rupture in the cycle of impunity. Another set of legal actions refers to the authorization and prerogatives of human rights organizations with respect to their prison visits and inspections. With the passage of years and the intensification of complaints of human rights violations, the CASA Foundation began to make it more and more difficult for organizations to enter the prisons until, in 2005, it issued a general ban on the entry of organizations that did not have cooperation agreements with the prisons.

This explicit ban and the lack of a defined policy on inspections caused Conectas, in partnership with other organizations working in the defense of children and adolescent rights, to file a civil class action, with the goal of requiring the CASA Foundation to create a policy for inspection and transparency, which would be in line with international procedures for human rights protections, particularly the Optional

Protocol to the Convention against Torture. The lawsuit succeeded on appeal, and the ruling of the Court of Justice stressed the importance of the work of NGOs in the defense of human rights:

(...) There is no doubt that it is the duty of all, and not merely the state, to guarantee the birthrights of children and adolescents, such as the right to life, to health, to physical integrity, etc. The Federal Constitution itself makes this very clear in its Articles 1, III, 204 and 227. Therefore, when the state applies socio-educational measures to juvenile offenders, which are aimed at maturation, an awareness of errors and rehabilitation, there is, in a way, not only a participative duty of the entire population, included herein, which obviously comprises non-governmental entities, but also a right of all persons to verify if such goals are being reached or if, at the very least, efforts for such are being made. (...) Although it is owed to the defendant-respondent to have freedom in the planning and execution of its protection programs, the defendant does not have the right to prohibit non-governmental associations, which act in the protection of children and adolescents, from accessing the youth and the facilities where they are held. When the CASA Foundation acts in this way, it is in violation of the principle of transparency that ought to guide its operation; the CASA Foundation should be the first to make it clear that there are no violations in its detention centers, of the rights established by Art. 124 of the Statute for Children and Adolescents. (...) I grant the appeal, allowing for the plaintiff-petitioners, as well as other non-governmental associations with the same goals, to enter the detention centers of the CASA Foundation, in conformity with any other provisions that now exist or that may be enacted in the future.

(SÃO PAULO, 2008).

This may perhaps be the most relevant sentence obtained during this period and for various reasons: a collective procedure was adopted, which enlarges the impact and scope of the lawsuit and imposes upon the CASA Foundation a clear obligation of creating strategies for control, transparency and participation.

Finally, a third set of legal actions sought to question poor prison confinement conditions, beginning with violations of general building and care provisions. In this regard, several prisons were questioned, for example for having no fire safety equipment, thus supporting a court injunction for unsafe prisons. This suit fostered an official condemnation of the Brazilian state by the Inter-American Court of Human Rights in December 2005, in a case that was filed in partnership with a group of NGOs.¹⁵ This lawsuit was originally filed before the Inter-American system, on behalf of 4,000 adolescents in the CASA Foundation's detention center in Tatuapé, which was known for subjecting its adolescent inmates to inhumane conditions and treatment. After the failure of the Brazilian government to implement the measures that had been ordered by the Inter-American Commission on Human Rights (among them, providing reparation to victims, closing the detention center and holding the perpetrators accountable for their violations), the case was forwarded to the Inter-American Court of Human Rights. The Court affirmed the same measures that had been ordered by the Commission and required the de-activation of the Tatuapé Complex, which finally took place in December 2006.

The second strategy used by Conectas was to seek, by means of litigation, to extend compensation to victims of human rights violations, so as to revert the process of trivialization of the violations perpetrated by the state. The application of high damages verdicts points to the seriousness of an offense, as well as the need to combat such practice.

There were many victories with respect to requests for compensation for moral damages, arising due to extrajudicial killings and incidents of torture in the CASA Foundation's detention centers. Artigo 1º – Conectas succeeded in transforming the standard of the São Paulo Court of Justice with regard to the value of compensation ordered for loss of life and torture. Initially, judges ordered sentences for the payment of pitiful amounts, of around R\$ 30,000 to families of victims of deadly state actions. Due to the intense work of Conectas, judges began to change their perspectives with respect to the obligation of the state to guarantee the life of those who are in its custody. The values paid in the name of compensation amounts increased to R\$ 300,000 (US\$ 150,000), on average. The goal of awarding such compensation is to send a clear message to the general public that the lives of these adolescents could not be forgotten in the face of such abuses.

Almost one hundred legal actions, in the name of adolescents of Febem's detention centers, were filed with the goal of: guaranteeing compensation for victims of abuse, punishing the perpetrators of these violations and changing the Foundation's institutional practices. Each of these cases demanded and still demands that the civil, administrative and sometimes criminal aspects of the problem be addressed.

Generally speaking, Artigo 1º – Conectas seeks to use the justice system to increase the political cost associated with practices that violate rights, thus contributing to the pressure for reforms in our youth prison system, which is currently in conflict with the law in São Paulo.

In addition to the issue of incarcerated youth, beginning in 2005, Artigo 1º – Conectas began to work with the question of police violence, particularly in cases of summary executions, with the same strategy of, on the one hand, strengthening mechanisms of control, transparency and participation and, on the other hand, aiming to achieve instructive impact by awarding generous compensation to victims.

On this issue, we highlight the actions carried out during the so-called bloody week of May 2006. In the time between May 12th and 21st, 2006, there were a series of attacks on the police and rebellions in the prisons of the state of São Paulo, which were orchestrated by the criminal gang First Command of the Capital – PCC, followed by a violent response by the police. In this week, 492 people were shot to death, with clear indications of summary executions practiced by the police (CANO, 2009). The actions of Artigo 1º – Conectas sought to federalize the case, given the high commitment of the institutions of the justice system to conduct factual investigations. In the international context, Artigo 1º – Conectas sought to: abolish the use of the expression “resistance followed by death” in police reports, a factor that is responsible for both covering up the number of incidents of police violence and fostering impunity; and effect the adoption of standards of police conduct surrounding the use of excessive lethal force.

Starting in 2007, Artigo 1º – Conectas began to apply its acquired experience to other areas, in order to operate in the adult prison system, with a focus on the issues of overcrowding, excessive use of provisional imprisonment and poor confinement conditions.

The first case Conectas worked on was of the Public Prison of Guarujá, in which overcrowding and the very poor conditions of confinement characterized a situation analogous to torture. From intense correspondence with local actors,¹⁶ Artigo 1º – Conectas succeeded in starting a large debate on the indiscriminate use of presentence prison and the precarious nature of incarceration in public prisons,¹⁷ which was responsible for shutting down the prison and effecting the adoption of precautionary measures from the Inter-American Commission on Human Rights.¹⁸

The same strategy was adopted in 2009 in order to operate in the prison system of Espírito Santo, which is notorious for being a great violator of human rights. Artigo 1º – Conectas and its partners¹⁹ worked with a combined strategy of media, local mobilization efforts and international actions, which generated a widespread impact. Absolutely inadequate prison facilities, such as the Vila Velha Judicial Police Department and metallic cells that operated in crates were deactivated and banned (respectively) following both the adoption of the precautionary measures by the IACHR and the debate on the issue that took place at a parallel event in the UN Human Rights Council.

This operational model, because of the intensity of its actions, which were coordinated with other organizations, and its use of the media seems to have contributed to destabilizing systematic violative practices.

3.1.1 Litigation to enlarge the spectrum of rights

The decision to enlarge the spectrum of rights was based on the fact that, in spite of the 1988 Federal Constitution representing a great advancement, there are rights that failed to be recognized, leading to the unjustified exclusion of groups in need of an effective system for protection.

In order to attack these unjustified exclusions, two strategies were outlined: first, to defend normative advances obtained in the National Congress; and second, to defend a constitutional interpretation supporting the amplification of human rights.

For the development of these strategies, instead of selecting an issue, we first decided on a privileged location: the Federal Supreme Court (STF). Such a choice was supported by the irrefutable centrality that STF has achieved in the human rights debate (VIEIRA, 2008). In fact, over the past 18 years, the Federal Supreme Court has become one of the primary national forums for defining fundamental rights.

Nevertheless, there exist very restrictive rules that remove a large part of civil society from the constitutional debate: while it is possible to have access to STF, either by means of an appeal filed in a single case or by means of a direct unconstitutionality action, only some social and political actors can work with the Federal Supreme Court directly. In order to democratize this arena, Congress passed a law in 1999 that allows third parties to file briefs of *amicus curiae* with STF. In some countries, such as the United States, this device has considerably influenced Supreme Court decisions, even though it is still used very little in Brazil.

Artigo 1º – Conectas has focused its actions on the use of briefs of *amicus curiae* in its strategy to enlarge the spectrum of human rights in the country. Conectas is currently the organization that files the greatest number of briefs of *amicus curiae*

with the Federal Supreme Court (ALMEIDA, 2006) – 38 so far – on a wide range of issues, and it constantly seeks to form partnerships with relevant actors in each of the areas addressed. Conectas is also the only organization that participated in each of the five public hearings that have been carried out by STF up until now.²⁰

Brazil adopted a progressive Constitution in 1988. After the enactment of such, Congress passed several laws intended to implement the expectations that were brought about by the new constitutional order. These new laws are constantly questioned by conservative sectors that were defeated by the political process which culminated in the adoption of the Constitution; these sectors have used the Supreme Court to question the acts of the National Congress. On the other hand, vulnerable minority groups, which are unable to get laws passed before the National Congress, turn to the judiciary in order to obtain some protections. For this reason, the current challenge for civil society organizations committed to the promotion of human rights is to defend both the progressive legislation that was passed after the enactment of the 1988 Constitution and minority groups in cases before the judicial branch.

With the strategy of enlarging the spectrum of rights, beginning from the normative advances created by the National Congress, Artigo 1º – Conectas has expressed itself through actions of great public relevance by defending the new laws. In this regard, we consider as emblematic manifestations, the briefs of *amicus curiae* of Artigo 1º – Conectas, which defended gun control and embryonic stem cell research, in addition to supporting affirmative actions for blacks in universities, on which STF has already taken a stance. The first substantive victory came about in the case on gun control (ADI 3112) (BRASIL, s.d. a), a subject of extreme importance in Brazil due to the impact of such control on homicide rates. Brazil has an extremely high homicide rate, in which small guns are responsible for the majority of these deaths. Following a drawn-out parliamentary debate, the National Congress passed the Disarmament Statute, a law for gun control, setting forth several restrictions on personal gun possession. Although this law contained a provision that would completely prohibit the sale of guns in Brazil, such provision would only come into effect upon approval by national referendum. The results of this referendum were negative. For this reason, the sale of guns today is legal in Brazil, even though several restrictions on the possession thereof are still in effect. In opposition to these restrictions, a direct unconstitutionality act was filed by the PTB (Brazilian Labor Party), a right-wing party, with respect to several provisions of the new law. The Supreme Court ruled on the case in May 2006, upholding the law, implementing a few adjustments pertaining to procedural questions and drawing on the arguments provided by the briefs of *amicus curiae* of Artigo 1º – Conectas, Sou da Paz and Viva Rio.

The second case of normative advancement that was defended by Artigo 1º – Conectas, related to the law on embryonic stem cell research (ADI 3150) (BRASIL, s.d. b). This law suffered from several attacks, particularly from the religious sectors that sought the constitutional protection of the sanctity of life of the embryo, which is discarded in the process of artificial fertilization. In this case, in addition to obtaining a favorable pronouncement on the law from STF, Artigo 1º – Conectas collaborated with STF to carry out the court's first public hearing.

Finally, Conectas defended the affirmative action law (ADI 3330) (BRASIL, s.d. c), which allows for racial criteria in the context of ProUni – a comprehensive program of the federal government for the concession of scholarships for access to university education. In this case, Artigo 1º – Conectas acted in the defense of affirmative action, and, when STF was faced with a request for suspension of judgment, it obtained a favorable vote of the reporting Justice. Artigo 1º – Conectas also acted in the public hearing carried out by STF on this subject.

In addition to these positive substantive results, we must also underscore the result obtained by Artigo 1º – Conectas with respect to the determination of the ability of human rights organizations to file briefs of *amicus curiae* with the Court. Upon the request of Artigo 1º – Conectas, the Federal Supreme Court justices debated which criteria the Court ought to use in order to admit briefs of *amicus curiae* filed by civil society organizations, and they decided that any human rights organization such as Conectas, with an overall mission to promote human rights, would be competent to express itself in all cases in which questions relating to fundamental rights were presented.

Furthermore, Conectas acts in the defense of the constitutional interpretation for the enlargement of rights. As mentioned above, the text of the 1988 Federal Constitution failed to expressly recognize the rights of some groups, thereby necessitating the operation of STF in seeking a comprehensive and expanding interpretation of these rights.

The most emblematic case in this line of actions is the recent case on the constitutionality of civil unions of persons of the same sex (ADPF 132) (BRASIL, s.d. d). The 1988 Federal Constitution established a regime for stable unions and their conversion into marriages, and it explicitly mentions the union between a man and a woman. This mention has served as a justification for the refusal to recognize civil unions between persons of the same sex. Precisely for this reason, the suit filed in STF sought an interpretation of the stable union rules that would remove this unjustifiable exclusion. The manifestation of Artigo 1º – Conectas and its partners was accepted,²¹ as was that of other organizations, and STF unanimously recognized the right of the union of persons of the same sex as a family unit.

Although not yet ruled upon, there also exist other pending lawsuits, such as in the case of religious teaching, which seek an interpretation of the law that is more consistent with respect for human rights, in areas where the Constitution has failed to be as consistent.

Finally, and still with the objective of enlarging the spectrum of rights, Artigo 1º – Conectas began to participate in the GTPI/ Rebrip – Working Group on Intellectual Property of the Brazilian Network for People's Integration, with the objective of formulating strategies and legal actions that are geared toward revising the current system of intellectual property protections, in order to foster greater access to medicine. One of the most exemplary lawsuits, which is currently awaiting final judgment by STF, specifically questions pipeline patents and, more generally, the entire system of intellectual property protections in a country where pharmacological assistance constitutes part of the fundamental right to health and the obligations of the state.

From this initiative, paradigmatic and innovative actions were also formulated, including a civil class action that aims to use flexibilities in the protection system

to decrease the price of medicine, which would then be freely distributed by the government. Aside from this lawsuit, which continues to await final judgment, GTPI acts: in the formulation of efforts that oppose the concession of medicine patents; and in the realization of debates that expose the inefficiency of the current system for intellectual property protections – in guaranteeing the creation and development of medication for neglected diseases or access to medication that already exists.

4 Conclusion

Following this short and intense strategic advocacy experience in the field of human rights, we can summarize, in the following manner, our greatest challenges and achievements. We will divide the challenges among external obstacles, which relate to the institutional framework and social structure, and internal difficulties, which relate to the limits of the organization itself and its sustainability. In the context of achievements, we mostly aim to emphasize the strategies and methods behind the results described above.

There are many external obstacles to human rights advocacy in Brazil. The first of these obstacles has to do with the systematic nature and breadth of human rights violations in Brazil. Given our social structure, which is highly hierarchical, as characterized by a deep and persistent inequality between several segments of society, violations are widespread and oftentimes nationalized by public opinion. The brutality, arbitrariness and, in most cases, the simple disregard for and neglect of the fringes of our society are not capable of provoking political and legal reactions that are expressed in order to overcome the status quo. Thus, to advocate for human rights causes is, in many cases, something unpopular, and it therefore places the organizations and people involved at risk.

A second difficulty is directly related to the lack of *responsiveness* of the justice system, especially with respect to causes that seek to defend the interests of vulnerable groups in Brazilian society. As illustrated by innumerable studies, such as the Justice Confidence Index of Direito GV (2011) or even the Latinobarómetro studies (2005), there is a strong perception among Brazilians that our justice system does not apply the law in an impartial way. Oftentimes, our legal claims simply receive no institutional response. The most glaring examples of this may be those that relate to torture or death in adult and youth prisons. The requests for federal intervention that were filed with the Office of the Attorney General due to the acute crises of the prison system of Espírito Santo in 2009, never received any kind of response from that institution. Similarly, the request for an investigation of a case involving the suspected collective torture of an adolescent in the Tupi penitentiary not only lacked follow-up but also resulted in several complaints, which were issued by the Public Prosecutor's Office and later attacked by the state court, imputing to the adolescent the practice of self-flogging, as well as of making slanderous accusations.

Also in the realm of legal institutions, a third obstacle can be detected, which relates to the difficulty faced by judges in granting sentences in situations of greater complexity, such as those involving a prison's lack of sanitary conditions or its overcrowding. In the few circumstances where the courts have ordered the

closure of prisons, as occurred in the public prison of Guarujá, it is not rare for the individuals being held to simply be reallocated to other prisons, thus maintaining the underlying violating circumstances. The reach of court decisions is still very narrow in Brazilian legal culture. Complex situations demand a new kind of managerial decision, whereby judges would impose deadlines, criteria and more transparent mechanisms for confronting such problems. Favorable judgments, seen as silver bullets, have frequently been shown to be insufficient in solving the problem. In the first place, these decisions leave judges fearful of their consequences, thus creating a disincentive for the concession of favorable judgments. Furthermore, when such decisions are conceded, they tend to be systematically suspended by the courts. Lawyers and judges need to be more daring in terms of formulating a remedy necessary to confront problems of systematic human rights violations.

A fourth, very challenging obstacle refers to the frailty of the culture of precedents in Brazil. Efforts to obtain a good decision in the field of human rights do not signify that a given violative practice will be suspended in a generalized way. In a system where legal decisions represent, in many cases, mere fragments of legal history rather than interpretive change, the costs for “cause lawyers” are increased. The lack of authority of precedent favors individuals and lawyers who are well positioned to achieve their unique objectives, without altering the logic of the system. In this sense, victories in the field of human rights do not necessarily become dominant jurisprudence, and it is much less likely that they will reverse violative practices.

Finally, a fifth obstacle refers to the sluggishness of the Brazilian courts. Given the accumulation of procedures and the succession of proceedings that ought arrive at judgment, human rights litigation creates disincentives for disadvantaged sectors that favor strong state advocacy structures. There are very few human rights organizations that have the conditions necessary to maintain a team that accompanies numerous cases, each of which may take more than a decade to be resolved. Such delays therefore contribute to the perpetuation of violative practices.

There are also many internal challenges. The first of these relates to the formation of an efficient team of lawyers. Questions of human rights are normally complex, requiring well-trained and experienced professionals. Considering that human rights questions occupy a merely marginal position in the academic curriculum of law schools, when they occupy any space at all, it is very difficult to find young people with the necessary educational background. The question is still more complex, as a combative lawyer ought to be familiar with not only the area of human rights itself, but also civil and criminal procedure, as well as administrative and constitutional law. This dominion of multiple areas is normally only found in more experienced professionals. In most cases, these professionals have salary requirements that are far greater than what is viable for a human rights organization to pay. The problem relates not only to salary, but also to profile. In our recruiting experience, we have found that there are very few young people who not only are engaged in human rights but also dominate its practice and are available to play an advocacy role in a methodical way. Worse yet, when these young people become good lawyers, the market attractions for them are enormous.

Related to the question of forming a good team is the question of its maintenance. Here there are two elements: one of a financial order and the other of

a psychological nature. In the financial field, non-governmental organizations hardly ever receive long-term funding that is compatible with the time that is necessary for lawsuits to be concluded in Brazil. Donations invariably stick to the logic of projects, lasting one or two years before they must be renewed. Even the most stable foundations require a constant renewal of projects, which, in the legal field, is not necessarily possible or necessary. Foundations that understand the nature of strategic litigation and invest over the long term are quite rare. In litigation, it is necessary to continue doing the same thing for many years. And, the sluggishness of the courts does not help contribute to the self-sustainability of human rights advocacy projects. Any procedural victories which could hypothetically generate money for lawyers, take many years to be executed, and even more so when the defendant of the case is the state. The challenges in good team maintenance, nonetheless, are not limited to a merely financial question. Human rights advocacy, however morally gratifying, is extremely taxing from a psychological perspective. Daily contact with violence, arbitrariness and the suffering of others ends up jeopardizing the psychological health of young lawyers (as well as of other professionals). Furthermore, future harm may destabilize teams that, most of the time, lack the necessary support of outside (psychological and security) organizations.

A third internal problem that we detect along this path and that is common to other organizations that have full teams of lawyers, is the relationship between the legal body and the political body of the organization. Lawyers tend to concentrate on cases, which have urgent deadlines and that require a certain amount of reclusion. Militancy requires constant availability for dialogue with other spokespersons, presence in multiples forums of debate and coordinated actions with different spheres of society, possibly even including the state. In an organization that has two such bodies, it is not uncommon to find that different work logics generate friction. Sometimes there are lawyers who do not understand the political imperatives of operational actions, and sometimes there are militants who do not value reclusion and the temporal imperatives of cases. Mediation and integration of the organization's teams must be a constant.

One way of seeking to overcome the problems of scarce resources, sustainability and even professional experience, is to seek partnerships, whether in the context of the state agencies of public interest advocacy, or in the practice of pro bono advocacy, or even with other non-governmental organizations. These partnerships are essential, but making them work is a constant challenge. Public institutions have their own mechanisms for decision-making, and they form their own agendas, not always being available to attend to the needs of non-governmental organizations. Nonetheless, fostering this dialogue is fundamental. The weight of institutions such as the Public Prosecutor's Office and even the defender's offices is so significant in Brazil that one cannot think of a strategic human rights advocacy project that did not take these institutions into consideration. Pro bono advocacy also has an enormous potential. In all of these years, various strategic partnerships were built, but oftentimes the high political tensions involved in a case do not facilitate the entry of pro bono lawyers in human rights litigations. This is exacerbated by the restrictions put in place by the Brazilian Bar Association on the practice of pro bono advocacy.

Greater advantage must also be taken of university partnerships. In the experience of Artigo 1º – Conectas, the greatest difficulty in counting on the collaboration of law professors and law schools has to do with time; the academy invariably works more slowly than necessary for a case.

In spite of these obstacles, there were innumerable achievements in this period that deserve to be highlighted on a balance such as this. This does not deal with narrating future legal victories but rather with reflecting on the way in which these achievements were made and, above all, the way in which litigation had some impact on the field of human rights.

If we use as an example our advocacy geared toward curbing bad practices in the youth prison environment, some positive lines of action can be seized upon. There were three guidelines that we sought to take into consideration. When duly articulated, these guidelines increased our chances of success.

The first element that warrants distinction is the intimate relation that any human rights advocacy project should have with the direct parties of interest (victims or their representatives). It is only from this relationship of trust and respect for victims that lawyers will be able to formulate lawsuits that may be relevant to vulnerable groups. This closeness is essential for ensuring that any victories will also be appropriate for these groups. This relationship is what will provide political meaning and social backing to the practice of strategic human rights advocacy. Confronting the tragic problems in the now-extinct Febem of São Paulo was only possible thanks to an alliance of mothers, intermediated by Amar, with the lawyers of Conectas.

A second key element is the relationship with the media. Although the media in Brazil is repeatedly against human rights, the most relevant part of print media and even some of the most relevant television channels devote a large amount of attention to, and coverage of, issues relating to human rights. Systematically informing these media sectors, producing trustworthy material and offering real and representative cases of violative practices, are all essential for obtaining the attention of communication channels. In the case of the crisis of the prison system of Espírito Santo, narrated above, media coverage was fundamental for destabilizing the violative practices in question.

A third factor that seemed relevant to us in our winning cases was that our actions were carried out systematically, intensely and persistently. Rarely does one succeed in destabilizing a violative practice merely by means of a single lawsuit or court decision. It is necessary to encircle the problems, attack them from many different angles, reduce the spheres of arbitrariness and create channels for participation and intervention so that groups that are willing to improve upon the situation can participate in the process. Approaching the problem systemically requires a deep understanding of that fact. Whether with regard to the issue of prisons, police violence or discrimination of youth with disabilities from the educational system, before acting it is necessary to comprehend the main bottlenecks, which are the points of perpetuation of the problems, and then attack them from multiple directions. Strategic advocacy ought to seek to offer alternatives for judges to confront problems. As mentioned above, it is not enough to serve a pleading; rather, it is necessary to create mechanisms that prevent the perpetuation

of violative practices. In this same sense, strategic advocacy ought to be perfected, and greatly, with respect to the formulation of claims. If lawyers are not creative in what they ask of judges, what judges grant will not be “original.” Finally, we learned that persistence is indispensable to the achievement of advances, as there are many defeats for every victory.

In addition to these three elements that we constantly seek to consider, we also detected institutional opportunities, which, if not well explored, are generally lost. When, in 1999, there emerged a legal opportunity for civil society organizations to participate in the public interest cases in the Federal Supreme Court by filing briefs of *amicus curiae*, few organizations realized that a new road to an important arena of decision-making was being opened. Conectas’ operation in the Federal Supreme Court has been very positive, not only for introducing a human rights bias into the lawsuits pending before the Court, but also for having been capable of inspiring innumerable other organizations to also seek to present their perspectives before the Court. This increase in social participation in the Court certainly impressed upon justices the need to take human rights principles more seriously.

The last lesson that we took away from our own small but intense experience with strategic human rights advocacy pertains to the very expectations that we ought to foster when we engage in complicated tasks. Advocacy cannot be seen as a means to resolve problems but rather as a means to expose human rights violations through a different lens, which is frequently neglected in Brazil: the law. This may seem to be a contradiction; nonetheless, we believe that questions of human rights, when presented merely from a moral, political or even economic perspective, become the object of greater argumentative elasticity, as if certain abusive practices can constantly be the subject of deliberation by the social body. By affirming the perspective of rights and calling upon enforcement institutions to face questions of human rights violations, we can call attention to the imperative nature of the rights that were already the subject of deliberations. Thus, there is no space to discuss whether torture is legitimate or whether discrimination is part of our culture. By incorporating the principles of human rights, by means of the Constitution and innumerable laws and treaties, society and the Brazilian authorities took on a legal responsibility which may not be systematically relaxed. Human rights are, in this way, understood in their imperative dimension. This does not negate the complexity of the situation surrounding the systematic violation of human rights, which would require multiple efforts to overcome. The function of litigation is to expose the inadmissibility of violative conduct, aiming to hold perpetrators accountable and, in particular, seeking to open up institutional channels for these practices to be defeated. Over the course of its journey, with great difficulty and the sense of limitation, Artigo 1º – Conectas sought to attract the weight of the judicial branch in order to destabilize systemic practices of human rights violations. Although it is not possible to trace direct causal relationships in this field of knowledge, we have found innumerable indications that the same actions by a small office of strategic advocacy, such as that of Conectas, can indeed contribute to a reduction in the invisibility of violations and the impunity of violators and the perfection of the institutional mechanisms that are geared toward the question of human rights.

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NOTES

1. RENAP, primarily comprised of lawyers, under the leadership of Jacques Alfonsin, Luiz Eduardo Greenhalg and Plínio de Arruda Sampaio. This network is still operating today and is responsible for building legal strategies and providing legal assistance to MST throughout Brazil.
2. *Note from the Editors: Era Vargas* is the common appellation for the period Getulio Vargas ruled Brazil (1930-1945).
3. Under deliberation in the Federal Senate is the Proposed Constitutional Amendment PEC 61/2011, which intends to enlarge both the list of those with standing to file an Incident of Transfer of Jurisdiction (IDC) and the list of those with standing to file lawsuits for the judicial review of constitutionality, as set forth in Article 103 of the 1988 Federal Constitution.
4. The Land and Housing Nucleus (NUTH) of the Public Defender's Office worked strongly on the denunciation of forced evictions in Rio de Janeiro and the defense of the communities. In the face of great political pressure directed against the Defenders, which included the firing and transfer of NUTH employees, the Defenders withdrew from the activities because they disagreed with the courses of action suggested by the current management.
5. Definition of INAF: Illiteracy – Corresponds to the condition of those who are unable to carry out simple tasks that involve reading words and phrases, even though a portion of such individuals may be able to read familiar numbers (telephone numbers, prices, etc.). Rudimentary illiteracy – Corresponds to the capacity to locate an explicit piece of information in short or familiar texts (such as a single announcement or a short letter), read and write typical numbers and carry out simple operations, such as handling money for the payment of small amounts or carrying out length measurements using a tape measure.
6. For example, in the state of Piauí the following situation was found to have occurred: "the adolescents complained consistently of assaults and bad treatment by the police officers (...). The adolescents described (...) that they are tied with their hands behind their backs in holding crates, in such a way that they remain on their tippy toes, for long periods of time." In Rio Grande do Norte: "As one can see (...) there is human feces thrown at the walls and ceiling, in addition to accumulated trash; it was reported that the odor is repugnant. The adolescents narrate assaults by the military police who are responsible for the prison's security" (BRASIL, 2011a).
7. Only the states of São Paulo and Alagoas have a Pro Bono Resolution issued by the Brazilian Bar Association.
8. Report of the National Justice Council indicates that "in the public sector (Federal, State and City), banks and telephone companies represent 95% of the total number of cases of the 100 biggest national litigants" (BRASIL, 2011b). It is estimated that these 100 biggest litigants represent 20% of the total number of cases in Brazil.
9. Conectas' Justice Program received its first push from the financing of the AVINA Foundation (2003-2005), to support the activities of fellow Oscar Vilhena Viera. Following the AVINA Foundation's support, Conectas' Justice Program was funded by the OAK Foundation (2006-2008 and 2008-2010), of the Open Society Institute (2008-2009). Currently, the Justice Program is funded by the European Union, the OAK Foundation and the Open Society Institute.
10. The following individuals comprised the team of Artigo 1º – Conectas: Lawyers: Oscar Vilhena Vieira (2003-2010); Eloísa Machado de Almeida (2003-2009 and 2011); Beatriz Carvalho dos Santos (2004); Marcela Fogaça Vieira (2004-2011); Humberto Polcaro Negrão (2005-2008); Irineu João Simonetti Filho (2008); Samuel Friedman (2008-2010); Julia Mello Neiva (2009-2010), Vivian Calderoni (2011) and Flávia Annenberg (2011); and Interns: Thiago Amparo (2004); Cecília Oliveira (2004); Vivian Sampaio Gonçalves (2005-2009); Valcrécio Paganele (2008-2009); Riccardo Silva (2009-2011); Rosa de Santana Santos (2010); Fernanda Sacillotto (2010); and Fabiane Oliveira (2010).
11. The state of São Paulo held, from 2003 to 2010, half of the total number of adolescents incarcerated in Brazil, thus characterizing a microcosm of the problem.
12. Other partner organizations in this area were: CTV; Cedeca; CRP; Abring; Travessia; CDH; and CDH ES.
13. Conectas' Justice Program was greatly influenced by projects developed by Ilanud – United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, an organization in which Oscar Vilhena Vieira and Eloísa Machado de Almeida developed projects, from the ground up, for the legal technical defense of adolescents who are in conflict with the law, from 2000 to 2003, then under the coordination of Karyna Sposato.
14. The Internal Affairs Offices are bodies of internal control of public institutions, aimed at investigating failures to act and violations of the law and internal regulations. Febem – State Foundation for the Well-Being of Minors is the public institution responsible for the execution and management of youth prisons. It is now called the CASA Foundation – Central Foundation for Adolescent Socio-educational Care.
15. Provisional Measures to the adolescents of the Tatuapé Complex, filed by the Center for Justice and International Law – Cejil; the Teotônio Vilela Commission – CTV; the Association of Mothers

and Friends of Children and Adolescents at Risk – AMAR; the Inter-American Foundation for the Defense of Human Rights – FIDDH; Conectas Human Rights; and the Travessia Project Foundation.

16. Partners in these legal actions included: the Pro Bono Institute, the Community Council on Prisons of Guarujá and the county Public Prosecutor's Office.

17. The case is still pending before the IACHR. Case 12.654 (COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS, 2008).

18. Precautionary Measures in favor of the Prisoners in the Public Prison of Guarujá/ IACHR PM 63/2007 (INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, 2007).

19. Partners in these legal actions included: Centro de Apoio aos Direitos Humanos "Valdício

Barbosa dos Santos"; Centro de Defesa dos Direitos Humanos da Serra; the State Human Rights Council of the State of Espírito Santo CEDH-ES; Global Justice; and Pastoral do Menor do Espírito Santo.

20. Artigo 1º – Conectas has participated in all of the public hearings that have so far been carried out by STF on: embryonic stem cell research (ADI 3510) (BRASIL, s.d. b); abortion due to fetal malformation (ADPF 54) (BRASIL, s.d. e); prohibition on the importation of used tires (ADPF 101) (BRASIL, s.d. f); affirmative action for blacks in universities (ADPF 186) (BRASIL, s.d. g); and the role of the Court in the realization of the right to health (BRASIL, s.d. h).

21. Partners of Artigo 1º – Conectas in this legal action included: ABGLT; CORSA; the Gay Group of Bahia; and Escritório de Direitos Humanos de Minas Gerais.

RESUMO

Este artigo pretende analisar a experiência da advocacia em direitos humanos realizada pela Conectas entre 2003 e 2011. A partir das influências do histórico da advocacia de interesse público no Brasil, da adoção da carta de direitos da Constituição Federal de 1988 e do processo de internacionalização dos direitos humanos, o artigo descreve as principais linhas de atuação, as estratégias, as dificuldades e os sucessos da Conectas na superação de violências sistemáticas e exclusões injustificadas a partir da experiência de advocacia em direitos humanos.

PALAVRAS-CHAVE

Litígio – Direitos Humanos – Violência – Constitucional

RESUMEN

Este artículo pretende analizar la experiencia de la abogacía en derechos humanos realizada por Conectas entre los años 2003 y 2011. A partir de la influencia de la evolución histórica de la abogacía de interés público en Brasil, de la adopción de la carta de derechos de la Constitución Federal de 1988 y del proceso de internacionalización de los derechos humanos, el artículo describe las principales líneas de actuación, las estrategias, dificultades y las conquistas de Conectas en la superación de las violencias sistemáticas y de las exclusiones injustificadas, a partir de la experiencia de la abogacía en derechos humanos.

PALABRAS CLAVE

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By Glenda Mezarobba

SUR 8, v. 5, n. 8, Jun. 2008

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SUR 10, v. 6, n. 10, Jun. 2009

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SUR 12, v. 7, n. 12, Jun. 2010

SALIL SHETTY
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The Effectiveness of the Inter-
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Cooperation and the Clean
Development Mechanism

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Is the Right of Apartheid Victims
to Claim Reparations from
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Adequate Rubric for Corporate
Human Rights Obligations?

SUR 13, v. 7, n. 13, Dec. 2010

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Legacy of the Dictatorship in Brazil

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Transitional Justice in Peru

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The Restriction of Military
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Systems in the Framework of the
Universal Periodic Review Mechanism

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SUR 14, v. 8, n. 14, Jun. 2011

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Convention on the Rights of Persons
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