RISING TO THE POPULIST CHALLENGE

A New Playbook for Human Rights Actors

César Rodríguez-Garavito and Krizna Gomez (eds.)

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Dejusticia
Carrera 24 # 34 – 61, Bogotá, D.C., Colombia
Telephone: (571) 608 3605
www.dejusticia.org

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César Rodríguez-Garavito and Krizna Gomez

Bogotá, April 2018

RESPONDING TO THE POPULIST CHALLENGE: A NEW PLAYBOOK FOR THE HUMAN RIGHTS FIELD

César Rodríguez-Garavito and Krizna Gomez

The proliferation of populist governments and movements creates serious risks and challenges for human rights around the world, from India to Venezuela, from the United States to Turkey, from Hungary to Russia, and from the Philippines to Poland. However, their rise could have an unexpected positive effect: to push the human rights movement to carry out transformations in its architecture and changes in its strategy that were imperative even before the new wave of populist governments, and that are now urgent (Rodríguez-Garavito 2016b).

Before the decline of the global Anglo-American order—reflected in Brexit, the election of Donald Trump, the proliferation of illiberal nationalisms across the world, and the increasing influence of Russia and China—the answers that many analysts and practitioners in the human rights movement offered tended to be grouped into two extremes: skepticism and defensiveness. The skeptics announced the "end-times" of the international project of human rights, based on a view that human rights were imposed by Euro-America. Given this view, the end of Pax Americana would also be the end of the movement (Hopgood 2013; Moyn 2017). The skeptics' view

is thought provoking and inexact in equal parts, as it forgets that this regime was built in part with the ideas and the pressure of states and movements of the global South, from those who created the American Declaration on the Rights and Duties of Man in 1948 to postcolonial nations that pushed for treaties against racial and religious discrimination in the sixties (Jensen 2016; Sikkink 2017).

However, recognizing the history and accomplishments of the movement does not imply that the dominant tactics in human rights, under the Euro-American order, are without serious flaws. Nor does it imply that, with the decline of that global order and the tribulations of liberal democracy, the conventional tactics will be any more sufficient or effective than they have been of late.

In a multipolar world, the old "boomerang" approach (Keck and Sikkink 1998) of appealing to Washington, London, or Geneva so that governments in the North would pressure their global South counterparts to comply with international human rights standards was already losing its effectiveness. With populist leaders stoking nationalism and violating the basic rights of vulnerable groups like religious and racial minorities both in the North and the South, the limited effectiveness and legitimacy of naming and shaming strategies focused on the traditional centers of power have been further eroded.

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Moreover, the proliferation of illiberal democracies puts considerable pressure on the fault lines and blind spots of the contemporary architecture of the human rights field. As several of the contributions in this book illustrate, populist leaders have learned to exploit such weaknesses: the overreliance on international funding; the concentration of agenda-setting power in international non-governmental organizations (INGOs); the difficulties of INGOs in collaborating on a level playing field with global South organizations and in adopting agendas of high priority for global South organizations (such as economic justice and social rights); the insufficient connection among professional non-governmental organizations (NGOs), social movements, and online activists; the inordinate dominance of law-centered discourses and strategies; the insufficient attention to economic inequality; and the difficulties

in developing persuasive human rights narratives that meaningfully engage with the majority of the population (Rodríguez-Garavito 2014).

That is why the second response—the defense and reinforcement of the status quo of the movement—is equally ill-advised to confront what Alston (2017) has rightly called "the populist challenge to human rights." As we will see, the challenge comes in the form of political narratives, legal reforms, and coercive measures aimed at eroding the *legitimacy* and *efficacy* of human rights actors. Starting with Vladimir Putin's measures against NGOs in the mid-2000s, populist governments have learned from each other, to the point that copycat attacks against human rights have spread to countries in different regions. The result is what some have called a "global war against NGOs" (Editorial Board 2015) whose script seems to follow an unwritten playbook of restrictive measures (Rodríguez-Garavito 2016a).

What is needed, therefore, is a new human rights playbook that updates the diagnosis of and the responses to the crackdown against civil society in general and human rights organizations in particular. The purpose of this book is to contribute to the contents of such a playbook, by bringing together and analyzing the repertoire of responses that human rights actors are developing in populist contexts. Written by a group of scholars and advocates, its main audience is the community of human rights actors who are grappling with and resisting the erosion of democracy and rights in those contexts, and who may derive ideas and inspiration from their peers working for a similar cause in equally challenging political settings.

Although we speak of human rights actors in general, many of the populist measures discussed in this volume—for instance, obstacles to legal registration and restrictions on international funding—explicitly target human rights organizations. Thus, this chapter and the subsequent ones give particular attention to attacks against and responses by NGOs. This does not mean that formal organizations should continue to have a dominant role in the movement. As noted, one of the costs of the professionalization of human rights advocacy is the growing disconnect between formal organizations and the myriad other actors who use the language and the values of human rights, or what some less sympathetic observers have called "the NGO-ization of resistance" (Roy 2017). Among the wealth of actors are grassroots groups, online activists, religious organizations, think tanks, artists' collectives,

The challenge comes in the form of political narratives, legal reforms, and coercive measures aimed at eroding the legitimacy and efficacy of human rights actors

scientific associations, film makers, and many other individuals and groups around the world. Oftentimes, their tactics and operational logic differ starkly from those of formal NGOs. As Bennett and Segerberg (2012) have shown, while NGOs tend to operate along the lines of well-established forms of "*collective* action," other actors, especially those from younger generations, resort to individualized, internet-enabled forms of "*connective* action." One of the challenges for formal specialized organizations, therefore, is to find ways to connect and collaborate with these and other actors in the human rights field in order to push back against populist governments and movements.

The goal and the audience of this volume partially diverge from those of most contributions to the growing literature on contemporary threats to civil society. Although we draw on a systematic analysis of that literature, we do not seek to offer a comprehensive account of the causes of such a phenomenon. Moreover, unlike other contributions to this type of strategic reading of the landscape, which tend to focus on actions and responses by Western donors and governments (Carothers and Brechenmacher 2014), we hone in on the actions of national and international human rights organizations, so as to foster mutual learning among them.

Ideally, human rights analysts and practitioners would have addressed the above-mentioned weaknesses of the field and developed a new strategic playbook in times of relative normalcy. Now it must be done in extraordinary times. The reinvigoration of the movement is a middle road between skepticism and defensiveness. This collective volume takes two steps towards clearing this path. First, it seeks to clarify the specific challenges to human rights raised by contemporary populist regimes and movements. What do populist measures against human actors have in common in different countries and regions? In other words, what is the populist playbook against human rights? What is new about it, and what is business as usual? What are the weaknesses of the human rights architecture that such measures tend to exploit?

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Second, this volume contributes to documenting and learning from the wealth of initiatives that human rights actors have been developing in order to push back against the populist crackdown. After all, times of turmoil are also moments of

creativity. What innovations are human rights actors introducing in their strategies and narratives in order to counter those of populist regimes? Could those responses be transposed from one country to another, just as copycat legislation and policies against human rights have proliferated in different regions of the world? What lessons do those innovations offer for reinvigorating the human rights field at large? In sum, what would a human rights playbook against populism look like?

In order to prepare the analytical and empirical ground for the case studies and commentaries of the following chapters, in this introductory chapter we elaborate on those two goals and sets of questions. First, we make explicit the criteria for the focus countries in the volume by characterizing contemporary populist regimes and their distinct challenges to human rights. Second, we offer a typology of measures against human rights organizations that such regimes have taken in different parts of the world. Finally, we discuss the range of responses and innovations that the subsequent chapters document, and the broader analytical and strategic lessons that can be extracted from them.

While many of the measures against human rights—for example, smear campaigns and arbitrary detentions of activists—are not new, the populist age does raise new challenges

In analyzing the populist crackdown and responses to it, we make three arguments. First, we posit that while many of the measures against human rights—for example, smear campaigns and arbitrary detentions of activists—are not new, the populist age does raise new challenges. The fact that the new attacks are coming from elected governments, as opposed to the dictatorships of the past, creates a tension between rights and democracy—between the liberal and the democratic components of liberal democracy—that raises the stakes and the difficulty of human rights activism. As we will see, such a tension is a defining feature of the populist age, and facilitates the proliferation of constitutional and legislative reforms that, invoking the popular will, impose new, overarching restrictions on civil society and other checks on power.

Second, we argue that populist leaders have learned to exploit the weaknesses of the human rights architecture and strategic repertoire. Precisely because the human rights movement has been impactful, its opponents have learned to respond and to take notes from each other, as the similarities among their tactics bear witness to. Pioneer contributions to the study of the impact of human rights were made in the 1990s and 2000s, when the dissemination of human rights standards around the world suggested that commitment and compliance with human rights was "spiraling

up" (Risse, Ropp, and Sikkink 1999; Ibid 2013). In light of populist pushback, we need to analyze and better understand the backlash. With some notable exceptions (Sikkink 2013), human rights scholars have yet to study the content of regression on commitment and compliance—a "reverse spiral" of sorts that is underway in populist regimes. Although we remain agnostic about the question of whether or not such regression amounts to a global trend of "closing civil society space" (and thus do not use this term in this chapter), we believe that the populist backlash merits serious attention by human rights scholars and activists.

Third, we posit that human rights actors, in turn, must learn from and respond to the populist backlash. Given that populists challenge both the legitimacy and the efficacy of human rights organizations, we contend that ongoing and future responses to populism need to tackle the weaknesses and postponed reforms of the human rights field on both fronts.

THE POPULIST CHALLENGE

Over the last five decades, human rights organizations have developed a standard set of advocacy tools that has relied heavily on naming and shaming governments into compliance with human rights norms. However, the efficacy of traditional strategies is diminishing, as it has rested on international and domestic political conditions that have been rapidly changing. As noted, increasing multipolarity and the rise of populist governments and movements in the United States and Europe mean that the main leverage points of naming and shaming strategies are no longer as willing or as influential—or are downright hostile to human rights (Rodríguez-Garavito 2016).

While the main threats to liberal democracy and human rights around the world used to come from authoritarian regimes, today they tend to come from hybrid regimes that straddle the democracy-autocracy binary

Moreover, while the main threats to liberal democracy and human rights around the world used to come from authoritarian regimes, today they tend to come from hybrid regimes that straddle the democracy-autocracy binary. Twentieth-century liberal democracies used to die a sudden death at the hands of autocratic leaders through a coup. Now, twenty-first century liberal democracies tend to die a gradual death at the hands of elected leaders who slowly but surely chip away at the pillars of liberalism—from civil liberties to independent media to judicial and legislative

checks on the executive—and oftentimes go on to undo the pillars of democracy themselves, such as free, fair, and open elections (Levitsky and Ziblatt 2018). In between liberal democracies and full-blown authoritarian regimes, such hybrids have been variously called "democracies without rights" (Mounk 2018), "illiberal democracies" (Zakaria 1997), "semi-authoritarian regimes" (Carothers and Brechenmacher 2014), "competitive authoritarianisms" (Levitsky and Way 2010), "partially free democracies" (Abramowitz 2018), or simply "populist regimes" (Krastev 2007; Müller 2016).

Although contributors to this volume and the literature at large do not agree on a single term, we prefer to use the populism frame in this chapter and the title of the book for two reasons. First, the term has gained wide currency in public debates and the media in different parts of the world. This makes it well suited to our practical purposes, that is, to offer tools and strategies for human rights actors confronting this type of regimes and discourses. However, the currency of the term has come at the cost of analytical accuracy, as it has been applied to political figures as diverse as Donald Trump, Rafael Correa, Vladimir Putin, Nicolás Maduro, Marine Le Pen, Luiz Inácio Lula da Silva, Beppe Grillo, and Daniel Ortega.

As Hannah Arendt (1958) wrote, political analysis consists, largely, in the ability to draw accurate distinctions. This has been the contribution of a number of recent works that have cogently characterized contemporary populism and its specific challenges to human rights. Analytical clarity is thus the second reason why we adopt this frame.

Müller (2016) has convincingly argued that what contemporary populists share is not a political or economic ideology. They come equally from the right (Modi, Erdoğan, Putin, Trump) and the left (Maduro, Correa, Ortega). What sets them apart is a combination of two traits: anti-elitism and anti-pluralism. All populists are anti-elitists, but not all anti-elitists are populists. In other words, a reaction against the elites is a necessary but not sufficient condition of populism. Populists go further. They make a moral claim as radical as it is exclusionary: that the opposite of the elite is "the real people"—that they, and they alone, represent. Herein lies the intrinsic anti-pluralism of populists: in their worldview, only one part of the population counts as the real, pure people, while the others are seen as the enemies of the people.

Let us look briefly into each of these two traits and the way they clash with human rights values and actors.

Anti-Elitism

As Krastev (2007) puts it, at the heart of populism "is the view that society falls into two homogenous and antagonistic groups: 'the people as such' and 'the corrupt elite.' It proceeds to argue that politics is the expression of the general will of the people and that the social change is possible only via the radical change of the elite."

"The elite" as a category in populist discourse is a hybrid of empirical reality and symbolic construction. Populists shed light on the economic fact of increasing socioeconomic inequality, as well as the political reality of the increasing distance between citizens, on the one hand, and decision-making power circles on the other. Confronted by the outsized influence of moneyed and technocratic elites in contemporary liberal democracies, large disaffected sections of the population have ended up voting for populist leaders, thus unleashing the power of democracy against liberalism (Mounk 2018).

Who exactly constitutes the elite and the people is fluid—it depends on the sociopolitical context and the power play between relevant groups and factions

The elite, however, is not an empirically neat category. Populist success depends on their ability to symbolically enlarge the meaning of "the elite" to include other groups against whom "the real people" should mobilize and vote. Therefore, who exactly constitutes the elite and the people is fluid—it depends on the sociopolitical context and the power play between relevant groups and factions. For instance, in Brexit's Britain, the elite were European Union bureaucrats or London financiers who, in the view of Brexit populists, sold the idea of United Kingdom membership in the EU in order to enrich themselves. The success of a cosmopolitan professional class—the "citizens of nowhere" as Prime Minister Theresa May has derisively called them—was portrayed as being to the detriment of "the people"—specifically the blue collar British left behind by the financialization of the U.K. economy in its integration into the rest of Europe.

Oftentimes, populists lump together the wealthy and the powerful, on the one hand, with disadvantaged groups on the other, into an amalgam as empirically implausible as it is symbolically and politically powerful. Immigrants in the United States and Europe, Romas in Hungary, or Muslims in India have all been labeled as "privileged" despite their subordinate social status. According to populist leaders, these groups have worked against the interests of "the real people"—the *real* white

Americans; the *real* Christian Hungarians; the *real* Hindu Indians—by taking the economic benefits, opportunities, or other entitlements properly belonging to the latter.

Therefore, although the wealthy and the dominant political and professional groups are usually the target of anti-elitism, the precise configuration of the elites in populist discourse varies from country to country (Moffitt 2016). In Turkey, the elite would be the liberal professionals "enabling" the Kurds as a minority group, both groups being opposed to the interests of "the Turkish people." In Rafael Correa's Ecuador, the privately owned media—alongside NGOs and the supposedly Western-controlled social movements—were portrayed as the elite (*New Left Review* 2012). In the Netherlands, Geert Wilders established his Party for Freedom in 2016 with a declaration of independence from "the elite in The Hague," to which he added Muslims and immigrants as "the Other" to the Dutch people (Darroch 2017).

The anti-elitism frame has a direct impact on human rights actors, as we will see in the next section and in the chapters by Edwin Rekosh and by James Ron, José Kaire, Archana Pandya, and Andrea Martínez. Populist leaders have skilfully exploited the professionalization of NGOs and their reliance on foreign funding in order to portray human rights advocates as part of the elite. The frequent claim of foreign-funded organizations as working against the people's interests and the country's national sovereignty falls squarely under this narrative. For instance, in India, the Modi government routinely accuses human rights and environmental activists of working against the national interest of development, which brings connotations of treason (Mohan 2017; Patkar 2014). It has also provided the rationale for legislation and administrative measures that heavily restrict the operation and funding of human rights NGOs, to the point of making it virtually impossible for international philanthropic foundations to continue to provide direct funding to those organizations.

Although Egypt falls squarely into the category of authoritarian regimes (rather than that of populist, illiberal democracies), its government's stigmatization of activists as foreign-influenced elites is very similar to the actions of populist governments from India to Venezuela. In Egypt, an active government campaign in 2011 framed NGOs as "foreign agents" serving hidden agendas, the same term used in Russia. Conspiracy theories described how activists received military training, had ties to the U.S. government and the Central Intelligence Agency, or had weapons in their offices (Abuza, Mansour, and Snegovaya 2015). Television coverage has also leveraged the state-promoted xenophobic mood to claim

The real danger of populism is the decoupling of democracy and liberalism

that NGOs are foreign spies colluding with actors like the Islamic State, Iran, Israel, and the CIA (Project on Middle East Democracy 2018).

Beyond the specific impact on human rights, populist anti-elitism raises a challenge to liberal democracy writ large. Albeit opportunistic and self-interested, populists tap into a clear weakness of contemporary liberal democracies in which economic, political, and professional elites wield disproportionate decision-making power, to the detriment of large (even majority) sectors of the population. Thus, the real danger of populism is the decoupling of democracy and liberalism. As Krastev (2007) has put it, "in the age of populism, the front does not lie between Left and Right, nor between reformers and conservatives. It is more the case that we are witnessing a structural conflict between elites that are becoming increasingly suspicious of democracy, and angry publics that are becoming increasingly anti-liberal." Populists deepen and entrench such a conflict by making an exclusionary moral claim about the corruption of the elite and the purity of the "real people." This is the anti-pluralist element of populism to which we now turn.

Anti-Pluralism

"Chávez is the people" used to be a campaign slogan in Venezuela, a phrase of striking parsimony that captured the identity between a leader and a supposedly uniform and unified people. After Chávez died, the slogan was replaced with an equally concise one: "Let's be like Chávez." In the populist logic, politics is an all-or-nothing game, a conflict between patriots and "enemies of the homeland," as Nicolás Maduro routinely calls his critics.

The categorical and moral nature of this claim distinguishes it from other calls for social inclusion, among them those made by human rights activists advocating against inequality and discrimination. The latter is an effort to include into the polity and decision-making processes sectors of the population who have been traditionally excluded or discriminated against, from the working class to women to sexual and racial minorities. Populists, on the other hand, claim "the people" as the *only* people (Müller 2016, 27). As can be readily seen, this claim leads to the conclusion that only the "real people" deserve full recognition as rights holders. This clashes directly with human rights standards and aspirations asserting the intrinsic dignity of *all* people as rights holders.

As with any regime, populist ones evolve over time. In fact, some movements and governments may begin as anti-elitist but not anti-pluralist, and only later

become populist. As Rafael Uzcátegui explains in his chapter, this was the case of Chavismo in Venezuela, whose anti-elitism was initially coupled with a progressive economic agenda that favored the inclusion of social groups traditionally left out of Venezuelan politics. Over time, however, not only did Chavismo become an anti-pluralist movement, but it also went on to become an authoritarian force. Starting in 2016, with the postponement of regional elections and the manipulation of the electoral system, the Maduro administration reneged on the fundamentals of democratic governance such as free, fair, and open elections.

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The political corollary of anti-pluralism is that the populist leader alone is the legitimate representative of the people (Moffitt 2016). By undermining the independence of organizations designed to check his powers in liberal democracies—be it the judiciary, electoral commissions, the media, or NGOs—he seeks to establish a regime of direct rule over the polity. As Bilge Yesil points out in her chapter, this is illustrated by Recep Tayyip Erdoğan's persecution of the media and civil society in Turkey. "We are the people; who are you?" was how the Turkish president put it when he snapped at his critics in public, as he progressed in his purge of more than 100,000 officials, teachers, judges, academics, and independent journalists. In the same vein, Donald Trump has declared independent media outlets as "enemies of the people."

In order to sidestep intermediaries, populists in power tend to develop communications platforms where the leader connects directly with the people. A notorious example was Rafael Correa's own TV show, *Enlace Ciudadano* (Citizen Link). Correa would spend two to three hours every Saturday explaining his policies, dedicating significant time to attacking NGOs and his detractors, all the way to individual social media posts of citizens and comedians who criticized him. *Enlace Ciudadano* would be broadcast from different remote locations around the country where Correa would hold his "itinerant" cabinet meetings (Kitzberger 2010, 9). The show featured Correa doing a monologue in conversational style, again reinforcing his alleged direct connection to the people. In his show, he solidified the othering of those who opposed him, casting the "bourgeois media" as "Mafiosi, savage beasts and idiots who publish trash" and civil society and social movements as "the infantile left" who supposedly worked against the Ecuadorian people, whom he claimed to embody (de la Torre 2015). (The fact that Correa's show was an almost perfect replica of the "community councils" that former Colombian President Álvaro Uribe used to hold weekly

in front of the cameras is a reminder that the populist logic and communications style cuts across the Left-Right divide).

In sum, the anti-pluralist element of populism is a moral logic of "Us versus Them" that goes directly against the basic tenets of human rights (Amnesty International 2018). Contrary to the view that populists attempt to demolish constitutional and legal constraints, they invest significant time and energy on constitutional and legislative reforms aimed to constrain opponents—to rein "Them" in by making it increasingly hard for NGOs and independent media to operate, for opposition parties to have a fair shot at winning elections, and for citizens to be able to enjoy basic rights and freedoms that might put in peril the continuation of the populist regime. In the name of the will of the people and in the name of democracy, populists undermine human rights, thus promoting a system of "democracy without rights" (Mounk 2018).

However, once basic rights and freedoms are heavily weakened or dismantled, democracy itself is at risk. Müller is right to conclude that populists, in the end, are anti-democratic. Once in power, they tend to use manipulated elections and democratic rhetoric to undermine democracy. His conclusion remains as a warning: the greatest danger to democracy today "comes from within democracy: the political actors who threaten it speak the language of democratic values" (Müller 2016).

Populists, in the end, are anti-democratic. Once in power, they tend to use manipulated elections and democratic rhetoric to undermine democracy

Early in his career, Erdoğan said, "Democracy is like a train; you get off once you have reached your destination" (*Economist* 2016). He is certainly getting off the train, as are several populists who feel that, after years of undermining human rights and civil society, they have reached their destination.

THE POPULIST PLAYBOOK AGAINST HUMAN RIGHTS ACTORS

As noted, the path towards populism includes a series of measures against human rights actors that are remarkably similar across regions and countries. Although the list of measures is long and diverse, we posit that in the end they pursue two main goals: to undermine the *legitimacy* and the *efficacy* of human rights actors. Ultimately targeting either or both the legitimacy and efficacy of human rights, we focus our examination on five types of actions that are found in the populist playbook:

1) restrictions on foreign funding; 2) smear campaigns; 3) restrictions on fundamental rights that strike at the heart of the work of independent media and NGOs; 4) severe burdens on the operational capabilities of human rights actors and civil society at large; and, 5) cooptation of sections of civil society. Subsequent chapters in this volume focus on specific items in this playbook and document the responses to them by human rights actors.

Restrictions on Foreign Funding

Populist governments have been impeding civil society organizations from receiving funding, especially external ones, through three means: 1) laws; 2) counter-terrorism and anti-money-laundering policies; and, 3) asset freezes.

According to Dupuy, Ron, and Prakash (2014), forty-five or one-fourth of the world's countries passed laws restricting foreign funding to local human rights groups between 1993 and 2012. In an analysis by the International Center for Not-for-Profit Law, a further ninety-eight countries have passed laws restricting civil society space, 36% of which have to do with international funding, since 2012 (Rutzen 2015). Among the countries discussed in this volume, India, Venezuela, Russia, Hungary, and Egypt have enacted laws that restrict the receipt of foreign funding by human rights NGOs, while Turkey and Ecuador impose reporting and other administrative regulations in relation to receiving and using foreign funding. In India, as of mid-March 2017, Prime Minister Narendra Modi's government had revoked the licenses of about 10,000 organizations, with many barred from receiving donations under the Foreign Contribution Regulation Act (FCRA; Mohan 2017).

Populist governments also use the supposed vulnerability of human rights NGOs to "risks of money laundering and terrorist financing"—a weakness claimed by the Indian Ministry of Home Affairs in a report in 2014 (FATF and APG 2010). As a response to this as well as the demands by the Financial Action Task Force (a body created by the G7 that recommends rules for adoption by states to combat terror financing), money laundering and counter-terrorism regulations have been passed and often used to unduly restrict the flow of funds to human rights NGOs (CIVICUS 2015).

Governments can impose reporting requirements on NGOs for the funds they receive, directly access their bank accounts without their consent (as in Egypt), or prohibit the receipt of funding altogether when suspected of being related to terrorism (World Bank and MENAFATF 2009). In Venezuela, the *Organic Law against Organized Crime and Financing of Terrorism of 2012* uses an ambiguous definition of

terrorism and organized crime to prohibit several advocacy activities and hinder foreign funding (ICNL 2017). The law mandates that organizations report any financial activity that could be considered "suspicious" even if the source of funds is legitimate (ICNL 2017).

Sometimes, governments also publish the names of NGOs accused of financing terrorism, as in Kenya, where the Cabinet Secretary for Defense published a list of individuals and institutions accused of having funded terrorist activities in 2015. Two of the organizations listed had been investigating extrajudicial killings and enforced disappearances in the country (Mbogouri 2016). That same year, three organizations were placed under the government list of organizations with suspected links to *Al-Shabaab*. Two of the groups challenged these claims in court and won, as there was no evidence showing an association to terrorism (Wood 2016).

As a supposed sanction against these and other crime-related financing, governments freeze bank accounts of human rights NGOs, and in some cases, those belonging to their individual members. Of all the populist regimes discussed in this volume, Turkey makes greatest use of such provisions. Following the failed July 2016 coup, the government seized the assets of organizations allegedly linked to the Gülen movement (ICNL 2018b). More targeted imposition of asset freezes have also been seen in Kenya and India. In Kenya, the government froze the bank accounts of human rights organizations on allegations of terrorist activity in 2015 (Gettleman 2015). In the same year, the Modi administration blocked funds from Greenpeace International to Greenpeace India without prior notice. Freezing the bank accounts of organizations and their individual members is often explicitly allowed under the law, such as Russia's Undesirable Law of 2015 and India's FCRA (Mohan 2017).

Smear Campaigns

Lacking economic power, the influence of human rights actors stems largely from their symbolic power. Indeed, the defining trait of advocacy organizations is "the centrality of principled ideas or values [as opposed to material interests] in their formation" (Keck and Sikkink 1998, 1). Thus, it is not surprising that a second strategy in the populist playbook is to unleash smear campaigns to undermine the perception of advocates as being inspired by principles and values. Specifically, populists contest the perception of human rights actors as being 1) principled, 2) non-partisan, and, 3) non-violent.

In order to undermine the perception of NGOs as being *principled*, gov-

ernments often resort to measures and discourses aimed at portraying them as being driven by profit or by anti-patriotic or anti-social motives. The charges that come under this kind of attacks have to do with either misappropriating legally received funding or receiving illegal resources. As for the former, in Hungary for instance, human rights NGOs have been accused of unauthorized financial activities, misappropriation, embezzlement, financial fraud, and forgery (Keller-Alánt 2016).

The latter allegations of illegal money-making activities by human rights NGOs are often tied to work supposedly done in the service of foreign interests, which also serves to question the patriotism of the NGOs—an accusation that, as we discussed, alienates them from citizens and their community base. In Russia, the government accused activists of sneaking nuclear secrets in exchange for money and receiving checks from the U.S. State Department for ruining the reputation of Russian companies (Digges 2017). The Turkish government has also regularly evoked similar theories; Prime Minister Erdoğan has accused local NGOs and the United States of plotting against the Turkish state. In Venezuela, the government has accused NGOs of being a "political, media, and economic conspiracy against the Bolivarian Revolution" (HRW 2016b) and human rights defenders of being traitors (Front Line Defenders 2016a).

One of the most influential figures of Venezuela's Nicolás Maduro government, Diosdado Cabello, has publicly accused the director of the NGO Venezuelan Prisons Observatory of receiving money from the National Endowment for Democracy, stealing the funds, and then sending them to an arms company registered in Panama under his wife's name (Front Line Defenders 2016b). Venezuelan advocates have also been accused of receiving money from paramilitaries in Colombia and from the United States government, and of having suitcases stuffed with dollars (James 2011).

In Hungary, President Viktor Orbán called human rights groups "activists financed from abroad" and "foreigners" promoting "interests directed against the nation" (Bota, Köckritz, Lau, and Ross 2015). He has also alleged they are "pseudo-civil organizations that are being funded by foreign speculators in order to ruin Hungary's reputation abroad" (Keller-Álant 2016), saying that this is "an attack against Hungary" (HCLU 2014).

This type of allegation against human rights NGOs has even been formalized into law in Russia, with the passage of the Foreign Agent Law in 2012, capitalizing on a term that carries Soviet Union-era connotations of being traitors (Hooper and Frolov 2016). As of January 2017, 155 NGOs had been labeled as "foreign agents" under the law, with many being forced to close down (VOA 2017). Similar

legislation has since cropped up in at least eighteen other countries (Gessen 2014; Dzyubenko 2015).

This divide between human rights NGOs and the public is also exacerbated by appealing to standards of morality or good behavior; the discredited behavior that is targeted depends on what issues are considered divisive in the country. Allegations of homosexual behavior, in a country where homophobia remains a sensitive issue, are common in Russia. In Hungary where the issue of immigration has been at the center of national debate and politicking, President Viktor Orbán said that "certain international organizations encourage the illegal immigrants to commit illegal acts" (Eötvös Károly Institute et al. 2017).

Second, populist governments seek to undermine the reputation of human rights NGOs as being *non-partisan*. In Turkey, some prominent German NGOs were accused of supporting dissidents and the opposition. Ecuador's Rafael Correa similarly accused NGOs of informally supporting and financing the political opposition, and planning to destabilize the government through international funding (*La Hora* 2013). For Correa, "they're not non-government organizations but organizations from other governments, and powers that be, which want to impose a political agenda with no political responsibility, with no democratic legitimacy" (*Andes* 2016). In the case of India, such ties to the opposition have been further specified to be working with the insurgent Naxalite movement, with the Ministry of Home Affairs alleging before the Supreme Court that human rights NGOs were being used as fronts to penetrate urban areas (Bhalla and Press Trust of India 2013). Similarly, Venezuela has taken this rhetoric of being political to the level of legislation, with the new Decree No. 2323 criminalizing those opposing the national government, including human rights NGOs who hold contrarian views, as "internal enemies."

Finally, smear campaigns aim to tarnish the perception of human rights NGOs as being *non-violent*. To question this reputation in Kenya, where terrorism by the jihadist group *al-Shabaab* has plagued the country, especially its Christian population, the government has delegitimized human rights NGOs by accusing them of funneling aid to terrorist activities (BBC 2014). The Kenyan government closed over fifteen NGOs for allegedly fundraising for terrorism (Agence France-Presse 2014). Similar accusations of links with terrorist groups were also made in Ecuador, where more than 200 activists from the peasant and indigenous movements were charged with terrorism for protesting government policies (de la Torre 2015). In Russia, the Czech aid group People in Need was accused of links with Chechen rebels and was forced to leave the country (Dzutsev 2005). In Hungary, in relation to NGOs funded

by George Soros, the government has suggested that people calling themselves human rights defenders fraternize or cooperate with terrorist and human trafficking organizations (Eötvös Károly Institute et al. 2017). Most recently, Philippine President Rodrigo Duterte tagged UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz as a terrorist, placing her on a list of 600 alleged members of the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA; Mogato 2018). Just before being listed as a communist and terrorist, Tauli-Corpuz had been denouncing the government for attacks and killings of indigenous *Lumad* people in the Philippines (Ellis-Petersen 2018).

Restrictions on Fundamental Rights

A common strategy in the populist playbook is to limit rights and freedoms that are fundamental for the existence and independence of NGOs and media outlets. Populist governments directly target the essential rights that civil society actors advocate for and upon whose protection they rely for existence—rights to life, liberty, security of person, freedom of association and assembly, freedom of expression, freedom of movement, fair and public hearing, and effective remedy, and the rights against arbitrary arrest and detention, and against torture.

With respect to freedom of association, shutting down human rights NGOs on arbitrary grounds or trumped up charges is a common strategy in the playbook. In Turkey, more than 1,500 civil society organizations were closed down by April 2017, especially since the failed coup attempt of July 2016 (Kingsley 2017). Ecuador under Correa utilized the same tactic, although in a more targeted and individualized manner than Turkey. Ecuador's Decree No. 16, which allows for the dissolution of organizations on vague grounds such as straying "from the objectives and aims for which they were created" allowed Correa's government to shut down several NGOs.

Moreover, governments do not just target the formal organization of human rights organizations, but also one of the primary means for civil society to advocate for their causes—public demonstrations. Protests have come under severe attack in many of the countries we examined, where their criminalization was justified by being labeled "destabilizing actions" (INCLO 2013). Venezuela's Decree No. 2323, for example, prohibits demonstrations for being a "threat against security, peace, or public order" (Amnesty International 2013, Vegas 2016). Similarly, Turkey's Prevention of Terrorism Act has been interpreted broadly to include protesters (ICNL 2018b). Legitimate grounds for regulating protests, such as national security and public or-

der, are also often defined vaguely in order to deny permits for organized action or disperse otherwise lawful gatherings—as has been seen in Turkey (Kingsley 2017) and Russia. When protests are dispersed, they are often met with excessive force, as in Russia (ICNL 2018a); in some cases, lethal force against protesters is even permitted by law, as in Egypt (INCLO 2013).

With respect to freedom of expression, a common tactic of responding to critical views by human rights NGOs and their members is either directly through libel or slander suits or indirectly through non-speech related charges, such as "engaging in political activities" as was used by the Correa administration in seeking to dissolve *Fundamedios* (HRW 2016a), an NGO that monitors freedom of expression. Insulting statements against government leaders, normally covered by free speech protections, become criminalized, as has been seen in Turkey, with the government using article 301 to prosecute those insulting Erdoğan on Twitter, Facebook, or YouTube (CIVICUS 2016).

Apart from punishing speech after the fact, populist governments have also been using means to prevent speech or eliminate potential spaces for communication. Blocking Internet access has been used in Turkey, with a 2015 amendment that has allowed the government to block websites without prior court approval (CIVICUS 2016). Most recently, the Turkish government has put forward a draft of restrictive legislation that will significantly restrain broadcasting freedom and access to Internet content by citizens (Gall 2018). In Egypt, during the revolution in Tahrir Square, Internet and phone network access was blocked to around 80 million people (Searcey and Essomba 2017). Internet blocking has also been widely used by leaders in many African nations, especially during contested elections that threaten a long-sitting leader (Searcey and Essomba 2017). In other places where Internet access is relatively unhampered, governments resort to expanding their power to control online speech, as in Russia (HRW 2017).

With respect to freedom of movement, travel bans have been a tool commonly used by governments, either as a form of censorship before the fact or as punishment post facto. Turkey has issued the most travel bans of the populist regimes we studied. As of 2016, several human rights lawyers faced travel bans for defending members of the Kurdistan Workers Party (PKK; Front Line Defenders 2016c) as part of a broader crackdown where the passports of around 140,000 individuals had been cancelled (Hansen 2017). Apart from blanket travel bans, some countries have also issued event-related travel restrictions for activists seeking to go abroad to denounce human rights violations. In Russia, authorities prevented activists for indigenous peo-

ples' rights from traveling to a United Nations meeting in New York City, while other activists were delayed after unnecessary checks (HRW 2014). In India, the government prevented Greenpeace activist Priya Pillai from flying to England for a meeting to brief British members of parliament on the impact of a U.K.-backed coalmine on local villagers (BBC 2015).

With respect to the right to life and security of person, killings, enforced disappearances, and arbitrary detentions are all being used against members of human rights NGOs. In Russia, killings of members of human rights NGOs, including high profile activists, are prevalent. Human rights activists who criticized the Putin administration—such as Stanislav Markelov, Anastasia Baburova, Natalia Estemirova, and Anna Politkovskaya, some of whom have even been recognized through awards by foreign groups or governments—have wound up dead (O'Neill 2017). India has also seen killings of human rights activists, particularly those advocating for land rights (VOA 2016) and the right to information (HRW 2015). In Venezuela, NGO *Foro Penal* (2018) recorded 5,511 arrests based on political grounds in 2017, along with 848 cases of political prisoners (those formally deprived of their liberty)—a 1200% increase from the prior year.

Short of killing, activists have also been subjected to violent attacks. In Russia, a commonly used antiseptic, sometimes mixed with a strong chemical, has been used against activists to cause eye impairment (Ayres 2017). Most vulnerable are activists working on highly sensitive issues like corruption, LGBTQI, or electoral fraud issues (Brechenmacher 2017). In Kenya, those particularly at risk are individuals and organizations working on land rights, environmental issues, and corruption (Kode 2015). In Venezuela, advocates have been threatened, kidnapped, robbed, detained, and disappeared (ICNL 2017).

Severe Burdens on the Operational Capabilities of NGOs and Society Actors

Populist regimes tend to impose various kinds of legal impediments and administrative burdens that make it much more difficult to carry out the day-to-day business of civil society. These restrictions are chosen from the following (non-exhaustive) anti-civil-society menu:

1. Difficult or delayed registration process for NGOs;
2. Impossible requirements for obtaining official registration;
3. Requirements to submit identification and personal details about the

NGO's members and board of directors, engendering fear of personal reprisal;

4. Constant reporting and monitoring requirements;
5. Ambiguous standards that restrict the kinds of activities that the organization can carry out;
6. Sudden eviction from its offices by the landlord or for building or fire code violations that are often impossible to comply with;
7. Unannounced or multiple spot checks of the organization's books and premises; and,
8. Tax audits requiring a temporary shutdown of the NGO until the procedure's conclusion.

Failure to comply with such requirements may carry the penalty of suspension of operations or dissolution altogether. In order to justify these measures, populist governments oftentimes allege public interest grounds: tackling terrorism; preventing foreign intrusion into national sovereignty; curbing corruption and malpractice by NGOs; preventing public disorder; protecting public interest or morals; and making aid more effective and coordinated with government programs.

Administrative and regulatory restrictions are strikingly similar across populist and authoritarian regimes in different parts of the world. First, restrictions are often based on the commission of an ambiguously defined act. For example, Russia's Foreign Agent Law hinges the labeling of an organization as a "foreign agent" upon receiving foreign funds and conducting "political activity"—a term so broadly defined that it can arguably include any act normally undertaken by human rights NGOs. Moreover, regulations imposed by the law are unduly burdensome, lessening the ability of human rights NGOs to undertake their normal work or causing them to shut down completely. Venezuela's *Law for the Defense of Political Sovereignty and National Self-Determination of 2010* stipulates that the government can impose a fine that is twice the sum of what a group receives from abroad and impose penalties on their international guests who publicly "give opinions that offend state institutions." Organizations that do not comply can be deprived of their political rights for five to eight years, in addition to being meted a fine of up to a $100,000 and being imposed penal sanctions.

Furthermore, the requirements of restrictive laws make the human rights organizations either dependent on the government or subject to its intrusive regulation, affecting their essential independence. This can take the form of requiring NGOs to

seek approval of the government for their programs or the release of their funds, or of the government being able to freeze the assets of the organizations. The recent amendments to the FCRA in India, for example, state that only 50% of the foreign funds of an organization can be used for administrative costs, subjecting the budgeting and decision-making power of an NGO to direct government control (Sampath 2016).

Furthermore, NGO officers and members can be subject to personal punishment even for acts supposedly conducted by the organization as a legal entity. This is a significant divergence from the general rules governing corporations, where individual officers are protected from personal liability. Article 33 of the Associations Law of Turkey holds that the chair of the executive board of an association can be held personally liable for any fines or sanctions to which the organization is subject. This defeats the basic premise of why a human rights group would incorporate, which is to seek liability protection for individuals through obtaining a legal personality for the organization (Bloodgood, Tremblay-Boire, and Prakash 2013, 726).

Finally, a common tactic is to impose fines beyond the means of the NGO to pay as an indirect way of shutting it down. Amendments to Russia's law "on Assemblies, Meetings, Demonstrations, Marchers and Picketing" increased by 300 times the fines for organizations not complying with regulations on assembly, the maximum penalty being one million rubles (approximately US$17,500; ICNL 2017).

Cooptation of Sectors of Civil Society

The final tactic in the playbook is cooptation, especially through establishing government-owned NGOs (GONGOs) that compete with or attack legitimate human rights organizations. For instance, in Ecuador, the GONGO *Seguro Social Campesino* (Peasant Social Security) was set up to compete for leadership of the indigenous movement with the *Confederación de Nacionalidades Indígenas del Ecuador* (CONAIE), the most established indigenous peoples' organization in the country (Ortiz Lemos 2015). In Ecuador, the indigenous movement was at the helm of opposing many of the Correa administration's development projects. Moreover, the government revived defunct indigenous organizations, such as the Federation of Ecuadorian Indians (FEI), and created new ones to serve as apologists for the government and as a counterweight to the traditional civil society organizations critical of the administration (Ortiz Lemos 2015). In neighboring Colombia, President Álvaro Uribe had tried the same tactic in order to divide the indigenous movement in the Cauca region, the movement's strongest regional base.

In Kenya, the Kenya Conservatives Forum is one of the organizations that advocate in favor of the government. During the International Criminal Court (ICC) process to bring the incumbent President Uhuru Kenyatta before the court, the Forum issued statements, filed cases, and carried out other forms of activism for the benefit of those accused. Another NGO, Change Associates, opposed the advocacy of organizations supporting the ICC investigation. The director was able to travel to The Hague after being financed by the government. He, along with other NGO directors, has become one of the most important critics of the Kenyan NGO sector.[1] Hungarian GONGOs do the same—the Civil Cooperation Forum organized pro-government "peace rallies … and participated very actively in the electoral campaign of 2014 on the side of the governing parties" (Koncsik 2017). Other PANGOS (party-organized NGOs) also legally defend the government position (Krekó 2016).

Sometimes, these GONGOs evolve into units of violence that harass government opponents. One example is the *Círculos Bolivarianos*, created by Hugo Chávez in 2001 as a loose grouping of workers' movements that were supposed to strengthen direct democratic participation but that evolved into militias for the government (Stratfor Worldview 2004). Russia has done the same with the Nashi youth movement, which acts as an armed apologist for Putin's policies (Walker 2015), often attacking individual activists who oppose the government. In India, NGOs affiliated with the *Rashtriya Swayamsevak Sangh* (RSS), a Hindu nationalist volunteer organization connected to Modi's *Bharatiya Janata* Party (BJP), serve as government defenders, attacking human rights NGOs for criticizing the government.

In some cases, the government approach is less explicitly aimed at attacking—physically or verbally—legitimate human rights NGOs; instead, they simply divert government resources to GONGOs to crowd out legitimate organizations from scarce resources

In some cases, the government approach is less explicitly aimed at attacking—physically or verbally—legitimate human rights NGOs; instead, they simply divert government resources to GONGOs to crowd out legitimate organizations from scarce resources. In Venezuela, legislation created "Organizations of People's Power," the only groups allowed to organize and participate in public affairs as well as to access public funding. They can be recognized only if they adhere to the state's values

1 Anonymous personal communication, June 2017.

and ideological practices and agree to be closely monitored by the government (ICNL 2017). In Turkey, the government allocated valuable state lands and properties to government-affiliated NGOs and foundations. GONGOs, such as *Sivil Dayanisma Platformu,* were quite visible during the demonstrations in favor of Erdoğan's referendum and post-coup-attempt demonstrations.

The tactic of using GONGOs has proven to be effective. First, the government gains defenders of its policies and ideology in the NGO sector, creating added legitimacy, either through the declarations of GONGOs or the simple fact that a former government opponent is now part of its ranks. Second, the creation of GONGOs produces more competition for the limited resources in the NGO community, especially where the government itself is a donor. As expected, the government grants more resources to NGOs it creates. Third, GONGOs and individual activists now aligned with the government compete for that coveted public legitimacy, often at the cost of legitimate NGOs. Finally, such divide-and-conquer tactics create a sense of chaos within the human rights community, causing the public to be confused or lose its trust in the sector as a whole.

RISING TO THE CHALLENGE: A NEW PLAYBOOK

Human rights actors currently operate in uncertain times, with some scholars writing about the "endtimes" of human rights and some activists speaking of a "crisis" in the field. Although the populist challenge has contributed to this perception, uncertainty and a sense of crisis stem from the overlap between the populist moment, on the one hand, and longer-term changes in geopolitics, technology, and society on the other. The United States and Europe are no longer as dominant as they once were; there are many new human rights groups and issues; and information and communication technologies are creating new opportunities and challenges for human rights advocacy (Rodríguez-Garavito 2015).

Faced with uncertainty, the response of human rights analysts and practitioners who do not embrace the "endtimes" vision could be defensiveness or reflexive reconstruction. Defensiveness tends to be the reaction of those human rights practitioners who are highly invested in the dominant model of advocacy. Reflexive reconstruction is the response of those who recognize the value of such critiques, but believe that they do not represent the end of an ideal and the struggle for human rights, but rather the need for new ways of thinking about and practicing them (Rodríguez-Garavito 2014).

As we noted earlier, reflexive reconstruction is the perspective of this chapter and the spirit of this volume as a whole. Rather than representing a crisis, the populist moment—and its concomitant geopolitical, technological, and societal transformations—entails a moment of transition and transformation in the human rights field. Transitions create opportunities for innovation, so these are also creative and experimental times.

We agree with Kathryn Sikkink's argument in her chapter in this volume and in her recent book that there is evidence for hope in the human rights field (Sikkink 2017). As Rebecca Solnit (2005) writes in *Hope in the Dark*, "authentic hope requires clarity and imagination." In the previous section, we sought to clarify the nature and content of the challenge—the populist playbook. In this final section, we engage in an exercise in imagination, proposing responses to this challenge to incubate some ideas and strategies for a new human rights playbook. However, our exercise in imagination and hope does not unfold in the dark. Rather, it is based on a summary discussion of the findings and ideas from subsequent chapters, as well as our own research and our engagement with human rights organizations around the world.

Based on previous work, we posit that the new playbook requires less emphasis on naming and shaming strategies; instead, we must connect with new constituencies, combine online and offline mobilization, and develop horizontal forms of collaboration between global North and global South organizations (Rodríguez-Garavito 2014, 2015). As Sikkink (2017) has argued, "human rights activists should rely less on… so-called 'naming and shaming' and more on what might be called 'effectiveness politics'—identifying techniques and campaigns that have been effective to discern how best to improve human rights." Since the populist crackdown seeks to undermine not only the effectiveness of human rights actors, but also their legitimacy, we believe that responses need to tackle both challenges.

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In what follows, we thus organize the discussion of the subsequent chapters into three parts. First, we highlight contributions that *contest the idea of a crisis* in human rights. Second, we document promising responses to the *legitimacy* challenge. Finally, we bring out contributions to addressing the *efficacy* challenge.

Contesting the Idea of a Crisis of Human Rights

It is too early to tell whether the copycat actions by populist governments against human rights NGOs amount to a global trend of closing civil society spaces. This is an empirical question, whose answer depends on quality data not only on the types of violations traditionally covered by well-established human rights indexes (such as killings or arbitrary detentions of activists), but also of what Katrin Kinzelbach and Janika Spannagel's chapter calls "softer" forms of repression, such as imposing obstacles to NGO operation and funding.

Kinzelbach and Spannagel show that although threats against human rights organizations are worrying and should be taken seriously, the existing data do not support the dire diagnosis that such threats amount to a global, sustained trend. Instead of debating just how dangerous civil society engagement has become, they propose two fundamental shifts in emphasis: from victim-focused advocacy toward perpetrator-focused advocacy, and from documenting hard repression toward more documentation of softer forms of repression.

Most human rights organizations focus on documenting cases of individual victims and telling the story of the latter. Kinzelbach and Spannagel argue that it is important that this approach be complemented with more rigorous documentation of the lines of responsibility—removing the blanket of anonymity enjoyed by those responsible who hide behind "the state" as the perpetrator—thus altering the cost–benefit calculation. Moreover, those who resist should also push state representatives into a discussion about and public commitment to norms that uphold human rights.

Moreover, in line with our argument in this chapter, Kinzelbach and Spannagel make a case for human rights organizations to invest in documenting and monitoring softer forms of repression—the ones that populist regimes tend to focus on since they have learned that international attention often, if not exclusively, focuses on violent crackdowns.

In her chapter, Kathryn Sikkink also contests the frame of crisis and peril, showing that pessimistic claims about the state of civil society and human rights today are not substantiated by historical and statistical evidence. She focuses on the debate about the accuracy of the peril and crisis frame not only because of its inadvertent impact on perceptions about the effectiveness and legitimacy of human rights work—both within the movement and with outside audiences—but also because it can negatively affect the motivation and well-being of activists.

Sikkink argues that a study of both historical and future trends on the five challenges to human rights that we identified can provide a strong basis in the search for effective strategies. This includes demonstrating more specifically how human rights groups have made a positive impact—as the other chapters in the book do.

Responding to the Legitimacy Challenge: Developing Powerful Narratives and Connecting to the Grassroots and other Movements

Contesting Populist Narratives and Engaging the Public's Values and Emotions

One of the positive developments in human rights during the populist moment has been activists' increased attention to values, narratives, and communications. Moving away from overreliance on legal tools and language, human rights actors have diversified their communicative tools and re-engaged the public on values and emotions in order to contest populist narratives and the politics of fear and anger. Going beyond the conventional audiences of progressive movements and the liberal media, they are increasingly attempting to create bridges with other movements and other sectors of society —with "the persuadable middle" that stands between the increasingly polarized factions of contemporary polities (Amnesty International 2018). Given that populist leaders' political force is rooted in populist sectors of civil society–from xenophobic movements to discriminatory religious organizations to violent "social cleansing" groups—that have gained considerable prominence, the new human rights playbook needs to include tactics to counter their influence.

As a result, one of the refreshing features of some of these new debates and practices in the field is that they return the discussion to the place where human rights emerged and where they must be located: the space of moral reasoning (Rodríguez-Garavito 2017). The over-legalization of the language and tactics of human rights has resulted in losing sight of the fact that, more than a set of treaties and constitutional norms, human rights are moral claims about the intrinsic value of every human being. As Amartya Sen (2006) wrote, in contesting that "legally parasitic view of human rights," human rights must be seen as an appeal to ethics, standing in contrast to utilitarianism.

If human rights are universal ethical claims and if their impact must be measured in our everyday life, what type of message can augment their efficacy and their emotional resonance among the majority of the population? Considering the growing efficacy of populist-nationalist messages against human rights, the question

is how to build counternarratives that effectively influence public opinion and citizen perceptions about rights and about those who defend them.

Fortunately, both the theory and the practice of social movements provide useful elements for the constant task of reframing. Studies in framing theory have shown how social changes depend on whether the activists who defend them manage to construct and reconstruct frames that give their movement an identity (*frame making*), so that they can have an echo with their audience (*frame resonance*) and connect with discourses and agendas from other movements, each one with their own audiences (*frame bridging*) (Benford and Snow 2000).

Going beyond the conventional audiences of progressive movements and the liberal media, they are increasingly attempting to create bridges with other movements and other sectors of society --with "the persuadable middle" that stands between the increasingly polarized factions of contemporary polities

For example, in the midst of the Orbán government's highly hostile context marked by unrelenting anti-rights and anti-NGO narratives, the Hungarian Civil Liberties Union (HCLU) invested heavily in new frames and narratives. As Stefánia Kapronczay and Anna Kertész show in their chapter, the HCLU took advantage of the increased media attention—due to the foreign-funded organizations law and the government attack on Soros-funded civil society organizations—to create a communications strategy designed to strengthen the organization's credibility by reaching an audience beyond its usual supporters and connecting with their value frames. Instead of responding to the government attacks and allowing itself to be cornered into a defensive stance, the HCLU deliberately chose to tell its own story about its values, its staff, and its clients using narratives that resonated with people's feelings. The key was to reach publics beyond its current circle of donors and supporters into segments of the majority population who traditionally have seen human rights as protecting only minorities and who have tended to support the government and xenophobic movements.

The initiative, called "HCLU is needed" *(Kell a TASZ)*, started as a hashtag campaign but evolved into a whole communications strategy to change the narrative about human rights. First, the HCLU gave a face to the clients it works for through personal stories showing that they are like any other Hungarian and that human rights protect everyone, thus bridging the human rights frame with the moral and political frame of the Hungarian public. Second, it shifted attention from the general principles

that the HCLU upholds to the organization itself and the people behind it, posting features on its staff members showing who they are as individuals and their reasons for working at the HCLU.

Furthermore, the HCLU steered away from the often-alienating technical language of human rights, explaining its values in plain language and appealing to values and emotions that resonate with the majority of the population. It also selected stories that would reach the average citizen most effectively rather than those that covered its most divisive areas of work, such as Roma rights. The HCLU also heeded the advice of political strategists on the power of repetition, using the "HCLU is needed" slogan wherever it could and eventually ingraining it in the minds of many Hungarians. Furthermore, to address government criticism about the lack of transparency and legitimacy of NGOs, the HCLU decided to go beyond the legal requirement of publishing its annual financial reports and post an easy-to-understand pie chart of its sources of income on the landing page of the Hungarian version of its website. Moreover, it produced videos to reach out to different age groups about what it does. Finally, it involved its staff, clients, and public personalities with significant social media following—musicians, graphic designers, and artists—in disseminating its messages on why the HCLU is needed.

Resonant narratives and stories are key in persuading the public—not only the progressive camp—about the importance of human rights values

The experience of the HCLU offers a crucial lesson for the new human right playbook: communications efforts should not only be about how to reach a target audience and what mediums to use. More importantly, it is a broader effort at elevating communications from a tool to a strategy. Resonant narratives and stories are key in persuading the public—not only the progressive camp—about the importance of human rights values.

The centrality of communications and resonant, creative narratives targeting a broad public is exemplified also by Venezuelan activism against the increasingly authoritarian rule of the Maduro government. As Rafael Uzcátegui relates in his chapter, his NGO, Provea, now uses social networks intensively, incorporating graphic and visual elements into its messages. It also promotes comics as a way of connecting with its audience. Provea has also co-created an online radio station whose infrastructure is made freely available to other civil society actors at no charge and enables them to disseminate their recordings through networks like WhatsApp. This has increased NGO presence in the media.

In an exercise in frame resonance and bridging, Provea's alliances include musicians, photographers, and graphic designers who generate content to reach non-specialized, young audiences. As in other national contexts where populist governments have censored mainstream media, much of this content is broadcast through new online portals and digital platforms.

Perhaps the most radical example of frame transformation documented in this book is the campaign led by Harsh Mander. Through the *Karwan-e-Mohabbat*, or Caravan of Love, he and a group of committed volunteers who joined his call traveled India from east to west in September 2017. Their goal was to address the rise of hatred and bigotry among common people against minorities in India—especially Muslims—through acts of compassion, love, and solidarity. While Mander has been running his own NGO, the Centre for Equity Studies (which ended up being targeted by the government because of the Caravan's work), he opted for an approach that spoke to the suffering of the families of people lynched around India, humanizing the effects of communal violence. In doing so, he deliberately sought to contest the political frame of anger and hatred against minorities promoted by the Modi regime—the paradigmatic example of the global trend that Indian writer Pankaj Mishra (2017) has called "the age of anger"—with a frame of love and compassion.

It started with Mander writing an article calling for response to what he calls "command hate" in India, proposing a journey of "shared suffering, of atonement, and of love" across the country to meet the families of those killed by lynching—to "create a garland of empathy" with them, break the silence, and seek collective atonement. After gaining a significant following, the Caravan now plans to call upon volunteers from across India to help create a database of hate crimes by state and non-state actors in order to address the lack of information. It also plans to ensure legal, psychosocial, and financial support for the families that the Caravan met.

What these and other similar initiatives have in common is an explicit effort to go beyond the traditional tools of human rights advocacy and to engage the public's values, emotions, and perceptions. Just as the anti-rights rhetoric of populism seeks to garner citizen support through powerful narratives that define the national interest in exclusionary terms—as the interest of "the real people"—new rights narratives contest such a frame through language and values that resonate beyond the usual audiences of human rights activism. In sum, the new playbook must put narratives, emotions, values, and communications front and center, rather than as afterthoughts in deploying conventional and technical tools of advocacy.

Bolstering Legitimacy through New and Deeper Alliances

A second response to populist efforts to delegitimize human rights advocacy has been to develop new organizing models that seek to reduce the legitimacy deficit of conventional human rights strategies and also to raise the cost for populist governments when they attack civil society, as documented in Khaled Mansour's chapter. As noted, this legitimacy deficit takes two forms: 1) the distance between NGOs, on the one hand, and the public and grassroots organizations on the other; and, 2) asymmetries between national and international organizations.

In his chapter, Jonas Wolff convincingly argues that any effort to counter the populist charge of NGOs being "foreign agents" requires expanding societal support for human rights work. There are two complementary avenues for achieving this goal: 1) building a local constituency and strong ties with communities beyond urban centers; and, 2) creating coalitions and alliances with other NGOs as well as other non-NGO sociopolitical actors, such as mass- or community-based organizations, civic activists who act more fluidly and sporadically, and political actors.

Some of the most promising new organizing models have sought to create a bridge between formal NGOs and less structured, individual forms of activism such as online mobilization. Such bridging between the logics of "collective action" and "connective action" (Bennett and Segerberg 2012) is a fundamental step towards creating impactful coalitions for human rights and social justice at large in the digital age. This entails deepening collaborations between the type of organizations that this chapter has focused on (NGOs) with the myriad human rights actors who do not have a formal structure and embody other equally important models of advocacy.

A particularly clear instance of the combination of "offline" and "online" activism is Provea's work in Venezuela, as recounted by Uzcátegui in his chapter. Provea decided to collaborate with young activists not only because of their training in digital tools, but also for their cultural references, different from those of what he refers to as the traditional "analog" civil society.

Governmental pressure on NGOs has also prompted collaborations between human rights organizations and other movements. As Ivor Chipkin shows in his chapter, although South Africa does not fall neatly into the characterization of populist regimes, the highly personalistic and autocratic rule of the Zuma government included measures against civil society that resemble those of populist regimes. To counter the government's authoritarian tendencies, an unlikely coalition in civil society has emerged in South Africa—one that unites the traditional mem-

bers of the anti-apartheid struggle with new actors such as businesses. This coalition to oppose "state capture" thus joined businesses with radical trade unions and liberal organizations.

Working separately, and occasionally together, they have used three effective tactics: 1) taking advantage of the continuing independence of the South African high courts through litigation to, for example, challenge illegal presidential appointments, preserve the independence of state institutions, develop jurisprudence on public law, and even re-file criminal charges against the country's president; 2) social mobilization by civil society involving significant numbers of new and diverse groups; and, 3) political mobilization between activists and other diverse actors, including senior figures in the African National Congress.

As for international asymmetries that erode the legitimacy of human rights work, NGOs have responded by experimenting with new forms of horizontal transnational collaboration that no longer revolve around support to national organizations in the global South by INGOs in the global North. To counter populist charges that they are controlled from abroad, national NGOs in populist contexts have forged alliances with counterparts in neighboring countries or in other regions of the global South. For instance, Provea has fostered a strategy called "citizen diplomacy" with other Latin American organizations through one-week visits in other countries in the region, with the aim of increasing awareness outside Venezuela about the country's crisis and forging alliances with these organizations. While information technologies have made communications more accessible, face-to-face interaction remains crucial in building relationships and strong partnerships.

Similarly, to address the legitimacy and efficacy shortcoming of the traditional "boomerang" model of transnational advocacy, a number of organizations now engage in what can be called "multiple boomerang" strategies that consist of actions coordinated by several organizations in different countries in order to exert simultaneous pressure on the governments to which each of them has access. Sometimes this takes the form of alliances between national organizations, as in the campaign that blocked the attacks of Latin American states against the Inter-American Human Rights System (Rodríguez-Garavito 2015). In other occasions, they rely on transnational work coordinated by a network of national and global organizations, such as CIVICUS, as documented in Mandeep Tiwana's chapter.

Responding to the Efficacy Challenge: Operational and Fundraising Innovations

Populist government measures have been successfully undermining the efficacy of NGOs by creating regulatory, logistical, and financial obstacles that considerably hamper their operations. To counter such regulatory measures, human rights actors have adopted four types of responses, as documented in Rekosh's chapter.

The first response—avoiding the issue—has probably been the most common. NGOs have often chosen to focus on the political strategy of attacking the underlying political forces that produce the threats instead of the technical details of the regulatory regime—embodying the attitude that "if they want to get you, they will get you." The second response—adopting standard business practices—means that, like business organizations, NGOs develop compliance systems and invest heavily in efforts to persuade policy-makers to change direction. For this effort, Rekosh notes, NGOs can take advantage of pro bono voluntarism by law firms around the globe to obtain high quality legal advice. The third response—working around the system—includes structuring operations in various countries (with strong legal advice by law firms that specialize in such set-ups for international business) or operating informally, without any legal entity. The final response is working upstream to change the regulatory regime when possible. For this, NGOs can push the government to negotiate, use technical expertise to highlight the negative effects of regulatory changes, or attract public support for their political legitimacy.

Based on the successful global work of CIVICUS in pushing back against persecution of human rights actors, Mandeep Tiwana proposes additional tactics in his chapter. Civil society organizations need to develop ways to respond to negative developments in a fast and collaborative way (such as through "emergency legal assistance, flexible funds for advocacy campaigns, immediate relocation of threatened activists, and replacement of lost, destroyed, or confiscated equipment"), draw strength from their cumulative experiences, and move carefully beyond their traditional thematic silos. In addition, more accurate and frequent monitoring by civil society is essential, including resorting to courts, parliaments, and human rights commissions to demonstrate unrealized commitments that protect civic space. Finally, in order to push back against populist governments, Tiwana argues that alliances need to be established beyond the usual circles of activism. For instance, there is a need to persuade business leaders to not only adopt a "first do no harm" principle towards civil society, but also to actively defend civil society space, including by using their connections with political leaders and the power of their brands that appeal to the public.

James Ron, José Kaire, Archana Pandya, and Andrea Martínez also open up a menu of choices for NGOs to reduce their reliance on foreign funding, and thus their exposure to governmental measures that cut off international flows of financial support to NGOs. Based on a survey they conducted in Mexico City, which showed that citizens are likely to donate to human rights causes under certain conditions, the authors conclude that local fundraising from individuals is a strategy that can and should be tried. However, they also note that human rights NGOs, as well as their foreign donors, would need to invest in new capacities to open this channel of resources, including hiring dedicated staff, creating new advocacy and fundraising messages, building community relationships, and acquiring adequate computer and accounting systems. They must also identify their "market niche" to attract local donors. These measures can make the human rights movement less vulnerable to financial restrictions by populist and authoritarian regimes and thus more sustainable.

Similarly, Wolff suggests countering the "foreign agent" accusation against NGOs by finding alternative sources of funding, either by seeking local funding when feasible, or shifting to foreign donors considered less problematic. For example, European rather than American money (or vice versa), relatively autonomous para-state funding (such as by the U.S. National Endowment of Democracy, the European Endowment for Democracy, or the German political foundations) rather than government aid, and donations from the global South are all possibilities. Wolff also highlights the importance of making transparency and accountability part of the core mode of operations by NGOs, rendering potential reputational attacks by government ineffective.

However, Mansour provides important caution on the effectiveness of some of these options, especially that of local funding, in the Egyptian context. He points out that domestic funding also carries its own risks. His chapter instead offers insights on how certain NGOs have adapted by tweaking certain aspects of their operations such as "cutting down programs, tailoring activities, allowing staff members to work part-time for better paying jobs, [establishing] overseas offices for better protection of sensitive programs, and transferring funds more innovatively".

Yet another innovation in the face of funding restrictions is found in Harsh Mander's Caravan of Love in India. The Caravan was completely crowdfunded and consisted of volunteers from various sectors. Defying threats of violence in communities where it traversed, the Caravan persisted in performing symbolic acts as simple and inexpensive as placing a bunch of marigolds at the site of a lynching.

This sample of actions, and the broader repertoire displayed in the follow-

ing chapters, shows that human rights actors are responding to the populist challenge by developing new tactics and updating old ones. From re-energizing volunteers to experimenting with local fundraising and crowdsourcing, from engaging with the majority of the population's values and emotions to making communications a central element of their work, from developing alliances with other movements and online activists to deepening horizontal collaborations with grassroots organizations at the local level and with similar organizations in other countries—activists are contributing to a new playbook that offers hope for a meaningful reinvigoration of the movement. This reinvigoration addresses the weaknesses and blind spots of the current human rights architecture that populist governments exploit as they seek to undermine rights and freedoms in the name of democracy, and ultimately, democracy itself.

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PART I

PUSHING BACK AGAINST THE CRACKDOWN ON HUMAN RIGHTS AND CIVIL SOCIETY: CASE STUDIES

THE CRACKDOWN ON NGOs AS AN OPPORTUNITY TO REINFORCE HUMAN RIGHTS VALUES: A HUNGARIAN CASE STUDY

Stefánia Kapronczay and Anna Kertész

> *It is very important that we make it clear that we are not opposing non-governmental organizations here and it is not non-governmental organizations who are moving against us, but paid political activists who are attempting to enforce foreign interests here in Hungary.* —Viktor Orbán, 2014
>
> *They investigate where [Soros's] money comes from, what kind of intelligence connections there are, which NGOs represent what interests. The next year will be about driving out George Soros and the forces symbolized by him.* —Viktor Orbán, 2016

These quotes from Hungary's Prime Minister Viktor Orbán—the second from an interview reflecting on Donald Trump winning the U.S. presidency—are the new reality for NGOs funded by Open Society Foundations,[1] as are many in East-

1 Open Society Foundations, founded and chaired by George Soros, "work to build vibrant and tolerant democracies whose governments are accountable to their citizens." See https://www.opensocietyfoundations.org/about/mission-values.

ern Europe. How should civil society groups respond? The deliberate campaign aiming to discredit civil society organizations (CSOs) in Hungary poses new challenges for communications strategy. The response of the Hungarian Civil Liberties Union (HCLU) to this campaign provides some important clues for developing narratives to respond to the phenomenon of closing civil society space.[2]

The deliberate campaign aiming to discredit civil society organizations (CSOs) in Hungary poses new challenges for communications strategy

Hungary went through a dramatic shift beginning in 2010. Since then, Hungary has transformed from a progressive European democracy to an illiberal state. During the Fidesz Party's first term (2010–2014), the constitutional system was reshaped through an extensive legislative process and by chipping away at the independence of state institutions designed to check and balance state power. The party's second term was characterized by shrinking democratic space through weakening media pluralism and firmly clamping down on dissenting voices. At the onset of its term, the party attempted to restrict NGO access to independent funding from the Norwegian NGO Fund. Since 2014, the government and affiliated businesses acquired an unprecedented proportion of the media market. This concentration in the hands of Fidesz and its business allies allowed for a strikingly effective dissemination of political messages and propaganda. Concurrently, independent and critical media were subjected to more restrictions than ever before.

Another important element of this illiberal state is the marginalization and stigmatization of dissenting voices. The most well known instance is the 2017 *Law on the Transparency of Organizations Supported from Abroad* (i.e., foreign funded organizations), which is a carbon copy of the Russian "foreign agent" law aiming to stigmatize civil society organizations. In addition to the pro-government media machinery that attacks these organizations, government-organized non-governmental organizations (GONGOs) are used to question the professional expertise of CSOs.

While government discourse developed over the course of two years, as

2 The phenomenon of closing civil society space affects CSOs worldwide. A common characteristic is that many organizations—especially environmental, human rights, and civic participation—challenge the establishment. We use the terms CSO and NGO interchangeably in this article. The human rights movement more broadly is facing many critiques entangled with the closing space trend. Specific remarks that apply only or mostly to the human rights movement will use the terms human rights NGO, organization, or movement.

depicted in the above quotes, the core characteristics remained the same. The argument shifted from calling out the suspiciousness of foreign funding to finger pointing towards a specific person, George Soros, and the need to "drive out" "his forces." The latest "national consultation," distributed to every home in the country, contains out-of-context statements and false accusations about the "Soros Plan."[3] The government put forward a legislative package in January 2018 under the title "Stop Soros", which poses an existential threat to many civil society organizations. The legislative package will be put to vote after the elections in April 2018.

This "national consultation" combines basic political campaigning methods with critiques of the human rights movement. The first is characterized by frequently repeated hard-edged messages identifying one enemy.[4] While the rhetoric often builds on truths, they often arbitrarily omit or combine important data points to support a particular agenda.[5] Oftentimes the arguments also build on broader critiques of the human rights movement and NGOs. One of the central anti-civil-society campaign arguments is that NGOs, particularly human rights organizations, lack legitimacy as they do not represent the interests of the average person. This element of the campaign capitalizes on the fact that there is generally little direct relationship between these organizations (especially human rights organizations) and citizens.[6] For the average citizen, human rights NGOs may sometimes appear to represent the "other" in society, such as the Roma minority, prisoners, or migrants and refugees. Another characteristic of the discrediting campaign is the suggestion of some form of conspiracy. Common arguments suggest that the organizations in question are not transparent and obscure their funding sources from the

For the average citizen, human rights NGOs may sometimes appear to represent the "other" in society, such as the Roma minority, prisoners, or migrants and refugees

3 The "national consultation" is a questionnaire sent by the Hungarian government to the eight million eligible voters. These questionnaires are designed to survey citizen opinions on important public affairs; however, they have serious methodological flaws, such as one-sided questions addressing already resolved policy decisions. The seventh edition of the "national consultation" is on the Soros Plan: http://abouthungary.hu/news-in-brief/national-consultation-on-the-soros-plan/.

4 Arthur Jay Finkelstein, well known for this type of political campaigning, was a consultant to the Fidesz party.

5 The consultation on the "Soros Plan," for example, refers to an article by George Soros but fails to mention a second article with a revised position.

6 According to data from the European Values Study, only 14% of Hungarians volunteer with civil society organizations, while 28% do in neighboring Austria. See http://www.erstestiftung.org/wp-content/uploads/2017/05/Civil_Society_Studie_Issuu_E1.pdf.

public. This is false, however, as every public benefit CSO is required to upload its detailed financial report to its website. The other element of the supposed conspiracy is that the organizations are working together for a common goal: to support the plan of powerful billionaire George Soros to resettle one million migrants annually in Europe. The campaign explicitly plays on anti-Semitic sentiments and suggests that Mr. Soros's NGO network and its "paid allies" (headquartered in European Union institutions, commonly referred to as "Brussels") cooperate to support his plan.

The pro-government media machinery supports claims about the "Soros Plan," though oftentimes it only interviews GONGO representatives. One example is an article by *The Hungarian Times (Magyar Idők),* which combined publicly available information about organizations providing human rights and sensitization trainings to state officials, the cooperation between UN officials and NGOs in training interpreters, and the fact that the HCLU was looking for volunteer translators (Áron 2017). The article suggested that the NGOs "on the payroll" of Open Society Foundations influenced the interpreters and translators, which they claimed was significant because migrants often lied about their age and country of origin. The article is a frightening example of how to fabricate misguided conspiracy theories and hidden agendas by spinning true yet unrelated facts about various stakeholders. Similar articles are published in online media weekly, making their way to regional newspapers and even national media.

HOW WOULD YOU RESPOND?

HCLU's response to the campaign against it, and against CSOs in general, includes an ongoing communication strategy that provided some interesting lessons. The campaign is called "HCLU is needed" *(Kell a TASZ),* and social media is the main platform, especially Facebook, since HCLU has always had a significant following compared to other civil society organizations. The campaign grew out of the realization that the organization would be cornered into a defensive position if it solely responded to the accusations and vague suggestions of politicians and pro-government media. Furthermore, our experience with previous communications campaigns highlighted the power of being explicit about our values and sharing individual stories that resonate with people's feelings. We therefore decided to use the increased attention to present an alternative narrative about human rights and our activities. We decided not to respond directly to the stigmatizing statements, but instead start telling *our* own story about who we are, what we believe in, and who we are fighting for.

At first, we began using the "HCLU is needed" hashtag after we published success stories about making a difference in citizens' lives. Soon the campaign developed to encompass four distinct aspects connected with the hashtag. First, we introduced our clients through personalized online stories that demonstrated that they are "one of us" and that human rights protect everyone (see figure 1). Second, despite the stigmatization only rarely getting personal, we wanted to highlight the organization, not only the abstract principles we protect. We therefore posted introductions to our staff members that illustrated who we are and why we work at the HCLU (see figure 2). Furthermore, we were aware of the often-alienating human rights jargon and felt the need to explain our values in plain language. We created posts (see figure 3) mimicking memes with inspirational quotes such as these:

- "The state should not question our relationship just because we did not get married."
- "I would like to be treated in a hospital that is well maintained, where doctors and medication are available, and where I will not get infected."
- "It is important to me that my child who has a disability learns together with other pupils."

Figure 1. *"Maria shared an article that claimed that the local government in Tata sold its real estate and then rented those properties above market price. She was criminally charged for hitting 'share'. We represented Maria in court and organized a successful crowdfunding campaign to cover her legal costs. Learn more about our client's case. If we are not standing with Maria, she does not get help."*

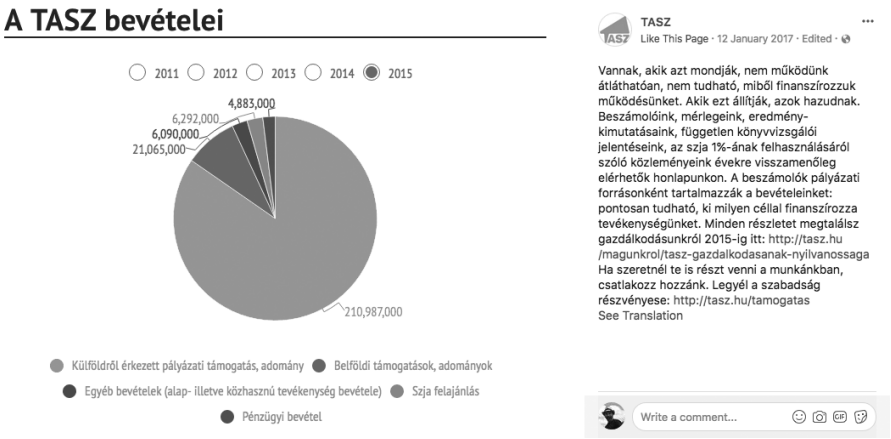
Figure 2. "This is who we are, the people of the HCLU. Dominika Milanovich: A former student of CEU, psychologist, lesbian woman. I organized Budapest Pride, I lead a Norwegian NGO Fund project. I receive trust and opportunities from the HCLU to advocate for people with disabilities. I am everything this system wants to portray as the enemy. In the meantime, how am I spending my time at the HCLU? I am helping people with disabilities to stand up for their rights."

Figure 3. Left: "I would like to be treated in a hospital that is well maintained, where doctors and medication are available, and where I will not get infected." Right: "When we initiated a lawsuit for transparency in relation to hospital infections, we received tons of personal stories about tragedies. It turned out that most people only wanted one thing: if relatives ended up in a hospital, they would not get hospital infections. This is what the HCLU works for."

Lastly, we produced three videos for different age groups to explain various aspects of what we do.

The government alleges that it is impossible to know who "controls" NGOs because of their lack of transparency. In response, we made transparency the center of our communications. The HCLU not only publishes annual financial reports, as prescribed by law, but also posts an easy-to-understand summary showing our sources of income (see figure 4).

Figure 4. Left: Revenue sources of the HCLU. Right: "There are people who say that we are not transparent, that it is not known how we finance our operations. Those who claim this are lying. Our financial reports and the external auditor's reports are available on our website for years back. The financial reports list our revenue sources: it is clear who gives support to the HCLU and for what purposes. You can find the details about the previous financial year, 2015, here."



On the day of the adoption of the foreign-funded organizations law, we created a new landing page on our website that showed the pie chart of our income with stories of six clients next to it (see figure 5). The goal was to answer two basic questions: 1. Where does our money come from? 2. Who are we protecting?

The goal for our dissemination strategy was partially to get new followers, but also to reach people outside of our usual circles with our new alternative message: this is who we are; this is what we work for. We used multiple dissemination techniques, including advertising on social media to target people who did not already follow us. Another dissemination tactic was asking friends, colleagues, and clients to

Figure 5. Left: We work transparently. Revenue sources of the HCLU. Right: We helped thousands of people over 22 years. Get to know our clients.

write posts about why they think the HCLU is needed. We were careful to address only those clients who—according to our experience—had a sufficient understanding of social media to make an informed choice. Furthermore, we asked influencers to share their thoughts about the importance of the HCLU, and identified people who had significant following in circles beyond our usual reach. We asked graphic designers, musicians, and other artists to publish statements about our work. Since many expressed their interest in showing support in the spring of 2017, we created a video about the various ways in which the average citizen could show their support, including through donations and writing testimonials about why the HCLU and similar organizations are critical (see figure 6).

IMPACT

One of our most uplifting moments was in the spring of 2017 when we stood in front of the Hungarian Parliament watching a demonstration. This demonstration was different as it was organized and attended by a younger generation than the typical protesters, a generation where the HCLU and similar CSOs are less well known. We stood in the crowd together with colleagues and began a new chant—"HCLU is needed"—which was taken up by the crowd. After four months of repeating our message, we had proof that it had indeed reached a significant new audience.

Figure 6. Top: A post from a colleague reads: "A couple of tips to show how much you love us J Please post about our work at #IStandWithNGOs or #kellaTASZ hashtag. Please give your personal income tax of 1% to the HCLU or become a donor. Bottom: You agree with us that #kellaTASZ / #HCLUisneeded but don't know what you can do? Please post about our work at #IStandWithNGOs or #kellaTASZ hashtag. Please give your personal income tax of 1% to the HCLU or become a donor."

The "HCLU is needed" campaign started at the beginning of 2017. By the end of October, the number of HCLU Facebook followers had grown by 17% in a steep and steady growth with no decline. April 2017 was the strongest month, as our campaign reached its peak when the proposed foreign-funded organizations law was submitted to Parliament. In April, our Facebook reach was 84% higher than it had been in March and engagement had doubled. Since the beginning of 2017, the HCLU had also doubled the number of regular individual donors. While 35% of the population had heard of the HCLU in May 2016, 41% had by the summer of 2017.

WHY IT WORKED

In a restricted media landscape, every organization facing a discrediting campaign must be creative about how to respond. The key issue is the narrative we would like to tell and its dissemination to our target audience. This not only requires delineating our target audience and preferred mediums, but also a broader process of elevating communications from a tool to a strategy. Communications are key in convincing people about the importance of human rights values and empowering them to understand their power to exercise these rights. The goals of effective human rights communication go back to the roots of the movement: empowering those who speak truth to power and spreading the message to strengthen these voices. This process is essential in repressive regimes where the ultimate goal of those in power is to discourage citizens from questioning the status quo and voicing opinions about public affairs.

A central critique of the human rights movement is that it uses an abstract, highly rationalized language that does not reflect emotions and that very few people can understand and utilize. In this campaign, we attempted to move beyond this not only by using storytelling techniques, but also by reinforcing our values. Values are key to narrative building, and we used techniques suitable for modern-day communications to convey them, such as using inspirational quotes. Another advantage of the campaign was that instead of responding defensively, we managed to tell stories about our work that exemplified our values in a relatable way. Though key to engagement, values and emotions are often missing from the narrative of the human rights movement.

The goals of effective human rights communication go back to the roots of the movement: empowering those who speak truth to power and spreading the message to strengthen these voices

Additionally, we deliberately chose stories that would be most compelling to the average citizen rather than our most controversial topics. While we have shown Roma and disabled clients in past campaigns, we have also shown an elderly woman as an example of restrictions on freedom of expression. We also started to shift our language away from human rights jargon. For instance, we did not talk about "rainbow families" but instead families with unmarried parents (same-sex marriage is not legal in Hungary). This strategy helped us demonstrate that human rights protect everyone, not only the "Other." This is not to suggest that we should tailor our communications to populist politics and only talk about what the majority agrees with. Rather, the technique aims to start human rights education through values and issues that affect the broader community. This strategy has its own risks, however, such as deterring vulnerable clients from seeking help. In the case of the HCLU, this risk was deemed minimal due to our good working connections with vulnerable populations and their organizations. The human rights movement began to empower the powerless—a goal that organizations should not lose sight of in trying to be relatable.

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The need to change the narrative was also present in our dissemination strategy, based on the concept that people find arguments more credible if they hear them from friends. It proved to be especially powerful that beneficiaries and clients picked up the hashtag and shared their stories. In many cases, HCLU clients do not belong to the circles where the HCLU is most well known—highly educated people living in big cities. This strategy, therefore, not only built credibility, but also helped us move beyond our bubble.

Some technical considerations are worth noting as well. We learned the power of repetition from political strategists, that is why the "HCLU is needed" slogan became entrenched and is still used. Another lesson is that preparation is an important asset when operating in an ever-changing hostile environment; our strategy made it possible to respond calmly and strategically. The campaign, designed for social media platforms like Facebook, was quite cost-effective and was adapted to the restricted media landscape and a still relatively free online speech context.

Certainly, the outcomes of the campaign cannot be separated from the increased media attention due to the foreign-funded organizations law. However, we used this attention to tell a story that focuses on why society needs human rights or-

ganizations instead of CSOs being victimized by the government. "HCLU is needed" started as a hashtag campaign but has since become a communications strategy that has helped change the narrative about human rights.

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RESILIENCE IN NON-DEMOCRATIC CONTEXTS: THE CHALLENGE OF BEING USEFUL UNDER THE VENEZUELAN 21st CENTURY DICTATORSHIP

Rafael Uzcátegui

In 1960, one year after its founding, the Inter-American Commission on Human Rights (IACHR) appointed Venezuelan writer Rómulo Gallegos as its first president. The appointment was not accidental. In 1958, Venezuela had begun building one of the most stable democracies on the continent and this author of the novel *Mrs. Barbara* had himself suffered a coup d'état twelve years earlier, a situation that several countries in the region were then facing. Thanks to revenues from its main export—oil—Venezuela was able to create democratic institutions that worked smoothly for thirty years, generating inclusion policies and, in spite of everything, the progressive guarantee of different political and social rights.

In 1982, signs that this model was eroding began to show with the beginning of the economic crisis and the devaluation of Venezuela's national currency, the Bolivar. The image of an abundant Venezuela that had welcomed the immigration of thousands of people from several continents began to fall apart. In 1989, a series of street riots known as "El Caracazo" (from the name of the nation's capital Caracas, although they occurred in several cities), demonstrated that the social and economic

pact that had worked since 1958 was plunging into terminal crisis. The 1990s was a period of intense citizen mobilization demanding change, which included two coup attempts in 1992 and, finally, the rise of a new political project labeled as "Bolivarian," led by Hugo Chávez.

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"El Caracazo" involved some of the most serious human rights violations during the period, a debacle that brought about new and different social and mass organizations. Among them was the first generation of Venezuelan human rights groups—whose rise was portrayed in the film *Shoot to Kill* (1990, dir. Azpurua)—which documented dozens of cases and accompanied victims during the convulsive decade of the 1990s. Those first NGOs faced accusations of being "defenders of criminals." Although they handled the most controversial cases—the El Caracazo riots, the peasant massacre of El Amparo, the indiscriminate raids in poor neighborhoods—the democratic muscle exercised during the three-decade period that followed generated a space in which they managed to function without the threats that their counterparts in other parts of Latin America experienced. For example, in 1995 the Venezuelan State accepted the first ruling against it by the Inter-American Court of Human Rights, recognizing that it had extrajudicially executed a group of peasants—portrayed to the public as guerrilla members—in El Amparo in 1988.

FROM HOPE TO DISENCHANTMENT

The coming to power of the Bolivarian project in December 1998 generated expectations for most of the population, including members of human rights organizations. At the beginning of his term, President Hugo Chávez met with members of various NGOs proposing the adoption of a national plan on human rights, which Chávez accepted verbally. This same movement participated, enthusiastically, in the 1999 Constituent Assembly, achieving the inclusion of different international standards, and resulting in a text that provided broad guarantees for economic, social, and cultural rights. However, the honeymoon period with the new government lasted only until the beginning of 2000, when Provea[1] publicly denounced extrajudicial ex-

1 Provea is the Venezuelan Education-Action Program on Human Rights, one of the most prominent Venezuelan human rights organizations.

ecutions in the communities affected by a landslide in the state of Vargas in December 1999. The president's response was to defend the actions of the military and to try to discredit Provea. Two years later, as a result of the attempted coup d'état in April 2002, the Bolivarian government began a gradual process of discrimination against any sector that criticized it, including human rights organizations.

In the middle of 2012, Provea published a report in which it conducted a 15-year review of public policies, whose title summarized the general situation of human rights at the time: "Inclusion in the Social, Exclusion in Politics." Between 2004 and 2009, backed by high international oil prices, Hugo Chávez's government promoted different social inclusion public policies that he called "Misiones" ("Missions"), which had a positive effect in the short term. However, the situation of civil and political rights opposed the advances made in social welfare. The guarantee of rights such as freedom of expression, assembly, and association went into sharp decline. For the first time in its history, Venezuelan NGOs were questioned about their funding sources, which the government claimed were part of an international conspiracy against it. In 2010, a preliminary draft of the Law on International Cooperation was approved, which regulated the receipt of international funds. This legislative initiative generated a scandal that forced the government to halt its approval and instead adopt a different regulation with a name that belied its real intentions. This was the so-called *Law for the Defense of Political Sovereignty and National Self-Determination*, which expressly prohibits foreign financing for organizations deemed to have "political purposes." The text argued that those who promoted candidates for elected office should be considered as such, which excluded NGOs. However, the label also applied to organizations that worked on accountability issues and educating the public to exact such accountability, which almost all activists in the country were doing. Although the law has never been formally applied, it still managed to inhibit different social actors who did not want to put their funding sources at risk.

Another harassment strategy used against activists and human rights defenders has been smear campaigns through the so-called National Public Media System. Organizations may be accused of having an "extreme right" ideology, being part of an international conspiracy, or being financed directly by the president of the United States. In the case of Provea, after it publicly denounced the burning of different health care centers by supporters of the opposi-

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tion, Communications Minister Ernesto Villegas called the organization a "rearguard of fascism." For almost two months, state media coordinated a campaign against the NGO, which had to adopt a security protocol to protect its members. The smear campaigns increased with the political rise of Nicolás Maduro. The fall in international oil prices and the absence of controls on public spending coincided during the first months of his term with the start of an economic crisis, high inflation, and shortages of food and pharmaceutical products, 80% of which had been imported during more prosperous periods. The increasingly fewer social benefits granted by the executive began to be distributed in an openly discriminatory manner in an attempt to favor certain electoral candidates. At the end of 2014, during a hearing at the IACHR, Provea described Nicolás Maduro as a "poverty factory." After that, the harassment against civil society increased to the point that in 2015, the IACHR ordered nine precautionary measures to protect Venezuelan human rights defenders.

21ST CENTURY DICTATORSHIP

The hottest point of confrontation between the government and Provea came in 2016 as a result of the authoritarian offensive by Nicolás Maduro's administration in the face of its loss of popularity due to the economic crisis, among other reasons. At the end of 2016—after being undefeated in 19 of 20 elections between 1998 and 2015—the Bolivarian campaign experienced its worst electoral result since the rise of Hugo Chávez. In the elections for National Assembly representatives, the opposition coalition defeated the ruling coalition by a margin of more than two million votes, prompting a turn to government dictatorship.

The first evidence was the premature replacement, a few days after the parliamentary elections, of the magistrates of the Supreme Court of Justice, by which the government ensured control of the country's highest court. In March 2017, following the enactment of legislation that illegitimately replaced the *Magna Carta*, the *Decree of State of Emergency and Economic Emergency*, civil society activists described the measure as "breaking the constitutional thread." Eight months later the government decided to suspend two electoral events (the Recall Referendum and elections for governors). The message sent by the Miraflores (Presidential) Palace was that "We will not hold more elections until we have the possibility of obtaining favorable results." Although democracy had already been progressively weakened by this point, here the Bolivarian project completely crossed the line. Aware of the gravity of the situation, human rights defenders started to label the government a "21st century dictatorship."

Other decisions were equally controversial; however, it was the public declaration in March 2017 of Attorney General Luisa Ortega Díaz about the rupture of constitutional order that led citizens to say "enough!" After having been in office for ten years—six under the government of Hugo Chávez—her words triggered a cycle of protests that lasted 120 days and, according to the United Nations High Commissioner for Human Rights, left 124 people dead, more than 5,000 arrested, and 609 civilians prosecuted under military justice. The intensity of the protests—9,436 demonstrations, with an average of 78 protests a day according to the government—was such that in order to stop them, the official strategy was to finally sacrifice the last positive symbolic element of Bolivarianism: the 1999 Constitution. On July 30, 2017, the government organized fraudulent elections for the National Constituent Assembly (ANC), making it a supra-power entity, even above the legitimate National Assembly and the president. The first decision of the ANC was to dismiss Luisa Ortega Díaz from her position as Attorney General. The second decision was to approve the *Anti-Hate Law for Tolerance and Peaceful Coexistence* that, despite its politically correct name, was brought in as a weapon to punish any criticism, threatening journalists and others with penalties of fifteen to twenty-five years in prison.

In Provea we maintain that the so-called "21st century dictatorships" are a new form of authoritarianism in Latin America whose genesis occurred in Alberto Fujimori's government in Peru

In Provea we maintain that the so-called "21st century dictatorships" are a new form of authoritarianism in Latin America whose genesis occurred in Alberto Fujimori's government in Peru (1990–2000). Some comparative characteristics of the Venezuelan and Peruvian experiences include the following:

1. Coming to power through elections and not through military coups d'état
2. "Re-founding" the state after the approval of a new constitution
3. Eroding the independence of governmental powers, centralizing power in the chief executive
4. Administering the justice system to legitimize arbitrary decisions, criminalize protest, and persecute dissent
5. Building, rhetorically and legislatively, an "internal enemy" that allows the approval of "exceptional" circumstances that justify governance without institutional counterweight

6. Gradually militarizing the justice system and, in "the fight against terrorism," using military tribunals to imprison civilians under emergency laws for crimes of "treason"

7. Not absolutely prohibiting the rights to freedom of assembly, association, demonstration, and free expression, but using selective threats and aggressions, administrative sanctions, and the courts to punish criticism and dissent

8. Controlling electoral power

9. Criminalizing international systems that protect human rights and withdrawing from the jurisdiction of international tribunals

10. Using public media outlets both to justify their arbitrary actions and to criminalize or discredit political and social leaders

11. Removing any hint of autonomy and independence of social and mass organizations, with the state creating its own organizations

12. Not promoting mass enforced disappearances due to the high political cost they would generate; instead neutralizing those considered antagonistic selectively

RESILIENCE IN THE FACE OF ADVERSITY

In a non-democratic context like the Venezuelan one, the space for independent civil society has been reduced to a minimum. Ninety-five percent of the lawsuits against the state in different courts across the country are declared "inappropriate," reflecting the absence of a system of effective recourse to justice. The lack of independence in the branches of government has also reached the public prosecutor's office and the ombudsman's office. As a result, victims of human rights violations do not have institutions that respond to their demands. With no possibility of litigation and bringing cases to justice, NGOs dedicate themselves almost exclusively to documenting cases and reporting them to international bodies. However, the fear of losing some of the social benefits granted by the government—and other less subtle threats such as coercion by armed civilian groups protected by the government—results in many victims refusing to even approach human rights organizations. For their part, human rights organizations have had to assume a greater culture of safety, which has generated unforeseen expenses. Finally, general insecurity, the deterioration of basic services such as electricity, water, and the Internet, and ongoing difficulties with public transport have limited the fieldwork carried out by researchers, reducing visits to other cities.

As a strategy of resilience against adversity, the Venezuelan NGO Civilis has argued that the work of Venezuelan organizations should focus on the physical protection of individuals, quick responses to arbitrary acts, the restoration of social memory, and various strategies for justice inside and outside the courts. In addition, tactics must be adopted to neutralize intimidation, eliminate or avoid opportunities for abuse and violence, unblock channels of access to help, reveal lies and censorship, gain allies, and employ unprecedented and innovative actions. Provea has been reflecting on and experimenting with innovation in this non-democratic context. Its strategies result from studied diagnosis, not merely use of social networks because the state has control of traditional communications channels.

Our first conclusion was that the gravity of the situation merits human rights actions that go beyond traditional activities (documenting, denouncing, litigating, and exposing). The need for "political" action, understood in a sense broader than "partisan", resulted from a long dialogue with the Peruvian human rights movement that struggled against Fujimori. A second conclusion was that, in the context of globalization of communications, maintaining a high profile in such a non-democratic context provided a greater guarantee of security for members and for the organization itself. A third decision was to craft less technical messages, steering away from the usual jargon of NGO activists, so that ordinary citizens could understand that the political cost of the attacks against human rights defenders would increase. Finally, we concluded that we should dialogue with "new" activists not only because of their training in digital platforms, but also for their different cultural references than those of "analog" civil society that was influenced by the May 1968 events in France, the counterculture, the new left, and the struggles for Latin American national liberation.

Our first conclusion was that the gravity of the situation merits human rights actions that go beyond traditional activities (documenting, denouncing, litigating, and exposing)

During the ten months during which Provea discussed how to describe Nicolás Maduro's government, the question "If it is not a democracy, is it a dictatorship?" kept coming up. Was it "competitive authoritarianism" or "neo-totalitarianism"? Official propaganda characterized the government's political project as "socialism of the 21st century," so we built popular messages that twisted the 21st century idea to highlight the novelty of the neo-dictatorship phenomenon. Another dimension of the discussion was how to warn people about the gravity of the situation without causing citizenship paralysis. Since most Latin Americans remember traditional dic-

tatorships—or have heard about them from their parents or grandparents—our strategy in the first months was to compare Maduro and Fujimori, not only because it was conceptually correct but also because the resistance of the Peruvian people had achieved a victory—Fujimori's resignation in 2000.

Provea now uses social networks intensively, incorporating graphic and visual elements into our messages. We also promote comics as a way of connecting with our audience and we sponsor trainings in narrative writing and other forms of discourse different from traditional human rights reporting. Together with the youth organization Redes Ayuda, Provea has created an online radio station[2] whose recording and publishing infrastructure benefits other civil society initiatives (at no cost) to circulate their short recordings in networks like WhatsApp. This has increased NGO presence in the media—such as the program "Son Derechos" in Faith and Joy ("Fe y Alegría") Radio, and opinion columns in different outlets. Our alliances include musicians, photographers, and graphic designers who generate content for new audiences. Another strategy has been building alliances with the new digital information platforms that have appeared because of the censorship and neutralization of traditional media. Provea has financed research by affected journalists who publish on different platforms and we strengthen media outlets that depend on crowdfunding. Now that the crisis has become normalized, maintaining interest in social rights issues requires unorthodox techniques, such as the "music for medicine" program, in which CDs and vinyl records are exchanged for medicine. Finally, Provea has fostered a strategy called "citizen diplomacy" through one-week visits in other Latin American countries, increasing knowledge outside Venezuela about our political crisis and mapping out joint work with partner organizations. Information technologies make communications faster and more affordable, but to gain allies, nothing can replace face-to-face interaction.

Without reducing these threats to human dignity to mere left–right ideologies, NGOs across Latin America must work together to restore democratic practices

Provea believes that these post–Cold War dictatorships are the new models of regional authoritarianism. NGOs across Latin America must work together to restore democratic practices and avoid division caused by reducing these threats to human dignity to mere left–right ideologies. We can learn much from each other by sharing and replicating good practices in a regionally appropriate way.

2 See www.humanoderecho.com.

THE FIFTH ESTATE: ATTACKING AND COOPTING THE TURKISH MEDIA

Bilge Yesil

Turkey has been beset by political, social, and cultural polarization since the late 2000s with serious implications on civil society, activists, dissidents, and journalists. The seeds of this polarization were sown between 2007 and 2009, as the Justice and Development Party (the AKP) decelerated the European Union–driven reform agenda, initiated a crackdown on civil society and the press, and subjected the Kurdish political community to mass arrests through its proxies in the judiciary. Dozens of journalists and civil society actors were detained and/or prosecuted for their alleged roles in so-called military plans to overthrow the AKP government. Additionally, hundreds of Kurdish politicians, lawyers, and human rights activists were arrested on charges of terrorism.

The tentative nature of the AKP's commitments to freedom of expression and association came into sharp relief during the 2013 Gezi protests when it took a heavy-handed approach against protestors. Once the nationwide demonstrations ended, the AKP government hastily passed a series of laws to prevent citizens from organizing mass rallies and to criminalize those who did. That same year, when a corruption scandal erupted exposing widespread cronyism and bribery among the higher echelons of the party, the AKP purged certain members of the judiciary and

law enforcement, and blocked news media organizations and social media users from disseminating critical information.

Following these legitimacy crises, the AKP and its leader, Recep Tayyip Erdoğan, intensified their efforts to monopolize state power and continue undermining civil liberties. With Erdoğan's ascent to the presidency in 2015, the AKP consolidated its political hegemony and passed stricter legislation to expand the powers of the state intelligence agency and to amplify the existing surveillance regime, including online communications (Yesil and Sozeri 2017).

What follows provides an overview of the AKP's attempts to silence its media and civil society critics and curb the free flow of information, along with some thoughts on how to respond to these challenges.

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FINANCIAL CARROTS AND STICKS

One of the key problems afflicting Turkey's media system is the political-economic collusion between media owners and power brokers. In the aftermath of the neoliberal restructuring of the Turkish economy in the 1980s, the media went through a rapid and untrammeled commercialization process that worsened existing patronage structures and led to a sharp increase in media partisanship. In the 1990s, up-and-coming entrepreneurs acquired financially troubled newspapers and integrated them into big conglomerates with the sole purpose of using them as "bargaining chips" to receive subsidies, privatization deals, and bank credit from the government and state agencies (Bek 2004). In return, politicians, high-ranking military officers, and bureaucrats exploited their relations with media owners to pursue their own political agendas and attack their rivals.

By the end of the 1990s, the media industry emerged as an oligopoly marked by the domination of a handful of corporate giants that limited the prospects of small, independent outlets. During the 2000s, this oligopolistic structure became further politicized as pro-Erdoğan media companies proliferated (Yesil 2016). In its early years in office, the AKP created a new government agency to deal with the fallout from the 2001 economic crisis. The agency took ownership of bankrupt conglomerates' media assets and sold them off to partisan investors (Yesil 2016). The AKP

continued to cultivate partisan media companies during the latter part of the decade. Using past financial criminal charges as an excuse, it took over several newspaper and television outlets and auctioned them off to pro-AKP conglomerates.

The AKP intervened in the media industry through the redistribution of state largesse as well. Erdoğan-friendly media companies prospered thanks to receiving a large share of privatization deals, public tenders, cheap credit via state-owned banks, and government advertising. Meanwhile, mainstream media outlets felt compelled to shift their political allegiances and began toeing the AKP line so as not to hurt their parent conglomerates' chances of getting a piece of the pie.

The AKP not only cultivated its loyal media, but also silenced its critics through financial reprisals. The heavy tax fines imposed in 2009 on Doğan Media, Turkey's largest media conglomerate, marked an important turning point in media-government relations. Following its critical coverage of a corruption scandal, Doğan Media was levied escalating tax fines that nearly equaled the value of its assets and threatened its existence (Watson 2009). To appease the government, Doğan Media sold some of its mainstream newspapers, laid off its most critical journalists, and took great care not to criticize Erdoğan further. The financial reprisals not only tamed Doğan Media, but also served as a careful reminder to other media owners of the potential dangers of anti-government coverage.

The AKP not only cultivated its loyal media, but also silenced its critics through financial reprisals

LEGAL ACTIONS AGAINST JOURNALISTS

In addition to these financial reprisals, media practitioners in Turkey have also been riven by the selective application of legal action. In the 1980s and 1990s, for example, journalists were prosecuted and/or imprisoned on charges of spreading propaganda on behalf of terrorist organizations, endangering national security and territorial integrity, inciting hatred and enmity among the public, and insulting state institutions. During the AKP's tenure, they were also accused of attempting to overthrow the government. For example, between 2008 and 2011, dozens of journalists, civil society actors, and human rights activists were charged with attempting to overthrow the government and threatening national unity. They were prosecuted as part of a politically motivated investigation and an anti-Kurdish operation.

ASSET SEIZURES AND CLOSING DOWN MEDIA OUTLETS

To control and silence media outlets with ties to AKP opponents and dissidents, the AKP government resorted to a more interventionist approach in recent years. For example, in December 2014, a year after the corruption revelations became known, the police raided several media outlets affiliated with Erdoğan's political nemesis, the Gülen community. Approximately two dozen journalists, producers, and scriptwriters were detained on charges of "forming an illegal organization and attempting to take control of the state" (Domonoske 2016). In 2015, the AKP replaced the management of a media company with its own trustees, citing an ongoing investigation on Gülenist connections. In 2016, the AKP took over another media company as part of a terrorism-related investigation. Discontent with the idea of turning these confiscated outlets into government mouthpieces overnight, the AKP used its proxies in the courts to take down their Twitter accounts, block access to their websites, and even delete their entire news archive (Domonoske 2016).

Such direct intervention into media outlets' ownership structures became ever more blatant after the coup attempt of July 2016. Since then, the AKP's efforts to repress its perceived enemies (Kurds, leftists, and Gülenists) and stifle any criticism in the public sphere took an ominous turn. Following the declaration of a State of Emergency, the AKP embarked on a massive purge of judges, police officers, civil servants, and educational and media workers.

In the media field, the botched coup set in motion the closure of media outlets, the arrests of journalists, and the blocking of websites and social media accounts. The passing of decree laws without any parliamentary approval resulted in a massive liquidation of critical voices from the media landscape (Venice Commission 2016). For example, in October 2016, twelve Kurdish and/or pro-Kurdish outlets were closed on charges of terrorist propaganda. By March 2017, the number of shuttered media outlets reached 147 (thirty-eight television channels, thirty-nine radio stations, and seventy newspapers and periodicals) and the number of imprisoned journalists was seventy-three (Beiser 2017).

Such direct intervention into media outlets' ownership structures became ever more blatant after the coup attempt of July 2016

MEDIA SMEAR CAMPAIGNS AGAINST CIVIL SOCIETY ORGANIZATIONS (CSOs)

Another worrisome development is the AKP government's increasing efforts to restrict the activities of CSOs coupled with smear campaigns undertaken by its proxies in the media. As part of the post-coup state of emergency, a total of 1,125 associations and forty-one foundations have been shut down; and dozens of local and domestic civil society staff have been detained, expelled, or harassed based on terrorism charges (Altintas 2017; Amnesty International 2017a).

As part of the post-coup state of emergency, a total of 1,125 associations and forty-one foundations have been shut down; dozens of local and domestic civil society staff have been detained, expelled, or harassed based on terrorism charges

For example, in June 2017, Amnesty International's local chair, Taner Kılıç, was arrested on charges of aiding an armed terrorist organization. A month later, Amnesty International's local director, İdil Eser, and five other activists were arrested while attending a digital security workshop in Istanbul, charged with membership in a terrorist organization (Wintour 2017). The arrests were part of the so-called security operations conducted in the aftermath of the coup attempt. Although Eser and other activists were released in October (charges pending), Kılıç remains imprisoned (Amnesty International 2017b). Notwithstanding these baseless charges, the pro-government media portrayed these activists as foreign agents allegedly planning to start a new round of anti-government protests and destabilizing the country (Albayrak 2017). One pro-government newspaper claimed that when the police raided the digital security workshop, the activists were caught with a map of Turkey in front of them making plans to "create widespread chaos in the country" (Yeni Safak 2017).

In yet another blow to civil society, Osman Kavala, a prominent philanthropist and founder of several cultural associations, was arrested in October 2017. Charged with "attempting to overthrow the government" and being a member of a terrorist organization, Kavala remains in pre-trial detention (Altintas 2017). Similar to Amnesty International staff, Kavala has been subjected to a coordinated smear campaign by pro-AKP media outlets. Inspired by President Erdoğan's labeling of Kavala as "the Soros of Turkey," several newspapers began to use the epithet "the Red Soros" in reference to Kavala's leftist politics. A pro-Erdoğan newspaper referred to Kavala as "one of the most mysterious men in Turkey," and raised questions about his

affiliation with the Open Society Foundations and George Soros, "the international speculator who creates crises around the world" (Star 2017).

International CSOs have also not been immune from legal attacks or media smear campaigns. In 2017, Turkish officials expelled Mercy Corps and the International Medical Corps (IMC), American organizations that deliver aid to Syrian refugees across the Turkish border. Some staff members of the IMC were detained and then released. Other international organizations have reported being subjected to growing bureaucratic obstacles and harassment from local officials (Mellen and Lynch 2017). As anticipated, pro-government media accused these international CSOs of working with Western intelligence agencies to support terrorist organizations in Syria and even partake in organ trafficking (Heller 2017).

RESPONSE: STRENGTHEN THE LOCAL NEWS ECOSYSTEM

These problems could be solved by making changes in existing legislation to: (i) disable media conglomerates from partaking in economic activities in non-media sectors; (ii) eliminate the provisions in the Constitution, Penal Code, Anti-Terrorism Law, Press Law, and Internet Law that criminalize free speech; and, (iii) revoke the decree laws that paved the way to the closure of media outlets. However, such remedies are not possible in the foreseeable future since the AKP enjoys near-total domination of the legislative, executive, and judicial branches; the main opposition parties remain in a state of paralysis, and the members of the Kurdish political party are imprisoned.

Given this rather bleak picture, local and international funding and support may offer some respite to media practitioners, especially those working at the local level. Since much of the government's ire is directed at national level media outlets, training and funding aimed at strengthening local newspapers, radio, and television stations, as well as online journalism initiatives might yield some results. Below is a list of some areas where support at the local level is needed:

- Provide digital security workshops and training to local journalists.
- Provide funding to online journalism initiatives that focus on local issues (environment, education, labor, women's and children's rights, and gender inequality).
- Provide training and funding to local news organizations to strengthen their investigative journalism practices.
- Assist local news outlets (print, radio, television) to establish community websites and to attract advertising from local businesses.

- Work with local higher education institutions to place their journalism and communications students as interns at local news organizations.
- Provide assistance to universities and high schools to launch student-run news websites that focus on issues that pertain to the environment, education, labor, gender inequality, and women's and children's rights.
- Provide training and funding to equip community leaders as citizen journalists to report from local municipality meetings.

There is no question that journalism in Turkey under the AKP has become a dangerous business. It will take much resistance not to lose the basic principles of journalism of a free and democratic society: truth and accuracy, independence, fairness and impartiality, humanity, and accountability.[1]

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A CARAVAN OF LOVE: PROTEST, ATONEMENT, AND CONSCIENCE IN INDIA

Harsh Mander

Many countries in the world are witnessing the rise of authoritarian and chauvinistic political parties that legitimize hatred against minorities and suppress liberal and left dissent. Such parties and leaders have been elected in countries such as the United States, Turkey, Hungary, and India. In others, like France and Germany, they may not have succeeded in capturing power, but their broadening electoral appeal reflects a rising, intensely worrying constituency of hate in a growing number of countries across the planet.

In countries where Muslims constitute a minority, major targets of these parties are Muslim citizens and immigrants. Other minorities are also targeted, including people of color, and religious, ethnic, and sexual minorities. In the media and civil society, liberal defenders of these targeted communities are typically attacked, intimidated, and gagged by their governments.

A dominant challenge of our times, therefore, is to craft instruments to fight this kind of politics—what I call "command hate"—as this bigotry and hate continue to be fostered, encouraged, and legitimized by the elected leaders of these countries. Convinced that the politics of hate can only be effectively fought with a politics of love, I wrote—echoing Mahatma Gandhi, Martin Luther King, and Nelson Mandela—an article calling for a resounding response to this hatred:

> Darkness can never be fought with darkness, only light can dispel the enveloping shadows. And so also a politics of hate can only be fought with a new and radical politics of love and solidarity. In battling ideologies that harvest hate, we can win only equipped with this love. We need to garner across our land a plenitude of acts of love. (Mander 2017)

The test is much greater because the hate that we must fight is not just "out there" but within ourselves or within those we are close to, reflected in our resounding silences, and in our political choices. I wrote:

> We must resolutely fight … governments and policepersons who betray their constitutional duties; and the hate attackers, ensuring that they be tried and punished under the law of the land. But I believe our greatest, hardest battle will have to be with the bystander. With ourselves. And with our own. We need to interrogate the reasons for our silences, for our failures to speak out, and to intervene, when murderous hate is unleashed on innocent lives. We need our conscience to ache. We need it to be burdened intolerably. (Mander 2017)

To speak in this way to our collective silences, I proposed a journey of shared suffering, of atonement, and of love, called *Karwan-e-Mohabbat*, or Caravan of Love. I proposed that we travel across the country to meet families who had lost their loved ones to hate, lynching, and violence, to create a garland of empathy across the land. With pain and shame, we sought from them our collective forgiveness, an atonement, to try to share their suffering. And to speak to them of our solidarity, love, and our resolve that justice be achieved.

With pain and shame, we sought from them our collective forgiveness, an atonement, to try to share their suffering

Within just a month after my appeal was published, the *Karwan* (Caravan) set off on September 4, 2017. Entirely crowdfunded, and with an exceptional group of volunteers—writers, journalists, social workers, teachers, and lawyers—we traversed India from east to west in over a month: Assam, Jharkhand, Karnataka, Delhi, Western Uttar Pradesh, Haryana, Rajasthan, and Gujarat.

As we traveled, I wrote an update late every night, as we tried to catch a few hours of sleep. Everywhere we traveled, we found minorities living with fear, hate, and state violence, resigned to accept these as normalized elements of everyday living. We encountered widows, mothers, fathers, and children numbed by the loathing and violence that snatched from them their loved ones. Their stories were not only tragic, but incomprehensible. How could parents of two teenaged boys in Nagaon

come to terms with the lynching of their sons by a mob from their neighboring village, accusing them of being cow thieves? Why would they gouge out their eyes and cut off their ears? Why would complete strangers stab Harish Pujari fourteen times near Mangalore, pulling out his intestines, only because they mistook him for a Muslim when he was riding pillion behind his Muslim friend?

We consistently found that families hit by hate violence were bereft of hope of either protection or justice from the state

The violence has indeed become widespread. Dalits are viciously attacked by upper caste neighbors to crush any assertion. Single women, branded as witches, remain vulnerable to incredible medieval cruelty by family and neighbors. Christians in tribal regions are subjugated by violence targeting their priests, nuns, and places of worship, and by laws criminalizing religious conversions. But the foremost targets of hate violence by lynching and police killings are Muslims, and it is they who have most abandoned hope.

Against Muslims, the hate weapon of choice is public lynching. We read of lynching of blacks in America decades ago as public spectacles, watched by white families on picnics. In today's India, this same objective of lynching as public performance is accomplished with the video camera. Most lynch attacks are filmed by the attackers, with images of their victims humiliated, cringing, and begging for their lives. In a particularly horrifying incident in Jharkhand, in a busy market square in Ramgarh, a mob stops the car of a Muslim man. A huge pile of red meat—the size of the body of a full cow—appears on the street, the mob claiming that they "seized" this from the car. He is filmed as they beat him to death. Laughing faces of attackers appear in the video. They upload the videos even as they lynch the man and torch his car. His young son receives the video of his father being lynched on his mobile even as the lynching is underway.

We found that lynch videos are widely and avidly shared among young Hindu activists. This is probably evidence of what they see as their valorous exploits, as proof that the state will protect them, as public exhibitions of the humiliation of their "enemy" communities, and for drafting new recruits to militant Hindu supremacist formations.

We consistently found that families hit by hate violence were bereft of hope of either protection or justice from the state. The police, in almost all the fifty families we met during our travels in eight states, registered criminal charges against the victims and treated the accused with kid gloves, not opposing their bail, and some-

times even erasing their crime altogether. A lynch mob, for instance, attacks a vehicle transporting cattle, killing some of the transporters. The police register criminal cases of illegal cow smuggling, animal cruelty, and rash driving against the victims, obliterating the fact that the men were lynched. In other cases, police records mention "anonymous" mobs who are never caught. The families of people attacked by lynch mobs sometimes do not even file a complaint with the police because, far from getting justice, the police would just register criminal charges against them.

Even more worrying, we found that the police have increasingly taken on the work of the lynch mob. There are dozens of instances of the police killing Muslim men, charging them as cattle smugglers or dangerous criminals, and claiming that they were fired on by their victims. In Gujarat, police publicly lynched a tribal man charged with cow slaughter until he soils his clothes with his excreta and dies. These crimes have barely registered in the national conscience.

* * *

We found in all these local communities profound and pervasive failures of compassion. We encountered very little acknowledgment, regret, or remorse amongst the upper-caste Hindu communities in any of the states we traveled to. They remain convinced that somehow their Muslim and Dalit neighbors deserved their cruel deaths to lynch mobs or police bullets.

"How can an administration block a Karwan from trying to offer a little solace to bereaved families of hate lynching by paying tribute to a lynched man's memory?"

They expressed their anger to the *Karwan* at many points, at one point becoming violent. Our tenth day was marked by hostility to the advance of the *Karwan* to Behror, the highway crossing where Pehlu Khan, an ageing Muslim cattle trader, had been lynched by a cow vigilante mob in April 2017. The *Karwan* had resolved to place flowers at the site of his lynching the next morning, in both his memory and the memory of others like him who fell to hate violence. Hindu supremacist organizations—*Vishwa Hindu Parishad*, the *Hindu Jagran Manch*, and the *Bajrang Dal*—announced that they would not allow the *Karwan* to enter Behror and pay tribute at the lynch site. Local organizers were told that we would be met with sticks and stones if we entered. The owners of the hall where we were to hold a peace meeting canceled on us, and no one else was willing to give us a hall.

We resolved to proceed to Behror to remember Pehlu Khan despite any mob opposition. In Alwar, where we arrived to spend the night, senior police and officials

tried to persuade us to bypass Behror. We courteously but firmly refused. We said we would visit the police station in Behror to express our disappointment about how the police had absolved the men Pehlu Khan mentioned in his dying declaration and had criminalized Pehlu and his sons. We would then place flowers at the site of his lynching. The police officers said that no one had been allowed to do this so far. We argued with them, "How can an administration block a *Karwan* from trying to offer a little solace to bereaved families of hate lynching by paying tribute to a lynched man's memory?"

Day eleven became one of confrontation and tension. The Alwar district administration again tried hard to persuade us to bypass Behror. The district officers said that violent mobs had gathered with stones to block our passage. We remained determined. I told them that we would not allow a mob to block a small mission of love and solace with violence. All *Karwan* participants were united in their support of my decision to defy the orders of the administration and place flowers where Pehlu Khan had been lynched. I was unwilling to put any of them into any danger, I said, except for the unavoidable possibility of them stoning our bus. I therefore insisted that they remain at the bus, while I alone would go to place the flowers on behalf of the entire *Karwan*.

With two fistfuls of marigolds, surrounded by police, I walked a couple of hundred yards to the spot where Pehlu Khan had been cruelly lynched by a mob

After we emerged from the police station—where we had asked hard questions to the police—the administration again tried to dissuade me from the small journey of a few hundred yards to the spot where I would place the flowers. They said that a furious mob had gathered there with stones and sticks and would cause me harm. I said I was prepared, and would not agree to discard the plans of a floral tribute. I explained I would go there alone so as to not risk any of my *Karwan* colleagues being attacked or hit by a stone. A senior police officer said to me hotly, "The mob has the constitutional right to protest." I answered, "I am not sure that anyone has a constitutional right to protest with violence. But even if you believe so, then surely I have at least the same constitutional right to protest armed with nothing other than flowers."

I began to walk to the site, but the police physically blocked me. I then sat on the ground in a spontaneous *dharna* (sit-in). They would have to either arrest me or allow me to walk to the location to make my floral tribute. I sat for half an hour as they confabulated.

Finally, they relented. With two fistfuls of marigolds, surrounded by police, I walked a couple of hundred yards to the spot where Pehlu Khan had been cruelly

lynched by a mob. It was a dirty, nondescript stretch of sidewalk. I knelt down and said, "I am not a believer, so I cannot pray. But I believe in *insaniyat aur insaaf* (humanism and justice). Therefore, for humanism and justice, I place these flowers here. In memory not just of Pehlu Khan, but of hundreds of others like him who have fallen to hate violence across our land."

I returned to the bus and the police hurried us on our way. As we drove off, the protesting men threw a few stones at our bus. Even in the presence of the police, a bunch of young men tore down the banners and threw away the flowers. The police claimed to be helpless to stop them. The police then asked just two organizers to meet the bus outside the police station. I emerged with a couple of colleagues, and the police said we had only a couple of minutes. They handed over packets of breakfast, as a few protesters gathered. As the bus drove away, one of them almost threw his shoe. We stopped the bus long enough to throw more flowers.

After many angry tweets calling me a scoundrel and fostering other online trolls to slander my work, Sinha angrily decried my credentials in the debate itself. He also said that the funds of "my" NGO must be investigated thoroughly

The *Karwan* bus now had police escorts both ahead and behind. Only under these conditions would the state administration allow the *Karwan* to travel through Rajasthan to Kothputli where the people of that small town had planned a welcome for us. It is a sad day when a caravan of love can travel only with police protection. We do not need or deserve protection; it is the bereaved families we have met on the *Karwan* who the police should protect, but it is they who the police fail so profoundly.

* * *

It was clear that the government was troubled by the *Karwan*—by both its discourse of love and the evidence gathered of widespread fear and hate engendered by the government itself. We learned that all big newspapers and TV channels were advised to censor news of the Caravan. Many, but not all, complied with these pressures. Despite everything, many stories—my daily updates and several articles by *Karwan* travelers—appeared both online and in print. The most liberal of the major TV channels, NDTV, slotted a very rare one-hour for a documentary on the *Karwan*. Its two reporters became precious members of the *Karwan*.

When the *Karwan* was blocked from placing flowers, Rakesh Sinha of the *Rashtriya Swayamsevak Sangh* (RSS), the leading Hindu supremacist organization,

appeared in a television debate. The *Bharatiya Janata* Party (BJP) is closely aligned with the RSS, and Prime Minister Modi has been a member of the RSS his entire adult life. After many angry tweets calling me a scoundrel and fostering other online trolls to slander my work, Sinha angrily decried my credentials in the debate itself. He also said that the funds of "my" NGO must be investigated thoroughly.

I issued the following press release:

> In a television debate on 14 September 2017, in NDTV's Left, Right and Centre anchored by Nidhi Razdan, I joined by phone from the *Karwan* bus. Mr. Rakesh Sinha of the RSS during the debate made angry personalized attacks against me. He also said that I was against the RSS. I replied that I am indeed against the ideology of the RSS, because its belief in a *Hindu Rashtra* (Nation) contravenes the Indian Constitution. During this same debate, Mr. Sinha said, in a barely veiled threat, that the funding of "my" organizations would be investigated. The next morning, despite stone-throwing mobs, I did finally prevail in placing flowers at the site of Pehlu Khan's lynching.[1]

Four days later, the Centre for Equity Studies —an organization of which I am the Director and one of the founders— received an email notice regarding an audit of the tax returns of the Centre between 2016–2017 under Section 143(2) of the *Income Tax Act*. The tax department may claim that this was simply a routine notice, but its timing shortly after the public threat to investigate the Centre's funding suggests that this could have well been an act of state vengeance and intimidation.

We are happy to subject ourselves to any scrutiny, as we believe in public accountability. However, no amount of state intimidation of organizations I am associated with would succeed in silencing my public dissent of policies and ideologies that I believe are detrimental to India's constitutional values. I would also like to point out that the Centre for Equity Studies had nothing to do with the *Karwan-e-Mohabbat*. The Centre publishes the annual *India Exclusion Report*, and works with the vulnerable groups including the homeless, but the *Karwan* was a separate project.

The work of the Centre is precious to me, but at times like this, I believe that there is no higher duty than public dissent

The work of the Centre is precious to me, but at times like this, I believe that

1 See https://thewire.in/180617/harsh-mander-it-notice/. See also Press Note on Income Tax Notice to Centre for Equity Studies: https://centreforequitystudies.org/press-note/.

there is no higher duty than public dissent. This is not an act of particular valor, just that no other option is acceptable. As I wrote to my colleagues, "they can cancel our FCRA (permission to receive foreign funds) and shut down the organization. How does it matter? This would be an infinitely small fraction of the suffering we bore witness to in the *Karwan*."

* * *

Did the *Karwan* accomplish anything? It was like a small lamp lit amidst a raging tempest of hate. None of its fellow travelers was left untouched by this odyssey; of this, we are sure. It was also clear that their travels offered precious solace to the more than fifty families we met across India who were often struggling alone with the consequences of incredible hate and colossal state injustice. This alone made the voyage of love worthwhile.

Yet we found a particularly worrying lack of remorse in the majority communities where hate violence against Dalits and minorities unfolded. During moments like the mob's stoning of the *Karwan* to prevent us from paying a simple floral tribute, the *Karwan* feared that we needed to do much more to appeal to the conscience of the communities we visited.

We want to inform and appeal to our sisters and brothers across the country to care, speak out, and resist

We still took heart that rose petals, not just stones and footwear, were thrown at us by ordinary people in the many places through which we journeyed. There was a great response to the *Karwan's* call for crowdfunding, as it was entirely funded by individual contributions. We started with no money. In a month, more than two hundred people contributed two million rupees (over thirty thousand dollars) for the *Karwan*. Even late at night, large numbers turned out for peace meetings and to greet the *Karwan*.

The *Karwan* will continue its work. In concrete terms, it now plans to call upon volunteers from across the country—students, journalists, and lawyers—to help establish a database for tracking hate crimes by state and non-state actors. The number of hate crimes we know of from the national press are but a tiny fraction of the number we found in every state we visited.

We have resolved to chronicle through books, films, photo exhibitions, and public talks the rise of hate and fear that we witnessed during the *Karwan* to inform and appeal to the public conscience. Many travelers have already begun to tell the

stories they heard and saw, and plan to continue doing so with pictures, videos, and words. We want to inform and appeal to our sisters and brothers across the country to care, speak out, and resist.

We are deeply committed, in coordination with other groups, to ensuring support—through legal justice, psychosocial care, and financial provision—for each of the families affected by hate violence that we visited during the *Karwan*. We have also resolved with other groups to help establish systems of rapid and long-term response to hate crimes in states where these are endemic. This would include establishing Citizen Councils for Peace and Compassion and human rights collectives.

The *Karwan* will not end here. Its members will continue to journey to old and new sites of hate violence with the same objectives of solidarity, atonement, justice, and love. There is much work to do for the justice and healing of families destroyed by hate violence, to chronicle our troubled times of pervasive and engineered hate, and to find ways to bravely and resolutely fight with solidarity, justice, and love.

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THE END OF TYRANNY: HOW CIVIL SOCIETY IN SOUTH AFRICA FOUGHT BACK

Ivor Chipkin

In classical texts, tyranny, as opposed to despotism, refers to a form of government that breaks its own rules. This is a useful starting point for discussing political developments in South Africa and the civil society response over the last ten years. The African National Congress (ANC) government under ex-president Jacob Zuma became increasingly tyrannical as it set itself up against the constitution and the rule of law. This move to tyranny was not simply the result of corruption, but was also a political response to South Africa's racially defined inequality, which incorrectly identified the constitution as an obstacle to radical economic transformation. The move to tyranny justified a growing lawlessness in key parts of the government and enabled widespread corruption in the state marketplace—the area where businesses do the government's outsourced work. In response, largely to force the government to play by the rules, civil society has been reinvigorated and several new coalitions have emerged.

In May 2017, several colleagues and I published a report called *Betrayal of the Promise* (SCRG 2017). We had worked quickly and quietly to gather as much information in the public domain and "connect the dots," so to speak. The centerpiece of the analysis was how a populist political project turned against the constitution, the law, and South Africa's democratic processes and institutions. Essentially, we were able to show that the struggle today was between those seeking change within the

framework of the constitution and those ready to jettison the terms of the transition. The report proved to be hugely influential in South Africa, and may have played an important part in galvanizing political opposition to "state capture" from constituencies beyond the middle class.

The report marked an inflection point in two ways. First, it provided a new vocabulary for understanding political phenomena, which was readily taken up in the media and especially amongst social movements and political organizations, even those allied to the ANC. Terms like "shadow state," "silent coup," and "repurposing institutions" have now become part of the everyday language of political discussion in South Africa. Second, together with the work of the Public Affairs Research Institute (PARI), the report has been influential in galvanizing a new kind of political activism in South Africa—one that focuses on defending honorable civil servants and building progressive state administrations. What my colleagues and I found was an administrative campaign to harness the state for non-democratic purposes.

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TURNING AGAINST THE CONSTITUTION

From around 2010, the South African government started to introduce measures to control the diffusion of information and tacitly regulate the press. In 2011, in the face of impressive opposition, a majority of ANC members of parliament (MPs) passed into law the *Protection of State Information Bill*. The Act was especially controversial for giving government officials the right to classify as "top secret" any government information in the "national interest." As activists from the Right2Know campaign argued repeatedly, the definition of the "national interest" was so broad as to exclude virtually nothing from censorship. The Act also criminalized "whistleblowing" and investigative journalism by imposing heavy jail sentences on anyone holding "classified" information. This resonated with the findings of a 2008 ministerial review commission on intelligence that discovered that the mandate of the South African intelligence services was so broadly defined that ordinary democratic activity could be construed as a national security threat. Eventually, ex-president Jacob Zuma refused to assent to the legislation, thereby halting its passage into law, since it would ultimately fail at the Constitutional Court. It was, nonetheless, symptomatic of a wider trend.

During this period, there were concerted efforts to create alternative media platforms more sympathetic to the ruling ANC government, such as a daily circulation newspaper, *The New Age*, launched in 2010. *The New Age* is owned by the Gupta family—a wealthy Indian-born South African family—and run with the explicit mandate of presenting a positive image of the ANC. Today it claims to provide positive news that is critically constructive. In 2013, the Guptas launched ANN7, a 24-hour news channel with the same purpose. As the Zuma administration came under increasing pressure, it became more brazenly propagandistic.

THE MOVE TO DIRECT MEDIA CONTROL

The South African Broadcast Corporation (SABC) is the country's public broadcaster. It has an impressive reach. Public radio is the primary source of news and information for the vast majority of South Africans. In 2011, Hlaudi Motsoeneng was appointed acting SABC Chief Operating Officer (COO). In 2014, the Public Protector—an institution established under Chapter Nine of South Africa's constitution to protect the rights of citizens against governmental abuses—found that Motsoeneng had been illegally appointed. He had never finished school and was thus ineligible by the job post's own criteria. Notwithstanding, Communications Minister Faith Muthambi approved his appointment in July 2014. The cabinet stood by him even after several courts confirmed his ineligibility. When Motsoeneng was finally removed from his position by the Supreme Court of Appeal in September 2016, Muthambi intervened to secure him another senior post. It was not difficult to understand why.

Under Motsoeneng, the SABC had effectively moved to prohibit reporting news that was either critical of or potentially embarrassing to the government. The shift towards a more politicized newsroom had started during the Thabo Mbeki administration (June 1999 to September 2008) when then-head of news Snuki Zikakala blacklisted several critical political commentators. What was happening under Motsoeneng looked more like "institutional capture." The policy of the SABC was illegally changed to remove editorial discretion from senior journalists and instead grant it to the COO—that is, to Motsoeneng himself. Critical or independent journalists were also purged. These events transpired in the context of an audacious political project unfolding in other parts of the state as well.

In December 2007 in Polokwane—a provincial town about a three hours' drive north of Johannesburg—accumulating tensions within the ANC burst open. During the 52nd national conference of the party, Thabo Mbeki failed in his bid to se-

cure a third term as the organization's president. Jacob Zuma was elected in his stead, coming to power on a wave of resentment and grievance against the previous administration—not least for allegedly conspiring to destroy Zuma's political career. Within days of Zuma taking office, the ANC "recalled" Mbeki from his government position. The 2009 national election that followed saw Jacob Zuma become president of both the ANC and the country.

The Polokwane revolt in the ANC was informed by a conviction that economic transformation as pursued during the Mandela administration, and especially during the Mbeki period, had produced an anomaly if not a perversion: a small black elite beholden to "white" corporate elites, a vulnerable and over-indebted black middle class, and a large African majority condemned to unemployment and dependent on welfare handouts to survive. The economic policies of the Mbeki period were widely seen as a self-imposed program of structural adjustment. In the wake of Polokwane, and especially after the 2009 election, a search began in earnest for a more "radical" model of economic transformation. At the time, the Zuma presidency was applauded in "left-wing" circles for promising to break with the "neoliberal" policies of the Mbeki years.

The idea of using the government's procurement budget to realize social and economic outcomes was not a new one. It was the backbone of South Africa's "developmental state" in the 1930s and a key plank in the Apartheid platform, especially in cultivating a national class of Afrikaner capitalists. From about 2011, sections of the ANC and ministers and officials in the Department of Trade and Industry, supported by elements of organized black business, began referring to "radical economic transformation." This was the name for an ambitious project to leverage the procurement budgets of state-owned enterprises (SOEs) to displace established white firms and to create new, black-owned and controlled industrial enterprises. The two largest SOEs were the focus of this attention: Eskom (generated and transmitted electricity) and Transnet (responsible for the bulk of the rail network). Here was a vision of economic transformation that was not contingent on the reform of "white businesses" and that did not depend on the goodwill of whites to invest in the economy, employ black people, and treat them as equals. It is easy to see why this vision was profoundly compelling in nationalist circles.

From around 2011, however, the project of radical economic transformation increasingly began setting itself up against key state institutions and the constitutional framework. At stake was a critical reading of South Africa's political economy and of the constraints that the transition imposed on economic transformation.

This analysis emerged from within parts of government and the fringes of the ANC. It resonated closely with the neo-Fanonian readings of South Africa's postcolonial situation, within discussions on university campuses, in the "Black First Land First" grouping, and in "ultra-left" critiques of South Africa's "elite transition." It was not the position of the ANC itself. The centerpiece of this critique was the National Treasury, the department of state responsible for government finances, including approving departmental budgets and allocating funds from the fiscus. There was one major reason why the National Treasury was a red flag to the project of radical economic transformation.

From around 2011, however, the project of radical economic transformation increasingly began setting itself up against key state institutions and the constitutional framework

The National Treasury's constitutional mandate placed it on the horns of a very sharp dilemma. In South Africa, the terms of public procurement are not simply defined in statutes (subject to legislative revision) but are inscribed in the ground law of the country. South Africa's constitutional drafters were prescient, perhaps, about the significance that procurement would assume in the political life of the country after Apartheid. The National Treasury, itself a creature of the constitution, had to reconcile black economic empowerment with considerations of fair value for the fiscus and for citizens. When the protagonists of black economic empowerment thus insisted that 30% of government contracts, especially those of state-owned enterprises, be set aside for black companies, irrespective of their experience, capacity, or price at which they offered to provide services or goods, the National Treasury balked. Indeed, the more it insisted that government entities proceed in a way that was "fair, equitable, transparent, competitive and cost-effective," the more of a target it became.

As the Zuma administration radicalized and tended towards illegality and eventual straightforward criminality, it became dependent on managing increasingly complex relations, many of which involved people engaged in unlawful activities. At this time, the Zuma administration moved to establish control over key state institutions, especially those involved in criminal investigations and prosecution: the South African Revenue Services (SARS), the Hawks (high priority crimes unit of the South African police), and the National Prosecuting Agency (NPA). Looming in all these proceedings was the shadow of South Africa's intelligence services. The moves against the media, therefore, must be seen in the light of these developments.

Two imperatives were at play. First, as the project tended towards illegality,

it was driven into the shadows by the concomitant risk of the loss of political control. Hence, some form of management system was needed. Second, it had been necessary to shut down certain investigations and immunize or protect key people from prosecution. Taken together, the events at SARS and the Hawks (and at the NPA) suggest that as the Zuma administration radicalized and resorted to increasingly unlawful means to pursue radical economic transformation, it was driven to "capture" and weaken key state institutions. In this sense, the political project of the Zuma administration came at a very heavy price for the capability, integrity, and stability of the South African state.

CIVIL SOCIETY REINVIGORATED

For a long time, there was very little organized opposition to these events. The South African media had largely managed to fend off moves to formally introduce censorship. Moreover, there was still a legacy of brave, independent investigative journalism. Largely through the efforts of several such journalists—many associated with amaBhungane, an unaffiliated network of journalists—stories regularly broke about the corruption of government officials. The Public Protector's *State of Capture* report went far in creating public outrage, but the political response was strangely muted. Within the ANC, some individuals raised concerns, but as an organization it rallied behind its president. This began to change when then-Minister of Finance Nhlanhla Nene was unexpectedly dismissed in December 2015. Financial markets reacted strongly and the South African currency, the Rand, plummeted in value. These events triggered a political response, as thousands marched on the streets to protest "state capture." Yet the protest remained largely a middle class one. It was not difficult for those around the Zuma administration to present such opposition as the work of either political forces opposed to radical change or in the service of a foreign agenda. This began to change after the dismissal of the new Finance Minister, Pravin Gordhan, and his deputy, Mcebisi Jonas, in 2017—both highly respected technocrats but also savvy politicians. Opposition to the Zuma administration grew, including from within the ANC.

The problem with the resistance up until then, however, was that its analysis of what was going on was superficial. It ultimately fell back on the assumption that the president and his allies were corrupt, motivated by self-interest, or were kingpins of a vast network of patronage. Apart from the obvious flaws of such an analysis—it resonates with all sorts of racist clichés about African leaders—it obscured the political project at work.

The live launch of our report, *Betrayal of the Promise,* on May 25, 2017, was covered by ENCA, one of the major national television channels. It was all over the radio, and there were numerous interviews with Mark Swilling, the other authors and me. The print media gave the report extensive coverage. It was front-page news in most of South Africa's major daily and weekly publications and was the lead story in the Sunday papers. *The City Press*, for example, South Africa's second largest circulation paper, reported carefully on the report's argument and on its new terms. It also generated numerous opinion pieces published in various papers.

The weekend after our report came out, an enormous trove of emails was leaked into the public domain. They provided and continue to provide rich confirmation of our report's argument. We had discussed the emergence of a "shadow state" and how political power was seeping away from constitutional bodies. Apart from evidence of further illegal rent-seeking, the emails provided details of Gupta associates involved in the day-to-day administration of key departments—writing speeches, commenting on proposals, and suggesting regulations—all evidence of the evolving, silent coup d'état.

The reception of our report amongst political parties was no less spectacular, especially within parts of the ANC and within the South African Communist Party (SACP). The SACP and the ANC have been longstanding historical allies (since at least the 1950s) and together with the Congress of South African Trade Unions (COSATU) form the "Tripartite Alliance"—the united front that spearheaded the resistance to Apartheid and today makes up the government of the country. The rise to power of Jacob Zuma was, in part, credited to the SACP and to General Secretary Blade Nzimande's unwavering support for him.

We had discussed the emergence of a "shadow state" and how political power was seeping away from constitutional bodies

While the Communist Party had already become increasingly critical of the ANC, and especially of its president, tensions merely smoldered. Was our report the match that set the actual fire? The weekend after the launch of the report, Blade Nzimande came out strongly endorsing our argument, using the report's terms and concepts, and he has continued to do so. Most dramatically, the country's largest circulation newspaper, *The Star*, reported that "due to the damning report, pressure mounted on Nzimande to break his silence on the alleged looting of public purse by the Guptas. During his party's 14th national congress this week [July 2017], Nzimande assured his support-

ers that his relationship with Zuma had broken down irreparably due to the Guptas' influence on the incumbent" (Ndaba 2017).

When a colleague and I presented the report to the SACP's 14th national congress, the details were received in hushed silence. Apart from the nearly 2000 party delegates, many cabinet ministers and senior political figures were in attendance. I overheard ANC Deputy General-Secretary Jessie Duarte complaining bitterly to a party official that the SACP had organized a "hostile" congress.

Since then, the SACP has come out officially against "state capture" and has supported efforts in the ANC to remove the president. In a surprise cabinet reshuffle in October 2017, Blade Nzimande was dropped from the cabinet. Then on November 29, for the first time in its history, the SACP contested a local government election as an independent party against the ANC. This unprecedented development signaled the end of the historic alliance between the two movements.

The report was also widely taken up by some of South Africa's major trade unions. Since at least 1985, the largest unions in South Africa have been affiliated with COSATU. In April 2017, several COSATU affiliates, including the massive National Union of Metalworkers of South Africa (NUMSA), split to form a new body, the South African Federation of Trade Unions (SAFTU). Three years earlier, NUMSA had been expelled from COSATU for its increasingly robust critique of the union leadership and of the ANC. When he was still General Secretary of COSATU, Zwelinzama Vavi had said that under Jacob Zuma, South Africa was "headed for a predator state where a powerful, corrupt and demagogic elite of political hyenas are increasingly using the state to get rich" (Steenkamp 2010). Whereas this critique had previously rested on accusations of corruption in the ANC, after May 2017 there was growing appreciation for the relationship between corruption and the disregard of the constitution and the rule of law. This was a significant development, especially considering that for many involved there was sympathy for the argument that the 1996 Constitution was the result of an "elite pact" that came at the expense of workers and the poor. As we will see shortly, this had made possible new kinds of unexpected and even awkward political alliances.

The South African Council of Churches (SACC), the largest ecumenical association of Christian churches in the country, was already active in the struggle against corruption. It had convened confessionals for compromised politicians and officials and those with information on corruption to "unburden" themselves (SACC 2015). The release of the SACC's report on these panels coincided with the release of our own. Many originally believed that *Betrayal of the Promise* was a church

document. We had consulted with them, of course, but our report was the result of a different process.

Civil society activists in South Africa have for the first time taken up issues of state building, and even more surprisingly, of public administration

The church, as a civil society organization, has mobilized religious opposition to the current administration. Its own report was taken up by a group of "veterans and stalwarts" of the ANC who addressed an open letter to the General Secretary of the organization explaining that "our hearts are broken as we watch some in the leadership of our movement… abrogate to themselves the power of the State to serve their own self-interests rather than the interests of the people of South Africa" (Serote 2017). In July 2017, the largest gathering of civil society organizations came together under the umbrella of the "Future South Africa" coalition to fight "state capture" and rebuild state integrity.

There are two noteworthy features of this coalition. Though it comprises many of the people and the kinds of organizations that advanced the anti-Apartheid struggle in the 1980s and 1990s—and in this sense marks a revival of an older civil society—it is not exclusively so. Business organizations now share the platform with radical trade unionists and avowedly liberal associations.

Furthermore, civil society activists in South Africa have for the first time taken up issues of state building, and even more surprisingly, of public administration. For the first time, there is appreciation for the fact that the immediate victims of tyranny in South Africa have been honest civil servants committed to a public service ethos. The move to authoritarianism has primarily been carried out silently through administration, which goes some way in explaining why journalists and activists have not been subject to the kind of repression seen elsewhere. The influence of our report has been in developing this awareness.

In December 2017 at the ANC's national elective conference, Cyril Ramaphosa was elected as the new party president. In January there were moves to recall Jacob Zuma as president. After several weeks of tense and inconclusive negotiations, senior leaders of the ANC finally decided to move to have President Zuma impeached through a parliamentary process. Late at night on the 14th of February, Jacob Zuma resigned. The same day, the police raided the house of the Gupta brothers. They are currently fugitives. The mobilization of civil society organizations is widely credited with stalling and, hopefully, ending this authoritarian slide. *The Betrayal of the Promise* report played a key role in galvanizing democratic opposition.

TACTICS

Taken together, 2017 has seen the re-emergence of powerful coalitions of civil society, often bringing together new and unexpected partners. Working separately, and occasionally together, they have used four effective tactics:

- *Litigation*: The growing lawlessness of the government has made litigation an often-powerful tool. The high courts have overwhelmingly safeguarded their independence, and civil society groups have used the high courts to successfully challenge illegal government decisions and appointments. This has ranged from challenging the president's appointments of heads of key state institutions (the state prosecuting authority and the police), to reinstating criminal charges against the president himself, to upholding the independence of state organs, to insisting on the rule of law of constitutional principles, and to further developing the jurisprudence on public law.
- *Social Mobilization*: Some civil society coalitions have been successful at drawing people onto the streets in fairly large numbers. It is especially important that they have constituted new and diverse publics.
- *Political Mobilization*: It has been especially impressive that activists have been able to build energetic and diverse political coalitions, drawing senior figures in the ANC itself into alliances with a broad range of other organizations.
- *Unsettling Hegemony:* As we have seen, the shift to tyranny in South Africa has been accompanied by political arguments about the nature of South Africa's constitution and its transition from Apartheid. Essentially, the Zuma government has been able to justify growing criminality as a necessary instrument of radical change and depict opponents as acolytes of "white monopoly capitalism." Reports like *Betrayal of the Promise* were key in unsettling these claims and providing a new language of resistance.

ANOTHER COUNTRY?

During the weekend of December 15, 2017, the ANC gathered in Johannesburg to elect a new president at its 54th national congress. Cyril Ramaphosa, the current deputy president of the country, defeated Nkosazana Dlamini-Zuma, a candidate strongly affiliated with the networks of tyranny. The result is not a straightforward victory, however. Former key allies of Jacob Zuma have taken half of the top six positions in the organization. Yet in the broader National Executive Committee (NEC), consisting of eighty people, Ramaphosa has forty-one supporters. What dis-

tinguishes Ramaphosa from Dlamini-Zuma, apart from questions of policy, is that he is more likely a constitutionalist; after all, Ramaphosa was one of its key architects during the transition. It remains to be seen whether he will be able to stamp his authority on the party in the long-term, though the recall of Jacob Zuma suggests that he has been able to do so for the moment. What is certain, though, is that he and the ANC now operate in a different political environment, one that is less naïve about the risks to democracy and development.

There is fire in the belly of a rejuvenated civil society. The high courts have stood by the constitution, and parts of the media have played heroic roles. In various administrations, and across the government, numerous officials and public servants have quietly resisted tyranny. Parliament has discovered its authority. Amidst all of this, civil society organizations have played a leading role.

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HOW TO SURVIVE BETWEEN A ROCK AND A HARD PLACE: THE EXPERIENCE OF HUMAN RIGHTS ORGANIZATIONS IN EGYPT

Khaled Mansour

Between 2014 and early 2018, the Egyptian government cracked down with unprecedented fury on civil society organizations (CSOs), including political and labor activists, student unions, and sports club fan groups, etc., and, in particular, human rights defenders (HRDs). Previous regimes worried about international reaction and reputational risk, and, to a lesser extent, maintaining the appearance of freedom of association. The current regime, however, feels far more empowered on both fronts. It has committed with impunity some of the most egregious human rights violations in Egypt's modern history: crushing nearly all forms of public dissent, killing thousands of protesters in the span of a few days, and imprisoning tens of thousands of people. Finally, the regime has strangulated and demonized human rights actors by portraying them as traitors and foreign agents, restricting their movement, and drying up their funding streams especially from foreign sources.

The regime has deployed almost all the tools in the authoritarian arsenal against human rights advocacy and CSOs. These include restrictive laws and regulations, vilification and labeling, media censorship, and lawsuits charging HRDs with harm, national security violations, and tax evasion.

The regime has appeared to mollify the protest movement that reached its zenith in mid-2013. However, anger seems to be simmering once again, ostensibly fueled by the persistence of deteriorating socioeconomic problems. The regime has benefitted from the prominence of counterterrorism, migration, and stability issues in the domestic policy agendas of countries in the region (e.g., Israel and Arab gulf countries) and the foreign policy agendas of countries interested in the region (e.g., U.S. and Russia). The Egyptian regime's regional and global support enables the domestic evisceration of Egyptian politics. Egyptian CSOs have been squeezed by the high price of dissent from unaccountable security measures, and the few remaining independent media platforms have likewise been squeezed into a very tight corner over the past four years.

The regime has strangulated and demonized human rights actors by portraying them as traitors and foreign agents, restricting their movement, and drying up their funding streams, especially from foreign sources

FOCUS ON FOREIGN FUNDING

Similarly to other authoritarian, populist, and right wing regimes (e.g., India, Russia, South Africa, and Hungary), restricting foreign funding has been a central weapon of the Egyptian regime against human rights organizations. Ambiguous and elastic Egyptian laws (Law 84 of 2002 replaced in 2017 by the more draconian Law 70) declare that foreign funding must be pre-approved by the state before it can be used by NGOs and other entities registered with the Ministry of Social Solidarity.

Advocacy and research entities that are registered as law firms or civil companies can be prosecuted either under Law 70 articles or under the penal code for receiving foreign funds unless they receive such funding under commercial service contracts. Sentences can be as harsh as twenty-five years in prison and EGP $500,000 in fines (about USD $28,000). Since 2015, all independent advocacy and human rights NGOs registered with the government have not received government approval for their foreign funding.

Restricting foreign funding allows the government to undertake a two-pronged attack against human rights actors: (i) a legal attack with Egypt's restrictive and ambiguous laws; and, (ii) an ideological attack through vilification in the media with a hyper-nationalist discourse that has been coopted or bought by the government or pro-government parties. The twists and turns of judicial case No. 173 of 2011

(see Miller and Suter 2016) lay bare the dynamics of this crackdown, including the motivations of the regime, the behavior of foreign donors, and the coping mechanisms of human rights defenders and organizations.

In the first phase of this case, security forces stormed five foreign organizations in December 2011.[1] Forty-three people (including nineteen U.S. nationals) were indicted based on alleged "evidence" found in these raids. In mid-2013, they were sentenced after being convicted of founding and running branches of international organizations and receiving foreign funding without licenses and permits. A mass media campaign accused the defendants of being part of a "foreign agenda" and conspiring "against national stability," even though the real charges were far more mundane administrative violations.

After U.S. government pressure, the Egyptian authorities allowed the foreign defendants to leave the country on bail. Twenty-seven people were sentenced in absentia while eleven received suspended sentences (Youssef 2013). The case came after the U.S. ambassador to Egypt, Ann Patterson, told the U.S. Senate Foreign Relations Committee that sixty-five Egyptian NGOs received USD $40 million in U.S. government funding for democracy-support programs after the revolution on January 25, 2011 (El-Din 2011).[2] Egypt's Minister for International Cooperation, Fayza Aboul Naga, said that Egyptian CSOs had received USD $175 million in only four months (March–June 2011), while foreign funding between 2006 and 2010 for the same purpose was only USD $60 million, a discrepancy that could be charged as political interference.[3] Neither these monetary amounts nor the names of the organizations that received them were well documented or publicly disclosed. Most independent human rights organizations in Egypt have declined any U.S. government funding for years.

This infamous case was reopened in 2016, and by the end of 2017, twenty-

1 Four of the organizations were American and one was German. The organizations included the International Republican Institute, the International Democratic Institute, Freedom House, the International Center for Journalism, and the Konrad Adenauer Foundation.

2 Patterson told the U.S. Senate's Foreign Relations Committee in April 2011 that the "US has already granted $105 million to various non-governmental organizations (NGOs) to assist with their participation in the political life of the country." Ironically, almost all independent and semi-independent human rights organizations had long ago stopped accepting or had never accepted U.S. government funding.

3 Ms. Aboul Naga is now the National Security Adviser for President Abdel Fattah El-Sisi, the former Minister of Defense, who overthrew the Muslim Brotherhood government after massive street protests in mid-2013.

eight human rights defenders were prohibited from leaving the country and sixteen were interrogated and released (nine of whom paid bail ranging between EGP $1,000 and $30,000 or between USD $57 and $1,700). Seven human rights organizations and ten defenders had their assets frozen (AI 2016a, 2016b; CIHRS 2016).[4] NGOs suspected of being affiliated with or sympathetic to the Muslim Brotherhood—most of which were development and service-provision organizations—had already suffered a harsh crackdown in 2014. The government froze the assets of more than one thousand associations, some of which had been providing millions with health and education services for years (EIPR 2014).

For decades, foreign grants have been the predominant, if not the only, source of funding for all independent Egyptian human rights organizations

For decades, foreign grants have been the predominant, if not the only, source of funding for all independent Egyptian human rights organizations. The business community has rarely supported these organizations, as most operate as companies or law offices instead of as non-profits. Moreover, local funding is extremely difficult as none of them have been able to operate as a membership-based organization or be based in a specific community.

FOREIGN FUNDING: THE PRETEXT OF LEGITIMACY

As a foundational part of international law, one could plausibly argue that states should maintain oversight over the relations and transactions of funds between local actors and foreign powers. Sovereign states have the right to ensure that only domestic forces are directly shaping the country's political developments, especially given that foreign funding can support illegal activities. This right, however, has been extensively abused by authoritarian states who make local fundraising difficult and foreign fundraising nearly impossible for CSOs.[5] Several human rights organizations in Egypt have in turn registered as companies to avoid the Associations Law and its various restrictions, especially on foreign funding. However, this has raised transparency and accountability issues since companies are owned by individuals and accountable to shareholders rather than to the public.

4 Final numbers are based on a database of a leading Egyptian human rights organization that was shared with the author.

5 For a reasoned argument on the right of states to control foreign funding, see Poppe and Wolff (2016); for an opposing view, see Baoumi (2016).

Foreign funding indubitably raises questions about the allegiance, credibility, accountability, and very legitimacy of human rights organizations. Foreign funding carries the risk of clientelism that could undermine what should be the genuinely domestic nature of a CSO and its priorities. The reliance on foreign funds could force the recipient NGO into "structures, agendas and programs that fit the interests of their patrons, be they foreign governments or private foundations, rather than addressing real problems in their proper contexts" (Adly 2018). Some of these concerns did not apply to the organizations studied in Adly's paper. In fact, he showed that the exact opposite could be said of several organizations. The foreign-funded Egyptian NGOs—some of which garnered funding from mainstream Northern foundations—adopted a strong anti-neoliberal stance in clear opposition to the policies of successive Egyptian governments and international financial institutions, such as the International Monetary Fund and the World Bank (Adly 2018).

As foreign funding does not necessarily impose an external agenda neither do domestic funds necessarily come without strings attached. There is no evidence that local funding in Egypt could enhance NGOs or make them more independent. Other countries show mixed evidence. Forty-five philanthropic organizations established by South Korea's largest corporations were set up either to evade gift and inheritance taxes or to protect large corporations from hostile business takeovers (Shahin 2017). Such an environment does not encourage transparency and could lead to corruption, especially given that local organizations protect themselves by not disclosing financial information or donor identities. The main culprit, however, is a state that imposes a regulatory and administrative framework that leaves CSOs in this Catch-22 situation.

As foreign funding does not necessarily impose an external agenda neither do domestic funds necessarily come without strings attached

DUTY OF CARE OR RETURN ON INVESTMENT?

Alongside government pressure on Egyptian NGOs to scuttle foreign funding, many foreign donors concurrently cut back on their funds to Egyptian human rights organizations (including those working externally). These are some of the primary reasons:

1. Registered organizations must obtain permission from the government to receive foreign funding. By 2015, these permissions became almost impossible to acquire for both registered organizations and other non-rights based organizations engaged in progressive research projects.

2. Certain NGOs became worried about entering into new contracts or receiving foreign funds from old contracts lest they become embroiled in a lawsuit like case 173 of 2011.

3. Several conventional donors began to shun human rights organizations because they were worried that such transactions would be considered illegal under Law 84 of 2002 (or the successor Law 70 of 2017). Some donors expressed that it no longer made sense to "invest" in Egyptian human rights organizations because of the restrictive environment. Other foundations and governments did not want to undermine their local operations with development and service-provision NGOs.

4. Some donors argued that their duty of care required that they not put recipients in a legally compromising position.

This distancing by external donors and partners became more visible with multilateral and UN organizations, which preferred to work with development-oriented and politically safe advocacy CSOs. This almost automatically excludes partnerships with human rights organizations. This issue was complicated by government donor agencies that continued to work with governments in the global South, including Egypt. They became increasingly interested in issues related to their own national priorities, including refugees and violent extremism, which further crowded out the human rights sphere.

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NGOs: RESILIENCE OR METAMORPHOSIS

Human rights organizations in Egypt adopted various responses and strategies to tackle the increasingly closed civic space. A few closed, while others relocated activities overseas. The majority of independent organizations, however, soldiered on with a variety of adaptation mechanisms.

The Forum of Egyptian Independent Human Rights Organizations was formed in the late 2000s by around seventeen independent organizations. Most of these organizations stayed in Egypt after 2013 but had to cut staff and reconfigure or decrease activities. This was especially true of those whose assets and accounts

were frozen. Nazra for Feminist Studies,[6] the Center for Egyptian Women's Legal Assistance,[7] and Al-Nadeem Center for the Rehabilitation of Victims of Torture,[8] for example, had to cut down their activities, while the Cairo Institute for Human Rights Studies[9] had to relocate almost all its activities to Tunis, with the exception of a small Cairo program. The leading remaining organizations are the Association for Freedom of Thought and Expression (AFTE),[10] the Egyptian Initiative for Personal Rights (EIPR),[11] The Arab Network for Human Rights Information (ANHRI),[12] the Egyptian Commission for Rights and Freedoms (ECRF),[13] and Adalah.[14] To be able to continue working, these organizations have largely limited their activities to Cairo, the capital housing 20% of Egypt's population, and to a much lesser extent Alexandria, the country's second most populous city.

It has been almost impossible to document possible violations committed by the regime because of counterterrorism measures

Most challenging for these organizations has been the documentation of regime violations and public advocacy. It has been almost impossible to document possible violations committed by the regime because of counterterrorism measures. Very few reports have been released, especially given the ongoing counterinsurgency operations in the Sinai Peninsula and its collateral damage to civilians and infrastructure, including forced displacement.[15] It is risky and almost illegal under current ambiguous law to report on these possible violations, which can expose human rights defenders to physical harm as they conduct research. Furthermore, mass media smear campaigns and possible prosecution may ensue after a report is published. Independent organizations have resorted to several other adaptation mechanisms in addition to curtailing staff members, programs, and the scope of activities. Most of these mechanisms can be categorized as follows:

6 See http://nazra.org/en.
7 See http://www.cewla.org/.
8 See https://www.alnadeem.org/en.
9 See https://www.cihrs.org/?lang=en.
10 See https://afteegypt.org/?lang=en.
11 See https://eipr.org/en.
12 See http://anhri.net/?lang=en.
13 See http://www.ec-rf.org/.
14 See http://www.adalaheg.org/.
15 One of the very few reports on the conditions in the Sinai Peninsula, a site of major counterterrorism efforts since 2012, is EIPR (2017). *Mada Masr* is the only domestic news organization that sometimes still provides independent reporting from the Sinai. See Mada Masr (2018).

- *Adaptation:* These include cutting down programs, tailoring activities, allowing staff members to work part-time for better paying jobs, overseas offices for better protection of sensitive programs, and transferring funds more innovatively. Due to the effective ban on media coverage of human rights organizations (since most media is either pro-government or owned by the government), human rights communications have increasingly utilized social media.

- *Raising the cost*: Some human rights defenders have continued strenuous international advocacy within Western countries and their media. This has probably helped keep pressure on them to a minimum, at least with respect to preventing arrests of HRDs. However, with Western liberal democracies focused on security, refugees, and counterterrorism, they have also become less interested in pressing global South ally governments on human rights issues and civic space. After all, some of these governments, such as the U.S., have been waging their own illegal acts of war in various countries, thereby ignoring human rights norms. Many governments in the global South have also become inured to criticism from Western media.

Global South–North coalitions are most useful since civic space is being increasingly restricted worldwide

- *Coalition building and alliances*: Some Egyptian human rights organizations have long worked well with regional and international alliances and coalitions. Global South–North coalitions are most useful since civic space is being increasingly restricted worldwide. Governments in the global North that used to defend human rights organizations and advocates in the global South are either no longer interested or even busy discrediting their own civil society. This calls for more concerted and organized global civil society action (including on funding, joint programs, national advocacy, etc.). Global civil society coalitions are also good platforms to pressure multinational conglomerates that are negatively affecting environmental and labor conditions, especially in the global South. By exercising consumer pressure over apparel producers at points of consumption in Europe and the U.S., for example, South Asian rights organizations could have a greater impact on improving working conditions in the textile and apparel industries.

  These coalitions can also work locally. Maina Kiai, former Special Rapporteur on the rights to freedom of assembly and of association, pointed out a good example when Kenyan CSOs were able to reverse a government decision to

enact a law curtailing foreign funding. This law would have starved "critical CSOs by limiting foreign funding, and also [by] creating a state body that would determine which CSO could work where and with what resources. But because the draft law was very broad, the human rights NGOs that were the targets got the development CSOs to take the lead and show how much damage the law would create for humanitarian work and for development work" (Hudson 2017). Egyptian CSOs could not achieve such a feat, however, and the new, extremely restrictive May 2017 law put all foreign funding completely under the control of security agencies. Development and aid organizations are the largest recipients of this foreign funding, but they did not fight pro-government claims that the law only targeted politicized organizations working on human rights and policy advocacy. Essentially, there is little coordination between human rights and development organizations to improve the Egyptian regulatory environment. A similar failure took place in Uganda against a comparable restrictive funding law (Jjuuko and du Toit 2017).

Community-based funding or market-supported solutions were never seriously pursued by Egyptian human rights organizations

- *Constituency building:* Some Egyptian organizations tried to build networks of volunteers and broaden their constituencies but this did not succeed in any meaningful way. Some organizations, especially those in the dwindling independent media sector, tried to fundraise locally through contracting out their own production services, getting proceeds from artistic performances and events, and creating special membership programs for individual supporters. They succeeded to a certain extent.

  Egyptian human rights groups have not succeeded in generating new local fundraising business models because of the restrictive legal and administrative framework and possible repercussions caused by security agencies and pro-regime media. However, the human rights defenders interviewed for this paper were unable to mention a sustained, systematic attempt at domestic fundraising. Community-based funding or market-supported solutions were never seriously pursued by Egyptian human rights organizations.

  At least one organization tried to enlist a large number of volunteers as an alternative to a membership-based organization. This has not succeeded. Such efforts need to start in an environment of political openness without extreme authoritarian security measures. Attracting membership requires an enabling

legal environment and several years of groundwork. There are good examples like the Moroccan Association for Human Rights (AMDH), but almost no other known human rights organization in North Africa or the Middle East has been able to become membership-based.

In the face of a repressive regime with public collusion, there are no easy solutions or immediately effective countermeasures for human rights organizations. Human rights work cannot take root, advance policy reforms, and change norms, behaviors, and practices in an unchecked authoritarian environment without a popular constituency pushing for such changes. Without this public constituency and decent international support, human rights action withdraws to the realm of documentation and/or survival through hibernation. Though no amount of foreign funding can fix these problems, complete withdrawal of foreign support could weaken an organization's resilience.

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Kiai noted, however: "What states don't understand is that with or without foreign funding, true activists, true believers in democratic values will still find a way to work" (Hudson 2017). He is partly right. Yet, what these activists need to focus on, especially in Egypt, is expanding their constituencies and working with them, rather than on their behalf. Tunisia and Morocco provide successful examples of partnerships between human rights activists, CSOs, and social movements. To be fair, of course, Egyptian human rights defenders have struggled tremendously under successive regimes that have each worked hard to close civil society and political space and leave a security state in its stead.

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PART II

STRATEGIC RESPONSES FOR THE HUMAN RIGHTS FIELD: NEW NARRATIVES, FUNDING MODELS, REGULATORY ALTERNATIVES AND GRASSROOTS MOBILIZATION

THE DELEGITIMIZATION OF CIVIL SOCIETY ORGANIZATIONS: THOUGHTS ON STRATEGIC RESPONSES TO THE "FOREIGN AGENT" CHARGE

Jonas Wolff

The phenomenon of closing civic space essentially reflects a political struggle over the legitimate role of civil society organizations in public affairs as well as over the legitimate role of the state in regulating such civil society activities. The public sphere is a key site in which this struggle is waged. In general, in the context of closing spaces, governments publicly define increasingly narrow limits as to what kinds of civil society organizations and activities are to be considered appropriate.[1] Based on such a definition of standards of appropriateness, governments may then publicly criticize individual civil society organizations (CSOs) with a view to designating them as, in one way or another, outside the realm of legitimate civic behavior.

1 Governments may do so through legal action (e.g., through CSO laws) and/or via public statements. Such limits—and the corresponding standards of appropriateness—can also refer to actor characteristics (i.e., what defines a legitimate civil society actor in terms of legitimate purposes, internal procedures, or funding sources), their activities (i.e., which types of civil society action are or are not legitimate), or both (defining, for example, that certain CSOs are or are not entitled to engage in specific activities).

THE LOGIC BEHIND "REPUTATIONAL ATTACKS AGAINST CIVIL SOCIETY ACTORS"

The *basic logic* of what is called "reputational attacks against civil society actors" involves three steps. First, a given government promotes a specific set of general standards of appropriateness that defines and delimits the range of legitimate CSOs and their activities. Second, individual CSOs are publicly delegitimized, that is, designated as transgressing these limits. Third, in doing so, governments indirectly weaken the CSOs concerned by negatively affecting their reputation with the public.

Consequently, in contrast to other forms of civic space restrictions in which governments *directly* constrain CSOs, the effect of such "reputational attacks" depends on dynamics in the public sphere and society. The reputation of a given CSO will only be harmed by governmental statements if the audience buys into (i) the specific charges leveled against the organization as well as (ii) the general standards of appropriate civic behavior that underlie these charges. To be sure, governments have privileged access to—if not partial control of—the public sphere and may utilize a disproportionate amount of resources to shape public discourse. But nowhere can governments simply decide what people should think. Government efforts at delegitimization, therefore, depend on two key factors:

1. The *vulnerability* of the individual CSO is determined, in particular, by the extent to which the organization is perceived as credible by the public as well as by the depth of its societal roots and the breadth of its alliances.

2. The *public resonance* of the general standards of appropriateness and of the kind of transgressive behavior the civil society actor is charged with is determined, in particular, by societal norms and values as well as by pre-existing public narratives.[2]

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2 In this sense, in her comparative study on Egypt, Ethiopia, and Russia, Brechenmacher

THE RELEVANCE AND SPECIFIC POWER OF THE "FOREIGN AGENT" MOTIF

In the context of the current trend of closing civic space around the world, the most prominent motif used by governments in order to delegitimize CSOs is the notion of "foreign agents." More specifically, external civil society support is "deliberately depicted as a new form of imperialism or neo-colonialism" (Kiai 2013a, 9), and civil society organizations that receive foreign funding are frequently labeled as "foreign agents or puppets of Western powers pursuing larger geostrategic objectives" (Carothers and Brechenmacher 2014, 11; Mendelson 2015).

Why is the "foreign agent" frame so powerful? Generally, the overall motif refers to principles—including collective self-determination, sovereignty, and non-interference—that have strong resonance in a world organized according to the logic of nation-states. More specifically, in countries with a long history of foreign intervention and asymmetric economic interdependencies, particularly in postcolonial settings, suspicions of and resistance to "Northern" and/or "Western" interference often constitute deep-seated public sentiments (Poppe and Wolff 2017, 16).[3] As a result, "pushback measures against Western actors often enjoy significant domestic public support" (Carothers 2016, 370).

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When CSOs are faced with governmental campaigns that specifically use foreign support as a means to publicly delegitimize them, they should certainly do their best to *tactically* respond to inappropriate, misplaced, or outright false charges. However, if the corresponding organizations indeed receive a significant amount of foreign support, this oftentimes is not enough. Given the societal resonance of the "foreign agent" motif, local CSOs—as well as the external actors supporting them—are well advised to take the basic allegation seriously and think hard about how to

has identified three factors that "particularly aided government strategies of delegitimization": (i) "state influence over key media outlets [...] that allow the ruling government to aggressively disseminate its message"; (ii) "the existence of public narratives that reinforced anti-civil society suspicions"; and (iii) "relatively weak-rooted formal NGO sectors with narrow core constituencies."

3 For different country case studies, see Brechenmacher (2017) and Wolff and Poppe (2015, 14–29).

address it *strategically*. Such strategic action can address the specific *vulnerability* of the CSOs at hand and/or address the *public resonance* of the charge, that is, the general legitimacy question.

MAKING CSOs LESS VULNERABLE

The most obvious way to make CSOs less vulnerable to the "foreign agent" charge is to reduce reliance on foreign funding. James Ron and his colleagues have argued that the increasing availability of international aid resources designated to human rights issues has led local human rights organizations in the global South to take "the path of least resistance," even though, while perhaps more complicated and uncertain, domestic fundraising would have generally been possible (Ron, Pandya, and Crow 2016). Consequently, scholars and practitioners have started to think about innovative strategies for Southern CSOs to attract domestic funding and have identified existing experiences and sources (Green 2017; Hodgson 2016; Ibe 2014; Rekosh 2017).[4] External actors engaged in international civil society support could do more to promote such local fundraising strategies. Yet, very clearly, the potential of raising domestic money depends very much on the specific context and generally it will be hard if not impossible to entirely substitute foreign resources. Furthermore, as Hussein Baoumi has argued, relying on domestic funding also comes at a cost: given the concentration of wealth "in the hands of few families, corporations or individuals" that is typical for countries from the global South, locally funded CSOs may become "accountable to a small rich elite in their countries" (Baoumi 2016).

The most obvious way to make CSOs less vulnerable to the "foreign agent" charge is to reduce reliance on foreign funding

Another—not necessarily competing—option is to shift to foreign donors that, in the particular country, are generally seen as less problematic. In some cases, it may already suffice to rely on European rather than on U.S. money (or vice versa), or to replace support from other countries' governments to relatively autonomous para-state funding (such as by the U.S. National Endowment of Democracy, the European Endowment for Democracy, or the German political foundations). A more signifi-

4 For examples from different countries of the global South, see the online debate: "Funding for Human Rights" on openGlobalRights, https://www.opendemocracy.net/openglobalrights/funding-for-human-rights.

cant change includes the turn to donors from the global South. In fact, as Carothers reports, some "aid providers can also direct their assistance [to CSOs] to third-country organizations that may have more operational flexibility and greater credibility in recipient societies," an example being the Indonesian Institute for Peace and Democracy (Carothers 2016, 373). Christopher Harris points to African initiatives such as TrustAfrica from Senegal and the African Women's Development Foundation from Ghana wich are "heavily reliant on overseas funding" even if they also raise money from regional donors (Harris 2013). Yet again, even if the funding would be entirely "Southern," the above caveat raised by Baoumi still applies—and, in this case, is reinforced by the basic logic of external interference that persists.

A different set of strategies attempts at reducing CSO vulnerability to governmental delegitimization efforts by expanding societal support. Again, there are basically two complementary ways to do so. On the one hand, CSOs can strengthen their ties with domestic constituencies and build close links with local communities, in particular in rural areas outside the capital (Howard et al. 2015, 35). As a result, CSOs can preventively counter the image that foreign-funded organizations are essentially opportunistic enterprises alienated from domestic society and accountable only to their external funders (Hahn-Fuhr and Worschech 2014; Mendelson 2015, 5–6). On the other hand, CSOs that operate in "sensitive" areas are well advised to build formal coalitions and informal alliances with other CSOs, but also with the broad range of sociopolitical actors that exist outside the world of formal nongovernmental organizations (NGOs). Such alliances may include traditional mass- and/or community-based organizations and new forms of "civic activism" that are rather sporadic and fluid (Youngs 2017), but also political parties and individual politicians that enable access to the political arena. Being part of broad coalitions or networks can be crucial when it comes to publicly counteracting negative governmental campaigns. For instance, in the case of Kenya, a previously established alliance of NGOs, the CSO Reference Group, proved crucial when the government tried, starting in 2013, to enact legislation that would severely restrict foreign funding to local organizations (Carothers 2015, 20; Hetz 2017; Mbogori 2016).

Being part of broad coalitions or networks can be crucial when it comes to publicly counteracting negative governmental campaigns

DEALING WITH THE PUBLIC RESONANCE OF THE "FOREIGN AGENT" MOTIF

The predominant response to the "foreign agent" charge, at least in the international debate on closing civic space, is characterized by an emphasis on human rights. As Maina Kiai has argued, for instance, "we need to use the language of human rights as a universal standard, and move towards a rights-based approach to development, rather than a results-based one" (Kiai 2013b). This is certainly what one would expect from a UN Special Rapporteur on the rights to freedom of peaceful assembly and of association. Such a strategy may indeed work in contexts in which public narratives that emphasize negative experiences with foreign meddling and the importance of sovereignty and self-determination are marginal. But in many cases, such a strategy will probably not be very successful.[5] In fact, the very case in Kenya to which Kiai refers suggests a different strategy. The successful NGO campaign that in 2013 (and again years later) managed to prevent the Kenyan government from passing a severe foreign funding restriction did *not* use a human rights-based discourse but precisely a results-based one. The key argument that ultimately convinced both a majority of legislators and the public was that the loss of foreign funding would have severe socioeconomic consequences: most notably, 240,000 jobs in the CSO sector would be at risk, and 20 million Kenyans would lose access to basic health care (Maracci 2013; Kiai 2013b; Vandyck 2017).[6]

In short, instead of letting governments define the terms of reference, CSOs need to redefine them in terms that will ensure their status with the public, thus deflating government attempts to attack their reputations

The key strategy here is to reframe the terms of the legitimacy discourse.[7] Rather than trying to defend the intrinsic legitimacy of foreign-funded CSOs (by emphasizing a universal right to access foreign funding), CSOs and their sympathizers must accept that reliance on external support compromises their domestic legitimacy, at least in the eyes of some. Yet, they can emphasize *other* forms of legitimation. The Kenyan example above suggests that CSOs' instrumental legitimacy—that is, the

5 It is also important to note that in the case of foreign funding restrictions, the human rights-based argument is quite weak in terms of established international norms (Poppe and Wolff 2017; Wolff and Poppe 2015).

6 Fabian Hetz (2017) has analyzed the successful strategy of the CSO Reference Group in detail.

7 Such a strategy, of course, can still be combined with a human rights-based discourse that emphasizes international and national human rights law.

appreciation they receive because they are perceived as meeting important societal needs—is key in this regard. Procedural legitimacy—arguments that explain *how* CSOs operate—could also be a worthwhile emphasis: wherever the funding comes from, mechanisms of transparency and accountability guarantee that resources are used for the declared purposes of the organization. As an experience from a German NGO that supports CSOs worldwide suggests, the establishment of voluntary codes of conduct and seals of approval can be useful tools to improve the reputation of CSOs precisely in terms of their procedural legitimacy.

In short, instead of letting governments define the terms of reference, CSOs need to redefine them in terms that will ensure their status with the public, thus deflating government attempts to attack their reputations.

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ON DEATH BY A THOUSAND MOSQUITO BITES: NAVIGATING THE REGULATORY ATTACK

Edwin Rekosh

If the sun is low in the sky, and you're on the porch of a house overlooking a swampy lake, what do you do? Sit there and wait for the inevitable, cursing at the welts that grow later? Reach for the bug repellent? Hang up the mosquito net? Retreat inside? Gather your neighbors together and drain the swamp? If there has been a recent outbreak of malaria in the area, does that change your decision?

Civil society is primarily organized in the form of non-governmental organizations (NGOs), which are legal entities (typically with charitable status) that enable individuals to organize collectively to undertake actions recognized by a national legal system. Through their regulatory powers, governments can make operational life difficult for NGOs in a myriad of small ways that often go unnoticed or unaddressed. In most cases, isolated regulatory requirements, or even proactive enforcement actions, are not fatal to an NGO's viability. When these issues surface, NGOs typically respond in whatever way will require the least resources in order to eliminate the immediate distraction so they can return to their core priorities. Rarely do NGOs prioritize the development of a focused strategy to anticipate, manage, and respond to regulatory risks.

Unfortunately, in most countries where civil society has relatively shal-

low roots, the impact of regulatory risk on the viability of NGOs has increased dramatically, especially as the political space for NGOs has shrunk. Governments are increasingly using technical regulatory means as an instrument to restrict and even eliminate NGOs they consider threatening to their legitimate or illegitimate political objectives.

Generally, NGO leaders do not consider regulatory requirements important; they treat them as nothing more than pro forma bureaucratic concerns

Generally, NGO leaders do not consider regulatory requirements important; they treat them as nothing more than pro forma bureaucratic concerns. Furthermore, focusing on them seems somehow antithetical to the action-oriented initiatives and organic personal relationships that most often drive the organizational cultures of small NGOs. Let the lawyers and accountants do whatever is necessary and let us get on with the job.

This phenomenon is particularly pronounced when the growth of NGOs has followed a significant political transition, with NGOs representing a collective expression of passionate beliefs in the transformation of a society. The resulting blind spot for regulatory risk unwittingly creates a vulnerability that political enemies of NGOs can exploit with near impunity.

ORIGINS OF THE THREAT

There is nothing new about governments creating burdensome requirements on NGOs, and there have always been legitimate reasons for such regulation. What is worrisome, and perhaps new, are the illegitimate motives for government regulation.

Legitimate Policy Motivations

NGO regulation is partly driven by the same justifications as regulation of business. The government has a responsibility to prevent fraud and manipulation—to ensure that wrongs committed by individuals in the name of a legal entity can be addressed properly through the legal system. The government also has the responsibility to implement tax policy in a fair and consistent manner so that tax subjects are treated on an equitable basis.

However, regulation of NGOs is generally more extensive than regulation of business, primarily due to the preferential tax treatment given to charitable organizations. Since NGOs are often subsidized to some extent with public funds through tax benefits, governments justify additional scrutiny and administrative burdens to safeguard the appropriate use of public funds.

Governments also justify prohibition of "political" activities of NGOs on the grounds that public funds (charitable subsidy) should not be used to influence the outcome of a political process in a partisan manner. Both NGOs and businesses are subject to some of the same requirements in this regard, but NGOs are sometimes subject to additional restrictions because of their tax status.

Illegitimate Policy Motivations

When governments treat NGOs as a political threat, the playbook for limiting the operational effectiveness of the organizations is comprised of several interrelated strategies frequently executed, either wittingly or unwittingly, by government officials at all levels.

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- *Create opportunities for control*: NGOs often represent a threat to governments; by their very nature, NGOs represent an unpredictable and difficult-to-control source of accountability. For that reason alone, governments often adopt regulatory policies that possess the patina of legitimacy, but whose unstated intention is to create more possibilities for control over a sector that is inherently threatening to those holding public office. That phenomenon has been present for decades, as the development of civil society in many countries has outpaced the capability of politicians and government bureaucrats to adjust their expectations.

- *Allow the machinery of the state to make ordinary operational life impossible*: The inherent arbitrariness of state action, even on mundane administrative matters, can exacerbate the problem by transforming potentially innocuous administrative burdens into mortal wounds. This is especially true in countries where legal culture and institutions are dysfunctional, undeveloped, and weak. With registration

documents required for transactions withheld, bank accounts frozen, fines levied, and additional paperwork required, the cumulative effect, even of unintended arbitrary decision-making, can sometimes lead to death by a thousand paper cuts.

- *Control the channels of action*: The reality of governance in many countries is that business has undue influence on political decision-making through financial power, the existence of elite influence networks, and, in extreme cases, state capture by powerful business interests. In contrast, NGOs usually work on behalf of powerless and politically marginalized segments of the population, and therefore have less access to informal levers of political influence. This makes NGOs more dependent on officially sanctioned cvhannels of political engagement and policy deliberation, creating an opportunity for governments to silence critical voices or consolidate political power by narrowing the channels for public discourse on policy matters.

In short, governments can privilege a favored segment of society by closing off undesired channels of policy debate simply by forbidding NGOs as a whole from engaging in "political" activities. The essential ambiguity of the meaning of the term "political," in any technical legal sense, renders even the most well-intentioned policies (such as U.S. tax rules on lobbying by tax-exempt organizations) nearly incoherent. No wonder, then, that laws and regulations purporting to regulate "political activities" by NGOs in countries such as Russia, India, or Ethiopia have such pernicious effects.

POTENTIAL RESPONSES BY NGOs

Since NGOs do not usually engage in explicit strategic thinking about how to respond to regulatory threats, they leave themselves vulnerable. A number of responses that NGOs would do well to consider more explicitly, especially as regulatory attacks increase, include the following:

Avoid the Issue

The most common response, and the one that NGOs have generally adopted toward burdensome regulations over the decades, has been to ignore and avoid. That was the consensus response to Russian regulations on political activities by NGOs receiving foreign funding (the "foreign agent" law) when it was first promulgated in Russia. This has also been the instinctive response over the years of a large segment of Chinese civil society in response to various governmental policy shifts on

foreign funding. It is probably the most common response to new efforts strengthening control mechanisms over civil society.

This response comes instinctively to NGOs in many countries; NGO leaders will often point out that the technical regulatory regimes are not the problem so much as the underlying political forces that produce them. According to their political analysis, the threat emanates from elsewhere, and targeting that political threat is the essential priority. Administrative burdens are small and relatively innocuous and can be worked around with the usual savvy of skilled and well-connected NGOs. The common sentiment is "if they want to get you, they will get you," so focus instead on political strategy, and don't worry about the technical details.

The most common response, and the one that NGOs have generally adopted toward burdensome regulations over the decades, has been to ignore and avoid

Political strategies can be an important means for ultimately neutralizing the threat, especially in contexts where mobilizing around democratic values can be influential, as discussed below. But the limitation of focusing exclusively on high-level political strategy is that it privileges the most powerful dynamics (deeply entrenched political forces), which are inherently resistant to influence in contexts such as Russia, especially in the short term. Meanwhile, a relatively small policy tweak can leverage the slow and steady effect of the omnipresent administrative state going about its ordinary business, which could accumulate into possibly devastating impacts on NGOs.

Adopt Standard Business Practices

In contrast to the instinctive response of most NGOs, businesses closely track the regulatory changes that may affect them. Companies often perceive as a significant potential threat even the smallest technical shift affecting their interests. Even if the immediate impact is inconsequential, they tend to worry about the precedential consequences, fearing what might come next.

Businesses generally ensure that they are well insulated from risk by developing compliance systems designed to maximize the pursuit of their interests while reducing the risk of negative governmental action. Depending on the size of the business, its compliance systems can be as basic as hiring an accountant and lawyer to ensure its financial practices and public reporting are in order, or as sophisticated as developing and maintaining obligatory, elaborate protocols and policies for employees.

Further, businesses concerned about potential regulatory trends that could interfere with their interests over time generally invest heavily in efforts to persuade policy-makers to change direction. Leaving aside the more unscrupulous means deployed in some contexts, they collect evidence, provide technical arguments, and engage in labor-intensive efforts to demonstrate the undesirable, unintended consequences of the current policy direction and the wisdom of alternative approaches.

NGOs are usually under-resourced compared to most businesses, and often consider the administration necessary for well-functioning compliance systems to be an unrealistic luxury. Global trends in legal voluntarism, however, provide an underexploited opportunity. Legal globalization followed in the wake of economic globalization, with large law firms developing not just in the world's financial capitals, but also in most emerging markets. Those law offices are often formally linked with global law firm networks, or at least regularly conduct business with large global law firms. As a result, the strong prioritization of "pro bono" voluntarism in the American context has diffused around the world and is driving the development of organized pro bono programs in many areas (Cummings, Silva, and Trubek forthcoming).

Global trends in legal voluntarism provide an underexploited opportunity

Ideally, law firms would devote their considerable resources to providing access to justice directly to the most vulnerable individuals in society. Yet, the largest law firms in a given country—usually located in cities where economic activity is concentrated—are structured to serve organizational clients, namely the companies upon which they depend for their commercial work. As a result, law firms looking to contribute their skills and work for the public good often find that they are well suited to meet the needs that NGOs tend to de-prioritize. That creates a significant hidden resource for NGOs that decide to invest a relatively small effort in packaging their administrative needs in a manner that attracts these law firms (PILnet 2018).

Law firms working pro bono can either solve specific issues as they arise or conduct a full legal audit to help ensure that clear policies and procedures are in place to partially immunize the NGO from arbitrary enforcement actions. Sometimes these are simply oversights that can be avoided. If targeted for political reasons, an NGO could prevent intrusive enforcement actions through practices as simple as publishing online an annual profit and loss statement or ensuring that decisions made at an annual meeting are transparent.

With high quality legal advice, NGOs can enhance their capability for mak-

ing strategic choices about how they respond to regulatory burdens. Despite a tendency by NGOs to consider their options according to an oversimplified and emotionally charged choice between submission and defiance, in reality there are subtler choices for NGOs that may better serve their interests and those of their beneficiaries. Proper legal advice can help them to consider and exercise those choices intelligently. For example, an NGO seeking to challenge a particular provision on principle—such as a requirement to publish the names and addresses of all its members or contributors—would strengthen its legal position by complying with all other legitimate government requirements while withholding the specific information it seeks to protect (see Rekosh 2017, 26–29).

Work Around the System

NGOs that operate internationally are not unlike companies that engage in international trade. For better or worse, economic globalization has enabled business operations to cross borders at will, according to decisions determined by factors such as tax treatment and labor and consumer markets. Some features of globalization, such as increased communication channels and capital flows, have also benefited international NGOs. These NGOs, however, often do not consider their organizational structures and operations with the same strategic care that international businesses employ.

Just as many law firms advise NGOs pro bono on compliance issues, law firms—especially those of the larger international networks—are in a position to provide high quality advice to help NGOs make well-informed, strategic choices about how to structure their operations in various countries. It may make sense, for example, for an NGO to set up an entity in a "safe" country for purposes of fundraising, while operating locally in another country.

Another option available to avoid the most intrusive regulatory measures is to set up NGOs as commercial entities. If the organizers can live without the tax subsidy provided by charitable status, it may make more sense to operate as a commercial entity without seeking profit.

Finally, NGOs can choose to operate informally, without any legal entity. In Tunisia, for instance, the Arab Institute for Human Rights has developed a multitude of programs designed to foster collaboration among citizens at the community level and more broadly, without the need for setting up legal entities (AIHR, n.d.). This approach is contributing to a larger trend. The Kamour Movement between April and

June 2017, for example, was a well-organized but non-hierarchical protest to occupy an oil and gas facility in Kamour in southern Tunisia with concrete labour demands. Tunisian individuals financed the movement and its leaders made great efforts to maintain distance from political parties. It disbanded after securing a mostly favorable negotiated result (Cherif 2017).

Particularly when operating across borders, choices about structure should be made carefully and with expert advice in order to avoid unexpected negative consequences. Two global law firms, DLA Piper and Dentons, have joined forces to provide a resource to aid NGOs seeking to restructure or relocate for a variety of reasons, including working around particularly harsh regulatory regimes, expanding geographically to new locations, or responding to changing priorities or opportunities globally. In 2018, the two firms in collaboration with PILnet will launch a website covering around twenty European and other jurisdictions (Rekosh 2017, 47–50).

Work Upstream to Change the System

Ultimately, the most effective strategy for NGOs is to engage in a sustained effort to change the regulatory regime when feasible. Approaches to addressing regulatory issues at a more systematic level vary, can be done simultaneously, and include the following:

Negotiated Approach

The largest NGOs often have some degree of political leverage and are sometimes able to mobilize enough political pressure to negotiate a solution to a regulatory problem that affects them. For example, Hungary adopted a law in early 2017 that was drafted in generic terms, yet effectively targeted Central European University (CEU), a privately funded non-profit university. CEU and its supporters launched a significant protest campaign that sparked public outrage around the world, including in the corridors of the European Union, and brought CEU and the Hungarian government to the negotiating table. Although these developments appeared to neutralize the immediate threat, the negotiation process has since been prolonged. As with any negotiation, there is a risk that the threat will re-appear once the immediate pressure dissipates.

Ultimately, the most effective strategy for NGOs is to engage in a sustained effort to change the regulatory regime when feasible

Technocratic Approach

Specialized organizations, like the International Center for Not-for-Profit Law (ICNL), often work in conjunction with national coalitions like the Civil Society Reference Group in Kenya (ICNL, n.d.). These organizations rely on technical expertise to call attention to the potentially pernicious effects of relatively obscure regulatory changes to push for improvement of existing laws. The Civil Society Reference Group formed in 2010 in Nairobi as an informal coordinating body of Kenyan NGOs devoted to proactively championing legislation that would enable further development of civil society. When the Kenyan government began to attack NGOs in 2013, human rights groups in the crosshairs were able to access high-quality local and international technical expertise, as well as coordinate closely with international development organizations through the Civil Society Reference Group. They were thus able to respond to the government with technically sound, unified positions (Rekosh 2017, 52–53, 65–67).

Political Approach

NGOs can more easily capture the support of the public by framing the dispute in starker value-based terms rather than technical ones

As they did in Kenya, sometimes these technocratic efforts become politicized. In general, however, NGOs can more easily capture the support of the public by framing the dispute in starker value-based terms rather than technical ones. In Israel, for example, the government enacted a 2016 law branding NGOs as "foreign agents" if they receive more than 50% of their grant funding from foreign governmental sources (such as the European Commission). The legislation was dubbed "The NGO Transparency Law" though it covered only certain NGOs. Omitted were NGOs funded primarily by private philanthropic sources—which disproportionately support causes favored by Israel's political right, such as settlement in the Occupied Territories— revealing the underlying political intent of the law. Human rights advocacy groups, like the Association for Civil Rights in Israel (ACRI), have engaged in a concerted campaign against the law. They explained to the public that other laws more effectively and consistently provided transparency, and they characterized the "Transparency Law" as an attack on democracy by emphasizing the disproportionate impact on one particular political viewpoint (Rekosh 2017, 62–63).

Inherent in this response is a strategic reframing to focus on the underlying

problem—an unjustified attack on the political legitimacy of NGO activities. Unfortunately, however, governmental narratives about the legitimacy of foreign funding have deep roots. The U.S. Foreign Agent Registration Act (FARA), for example, was adopted in 1938 in response to the deliberations of a Congressional committee designed to investigate Nazi and Communist propaganda in the U.S. (National Archives 2016). It was initially enacted to curb the impact of influence strategies implemented by foreign governments, an issue re-emerging in the context of the U.S. Justice Department's investigation into contacts between the Trump campaign and the Russian government in the period leading up to the 2016 U.S. presidential election. When the Russian government adopted its Foreign Agent Law in 2012, it explicitly pointed to FARA as precedent. Moreover, the Cold War origins of efforts to regulate foreign funding for NGOs have been evident in earlier efforts in India, among other countries (Rekosh 2017, 11–12).

Ultimately, the pernicious nature of the trend hangs on subtle distinctions between covert foreign governmental influence and genuine local initiative. In the U.S., a limitation on the application of FARA to the NGO sector is clear enough. Charitable grants to NGOs do not create the degree of direction and control necessary to establish an agency relationship according to U.S. law on income taxation and charitable support. (Thomas and Henzke 2001, 148–149). However, these distinctions are lost in most legal systems. As a result, in defending the political legitimacy of their actions, it is incumbent on NGOs to educate the public about both the necessary function of NGOs in a democratic society and the distinction between charitable support and direct foreign control. NGOs must ultimately attract public support for their political legitimacy if they are to fight back successfully against governmental efforts to restrict their role in the public sphere.

CONCLUSION

Human rights defenders have long been subject to intimidation, harassment, hostile legal proceedings, and physical harm from governments and other actors threatened by their activities. Indeed, deadly violent attacks on human rights defenders are on the rise, particularly for advocacy touching on issues of land, the environment, and indigenous communities (Front Line Defenders 2018, 6).

Equally profound is the increase of criminalization and violent attacks on defenders in contexts where NGOs are under unprecedented pressure. State-sponsored vilification campaigns against NGOs, and in particular their foreign sources of

funding, have spread across the globe. This is how they have justified suppression through technical regulatory means. In a global political environment in which human rights norms and institutions are eroding, and diplomatic support for democracy and civil society has declined, regulatory threats to NGOs are hardly less dramatic than attacks on human rights defenders themselves.

Consequently, national regulatory frameworks for NGOs are increasingly threatening the very existence of institutions essential for protecting human rights nationally, with dire potential consequences in the long-term. This development has caught many NGOs by surprise, and there has thus been insufficient strategic focus on the tactical choices they can make in response. Strategic thinking about regulatory issues can produce opportunities to mitigate the potential damage.

The problem, however, is an even wider one: an attack on the political legitimacy of NGO activities at the national level, premised on a distorted understanding of the significance of foreign funding sources. It is incumbent on NGOs to focus on the underlying threat and find ways to address it through collective action supported by the broadest possible network of individuals and institutions. Ultimately, NGOs need to develop stronger support for their legitimate role as intermediaries for the public—especially the politically, socially, and economically marginalized and most vulnerable—to enable individuals to participate in the governmental decision-making that impacts their daily lives.

Ultimately, NGOs need to develop stronger support for their legitimate role as intermediaries for the public—especially the politically, socially, and economically marginalized and most vulnerable—to enable individuals to participate in the governmental decision-making that impacts their daily lives

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WHAT WILL IT TAKE TO REDUCE NGO DEPENDENCE ON FOREIGN AID?

James Ron, José Kaire, Archana Pandya and Andrea Martínez

Recent studies show that human rights groups in the global South depend heavily on foreign aid (Ron, Pandya and Crow 2015). At the same time, governments worldwide are cracking down on foreign funding of locally operating NGOs (Dupuy, Ron and Prakash 2016). In at least one case—Ethiopia—these new restrictions have led to the wholesale collapse of a domestic human rights NGO sector (Dupuy, Ron and Prakash 2015). The wave of governmental regulatory pressure on NGOs is being felt in many countries and is inspiring activists and donors to think of new solutions. Understanding the reasons why local rights NGOs in the global South depend on foreign aid, which is a necessary (but not sufficient) condition for their current predicament, can help devise some solutions. Here are a few possible reasons:

1. *Global inequality:* Given global currency and wealth differentials, it is easier for local NGOs to ask for modest inputs from abroad than to invest the vast amounts of time, resources, and effort required to raise money locally.

2. *Political repression:* Human rights NGOs are often active in politically repressive countries. They are often closely watched by governments keen to monitor and control NGO supporters. Given this, potential

local donors are too scared to donate money to rights-oriented NGOs for fear of government retaliation.

3. *Public attitudes towards human rights principles:* Some people in the global South (as well as in the global North) find human rights principles unattractive for a wide range of reasons. The lack of a donor base for less popular rights, such as those pertaining to LGBTQI issues, is thus not surprising.

4. *Southern NGO desires for independence:* human rights organizations prefer to raise money internationally because the distance from foreign donors gives NGOs greater autonomy. When NGOs receive money locally, they find it harder to maintain their independence. Although much has been made of international donors' influence over NGOs, the reality may be that local donors are even more controlling.

5. *Clashing North–South philanthropic repertoires:* individual and institutional donors in the global South often prefer brick-and-mortar human service programs and projects, such as the construction of schools and hospitals, or feeding programs. The public policy, legal, and advocacy work of human rights groups, by contrast, is not sufficiently tangible for the average donor in the global South.

Understanding the reasons why local rights NGOs in the global South depend on foreign aid, which is a necessary (but not sufficient) condition for their current predicament, can help devise some solutions

6. *Foreign donor behavior:* foreign donors provide local NGOs in the global South with little encouragement, incentive, or support to build local fundraising capacity. Foreign donors assume that the above 1–5 reasons dominate, and therefore local fundraising is unrealistic. Thus, they do little to encourage local fundraising potential.

Of the reasons outlined above, if items 1–5 are the entire story of foreign aid dependence, there is not much that can be done to improve the predicament of NGOs in the short-term. If at least part of the explanation is item 6, however, something *can* be done, and relatively quickly. While we recognize that items 1–5 often obtain, our research leads us to believe that item 6 is particularly important, and that donors can do more to encourage local human rights NGO fundraising. In other

words, we believe that in countries where item 6 can be altered—that is, countries where local fundraising is possible and items 1–5 do not tell the entire story—foreign donors can help local NGOs build local fundraising capacity.

OUR PROJECT

In 2016, our research team received a grant to explore whether ordinary people might donate to local rights groups in Mexico City, Mexico and Bogotá, Colombia. We began with a survey of a representative sample of 960 Mexico City adults and discovered that many people are in fact willing, *if asked in the right way,* to make small donations (Absar et al. 2017). These small contributions could, over time, add up to serious money.

The most exciting results came from an experiment in which our twenty-plus enumerators gave each of the nine hundred sixty respondents a small bag with MXN $50 (roughly USD $3.5 at the time), denominated in 5-peso coins. Given that the daily minimum wage in Mexico City is roughly seventy-two pesos, this sum was not inconsequential. We told respondents the money was theirs to keep, but that if they wanted, they could donate some, or all, to a "Mexican human rights organization," which we then proceeded to describe.

Overall, almost 80% of respondents donated at least something to one of the "Mexican human rights organizations" we described, and 22% donated the entire sum. These findings alone, we believe, suggest there is real potential for Mexican rights groups seeking to raise local money

To see which *type* of organization the public was more likely to support, we randomly allocated two hundred forty respondents into each of four groups, each of which received a different organizational description. For the first group, we described a "Mexican human rights organization" that was regularly and rigorously audited. This group, we said, was *fiscally trustworthy*. For the second group, we described a Mexican human rights organization that was *highly effective* at changing laws and policies, highlighting its ability to get things done. For the third group, we described an NGO that had helped an individual, ordinary Mexican citizen with his troubles; this organization, we said, *was directly responsible for helping a specific individual,* whom we identified by name. For the fourth group, we described a generic Mexican human rights organization with no specific attributes. This, in our experimental design, was the *control* group.

The results of the experiment were promising. The average donation, controlling for other relevant factors, was 21.6 pesos, or 43% of the 50-peso gift we had given each respondent. Overall, almost 80% of respondents donated at least *something* to one of the "Mexican human rights organizations" we described, and 22% donated the entire sum. These findings alone, we believe, suggest there is real potential for Mexican rights groups seeking to raise local money.

Our analysis suggests that the "fiscal transparency" story had the strongest effect, since respondents in that first group donated four pesos more, on average, than the baseline sum. Transparency is likely important because of widespread concern over corruption. Mexicans fear their money will be stolen, skimmed, or wasted, but when assured otherwise, they are more eager to give.

Importantly, even the poorest respondents donated some money. To measure individual respondents' wealth, we created an assets index, asking respondents how many consumer durables their household contained, such as number of light bulbs, computers, cars, telephones, and more. People located in the top fifth of this index donated roughly thirty-two pesos, but people located in the bottom fifth—Mexico City's poorest residents—donated roughly twenty-two pesos, on average. The rich donated a greater *absolute* sum, but the poor donated much more in *relative* terms, given their smaller asset base.

If Mexican rights groups can get a member of the public to donate once, they will dramatically increase the chances of that person donating again

Other factors also boosted donations. Not surprisingly, the more people thought human rights conditions in Mexico were problematic, the more they donated. Since 63% of the sample said there was either "no" (17%) or "very little" (46%) respect for human rights in Mexico today, the demand for human rights solutions is genuinely high, and this should boost giving in any future fundraising effort.

Education was also correlated with more donations, as university-educated respondents donated nine pesos more, on average, than those without such an education. Political knowledge, measured with questions about national, regional, and international issues, also mattered; politically knowledgeable people donated five pesos more on average. And while only a small number of respondents said they had ever donated to a human rights organization, these "prior donors" were *four times more likely* to donate. Thus, if Mexican rights groups can get a member of the public to donate once, they will dramatically increase the chances of that person donating again.

To be sure, there is no way around the fact that raising money from individual donors costs money: human rights NGOs would have to hire new staff, create new advocacy and fundraising messages, generate new community relationships, build new computer and accounting systems, and much more. Yet, international donors can help wean local groups off foreign dependence by investing in precisely these types of new capacities. Modest investments of this type could transform the global human rights community into a truly sustainable and autonomous force rather than an embattled, foreign aid-dependent sector.

DATA UTILIZATION AND OUTCOMES

Upon completion of the public opinion survey, we approached the human rights NGO community in Mexico City, asking them if they would use our results to motivate their own domestic fundraising work. Prior to our public survey, we had interviewed thirty-four of the forty human rights organizations identified in the city. We invited all thirty-four to attend a workshop about our results in February 2017; of these, representatives of nineteen organizations showed up. After the workshop was over, we contacted all nineteen organizations, and fourteen responded to our messages. In the end, we were able to meet in person (or via Skype) with twelve of these groups, or *roughly 30% of Mexico City's entire NGO human rights sector*. Of these twelve, we met eleven groups two or more times; six groups, three or more times; two groups, four or more times; and one group, five times.[1]

PRELIMINARY RESULTS

Many of the local rights groups we engaged with indicated an interest and willingness to explore local fundraising strategies to help sustain their work. Some of the preliminary results of our interactions with local rights groups in Mexico City are as follows:

- We met with one group on three separate occasions. They asked us to write a concept note about building local fundraising capacity. We did so, and then worked with that NGO to write a full funding proposal, which they intended to send to a foreign donor. There is no word yet on whether anyone is funding that proposal.

1 For details on our interactions with rights groups in Mexico City as well as their website addresses, please contact the lead author at jamesr@umn.edu.

- Two organizations were interested in writing a proposal themselves; as of now, we do not have further information on their efforts.
- One rights group held its first fundraising event for local citizens in Mexico City, inspired by our work. They had been considering a fundraising campaign for a while, but told us that our work convinced them it would be worthwhile. We are still awaiting word on the results of that event.
- One of Mexico's leading women's rights groups asked us for a demographic analysis of potential donors in Mexico City. Based on our analysis, they decided to target a particular subset of the population—older women in specific neighborhoods—for sales of tickets to a local fundraising event. We have yet to receive an update on the results of that event.
- Another larger Mexican rights NGO asked us to submit a proposal to them for conducting a survey on philanthropic giving in the whole of Mexico. We did, and they were going to take that proposal to specific entities, including USAID, the Mexican government, and others. We have also yet to receive word.
- Another group asked a member of our team to present our research during an institutional development workshop they held for other organizations. Similarly, one group also asked us to present our results to other members in their organization. We agreed to both requests.
- Members of one group asked to meet a member of our team to talk about our research. They are starting their own organization in the near future and were interested in making local fundraising an integral part of their financial strategy.

Beyond the local rights groups, we have heard that one or more donor agencies are interested in exploring the possibility of integrating our findings into their work. We hope that in the next year or two donors will start making small grants to local NGOs to help them explore capacity building for local fundraising.

CONCLUSIONS

To thrive, local human rights organizations in the global South will need to develop a broad mix of resources, including both external and domestic funds. Many groups have spent at least twenty years building their capacity for international fundraising; the time has come to build the capacity and the research base to support fundraising at home. Domestic resources are not appropriate at all times, for all is-

sues, and in all places, but they must become a bigger part of the human rights budgetary toolkit.

To thrive, local human rights organizations in the global South will need to develop a broad mix of resources, including both external and domestic funds

To raise more domestic money, human rights groups will have to hire new kinds of people, develop new social ties, and build new fundraising capacities. They may also have to figure out a better "market niche," in which they offer something so valuable that local donors, big and small, will want to pitch in. Significantly, in order to move gradually towards diversification and financial independence, they will also need the support of international donors to provide incentives, capacity, and room for local NGOs to develop their local fundraising approaches.

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RESPONSE STRATEGIES TO PUSH BACK AGAINST THE GLOBAL CRACKDOWN ON CIVIL SOCIETY

Mandeep Tiwana

The month of October 2017, when this paper was penned, saw several attacks on civil society:

- *Daphne Caruana Galizia, an investigative journalist and mother known for writing against corruption in high places, was assassinated by a car bomb in Malta*
- *Poland's president signed a law to control distribution of public and European Union funding to civic groups following massive protests against attempts to pass draconian anti-abortion rules*
- *Raleva, a community activist, was arbitrarily detained for questioning because of the environmental fallout of a mining operation in Madagascar*
- *Bobomurod Abdullaev, an independent Uzbek journalist, was charged with "attempts to overthrow the constitutional order" and is at risk of torture for his professional activities*
- *Santiago Maldonado, an Argentine activist who spoke out for the land rights of the Mapuche indigenous community, was found dead eighty days after his disappearance*

These represent a mere sliver of the events occurring over just a few days in October 2017. Nevertheless, they indicate the harsh reality of attacks on civil society

and the independent media that are becoming so brazen and so commonplace. Only 2% of the globe's population can be said to live in countries where the fundamental freedoms of expression, association, and peaceful assembly are adequately protected (CIVICUS 2017).[1] The proliferation of attacks on these accepted freedoms has led to increased interest among academic, media, and civil society actors to better understand what is driving the erosion of hard-won human rights gains. Conspicuously, many are asking what can be done to push back against fierce attacks by repressive state apparatuses, politically well-connected criminal elements in the private sector, and religious and ideological extremists for whom civil society's focus on social cohesion represents an existential threat.

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This chapter seeks to offer a range of responses from the perspective of civil society organizations and activists facing the harsh weight of these restrictions, attempting to offer a coherent set of responses to the current challenges. Notably, as the literature on the closing of civil society space expands, it is important to keep in mind that the notion of closing space is amorphous. While similarities exist between the tactics used by those attacking civil society, regional nuances and variations militate against the adoption of wholesale externally developed "solutions." In devising strategies, processes are important. Too often solutions are crafted in distant locations for presumable implementation elsewhere.

Moreover, our experience at CIVICUS, a membership-based global civil society alliance, tells us that even as restrictions proliferate, civil society activists and organizations are continuing to score substantial victories to protect and expand their space. These victories may take the form of the release of arbitrarily detained prisoners of conscience, adoption of enabling freedom of information laws, or even a change in government and official policies through legitimate political processes. It is important, however, to note that while these victories are sometimes assisted by international solidarity, they are often rooted in local responses.

1 Updated findings from the *CIVICUS Monitor* from October 2017 can be accessed here https://monitor.civicus.org/Ratingsupdatesept17/. The *CIVICUS Monitor* is an action oriented online participatory research platform that tracks the state of civic freedoms around the globe https://monitor.civicus.org/.

Much thought has been given to responding to attacks in successive editions of *State of Civil Society Reports*, our yearly round-ups of the health and conditions of civil society (CIVICUS 2012–2017). Below is an amalgamation of some key response strategies from the perspective of our membership, comprised largely of human rights and social justice oriented civil society organizations spread across 175 countries.

DEVELOPING A POSITIVE NARRATIVE ON THE CONTRIBUTIONS OF CIVIL SOCIETY

Those undermining fundamental freedoms and attacking civil society often utilize arguments that appeal to the collective fears of population groups around issues relating to national security, foreign influence, or protection of cultural values. Thus, whether one lives in an autocratic environment or in a consolidated democracy, there's a need for stronger, clearer, more popular messaging on the contributions of civil society to national life, including realizing sustainable development, increasing national income, or increasing a nation's soft power. Importantly, we need to proactively challenge the misinformation propagated by those who attack civil society through the development of effective counternarratives. We also need to win over more of the public with the idea that individual rights are closely linked to those of civil society activists and organizations, and that when civil society flourishes, everyone gains. Essentially, protecting civil society space and respecting constitutional norms are inextricably linked. Moreover, in times of constrained space, civil society needs to invest in building relationships with reform-minded public servants to align them with the value of our work, such as in fighting corruption. The struggle for hearts and minds is an important one.

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WORKING TOGETHER TO CHALLENGE ATTACKS

The closing of civil society space is a crosscutting issue that affects the whole spectrum of civil society actors, from those engaged in service delivery activities to those proactively exposing abuses by powerful entities. There is thus a need within

the civil society sphere to recognize the imperative of responding to closing space challenges at the organizational or project level; civil society should emphasize civic space and democratic values for effective resistance. In doing so, we need to develop protocols to collectively and swiftly react to negative developments such as raids on the offices of civil society organizations or incidents of arbitrary detention of activists. Examples can include measures geared towards emergency legal assistance, flexible funds for advocacy campaigns, immediate relocation of threatened activists, and replacement of lost, destroyed, or confiscated equipment. Notably, networks and organizations with an interest in civil society rights can also draw strength from coming together to compare experiences and explore tactics to respond to emergency situations. But coalitions of the concerned should move beyond those tactics that may be easily dismissed as being familiar voices repeatedly highlighting serious human rights abuses. Organizations working on different issues, such as internet freedom, democratic reform, gender justice, and environmental, land, and indigenous rights, need to go beyond their silos and work more closely together in the spirit of solidarity. Much can be gained through cross-border experience sharing, as closing space is no longer solely a global South issue. In fact, civil societies in the global South have much to offer to their global North counterparts in terms of resilience strategies.

TRACKING PROGRESS ON CONSTITUTIONAL AND INTERNATIONAL COMMITMENTS

Fundamental freedoms of expression, association, and peaceful assembly, which underpin an empowered and enabled civil society, are enshrined in most constitutions and are an integral part of international law. Guarantees of civil society participation and enabling environments are part of several multilateral aid and development related agreements as well as national policies on the civil society sector. Agenda 2030, the Busan Partnership for Effective Development Cooperation, the Open Government Partnership, and communiques issued by the Community of Democracies and other multilateral bodies contain a host of promises to civil society that they hope to see implemented. Several resolutions to protect civil society space have been passed by the UN Human Rights Council in recent years, alongside appointments of independent UN experts to report on progress. Implementation, however, remains a key challenge. More accurate and frequent monitoring by civil society can help shine a spotlight on unrealized commitments. Moreover, those with an interest in protecting fundamental freedoms need to creatively engage with national institutions, including apex courts, parliaments, and human rights commissions, to uphold

in practice what governments have committed to in principle. Notably, contemporary open data tools could help track and report whether civil society space is worsening or improving in different contexts over time, and trigger early alerts to drive prompt action in cases where the space is quite notably deteriorating. Better data on rights violations, including threats and violence against human rights defenders, is thus needed to support effective advocacy.

INVESTING IN ACCOUNTABILITY

The very nature of the work of civil society in speaking truth to power and exposing abuses by powerful entities can elicit retaliation through implementing intrusive laws or making false accusations. Oftentimes, civil society activists and organizations are subject to stigmatization and vilification by political figures who try to erode the legitimacy of their work in the eyes of the public. Too often, civil society organizations are dismissed as being elitist and out of touch with on-the-ground realities. It is therefore critical to develop strong roots in local communities and among the public whose interests we seek to serve. Importantly, those of us working in civil society should be prepared to be held to a higher standard by the public. Demonstrable competence and impeccable accountability and transparency from within can help counter attacks on civil society. Communities of practice centered on values can help develop resistance against externally imposed measures that claim to be about accountability but are in fact about control. They can also enable civil society organizations to demonstrate that they are acting independently and working for the public good.

Those of us working in civil society should be prepared to be held to a higher standard by the public

MAKING COMMON CAUSE WITH ACADEMICS AND JOURNALISTS

Civil society, media, and academic freedoms are closely intertwined. Attempts to gag civil society are usually accompanied by encroachments on the academic and journalistic spheres. For civil society activists and organizations, developing relationships with academia and the media is key in times of closing space. Indeed, political elites who attack civil society often resort to spurious allegations that the academic community and the media—civil society allies—help to unravel. In fact, civil society can help mobilize the public and expose the truth that they seek to sup-

press. It is thus critical for civil society organizations to invest in relationships with the academic and journalistic communities through seminars and interactive workshops and also explore joint projects that can involve skills sharing and dissemination of information.

MAKING THE BUSINESS CASE FOR CIVIC SPACE

The rapid and transnational growth of business is exacerbating the problems of diminished civil society space. Some businesses are directly targeting activists who seek to hold their businesses accountable. Some are driving restrictions on civil society through their influence with governments. A persistent problem is the impunity for attacks, particularly those on defenders of environmental, land, and indigenous peoples' rights and independent journalists. Yet, there are values-oriented businesses that can become allies of civil society. A business case for civil society space can be made on the grounds of the rule of law, as a strong rule of law helps businesses plan and invest with predictability. A robust and independent civil society helps uphold the rule of law; without this, there would be large-scale corruption, political uncertainty, and volatility, all of which increase business costs. A first step is persuading business leaders to adopt a "first do no harm" principle towards civil society. The private sector, however, needs to go beyond this and actively defend civil society space, including by leveraging relationships with political leaders and the power of its brands with the public. Civil society leaders need to explore avenues to influence corporate behavior, for example, by offering reputational reward for companies that defend civil society space and reputational risk for those complicit in restrictions.

We need to find new ways of articulating the vision of a just, inclusive, and sustainable society by emphasizing the importance of participatory democracy where all people's fundamental rights are respected

ADDRESSING THE NEW DEMOCRATIC CRISIS

Civil society in several democracies is currently facing unprecedented blowback emanating from the rise of neo-fascist political leaders and movements seeking to roll back human rights and social justice norms. We in civil society need to understand and engage with the anger driving support for right-wing populism while being careful not to appease xenophobic, racist, or sexist politics. Moreover,

we need to deconstruct the forces of economic globalization that feed the anger that drives right-wing politics and offer alternative solutions. In doing so, we need to find new ways of articulating the vision of a just, inclusive, and sustainable society by emphasizing the importance of participatory democracy where all people's fundamental rights are respected. The current lurch towards neo-fascist politics will likely lead to a pendulum shift. Disillusionment is bound to follow when populist politicians fail to deliver on their contradictory and outrageous promises. Civil society organizations need to ready themselves for those moments. In the meantime, they need to continue to offer reasoned perspectives grounded in facts that speak to people's grievances and demands for a better life.

CONCLUSION

We must invest in civil society resilience strategies, solidarity actions, and coalitions to ride out waves of restrictions. We must employ both cutting-edge technology and accessible means of communication to better involve local communities and the public in supporting civil society struggles. We need broad-based alliances that connect different parts of civil society, including classic NGOs, social movements, bloggers, trade unions, youth groups, artistic platforms, professional associations, and others. We need to develop new tools to challenge contemporary forms of restrictions while also drawing lessons from past struggles to understand the dynamics of repression and resistance. We are being attacked together, and so we must mobilize and celebrate our rights as we fight back together. The Speak Campaign, for example, sought to raise awareness of civil society rights on a global scale over the course of three days in September 2017 through 176 events in seventy-nine countries spread over six continents.[2] We need more days like this, and fewer like the ones in October 2017 that saw all the attacks enumerated at the beginning of this chapter.

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2 More information on the Speak Campaign can be found here https://www.togetherwespeak.org/.

PART III

CONTESTING THE IDEA OF CLOSING SPACES FOR HUMAN RIGHTS

A CAUTIONARY NOTE ABOUT THE FRAME OF PERIL AND CRISIS IN HUMAN RIGHTS ACTIVISM

Kathryn Sikkink

There is an epidemic of pessimism surrounding human rights today. To name but a few examples, former UN Secretary-General Ban Ki-moon has suggested that there has never been so much suffering since World War II, University of Chicago law professor Eric Posner has claimed that there have been no marked decreases in human rights violations in the same time period, and international relations scholar Stephen Hopgood has argued that we are witnessing the "endtimes of human rights" (Ki-moon 2016; Posner 2014; Hopgood 2013). Social movement theorists have long theorized that the ways in which movements frame their issues can matter for the resonance of their concerns with the public and thus, eventually, the effectiveness of their campaigns (Benford and Snow 2000). Human rights movements make frequent use of the framing involving peril and crisis, as did the title of the conference that led to this volume.[1] Such a pessimistic mindset is understandable because of the worrisome situations that human rights activists face every day. The idea of peril and crisis, however, points not only to the present moment but also implies some knowledge about trends and change over time; it suggests that human rights were not challenged

1 The workshop was entitled "Civil Society and Human Rights in Peril: Threats and Responses across the World."

or imperiled previously, and that the situation now is worse. I recognize that many alarming human rights situations exist in the world today, and I am particularly worried about the current situation in the United States, but I am not persuaded that the state of human rights globally is now worse than it has been before. Instead, let us consider how the frame of constant crisis itself could have negative consequences for human rights.

I recognize that many alarming human rights situations exist in the world today, and I am particularly worried about the current situation in the United States, but I am not persuaded that the state of human rights globally is now worse than it has been before

My recent book, *Evidence for Hope: Making Human Rights Work in the 21st Century*, proposes that pessimistic claims need to be submitted to rigorous examination, both historical and statistical (Sikkink 2017). This debate matters because of the inadvertent effects the frame of crisis and peril may have on perceptions about the effectiveness and legitimacy of human rights activism, both inside movements and vis-à-vis outside audiences. Historically, human rights progress has occurred as a result of struggle, and has often been spearheaded by oppressed groups. Where it has occurred, human rights progress has not been at all inevitable, but rather contingent on continued commitment and effort. Some activists and scholars fear that if they admit there has been progress, people will grow complacent and disengaged. But excessive pessimism can be equally or more devastating. As community organizer Saul Alinsky reminded activists decades ago, pessimism and anger are not sufficient to maintain motivation over time; you also must have hope to believe that you can make a difference (Alinsky 1971).[2] A recent survey of 346 individuals currently or previously working in the field of human rights found that this work is associated with elevated levels of depression and post-traumatic stress disorder (PTSD), and that one source of this appears to be negative self-appraisals about human rights work (Joscelyne et al. 2015). These findings suggest that one of the most difficult parts of being a human rights activist is the doubt about whether you are contributing to positive change. A frame of excessive crisis thus may not only contribute to the impression that the human rights movement has historically been ineffective, but it could also diminish the motivation and well-being of activists.

2 Some of this appears in Saul D. Alinsky's most famous book, *Rules for Radicals* (Alinsky 1971), but the exact formulation used here comes from an interview with Douglas Johnson in which he discussed a training course he did with Alinsky in Chicago in the late 1960s.

By their very definition, human rights are needed when things are bad. I worked at a small human rights organization, the Washington Office for Latin America (WOLA) in the early 1980s, a time that is now seen by some as the golden age of human rights activism.[3] Yet we never felt like human rights goals were easily within our reach. How could we, when the Argentine government was disappearing thousands of its citizens; the Salvadoran government—with the heavy support of U.S. government training and money—was killing U.S. nuns and massacring its own citizens in places like El Mozote; and the Khmer Rouge was carrying out a genocide ignored by much of the world? The period between the end of the Cold War and the start of the so-called War on Terror has likewise been identified as a high point for human rights activism, yet it was also during this period when genocide and mass atrocities were perpetrated in both the Balkans and Rwanda.

Some of the current pessimism also suggests that human rights activists were popular at some point in the past and are now denigrated. But human rights activists have never been popular in the countries where they work. Repressive governments have a long history of attacking and vilifying human rights groups. Human rights organizations often defend the rights of unpopular minorities such as political leftists in Latin America, refuseniks in the former USSR, the Roma in Europe, and transgender people in the U.S. Another way to think of this is that human rights demands tend to be counter-majoritarian. Majorities in places like Hungary, for example, are trampling on the rights of their Roma minorities, and groups like the Hungarian Civil Liberties Union (HCLU) do not win popularity by defending their rights. As Stefánia Kapronczay, Executive Director of the HCLU, discusses in her chapter in this volume, the HCLU has nevertheless been able to enhance its identity with Hungarians by better explaining who they are, what they believe in, and what kinds of work they do. Still, one should not go into human rights work expecting to win majority acclaim, as it is often the cruelty or the indifference of the majority that necessitates human rights activism.

Some of the current pessimism also suggests that human rights activists were popular at some point in the past and are now denigrated. But human rights activists have never been popular in the countries where they work

3 For example, in his presentation at "Civil Society and Human Rights in Peril: Threats and Responses in the World" (October 27, 2017, at Brown University), Mandeep Tiwana said that there had been progress in human rights in the second half of the twentieth century. However, if we look at the first seventeen years of the twenty-first century, we have started to go backwards, he said, and there is "a steady erosion of human rights."

The fact that the fight for human rights has always faced significant opposition should not discourage us. The longer history of human rights offers a positive message that can help sustain us in the context of our current struggles. In *Evidence for Hope*, I explore what changes have taken place over time, using the best data I can find on what many of us would agree to be good measures of diverse human rights. Looking at this data carefully, issue by issue, we see that some situations are worsening—such as the absolute number of refugees displaced by war or economic inequality within many countries. Nevertheless, there are many more upward trends, including a decline in genocide and politicide, a shrinking number of people killed in war, decreasing use of the death penalty, and improvements in poverty, infant mortality, and life expectancy, as well as advances in gender equality, the rights of sexual minorities, and the rights of people with disabilities. I use this history and data to tell *not* a triumphalist history, but what Albert Hirschman would call a "possibilist" one, focusing not on what was probable, but on what, with commitment and struggle, was eventually possible (Adelman 2013; Hirschman 1971; Hirschman 1963).

So why is it that so many people believe human rights violations in the world are getting worse rather than better? The short answer is that we think the world is worse off because we care more and know more about human rights than ever before. The media and human rights organizations have drawn our attention to an increasingly wide range of rights violations around the world. Their success in doing so sometimes inadvertently causes people to think that no human rights progress is occurring. Discouraging results are also generated by a method employed by human rights activists and scholars that I call "comparison to the ideal"—we compare our current situation not to the past but to an imagined ideal world, and thus we always fall short.

We think the world is worse off because we care more and know more about human rights than ever before

Some of the chapters in this volume exemplify this tendency to see our own period as uniquely bad compared to what came before regarding some of the key challenges posed by the attacks against civil society groups that this volume addresses (smear campaigns, foreign funding restrictions, attacks against the media, operational and administrative restrictions, and attacks against fundamental freedoms). Here, I briefly explore which of these challenges are mainly new for civil society, and which are older challenges, before addressing more specifically the topic of the restriction of fundamental rights. The newness of the challenge does not necessarily mean that it is more important; indeed, restrictions of fundamental rights of civil society groups are

very important, but not new. It may be useful to start with an exploration of how new or old these challenges are because civil society groups can draw on prior experiences in response to older issues, while new tactics and innovation may be necessary for responses to newer challenges. Harsh Mander's activism, as described in his chapter in this volume, "A Caravan of Love: Protest, Atonement, and Conscience in India" for example, draws on Gandhian traditions of love and non-violence that have been effective in India in the past.

Historical comparisons and an effort to examine evidence we have on the topic of trends may be useful to put the chapters here in context. I suggest that more formal restrictions on foreign funding and severe burdens on the operational capacity of civil society organizations, including new registration requirements for NGOs, are newer challenges, while smear campaigns against civil society, attacks against the media, and restriction of fundamental rights are older problems. Let me briefly give some historical evidence for these claims.

SMEAR CAMPAIGNS AGAINST CIVIL SOCIETY

As long as there have been civil society groups advocating social change there have been smear campaigns against these organizations. Even Gandhi faced a smear campaign from Winston Churchill, who accused him of sedition or treason, a charge used frequently against activists today. Although it could be the case that today's smear campaigns are better orchestrated or further reaching, especially given social media, the general tactics are all too familiar.

The suffragists and suffragettes, for example, were smeared both personally and politically, as sly, unwomanly, ugly, unmarriageable, greedy, and even mentally unstable activists undermining order and the family. These became the inheritance of feminists. One author has argued, "When the feminist movement grew out of the successes of the suffrage movement, the already existing negative tropes about suffragists were recycled and adopted by antifeminists" (Lamoreaux 2014). Some of these same tropes were used against women's human rights organizations as well, including accusations of mental instability. For example, in Argentina, the dictatorship of the late 1970s and early 1980s attempted to delegitimize the Mothers of the *Plaza de Mayo* by calling them *"Las Locas de la Plaza de Mayo"* ("The Crazy Women of the Plaza de Mayo").

Also common in Cold War Latin America were accusations of communism. Some human rights groups in Latin America were in fact connected to communist parties, such as the *Liga Argentina por los Derechos del Hombre* (The Argentine League

for the Rights of Man), the nation's oldest human rights organization, which was set up in the 1930s by members of the Communist Party of Argentina. For others, however, the accusation was far-fetched, and could be seen as part of a smear campaign. Amnesty International (AI) was routinely branded as communist by anti-communist regimes in Latin America, even though its tripartite structure at that time required each of its groups to adopt prisoners of conscience from the three "worlds"—the first world, the second world (e.g., the communist world), and the third world. For example, after Amnesty International's first-ever country campaign, which focused on Uruguay in 1976, the Uruguayan government accused AI of "being a communist front." Another Uruguayan newspaper published a political cartoon (figure 1) depicting a devil with "Amnesty International" written across his chest, holding signs that read "slander" and "lies".[4]

In addition to facing accusations of communism, human rights organizations in Latin America were labeled "foreign agents" or "traitors." Because they were accused of being "anti-national," some human rights organizations were hesitant about revealing their sources of funding. However, I do not recall hearing about any formal or official policy blocking foreign funding or making groups register in the 1970s or 1980s.

Figure 1. An anti-Amnesty International cartoon published in La Mañana*, February 20, 1976.*

4 This material comes from Sharnak 2017, and I thank Debbie Sharnak for her permission to use it here.

ATTACKS AGAINST OR COOPTATION OF THE MEDIA

Another old tactic of repressive regimes is to attack or coopt the media. One of the best-known cases of a government launching an attack against the media occurred in Argentina with the newspaper *La Opinión*. This paper's editor, Jacobo Timerman, was kidnapped, imprisoned, and tortured in 1977, supposedly for his connections to terrorism, and released only after a concerted campaign that included some key members of the U.S. Congress. Yet the attempt to control *La Opinión* did not stop there. From 1977 to 1981, the dictatorship expropriated the newspaper, and published it under the same name with a completely different editorial line. All the dictatorships of Latin America censored, attacked, or coopted the media. Suppressing journalistic activism was, to a greater or lesser degree, a standard strategy.

After comparing summary data from 2001 to 2017, no clear increase in violations of the fundamental rights of human rights defenders is evident

RIGHTS RESTRICTIONS ON HUMAN RIGHTS ACTIVISTS

Restrictions on the fundamental rights of human rights activists are likewise not a recent practice. Suffragettes were beaten and abused by police and members of the public when they protested, and those arrested were brutally force-fed by prison guards when they went on hunger strikes. Henry Brailsforth was commissioned to write a report on the way police dealt with one demonstration of suffragettes that turned violent, and obtained "irrefutable testimony not just of brutality by the police but also of indecent assault" (Foot 2005, 32).

From my work and research on human rights organizations (mainly in Latin America) in the 1980s and 1990s, I learned that restrictions on the fundamental rights of human rights activists—from freedom of speech and association, to freedom from arbitrary arrest and torture, and even their right to life—were common. Searches of the offices of human rights organizations and confiscations of their files were common. Governments killed and disappeared activists, often clandestinely, though sometimes in the open.

One of the problems with trying to assess whether the current restrictions against human rights organizations have created a uniquely negative situation for civil society groups is that there is no source of information to explore whether these restrictions have significantly changed over time. For this reason, I use some data from

the Special Rapporteur on the situation of human rights defenders, which was set up in 2000 to study exactly this situation. Although these reports almost certainly capture only a small subset of violations of the fundamental rights of human rights civil society groups, it is the only source focused exclusively on these kinds of violations of human rights defenders.[5] A survey of the reports of the Special Rapporteur could provide some evidence about changes in the violations of the fundamental rights of human rights activists from 2000 to the present, but not about how this current period compares to periods before 2000. One independent evaluation found that in some cases these experts have been effective in catalyzing improvements in human rights (Piccone 2012, 18). Still, a comparison of the reports of the various Special Rapporteurs is difficult because each had different levels of staff and resources available to them, and did not always include the same information in their annual reports. Despite these caveats, after comparing summary data from 2001 to 2017, no clear increase in violations of the fundamental rights of human rights defenders is evident. As knowledge about the rapporteurs grew, more human rights defenders may have submitted complaints, but since multiple communications about particular violations against individuals and organizations were issued, it is hard to identify any trends in new complaints.[6] This is potentially both a commentary on the lack of effectiveness of the communications from the Special Rapporteur and a warning that the numbers cannot be easily used to explore trends in the violations of fundamental rights of human rights defenders.

Despite my inability to identify trends from these reports, Forst reports that he has witnessed an increase in such violations during his mandate:

> After spending the past three years traveling around the world and documenting the situation of human rights defenders, the Special Rapporteur is more appalled than ever to see attacks against them multiplying everywhere, assailing bloggers, indigenous peoples, journalists, community leaders, whistle-blowers and community volunteers. Furthermore, the Special Rapporteur has become convinced that the incidents in question are not isolated acts but concerted attacks against those who try to embody the ideal of the Universal Declaration of Human Rights in a world free from fear and want. (UNHRC 2017, 3)

5 For example, one could also try to code Amnesty International documents for violations of fundamental rights of human rights defenders.

6 We see data about these multiple reports in two places. First, in the summary report by H. Jalani for 2000–2007, we see that although she sent well over 3,000 communications in this time period, they involved 1,137 individuals. Likewise, in his 2016 annual report (UNHRC 2017), M. Forst clarified that of the 209 communications he had sent to governments, 184 were follow-ups on persons and organizations that had previously been the subject of communications.

In addition to providing some data on violations of the fundamental rights of human rights defenders, the Special Rapporteur also has a useful website (in English, Spanish, and French) with dozens of resources and tools in each language.[7] This single website provides a wealth of information for human rights defenders faced with a variety of assaults on their fundamental rights, including of course a way of contacting the Rapporteur.[8] This suggests that although there continue to be extensive attacks on human rights activists, there are also more resources available to help them defend their rights than in earlier periods.

My point here is not to suggest that the situation for human rights defenders is improving in the world. I mainly want to remind readers that human rights defenders have long been on the front line, and we should be cautious in suggesting that there was a better period for human rights in the second half of the twentieth century that has now been eroded in the twenty-first century

One type of attack that has been particularly worrisome is that of political imprisonment. Although people suffer political imprisonment for diverse reasons, repressive governments have long targeted human rights and democracy activists, as we see today in Venezuela, Egypt, or Turkey. In this area too, however, it is not clear if there is more or less political imprisonment today than in the past, and thus we simply do not know if human rights activists are more likely to be imprisoned today than they were in previous decades. The weakness of data on political prisoners in the world makes it difficult to document trends. In the most careful research to date on global trends in political imprisonment, Katrin Kinzelbach and Janika Spannagel gathered data from three separate sources—Amnesty International, the U.S. State Department (USSD), and the UN Working Group on Arbitrary Detentions (UN WGAD). They found little overlap between data on specific political prisoners in these three sources, and that perhaps as a result they varied in terms of their trend lines about the level of political imprisonment in the world (see Kinzelbach and Spannagel's chapter in this volume). Using data from Kinzelbach and Spannagel we once again cannot conclude that there is more political imprisonment in the world today than ever before, but they would be the first to remind us that the imperfections in the data make any claims about trends problematic.

7 The website of the "Resources and Tools" of the Special Rapporteur can be found at https://www.protecting-defenders.org/en/resources-and-tools. For the digital guide, see Nyst 2016.

8 There is also a Special Rapporteur on Human Rights Defenders established by the African Commission on Human and Peoples' Rights. See http://www.achpr.org/mechanisms/human-rights-defenders/.

My point here is not to suggest that the situation for human rights defenders is improving in the world. I mainly want to remind readers that human rights defenders have long been on the front line, and we should be cautious in suggesting that there was a better period for human rights in the second half of the twentieth century that has now been eroded in the twenty-first century. Some of the threats—particularly those involving invasive laws about registration and funding—are indeed new and threatening, while other challenges have been almost a constant for civil society human rights organizations over time. In concluding, let me reiterate that nothing about how new or old these challenges are or about any trends in fundamental human rights detracts from acknowledging the frightening challenges groups and individuals face, nor do they negate the urgent need to strategize about how to respond to these challenges. What I hope is that some information about historical trends in the five challenges to civil society space, as well as a more focused look at data on possible trends in challenges to the fundamental rights of human rights activists, may be useful as part of an action-oriented discussion of promising tactics and how to address these challenges.

The stakes in this human rights debate are high. Anger, hope, and the knowledge that you can make a difference in the world give people the energy to keep working. Knowing more specifically how human rights groups have made a difference can teach us more about effective strategies and tactics to use in the future. The empirical research is not unified or simple, but using the best data at our disposal, my research has led me to have a bias for hope based not on optimism, but on reasoned evaluation of evidence. The challenge we face now is how to sustain hope and action without spiraling into complacency or indifference.[9]

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9 For readers who require detailed support for my claims, see Sikkink 2017, particularly chapters 5 and 6.

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NEW WAYS TO ADDRESS AN OLD PROBLEM: POLITICAL REPRESSION

Katrin Kinzelbach and Janika Spannagel

The term "closing space" has become a widely embraced trope to describe contemporary challenges in the struggle for human rights, suggesting that the human rights movement confronts a global, varied, but overall very serious pushback as governments limit opportunities for civic engagement and activism.

Initially, in the influential report published by Thomas Carothers and Saskia Brechenmacher in 2014, the term "closing space" referred rather narrowly to restrictive measures adopted by a number of states to regulate and, indeed, obstruct international support for democracy- and rights-promoting civil society initiatives. The new laws undermine a dominant modus operandi for collaboration across borders, namely the provision of financial support by democratic states and some private foundations to civil society organizations in countries where local actors are either unable or unwilling to fund human rights and democracy promotion. In response, international donor organizations began to protest these new obstacles.

In the ensuing conversation among activists and policy makers, the term "closing space" quickly caught on and it soon no longer referred just to restrictive NGO legislation. Instead, it has become the shorthand for a much wider proposition, namely that civil society around the world faced a new wave of repression. In this con-

text, it has also been suggested that violations of fundamental rights are on the rise, including violations of rights to life, liberty, and security of person, rights to a fair and public hearing, and freedom from arbitrary arrest and detention. There is no doubt that many human rights activists face threats and rights abuses, though that is not a new situation. Is repression against human rights defenders getting worse?

That notion is advanced by many experienced civil society representatives and also by the CIVICUS Monitor. This is a relatively new online platform which provides ratings of civic space in broad bands for every country in the world, accompanied by frequent narrative descriptions of civic space-related events produced by members of a strong research collaborative of twenty organizations. The Monitor's April 2017 edition raised concern about a "global crackdown," referring to the intimidation, harassment, and detention of activists, the prevention or disruption of protests, and the use of excessive force, censorship, and legislative and bureaucratic restrictions for civil society activities (CIVICUS 2017a, 6). According to the report, civil society activities that challenge power are "becoming increasingly risky in many countries across the world as reprisals abound to prevent criticism and stifle free speech, disrupt protests and manipulate the law to lock up peaceful activists" (CIVICUS 2017a, 2). Similarly, on the occasion of the launch of World Justice Project's 2018 Rule of Law Index, its founder and CEO William H. Neukom spoke about "a global deterioration in fundamental aspects of the rule of law" (WJP 2018), and the latest annual report by Freedom House declared that "democracy faced its most serious crisis in decades" (Abramowitz 2018). None of these measures claim to capture the precise level of fundamental rights violations, but these reports all bolster the assumption that civil society engagement in the name of human rights and democracy is becoming increasingly dangerous. Today the trope "closing space" no longer encapsulates a notion that civil society work is becoming increasingly difficult to fund; instead, it suggests that this work is becoming more and more risky. This is a very different notion than the one first put forward by Carothers and Brechenmacher (2014) and we need to ask ourselves if it is true.

We are skeptical that violations of fundamental freedoms are actually on the rise because there exists no solid empirical data to support this claim

We consider repression against civil society organizations and individual activists a matter of great concern, and we welcome all efforts to document and shame abuses, particularly collaborative research projects such as the CIVICUS Monitor, which makes a renewed effort to produce not only comparable but also frequently

updated information on a global scale. It is no doubt important to raise international attention to the violations that occur, because they are widespread. At the same time, from a scholarly perspective, we want to caution against drawing overconfident conclusions about a deteriorating trend. We are skeptical that violations of fundamental freedoms are actually on the rise because there exists no solid empirical data to support this claim. Given that the broad narrative of a "closing space" has become a commonly accepted wisdom in activist circles, we worry that the human rights community might become caught in an echo chamber that, at a minimum, paints a grossly simplified picture and, at worst, offers a wrong analysis of the state of fundamental rights around the globe.

A simplified narrative can help ring alarm bells, but only in the short run, and it does not facilitate the generation of nuanced and actionable ideas. Most activists and policy makers would agree that international responses to fundamental rights violations ought to be tailored to local circumstances. Only based on a context-specific analysis can we develop tailored and impact-oriented recommendations on how to improve the situation. But who can do what about a global crackdown?

There is a real risk that the narrative of a global crackdown contributes to normalizing reports on fundamental rights violations, thereby lowering their chances of attracting attention and stirring tangible action

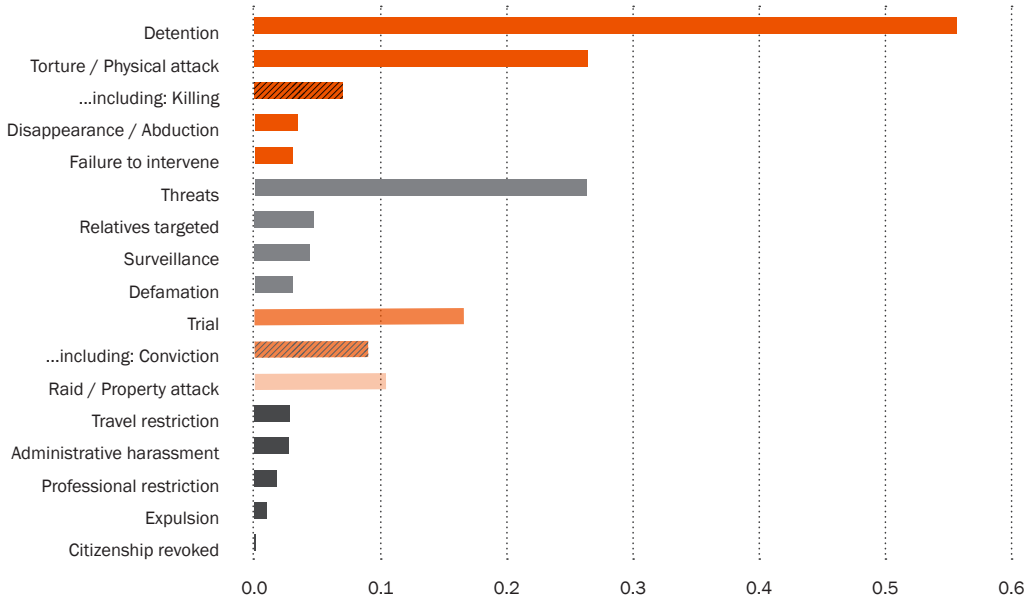
What is more, there is a real risk that the narrative of a global crackdown contributes to normalizing reports on fundamental rights violations, thereby lowering their chances of attracting attention and stirring tangible action. As Kathryn Sikkink aptly argues in this volume, we should also not forget that activists need hope to sustain the human rights struggle. An overly negative analysis, if not substantiated by irrefutable evidence, can easily undermine instead of strengthen resolve to fight against fundamental rights violations.

Finally, the advancement of a badly substantiated argument is undesirable from a tactical perspective because it plays into the hands of opponents who question the credibility of civil society. Human rights activists cannot afford to lose an argument on factual grounds. The *CIVICUS Monitor* itself is a new instrument and, as such, the data it presents does not allow for meaningful comparisons over time yet. As far as we know, currently no empirical data can solidly prove an increase in fundamental rights violations around the world. It is not even clear what the level of analysis should be. Should we look at the total number of repression events around the world?

Considering that mass arrests in one country alone could theoretically explain an increase in the total number of political detention cases recorded around the world, how instructive is a global count? In how many countries must fundamental rights violations occur before the crackdown becomes "global"? The measurement conundrum is further complicated by the multidimensionality of repression. Intimidations, defamations, administrative or professional restrictions, and similar harassments can stop activists from pursuing their causes, and repressive states typically try these softer repression measures before escalating and using their power to detain, disappear, or kill. When measuring repression, what weight should we give to the surveillance of a hundred activists versus the detention of one? We know that there tend to be comparatively few events of hard repression in high-capacity authoritarian states because, in such contexts, most people engage in self-censorship out of fear. That is, fewer cases of physical integrity violations can actually mean higher levels of repression.

In addition to such conceptual questions, the scarcity and overall quality of data on fundamental rights violations is a real problem. To judge whether things are getting better or worse, we need data that is comparable across time and space. One available source on human rights defenders specifically are reports issued by the

Figure 1. Distribution of violations among individual cases raised by the UN Special Rapporteur on human rights defenders 2000–2016 (n=12,086).



UN Special Rapporteur on these situations, notably the communications on individual cases issued by the mandate. In the years 2000–2016, the Special Rapporteur addressed more than 12,000 cases of human rights defenders at risk. Figure 1 shows what kinds of repression human rights defenders experienced before the UN raised their cases:

There is a striking prevalence of detention cases in this data—more than 56% of all defenders addressed by the UN over the course of 16 years—whereas softer forms of repression involving administrative measures such as travel or work restrictions are only present in about 8% of all cases. What is more, they are usually mentioned in combination with various forms of hard repression that an individual under consideration experienced. Human rights defenders that only experienced travel restrictions or defamation, to name just two threats, are rarely taken up by the UN special procedure.

The distribution presented in figure 1 is thus highly unlikely to be reflective of repression patterns in reality. Instead, the data is shaped by an attention bias that overemphasizes detention as a threat faced by human rights defenders. Since harder forms of repression capture the most attention, activists who grow used to low-level threats only start reporting when things turn violent; as well, state involvement is comparatively easy to prove in cases of detention. For most detention cases, there exist detention orders; for imprisonment, there are also court documents. In cases of harassment or smear campaigns, on the other hand, it is much more difficult to prove state involvement.

Given this bias in available data, one might think that there is a good level of international knowledge about political detention cases at least.[1] But even here our knowledge is sketchy, as shown in a comparative analysis we conducted on individual case data published by four international actors: Amnesty International, the U.S. Department of State, the UN Working Group on Arbitrary Detention and, again, the UN Special Rapporteur on human rights defenders. Covering the years 2001–2010,

1 There is no internationally agreed-upon definition of "political prisoner." The Council of Europe defined the term in a resolution adopted in October 2012, but it is only binding on member states of the Council of Europe: http://assembly.coe.int/nw/xml/Xref/Xref-XML2HTML-en.asp?fileid=19150&lang=de. Imprisonment requires a court sentence. Since not all cases of politically motivated deprivation of liberty fulfill this criterion, we use the term "detention" instead of "imprisonment." For the purpose of data collection, we recorded all detention cases framed as politically motivated in reports published by Amnesty International and the U.S. Department of State. For the two UN special procedures, all detention cases were recorded.

Figure 2. Number of political prisoner cases raised each year for twenty-six countries by Amnesty International, the U.S. Department of State, the UN Special Rapporteur on human rights defenders, and the UN Working Group on arbitrary detention.

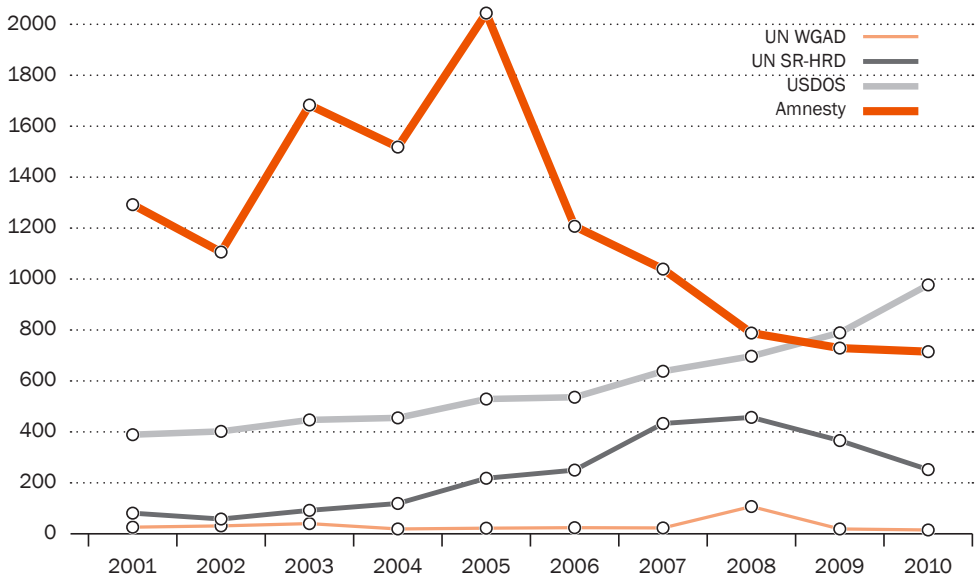


figure 2 shows the number of political detention cases mentioned by each of these actors in twenty-six countries where political imprisonment is systemic. Strikingly, the datasets suggest very different developments over time.

The main take-away from this distribution is that we cannot identify an overall trend. In most of the years under review, the cases reported by the various actors not only show strongly diverging levels but even opposing trends. By looking at Amnesty's figures, we would assume that there were fewer instances of political detention in 2010 than there were in 2005, while the U.S. State Department's data suggests there were more in 2010 than in 2005. The UN special procedures suggest that the overall numbers in 2005 and 2010 were almost the same.

Political detention cases are likely to be the best-documented cases of repression suffered by individual activists. Nevertheless, we do not have a clear picture of the overall trend because the number of prisoner cases identified is strongly linked to each reporting actor's monitoring capacity. The reason that Amnesty data shows a drop in numbers is directly linked to the organization's decision to shift institutional

resources away from documenting political imprisonment and towards other human rights violations. That is, Amnesty data is shaped by advocacy considerations; it is not a statistically representative sample.

Our comparison dates back to the last decade, but the same data discrepancies exist today. Consider one aspect of the above-mentioned CIVICUS Monitor. For June 2016–September 2017, CIVICUS reports 292 detention cases—roughly 18 cases per month—suffered by human rights defenders, and asserts that detention and physical attacks were the most frequently used measures of repression (CIVICUS 2017b, 5). To put this into perspective, the current UN Special Rapporteur, Michel Forst, was acting on an average of 28 cases of detained defenders per month between taking office in June 2014 and November 2016. The fact that even the UN mandate, a mechanism with highly limited capacity, has been taking up substantially more cases of detained human rights defenders than CIVICUS shows that the latter's data is not a comprehensive and most certainly not a statistically representative sample. We believe that the CIVICUS event data—like the UN data—reflects an international attention bias towards political detention and disproportionately reports violent threats. As we have established above, the UN Special Rapporteur's sample is also not comprehensive and statistically representative; with this caveat in mind, it is nevertheless noteworthy that the most recent peak in cases reported by the UN occurred in 2013, when the Special Rapporteur identified 724 detained defenders; in 2016, the procedure identified 408 detained activists.[2]

To be sure, a count of individual cases cannot be equated with our knowledge and understanding of repression in a specific context which is precisely why the CIVICUS Monitor relies on multiple data sources and not only on event data. But individual casework is still one of the major tools of advocacy around fundamental rights violations, and it offers a glimpse into some of the problems we face in terms of rigorous documentation. The overall victim numbers are simply too large for a comprehensive count. An often-used alternative measure are standards-based indexes based on Amnesty and U.S. State Department reports, and qualitative expert assessments—but such assessments are typically shaped by available data on individual cases as well. In fact, it remains very difficult to measure changing levels of fundamental right violations around the world.

From our perspective, the following conclusions can be drawn:

2 Data is available for the period January–November 2016.

- In activist circles, it is becoming common wisdom that fundamental rights violations are getting worse around the world. However, no credible dataset exists to substantiate claims that civil society engagement is becoming increasingly risky worldwide. As well, important differences exist between country contexts.
- The monitoring capacity of international actors presents a serious bottleneck as we seek to understand fundamental rights violations around the world. The reported violations are not a representative sample of the type of violations that occur.
- The advocacy shift away from "political prisoners" and towards "human rights defenders" has brought some attention to softer forms of repression, but due to available evidence on state involvement and, most importantly, an attention bias towards more severe forms of repression, international reports on attacks suffered by human rights defenders continue to overemphasize detention as a threat.

Instead of quibbling about just how dangerous civil society engagement is and whether or not things are getting worse around the globe, we believe it is more important to ask, "What should be done internationally in response to fundamental rights violations? And how can we best support local activists in their efforts to open closed spaces?" These are not new questions; hence, we can and should learn from what has been tried so far. We propose two fundamental shifts in emphasis:

Instead of quibbling about just how dangerous civil society engagement is and whether or not things are getting worse around the globe, we believe it is more important to ask, "What should be done internationally in response to fundamental rights violations? And how can we best support local activists in their efforts to open closed spaces?"

1. From victim-focused advocacy toward perpetrator-focused advocacy
2. From documenting hard repression toward more documentation of soft repression

It no doubt remains important to collect data on repression events, because repressive states fear international attention. Detailed data on distinct acts of repression is a necessary ingredient for credible naming and shaming. At the same time, repressive states have learned how to undermine the power of shaming; for example, by launching counter-discourses, by criminalizing members of civil society, including through frame-ups, by conducting mass arrests so that human rights organizations

cannot keep up with collecting data on the affected individuals, and by altering the tactics of repression. So far, most human rights organizations engage in documenting individual cases of concern and in telling the stories of victims. It is high time that this tactic be complemented with more rigorous efforts to document lines of responsibility. So far, we know and talk too little about the perpetrators of fundamental rights violations, about the very decision-makers who plan and implement attacks on civil society. We let them hide in anonymity, and that has to change.

Repression is the result of political calculations on how to use and maintain the power to rule. To counter politically motivated attacks on civil society, activists and policymakers must therefore engage in activities that alter the cost-benefit calculations of perpetrators. We rightly attribute acts of repression to the state, but individuals make the political calculations that drive repression. Other individuals execute these decisions, and others decide to ignore events of repression instead of resisting them, either passively or actively. We need much better knowledge on who is who in a given state apparatus: how different decision-makers think and act, and how the lines of responsibility are constructed. In addition to trying to alter the cost–benefit calculations by exposing individual perpetrators and encouraging those who resist, we know it is possible to counter fundamental rights violations by entangling state representatives in a discussion about norms, pushing them to commit themselves publicly to upholding human rights. However, none of this can happen as long as activists continue to address the state apparatus as a black box and those responsible remain unknown to international audiences. Local civil society actors typically have a very detailed understanding of lines of responsibility and can share their knowledge on individual perpetrators with their international partners.

To counter politically motivated attacks on civil society, activists and policy-makers must therefore engage in activities that alter the cost-benefit calculations of perpetrators

The recently adopted U.S. *Global Magnitsky Human Rights Accountability Act*[3] presents a good opportunity to push forward on a more perpetrator-focused international response to fundamental rights violations. Yet U.S. action alone is not sufficient, especially when the U.S. has lost credibility on human rights matters. Even if

3 The bill foresees U.S. entry and property sanctions against foreign persons responsible for gross violations of human rights, including extrajudicial killings and torture. A summary of the bill and the full text are available here: https://www.congress.gov/bill/114th-congress/senate-bill/284.

the U.S. regains that credibility under a new administration, the world's unipolar moment is undoubtedly over. No one country can fill the current human rights leadership gap. Instead, we must build a fine-meshed net of collaboration between democracies in the global South and the global North whose common task will be to identify not only the victims but also the perpetrators of fundamental human rights violations. Wherever sufficient evidence for gross violations is available, and after due review of each perpetrator's case, democratic states should limit that perpetrator's international mobility by denying entry visas. A similar effect could be achieved by a more systematic domestic exercise of universal jurisdiction over international crimes. Under the *Global Magnitsky Act*, it is furthermore possible to freeze personal assets held in bank accounts abroad—another response to perpetrators that is worth emulating. Canada adopted its own *Sergei Magnitsky Law* in late 2017[4]; the parliaments of Estonia, the U.K., Lithuania, and Latvia have also passed similar legislation. More democracies should follow suit.

As perpetrators continue to experiment with such measures in different parts of the world, human rights organizations should double down on their efforts to monitor softer forms of repression, which are very likely more common than hard repression

A wider shift of emphasis from the traditionally victim-focused toward more perpetrator-focused advocacy would go a long way in better addressing and preventing fundamental rights violations. However, this tactic would, again, focus on acts of hard repression and, as such, not do justice to lower-level threats that can be equally crushing for members of civil society.

The other chapters in this volume rightly draw attention to those repressive measures that too often remain under the radar of international attention: funding restrictions, smear campaigns, cooptation of the media, operational burdens placed on NGOs, and delegitimizing narratives that aim to limit the credibility of civil society. As perpetrators continue to experiment with such measures in different parts of the world, human rights organizations should double down on their efforts to monitor softer forms of repression, which are very likely more common than hard repression. This volume's contribution to better understanding and countering softer forms of repression, and the documentation of a wide range of repressive measures, as pro-

4 The full name of the Canadian bill is *Justice for Victims of Corrupt Officials Act (Sergei Magnitsky Law)*. See http://laws.justice.gc.ca/eng/acts/J-2.3/.

moted for example by the CIVICUS Monitor, are timely efforts because repressive states have learnt that international attention tends to focus predominantly if not exclusively on violent crackdowns. Accordingly, arbitrary arrests and physical integrity violations have, in fact, become less attractive policy options for those who chose their tactics of repression based on cost-benefit calculations.

The political costs associated today with arbitrary arrests and physical integrity violations are to a great extent the result of relentless efforts by domestic and transnational civil society actors who work together to expose fundamental rights violations. Building on this success, civil society organizations can unite against soft repression as well.

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ABOUT THE AUTHORS

Ivor Chipkin is the founding director of the Public Affairs Research Institute, linked to the University of the Witwatersrand and the University of Cape Town, which has been a pioneer in the field of institutional studies in South Africa. He is also an Associate Professor at the University of the Witwatersrand. He completed his PhD at l'École normale supérieure in France and was previously based at the Wits Institute for Social and Economic Research (WISER). He received an Oppenheimer Fellowship at Oxford University in 2005. In 2007, Chipkin published *Do South Africans Exist? Nationalism, Democracy and the Identity of 'the People'* (Wits University Press), and has also published widely on questions of government, governance, and the state in South Africa. *Shadow State: The Politics of State Capture* is forthcoming from Wits University Press in 2018.

Krizna Gomez is a research coordinator at Dejusticia, focusing on the crackdown against civil society as well as solidarity support for defenders at risk in the global South. She has a Master of Laws (LL.M) with a concentration in International Human Rights Law from Harvard, and Bachelor of Arts in Political Science and Juris Doctor from Ateneo de Manila University in the Philippines. She was granted a Presidential Fellowship at the Open Society Foundations in New York, where she focused on donor policies affecting the security of their grantees. Gomez began her career as a human rights lawyer and law lecturer in the Philippines. In Cambodia, Ghana, Papua New Guinea, and Uganda, she worked on issues of gender-based violence, education,

and human rights defenders. Gomez is a facilitator at the Human Rights Lab and JustLabs, providing a space for experimentation and innovation for social change organizations, especially during times of crisis.

José Kaire is a Political Science graduate student at the University of Minnesota–Twin Cities. His research focuses on how political institutions and mass mobilization can be used to prevent the abuse of power and to achieve representation. Since 2015, he has worked with *openGlobalRights*, a multilingual forum for human rights strategy, overseeing the implementation of public opinion polls, analyzing survey data, and working with local human rights organizations to help them implement new, evidence-based funding strategies.

Stefánia Kapronczay is the Executive Director of the Hungarian Civil Liberties Union (HCLU) and co-chair of the International Network of Civil Liberties Organizations (INCLO). Stefánia started working at the HCLU in 2005 and was the Head of the Patients' Rights Program from March 2008 to August 2012 where she led efforts to stop the criminalization of homelessness and restrictions on reproductive rights, and to foster the rights of persons with disabilities. She obtained a Master of the Science of Law at Stanford University on a scholarship, and wrote her dissertation on the sexual and reproductive rights of people with disabilities. Kapronczay graduated *cum laude* from the Faculty of Law at Hungary's Eötvös Loránd Tudományegyetem (ELTE) and completed a five-year master's program in sociology in 2010. She was a German Marshall Fund Fellow in 2015.

Anna Kertész is an expert in humanitarian and crisis communication and is Head of Communications at the Hungarian Civil Liberties Union (HCLU). She graduated with a degree in journalism, specializing in human rights and social issues, from the Eötvös Loránd Tudományegyetem (ELTE). She is the founder and first editor-in-chief of *Humana Magazin*, a Hungarian journal about human rights issues written and edited by young people. Kertesz also worked as a communications expert for several NGOs, including Amnesty International Hungary and Red Cross Hungary. She has been hosting a weekly radio show since 2009, for which she was awarded the 2012 Tamás Szegő Award for a young journalist reporting on vulnerable people.

Katrin Kinzelbach holds a PhD from the Universität Wien and is Associate Director at the Global Public Policy Institute (GPPi) in Berlin as well as a visiting professor at the Central European University's School of Public Policy in Budapest. Her ongoing research focuses on political persecution and she was awarded a Schumpeter Fellowship by the Volkswagen Foundation. For her dissertation on human rights diplomacy, she received the Körber Foundation's Deutscher Studienpreis,

which honors outstanding research of particular value to society. She also worked at the Ludwig Boltzmann Institute of Human Rights and the United Nations Development Programme. Kinzelbach currently serves on the German government's Advisory Board for Civilian Crisis Prevention.

Harsh Mander is a human rights and peace worker, writer, columnist, researcher, and teacher working with survivors of mass violence and hunger, homeless persons, and street children. He is Director of the Centre for Equity Studies and the founder of Aman Biradari, a campaign for secularism, peace, and justice. For a dozen years, he served as Special Commissioner to the Supreme Court of India for the right to food case. His books include *Looking Away: Inequality, Prejudice and Indifference in New India* (Speaking Tiger Books, 2015), and *Ash in the Belly: India's Unfinished Battle Against Hunger* (Penguin Books India, 2012).

Khaled Mansour is a writer, researcher, and lecturer on issues of human rights and humanitarian aid. He sits on the boards of Crisis Action International and the Egyptian Initiative for Personal Rights. He served the United Nations for over thirteen years, from Afghanistan and Iraq to New York, until he left in 2013 when he was UNICEF's Director of Communications. He survived the terrorist attack on the Canal Hotel in Baghdad in 2003, and acted as the UN spokesperson during the war in Lebanon in 2006. Mansour is also a senior non-resident fellow with the Arab Reform Initiative where he leads research on the future of human rights action in North Africa. He is a senior consultant with the UN, having recently worked on peacekeeping and communication issues. Mansour has published a book on Afghanistan (2010) and edited *Dissecting the Defeat: The June 1967 War* (2017).

Andrea Martínez holds a BA in Political Science and International Relations from Centro de Investigación y Docencia Económicas (CIDE) in Mexico, and is now completing a Master of Human Rights at the University of Minnesota's Humphrey School of Public Affairs. During her graduate studies, she worked as a research assistant for Professor James Ron and Professor Christina Ewig. During the summer of 2017, she facilitated work meetings on public opinion and human rights with non-governmental organizations in Mexico City to help them design effective strategies for fundraising. Before that, she worked for three years at the Mexican Ministry of Foreign Affairs on projects aimed to improve the conditions of migrants in vulnerable conditions.

Archana Pandya is the co-director of *openGlobalRights*, a multilingual online platform established in 2013 to support the global human rights community to develop effective strategies through critical exchange. She is also a research coordinator at Dejusticia. Archana holds an MA in International Affairs, specializing in

international development and human rights, and has over a decade of experience managing and contributing to complex human rights initiatives. She has conducted dozens of interviews with local human rights organizations, activists, and experts in Mumbai and Mexico City and coordinated public opinion polls on perceptions of human rights in several countries.

Ed Rekosh is a visiting professor of Law at Cardozo Law School in New York City and Director of Human Rights Forward, an initiative to create new solutions for combating the suppression of civil society groups and for advancing human rights. He is also a collaborating editor at *openGlobalRights* and a member of the adjunct faculty of Columbia Law School. Rekosh previously served as president and CEO of PILnet: The Global Network for Public Interest Law, an organization he founded in 1997 to develop global resources and networks in support of local human rights advocacy around the world. He has co-created innovative human rights initiatives in China and in over thirty other countries in Europe, Asia, and Africa, including while living in Romania and Hungary for ten years.

César Rodríguez-Garavito is the Executive Director of Dejusticia and founding Director of the Program on Global Justice and Human Rights at Universidad de los Andes (Colombia). He has been a visiting professor at New York University, Stanford University, Brown University, the University of Melbourne, the University of Pretoria (South Africa), American University in Cairo, Central European University, and the Getulio Vargas Foundation (Brazil). He is the founding director of the Human Rights Lab and JustLabs, and a board member of *openGlobalRights,* Business & Human Rights Resource Centre, WITNESS, *Annual Review* of *Law and Social Science,* and *Business and Human Rights Journal*. He has been an Adjunct Judge of the Constitutional Court of Colombia and he writes a weekly op-ed for *El Espectador*.

James Ron holds the Harold E. Stassen Chair for International Affairs at the University of Minnesota's Humphrey School of Public Affairs. He is also an affiliated professor with Mexico's Centro de Investigación y Docencia Económicas (CIDE); co-editor of *openGlobalRights*, a multilingual forum for human rights strategy; and co-director of the University of Minnesota's Master of Human Rights program in the Department of Political Science. Ron has worked with Human Rights Watch, the Associated Press, and the International Committee of the Red Cross in Palestine, Turkey, the former Yugoslavia, and Nigeria. His research has been supported by the Ford Foundation and Global Affairs Canada.

Kathryn Sikkink is the Ryan Family Professor of Human Rights Policy at the Harvard Kennedy School of Government and the Carol K. Pforzheimer Pro-

fessor at the Radcliffe Institute for Advanced Study. Sikkink is an international relations scholar known for her work on human rights, international norms, transnational advocacy networks and social movements, and transitional justice. Her book *Activists Beyond Borders: Advocacy Networks in International Politics* (co-authored with Margaret Keck) won the Grawemeyer Award and the ISA Chadwick Alger Award. Her 2011 book, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (winner of the Robert F. Kennedy Center Book Award and the WOLA/Duke University Award), explores the emergence and impact of individual criminal accountability of state officials for past human rights violations. Sikkink's latest book *Evidence for Hope: Making Human Rights Work in the 21st* Century (Princeton University Press, 2017) documents the legitimacy and effectiveness of human rights law, institutions, and movements.

Janika Spannagel is a research associate at the Global Public Policy Institute (GPPi) in Berlin and a PhD candidate at Albert-Ludwigs-Universität Freiburg in Germany. She pursues quantitative and qualitative research on human rights defenders under pressure, and on the impact of international protection mechanisms. Before joining GPPi, Spannagel was a Carlo Schmid Program Fellow at the Geneva headquarters of the United Nations Office of the High Commissioner for Human Rights, supporting the Human Rights Council branch and the Middle East and North Africa section. The German National Academic Foundation, Germany's most prestigious scholarship organization, funds her doctoral project.

Mandeep Tiwana is the chief programs officer at CIVICUS, a global civil society alliance. He specializes in legislation relating to the core civil society freedoms of expression, association, and peaceful assembly. Since joining CIVICUS in 2008, Tiwana has been engaged in advocacy to protect and expand civil society space globally, about which he has also written extensively. He worked with the Commonwealth Human Rights Initiative, and published a compilation of landmark Indian Supreme Court decisions and National Human Rights Commission guidelines on human rights and policing. He co-authored modules on human rights for the Commonwealth Parliamentary Association and a citizen's handbook explaining the mandate and practical functioning of human rights commissions in India. He holds a Master of Laws (LL.M) in Law in Development from Warwick University, and Bachelor of Laws (LL.B) and Bachelor of Arts degrees from Panjab University in India.

Rafael Uzcátegui is a rock musician loaned to the human rights movement. He has degrees in Sociology from the Universidad Central de Venezuela and Advertising and Marketing from the Instituto Universitario de Tecnología Industrial

Rodolfo Loero Arismendi in Venezuela. He is the General Coordinator of Provea, one of the leading and most respected human rights NGOs in Venezuela, where he has worked since 2006. His books include *Corazón de Tinta* (Heart of Ink; Naufrago de Itaca, 2000), *Venezuela, la revolución como espectáculo* (Venezuela, the Revolution as a Spectacle; El Libertario/ La Cucaracha Ilustrada/ Libros de Anarres/ Tierra de Fuego/ La Malatesta 2010), and *Una crítica anarquista del gobierno bolivariano* (An Anarchist Criticism of the Bolivarian Government; La Malatesta, 2010). He is a regular columnist for the newspapers *Tal Cual* and *Correo del Caroní*. He serves as a member of War Resisters International and is a co-founder of the NGO Laboratorio de Paz (Peace Laboratory) and the web radio Humano Derecho (Right Human). Since 2016, he has been producing the podcasts "Imperdibles" for Noesfm.com and "Veneco" for Humano Derecho. From 1995 to 2015, he was the editor of the newspaper *El Libertario*. His personal blog can be found at www.rafaeluzcategui.wordpress.com.

Jonas Wolff is head of the research department for Intrastate Conflict and an executive board member of the Peace Research Institute Frankfurt (PRIF) in Germany. He is adjunct professor (*Privatdozent*) at Universität Kassel and teaches at Goethe-Universität in Frankfurt. His research focuses on contentious politics, the transformation of political orders, international democracy promotion, and Latin American politics. His recent articles include "The Contested Spaces of Civil Society in a Plural World: Norm Contestation in the Debate about Restrictions on International Civil Society Support" (*Contemporary Politics* vol. 23 #4, 2017, with Annika Elena Poppe) and "Business Power and the Politics of Postneoliberalism: Relations Between Governments and Economic Elites in Bolivia and Ecuador" (*Latin American Politics and Society* vol. 58 #2, 2016).

Bilge Yesil holds a PhD from New York University (2005), and is an Associate Professor of Media Culture at the College of Staten Island, City University of New York (CUNY) and an Affiliated Faculty at the Graduate Center, CUNY. She is the author of *Video Surveillance: Power and Privacy in Everyday Life* (LFB Scholarly Publishing LLC, 2009) and *Media in New Turkey: The Origins of an Authoritarian Neoliberal State* (University of Illinois Press, 2016). She has also published several articles on Internet policy, online surveillance, press censorship, and transnational television for academic journals, online publications, and blogs.

Rising to the Populist Challenge: A New Playbook for Human Rights Actors collects and analyzes a repertoire of responses by human rights organizations to the crackdown against civil society in the populist context. Written by scholars and advocates in challenging political settings from around the world, *Rising to the Populist Challenge* offers ideas and inspiration to their peers in the human rights community who are grappling with and resisting the erosion of democracy and rights.

Ironically, the rise of populist leaders could have an unexpected positive effect: to push the human rights movement to transform its architecture and its strategies for combat in this hostile landscape. These transformations were already imperative even before this new wave of populist governments, but now they are simply urgent.

This collection takes two steps towards clearing the path for this civil society transformation. First, it clarifies the specific challenges to human rights raised by contemporary populist regimes and movements. What is the populist playbook against human rights? Second, it contributes to documenting and learning from a wealth of initiatives by human rights actors. What innovations are human rights actors introducing into their strategies and narratives to counter those of populist regimes? In short, what is the human rights playbook against populism?

From meticulous documentation of abuses in Turkey to more grassroots forms of social networking in Hungary, from peace caravans in India to finding new ways of being useful under 21st century dictatorships in Venezuela, like war correspondents reporting from the trenches, our authors step forward to share their own continuing struggles to help their communities.

Based on evidence from populist governments in India, Venezuela, Hungary, Turkey, Russia, the United States, and Ecuador—as well as crackdowns against civil society in South Africa, Egypt and other countries—this volume provides hope, solidarity, and reinvigoration for the human rights movement.

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