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COMMEMORATIVE ISSUE
HUMAN RIGHTS IN MOTION



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INTRODUCTION



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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Human Rights in Motion

Tools

GASTÓN CHILLIER AND PÉTALLA BRANDÃO TIMO

The Global Human Rights Movement in the 21st Century: Reflections from the Perspective of a National Human Rights NGO from the South

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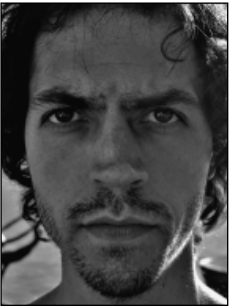
Convergence Towards the Global Middle: "Who Sets the Global Human Rights Agenda and How"



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ABSTRACT

This article will discuss strategic human rights litigation in the Inter-American Human Rights System from the experience of a Brazilian organization. It begins with the conceptualization of strategic litigation and how it can be developed in the Inter-American context, with Brazil as a backdrop. The theoretical formulation of strategic litigation deals with how an organization engages with the other actors in the field and, primarily, with those from the area where the violations have taken place, proposing a dual typology for the issue and presenting the general outlines of two case studies.

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Strategic litigation – Human rights – Inter-American system



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ESSAY

STRATEGIC LITIGATION EXPERIENCES IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

Sandra Carvalho and Eduardo Baker

1 Initial considerations on strategic litigation

Let us start with the following problem: how to balance short and long-term actions in the field of human rights, particularly in relation to advocacy in the international human rights protection systems. The balance between urgency and long-term impacts is a difficult equation, and one that can be addressed in a variety of different ways. This article draws on the work of a Brazilian human rights organization, Global Justice, specifically its experience in international human rights litigation in the Inter-American Human Rights System (IAHRS).

Consequently, theoretical and jurisprudential aspects of the international systems are not relevant here. We could discuss the different forms of reparation and prevention ordered by the Inter-American Court of Human Rights and how they were processed by the different States. This article, however, is not an analysis of the effectiveness of the international protection systems. Instead, it focuses on how things unfold on our side—for the organizations and movements that use these instruments.

What role can or do these actors play in an international protection system? What views of the subject are possible and how do they appear in litigation before this multilateral rights protection mechanism? Some points will be important in this debate, such as the selection of cases and how triangulation occurs between the petitioners or representatives of the victims, the international body and the State responsible.

Obviously, any answer is provisional. Every day we learn a great deal about the possibilities and limitations of this type of work and, often, the limitations seem to far outweigh the possibilities. However, perhaps one of the main jobs of a human rights organization should be precisely to look for these possibilities

Notes to this text start on page 459.

and create new ones—besides just using international human rights law, actually creating from it and with it.

By considering the possibilities for advocacy in the IAHRS as the main focus of analysis, the first important point is interdisciplinarity. Litigation in the Inter-American Court and Commission does not require professional registration as a lawyer. Registration with the Brazilian Bar Association (*Ordem dos Advogados do Brasil* - OAB), in Brazil's case, is not necessary to petition or to appear before the Inter-American System. Article 46 of the American Convention on Human Rights, which deals with the minimum requirements for a petition to be admitted; article 23 of the Rules of Procedure of the Inter-American Commission, which deals with the presentation of petitions; and article 28 of the Rules of Procedure of the Inter-American Court, which deals with the presentation of written material, are some of the articles that make this lack of restriction clear.

This does not mean that no legal knowledge is needed to engage with the Inter-American System—it is, in fact, essential—but it points to another advocacy requirement in this area: integrated and interdisciplinary work. Human rights violations always involve other issues besides the breaking of an international legal norm. While this may be the minimum requirement for holding States internationally accountable, in human rights it is not possible to adequately address international wrongdoing without a holistic understanding of the problem. Human rights violations are part of a political, historical, economic, social and cultural context that needs to be studied for advocacy via these mechanisms to produce the desired results.

For example, in the debate on business and human rights, an important challenge is to understand the role of the governmental and international development agencies, such as the Brazilian Development Bank (*Banco Nacional do Desenvolvimento* - BNDES) and the International Bank for Reconstruction and Development (IBRD) in the financing of mega-projects that impact human rights. Similarly, when we talk about the policy of compulsory drug rehabilitation for crack cocaine users, the mental health angle cannot be overlooked if we are to understand how this practice violates people's rights.

In order to have these debates, there needs to be a diversified dialogue. Psychologists, sociologists, journalists and economists are examples of professionals who can contribute a great deal to human rights litigation. Without this diversity, the work can be severely impaired and even derailed, depending on the case.

Furthermore, there should be no “pure advocacy” in the debates. The discussion about what legal activism is and how it should be conducted in the field of human rights can be viewed as a dialogue with a broader strategy, commonly called strategic litigation.

In Brazil, unfortunately, there is very little literature or practical experience on the topic. Strategic litigation is closely associated with legal education and with the emergence of the so-called human rights “clinics” in Europe, the United States and some Latin American countries, such as Chile, Argentina and Colombia.¹

Over the past few years, Brazil has started to introduce, albeit tentatively, a few initiatives in some higher education institutions. However, some civil society

organizations have already been working for more than a decade with strategic litigation, even though they rarely actually use the term itself.

One possible definition of strategic litigation can be found in the *Litigation Report* (SKILBECK, 2013) of the Justice Initiative, a program of the Open Society Foundations that focuses specifically on the field of strategic litigation. According to the report: “Strategic human rights litigation seeks to use the authority of the law to advocate for social change on behalf of individuals whose voices are otherwise not heard” (SKILBECK, 2013, p. 5). In the United States, the terms *high impact litigation* and *public interest litigation* are also used.

A book published by the Columbia University School of Law contains the following description:

First, public interest litigation persuades the judicial system to interpret the law; public interest litigation urges courts to substantiate or redefine rights in constitutions, statutes, and treaties to better address the wrongdoings of government and society and to help those who suffer from them. In addition, public interest litigation influences courts to apply existing, favorable rules or laws that are otherwise underutilized or ignored.

(REKOSH; BUCHKO; TERVIEZA, 2001, p. 81-82).

The emphasis on the legal aspect is sometimes softened. For example, in an article that analyzes typologies of the concept of strategic litigation in the Americas, we find four forms of definition of the term: focusing on the judicial defense of human rights; based on the high impact results of strategic litigation; according to the timing of the intervention (preventive or corrective); or according to the human rights to be protected (CORAL-DÍAZ; LONDOÑO-TORO; MUÑOZ-ÁVILA 2010, p. 49-76).

Strategic litigation should be capable of drawing attention to human rights abuses and violations and emphasizing the duty of the State to fulfill its national and international obligations. This does not mean that every rights violation can, or should, be handled with strategic litigation. On account of its versatile character, involving legal litigation and political advocacy, the Mexican Commission for the Defense and Promotion of Human Rights lists the four situations in which the strategy is applicable:

1. The law is not observed (whether substantive or procedural law); 2. There is a discrepancy between domestic law and international standards; 3. The existing law is not clear; 4. The law is repeatedly applied in an erroneous/arbitrary manner.

(CONTRERAS, 2011, p. 25, free translation).

But this characterization raises a difficulty, which is exemplified by the topic of torture in prisons. We know that torture is widespread in Brazilian prisons, and that the right of detained persons to their physical and psychological integrity is not respected. It is not clear where to draw the line that distinguishes mistreatment from torture in the application of the law by Brazilian courts, nor is it possible to identify from this application any dialogue with the sources of international laws

and jurisprudence. The law that deals with torture is very rarely used in practice in criminal investigations and charges. In theory, therefore, the topic could fit into any one of the four above mentioned categories.

This, however, poses two problems: why litigate this topic instead of, for example, the non-demarcation of the land of traditional peoples? After all, it would be equally possible to justify the inclusion of that topic in the same four categories. And which case should be chosen to conduct the litigation?

The same text, when addressing the choice of the paradigmatic case, raises the following considerations:

the opportunity, the evidential quality of the case, the relationship with the victim(s), the exhaustion of domestic jurisdiction remedies, or the sum of these factors, or any other situation that, once analyzed, allows us to identify a possible situation that, given its merit, is worthy of national or international litigation.

(CONTRERAS, 2011, p. 31, free translation).

But this does not really get to the bottom of the problem. The main reason is that, in this approach to strategic litigation, all the reflection and judgment comes from a position that is relatively detached from the problem. This is why the relationship with the victim is so important, and why we need to work for the benefit of those individuals whose voices are not heard. The job of litigating is to empower others.

The distance between the litigator and these others becomes even clearer when we find recommendations for litigators in the specialized literature, such as: “It is always advisable to be aware of the ‘market’ need for the services provided” (EUROPEAN ROMA RIGHTS CENTER; INTERIGHTS; MIGRATION POLICY GROUP. 2004, p. 38) and “Perceived need on the part of potential clients (the ‘client’ market) is a key consideration” (EUROPEAN ROMA RIGHTS CENTER; INTERIGHTS; MIGRATION POLICY GROUP. 2004, p. 37). From a client market, it is a logical step to a donor market, where human rights litigation starts to be managed more like a business. In the corporate world of human rights, our role, for example, is to identify *stakeholders*. Our “old” terminology has long disappeared from the jargon.

But before delving into this debate, we need to take a brief detour. Related to the topic of strategic litigation, but sometimes hidden from the discussion, is the matter of the political agenda of the donors. First, it is important to distinguish between a case to be litigated involving a broad activity and one to be conducted as part of a project. When looking for funding, it is not uncommon for the donor to have a hand in setting the agenda. The simple decision to allocate funding for one issue and not for another in itself signals an ethical and political position by the donor.

We also know that this is not exclusive to human rights organizations. It is not rare, for example, for universities to provide scholarships for specific subjects with the financial support of companies and development agencies. Not wanting to go into too much detail, it is enough to say that this is something we all have to live with, in one way or another.

Based on this situation, we can consider two models for selecting cases. The first follows the straight line: donor => organization => victim. The second is a two-way street: partners <=> organization <=> donor; noting that this last element, the donor, is not always present.

In the first model, the donor provides funding to address a particular topic, use a particular international mechanism or research a given subject. After obtaining the funds, the organization looks for cases and/or victims that fit the funding profile or rejects or accepts the cases they receive based on this filter. From there they develop a litigation strategy.

In the second model, the organization already has partners with which it works regularly and has developed an institutional track record. Through their joint action, they propose to work on a particular topic and/or case using litigation, which may involve, for example, the Inter-American Human Rights System. Once the joint agenda is set, if possible they seek funding for the project or use existing funding, although in some cases—or in many cases—they act without obtaining any direct support.

Obviously the models are exaggerated and reductionist. But it is important to have a clear understanding of this distinction in conducting human rights work. The problem is the starting point: whether or not it is underpinned by a real commitment to social struggles.

2 Two advocacy experiences

At the authors' organization, there is a recent example of such advocacy in the Inter-American System involving the struggle of the Guarani-Kaiowá indigenous people for access to land and territory in the Brazilian state of Mato Grosso do Sul. We first started working on this case after liaising with the Missionary Council for Indigenous Peoples (Cimi), with which we have had a long-term partnership.

In November 2011, Chief Nísio Gomes, leader of the Guaiviry village, was murdered. After talking to lawyers and members of Cimi, a proposal was drawn up to request a precautionary measure from the Inter-American Commission. Due to the urgency and the risk of new attacks, this looked like the best way to achieve the outlined goals.

The intention was to give visibility to what was happening in Mato Grosso do Sul, which was nothing new. For many years, the Guarani-Kaiowá and the Terena peoples from the region have been victims of negligence by the State and the actions of gunmen, although the lack of demarcation of their territories is the main reason for the violence, including internal violence. Suicide and murder rates among indigenous people are extremely high in Mato Grosso do Sul. Between 2004 and 2010, 55.5% of the murders of indigenous people in Brazil and 83% of the suicides occurred in the state.²

Using the precautionary measure approach, we planned to debate this very problem of access to territory, which could not itself be the direct subject of the precautionary measure. Two main forms of litigation are available in the Inter-American System: the presentation of individual petitions and the request

for precautionary and provisional measures. This second category is intended for urgent and serious situations that could result in irreparable harm. The seriousness, urgency and irreparability of the harm was demonstrated, we argued, by the killing of Chief Gomes and the large number of threats, attacks and violent acts against these communities in recent years.

In the request, we tried to show the relationship, which for us is indissociable, between the violation of the right of access to traditional lands and the threats, violence and killings that the Guarani-Kaiowá people endure to this day. The material produced by Cimi over the years was essential in this debate, since it contained an extensive and careful analysis of this relationship and other impacts caused by the deprivation of land.

The combination of legal arguments and historical and social contexts serves a very important purpose in requests for precautionary measures. It is necessary to show, in order to help persuade the Commission, how the seriousness, the urgency and the harm fits into a broader pattern of rights violations and how the precautionary measure, even though it will obviously not solve the underlying problem, could play a vital role in the preservation of some other rights that are essential in the wider struggle: in this case, the wider struggle for access to traditional lands.

This political dimension, however, works both ways. The relationship between Brazil and the Inter-American Commission, at the time, was not at its best. The Belo Monte incident was still fairly recent and perhaps the Commission did not want to open another flank for possible further attacks. Both cases involved indigenous peoples, even if from very different perspectives. After several exchanges of information, the progress of the request came to a standstill.

Nevertheless, the presentation of the request improved ties between the parties involved, strengthening the partnership, and pressured the State to take action, albeit very tentatively. For example, Brazil formulated and approved a Security Plan for part of Mato Grosso do Sul to protect some indigenous villages, although this has yet to be effectively implemented.

Over the course of these months, other actors came on board and joined the cause to use international human rights law to protect the Guarani-Kaiowá indigenous people of Mato Grosso do Sul. On either a temporary or permanent basis, the organizations *Advogados Sem Fronteira* (Lawyers without Borders), *Associação de Juízes pela Democracia* (Association of Judges for Democracy), Amnesty International and FIAN have worked, or still work, on this front. This last organization, both as FIAN Brasil and FIAN International, became more closely involved with the development of these initiatives, primarily because it had already been working for years with the Guarani-Kaiowá from the perspective of food security. We then started to formulate other international advocacy strategies.

Within the framework of the Inter-American System, we started to focus on thematic hearings as another possible form of international pressure. In addition to receiving individual petitions and issuing precautionary measures, which we might describe as direct protection, the Inter-American Commission also has the task of promoting and monitoring human rights in the Americas. One of the ways in

which the Commission performs this role is by holding thematic hearings during its sessions. Any organization or group can request a hearing on a human rights issue it deems particularly relevant. The Commission receives these requests and chooses those it views most relevant in the context—at least in practice, because there are other political factors that influence the decision of the Commission to grant or not grant a hearing.

We requested a thematic hearing at the end of 2012 to address access to land by the Guarani-Kaiowá indigenous people of Mato Grosso do Sul. If, on the one hand, the precautionary measure would be an indirect way to address the topic, since it would be difficult to secure such a measure directly dealing with access to land, on the other the thematic hearing would give us just that freedom. Unfortunately, however, the hearing was not granted.

The organizations involved in the request concluded that it would be problematic for the Commission to directly address the issue of access to land by indigenous peoples, even in a thematic hearing. Just as we had worked on the precautionary measure as an indirect way to tackle the problem, we decided to use the same approach to obtain a thematic hearing, and so we requested, for the last period of sessions scheduled for October and November of 2013, a hearing on the situation of human rights defenders in Brazil, while indicating in the request itself that we intended to deal specifically with those defenders who work in the field of land and territory.

This time, the hearing was granted and we were able to address the violence against the Guarani-Kaiowá and the lack of a diligent policy for demarcating land by the Brazilian State. We shall not go into the details of the hearing—everything is available on the website of the Inter-American Commission.³ The important thing about this story is to note how an apparent failure, from a technical legal standpoint, can produce positive results, one of the most important of which is perhaps the better cooperation between organizations and movements that come together to advocate and litigate on an issue.

A second example of strategic litigation demonstrates another type of possibility: the Urso Branco case, also involving precautionary measures. The Urso Branco Prison, officially called the José Mário Alves da Silva Detention Center, was opened in 1996 in Porto Velho, in the Brazilian state of Rondônia, with an initial capacity of just 360 pre-trial detainees.

In December 2001, Criminal Sentencing Judge Arlen Silva de Souza ordered the then warden of the prison, Weber Jordiano Silva, “that all so-called ‘*cela livre*’⁴ detainees be placed in cells until further notice from this court, under penalty of liability”. From that date on, it was not permitted for any detainee to have “*cela livre*” status.⁵

The guards responsible for enforcing the order, on December 31, 2001, decided to separate the most dangerous prisoners, mainly because they posed a threat to the lives of prisoners held in the so-called “safe house”, where detainees are kept who have been threatened with death. On the following evening, January 1, 2002—due to the fact that prisoners from rival gangs had been placed in the same cell—there ensued a long riot that caused dozens of deaths.

One week later, forty-seven of the prisoners who survived the massacre and whose lives had been threatened were transferred to cells which, once again, contained inmates from different gangs. On February 18 of the same year, three prisoners were killed while they were transferred to the “safe house”.

As a protective measure, the Justice and Peace Commission of the Archdiocese of Porto Velho submitted a request for precautionary measures to the Inter-American Commission on Human Rights (IACHR) asking for the forty-seven surviving prisoners whose lives had been threatened to be transferred to another facility⁶ and for a reform of the prison. As a result, on March 14, 2002, the IACHR granted precautionary measures in favor of the Urso Branco inmates.

Following the non-compliance with these measures, the Commission requested that the Inter-American Court of Human Rights issue provisional measures to protect the life and personal safety of the inmates. This was granted on June 18, 2002, and required measures similar to those previously requested in relation to the prison system, such as the adoption of “all necessary measures to protect the life and personal safety of all incarcerated persons”, but also including a more concrete request: “the confiscation of all weapons that are in the hands of the inmates” (COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS, 2002). This different treatment in relation to the Urso Branco case is an important precedent that would be repeated in later resolutions of the Court.

In its second resolution on the case, the Inter-American Court of Human Rights requested the State and the Inter-American Commission on Human Rights to take the necessary steps to establish a mechanism to coordinate and oversee compliance with the provisional measures. The decision of the Court strayed from its usual standard for handling prison issues.

Due to state inertia, the Inter-American Court of Human Rights reiterated its previous requests in its third resolution, on April 22, 2004, emphasizing the need for the State and the Commission to take steps to “coordinate and oversee compliance with the provisional measures ordered by the Court” (COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS, 2004).

It was not until 2006 that a mechanism responsible for this oversight, the Urso Branco Special Commission, was created. Formed by representative of the State—from the federal and state level—and by the organizations that petitioned the Inter-American System, its work was severely criticized by these organizations. Its initial inefficiency was evidenced by the repetition of its agenda in the first two years of its work, which culminated in the petitioning organizations withdrawing from the commission in 2008.

In the same year, however, after pressure from the organizations that litigated the case in the IAHRs, the Brazilian Attorney General filed a request for federal intervention with the Supreme Court, which led to the declaration of a state of emergency in the state of Rondônia. The request was filed in October of that year. In response, the governor of Rondônia declared a state of emergency and the subsequent partial closure of the prison in December, by decision of the 1st Criminal Sentencing Court of Porto Velho.

Concerning the administrative and judicial processes related to the Urso

Branco prison, the first two most significant breakthroughs came in 2009. One was an indictment for the 2002 massacre and the other was a favorable ruling in a civil action filed by the Public Prosecutor's Office of Rondônia in 2000, requiring reforms be conducted and new staff be hired at the Ênio Pinheiro and Urso Branco prisons.

In 2010, after the first trial for the 2002 massacre that resulted in the death of at least twenty-seven people, in which there were ten acquittals and eight convictions, the petitioning organizations started to take part once again in the meetings of the Special Commission, and in August 2011 the Court issued one of its most important resolutions, deciding to lift the provisional measures on August 25, 2011. The backdrop was the public hearing held during the 92nd Regular Period of Sessions of the Inter-American Court, which occurred on the same day.

On the day before, representatives of the Brazilian federal government, the state government of Rondônia, the Public Prosecutor's Office, the Public Defender's Office and the Judicial Branch of the state of Rondônia signed the *Agreement for the Improvement of the Prison System of the State of Rondônia and the Lifting of the Provisional Measures Granted by the Inter-American Court of Human Rights*, with the intervention of the Justice and Peace Commission of the Archdiocese of Porto Velho and of Global Justice.

The agreement proposed five courses of action that were broken down into approximately fifty individual actions. The courses of action are: investments in infrastructure; measures for the hiring and training of personnel; an inquiry into the facts and determination of responsibilities; improvement of services, mobilization and social inclusion; and measures for combating the culture of violence.

In a paper on the Urso Branco case, Camila Serrano Giunchetti addresses the effectiveness of the Inter-American System, starting with an analysis of the interrelation between it and the national jurisdictions. According to the author, the Court functioned like a sphere of influence, never overriding national jurisdiction, but also not accepting the omissive attitude of the State (GIUNCHETTI, 2010, p. 184), which was illustrated by the creation of the Special Commission. The author points out that one of the contributions of the case was the creation of an oversight mechanism, which only features in two other cases: the sentence in the Mapiripán Massacre case, in Colombia, and the provisional measure in the Penitentiary Center of the Central Western Region (*Uribana Prison*) case, in Venezuela.

3 Final considerations

In the balance between urgency and long-term impacts, what kind of approach in the international protection systems can we consider, based on these experiences? Perhaps one of the first contributions is the perception that the long-term is a given. In the relationships built up over the course of the different institutional histories, including civil society organizations and social movements, these goals emerge naturally from debates and exchanges before the occurrence of a potential emergency.

The immediate reality of the Urso Branco prison and the murder of the chief

of the Guarani-Kaiowá only illustrate the underlying problems that were already envisaged by the organizations involved with these issues: mass incarceration and neglect of the country's prisons; and non-demarcation of indigenous lands and increasing violence against indigenous peoples. Strategic litigation starts to be planned in a place where the final commitments—a new security and prison policy or the demarcation of the Guarani-Kaiowá territory—cannot be negotiated or debated.

Focusing on urgency does not mean leaving the establishment of long-term goals for a later date. On the contrary, it is an opportunity to examine and advance measures towards these goals, at least within the vision of human rights work defended in this article.

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NOTES

1. For a more detailed discussion of these roots: Coral-Díaz, Londoño-Toro e Muñoz-Ávila (2010).

2. For more information, see the report “As Violências contra os Povos Indígenas em Mato Grosso do Sul” (CONSELHO INDIGENISTA MISSIONÁRIO, 2011).

3. Available at: <<http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=132>>.

4. “Cela livre” (free cell) is the name given to those

inmates who are allowed to work in the prison, on jobs such as cleaning, and are deemed trustworthy by the prison authorities. The name varies depending on the state. In the state of Pernambuco, for example, the term is “chaveiro” (keymaster).

5. Notice No. 4794/01/VEP, of December 20, 2001.

6. At this point, the request for a precautionary measure was made on behalf of a specific list of individuals.

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