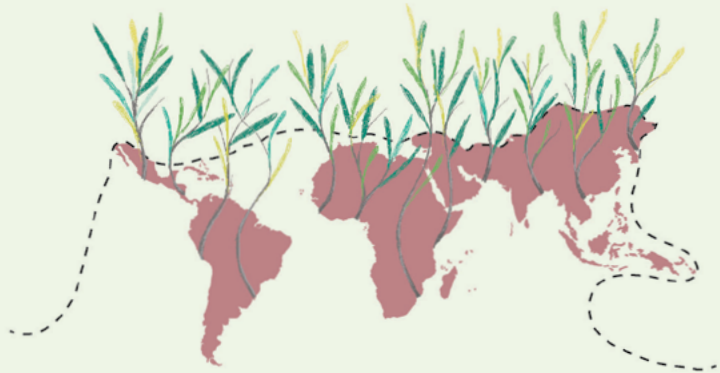


Civil Resistance Against 21st Century Authoritarianism

Defending Human Rights
in the Global South



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Centro de Estudios de Derecho,
Justicia y Sociedad (Dejusticia)

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**Introduction: Reinstating Spaces
for Human Rights in the Context of
Authoritarian Populism**

César Rodríguez-Garavito

From Brazil, Chile, Venezuela, and Mexico to Turkey, India, and South Africa, human rights are facing a critical moment in the hands of both right-wing and left-wing authoritarian populist governments. To understand these challenges (and to think about how to face them), we must first clarify some concepts. What is the logic behind 21st century authoritarian populism? And how does it put the human rights achievements of the 20th century in jeopardy?

In his seminal book *What is Populism?* (2016), Jan-Werner Müller shows what these contemporary governments have in common, those that came to power by democratic means and later dismantled the democratic institutions that limit them, including human rights. Authoritarian populism does not share an ideological framework — these governments come from both left-wing and right-wing parties — nor a specific economic policy. Rather, it shares a moral affirmation both categorical and exclusionary: that there are “real people” — the only legitimate representatives — and enemies of the people. It is the division between “us” and “them” turned into a political and legal platform.

“*Chávez es pueblo*” (Chávez is the people) used to be Chávez’s campaign slogan in Venezuela. It is a phrase of unsurpassed parsimony that captured the relationship between a leader and a supposedly uniform and unified people. With the leader gone, *Madurism* replaced it with a similar slogan: “Let’s be like Chávez.” In populist logic, politics is an all-in game, a conflict between “patriots” and “enemies of the motherland,” as Venezuela’s Nicolás Maduro often says. No wonder an authoritarian populist from the opposite political wing, such as Brazil’s Jair Bolsonaro, sounds so similar. His opponents are “enemies of the homeland” or instruments of the international NGOs that supposedly want to take over the Brazilian Amazon rainforest.

The media and any other institutions that stand between populist politicians and the people are also enemies. Trump’s attack on independent media for publishing “fake news” and supplanting it with

“alternative facts” created by the president are well known. “We are the people; who are you?” exclaimed Erdoğan to his critics in Turkey while he purged over 100,000 officers, teachers, judges, academics, and independent journalists. Hence, a reliable test to recognize a populist is to see if they alter the constitution or take over institutions and media.

Ultimately, populists are anti-democratic. What’s more, they use elections and the language of democracy to undermine democracy. That makes them different from 20th century authoritarianism while still reviving “20th century dictatorships,” as analysts from PROVEA, the renowned Venezuelan human rights organization, concluded before many others.

Müller ends with this warning: “The greatest danger for democracy today comes from within democracy: the political actors who threaten it speak in the language of democratic values.”¹

The Challenges for Human Rights and Civil Society

The newest populist governments, like Bolsonaro’s, follow a script that has been well-tuned by their predecessors over the last decade. The challenges emerge as political narratives, legal reforms, and coercive measures aimed at undermining the *legitimacy* and *efficacy* of human rights actors and civil society in general.² These measures can be classified into five primary types: 1) restrictions on foreign funding for NGOs; 2) smear campaigns; 3) restrictions on the fundamental rights of independent media and NGOs; 4) severe burdens on the operating capacity of human rights actors and civil society in general; and 5) co-optation of segments of civil society.

But the biggest challenge concerns not strategies, but values central to human rights. The authoritarian populist vision is, by definition, incompatible with human rights. Dividing societies between “us” and “them” (or “patriots” and “enemies”) implies recognizing the rights of some and denying them to others. If the contrast sounds too harsh, one need only look to India’s re-election of Narendra Modi for direct evidence. Ignoring the rights protected by the 1949 Constitution — a legacy of forerunners of the contemporary human rights movement

1 Jan-Werner Müller, *What is Populism?* (Philadelphia, PA: University of Pennsylvania Press, 2016), p. 6.

2 César Rodríguez Garavito and Krizna Gomez, eds., *Encarar el desafío populista: Un nuevo manual de estrategias para actores de derechos humanos* (Bogotá, Colombia: Dejusticia, 2018).

such as Mahatma Gandhi and B. R. Ambedkar — the government is promoting a Hindu fundamentalist platform that seeks to deprive millions of Muslim citizens of their rights through measures such as the 2020 Citizenship Reform Act.

Reinstating Spaces

But challenging times are also times of resistance and creativity, as shown by the massive mobilization against Modi's measures in the streets of India, or the periodic protests against Bolsonaro's attacks on the constitutional freedoms and rights of sectors such as Indigenous peoples, Afro-Brazilian communities, and the LGBTI population. This has also happened in Venezuela, where persecution by the Maduro regime has led human rights NGOs to engage in activism that is as creative as it is courageous, taking to the streets and engaging with young people who mobilize in spaces such as rock concerts. As the chapters of this book show, efforts to reinstate spaces for human rights are diverse and dynamic.

In Turkey, people asked political strategist Ateş İlyas Başsoy — director of the campaign that won Istanbul's mayoral election over the almighty party of President Erdoğan in 2019 — what his recipe was. "Radical love," replied Başsoy, sounding more like a spiritual leader than a political one. But the results proved him right. Their candidate, now Mayor Ekrem İmamoğlu, soundly beat Erdoğan's protégé.

If one reads Başsoy's campaign manual and analyzes what his candidate did, the response is less emotional but equally eloquent. Instead of imitating the populist strategy of stirring up hatred and division, leaders like İmamoğlu provide the antidote in messages of empathy and hope. Instead of feeding the egomaniacal bullying of social media that divides society between "us" and "them," the anti-populist formula is to acknowledge and bridge the fears, concerns, and way of life of the other half of the population. For this reason, İmamoğlu did not disqualify Erdoğan's religious voters, but eloquently appealed to their discontent with the impacts on them of the Turkish economic crisis, which affects the entire population.

The Turkish case is not the only one to show that the politics of hate should be countered with new tools. The same lesson emerges from recent studies by social psychologists and neuroscientists, which show how humans stand behind the walls of our ideological tribe when the other side conveys messages of fear and division. The anti-populist mobs that ignite on social media create the same effect as Bolsonaro's trolls: they activate the fearful chimpanzee inside us and re-double our

defenses and prejudices. The result is apparent: political polarization degenerates into the social trivialization on which the world's authoritarian populists feed.

All of which is reminiscent of brilliant old advice from Saul Alinsky, the famous American social activist. Anger and outrage at injustice are a good start for political activism because they ignite the will to do something. But anger is a fuel that burns quickly. To sustain human rights mobilizations in the long term, such as those needed to reverse the current populist wave, moving from anger to hope is critical, as Alinsky would say. Hope is just another word for love.

New Narratives on Human Rights in Times of Authoritarian Populism

This book — and Dejusticia's initiative that originated it — seeks to promote answers to populist challenges to human rights. To do so, they propose a new thrust characterized by three features: reflective writing, narrative writing, and voices from the Global South.

First, this book contains reflective writing. Its authors are activists who work directly within organizations in the field, who stop to think about the potential, the achievements, and the challenges of their knowledge and practice. In this sense, the book seeks to amplify the voices of human rights defenders in discussions about the future of the field, which tend to be dominated by research from academia. The texts combine the methodological and analytical strengths of academic research with the practical experience of the authors, organizations, and communities with which they work. The objective is to promote a hybrid genre that contributes to maintaining and widening the window of reflection and discussion in the field of human rights.

Second, the genre proposed in this book, and in the series of which it is part, is narrative writing. In part because of the prevalence of legal language and knowledge of the world of human rights, the predominant writing in their field is that of technical reports and legal pleadings. While these genres have made notable achievements over the decades, this focus has prevented organizations and activists from effectively sharing their stories and experiences firsthand: those of the victims, the campaigns, the moral dilemmas, the injustices, the victories, and more. Opening the field of human rights to other actors, other knowledge, and other audiences means telling these stories and telling them well. To this end, the authors of these chapters are involved in the stories, relating them using techniques taken from fields such as narrative journalism.

Third, the stories come from the Global South, from countries and regions that have more often been the object of study rather than the subject of knowledge, making their own decisions in the field of human rights. In this sense, these chapters attempt to respond to the challenges of a more multipolar world, to counter the organizational, economic, and epistemological asymmetries between South and North that have undermined the effectiveness and legitimacy of the global human rights movement. The authors of these studies are activists, researchers, and members of human rights organizations writing from this geographical and professional perspective to enrich the global debate on the future of the field.

Acknowledgments

This book is part of a long-term project organized by Dejusticia as part of its international work. The project revolves around an annual action-research workshop for young human rights defenders. The workshop develops action-research tools to combine rigorous research with practical advocacy on social justice causes. The purpose is to strengthen the ability of participants to produce hybrid texts that are both thorough and attractive to broad audiences.

A long-term initiative like this requires not only a collective of authors, but the sustained support of an entire organization. This text, and the long-term commitment it represents, form an institutional effort by Dejusticia that involves, in one way or another, all of its members. In the 2017 workshop reflected in this publication, and throughout the process of the workshops and books that follow, the contribution of Meghan Morris, who coordinated the workshop and book project, was essential. Workshop and book tutors and mentors Nelson Fredy Páddilla, Diana Rodríguez Franco, Krizna Gomez, Sebastián Villamizar, and Claret Vargas, were equally important. Any project of this nature requires considerable logistical support, which William Morales assumed with his usual efficiency and solidarity.

In the publication phase, Morgan Stoffregen, Sebastian Villamizar, and Ruth Bradley-St-Cyr were exemplary translators and editors. Claudia Luque from Dejusticia, and Carlos Díaz and Federico Rubi from Siglo XXI, were the architects of the editorial project and, in the end, made it possible for readers to hold this book in their hands.

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**A Faceless Political Prisoner:
Journey to the Drama of Arbitrary
Detentions in Venezuela**

Ezequiel A. Monsalve F.

This Criminal Preliminary Proceedings Court of the Judicial District of the State of Bolívar, on behalf of the Bolivarian Republic of Venezuela and administering justice, orders that Fray Lacava,¹ 18 years of age, be imprisoned. The Court orders his immediate imprisonment in the maximum-security area of Colonia Penitenciaria del Dorado, State of Bolívar, with headquarters in the Municipality of Sifontes.²

While the judge read his decision aloud in one of the small, warm courtrooms of the Palace of Justice in Puerto Ordaz, in the State of Bolívar in Venezuela, outside, a mob demanded the release of another university student who, despite having been granted bail, had not been released by the court but had been held for eight days in an overcrowded, narrow four-square-meter cell alongside several individuals who committed ordinary offences.

That crowd, made up mostly of student leaders and classmates, were extremely offended — you could see it in their faces. This was just one of the thousands of omissions of the Venezuelan justice system that occur daily. Enduring days in prison, without a court order, broke every rule of the legal logic of contemporary criminal law.

Despite this, these episodes recur in Venezuela. In fact, with the arrest of these two young people (May 15, 2017), a total of 2,977 arrests were made in just 45 days of protests against Nicolas Maduro Moro's government policies,³ 82 in the city of Puerto Ordaz alone.⁴

In the middle of this scene, at the end of Fray's hearing, the lawyers assigned to his defense approached, whispering in my ear: *Ezequiel, we*

1 Real name changed for the security and physical integrity of the person.

2 The ruling of the Preliminary Proceedings Court in charge of the criminal case against Fray Lacava.

3 Foro Penal Venezolano [Venezuelan Criminal Forum], "Informe de represión del 2017" [2017 crackdown report], Feb. 16, 2018, <https://foropenal.com/2018/02/16/reporte-la-represion-venezuela-2017/>.

4 Author's field notes.

officially have the first political prisoner of the city. At that moment, my face turned pale, my mouth was dry, and my hands were clammy. I also felt a strange tingling in my back and head, as when the atmosphere becomes extremely tense. I pause, breathe, and write in my notebook. I was sure that this news was going to affect the situation outside the courthouse. Soon after 5:00 p.m., upon learning the result of Fray's hearing and in the absence of a timely response about the other student, the 50 people gathering outside the Palace of Justice decide to block access to the administrative personnel of the Court.

I nervously approach a metal fence, and from there, I try to explain the situation, but am told, *"Well, we're sorry, sir, you're locked in too."* The Court's internal security communicates with the demonstration-control forces of Operational Command No. 65 of the Bolivarian National Guard (GNB), and three VN4 4WD armored tanks, about ten KLR 650 cc motorcycles and a truck with dozens of officers, all equipped with anti-riot weapons and equipment to control and disperse demonstrations, approach the site.

A dark-skinned man in an olive-green uniform emerges from one of the tanks; he bears the National Coat of Arms and the Captain insignia on his chest. Sneeringly, the man approaches the crowd (very exhausted by then) and asks for someone to explain the situation. A new voice emerges and fearlessly exclaims, *"Let the lawyer explain."*

In response to that strident, collective voice, the officer approaches the metal fence and, in a superb tone, asks, *"What's going on here?"* Calmly, I explain the reasons for the protest and the irregular situation occurring inside the courthouse regarding the legal status of dozens of people detained for political reasons. Defiantly, the officer demands, *"Who the hell are you?"* To which I reply, *"I'm the lawyer of the young man being unjustly detained, and of several others who are being sent to prison for the same reasons."* Additionally, I mention that I represent the non-governmental organization Foro Penal in the State of Bolívar, which promotes and educates on the civil and political rights of politically persecuted people in Venezuela. The legal team, the activists, and I have assisted plenty of the detainees as their defense council.

The captain demands that the demonstration end and everyone return to their homes, or else he will break up the demonstration by force. The protest continues, so, several minutes later, the armored trucks turn on their sirens while the military platoon organizes and loads their weapons. The demonstrators remain in front of the courthouse with more confidence, but with fear for what might come next.

You can hear an almost musical tone as the 12 mm caliber shotguns are being loaded with rubber bullets. For their part, the officers aim

deadly⁵ M79 tear gas canisters at chest-level of the demonstrators in the fashion of an 18th century firing squad. From the security of one of the armored trucks, their executioner is preparing to give the order to repress protest number 9,787.⁶

Just when I thought the day was going to end badly, with people wounded and arrested, a Toyota Hilux bearing a military plate pulls up in the middle of the crowd. Surrounded by bodyguards, an officer emerges, the commander of an important detachment in the area. His uniform, despite being the same as the rest, had a different aspect, as if he took much better care of it. His facial features suggested that he probably slept and ate better than his subordinates, like a man unaffected by the social and economic crisis of the country. He was the head of all the military in the area, and his bodyguards protected him jealously. The platoon's attitude shifted with his arrival, growing silent and submissive.

I was able to exchange some words with him as the officers surrounding him recorded my face with their cameras. Phone calls were made from inside the courthouse, and he promised a favorable outcome for the young detainee. The influence of the military on the judiciary is staggering, typical of totalitarian governments. The person who took the call sounded quite nervous about the commander's presence at the Court. It was the first time I had seen him, but I did know that he was the man behind the repression in the State of Bolívar.

The situation had a happy outcome that day — no injuries, no arrests. There were no repercussions for those making use of their constitutional right to peaceful demonstration until about five days later, when the ballot to release the young man was finally signed.

For several years in Venezuela, the judiciary has been used as a political weapon to criminalize protests and legitimize the persecution of dissidents. The Supreme Court of Justice (TSJ) and other courts have made the most abhorrent decisions in the history of Venezuela. Gonzalo Himiob, Vice-Director of Foro Penal, points out that courts are used to encourage persecution outside the law, reinforcing the systematic violation of human rights in Venezuela. The State violates the rights of dissidents by criminalizing them and by implementing different

5 Responsible for numerous deaths in Venezuela due to their misuse.

6 Observatorio Venezolano de Conflictividad Social [Venezuelan Observatory of Social Conflict], *Informe de conflictividad social en Venezuela [Report of social conflict in Venezuela]*, 2017, <https://www.observatoriodeconflictos.org.ve/tendencias-de-la-conflictividad/conflictividad-social-en-venezuela-en-2017>.

modalities of institutional action that only seek to disguise the government's tenacious intolerance for legitimate, legal dissidence.⁷

The Two Faces of Persecution

Fray and I probably did not have much in common, but we both knew the face of intolerance, with different nuances. We both knew what it was and how it reacted. The monster I saw in 2013 was the same one that forced Fray into the saddest episode of his life in 2017.

Fray became a prisoner of conscience because of the dire consequences of state intolerance. These shocking events, involving humiliation and degrading treatment, resulted in the transfer of a young man to a high-security prison where he shared a cell with those convicted of severe crimes. In this "no man's land," the State is unable to guarantee life, not only because of the violence of the *pranes* or "negative leaders," but also because minimum sanitation and hygiene standards are not provided. Many inmates contract lethal diseases, including malaria, an epidemic raging in the country's south that has claimed several lives due to a shortage of medicine.

Like Fray, the other 431 political prisoners registered at the time of his arrest were all living with similar hardships. Venezuela's criminal law sees these Venezuelans — and some foreigners — as enemies; as such, the objective is to annihilate them.

How many enemies could an 18-year-old boy have? Fray had just graduated from high school and, like many boys his age, was applying for a place at a public university. The youngest son of a divorced woman, Fray was an introverted boy who barely expressed his thoughts, or at least that's how he seemed.

For my part, I graduated from university in law in 2012. By 2017, I had already completed my first postgraduate degree, saving the money from my first job to study abroad; that was my medium-term goal. At 22, I started working as a human rights activist at Foro Penal, working on the civil and political rights. As a student, I had always bet on the triumph of an ethical and correct law; you could say that I was a dreamer. Inspired by the lessons of my paternal grandfather and the humility of my maternal grandfather, I created a professional profile quite distinct from the litigation of the time.

Perhaps the most impactful episode of my professional life was the *dakazo*, which made me question whether to remain a lawyer or retire from the profession. The *dakazo* was the result of a series of actions

7 Gonzalo Himiob Santomé, *El Gobierno de la intolerancia* [The Government of intolerance] (Caracas, Venezuela: Los Libros de El Nacional, 2009).

taken by Venezuelan President Nicolás Maduro Motos in late 2013, coercing appliance shops, including the leading company at the time — Daka — to make sales. For this purpose, the government had hundreds of officers assigned to different national public power agencies: prosecutors from the Public Prosecutor’s Office, attorneys, the armed forces, and the police, among others, whom it called the “Front Francisco de Miranda.” This front was responsible for closing thousands of businesses, which led to the annihilation of private capital and a massive exodus of transnational companies for fear of reprisals against them.

The *dakazo* resulted in my first hearing. My client was an Italian family who had arrived in Venezuela over 50 years before and founded a water-pump production and sales business in the east of the country. They were the perfect example of a family business — lasting at least two generations — with an enviable payroll of at least 60 workers. The entire family, all members of the company’s board of directors, was detained. Father, mother, and sons were all taken by the GNB as alleged criminals, apparently for having a couple of items that were overpriced, according to the government. As of the date of writing, there has been no oral or public trial in the case.

I had to attend and defend the interests of the accused at the preliminary hearing. After several days, the result was custodial, just like Fray’s. Back then, I was much less experienced and had never seen “the face of the monster” responsible for so much arbitrariness. The current social crisis in the country, the result of this arbitrariness, has so far led to more than four million Venezuelans migrating to other nations. Dismayed by the judge’s unfounded decision, I approached the bench to demand a reversal of the decision. She immediately ordered the doors of the courtroom closed and told me this: “Sir, excuse me for what I’m about to say to you. If I don’t put these people in jail, I lose my job. I hope you can understand.”

That was very hard to hear, especially in the 21st century where we are used to hackneyed phrases about the rule of law and the principle of legality, especially the separation of powers. Her actions betrayed a mixture of desolation, indifference, and much frustration.

Metamorphosis of Protests in Venezuela

Social protests in Venezuela have been taking place in a much more complex environment due to restrictions on freedom of speech. For example, current protests are nothing like the first protests of 2002, during the revolutionary era of Hugo Rafael Chávez Frías. Despite the lethal fallout of those demonstrations, the attitude of citizens was undoubtedly naive.

They did not expect so much violence; they were not prepared to deal with it. In other words, the government's violent and disproportionate use of force has always been the same; it has only been perfecting its technique. However, the attitude of dissident citizens in these protests has adapted to continue protesting more securely.

Venezuelans have put their whistles, drums, and tricolor caps aside and replaced them with improvised shields, helmets, dungarees, vinegar, or any other object that provides protection from tear gas canisters and rubber (sometimes real) bullets. They have also become more cautious and distrustful; they guard each other against possible infiltration by intelligence officials and have perfected their methods for assisting the injured or simply documenting incidences of human rights violations. It is simple: more than a right, protesting against the government is now a mission whose objective is to make it back home alive.

Many protect their identity with old t-shirts that they wear only when they go out to the streets. The more creative ones use science fiction character masks. The most usual one is that of Guy Fawkes, the character from the film *V for Vendetta*, who came to represent a wide range of protests and became a symbol of the hacktivist group Anonymous, the Project Chanology, Occupy movements, and anti-government and anti-system demonstrations around the world.⁸ Others went a little further and modified the colors of the mask, painting it gold, black, pink, or with the tricolor of the Venezuelan flag.

Much of the country admired these young people because they represented a rebellious way out of Venezuela's political and economic crisis, but others saw them as vandals. The government initially described them as "*guarimberos*;"⁹ however, in the 2015 and 2017 protests, the term most used by the authorities was "terrorists." The purpose of using derogatory qualifiers for the opposition is to stigmatize them as

8 Rosie Waites, "La máscara de 'V de Vendetta': ¿qué hay detrás?" [The Mask of 'V for Vendetta': What's Behind It?], *BBC Mundo*, Oct. 22 2011, http://www.bbc.com/mundo/noticias/2011/10/111020_mascara_v_vendetta_az.

9 Historian Robert Alonso explains that the term *guarimberos* began to be used as a synonym for refuge under the government of the general officer Marcos Pérez Jiménez (1953). At that time, civil resistance designed a method of subversion: They protested against the dictatorship and then ran inside churches looking for safety. There was no talk of blocking or taking the streets; the objective was to carry out acts of sabotage near the churches and then run to them, where they would take refuge before "the henchmen of the regime got to them" (see <https://www.lavanguardia.com/internacional/20140311/54402957109/queson-las-guarimbas.html>). Hugo Chávez himself reanimated the term in 1996 when he led an election campaign inviting Venezuelans to "resist" in demonstrations against right-wing parties. However, the government of Hugo Chávez used the term on several occasions to disqualify the social protests of his adversaries.

if it were a fight of good against evil. In these cases, the bad guys are the terrorists, which includes all those who oppose the policies of the Bolivarian government.

When reported to the Venezuelan scientific police, political prisoners are photographed with an identifying sign that reads “terrorist.” This photograph is the one uploaded to the Police Investigation and Information System (SIIPOL), which appears when any police authority in Venezuelan territory checks the records. It is the crudest way to identify the “enemies of the revolution.”

However, the protestors identify themselves differently. There is a diversity of pseudonyms because of the diversity of groups or structures within those groups. In general, they are called “resistance,” but also “t-shirt warriors,” “squires,” or “shock troops.” In my opinion, the name that best suits them is “liberators.”

The latter pseudonym was ratified in a sad episode of the country’s history. On June 8, 2017, around 4:40 p.m., teenager Neomar Lander was killed when hit by a tear gas canister fired at point-blank range by a GNP official. This terrible scene was recorded by people who were close by. Spokespersons for the Ministry of the Interior and Justice, including Attorney General Tarek William Saab, claim that the death resulted from the explosion of a handmade mortar that the young man was handling.¹⁰ However, eyewitnesses — backed up by videos recording the death — claim that he was killed by a tear gas cannister shot to his chest. Neomar joined the grueling list of 102 direct violent deaths in the context of social protests registered in 2017 alone.¹¹

The death of this minor caused discontent in public opinion because he was beloved among the demonstrators. The media occasionally featured him because of the energy he transmitted, always jumping around the main avenues of Caracas. A striking image on the web shows what the struggle surely represented. A photograph shows him holding a homemade bomb (Molotov) next to a red rose with the slogan “I am a liberator” on his handmade protective bib, which represents youth resistance motivated by patriotic values.

Also, just hours before his death, he published a video giving his reasons for protesting: *“I am 17 years old, dad. I am not studying because I’ll be leaving the country looking for a brighter future. But I do not want to*

10 Isaac González Mendoza, “La hipótesis de la muerte de Neomar Lander” [The theory behind the death of Neomar Lander], *El Nacional*, June 8, 2017, http://www.el-nacional.com/noticias/sucesos/las-hipotesis-muerte-neomar-lander_186663.

11 Foro Penal Venezolano, “Informe de represión del 2017” [2017 crackdown report].

*leave Venezuela, this is my country. I was born here, and I am fighting for it.*¹² Neomar reflects the high participation of young people, including minors, in the protests. He symbolizes their concern for the future and the disrupted Venezuelan economy. Today Venezuela has a high number of university dropouts and one of the highest emigration rates in Latin America.

Fray was part of these groups of liberators who, among other things, acted as shock absorbers against the disproportionate use of force by the State combined with the irreverence of youth. For better or worse, youth provide the living voice of dissidence, and their receptivity is much higher than political opposition actors. For many, they represent the surest way out of the Venezuelan dictatorship.

Detainees in political and social demonstrations are divided into two groups. The first is made up of defenseless people, not members of any shock group, who — due to vulnerability or lack of expertise in defending themselves at political gatherings — are easily arrested when persecution is directed at the masses. A famous case occurred in Puerto Ordaz in 2014 when a young university student suffering from Asperger's was captured by the GNB for being linked to a street blockade near his home. The day he was arrested, he was returning home from college after rehearsing with the choir. He ran into the lockdown walking to his building. There, a group of officers approached, arrested him, and put him in a pick-up truck with other young people. Due to GNB aggression and their lack of identification or explanation of his arrest, this boy panicked and jumped out of the moving vehicle, suffering several injuries. For this, the officers beat him and cut his long hair with a razor to humiliate him. Finally, he was placed in custody. He is currently the subject of a criminal investigation that seems to have no end.

The second group of detainees represents young people like Fray, who, while exercising the right to peaceful protest like the first group, often deploy defensive strategies against police attempts to deter social demonstrations. They appeal to Article 350 of the Venezuelan Constitution, which enshrines the right to rebel against any tyrannical regime that violates human rights. But despite a certain degree of organization and skill, they are still caught in intelligence operations or surprised by numerous officers, making their escape impossible. Fray was captured by a mixture of both intelligence work and some recklessness on the part of the group, which that night decided to stay a little longer than

12 Maduradas, "Neomar Lander contó sus razones para salir todos los días a luchar por Venezuela" [Neomar Lander explains why he went out every day to fight for Venezuela], June 8, 2017, <https://www.youtube.com/watch?v=xilFFYgh1MI>.

agreed. That is when Fray was captured by groups or undercover officers of the Bolivarian National Intelligence Service (SEBIN).

Fray's Story

Fray says he had a date to play football with some friends on the pitch near his house in the afternoon but left early to make arrangements to enter the university. Just then, a few blocks away, the GNB was repressing a group of university students; a cloud of tear gas covered them. Immediately, he and several friends approached the site to support the student demonstrators. Fray says:

I got to the site. There was a university right in the middle of the main avenue, across from downtown. Ever since 2014, it has been the place for strong, severe protests. Conditions are optimal because we have the support of the student movement, who also has their shock group. The goal is to keep that avenue closed for as long as possible as a symbol of discontent with the national government.

My student friends had been there long before I arrived. By the time I got there, every indication was that the protest would be over in a few minutes. I went to the middle of the avenue to pick up a wooden shield left on the road when I saw the lights from several vehicles approaching at full speed. I was paralyzed for seconds, and before I could react, they were on top of me. I tried to free myself from all the hands grabbing, and I started to get hit as if it were a game of football, but finally, they caught me. They took me to a plate-less white Toyota Landcruiser with opaque glass. Inside, several people who did not let me raise my head kept beating me, stepping on my head with their shoes.

They took me to the trunk of the vehicle and hit me. I was petrified because I thought they were *colectivos* and were going to kill me. Our journey did not take long; I was forcibly taken down to a wooded area. I immediately realized where I was: Cachamay Park.¹³ It was dark, and the park was closed to the public.

I remember that while they were beating me, threatening me with death, they kept screaming "We're going to kill you, fucking *guarimbero*." They asked me who was financing me, how much they were paying me to be there. I told them that nobody was paying me, and they kept hitting me, dragging me around on the floor like a sack of garbage.

I remember that one of them held me by the feet and started to run, dragging my back against the asphalt. I was bleeding a lot from the back and head; I don't know if it was because of the blows. I don't remember how long that episode lasted, but it stopped when I said an amount in bolivars.

13 A national recreation park, open from 5:00 a.m. to 5:00 p.m.

I remember I told them an insignificant number. They stopped hitting me, asked me to say it aloud. I think that they recorded me from a cell phone because I could feel light on my face.¹⁴

While Fray was living the worst hours of his life, I arrived at my house around midnight. We had had several hearings that day, and I was exhausted. As I lay down, I received a private message via Twitter. On this platform, I post public information on the status of detainees, numbers of political prisoners, arrests, and information of regional interest. A woman who claimed to be Fray's sister wrote to me, saying that she had not heard from her brother and that, according to friends, he had been taken away by the *colectivos*. She was reporting his disappearance.

Since the social protests of 2014 and the ensuing state-sponsored repression, the term "*colectivos*" has generally been used to describe the armed pro-government gangs that have attacked demonstrators, passersby, or people they believed to be in opposition to the government, often in full view of members of the Venezuelan security forces. They also collaborate with security forces in controlling demonstrations, repelling, and arresting people. The 2017 report presented to the International Criminal Court by Human Rights Watch, in collaboration with Foro Penal, describes the participation of armed civilians in controlling and dispersing demonstrations with firearms and arresting civilian demonstrators with the complicity of the Venezuelan authorities.¹⁵

Once Fray's disappearance was reported, even though he did not know who had arrested him, the usual thing would be that he would appear at a regional Armed Forces base. *Colectivos* work in open collaboration with state security bodies. If *colectivos* had carried out this (illegitimate) detention following torture and cruel treatment, they would transfer the victim to a state detention center, and the police receiving this person would forge procedural records, claiming that they had carried out the detention, instead of a group of *colectivos*.

After reading the Twitter message, we took note of Fray's personal data and identifying features. I instructed Foro Penal's Active Defense team to go to various police stations to inquire as to his whereabouts. The search went on until the early hours of the morning, and I had to stop it because it put our members at serious risk. The search resumed

14 Personal communication, March 3, 2018.

15 Foro Penal Venezolano [Venezuelan Criminal Forum] and Human Rights Watch, *Arremetida contra opositores: Brutalidad, tortura y persecución política en Venezuela* [Onslaught Against Opponents: Brutality, Torture, and Political Persecution in Venezuela] (New York: Human Rights Watch, 2017), https://www.hrw.org/sites/default/files/report_pdf/venezuela1117sp_web.pdf.

in daylight, and we were able to locate him at a GNB operations station, the same one where the general I described at the beginning of this chapter was stationed.

This station was the epicenter of political detentions in Puerto Ordaz: 191 of the 293 people then arrested in the State of Bolívar alone were taken there. Inside, there were forced disappearances, bans on talking to a trusted lawyer, torture, and other crimes. Fortunately, no homicides were recorded, at least not in the cases handled by our organization.

The dynamics for attorneys accessing this station are incredibly complex. All kinds of restrictions could make matters better or worse as the days went by. Fortunately, we managed to find a workable way to ensure our objectives in the face of dictatorship, which we dubbed the “ten commandments.”

The Ten Commandments of Political Prisoners

Step 1: Relatives or eyewitnesses contact the organization’s call center to report a detention or disappearance. Sometimes the person makes contact themselves via a member of the legal team or an Active Defenders activist, or we are alerted by social media. Headquarters then registers the detainee so that we can put them under our protection.

Step 2: Once the detainee is reported, Foro Penal volunteers are deployed to the main police stations. We scan the area to discover the whereabouts of the detainee.

Step 3: After locating the detainee, we try to get a lawyer admitted to corroborate their physical condition. As a member of the organization, I can count on one hand the number of times I was granted entry to interview a detainee just by identifying myself as a lawyer; this is impossible. Detainees are always treated as absolute property by order of a superior: “No attorneys, much less those from Foro Penal.”

Step 4: If we could not talk to the detainee, we had to contact the fundamental rights section of the Public Prosecutor’s Office or the Ombudsman’s Office. Both public organizations, in principle, protect citizens and investigate human rights violations. However, as they were public officers, trusting them was difficult. Things changed with the Public Prosecutor’s Office during the 2017 protests. The national demonstrations that year began after an official statement by the Attorney General — the highest authority of the Public Prosecutor’s Office — denouncing decisions 155 and 156 of the Supreme Court of Justice as

violating the Constitution.¹⁶ These rulings completely annulled the functions of the National Assembly and suspended parliamentary immunity for opposition deputies, who had won the majority in the 2015 elections. Therefore, for a short time (until the government intervened again), public prosecutors worked proactively to guarantee the fundamental rights of detainees.

Step 5: The cooperation of either of these two offices makes it easier for a Foro Penal lawyer to gain access since the Constitution requires the entry of a trustworthy lawyer. If this does not work, we must appeal for the involvement of a third party.

Joining Foro Penal as an attorney is a daunting task. I am banned from entering any police or GNB station to visit detained state dissidents, for example, because my face appears in the media. The same is true for the most senior members of our legal team or those who, in the course of their duties, visit clients detained for ordinary offences in remand centers. In this context, we resort to strategies such as a visit by a relative or the intercession of the church. The idea is to verify the detention conditions of political prisoners, especially their health.

Despite any previous negative comments about the actions of the superiors and subordinates of the GNB station in Puerto Ordaz (where Fray was being held), the situation was a little more bearable than in other political detention centers. For example, according to a report by the NGO Una Ventana a la Libertad,¹⁷ the headquarters of SEBIN Helicoide in Caracas houses the majority of Venezuela's political prisoners. The worst cases of torture and suffering in the entire country have been recorded in that prison. Political figures such as Carlos Melo, Rosmit Mantilla (a deputy in the National Assembly), Gerardo Carrero, and Daniel Morales describe the suffering they endured during their imprisonment there, despite the provisions of the Constitution and international treaties. Other prisons include the National Institute of Women's Orientation (INOF), which housed one of Venezuela's most famous prisoners, Judge Maria Lourdes Afiuni who made a judgment

16 El Nacional, "Luisa Ortega Díaz: Sentencias del TSJ violan el orden constitucional" [Luisa Ortega Díaz: TSJ sentences violate constitutional order], Mar. 31, 2017, http://www.el-nacional.com/noticias/politica/luisa-ortega-diaz-sentencias-del-tsj-violan-orden-constitucional_88240.

17 Una Ventana a la Libertad [A Window to Freedom], "Informe sobre la situación de los Derechos Humanos de las personas privadas de libertad en las sedes del servicio bolivariano de inteligencia nacional (SEBIN) del helicoide y plaza Venezuela" [Report on the Human Rights situation of persons deprived of liberty at the headquarters of the Bolivarian National Intelligence Service (SEBIN) at Helicoide and Plaza Venezuela], June 22, 2017, <http://unaventanaalalibertad.org/wp-content/uploads/2017/01/UVL-Informe-Sebin-22-junio-2017.pdf>.

contrary to an open order from Chávez. At the INOF, Judge Afiuni lived through the worst chapter of her life, including sexual abuse.¹⁸ In both the Helicoide and the INOF, admission is an uphill battle. In some cases, detainees have no contact with anyone until they are taken to court, where they can talk to their lawyer for the first time.

At our organization, we not only defend detainees in criminal matters, we also help demonstrators abused by police; people physically attacked or mistreated and not necessarily arrested. For example, in Ciudad Guayana, we assisted Yrma Bello in a case of excessive and disproportionate use of force documented by the media. It happened on February 19, 2017, during a demonstration headed for Monument Square in the center of the city. The GNB prevented the march from reaching its destination with pickets. Using protest dissipation protocols, the GNB used a NORINCO WTC-1 truck, called “Ballena” [whale], which contains a high-pressure water cannon. The water stream hit the 67-year-old woman and dragged her several meters, causing severe injuries to her head and face, resulting in partial memory loss.¹⁹ In this case, we not only represented her but also accompanied her to countless interviews, reports, and visits to the Public Prosecutor’s Office. At the time of writing, the person responsible for the events has been identified, and charges have been laid for cruel and degrading treatment and disproportionate use of conventional weapons; however, he is free, and there is no sentence or discharge.

In other cases, we were able to get justice against the perpetrators a little more quickly; for example, in the case of a youth activist from Voluntad Popular (an opposition political party). At the same demonstration as Yrma Bello, he was seriously injured, cruelly treated, and robbed by a captain of the GNB, who shot him point-blank in his thigh and buttock with a pellet gun and stripped him of his professional camera. This activist was also arrested and prosecuted for protesting; he spent several days handcuffed to a bed in one of the city’s health centers. The legal team of Foro Penal managed to get the aggressor arrested. He is currently detained and awaiting trial.

We also assisted members of communities and neighborhoods raided without a court order, locations where there were concentrations of demonstrators in the vicinity. Law enforcement officers used to enter buildings in the early morning to capture those allegedly responsible for blocking the roads. These entries to residences caused

18 Maria Lourdes Afiuni, *La presa del comandante [The Commander’s Prey]* (Caracas: Dahbar, 2018).

19 The available videos are on the YouTube platform: “Yrma Bello” case.

property damage and ended in the arbitrary detention of several persons.

Step 6: Once we obtained the information about what was going on inside the detention center, we reported it to the organization's data keepers, in charge of sorting, grouping, and filtering. Their report dealt with the number of detainees on the day in question, personal data, profession or occupation (at least 70% were university students), age (over 95% were under 25), and physical condition.

This was the reason for the ban on entry. Unlike the social protests of 2014, the injured to detainee ratio was higher in 2017. Foro Penal's official repression report notes the intensity of demonstrators' injuries — a clear indication of the intention to injure more and detain fewer. This was the same in Bolívar; in collaboration with the Colegio de Médicos del Estado Bolívar, our organization registered 67 injured in the state, at least four hit by bullets, one of whom died.²⁰

Step 7: After identifying the apprehended person, their case was dealt with on an as-needed basis. If there were untreated injuries, medical assistance was sought to safeguard their right to health. We also reported their physical or psychological situation to the relevant State institutions.

Step 8: The detainees were transferred to the Cuerpo de Investigaciones Científicas, Penales y Criminalísticas (CICPC) [Department of Criminal Investigations and Forensic Services] for review. The proceedings and the detainee were then taken to the Public Prosecutor's Office to prepare for the preliminary court hearing before a supervisory judge.

Step 9: Depending on the case, we assigned the lawyer with the most experience in that area. Our staff includes retired judges, former prosecutors, highly regarded and experienced trial lawyers, university professors, retired police officers, and former public defenders, among others. For example, if the detainee had a health condition, we assigned a specialized lawyer to take advantage of that resource and secure the detainee's early release. If the detainee was a member of a political party, we assigned another lawyer who could handle their case well with that party. If the detainee was a member of an educational institution, we assigned a lawyer who taught at the university, and so on. If the case was very complex or demanding, we assigned

20 Germán Dam, "En Bolívar han arrestado a 290 personas en 120 días de protestas contra la dictadura" [In Bolívar they have arrested 290 people in 120 days of protests against the dictatorship], *El correo del Caroní*, Aug. 4, 2017, <https://www.venezuelaawareness.com/2017/08/en-bolivar-han-arrestado-a-290-personas-en-120-dias-de-protestas-contra-la-dictadura/>.

more than one lawyer to it to distribute tasks or assignments throughout the proceeding.

Step 10: If the hearing resulted in a custodial sentence (such as the one Fray received), the detainee would be included on the list of the country's political prisoners, accredited by the Organization of American States (OAS). But if we received an injunction (i.e., parole), the detainee was listed as politically persecuted, and the case was handled differently because we must prioritize those who remain behind bars. Never in the State of Bolívar (unlike other states), did we manage to obtain either full freedom without restrictions or sanction of police actions, despite persistent complaints and indisputable evidence.

Skepticism

With Fray, we took all precautions; we did everything according to established protocol. Unlike my other cases, however, this one had a more substantial emotional impact on me. It took many hours to go through it, I suffered much stress and many sleepless nights, and now I confess that it also made me lock myself in the office bathroom a couple of times to cry as if I were lamenting the death of a relative.

But why? Was Fray's situation any different from that of the more than 12,336 political detainees in Venezuela? No. The ingredients were the same as always: police abuse, systematic violation of human rights, beatings, torture, cruel and inhuman treatment, omissions by the a judiciary, and many other aberrations. So, what was going on? A new ingredient was getting to me: oblivion — the primary enemy of the prisoner or politically persecuted person. At Foro Penal, Gonzalo Himiob points out that there is no worse punishment for a political prisoner than oblivion. Oblivion condemns people to years of imprisonment just for thinking differently, while the rest of society continues on its course.

A group of neuroscientists from the University of Cambridge has shown that humans use two processes to forget — suppression and substitution — and that the brain works differently in each case: the first interrupts the process of recovering memories; the second allows unpleasant events to be replaced by others.²¹ The wave of repression

21 R. G. Benoit and M. C. Anderson, "Opposing mechanisms support the voluntary forgetting of unwanted memories," *Neuron* 76, no. 2 (2012): 450–460, <https://doi.org/10.1016/j.neuron.2012.07.025>. See also Te Interesa, "El cerebro es capaz de olvidar recuerdos dolorosos sustituyéndolos por otros o borrarlos" [The brain is able to forget painful memories by substituting them for others or erasing them], Oct. 18, 2012, http://www.teinteresa.es/salud/cerebro-recuerdos-dolorosos-sustituyendolos-borrandolos_0_794320936.html.

that saw thousands arrested in 2017 forced citizens to dissociate from the facts as a mechanism of self-preservation, which in turn made them forget about those detained by the regime. Eventually, this becomes a constant process that erodes democratic and social justice values. In a country like Venezuela, an exporter of bad news, people have developed a system of permanent oblivion based on the suppression of memories so that they can get on with life and cope with the worst economic and inflationary index recorded in decades.

Behind Bars

After the custodial sentence for Fray was decreed, he was again transferred to a provisional detention center run by the GNB (the arresting body, according to police records), who were awaiting authorization for his confinement from the warden of Colonia Penitencia del Dorado. During his 90 days in prison, Fray was in three different detention centers. In each of these, he suffered cruel and degrading treatment at the hands of several officers from various police forces, and experienced firsthand the worst face of intolerance.

His first stay was with GNB, after being arrested by intelligence officers. By midnight, he had been bloodied and denied medical help by his captors. He was received by the GNB with more blows and pepper spray to obtain a statement justifying his arbitrary detention. He was knocked unconscious several times; when he came to, all they got was cries of pain. Fray slept on the floor that first night, handcuffed to a chair and denied the right to see his lawyer, a relative, or the prosecutor. He still had not received medical attention and was not even given access to the toilet so that he could clean off the blood.

The next day, instead of being transferred to the court to appear before the arraignment judge, he was locked in a cell with ordinary prisoners. Like his captors, they beat him at the insistence of the guards. They also made him fight other detainees, like gladiators in Roman times, and bet cigarettes on the winner. The loser, on the other hand, was punished with blows to the buttocks. There was no way out of these fights; either you participated and got beaten up, or just got beaten up. The prisoners made Fray ask for cigarettes for them. At night, he had to sleep standing up due to overcrowding. This hell lasted for several days, even after the preliminary hearing.

His next prison was a GNB truck. Days after Fray's hearing, six detainees from demonstrations appeared before the same court; they received the same sentence and were sent to the same prison, Colonia Penitenciaría el Dorado. Despite receiving his transfer order more

than a week before, Fray had not yet been transferred. So, when these six people were also deprived of their liberty, we took the opportunity of sending them all together. That truck became their temporary detention center because of the number of days they had to travel to the town of El Dorado. Paradoxically, Fray's conditions improved in the company of other political prisoners. He received more care, better treatment, and food; he was even allowed to make phone calls. These were the benefits of being incarcerated with a large group of people, thus receiving more attention from society.

Upon arriving at the prison, the GNB was unable to complete the handover of the prisoners due to media pressure for their return to Puerto Ordaz. Public opinion revolved around the terrible story of seven political prisoners being held in a maximum-security prison. This sentence was not new in Venezuela, but it was in the State of Bolivar. That night, Fray and the other prisoners slept in that same truck. People who were severely beaten and needed medical attention were also in that group, including a young dentist who was having seizures. Their relatives caravanned behind the truck and reported on events as they occurred. Finally, after four days of agony, they decided to return to Puerto Ordaz. Good news among all the bad. They were to be confined at a local police station that had no direct involvement in controlling demonstrations, so it was believed that their situation would improve.

The team of lawyers assisting Fray requested a change of detention center because a detainee cannot be in the custody of officers denounced as aggressors. In other words, he sought to have his guardians be agents other than the GNB. Despite the indirect change of detention center, the court never responded to this request. At the station, Fray was able to see his mother and sister for the first time; he hugged and kissed them. They needed to see him to know that he was well or at least alive.

While the torture and beatings stopped with the transfer to this police station, other problems appeared. First, they put him in a dark, hot cell with no access to sunlight; he could only go to the bathroom once a day. Sometimes the guards would not give him food, and he lived very stressful hours of anguish and uncertainty, typical of confinement. It was in this cell that he first felt the need to commit suicide. This feeling lasted for at least the 67 days he was locked up with two other political prisoners in that small cell.

The Noble Mission of Human Rights Activists

Here, the Active Defenders of Foro Penal played a fundamental role in combating the subhuman conditions of political prisoners. They planned constant accompaniment and visits to the police station, gaining the trust of the police chief, and brought in food every day. During this time, the number of political prisoners in the State of Bolívar grew to 67, distributed among different prisons, police stations, and detention centers. Most were university students; there were also teachers, engineers, dentists, architects, social communicators, nurses, masons, and others. In short, people committed to a better country.

For two months, the Active Defenders managed to get injunctions for many political prisoners, allowing them to get out of prison. Others received humanitarian sentences due to health problems. However, many went in and out. Fray was not as lucky despite the resources and even the cessation of the order that left him behind bars; his condition deteriorated, his health deteriorated, and his hopes of getting out were dashed.

So, I asked the team to focus on Fray's case. We had to make sure that conditions changed, that he was in the spotlight, and that public opinion was on his side. We called several press conferences in which his family, his lawyer, and his friends told of the terrible conditions he was experiencing. We also wrote on social media about what he liked to do and what his aspirations were. The strategy was clear: raise awareness and visibility. We were invited to speak on radio stations and television programs. We tried to get all the local media to talk about him so that people would be interested in his case. Trying not to let him be forgotten. Not to face oblivion.

In the absence of a court ruling, the team mapped out a plan to achieve his release. The strategy of raising the profile of the victim to create a political cost to the government is vital in this type of incarceration. Its success depends on several factors, the first being simple visibility. For the State, having an opposition leader incarcerated represents a higher "cost" than having a citizen who was apprehended in front of his house. We had to create a higher media profile for Fray, and get everyone talking about him.

The second factor lies not in the political prisoner's liberation but rather in his state of mind, which requires motivation, optimism, and hope in order to keep going. In short, it means making confinement less traumatic and taking suicide off of his mind. The work of human rights activists and other civil society defenders who accompanied Fray and other political prisoners was vital here. We designed a meal

preparation and distribution plan that included personalized messages of encouragement. We collected letters of support to deliver to them. We scheduled visits to the various detention centers, bringing board games, books, or magazines. In one detention center where 31 political prisoners were held, we managed to bring in musicians to cheer them. We also organized events and discussions.

I once picked up 20 lunches prepared by an Active Defender of Foro Penal and was amazed at her efforts. She was making pasta with all the love in the world, even though she did not know any of the 20 prisoners. Her kitchen was a complete mess, her air conditioning was broken and it was hot as hell, but she had a contagious smile on her face. Many restaurants and hairdressers in the area also contacted us to offer their services free of charge to relieve the economic burden on families.

I fondly remember one visit Fray around his 80th day of confinement. Several activists were very eager to meet him and we brought cakes, sweets, drinks, and board games. The idea was to encourage him and give him 30 minutes to remember. We were all subjected to a strip search before entering; the women were made to squat. It was all extremely offensive and unnecessary, but they agreed for the opportunity to accompany him and provide the moral support necessary for him to continue resisting.

Today is the Day!

Days before Fray's release, he held the incarceration record for political prisoners in the State of Bolivar — 91 days. The political situation had become more tense: some opposition parties had begun a widespread consultation throughout the country, which was not supported by the National Electoral Center (CNE). The consultation included three propositions: 1) to reject the National Constituent Assembly convened by Maduro; 2) to request that the Armed Forces defend the Constitution; and 3) to renew public powers, hold free elections, and form a national union government. Over seven million Venezuelans supported these measures.

The government responded by installing the National Constituent Assembly, a body lacking both national and international recognition. This assembly made structural changes to the country's institutions and succeeded in dismantling the legislative branch, formed by opposing majorities, and dismissing Prosecutor General Luisa Ortega Díaz so that *she* could be prosecuted.

Her ministry — which from the beginning was vital in consolidating the dictatorial government and forging the policy of persecution against dissidents in 2014 — did an about-face in 2017. Prosecutors used jurisdictional tools to demand freedom for political prisoners. With her expulsion, this advantage vanished, and this positive institutional pressure dried up. Venezuela was a ticking time bomb. In this new atmosphere of anguish and uncertainty, political prisoners were the primary victims. In the detention centers that had recreation yards, access was now limited; visits and bringing in food were suspended.

Apart from having an unjust sentence, Fray was now illegitimately deprived of his freedom. Since approximately day 55 of his confinement, the court had ordered his provisional freedom and agreed to his transfer to a health care facility to treat the injuries received during his apprehension and confinement in the first prison. This order was never enforced because of an alleged lack of officers to guard the prisoner outside of the jail.

In the face of so many irregularities, a constitutional appeal on the grounds of denial of justice was filed on behalf of Fray. Although it was dismissed, just like previous appeals, it was useful in accessing meetings with the president of the judicial circuit and exerting more pressure on the case. This also increased the reach and dissemination of Fray's image on the official social media of the organization. Time was running out because Friar was suffering from a kidney infection due to limited bathroom access. He was urinating blood and suffering from severe dehydration and scabies due to the poor sanitary conditions.

The prisoners, however, were paying the consequences of our external pressure. They were denied access to the bathroom, so they had to use plastic bags in front of the other inmates. The police were exhausted from the constant accusations of human rights violations, which certainly made them uncomfortable. Finally, several intense days later, after we lowered the social pressure a little, we received news through an anonymous informant who said, "Today is the day! *At last, Fray will be released!* The date was August 7, 2017.

The authorities demanded the utmost discretion as a condition for his release. It was like winning the world cup but not being able to celebrate. We agreed, of course, and were finally given the green light. We were all very excited: his family, his friends, his lawyers, and even, dare I say, the police officers. I went to the courthouse. It was almost at 9:00 p.m. I was very anxious, and I certainly didn't believe it. All we needed was the judge's signature and the last-minute confirmation of his superior.

And then the final act unfolds. The marshal comes out with the ballot. I ask to see it to confirm that everything is in order. It is. Lacking any official vehicle, I offer to drive the marshal to the detention center where Fray is being held. On the way there, I talk to the team. Fray's mother is there since I had informed her earlier. There are laughter and tears when I arrive. The marshal hands the ballot to the officer on duty; he relays the order to his superior. They make us wait for another hour, but we wait eagerly. Inside, Fray is unaware of what is happening. He has no idea that he will sleep in a comfortable bed tonight, and not on the cold floor of a prison cell.

An officer approaches him and, in a cruel joke, asks him to pick up his things because he is being transferred again to Colonia Penitenciaria el Dorado. Then he handcuffs him. Then the officer tells him that he is only joking, that he is being released. Fray does not believe him. He says he is exhausted and begs not to be harmed. He exits the dungeon with his few belongings in a plastic bag. Upon leaving through the front door of the station, he can't not believe it. His face does not show happiness or excitement but the fear typical of a person who has suffered a lot and no longer believes in people's good will. Even though his mother jumps on him, his reaction is minimal; he can barely contract his arms to hug her. For their part, many of the activists begin to cry, hugging Fray, even though it is the first time they have seen him in person. His skin is pale. He has not seen the sun for 60 days; he looks unsettled and absent-minded.

Many photos were taken that night to commemorate how vital freedom is, and how political interests that take it away can lead those prisoners to wish for death. As of march 2021, there are 321 political prisoners in Venezuela²² suffering the same emotions, feelings, and experiences that Fray suffered and that have left a terrible scar on his memory.

The Future of a Political Prisoner

Little has changed for Fray a year after his release. He still lives in the same country as before his imprisonment, only most of his friends have now left. Like thousands of young people, he is frustrated by an economic situation that keeps him stagnant and without opportunities. His only goal now is to migrate. He works as a waiter for a salary of \$7 USD, which barely covers his expenses. His plans to study have vanished; he is focused on resolving his legal situation so that he can

²² According to the Venezuelan human rights organization Foro Penal, <https://foropenal.com/presos-politicos/#categorias>.

leave the country. He has no savings or goods to sell. He also has no passport, and the issuing institution is not handing out appointments. The only option is to pay a dealer with links to the authorities to do so, but they usually charge around \$3,000 USD. Fray suffers from severe pain in his knees due to the abuse he received in prison; he can no longer play soccer. He has nightmares and does not speak much. In his free time, he prefers the safety of his room. His political interest in the current situation has diminished.

Like Fray, thousands of young people subjected to arbitrary detention have migrated or are planning to do so. According to the UNHCR, three million Venezuelans have migrated as of 2018.²³ Caracas, a city that used to be congested, today has little traffic and looks abandoned. The leading universities have the highest student dropout rates, and teachers have also decided to leave the country. The youth wings of political parties and all forms of student movements are demoralized, many almost desolate. The opposition forces of the main political parties do not have a clear route out of the crisis, and all potential political leaders are either ineligible, imprisoned, or in exile. Recently, the humanitarian situation has worsened. There is no medicine, the price of food exceeds the average income, and the supply does not cover the demand for most items. Everyone's priorities have changed; few care about the collective welfare anymore. No one has the energy to deal with that.

As expected, human rights organizations and their workers have been affected. Many have given up their labors, not for lack of inspiration or lack of work, but for the same reason that most Venezuelans leave their country. It is becoming increasingly difficult to cover the gaps; the government has diversified its repression and social justice no longer reaches any of its citizens. According to surveys, 77% of Venezuelans disapprove of Maduro's administration and do not identify with its policies.²⁴ For their part, opposition leaders have been unable to take advantage of this political landscape due to lack of consensus. They are sometimes branded as traitors or conspirators if they

23 UNHCR, "Sobre los defensores de los derechos humanos" [On human rights defenders] (Geneva: United Nations High Commissioner for Human Rights) <http://www.ohchr.org/SP/Issues/SRHRDefenders/Pages/Defender.aspx>.

24 El Nacional, "Encuesta asegura que 77% de 1.200 venezolanos quieren cambio de gobierno" [Survey ensures that 77% of 1,200 Venezuelans want a change of government], Feb. 11, 2018, http://www.el-nacional.com/noticias/politica/encuesta-asegura-que-1200-venezolanos-quieren-cambio-gobierno_222781.

negotiate with the government, accused of giving oxygen to a poisonous administration.

The obvious closure of civil society spaces seems to have reached a point of no return. But what has been done to reverse this situation? Following the failure (according to various analysts) of government-opposition negotiations set up in the Dominican Republic in February 2018, various alternatives to address the situation have emerged, such as the Frente Amplio Nacional para Venezuela [Broad National Coalition for Venezuela]. There are many similar groups with different approaches and goals, some with the participation of opposition leaders, others with the involvement of social movements, NGOs, and universities, such as Reto País [Country Challenge]. Everyone wants to focus on a different aspect of the crisis and be able, little by little, to recover the civil society spaces lost due to an avalanche of bad decisions by those responsible for politics in Venezuela.

The creation of these movements may respond to two scenarios. First, there is the imperative need to rebuild confidence in Venezuela's ability to get out of the crisis. Second, opposition parties may simply seek to regain the trust of their constituents with other strategies, which are likely to see the same fate as the previous ones. Regardless, as long as we seek to recover these spaces through legal and legitimate participation in society, there may be a solution to the crisis.

Today we must reflect on all these terrible experiences, such as going to bed with an empty stomach because there is no food, the suffering of a sick relative because there is no medicine, the death of babies in hospitals because of severe malnutrition, the crying of mothers for the loss of their children at the hands of the GNB, the young engineer or doctor working as a cleaner in Chile or Argentina to send remittances to his relatives with the hope of being reunited. Or those who pack their entire lives into a suitcase hit the road.

Finding our future is what it's all about, not going back and learning lessons from the past. Every day we all risk losing our freedom, which manifests in mundane yet eloquent ways, such as not being able to attend an event because of insecurity, not being able to take a shower because of water rationing. Or, like Fray, being a faceless political prisoner locked up for exercising his right to protest. That is why we must all remain focused and never lose hope in regaining freedom for Venezuela.

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**Criminalizing Community
Healthcare Workers:
The Unsung Heroes**

Ektaa Deochand

The drive from Johannesburg to Bloemfontein was long and dry. My throat was also dry, as my mind searched for a way to break the bad news to our clients, a group of community healthcare workers (CHWs). My colleagues and I were on our way to tell them we did not have a good chance of bringing a claim for unlawful arrest and detention against the Minister of Police after they were arrested during a peaceful protest.

I was new to my organization, SECTION27. One of my first assigned cases took me out of the socioeconomic rights litigation arena I had come from and thrown me into the political world of health activism and corruption. I trained in the direct use of the law as a clear and mighty tool to uphold human rights. I learned that the law was just the entry point, and that people demanding the full entitlements promised by it was the true catalyst for social change. SECTION27's closest partner organization is the Treatment Action Campaign (TAC), a community-based organization founded by people living with HIV/AIDS. TAC changed the face of health care access in South Africa and globally through the combination of civil disobedience, mobilization, and litigation. It successfully compelled the South African government to provide life-saving antiretroviral treatment to those living with HIV who could not afford treatment. Working closely with TAC, I had to learn how to adapt to working on the ground, and how to respond to a range of intersecting sociopolitical issues.

In South Africa, protest has historically been used as a form of resistance during the struggle against apartheid. After democracy was put in place, protests continued to be used as a way for people with little access to formal complaint channels to demonstrate their dissatisfaction with the state's failure to deliver an adequate standard of living. Regionally, protests on the African continent have largely been credited with helping to bring about democratic shifts during the 1980s and 1990s. The past decade has seen a rapid surge in protest once more

in many countries. Unrest has taken many forms, which vary according to the political context, including demonstrations against the rising cost of living (Chad, Niger, Guinea); strike actions over labour disputes and student fees (Botswana, Nigeria, South Africa); election disputes (Burkina Faso, Burundi, DRC); and unrest over police violence, extortion, and corruption. Many of these protests are driven by deep-seated frustration with the economic and political status quo.¹ Because of increasing police brutality and force used against protestors, the African Commission on Human and Peoples' Rights recently adopted their "Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa,"² which provides best practices for policing protests. Many African countries have yet to bring their domestic laws in line with these guidelines.

The CHWs arrived in Bloemfontein, the main city, from across the Free State province, all of them expecting that we were coming from Johannesburg to deliver good news on the progress of their case for damages against the state. When former director Mark Heywood walked through the door of the community church in which we were convened, every CHW rose to her feet and started cheering and applauding to welcome him. I realized that I had never comprehended my former director's gravitas and deep history of fighting for the rights of the poor and those living with HIV. As a founding member of TAC, his mere presence was a symbol of hope in a place that had little.

Although I often addressed large groups, I felt small that day as I stood in front of 100 powerful, strong women, who, despite having so much more richness of experience, looked to me to answer their questions. My colleague Patrick Mdletshe stood beside me. He wore two hats as a senior leader at TAC's national level and a researcher at SECTION27. His kind words of encouragement gave me strength. He opened the meeting with a loud rendition of the struggle song, uTAC Siyamthanda. The entire room was soon vibrating with song, filling me with a warm sense of peace and setting the tone for the meeting. We then began the conversation about why we were meeting, where our journey had begun, and where it had led us so far.

1 Valerie Arnould, Aleksandra Tor, and Alice Vervaeke, "Africa Uprising? The Protests, the Drivers, the Outcomes," *Brief* 33, December 2016, European Union Institute for Security Studies (EUISS), https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_33_Africa_uprising.pdf.

2 See <https://www.saferespaces.org.za/resources/entry/guidelines-for-the-policing-of-assemblies-by-law-enforcement-officials-in-a>

Filling the Gaps: Community Healthcare Workers as Unsung Heroes

South Africa is 25 years into democracy, with a progressive constitution that protects civil, political, and socioeconomic rights. Yet, in a society riddled with unemployment and beset by a poor economy, the realization of those rights, such as access to quality healthcare, is reserved for those who can afford it. The apartheid system was designed so that the majority black population remained in rural areas far removed from city centers, with access only to limited healthcare services meant to address public health concerns, not based on health being a basic human right.

Communities in these areas have deep structural inequalities, compounded by human and financial resource constraints. Unsung heroes step in to fill the gaps and assist those without the means to seek help themselves. China calls them “barefoot doctors,” Ethiopia refers to them as “health extension workers,” and Pakistan calls them “lady health workers.” They are all ordinary but remarkable people who take it upon themselves to help their communities receive healthcare. Having community health workers going from home to home in poor communities has been shown to have significant positive impacts on reducing maternal mortality rates and the number of children dying before their fifth birthday.³

In South Africa, community health workers form the link between poor rural communities and a health system unable to meet the demand. In rural communities with a high burden of HIV infections, many people cannot afford the transportation to the antiretroviral treatment clinic, or they are too ill to make the journey. CHWs provide critical assistance to these communities by traveling to households, providing medication, and taking care of bedridden patients. They also provide basic medical assistance in emergencies, including assistance with childbirth. In these areas, there is often little to no chance of an ambulance arriving. The CHWs are also the first responders in emergencies, a role that requires both physical and emotional resilience. They often also provide vital health information and counseling on HIV testing and maternal health, and they help break down detrimental cultural myths around healthcare and HIV. Without the intervention of these women, the state of health in many communities would be disastrous.

3 Mia Malan, “Analysis: Why Policy is Failing Community Health Workers,” Bhekisisa Centre for Health Journalism, September 4, 2014, <https://bhekisisa.org/article/2014-09-04-why-policy-is-failing-community-health-workers/>.

One of the CHWs told me the reason that she chose to do this work was because she could not sit by and see her people suffering and dying.

Despite the vital role they fulfill, CHWs constantly find themselves in a battle with state actors who refuse to recognize them. Since most CHWs are volunteers, the CHW sector remains largely unregulated and unprotected by labor laws. Those contracted by non-governmental organizations or by the state usually earn a meagre stipend. The CHWs in Free State province are not formal employees of the Department of Health, but received a stipend of around \$67 per month in exchange for their services. In a crumbling health system, CHWs make an easy target.

TAC and SECTION27 embarked on a campaign against the Free State Department of Health to expose the perilous working conditions of CHWs in the province. Around this time, then-Free State Member of the Executive Council (MEC) of Health Benjamin “Benny” Malakoane and his officials decided to terminate the contracts between the Department and over 3,400 CHWs with no explanation.

The “People’s Commission of Inquiry into the Free State Healthcare System”⁴ was then launched to provide an open, neutral platform where users of the public healthcare system and others impacted could testify about the state of healthcare delivery in the province. The testimonies were harrowing. The Commission’s report indicated that, over the past few years, there had been a “muzzling of public healthcare practitioners and growing antagonism directed at media from the Provincial Department of Health.” The number of public sector doctors working in the province fell by 24% from 2014 to 2015.⁵ The Commission found that the government failed to protect access to healthcare services, especially for the poor. It also found that whistleblowing and even candid engagement with the provincial department was discouraged and at times met with severe intimidation.⁶

At the time, there were pending corruption charges against Benny Malakoane in a case that was repeatedly postponed and eventually disappeared. Malakoane was charged with fraud and corruption for receiving kickbacks worth \$878,000 for irregularly awarded contracts

4 Thembeka Gwagwa, Bishop Paul Verryn, and Thokozile Madonko, “Free State in Chains: Report back from the People’s Commission of Inquiry into the Free State Healthcare System 7-8 July 2015,” Treatment Action Campaign, <https://static1.squarespace.com/static/5b9e99f150a54fcd0cce515e/t/5d7eafab25734e4ae9e13409/1568583641551/People%27s+Commission+of+Inquiry.pdf>.

5 Ibid., p. 7.

6 Ibid., p. 31.



Various views of the hearings conducted at the People's Commission of Inquiry.

in the municipality of Matjhabeng when he was municipal manager.⁷ During his tenure as MEC, the Free State Department of Health was in a state of turmoil. Investigations revealed that the department had run out of more than 200 essential drugs and supplies at the provincial depot.⁸ There was no reprieve in sight.

7 Amy Green, "Fifth Postponement in MEC Malakoane's Corruption Case," Bhekisisa Centre for Health Journalism, August 27, 2014, <http://bhekisisa.org/article/2014-08-27-fifth-postponement-in-malakoane-corruption-case>. See also a video clip from the protest, "Coalition demand justice now for Benny," Treatment Action Campaign, May 18, 2016, video, <https://www.youtube.com/watch?v=9LE3ZUIKusY>.

8 Mia Malan, "DA Reports Free State Health Dept to SAHRC Over 'Gross

The struggle against this corruption was intertwined with the struggles of the CHWs. Many CHWs are elderly women, with the stipend as their sole source of income; most are family breadwinners, supporting many dependents. Desperate and aggrieved, the CHWs started organizing and formed a structure within TAC. Many CHWs were also branch members of TAC, and often mobilized together for access to greater healthcare services. TAC assisted the CHWs in requesting a meeting with the MEC's office. Letters were written to the MEC, the premier of the Free State, and the head of Department of Health. However, all attempts to negotiate were futile, and promises made regarding proposed meetings never materialized.⁹

Desperate and frustrated by the termination of their services, the shoddy administration of the health care system, and the failure of the MEC or anyone else to hear their grievances, the CHWs decided to hold a night vigil at Bhopelo House, the Department of Health's head office. Bhopelo House is an old colonial building with dark glass windows that lies at the center of town. From the outside, it looks like a prison, despite the name "Bhopelo" meaning "life."



CHW banner: "Vote for health not corruption."

Over 130 CHWs arrived from different parts of the province throughout the day. By evening, they were ready to begin their quest to demand answers. They held hands, sang, danced, and held up cardboard signs and banners that said "Vote for health not corruption."

Inc Competence," Bhekisisa Centre for Health Journalism, June 24, 2014, <http://bhekisisa.org/article/2014-06-24-00-da-accuses-free-state-health-mec-of-gross-incompetence>.

⁹ TAC Submission to the People's Commission of Inquiry into the Free State Healthcare System, July 7–8 2015.

The entire city center was brought to a standstill. They hoped the MEC would meet with them and try to understand their plight. Instead, they were met by police officers who knew nothing about health and cared little to understand why they were there.

The police had only one concern; they demanded to know whether the authorities had been notified about the gathering. There was confusion amongst the protestors about the question — had they not tried to request a meeting for months? Did they not have the right to protest? They were not harming anyone or destroying any property and could not understand why the protest was not allowed. Some TAC members told the police that they did not know a permit was needed. One of the police officers shouted that what they were doing was illegal and that they should go away. Fearful of what might happen next, some of the CHWs did leave, although there was no transport to take them home at 2:00 am. Most of the CHWs remained rooted to the ground saying, “we will not go.” Angered, the police officers called for more vans. If the women had any fear, it did not show. Before they knew what was happening, the CHWs were surrounded by police vans and thrown inside. They were not told where they were being taken.

News of the arrests spread, and more CHWs arrived at Bhopelo House at sunrise to show their support and anger that their comrades had been arrested during the night. The singing continued, and the CHWs, with even greater fervor and raw courage, sang that they too were willing to face arrest. More police arrived, and without giving them an opportunity to respond, arrested the second group of CHWs. We never found out on whose orders the police were acting, only that a complaint had been received from “higher up” that this protest needed to be stopped.



Some of the CHWs charged with protesting illegally.

The Legal Battle Begins

TAC called on SECTION27 to provide legal assistance to the CHWs who were arrested. We had been working with TAC to help the CHWs for years. We were aware of the failings of the provincial department, but we were shocked to hear they would go so far as to arrest CHWs during the night! We did not have much criminal law experience, but without the luxury of time whilst these women were behind bars, two of my colleagues immediately drove to Bloemfontein. It was a daunting and difficult task for them to find the CHWs, as they were taken to about five different police stations, and no one knew exactly how many people were arrested. When they finally arrived at the first police station, they found that many of the CHWs were kept in small holding cells, without access to HIV medication, sufficient food, or proper washing facilities. They requested that they be allowed to apply for bail for all the CHWs together. Thankfully, after 36 hours, bail was granted.

After many court appearances, the CHWs were charged for attending a gathering for which no notice was given. Outrage echoed throughout the country that these innocent elderly women were charged for protesting the shocking state of healthcare services. Various other stories emerged showing patients not receiving food or water after childbirth, shortages of medicine, and people waiting for several days before receiving any treatment at public health facilities. It also emerged that the department was \$47,317,000 in debt. Everyone wanted to know why the department was in debt, how they could deny the state of affairs, and if the CHWs posed such a threat that they needed to be criminalized.

This media attention only made the public prosecutors more determined to pursue a conviction against the CHWs, no doubt as a deterrent to others seeking to display their frustration with the administration and their abuse of public power. Many times during the trial our team made it clear to the prosecution that attending a gathering for which no notice had been given was not a criminal offence. There were also public outcries and further protests pleading for the state to drop the charges. They all fell on deaf ears.

Our Constitution provides that “Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.” But under the current provincial administration, this was not the case. A lengthy trial began against 130 women, and no one could have dreamed that, in our supposedly advanced justice system, the state stood a chance of convicting them. One woman called to testify

during the trial, Madame Tsiane, took to the stand unshaken by the intimidating courtroom or judge. She said to the court, “I am a grandmother; I left my grandchildren at home while they arrested me.”¹⁰



Protesting in support of those arrested for protesting.

Our team wrote to the head of the prosecuting authority, requesting that they drop the baseless case. He responded that there was a case to be made against our clients. Public faith in our prosecuting authority was almost entirely diminished as the senior prosecutors were seen as being selected to protect the interests of a few within the ruling party. We should not have been shocked when the prosecutors insisted on proceeding. Having a conservative magistrate did not help either. The CHWs were convicted of violating the Regulations of Gatherings Act (RGA) in the Magistrates’ Court. They were sentenced to imprisonment for three months or a fine of \$40. This was a lot of money for the CHWs, as it was more than half of their monthly income.

The trial magistrate found that the state had proven beyond a reasonable doubt that all the CHWs had attended a gathering for which no prior notice was given to the responsible officer, thus contravening section 12(1)(e) of the RGA, which states that any person who convenes

¹⁰ *Patricia Tsoali and Others v S*, Case No. 21/939/2014. Appeal: *Patricia Tsoali and Others v the State*, High Court of South Africa, Free State Division, Bloemfontein, Appeal No. A222/2015. See also “Victory at last for #BopheloHouse94: Long live democracy and the right to protest,” Joint statement by the Treatment Action Campaign and Section27, November 17, 2016.

or attends a gathering prohibited in terms of the Act is guilty of an offence. It also states that a convener of a gathering must give notice of their intention to hold the gathering to a responsible officer. It was on this basis that the court deemed the CHW gathering to be “illegal.”

For perhaps the first time, the CHWs had access to legal representation and expressed their belief that SECTION27 would win their case. As a social justice organization with strong moral convictions, we too believed it to be a winnable case. The failure at the Magistrate’s Court was a blow, but the battle was not over. We took the case on appeal to the High Court, arguing that the CHWs did not commit a crime. After the appeal, they were vindicated.

In the High Court, we argued that the conviction violated the principle of legality and should be set aside. Arresting the CHWs violated their right to protest. The government’s case was that, even though the RGA does not define the word “prohibit” or state that attending a gathering without prior notice is an offence, it was inferred from the tenor of the whole Act. The state’s counsel persisted that failure to give prior notice resulted in gatherings being “automatically prohibited.”

The purpose of the RGA is to regulate public gatherings and demonstrations. In the past, the responsibility to approve gatherings rested with magistrates, with the police playing a major role. The Riotous Assemblies Act 17 of 1956, the Suppression of Communism Act 44 of 1950, and the Internal Security Act 74 of 1982 were the three central pieces of legislation enabling the state authorities to prohibit and criminalize marches, gatherings, and demonstrations.¹¹ The apartheid regime used them to ensure that protests were as restrictive as possible, with excessive force used by the police to curb social resistance.

The misnomer in comparing the apartheid legislation with the current RGA framework is that the old order would criminalize a gathering only if attended after it was prohibited, not for failure to give notice. Section 57 of the Internal Security Act stipulated that any person who convened, publicized, or attended a gathering after its prohibition was guilty of an offence unless they could prove that they did know about the prohibition.

A report compiled by a Study Group on Freedom of Association and Freedom of Assembly, commissioned by the African Commission on Human and People’s Rights, emphasized that the proper purpose of the notification regime is to enable the state to meet its obligations to facilitate the gathering. It is not meant to limit the right to freedom of assembly. It concludes that

11 *S v Tsoaeli* at para. 18.

in the case of small public gatherings or gatherings leading to no disruption to others, no notification should be necessary. Core to the idea of a notification regime is that no sanctions be imposed merely for failure to notify, as to do so would be to punish people for exercising their right. Rather, sanctions may be imposed only when lack of notification is combined with demonstrable harms. Similarly, no assembly should be dispersed for failure to notify.¹²

The CHWs would not have caused any harm during their protest. Nevertheless, they were arrested and convicted.

In the Tsoaeli case, the court applied an interpretation in line with Section 39(2) of the Constitution, which requires that, when interpreting any legislation, a court must promote the spirit, purport, and objects of the Bill of Rights. The judge of the High Court agreed with our argument and set aside the convictions. The High Court found that the RGA does not provide for a summary prohibition of a gathering. Instead, it provides for a consultative process through the creation of a “safety triangle” between the convener, a local officer, and an authorized member of the South African Police Service (SAPS). The judgment said that a provision that allows for peaceful protestors to risk losing their liberty for up to one year and get slapped with a criminal record undermines the spirit of the Constitution.



Inside the courtroom at the appeal.

The State of Protest

A regime that criminalized protestors was not unique to the Free State. Other parts of the country were also criminalizing protestors under the guise of formalistic distortions of the RGA. There was also excessive force used by police officials. The visible culmination of this was the Marikana Massacre in 2012. Following an intense week-long protest at the Lonmin platinum mine, the SAPS opened fire on the crowd of

12 *S v Tsoaeli* at para. 69.

mineworkers. They killed 34 and injured 78. Then, 250 miners were arrested.¹³

In 2016, the Fees Must Fall movement saw widespread student protests against increases in tertiary institution fees. During that demonstration, police launched stun grenades into the crowd and arrested many students.

In the Western Cape, in the case of *Mlungwana and 9 Others v The State and Another*, the court dealt with a provision criminalizing the convening of a gathering for which no notice had been given.¹⁴ In this case, social justice activists were arrested after protesting against the state of sanitation facilities in the informal township of Khayelitsha. In its judgment, the court expressed that the lessons of our history remind us that we will never allow the people's right to freedom to be taken away and there is inherent power and value in freedom of assembly and demonstration. These are tools of democracy used by those who may not have access to other means of making their democratic rights count.¹⁵

The court also spoke about the criminalization of the leaders. If criminal sanctions are imposed on members or leaders of the organization that convened the gathering, the purpose is likely to be disrupted. If sanctions are aimed at the convener instead of the gatherers, the impact of the arrest and incarceration will, without a doubt, filter through to the gatherers and community. It must be accepted that the conveners would be "ngabo abahlabe ikhwelo" (they are the ones who made the clarion call for action).¹⁶

Jane Duncan, Professor at the University of Johannesburg, points to fundamental shifts in the coercive capacities of the state, away from overt repression and towards less visible, more pre-emptive forms of repression. She attributes this change to three indicators. The first is the change from human intelligence to signals intelligence.¹⁷ In 2003, then president Thabo Mbeki issued a directive requiring an expansion of the

13 South African History Online, "Marikana Massacre 16 August 2012," <http://www.sahistory.org.za/article/marikana-massacre-16-august-2012>.

14 *Mlungwana and Others v S and Another* (A431/15) [2018] ZAWCHC 3; [2018] 2 All SA 183 (WCC); 2018 (1) SACR 538 (WCC) (24 January 2018). See also *Mlungwana and Others v S and Another* (CCT32/18) [2018] ZACC 45; 2019 (1) BCLR 88 (CC); 2019 (1) SACR 429 (CC) (19 November 2018).

15 *Mlungwana and Others v S and Another* (A431/15) at para. 63.

16 *Mlungwana and Others v S and Another* (A431/15) at para. 83.

17 Jane Duncan, "Is South Africa Reverting to a Repressive State?" Inaugural professorial lecture, Council Chambers, University of Johannesburg, 13 July 2016, <https://www.uj.ac.za/newandevents/Documents/2016/Is-South-Africa-reverting-to-a-repressive-state.pdf>.

National Intelligence Agency's mandate to include political and economic intelligence. It later emerged that intelligence operatives were embroiled in internal factional battles in the African National Congress (ANC). When Jacob Zuma came to power, the domestic and foreign intelligence services were centralized into the State Security Agency (SSA). A high-level review panel report on the SSA confirmed shocking illicit activities during the Zuma years, which showed politically motivated operations, corruption, and a disregard for the rule of law. It was also used to serve the personal political interest of former President Zuma. SSA agents stole money and ran illegal covert operations. The report also suggests that the SSA influenced the media and spied on civil society organizations.¹⁸ In 2016, a former crime intelligence officer was charged with illegal surveillance of journalists.¹⁹

The second indicator is the shift from militarized policing to intelligence-led policing. This policing model uses risk assessment as its main tool to direct decisions about where and how to intervene. The SAPS used intelligence-led policing because police violence erodes trust between the police and communities. This form of policing, however, encourages problematic profiling of individuals or social groups thought likely to resort to crime, which leads to stereotyping.

The third indicator is the increasing use of pre-emptive methods to contain protests through manipulations of the RGA. The goal is to prevent protests from spilling out onto the streets (as is evident from the Tsoaeli and Mlungwana cases). Between 1997 and 2013, the SAPS Incident Registration Information System (IRIS) recorded 156,230 "crowd incidents." Of which, 90% were classified as "crowd peaceful" and 10% as "crowd unrest."

A research study on the right to protest in eleven municipalities collected and logged data on gatherings and protests between 2008 and 2013. This data revealed that most protests are peaceful and uneventful, unlike the dominant image in the media. The security cluster can use images of marauding mobs to create panic, turn the public against protestors (even those whose demands are legitimate), and justify heightened security measures against them. Yet, despite protests remaining

18 Pieter-Louis Myburgh, "The Real Rogue Unit: Jacob Zuma and his State [Capture] Security Agency's Nine Wasted Years of Impunity," *Daily Maverick*, March 11, 2019, <https://www.dailymaverick.co.za/article/2019-03-11-jacob-zuma-and-his-state-capture-security-agencys-nine-wasted-years-of-impunity/>.

19 Busi Mtabane, "Statement: R2K GP continues to picket outside Pretoria Specialized Commercial Crime Court!" Right 2 Know, September 12, 2016, <http://www.r2k.org.za/2016/09/12/statement-r2k-gp-continues-to-picket-outside-pretoria-specialized-commercial-crime-court/>.

largely peaceful, all municipalities surveyed instituted unreasonable restrictions on the right to protest.²⁰

In South Africa, the political powers are aware that they cannot engage in open repression. But informal repression is evident through the silencing and arrest of activists who raise awareness of the shortcomings of the political elite. At the local level, political assassinations of activists who oppose mining interests or fight for the rights of informal shack dwellers have been seen.²¹ The national government distances itself from these incidents and refuses to take accountability or acknowledge the political connection to the unrest.

Personal Liability in the Public Interest?

Following the High Court victory for freedom of expression and the right to health, the CHWs celebrated. Finally, they felt like the law was on their side. Filled with exaltation, our legal team began proceedings to sue the Minister of Police and prosecuting authority for the unlawful arrests and malicious prosecution. On the surface, it looked like a clear case of abuse of public power, which demanded that the officials be held accountable for their actions. If this claim were successful, each of the CHWs would have been entitled to a small monetary award. After some procedural difficulties emerged as the case for damages began, we realized that we would not be able to, in good faith, go ahead with the civil suit. To be a lawyer in the public interest is to constantly be conflicted between serving the needs of your client versus advancing the system for greater societal good. Sometimes we are fortunate and these two ideals meet, but most times they do not.

In the case of the criminal appeal against the convictions of the unlawfully arrested CHWs, overturning their convictions was clearly in the public interest to affirm the rights to protest and to health. Although we had hoped to be able to hold the state and the prosecutors accountable for their actions in a civil case, the practicalities were more complex. Even today, I have mixed feelings about whether such action would have caused the state to treat protestors with greater caution and respect in the future. Unfortunately, we did not have enough facts to test this challenge. We commissioned an opinion from a senior

20 Duncan, "Is South Africa Reverting," p. 8.

21 For example, the 2014 murder of Abahlali baseMjondolo (AbM) activist Thuli Ndlovu by ANC councilors in KwaZulu-Natal. See Daneel Knoetze, "ANC Councillors in Dock for Murder of Activist," Ground Up, March 20, 2015, https://www.groundup.org.za/article/anc-councillors-dock-murder-activist_2775/.

public interest lawyer, who told us that, considering the common law on these issues, our chances of success were slim. It was painful to accept this, and even harder to tell it to the CHWs.

At our meeting in Bloemfontein, I explained the steps we had taken and the opinion we received. I was ready to take the hits from our clients. They asked many questions, mostly for clarity, but a few accusatory. Finally, Maria stood and spoke on behalf of the group. She thanked us for everything we did to help them throughout the case, but said that they were tired of the process and thought the matter should be put to rest. She said that, as poor people, they never believed that the government was on their side, so it was easy for them to let go and try to move on. I had no words. Thankfully, Mark stepped in and addressed the group. He reminded them that they were not alone in their struggles. We would do everything in our power to help them in their fight for recognition and employment, and to demand that the government remove their criminal records.

Aluta Continua

What may have been a legal defeat for monetary compensation, upon further reflection, achieved outcomes that were far greater. We achieved sustained community mobilization at a critical point in our country's history. Some major successes were achieved through this case and campaign. In April 2018, an official national policy recognizing the role of CHWs in district health teams was passed. In the Free State, many of the CHWs now have formal employment contracts. This victory would not have been achieved without the mobilization of the CHWs and the consistent pressure placed on the administration by TAC.

Another important victory was that the MEC of Health in the Free State province resigned following mass public pressure. Unfortunately, the state of health in the province has not recovered from the reign of poor administration. But, as South Africa moves into a new ANC dispensation following the resignation of Jacob Zuma, we can only hope that the days of hostility against civil society are numbered. Various commissions have been set up over the past year to investigate allegations into state capture by political elites. Allegations by brave civil society activists that state resources were being looted by government officials at the expense of the poor have now been confirmed.

As South Africa moves toward the implementation of universal health coverage, spaces for civil society have opened just enough for the perception of consultation to be present. But this, at least, is the first step: a state willing to engage *with* activists instead of criminalizing

them. Whether this will translate into concrete change for CHWs like Maria, only time will tell. But, if they can remain optimistic, then so can I.

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The Dark Side of the Food Industry: Seeking Civil Society's Silence

Slavska Zec

Baby bottles are outdated. Today, we must embrace the changes offered by the food industry. A mother giving her baby a bottle filled with Coca-Cola — not milk — is no surprise. In fact, this is quite usual in Argentina. I've often wanted to ask the parents about the reasoning behind giving their newborns six tablespoons of sugar per bottle. To my surprise, they say this was some kind of "reward." However, far from giving kids "joy," "inspiration," or "dreams and desires" (common advertising phrases used by these companies), what they are drinking is, among other things, corn syrup, ammonium and sulfides, phosphoric acid, and an increased risk of diabetes mellitus in the medium term.¹ In the case of children, drinking 600 mL of Coca-Cola is equal to twelve tablespoons of sugar, which is 325% to 425% of the maximum daily intake.²

In my country, as in many others, Sundays are dedicated exclusively to family meals. For breakfast, we have the most coveted assortment of baked goods: scrumptious butter *medialunas* (half-moons) and warm *criollitos* (flaky buns). The former is an Argentinian rendition of the croissant, and are usually sweet. *Criollitos*, of different varieties, are more common in Córdoba than in the rest of Argentina and are an ideal companion for *mate* (a herb-infused hot drink). Thus, the day begins with mountains of fat, sugar, and calories.

Then comes the most important thing. Sunday's *asado* (fire-roasted meat) is a sacrament for all Argentinians. And because we like to stand out and occupy the top positions, we lead the world in red meat intake. The ritual begins with a *picada*, which involves countless sausages, deli meats, and cheese. And, although the WHO informed us that eating

1 El poder del consumidor [The power of the consumer], "Radiografía de... Coca-Cola (600 ml)" [X-ray of... Coca-Cola (600 ml)], Dec. 18, 2013, <http://el poder del consumidor.org/analisisdeproductos/radiografia-de-coca-cola-600-ml/>.

2 Ibid.

processed meat in excess increases the risk of cancer, we just look the other way. A *picada* would be nothing without bread made with refined flour, which, of course, contains little in the way of fiber and vitamins. However, the real delicacy is *achuras* (offal). From Araucanian heritage, the word means “what is not good” or “what is left over and thrown away”: animal viscera. Even so, they are a delicacy for us Argentinians. *Chinchulines* (beef’s small intestine), the large intestine, or the kidneys are some of the preferred offal together with the feast’s vedette: gizzard. What used to be the first thing to be discarded is now popular and essential in any *asado*. But let’s not forget the cherry on top: the world’s most famous dark sugary soft drink, with a perfect record of attendance at the family table on Sundays. The little ones have priority and are always served first. And, if they behave well, they are promised the most delicious and tempting dessert: ice cream. Even better in winters, because “buy one, get one free” sales of this product are everywhere. The ideal combination of sugar and fat, perfect to end the feast.

Scanning supermarket shelves for healthy food is not an easy task. In my case, it’s a lost cause. I ignore what these “foods” actually contain. With seductive labels and messages claiming to be something they are not, they entice me to buy. In the dairy section, next to the milk, we find boxes imitating milk, but far from it. Much cheaper than actual milk, the packaging reads “dairy product.” Similarly, some grated cheeses are actually “cheese flavored” processed breadcrumbs or semolina, or products with such fine print that you need a magnifying glass to read the label. With good vision, we can read others that say “grated cheese flavoring.” It’s the same with various yogurts, which hide behind being a “yogurt-based drink.” Beside traditional coffee, we have its evil twin. The only similarity is the packaging; it’s really “powder to prepare a coffee-based drink with dyed glucose syrup.” Would you like wholegrain bread with that? Be careful, because if you misread the label, you might never discover that you’re buying dyed white bread. If you pay attention, the cheaper honey, next to the real one, is a “high-fructose based food,” or fake honey. The picture is clear. Nowadays, we do not eat to feed ourselves, but rather to feed the big corporations that, from above, order us what to consume. We do not know the contents of the food we eat, and attempting to find out is almost impossible for an ordinary citizen who is not a nutritionist.

Fake promises are also frequent. Food advertising is deceiving, even though current regulations forbid “false statements or misleading information that may induce or lead the consumer to error.”³ But

3 Art. 1010 of the Civil and Commercial Code of Argentina.

companies take advantage of the lack of control to violate the rules established by the Argentinian Food Code and other laws. Furthermore, the flexibility of law and legal voids create a perfect smokescreen to mislead the consumer. The Argentinian State has actually failed to comply with the obligations of various international treaties. In turn, the industry's voluntary agreements are not effective, allowing it to violate the rights of the most vulnerable.

In this way, the most affected are children and teenagers, exposed to this kind of manipulation from a young age. One study showed that 90% of the cereals, desserts, and cookies that children eat are unhealthy.⁴ The advertising for these products directly influences children's consumption preferences, resulting in more child obesity.

It took me a long time to realize the link between poor nutrition and adverse health effects. Fortunately, at FUNDEPS⁵ we have been addressing public health issues, especially a healthy diet, for several years, lifting the veil of ignorance on this issue. The more I research, the more I am concerned about the lack of information we receive on the food offered by large supermarket chains and fast food restaurants and how difficult it is to find this information. It never ceases to amaze me that an activity as essential as eating has so little space on the political agenda.

The obesity epidemic is rapidly spreading in our region, and it is not exclusive to higher-income countries. On the contrary, poverty leads to poor nutrition. Poor people cannot afford to eat well, so cheaper, unhealthy food appears. In addition to being more affordable and tempting, fast food contains products high in saturated fat, sugar, and sodium. Fresh fruits and vegetables are a luxury beyond their reach. As reported by the Pan-American Health Organization,

It can be said that the poor do not eat what they want or what they know they should eat, but what they can. Restrictions to food access determine two simultaneous phenomena, which are two sides of the same coin: poor people are malnourished because they do not have enough to eat and are obese because they eat poorly, with a significant energy imbalance. The food they can afford includes industrialized, mass-produced, undifferentiated,

4 FIC Argentina, FUNDEPS Argentina, and the Catholic University of Santa Fe, "El engaño oculto detrás del etiquetado de alimentos" [The hoax behind food labeling], Nov. 23, 2017, <http://www.fundeps.org/el-engano-oculto-de-la-industria-detras-del-etiquetado-de-alimentos/>.

5 FUNDEPS is a non-profit organization that researches, advocates, and develops strategic litigation to achieve the creation of public policies that ensure sustainable development. Thus, its actions promote the defense of human rights at a local, national and regional level, while fostering participatory democracy to create dialogue where different opinions are heard, and public policies are constructed based on collective agreements.

and cheap products. In the metropolitan area of Buenos Aires, Argentina's central cluster, the prices of fruit and vegetables, lean meats, and dairy tend to increase above the inflation average. Facing this situation, poor people select food rich in carbohydrates, fat, and sugar, which prevents them from achieving adequate nutrition but satisfies their appetite.⁶

In this context, several human rights activists, doctors, journalists, and civil society organizations began warning consumers about the adverse health effects of this food and the abusive practices of the food industry regarding consumers' right to health and access to information. The battle to limit these practices is constant. It implies supporting the State in establishing a series of policies, such as efficient, clear labeling of products, taxing junk food, and restricting processed food advertising targeted at children and teenagers.

Despite the efforts of some countries to find solutions, however, the power of the food industry keeps growing. Like a giant, it ravages everything in its wake, committing abuses against civil society. In this chapter, I compare cases from three countries in the region where many researchers and activists have been victims of a food industry that has hindered their work or prevented the adoption of public health measures. Industry has used novel methods, including spying on activists, indirect censorship of awareness campaigns, financing highly questionable research, and more. Finally, I will highlight the efforts of some Latin American governments that, by implementing effective public policies, have attempted to counter the impunity that the food industry has enjoyed for all these years; which proves that, despite everything, there is still "evidence for hope."⁷

Argentina: No Conflict, No Interest?

Argentina won the gold medal for obesity of children under five in the region, awarded by the Panorama of Food and Nutritional Safety.⁸ As mentioned above, experts warn that both overweight and obesity are problems, primarily affecting children and teenagers from the

6 Manuel Peña and Jorge Bacallao (Eds.), *La obesidad en la pobreza: un nuevo reto para la salud pública* [*Obesity and Poverty: A New Public Health Challenge*] (Washington, DC: Pan American Health Organization, 2000), p. 13. <http://iris.paho.org/xmlui/handle/123456789/4006>

7 Following the title of the book by Kathryn Sikkink and C. B. Walling (2018).

8 FAO, OPS, WFP, and UNICEF, *Panorama de la Seguridad Alimentaria y Nutricional en América Latina y el Caribe* [*Overview of Food and Nutrition Security in Latin America and the Caribbean*] (Santiago de Chile, 2018), <http://www.fao.org/3/CA2127ES/ca2127es.pdf>

most vulnerable sectors. Famine, obesity, and poverty are three of the scourges that most afflict children in our times.

The current statistics are embarrassing; one out of every three people in Argentina is poor. This means that about 12 million Argentines do not manage to put what they need to survive into their mouths every day.⁹ As if this were not enough, overweight and obesity in teenagers has increased by 16% and 34%, respectively. One out of every four school-age students is overweight. Despite Argentina's gold medal of shame, other Latin American countries are hotly vying for silver and bronze. Between 20–25% of Latin American children and teenagers are overweight or obese and these levels are increasing.¹⁰

And at this point, I must insist on what is already apparent. Food, obesity, and the marketing of products that contain little real food are closely linked. The food industry invests more in advertising and marketing than any other sector in the world. With these powerful, effective weapons, they try to convince us that we are free to make our own decisions, when in reality we are victims of the art of persuasion, seduced by creative marketing experts. In this way, we and our children become perfect puppets of the big food companies. But fortunately, civil society organizations can open our eyes to these issues, right?

When we hear about NGOs or civil society organizations (CSOs), most of us think of groups that fight for just causes, based on principles of transparency, acting with integrity for the benefit of society. This is not always the case. Unfortunately, some “facade groups” addressing certain issues — such as healthy eating or tobacco — are financed by industry to hinder progress, co-opt the debate, defend the interests of corporations, and question scientific research that concludes that certain products are harmful to people's health. Indeed, the mechanisms used by industry are numerous and varied. From censorship, lobbying, and strategic litigation, we move on to what now concerns us: the financing of “bad” CSOs to interfere with specific public policies. These associations, also known as “facade groups,” are “fake CSOs”

9 INDEC, “Incidencia de la pobreza y la indigencia en 31 aglomerados urbanos” [Incidence of poverty and indigence in 31 urban agglomerates], *Informes Técnicos* 1, no. 180/*Condiciones de vida* 1, no. 12 (Buenos Aires: Instituto Nacional de Estadística y Censo [National Institute of Statistics and Censuses], 2017), https://www.indec.gob.ar/uploads/informedesdeprensa/eph_pobreza_01_17.pdf

10 Federación Interamericana del Corazón Argentina [Inter-American Heart Federation Argentina], “Se aprobó el Plan de Acción para la Prevención de la Obesidad en la Niñez y la Adolescencia” [The Action Plan for the Prevention of Obesity in Children and Adolescents was approved], Oct. 3, 2014, <https://www.ficargentina.org/se-aprobo-el-plan-de-accion-para-la-prevencion-de-la-obesidad-en-la-ninez-y-la-adolescencia/>

subsidized by industry, which use the prestige and position of these so-called non-profit groups to defend their interests covertly.

Under these circumstances, it is essential to uncover the conflicts of interest and danger generated by these situations. The importance of exposing these fake CSOs lies in the fact that they pose as researchers or experts in the field while speaking, without saying so, with the voice of the industry from which they obtain funding to defend industry interests. In other words, they confuse and hinder the development of effective public policies.

In 2015, the director of the Latin American Nutrition Society (SLAN) received a letter from the most prestigious researchers in the region saying, “We have an epidemic of chronic non-communicable diseases related to unhealthy diets. It is therefore problematic that many of the corporations in the food and beverage industry that contribute to this problem are themselves sponsors of nutrition conferences. [...] These corporations’ decision to sponsor is motivated by the need to protect their interests and to link their increasingly threatened brand image with a message of health and well-being.”¹¹ Following this, a commission was created, entrusted with the mission of developing a code to manage conflicts of interest. In 2018, a conference was announced *without* the sponsorship of the usual brands.¹²

There are many similar cases in Argentina. The first International Nutrition Congress was held in Buenos Aires in October 2017. Despite being filled with researchers and scientists from all over the world whose work is aimed at promoting “real” foods, the congress was a scandal. The registration fees were very high and yet crumbly sandwiches of something that seemed to be ham and cheese, and an “open bar” of Coca-Cola and water, were offered as meals. It was not long before the complaints came in. Participants uploaded photos on social media denouncing the situation and sent letters to the organizing committee expressing their deep disappointment. On the one hand, participants were upset by the sponsorship from the sugary drinks industry. On the other hand, the food offered should have been a clear reflection of what participants were promoting in the conference rooms — good nutrition. Having sugary drinks at health and nutrition events, they said, is inconsistent with the recommendations of the World Health Organization and the efforts of many countries to reduce their

11 Soledad Barruti, “El camino hacia una nutrición sin marcas” [The path to brand-free nutrition], *La Nación*, Oct. 1, 2017, <https://www.lanacion.com.ar/2074136-el-camino-hacia-una-nutricion-sin-marcas>

12 Ibid.

consumption. Also, they stressed the obvious lack of consideration for the effects of the food offered on health; nor was such a menu sensitive to people who do not eat meat for personal or religious reasons. They also warned that the packaging created a large amount of unnecessary plastic waste. They were outraged and frustrated because all of this ran completely contrary to what conference participants themselves promoted as nutrition.

Subsequently, *El Clarín*, one of the largest newspapers in Argentina, published an article interviewing different people from the food industry who defended the consumption of processed foods. They claimed that these foods should not be associated with obesity and could be part of a healthy diet. In this line of argument, contradicting PAHO's recommendations, Julie Miller Jones pointed out that it was "a misconception to believe that obesity and chronic diseases are related to the level of processing."¹³ Susana Socolovsky, president of the Argentine Association of Food Technologists (AATA), described PAHO's Nutrient Profile Model as "controversial," implying "an unjustified demonization of processed foods."

Similarly, institutions such as the Environment and Natural Resources Foundation (FARN), which receives funding from companies, participates in government spaces by bringing false arguments to the discussion tables, thus deterring the implementation of public policy. So, who funds the research of scientists and nutritionists? Danone, for example, funded research on the benefits of yogurt intake.¹⁴ Ironically, salt packages bear the seal of the Argentinian Nutrition Society, although they recommend that we consume less salt. We should be wary of nutritionists who favor "moderate" consumption, who argue that food should not be demonized, that the pleasure of eating everything should be legalized, and who attempt to disprove the risks of consuming ultra-processed food, thus shifting responsibility onto the consumer.

Another compelling case is that of the Buenos Aires program "*Mi Escuela Saludable*" (My Healthy School)¹⁵ and the International

13 El Clarín, "Expertos defienden los alimentos procesados" [Experts defend processed foods], Oct. 16, 2017, https://www.clarin.com/sociedad/expertos-defienden-alimentos-procesados_0_rkJoRfM6b.html

14 Nancy Babio Sánchez, Guillermo Mena Sánchez, and Jordi Salas-Salvadó, "Nuevas evidencias científicas sobre el beneficio del consumo de yogur" [New scientific evidence on the benefit of yogurt consumption], Faculty of Medicine and Health Sciences, Rovira i Virgili University, Spain, http://www.iispv.cat/media/upload//arxiu/VARIS/Monografico_beneficios_yogur_AF.pdf

15 City of Buenos Aires, "Mi escuela saludable" [My healthy school], <http://www.buenosaires.gob.ar/vicejefatura/desarrollosaludable/mi-escuela-saludable>

Life Sciences Institute (ILSI), an organization that advertises itself as an international non-profit scientific integration institution dedicated to promoting public health worldwide. However, ILSI is funded by companies in the food and agribusiness industries: Arcor, Basf, Bayer, Chacra Agrícola Santa Rosa, Coca-Cola, Dow Agrosiences, DSM Nutritional Products, Mondelez, Monsanto, Publitec Editora, Syngenta Agro, and Syntech Research.¹⁶ So, how can an institution funded by companies whose ultimate goal is to increase the sales of their unhealthy foods, and thus their profits, contribute to healthy eating projects?

This school nutrition program “seeks to improve eating and physical activity habits to slow progress and decrease the prevalence of overweight and obesity; and contribute to improving the quality of life of the educational community.”¹⁷ ILSI was hired to conduct a field study to survey children’s eating habits and take their body measurements (weight, height, etc.) in the public schools of the city. Strikingly, this education program, which sought to promote healthy eating, did not interfere in practice since it did not alter the menus of school cafeterias. The first flaw is apparent: How can theoretical food education work if it does not include real food in its proposal?

The Buenos Aires Legislature enacted law 3704/10 aimed at promoting a varied, safe, healthy diet for school-age children and teenagers through promotion and prevention policies.¹⁸ The law provides that the Ministry of Education is the authority responsible for implementing school food programs. The program “*Mi Escuela Saludable*,” inaugurated in the framework of this law, however, has no authority to intervene in school lunches.

Thus, companies in the food and agribusiness industries visit schools disguised as NGOs and use children as research subjects to free themselves from guilt. This research will be used to design future public policies. This is as absurd as trying to solve the problem of obesity without changing eating habits. Meanwhile, in Argentina, the promotion of healthy eating found no effective policies other than a few cafeterias that claim to be healthy but are more of the same. School cafeterias are far from meeting PAHO/WHO recommendations and serve merely to alleviate hunger, not to nourish. While independent science has found that the key problem behind obesity is junk food, companies instead assert that the real cause is lack of exercise. In this way,

16 ILSI, “Miembros” [Members], International Life Sciences Institute, <http://www.ilsa.org.ar/index.php?com=miembros>

17 City of Buenos Aires, “Mi escuela saludable” [My healthy school].

18 Law No. 3704/10.

the ubiquitous industry tries to offer new ways to encourage physical activity.

The conflict of interest here is apparent. Industry meddles in health and nutrition discussions by funding research and sponsoring conference speakers to contradict scientific evidence and WHO principles related to healthy eating. According to nutritionist Marion Nestle, "The industry's efforts to influence nutritional recommendations to the public and establish an image of its products as nutritious go beyond lobbying Congress and government agencies. They go right to the core of nutrition as a profession. They engage experts, especially academics, in an explicit corporate strategy."¹⁹ The need to clean up scientific spaces, together with the need to protect access to transparent and accurate information from these conflicts of interest, are indispensable in achieving progress in public health.

The Right to Know What You Eat: Espionage and Sponsored Science

As we now know, the food industry is very adept at preventing access to accurate information about the products we consume and uses different, ingenious methods to achieve this. Specific cases include unethical research financed by industry, espionage on activists in Mexico, and "indirect censorship" of awareness campaigns in Brazil. Not surprisingly, it is not the only industry which does so; many industries finance research carried out by renowned scientists to obtain results favorable to their interests. The tobacco and pharmaceutical industries are two of the worst offenders.

Unethical Research in the United States

After three prestigious scientists from Harvard University published a misleading report on the (low) impact of sugar on people's health in the *New England Journal of Medicine*, the University of California analyzed internal documents and reports from the former Sugar Research Foundation (now called the Sugar Association).²⁰ They found that the institution had disbursed \$50,000 to pay for the study, but the source of the funding was not reported in the article. The response from the

19 Marion Nestle, *Food Politics: How the Food Industry Influences Nutrition and Health* (Berkeley: University of California Press, 2013).

20 Cristin E. Kearns, Laura A. Schmidt, and Stanton A. Glantz, "Sugar Industry and Coronary Heart Disease Research: A Historical Analysis of Internal Industry Documents," *JAMA Internal Medicine* 176, no. 11 (2016): 1680–1685, <https://doi.org/10.1001/jamainternmed.2016.5394>

funder was swift, saying simply that, at the time, medical journals did not require information about funding sources. Still, it maintains that sugar “does not have a unique role as a cause of heart disease.”

Corrupt scientists selling their knowledge is nothing new. Unfortunately, acting as a spokesperson to proclaim the supposed benefits or minimize the adverse effects of certain foods has become common practice. These experts are often hired to tour different countries to undermine regulatory measures on healthy eating. Thus, with industry cooperation, some scientists are funded to carry out nutritional research that unfailingly yields beneficial results for the corporations. A few years ago, *The New York Times* revealed how Coca-Cola, the world’s largest sugared beverage company, was financing scientific research that attempted to disassociate Coke from being a leading cause of the obesity epidemic.²¹ The research aimed to convince consumers that the “real” solution to obesity and noncommunicable diseases was simply to engage in more physical activity without worrying so much about what they eat. For them, nutrition and healthy eating were not determinants of health, in clear contradiction to the weight of scientific evidence. While admitting the health benefits of physical activity, evidence shows that this is not enough to counteract the harm produced by sugary drinks.

A similar case occurred with confectionery producers, who funded the “scientific discovery” that children who consumed candy tended to have a lower incidence of overweight or obesity. In response, the Associated Press discovered that the study was funded by a group representing Butterfingers, Hershey, and Skittles, three popular confectionery brands. Once again, the industry attempted to distort scientific research in its favor.

It seems that economic benefit is the only goal of those in power. Their methods? Misleading advertising, unethical scientific studies, and various marketing techniques that try to sell us little colored mirrors as if they were gold. Due to this manipulation, consumers, deprived of any real information, are unaware of their permanent vulnerability. Thus, the credibility and trustworthiness of medicine and nutrition are put to the test. The general public has less access to reliable information and is so confused that no one knows what they are consuming anymore. Meanwhile, the State does nothing to counteract this.

21 Anahad O’Connor, “Coca-Cola financia a científicos que buscan explicaciones alternativas para la obesidad” [Coca-Cola funds scientists seeking alternative explanations for obesity], *The New York Times en español*, Aug. 20, 2015, <https://www.nytimes.com/es/2015/08/20/espanol/coca-cola-financia-a-cientificos-que-buscan-explicaciones-alternativas-para-la-obesidad.html>

Espionage in Mexico

Espionage is another strategy used by the food industry to violate the rights of activists working to defend the right to healthy food. Not just in the movies or on television, this real-life espionage is stranger than fiction. One target was three fervent health promoters trying to curb the severe epidemic of obesity that afflicts Mexico, including implementing front label warnings and a tax on sweetened beverages. Alejandro Calvillo (director of El Poder del Consumidor [The Power of the Consumer]), Simón Barquera (researcher at the National Institute of Public Health), and Luis Encarnación (then director of Fundación Mídete [Foundation Mídete]) all had their essential human right to privacy violated. During July and August 2016, all three received messages on their cellphones with links that infected the phone with surveillance malware. The attackers gained privileged access to the device, including stored documents and photos; they could use the camera at will and even track the phone's location, among other things.²² "Alejandro, I'm sorry, my father just passed, we're in a bad situation. Here are the details of the funeral for you to attend," said one message with the spyware link. Another message accused the victim of having an extra-marital relationship, including the link to the (non-existent) photos that corroborated it.

In 2014, the State of Mexico had approved a tax on sugary drinks in an effort to stop the obesity problem seriously affecting the country. The tax had positive effects: consumption decreased by 12% in December 2014 and the intake of healthier options increased.²³ The three individuals targeted were working to double that tax. Experts recommended a levy of at least 20% of the price of the product,²⁴ to which the affected industries wanted to respond.²⁵

22 Nicole Perlroth, "Programas de espionaje fueron usados contra promotores de un impuesto a los refrescos en México" [Espionage programs were used against promoters of a soft drink tax in Mexico], *The New York Times en español*, Feb. 11, 2017, <https://www.nytimes.com/es/2017/02/11/programas-de-espionaje-fueron-usados-contra-impulsos-de-un-impuesto-a-los-refrescos-en-mexico/>.

23 Alianza por la Salud Alimentaria [Alliance for Food Health], "Destapando la verdad: El impuesto a las bebidas azucaradas en México funciona" [Uncovering the truth: The tax on sugary drinks in Mexico works], June 2016, <https://elpoderdelconsumidor.org/wp-content/uploads/2017/08/hoja-informativa-asa-el-impuesto-funciona.pdf>. See also Perlroth, "Programas de espionaje fueron usados contra promotores de un impuesto a los refrescos en México" [Espionage programs were used against promoters of a soft drink tax in Mexico].

24 Alianza por la Salud Alimentaria [Alliance for Food Health], "Destapando la verdad".

25 According to the report by Citizen Lab (affiliated to the University of Toronto) together with the Network in Defense of Digital Rights, SocialTIC, Ac-

The cyberattack caused a scandal in the country. The discovery of this type of illegal software — allegedly also used by the Mexican government against journalists — left civil society and the community perplexed. These mechanisms, which are supposed to be used to counter organized crime under the strict authorization of a judicial body, were being used against the civilian population as a means of intimidation and censorship. Activists and journalists who raised their voices in search of solutions to problems that concern all of Mexican society were the most affected.

Censorship in Brazil

“You have the right to know what you eat” was the name given to a campaign launched by the Alliance for Adequate and Healthy Food²⁶ in reaction to the obesity epidemic affecting the whole region, Brazil in particular. The alarming decline in food quality and the tendency to consume ultra-processed food means that 57% of Brazil’s population is currently overweight. This right-to-know campaign exposed the true ingredients of everyday processed foods: large quantities of sugar, fat, and sodium. For example, it showed how much refined sugar was hidden in a package that allegedly contained only “natural” fruit juice. The industry’s misleading advertising tends to link such products to health properties so the right-to-know campaign highlighted the direct link between obesity and unclear labels/misleading information. Such is the lack of information consumers have when making decisions about their daily diet.

In parallel, the right-to-know campaign supported the adoption of warning labels on the front of packages to help consumers make healthy choices. The National Health Surveillance Agency (Anvisa) is reviewing the regulations since the status quo favors the excessive consumption of this type of unhealthy food, which contradicts the industry’s claim that a lack of physical activity is responsible for obesity.

The awareness campaign was launched in various media, including *TV Globo*. Despite having fulfilled all the requirements demanded by the television station in purchasing advertising space, however, they still had not received a response 20 days later. Faced with this situation, the Alliance requested a response from the station, and the

cess Now, and Amnesty International, the malware would have been from the firm NSO Group from Israel. It would have been sold only to governments.

26 It is composed of CSOs of public interest, professionals, associations, and social movements to develop and strengthen collective actions that contribute to the realization of the human right to adequate food by advancing public policies to guarantee food and nutritional security and food sovereignty in Brazil.

company replied that it had not yet made a decision and was still discussing the content of the ad.

The Alliance stated that

Our perplexity with the silence about the approval or disapproval of our commercial is increased by the fact that Globo broadcasts the advertisements of ultra-processed food companies. They sell products advertised as healthy without questioning whether they are clearly transmitting everything that consumers need to know about these products. Of course, these commercials follow current legislation and regulations on communications, but so does our campaign. Particularly, it complies with the right to information guaranteed by law.²⁷

In essence, the awareness campaign was trying to send out a public service message regarding the right to healthy and adequate food. Moreover, the ad was based on abundant scientific evidence linking the consumption of processed and ultra-processed foods with obesity. This situation amounts to indirect censorship by trying to delay broadcasting the campaign and not offering an adequate reason to justify the refusal to broadcast it. Unfortunately, this is not the first time that defenders of the right to health have faced obstacles when they decided to reveal what the industry so zealously conceals. Unfortunately, it will not be the last.

Who Keeps Company With Wolves, Shall Learn to Howl

The Colombian Superintendence of Industry and Commerce (SIC) has little sympathy for human rights activists as evidenced by prior censorship of awareness campaigns and inaction on claims of misleading advertising of sugary drinks. Two cases reveal the closure of civil society spaces in Colombia by the SIC. The first case resulted in a victory in court; the second shows the ongoing struggle against the misleading advertising of unhealthy products targeted at children.

Case 1: Educar Consumidores

Educar Consumidores [Educate Consumers] is a CSO that seeks to put a stop to abuses of information by the food industry. One of its main goals is to help formulate public policy that guarantees the human

27 Aliança pela Alimentação Adequada e Saudável [Alliance for Adequate and Healthy Eating], "TV Globo e Aliança: O Silêncio que diz muito" [TV Globo and Aliança: The silence that says a lot], Dec. 5, 2017, <https://alimentacaosaudavel.org.br/blog/noticias/tv-globo-e-alianca-o-silencio-que-diz-muito/2536/>.

right to health and conscious and responsible consumption. To this end, they seek to safeguard the right of access to information about healthy food through advocacy on consumer issues affecting human health. With this in mind, the organization launched a television commercial — “*Cuida tu vida, tómala en serio*” [Take care of your life, take it seriously] — an awareness-raising strategy that warned of the dangers of the high consumption of sweetened beverages (soda, bottled juice, and iced tea). Its purpose was “to raise public awareness of the high risk [that] consuming sweetened beverages poses to public health.”²⁸

In retaliation, in August 2016, Gaseosa Posada Tobón S.A., one of the largest sugared drink companies in South America, denounced Educar Consumidores to the SIC requesting, among other things, that the campaign be terminated for disseminating misleading information. They claimed four elements in their defense: 1) “there are several products sweetened with sweeteners, aspartame, and many other options that allow the drink not to contain a single gram of sugar”; 2) that “no scientific studies show that the consumption of any (such) product has adverse effects on health”; 3) that damage to health is caused by the excessive consumption of any product containing sugar; and 4) that there are other products that contain higher amounts of sugar, but only “three products are disparaged” (bottled juices, soft drinks, and iced tea).

The following month, the SIC ordered Educar Consumidores to cease broadcasting the commercial, without first notifying it of the preliminary investigation against it and without allowing it to present any arguments in defense of the commercial and the campaign.²⁹ In addition to eliminating the campaign that explained the harmful effects of consuming sweetened beverages, the SIC had a most surprising and absurd measure: to subject all information that Educar Consumidores wished to disseminate regarding these products to prior control; in other words, “prior censorship,” which is expressly prohibited by both national and international law. This situation essentially meant that Educar Consumidores was banned from publishing information in any media without express authorization from the SIC.

Faced with this situation, Educar Consumidores was forced to terminate the campaign in all media. But in September 2016, the organization filed a writ for the protection of fundamental rights against the

28 File T-6029705, book 1, folio 1.

29 This occurred despite Educar Consumidores’s interest in and commitment to providing the SIC with scientific evidence to prove the integrity of the content included in the commercial, the campaign’s advertisements, and the campaign’s informational documents.

ensorship of the SIC before the Constitutional Court of Colombia, after both the trial and appellate courts had dismissed the claim.³⁰ Many CSOs reacted to this, and FUNDEPS and FIC Argentina filed an *amicus curiae* in the case. It was essential to CSOs that no precedent to validate the restriction on freedom of expression and the right to inform should be created, as it would be a severe threat to the work of human rights activists. Such a limitation on civil society's latitude is unacceptable; human rights defenders must be able to express themselves freely.

Along with the writ for the protection of fundamental rights filed by Educar Consumidores, other CSOs³¹ filed a similar claim³² at the same time in order to safeguard the right to freedom of speech and the consumers' right to access information. Both claims³³ were reviewed by the Constitutional Court, which also considered the *amicus curiae*. The court reached two significant conclusions. First, that the SIC violated the plaintiff's right to due administrative process by "initiating an administrative action against them without notification, preventing the exercise of the guarantees that derive from it." In other words, it was prevented from providing relevant evidence based on scientific facts to enable it to exercise the right to defense.

Second, the court also stated that the SIC "violated the plaintiffs' fundamental right to freedom of speech by subjecting the transmission

30 By means of Proceeding T-6.029.705. On this basis, an attempt was made to safeguard the rights to freedom of speech, information, and due process to provide the population with relevant information regarding the consumption of certain foods without any censorship or unfounded limitations. The SIC denied having restricted those rights by granting unsuccessful arguments. In contrast, Gaseosa Posada Tobón S.A. (who initiated the case denouncing Educar Consumidores before the SIC) resorted to unpredictable silence and did not issue any statement. The red light was turned on in the trial court when the 44th Civil Judge of the Bogotá Circuit dismissed the claim. However, the battle did not end there, and Educar Consumidores appealed this decision invoking, among other things, Article 20 of the Political Constitution, which prohibits censorship, and which was not evaluated by the intervening magistrate. The appellate court ruling came soon after. The bad news kept coming. The Civil Chamber of the High Court of Bogotá upheld the verdict of the previous instance. It ruled that there neither due process nor freedom of speech were violated. Concerning this last matter, the court pointed out that the decision of the SIC was simply aimed at limiting this right to guarantee consumers' access to information that would enable them to make responsible decisions.

31 Centro de Estudios de Derecho Justicia y Sociedad (Dejusticia), Fundación Colombiana de Obesidad (FUNCOBES), Red Internacional de Grupos Pro Alimentación Infantil (IBFAN), Red PaPaz, Centro de Consumidores para la seguridad alimentaria y nutricional, FIAN Colombia, La Liga contra el Cáncer, Fundación Anaas, Fundación Semilla Andina, Comité de Impulso Nacional de la Agricultura Familiar en Colombia, and others.

32 Corte Constitucional de Colombia, Sentencia T-6.139.760.

33 Corte Constitucional de Colombia, Sentencias T-06.029.705 and T-6.139.760.

of information on the consumption of sweetened beverages to prior content control. The Constitutional Court was very clear on this matter. Prior censorship is prohibited, and possible responsibilities may only be determined at a later stage: “any limitation on freedom of speech is presumed to be suspicious, and must, therefore, be subject to a strict judgment of constitutionality.” The court further clarified that freedom of information covers two essential aspects: 1) not only the freedom to report accurate and fair facts or opinions but also 2) the right of consumers to receive or access food-related information to make informed choices.

What is surprising is that the court gave the SIC a taste of its own medicine by ordering it to publish the ruling on its website, together with a summary, a measure that the SIC had required of Educar Consumidores after its resolution. And there was more: the ruling ended with a firm reprimand to the institution, emphatically stating that it can no longer exercise any kind of prior control over information and that it must respect due process.

This marked the happy ending of a great struggle. Fundamental rights had won (this time), as the director of Educar Consumidores pointed out: “This decision by the Constitutional Court becomes an instrument that not only protects the rights of the plaintiff organizations but also serves as a national and international reference to prevent public health information campaigns from being silenced again, which is why we consider it an excellent judicial precedent, protecting health information from interference by those who do not want that information to be known.”³⁴

Case 2: Red PaPaz

“Real fruit,” “recommended by pediatricians,” “it makes you grow and learn,” and more, are some of the misleading messages that sweetened beverages “Hit” and “Fruper” used in Colombia to attract children and their parents to consume them. Given this situation, in December 2017, Red PaPaz,³⁵ an organization helping parents protect and educate children and teenagers about nutrition, filed two complaints to the SIC expressing its concern about these campaigns and requesting protection for children from this type of misleading advertising.

34 Educar Consumidores [Educate Consumers], “El ‘mensaje de bien público’ que la SIC acusó como publicidad engañosa” [The ‘public good message’ that the SIC accused as misleading advertising], Oct. 2, 2019.

35 This organization was created in 2003 to advocate for the protection of the rights of children and teenagers in Colombia, and to strengthen the capacities of adults and social actors to guarantee their effective fulfillment.

After some time without a response, Red PaPaz asked the SIC about the status of its complaints. The SIC finally replied by denying the organization that filed the claim the possibility of participating in the complaint process. In view of this, Red PaPaz, representing over 36,000 parents, requested to be included in the proceedings. After months of silence, Red PaPaz filed a writ for the protection of fundamental rights, specifically the right to access adequate information on the food offered by the industry, to protect consumers against misleading advertising that could influence their consumption decisions, and to allow Red PaPaz to participate in actions aimed at defending these rights.

The claim was dismissed twice; now the Constitutional Court must rule on the case. This body has yet to issue a decision, but there are two possible outcomes: 1) a ruling similar to that of the *Educar Consumidores* case in favor of better protection for the health and nutrition of children, or 2) an endorsement of the ruling of the lower courts.

“Evidence for Hope”³⁶

Sugar, saturated fat, and sodium are some of the unhealthy ingredients contained in many of the products advertised by the food industry. Hour after hour, day after day, I am the victim, along with the rest of society, of messages perfectly designed by marketing experts, inviting us to eat food that does not nourish us. In reality, we know little about the content of the products we consume and the companies that sell them are very good at hiding their true nutritional value, preventing us from making informed decisions.

The turmoil of our world is efficiently harnessed by a food industry that provides an extraordinary variety of products for all needs. Not only does it offer us supposedly “nutritious” “ready-to-eat” foods, at very reasonable prices, without the need to waste time in the kitchen, it also offers practical packaging, durable products durability, and countless promises of health benefits. These products are so strikingly attractive that they appear to be “superfoods”: a kind of elixir of life.

Scientific evidence, however, has demonstrated the direct link between obesity and various chronic diseases with the consumption of these foods.³⁷ As we have seen, many activists, researchers, nutritionists, and CSOs have raised their voices to denounce this situation and

36 Title of the book by Kathryn Sikkink and C. B. Walling (2018).

37 Barry Popkin, “Nutritional Patterns and Transitions,” *Population and Development Review* 19, no. 1 (1993): 138–57.

to promote public policies that defend the right to health and access to information regarding healthy decision-making by consumers.

Thus, despite the narrowing of civil society spaces because of the actions of multinational food companies — as we have seen in Mexico, Colombia, Argentina, and Brazil — more and more countries are confronting the industry to protect the health rights of their populations, thanks to the efforts of activists and researchers. In 2016, for example, Chile succeeded in implementing a new, more rigorous front-of-package labeling system that requires products exceeding limits set by the Ministry of Health to include black and white octagonal warning stamps that read “HIGH IN,” followed by “CALORIES/SATURATED FATS/SUGAR/SODIUM,” as the case may be.³⁸ This new regulation allows the consumer to identify less healthy foods associated with obesity and other chronic diseases quickly and efficiently. Despite the relative newness of this measure, the positive effects of the new labeling system are already visible. Some food companies have even reduced the amount of salt, sugar, and saturated fat in their products to avoid having to use the warning labels.

Fortunately, Chile’s model has spread to other countries in the region: Peru, Uruguay, and Mexico have joined the list of countries that took up the idea of guaranteeing the consumer’s right to clear, accurate, non-misleading information to enable informed choices. Brazil is also reviewing its labeling system. In Colombia, this debate has continued for several years with the idea of increasing information about the benefits or dangers of certain foods, thus reducing diseases resulting from unhealthy products.

The negative impacts on people’s health of advertising unhealthy foods is already known, as are the dishonest practices carried out by the industry. Still, in the words of Kathryn Sikkink, “if I have more hope than others perhaps it is because I have seen dramatic improvements in some human rights during my lifetime.”³⁹ I genuinely believe that the ongoing struggle that we activists, researchers, and CSOs lead has already achieved results that were unthinkable in the past and, in turn, herald a hopeful future. The struggle for the right to unbiased information about food will not be without challenges. Even so, the

38 VOA News, “Chile seeks to fight obesity with new food labeling law,” June 28, 2016, <https://www.voanews.com/a/chile-seeks-to-fight-obesity-with-new-food-labeling-law/3395681.html>

39 Kathryn Sikkink and C. B. Walling, *Razones para la esperanza: La legitimidad y efectividad de los derechos humanos de cara al future [Reasons for hope: The legitimacy and effectiveness of human rights for the future]* (Buenos Aires, Argentina: Siglo XXI, 2018), p. 21.

conquests are essential, despite the reversals. With perseverance and conviction, I am sure that eventually we will see our work bear fruit.

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How Do We Tell Difficult Stories in Difficult Times?

Kerem iftiođlu

Introduction

One day, I was sitting in a café with two good friends from high school, discussing politics as usual. I was excited about the new things I was learning at university and eager to tell them: “You know, early years of the Republic weren’t just about progress, revolution, and positive things. There were some horrible state crimes committed too.” I was naïve and unrefined. I gave this new information with the emotional enthusiasm of a young kid who, when he discovers new music, asks his friends impatiently to listen to it. As is often the case, my friends weren’t ready to accept what I offered.

As a member of a generation born after the 1980 military coup d’état, and coming from a secular, upper middle-class family, it was during my university studies in the early 2000s that I first encountered a different narrative about the history of modern Turkey. I was blown away by the revisionist presentations in courses about this period and about Mustafa Kemal Atatürk, the army officer who founded the Republic of Turkey.¹ I could have cast a blind eye on these new stories, but I chose not to. I now wonder, why? Thinking back, I guess it had something to do with the way I was introduced to them. In the history we learned in primary school and high school, the narratives were rigid, serious, and made no space for my own opinions. The approaches at university, however, were interesting, engaging, and non-judgmental. I felt both uneasy at the collapse of the narrative I knew and curious to learn more.

I was convinced that part of the struggle for democracy was about creating conditions conducive for people to feel open and curious about learning new things. In the context of human rights, this meant

1 In official discourse, Mustafa Kemal Atatürk almost single-handedly defeated the forces sent by the Allies and emerged victorious from what is today referred as the Turkish War of Independence of 1923.

being open to learning alternative narratives about the past. That's why I have always had a particular interest in how to convey difficult topics in ways that trigger curiosity and creative reflection. Today, I'm in a privileged position to work towards that objective in my current role as the Outreach and Advocacy Officer for the Truth Justice Memory Center (Hafıza Merkezi).²

Hafıza Merkezi is an NGO set up in 2011 to advocate for coming to terms with past atrocities in Turkey. In our work, we focus on the enforced disappearances of the 1990s that occurred during the armed conflict between the Turkish military and the Kurdistan Workers' Party (PKK).³ We work to uncover the truth about the disappearances, support families in their pursuit of justice, and contribute to a collective memory about these crimes.

In this chapter, I will discuss how different forms of visual storytelling can help create new spaces for learning and societal reflection, allowing us to reach out to a larger audience in our human rights work. In relation to our work at Hafıza Merkezi, I will discuss the field of memorialization in particular — a field that, throughout twentieth century, has been increasingly used for telling the long-denied stories of grave human rights violations.

At Hafıza Merkezi, we are already experimenting with engaging creative disciplines to produce new ideas for storytelling. Of course, this new engagement is taking place in a deteriorating political context in Turkey, as the developments following the failed Kurdish-Turkish peace process create new challenges that make our demands even more relevant. The lack of short-term prospects in the legal and political domains led us to explore the role of culture and the arts in making our demands visible. From the perspective of our work, this means thinking about the role of memorialization in coming to terms with past crimes.

First, I will present background information to explain the current political context in Turkey, including the opening and closing of civil spaces since the Justice and Development Party (AKP) came to power in 2002. Second, I offer basic definitions and concepts in the field of

2 Hafıza Merkezi's website can be found here: <https://hakikatadalethafiza.org/en/>.

3 During this period, government military and security forces forced hundreds of thousands of people to abandon their villages, extra-judicially killed civilians, and forcibly disappeared them. For an overview, read the background section in the report by Özgür Sevgi Göral, Ayhan Işık, and Özlem Kaya, "Unspoken Truth: Enforced Disappearances," Truth Justice Memory Center (Hakikat Adalet Hafıza Merkezi), 2013, 14–23, https://hakikatadalethafiza.org/wp-content/uploads/2015/02/Konusulmayan-Gercek_ENG.pdf.

memorialization and evaluate the existing efforts in Turkey. Third, I discuss the opportunities presented by novel ways of visual storytelling and the insights gained for the future of memorialization practices in Turkey. Fourth, I give a detailed account of Hafıza Merkezi's recent experimentation with the creative sectors, bringing together our data on enforced disappearances and exploring ways to present them to the public. Finally, I discuss some of our challenges and questions about this work.

Some Background on Turkey

Relative Opening of the Early 2000s

In 2002, the AKP, a moderate Islamist party with a self-proclaimed conservative-democratic vision, came to power with a clear single-party majority. In its early years in power, adopting a full EU membership agenda, it took important steps towards civilian control of military institutions and opened up new space for democratic deliberation.⁴ Previously, Turkey's forceful coercion of social, religious, and ethnic groups that remained outside of the envisioned Turkish national identity caused a long list of collective traumas experienced by Armenians, Greeks, Kurds, Alevis, leftists/socialists, and political Islamist groups. The AKP's coming to power challenged the status quo since the Islamist social movement had historically been on the outskirts of the political sphere. This crack that the AKP opened led to alternative readings of history, making space to challenge previously state-sanctioned historiography.⁵

The first critical academic conference on the Armenian Genocide was held by the two leading universities in Istanbul in September 2005.⁶ It was a groundbreaking event on the history of the mass killings of Armenians during the waning years of the Ottoman Empire.⁷ Alternative

4 Kemalism — the founding ideology of the Republic of Turkey based on Mustafa Kemal Atatürk's sweeping political, social, cultural, and religious reforms — had a strict interpretation of secularism and nationalism. See Eric J. Zürcher, *Turkey: A Modern History*, 3rd ed. (New York: I.B. Tauris, 2004).

5 Onur Bakiner, "Is Turkey Coming to Terms with its Past? Politics of Memory and Majoritarian Conservatism," *The Journal of Nationalism and Ethnicity* 41, no. 5 (2013): 691–708, doi:10.1080/00905992.2013.770732.

6 Cf. Fahri Aral ed., *İmparatorluğun Çöküş Döneminde Osmanlı Ermenileri: Bilimsel Sorumluluk ve Demokrasi Sorunları* [Ottoman Armenians during the Demise of the Empire: Responsible Scholarship and Issues of Democracy] (İstanbul: Pandora Kitabevi, 2011).

7 The controversy around the conference transformed it into a national debate. Despite the Minister of Justice's accusations of "treason" and "stabbing the nation in the back" and a court decision to suspend the meeting, politicians

readings of this history created pockets of resistance from within the state. This took its biggest toll with the assassination of Hrant Dink, an Armenian journalist, compassionate figure of peace, and advocate for Turkish–Armenian reconciliation.⁸ His funeral in 2007 became a historic demonstration when a hundred thousand people marched together chanting, “We are all Hrant, we are all Armenians.” Thanks to this mobilization, an online civic campaign, “I Apologize” (Özür Diliyorum), was initiated in 2008 by a number of public intellectuals, calling for a collective apology for the Armenian Genocide.⁹ Other memory initiatives led by a broad range of societal groups — including Alevi, Muslims, LGBTIs, feminists, and Kurds — also mushroomed during this period, immensely diversifying the memory landscape of Turkey.

In 2008, a series of high-profile trials began against alleged members of an ultranationalist, clandestine organization called *Ergenekon*, suspected of creating the conditions for a military coup against the AKP government.¹⁰ The arrest of members of counterinsurgency teams and high-ranking commanders involved in crimes during the 1990s gave hope to human rights groups, lawyers, and the families of victims. Despite serious fair-trial violations and questions about hidden political motivations, these court proceedings offered a crucial window of opportunity for coming to terms with the “dirty war” of the 1990s. Finally, in 2013, the government declared the commencement of a process for the peaceful resolution of the Kurdish–Turkish conflict. This was another historical moment where, for the first time in their long-running history of conflict, the Turkish State publicly recognized the PKK as a party that could negotiate.

from the ruling and opposition parties, including then–Prime Minister Recep Tayyip Erdoğan, did support the right to hold the conference freely.

8 Hrant Dink was assassinated by Ogün Samast, a 17-year-old Turkish nationalist, on January 19, 2007. The killing is alleged to be an organized crime, facilitated by a nationalist underground group within the state called the Ergenekon network. The investigation is still ongoing and hasn’t been able to reveal the truth behind the assassination.

9 The petition was signed by over 5,000 people in the first 24 hours and 30,000 people by January 2009. Nora Shahnazarian, “Breaking the Nation’s Taboo: The *Meds Yeghern* and Turkish Intellectuals,” PONARS Eurasia, Policy Memo no. 86, 2009, http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/pepm_086.pdf.

10 Özgür Sevgi Göral and Luxshi Vimalarajah, “Democratization in Turkey: Policy Implications and Support Options.” Policy Report. Berghof Foundation, 2014, [https://www.berghof-foundation.org/en/news-article/policy-report-democratization-in-turkey/...](https://www.berghof-foundation.org/en/news-article/policy-report-democratization-in-turkey/)

Back to Conflict and the Closing of Civil Spaces

After successive election victories, the AKP's reformist agenda started to give way to increasing authoritarian tendencies. As reflected in the repressive police force, the extensive use of tear gas, the polarization of society over religious symbols, and the denial of some basic human rights, such tendencies had already been on the rise when corruption allegations erupted in 2013. The allegations resulted from escalating tensions between the previously allied AKP government and the Gülenists — an Islamic movement that operates as a clandestine network to infiltrate and influence vital state institutions — turning into full-blown political war.¹¹

Following the June 2015 elections where the AKP lost its single-party majority for the first time, things got worse much faster. Recep Tayyip Erdoğan, at the time serving in what was then the politically neutral office of President, acted like a party leader and changed the AKP's political course. The AKP broke its alliance with its Kurdish constituents, gave up on the Kurdish–Turkish peace process, and turned to ultranationalists for a new alliance.

On the night of July 15, 2016, a section of the Turkish armed forces launched a military operation to topple the civilian government. Soldiers and tanks took to the streets and shot at civilians; military jets dropped bombs on the parliament. Fortunately, the attempt failed. The full picture of those responsible still remains in the dark, but it is generally accepted that a Gülenist flank of the army was behind it. The failed coup further complicated Turkey's political landscape.

This collective trauma gave the government the pretext to use extraordinary authorities indiscriminately and indefinitely. Turkey remained in an extended state of emergency for two years, issuing a series of emergency decrees that dismissed tens of thousands of public officials. Furthermore, hundreds of unions, federations, confederations, private health institutions, private educational institutions, private institutions of higher education (foundation universities), private radio and television outlets, newspapers, magazines, news agencies, publishers, and distributors were closed by emergency decrees. In addition, 1,401 associations and 122 foundations were dissolved. The appeals against the dismissals and closures afforded no remedies.¹²

11 Umut Uras, "Turkish Probe Marks AKP–Gülen Power Struggle," *Al Jazeera*, December 24, 2013, <https://www.aljazeera.com/indepth/features/2013/12/turkish-probe-marks-akp-gulen-power-struggle-2013122473646994231.html>.

12 "Fact Sheet: State of Emergency Measures in Turkey," Human Rights Joint Platform [Insan Haklari Ortak Platformu (IHOP)], February 23, 2017, <https://www.docdroid.net/Mv9RHjE/fact-sheet-state-of-emergency-measures-in-turkey.pdf>.

Criminal investigations on alleged support for the Gülenists were implemented in sweeping fashion without factual evidence. In most cases, evidence for membership in a “Gülenist terrorist organization” was based on enrollment in a particular school or having an account in a bank owned by Gülenist entrepreneurs, without establishing any direct link between the person and the criminal action.¹³ Not surprisingly, Kurdish, leftist, and liberal opposition groups were increasingly targeted through investigations using emergency laws. Erdoğan also used his emergency powers to change Turkey’s governing structure from a parliamentary to a presidential system. In April 2017, Turkey held a constitutional referendum under the state of emergency. The vote passed by a narrow margin with controversies over electoral misconduct.¹⁴

Attacks on Kurdish Politics and Memory

The state of emergency was terminated in July 2018. However, the counterterrorism laws continue to be widely misused against government opponents. This is particularly true for Kurdish political actors, especially after Erdoğan allied in 2015 with the ultranationalists.

In the context of the Kurdish conflict — as in many other conflicts in the world — there are fundamental differences, as well as organic relationships, between the armed groups and political actors. In times of peace, the differences gain significance as the civilian actors gain autonomy and increase their capacity to shape politics. When the conflict re-escalated in 2015, however, both parties quickly targeted this autonomy. The state began fiercely criminalizing the Kurdish movement and its supporters, pronouncing any declaration of support or sympathy as either propaganda or membership in a terrorist organization. In this context, and after the removal of parliamentary immunity from MPs of the People’s Democratic Party (HDP) in May 2016, a wave of prosecutions took the party’s political leadership hostage. As of 2019, nine MPs have been under arrest for over two years, including co-chairs Demirtaş and Yüksekdağ.¹⁵ In late 2016, at least 118 mem-

13 Office of the United Nations High Commissioner for Human Rights, “Report on the Impact of the State of Emergency on Human Rights in Turkey, Including an Update on the South-East, January–December 2017,” March 2018, http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf.

14 Kareem Shaheen, “Erdoğan clinches victory in Turkish constitutional referendum,” *The Guardian*, April 16, 2017, <https://www.theguardian.com/world/2017/apr/16/erdogan-claims-victory-in-turkish-constitutional-referendum>.

15 Bianet, “The Status of HDP MPs to Date,” February 21, 2017, <http://bianet.org/english/politics/183865-the-status-of-hdp-mps-to-date>.

bers of the party's provincial and district organization were detained and arrested in a single operation.¹⁶ In 2018, at least 2,000 members or supporters of the party were detained, with at least 500 arrested. The government also removed the elected mayors of Kurdish-held municipalities and centrally appointed trustees in their place, using the extraordinary authority granted by emergency laws. Ten of the 11 municipalities won by the HDP in the 2014 local elections were removed based on accusations of links to terrorist organizations. After the recent March 2019 local elections, the HDP lost four of these municipalities to the AKP but regained six.¹⁷

This policy later extended to targeting Kurdish collective memory, as the appointed trustees started removing and destroying memorials, parks, and monuments built by Kurdish municipalities. First, the *Roboski Massacre Memorial*, built in memory of 34 people killed in 2011 by an army airstrike,¹⁸ was removed in January 2017. The statue was created in December 2013 during the moderate atmosphere of the solution process. It depicted a mother surrounded by air-to-surface missiles as she stretches her hands to the sky. In May 2017, the name of a park in Diyarbakır was changed¹⁹ from Tahir Elçi, a renowned Kurdish lawyer and human rights defender, to the name of a village guard.²⁰ This surely had a tremendous emotional impact, not only because Tahir Elçi was a leading human rights lawyer, beloved by the Kurds, but also because he was assassinated on December 28, 2015, shortly after the peace process collapsed.

The removal of symbolic memorials continued. The statue erected in Kızıltepe in memory of a 12-year-old boy, Uğur Kaymaz, killed in police crossfire, was also removed and replaced by a watchtower. The latest attack was the breaking up of the Saturday Mothers' weekly vigil in Galatasaray Square before their seven hundredth gathering on

16 Bianet, "HDP Executives Detained in Simultaneous Operations," December 12, 2016, <http://bianet.org/english/politics/181621-hdp-executives-detained-in-5-cities>.

17 BBC Turkey, "Local Election 2019: HDP Lost Some Municipalities in the East and Southeast, Played a Key Role in Many Provinces," BBC.com, April 1, 2019, <https://www.bbc.com/turkce/haberler-turkiye-47769338>.

18 Rudaw, "Turkish Officials Remove Roboski Massacre Memorial," January 9, 2017, <http://www.rudaw.net/english/middleeast/turkey/09012017>.

19 Bianet, "Trustee Changes Name of Tahir Elçi Park," May 19, 2017, <https://bianet.org/bianet/other/186629-trustee-changes-name-of-tahir-elci-park>.

20 Village guards are part of a paramilitary structure in Turkey in which they are recruited, mostly amongst ethnic Kurds, to act as local militia in towns and villages to support state security forces against the PKK. See https://en.wikipedia.org/wiki/Village_guard_system.

August 25, 2018.²¹ Since then, the mothers have been banned from the square that they've been gathering in since 1995.



Roboski Massacre Memorial. The names of the 34 bombing victims are inscribed around the memorial.



Roboski Memorial removed from its place, taken on January 8, 2017.



Uğur Kaymaz statue depicting two children holding a pigeon.



A watch-tower standing in place of the Uğur Kaymaz statue.

21 *New York Times*, "Police in Turkey Break Up Mothers' Weekly Vigil," August 26, 2018, <https://www.nytimes.com/2018/08/26/world/europe/turkey-protest-saturday-mothers.html>.

The Field of Memorialization

What is a memorial? In its most basic form, a memorial is an object, a statue, or similar structure of large stone, made to honor a person or event.²² Memorials originated from cemeteries, places where we mourn and leave a mark as a reminder of our lost ones. In modern times, memorials have acquired the critical role of creating conversations about social values. In the 1980s, Pierre Nora developed the concept of *lieux de mémoire* (sites of memory), which encompassed not just memorials, memorial sites, and graves, but also emblems, flags, and national anthems.²³ In some interpretations, in addition to memorials, museums, and buildings, “such sites of memory even included works of literature, authors, philosophers, historical treaties, battles, specific days, whole historical periods, laws, symbolically charged slogans, concepts, organizations and fairy tales.”²⁴

Memorialization Around the World

Naturally, memorials have gone through changes as notions of democracy and human rights began challenging nationalism during the twentieth century. To conceptualize this shift, Bickford distinguishes between the classical and the new paradigms of memorialization.²⁵ In the classical paradigm, symbols emphasize either the glory or grief of a nation pulling itself together. Here, there is space for only one hegemonic memory imposed over previous ones. War museums, statues of generals, and other symbols of nationhood are typical examples of this paradigm. The shift to the new paradigm began with the need to deal with human atrocities, most prominently the legacy of the two World Wars and the Holocaust. Instead of trying to validate history, these new memorials took the role of creating space for asking questions and engaging with memory.

In many ways, the German experience of memorializing the Holocaust represented a point of reference for others. From the “voluntary

22 *Cambridge Dictionary*, <https://dictionary.cambridge.org/dictionary/english/memorial>.

23 William John Niven and Chloe E. M. Paver (eds.), *Memorialization in Germany Since 1945* (London: Palgrave Macmillan, 2010), p. 1.

24 *Ibid.*, p. 6.

25 International Commission on Missing Persons (ICMP), *Memorializing Missing Persons in the Western Balkans: Challenges and Perspectives* (Sarajevo, 5 March 2012), <https://www.icmp.int/wp-content/uploads/2012/03/icmp-jcsi-94-3-doc-report-memorializing-mmissign-persons-in-wb-challenges-and-perspectives.pdf>.



Memorial to the Murdered Jews of Europe, Berlin 2017, © Hanlu Cao.

forgetfulness” of the 1950s to a more responsible position, Germany today takes memorialization so seriously that it is now a subject of state policy.²⁶ The trajectory of Germany’s memorialization is traceable not only in number, but also in form. During the 1990s, a strong counter-monument movement emerged in the country, seeking to replace *presence* in monumental form with *absence*, relating negative spaces with memory. The new generation of artists of this time argued that a monument fixed in time, space, and meaning not only betrayed the traumatic experience, but also failed to fulfill art’s role of challenging the world around it.²⁷ They argued that conventional forms displace memory because, with their didacticism, they remain self-contained, detached from daily life, thus helping us to let go of our own responsibility to remember. Instead, these artists wanted to understand monuments as processes, changing the role of the form from being a source of meaning to a trigger for reflection.

Peter Eisenman’s winning design in the German national competition for a memorial to the murdered Jews of Europe wasn’t as provocative as Horst Hoheisel’s, who suggested blowing up the Brandenburg Gate and using its remains on its former site, marking “one destruction with another.” Nevertheless, despite its similarity to classical

26 Niven and Paver, *Memorialization in Germany Since 1945*, p. 1.

27 James E. Young, “The Counter-Monument: Memory Against Itself in Germany Today,” *Critical Inquiry* 18, no. 2 (Winter 1992).

monumental forms, Eisenman's submission also created a very vibrant space for creative reflection. Spacious and disorienting at the same time, the memorial invites visitors to walk in between 2,711 concrete blocks, each of different size and height, spread across a 19,000 square meter area.

Since the 1990s, memorialization works have proliferated in places like Latin America with considerable success when transitioning from repressive regimes. In these examples, memorials move beyond one-dimensional narratives to creatively open spaces for civic-engagement. In Chile, Villa Grimaldi Peace Park transforms the most important torture and detention centers of the Chilean secret police into a national park with multiple features that create space for personal reflection and school tours for young people. In Peru, the Eye that Cries incorporates the symbolism of Quechua, the indigenous people of the Andes, to create a space for meditative contemplation, encouraging visitors to confront human cruelty with an inward journey. In Argentina, the design and construction of the *Parque de la Memoria*, as well as the many memorial artworks inside the park, are the result of a lively collaboration between human rights organizations and the University of Buenos Aires.²⁸

Memorialization in Turkey

In relation to Turkey, any mention of memorialization should begin with the weekly gatherings of Saturday Mothers. The silent vigil was first convened on May 27, 1995, one day after Hasan Ocak's body was found.²⁹ He was 30 when he died, one of 1,352 forced disappearances, according to tentative numbers gathered by Hafıza Merkezi. Ocak was a teacher and a socialist; he ran a tea shop in the Gazi Quarter of Istanbul, a mostly Alevi area.³⁰ He disappeared on March 21, 1995,³¹ a few

28 Covering a very large area outside the city center, the park is an amalgamation of different types and forms of memorialization. The main monument, sitting in the middle of the park and dedicated to the victims of state terror, is a big stone wall inscribed with the names of more than 9,000 people in alphabetical order. The list is not exhaustive, but as new people are identified, their names and information are added to the empty stones.

29 Z. G. Goker, "Presence in Silence: Feminist and Democratic Implications of the Saturday Vigils in Turkey," in *Social Movements, Mobilization and Contestation in the Middle East and North Africa*, ed. J. Beinlin and F. Vairel (Stanford, CA: Stanford University Press, 2011).

30 Alevis constitute a religious minority group in Turkey whose Shi'a adherents follow a syncretic, heterodox, and mystical view of Islam, which is perceived as a deviation by the adherents of the majority Sunni Muslims.

31 ANF News, "Saturday Mothers Demand Justice for Hasan Ocak," March 23, 2019, <https://anfenglishmobile.com/human-rights/saturday-mothers-demand-justice-for-hasan-ocak-33809>.

days after the Gazi Quarter riots,³² which began with shots fired by people believed to have connections with the deep state. His death became the tipping point for a protest that proved more resilient than any other. From that day on — except for the 10-year break from 1999 to 2009 due to the heavy police crackdown — the Saturday Mothers kept gathering in Galatasaray Square every week at 12 noon for 30 minutes, holding up photos of their loved ones.

During the 2000s, Turkey witnessed many other memorialization initiatives led by different social, religious, and ethnic groups. To document these practices, Hafıza Merkezi put together a website in 2013, presenting a collection of major memorialization initiatives.³³ This sample provides an opportunity to make general observations about memorialization in Turkey.

The dates of implementation of these projects show that the 2000s witnessed the democratization of memory in Turkey. Of the 28 projects documented, 22 were carried out after 2005, 16 of them between 2005 and 2010. Unsurprisingly, these memorials were all mobilized by groups systematically targeted by the state: leftists, and ethnic and religious minorities, including Kurds, Armenians, Greeks, Alevis Jews, Circassians/Cherkess, and Assyrians. Memorials commemorating symbolic figures of Kurdish nationhood constitute a majority, with 15 projects, mostly parks or monuments. Five projects dealing with the legacy of Armenians in Turkey are either restoration or reactivation projects of historical churches. Five projects focused on the memory of Alevis and six on leftists. Similar to what is seen worldwide, all projects were initiated via the mobilization of victim groups and local communities. With 21 projects, Kurdish local municipalities were the biggest public supporters. Ten projects were carried out independently by NGOs, and many involved direct community ownership via private donation. Central state agencies provided support in only three projects, which almost always came with strings attached.

32 The 1995 Gazi Quarter riots were four days of unrest in which 23 people were killed and more than 1,400 rioters, police, and civilians were injured. See https://en.wikipedia.org/wiki/Gazi_Quarter_riots.

33 As the website was launched in 2013, it did not include some memorialization works, most importantly the Roboski Massacre Memorial. The project, carried out in partnership with the World Policy Institute, was part of Hafıza Merkezi's learning process about memorialization around the world. Following the first workshop in December 2011, Hafıza Merkezi then launched another workshop in February 2013, bringing together participants from Turkey with experts on memorialization from Germany, Israel, and Bosnia. In this 2013 workshop, the next step of looking critically at the existing projects in Turkey was decided upon. The project team focused on works that served the consolidation of democracy, eventually selecting 40 memorialization efforts.

The democratic quality of the project improves as ownership moves from central to local. In cases of NGO or community support, projects were usually carried out with the consultation and participation of victims. This also holds true for most municipally supported projects. In projects with strong grassroots support, we almost always observe better quality, diversity, and room for democratic dialogue. These projects show great variation in form, yet in terms of aesthetics, irrespective of the group, most memorialization works in Turkey take the classic forms of monuments, statues, anniversary gatherings, and parks. Usually one-dimensional in their narrative, they do not offer creative tools or reflective spaces. As with most classical memorialization works, their focus is on restoring the honor of victims in public spaces.

Innovative Approaches and Visual Storytelling

In focusing on the more traditional forms of memorialization, like statues, memorials, parks, museums, and commemorations, my purpose was to pinpoint various aspects of these works that trigger democratic debate, civic engagement, and creative reflection. The examples mentioned above, however, fail to go beyond dignifying victims. When talking about memorialization in Turkey, it is important to note that the problem is not so much the lack of memorials, but rather their appeal for the wider population and for younger generations. The period after 2000 marked a remarkable pluralization of memory, including a surge in the production of films, television series, books, and academic research on alternative memories. During this period, there have been lively discussions about how to relate to the past, and considerable mobilization for transforming some renowned prisons into sites of conscience.

It is hard to identify many examples that both open up discussion about the past and are relevant and compelling for younger generations. Political and civil actors involved in such work are often not familiar with the novel aesthetics and communication tools that are crucial in creating such appeal. There is a cultural gap and a lack of collaboration between the human rights community and the creative sectors. This is the rationale behind our recent efforts at Hafıza Merkezi to collaborate with creative people to find new ways of storytelling.

The Generation Gap in Turkey

I remember how withdrawn I was when I joined the Saturday Mothers vigil. I felt a wide gap between their experiences and mine. The Saturday Mothers were subject to the gravest state violence. Their loved

ones had been taken away, tortured, killed, and disappeared as the price for their political actions and ethnic identities. Most couldn't find their loved ones' bodies and have no closure to their suffering. Along with a significant number of 1980s leftist militants, the disappeared were largely ethnic Kurds who were either active political leaders, local figures, or random villagers living in conflict zones.³⁴ On the other hand, I came from a secular upper-middle-class background. I went to private schools and had a Western-oriented upbringing with the privilege of not being confronted with law enforcement. The gap between the Saturday Mothers and me was tremendous. That gap may be narrower now, but it is still there. I understand that for many this gap is too scary to attempt to narrow.

I don't think the gap between someone who suffers grave crimes and someone who doesn't can be recovered. But I know that efforts to communicate immense suffering do help society heal. This is why I find it particularly helpful to create new spaces for the wider population to engage with politically difficult issues — spaces that meet people where they are. And I do believe that novel mediums like animation, film, interactive design, data visualization, and even games³⁵ can make valuable contributions to these efforts.

In my experience with human rights activism in Turkey, we lag in our ability to use these opportunities. The reasons for this are complex, but may relate to a lack of collaboration and transition across generations. The organizations that form the human rights community are still dominated by older generations whose modes of action originate from political traditions of the past. In this tradition, the urgency of the political message comes at the expense of aesthetic reflection and interpretation. Young people, on the other hand, relate to life differently. They adapt to and are engaged with new technologies, and they don't like to be told what to think. Instead, they demand to interact, participate, and be part of an experience. This is what new technologies allow them to do. In Turkey, the human rights community currently fails to create spaces for their curious involvement.

This generational gap has deepened the already existing cultural gap between the human rights community and the creative actors of society, but not because younger generations are uninterested in politics. On the contrary, we have seen their creative energy unleashed during the Gezi Park protests — a wave of demonstrations in 2013

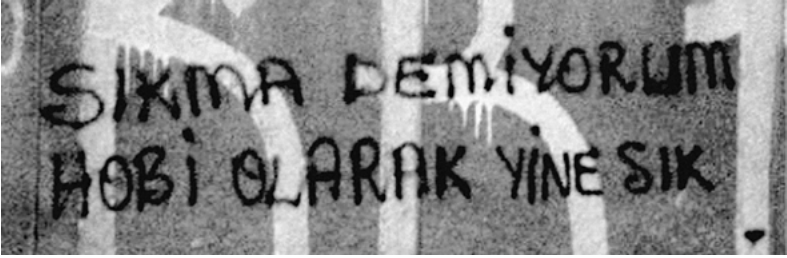
34 Göral, Işık, and Kaya, "Unspoken Truth."

35 Gamification is the application of game-design elements and game principles in non-game contexts.

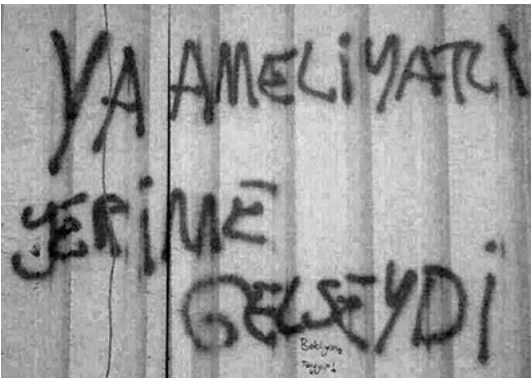
sparked after police violently intervened in a public sit-in contesting an urban development plan in Istanbul. During this spontaneous civic unrest, protesters used humor to respond to the disproportionate use of tear gas by painting daring but smart slogans in street writings.



Don't worry mom, we stay back. (A typical expression in response to a worried mother telling her child not to get involved in political demonstrations.)



I'm not telling you not to spray, I say spray as a hobby instead. (Mimicking a parental expression to convince children not to pursue an adventurous career, like music or acting. Used this time to address police use of tear gas.)



What if you hit me on my surgery scar?

Today, six years after Gezi and its optimism, we still find the same humor in courtroom posters designed by students in support of the hundreds of university professors currently being tried on charges of terrorist propaganda for signing a 2015–2016 petition calling on the state to stop atrocities in Kurdish cities.³⁶ As agents of change, civil society actors should work to catch this resilient, confident, vivacious tide in the younger generation. Helping memorialization efforts reach larger audiences would be a good first step.



*I'm on trial, therefore I am.
Hocamı Darlama is an idiom
similar to the slang "Stop
Busting My Teacher."*

*My eyes closed, I listen to
Çağlayan (name of Istanbul's
main courthouse).*



This is not a palace of justice.



36 See "Academics for Peace: Hearing Statistics as of 13.12.2019," <http://tiny.cc/zi5v4y>.

Trends and Examples in Visual Storytelling

With digitization, the act of commemorating, documenting, and archiving certainly finds new frontiers. These mediums hold great potential for creating spaces of curious engagement, and therefore should be more central to human rights and memorialization work. This trend has been hailed as giving rise to a plurality of memories by making silenced histories visible in its networked structure. Pierre Nora correlates the rise of the *lieux de mémoire*, sites where memory is constructed and artificially maintained, with the decline of *milieux de mémoire*, a socially shared living memory, archives being one such site. According to Nora, *lieux de mémoire* thrives on the ruins of living social memory and is foreign to social life: “This form of memory comes to us from the outside; because no longer a social practice, we interiorize it as an individual constraint.”³⁷ There are features of digitization, however, that many argue contribute to the opposite disposition. With the advent of electronic audio-visual technologies, and more intensively with the introduction of interactive new media, recent digital technologies may introduce significant changes to the logic of the archive, which can now be seen as a form of social intervention.

Good places to see technology’s contributions to archives are in online information-gathering efforts. These spaces, used in pursuit of justice or during times of crisis, can quickly transform into spontaneous shrines and digital memorials. Platforms such as Facebook produce digital archives almost as a byproduct. The Facebook page *Justice for Catherine Cesnik and Joyce Malecki*,³⁸ for instance, was set up by a group of women investigating the 1969 murders of Sister Cathy Cesnik and Joyce Malecki.³⁹ The page was first opened to keep the investigation alive by reaching out to new witnesses and sexual abuse victims. It also served as a digital memorial, where a larger community could get together to share memories, reflections, and experiences. Threaded posts, profiles, photos, and avatars create a history of online exchanges and allow for the past to be reconstructed on an online platform. In this way, the interactive and participatory aspects of the Internet generate a kind of “writable collective memory,”⁴⁰ which captures contemporary norms about institutional injustice and sexual abuse.

37 Nora, “Between Memory and History, 14.

38 See <https://www.facebook.com/JusticeForCathyCesnik/>.

39 This murder story was recently covered by a Netflix documentary, *The Keepers*, which is how I learned about this initiative.

40 Gregory L. Ulmer, *Electronic Monuments* (Minneapolis, MN: University of Minnesota Press, 2005).

There are also examples of memorials in digital spaces that are centrally structured rather than distributive and collaborative. The Shoah Foundation at the University of Southern California⁴¹ is dedicated to archiving audio-visual interviews with survivors and witnesses of the Holocaust and other genocides. It has moved its archive to an on-line portal, which allows users to search through and view more than 55,000 video testimonies.

Digitization also complements and provides financially viable options for physical museums and memorials. Sophisticated websites allow users to experience the second-best thing to physical spaces by allowing them to not only hear and see aspects of the content, but to engage in a dialogue, which can be a wonderful pedagogical experience. Photographs, videos, historical documents, voices, and maps greatly accentuate the experience for people comfortable with interactivity and the fluidity of multimedia. The POLIN Museum of the History of Polish Jews is one such example: it is a digital oral history project that seeks to create awareness about the legacy of Jews in Warsaw. The website is divided into three historical periods on the past and present of Jewish Warsaw shown by a mapped city guide. Using this approach, information becomes accessible through timelines and mapping interfaces, offering a new dimension to the traditional, linear form of archiving.

Information design and data visualization, when presented in animated and creative ways, also provide powerful tools to convey grave atrocities. *The Fallen of World War II*,⁴² an interactive documentary that examines the human cost of the Second World War and the decline in battle deaths in the years since the war, is a great example of this. The 15-minute video combines data visualization with cinematic storytelling to provide viewers with a dramatic perspective about the human costs of war.

Another visualization trend is seen in collaboration across disciplines in collecting forensic evidence. Forensic Architecture (FA) and SITU are two unconventional architecture firms that open new frontiers in human rights work using design, research, and simulation in multidisciplinary styles to provide visual evidence in investigations of human rights violations. Both have collaborated extensively with international prosecution teams, political organizations, NGOs, and the United Nations in situations where hard evidence was difficult to gather. In a recent study, FA digitally reconstructed the murder of Tahir

41 See <https://sfi.usc.edu>.

42 See <http://www.fallen.io/ww2/>.

Elçi, a Kurdish lawyer assassinated in 2015, narrowing down potential suspects using sophisticated digital analysis. In December 2018, these results were submitted to the public prosecutor in Diyarbakır to push the state to reinvigorate its own investigation.

Other examples of using technology to reconstruct events were used in the contexts of Gaza and Afghanistan. The investigation of the behavior and effects of white phosphorus in Gaza during Operation Cast Lead involved the production of an interactive map of attacks by Israeli forces on Gaza in the summer of 2014. The map enables users to explore a vast collection of data collected on the ground by the Al Mezan Center for Human Rights, the Palestinian Centre for Human Rights (PCHR), and Amnesty International. Similarly, SITU collaborated with journalist Matthieu Aikins to release an interactive, digital platform synthesizing historical satellite imagery, photographs, and videos with a geospatial portal to document evidence for alleged U.S. war crimes in Nerkh, Afghanistan. In these and other cases, the models intended to serve as evidence were also meant to become spaces where the public could empirically relate to the true events of these crimes. Once the purpose of evidence-building is achieved, the forensic analysis could then be used as a digital memorial to provide explanations of human rights violations.

Besides offering new frontiers, digital technologies can also transform public spaces. One such tool used for raising awareness is video mapping. In an inspiring case, UNICEF used this visualization method to project moving silhouettes of young children onto the streets of Stockholm to raise awareness of the ghost-like presence of refugee children in the city.⁴³ Video mapping was also used in Turkey. First in 2011, by Greenpeace Turkey, about the risks and dangers of nuclear energy⁴⁴ and later in 2013, by Amnesty International Turkey, related to police violence, including a case where disproportionate use of tear gas left Hakan Yaman permanently blind.⁴⁵ In all these cases, we see that the meeting of public space with digital form provides a new feature of flexibility, both when compared to fixed monumental forms and in relation to physical restrictions enforced by authorities. In this sense, video mapping is similar to the emerging technologies of virtual and

43 “Flykten Slutar Här” [The Flight Ends Here], <https://www.youtube.com/watch?v=lKelpVkwO1M&feature=youtu.be>.

44 “Greenpeace Video Mapping: Realtime on Galata Tower,” <https://www.youtube.com/watch?v=FD3DEYNhBfc>.

45 #HakanYamanaNeOldu? Uluslararası Af Örgütü – Çağlayan Adliyesi & Galata Kulesi [#HakanYamanaNeOldu? Amnesty International – Çağlayan Courthouse & Galata Tower], <https://vimeo.com/81084138>.

augmented reality.⁴⁶ This trajectory indicates that public commemoration can take novel forms in the near future.

Innovation in approach doesn't just mean the use of cutting-edge technologies. Combining the wisdom of guided tours, oral history, and social activism, alternative guided tours have long been used creatively by initiatives working to create space for silenced memories. In Israel, alternative tours are used for creating public engagement about the Palestinian side of the story with respect to Israel's security policies. In Turkey, two recent initiatives, rooted in the traditions of youth and feminist studies, provide exciting new ways to engage young people with the memory of public spaces. Black Box Association facilitates memory walks that help young people engage with questions of injustice against historically marginalized groups in Turkey.⁴⁷ Similarly, Sabanci University's Gender and Women's Studies Center of Excellence organizes memory walks through the city from a gender perspective, sharing hidden stories and making "discovery" possible.

Gamification is another fruitful venue to convey difficult topics to younger generations. Game designer Brenda Romero cites her seven-year-old daughter's relationship to black history classes at school when talking about how she started designing games on serious topics. Disappointed by how trivial the events of "Middle Passage"⁴⁸ sounded to her daughter, Romero designed a game for her. She gave her a bunch of tokens, put them on a boat made out of a notecard, and gave her a number of rules. Playing the game with the instructions she received, her daughter realized that she was rolling too high and didn't have enough food. That's when she turned to her mother and said, "We're not going to make it." After a month of black history class at school, this was the first time that the event registered emotionally with her daughter and she finally asked, "Did this really happen?"⁴⁹

46 Kevin Kelly, "AR Will Spark the Next Big Tech Platform — Call It Mirrorworld Wired," *Wired*, February 12, 2019, <https://www.wired.com/story/mirrorworld-ar-next-big-tech-platform/>.

47 See Karakutu's "Memory Walk" website: <http://www.karakutu.org.tr/causes/memory-walk/>.

48 The Middle Passage is the stage of the triangular trade in which millions of Africans were shipped to the New World as part of the Atlantic slave trade. See https://en.wikipedia.org/wiki/Middle_Passage.

49 Romero later went on to design *New World* (2008) to teach her daughter about the slave trade (<http://brenda.games/the-new-world/>); *Síochán Leat* ("The Irish Game"; 2009) to tell the story of her family's history beginning with the Cromwellian invasion of Ireland (<http://brenda.games/soch/>); *Train* (2009) to explore complicity within systems by asking two questions, "Will people blindly follow the rules?" and "Will people stand by and watch?" (<http://brenda.games/train/>).

A Work in Progress: Bringing Together Data and Design

So how did all these influences come together to influence my work? When I started at Hafiza Merkezi, I worked on putting structures and mechanisms into place for the effective dissemination of the data and findings produced by our documentation and legal teams. We used political thresholds, such as general elections and critical hearings, to carry out digital campaigns. However, the radical closing of the political landscape after 2015 created obstacles to organizing similar campaigns. First, the speed of devastating new developments made it difficult to get public attention for past crimes. Second, the extent of the political clampdown made such visibility vulnerable to legal action. For these reasons, we needed a new way to engage when defining our communications work in the new political context.

I always had the sense that we had many stories hiding in our reports and databases as we documented testimonies and legal documents. As a person who is routinely inspired by creative productions and educational tools from around the world, I felt that there was much more to telling these stories than just corporate communications.

I also learned about new forms of gatherings, where participants convened in a marathon style, collaborated, and worked hands-on to solve a problem. For instance, when I was in Berlin in 2015, I heard from a designer that they used to organize workshops called *data meets design*, where groups from the worlds of *data* and *design* came together to collaborate, with both sides bringing what the other needed. Around this time, I also heard the word *hackathon*, a concept for defining a marathon meeting, in person or online, where people from coding and programming backgrounds collaborated to solve a problem or generate new information. In *game labs*, they did something similar, designing games based on given concepts. The key take-away words for me were *collaboration*, *creativity*, *hands-on*, and *interdisciplinarity*.

Later, in 2016, we discussed the need to engage with the creative sectors and younger generations during our strategy meeting at Hafiza Merkezi. Then, the concepts and ideas came together. Why not bring our data together with people from creative disciplines and see what comes out of it?

This was the background to our February 11, 2017, hackathon in Istanbul.⁵⁰ Over 40 people with interests and skills ranging from soft-

50 Hafiza Merkezi, "Hackathon by Hafiza Merkezi: How to tell the stories of enforced disappearances, February 11, 2017, <http://hakikatadalethafiza.org/en/hackathon-by-hafiza-merkezi-how-to-tell-the-stories-of-enforced-disappearances>.

ware development and data visualization to graphic design and creative writing participated in this one-day event. First, we introduced the participants to some of the main concepts and discussions about human rights violations and memorialization. Then, we moved on to our data on enforced disappearances. Everybody was left to work in groups, making use of their different skill sets to transform their proposed ideas into prototypes. At the end of the day, over 15 prototypes using the mediums of video, game, poster design, guerrilla marketing, and digital communications were presented. Today, two years after that meeting, I'm happy to say that not only were we able to develop a number of these prototypes into full-fledged projects, but we also scaled this pilot project into a more structured model of collaboration between the human rights community and the creative disciplines. Two projects we developed help to explain the state of our current activities in this line of work: Memorial Stones for the Disappeared and the Dictionary of the Disappeared.

Memorial Stones for the Disappeared

In response to the perpetrators' efforts to remove them from humanity, portrait photos are universal symbols of resistance for those who have been subjected to grave human rights violations. For the disappeared, photos reaffirm their belonging to our shared humanity. Based on this idea, photographer Anil Olcan suggested producing marble stones with portraits of the disappeared printed on them:

Portrait photos have been the most important representations to the living days of the disappeared, which are today strong symbols for their remembrance. As a resistance to the erasure of the disappeared from public imagination, I suggested to make a public installation of cubic marbles using the portrait photos of the disappeared.

In Anil's proposal, marble stones were conceived in identical cubic form (5 cm³) and photos of the disappeared were to be printed on each marble using cyanotype — a photographic printing process that produces a cyan-blue print. We documented 500 people who had disappeared and had photos of 266 of them. This meant producing at least 266 marbles.

The idea seemed straightforward at first, but once we started thinking about the details — like shape, form, production, and presentation — it became more complicated. Would this be a permanent or a mobile exhibit? Indoors or outdoors? How much would the marbles

weigh? How would they be presented and exhibited? The question about their placement had tremendous bearing on the symbolic value attached to the disappeared, the photos, and the marbles. These were questions that Anıl and I could not answer alone. We asked feedback from friends in the arts and exhibition fields. One of the works that two artist friends, Billur and Ayşenaz, presented was Carl Andre's "Carbon Copper Triads." In this example, the coppers looked very much like our marbles, but they were of different heights. We decided that cubes, all the same height, would look almost militaristically homogeneous, so we borrowed this idea to cut marbles to three different heights. We also liked their random placement.

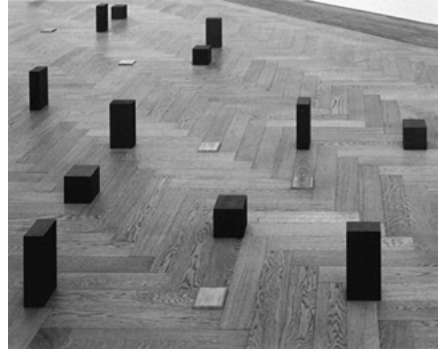
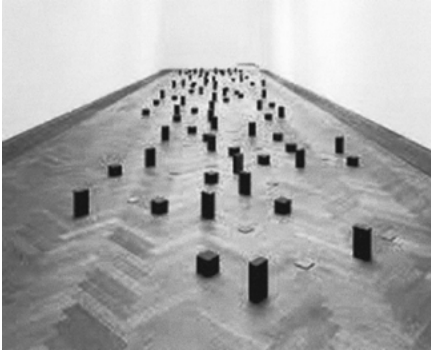


The prototype design of the 5 cm³ marble stones suggested at the hackathon by Anıl Olcan.

We then did a few simulations, first with replica items, then with a sample of 30 marbles. Since we liked what we saw, we moved forward with the final versions. It took a month to produce all the marbles with cyanotype prints of the disappeared on them.

It took six months to find the right time and place for the exhibit: May 10, 2019, in the Karşı Sanat Gallery in Istanbul. The title of the exhibit — *Public Secret (Aşikar Sır)* — was suggested by Ozgur Sevgi Goral, a former colleague at Hafıza Merkezi. It refers to the concept used by anthropologist Michael Taussig to define the dual nature of the crime of enforced disappearances: disappearing a person into thin air (secret) in a defiant and blatant fashion (public). In the exhibit, the

marble stones were the main work but, to our pleasant surprise, they were presented along with a number of other contributions.



Carl Andre (b. 1935, American; Contemporary Sculpture, Minimalism):
44 Carbon Copper Triads, 2005.

The biggest discussion revolved around the installment of the stones. We wanted them close to ground level to make the association with death and to render the multitude of the disappeared more visible. But we also didn't want them right on the floor with nothing underneath them, as this is considered culturally and religiously disrespectful. During this phase, artist Sevim Sancaktar, who has extensive experience in exhibit setup, helped us find spatial answers. Finally, we placed some of the stones on shelves right along the walls, and others on top of a short console in the middle of the space.



30 marbles positioned adjacent to each other.



30 marbles positioned randomly in one big cluster.



Anıl cyanotype printing photos of the disappeared over nearly 300 marble stones.



Cyanotype printing involves the use of a number of chemicals with water to get the blueprint of the pictures.

The venue of our exhibit, the Karşı Sanat Gallery, was set up as an independent art gallery back in 2000. Since then, it has hosted many exhibits and events on various politically sensitive issues. The choice of this venue was special for two reasons. First, it was set up by artist Feyyaz Yaman, the brother of Hüsametdin Yaman who was forcibly disappeared in 1992. Second, Karşı Sanat reopened at its new location — right across from Galatasaray Square where the Saturday Mothers used to meet — a month before our exhibit.

Dictionary of the Disappeared

Sometimes the best way to convey the unique nature of a crime is to show how its victims relate to things that are mundane for the rest of the society. In this example, we wanted to communicate disappearances by showing how certain words can gain new resonances via subjective meanings: *body, telephone, door, pajamas, mask, bone, petition, farmer, photo...* For many, these words denote only their literal meanings. In this project, we wanted to share their new connotations based on the experiences of those whose loved ones had been forcibly disappeared. The idea was to catch the reader's attention through the contrast of something ordinary and familiar diverted by something unfamiliar, unpleasant, and unsettling. The idea was proposed at the hackathon by Pınar İlkiz, co-founder of Pikan Ajans, the first communications agency in Turkey to work exclusively with NGOs. We worked with them to develop and implement this idea in the spring of 2017.

The first thing we did was to analyze Hafıza Merkezi's reports and database, looking for common words with unsettling memories, and compile a list. For instance, when describing the taking of their loved ones, relatives of the disappeared often mentioned *pajamas* since the operation took place at home so early in the morning that the person didn't have time to change. In contrast, *door* and *telephone* are strongly associated with hope. This kind of hope, however, may also block closure and expose the relatives to never-ending grief. Deep down, despite knowing that they will never see their loved ones again, relatives remain hopeful that those taken will one day walk back through that *door* or good news of them will arrive by *phone*.

Since these words are associated with traumatic memories, we had to find the right balance between the relatives' emotional triggers and our urge to interest people in these crimes. As a communications agency, Pikan tends to gravitate towards being striking. This is a strength that we lack, and thus the main reason that we work with them. However, this tendency also carries the risk of relegating the relatives' sensitivities to the background. To address this, our documentation team, who know the families best since they carried out the field interviews, worked diligently through all of the creative content. Following a laborious mutual feedback and revision process, the content of 25 words was ready. The last production step was to create a visual for each word. It was important to carry the conceptual idea over to the visuals, so we used the conventions of a dictionary. To strengthen the contrast, we juxtaposed the definitions of the words with their subjective meanings.

kapı

—Bir yere girip çıkarken geçilen ve açılıp kapanma düzeni olan duvar veya bölme açıklığı.*
Yakınları zorla kaybedilen insanların, yıllar geçmesine rağmen geri gelecek umuduyla kilitlenmedikleri, her çaldığında "Belki bir haber gelmiştir" diye açtıkları şey.

*tdk.org.tr adresinden alınmıştır.

Door: A space in a wall or partition that is passed through to enter or exit and has a mechanism of opening and closing. / *That which the relatives of the disappeared do not lock thinking that maybe it's news from him when he knocks, despite the passing of years.*

fotoğraf

—Çeşitli araç ve malzeme kullanarak görüntüyü özel bir yüzey üzerinde tutulmuş.*
Türkiye'de kayıp yakınlarının, kayıplarını andıkları meydanlarda ellerinde ya da kucaklarında taşıdıkları görüntü.

*tdk.gov.tr adresinden alınmıştır.

Photograph: An image, especially a positive print, recorded by exposing a photosensitive surface to light, especially in a camera. / *An image of a loved one, which is usually carried to the square where the loved one is commemorated.*

beden

—Gömme ve kılınların maddi bölümü, vücut** Türkiye'de zorla kaybedilen 500 kişiden yalnızca 211 kişiye dair bulunabilen, bu insanların cansız varlıklarının maddi bölümü.**

*tdk.gov.tr adresinden alınmıştır.

**Hafıza Merkezi'nin doğruladığı, bilgileri veri tabanında bulunan kayıpların belirlir.

Body: The entire material or physical structure of an organism, especially a human or animal. / *The entire material or physical structure of an organism, which remains to be found for 211 of the 500 people who were forcibly disappeared.*

One word was shared on social media every three days over three months. We received positive feedback from friends and affiliates, who said they found the concept quite moving. The words must have struck a chord, as many people recalled them months after we stopped sharing them. This impression was supported by our social media stats, which revealed a clear rise in reach and interaction during that period.

This small, low-budget digital memorial initiative used the subjective meanings of words as its content, and social media as its medium. Its emotional impact lay in the contrast of juxtaposing ordinary words with these extraordinary experiences. The concept was a symbolic representation of the wide gap between the experience of society at large and that of the disappeared and their relatives. The subjective meanings exposed this asymmetry in a subtle yet emotional way. This link with ordinary words also helped us grab attention.

The project's small scale made it possible to start and finish its full production cycle within a few months. This gave us a sense of achievement and motivated us to continue building. It also provided a prototype for an evolving project that can be scaled up with more content or applied in other mediums. It too could be part of an art exhibit, which, in fact, we did on a small scale when we decided to produce stickers of the words as part of *Public Secrets*.

The Next Phase: A Model for Civil Society?

The memorial stones and the dictionary were new and experimental for us, but they only truly become meaningful if we build on these projects. For me, this model can be understood in terms of creating space for creative collaboration between the human rights community and creative storytellers. Right now, that is exactly what we are trying to do in order to create a model for civil society.

In the spring of 2018, we began a new project called *Human Rights and Creative Communications* to build on what we have done and scale it as a model for other human rights organizations. As I write this, we are halfway through the one-year project. In February 2019, we organized another hackathon where we brought together representatives from eight human rights NGOs with more than 20 creative contributors, having them work together to produce at least one prototype for each NGO. By the end of summer 2019, we expect to produce and disseminate these prototypes in eight visual projects.

For this next phase, we made major revisions to address the novelty of working with eight organizations. For instance, in order to narrow the information gap between the NGOs and the creatives, we

emphasized preparation before the hackathon. To this end, we helped the NGOs prepare briefs that informed the creatives about their organizations and content. We also planned the hackathon to last for two days and programmed it with greater detail. Instead of an open call, we handpicked the creatives to make sure that their skill sets were adequate and complementary. This was crucial in this hackathon in order to match the eight NGOs with the right combination of creative skills.

Challenges and Reflection

Consultation with the victims is an important issue for memorialization projects. Yet, for reasons I'll explain below, we did not put consultation at the heart of our project. For example, we didn't invite the relatives of the disappeared to the hackathon. We knew that would be counterproductive and traumatic for them. Instead, we wanted to let the ideas roam during the meeting and inform the relatives about any output at a later stage. The importance of consultation has to do with the scale and public nature of the project. If our purpose was to create a large-scale, permanent memorial, then it would be absolutely necessary to consult the relatives about the method and priorities. However, our purpose was to engage more people in creating stories on difficult topics. This doesn't mean that we did not take the sensitivities of relatives into account. For each project, the production phase included collaboration between the creatives and our documentation team, who were diligent about the ethics of working with victims.

Another challenge has been the degree of uncertainty. This type of collaborative process always bears unforeseen complications because of its experimental nature. The lack of previous experience or established routines in estimating budgets, division of labor, and deadlines make it difficult to make predictions, which we need when applying for funding. Instead, we had to make general estimations about the project period and budget in our applications, changes to which had to be accommodated along the way.

These uncertainties may lock some projects into dead ends. For instance, we weren't able to finalize one of the selected prototypes due to the unexpected workload of the creator. One participant proposed an inspirational poster design project during the hackathon. This was beyond just a poster design idea though, as it described a process whereby people would join by designing their own posters. Due to the difficulties mentioned above, we were not able to clarify the uncertainties and implement it.

Another challenge has to do with over-emphasizing the role of digital media in outreach. There are varying degrees of complementarity between digital and physical means of dissemination. As we know, digitization not only opens new frontiers for memorialization, but also complements existing efforts. During the hackathon process, however, we remained largely within the digital domain due to the growing restrictions on the public domain and the lack of human resources to do both. This creates limitations in reaching out to, and interacting with, people in more tangible ways. In our future efforts to expand on the experience of this collaborative process, we will look for ways to support the digital aspects of our work with more spatial interaction. The dictionary could grow into a larger project in which we could print it in different forms and disseminate copies at public events. And whether we will be able to exhibit the marble stones outside will be bound by the security risk of taking direct action.

On this note, our final challenge has been the mounting political pressure over dissidents, particularly through increased surveillance and denunciation over the Internet. Particularly since the failed coup of July 2016, law enforcement has been actively calling on citizens to denounce social media postings.⁵¹ Since then, thousands of individuals have been detained and arrested based on charges of terrorist propaganda from what they shared on social media. This environment of growing online pressure has put Hafıza Merkezi, as a human rights NGO dealing with state crimes, on the radar.

Conclusion

In the opening section of this chapter, I argued that part of the struggle for democracy is to create favorable conditions for people to feel open about learning new things. In the context of my work at Hafıza Merkezi, I have been trying to do that by facilitating a creative space in which the human rights community can tell better stories. We need to think of truth and story as best friends, and do our best to keep them in each other's company. I hope that the process described above increases our capacity to make atrocities and violations more accessible.

I also like to think of the two projects described above as mini-memorials born of innovation. Anıl's idea takes the more traditional

51 For more about denouncing those who support terrorist organizations over social media, see Yeni Şafak, "Sosyal Medyada Teröre Destek Verenler Nasıl İhbar Edilir?" [How Are Those Who Support Terrorism on Social Media Reported?], December 23, 2016, <https://www.yenisafak.com/teknoloji/sosyal-medyada-terore-destek-verenler-nasil-ihbar-edilir-2585434>.

memorial concept and transforms it into a flexible form. The mobility of the stones liberates them from being fixed in time and space, helping them infiltrate the rhythms of daily life through remembering. Similarly, with the *Dictionary of the Disappeared*, we used a mainstream form as a hook to tell the story of a difficult truth. Both memorials can also be understood as ever-expanding processes. The marble stones will proliferate with new documented cases, while the dictionary can expand with new words and forms, as we've seen in our recent exhibit. Just as they can expand in form and scope, these two proto-memorials can also expand in scale with public support in a more politically favorable future.

For me, the benefits of this creative space go far beyond its produced outputs. I see great value in the process of interacting with people outside of human rights in ways that bring them and their expertise onboard. I witnessed the rejuvenating, energizing, and contagious vibrancy that resulted from this interaction in both our hackathons. It was therapeutic to be able to share the load of working on highly traumatic experiences with people coming from different occupations. For human rights activists conditioned to facing the negative, one should not underestimate the healing impact of creative work.

Another valuable aspect of this process has been the hands-on, applied nature of the collaboration, similar to the studio model. The starting point in this model is typically a question: *How do we tell the stories of grave human rights violations?* This was the question that informed our hackathons. The creative process starts with a focus on developing ideas and continues through to their implementation. Both parties learn through problem solving.

This is quite different from the classroom model of typical civil society capacity-building events. Here, on the opposite sides, trainers provide the information and participants receive it. In pedagogically more interactive models, this dichotomy is broken down as trainers become facilitators. However, even in these models, implementation — the most crucial aspect of learning — is usually missing.

In our approach, however, problem-solving and co-creation center the process. This helps people and organizations learn while figuring things out. I have seen how having to work on specific projects forced both sides to move out of their comfort zones. NGOs had to think in terms of their impact and explain themselves in a language outside their learned shortcuts. Creatives were forced to dive deep into trauma and suffering. They faced the challenge of trying to accommodate difficult content into their creative processes. But the two sides eventually transformed each other.

From one perspective, these novelties may seem mere luxuries as the human rights community in Turkey is under heavy attack. One could argue that there are more immediate, existential tasks than those described in this chapter. I agree that this kind of work does not address the most immediate threats of a shrinking civil space. Yet, I find it refreshing sometimes to put a healthy distance between immediate threats and building our capacity for a better tomorrow. At least this is what I say to the cynic in my own mind. We should neither get caught up in excessive optimism nor think the time is wrong for engaging in this kind of work. We certainly know that perpetrators can master innovations to curb rights and freedoms. It is therefore imperative that those of us promoting rights and freedoms should similarly improve our skills to make our story relevant for the larger society.

Good and bad experiences play important roles in people's choices in life. In my life, my decision to work in the field of human rights has much to do with the curiosity that has always supported my work. My own inclinations as a human rights practitioner, therefore, are all about creating spaces for curiosity, understanding, and reflection on human rights atrocities.

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Venezuela: The Mettle of Civility

Jennifer Peralta

In my quest to contribute to my country in the context of its deepening political crisis, and after profound reflection on my practice, I joined PROVEA¹ as their media manager in July 2016. This organization has worked for the defense and promotion of the dignity of economic, social, and cultural rights (ESCR) since 1988. For the nine years before that, I had worked as a visual journalist at what was once a leading news agency in the country. At the same time, I worked on my master's degree in social psychology at the Universidad Central de Venezuela. Then, in 2013, a holding company related to Nicolas Maduro's government bought the media I worked for to use as a political tool.²

PROVEA not only works for ESCR, it also addresses civil and political rights, as they did in October 2016 when the government decided to suspend the Revocation Referendum in violation of the Constitution of the Bolivarian Republic of Venezuela. As outlined in PROVEA's 2016 statement, this event closed all democratic channels for the political participation of citizens.³

Context

From late 2016 to early 2017, the Venezuelan government dramatically deepened the social, political, and economic crisis, considered by many as the worst crisis in our history. At the same time, citizens continued

1 PROVEA stands for *Programa Venezolano de Educación Acción en Derechos Humanos* [Venezuelan Education-Action in Human Rights Program].

2 *El Estímulo*, "¿Esta es la cara del dueño de Últimas Noticias?" [Is this the face of the owner of Últimas Noticias?], Nov. 8, 2014, <https://elestimulo.com/esta-es-la-cara-del-dueno-de-ultimas-noticias>.

3 PROVEA, "A partir del 20-0, gobierno de Nicolás Maduro debe calificarse como una dictadura" [From 20-0, the government of Nicolás Maduro must be classified as a dictatorship] (Caracas: Programa Venezolano de Educación-Acción en derechos Humanos, 2016), <https://provea.org/comunicados/a-partir-del-20-0-gobierno-de-nicolas-maduro-debe-calificarse-como-una-dictadura/>.

to press for the restoration of democratic institutions while now living in a country with no guaranteed rights. Food and medicine shortages, increased repression, and other elements undermined our morale and our hope.

One of the civic achievements of the public pressure — promoted by PROVEA — was the adoption of the term “21st century dictatorship” by national and international public opinion to refer to Nicolas Maduro’s government. This happened in October 2016 after the Consejo Nacional Electoral (CNE)⁴ arbitrarily and unconstitutionally decided to suspend the three-phase Revocation Referendum. The first phase was the collection of 1% of the signatures of all Venezuelan voters to accredit the

political organization or group of voters who would act as the petitioner of the referendum. The second phase, which can only begin after meeting the requirements of the first phase, consists of collecting statements or intentions equal to at least twenty percent (20%) of the registered voters to summon the referendum. The last stage consists of convening the referendum so that the voters may decide on the revocation of the mandate.⁵

Thus, amid the second phase, and by order of the criminal court, whose competency is far from making election-related decisions, the popular clamor of many Venezuelans was crushed “until further judicial instructions” by the CNE (2016). Yes, this was a direct attack on our hope. Still, it was also the opportunity to say without hesitation that holding democratic elections in Venezuela would be impossible so long as the government was not sure that it had the conditions to win. In other words, we could definitely say that the spaces for civil society were closing in Venezuela.

21st Century Dictatorship

To categorize Maduro’s government as a 21st century dictatorship, we had to introduce new elements into the social imaginary of my both country and the international community. Their closest references were the Latin American military dictatorships of the Southern Cone in the 1970s and 1980s. We did this so people could understand that the situation of Venezuela should not be taken lightly and that we were not

4 National Electoral Council.

5 José Ignacio Hernández, “La violación del derecho al referéndum revocatorio en Venezuela” [Violation of the right to the recall referendum in Venezuela], *Revista de la Facultad de Derecho de México [Journal of the Faculty of Law of Mexico]* 67, no. 269 (2017): 791–818, <http://dx.doi.org/10.22201/fder.24488933e.2017.269.62463>.

being facetious. This was different. This was a dictatorial regime, albeit somewhat different from those of Argentina or Chile.

Thus, on October 23, 2016, PROVEA issued a statement warning of the gravity of the CNE's decision and its effects on the closure of democratic spaces, in violation of the Constitution and the international treaties signed by Venezuela:

This is a dictatorial regime adapted to new times, co-opting the independence of institutions to cover the abuse, arbitrariness, and power hegemony under a veil of legal legitimacy. In the Venezuelan context, it is based on the support of the military sector and the use of judicial power to criminalize and neutralize any dissidence. Less than two decades ago, Latin America had a similar experience with the Fujimori auto-coup in Peru, which severed the democratic freedom of that country and ended thanks to the people's struggle for the restitution of democracy.⁶

However, the Venezuelan imaginary on dictatorships is not only based on Videla and Pinochet, but also its own history and military. Of course, Maduro had a well-built democratic façade. He represented the union sector when he was elected president in 2013 with over seven million votes (more than half of the total) in an election with a 78% voter turnout. Nothing could be further from a traditional dictatorship. Maybe that is why it took so long to make this statement: "Strictly speaking, this has been a dictatorship for quite some time. There is a concentration of power under a single person, the public powers have lost their independence, the civil and political rights of the people are not guaranteed under equal conditions but are determined by whether or not they support Chavism," according to Margarita López Maya, an academic, researcher, historian, PhD in social sciences, and member of PROVEA's Assembly.⁷

With this decision, the CNE began to pave the way for people to take the streets en masse — not for one or two days, but for almost four months starting on April 1, 2017. This was one day after Attorney General Luisa Ortega Díaz, an outspoken advocate of Chavism, made

6 PROVEA, "A partir del 20-0, gobierno de Nicolás Maduro debe calificarse como una dictadura."

7 Margarita made this comment during an interview I conducted with her in November 2016, one month after this statement became public, marking a milestone in PROVEA's history. "Margarita López Maya: 'En este momento nos necesitamos todos, y de alguna manera tenemos que converger'" [Margarita López Maya: "Right now we all need each other, and somehow we have to converge"] (Caracas, Venezuela: Programa Venezolano de Educación-Acción en derechos Humanos, 2016), <https://www.derechos.org/ve/actualidad/margarita-lopez-maya-en-este-momento-nos-necesitamos-todos-y-de-alguna-manera-tenemos-que-converger>.

a public statement on Rulings 155 and 156 issued by the Supreme Tribunal of Justice. These rulings stripped the National Assembly of its powers and removed parliamentary immunity. This was the first time that Ortega Díaz moved towards being the “heir” of the government of the late Hugo Chávez, sounding the alert about the “rupture of the constitutional thread.” In other words, she challenged this breach of the Constitution that illegally suspended the elections.

These protests, during which PROVEA registered the deaths of 143 people (although some media counted more) due to violence and repression by state security forces, spread throughout the country and in various social sectors.⁸ This resulted in the creation of non-violent resistance collectives, showing the civic nature of the protests and exposing their brutal repression. As Deputy Miguel Pizarro put it, “the most important thing about peaceful protest is that it always exposes barbarism. We have seen some remarkable expressions. Take, for example, what Las Piloneras and Dale Letra have done... These expressions of peaceful protest always serve to contrast the much larger barbarism against a country. The chants are very meaningful.”⁹ We shall see what he is talking about in the next section.

Symbols of Non-Violent Resistance

Cantos de pilón,¹⁰ an apron, a rag doll, and some maracas have enabled people to join the protests and channel their anger and frustration. The organization *Las Piloneras* represented the civic struggle, but also the struggle of mothers, a symbol of family, sacrifice, and the life-force of households. “The apron emerges from the private space to become public, but because the situation on the streets affects the apron, it affects the private life. Mothers had to take to the streets to defend their space, their sustenance, and the sustenance of their children,” said María Fernanda Montero, known popularly as Mafer, who was responsible for the lyrics of the organization’s chants.¹¹

8 PROVEA, “Informe Especial: Protestas, derechos humanos y represión (1989–2017): Elementos para comprender la cultura de la protesta en Venezuela” [Special Report: Protests, human rights and repression (1989–2017): Elements to understand the culture of protest in Venezuela] (Caracas, Venezuela: Programa Venezolano de Educación-Acción en derechos Humanos, 2018), <https://www.derechos.org.ve/web/wp-content/uploads/25-comics.pdf>.

9 Telephone interview with Miguel Pizarro, February 2017.

10 *Cantos de Pilón* are a tradition that consists of singing chants while grinding corn.

11 Skype interview with Maria Fernanda Montero, February 2018.

During the more than one hundred days of protests in Venezuela in 2016, the demonstrators, mostly women, successively became symbols of consolidated nonviolent resistance. They created a social organization to hold assemblies every two weeks to plan their next actions with a complete structure, a records commission, and replication, training, and security committees.



Source: TW @piloneras

Mafer had never attended a demonstration before, but seeing the number of people who died around the country during the protests, she felt a moral need to take action.¹² After attending her first demonstration with some colleagues in late April, they decided to meet in the house of one of them because they felt the need to help channel all the energy they saw among the people. “Andrés grabbed his *cuatro*; he wanted us to do a May Cross wake, so he started singing the most beautiful *décimas*. That night, we started to sing *cantos de pilón*. They have the rhythm of a procession... and so it was on that day. That is how it all began,” said Mafer.¹³ Since then, mothers, professionals, university professors of all ages, and other supporters, gathered under the name *Las Piloneras*. They continue to sing *cantos de Pilón*, with lyrics that condemn the serious human rights violations in Venezuela and connect them to the folklore.

12 PROVEA, “143 personas fallecidas en contexto de manifestaciones durante 2017” [143 people died in the context of protests during 2017] (Caracas, Venezuela: Programa Venezolano de Educación-Acción en derechos Humanos, 2017), <https://www.derechos.org/ve/actualidad/139-personas-fallecidas-en-contexto-de-manifestaciones-hasta-el-27-de-julio>.

13 Skype interview with Maria Fernanda Montero, February 2018.

“No es la violencia la salida. La violencia está sembrada en este país, la llevamos por dentro.”¹⁴ Yo no quiero héroe ni mártir, lo que quiero es que aquí- IO IO-, sigan mis muchachos vivos pa’ reconstruir el país- IO,”¹⁵ sang Mafer with emotion at the rallies. “You would not believe how careful we were selecting each word,” she reflected later.¹⁶



Source: TW @Dale_Letra

While Caracas trembled with each protest, nonviolent resistance groups continued to emerge from civil society. May 15, 2017, marked the creation of the pluralist, independent citizen movement Dale Letra, formed by twenty people from different disciplines working in “collaborative-collective action.”¹⁷ Dale Letra not only carried out actions in the streets but also promoted debates, workshops, and alliances to strengthen non-violence resistance to promote democratic transition.

Dale Letra is known for designing a “mobile alphabet” to demand their rights. During the protests, each member takes a letter and they take turns building a message. This way, they promote a culture of gatherings, dialogue, tolerance, and respect in the context of peace-in-democracy culture. “We work with community leaders from working-class sectors to develop joint actions to demand basic services, food, and medicine, due to the high cost of living that affects us all equally.”¹⁸

14 Violence is not the answer. Violence grows in this country; we have it inside us.

15 I don’t want heroes or martyrs; what I want is for my boys to stay alive and rebuild the country.

16 Skype interview with Maria Fernanda Montero, February 2018.

17 Email interview with Dale Letra, March 2018.

18 Ibid.

Furthermore, they reassert nonviolent resistance as a form that is coherent with democratic principles, respect, and dignity, and which has had historic results “inspired by the teachings of great masters such as Mahatma Gandhi, Martin Luther King Jr., Nelson Mandela, Lech Wałęsa, Václav Havel, and several other examples of non-violent resistance in the world.”¹⁹

On May 27, 2016, it had been ten years since Radio Caracas Televisión (RTVC) went off the air after former president Chávez failed to renew their broadcasting license. The first news broadcast by El Bus TV, in a moving passenger bus, was on that day. A member of the organization holds a rectangular frame emulating a television. At the same time, another narrates the most important news of the day with a microphone in hand and with the pose of a news anchor. That is Bus TV, a community, alternative, creative media that seeks to break the communications hegemony imposed by Nicolas Maduro’s government while trying to promote empathy on relevant issues.



Source: TW @elbusTV

This community initiative was formed by a group of volunteers, many of them journalism students doing their internships in Caracas and Valencia. “Media should no longer wait for the audience to reach us. As the media, we must go where the audience is,” said Laura Castillo,²⁰ one of its members. “The reactions of the passengers, drivers, and fare collectors motivate us; they appreciate and thank us for taking the news to them. That is our fuel to keep going,” said Laura.²¹

19 Ibid.

20 Email interview with Laura Castillo, June 2018.

21 Ibid.

There are many other symbols of nonviolent resistance apart from these three movements. For example, violinist Willy Arteaga was arrested and held for nineteen days for protesting, his violin destroyed by a member of the Bolivarian National Guard (GNB).²² There is no better contrast between barbarism and civility than that of brute force versus the nobility of art! We also learned the story of Hans Wuerich, a demonstrator who decided to remove his clothes in front of the GNB's anti-riot vehicles in the middle of a protest and, carrying a bible, climbed to the roof of one of these vehicles.²³ He was shot with rubber bullets in the back and face.

Melanio Escobar, journalist and director of the NGO Redes Ayuda, noted that "the government is an expert and has the advantage in violent scenarios; however, it has no tools to act under civil and peaceful scenarios, where reason, logic, and justice are everywhere. This is why this is an arbitrary, oppressive, and murderous government."²⁴ Redes Ayuda works to defend human rights in Venezuela. Together with PROVEA, Redes Ayuda has developed initiatives to support citizens, such as *Música por medicinas* (Music for medicine), which encourages the exchange of medicine for music in various physical formats, such as compact discs and LP records.

The successive closure of civil society spaces has placed human rights organizations in a position that goes beyond traditional actions: promoting and defending rights, documentation, and research. These organizations lead citizen coordination, promote street actions, and diversify the forms of communicating serious human rights violations. For example, they have created radio shows, comics, music events, intensive social media management, publications, and more. They have also promoted activities that may help alleviate serious humanitarian crises, such as *Música por medicina*, mentioned above. Additionally, they must continue lobbying the international community to establish a clear position regarding Nicolas Maduro's dictatorship. Of course, all

22 *El Nacional*, "GNB destruyó instrumento de 'El Violinista' en protesta en Caracas" [GNB destroyed "El Violinista" instrument in protest in Caracas], May 24, 2017, https://www.elnacional.com/oposicion/gnb-destruyo-instrumento-violinista-protesta-caracas_184028/.

23 Jefferson Díaz, "Hans Wuerich, el venezolano que protestó desnudo: 'Lo que yo quería era hacer llegar mi mensaje'" [Hans Wuerich, the Venezuelan who protested naked: "What I wanted was to get my message across"], *The New York Times*, Apr. 25, 2017, <https://www.nytimes.com/es/2017/04/25/espanol/america-latina/hans-wuerich-el-venezolano-que-protesto-desnudo-lo-que-yo-queria-era-hacer-llegar-mi-mensaje.html>.

24 WhatsApp interview with Melanio Escobar, March 2018.

these actions were framed by the non-violence resistance and democratic convictions that move human rights activists.

At PROVEA, for example, we promote several initiatives. We have created comics about the dictatorship to teach people about what is happening. Together with Redes Ayuda, we conditioned and equipped a space to operate the first radio station for human rights and civil society organizations, Humano Derecho Radio, and enhanced the program *Música por medicina*. We also started organizing narrative, photography, event production, and other workshops to strengthen communication and action skills. In the meantime, considering the context of censorship, our Twitter account became the critical network to disseminate both traditional (documentation, research, promotion, and denouncement) and new content and actions.

Rafael Uzcátegui, General Coordinator of PROVEA, says that “a human rights activist must frame all of their resistance actions and strategies in non-violence. Peaceful protest allows for including various sectors and operates in a democratic manner, which is harder when assuming an insurrectionist or focalist strategy.”²⁵

Nonviolent, peaceful resistance, the guiding principle of Venezuelan NGOs, has the power to put any anti-democratic government in check, not because it immediately neutralizes repressive, fascist actions, but because it can undermine the foundations upon which these regimes are built: hate, barbarism, and lack of humanity.

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25 Email interview with Rafael Uzcátegui, March 2018.

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**Lalgarh Insurgency and Political
Society: How Eastern India
Erupted in Anger Against the
Left Front Government**

Rajanya Bose

Lalgarh village in the West Midnapore district¹ of West Bengal (WB), an eastern Indian state, created its niche in the national consciousness in November 2008. Then, it lent its name to an uprising by hundreds of thousands of people, spread across multiple villages in the district, in response to brutal assaults by police. In the three years after the beginning of the uprising, 264 lives of members of the ruling political party, militants, and the police force were lost in the area. The movement's trigger was horrifying police atrocities against the villagers in Lalgarh and its adjoining villages. This came after a landmine attack on the convoy of WB Chief Minister² Buddhadeb Bhattacharya and Union Minister for Steel Ram Vilas Paswan on November 1, 2008. At the time, they were returning from the inauguration of the Jindal Steel Works special economic zone (SEZ)³ nearby. West Bengal was already in the midst of two other major land conflicts. The combination of these conflicts had significant political and economic ramifications for the state. They led, in 2011, to the democratic demise of the Communist Party of India (Marxist; CPIM), the longest bastion of the Parliamentary Left, after being in power for 34 years.

I first visited Lalgarh in 2013, as a graduate student, to write my dissertation on the insurgency. I collected much of the data for this chapter during the summer months of 2013 through ethnographic fieldwork, which included in-depth interviews of participants of the movement, political leaders from different political factions, and

1 A district is an administrative division carved out of the states or territories in India. India's 28 states and seven territories comprise about 600 districts.

2 The elected heads of the individual states in India. India comprises 29 states, each with its own elected head of state government or chief minister.

3 Set up in India by the *Special Economic Zones Act, 2005*, Special Economic Zones are meant to increase foreign investment and boost employment through growth in exports. The passing of the act led to a drastic increase in land acquisition by state governments on behalf of private capital, frequently leading to aggravated land conflicts in India.

journalists who covered the movement in 2008–2009. I also heavily relied on literature written on the history of the region, posters and pamphlets produced by the movement, and the books and media articles published on the movement around the same time. Though the data was collected in 2013 and the dissertation written soon after, the analysis and theoretical insights in this chapter have been developed over the past five years, most of which I spent as part of the research team at the Centre for Equity Studies (CES), an NGO based in New Delhi, India. As a part of CES, among several other projects, I worked on a two-year-long project studying land alienation among Scheduled Tribes in post-colonial India. While traveling across five states and conducting fieldwork as a researcher striving to understand the extent, processes, and impact of land alienation, I revisited my notes taken during the months spent in Lalgarh. This chapter, therefore, not only includes the notes and analysis used for my postgraduate thesis, but also reflects my engagement with both practice and theory over the next few years in various parts of my country.

While researching Lalgarh, I found many of the scholarly articles, apart from being written during the movement or soon after, discussed what it meant for the party in power, CPIM, its political future, and the parliamentary left politics in India. The literature also predominantly focused on either the decline of law and order as a result of the movement, or explained it as a response to instigation by other political parties, then the opposition in the state. This chapter aims to achieve two objectives: One, to explore the socio-political-historical context of the Lalgarh movement to shed some light on why people revolted against the state. Two, to aim for a historical construction of the “politics at Lalgarh” and view the movement as a contextual and strategic political formulation meant to engage with the state. In doing so, this chapter will engage with Partha Chatterjee’s widely cited, and much debated, theorization of political society, which he uses to analyze the “structure and dynamics of mass political formations in twentieth century nation states.”⁴ For Chatterjee, the political role of civil society in the post-colonial setting is both inadequate and often exclusionary of most poor people living on the fringes of legality. He uses the theorization of political society to encompass popular mobilizations where the poor often meet the state on those same fringes of illegality to express their own demands.

4 Partha Chatterjee, “On Civil and Political Society in Postcolonial Democracies,” in *Civil Society: History and Possibilities*, ed. Sudipta Kaviraj and Sunil Khilnani (Cambridge, UK: Cambridge University Press, 2001), 165–178.

The ethnographic stance strives to produce a “thickness,” as Geertz called it,⁵ but need not be exhaustive or holistic. This chapter, therefore, does not claim the existence of a singular wholesome reality that can be grasped or produced in totality. This is true of an uprising and its causes involving multiple participants, causes, and trigger points that could bring thousands of people together to fight against what they consider unjust. While this chapter participates in the discourse around the movement where multiple interests and factors might be at play, the internal power hierarchies of the movement itself and conflicts within the mobilization are beyond its scope.

Lalgarh Movement: A Timeline

The immediate trigger for the movement came from the blast when the Chief Minister’s convoy crossed Salboni on November 2, 2008. The Chief Minister was returning with Ramvilas Paswan, then the Union steel minister, after they visited the site to lay the foundation of the Jindal Steel Works SEZ.⁶ The police soon began their raids across villages in and around Lalgarh, 40 miles away from the location of the blast. The police accused Shashadhar Mahato, brother of Chhatradhar Mahato (who later became the face of the movement), for the blast. The police picked up three teenaged students returning home from a village festival and charged them with waging war against the state, among other charges. An armed police party arrested a man who was buying medicine for his pregnant wife. Then, they went to his home, picked up his wife, and abused her, causing her to lose her baby. The police did not spare women from their atrocities. Many were severely beaten and hospitalized with multiple fractures. One woman, Chitamani Murmu, lost her eyesight after being hit in the eye with the butt of a gun.

On November 6, thousands of men and women belonging to Scheduled Tribes and Other Backward Class groups⁷ gathered in front

5 Clifford Geertz, “Thick Description: Toward an Interpretive Theory of Culture,” in *The Cultural Geography Reader* (London: Routledge, 2008), 41–51.

6 The *Special Economic Zones Act, 2005*, was passed to create public infrastructure. Vast tracts of agricultural land acquired by the government were handed over to private investors to encourage industrial growth, export-oriented industrialization, and real estate development.

7 Both Scheduled Tribes and Other Backward Class (OBC) are state-identified social groups in India. While the Indian government does not bestow the status of indigeneity on any particular group, the term “Scheduled Tribes” is often used synonymously with the indigenous population in India. Many Scheduled Tribes also self-identify as “Adivasis,” meaning “original inhabitant of the land.” OBC is an umbrella term used by the Indian government to identify socially or educationally disadvantaged caste groups.

of, and blockaded, the Lalgarh police station. At a rally on that same day, the people decided to forbid the entry of police into Lalgarh until they apologized for their actions. By the next day, telephone and electricity lines were cut off, converting a large area into a “liberated zone.” In this initial phase of the movement, demands were few: an apology from the government, punishment for the police officers who had committed the atrocities, compensation for the victims, and the release of the three arrested students. These demands were later included in a 13-point charter of demands.

A senior bureaucrat in the WB government told me that, for a long time, the government watched and did nothing.⁸ He said that if the government had been serious about the demands, the movement could have been brought under control in its first few days. Yet, the government was never serious about negotiating with the protesters and it underestimated the strength of the movement, he thought.

Since the beginning, while opposition parties called for strikes in the villages and the tribal leadership spearheaded negotiations between the people and state, the call for “non-partisan” leadership was getting stronger. On November 17, after the first demonstration at the Lalgarh police station, the *Pulishi Shantrash Birodhi Janashadhara-ner Committee* (People’s Committee Against Police Atrocities [PCPA]) was formed. The leadership of the committee, which included locals from WB and the different factions, discussed and created an 11-point charter of demands for the state government. While the PCPA is often touted as a front organization for the banned CPI(Maoist), the leaders were all locals perceived to be “sons of the soil” and could connect with the people immediately. This was unlike the leadership of the Maoist party, which largely hailed from other Indian states like Jharkhand and Andhra Pradesh rather than West Bengal.

The initial democratic character of the workings of the committee has been emphasized by many. In 91 villages of Lalgarh, 10 representatives from each village, which included five women, were part of the village-level committees in November 2008. Two members were then chosen from each committee to elect the 45-member central committee.⁹ However, an ex-PCPA member mentioned that the demand charter was not drafted through a democratic process, as it was later made out to be. Instead, the leadership already had a charter ready

8 Anonymous personal communication, May 4, 2013.

9 Prashant Haider, “Rajkiya Daman ke khilaf Lalgarh ka Jan Ubhaf” [Lalgarh Public against State Repression], *Dastak*, January–February 2009, as quoted in Manika Bora and Budhaditya Das, “The Movement in Lalgarh,” *Economic and Political Weekly* 44, no. 26/27 (2009): 15–17, www.jstor.org/stable/40279768.

and merely asked the people to suggest further demands they felt were legitimate. The organizational power yielded by a few men, therefore, was noticeable from the beginning.

The initial phase involved mass gatherings, cutting roads and trees, and not allowing the police officers to enter, thus forcing the CPIM¹⁰ leaders to leave the area. These actions garnered national attention. Until the end of 2008, the movement remained largely non-violent, however, by the beginning of 2009, armed conflicts between the cadres of the party in power and the committee began. In January 2009, the ruling CPIM formed its own militia to attack government protestors. In April 2009, thousands of tribal people marched on the streets of the WB state capital, Kolkata, urging the urban civil society and population to stand in solidarity with the movement. June 15, 2009 is one of the most significant days for the movement, and produced the most powerful metaphor for the insurgency. The three-story house of Anuj Pandey, a local CPIM leader, was broken down by movement supporters who traveled 11 kilometers the previous day and took control over 48 villages in the area. This was when the movement took a violent turn, sealed by the formation of an armed militia in October 2009. The militia was named "Sidhu-Kanu Gana militia" (Sidhu Kanu People's militia) referring to two tribal, anti-colonial freedom fighters from the area. The PCPA's statement at this time said, "After facing continuous torture by the joint forces and the administration in Jangalmahal, PCPA has decided to pick up arms to combat the forces."¹¹

The state military began operations in the area in June 2009, and, following an increase in violence and a massive blast in a passenger train engineered by the Maoists, local support for the movement began to decline. The violent turn became irreversible when the Maoist party claimed leadership of the movement, forming the armed militia. The government's repression of the committee leaders continued, and peace talks failed in 2010. When the new government came to power in 2011, after 34 years of the Communist party regime, the new Chief Minister, who had publicly supported the movement in the past, oversaw the arrests of the movement's major leaders. Most of the armed rebels were forced to surrender, while the Maoist leader Kishenji, who

10 To re-emphasize, CPIM or CPI(M) refers to CPI(Marxist), a mainstream Indian party that participates in parliamentary elections. CPI(Maoist), formed by the merging of PWG and MCC, is a banned party and is not referred to as CPI(M).

11 Sukumar Mahato, "Lalgarh's PCPA Turns into Armed Outfit, Loots Weapons," *Times of India*, October 27 2009. <http://timesofindia.indiatimes.com/india/Lalgarhs-PCPA-turns-intoarmed-outfit-loots-weapons/articleshow/5166630.cms?referral=PM>.

spearheaded the operations of the Lalgarh movement, was killed in an alleged fake “encounter”¹² on November 24, 2011.

Looking Back in Anger: Why Did Junglemahal Explode?

As a young researcher keen to understand who rose against the Left Front government and why, my field research revealed two major reasons that pushed the population, largely composed of tribes and backward castes, to rebellion: first, the assertion of ethnic identity of those belonging to tribes (and backward castes) against the dominant Bengali population; second, prolonged neglect and underdevelopment of the region by the government. Bengalis are the dominant Bengali-speaking ethnic group in the state of West Bengal. Rooting the movement in a socio-political history challenges the dominant narratives of either treating the movement as a Maoist instigation to break down law and order or a politically instigated rebellion fuelled by opposition parties. The discussions and analysis of the movement belonging to the latter category are more instrumental than discursive; sometimes, by emphasizing the electoral gains and losses of the political parties, they focus on the “conspiratorial” aspects of the movement. There is a need to discuss the normative and political questions arising out of the movement, and not just the consequences of it.

While the movement gained its name, “Lalgarh,” from the name of a block¹³ within WB, it spread across a much wider region, now commonly referred to as Junglemahal. Junglebhoomi, or Junglemahal, which translates to the land of forests, was created as an administrative unit by the British in 1805. The name Junglemahal does not appear in any government or historical documents; and, despite there being no administrative or fiscal division by that name today, it is recognized as having a distinct presence, “an area, an economy, a particular form of contentious politics, an idea and a revolt.”¹⁴

The neglect of the Junglemahal region was not a phenomenon restricted to the three-decade-long Left Front regime. It had roots in the colonial past, where, to gain revenue out of this forested terrain, the property structure had to be aligned with the increasing

12 An “encounter” is used to refer to alleged extrajudicial killings by state forces (police or military forces), apparently in self-defense.

13 A block is an administrative unit in India. Multiple blocks make a district; multiple districts make a state.

14 Ranabir Samaddar, *Memory, Identity, Power: Politics in the Jungle Mahals (West Bengal), 1890–1950* (Hyderabad: Orient Blackswan, 2013).

commercialization of forests, a factor that has always propelled tribal unrest in the area, especially from 1915–1925. Traditional tribal customs were undermined in order to introduce and implement tenancy laws in the region that “made” the modern-day revenue villages. The 2008 movement brought forth various continuations between colonial and post-colonial Junglemahal politics: the tribal groups joined hands with Other Backward caste groups and the upper castes, who form the backbone of the ruling party, had been under attack by the resistance. Demands such as autonomy of life, ownership of land, and access to forests remained the primary concern of the movement, as in colonial times.¹⁵ The present emergence of indigenous politics here can thus be found in their past, reflected in the survival of the name Junglemahal itself, long after it no longer formed part of any government document.

The movement in Junglemahal, thus, cannot be seen as originating in a historical or political vacuum. Ranabir Samaddar makes a case for building the narrative of politics of an indigenous population “as a form of historically contingent phenomenon” to be understood only in the context of contentious politics. He argues that, in a democracy, the correct ratio between consent and coercion must be found over time to produce legitimate rule, and here colonial and post-colonial Junglemahal seem astoundingly similar. Democracy produced infamous bosses with party backing who would silence any dissent, gun down women and children, and “bring back the party in the wake of a marauding constabulary trying to gain control over the area.”¹⁶ He argues that the history of the insurgency in 2008–2009 “falls in the direct legacy of great revolutionary peasant mobilizations seen in this country in the last one hundred years, and certainly in Junglemahals.”¹⁷

Insurgency for Identity

The Scheduled Tribes, which form 8.6% of the Indian population, are arguably the most disadvantaged social group in India. The gap between the human development index of the tribals and the national average stands at 30%. In 2004–2005, 60% of tribals lived below the poverty line, compared to 37.7% of the entire population. This is only a marginal improvement over the poverty figure for Scheduled Tribes in 1993–1994, which stood at 63.7%. They have disproportionately borne the burden of India’s post-colonial development policies, as reflected

15 Ibid.

16 Ibid., preface.

17 Ibid., preface.

in the issue of land alienation among Scheduled Tribes. A government report states that almost 8.6 million tribals have been displaced due to development and mining projects from 1951 to 1990, and more than 50% of the total number of people displaced belong to Scheduled Tribes.¹⁸ Apart from the vast state-led land acquisition and displacement of tribes, they have also faced continuing alienation from land due to high indebtedness, being deprived of access to forest rights, displacement due to conservation, the creation of national reserve parks, and various other means. The Scheduled Tribes have asserted their right over their traditional habitat by foregrounding their identity of being “tribal” and the “original inhabitant of land.” A similar voice was heard in the Lalgarh movement from the Scheduled Tribes in the region, Santhals being the most prominent. Mahatos, who belong to the social group of Other Backward castes in WB, were also considered tribals in colonial times and their way of life matches closely with the tribes in the region. The movement foregrounded the narrative of identity loss to the ethnically dominant Bengalis and highlighted the material deprivation of the region of Junglemahal and its people.

This was not the first assertion of identity in Junglemahal. A significant part of the area participated in the Jharkhand movement in India, which began in the 1930s, demanding a separate state for the Adivasis (indigenous peoples) in Eastern India. While the government finally declared the formation of the separate state of Jharkhand in 2000, the Lalgarh area was not included, remaining part of West Bengal. With its porous red laterite soil and Sal-Mahua¹⁹ forests, this region is different, both geographically and culturally, from the plains in Bengal. A senior member of a left party in the state told me that people here felt alienated from the Bengalis, who dominate most government institutions in the area.

If everyone in the bank or the post office is a Bengali, it is like an “other” to the people here. There has been no integration of the population with the development process. The block development officers, forest officer, sub-divisional officers, irrigation officer²⁰—almost 90% of the posts that matter are in the hands of Bengalis who anyway treat this tribal belt as a punishment posting.

18 Government of India, *Eleventh Five-Year Plan: 2007–2012. Vol. I, II & III* (New Delhi: Planning Commission, 2008), p. 96.

19 Tropical trees most prominent in the forests in this region.

20 This list comprises a few of the most prominent bureaucratic posts for a block or village in India.

To him, the Left Front government that had been in power for more than three decades only strengthened the hegemony of the Bengalis. By the state perpetuating a colonial mindset, the local people were pushed to pursue a politics of asserting their own identity to demand a dignified space within the state polity and economy.

The ruling party, CPIM, also acknowledged the alienation of the tribals from the party in the early 1990s. The CPIM's peasantry wing, the All India Kisan Sabha (AIKS), noted the increasing support for the Jharkhand movement, and therefore for the electoral success of ethnic-identity-based political parties in the area. The AIKS admitted that the CPIM often gave more prominence to the middle and rich peasantry in the area, who typically belonged to caste Hindus and Muslims. This alienated small landholders and agricultural laborers, who typically belong to the Scheduled Tribes, and pushed them towards political parties espousing identity politics.²¹

The alienation continued with the failure of affirmative policies in the Jhargram region to provide more public sector jobs and political power to the tribes. For example, Scheduled Tribes comprised only 6% of the primary schoolteachers, despite making up 30% of the population. This has far-reaching effects, not only for tribal empowerment, but also because primary schoolteachers who speak the local indigenous language are crucial in keeping tribal students in school, as they are often overwhelmed by "Bengali," which is used at school.

The dominance of Bengalis and the imposition of a single "Bengali" identity in the state has often pushed people, whether in North Bengal the Lalgarh area, to pursue mass mobilization to assert their own identity. As historian Ranabir Samaddar explains, "Peace must have people on its side."²² After independence, West Bengal retained a singular nature despite building up a collective.

Much of it was possible due to the left movement and the spread of Leftist politics in North Bengal, central Bengal, Gangetic Bengal, and Junglemahal in the southwestern part of the state; also, the representational system and a common administration tied all these parts in one common political cultural whole. However, this project of building up a collective Bengal was in ruins in the later years of the Left Front rule owing to its Kolkata-centric rule, upper caste-dominated party politics corruption, neglect of

21 Dwaipayan Bhattacharyya, "Politics of Middleness: The Changing Character of the Communist Party (Marxists) in Rural Bengal (1977–1990)," in *Sonar Bangla? Agricultural Growth and Agrarian Change in West Bengal and Bangladesh*, ed. Ben Rogaly, Barbara Harriss-White, and Sugata Bose (New Delhi: Sage, 1999).

22 Ranabir Samaddar, "Peace Must Have People on its Side," in *War and Peace in Junglemahal: People, State and Maoists* (Setu Prakashani, 2012), 117–124.

agriculture, mad rush to invite monopoly capital, and neglect of the need for balanced development.²³

In essence, the socio-historical context and prolonged dominance of Bengali ethnic groups formed an undercurrent of the Lalgargh movement. This mobilization for asserting collective identity cannot be explained by poverty and economic deprivation alone. The long history of Junglemahal's struggles, in both the colonial and post-colonial eras, have repeatedly sought collective aspirations of better material rights in conjunction with cultural rights. I turn next to material rights.

Underdevelopment: Whither the Welfare State?

The Maoist movement in India (also called the Naxalite movement) has, for over 50 years, waged armed struggle against the Indian state across regions with very high Scheduled Tribe populations, which has often been seen as an impact of the marginalization and displacement faced by the Adivasis in the post-colonial period.²⁴ While I do not intend to review the literature of the movement here, I want to point out that the Maoist movement has been critiqued both for giving in to tribal cultural particularism²⁵ and for not being able to theorize the relationships between class, caste, and indigeneity.²⁶ In fact, as Ismail and Shah argue,²⁷ the geographical presence of the Maoists coincided with the tribal habitats in India primarily because the forests and hills where most of Scheduled Tribes live have been geographically conducive to guerilla tactics. The scope of this chapter does not allow for any nuanced discussion of the complex and substantial literature around the motives of joining an armed guerilla group like the Maoists in India, or of the workings of the Maoist party. Rather, it elaborates on how the Maoist leadership, and other local political leaders, created the conditions for the movement over a very long period, not just by focusing on tribal identity politics, but by bringing other ethnic groups into the fold by rooting their demands in economic deprivation.

23 Ibid., p. 117.

24 Ramachandra Guha, "Adivasis, Naxalites and Indian Democracy," *Economic and Political Weekly* 42, no. 32 (2007): 3305–3312.

25 Tom Brass, *Peasants, Populism and Postmodernism: The Return of the Agrarian Myth* (London: Routledge, 2013).

26 Feyzi Ismail and Alpa Shah, "Class Struggle, the Maoists and the Indigenous Question in Nepal and India," *Economic and Political Weekly* 50, no. 35 (2015): 112–123.

27 Ibid.

A journalist covering the movement since its inception told me that he would leave his home early in the morning and, with hardly any eateries or shops in the villages, eat his lunch at any home where he was offered food. One day, he came to a house decorated for a feast in the afternoon as the husband of a daughter of the house was coming to visit for the first time after the wedding. Since around 25 people had been invited for the feast, the household head asked the reporter to eat with them. The reporter asked the lady of the house what they were cooking for the feast, chicken or fish? To his embarrassment, she replied happily, "We have dal (lentils) to eat with bhaat (rice) today." A similar experience of poverty is told by Sunanda Ghosh of the Bengali newspaper *Anandabazar Patrika*. He wrote of his interview with a young boy who told him that their everyday meal consisted of rice, sometimes accompanied by salt or onion. Their family, despite having land of their own, can afford lentils only once every two months or so.²⁸

This saga of underdevelopment and deprivation prior to the movement was chronicled by Chandan Sinha, a high-ranking bureaucrat in WB, in his book *Kindling of an Insurrection: Notes from Junglemahals*. Sinha was the district collector of the West Midnapore district in 2004, and the book mainly comprises his lengthy field notes during his 14-month stint. He points out that many houses he visited would not even have a door, since people had nothing valuable that they feared losing.²⁹

In Jhargram, I arranged a focused group discussion among three women one evening: Seema Rana, who was active in politics in her college days and now ran a small business of renting out cars; Ishita Paira, a worker at a primary school near Jhargram; and Reena Shatra, a health worker with the government of West Bengal. They summed up all that was wrong with Junglemahal: "Nothing is the only thing you will find here." They agreed that funds were being sanctioned for the tribal belt, but most of it was siphoned off due to corruption. Reena has been working with the government's leprosy project for 20 years and surveyed 365 villages in the Jhargram subdivision alone. She spoke of Amlasole village in the region, which hit the headlines in 2004 for starvation deaths. She says,

Amlasole is not a single village; such instances of slow death are not difficult to find around here. People eat once a day most of the time; and, if

28 Sunanda Ghosh, "Unedited Page One," in Chitradeep Chakraborty (Ed.), *Breaking News Junglemahal* (West Bengal: Deep Prakashani, 2012), p. 6.

29 Chandan Sinha, *Kindling of an Insurrection: Notes from Junglemahals* (London: Routledge, 2013).

they do not migrate, they will not be able to afford even that as there are no jobs here throughout the year. This sort of deprivation and anger explain why so many people came together for the movement.³⁰

Ishita also agrees that the government need not wait for an uprising to deliver on simple things such as widow or unemployment allowances. She said that local support for the movement was much higher than the pictures of rallies and protests revealed in mainstream media.

The Maoists would stay in camps in the forested areas and send around buckets in the afternoons. People would contribute one bowl of rice or dal, which they would eat for lunch. If you look at these instances, you will see how most of us supported them in the beginning.

The people's economic losses were amplified by alienation from their rights to forests. Jagat Paira, a resident of Jhargram, researched extensively on the area and attended most meetings during the uprising. He saw the movement reach its peak and later decline. We met one afternoon, and he explained how people's dependence on the forests is changing. He explained how the Santhals know how to use each part of a *Mahua* tree. They dry the flowers and eat them, or make alcohol from it to drink. The fruit, called "Kochra," is used as a vegetable. The branches are dried and the oil is extracted to use as fuel and for their main festival, Badhna, when they put the oil on cow horns. They also use Sal leaves to make plates and bowls and sell them in the market. The forests also grow mushrooms that they pick and eat or sell. The Lodha tribes stay in the jungles and are dependent on forest produce. But forests are being cut off. People are moving to the cities to work in factories for minimum wage. But he says,

If you ask me: Is Lalgarh fighting just because it is poor? I would say no. Backwardness is, of course, important, but that is being enhanced by issues like no clean drinking water available, increasing deforestation, and pollution. The CPI(M) would not let any other political party gain formidable power. There was a political vacuum in which the Maoists entered easily.³¹

Veteran journalist Biswajit Roy, editor of *War and Peace in Junglemahal*, offers a similar explanation. He says the West Bengal government agreed to give 1400 acres of land to industries, out of which 400–500 acres were earlier given to the tribes for cultivation. This is worsened

30 Paira, Satra, Rana, personal communication, May 1, 2013. Most names in this section have been changed to protect the anonymity of interviewees.

31 J. Paira, personal communication, May 3, 2013.

by the lack of access to forests. The forest guards, employed by the state to keep a check on the use of forest resources, often become a source of harassment for tribes heavily dependent on forest produce for survival, thus symbolizing a massive source of discontent. The government's industrialization and forestation policies not only deny traditional rights to the local population, but often include activities that make conditions worse. For example, numerous eucalyptus trees have been planted around this area over the last few years, which the local people believe are depleting groundwater levels.

These trees are planted instead of local trees where ants lay their eggs on which the tribals depend for their protein. The sponge iron factories in Jitushol, Gojashimul, Mohanpur add to the woes by increasing pollution manifold. As a result, Sal leaves are becoming useless to make utensils with. "Puishakh," leaves of a creeper that low-income households often eat along with rice, now have a rusty layer on them and are no more edible. Those who go to the jungles to get Sal leaves get rash and itching on their bodies, and the people are getting deprived of their livelihood due to this. Water pollution has also led to more frequent occurrences of diarrhea and tuberculosis.³²

My respondents almost unanimously agreed that cadres of the Maoist party (then belonging to People's War Group, or PWG) had been in the area since the late 1990s, silently mobilizing people on issues of economic deprivation and lack of access to basic rights like education, healthcare, forest rights, etc.

Saptarshi Shom,³³ who worked at a local Bengali news channel, wrote in *Breaking News Junglemahal* that he met Koteshwara Rao, alias Kishenji, in 2004 in Jharkhand. He later claimed that the leadership of the Lalgarh insurgency once formed its armed militia. He was then a Politburo member of PWG, a banned political party that had also waged war against the state, and later formed a part of the CPI(Maoist) Party. Kishenji explained that he was given charge of Bengal, Bihar, Jharkhand, and Orissa in 1994–1995. The areas were selected for their involvement in the armed rebellion influenced by Maoist ideology, called the Naxalite movement, in 1960s and 1970s. His work began in the Hooghly district in West Bengal and extended later to other districts in southwestern WB. The Maoists built solidarity in the region by concentrating on better prices for farmers and tribes for the sale of forest produce, like Kendu leaves, Sal leaves, timber, and potatoes. While

32 B. Roy, personal communication, May 25, 2013.

33 Saptarshi Shom, "Kishen in Jharkhand, Kishenji in Lalgarh," in *Breaking-news Junglemahal* (West Bengal: Deep Prakashani, 2012), 111–119.

the Maoists never meddled in the workings of local government institutions, they had credibility among local people: they fixed the price of Tendu and Sal leaves and ensured that these prices were enforced among the contractors or traders who bought produce from the tribal people. Women sympathized with the party as it ran campaigns and performed street plays to discourage men from drinking liquor, and later tried to ban liquor shops in the area.³⁴

A story by Snigdhendu Bhattacharya in the *Hindustan Times* sheds some light on the developmental activities run by the “Forest Party” in JUNGLEMAHAL, as the banned Maoist party was often called. In June 2009, he wrote this account:

Here across a 1,000-sq-km area bordering Orissa in West Midnapore district, the Maoists over the last eight months have quietly unleashed new weapons in their battle against the Indian state: drinking water, irrigation, roads and health care. Carefully shielded from the public eye, the *Hindustan Times* found India’s second “liberated zone,” a Maoist-run state within a state where development for more than 200,000 people is unfolding at a pace not seen in 30 years of Left rule. Apart from taking over the organs of the state, most notably the executive and the judiciary, the Maoists here have built at least 50 km of gravel paths, dug tubewells and tanks, rebuilt irrigation canals and are running health centres, with the help of local villagers.³⁵

The fact that the people were organizing themselves to combat underdevelopment is also clear from a series of reports in the *Times of India* by Nilanjan Dutta. A report in October 2002 states, “If there was any Naxalite activity there at all, they (the villagers in Banshaphari, West Midnapore) vouched, it was precisely because there was no development.”³⁶ The people in this region, facing loss of traditional forest rights, cultural rights, and economic deprivation, maneuvered support for different political groups at different times. As Dutta noted,

34 I am aware that discouraging tribal people from drinking alcohol has been criticized as well since it has been part of their culture (even livelihood) for generations. Such an attitude towards drinking is often interpreted as casteist in India. My own experience, however, has shown that opinion about this among tribal women is not unanimous; therefore, I write this only to narrate what I heard from respondents without delving into debates on it or necessarily agreeing with the above perception.

35 Snigdhendu Bhattacharya, “Welcome to India’s Newest, Secret State.” *Hindustan Times*, June 10, 2009, <https://www.hindustantimes.com/india/welcome-to-india-s-newest-secret-state/story-aOAZ9y1NfEzet4Zv64uVnJ.html>.

36 Nilanjan Dutta, “Where People are Fighting Their Own War,” *Times of India*, October 8, 2002, <http://sanhati.com/excerpted/2316/>.

They are willing to rally behind CPM's mass organization, vote for Jharkand Party sometimes, or on other occasions, boycott elections at the call of the Naxalite People's War and the Maoist Communist Centre... It is people's strategy for their own war, their struggle for existence.³⁷

The report pointed out that there was no irrigation canal within 56 kilometers, and no electricity for pump sets and diesel. A bad rain year brings disaster for farmers. Another report enumerated the healthcare crisis in the region: no health workers, widespread malaria, and pregnancies being handled by midwives with no medical backup. The nearest health centers for pregnant women were at least 25–30 kilometers away. Dutta quotes a resident of the region,

Whenever we go there, we are treated as dirt. "Don't you have any medical facilities in your own district?" taunt the doctors... A surprising feature is the thirst for education. Most of the families, however poor, send their girls and boys to school. There is a primary one nearby, with only two teachers for more than 300 pupils, and a high school at Banshpahari.³⁸

The Naxalites have mobilized people on these issues for a decade, and elections have been boycotted in many instances by the locals despite facing police atrocities.

One incident shows how the Maoists had not sprung a surprise on the government when they announced the leadership of the Lalgarh uprising. In Kakrajhor, a popular local tourist destination during autumn, there were very few visitors around 2002:

"Some time ago a large tourist party came in five cars. I was driving one. A tree trunk blocked the jungle road and we stopped. Three girls with pistols appeared from nowhere and questioned everyone. They let us go only after being satisfied that it was a tourist group."

"They don't harm the common people," said villagers. "Some kendu leaf contractors, however, were beaten up. Perhaps they deserved it, as they used to deceive and torment us themselves," they added. Women like the three who have questioned the driver used to bear the brunt of the "deception and torment."³⁹

The groundwork laid by the Maoists for the movement has been admitted by Kishenji in an interview in 2009. However, he was surprised at the extent of the popular support when the insurgency broke out:

37 Ibid.

38 Nilanjan Dutta, "Paying the Price of Seeking Development," *Times of India*, October 9, 2002, <http://sanhati.com/excerpted/2316/>.

39 Nilanjan Dutta, "Priest, Police and Puja in PW Land," *Hindustan Times*, October 14, 2002b, <http://sanhati.com/excerpted/2316/>.

The Maoists have been doing groundwork in the region for long and had drawn up a meticulous plan. However, had the police not perpetrated torture on tribal women after the landmine blast on the Chief Minister's convoy last year, the movement could not have gained intensity so fast. It helped us... The pace at which the movement spread in the entire region and the manner in which more and more people joined it, was unexpected. It was almost 50 to 60 per cent more than our calculation.⁴⁰

The involvement or leadership of the Maoists in the Lalgarh insurgency has been debated in the media, in academic literature, and among local respondents I interviewed. Many agree that the Maoists were long active in the region and laid the groundwork for the movement. For others, they were but one participant in the movement, and their claim of ownership was deemed as "opportunistic" and exclusionary of other political leaders who lent support. I found enough evidence to suggest that Maoists were always stakeholders in the movement and their participation was not mere opportunism. However, the formation of an armed militia and declared departure from the democratic path in October 2009 marked the beginning of the decline of popular support. Coupled with massive state repression of the rebels by the military, the end of the insurgency was now in sight.

A Farewell to Arms? The Beginning of the End

When the armed militia, or "Gana Militia" as it was called, formed during the insurgency, the leadership claimed it was a response to the excessive force used by the state to repress the movement. The bloodshed increased leading to frequent killings of local people often poor themselves. As one local respondent said, with the fight being concentrated among the few who had arms, a huge section of the population, especially women, who had taken the lead role in roadblocks and mass protests, suddenly had nothing to do. In the first phase of the movement, the Adivasis, including women, were at the forefront of the blockades, rallies, protests, etc. The participation of civil society, which was active in other social movements in the state at the same time as protesting forceful land acquisitions by the WB government, was low in Lalgarh because of the use of armed force. Public sympathy particularly suffered after the Maoists were blamed for the derailment of a passenger train on May 28, 2010, in which almost 150 people lost their lives.

40 Rajanya Bose, "Tribal Campaign Helped Maoists Consolidate Presence," *The Hindu*, October 14, 2009, <https://www.thehindu.com/news/national/other-states/tribal-campaign-helped-maoists-consolidate-presence/article16886497.ece>.

The movement was crushed in 2011 after the new government came to power, ending 34 years of Left Front rule in the state. Mamata Banerjee, WB's new Chief Minister, had supported the movement in 2009 and even called for "Lalgarh Chalo" (Let's go to Lalgarh) in 2010. She shared the stage with some PCPA leaders supporting the movement in August 2010. She even promised to release all political prisoners and withdraw military forces when she came to power. By the time the elections arrived, the train derailment had already occurred and most PCPA leaders had been arrested. Peace talks were unfruitful and all possibility of negotiation broke down with the killing of Kishenji on November 24, 2011. The government denied all allegations of his death being a fake "encounter" despite much alleged evidence supporting that perception. The new government, in turn, offered lucrative surrender opportunities for PCPA members and promised cheap food grains and job opportunities for local youth. The political backbone of the insurgency was broken as people lost hope for a peaceful reconciliation. As one respondent told me,

The popular character of the movement was ruined early on. Kids had written posters. But it was all lost with the murders; if someone was killed, the whole village would not have the courage to go and stand behind the family. Is death the only punishment? The school teachers, government workers had to part with a part of their earnings for the Maoist party. Though, the [Maoist] party had the courage and dedication, they are not democratic. So, both their rise and decline have been quite fast.⁴¹

Political Society and Insurgent Citizens of Lalgarh

We have seen how social, political, and economic marginalization of Junglemahal in post-colonial India, unaddressed by the Left Front government, led to a movement that asserted its identity over Bengali hegemony and demanded better socioeconomic rights from the state. We now turn to Partha Chatterjee's theory of political society to assess the PCPA and the Lalgarh insurgency as a space of negotiation for the marginalized in Junglemahal.

Prominent scholar Partha Chatterjee has conceptualized "political society" in the context of the nature of democracy and mass mobilizations in the age of post-colonialism, especially in India. Chatterjee rejects the Western notion of a civil society based on a normative ideal concept of citizenship, which he says cannot to be applied to the Global South and the mass formations of the twentieth century nation state.

41 Anonymous personal communication, May 2, 2013.

He argues that when India became independent, it carried its modes of governance from the colonial period: the structure and a large part of bureaucracy, the armed forces, the police, and the basic structure of the judicial system. It created the notion of a nation state, provided legitimacy to state intervention in a wide range of economic and social areas by creating an ideology of development.⁴² The opening up of the Indian economy post-liberalization in 1991 brought the subsistence economy in the country under the firm grip of capital. As opposed to “corporate capital,” Chatterjee theorizes that they are under the sway of non-corporate capital. Instead of forming a part of civil society, which for him is the domain where corporate capital is negotiated, laborers in the informal sector, as well as peasants, constitute a part of the political society where the nature and impact of “non-corporate” capital is negotiated. This peasantry, as a part of political society, takes part in insurgencies that differ from peasant insurgencies in colonial times. Instead of rising in revolt against the landlords or other feudal sources of exploitation, these peasants confront the state and its governmental agencies to demand a better distribution of benefits. The state here is not exploitative, but discriminatory, with whom the peasants negotiate to be handed a better deal. Even the use of violence by such insurgencies is “instrumental” and “calculative” to gain “appropriate governmental benefits.”⁴³ The binaries created between “corporate” and non-corporate capital, and the corresponding binaries between civil and political society have been critiqued by many Indian scholars. In creating such schisms, what Chatterjee does not see is that “political society” cannot just be deemed as those excluded from capital, but often as a result of the predation of capitalist forces⁴⁴ with the state as its ally. Recall the beginning of the Lalgarh revolt: a blast on the Chief Minister’s convoy to protest a SEZ built by the state to hand over to private capital. This chapter does not delve into the details of such pertinent and rich debates, but rather analyzes the mobilization of Lalgarh in Chatterjee’s own terms; it aims to assess how far the insurgency at Lalgarh deviates from, or adheres to, Chatterjee’s theory.

Chatterjee’s theory about political society pertaining to the peasantry is useful to conceptualize the movement in Lalgarh, as those

42 Partha Chatterjee, “Beyond the Nation? Or Within?” *Social Text* 56 (1998): 57–69.

43 Partha Chatterjee, “Democracy and Economic Transformation in India,” *Economic and Political Weekly* 43, no. 16 (2008): 53–62.

44 Subir Sinha, “On the Edge of Civil Society in Contemporary India,” Bergen Workshop on New Subaltern Politics in India, 2015, 225–54, doi:10.1093/acprof:oso/9780199457557.003.0010.

involved belonged predominantly to rural areas dependent on the land (including forest resources) either as peasants or rural farm laborers in some capacity. Access to forests was also crucial for their livelihood and survival. Belonging in large numbers to Scheduled Tribes, land was also significant for sustenance to the collective identity of the insurgents. It is true that most of the demand raised by the Lalgarh insurgency pertained to basic rights from the state, for example, access to better healthcare, inclusive education, access to forests, etc. To that extent, the creation of the committee and the strategic use of blockades, protests, etc. was to negotiate for better rights from the government. However, the movement also targeted members of the ruling party, often belonging to the higher-caste groups. A prominent example of this is the breaking down of CPIM leader Anuj Pandey's three-story house, which stood like an eyesore for a public suffering from destitution and poverty. Leaders like Pandey represented not just government apathy and corruption, but the inequality of land ownership and the interlocked markets of landowning and money lending at the same time. A 2009 fact-finding report showed a few attempts at land redistribution by the PCPA while the movement was on, including land held by upper caste Hindus associated with the ruling party.⁴⁵ Therefore, the mobilization, unlike what Chatterjee anticipates, went beyond negotiating with the government for welfare benefits, but also challenged the distribution of wealth, thus targeting society's structure.

Chatterjee ascribes four major features to political society in his earlier works.⁴⁶ First, many mobilizations are based on violations of law. These violations are not merely contingent for the group; the violation itself binds the group together. He gives examples of associations of squatters, encroachers on public property, or unauthorized users of electricity, water, or other public utilities. Second, despite being violators of the law, they demand government welfare as a right. Both of these formulations hold true for the PCPA. Though the mobilization itself is not illegal, the methods of protest, including the attacks on police stations and personnel, road cutting, and disallowing government officials from accessing the area, do not adhere to norms and legalities. The population can be considered as living on the margins, as they are constantly left out of the state's development efforts, though this must not be misconstrued for the absence of the state. While abdicating its responsibilities for welfare, the state is present and has a prominent extractive nature, acquiring agricultural land, denying access to

45 Bhattacharya, "Welcome to India's Newest, Secret State," p. 4.

46 Chatterjee, "On Civil and Political Society in Postcolonial Democracies."

forests, extracting mineral and other resources, collecting taxes, setting up military bases, etc. The illegality of the means of this insurgency was aggravated by the role of the Maoist party in the area from as early as 2002, when people boycotted elections in response to a call by the Maoists.⁴⁷ Refusing to accept the norms of parliamentary democracy by not turning up to vote can be seen as a negotiating device, meant to draw the state's attention. While violating the law bound people together in the movement, however, they in turn also negotiated which violations were to be accepted or supported. The increasingly violent tactics adopted by many were counteracted by reduced support; the role played by the retaliatory violence of the ruling party, armed military, and state government in repressing the movement, however, cannot be downplayed.

The third feature of political society in Chatterjee's formulation is that the rights demanded are deemed as collective rights, on behalf of the community, not individuals. The notion of community is not always sacrosanct as, say, those belonging to a particular caste, but could also be based on shared interests where "collective rights can mean something when an older ethic of subsistence is married to a new rhetoric of democratization."⁴⁸ This is essential, as the mobilization and act of negotiation occurs in a space involving both transgression of laws and, occasionally, violence. The community, as represented by the PCPA, was not built from "scratch," but by shared history, for example, the usage of the name *Junglemahal*, long after any such geographical territory ceased to exist in government documents. The name of the committee, instead of referring to any particular social group, also aims to create solidarity based on shared experiences of state oppression. Another example is seen in using the name of local tribal freedom fighters *Sidhu and Kanu* in the name of the armed militia formed by the insurgent PCPA, again referring to a shared history to create a sense of historically formed collective identity.

The fourth feature is that the state and NGOs deal with the members of political society not as bodies of citizens belonging to a lawfully constituted civil society, but as population groups deserving welfare. The degree to which they will be so recognized depends entirely on the pressure they are able to exert on those state and non-state agencies through strategic maneuvers in political society. This could differ from the "constitutionally sanctioned relationships between the state and individual members of society." As mentioned, the state ignored

47 Dutta, "Where People are Fighting Their Own War."

48 Chatterjee, "On Civil and Political Society in Postcolonial Democracies."

the demands of the people in the initial stages of the movement, but had to negotiate with the PCPA once the movement gained further popularity.

After the initial days of protest, the CPIM government began direct negotiations between PCPA leaders Chhatradhar Mahato and Lalmohan Tudu, and senior bureaucrat, Additional District Magistrate (state representative) R. A. Israel. The PCPA agreed to call off the struggle. The meeting took place at the Lalgarh police station, which, being a symbol of power for the state, acted as a place where the formal and informal spaces of politics interacted. However, the protests erupted again after the state posted police officers in Lalgarh, thus breaking the terms of negotiation. A second round of direct negotiations, which eventually fell through as well, took place when the state appointed interlocutors after the movement took a violent turn. However, the negotiations treated the insurgents as population groups deserving welfare benefits only to the extent that this would act as a counter-insurgency mechanism. Imprisonment of political prisoners and alleged “encounters” with PCPA leaders went ahead unhindered. Even the new government did not keep its promise of releasing political prisoners. On the other hand, welfare benefits were announced for those willing to surrender their arms, meaning that jobs and education for children were meant as a counter-insurgency mechanism rather than a right for the dissenting population.

By Chatterjee’s own admission, his theory does not “offer a transformational narrative threatening the course of capitalist development. It is not a concept of revolutionary politics.”⁴⁹ Rather, he aims it as a response to new governmental technologies by which, instead of class-based politics, there is a new space created for the “changing grids within which population groups can make their demand.”⁵⁰ He says that most scholars find boredom in everyday politics, as only extraordinary acts make headlines or excite us. The political subject sometimes goes on a hunger strike in Manipur, digs up roads in Nandigram, or throws stones at police in Kashmir.⁵¹ But what happens when the resistance passes because it was repressed or runs out of steam or wins its immediate demands? He asks, “Does the political subject vacate the scene when everyday politics is resumed? Or does she pursue a

49 Partha Chatterjee, *Lineages of Political Society: Studies in Postcolonial Democracy* (New Delhi: Permanent Black, 2013), p. 148.

50 Ibid.

51 All three places mentioned here are used as examples of prominent social movements in India.

different mode of political action?"⁵² Chatterjee prefers to speak of the latter, focusing on the mundane rather than the extraordinary, as the extraordinary can never fully explain the everyday nature of politics.

This argument downplays the role of the extraordinary in determining the mundane. The insurgency, however ephemeral or brutally crushed by governmental forces, changes the terms and conditions of negotiations between the political society and the state permanently. Tota Satra, a healthcare official with the government and a resident of Jhargram, told me this:

The movement, though crushed, has convinced the government they cannot take us lightly anymore. They cannot ignore us: they now have to work for our development. That is why this hurry to build roads, schools, and offer rice at low prices.

Her words provide practical insight into a similar argument made by Aditya Nigam while critiquing Chatterjee's work:

And it is of little importance here whether life under Trinamool Congress⁵³ today is substantially better than what it was under the Left Front. What is of far greater importance is that never again in the foreseeable future will either of these formations be able to take the support of the peasants for granted. The thirty-four years of LF rule are now irrevocably behind them.⁵⁴

The second major limitation involves Chatterjee's theory of differentiating between two aspects of mass mobilization in India.⁵⁵ For him, the first type challenges the sovereignty of the Indian state, in which he includes the examples of Kashmir, North East India, and the Maoist movement in central India, sometimes referred to as the "red corridor" due to the armed rebellion. The second type, he says, negotiates for better governmental benefits. The first does not necessarily mean the absence of the state from those regions, but more complex negotiations over what the benefits should be and what agencies could be used to pass them on to people. Chatterjee takes the easy route by speaking of the demands of governmental benefits fringing on illegality, where the negotiating community asks to be treated as exceptions.⁵⁶ So the state

52 Chatterjee, *Lineages of Political Society*, p. 149.

53 The party that has been in power in WB since 2011 since CPIM was voted out.

54 Aditya Nigam, *Politics, "Political Society" and "the Everyday,"* Kafila, 2012.

55 Partha Chatterjee, "After Subaltern Studies," *Economic and Political Weekly* 47, no. 35 (2012): 44–49.

56 Chatterjee, "Democracy and Economic Transformation in India."

must grant exceptional status in order to grant those benefits, a decision which is not administrative but political.

Both arguments raise a fundamental question: What if the demands being negotiated by an insurgency are legitimate, but the tactics of the negotiation fringe on illegality and involve the support of extremists? If one takes the case of Lalgarh, the demands for compensation for police atrocities, for apologies to those who suffered, for freeing political prisoners, or for demands for better education and healthcare are neither illegitimate nor require the state to declare any exception. But the tactics of the negotiations, including garnering support from the CPI(Maoist) Party, meant that the movement also challenged the state's right to govern. With the banned Maoist Party's support (and even leadership) apparent in the movement from the beginning, and the occasional solidarity of then opposition leader Mamata Bannerjee to the movement before she came to power, blurs the line between the two types of mass mobilization Chatterjee differentiates.

Finally, Chatterjee argues that some groups, such as low caste groups or tribals who are not peasants and depend on forest produce or pastoral occupations, are not given the means "by political society and electoral democracy to make effective claims on governmentality. In this sense, these marginalized groups represent an outside beyond the scope of political society."⁵⁷ Chatterjee does not explain why these people do not have access to political society, which in itself is a space formed via exclusion from civil society. While one can argue that the tribes in India have not been able to impose their demands on electoral politics, they have had an extremely rich history of fighting against land grabs, for self-determination in Central and North Eastern India, and for environmental movements where they have fiercely protected their land and natural resources. These consistent struggles have adopted different tactics for different purposes, including the legal route for many grievances. They have even maneuvered the political and legal system to make changes to both land acquisition laws and forest laws in the country. With the Lalgarh movement, the participation and leadership from local tribes cannot merit the argument that they are excluded from both civil and political society. The movement caught the attention of the government because of its geographical reach, effective strategies, and electoral significance. It is also untenable to insist on the "illegality" of the demands or strategies for making those claims on a government often perceived as unjust to the marginalized.

57 Chatterjee, "Democracy and Economic Transformation in India."

While one can debate the impact and success of the movement itself, it did undeniably create a space for negotiation with the state. The use of extraordinary means of negotiation is often a foil to everyday means of negotiation, so that once the “everyday” struggles are resumed, the terms of negotiation between the state and society have been disrupted and forever altered.

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The Right to be Forgotten: Sergio's Case

Sebastián Becker Castellaro

To Sergio and his family

Could you imagine your best friend, your sister, or your mother dying because some guy thinks he is going to start a revolution by placing bombs around the city? What would you say if one of these victims burns alive, and no one helps them out of fear, incompetence, or indifference? How would you react if I told you that while that person was burning to death, some unscrupulous person recorded it and uploaded the video on social media to satiate a society addicted to *likes* and *shares*; a society that consumes superficial images with no context or meaning? And that these images were also published by the yellow press, indifferent to that body who was a human being with stories, joys, sorrows, and fears.

This happened to Sergio, a boy from a humble, working-class family from the real and anonymous Chile. Sergio's case touches on sensitive issues and allows us to reflect on how we use information technologies and the right to intervene (or not) in mass communications, information, and transparency. This chapter reflects on how a photo showing a body burned by a bomb can provide new perspectives on truth, news, privacy, and whether cruel and gruesome photos are covered under freedom of speech.

Sergio Landskron's case portrays the old tension between freedom of speech and the right to privacy, honor, and truth. However, the new factors are social media, hyper-connectivity, and information immediacy. The Spanish journalist Marta Peirano refers to this phenomenon as the *economy of attention* — with large companies such as Google, Facebook, Twitter, or Instagram investing billions of dollars to “keep your eyes glued to the screen for as long as possible, without ever reaching the saturation point.”¹ The *digital age* has modified the private and public spheres, and this case reflects this shift. Privacy is in crisis in the

1 Marta Peirano, *El enemigo conoce el Sistema* [*The enemy knows the system*] (Barcelona: Penguin Random House, 2019), p. 23.

digital age; images that are supposed to inform can have devastating effects on people's rights. Therefore, it is necessary to know how the various human rights fit together in times of digital overexposure.

This chapter reflects on these tensions and some of the practical implications of defending human rights in digital spaces. The digital age has changed *public* spaces forever. At the same time, it has changed the forms and risks that activists take in these spaces to defend human rights.

This is the story of Sergio, of which I was part.

The Case

In short, Sergio's case shows how a trial that sought to repair a person's image and memory was conducted and how we tried to defend that individual's image against the maelstrom of the digital era.

Sergio was a Chilean boy from a humble family. He lived on Santiago's periphery, an area of the displaced, of those transferred — or set aside — to marginal settlements during the time of Pinochet and the military dictatorship, segregating the poor from the rich in the capital. There, Sergio experienced marginality and drugs. He became an evangelist. He had a daughter. He believed in God and his family.

On September 25, 2014, Sergio ran away from home for the umpteenth time. His drug problem had escalated, and leaving home was the usual outcome of these episodes of anguish and despair. At about 1:30 a.m., wandering the streets of Santiago searching for money or food, Sergio found a backpack in the middle of the road. He opened it, and everything turned black. The backpack was a bomb. An enormous explosion seriously injured his hands and head; his life was ending in flames.

After the explosion, several people approached to help him and try to extinguish the fire. However, the police cleared the area immediately after they arrived. Sergio was suspected of carrying more bombs, so helping him, they said, could cause even greater tragedy. Due to the lack of aid by the police, Sergio burned alive before the residents of the area, who were powerless to help him.

Time slowed down. While Sergio was burning, apathy began to grow among the spectators. The "transparent society," written about by Byung-Chul Han,² materialized in its saddest form: the *homo digitalis* who witnesses a horrific episode and begins shamelessly recording

2 Byung-Chul Han, *La sociedad de la transparencia* [*The transparent society*] (Barcelona, Spain: Herder, 2013).

it, in this case capturing another human being — a faceless one — dying in flames.

The images captured by mobile phones that evening in Santiago showed that technology, social media, and mass information constitute a form of pornography where “Everything is open, uncovered, stripped, undressed and exposed.”³ The images of a stranger burning to death were used as merchandise; this pornographic society made Sergio a new trending topic to be devoured by internauts. And so, it came to pass that in a matter of hours, the video of Sergio burning alive could be seen from anywhere in the world thanks to the Internet.

Checho

According to his brother Bastián, Sergio, or “Checho” as they called him at home, “was never a violent person; he was a good brother, always. He was the eldest and the most loved and supported by the family. He was the liveliest person; compassionate and caring [...] emotional, affectionate, charismatic and joyful.”⁴ He came from a stable and close religious family, which perhaps allowed for vigorously defending Sergio’s reputation in the media. His family consisted of his brothers Daniela, Andrés, and Bastián, his parents Sergio and Ana, and his daughter, Josefa.

Checho had been in prison for five years for being involved in aggravated robbery. After leaving prison, his family and friends said “he was at his best at that time.” He worked for his uncle for two months at a computer store, gaining the trust of those closest to him. He dreamed of becoming a personal trainer.

Everything was going well, and there was hope in the family. Sergio was responsible and dedicated, but everything changed one day. Sergio left his house and never came back. We know how the story ends.

Perhaps the cold and gruesome way in which the police delivered the news to the family was because Sergio was poor and an alleged terrorist.⁵ The Landskrons lived in *La Pintana*, a *comuna* where

3 Ibid., p. 29.

4 Cooperativa, “Bastián Landskron: ‘Queremos limpiar su nombre, mi hermano no era un terrorista’” [Bastián Landskron: ‘We want to clear his name, my brother was not a terrorist’], YouTube, 2014, https://www.youtube.com/watch?v=5ZIQccUN_XQ.

5 P. Cádiz and M. Núñez, “Familia de fallecido en bombarzo: ‘Jamás ha tenido relación con un grupo terrorista’” [Family of deceased in bombing: ‘He has never been connected to a terrorist group’], *Latercera*, Sept. 25, 2009, <http://www.latercera.com/noticia/familia-de-fallecido-en-bombazo-jamas-ha-tenido-relacion-con-un-grupo-terrorista/>.

76% of the population lives in poverty, and over 90% of houses are rudimentary.⁶ For Sergio's brother, *La Pintana* was a drug-filled, dangerous environment.

Sergio was a victim of marginalization and drugs. "The only bad thing [about him] was that he had a drug problem," said his mother in a television program.⁷ For his father, Sergio was "a victim of this country's shitty system, where the State has not been able to keep drugs off the streets."⁸

Exposition as Exploitation

That night, the anti-terrorist police (GOPE) conducted a massive operation at the Landskron's residence to communicate Sergio's death and look for any incriminating evidence. *The Clinic* (a national newspaper) narrates this first encounter between Sergio's parents and the police as follows:

"Are you Sergio Landskron's father?" asked the officer of the Civilian Police. The father, named just like his son, nodded, and immediately thought he could guess what the officers would say next.

"Your son died because he was placing bombs," said the officer without any hint of consideration.

Landskron was in shock. He knew that, at any time, someone could knock at his door and tell him that Checho was dead, but not for this reason. "I always imagined that someone could come and tell me that he died from an overdose, hit by a car, or in a fight, but never for being involved in a bomb case, like some sort of anarchist or something."⁹

Sergio was dead, and if that were not enough, medical officers from Santiago's Posta Central Hospital leaked photographs of his body. The photographs went viral on social media. Nothing could be done. "This whole photo thing destroyed us a little bit more as a family," said his brother Bastián to the press after learning that the photos were circulating on the Internet.¹⁰

6 Alejandro Olivares, "Los últimos días de Sergio Landskron" [The last days of Sergio Landskron], *The Clinic*, Oct. 2, 2014, <http://www.theclinic.cl/2014/10/02/los-ultimos-dias-de-sergio-landskron/>.

7 A. Baeza, "Madre de fallecido por bomba: 'Lo único malo de mi hijo era que estaba metido en la drogadicción'" [Mother of deceased by bomb: 'The only bad thing about my son was that he was involved in drug addiction'], *Latercera*, Sept. 26, 2014, <http://www.latercera.com/noticia/madre-de-fallecido-por-bomba-lo-unico-malo-de-mi-hijo-era-que-estaba-metido-en-la-drogadiccion/>.

8 Olivares, "Los últimos días de Sergio Landskron."

9 Olivares, "Los últimos días de Sergio Landskron."

10 Amparo Montoya, "Hermano de Sergio Landskron por filtración de

The transparent society can be relentless and will transmit any kind of image to inform or, better yet, consume: "Images are no longer shocking. Some gross images even amuse us. They become consumable."¹¹ There was no respect for the family's grief, nor empathy for their tragedy. Two news portals, *Diario Red Digital* and *Diario Noticias Chile S.A.*, decided to claim the photos as their own and publish them on their website to make more money from clicks.

In the economy of attention, the thirst for breaking news (fueled by morbid curiosity) encourages the consumption of all kinds of information. In this case, "the first photo shows Sergio Landskron's head, burnt and with a severe and bloody wound; [and] the second photo shows his lifeless, burnt body."¹² Morbid curiosity, resentment, anger, and envy are well known to generate more clicks than kind or well-informed news.¹³ Showing Sergio's body is a clear reflection of this: garnering attention no matter the cost, gaining clicks on the website, and satiating the consumer's morbid curiosity.

Since people assumed that Sergio was poor and possibly a terrorist and a drug addict, they did not think twice about uploading these photos and making them public. Photos, even those showing obscene images of Sergio's mutilated body, are considered publishable, according to the cyber community. Freedom of speech and the free market allow for everything because "the transparent society does not allow for information or vision gaps."¹⁴

Against this, the first battle for Sergio's family was to defend his good name and honor. Sergio was not a terrorist. During an interview, his brother Bastián said

As a family, we want to restore his good name; we do not want to say that he was a righteous man [sic], he had problems due to substance abuse. If there are people who want to call him a criminal, well [sic] he might be; if people want to call him a drug addict — which he was — that is alright, but we ask people not to call him a "terrorist," because he has never been

fotos: 'Nos vino a destruir un poco más como familia' [Sergio Landskron's brother on leaking photos: 'It came to destroy us a little more as a family'], Sept. 26, 2014, <http://www.biobiochile.cl/noticias/2014/09/26/hermano-de-sergio-landskron-por-filtracion-de-fotos-nos-vino-a-destruir-un-poco-mas-como-familia.shtml>.

11 Han, *La sociedad de la transparencia* [*The transparent society*], p. 87.

12 Court of Appeals of Santiago, file 125590-2016, Monday, October 2, 2017.

13 Peirano, *El enemigo conoce el Sistema*; Zeynep Tufekci, "YouTube, the Great Radicalizer," *The New York Times*, Mar. 10, 2018, <https://www.nytimes.com/2018/03/10/opinion/sunday/youtube-politics-radical.html>.

14 Han, *La sociedad de la transparencia* [*The transparent society*], p. 17.

a terrorist. He would never attack human life because of his evangelical beliefs.¹⁵

Similarly, his brother Andrés released a press statement:

Our family has never been involved with any terrorist group. Sadly, he fell into drugs when he was 15. To date, he depended on cocaine paste¹⁶ [...] Everything related to his death is being investigated. We only ask to let us mourn [...] we only ask for justice to clarify his death; he is currently a victim of this situation.¹⁷

There was no presumption of innocence for Sergio. The press and the Attorney General openly and unambiguously claimed that Sergio “was manipulating a homemade explosive device which exploded in his hands.”¹⁸ Other media replicated their words, and the news reached all corners of the world: “Yesterday evening, a man died when a bomb he was allegedly manipulating exploded in a central Santiago neighborhood.”¹⁹

Thanks to the insistence of the Landskrons, Sergio’s innocence was determined following the expert reports. His drug addiction explained why he was at that place at that time. He was just passing by and, seeing the abandoned backpack, picked it up to see if there was anything he could sell. The backpack exploded. The attorney finally determined his innocence, and the media cleared his name. The Landskrons’ efforts bore fruit, and no media could ever claim that Sergio was a terrorist, thus disproving their first hypothesis. However, the road ahead was still a long one.

15 Cooperativa, “Bastián Landskron: ‘Queremos limpiar su nombre, mi hermano no era un terrorista’” [Bastián Landskron: ‘We want to clear his name, my brother was not a terrorist’].

16 Cocaine paste or cocaine sulfate is a low-purity derivative of coca leaves, prepared with cocaine residues and processed with sulfuric acid and kerosene. At times, it is mixed with chloroform, ether, or potassium carbonate.

17 Cádiz and Núñez, “Familia de fallecido en bombazo: ‘Jamás ha tenido relación con un grupo terrorista’” [Family of deceased in bombing: ‘Has never had a relationship with a terrorist group’].

18 Emol, “Explosión en Barrio Yungay: Muere hombre que habría manipulado bomba” [Explosion in Yungay neighborhood: Man who would have manipulated a bomb dies], Sept. 25, 2014, <http://www.emol.com/noticias/nacional/2014/09/25/681782/bombazo-en-sector-centrico-de-santiago.html>.

19 La Nación, “Un muerto al estallar bomba en Santiago de Chile” [One dead as bomb explodes in Santiago de Chile], Sept. 26, 2014, <http://www.nacion.com/el-mundo/conflictos/un-muerto-al-estallar-bomba-en-santiago-de-chile/BSBPIZAFUVBUJBRDSN5HLLFPWA/story/>.

Searching for a Legal Way Out

The case had three legal aspects. On the one hand, the Landskrons sued the Chilean State for moral damages and negligence on the part of public officers for failing to tend to Sergio's wounds.²⁰ According to his father, there was "negligence because they left my son to die, paramedics did not get there on time, they took pictures and recorded him; they let him die."²¹

Another aspect was the photo leak. As a result, a criminal claim was filed against the public officers of Posta Central Hospital, which involved the payment of 3,000,00 Chilean Pesos (about 5,000 US dollars) to the family, and a public apology during the criminal hearing. The family filed this claim as a result of the damage to their dignity.

Finally, a process addressed the images that went viral on the Internet. This is where the NGO Datos Protegidos came in. I worked for this organization as a litigant and researcher. Datos Protegidos is a civil society organization that promotes and strengthens privacy and data protection as human rights. One of its working areas is strategic litigation, such as the goal of this case, to promote and educate on privacy as a human right.

Taking a data leak to justice was no easy task. We intended to discuss whether our courts could understand this situation as a case of the *right to be forgotten* due to the leak of Sergio's photos on the Internet. Google and the two local newspapers were the defendants.²² On the one hand, the search engine helped internauts find the photos quickly; therefore, deleting them from the search engine would make it harder (or even impossible) to find them. On the other hand, local newspapers should delete the photos from their website. The right to be forgotten had been previously discussed in Chile at the jurisprudential level only once. Similarly, citizens had not been genuinely educated on this right,

20 El Mostrador, "Familia de Sergio Landskron anunció demanda contra el Estado por 'daño moral y negligencia'" [Sergio Landskron's family announced a lawsuit against the State for 'moral damage and negligence'], Dec. 1, 2014, <http://www.elmostrador.cl/noticias/pais/2014/12/01/familia-de-sergio-landskron-anuncio-demanda-contra-el-estado-por-dano-moral-y-negligencia/>.

21 María Paz Núñez, "Fiscal indaga personal médico por toma de imágenes a Sergio Landskron" [Prosecutor investigates medical personnel for taking images of Sergio Landskron], *Latercera*, Dec. 1, 2014, <http://www.latercera.com/noticia/fiscal-indaga-a-personal-medico-por-toma-de-imagenes-a-sergio-landskron/>.

22 See Pedro Anguita Ramírez, *Acciones de protección contra Google* [Protective actions against Google] (Santiago de Chile: Librotecnia, 2016) for more information about challenges to Google.

on how search engines work, and on the consequences of publishing violent photos on social media.

Datos Protegidos filed a remedy for protection (a writ for the protection of fundamental rights), arguing that the photos violated the rights of Sergio and his family to a private life and a good name. Furthermore, the photos violated the right to the psychological integrity of his family due to their strong content and ease of access. Any person only had to Google “Sergio Landskron” for the search engine to recommend (as the first results!) the photos of Sergio’s body or a video of him burning alive. Such is the competition for clicks.

The Right to Be Forgotten: The Right to What?

The right to be forgotten has become relevant with the emergence of the Internet and the massification of social media, search engines, and intermediaries. The transparent society Han mentions has modified how it understands freedom of speech and the rights to privacy and intimacy. Search engines, social media, and the Internet create a *constant exposure* culture, as we regularly publish our photos, friends, addresses, and workplaces. An enormous volume of information circulates, transforming the pre-Internet balances between privacy, freedom of speech, honor, and truth.

Precisely, the right to be forgotten and its name comes from the renowned case of *Google Spain v. the Spanish Data Protection Agency (Mario Costeja González)* before the Court of Justice of the European Union (CJEU) and the general data protection regulations.²³ This case provides that people have the right to rectify or delete their data (including their images) if they are no longer necessary for the purposes for which they were collected. Thus, the Costeja case provides that the “national authority may directly order the operator of a search engine to withdraw from its indexes and intermediate memory information containing personal data that has been published by third parties, without having to approach beforehand or simultaneously the publisher of the web page on which that information appears.”²⁴

Why does it make sense to suggest that search engines such as a Google delete certain information that flows through the Internet? Sometimes, as in Sergio’s case, the answer lies in the fact that the fundamental rights of the deceased person and those of their family are

23 Court of Justice of the European Union, *Google Spain, S.L., Google Inc./ Agencia Española de Protección de Datos, Mario Costeja González*, Judgement of May 13, 2014.

24 Ibid.

affected. Unlike public figures, Sergio and his family did not decide to be the subject of the news. Their media exposure was not “voluntary,” meaning that their privacy should not be affected.²⁵ Therefore, the grief of Sergio’s death is part of the family’s privacy and, as such, should be respected.

Sergio’s experience may also be a starting point to know what to do with a current phenomenon: how the information that garners the attention of Internet users — whether due to anger, morbid curiosity, jealousy, or revenge — harasses and disgraces human rights activists and defenders. As search engines cannot be held liable for their search results, any information may affect activists, even if it is false. The economy of attention does not hesitate to resort to deep fakes²⁶ to discredit or insult human rights activists or defenders. It is increasingly easy to find fake news, threats, and attacks against activists. The issue of the right to be forgotten is about the responsibility of search engines and whether the cyber-harassment of defenders and activists is protected under freedom of speech.

The Arrival of the Internet and the Transparent Society

Mayer-Schönberger, professor of Internet Governance at Oxford University, wonders how the life of humans will be now that we have transitioned from a world where things were forgotten, to a world where there is no forgetting with the Internet.²⁷

Perhaps the answer may be found in literature. In his short story “Funes the Memorious,” Borges describes a teenage boy with an almost absolute memory, who alone has “more memories than all mankind has probably had since the world has been the world.”²⁸ Funes is a person with no capacity for wonder, as his memory deprives him of appreciating life: he remembers everything. Every image and detail. He could not tell what was worth remembering or forgetting. Borges describes Funes as a pitiful guy. His memory simply prevented him from analyzing and appreciating the knowledge of his surround-

25 Vivian Newman, María Paula Ángel, and María Ximena Davila, *Víctimas y prensa después de la guerra: Tensiones entre intimidad, verdad histórica y libertad de expresión* [Victims and the press after the war: Tensions between intimacy, historical truth and freedom of expression] (Bogotá, Colombia: Dejusticia, 2018).

26 Videos made using artificial intelligence to put a real person in false situations.

27 Viktor Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* (Princeton, NJ: Princeton University Press, 2009).

28 Jorge Borges, “Funes the Memorious” in *Labyrinths*, translated by James E. Irby (New York: New Directions Publishing Corporation, 1964), <http://vigeland.caltech.edu/ist4/lectures/funes%20borges.pdf>.

ings; there was no *intelligence* behind the infinite details his memory captured. Thus, Borges reflects that “to think is to forget differences, generalize, make abstractions.” Therefore, to forget is the key to reflection, of giving meaning and sense to things.

However, forgetting is almost impossible on the Internet. With search engines, the Internet becomes a space where everything endures and will always be easily accessible. Information indexing on search engines keeps the information searchable forever.

Information indexing causes a ripple effect on the data dumped on the network. Search engines provide content by localizing the information published, indexing it, and temporarily storing it (“cache memory”), to show it to Internet users in a particular order of preference.²⁹ Therefore, for the CJEU, indexing may cause a “structured vision of the information on this individual that is available on the Internet, which potentially affects several aspects of their private life and which would not have been available without the search engine or could only be accessed with a lot of effort, and which facilitates establishing a more or less detailed profile of the relevant individual.”³⁰ For Remolina, this means a massive, global, cross-border processing of the personal data of billions of people around the world.³¹ Thus, to dogmatically construct the right to be forgotten, search engines are meaningful as information indexers since they are responsible for processing personal data and should be held accountable for the rights affected by the information contained on their websites. The concentration of sources by search engines indicates an accumulation of power that should go hand in hand with responsibility to Internet users.

29 Romina Garrido Iglesias and Jessica Matus Arenas, “Consensos para un derecho al olvido digital” [Consensus for a right to digital forgetfulness], *Revista de la Defensoría Penal Pública* [Review of the Public Criminal Defender] 8, no. 14 (2016): 30–39.

30 RELE, “Estándares para una Internet Libre, Abierta e Incluyente” [Standards for a Free, Open and Inclusive Internet] (Washington DC: Relatoría Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos [Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights], Organization of American States, March 15, 2017), pp. 53–54, http://www.oas.org/es/cidh/expresion/docs/publicaciones/internet_2016_esp.pdf.

31 Nelson Remolina Angarita, “¿Derecho al olvido en el ciberespacio? Principios internacionales y reflexiones sobre las regulaciones latinoamericanas” [Right to be forgotten in cyberspace? International principles and reflections on Latin American regulations], in *Hacia una Internet Libre de censura II: Perspectivas en América Latina* [Towards a Censor-Free Internet II: Prospects in Latin America], edited by Agustina Del Campo, 199–226 (Buenos Aires, Argentina: University of Palermo, 2017).

One of the most evident consequences of the Internet and search engines is the hyper-accessibility and loss of control over personal information on the web. This is called informational self-determination: I control what is and is not published about me in digital media. This is provided in Article 8 of the Charter of Fundamental Rights of the [European Union](#) and has been adopted by various Latin American constitutions, including the Chilean Constitution, since 2018.

As information spreads through the Internet, both by adding information and by indexing it, the extent of its impact is unfathomable and even perverse. Vulgar, hateful, violent content will always be more attractive than truthful, timely information. Since the objective is to generate clicks on a web page, the more morbid the information, the more appealing it will be to the Internet user. This is why Sergio was on the first pages of search results.

Being able to counter or dispose of the information — to modify or eliminate it, for example — no longer depends on the exclusive responsibility of the affected party nor the intermediary; this makes forgetting a problematic task.³² Thus, we lose control over our data on the web, resulting in the Internet creating “a ripple effect of the attacks against the rights, assets, and interests of people,”³³ among other things, thus violating the right to informational self-determination. For Mayer-Schönberger, “the dissemination of digital memories makes us lose control over our information, precisely constraining the freedom to form our own identity and the control over our information [...]; therefore, the loss of control may be even bigger than what the concept of information privacy traditionally implies.”³⁴

In this context, the delicate balance between privacy and freedom of speech changes. The information that may circulate about an individual on the web is perpetuated, and the consideration of human rights online changes. The hyper-exposure to information on the Internet creates a new scenario with freedom of speech and other rights

32 Carlos Cortes, “Derecho al olvido: entre la protección de datos, la memoria y la vida personal en la era digital” [Right to be forgotten: Between data protection, memory and personal life in the digital age] (Buenos Aires, Argentina: Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE) [Center for Studies on Freedom of Expression and Access to Information], University of Palermo, 2012). <https://www.palermo.edu/cele/pdf/DerechoalolvidoiLEI.pdf>.

33 Ana Garriga Domínguez, “La protección de los datos personales en Internet: Problemas actuales” [Protection of personal data on the Internet: Current problems], in *Derechos Humanos y protección de datos personales en el Siglo XXI* [Human Rights and protection of personal data in the 21st century], edited by Álvaro Sánchez Bravo, p. 35 (Seville, Spain: Punto Rojo, 2014).

34 Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age*, p. 67.

clashing. To face this issue, therefore, we must come up with new solutions, such as the right to be forgotten. However, some people oppose these rights for reasons explained below.

Arguments Against the Right to be Forgotten

Criticism of the right to be forgotten revolves around freedom of speech and the right to truth. First, we review the issue of freedom of speech and its restrictions in the case of a conflict of rights. After, we look at the right to truth as a right to access information and as a collective value that strengthens democracy.³⁵

Criticism of the right to be forgotten has emerged around freedom of speech and the ambiguities in the wording of the ruling on the Costeja case: “They were not further discussed by the court, which has resulted in a series of vague or ambiguous interpretations by various jurisdictions.”³⁶ Academia has also criticized the right to be forgotten:

[The] digital right to be forgotten is broad and not necessarily consistent. At this stage of the debate, it is not possible to clearly state the criteria that would make this right enforceable, who is the holder of this right, before whom it can be exercised (who has the obligation of satisfying it), and which is the person or authority in charge of guaranteeing it. The doctrine is so ambiguous that its use causes great concern to freedom of speech defenders.³⁷

Thus, freedom of speech could be hindered by the ambiguity of Costeja’s ruling regarding the right to be forgotten, particularly in deindexing personal data from Google’s platform. As repeatedly stated by the Inter-American human rights system, the limitations to freedom of speech (whether to protect honor or privacy) must respect a three-step test where any restriction to fundamental rights (including freedom of speech) shall be 1) through a law; 2) necessary for the purpose it protects (i.e., there is no better means to enforce said restriction); and 3) proportional to the damage it intends to prevent.³⁸

35 IACHR, “The Right to Truth in the Americas” (Washington, DC: Inter-American Commission on Human Rights, 2014), p. 9, <https://www.oas.org/en/iachr/reports/pdfs/Right-to-Truth-en.pdf>.

36 RELE, “Estándares para una Internet Libre, Abierta e Incluyente,” p. 53.

37 Catalina Botero, Michael Camilleri, and Carlos Cortés, “Democracia en la era digital: Libertad de expresión en las Américas y el ‘Derecho al Olvido’ Europeo” [Democracy in the digital age: Freedom of expression in the Americas and the European ‘Right to Forget’], *El Diálogo*, Nov. 2017, p. 14. https://www.thedialogue.org/wp-content/uploads/2017/11/Democracia-en-la-Era-Digital_FINAL-1.pdf.

38 RELE, “Estándares para una Internet Libre, Abierta e Incluyente,” p. 54.

For the defenders of freedom of speech versus the right to be forgotten, deindexing would inhibit seeking, receiving, and disseminating information and ideas on the Internet. This would cause an imbalance between the actors participating in the dissemination of knowledge and information online; that is, those who request the information, those who publish it, the intermediaries, and those who see the information. Deindexing without jurisdictional orders or limitations would cause an imbalance in the rules, thus preventing “sufficient protection of the right to freedom of speech of Internet users.”³⁹

Another argument in favor of freedom of speech revolves around strengthening democracy. Freedom of speech has been understood as a means to fight the “tyranny of the rulers” and limit their power.⁴⁰ Thus, the right to be forgotten would be an obstacle in exposing human rights violations or corrupt acts. This would also apply to people under public scrutiny or public officers, as the activities they perform are considered of “public interest.”⁴¹ Similarly, forgetting on the Internet would inhibit public debate and prevent making truly informed political decisions.⁴² In sum, the right to be forgotten would go against an open and plural discussion because freedom of speech is “the cornerstone of a democratic society.”⁴³

Critics of the right to be forgotten point out that, given its confusing structure, “it would only make things worse and increase frivolous complaints and the excessive removal of content from the Internet.”⁴⁴ This would cause an imbalance between human rights on the Internet, as the right to be forgotten would leave the right to freedom of speech of Internet users unprotected.⁴⁵ Between late May of 2014 and October

39 Daphne Keller, “El derecho al olvido de Europa en América Latina” [Europe’s right to be forgotten in Latin America], in *Hacia una Internet Libre de censura II: Perspectivas en América Latina* [Towards a Censor Free Internet II: Prospects in Latin America], edited by Agustina Del Campo, p. 198 (Buenos Aires, Argentina: University of Palermo, 2017).

40 John Stuart Mill, *On Liberty* (London: John W. Parker and Son, 1859).

41 RELE, “Estándares para una Internet Libre, Abierta e Incluyente,” p. 55.

42 Catalina Botero, “Clase magistral sobre derecho al olvido” [Master class on the right to be forgotten], Lecture presented at the 10th Annual Latin America and Caribbean Internet Governance Forum (LACIGF 2017), Aug. 2–4, 2017, Panama City, Panama.

43 Ximena Fuentes Torrijo, “La protección de la libertad de expresión en el sistema interamericano de derechos humanos y la promoción de la democracia” [The protection of freedom of expression in the Inter-American Human Rights System and the promotion of democracy], *Revista de Derecho (Valdivia)* [Law Review (Valdivia)] 1, no. 13 (2002): 233.

44 Keller, “El derecho al olvido de Europa en América Latina,” p. 196.

45 *Ibid.*, p. 198.

of 2017, Google received about 1.9 million requests to remove URLs, of which about 826 thousand were granted.⁴⁶ Amidst this universe of requests, Google pointed out that many requests were false, and that about 57% of them did not contain a valid legal claim under the Right to Be Forgotten Law of the European Union.⁴⁷

Thus, freedom of speech would be the main bottleneck for the right to be forgotten. For critics, the naming of the right to be forgotten is confusing and abstract, and departs from the specificity required to restrict freedom of speech. Similarly, freedom of speech is not being considered, but rather priority is being given to personal data protection regulations, contradicting the Inter-American Human Rights jurisprudence. Finally, freedom of speech would not comply with the democratic dimension, understanding the Latin American context of possible authoritarian governments, which would use the right to be forgotten for anti-democratic purposes.⁴⁸

The second argument for rejecting a future right to be forgotten, especially in Latin America, is the coordination with the right to the truth of victims of human rights violations. The latter has an individual and collective dimension. In its individual dimension, it is the right of “the victims” to know what happened, and implies the correlative duty of the State to investigate, prosecute, and sanction these actions. In its collective dimension, it is society’s inalienable right to memory; that is, to “know the truth of what happened and the reasons and circumstances under which aberrant crimes were committed to prevent their recurrence in the future.”⁴⁹ Thus, critics argue that there is a relationship between truth and memory; “to de-reference information is to remove it from the public debate.”⁵⁰ Therefore, forgetting would be a threat to the victims of human rights violations in the region.

The Inter-American Commission on Human Rights (IACHR) has expressed the same opinion. Conflict and the authoritarian regimes of the Americas have had a strong demand for “greater access to information on past governmental and military activities and serious human rights violations. The population wants to remember, not to forget. Therefore, we must recognize the particular context of the region and how a legal mechanism such as the “right to be forgotten”

46 Botero, Camilleri, and Cortés, “Democracia en la era digital,” p. 4.

47 Keller, “El derecho al olvido de Europa en América Latina,” p. 181.

48 Botero, “Clase magistral sobre derecho al olvido.”

49 Botero, Camilleri, and Cortés, “Democracia en la era digital,” p. 11.

50 Ibid.

and its incentive to deindex may affect the right to truth and memory.⁵¹ Therefore, the right to truth is understood as a right applicable to “society as a whole,”⁵² which emanates from the right to access information. For the IACHR, the right to be informed of events “is essential to the development of democratic systems.”⁵³ Thus, under this perspective, the right to be forgotten would go against the right to access information and would affect the entire democratic system.

Thus, it seems that the right to be forgotten is linked to instruments like amnesty or the statute of limitations regarding human rights violations. Forgetting would be a sort of impunity that hinders the victims’ rights to truth and the reconstruction of historical memory.⁵⁴ This would happen because the right to truth requires informing on everything related to human rights violations. After all, unlike common crimes, society continues to live with the former “[a]s these are facts that transcend the contingency and contemporariness of the time in which they occur.”⁵⁵ Therefore, according to its critics, the right to be forgotten would be an obstacle to the free information flow, violating the right to freedom of speech and the right to the truth of victims and the society as a whole.

In Defense of the Right to Be Forgotten

The right to be forgotten discussed above is based on two sources. On the one hand, it may be constructed based on individual rights: the rights to private life, honor, and personal identity. On the other hand, it could be considered an extension of the right to the protection of personal data.⁵⁶ The judgment of the CJEU in Costeja’s case preferred to develop its ruling based on the latter without assessing the relevant human rights issues.

Thus, the right to be forgotten can be “analyzed from the logic of fundamental rights and, more specifically, from the logic of conflict of

51 RELE, “Estándares para una Internet Libre, Abierta e Incluyente,” p. 54.

52 IACHR, “The Right to Truth in the Americas,” p. 10.

53 Ibid., p. 13.

54 Keller, “El derecho al olvido de Europa en América Latina,” p. 186.

55 Gerardo Bernales Rojas, “El derecho a la verdad” [The right to the truth], *Revista Estudios Constitucionales* [Constitutional Studies Review] 14, no. 2 (2016): 287.

56 Rodrigo Pica, “El derecho fundamental al olvido en la web y el sistema constitucional chileno” [The fundamental right to be forgotten on the web and the Chilean constitutional system], *Revista Estudios Constitucionales* [Constitutional Studies Review] 14, no. 1 (2016): 309–318.

rights.”⁵⁷ The construction of the right to be forgotten, therefore, is a “didactic form to justify some sort of enhancement of the right to privacy and other rights or, similarly, set limits on the freedom of speech.”⁵⁸

This is critical. Considering a human rights assessment implies the legal criteria of the proportionality study, that is, whether restricting the freedom of speech is necessary, ideal, and proportional by law.⁵⁹ Thus, freedom of speech would be understood as a value that must be considered along with other human rights (privacy, honor, personal identity, and more) when studying whether or not forgetting information on the Internet is possible.

Thus, the right to be forgotten as part of human rights will facilitate balancing respect for privacy, the protection of personal data, honor, and other rights in today’s digital world, where hyper-accessibility and information perpetuity threaten human rights, just as in Sergio’s case. Furthermore, it cannot be said that the right to be forgotten will be a gateway to human rights violations — to delete investigations or claims against them — because there are no such cases to date.⁶⁰ If there are, in fact, judges who misjudge these rights and use the right to be forgotten as a mechanism for censorship, then the ruling, not the right itself, is flawed. Including such a critique in the human rights legal system would mean incorporating an underlying and extremely paternalistic vision of human rights protection, reducing the discretion of the legal authorities to protect the human rights in their own jurisdictional territories.⁶¹

Although freedom of speech is a fundamental mechanism of democracies from a classic and republican liberal perspective, it seems that the critics of the right to be forgotten have not considered the new scenario of human rights on the Internet, particularly regarding the volumes, perpetuity, and flows of information. Information indexing

57 Francisco Leturia I., “Fundamentos jurídicos del derecho al olvido: ¿Un nuevo derecho de origen europeo o una respuesta típica ante colisiones entre ciertos derechos fundamentales?” [Legal foundations of the right to be forgotten: A new right of European origin or a typical response to collisions between certain fundamental rights?], *Revista Chilena de Derecho [Chilean Law Review]* 1, no. 43 (2016): 97.

58 Ibid.

59 Ibid.

60 Botero, “Clase magistral sobre derecho al olvido” [Master class on the right to be forgotten].

61 Fuentes Torrijó, “La protección de la libertad de expresión en el sistema interamericano de derechos humanos y la promoción de la democracia” [The protection of freedom of expression in the Inter-American Human Rights System and the promotion of democracy].

leads to its hyper-accessibility and perennality, which may have serious consequences, such as in Sergio's case. The right to be forgotten would be a barrier to stop the mass of infamous information on individuals that circulates on the Internet and which affects their dignity, privacy, and honor. Think, for example, of cases of nonconsensual pornography, or cases of people declared innocent of charges of child sexual abuse that go viral on social media with no way to prevent it. The right to be forgotten is about resisting the maelstrom of information circulating on the Internet, which seriously affects innocent people.

Similarly, freedom of speech as the cornerstone of democracy would not be affected in principle by an eventual right to be forgotten. This right is an exception that considers the information flows on the Internet and does not intend to go against historical memory, human rights violations, or criticism of the government in power. The spirit and objective of the right to be forgotten is precisely to protect human rights and, as mentioned above, assessing these rights would prevent perpetrators of crimes against humanity, corruption, or information against the democratic spirit of countries from forgetting. The right to be forgotten does not go against the public interest, but against the information that time allows us to forget, that society forgets, and that does not transcend history; that is, the information that seriously affects the human rights of people and which, by means of due process, may be removed from the excessive and hyper-exposed flow of the Internet.

For example, how many teenage sex videos do we have to withstand circulating on the Internet every day to say that the hyper-accessibility and perennality of information also affect rights? The demand for more unrestricted information does not create *truth* by itself on the Internet. "More information and communication do not make the world any clearer. [...] Information by itself does not lead to any truth."⁶² If we want the Internet to be a place for truth and debate, there must be legal tools to mitigate the information preventing us from seeing the truth; information that has *no significance* and has rapidly become an epidemic.⁶³

Landskron v. Google et al.: The Trial

With clarity on the right to be forgotten from a human rights perspective, we return to Sergio's case.

62 Byung-Chul Han, *En el enjambre [In the swarm]* (Barcelona: Herder, 2014), p. 89.

63 *Ibid.*, p. 84.

At Datos Protegidos we argued that the publication and indexing of photos under the name “Sergio Landskron” in Google violated Sergio’s and his family’s privacy and honor. The great Chilean jurist Eduardo Novoa mentions that the violation of privacy may also indirectly affect the deceased.⁶⁴ Thus, “The right to privacy of living people includes aspects of the private life of their family or dead relatives [...], something that violates the dignity of the deceased may also violate the intimacy of their descendants.”⁶⁵ Thus, when Google and news sites affect the honor of an individual, the honor of their family is also affected. Therefore, our argument to the court was that the sphere of protection of Sergio’s privacy and honor was not limited by his death but also covered his family.

Furthermore, we pointed out to the court that the photos were obtained illegally. Not only because there were public apologies and a criminal trial against those responsible for leaking the photos but because the images were obtained in the ambulance and hospital, with no respect for the law about rights and duties regarding patients, as taking photographs in health care facilities is forbidden. Sergio did not receive appropriate and respectful care, as is the duty of all medical workers in Chile. In other words, health care professionals not only lacked the minimum ethical empathy with a dying person but also broke the law.

Finally, we pointed out to the court that deindexing and removing the photos was a way of protecting the higher interests of Sergio’s daughter and the physical and psychological integrity of his family. Protecting the rights and integrity of his daughter was important so that she would not be affected by these photos, which would only add to the hard situation of losing her father in such tragic circumstances. We wanted to protect his family from the painful consequences of having such crude photos circulating on Google and social media.

The Ruling of Santiago’s Court of Appeals

The case against Google, which was represented by one of the largest law firms in Chile, was heard on May 17, 2017. The ruling was eagerly awaited by Sergio’s family and our NGO. If we won, we would have made a substantial leap towards recognizing the right to be forgotten and could stop or contain the enormous damage caused by communication and news portals for years to come.

64 Eduardo Novoa, *Derecho a la vida privada y libertad de información: Un conflicto de derechos* [Right to privacy and freedom of information: A conflict of rights] (México, DF: Siglo XXI, 1979).

65 Rodolfo Figueroa García-Huidobro, *Privacidad* [Privacy] (Santiago de Chile: Ediciones Universidad Diego Portales, 2014).

A series of events that seemed to go in our favor occurred while waiting for the ruling. First, both news portals (one of them just before the court hearing) deleted the photos and apologized for the damage caused to the family, asking to stop the trial. However, although the news portals deleted the information, the photographs continued to be available in Google's cache memory, which still showed Sergio's photos.

As a result, and after allegations made by Google's lawyers, the company, perhaps in a strategic move not to take the matter to the Supreme Court, offered to deindex the photos and delete the caches so that they could no longer be seen on the web. This was a huge victory. Now it was practically impossible to find Sergio's horrible photos on the Internet. Now, we only needed the court to rule in our favor and understand the complexity of the phenomenon. Thus, it could set a precedent for forgetting information under exceptional circumstances and for qualified cases. However, this was not to be.

Despite the considerable time the judges took to rule, and the legal problem being discussed, the ruling is only seven pages long and displays an argumentative weakness that would surprise any court of law. The ruling did not assess the rights in question and failed to approach the issue directly. Even worse, it did not refer to the indexation, deindexation, hyper-accessibility, or perpetuity of information.⁶⁶

The court mentioned that "we fail to see that the actions described [...] are illegal; we only see that they act as some sort of index of all subjects, news, and documents." To "reinforce" its argument, the court mentioned that "the publication the plaintiff seeks to eliminate from the Internet registries is real and public information maintained therein without this constituting any arbitrary or illegal act or omission that affects any of the plaintiffs guarantees; therefore, and because of the reasons mentioned above, we reject this remedy."

There are several issues with this ruling. The court mentioned that the photos of Sergio's mutilated body were "real and public information [...] without these constituting any arbitrary or illegal act or omission that affects any of the plaintiff's guarantees." As mentioned, the photos expressly violated the law regarding rights and duties towards patients; therefore, the procurement of these photos was, in fact, declared illegal. Furthermore, the procurement of these images resulted in a criminal trial and a ruling for the payment of monetary compensation and public apologies before a court of the Republic. With this, the

66 See Court of Appeals of Santiago, file 125590-2016, Oct. 2, 2017, www.pjud.cl.

court deemed that the publication was within the scope of the media's freedom of speech, even though they did not assess the human rights issues. There was no assessment of freedom of speech versus Sergio's and his family's privacy, nor any assessment of freedom of speech versus the physical integrity of his family and daughter.

According to the arguments of the Court of Appeals of Santiago, there was nothing to assess on the matter of rights because this was a case of "real and public information." Following the logic of the court, should we not expect the media also to publish photos of rapes, child sexual abuse, or murders because they are "real and public information?" Are nonconsensual pornographic videos of any person also "real and public information?"

Thus, the court lost the opportunity of making a fair and well-rounded ruling on a matter that will inevitably come up again in the future. For our part, we lost the opportunity to seriously discuss a right that puts the balance of human rights in the digital age under strain.

Final Reflections

The end of Sergio's case has highs and lows. On the one hand, we achieved our practical objective: we were able to delete the photos that terribly damaged the honor, dignity, and privacy of Sergio and his family from the Internet. But, on the other hand, we felt powerless after noting the lack of will to serve justice more broadly — and alleviate the suffering of Sergio's family — in this terribly delicate matter.

This case shows that the obstacles to defending human rights are also present in jurisdictional spaces. Judges incapable of understanding new legal phenomena (beyond a favorable or unfavorable decision) stand in the way of a serious discussion about human rights on the Internet. One would expect the courts to be spaces to discuss and create legal theories that can provide remedies for situations like Sergio's. However, in this case, there was a deliberate refusal to get involved in the conflict, losing the opportunity to reflect on the limits of privacy and freedom of speech on the Internet. This chapter attempts to reopen such spaces for reflection on the defense of human rights, which the Court of Appeals of Santiago de Chile failed to make.

The outcome of Sergio's case was bittersweet considering how things came about. For us, it would have been extremely relevant to be able to advance in national jurisprudence recognition of the right to be forgotten as a remedy against the maelstrom of information circulating on the Internet. We do, however, consider the deletion of the photos

from the web as a triumph. This was a success for Sergio's family and a victory for our NGO.

Sergio's case shows how necessary it really is to reflect on search engines and how their click-based business models may adversely affect people's fundamental rights. Beyond this case, the absolute irresponsibility of what a search engine shows or does not show may lead human rights activists to be virtually harassed by their critics. Blatant lies about their reputation and violations of privacy may appear, affecting their rights without any legal remedy. Is this how we must understand the new balance of freedom of speech in the digital age?

It seems certain that the balance of rights (freedom of speech versus honor and privacy) on the Internet has been modified forever due to hyper-accessibility and hyper-connectivity. This implies a new scenario that must be conveyed to judges, lawyers, the media, and civil society, because it is not enough for the Internet to work by itself, as it provides spaces for unscrupulous and abusive people to use these tools against the population. How many cases like Sergio's must there be for us to understand the need to create legal remedies against information that seriously harms human rights? The lessons of Sergio's case affect other protagonists: teenagers in nonconsensual pornographic videos, people unjustly accused, teenagers who cannot delete photographs uploaded by their parents, and more.

We are creating the future of our technologized societies. This implies an awareness of the type of information circulating on the Internet, as not all information has the virtue of higher truth behind it. Today, intimacies are being exposed, and the boundaries of privacy are being blurred in favor of other human rights. The challenges in cases such as Sergio's make us ask a critical question: How far are we prepared to let Internet companies go in the pursuit of this new form of freedom of speech created by the digital age?

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**Reinstating Spaces for Civil Society:
Educating the Public Officers of
Mexico on the Right to Privacy and
the Protection of Personal Data**

Natalia Mendoza Servín

*All animals are equal, but some
animals are more equal than others.*
—George Orwell (1945)

I used to work with the organization Artículo 12 (better known as SonTusDatos). Nowadays, I coordinate a transparency unit in the State of Jalisco. At both jobs, my tasks have included ensuring the right to privacy and the protection of personal data. These two professional activities have undoubtedly made me aware of how important it is for public workers to know about these issues. Those working in the public sector must be educated on the importance of these rights so that they can ensure them for the citizens they serve.

In practice, public officers are trained continuously on the right to privacy and the protection of personal data, thus enabling the promotion of these rights. However, this training has not succeeded in making these rights as relevant as they should be. Experts may train public officers on the matter, but it seems that they only attend the training because they have to or because their supervisors asked them to. They do not necessarily assume the commitment of defending the privacy and the protection of personal data within their entities. On the contrary, they take on this task as an extraneous burden added to their public activities.

1. Introduction

This chapter provides a case study on the effects of this lack of education for public officers regarding the right to privacy and the protection of personal data. Here, I analyze the case of Mexico's Spy Government, a scandal in which several journalists and civil society activists reported that they were being spied on by the Mexican authorities.

Espionage and the violation of private life and personal data are not issues exclusive to Mexico. Public officers would have considered the possibilities of espionage if they had understood that the right to privacy must be protected just like any other right, especially when millions of citizens entrust public institutions with a significant amount

of personal data. The purpose of this paper, therefore, is to narrate the experiences and lessons learned on training public officers in Mexico. Later, I analyze the impact of this training regarding the reinstatement of public spaces for civil society.

This text contains six sections. Section 1 provides an introduction. Section 2 explains why the right to privacy and the protection of personal data is essential. Section 3 describes the evolution of Mexican regulations to become an ally of these rights. Section 4 narrates the challenges experts face when training public workers. Section 5 shows how the lack of education on privacy and the protection of personal data affects the reinstatement of spaces for civil society. Finally, section 6 presents some general conclusions.

2. All Rights Are Equal, but Some Rights Are More Equal than Others

I began this paper with a quote from *Animal Farm* by George Orwell, which has no relation whatsoever to the right to privacy. One might think that, in the case of this paper, any quote from *1984*, also by George Orwell, would have been better. However, I decided to use this quote to make an analogy with the public officers' attitude regarding the right to privacy and the protection of personal data.

Besides having a strong undertone of Russian history, *Animal Farm* talks about the victory of animals over humans. The humans used to take care of the farm but it is now owned by the animals. The first actions of the pigs, the leaders of the liberation movement, were to create principles to be followed by all animals:

1. Whatever goes upon two legs is an enemy.
2. Whatever goes upon four legs, or has wings, is a friend.
3. No animal shall wear clothes.
4. No animal shall sleep in a bed.
5. No animal shall drink alcohol.
6. No animal shall kill any other animal.
7. All animals are equal.

Over time, the pigs changed the rules at their convenience. For example, first, it was "No animal shall sleep in a bed," but then, they changed it, adding "with sheets" so that they could enjoy a comfortable bed without violating the rules. Similarly, "All animals are equal" was changed to "All animals are equal, but some animals are more equal than others," developing a hierarchy on the farm.

By saying that all rights are equal, but some rights are more equal than others, I am not implying that the Mexican authorities have manipulated the laws at their will to belittle the right to privacy and the protection of personal data. In other words, the attitude and ignorance of some public officers regarding these rights have led to the belief that there are “more relevant” rights. In other words, some rights are enforced more than others. This, because public operators have given more relevance to the rights they consider to be more important to which they are willing to invest time and effort.

I believe that this should not be. Human rights are considered as such because they guarantee human dignity. Eliminating or downgrading the importance of any of these rights would undermine the elements that consolidate the protections provided by the Constitution. By explaining the principles of interdependency and indivisibility of human rights, the judicial opinions (or the more detailed opinions by Mexican tribunals) mention that all these rights

Are related to each other, i.e., cannot be separated nor given more importance than others; they must be interpreted and taken as a whole and not as individual elements. All human rights and fundamental freedoms are interdependent and indivisible. The application, promotion, and protection of civil, political, economic, social, and cultural rights must be equally and urgently considered; i.e., they must complement, enhance, or reinforce each other.¹

Therefore, and as a principle, no human right is more important than other rights.

Furthermore, judicial opinions state that human rights complement, not diminish, each other. Human rights are a puzzle that becomes stronger as the picture comes together. All pieces of the puzzle are equally important, because the final image would never be complete with a missing piece. The same applies to human rights! The rights to privacy and the protection of personal data have emerged as rights equal to the rights to education, healthcare, or food. However, there are times when some rights may conflict. In these cases, the judge shall determine which right must prevail, without implying that one right “is less equal than other rights.”

Unfortunately, when training public officers, it is easy to note that the protection of personal data or the privacy of those who entrust them with their personal information is not their priority. On the

1 See Thesis I.4o.A.9 K (10a.), *Legal Journal of the Federation and its Gazette*, book 19, vol. 3, no. 10 (April 2013), p. 2254, Isolated Thesis (Constitutional), <https://sjf.scjn.gob.mx/sjfsist/Paginas/tesis.aspx>.

contrary, it is an additional burden that takes time from the tasks they consider to be priority. In other words, public officers — knowingly or unknowingly — are belittling one of the puzzle pieces. Consequently, our final image of human dignity is incomplete.

Neither the public officers nor the data subjects (citizens) are interested in privacy.² For the former, I believe that this is not a matter of interest to them because they do not see it as a responsibility that they must fulfill when they take public office, but rather as a task added on to the work for which “they were hired.” In turn, I believe that insufficient dissemination of the importance of protecting personal data has caused the indifference of data subjects (which, fortunately, is rapidly decreasing).

However, opportunities are always seized by the most knowledgeable. In this case, private entities have seen what some public officers have not (and that they should defend even more strenuously) — confidential information is a wonderful source of all types of competitive advantage. The best part is that no one is paying attention to its use or worried about protecting personal information.

Just as some public officers focus their efforts on issues (which are equally important, it must be said) besides privacy and personal data, others take these as their main objective. Consequently, some public officers, including the bodies responsible for ensuring these rights, have identified the need to promote privacy and the protection of personal data among public officers with the message that although the human rights they protect are essential, they should not neglect other rights. The human rights puzzle makes no sense without the right to privacy and the personal data protection pieces.

3. Raising Awareness of the Right to Privacy and the Protection of Data

Despite the neglect of some public officers, not all have forgotten that the right to privacy and the protection of personal data is essential. Furthermore, these operators are aware that these rights are treated as less equal than others.

Up until 2017, Mexico only had a Law for the Protection of Personal Data Held by Individuals or Private Companies.³ Up until then, the

2 For more information, see the National Census for State Transparency, Access to Public Information and Protection of Personal Data 2019, prepared by the National Institute of Statistics and Geography (INEGI), <https://www.inegi.org.mx/programas/cntaipdpe/2019/>.

3 Note that these laws are relatively new, enacted in 2010 and 2017. See

protection of personal data held by public officers was often regulated by transparency laws (implying that personal data protection regulations were not entirely specialized and were always subject to other rights, such as the right to information). In few cases, the States of the Republic created specific laws for public officers. The Law for the Protection of Personal Data Held by Reporting Parties (LGPDPSSO, for its initials in Spanish) was enacted on January 26, 2017, establishing guidelines to protect confidential information held by public entities. This new regulation gave autonomy and relevance to privacy and the protection of personal data beyond transparency and the right to access information.

The issue of education about these rights started with the enactment of transparency laws in Mexico, which provided for disseminating and promoting transparency and information access, but not the protection of personal data, at least not explicitly. However, those in charge of the training concluded that public officers should also know about the protection of personal data. Although most of the information is indeed public by nature — as a public entity protects it — this does not justify the disclosure of personal data.

With the enactment of the LGPDPSO, the entities responsible for ensuring transparency and access to information must now disseminate the right to the protection of personal data both in public institutions and Mexican society. Note that both the transparency and personal data protection laws require all public entities to have a transparency unit, which has been vital to reaching and training all public officers in their respective institutions.

Due to the existence of these transparency bodies and departments, we might be led to think that all personnel of public offices are trained to promote, respect, protect, and ensure the human rights mentioned in this article. Furthermore, many public entities have records of the number of training sessions provided and the number of people trained.⁴ The numbers are there: the number of institutions trained, the number of people who took the course, etc. This is an outstanding achievement, as there is no doubt that training is not an easy task,

Chamber of Deputies, *Ley Federal de Protección de Datos en Posesión de los Particulares* [Federal Law on Data Protection Held by Individuals] (2010) and *Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados* [General Law of Protection of Personal Data in Possession of Obligatory Subjects] (2017) both available at www.diputados.gob.mx.

4 For example, the National Transparency, Information Access, and Personal Data Protection Institute, the highest authority on the matter, has a website showing the training provided since 2011. See <http://inicio.ifai.org.mx/Site/Pages/CalendarioCapacitacion.aspx>.

especially training that leaves a mark on those who listened to the experts on the matter. However, the problem is no longer the number of people trained but the number of public officers who have taken the training seriously and applied it to their daily tasks.

4. Training Public Officers in Data Privacy and Protection

Guarantor bodies and transparency units prepare their material in advance to train the public officers from all fields of knowledge. They bring fun speeches, eye-catching visuals, and everything that helps make learning quick, easy, and exciting. As in any lesson, they find enthusiasts who, like sponges, devour the information. Many others fear the laws and its consequences, so they pay attention to the facilitators and ask many questions. The experts know that, after the training, they will receive phone calls from all of them.

The problem is reaching those who arrive and stare at the slides, but focus their attention elsewhere. Those who are talking to someone else, browsing social media on their phones, or doing their usual work during the training. The expert notices that their attention is elsewhere because they ask questions about items already covered or because they ask questions that don't make sense. After the training, they call to ask more questions, not on new subjects, but on basic things they should already know.

At first, we might see this as an issue of attitude and commitment towards the public service. Perhaps this is the case in some instances. But, when talking to these distracted people, the facilitator notices other pressing issues besides attitude that, although they do not justify it, do explain why they do not pay attention to such an important matter. These are three of the main reasons:

1. The officers' workload is excessive, and they barely have enough time to perform their daily work. During a training session I facilitated, someone mentioned that he could either do his usual tasks, or he could focus on protecting personal data. He did not have time for both, and since he was hired to perform his typical duties, he was more likely to omit the latter.
2. Institutions are understaffed, even for general activities. Senior officers often say that they will gladly work on privacy and data protection issues, but that they need additional budget to hire more staff.

3. Public officers have unstable working conditions with high turnover. As a result, people who have received training may leave soon afterwards and be replaced by new personnel who must be trained from scratch.

How can we solve this problem? In part, it is a matter of budget. The heads of institutions must allocate resources to ensure that the right to privacy and the protection of personal data has the material and human resources required to consolidate them. On the other hand, experts and trainers should be persistent and patient. They must make the public officer understand that, from the time they accept a public position — no matter how junior the position is — they agree to protect the right to privacy.

Unlike with training, there are no statistics showing the number of public officers who actually apply what they learn in the courses and workshops. As a facilitator, however, I can conclude that the programs have not permeated to the extent of compliance with constitutional duty, as the daily work of public officers still has considerable deficiencies.

In part, the lack of education on the right to privacy and the protection of personal data explains the decisions public officers make in many cases, which significantly affect the reinstatement of spaces for civil society, as discussed in the next section. By failing to understand the importance of these rights, public officers have incurred actions that not only violate the right to privacy but have also caused the closure of spaces for association, as some members of civil society feel intimidated.

5. Reinstating Spaces for Civil Society

In 2017, some Mexican civil society organizations reported that the government attacked several journalists and human rights activists through a malware⁵ called Pegasus, which allows spying on whoever has downloaded the software. Organizations such as Red por la Defensa de Derechos Digitales (R3D), SOCIALTIC, and Artículo 19 documented and conducted a study on the human rights violations suffered by those who received malware-infected messages.⁶

5 Malware is the general term for malicious software that tampers with a computer. See <https://www.seguridad.unam.mx/historico/usuario-casero/eduteca/main.dsc-id=193#queEs>.

6 R3D (Red en Defensa de los Derechos Digitales), “#GobiernoEspía: Vigilancia sistemática a periodísticas y defensores de derechos humanos en Méxi-

Although the attacks reported by civil organizations may have several causes, espionage by the States on civilian actors and human rights activists is related, in no small way, to a lack of education on the right to privacy and the protection of personal data. Imagine that a social movement anywhere in the world wishes to exercise its right to freedom of speech for a specific purpose, or a group of human rights activists plans a strategy to defend a particular cause that is opposite to the interests of the government. Their success or failure is based on respect for the privacy of these people. I believe that the great historical movements achieved their objectives when government agents or opposing parties did not intercept their ideas. They succeeded in their task by maintaining their actions in secret, as it was very likely that their plans would have been disrupted otherwise.

Therefore, the right to privacy — to not be disturbed or spied upon — is the spearhead to reinstate the spaces for civil society without the interference of authoritarian governments or those who disagree with their intentions. Consequently, these rights would help consolidate a democratic State with the electorate in command of the government, and not the other way around.

Nowadays, the right to privacy plays a fundamental role. Although information technologies have indeed brought great benefits to humanity, other sectors have found them to be tools to spy on any movement contrary to their interests. By not protecting the privacy of those who wish to freely associate or of human rights activists, not only are the ideals of justice at risk of being annulled, but activism itself is also at risk, as these public or private actors may have access to locations, conversations, documents, and other information which may be used against activists. Once people are freely associated, they should be able to access timely and accurate information to make decisions and execute sound plans based on real information.

At the end of the day, cases such as Pegasus continue to happen in Mexico. New attempts at espionage were detected during 2019, and civil society continues to fight against the invasion of people's privacy.⁷

6. Conclusions

Educating public officers on the right to privacy and the protection of personal data is an overdue task in which experts and trainers must

co" [#SpyGovernment: Systemic surveillance of journalists and human rights defenders in Mexico], June 19, 2017, <https://r3d.mx/2017/06/19/gobierno-espia/>.

7 Ibid.

work hard. Understanding that privacy is a human right, equal to other human rights, allows the authorities of public institutions to be aware that all humans deserve respect for their privacy. Freedom and democracy are also defended by respecting this area of human life.

Civil society activists will continue to associate to fight for our objectives, even if this implies that our privacy will be affected. However, we must hope for the public officers to know and understand that the right to privacy and the protection of personal data is equal to any other right. I believe that these rights are invaluable for societies of the Global South, for there are still many battles to fight. These struggles will be successful as long as individual activists stay out of the government's sight.

To the extent that governments (especially authoritarian governments) continue to spy on their own citizens, they take advantage of organized society, which fights for just ideals. Therefore, all of us must commit to the right to privacy and the protection of personal data, whatever our position on human rights matters.

The expert training of public officers must assure that those who work for the State understand that they are also part of a society that, while transparent, must also balance the citizen's "right to be alone." Perhaps the citizens they serve may need this right, which they never defended. The public officer will only see the importance of the right to the protection of personal data when they feel part of the society and understand that they too are affected by the insufficient protection of these human rights.

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Civil Resistance Against 21st Century Authoritarianism

Defending Human Rights in the Global South

Populist authoritarian governments have jeopardized the human rights accomplishments of the 20th century. Ensuring their fulfillment has become a challenge for these governments and an issue for human rights defenders seeking to find ways to resist anti-democratic actions.

This book seeks to expose the crisis of human rights at the hands of people who, despite rising to power through democratic means, now see democracy as a limiting institution that must be dismantled urgently. Restrictions on civil society and arbitrary detentions are some of the reasons why this populist and authoritarian vision is incompatible with human rights, which are guaranteed to some and denied to others.

Through various narratives, the authors seek to recognize new spaces for struggle —such as political activism— to develop action-research tools in a context of crisis.

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