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COMMEMORATIVE ISSUE  
HUMAN RIGHTS IN MOTION



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HUMAN RIGHTS

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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 Petrasek**), challenges to the movement's emphasis on protecting the rule of law (**Kumi Naidoo**), and strategic proposals to better ensure a compromise between utopianism and realism in relation to human rights (**Samuel Moyn**).

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

**Perspectives.** This section encompasses country-specific accounts, mostly field notes from human rights activists on the ground. Those contributions come from places as diverse as Angola (**Maria Lúcia da Silveira**), Brazil (**Ana Valéria Araújo**), Cuba (**María-Ileana Faguaga Iglesias**), Indonesia (**Haris Azhar**), Mozambique (**Salvador 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

# Themes

### **JANET LOVE**

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

### **PHIL BLOOMER**

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

### **GONZALO BERRÓN**

Economic Power, Democracy and Human Rights. A New  
International Debate on Human Rights and Corporations

### **DIEGO LORENTE PÉREZ DE EULATE**

Issues and Challenges Facing Networks and Organisations Working  
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### **GLORIA CAREAGA PÉREZ**

The Protection of LGBTI Rights: An Uncertain Outlook

### **ARVIND NARRAIN**

Brazil, India, South Africa:  
Transformative Constitutions and their Role in LGBT Struggles

### **SONIA CORRÊA**

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

### **CLARA SANDOVAL**

Transitional Justice and Social Change



PHIL BLOOMER

Phil Bloomer became Executive Director of Business & Human Rights Resource Centre in September 2013. Prior to joining the Resource Centre, Bloomer was Director of Campaigns and Policy at Oxfam GB. Prior to joining Oxfam, Bloomer spent 11 years in Latin America and worked on human rights dimensions of business, and conflict. His twitter is: @pbloomer.

## ABSTRACT

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

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## KEYWORDS

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Business – Advocacy – Partnership – Corporate legal accountability



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ESSAY

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

Phil Bloomer

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

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

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

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

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*Notes to this text start on page 121.*

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

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

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

## 1 Business and human rights

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

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

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

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

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

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

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

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

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

## 2 The Movement for Business and Human Rights

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

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

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

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

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

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

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

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

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

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



### 3 Human rights and the vulnerable

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

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

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