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COMMEMORATIVE ISSUE
HUMAN RIGHTS IN MOTION



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INTRODUCTION



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

Lucia Nader (Executive Director, Conectas)
Juana Kweitel (Program Director, Conectas)
Marcos Fuchs (Associate Director, Conectas)

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

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

Nevertheless, the **political and geographic coordinates** under which the global human

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

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

The result, which you now hold in your hands, is a **roadmap for the global human rights movement** in the 21st century – it offers a vantage point from which it is possible to observe where the movement stands today and where it is heading. The first stop is a reflection on these issues by the founding directors of Conectas Human Rights, **Oscar Vilhena Vieira** and **Malak El-Chichini Poppovic**. The roadmap then goes on to include **interviews** and **articles**, both providing in-depth analyses of human rights issues, as well as **notes from the field**, more personalized accounts of experiences working with human rights, which we have organized into **six categories**, although most of them could arguably be allocated to more than one category:

Language. In this section, we have included articles that ponder the question of whether human rights – as a utopia, as norms and as institutions – are still effective for producing social change. Here, the contributions range from analyses on human rights as a language for change (**Stephen Hoggood** and **Paulo Sérgio Pinheiro**), empirical research on the use of the language of human rights for articulating grievances in recent mass protests (**Sara Burke**), to reflections on the standard-setting role and effectiveness of international human rights institutions (**Raquel Rolnik**, **Vinodh Jaichand** and **Emílio**

Álvarez Icaza). It also includes studies on the movement's global trends (**David Petrusek**), challenges to the movement's emphasis on protecting the rule of law (**Kumi Naidoo**), and strategic proposals to better ensure a compromise between utopianism and realism in relation to human rights (**Samuel Moyn**).

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

Perspectives. This section encompasses country-specific accounts, mostly field notes from human rights activists on the ground. Those contributions come from places as diverse as Angola (**Maria Lúcia da Silveira**), Brazil (**Ana Valéria Araújo**), Cuba (**María-Ileana Faguaga Iglesias**), Indonesia (**Haris Azhar**), Mozambique (**Salvador Nkamate**) and Nepal (**Mandira Sharma**). But they all share a critical perspective on human rights, including for instance a sceptical perspective on the relation between litigation and public opinion in Southern Africa (**Nicole Fritz**), a provocative view of the democratic future of China and its relation to labour rights (**Han Dongfang**), and a thoughtful analysis of the North-South duality from Northern Ireland (**Maggie Beirne**).

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

Tools. In this section, the editors included contributions that focus on the instruments used by the global human rights movement to do its work. This includes a debate on the role of technology in promoting change (**Mallika Dutt and Nadia Rasul**, as well as **Sopheap Chak and Miguel Pulido Jiménez**) and perspectives on the challenges of human rights campaigning, analysed provocatively by **Martin Kirk** and **Fernand Alphen** in their respective contributions. Other articles point to the need of organizations to be more grounded in local contexts, as noted by **Ana Paula Hernández** in relation to Mexico, by **Louis Bickford** in what he sees as a convergence towards the global middle, and finally by **Rochelle Jones, Sarah Rosenhek and Anna Turley** in their movement-support model. In addition, it is noted by **Mary Kaldor** that NGOs are not the same as civil society,

properly understood. Furthermore, litigation and international work are cast in a critical light by **Sandra Carvalho and Eduardo Baker** in relation to the dilemma between long and short term strategies in the Inter-American system. Finally, **Gastón Chillier and Pétalla Brandão Timo** analyse South-South cooperation from the viewpoint of a national human rights NGO in Argentina.

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

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

Finally, we would like to emphasize that this issue of Sur Journal was made possible by the support of the Ford Foundation, Open Society Foundations, the Oak Foundation, the Sigrid Rausing Trust, the International Development Research Centre (IDRC) and the Swedish International Development Cooperation Agency (SIDA). Additionally, Conectas Human Rights is especially grateful for the collaboration of the authors and the hard work of the Journal's editorial team. We are also extremely thankful for the work of Maria Brant and Manoela Miklos for conceiving this Issue and for conducting most of the interviews, and for Thiago Amparo for joining the editorial team and making this Issue possible. We are also tremendously thankful for Luz González's tireless work with editing the contributions received, and for Ana Cernov for coordinating the overall editorial process.



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Human Rights in Motion

Themes

JANET LOVE

Are We Depoliticising Economic Power?:
Wilful Business Irresponsibility and Bureaucratic Response by
Human Rights Defenders

PHIL BLOOMER

Are Human Rights an Effective Tool for Social Change?:
A Perspective on Human Rights and Business

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Emerging Powers: Can it be that Sexuality and Human Rights is a
Lateral Issue?

CLARA SANDOVAL

Transitional Justice and Social Change



GLORIA CAREAGA PÉREZ

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ABSTRACT

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

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KEYWORDS

LGBTI rights – Gender identity – Sexual orientation



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ARTICLE

THE PROTECTION OF LGBTI RIGHTS: AN UNCERTAIN OUTLOOK

Gloria Careaga Pérez

The struggle to gain respect for LGBTI¹ rights has a long history. Sexual orientation has been recognized in theory as a fundamental element of the private life of every individual, which should be free from arbitrary or abusive interference by public authorities (COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, *Karen Atala e Hijas vs. Chile*, 2010, párra. 111; *Marta Lucía Álvarez Giraldo vs. Colombia*, 1999). The right to an identity has been the fundamental basis for recognition of the right to a gender identity and to the free development of an individual consistent with that gender identity. Nevertheless, alternative sexual orientations and gender identities continue to be the targets of legal and/or social persecution in many countries around the world. This is due, first and foremost, to confusion between the terms and to where sexuality is situated in the discourse.

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

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

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

Notes to this text start on page 149.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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NOTES

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

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

each of these expressions of sexuality or gender: homophobia, lesbophobia, transphobia.

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

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

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