

ISSN 1806-6445

v. 11 • n. 20 • Jun./Dec. 2014

sur

20

COMMEMORATIVE ISSUE  
HUMAN RIGHTS IN MOTION



**CONECTAS**  
HUMAN RIGHTS

**EDITORIAL BOARD**

**Christof Heyns** University of Pretoria (South Africa)  
**Emilio García Méndez** University of Buenos Aires (Argentina)  
**Fifi Benaboud** North-South Centre of the Council of Europe (Portugal)  
**Fiona Macaulay** Bradford University (United Kingdom)  
**Flavia Piovesan** Pontifical Catholic University of São Paulo (Brazil)  
**J. Paul Martin** Columbia University (United States)  
**Kwame Karikari** University of Ghana (Ghana)  
**Mustapha Kamel Al-Sayyid** Cairo University (Egypt)  
**Roberto Garretón** Former-UN Officer of the High Commissioner for Human Rights (Chile)  
**Upendra Baxi** University of Warwick (United Kingdom)

**EDITORS**

Pedro Paulo Poppovic  
 Oscar Vilhena Vieira

**EXECUTIVE EDITORS**

Maria Brant – Executive editor  
 Thiago Amparo – Guest editor  
 Luz González – Assistant executive editor

**EXECUTIVE BOARD**

Albertina de Oliveira Costa  
 Ana Cernov  
 Conrado Hubner Mendes  
 Glenda Mezarobba  
 Juana Kweitel  
 Laura Waisbich  
 Lucia Nader  
 Luz González  
 Manoela Miklos  
 Maria Brant  
 Thiago Amparo

**REFERENCES**

Luz González  
 Thiago Amparo  
 Tânia Rodrigues

**LANGUAGE REVISION****SPANISH**

Carolina Fairstein  
 Celina Lagrutta  
 Erika Sanchez Saez  
 Laia Fargas Fursa

**PORTUGUESE**

Erika Sanchez Saez  
 Renato Barreto  
 Marcela Vieira

**ENGLISH**

Murphy McMahon  
 Oliver Hudson  
 The Bernard and Audre Rapoport  
 Center for Human Rights and Justice,  
 University of Texas, Austin.  
 Tina Amado

**GRAPHIC DESIGN**

Oz Design

**LAYOUT**

Alex Furini

**COVER DESIGN**

Mariana Brend

**COVER PHOTO**

Renato Stockler

**CIRCULATION**

Beatriz Kux

**PRINTING**

Yangraf Gráfica e Editora Ltda/Alphagraphics

**ADVISORY BOARD**

**Alejandro M. Garro** Columbia University (United States)  
**Bernardo Sorj** Federal University of Rio de Janeiro / Edelstein Center (Brazil)  
**Bertrand Badie** Sciences-Po (France)  
**Cosmas Gitta** UNDP (United States)  
**Daniel Mato** CONICET / National University of Tres de Febrero (Argentina)  
**Daniela Ikawa** International Network on Economic, Social and Cultural Rights / Columbia University (United States)  
**Ellen Chapnick** Columbia University (United States)  
**Ernesto Garzon Valdes** University of Mainz (Germany)  
**Fateh Azzam** Arab Human Rights fund (Lebanon)  
**Guy Haarscher** Université Libre de Bruxelles (Belgium)  
**Jeremy Sarkin** University of the Western Cape (South Africa)  
**João Batista Costa Saraiva** Regional Jurisdiction for Children and Adolescents of Santo Angelo/RS (Brazil)  
**José Reinaldo de Lima Lopes** University of São Paulo (Brazil)  
**Juan Amaya Castro** VU University Amsterdam/ University for Peace (Costa Rica)  
**Lucia Dammert** Global Consortium on Security Transformation (Chile)  
**Luigi Ferrajoli** University of Rome (Italy)  
**Luiz Eduardo Wanderley** Pontifical Catholic University of São Paulo (Brazil)  
**Malak El-Chichini Poppovic** Conectas Human Rights (Brazil)  
**Maria Filomena Gregori** University of Campinas (Brazil)  
**Maria Hermínia Tavares Almeida** University of São Paulo (Brazil)  
**Miguel Cillero** University Diego Portales (Chile)  
**Mudar Kassis** Birzeit University (Palestine)  
**Paul Chevigny** New York University (United States)  
**Philip Alston** New York University (United States)  
**Roberto Cuéllar M.** Inter-American Institute of Human Rights (Costa Rica)  
**Roger Raupp Rios** Federal University of Rio Grande do Sul (Brazil)  
**Shepard Forman** New York University (United States)  
**Victor Abramovich** University of Buenos Aires (UBA)  
**Victor Topanou** National University of Benin (Benin)  
**Vinodh Jaichand** Irish Centre for Human Rights, National University of Ireland (Ireland)

**SUR - International Journal On Human Rights** is a biannual journal published in English, Portuguese and Spanish by Conectas Human Rights. It is available on the Internet at <<http://www.surjournal.org>>

SUR is covered by the following abstracting and indexing services: IBSS (International Bibliography of the Social Sciences); ISN Zurich (International Relations and Security Network); DOAJ (Directory of Open Access Journals) and SSRN (Social Science Research Network). In addition, SUR is also available at the following commercial databases: EBSCO, HEINonline, ProQuest and Scopus. SUR has been rated A1 and B1, in Colombia and in Brazil (Qualis), respectively.

SUR. Revista Internacional de Direitos Humanos / Sur – Rede Universitária de Direitos Humanos – v.1, n.1, jan.2004 – São Paulo, 2004 - .

Semestral

ISSN 1806-6445

Edições em Inglês, Português e Espanhol.

1. Direitos Humanos 2. ONU I. Rede Universitária de Direitos Humanos

# Human Rights in Motion

## CONTENTS

LUCIA NADER, JUANA KWEITEL, & MARCOS FUCHS	<b>7</b>	Introduction
PROFILE OF PEDRO PAULO POPPOVIC	<b>11</b>	“We Did not Create Sur Journal Because We Had Certainties, But Because We Were Full of Doubts”
MALAK EL-CHICHINI POPPOVIC OSCAR VILHENA VIEIRA	<b>17</b>	Reflections On the International Human Rights Movement in the 21 <sup>st</sup> Century: Only the Answers Change
<b>LANGUAGE</b>		
SARA BURKE	<b>27</b>	What an Era of Global Protests Says about the Effectiveness of Human Rights as a Language to Achieve Social Change
VINODH JAICHAND	<b>35</b>	After Human Rights Standard Setting, What’s Next?
DAVID PETRASEK	<b>45</b>	Global Trends and the Future of Human Rights Advocacy
SAMUEL MOYN	<b>57</b>	The Future of Human Rights
STEPHEN HOPGOOD	<b>67</b>	Challenges to the Global Human Rights Regime: Are Human Rights Still an Effective Language for Social Change?
EMÍLIO ÁLVAREZ ICAZA	<b>77</b>	Human Rights as an Effective Way to Produce Social Change
INTERVIEW WITH RAQUEL ROLNIK	<b>81</b>	UN Special Procedures System is “Designed to Be Ineffective”
INTERVIEW WITH PAULO SÉRGIO PINHEIRO	<b>91</b>	“Besides Human Rights, I Don’t See a Solution for Serving the Victims”
INTERVIEW WITH KUMI NAIDOO	<b>97</b>	“The Rule of Law Has Consolidated All the Injustices That Existed Before It”
<b>THEMES</b>		
JANET LOVE	<b>105</b>	Are we Depoliticising Economic Power?: Wilful Business Irresponsibility and Bureaucratic Response by Human Rights Defenders
PHIL BLOOMER	<b>115</b>	Are Human Rights an Effective Tool for Social Change?: A Perspective on Human Rights and Business
GONZALO BERRÓN	<b>123</b>	Economic Power, Democracy and Human Rights. A New International Debate on Human Rights and Corporations
DIEGO LORENTE PÉREZ DE EULATE	<b>133</b>	Issues and Challenges Facing Networks and Organisations Working in Migration and Human Rights in Mesoamerica
GLORIA CAREAGA PÉREZ	<b>143</b>	The Protection of LGBTI Rights: An Uncertain Outlook

---

ARVIND NARRAIN **151** Brazil, India, South Africa:  
Transformative Constitutions and their Role in LGBT Struggles

---

SONIA CORRÊA **167** Emerging powers: Can it be that sexuality and human rights  
is a 'lateral issue'?

---

CLARA SANDOVAL **181** Transitional Justice and Social Change

---

## PERSPECTIVES

---

NICOLE FRITZ **193** Human Rights Litigation in Southern Africa:  
Not Easily Able to Discount Prevailing Public Opinion

---

MANDIRA SHARMA **201** Making Laws Work:  
Advocacy Forum's Experiences in Prevention of Torture in Nepal

---

MARIA LÚCIA DA SILVEIRA **213** Human Rights and Social Change in Angola

---

SALVADOR NKAMATE **219** The Struggle for the Recognition of Human Rights in Mozambique:  
Advances and Setbacks

---

HARIS AZHAR **227** The Human Rights Struggle in Indonesia:  
International Advances, Domestic Deadlocks

---

HAN DONGFANG **237** A vision of China's Democratic Future

---

ANA VALÉRIA ARAÚJO **247** Challenges to the Sustainability of the Human Rights  
Agenda in Brazil

---

MAGGIE BEIRNE **257** Are we Throwing Out the Baby with the Bathwater?: The North-South  
Dynamic from the Perspective of Human Rights Work in Northern Ireland

---

INTERVIEW WITH  
MARÍA-I. FAGUAGA IGLESIAS **265** "The Particularities in Cuba Are Not Always Identified Nor  
Understood By Human Rights Activists From Other Countries"

---

## VOICES

---

FATEH AZZAM **273** Why Should We Have to "Represent" Anyone?

---

MARIO MELO **283** Voices from the Jungle on the Witness Stand of the  
Inter-American Court of Human Rights

---

ADRIAN GURZA LAVALLE **293** NGOs, Human Rights and Representation

---

JUANA KWEITEL **305** Experimentation and Innovation in the Accountability  
of Human Rights Organizations in Latin America

---

PEDRO ABRAMOVAY  
AND HELOISA GRIGGS **323** Democratic Minorities in 21<sup>st</sup> Century Democracies

---

JAMES RON, DAVID CROW AND  
SHANNON GOLDEN **335** Human Rights Familiarity and Socio-Economic Status:  
A Four-Country Study

---

CHRIS GROVE **353** To Build a Global Movement to Make Human Rights  
and Social Justice a Reality For All

---

INTERVIEW WITH MARY LAWLOR  
AND ANDREW ANDERSON **365** "Role of International Organizations Should Be to Support  
Local Defenders"

---

## TOOLS

- |   |            |  |
|---|------------|--|
| GASTÓN CHILLIER AND<br>PÉTALLA BRANDÃO TIMO       | <b>375</b> | The Global Human Rights Movement in the 21 <sup>st</sup> Century: Reflections from the Perspective of a National Human Rights NGO from the South |
| MARTIN KIRK                                       | <b>385</b> | Systems, Brains and Quiet Places: Thoughts on the Future of Human Rights Campaigning   |
| ROCHELLE JONES, SARAH<br>ROSENHEK AND ANNA TURLEY | <b>399</b> | A 'Movement Support' Organization: The Experience of the Association For Women's Rights in Development (AWID)                                    |
| ANA PAULA HERNÁNDEZ                               | <b>411</b> | Supporting Locally-Rooted Organizations:<br>The Work of the Fund For Global Human Rights in Mexico   |
| MIGUEL PULIDO JIMÉNEZ                             | <b>419</b> | Human Rights Activism In Times of Cognitive Saturation:<br>Talking About Tools   |
| MALLIKA DUTT AND NADIA RASUL                      | <b>427</b> | Raising Digital Consciousness: An Analysis of the Opportunities and Risks Facing Human Rights Activists in a Digital Age                         |
| SOPHEAP CHAK                                      | <b>437</b> | New Information and Communication Technologies' Influence on Activism in Cambodia  |
| SANDRA CARVALHO AND<br>EDUARDO BAKER              | <b>449</b> | Strategic Litigation Experiences in the Inter-American Human Rights System   |
| INTERVIEW WITH FERNAND ALPHEN                     | <b>461</b> | "Get Off Your Pedestal"  |
| INTERVIEW WITH MARY KALDOR                        | <b>469</b> | "NGO's are not the Same as Civil Society But Some NGOs Can Play the Role of Facilitators"  |
| INTERVIEW WITH LOUIS BICKFORD                     | <b>475</b> | Convergence Towards the Global Middle:<br>"Who Sets the Global Human Rights Agenda and How"  |

## MULTIPOLARITY

- |  |            |  |
|--|------------|--|
| LUCIA NADER                                      | <b>483</b> | Solid Organisations in a Liquid World  |
| KENNETH ROTH                                     | <b>491</b> | Why We Welcome Human Rights Partnerships   |
| CÉSAR RODRÍGUEZ-GARAVITO                         | <b>499</b> | The Future of Human Rights: From Gatekeeping to Symbiosis                                      |
| DHANANJAYAN SRISKANDARAJAH<br>AND MANDEEP TIWANA | <b>511</b> | Towards a Multipolar Civil Society   |
| INTERVIEW WITH EMILIE M.<br>HAFNER-BURTON        | <b>519</b> | "Avoiding Using Power Would Be Devastating for Human Rights"                                   |
| INTERVIEW WITH MARK<br>MALLOCH-BROWN             | <b>525</b> | "We Are Very Much A Multi-Polar World Now, But Not One Comprised Solely Of Nation States"      |
| INTERVIEW WITH SALIL SHETTY                      | <b>531</b> | "Human Rights Organisations Should Have a Closer Pulse to the Ground" Or How We Missed the Bus |
| INTERVIEW WITH<br>LOUISE ARBOUR                  | <b>539</b> | "North-South solidarity is key"  |

# 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 20<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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.



sur

## Human Rights in Motion

# Perspectives

**NICOLE FRITZ**

Human Rights Litigation in Southern Africa: Not Easily Able to Discount Prevailing Public Opinion

**MANDIRA SHARMA**

Making Laws Work:

Advocacy Forum's Experiences in Prevention of Torture in Nepal

**MARIA LÚCIA DA SILVEIRA**

Human Rights and Social Change in Angola

**SALVADOR NKAMATE**

The Struggle for the Recognition of Human Rights in Mozambique: Advances and Setbacks

**HARIS AZHAR**

The Human Rights Struggle in Indonesia:  
International Advances, Domestic Deadlocks

**HAN DONGFANG**

A Vision of China's Democratic Future

**ANA VALÉRIA ARAUJO**

Challenges to the Sustainability of the Human Rights Agenda in Brazil

**MAGGIE BEIRNE**

Are We Throwing Out the Baby with the Bathwater?:

The North-South Dynamic from the Perspective of Human Rights Work in Northern Ireland

**INTERVIEW WITH MARÍA-I. FAGUAGA IGLESIAS**

"The Particularities in Cuba Are Not Always Identified nor Understood by Human Rights Activists from Other Countries"



Nicole Fritz

Nicole Fritz is the executive director of the Southern Africa Litigation Centre (SALC) based in Johannesburg, South Africa. SALC promotes and advances human rights and the rule of law in Southern Africa, primarily through strategic litigation support and capacity building.

Email: nicolef@salc.org.za

## ABSTRACT

---

When it comes to controversial judicial cases, is human rights still an effective language for producing social change? This article sheds light on this question by examining litigation strategies in the African context. The author focuses on three issues: lack of public support to the death penalty case decided by the Constitutional Court of South Africa; loss of States' support to regional courts such as the Southern African Development Community (SADC) Tribunal; and, finally, judicial self-restraint in a case involving customary law in Botswana. By exploring these issues, the author argues counter-intuitively that, as civil society organisations seek effective rights protection and promotion, occasionally such long-term objective requires short-term eschewal of a rights discourse in favour of a more populist approach. While arguing this is not always the case, the author contextualises the potential for social change of public interest litigation vis-à-vis the need to gain and maintain public and States' support to human rights.

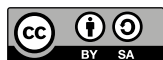
Original in English.

Received in April 2014.

## KEYWORDS

---

Public opinion – Litigation – SADC Tribunal – Botswana – Death Penalty



This paper is published under the *creative commons* license.

This paper is available in digital format at <[www.surjournal.org](http://www.surjournal.org)>.

## ESSAY

# HUMAN RIGHTS LITIGATION IN SOUTHERN AFRICA: NOT EASILY ABLE TO DISCOUNT PREVAILING PUBLIC OPINION

Nicole Fritz

I have been asked to provide some thoughts in response to the question: is human rights still an effective language for producing social change? As the director of the Southern Africa Litigation Centre (SALC), an organisation that seeks primarily to support human rights and public interest litigation in the Southern Africa region, I am principally interested in that question as it relates to litigation. And of course, when we litigate human rights and public interest-related issues we do so chiefly within parameters provided by rights provisions we find in domestic Constitutions and regional and international instruments applicable even in places as undemocratic and seemingly rights-hostile as Swaziland. So one would assume that my answer, necessarily, would be an easy “yes, human rights are still an effective language for producing social change”.

Yet I want to argue, counter-intuitively, that as we seek effective rights protection and promotion, occasionally that long-term objective requires short-term eschewal of a rights discourse in favour of a more populist approach. Put differently, social change – in the sense that human rights are advanced and achieved – sometimes requires a reference, even deference, to prevailing social and political mores.

## 1 Death penalty and public opinion

To begin with, it is worth examining the much acclaimed death penalty judgment, *S v. Makwanyane*, delivered by South Africa’s Constitutional Court in 1995. In soaring, poetic language the Court made plain that the death penalty offended a raft of rights provisions contained in the then recently enacted Interim Constitution of 1994. It was, as a matter of principle, unconcerned for the fact that public opinion strongly supported retention of the death penalty. As Judge Chaskalson explained:

*Public opinion may have some relevance to the enquiry, but in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions*

*without fear or favour. If public opinion were to be decisive there would be no need for constitutional adjudication. The protection of rights could then be left to Parliament, which has a mandate from the public, and is answerable to the public for the way its mandate is exercised, but this would be a return to parliamentary sovereignty, and a retreat from the new legal order established by the 1993 Constitution. By the same token the issue of the constitutionality of capital punishment cannot be referred to a referendum, in which a majority view would prevail over the wishes of any minority. The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process. Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and the weakest amongst us, that all of us can be secure that our own rights will be protected.*

(SOUTH AFRICA, *S v. Makwanyane and Another*, 1995, para. 88).

Yet while the articulation of the role of the courts is undeniably correct and the judicial reasoning of Chaskalson cannot be faulted, had the Court's judgment and its rejection of public sentiment on this issue triggered an enormous public backlash, the Court and its legitimacy might have been imperilled, and with it the entire constitutional enterprise.

As it was, no such dangerous outrage was directed at the Court and the Court knew that it was unlikely to provoke any legitimacy crisis because while public opinion supported (and continues to support) retention of the death penalty, the African National Congress (ANC), South Africa's majority party, does not. Of course the ANC might have instead legislated on this matter rather than allowing the controversial issue to be tested by the new court. Nevertheless, the court could issue its judgment against the death penalty, secure in the knowledge that it would not incur the enmity of the ruling party.

## 2 Regional courts and States' acceptance

Another example, in a different context and with a far less happy outcome, is that of the Southern African Development Community (SADC) Tribunal – an issue on which we at SALC have long worked. The treaty was established as part of the regional economic community and intended to resolve disputes between States as well as between States and inhabitants of the region. Unsurprisingly, in the Tribunal's short life-span the only disputes referred to it were those of individuals referred against States.

Some of the very earliest cases filed before the Tribunal concerned the contested land expropriation process in Zimbabwe. In 2007, the Tribunal ruled against Zimbabwe in the case of *Campbell (Pvt) Ltd and Others v. The Republic of Zimbabwe and Others* (SOUTHERN AFRICAN DEVELOPMENT COMMUNITY TRIBUNAL, 2008), holding that the Zimbabwean law ousting the domestic courts' jurisdiction to rule on the lawfulness of land seizures violated the rule of law in

that it denied claimants the right of access to the courts and the right to a fair hearing. The Tribunal also held that the impugned law, in targeting white farmers alone, regardless of other factors, amounted to indirect racial discrimination and was accordingly unlawful. The Tribunal emphasised that its ruling would have been different had the land expropriations been conducted in a reasonable and objective rather than arbitrary manner (NATHAN, 2011, p. 126).

Zimbabwe refused to comply with the rulings compelling the applicants to bring several applications before the Tribunal – in 2008, 2009 and 2010 – requesting that it hold Zimbabwe in breach and contempt of the 2007 order. The Tribunal ruled for the applicants in all instances, finding that Zimbabwe had failed to comply with its rulings and noting that it would report these findings to the Summit for its appropriate action.

In September 2009, Zimbabwe announced that it did not recognise the Tribunal's jurisdiction – despite having nominated a judge to be appointed to the Tribunal and having appointed a counsel to represent it before the Tribunal. It also circulated a legal opinion arguing that the Tribunal had not been legally established, that its rulings were of no binding force and effect and that member States were under no obligation to observe its jurisdiction. In addition, Zimbabwe undertook intensive lobbying of other SADC member States in an attempt to win their support for this position.

Meanwhile, the SADC Summit had received the Tribunal's report regarding Zimbabwe's non-compliance and the accompanying call that it adopt "appropriate measures" to enforce its compliance. The Summit might have adopted sanctions or suspension. But, instead of suspending Zimbabwe, the Summit preferred to suspend the Tribunal, under the guise of a review process – announcing at its August 2010 Summit meeting that the Tribunal's role, functions and terms of reference would be reviewed, and coupled this announcement with an instruction to the Tribunal not to take on any new cases. It also failed to renew the terms of Tribunal judges, so denying the Tribunal quorum. In a subsequent decision in 2012, the Summit announced that a new Tribunal protocol would be negotiated and that any new Tribunal would only be authorised to entertain disputes as between member States.

With hindsight, it seems clear that the Zimbabwean land cases should ideally never have been among the first cases heard by the Tribunal. All courts will find it difficult to withstand sustained political pressure but new courts – domestic, regional or international – are particularly fragile creatures. They hold neither a sword nor a purse and depend for their survival on something much more ephemeral: an acceptance of their legitimacy and authority. As new courts cultivate, in their early years, this culture of acceptance, they can ill-afford to take on the most politically contentious matters – unless they can be assured, as was South Africa's Constitutional Court, that the backlash provoked will be controlled.

As law scholars Garrity-Rokous and Brescia (GARRITY-ROKOUS; BRESCIA, 1993, p. 560) explain:

*While negative publicity may influence a State to comply with an adverse judgment, a human rights court or commission can exert pressure on a State only at the risk of*

*jeopardizing the State's voluntary support for the system itself. Regional systems thus are caught in a tension between maintaining political unity and protecting individual rights.*

For judges of new regional courts, it is not enough to contend themselves purely with the legal domain. They will have to “balance the protection of human rights in individual cases against the potential long-term consequences of their decision, a balancing that requires a constant assessment of the social and political milieu” (GARRITY-ROKOUS; BRESCIA, 1993, p. 562). They will also have to understand how far the rights at issue “can be realised under prevailing conditions” and how best “to encourage the governments and societies of their member States to accept rights – a necessary condition for the effective establishment of any right, regardless of its content” (GARRITY-ROKOUS; BRESCIA, 1993, p. 562).

Because of this conflict between political unity and the protection of individual rights, Garrity-Rokous and Brescia propose that regional human rights tribunals employ procedural mechanisms such as admissibility and standing to abstain from deciding politically contentious cases most likely to puncture political unity, thus preserving the opportunity for the tribunal at a later date, when it is better established or governmental and public support for the right has grown, to issue a substantive ruling on a similar matter (GARRITY-ROKOUS; BRESCIA, 1993, p. 564).

Of course, it is those most politically contentious cases for which access to justice is most difficult to obtain. And, as Garrity-Rokous and Brescia also observe, excessive concern on the part of regional tribunals for political unity may equally undercut long-term legitimacy for the system. This might occur when due process rights, including the right of access to the system's tribunals, are disregarded, leading the public to completely lose faith in the system, “thus vastly reducing the system's ability in the long-term to protect both substantive and procedural rights” (GARRITY-ROKOUS; BRESCIA, 1993, p. 565).

But again this speaks to the need on the part of regional tribunals, and those who seek to utilise them, of undertaking constant assessment of the surrounding political and social milieu. Still if the need for such assessment is most acute in respect of regional tribunals, it is nonetheless an assessment which must be undertaken also by other domestic courts.

### **3 Customary law and judicial self-restraint**

Here then is one final example and happily a more successful one. Recently, the Southern Africa Litigation Centre (SALC) supported a case in Botswana brought by three sisters challenging a customary law rule which allegedly provided only for male inheritance of the family home. At the High Court level, the judge ruled that the customary law rule denying women the right to inherit the family home infringed the right to equality, noting the supremacy of the Constitution over all other law including customary law.

The High Court of Botswana found the consequence of the customary rule was that women had limited inheritance rights in comparison to their male siblings

and that this meant that daughters could be evicted from their family home. The Court held that:

*[T]he law [at issue] is biased against women [...] This gross and unjustifiable discrimination cannot be justified on the basis of culture [...] It cannot be an acceptable justification to say it is cultural to discriminate against women [...] Such an approach would [...] amount to the most glaring betrayal of the express provisions of the Constitution and the values it represents [...] [the law at issue] has no place in a democratic society that subscribes to the supremacy of the Constitution – a Constitution that entrenches the right to equality.*

(BOTSWANA, *Mmusi & Others v. Ramantele & Another*, 2012, para. 200-202)

Notably, the Court also unequivocally rejected the view that a declaration of unconstitutionality would be against the public interest as public opinion was not in support of equal rights for women, stating that

*this court also rejects outright any suggestion [...] that this court must take into account the mood of society in determining whether there is violation of constitutional rights as this undermines the very purpose for which the courts were established.*

(BOTSWANA, *Mmusi & Others v. Ramantele & Another*, 2012, para. 197).

Using language which human rights activists would only applaud, the judge went on to pronounce that “it seems to me that the time has now arisen for the justices of this court to assume the role of midwives and assist in the birth of a new world struggling to be born, a world of equality between men and women as envisioned by the framers of the Constitution” (BOTSWANA, *Mmusi & Others v. Ramantele & Another*, 2012, para. 217).

On appeal, the Court of Appeal of Botswana, like the High Court, ruled in favour of the sisters, finding that they could not be disturbed in their possession of the family home, but they did so by a route very different from that of the High Court. In fact they chided the judge in the High Court for potentially giving the:

*wrong signal to those who are not cognizant of the primary role of a judge, namely to resolve disputes before him/her and interpret the law to be applied in the dispute before him/her. It is not for the judge to traverse issues that do not directly arise from the case being dealt with however important they may be.*

(BOTSWANA, *Ramantele v. Mmusi & Others*, 2013, para. 74).

They determined that the case might be decided without having to refer to constitutional rights: that among other things, the alleged rule – being unfair, inequitable and unconscionable – did not meet the requirements for recognition as a customary law. Unquestionably, it was a judgment less soaring in its rhetoric than that of the High Court and yet, arguably, it was stronger for it.

Its narrow, conscientious reasoning – concerned more for the particular facts



of the case than was the High Court judgment, less couched in the language of human rights – means the outcome is far less likely to be the subject of attack, is far more likely to meet with social acceptance in still fairly conservative Botswana than had the High Court had the last word.

## 4 Conclusion

In this short paper, by reference to some examples, I have sought to argue that in the sphere of public interest litigation, the language of human rights is not always the most effective tool for producing social change, or rather that the language of human rights – if inattentive to prevailing social and economic realities – may often fail to produce the social change we seek. That is not to say that we should only look to using the language of human rights when the prevailing political and economic forces are congruent – if that were the case too many people and causes would never receive legal support. But it does require that those of us who undertake public interest litigation are keenly appreciative of the relevant social, political and economic contexts in which we bring legal action, even if ultimately we choose to discount them.

## REFERENCES

---

### Bibliography and Other Sources

GARRITY-ROKOUS, Gates; BRESCIA, Raymond H. 1993. Procedural Justice and International Human Rights: Towards a Procedural Jurisprudence for Human Rights Tribunals. *Yale Journal of International Law*, v. 18. p. 559–605.

NATHAN, Laurie. 2011. Solidarity triumphs over democracy: the dissolution of the SADC Tribunal. *Development Dialogue*, v. 57. p. 124–137.

### Jurisprudence

BOTSWANA. 2012. High Court. *Mmusi & Others v. Ramantele & Another*, [2012] BWHC 1.

\_\_\_\_\_. 2013. Court of Appeal. *Ramantele v. Mmusi & Others*, [2013] BWCA 1.

SOUTH AFRICA. 1995. Constitutional Court. *State v. Makwanyane and Another*, 1995 (3) SA 391.

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY TRIBUNAL. 2008. *Mike Campbell (Pvt) Ltd and Others v. Republic of Zimbabwe*, SADC(T) No. 2/2007.

## PREVIOUS NUMBERS

Previous numbers are available at <[www.surjournal.org](http://www.surjournal.org)>.

### **SUR 1**, v. 1, n. 1, Jun. 2004

EMILIO GARCÍA MÉNDEZ  
Origin, Concept and Future of Human Rights: Reflections for a New Agenda

FLAVIA PIOVESAN  
Social, Economic and Cultural Rights and Civil and Political Rights

OSCAR VILHENA VIEIRA AND A. SCOTT DUPREE  
Reflections on Civil Society and Human Rights

JEREMY SARKIN  
The Coming of Age of Claims for Reparations for Human Rights Abuses Committed in the South

VINODH JAICHAND  
Public Interest Litigation Strategies for Advancing Human Rights in Domestic Systems of Law

PAUL CHEVIGNY  
Repression in the United States after the September 11 Attack

SERGIO VIEIRA DE MELLO  
Only Member States Can Make the UN Work Five Questions for the Human Rights Field

### **SUR 2**, v. 2, n. 2, Jun. 2005

SALIL SHETTY  
Millennium Declaration and Development Goals: Opportunities for Human Rights

FATEH AZZAM  
Reflections on Human Rights Approaches to Implementing the Millennium Development Goals

RICHARD PIERRE CLAUDE  
The Right to Education and Human Rights Education

JOSÉ REINALDO DE LIMA LOPES  
The Right to Recognition for Gays and Lesbians

E.S. NWAUCHE AND J.C. NWOBIKE  
Implementing the Right to Development

STEVEN FREELAND  
Human Rights, the Environment and Conflict: Addressing Crimes against the Environment

FIONA MACAULAY  
Civil Society-State Partnerships for the Promotion of Citizen Security in Brazil

EDWIN REKOSH  
Who Defines the Public Interest?

VÍCTOR E. ABRAMOVICH  
Courses of Action in Economic, Social and Cultural Rights: Instruments and Allies

### **SUR 3**, v. 2, n. 3, Dec. 2005

CAROLINE DOMMEN  
Trade and Human Rights: Towards Coherence

CARLOS M. CORREA  
TRIPS Agreement and Access to Drugs in Developing Countries

BERNARDO SORJ  
Security, Human Security and Latin America

ALBERTO BOVINO  
Evidential Issues before the Inter-American Court of Human Rights

NICO HORN  
Eddie Mabo and Namibia: Land Reform and Pre-Colonial Land Rights

NLERUM S. OKOGBULE  
Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects

MARÍA JOSÉ GUEMBE  
Reopening of Trials for Crimes Committed by the Argentine Military Dictatorship

JOSÉ RICARDO CUNHA  
Human Rights and Justiciability: A Survey Conducted in Rio de Janeiro

LOUISE ARBOUR  
Plan of Action Submitted by the United Nations High Commissioner for Human Rights

### **SUR 4**, v. 3, n. 4, Jun. 2006

FERNANDE RAINE  
The measurement challenge in human rights

MARIO MELO  
Recent advances in the justiciability of indigenous rights in the Inter American System of Human Rights

ISABELA FIGUEROA  
Indigenous peoples versus oil companies: Constitutional control within resistance

ROBERT ARCHER  
The strengths of different traditions: What can be gained and what might be lost by combining rights and development?

J. PAUL MARTIN  
Development and rights revisited: Lessons from Africa

MICHELLE RATTON SANCHEZ  
Brief observations on the mechanisms for NGO participation in the WTO

JUSTICE C. NWOBIKE  
Pharmaceutical corporations and access to drugs in developing countries: The way forward

CLÓVIS ROBERTO ZIMMERMANN  
Social programs from a human rights perspective: The case of the Lula administration's family grant in Brazil

CHRISTOF HEYNS, DAVID PADILLA AND LEO ZWAAK  
A schematic comparison of regional human rights systems: An update

BOOK REVIEW

### **SUR 5**, v. 3, n. 5, Dec. 2006

CARLOS VILLAN DURAN  
Lights and shadows of the new United Nations Human Rights Council

PAULINA VEGA GONZÁLEZ  
The role of victims in International Criminal Court proceedings: their rights and the first rulings of the Court

OSWALDO RUIZ CHIRIBOGA  
The right to cultural identity of indigenous peoples and national minorities: a look from the Inter-American System

LYDIAH KEMUNTO BOSIRE  
Overpromised, underdelivered: transitional justice in Sub-Saharan Africa

DEVIKA PRASAD  
Strengthening democratic policing and accountability in the Commonwealth Pacific

IGNACIO CANO  
Public security policies in Brazil: attempts to modernize and democratize versus the war on crime

TOM FARER  
Toward an effective international legal order: from co-existence to concert?

BOOK REVIEW

### **SUR 6**, v. 4, n. 6, Jun. 2007

UPENDRA BAXI  
The Rule of Law in India

OSCAR VILHENA VIEIRA  
Inequality and the subversion of the Rule of Law

RODRIGO UPRIMNY YEPES  
Judicialization of politics in Colombia: cases, merits and risks

LAURA C. PAUTASSI  
Is there equality in inequality? Scope and limits of affirmative actions

GERT JONKER AND RIKA SWANZEN  
Intermediary services for child witnesses testifying in South African criminal courts

## PREVIOUS NUMBERS

Previous numbers are available at <[www.surjournal.org](http://www.surjournal.org)>.

SERGIO BRANCO

Brazilian copyright law and how it restricts the efficiency of the human right to education

THOMAS W. POGGE

Eradicating systemic poverty: brief for a Global Resources Dividend

### SUR 7, v. 4, n. 7, Dec. 2007

LUCIA NADER

The role of NGOs in the UN Human Rights Council

CECÍLIA MACDOWELL SANTOS

Transnational legal activism and the State: reflections on cases against Brazil in the Inter-American Commission on Human Rights

#### **TRANSITIONAL JUSTICE**

TARA URS

Imagining locally-motivated accountability for mass atrocities: voices from Cambodia

CECILY ROSE AND

FRANCIS M. SSEKANDI

The pursuit of transitional justice and African traditional values: a clash of civilizations – The case of Uganda

RAMONA VIJEYARASA

Facing Australia's history: truth and reconciliation for the stolen generations

ELIZABETH SALMÓN G.

The long road in the fight against poverty and its promising encounter with human rights

INTERVIEW WITH JUAN MÉNDEZ

By Glenda Mezarobba

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

MARTÍN ABREGÚ

Human rights for all: from the struggle against authoritarianism to the construction of an all-inclusive democracy - A view from the Southern Cone and Andean region

AMITA DHANDA

Constructing a new human rights lexicon: Convention on the Rights of Persons with Disabilities

LAURA DAVIS MATTAR

Legal recognition of sexual rights – a comparative analysis with reproductive rights

JAMES L. CAVALLARO AND STEPHANIE ERIN BREWER

The virtue of following: the role of Inter-American litigation in campaigns for social justice

#### **RIGHT TO HEALTH AND ACCESS TO MEDICAMENTS**

PAUL HUNT AND RAJAT KHOSLA

The human right to medicines

THOMAS POGGE

Medicines for the world: boosting innovation without obstructing free access

JORGE CONTESSE AND DOMINGO LOVERA PARMO

Access to medical treatment for people living with HIV/AIDS: success without victory in Chile

GABRIELA COSTA CHAVES, MARCELA FOGAÇA VIEIRA AND RENATA REIS

Access to medicines and intellectual property in Brazil: reflections and strategies of civil society

### SUR 9, v. 5, n. 9, Dec. 2008

BARBORA BUKOVSKÁ

Perpetrating good: unintended consequences of international human rights advocacy

JEREMY SARKIN

Prisons in Africa: an evaluation from a human rights perspective

REBECCA SAUNDERS

Lost in translation: expressions of human suffering, the language of human rights, and the South African Truth and Reconciliation Commission

#### **SIXTY YEARS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS**

PAULO SÉRGIO PINHEIRO

Sixty years after the Universal Declaration: navigating the contradictions

FERNANDA DOZ COSTA

Poverty and human rights from rhetoric to legal obligations: a critical account of conceptual frameworks

EITAN FELNER

A new frontier in economic and social rights advocacy? Turning quantitative data into a tool for human rights accountability

KATHERINE SHORT

From Commission to Council: has the United Nations succeeded in creating a credible human rights body?

ANTHONY ROMERO

Interview with Anthony Romero, Executive Director of the American Civil Liberties Union (ACLU)

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

ANUJ BHUWANIA

"Very wicked children": "Indian torture" and the Madras Torture Commission Report of 1855

DANIELA DE VITO, AISHA GILL AND DAMIEN SH-ORT

Rape characterised as genocide

CHRISTIAN COURTIS

Notes on the implementation by Latin American courts of the ILO Convention 169 on indigenous peoples

BENYAM D. MEZMUR

Intercountry adoption as a measure of last resort in Africa: Advancing the rights of a child rather than a right to a child

#### **HUMAN RIGHTS OF PEOPLE ON THE MOVE: MIGRANTS AND REFUGEES**

KATHARINE DERDERIAN AND LIESBETH SCHOCKAERT

Responding to "mixed" migration flows: A humanitarian perspective

JUAN CARLOS MURILLO

The legitimate security interests of the State and international refugee protection

MANUELA TRINDADE VIANA

International cooperation and internal displacement in Colombia: Facing the challenges of the largest humanitarian crisis in South America

JOSEPH AMON AND KATHERINE TODRYS

Access to antiretroviral treatment for migrant populations in the Global South

PABLO CERIANI CERNADAS

European migration control in the African territory: The omission of the extraterritorial character of human rights obligations

### SUR 11, v. 6, n. 11, Dec. 2009

VÍCTOR ABRAMOVICH

From Massive Violations to Structural Patterns: New Approaches and Classic Tensions in the Inter-American Human Rights System

VIVIANA BOHÓRQUEZ MONSALVE AND JAVIER AGUIRRE ROMÁN

Tensions of Human Dignity: Conceptualization and Application to International Human Rights Law

DEBORA DINIZ, LÍVIA BARBOSA AND WEDERSON RUFINO DOS SANTOS

Disability, Human Rights and Justice

JULIETA LEMAITRE RIPOLL

Love in the Time of Cholera: LGBT Rights in Colombia

#### **ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

MALCOLM LANGFORD

Domestic Adjudication and Economic, Social and Cultural Rights: A Socio-Legal Review

## PREVIOUS NUMBERS

Previous numbers are available at <[www.surjournal.org](http://www.surjournal.org)>.

ANN BLYBERG

The Case of the Misplaced Allocation: Economic and Social Rights and Budget Work

ALDO CALIARI

Trade, Investment, Finance and Human Rights: Assessment and Strategy Paper

PATRICIA FEENEY

Business and Human Rights: The Struggle for Accountability in the UN and the Future Direction of the Advocacy Agenda

### INTERNATIONAL HUMAN RIGHTS COLLOQUIUM

Interview with Rindai Chipfunde-Vava, Director of the Zimbabwe Election Support Network (ZESN) Report on the IX International Human Rights Colloquium

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

SALIL SHETTY

Foreword

FERNANDO BASCH ET AL.

The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance With its Decisions

RICHARD BOURNE

The Commonwealth of Nations: Intergovernmental and Nongovernmental Strategies for the Protection of Human Rights in a Post-colonial Association

### MILLENNIUM DEVELOPMENT GOALS

AMNESTY INTERNATIONAL

Combating Exclusion: Why Human Rights Are Essential for the MDGs

VICTORIA TAULI-CORPUZ

Reflections on the Role of the United Nations Permanent Forum on Indigenous Issues in relation to the Millennium Development Goals

ALICIA ELY YAMIN

Toward Transformative Accountability: Applying a Rights-based Approach to Fulfill Maternal Health Obligations

SARAH ZAIDI

Millennium Development Goal 6 and the Right to Health: Conflictual or Complementary?

MARCOS A. ORELLANA

Climate Change and the Millennium Development Goals: The Right to Development, International Cooperation and the Clean Development Mechanism

### CORPORATE ACCOUNTABILITY

LINDIWE KNUTSON

Aliens, Apartheid and US Courts: Is the Right of Apartheid Victims to Claim Reparations from Multinational Corporations at last Recognized?

DAVID BILCHITZ

The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?

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

GLENDIA MEZAROBBA

Between Reparations, Half Truths and Impunity: The Difficult Break with the Legacy of the Dictatorship in Brazil

GERARDO ARCE ARCE

Armed Forces, Truth Commission and Transitional Justice in Peru

### REGIONAL HUMAN RIGHTS MECHANISMS

FELIPE GONZÁLEZ

Urgent Measures in the Inter-American Human Rights System

JUAN CARLOS GUTIÉRREZ AND SILVANO CANTÚ

The Restriction of Military Jurisdiction in International Human Rights Protection Systems

DEBRA LONG AND LUKAS MUNTINGH

The Special Rapporteur on Prisons and Conditions of Detention in Africa and the Committee for the Prevention of Torture in Africa: The Potential for Synergy or Inertia?

LUCYLINE NKATHA MURUNGI AND JACQUI GALLINETTI

The Role of Sub-Regional Courts in the African Human Rights System

MAGNUS KILLANDER

Interpreting Regional Human Rights Treaties

ANTONIO M. CISNEROS DE ALENCAR

Cooperation Between the Universal and Inter-American Human Rights Systems in the Framework of the Universal Periodic Review Mechanism

### IN MEMORIAM

Kevin Boyle – Strong Link in the Chain  
By Borislav Petranov

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

MAURICIO ALBARRACÍN CABALLERO

Social Movements and the Constitutional Court: Legal Recognition of the Rights of Same-Sex Couples in Colombia

DANIEL VÁZQUEZ AND DOMITILLE DELAPLACE

Public Policies from a Human Rights Perspective: A Developing Field

J. PAUL MARTIN

Human Rights Education in Communities Recovering from Major Social Crisis: Lessons for Haiti

### THE RIGHTS OF PERSONS WITH DISABILITIES

LUIS FERNANDO ASTORGA GATJENS

Analysis of Article 33 of the UN Convention: The Critical Importance of National Implementation and Monitoring

LETÍCIA DE CAMPOS VELHO MARTEL

Reasonable Accommodation: The New Concept from an Inclusive Constitutional Perspective

MARTA SCHAAF

Negotiating Sexuality in the Convention on the Rights of Persons with Disabilities

TOBIAS PIETER VAN REENEN AND HELÉNE COMBRINCK

The UN Convention on the Rights of Persons with Disabilities in Africa: Progress after 5 Years

STELLA C. REICHER

Human Diversity and Asymmetries: A Reinterpretation of the Social Contract under the Capabilities Approach

PETER LUCAS

The Open Door: Five Foundational Films That Seeded the Representation of Human Rights for Persons with Disabilities

LUIS GALLEGOS CHIRIBOGA

Interview with Luis Gallegos Chiriboga, President (2002-2005) of the Ad Hoc Committee that Drew Up the Convention on the Rights of Persons with Disabilities

### SUR 15, v. 8, n. 15, Dec. 2011

ZIBA MIR-HOSSEINI

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

LEANDRO MARTINS ZANITELLI

Corporations and Human Rights: The Debate Between Voluntarists and Obligationists and the Undermining Effect of Sanctions

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

**SUR 16, v. 9, n. 16, Jun. 2012**

PATRICIO GALELLA AND CARLOS ESPÓSITO

*Extraordinary Renditions* in the Fight Against Terrorism. Forced Disappearances?

BRIDGET CONLEY-ZILKIC

A Challenge to Those Working in the Field of Genocide Prevention and Response

MARTA RODRIGUEZ DE ASSIS MACHADO, JOSÉ RODRIGO RODRIGUEZ, FLAVIO MARQUES PROL, GABRIELA JUSTINO DA SILVA, MARINA ZANATA GANZAROLLI AND RENATA DO VALE ELIAS

Law Enforcement at Issue: Constitutionality of Maria da Penha Law in Brazilian Courts

SIMON M. WELDEHAIMANOT

The ACHPR in the Case of *Southern Cameroons*

ANDRÉ LUIZ SICILIANO

The Role of the Universalization of Human Rights and Migration in the Formation of a New Global Governance

**CITIZEN SECURITY AND HUMAN RIGHTS**

GINO COSTA

Citizen Security and Transnational Organized Crime in the Americas: Current Situation and Challenges in the Inter-American Arena

MANUEL TUFRÓ

Civic Participation, Democratic Security and Conflict Between Political Cultures. First Notes on an Experiment in the City of Buenos Aires

CELS

The Current Agenda of Security and Human Rights in Argentina. An Analysis by the Center for Legal and Social Studies (CELS)

PEDRO ABRAMOVAY

Drug policy and *The March of Folly*

Views on the Special Police Units for Neighborhood Pacification (UPPs) in Rio de Janeiro, Brazil

Rafael Dias — Global Justice Researcher

José Marcelo Zacchi — Research Associate, Institute for Studies on Labor and Society — IETS

**SUR 17, v. 9, n. 17, Dec. 2012**

**DEVELOPMENT AND HUMAN RIGHTS**

CÉSAR RODRÍGUEZ GARAVITO, JUANA KWEITEL AND LAURA TRAJBER WAISBICH

Development and Human Rights: Some Ideas on How to Restart the Debate

IRENE BIGLINO, CHRISTOPHE GOLAY AND IVONA TRUSCAN

The Contribution of the UN Special Procedures to the Human Rights and Development Dialogue

LUIS CARLOS BUOB CONCHA

The Right to Water: Understanding its Economic, Social and Cultural Components as Development Factors for Indigenous Communities

ANDREA SCETTINI

Toward a New Paradigm of Human Rights Protection for Indigenous Peoples: A Critical Analysis of the Parameters Established by the Inter-American Court of Human Rights

SERGES ALAIN DJOYOU KAMGA AND SIYAMBONGA HELEBA

Can Economic Growth Translate into Access to Rights? Challenges Faced by Institutions in South Africa in Ensuring that Growth Leads to Better Living Standards

INTERVIEW WITH SHELDON LEADER

Transnational Corporations and Human Rights

ALINE ALBUQUERQUE AND DABNEY EVANS

Right to Health in Brazil: A Study of the Treaty-Reporting System

LINDA DARKWA AND PHILIP ATTUQUAYEFIO

Killing to Protect? Land Guards, State Subordination and Human Rights in Ghana

CRISTINA RĂDOI

The Ineffective Response of International Organisations Concerning the Militarization of Women's Lives

CARLA DANTAS

Right of Petition by Individuals within the Global Human Rights Protection System

**SUR 18, v. 10, n. 18, Jun. 2013**

**INFORMATION AND HUMAN RIGHTS**

SÉRGIO AMADEU DA SILVEIRA

Aaron Swartz and the Battles for Freedom of Knowledge

ALBERTO J. CERDA SILVA

Internet Freedom is not Enough: Towards an Internet Based on Human Rights

FERNANDA RIBEIRO ROSA

Digital Inclusion as Public Policy: Disputes in the Human Rights Field

LAURA PAUTASSI

Monitoring Access to Information from the Perspective of Human Rights Indicators

JO-MARIE BURT AND CASEY CAGLEY

Access to Information, Access to Justice: The Challenges to Accountability in Peru

MARISA VIEGAS E SILVA

The United Nations Human Rights Council: Six Years On

JÉRÉMIE GILBERT

Land Rights as Human Rights: The Case for a Specific Right to Land

PÉTALLA BRANDÃO TIMO

Development at the Cost of Violations: The Impact of Mega-Projects on Human Rights in Brazil

DANIEL W. LIANG WANG AND OCTAVIO LUIZ MOTTA FERRAZ

Reaching Out to the Needy? Access to Justice and Public Attorneys' Role in Right to Health Litigation in the City of São Paulo

OBONYE JONAS

Human Rights, Extradition and the Death Penalty: Reflections on The Stand-Off Between Botswana and South Africa

ANTONIO MOREIRA MAUÉS

Supra-Legality of International Human Rights Treaties and Constitutional Interpretation

## PREVIOUS NUMBERS

---

Previous numbers are available at <[www.surjournal.org](http://www.surjournal.org)>.

### **SUR 19**, v. 10, n. 19, Dec. 2013

---

#### **FOREIGN POLICY AND HUMAN RIGHTS**

---

DAVID PETRASEK

New Powers, New Approaches?  
Human Rights Diplomacy in the 21st  
Century

ADRIANA ERTHAL ABDENUR AND  
DANILO MARCONDES DE SOUZA  
NETO

Brazil's Development Cooperation  
with Africa: What Role for Democracy  
and Human Rights

CARLOS CERDA DUEÑAS

Incorporating International Human  
Rights Standards in the Wake of  
the 2011 Reform of the Mexican  
Constitution: Progress and Limitations

ELISA MARA COIMBRA

Inter-American System of Human  
Rights: Challenges to Compliance with  
the Court's Decisions in Brazil

CONOR FOLEY

The Evolving Legitimacy of  
Humanitarian Interventions

DEISY VENTURA

Public Health and Brazilian Foreign  
Policy

CAMILA LISSA ASANO

Foreign Policy and Human Rights in  
Emerging Countries: Insights Based on  
the Work of an Organization from the  
Global South

INTERVIEW WITH MAJA

DARUWALA (CHRI) AND SUSAN  
WILDING (CIVICUS)

Emerging Democracies' Foreign Policy:  
What Place for Human Rights? A Look  
at India and South Africa

---

DAVID KINLEY

Finding Freedom in China: Human  
Rights in the Political Economy

LAURA BETANCUR RESTREPO

The Promotion and Protection  
of Human Rights through Legal  
Clinics and their Relationships with  
Social Movements: Achievements  
and Challenges in the Case of  
Conscientious Objection to Compulsory  
Military Service in Colombia

ALEXANDRA LOPES DA COSTA

Modern-Day Inquisition: A Report  
on Criminal Persecution, Exposure  
of Intimacy and Violation of Rights  
in Brazil

ANA CRISTINA GONZÁLEZ VÉLEZ  
AND VIVIANA BOHÓRQUEZ  
MONSALVE

Case Study on Colombia: Judicial  
Standards on Abortion to Advance  
the Agenda of the Cairo Programme  
of Action