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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 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.



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## **Human Rights in Motion**

# **Voices**

**FATEH AZZAM**

Why Should We Have to "Represent" Anyone?

**MARIO MELO**

Voices from the Jungle on the Witness Stand of the Inter-American Court of Human Rights

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NGOs, Human Rights and Representation

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Experimentation and Innovation in the Accountability of Human Rights Organizations in Latin America

**PEDRO ABRAMOVAY AND HELOISA GRIGGS**

Democratic Minorities in 21<sup>st</sup> Century Democracies

**JAMES RON, DAVID CROW AND SHANNON GOLDEN**

Human Rights Familiarity and Socio-Economic Status:  
A Four-Country Study

**CHRIS GROVE**

To Build a Global Movement to Make Human Rights and Social Justice a Reality for All

**INTERVIEW WITH MARY LAWLOR AND ANDREW ANDERSON**

"Role of International Organizations Should Be to Support Local Defenders"



PEDRO ABRAMOVAY

Pedro Abramovay is director of the Latin America Program and regional director of Latin America & the Caribbean at the Open Society Foundations. Previously, Abramovay held a series of key posts within Brazil's Ministry of Justice, including Secretary of Justice from 2010 to 2011. Under President Luiz Inácio Lula da Silva, Abramovay helped draft significant pieces of legislation and led a campaign that resulted in the removal of an estimated half-million guns from circulation. He worked on reform of Brazil's penitentiary system and created a blog-led drafting process for legislation on internet freedom. Abramovay was also a campaign director for Avaaz and a professor at Fundação Getulio Vargas School of Law in

Rio de Janeiro. Abramovay studied law at the University of São Paulo Law School and received an MA in constitutional law from the University of Brasília.



HELOISA GRIGGS

Heloisa Helena Griggs is a senior program officer for the Open Society Foundations' Latin America Program, where she manages the program's human rights and citizen security grant-making and advocacy in Latin America. Prior to joining the Open Society Foundations, Griggs worked as an associate in the São Paulo, Brazil, office of Simpson Thacher & Bartlett LLP. From 2007 to 2010, she served as counsel to Senator Richard J. Durbin on the U.S. Senate Judiciary Committee, advising Senator Durbin on human rights, criminal justice, and immigration. Previously, Griggs worked for human rights nongovernmental organizations in Washington, D.C., Timor-Leste, and Angola. Griggs received her JD from Yale Law School. She

graduated from Yale University with a BA in history and international studies.

## ABSTRACT

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Across the globe, there is growing debate about and enthusiasm for re-thinking citizen relations with the legislative and executive branches as a result of the gap between 19th century democratic institutions and 21<sup>st</sup> century societies. There is significant potential to transform and expand democratic participation through new tools and approaches. However, this is not without risk, as democratic majorities can abuse their power and oppress democratic minorities. The debate about the need to re-envision the judiciary and other mechanisms for safeguarding the rights of democratic minorities is much less advanced. A number of human rights organizations and individuals are actively thinking about what the new checks and controls to advance the rights of democratic minorities in 21<sup>st</sup> century societies should look like. But, there is still substantial resistance in the human rights field to revisiting existing structures and approaches for protecting human rights. While there is an understandable apprehension that changing the way we think, talk about and advocate for human rights might weaken existing frameworks, such changes and experimentation will be essential for advancing the rights of democratic minorities in 21<sup>st</sup> century democracies.

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## KEYWORDS

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Democracy – 21<sup>st</sup> Century – Check and Controls – Civil Society - Minorities



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ARTICLE

## DEMOCRATIC MINORITIES IN 21<sup>st</sup> CENTURY DEMOCRACIES

Pedro Abramovay and Heloisa Griggs

When hundreds of thousands of people took to the streets last year in Brazil, one of the most common refrains was “we want to be heard.” Beyond Brazil, recent protests across the globe have called for government responsiveness and a departure from “politics as usual,” revealing across-the-board frustration and impatience with the opacity and impermeability of the political system itself (KRASSTEV, 2014, p. 21). Use of social media was essential in the planning and wildfire expansion of these protests, allowing individuals to join other individuals to press for change directly. Beyond these enlarged protests that now can be organized simultaneously across many cities, there are a broad range of tools, as analyzed below, that allow individuals to monitor, question, and engage with governments in ways that were inconceivable not long ago.

### 1 19th century democratic institutions and 21<sup>st</sup> century societies

The major innovation of modern democracies was not establishing institutions to represent majorities, which ancient democracy had experimented with long before, but rather designing institutions that allowed for the incorporation of minorities into public debate. The founders of the United States were concerned that a majority might abuse its powers to oppress a minority, even though majority rule was necessary to represent popular will. Alexis de Tocqueville was struck by the ability of U.S. democracy to check the tyranny of the majority. Modern democracies recognized fundamental human rights, as with the U.S. Bill of Rights, and established independent judiciaries to act as a check on the executive and legislative branches.

Of course, in actuality these 19th century institutions were designed in ways that protected the power of male property owners of European descent. But the design of these institutions created a framework and discourse around the protection of minorities that facilitated the significant advances in rights during the 20th century. Accordingly, a core aspect of modern democracies is their ability to combine universal suffrage with checks and controls to protect human rights.

Both the mechanisms for representing the majority and for integrating the perspectives of democratic minorities were designed for societies that looked

completely different from those we live in today. When these modern democratic institutions were designed, societies were shaped by the Industrial Revolution, with hierarchical structures and comparatively static systems for representing both majority and minority groups.

Our 21st century societies have changed dramatically, with tremendous capacity for the exchange of information and communication among citizens. Individuals have a larger number of identities and membership in diverse groups. Rapid technological change has contributed to the decline of traditional power structures. Power structures conceived in the 19th century are becoming weaker and more constrained in a broad range of areas including politics, business, war, religion, culture, philanthropy and the power of individuals (NAİM, 2013).

The executive and legislative branches of our democracies were designed at a time when it seemed feasible to think that the main interaction of individuals with governments would be deciding whether to elect or reelect officials every few years. But with the rapid pace at which we now generate, receive, and engage with information, individuals can and want to do much more than check in on the progress of government every few years. This significant disconnect between 19th century democratic institutions and 21st century societies is something to which governments across the globe have yet not adapted.

As a result of this increasingly glaring gap between 19th century democratic institutions and 21st century societies, there is a consensus developing in many parts of the globe about the need to re-think citizen relations with the legislative and executive branches. There is significant potential to transform and expand democratic participation through new tools and approaches. But there is still no clarity on what these changes (or even an institutional reform agenda to bring about such changes) might look like.

Conditions for piloting new models of democratic participation that could catalyze global debate on the nature of democratic institutions and state-society relations vary substantially, and Latin America is particularly well-positioned. The region's new, but relatively stable, democracies have experienced historic reductions in poverty over the last decade, and citizens' expectations have been raised in much of the region and other emerging economies across the globe (FUKUYAMA, 2013). Over half of Latin America's population is under 30 years old, and these young adults are the first generation to grow up under democratic governments. While democracy has taken root and advanced further than in many parts of the Global South, democratic culture and institutions are relatively young and still malleable compared to more static democracies in the United States and much of Europe. With the region's economic growth and accompanying increase in global influence, Latin America is now in a position to determine its own future, rather than being shaped primarily by external actors and events.

The sizeable protests in Brazil and elsewhere mean key actors in governments may be more open to reconsider the design of institutional processes. The challenge now is to transform the recent burst of citizen engagement into citizen involvement in shaping new policies, processes and institutions. With increased focus on changes in behavior, political culture, and institutional processes, information

and communication technologies can offer new channels for citizen engagement with government and strengthen government responsiveness. This is an opportune moment for experimenting with reforms to make democracies more effective and open to citizen engagement.

## 2 Democratic minorities in 21<sup>st</sup> century democracies

Expanding democratic participation in Latin America or elsewhere in the globe is not without risk, as democratic majorities can abuse their power and oppress democratic minorities. Democratic minorities can include racial, ethnic, national, gender, sexuality, religious or other minority groups with little power or representation relative to other groups in a society. Democratic minorities are not a fixed category, and can be comprised of different groups of people depending on the issue at hand and change over time, as has been the case with drug policy reform efforts. In some instances, such as women's rights, groups may even constitute majorities in terms of absolute numbers in a society, but still be democratic minorities as a result of their lack of influence relative to other groups in a democracy.

There is substantial public debate and enthusiasm for re-thinking citizen relations with the legislative and executive branches as a result of the gap between 21st century society and 19th century democratic institutions (ITO, 2003). By contrast, the discussion about the need to re-envision the judiciary and other counter-majoritarian mechanisms for safeguarding the rights of democratic minorities is much less advanced. Several human rights organizations and individuals are starting to think about what the new types of checks and controls to advance the rights of democratic minorities 21st century societies should look like. But, despite the often poor record of institutions responsible for safeguarding the rights of democratic minorities, much of the human rights field is not eager to revisit existing human rights norms and mechanisms.

As a result of significant efforts to weaken or roll back human rights advances in many parts of the globe today, many in the human rights field worry that substantial changes in the approaches, language, and structures will weaken or undermine existing human rights frameworks. For example, in the Inter-American Commission on Human Rights reform process from 2011 to 2013, members of the Organization of American States raised a number of longstanding challenges and relevant questions for discussion. However, proposals during the reform process by some member states were perceived as efforts to weaken and limit the autonomy of the Inter-American Commission, putting many advocates for the Inter-American Commission on the defensive and limiting the possibility for frank and constructive discussion of these challenges.

Yet, precisely because of the significant changes underway in today's democracies and in the global balance of power, we need to experiment with new strategies and mechanisms to advance the rights of democratic minorities. As a field, we are often focused on righting past wrongs, and sometimes more likely to be looking backwards than forward. Our answer to the question SUR 20 poses about whether human rights are still an effective language for producing social change is a resounding yes, so long

as we are willing to entertain significant changes to existing human rights structures and approaches. This conversation about and experimentation with new approaches and institutions for advancing the rights of democratic minorities may appear at odds with much of what we think of as core human rights norms and processes at times, but will be essential to the continued relevance and influence of the field.

### 3 Experimenting with new approaches for advancing the rights of democratic minorities

Updating the checks and controls of 19th century democratic institutions to make them relevant for 21st century societies can involve minor adjustments or more substantial re-envisioning of role and work of these bodies. Concretely, what types of experimentation with new mechanisms and strategies to advance the rights of democratic minorities are we referring to?

#### 3.1 *National judiciaries*

In the national context, judiciaries are the central counter-majoritarian institutions responsible for protecting the rights of democratic minorities. Based on the premise that preserving judiciaries' independence and ability to act as checks on the executive and legislative branches requires them to be isolated from public opinion and influence, judiciaries often have remained more secretive and less transparent than other branches of government. For example, a recent assessment of the implementation of the access to information law by all three government branches in Brazil found that the judiciary lagged the most in implementation (MONITORAMENTO..., 2014, p. 56). Rather than enabling the judiciary to advance the rights of democratic minorities, efforts to insulate it from public opinion and public scrutiny tend to make the judiciary less accountable, responsive and accessible.

At the same time, despite the constitutional design aim that judiciaries primarily act as a check on popular will, it appears judiciaries are often strongly influenced by public opinion. In the United States, for at least seventy years, public opinion has influenced the Supreme Court and the two have come into alignment over time, even when the Supreme Court gets ahead of the public on some issues or lags on others (FRIEDMAN, 2009, p. 14-15). The public and elected representatives have exerted pressure on the Supreme Court at various points in time, and Supreme Court Justices have acknowledged the Supreme Court's dependence on public opinion (FRIEDMAN, 2009, p. 370-371).

Debate about Supreme Courts' interaction with and frequent affirmation of public opinion is underway in many places around the globe. For example, a similar debate about the relationship between the Supreme Court and public opinion is underway in Brazil, with arguments in support of public opinion informing the deliberations of the Supreme Court, highlighting the importance of this relationship for the legitimacy of a Supreme Court in a democracy (FALCÃO, 2012).

21st century information and communication tools have rapidly accelerated the ways in which public opinion can influence the judiciary. Rather than

continuing to pretend we can and should isolate judiciary from public opinion, we should acknowledge this relationship and explore what it means for how we seek to advance the rights of democratic minorities. Experimenting with ways to change the interaction of the public with the judiciary may be easier in democracies in the Global South, where judiciaries are still newer and perhaps somewhat less averse to change.

For example, there has been a debate underway in several countries about whether Supreme Court proceedings should be televised. In the United States, there has been significant public debate about the televising Supreme Court proceedings, with arguments supporting the benefits in terms of increased transparency and public interaction with the Supreme Court, and legislative proposals to encourage or require televising Supreme Court proceedings (YOUR REALITY..., 2010; CHEMERINSKY, 2014). However, the argument that televising the Supreme Court would be a threat to judicial independence appears to have prospered so far, despite significant public support for televising Supreme Court proceedings (MAURO, 2010).

By contrast, in Brazil, the judiciary created “Justice TV” in 2002. After initial controversy about whether to televise court proceedings live, with concerns that transmitting proceedings live would influence legal decisions, all Supreme Court hearings started being transmitted live. “Justice TV” set out to increase communication and understanding with the general public, and there has been an important increase in public interest and debate about Supreme Court decisions in recent years. There is significant debate and experimentation about televising court proceedings underway across the globe and it is certainly not the case that such innovation will only take place in the Global South, but this is an interesting example of how it may be easier for judiciaries to try different approaches in newer democracies.

In discussing whether to televise Supreme Court proceedings, we are admittedly discussing whether to bring judiciaries into line with a 20th century technology rather than the much more interactive forms of communication tools now available, but that in itself provides a sense of how resistant to change judiciaries have been. The issue of televising Supreme Court proceedings is a small example of how it increasingly makes sense to acknowledge the influence of public opinion over judiciaries, and factor this into our strategies to advance the rights of democratic minorities. There are certainly many new ways to adjust and modify how judiciaries operate. Some of them will incorporate the possibilities for public participation today and help advance human rights.

### *3.2 International Human Rights Mechanisms*

In the international context, there are substantial opportunities for international human rights mechanisms to change in ways that make them more responsive to 21st century human rights challenges and more effective in advancing the rights of democratic minorities in this context. In the Inter-American Human Rights System, which is the regional human rights system we follow most closely, the Inter-American Commission is well-positioned to experiment with new forms of interacting with governments and civil society to address present-day human rights challenges.



While the Inter-American Commission has both adjudicatory and broader policy functions, it has often focused much of its attention on its role of receiving, analyzing and issuing recommendations on individual petitions. With respect to individual petitions, there are important possible changes to current procedures being debated or piloted, such as consolidating cases involving substantially similar factual or legal issues or, more controversially, prioritizing cases (OROZCO, 2014). Such modifications could help the Inter-American Commission reduce its substantial backlog, which has considerably affected its ability to fulfill its key role.

Yet, the possibilities for the Inter-American Commission to develop and expand its public policy role are the most interesting opportunity for the Inter-American Commission to increase its impact and its ability to advance the rights of democratic minorities in Latin America and the Caribbean today. Of course, the Inter-American Commission has had a substantial impact on policy matters in the region through its non-adjudicatory roles in the past, as with the well-known and widely recognized visit to Argentina in 1979 (SIKKINK, 2011, p. 65-66). However, the most effective approaches for the Inter-American Commission to influence human rights outcomes in the context of today's imperfect, but evolving democracies will certainly look very different from the approaches adopted during a period when many of the hemisphere's governments were dictatorships.

Increased engagement by the Inter-American Commission with different parts of national governments, bolstering those government leaders or institutions interested in advancing the rights of democratic minorities, may help advance rights on the ground in ways that individual petitions are ill-suited to and lead to broader, more structural policy changes. While petitions are primarily a way of interacting with governments in an adversarial manner (except perhaps in the case of friendly settlements), public policy engagement by the Inter-American Commission with governments through collaboration on human rights issues of mutual interest, including through visits, technical assistance, and joint projects, could help strengthen implementation of human rights norms at the national and local level.

This is not to say that there will not be challenges in a more collaborative approach to engaging with governments in the hemisphere, and presumably concerns by some actors in the human rights field about the ability of the Inter-American Commission to maintain its independence. However, in the same way that human rights organizations are increasingly engaging with governments in meaningful ways to build human rights policy agendas, while remaining critical and independent, the Inter-American Commission also stands to benefit tremendously from such an approach to its relations with governments in the hemisphere.

Meaningful change will involve complex public policy reforms and not only short-term reparations. The Inter-American Commission already has substantial experience bringing about important policy reforms, as in the *Maria da Penha* case, where the Inter-American Commission concluded that the violation of *Maria da Penha's* rights were part of a pattern of discrimination that involved condoning domestic violence against women in Brazil (INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Maria da Penha v. Brazil*, 2001). The Inter-American Commission's decision, combined with significant civil society advocacy and engagement with

government, contributed to the enactment of the “Maria da Penha Law” (Law number 11,340/2006) and the adoption of other public policies to address omission and tolerance in connection with domestic violence against women. Building on past experiences influencing human rights policies in the hemisphere, the Inter-American Commission is to be commended for its current deliberation on and discussion on how to expand and strengthen this public policy function. Hopefully, the region’s human rights field will be able to support the Inter-American Commission in rethinking this aspect of its functions.

In both the national and international context, we have discussed smaller and larger changes in the ways counter-majoritarian bodies approach their work, but not fully new structures or mechanisms. It is our hope that these conversations about how to start changing existing institutions may lead to ideas about entirely new institutions or processes, but it is admittedly difficult to anticipate what these might consist of currently. The most important aspect at this point is the willingness to revisit existing mechanisms and approaches to see where that may lead, rather than allowing the human rights field to be bound and constrained by the current structures.

### *3.3 Influencing public opinion and working with governments*

New approaches for advancing the rights of democratic minorities that can help create different checks and controls will involve substantial efforts to communicate with and win over public opinion on human rights issues. As outlined above, the notion that courts, traditionally charged with defending the rights of democratic minorities, can be isolated entirely from public opinion probably has not been true for a long time, and this is increasingly the case with the pace and volume of public debate made possible by information and communication technologies. Beyond that, despite their absolutely fundamental role, there are many other limitations to the extent to which the judiciary can advance the rights of democratic minorities, and engaging with the executive and legislative branches is essential.

Acknowledging that counter-majoritarian institutions have been and likely increasingly will be influenced by public opinion has important implications for how we seek to advance the rights of democratic minorities. Significantly, it means we should not expect that judiciaries and human rights mechanisms alone will be able to safeguard the rights of these groups. Instead, we should engage much more proactively in efforts to shape public opinion, using the rapidly expanding tools and channels for democratic participation. Seeking to influence public opinion does not mean human rights organizations will have to yield to public opinion or that the path forward on any given issue will always involve trying to win over the opinion of the majority.

New strategies also will require working closely with government in ways that recognize its complexity and the multiple, often competing perspectives within government that can be engaged effectively to advance human rights. In many countries, the human rights movement emerged during challenging periods of dictatorship or conflict, when there were grave human rights violations and the human rights context was characterized by extremes and absolutes. While conflict

and autocratic leaders persist in some parts of the globe, imperfect and often messy democracies require much more multifaceted engagement.

Many examples of such new strategies and approaches are underway. Drug policy reform is an example of an issue where, despite extensive, longstanding rights human rights violations resulting from the drug war, neither majoritarian nor counter-majoritarian democratic institutions were able or willing to address this pressing human rights challenge. The drug war paradigm became ubiquitous and even discussing alternatives to the current regime became impossible for a long time. Political leaders sought to outdo each other in terms of who could be toughest on drugs, raising penalties for drug offenses and allocating vast sums of money to the drug war. While human rights organizations and some counter-majoritarian institutions in Latin America have long addressed the consequences of the drug war in the form of abuses by military forces and law enforcement, lack of due process, and over-incarceration, changing drug policy was generally seen as a marginal, taboo topic.

But the drug policy reform movement has gained tremendous momentum in the Western Hemisphere in recent years, having been built up from the ground outside of traditional channels and involving unlikely alliances. There have been substantial efforts to engage former political leaders, with the Latin American Commission on Drugs and Democracy involving three former presidents from Brazil, Colombia, and Mexico playing an important role, as well as to engage current political leaders open to discussing or exploring reform options in Uruguay, Colombia, Guatemala, and other countries. There have been creative campaigns to influence public opinion on drug policy, as in the lead-up to the legalization of marijuana in Uruguay. A growing number of human rights organizations are incorporating drug policy reform into their policy agendas, and human rights bodies, such as the Inter-American Commission on Human Rights and the Mexico City Commission on Human Rights, are focusing on drug policy reform for the first time. As the issue has moved from the margins to the mainstream, real public debate about alternatives to the currently drug prohibition regime has become possible.

There is also innovation underway on issues long considered part of the human rights agenda, such as criminal justice. Many organizations are carrying out interesting campaigns to try to win over public opinion on challenging human rights issues. For example, the “No a la Baja” campaign in Uruguay is aimed at preventing the lowering of the age of criminal responsibility in a constitutional referendum in late 2014 (COMISIÓN NACIONAL NO A LA BAJA, 2014).

As the potential for and influence of public participation increases, it will increasingly make sense to experiment with ways to influence public opinion on human rights issues we have usually looked to the courts to defend. Strategic human rights organizations are more and more focused on building and expanding local constituencies for their work, seeking to collaborate with new sectors that have not necessarily identified with human rights frameworks in the past. The approach of the human rights movement to working with governments to advance human rights in Latin America has changed substantially already, with important levels of collaboration in the design and implementation of policy, while maintaining independence and a critical outlook.

## 4 Drivers of change

This is an ambitious agenda for change in how we think about and advance human rights in 21st century democracies, and a key question is who will drive these changes? The answer touches on one of the central questions SUR 20 poses: who do human rights organizations represent?

Resilient, innovative human rights organizations around the globe, and especially in the Global South, will be at the center of these changes and experimentation. New communication tools and the mass protests of recent years have generated an impression that individuals are now able to interact with governments and bring about change directly. But a number of observers, including Ivan Krastev and Pierre Rosanvallon, warn of the limitations and pitfalls of democracies where the distrustful individual is at the center untethered by organizational ties and overly focused on oversight and limiting government, rather than building democracy. Individuals can question, monitor, and limit governments, but they cannot build agendas and propose constructive paths forward. Robust civil society organizations have a vital role to play in this more proactive democratic function.

Loosely organized and structured protest movements in several countries have generated significant energy and attention, but fallen flat and been unable advance reform agendas. In fact, an increasingly common critique of this new wave of protests is that it appears to be primarily an outburst of moral outrage without leadership or strategic goals (KRASDEV, 2014, p. 13).

During such recent mass protests, many human rights organizations and other parts of organized civil society, including foundations, have often been outside the thick of the action and sometimes been bewildered about how to engage with such bursts of citizen engagement that reject all formal organizations. The relationships and collaboration between the often fluid protest movements and organized civil society are not easy or straightforward. But they will be essential to building reform agendas with broad constituencies and advancing them.

In this context, human rights organizations and other parts of organized civil society can play a crucial role by acting as a hub that empowers democratic minorities and builds and sustains their influence over time. Organizations are better able to develop proposals and dialogue with governments than individuals. They are well-positioned to interact with government in complex ways, recognizing the plurality and heterogeneity of government, and the need to engage with those actors within government pressing for change, while remaining critical. Rather than acting on behalf of or representing democratic minorities, such hubs will serve as channels for advancing the rights of democratic minorities, remaining open to constant dialogue with these democratic minority groups, different parts of government, media and public opinion at large.

This hub function and regular interaction with government allowing constant monitoring and participation, rather than only through elections every few years, is of vital importance in a modern democracy. Serving as a channel for diverse constituencies and engaging with varied parts of government will likely involve changes in how organizations understand and advocate for human rights, and several

human rights organizations are already experimenting with these new approaches. As advancing human rights takes on new forms and channels, key actors in advancing the rights of democratic minorities may well include organizations that do not think of themselves as human rights organizations primarily.

This change and innovation in the human rights field is likely to take many different forms across the globe, and there will certainly be many blunders and failed experiments along the way. While SUR 20 rightly asks about the challenges of working on human rights internationally from the south, there is at least one way in which doing so has significant advantages. Democratic institutions and culture in the Global South, while often fragile, are still flexible and open to change in ways that longer-established democracies in the Global North are not. This is especially true in Latin America, and generates conditions for experimentation with new approaches and ideas that might not be possible in the Global North.

## 5 Conclusion

Pluralism and experimentation are not concepts we immediately identify with the human rights field, with its historic focus on universality and jurisprudence. The development and rapid expansion of the human rights in recent decades has been dramatic and impressive, with the adoption of large numbers of international human rights agreements and the incorporation of human rights into national constitutions and laws. The lack of implementation and steps backwards in some areas in recent years have led to significant frustration and arguments that the global human rights regime is on the verge of decline (HOPGOOD, 2013). But, in the same way that the human rights movement emerged and expanded in unforeseen ways, it can and should now change and adapt to the human rights challenges and context of 21st century societies. There will be mistakes along the way and adjusting to the idea that the way we talk, think and advocate for human rights may start to look very different across the globe may not be easy.

If universality defined human rights in the 20th century, pluralism may well define it in the 21st century. Pluralism will include diversity in terms of human rights actors and leaders, and where they come from in the globe. It also will include heterogeneity in the type of rights we want and how they look in practice. For example, Joey Fishkin urges us to reconceive our approach to equal opportunity, setting aside our focus on literal equalization and focusing instead on opportunity pluralism and loosening bottlenecks that constrain access to opportunities (FISHKIN, 2014). Finally, it will include experimentation and innovation in how we seek to advance the rights of democratic minorities across the globe.

The institutions designed to protect democratic minorities two hundred years ago are no longer able to fulfill this role today. There is an opportunity to build new checks and controls that take into account both the new tools and challenges of contemporary societies to deepen the inclusion of democratic minorities in public debate and protect their rights more effectively. The human rights movement has a core role in helping to build those new checks and controls through much deeper engagement with public opinion and different parts of government.

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