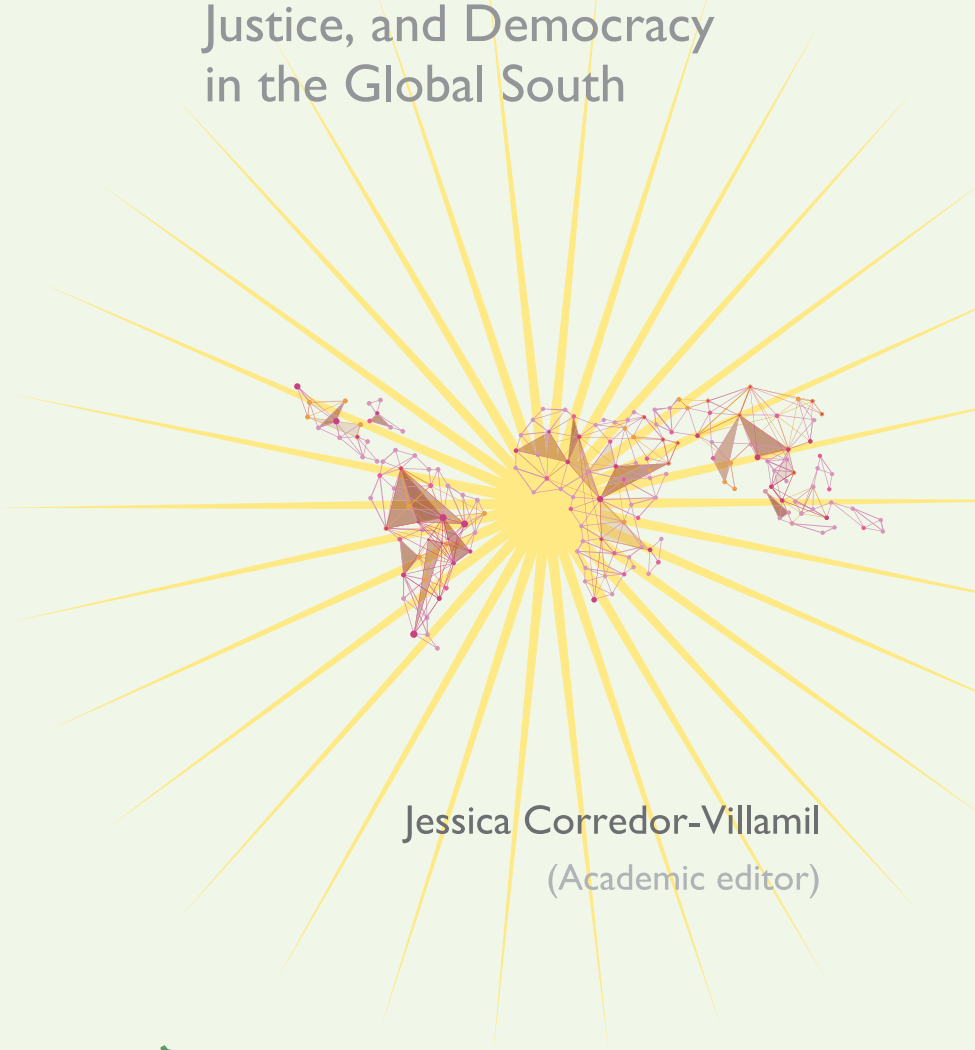
Reimagining the Future of Human Rights:

Social Justice, Environmental Justice, and Democracy in the Global South



Jessica Corredor-Villamil
(Academic editor)

Human Rights Action Research from the Global South *(Volume VI)*

Dejusticia Series

REIMAGINING THE FUTURE OF HUMAN RIGHTS

SOCIAL JUSTICE, ENVIRONMENTAL JUSTICE, AND DEMOCRACY IN THE GLOBAL SOUTH

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Social Justice, Environmental Justice, and Democracy in the Global South

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Editor

Dejusticia
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Introduction: Human Rights Have a Future

Jessica Corredor-Villamil

This book is the collective effort of participants from the 2018 Global Action-Research Workshop for Young Human Rights Advocates, which Dejusticia has been organizing annually since 2013. These workshops aim to strengthen the abilities of young activists from the global South to achieve a greater impact in their human rights work and to reach a wider audience through new forms of narration. This book is just one of the many outcomes of the 2018 workshop.

The talented and committed authors of this volume—all contributors to previous editions as well—hail from countries as diverse as Brazil, Ghana, Russia, and Venezuela. They came together again in 2018 to think about the intersection between research and activism and what it holds for the future of human rights. That is why our selection process for the 2018 workshop participants sought to ensure that two people from each cohort were working from a transnational perspective.

The specific goal of this particular workshop was to reflect on the future of human rights, for we sensed that we were at a crossroads. With the recent rise in populist authoritarian governments, the global increase in inequality, and the worsening climate crisis, a number of thought leaders have wondered whether we have reached "the end-times of human rights" (Hopgood 2013). We thus wished to use this workshop as an opportunity to respond to some of the most frequent criticisms of the efficacy and legitimacy of the human rights movement by drawing on historical and empirical arguments and responding to the reflections of Kathryn Sikkink—one of the workshop's instructors—in her book *Evidence for Hope* (2017).

Human rights defenders and activists are working in a world that is constantly changing. It's a more multipolar world; powerful voices have emerged from the global South, which has reshaped the way that human rights work is being done across the globe. Furthermore, the Arab Spring and other social mobilizations that have since taken place have put the spotlight on civil society's ability to act and its convening

authority. Nonetheless, despite the fairly positive outlook for civil society participation and the emergence of new voices, it is necessary to review the strategies that we have been using thus far and explore how to make them more effective.

This book is extremely relevant today, three years after the workshop, as we are living in a transformative time. The COVID-19 pandemic has had unprecedented socioeconomic and political impacts, including increases in inequality, unemployment, states' abuses of their emergency powers, and the concentration of presidential power. Moreover, social networks have played a critical role in the sociopolitical arena, not only in light of their capacity to massively mobilize but also due to their propensity to foster political polarization and the use of misinformation for political ends. Thus, although we face a different context from the one in 2018, this volume serves as a guide of sorts to help us reconsider the effectiveness of our strategies as a human rights movement as we look toward the challenges being posed by the third century of this decade.

The contributors to this book question traditional methods and explore new ways and visions of advancing human rights in the troubled context in which we live. Do the struggles of small-scale miners in Ghana, the use of strategic litigation in Lebanon, and the recognition of the rights of nature in India represent evidence for hope? Or is the opposite true, and, as shown in the chapters on martial law in the Philippines, the treatment of wastewater in Argentina, and in the internal conflict in Yemen, human rights have failed to deliver on their promises?

Acknowledgments

This book, like the other volumes in this series, is part of a collective and long-term project being conducted within the framework of Dejusticia's international work. The Global Action-Research Workshop seeks to help participants use action-research tools to strengthen their ability to produce rigorous texts capable of resonating with a broad audience.

Above all, the book is the result of the hard work and creativity of workshop participants, who earnestly followed the mentoring process from start to finish in order to write the chapters that make up this book. The leadership and dedication of Meghan Morris, global workshop coordinator, and Camila Soto, coordinator of Dejusticia's Escuela D, were key to the workshop's success. Morgan Stoffregen and Sebastián Villamizar Santamaría translated and edited the chapters in the English and Spanish editions, respectively. Claudia Luque, Dejusticia's

publications coordinator, led the production process and is the one responsible for ensuring that this book saw the light of day.

Lastly, the book—as well as the Global Action-Research Workshop effort in general—was made possible thanks to the continued support of the team at Dejusticia, the constant mentorship and involvement of Nelson Fredy Padilla, and the generous financial support of the Ford Foundation and the Open Society Foundations.

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The Dark Cloud and Lack of Air

Marisa Viegas e Silva

This chapter seeks to illustrate the political tension in Brazil during August–October 2018, the months leading up to the country's presidential race, from the perspective of a public official living in the capital of Brasília.

Brasília and the Lack of Air

It was one of those days where it was hard to breathe. August in Brasília: rain was nowhere to be found, and it was impossible not to think about it. How long would it take for the rainy season to arrive this time? Meteorologists had predicted scattered showers for this week, but they had said the same thing the week before and nothing. It was like that year round.

The public servant's body was on fire because of the dry air: at night, it hurt to breathe, as the air scalded her nostrils and shredded everything inside. She had been living in this city for some years now, but she could never get used to the drought that scorched her skin, eyes, and nose, as if they were an offering to the earth, a price to pay for those who have come to Brasília in search of job opportunities. It was as if the red dust that swallows the city during the dry season were a trial by fire for the outsiders who now lived here and were seeking to become children of this land.

Records dating back to the eighteenth century document the idea of moving Brazil's capital from the coast to the inland region. Indeed, the capital's transfer was the result of centuries of proposals and initiatives put forth by eminent figures in Brazilian history, and even of a legend: in 1883, Italian Catholic priest Don Bosco dreamed of a special "promised land" that would appear between South America's 15th and 20th parallels (Universidade Católica de Brasília 2013). Today, Brasília is located in the same spot prophesied by this priest, on the shores of Paranoá Lake (an artificial lake built to accompany the new capital), and Don Bosco is considered the city's patron saint, along with Our Lady of Aparecida (Senado Federal n.d.).

The idea of creating a new capital was usually justified on the grounds of "interiorization" (moving the capital inland), given that the two previous capitals, Salvador and Rio de Janeiro, were located on

the coast, as were other major Brazilian cities, and thus all were vulnerable to possible foreign attack. But other factors were also at play, such as the desire to populate the country's inland areas and President Juscelino Kubitschek's proposal to make Brazil a "modern" country (Oliveira n.d.).

It was the 1950s and the country was enjoying relative stability, having endured nearly ten years without any military coups. Kubitschek, the president of modernization, assumed office under the motto "fifty years in five," representing his ambitious development plan. He spearheaded the decision to give life to the old dream of the new capital. In fact, Brasília's construction was one of Kubitschek's campaign promises, and under his administration the city was built at an astonishing pace, at the expense of poor laborers seduced by the idea of trying their luck in the future capital. These construction workers, who hailed mainly from the northeastern region, as well as Goiás and Minas Gerais, were Brasília's first inhabitants. They eventually became known by the name *candangos*, a derogatory term for uneducated itinerant workers.

The rush to inaugurate the new capital was for a well-known reason: to avoid any moves by political actors opposed to abandoning the old capital, located in the idyllic beach city of Rio de Janeiro, for a piece of dirt in the middle of nowhere. To prevent this project from failing, Kubitschek needed to inaugurate the capital before his term was up—and in 1960 he did just that, presenting the country with an unfinished city. Despite opposition, the city was inaugurated as Brazil's new capital that year, and its new role was cinched with the arrival of the dictatorship in 1964.

The promises of a bountiful land and easy money turned out to be a sham: work was frenetic, pay was low, free time was practically nonexistent, and entertainment was scarce. Worker riots were quickly shut down by the Special Guard of Brasília, a special police force connected to state-owned company Novacap, which was responsible for managing the capital's construction. This special force was notorious for its aggressiveness and arbitrariness.

The public servant recalled wistfully how she came to Brasília some years ago thanks to a job opportunity in the public sector, one of the government's preferred ways of attracting new residents. The public service, with its difficult entrance exams and competitive wages, was still a dream for most Brazilians. And Brasília, among other things, was just that: an oasis in the midst of a challenging job market, a magic land of civil service and bureaucracy, a big amusement park where the usual urban scourges of violence, begging, and traffic were largely

absent. In fact, in 2017, Mercer, a US consulting firm, rated Brasília as the Brazilian city with the best quality of life (Mercer 2017, 2019). This ranking confirmed the same results from the firm's 2015 and 2016 reports, which looked at infrastructure-related factors such as access to electricity, water availability, and telephone services.

One of Brasília's many peculiarities is its climate, which has two distinct seasons: the hot and humid season (October to April) and the dry season (May to September). The region is home to the Cerrado biome, famous for its short, drought-resistant trees with thick bark. When the public servant first moved to Brasília, she didn't think much of these small, twisted trees so common in the area. But over time, she learned to observe and respect the Cerrado, which harbors one-third of Brazil's biodiversity and 5% of the world's flora and fauna—all of which are currently being threatened by human activity and the expansion of soybean and other crops. The Cerrado is dry and amazing; it defies fires and is reborn from the ashes. The Cerrado of the ipe trees that bloom during droughts.

The public servant thought about how the red tone so characteristic of the dry season was outshone only by the dazzling ipe trees, whose color filled the city with beauty. One by one, with their different colors, and their exuberance and strength, the ipes bloomed while Brasília's residents wrangled with the fatigue and dry skin that come with that time of year.

Brasília in a Country of Hope

It was an election year and everything was out of the ordinary: there were about two months left before the election, and, unlike in other years, the outcome was not a foregone conclusion by August. One of the candidates was in jail (former president Luiz Inácio Lula da Silva), one was a far-right candidate from a small party that was on the rise (Jair Bolsonaro), and there was a scattering of other contenders, some of whom had performed well in previous elections (such as Marina Silva, Geraldo Alckmin, and Ciro Gomes).

Another aspect that gave a new face to the election process that year was the ban, thanks to the Supreme Court, on corporate donations to presidential candidates, which meant that campaigns had to be financed with public funds and individual donations. There were also new rules on campaign advertising and on the use of sound trucks, among other things, which made the campaign season a bit calmer, more organized, and more peaceful than usual.

It was impossible not to breathe politics, even if minimally, in a city that was built on this function. And it was especially true for someone who worked in the federal public service.

She had prepared for the public service entrance exam back in 2012, when the country was enjoying a period of significant economic prosperity and was hiring lots of public servants. Brazil's economy was the sixth largest in the world, having surpassed even that of the United Kingdom, according to the Centre for Economics and Business Research, a leading economics consultancy based in the United Kingdom (Inman 2012).

In a country that is extremely unequal, that has a large population suffering from hunger, that has suffered economic crises time and again, and whose collective memory knows all too well how difficult it can be to get by, the benefits of working in the public service were undeniable. Two of the main advantages were job stability and above-average salaries. Here, it is worth noting that job stability is only for those who join the public service via an entrance exam, and not for political appointees (who are at-will employees).

She was optimistic, and she remembers clearly how passing the exam changed her life forever: her purchasing power increased considerably, opening the door for home ownership and financial security. There were lots of employment opportunities in the country, with even a shortage of labor for some of the more basic jobs. She recalls being surprised at seeing people from the poorest sectors of society gaining access to goods and services that they had never dreamed of, such as housing, appliances, and even air travel, something that had been unimaginable just a few years prior.

There was also the strength of BRICS and the euphoria over Brazil's pre-salt oil region. With regard to the first of these, the acronym BRIC was coined in 2001 by British economist Jim O'Neill, from Goldman Sachs, to refer to the then-emerging economies of Brazil, Russia, India, and China. In light of these countries' prospects for economic growth and the observations of international agencies, these countries' governments established an economic bloc in 2009. Two years later, South Africa joined the group, and the acronym was modified to BRICS.

With regard to the second factor, the pre-salt region is an oil and gas reserve that Petrobras discovered in 2006. This reserve, trapped below a thick layer of salt, is located along an 800-kilometer strip of coastline between the states of Espírito Santo and Santa Catarina (Senado Notícias n.d.). The company's discovery generated tremendous enthusiasm due to its potential to greatly expand the Brazilian economy, particularly since Brazil has historically had to import oil. Although

pre-salt drilling is inherently more difficult than other types of extraction, that fact didn't diminish excitement around the idea. Later, Petrobras became ensnared in a serious political scandal, which slowed down investments in the pre-salt project, but this did not stop it from commencing drilling in the Jubarte field, located in the Campos Basin in the state of Espírito Santo. According to data published by Petrobras, average oil production in this area was 41,000 barrels per day in 2010;[1] one million barrels per day in 2016; and 2.03 million barrels per day in 2018 (Petrobras 2016, 2019).

Brasília and the Political Scene

She couldn't fathom how much Brazil had changed in just a few years. She was not an expert in politics or the economy, but she recalled a few events from recent years that helped her understand, at least in part, how it got on this path.

She remembered the massive protests of 2013, which began with a public demonstration led by the Free Fare Movement that had been organized online and brought together students and workers to protest a bus-fare increase. This wave of protests ended up reaching all corners of the country, uniting people with disparate political agendas behind a common cause: to denounce the country's World Cup spending, its dislocation of families in the name of development, and its reduced spending on education, among other things. Above all, the need to protest was in the air.

She thought back to the 2014 World Cup and the public's fear that it would be a colossal failure because of the surrounding tensions. She also remembered the presidential race from that year, marked by a tragic airplane crash that killed Eduardo Campos, a promising candidate. She recalled the fierce battle for office between Aécio Neves (the Social Democratic Party), Marina Silva (Socialist Party), and Dilma Rousseff (Workers' Party). After the country's return to democracy, elections had always been decided in favor of one of two parties—the Social Democratic Party or the Workers' Party—but this time had been different, with Rousseff winning by only a slim margin of 51.64%.

From there, everything had gone downhill quickly and confusingly. There were so many events that it was hard to keep track. The feeling she had was that the 2014 election had not been decided at that moment, since the results (which gave a narrow but verifiable victory, from the point of view of electoral rules, to the Workers' Party) had

1 According to Petrobras, average daily production increased tenfold between 2010 and 2014 (Petrobras 2014).

been disputed before the Electoral Justice by the Social Democratic Party.

In the midst of all this, a series of corruption scandals involving high-ranking politicians emerged. One such scandal was Operation Car Wash (*Lava Jato*), the largest corruption investigation in Brazilian history. The operation's name was coined at the start of the investigation, when the Federal Police were focused on investigating a gas station suspected of laundering money; subsequently, the operation transformed into a much larger investigation targeting a web of corruption that was operating in Brazil and abroad and which involved business executives and politicians from different parties. Operation Car Wash, which began in 2014 and continues to the present day, has included search warrants and arrest warrants, pretrial detention, and plea bargaining (in which suspects reduce their sentences in return for cooperating with the criminal investigation or testifying against their accomplices).

Through the joint work of the Federal Police, the Public Prosecutor's Office, and the federal judicial system, for the first time in Brazil's history, high-ranking politicians were being investigated, charged, and arrested, marking a paradigm shift away from the traditional impunity enjoyed by politicians and the country's elite. Without a doubt, the most impactful of these actions, at least symbolically speaking, was the jailing of former president Lula in early 2018.

Despite being widely supported by the public, Operation Car Wash also had its critics, most of whom argued that the state's investigation was violating constitutional guarantees. Among the violations cited were the selective leaking of records and information, arrests used to force plea bargains, and the failure to respect the principles of presumption of innocence and impartiality.

The fact is that Operation Car Wash was much more than a simple police investigation, since it struck at the heart of Brazilian politics and business, thus playing a role in the crisis that the country is currently experiencing. Her impression was that Operation Car Wash led politicians to redirect much of their energy toward defending themselves from possible imprisonment and criminal sanctions instead of leading the country.

Each time a potential prison sentence was announced for an Operation Car Wash suspect, Brasília trembled. The city is the setting where major decisions are made, where battles, betrayals, and conspiracies take place—and it is the place where people from different parts of the country gather together to define the country's future.

Brasília and Architecture

Many years ago, when Brasília's construction was being planned, a design competition was held, and the jury selected urban planner Lúcio Costa and architect Oscar Niemeyer to design the new capital. Costa proposed an urban layout in the shape of a butterfly or cross (known as the "pilot plan" in allusion to its airplane-like format). The uniqueness of this design led to Brasília's designation as a UNESCO World Heritage Site in 1987.

The entire city was conceived of as an open-air work of art, with its magnificent buildings showcasing the political power that came to inhabit the city starting in 1960. Though it is famous for being a city of cars and not people (due to its wide avenues and the long distances between places), the public servant always felt the opposite: she was impressed by the "super blocks" (the term used for the city's neighborhoods), which were all the same except for their numbers. And in commercial and residential areas alike, there were trees, so many trees. And birds. And cicadas. And quiet, to balance out all of the noise generated by the political scene.

And in the midst of the turmoil caused by Operation Car Wash came the impeachment of President Rousseff, who had been accused of "fiscal pedaling," a creative accounting practice involving the delay of government payments to banks, with the aim of creating a false impression of the state's financial health. As a result, Rousseff was impeached and removed from office on charges of criminal administrative misconduct, marking the second president to be impeached since the country's return to democracy.

All of this was happening in the National Congress, next door to the public servant's place of work. She had seen so many newspaper photographs of this strange-looking building located at the eastern end of the Monumental Axis, which occupies one of the corners of the Three Powers Plaza, along with Planalto Palace and the Supreme Court. The building consists of a main structure that serves as a platform for the domes of the Chamber of Deputies and the Federal Senate. The smaller dome, belonging to the Senate, is turned downward in a sign of reflection, serenity, and balance. The larger dome, belonging to the Chamber of Deputies, is turned upward, symbolizing an openness to receiving the wishes of the people.

Every time she passed by that building, she wondered: When will you finally hear us? Despite having lived in the city for years, seeing the building still filled her with awe, especially on afternoons boasting those beautiful orange sunsets so common in the region.

Rousseff was replaced by Vice President Michel Temer, from the Brazilian Democratic Movement, who quickly adopted positions that were diametrically opposed to those of his predecessor. He rolled out a series of unpopular reforms, including a labor reform (approved in November 2017), Constitutional Amendment 95 (an austerity measure enacted in 2016 that froze public spending for twenty years), and a pension reform (yet to be approved). The public servant followed all of these developments closely, concerned for herself and others.

Brazil's economic crisis, which started in mid-2014, eventually spurred a severe economic recession. By August 2018, the unemployment rate was 12.1%, with 4.8 million "missing" workers (people who stopped looking for work). And the country's political scene was just making the economic crisis worse ("Desemprego cai para 12,1%" 2018).

The public servant was fearful. Despite seeing herself as privileged (her friends who had been working in the private sector were now unemployed or gigging as Uber drivers), she was afraid that the stability she had worked so hard to achieve would come to an end. She was afraid of being discharged as a result of the spending cap imposed by Constitutional Amendment 95. She was afraid that the labor reform would replace public servants with outsourced employees, who work longer hours, earn much less, and enjoy fewer labor protections.

With so many corruption scandals coming to light, in addition to the economic crisis and unemployment situation, the public's apathy toward politics transformed into anger and disbelief, which sparked a general feeling that the country's politicians needed an overhaul. It was amidst this pervasive sense of confusion, fear, and upheaval that the 2018 presidential election arrived.

In August of that year, judges from Brazil's Superior Electoral Court barred former president Lula from running for office because of his corruption conviction. Lula had hoped to run and had a genuine chance of winning, according to pollsters, even from behind prison bars. After this ruling was issued, the Workers' Party had ten days to find another candidate, ultimately deciding on his running mate, Fernando Haddad, as the presidential candidate, and Manuela D'Ávila from the Communist Party as vice presidential candidate.

In the period leading up to the first round of the election, Haddad, in his capacity as a lawyer, made weekly visits to Lula in prison, and his campaign ads sought to connect his name to Lula's. Despite significant voter support for Haddad's candidacy, even stronger was the feeling of rejection toward Lula and the Workers' Party.

Meanwhile, Jair Bolsonaro, a former congressman belonging to a virtually unknown party, began to gain strength with his extremist and

divisive rhetoric. Exacerbating matters, other well-known candidates appeared to be securing little voter support. One such example was Marina Silva, who had almost made it to the second round in the 2014 presidential election.

October arrived, and the cicadas were engulfing the city with their song, as if in celebration of the welcome end to the drought. In her first few years living in Brasília, the public servant had been unable to tolerate the cicadas, whose smell penetrated her nose, and which flooded the crowded city streets with their deafening buzz. She would never have wanted the experience of a cicada accidentally entering her house: she wouldn't be able to sleep or even think straight due to its loud song. But now, especially with the dry seasons growing longer and her feeling slightly bored with the silent streets of Brasília, the public servant welcomed the cicadas' song, viewing it as a harbinger of the much-needed rainy season.

The first round of the election was less than a week away, and she still didn't know whom she would vote for, though she did know who wouldn't be getting her vote. Without a doubt, she was going to read the candidates' policy proposals that week. The televised debates hadn't helped much in her analysis, particularly because one of the strongest candidates, Bolsonaro, hadn't taken part for "medical reasons." About a month prior, Bolsonaro had been stabbed during a campaign rally in the city of Juiz de Fora, in the state of Minas Gerais, by an assailant allegedly suffering from mental health issues and who had previously been affiliated with the Socialism and Liberty Party. Bolsonaro subsequently underwent surgery and suspended his campaign events during the first round.

She sensed that tensions were mounting as the election drew nearer. The rainy season was showing its first signs, but this didn't seem to be enough to mitigate the dense fog that was engulfing the country, especially Brasília. It was the fog of fear and confrontation.

A few days earlier, women across the country had launched a wave of nationwide protests, uniting under the hashtag #EleNão ("not him") to voice their rejection of Bolsonaro. Counter-marches were quickly organized under the hashtag #EleSim ("yes him") in support of the former congressman.

Fear lurked throughout the country like a poisonous smoke that infiltrated friendships and suffocated family relationships. It was a time of extremes: you either supported one party or you supported the other. Being on the fence, even momentarily, was not an option.

At first, she vowed not to lose any friendships or family relationships during this time, as she had seen happen to others around her.

One of her friends cut off all contact with her father until election day in order to avoid further conflict. But at the last minute, the public servant failed to prevent a discussion of politics from abruptly alienating her from a childhood friend. After that point, she decided that it was easier just to block certain acquaintances from her WhatsApp and social media sites. She wondered, How could a person live with someone else who was planning to vote for the other candidate?

How long had this dark cloud been sitting there? She knew it hadn't always been there; she knew that people used to coexist in relative harmony. Life seemed to go on as usual in spite of the unease that lingered in the air. The density and bleakness of the cloud merged with the everyday. Fear grew after the first round of the election took place and the candidates for the second round—Haddad and Bolsonaro—were defined.

Brasília and Democracy

She had never thought so much about the meaning of the word democracy. That year, the thirty-year anniversary of Brazil's 1988 Constitution, she could sense a palpable concern among the public over the need for the candidates to commit to upholding democracy.

The election campaign was running loose on WhatsApp, and fake news was everywhere, such as the story claiming that one of the candidates would be escorted by Cuban guerrillas and that the country would be at risk of a communist takeover. And photos were published of the other candidate's son wearing a t-shirt that supposedly made fun of Nordestinos (people from the northeastern region of Brazil). On both ends of the political spectrum there was an intense fear that Brazil would "become Venezuela" due to the humanitarian crisis next door and the large influx of Venezuelan migrants and refugees in certain cities in Brazil, especially those in the north.

Above all, it was a battle of morals. For example, one side criticized previous government programs aimed at integrating education on sexual and gender discrimination into schools (so-called gender ideology) and promoted a controversial discussion on the role of ideology in education (pushing the project known as "schools without political parties").

She thought about the time when she was about ten years old, at home in her native town, with the TV on in the living room. She had been wearing light clothing because of the heat. The TV was displaying a roomful of people—mostly men in suits—in a solemn session of the National Congress. The legislators were enacting the Constitution of

1988. At the time, she didn't really understand what was happening, but she knew it was important and felt excited.

Today, she understood the importance of that constitutional text and everything enshrined within it. Previously, she had taken the 1988 Constitution's modern proclamations for granted, assuming that things had always been that way. Brazilian history has enjoyed few periods of democratic stability, and the current era is one of the longest. She grew up with the naïveté of those who don't recognize their luck, who don't cherish the freedom of living in a democracy.

One of the many advancements ushered in by the 1988 Constitution was the strengthening of the Public Prosecutor's Office and a broadening of its functions. Prior to the new Constitution—and as remains the case in other countries today—this office was responsible for representing the state in the filing of criminal charges. This avoided placing the burden on victims in terms of initiating criminal proceedings. The Public Prosecutor's Office exercised this function almost exclusively until 1988, when something unusual happened, giving the institution a set of powers that set it apart from its counterparts in other countries.

In the post-dictatorial period in southern Europe and Latin America, countries' transitions to democracy were marked by a desire to reinforce existing constitutional guarantees in order to avoid the repetition of human rights violations. To do this, they drew inspiration from an institution of Scandinavian origin—the ombudsman—a kind of inspector general that monitors the actions of the public administration and which, for the Latin American countries transitioning to democracy, would also take on the role of defending constitutional rights.

In Brazil, this is essentially what happened, save for one exception: this role, instead of going to a new institution, was folded into the functions of the Public Prosecutor's Office. The result was a hybrid-type institution consisting of public prosecutor and ombudsman. This hybrid institution has the power to act both in the area of criminal prosecution and in the promotion and guarantee of fundamental rights. As a result, the Public Prosecutor's Office of Brazil was tasked with two critical roles: keeper of the democratic order and defender of constitutional rights.

The public servant thought about the meaning of the Constitution, of democracy, and of the role of the Public Prosecutor's Office as she read a book by Steven Levitsky and Daniel Ziblatt (2018), two Harvard professors, on the dangers facing democracies. The authors argue that in today's world, military coups are no longer necessary to topple a government; instead, the death of democracy begins at the ballot box,

with leaders coming to power via legitimate means and, once in office, eviscerating democratic institutions from the inside.

Is democracy really at risk? What is the true meaning of freedom? Could freedom as she knew it be coming to an end? Her mind was so fraught with these questions that she began praying, and one day she decided to enter the Metropolitan Cathedral of Brasília, the new capital's first monument to be built. The cathedral is peculiar, like everything in the city. Inside is a shining space with a glass ceiling that slopes up toward the sky. Niemeyer's strokes of freedom.

She thought of Marielle Franco, the brave Carioca councilwoman who denounced police violence being waged against black youth in the favelas of Rio de Janeiro and who herself was shot dead in downtown Rio that same year. She also remembered other heroes, famous or not, who inhabit this beautiful country. And she was certain that Brasília would prevail.

Postscript: The Brazilian presidential election was concluded on October 28, 2018, with Jair Bolsonaro, then candidate of the Social Liberal Party, winning office.

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Venezuela's Judiciary under the "Bolivarian Revolution"

Ezequiel Monsalve

Inequality in the Judicial System

Valentina[1] scoots her car up the entrance ramp of the Palace of Justice. This entrance, reserved for judges and other judicial officials, connects to the building's only parking lot. There, her car will be well protected, unaffected by the evils of Venezuelan crime, at least while she is at work.

As for myself, I park in the area just outside the palace, in a type of embankment unequipped to accommodate the dozens of cars belonging to the users (lawyers and the general public) who visit the Palace of Justice each day. I have to leave my car under the surveillance of an older man who, with a rag draped over his shoulder, tells me not to worry, he's going to take care of the car as long as I give him "a little something" when I return. The situation is clear: it's an unprotected parking lot managed by a total stranger who offers a guarantee of security that he cannot fulfill, and should there be a problem, I will have nowhere to complain.

Valentina takes her seat at her bench. It's a wooden desk, about twenty years old, with pencil marks and a distinctive shade characteristic of old wood; above her head hangs a painting of Simón Bolívar, Venezuela's custodian and guarantor of justice. I wonder: if Bolívar could speak today, what would he say about our justice system?

I wait in the records area for a court worker to give me an update on the application I filed; this is the third time I have come and I have yet to receive a response. Whenever you come here, you must first announce yourself to the bailiff at the door, who gathers the various requests of the visiting lawyers and then seeks the relevant information from the court clerks. Depending on the day or time, this procedure can eat up an entire day, and it's likely that you won't get lucky on your first try, meaning that you'll have to return the following day.

1 Pseudonym.

The application I filed is for something purely procedural—a simple case file that doesn't require the presence of a lawyer (or interested party) in order to be granted. A good example of this kind of file is certified copies of a court record. If you aren't constantly visiting the courthouse or requesting a meeting with the relevant clerk or judge, you will never get those documents. And sometimes, persistence alone is not enough.

This situation is 100 times more difficult when it comes to any procedure requiring a specialized response or an administrative action related to criminal proceedings—such as the setting of a preliminary hearing for a client. Under Venezuelan criminal law, the hearing date must be set after the prosecutor files the charges, but this doesn't always happen. To actually secure the hearing, you must go through the hassle of visiting the courthouse each day until they finally have mercy on you.

Although I hate waiting, I can honestly say that this job has turned my weaknesses into strengths. Now my mind and body are prepared to wait indefinitely, my tolerance level having been forcibly increased by judicial officials who taught me to kneel before the corrupt and malfunctioning system. Now I just beg for a little attention.

But my critical thinking skills remain intact—so much so that I am writing a few lines about it in this hopeful chapter. While I wait in the records area, I come up with at least ten ways that the judicial system could be more efficient for users, who clump together like traders on the floor of the New York Stock Exchange, eager for an encouraging bit of news. It frustrates me to see the special treatment enjoyed by some lawyers, who walk through the doors without a care in the world under the icy glares of the dozens of other lawyers who allow themselves to be treated like doormats but do not complain. Raising your voice in this space means sacrificing your chance for a morsel of attention.

This tale I'm telling is about the absence of equality in the face of a broken system whose limited capacity is reserved for those who pay or who wield public influence. Added to this are judicial misconduct, corruption, a weakened rule of law, regulatory reforms, and the judiciary's limited budget.

Further, certain nuances of the judicial system make it even more unequal to the point of being out of reach and counterproductive for many. Unlike other countries with judiciary-related challenges, Venezuela's problem is not simply that the courts respond to the cases of the rich while ignoring those of the poor; rather, the judiciary also suffers from corruption and interference by the executive branch.

According to Acceso a la Justicia, a Venezuelan nongovernmental organization, Chavism entrenched a systemic policy of attacking the judiciary's independence (Acceso a la Justicia 2019a). This resulted in the gradual corrosion of the judiciary and in the concentration of power in the executive branch at the expense of the other branches, the rule of law, democracy, and, above all, citizens. Today, the judiciary essentially serves to legitimize the actions of the president. Rather than investigating corruption, it fosters it; it is part of the problem due to its association with the political establishment.

This fusion of judicial power and political power has aggravated inequality before the courts, making justice even more inaccessible and counterproductive for those who need it. For example, a recent report published by a national media outlet (one of whose authors is currently in exile) noted that 56.3% of Venezuela's judges are or have been affiliated with the ruling party (Marcano et al. 2019).

The lack of an independent judiciary means that courts prioritize cases that benefit those in power and prosecute, punish, or deny access to justice for those who side with the opposition. Former judge Eladio Aponte of the Criminal Cassation Division of the Supreme Court of Justice admits that he followed orders from the president's office about how to decide on certain cases, noting that he received calls from the president himself, asking Aponte to "conduct the investigations in a way that was convenient for the government." As he noted, "Justice is worthless … It's like Playdoh … It can be shaped for or against you" (YoSOiTV 2012).

A context such as this makes it extremely unlikely that there will be public allegations accusing high-ranking officials (magistrates, public prosecutors, and so forth) of corruption or of having connections to corruption networks within the judicial system.

This institutional inequality, made worse by corruption, prevents justice operators from functioning as they should. For example, whenever an accused person has any dealings with a police officer, they can immediately see that the situation revolves around the money that they are willing to pay or the money that is at stake, as that determines how many people will get their cut. In order to extract money from the accused, police officers often threaten them not just with incrimination but with the seizure of their assets. This can occur during any part of the criminal process, including the trial, when the guarantees of *audi alteram partem* are greater. Throughout criminal proceedings, both the accused and the victim can suffer violations to their fundamental rights. While the accused is subjected to extortion, the victim is revictimized not only by the obstacles encountered in their quest for justice

but because they must be alert to the likelihood that their case could go unpunished as a result of corruption.

A recent example of this occurred in judge Valentina's court during the case of Angela Aguirre, a young Guyanese woman who was allegedly raped and murdered by a group of acquaintances (Acceso a la Justicia 2019b). The perpetrators, who belong to wealthy families in the area, allegedly bribed officials to secure their innocence, and Aguirre's parents had to go to all ends, including by launching a media campaign, to prevent them from escaping punishment. Thanks to the support of civil society organizations specializing in gender issues (Civilis 2019), the family was able to raise awareness of the case and, as a result, achieve a bit of transparency during the criminal investigation.

Another frequent example of inequality—clientelism—can be seen in the courtrooms themselves, right where Valentina works. Clientelist networks set the tone for courts' operation by, for example, organizing hearings for privileged groups of lawyers who, for a fair price, win judges' "hearts." These lawyers pay exorbitant sums of money to ensure their preferential and almost exclusive treatment within the judicial system.

Yet another facet of inequality is embodied by criminal charges that seek to prosecute dissidents or reject their lawsuits. The treatment that such individuals must endure is even worse than that of the average person, with nonexistent exceptions of justice and equality. One example of this is criminal cases against political prisoners, where judges and public prosecutors are coerced into making unconstitutional decisions in order to keep their jobs.

The prison situation—namely detention and pre-trial detention facilities—is a critical issue that has worsened over the years, especially the past three years, as Venezuela has faced a complex humanitarian crisis (Provea 2018). This crisis, coupled with the dire state of prisons, has led many prisoners to suffer from illness, malnutrition, and delays in their legal proceedings. In 2018, the Venezuelan nongovernmental organization Una Ventana a la Libertad (2018) published a study revealing that 49% of the 176 pre-trial detention centers evaluated lacked potable water, and 33% lacked toilets, showers, and lighting. A subsequent report by the same organization noted a stark deterioration in cleanliness, food, and prisoners' physical movement in 100% of the facilities studied (Una Ventana a la Libertad 2019).

In Venezuela, wealthy prisoners enjoy privileges— such as private, air-conditioned rooms with television—that are off-limits to the rest of the prison population. Prisoners without financial means are outcast and abused to the point that their lives are in constant danger, not just

because of the harm they might suffer at the hands of prison leaders but also because of limited access to basic services, such as water.

Prison settings are affected by political influence as well. In 2011, then president Hugo Chávez created the Ministry of Popular Power for Correctional Services in light of the grave prison crisis stemming from, according to President Chávez, the historical exclusion of prisoners ("Asume nueva ministra de Asuntos Penitenciarios" 2011). President Chávez also promised to dismantle prison gangs. This new ministry was placed under the leadership of Iris Valera, who served as minister until 2019.

The ministry, however, has strengthened armed movements within prisons to such an extent that *pranatos*, or organized crime groups, have taken control. Today, many of the country's prisons operate like fortresses, and their criminal bosses have expanded their activities beyond prison walls, openly operating extortion and kidnapping rings (Una Ventana a la Libertad 2018).

Former minister Valera was accused on several occasions of strengthening and financing these *pranatos* by granting them certain procedural benefits and sometimes even making public appearances with them. To take one example, in 2016, she granted parole to prison gang boss Wilmer Brizuela, a.k.a Wilmito, who had been sentenced to prison for kidnapping, robbery, and murder for hire (Una Ventana a la Libertad 2017). Wilmito used this new status to travel throughout the entire national territory, even to Margarita Island, where he was spotted vacationing with his family. The minister also appeared in a photograph where she was sitting on the bed of Teófilo Rodríguez, a.k.a. El Conejo, a prison gang boss from San Antonio Prison (Carmona 2016).

El Conejo's ideological and business ties with Chavism are so deep that his likeness appears next to Chávez in a prison mural. Following the lead of other prison gang leaders in Venezuela, he built a nightclub in Tocorón Prison, where prisoners and visitors alike could party. In 2012, he ordered the construction of a walkway connecting the prison's main entrance with this nightclub. The minister's justification for approving this walkway was that it would help families and friends avoid having to pass through other areas of the prison (Franco 2016). Gang leaders and their armed groups, with the government's permission, enjoy privileges that are unavailable to the rest of the prison population. They demand *vacunas* ("vaccinations," or extortion payments) from other prisoners in exchange for their safety, and they decide whether other prisoners get to leave the facilities to attend court hearings, thus exacerbating the delays in Venezuela's judicial system.

Ultimately, these gang bosses control prison security by prohibiting the entry of law enforcement authorities and other prison officials.

In response to this dire situation, in 2021 President Nicolás Maduro created a special commission tasked with reforming the judicial system, which would be headed by Chavist legislator Diosdado Cabello Rondón and Maduro's wife, Cilia Flores, also a legislator (Asamblea Nacional 2021). This commission was granted broad power over the judicial system in order to address the problem of overcrowding in prisons. It was also authorized to act in the area of legal reform and to conduct a systematic performance review of justice operators, including judges and public prosecutors.

The creation of this commission attracted fierce criticism from civil society, who argued that it was a desperate attempt by the government to fend off an investigation by the International Criminal Court (Provea 2021) and that the commission was ill equipped to remedy either the serious human rights violations occurring within Venezuelan prisons or the failings of the entire justice system. Legal experts agree that one of the main weaknesses of today's judiciary is that more than 85% of its judges have been appointed only "provisionally" instead of being required to undergo a transparent selection process, as is required by the Constitution (International Commission of Jurists 2021).

In practice, the commission has simply served to generate even deeper interference in criminal procedures and thus facilitate corruption even more. But this time, the corruption comes from officials directly linked to the executive branch, who, overstepping judges, determine prisoners' hearing dates and early release dates.

Some of my criminal lawyer colleagues have confided to me that the entire situation is a *rosca* (a colloquial term to refer to a ruling clique): prisoners are forced to pay money to members of the commission in order to be added to a list of beneficiaries. The aim is to expedite their cases (most of which were experiencing significant delays) by setting their hearing dates and negotiating the terms that would allow them to obtain an early release.[2]

In terms of the commission's legislative strategy, it lobbied legislators to expedite the reform of seven criminal laws, including the Organic Code of Criminal Procedure (COPP by its Spanish initials) and the Organic Code of Military Justice ("Asamblea Nacional aprobó siete proyectos" 2021). And while some practices that had been in violation of the Constitution have since improved, this reform has not resolved the structural problem facing the justice system, which stems

2 Interview with two practicing attorneys, Puerto Ordaz, March 2021.

from a weakened rule of law and a lack of judicial independence. This problem could theoretically be remedied by drawing on the Constitution and other laws—but the government, through its manipulation of the judiciary, has suspended the application of such constitutional principles.

In summary, the Special Commission to Reform the Judicial System is the most recent example of how the political establishment has negatively impacted the judicial branch, thereby heightening corruption and damaging the system of checks and balances. The frustration of justice operators, compelled to comply with these "new guidelines," can be sensed as one walks down the hallways of courthouses and other judicial institutions. Judges' authority has been dislodged by a group of individuals who, lacking all legitimacy (including in the public eye), tell judges how to rule in each of their cases.

Role Play

Criminal proceedings—which are the ones most likely to implicate fundamental rights, such as the rights to life and to liberty—are the main focus of legal debates on human rights in Venezuela. Each year, hundreds of thousands of people visit courthouses, prosecutors' offices, police stations, and other institutions to demand that the state, through its punitive justice system, intervene in their problems and impart justice.

Valentina serves as a control judge; according to the COPP, as a first-instance judge she is tasked with ensuring compliance with constitutional principles and safeguards, the country's criminal laws, and international treaties. She is a first line of defense against any arbitrary or abusive actions that authorities might commit against the accused or the victim, but she is also responsible, "in the name of the Republic", for determining classifications of crimes, issuing or removing precautionary measures, and deciding which type of criminal procedure will be adhered to. She is the first judicial authority to see an accused person or victim during the course of their legal proceedings.

According to article 6 of Venezuela's Judicial Code of Ethics, Valentina must ensure that all persons are able to fully exercise their human rights—which are inalienable, indivisible, and interdependent—as well as the guarantees enshrined in the Venezuelan Constitution and in its legal system (Gaceta Oficial de Venezuela 2009). This requires respecting persons' dignity and their equality before the law.

In terms of my professional career, I am a litigator specializing in human rights. Litigators such as myself play a transcendental role in

Venezuela because we represent the interests of defendants and victims alike. We rely on a range of resources and texts to support our clients; as Eugenio d'Ors once said, "Laws are rules, but also weapons." Without a doubt, we embody the most important principle of modern law: the right of defense.

According to the Code of Ethics of Venezuelan Lawyers, the honor of our profession is paramount; dignity and decorum must always prevail (International Commission of Jurists 2014). We must act with honesty, integrity, discretion, efficiency, selflessness, veracity, and loyalty at all times.

Although judges and lawyers should abide by moral principles in line with the values imparted by the Constitution, few in Venezuela actually do; the practice of law has been turned on its head, and society is increasingly distrustful of our profession. For many, the problem stems from legal practitioners' failure to abide by these moral values; for others, it's a much bigger issue stemming from a state that wants things to function in this dysfunctional way. Personally, I lean toward the latter explanation, but I think that in the process of rebuilding Venezuela's justice system, we should consider those moral aspects that are reflected in professional codes of ethics. Being a judge, a lawyer, or even an auxiliary part of the administration of justice (such as a police officer or an expert witness) is difficult work. Venezuela suffers from a multitude of constraints and poor practices that make our justice system one of the worst in the world (World Justice Project 2021).

Judges earn less than US$42 a month ("Magistrados ganan 12 salarios mínimos" 2017), have long working hours due to backlogs, and are easily replaceable given the growing trend toward "provisional" appointments; further, courthouses are usually in deplorable conditions, and most judges don't have even mastered the basic elements of the legal profession. Moreover, there are no settings for them to engage in academic debate or to stay on top of developments in the field.

Meanwhile, lawyers face a dying profession thanks to a clientelistic system that has generated extreme inequalities among practitioners. Lawyers face a host of problems arising from a system that is, as mentioned earlier, corrupt and broken. To survive, they must pay the rates of whoever is in charge and then pass the cost onto their client accordingly. Legal insecurity is palpable, with very few guarantees of protection or enforcement.

For those of us lawyers who work on human rights issues, our litigation capacity is limited due to political interference in the judicial system. Discrimination, intimidation, and persecution are pervasive. Mobility and connectivity pose another structural barrier to our ability

to do our work. Further, the country's fragile situation forces us to provide certain types of support to victims that fall outside our expertise. Efforts to guarantee the protection of clients' human rights are even more exhausting and distressing in a highly hostile context such as Venezuela's.

The Venezuelan government has recently increased its attacks against human rights defenders. Cases abound, such as those of Marcelo Crovato, who was detained for more than three years for providing criminal defense for young protestors ("El calvario del argentino" 2018), and of Javier Tarazona, president of Fundaredes, who was detained in 2021 for denouncing the presence of guerrillas and paramilitaries in Venezuela. The nongovernmental organization International Service for Human Rights has called on the Venezuelan government to stop intimidating human rights defenders who are exposing rights violations and are seeking justice before the Inter-American Commission on Human Rights (Delgado 2015).

Valentina is guarded about her job. In fact, when I spoke with her, she didn't disclose how she got it. She sees being a judge as a golden career opportunity, accepts the system as it is, and tries to survive as best she can. She did not mention any specific acts of corruption but did acknowledge that no judge in Venezuela is immune to it—it's an inherent part of the work. She appeared to rationalize her situation, mentioning that she had the ideal profile for the position: she had five-plus years of professional experience, she was responsible and not economically hard pressed, and she had clerked in various criminal courts.

For my part, I have managed to preserve my calling as a lawyer in spite of the challenges, and I have molded my profile in a way that has allowed me to detach myself from the judicial system as a private attorney. My work is focused on legal research, defending victims of human rights violations, national advocacy, and international litigation. And while this has allowed me to engage in a saner version of the legal profession, it has also significantly increased my exposure before the state, whose watchful eye I have managed to circumvent with a certain degree of know-how and digital security protocols.

When you're a human rights activist, the state is always your adversary—but not necessarily your enemy. Sometimes it can be your strongest ally, so it's important to know when the moment is right to get that big bureaucratic machine behind your cause. The state is like a lumbering giant controlled by a little goblin without any muscle. The goblin is the administration, which, in accordance with its strategic interests, orders the state to crush entire groups of people. But if guided

by another person, the giant can act benevolently toward vulnerable communities.

I sometimes reflect on the similarity between lawyers who work for the government and those who work in private practice or in defense of human rights: it's a role-playing game. Valentina and I graduated from the same law school and crossed paths in similar activities, but we are different. Her vision of the legal profession centers on the power and benefits it offers, even though it requires her to bend her ethical principles.

For me, the profession is a reflection of my feelings and passions. It's an instrument to achieve victories for people and work toward a more just society. I don't consider myself an idealist, but I think that Venezuela is experiencing a difficult moment that has shredded the social fabric and pushed inequality and injustice to alarming levels. Once this crisis is over and our institutions are at least minimally functioning again, I will rethink my vocation.

Corruption and Distrust

Valentina knows that corruption is a permanent fixture of the judicial system; she lives in this environment daily. Patting herself on the back somewhat, she claimed that she was not "so involved" in it, since her goal as a judge is to have a positive influence on offenders, encouraging social reintegration and offering second chances to those who have made mistakes.[3] For her, the purpose of Venezuelan courts in the present context is to bring parties closer to a sense of justice.

Valentina told me that today's corruption is the product of the various parties in legal proceedings—that is, lawyers, prosecutors, and the accused. She explained:

> To begin with, the detainee wants to pay in order to circumvent the whole process that committing a crime entails. If he can't reach a monetary agreement with the accusing entity, then he goes to the court. Meanwhile, the lawyer offers liberty to the detainee on behalf of the judge and the public prosecutor by telling family members that if they pay a certain sum to these two people, their relative will go free, when in reality none of this is true. Another corruption-related factor is the influence that law enforcement agencies have on judicial decisions—in other words, decisions are often issued under the pressure of these agencies even when everyone is aware there isn't enough evidence, since doing otherwise can generate certain consequences for the judge who made such a decision.

3 Phone interview, February 2020.

Corruption is present in other areas of the judicial system as well. A good friend and colleague admitted to me that during his ten years as a judge in Ciudad Bolívar, he and other judges frequently had to rely on the whims of a local police chief and to deal with his officers' lack of willingness to do their work. For example, the judges would have to beg the police chief to transfer detainees from one facility to another, and then to wait for the officers to agree to execute the transfer. The situation is similar for prisons. As mentioned earlier, prison gang bosses decide whether a prisoner is allowed to enter a facility or be transferred somewhere else. They charge modest sums of money to this end, and of course the more one pays, the better the benefit they enjoy within the prison compound.

This current state of Venezuela's justice system makes people distrustful. I'm distrustful, Valentina is distrustful, and the gang boss at Tocorón Prison is probably distrustful, but the system is our master. It's the only option there is.

This crisis of confidence reaches far and wide, with no sphere of public power untouched. People's dealings are conducted through corruption, unequal relationships, poor services, and impunity, which is probably why any position related to public administration has a bad rap. In a country where a mere 1% of the population views the economy in a positive light, the public's trust in state institutions has reached an all-time low. In fact, in Venezuela, only 8% of people report having interpersonal trust and only 18% report having trust in the judiciary, making it the third-worst country in this regard (Estella de Noriega 2020).

Meanwhile, the lack of transparency makes it impossible to properly evaluate the performance of institutions involved in the administration of justice. This casts serious doubt on whether they are in fact working to guarantee human rights. This is the situation despite the fact that the Constitution (article 26) requires the administration of justice to be transparent and that the Organic Law of the Supreme Court of Justice (article 120) and the Law against Corruption (article 8) require the judicial branch to publish information on its operation and spending (Acceso a la Justicia 2018).

Venezuelan institutions are notorious for failing to publish annual reports. For example, neither the National Police nor the Ministry of Popular Power for Correctional Services nor the Autonomous Public Defense System have published such reports. And the Public Prosecutor's Office, the Supreme Court of Justice, and the Office of the Ombudsperson have published reports only during certain years.

A recent report by the Office of the United Nations High Commissioner for Human Rights confirms this state of affairs. It notes that

access to official data is limited given that "official publications, including statistics, have been scarce, and completely lacking in some areas, since at least 2015" (United Nations Human Rights Council 2019, para. 7). This not only makes it extremely difficult to diagnose and address the shortcomings of the judicial branch but also fosters corruption, weakens institutions, and fuels citizens' distrust of these entities.

Being a Judge in Venezuela

The vast majority of judges in Venezuela lack security of tenure, which can jeopardize their independence and discourage them from issuing decisions that could agitate those who have the power to take their jobs away (Martínez Neira 2019). Indeed, a mere 14.7% of judges are tenured; the remainder have provisional, temporary, casual, or accidental appointments (International Commission of Jurists 2021). Although article 255 of the Constitution states that judges must be selected and promoted by means of public competitions, current practice is in violation of this standard.

For example, on several occasions, the Supreme Court of Justice has modified the rules governing the selection of judges in order to uphold the practice of appointing provisional judges, which contravenes the Venezuelan Constitution and international standards.[4] Its jurisprudence has also established that the removal of provisional judges does not require any disciplinary process, thus failing to protect these individuals from safeguards against arbitrary removal, as enshrined in international law.

The judicial branch has not held a public competition for more than seventeen years (Acceso a la Justicia 2016). Up until now, the court's Judicial Commission[5] has had complete discretion in the appointment of provisional judges and has not required candidates to demonstrate any particular professional qualifications or to undergo a selection process. Provisional judges lack job stability, and they can be removed from their posts just as easily as they are appointed.

Valentina is among this group of non-tenured judges. Many of her colleagues have already been removed from their positions, and it is increasingly common to see new faces at the judge's bench. The robe hanging in her chambers is a symbol of authority and responsibility

4 *Chocrón Chocrón v. Venezuela*, Inter-American Court of Human Rights, judgment of July 1, 2011.

5 Established in 2000 by the Supreme Court of Justice, this commission is tasked with selecting, nominating, and swearing in judges, although the Constitution does not grant it this power.

but also a source of torment for the decisions she must make on a daily basis. These decisions have a direct impact on the lives of others as well as her own. Unlike many of her colleagues, she considers being a judge a valuable personal and professional goal. "It's an important step in the career ladder that every legal practitioner wants to reach," she said, while also noting that it is "a difficult job—you can be independent as long as the politics or personal interests of whoever is above you allow it."

Who is above a judge? The law is, and it must be applied in accordance with constitutional principles. But in Venezuela, judges have another boss—one who might lack authority on paper but who wields it in practice. This boss is the president of the Criminal Judicial Circuit, or, as I prefer to call them, the "judicial concierge." According to article 508 of the COPP, this person's functions are purely administrative and are limited to the circuit's physical headquarters. And although the circuit president's regulatory functions are minimal, in reality this person is the link between judges and the political establishment.

For example, the circuit president comes into play in cases where the government decides to detain and prosecute people for exercising their right to freedom of expression. Their role is to ensure that judges' rulings are in line with the interests of the executive branch. In 2017, when I was defending individuals suffering political persecution, on more than one occasion the circuit president called me to his office and, in the presence of the presiding judges and family members of the detainees, indicated whether the detainees should be released or kept in prison.

The command situation was an open secret. I recall how the relatives of political prisoners would line up outside the circuit president's office for hours, waiting for him to arrive so they could request their loved one's release, transfer, or medical care. Without his authorization, the judges were powerless. In recent years, this official has become even more powerful, controlling judges' rulings even in non-political cases.

As a result of this situation, Venezuelan judges have played a role in destabilizing democracy by cooperating in the commission of international crimes. Ordinary and criminal courts have supported and exacerbated political persecution that has led to serious human rights violations, revealing a clear absence of justice (Organization of American States 2018).

According to a 2021 report by the United Nations Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, "the justice system's deficiencies have gone hand-in-hand with

a pattern of serious human rights violations and crimes under international law in the context of a state policy to silence, discourage and quash government opposition since 2014" (Office of the United Nations High Commissioner for Human Rights 2021). As noted by the mission's chairperson:

> Our latest investigation found reasonable grounds to believe that, under intensifying political pressure, judges and prosecutors have, through their acts and omissions, played a significant role in serious violations and crimes against real and perceived opponents committed by various State actors in Venezuela. (ibid.)

The fact-finding mission believes that if prosecutorial and judicial authorities had adequately fulfilled their constitutional role, "they could have either prevented the crimes and violations from being committed, or placed rigorous impediments upon public security and intelligence services' ability to commit them" (ibid.). Instead, Venezuela's judicial system has been one of repression and not justice, and it has been both a witness to and an accomplice in the commission of crimes against humanity, which are currently being investigated by the Office of the Prosecutor of the International Criminal Court.

Valentina and her colleagues feel threatened—not by the warnings of the fact-finding mission but by the potential, during an eventual transition to democracy, that they will be targets of the political opposition. Valentina believes that "people from the opposition are so hungry for power that they want to hurt others so they can be the heroes."

Personally, I believe that these judges' job stability is threatened by more than just a new administration; it's also threatened by the current one. Within each institution in Venezuela, including the judiciary, there are sections that answer directly to the person who leads that institution. So if that person changes, the entire chain under them will also suffer "adjustments."

In general, Venezuela's Bolivarian era has been hostile to judges. An exemplary case is that of judge María Lourdes Afiuni, who in 2009 granted parole to a government critic of then president Chávez, prompting her imprisonment, torture, and persecution (Acceso a la Justicia 2020). In 2019, she was charged with "spiritual corruption," a fabricated charge to justify the suffering that the government inflicted on her for years. Since then, academics and civil society organizations have referred to "the Afiuni effect" to describe the constant intimidation that judges face whenever they issue a ruling that is out of step with the administration's interests.

As I was writing this chapter, Valentina was removed from her post. After being notified, she was callously escorted out of the Palace of Justice by the bailiffs, the very individuals who, moments before, had been her coworkers. The reason for her removal? There was a new president of the Criminal Judicial Circuit.

Valentina claims that she had taken that job out of "love for the profession, fulfilling a dream and trying to leave my mark—but politics always prevails over the things you try to do correctly. And when personal interests are involved, it's easier to move the pieces and put someone who sings the same tune as them." Her career as a judge lasted a bit less than two years, during which time she found herself embroiled in a variety of schemes and excesses. Many of her former friends are now enemies, and former enemies now friends. As long as Venezuela lacks a robust judiciary that can ensure judges' job stability, independence, and autonomy—and an appropriate process for their removal, should that be the case—this type of situation will only become more common.

I am not trying to point a finger but to stress the importance of restructuring our judiciary. I believe that a dignified judicial system is possible, but it will depend in large part on how democracy is restored in Venezuela. Impunity clearly isn't the answer, but neither is revenge. We need to rebuild this country, which has been mired in crisis, crippled by political polarization, and tarnished by corrupt institutions that have failed to act in the interests of a society for a long time.

Valentina is taking a break and assessing her options to continue fighting for her dream of being a judge. In the meantime, we will likely cross paths in the parking embankment outside the Palace of Justice, as we both enter through the same door and face the unequal conditions of the judiciary of the Bolivarian Revolution.

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The Advent of Philosopher-Judges as an Alternative Form of Democratic Expression

Karim Nammour

Until philosophers rule as kings or those who are now called kings and leading men genuinely and adequately philosophize, that is, until political power and philosophy entirely coincide, … cities will have no rest from evils, … nor, I think, will the human race.
—Plato, *The Republic*

Yusra al-Aamiri is an Iraqi woman who fled her hometown after it was ravaged by war following the US-led invasion of Iraq in 2003. Yusra's husband and brother were killed there earlier; she gathered the few possessions she had (some clothing and some money) and ran away with her other brother (the one who was still alive). They didn't really care where they went—what mattered was getting as far away from the war zone as possible. They likely crossed rough, uninhabited areas in the Syrian desert under the scorching sun, maybe encountered passers-by (merchants, farmers, or travelers) who gave them a ride, thus making their journey a bit swifter and somewhat more bearable. At some point in the arid plains, they saw a mountain, standing tall across the horizon. Behind it lay Lebanon and its high mountain chains across the Beqaa Valley. Safety, at last … Lebanon, along with other neighboring countries (like Turkey and Jordan), had historically been a preferred destination for refugees fleeing persecution or conflicts in their country of origin. With its rugged, inaccessible mountain chain and its sea coast overlooking the eastern side of the Mediterranean, the country represented, in the regional imagination, an ideal destination to get away from an insecure past and seize opportunities to start over or even resettle in third-country destinations in Europe or North America. Yusra was finally feeling safe there and trying to go about her business until, one day at the end of May 2009, officers arrested her for not having documents that justify her stay in Lebanon.

* * *

I was struggling to find a parking spot near the Monroe Hotel in downtown Beirut. I was late for a conference on the arbitrary detention of Iraqi refugees by Lebanese authorities. It was 2010, and I had just graduated from law school. After parking my car quite inelegantly on a corner, I finally reach the packed conference room at the hotel. It was a bit gloomy, and the air inside was dusty. Along the stretched conference

table sat lawyers, activists, researchers, and judges, all intervening on a topic I knew little about. Across the table, on the exact opposite side of where I managed to find a chair, sat Nizar Saghieh, a cause lawyer who had defended a number of Iraqi refugees who had been arrested arbitrarily. The Lebanese administration, represented by one of its major security branches, had been arresting various Iraqi refugees who had illegally entered the territory, refusing to recognize or even discuss their "refugee" status. Its policy was summarized in the motto it adopted and reiterated systematically whenever the subject was discussed: "Lebanon is not a country of asylum." Typically, a refugee would be arrested by security forces for entering illegally, and then prosecuted and punished on that charge; however, authorities were refusing to release individuals even after they had served their prison sentences, claiming that they had to remain in custody until being deported. Often, they would make refugees sign a pledge to return to their country of origin and use that to justify their continued arrest until deportation could be effectuated. Whenever a detainee refused to sign the pledge, authorities would use that refusal to prosecute them on the manufactured charge of "refusing to leave the country," thus prolonging their detention (Frontiers Ruwad Association 2010).

Nizar exposed the case of Yusra al-Aamiri, the Iraqi refugee woman who had been arrested on May 21, 2009, for illegal entry. A month later, a judge had sentenced her to one month in prison. Nevertheless, even after she had served her sentence, the General Security Directorate (a major security authority in Lebanon that deals with non-Lebanese residents) refused to release her on the pretext that she refused to go back to Iraq. Nizar decided to represent her and filed a lawsuit against the state, before the summary affairs judge, asking for her immediate release. To my surprise, as I was hearing about this case for the first time, the judge not only conceded his request but issued a landmark ruling finding that Yusra's arrest had been arbitrary, violating her right to personal freedom, which is protected by the Lebanese Constitution (article 8) and by international covenants that Lebanon has ratified (notably, the International Covenant on Civil and Political Rights).[1] Nizar explained how he had defended many Iraqi refugees before various first-degree judges across the Lebanese territory, thus generating what he referred to as "horizontal jurisprudence" within the scope of "strategic litigation."

1 Summary Affairs Judge of Zahle, Cynthia Qatharji, decision issued December 11, 2009.

This was all new to me back then. Lebanon's judicial system is inspired by the Romano-Germanic system, which doesn't function according to the principle of "judicial precedents" in the same manner as the Anglo-Saxon system (e.g., the judicial system in the United States). In Lebanon, for a court decision to have some sort of influence on the country's jurisprudence, it must be issued by the Supreme Court ("vertical jurisprudence"), a highly ranked tribunal that is not necessarily accessible in all judicial cases. Mainstream culture has also represented judges and the judicial system as either an impenetrable conservative block or as so tainted by corruption that it is immune to any sort of progressive change. That day in the hotel, however, this representation of the judiciary was being deconstructed in my mind. Suddenly, change appeared attainable. The notion of "horizontal jurisprudence" to generate precedent fascinated me. Nizar went on to describe how he had managed the strategic aspect of Yusra's case: various activists and mainstream media outlets had pitched in, lobbying and advocating for Yusra's release (Wansa 2014). The case was not confined to a "private" dispute against the state; it had become a matter of public interest. After Yusra's case, Nizar went on to defend more than a dozen refugees who had been arbitrarily detained in various regions of the country, succeeding in his effort to produce landmark horizontal jurisprudence.

I met with Nizar after the conference over coffee in the hotel's lobby, and less than a month later, I became part of his team both at the law firm and at the organization he had co-founded: the Legal Agenda.[2] During my career, I would learn how strategic litigation is undertaken and what it entails in terms of relations with plaintiffs, public opinion, and, most importantly, judges. Strategic litigation compels judges to rethink their roles and answer societal and sometimes philosophical questions about nature, society, people, and their intertwining relations. As it turns out, such litigation offers an efficient tool to reclaim the state and manufacture a new form of democratic expression, as I shall explain below.

Reclaiming Public Institutions

Zahed[3] is a twenty-nine-year-old unemployed man living in one of Beirut's most disadvantaged suburbs. The area he lives in is a shanty town inhabited largely by persons who were internally displaced by

2 See Legal Agenda's website for more details: legal-agenda.com.

3 Zahed is not his real name; most of the names mentioned in this piece have been changed to protect the privacy of those concerned.

Lebanon's Civil War (1975–1990). Unemployment rates are high in this area, and its inhabitants—if lucky enough to find a job—often work in the black market. One night, while Zahed was driving around town in his broken motorbike, delivering food orders for a restaurant chain that had recently opened in town, he was arrested at a police checkpoint. Initially, the officers asked to see the motorbike's registration, but when profiling Zahed (he had dreadlocks then) and seeing that he failed to produce the documents they sought, they arrested him and took him to the nearest police station. There, he was arbitrarily forced to undergo a urine test that came back positive for THC and opioids, proving that he had consumed *hashish* (a drug produced from hemp plants) and heroin. As a result, the public prosecutor charged him with the consumption of illegal narcotics.

The 1998 Lebanese Drug Act enshrines the principle of "treatment as an alternative to prosecution," allowing persons who are being prosecuted for using drugs to ask to undergo treatment instead. Once treatment is requested, prosecution should be halted and the defendant sent to an official committee—the Counter Addiction Committee (CAC)—which oversees their treatment. If treatment is successfully completed, the judge overseeing the case must then issue a decision exonerating the defendant and closing their judicial file, thus keeping their criminal record "clean."

Unfortunately, the Drug Act has remained ink on paper for more than a decade, as the executive (represented by the Ministries of Justice and Public Health) has failed to enable the law's mechanisms (namely, accredited rehabilitation centers and activation of the CAC). Persons using drugs are therefore systematically criminalized, even when they are able to produce certifications from rehab centers proving they underwent treatment.

In April 2012, I started collaborating with Skoun (a Lebanese nonprofit organization that offers treatment and other services to people who use drugs),[4] as one of the organization's legal counselors. Our law firm and the Legal Agenda were partnering with Skoun to defend persons being charged with drug use, through strategic litigation aimed at enabling the principle of "treatment as an alternative to prosecution." Our strategy contained several levels: we drafted a model defense in which we asked judges to assume the functions of the CAC by overseeing defendants' treatment at rehab centers; we undertook a comprehensive media strategy that included online campaigns, media coverage,

4 The organization's aim is to help and provide persons who use drugs with a caring environment of treatment and counseling and advocates for progressive drug policy change. See skoun.org.

and public conferences with lawyers and judges to raise awareness of the aforementioned principle; and we defended more than thirty individuals being prosecuted for consuming illegal narcotics.[5] It is within this context that I first met Zahed.

Zahed was waiting for me alone in the conference room. He looked pale and was shaking despite the warming rays of sun coming through the window and settling on his body. I tried to comfort him by offering him something to drink, and then proceeded to ask him a series of questions in the specific order listed in the questionnaire I had developed with Skoun. He was being quite unresponsive, however. His answers were contradicting one another, he was often forgetful, and I was under the impression that he wasn't being very genuine. I told him that he needed to avoid using drugs throughout the judicial process to increase the chances of success. He agreed. Nevertheless, he failed to show up on the day of his court hearing and answered my phone calls only a few days later. This pattern lasted for the next couple of hearings: he would promise me that he would show up and then disappear at the last minute.

In the meantime, I was able to make progress in other drug-related cases. Judges were recalcitrant at first; their discourse was dominated by repressive logic, viewing persons who use drugs more as criminals and less as people in need of treatment. We therefore invited many of these judges to participate in workshops we organized that brought together a range of participants, including medical experts, psychiatrists, and persons who had previously been prosecuted and charged for drug use. Our goal was to render substance use disorder (in all its psychosocial complexities) easier to understand for people who hadn't dealt with it holistically before.

Workshops alone were not about to help us achieve that goal, however. On some occasions, I would have direct conversations with judges, either before or after a hearing, about what substance use disorder was and why it was so difficult to overcome. Their main concern, though, was the lack of legal mechanisms established in the Drug Act. This is where our conversation would take an interesting turn: it would center around the judge's role in society. What could they do? What available mechanisms could they use, considering that the CAC had not yet been operationalized, and how could they oversee defendants' treatment? One of the main concerns was the following: If a person being prosecuted for drug use is asking to undergo treatment, but the relevant institutional mechanism is not available because the government

5 For a detailed view of the war on drugs in Lebanon, see Nammour (2019).

has not operationalized it, shall judges prosecute[6] and try the person instead? Or shall they release them without referring them to an accredited treatment center? Insisting on prosecution would mean doing so without legal basis, given that the legal crime requires two components—"using drugs" and "refusing to undergo treatment"—and the lack of either means that there can be no criminal charge. This situation led some judges to start thinking about alternatives. For example, some started issuing court orders or even signing a symbolic "contract" with the defendant in which they pledged to issue stays of execution in case the defendant proved that he underwent treatment successfully. One judge even went so far as to substitute himself for the CAC and directly oversee the defendant's treatment.[7]

This entire issue and the discussion around it took a drastic turn when we appealed one of the cases before the Supreme Court, which eventually issued a landmark ruling stating that judges had no discretion in this situation and had to halt all criminal proceedings once a defendant invoked their right to undergo treatment (see Nammour 2013). This ruling and the subsequent media coverage forced the executive to finally accredit rehabilitation centers and activate the CAC in 2013; and in 2014, I was able to witness a domino effect in the judiciary, whereby judges were almost systematically issuing decisions suspending proceedings and referring defendants to the CAC, sometimes adopting a pedagogical approach and inciting defendants to undergo treatment (Nammour 2014). Comforted by this outcome, Zahed eventually showed up to one of his hearings and agreed to undergo treatment. I would later reflect on his case and discover how I could have managed it more efficiently to tame his fears and understand where he was coming from.

Judges thus played an important role in forcing the executive to activate a public committee that had remained dormant for more than a decade. The law was clear in this situation, and its framework was already set on paper. In addition, judges were tasked with answering

6 In Lebanon, the prosecution is composed not of elected members of the executive branch but of appointed judges (often referred to as "prosecutors"). From an administrative perspective, these judges (i.e., prosecutors) and trial judges are not clearly separated from each other. They all respond to the same hierarchy in the judicial branch. The law (notably the Drug Act) does not differentiate between them when it comes to the process it establishes, as the latter can be undertaken before either type of judge and at any stage of the prosecution or of the trial. The terminology used in Arabic is applied equally during the prosecution and the trial period.

7 Unique Criminal Judge of Batroun, Munir Suleiman, decision issued May 7, 2012.

tougher, more philosophical questions on the relation between humans and society and with being creative in dealing with issues not necessarily covered by the law.

Reclaiming Social Justice

Spinneys is one of the biggest supermarket chains in Lebanon (a sort of regional Walmart). With its aggressive branding and well-crafted design, it has managed to secure a foothold in a very competitive market. Back when I used to shop at Spinneys, I noticed that its prices were much cheaper than other supermarket chains—in fact, it was one of the reasons I shopped there.

At the beginning of 2012, the government issued a wage-increase decree, the result of a long and often violent battle between the regime, pro-establishment syndicates, independent syndicates, employers' representatives, and an exceptionally progressive technocrat who was the minister of labor back then.[8] Spinneys felt that applying this decree would damage its yearly net profits and therefore abstained from increasing its employees' wages for months. Samir Tawk, one of Spinneys' employees, organized a petition demanding the company apply the wage increase, with retroactive compensation for the months that had passed. The petition was signed by more than a hundred employees, until headquarters heard about it. Within a few days, Samir found himself fired on fabricated reasons.[9]

I entered the conference room in our office. The smell of coffee, sweat, and a hint of cigarettes dominated the space. Imposing middle-aged men at least twice my age were occupying the main table. Chatter and heated discussions were buzzing. Among the attendees were Milad, Elie, Moukhaiber, and Samir—all current Spinneys employees, save for Samir. After Samir's layoff, they had decided that it was time to form a workers' union at Spinneys. I found it difficult to make myself present in this environment. I felt so little, cramped up in my chair trying to participate in the discussion. Thankfully, Nizar was there with me. They respected him greatly and listened to his ideas about the strategic steps that needed to be undertaken to successfully register the union. The future unionists organized a press conference a few days later to reach a large section of the public and incite other Spinneys employees to join the union that was being formed. The next

8 Charbel Nahas.

9 The movement of Spinneys' workers is brilliantly covered by Zbib (2012).

day, Milad—president of the founding committee—was fired from the company.

Back in 1946, during the Khoury[10] era, legislators had tried to enact a labor law that did not provide for the establishment of unions. Massive workers' demonstrations were organized, some of which turned violent, until parliamentarians finally conceded and included a section in the proposed law that recognized the concept of unions and allowed their establishment, granting unionists legal protection (notably in terms of being fired from their jobs). The law contained a Trojan horse, however: unions could be established only pursuant to the issuance of a license by the minister of labor. It wasn't a mere acknowledgement of receipt that was needed but an actual ministerial authorization published in the *Official Journal*. Practically, this manifested according to the following scenario: union founders would submit a request before the minister, who would stall in issuing the license; in the meantime, the founders' names would be leaked to the company, which in turn would proceed to fire them before they could acquire legal protection from the establishment of the union. This happened, for instance, with Moukhaiber (one of the founders of the Spinneys' workers union mentioned above), whose name was leaked: the company informed him that he was fired, but retracted it the next day, as if to threaten him with his job in case he insisted on establishing the union. This legal situation has resulted in very few independent unions being established in recent decades in Lebanon.

In light of Milad's layoff and Moukhaiber's and Elie's threats from the company, filing labor lawsuits was not going to be enough, as such suits work mostly after the damage has already been done. We needed to be more creative about our strategy and, with it, generate public debate around union establishment and the workers' movement. We believed that the judiciary had an essential role to play as a republican guarantor of rights and liberties: solutions were not to be found in the labor law itself but rather in judges' function and role in society. By using mechanisms inherent to judicial function, we could create protection mechanisms where labor regulations lacked them. And this is exactly what we did. We presented a request before the summary affairs judge of Beirut, asking her to issue a protective order restraining Spinneys from laying off any of the union's founders pending its establishment, basing our argument on international legal norms (such as those enshrined in the International Covenant on Economic, Social and

10 Bechara el-Khoury was the first Lebanese president after Lebanon's independence in 1943. His mandate lasted from 1943 until 1952.

Cultural Rights and the International Labour Organization's founding principles). The judge rejected our claim; we appealed her decision, and the file was reviewed by another judge, who, when exposed to the massive evidence proving that Spinneys was systematically oppressing its workers and purposely and progressively firing the union's founding members, issued a landmark ruling in which she forbade the company from firing any of the union's founders for a period of two weeks; otherwise, the company could be fined approximately US$67,000 for each breach committed.[11] Faced with evidence of consistent oppression by the company toward its employees, the judge then went on to extend her ruling for a similar period.[12] With these exceptional and historic rulings, the judge played a role that went beyond its classic *Pragraphen Automat* function (as Max Weber referred to it—i.e., a machine of syllogism production). At that moment, she became a socially sensitive and responsible jurist undertaking a public function. She liberated herself from strict legal frameworks that had confined her to the mere application of the law and began exploring alternatives that allowed her to protect rights in imminent danger of being violated and to respond to philosophical and sociological issues not addressed by the law but important nonetheless if justice were to be served.

Spinneys was not about to stand idle, however, and during the protection period, it did not hesitate to fire yet another founding member. At this point, I thought we needed to be even more aggressive in our strategy. We searched in criminal laws for solutions, finding one in the Criminal Code's article 329, which criminalizes the act of prohibiting Lebanese citizens from exercising their civil rights and obligations. It would be the first time this article would be used in a labor dispute. We filled a criminal lawsuit on that charge against the company and its chief executive officer. This lawsuit became aesthetically interesting, as it exposed to the public the smallest details of the harassment and oppression that Spinneys was exercising on its workers. It forced the judiciary to examine important questions related to the workers' movement in the country and the lack of legal frameworks guaranteeing the full enjoyment of the right to work. Eventually, the judiciary was asked to rethink social justice and implement it as a constitutional principle—a form of *Drittwirkung* "à la libanaise," where the German general principle of law is applied to enforce basic rights and freedoms not only

11 Summary Affairs Judge of Beirut, Zalfa el-Hassan, decision issued September 7, 2012.

12 Summary Affairs Judge of Beirut, Zalfa el-Hassan, decision issued September 20, 2012.

on state parties but on private parties as well.[13] And on December 20, 2018—as I was writing this piece—the single criminal judge of Beirut, Roula Sfeir, issued a landmark ruling condemning Spinneys and its CEO to one month in prison and ordering the payment of US$80,000 in damages to the plaintiffs. When my colleague first informed me of the decision over the phone, I jumped up and down in the office, in disbelief. That "win" fed my faith in the possibility of securing change through the judiciary—even in what seemed like the establishment's stronghold of economic territory (and consequent alienation of related rights). Using the existing legal framework, the judge opened the door to a whole new method of accountability, one that has never been envisioned in the country. As a result, accountability is no longer limited to civil disputes but is also sanctioned on a criminal level, thus acquiring a more deterring identity.

Reclaiming Rights

In 2009, two women who have never met launched a process that would manifest its results in 2014 and would contribute to redefining the role of judges in modern Lebanese society and, in doing so, generate a new concept of democratic expression. The first woman is a veteran activist who headed the Committee of the Families of the Disappeared during the Civil War; the second is a transsexual woman who had the misfortune of being arrested and charged with "acts of faggotry."

I met Wadad Halawani for the first time in 2010. She's a sweet, grandmotherly lady who has been carrying on her back the cause of the Families of the Disappeared during the Civil War (1975–1990) since the early eighties. Her fight is—in her own words—like that of an "ant that drills the rock with its bare legs." After the Civil War officially ended in 1990, she started lobbying former warlords and people in government (most of whom were former warlords themselves) to shed light on the fate of the disappeared; where had they gone? Her tireless resistance pushed the government in the late 1990s to launch an official investigation, the result of which (published in the early 2000s) turned out to be mediocre: a three-page report explaining that the investigation was over, that the disappeared (some 17,000 strong) had passed away, and that it was time to turn the page and avoid opening old Civil War wounds. No additional explanation. Nothing about the course of the investigation or what it found, except a few hints about three possible mass graves scattered across Beirut. Furthermore,

13 For a short documentary about the Spinneys case, see Legal Agenda (2016).

the government refused to hand over—or even disclose the details of—the investigation file. Wadad came to us, asking what could be done to force the government's hand. We thought that we could approach the issue from a multidisciplinary perspective: in addition to publishing lengthy research papers on the cause of the disappeared in Lebanon and the official investigation into their case, covering it in the media, and creating a consortium of organizations to draft a special bill on those disappeared during the Civil War, we filed three civil lawsuits—in parallel—before various summary affairs judges in Lebanon requesting the protection of the mass graves cited in the official investigation to be able to eventually properly uncover them. We also filed a petition before the State Council (the judicial body in charge of lawsuits involving the state as one of the parties) calling for the repeal of the government's refusal to turn over the investigation file and compelling it to act in accordance with the concept of "the right to the truth" as an extension of "natural rights."

That same year, the second woman, Anya, was arrested by security officers in the Metn region of the Mount Lebanon District, who stormed her house and dragged her to the police station on the charge of undertaking "acts of faggotry." Anya is a transsexual person who had not fully transitioned back then. In other words, she was being prosecuted for being a homosexual. In fact, article 534 of the Lebanese Criminal Code, imported from Vichy France during the Mandate era (1920–1943), criminalizes any "carnal conjunction against the order of nature." That article has been used historically to prosecute and criminalize homosexuals, regardless of whether "sexual intercourse" has occurred (sometimes people have been prosecuted on the observation that they look "gay") (see Ferchichi and Saghieh 2012).

In 2012, we partnered with Helem (a local veteran organization specializing in the LGBTIQ population) and drafted a strategy similar to the one we had undertaken with Skoun regarding people who use drugs, except that this was to defend people who had been charged based on the aforementioned article 534. We also published a model defense arguing that article 534 should not be applied to homosexual relations given that it contravenes international covenants related to personal liberties and rights, as well as the scientific approach to homosexuality as a sexual identity, and filed a series of strategic lawsuits before various judges across Lebanon.

That same year, I started training with experts on the process of interviewing families of the disappeared. While learning the methodology, I began questioning my own amateurish methods that I had previously used with clients from vulnerable or marginalized

communities. I reviewed, for instance, how I had managed Zahed in his drug-use case and explored where I had gone wrong. We didn't receive such training in law school; we were trained to deal mostly with corporations and companies, not with vulnerable populations who need psychosocial support in addition to legal advice. I had progressively learned a few tricks while defending persons who use drugs, but the current training I was attending made me realize that I had a long way to go. Therefore, I contacted my friend who is a psychiatrist specializing in vulnerable and marginalized populations and started meeting with her regularly to build a holistic and evidence-based methodology to approach the persons I was (or would be) defending. One of the first mistakes I corrected was about expressing empathy. I had been under the wrong impression that I needed to keep a "poker face" when dealing with defendants, when in fact it was the exact opposite that helped them feel at ease. Thus, I started focusing more on empowering the people I was defending. For instance, I started explaining in detail and in a simplified language how the Lebanese judicial system worked, and then proceeded with legal explanations about their specific case. Occasionally, I would take some of them on a tour of the courthouse to familiarize them with the space and temper their fears. Also, I tried to schedule follow-up meetings where I made sure that defendants had understood what was said in the first meeting and answered any other questions they might have. The outcome was very interesting; defendants became much more engaged in their cases. I encouraged some to join organizations (such as Skoun for persons who use drugs, and Helem for LGBTIQ people). Joining these organizations gave them a sense of community and strength during their legal battles.

In both causes (that of the families of the disappeared and the LGBTIQ populations), defendants became more vocal and started conquering space in the public sphere. This was highly needed because in both cases, what we were effectively asking the judiciary to do was to recognize rights unaddressed by lawmakers. Defendants therefore had a major role to play in conferring a needs-oriented basis for their causes and unboxing it from the impersonal and limited rights-oriented approach, particularly given that the establishment was starting to adopt a rights-based discourse to expand its own agenda. The legal debate thus took on a more personal, realistic turn. Judges' *Paragraphen Automat* format, mentioned earlier, was no longer coherent with the complexities of modern society (I will return to this point later). Judges had to step up and redefine the judicial public space to make it more responsive to basic needs that had been scorned by lawmakers and the regime and therefore recognize rights themselves and enshrine them in

positive law. This wasn't easy to accomplish in either of the two causes, since the polarizing philosophical concept of "nature" took center stage in the public debate. However, in 2014, the judiciary stepped up and issued two major decisions guided by that philosophical concept in order to recognize rights. On January 28, 2014, Judge Naji al-Dahdah, a magistrate in Jdeideh el-Metn, issued a ruling acquitting Anya from the crime she was charged with based on article 534 of the Criminal Code, stating that lawmakers did not clearly specify what constitutes "sexual intercourse contrary to nature," that differing from the norm does not translate into deviancy or abnormality, and that "nature" cannot be defined merely through the behavior of the majority (Makhlouf 2014). That same year, on March 4, 2014, the State Council also issued a historic ruling declaring that the families of the disappeared have a right to the truth concerning the fate of their family members, based on their "natural right" to know such fate, and ordered the government to hand over a complete copy of its investigation files. The State Council's ruling was distinguished not only by the fact that it served justice to the relatives of the disappeared but also because it was the first ruling in which the State Council consecrated a basic right on the grounds of the concept of "natural rights" (Frangieh 2014).

These decisions extended even further the horizon of the judicial public space as a space for democratic expression in an epoch defined by neoliberal policies. The 2014 Dahdah ruling on article 534 was followed in 2016 by another decision on that same issue by Judge Hicham el-Qontar (a magistrate in Jdeideh el-Metn as well)[14] stating that "homosexuality is not against the order of nature." The regime responded (through some of its members of Parliament, members of Cabinet, and judges who were members of the High Council of Magistrates) by stating that judges should apply the law and not substitute legislators (Nammour 2016). Most judges, however, did not bow to this discourse, and in 2017 another landmark decision was issued by a criminal judge in Jdeide, in which the judge stated that his role in modern society was to prevent personal freedoms and liberties from being violated by either state or nonstate actors, that his role was to protect minorities from the ideas and beliefs of the majority (thus avoiding transforming democracy into a dictatorship of the majority), and that homosexuality not only is not against the order of nature but "is the exercise of a natural right" (echoing the same birthplace of recognized rights expressed in the aforementioned State Council decision on the families of

14 Criminal Judge of Jdeideh, Hicham al-Qontar, decision issued May 5, 2016.

the disappeared) (Nammour 2017). As for the second decision (issued by the State Council regarding the right to truth of the families of the disappeared), it was followed in 2018 by Parliament's adoption of the special bill for the disappeared, which we had worked on with Wadad and which incarnated how—in this case—legislators were to follow judges and not the other way around.

By then, my conception of the judiciary had changed considerably from when I was a fresh graduate from law school. I remember Nizar insistently defending progressive judges, resisting the tendency to reproduce the derogatory discourse of the very establishment that manufactured vulnerability and marginalization, portraying the judiciary as a corrupt and elitist system. After all, weakening the judiciary and stripping it of its independence was a key strategy of the establishment to exercise its authority unchallenged. We started working on the independence of the judiciary and promoted it as the main guarantor for a just city (and eventually drafted a law in that regard, which was eventually proposed to Parliament in 2018). Our work with the judiciary thus opened the door to the possibility of reclaiming the spaces previously hijacked by the establishment.

Reclaiming Democratic Expression

Around 380 BC, Greek philosopher Plato theorized the characteristics of a "just" city and its ideal rulers. He designated these rulers as philosopher kings and queens possessing a love for wisdom and for what is beautiful (Platon 2016). Some 2,300 years later, the expansion of neoliberalism, its implications, and, with it, the concentration of power in the hands of a few transnational corporations, financial institutions, and imperial states has led to a perversion of democratic expression, especially in what is sometimes referred to as the "global South." The world we live in today seems far from Plato's ideal of a "just" city.

While I walk by Beirut's western seashore near Pigeons' Rock, I see kids playing on the beach, sunbathing, and swimming. As I gaze south, I am struck by the sight of a hideous grayish building block erected on part of the public beach. It's a luxury hotel. Kids are not allowed to enter that side of the beach, for it's no longer public. On the other side of the city, my playground—where I used to practice basketball with my sister and cousins—has been replaced by a mall filled with luxury brands. This trend can be further seen across the country: public spaces, beaches, and schools are disappearing, with giant malls and private beach resorts being erected in their place. Even Beirut's downtown area—once a thriving popular center striped with

specialized souks[15]—has been turned into a huge open-air luxury mall boasting international brands. In fact, one of these malls even proposes an "urban forest" as one of its features. I was disgusted when I first heard about this, for it reflected the epitome of the perversion of public and green spaces in a city where almost no such spaces are left. To recharge in this city, one must now go to an unaffordable private luxury mall and sit in a confined space scattered with a few olive trees. The common denominator among all of these private entities' defense line is their right to property, as if owning a given piece of land allows you to do whatever you want with it. That is the result of neoliberal culture. Furthermore, some of these entities have remodeled themselves as rights defenders, often using a green- or animal-friendly discourse to promote themselves. Even Spinneys, the company I mentioned earlier, regularly uses this strategy to enhance its image. For instance, it often publishes paid advertisements and news features promoting itself as a safe space for people with disabilities.

In her book *What's Wrong with Rights?*, Radha D'Souza (2018) explores these considerations and the consequences of what she calls "transnational monopoly finance capitalism," or TMF capitalism (another facet of neoliberalism, whereby big transnational entities monopolize markets, notably in the global South), on our lives and the democratic myths we grew up believing. Under TMF capitalism, legal entities such as corporations are represented as equally entitled to rights as human beings, often marginalizing the notion of proportionality when various rights and interests compete (the "rights to property" being the most flagrant *hypothèse d'école* of that conjuncture); this eventually flaws democratic expression and, with it, the very concept of "justice." A good example would be the Spinneys case described earlier or the replacement of public spaces by luxury malls. D'Souza argues that to resolve these issues, "considerations of the big questions in philosophy" must be tackled by activists, lawmakers, and rulers—and with these questions, the "conceptions of the relations between nature-society and human life." Earlier, I looked at how these questions were in fact considered in our work with the judiciary, albeit on a more basic level. Our strategic litigation efforts compelled judges to consider issues related to society, nature, and human life.

In fact, the development of judges' power has been noted as a consequence of the decline of the sacralization of written laws, to which I may add the hijacking of law production and governance by the

15 Arabic word for marketplace. Souks are often composed of specialized market areas selling items such as spices, fruits, vegetables, clothes, crafts, gold, and silver.

handful of actors behind neoliberalism's (or TMF capitalism's) expansion. Denis Salas argues that the judge in that sense surpasses its Weberian figure of *Paragraphen Automat* and develops into an interpreter of the law and then into its locum, especially when such law remains silent on issues that judges are invited to respond to, or contains contradictory norms and competing interests. Judges thus start answering philosophical questions that the law refuses to tackle, to such an extent that the norm no longer precedes judges but rather emanates from their application of it (Salas 2003) (the case of the disappeared in Lebanon is one of the most evident examples of this, where legislators followed the footsteps of judges). There is a catch to this, though. Eminent professor of anthropology David Harvey points out that the frequent appeal to legal action accepts the neoliberal preference for appeal to the judiciary and executive rather than parliament. He argues that such appeals are costly and time consuming and that courts are "heavily biased towards ruling class interests." He adds that the process has been accompanied by "privatization by NGOs", whereby nongovernmental organizations function as "Trojan Horses for global neoliberalism," adopting a universal-oriented "rights talk" that sits uneasily with local particularities and daily practices of political and economic life under the pressures of commodification and neoliberalism (Harvey 2005). Wow! I have to admit, I am intimidated by Harvey as I write these lines and find it challenging to respond to his antithesis, as it came to be in this piece. Nevertheless, thinking of the future can open up an opportunity here.

Harvey's argument, though on point, is generalizing and raises issues more than it resolves. As explored earlier in this chapter, judges in Lebanon did effectively respond to fundamental and somewhat philosophical, economical, and societal questions that neither Parliament nor the executive were responding to. In fact, the establishment's interest lay precisely in weakening the judiciary as much as possible by reducing its funding, controlling judges' appointments, and consistently denigrating the judiciary in the media. Thinking beyond this and into the future, I believe it is imperative for us to rethink the judicial function entirely and, with it, our current mythical form of democratic expression. This is not a purely theoretical exercise, for it is being imposed on us regardless, given the consistent expansion of neoliberalism in all its facets and of technological advances (without an efficient protectionist framework). We need to ask ourselves, Are current democratic forms of expression "just"? To what extent are these forms mortgaged to power dynamics (be they institutional, financial, or political)? To what extent are these forms developing a disguised dictatorship of

financial interests, and, at best, a dictatorship of the majority (whatever that mythical "majority" may be)? Finally, how can these pressing concerns be efficiently resolved? We can start with available platforms and think outside the box to expand such platforms and thwart the hijacking of democratic expression and rights by the establishment. Rethinking the judicial function, at its core, can do just that and may allow the development of a more rational and just form of democratic expression. Parallelisms may be drawn with Plato's architecture of a "just city." We could rethink how judges are trained and access their function, and how they are held accountable (this may entail a more democratic mechanism of accountability that includes peers and stakeholders outside restricted judicial circles, constituting a sort of "advisory" or "ethical committee"—I can imagine myself or the Legal Agenda as part of this). Of course, key obstacles must be tackled as well. We will have to rethink access to justice to mitigate power dynamics. We will also have to eventually question the validity of notions sacralized by liberal philosophy, such as the right to property, contractual dynamics, and the myth of legal entities as persons with rights equal to those of human beings. We may start concocting this within the judiciary itself by undertaking strategic cases to challenge the very notions of "right to property" and "legal entities" sacralized by liberal philosophy before judges, asking the latter to integrate philosophical notions and equity in the equation.

In this way, democracy may manifest itself holistically on the judicial platform, with four main actors: the plaintiff (whether a concerned stakeholder, activists, or groups of both), their lawyers, the media (in whatever form), and judges. This is not a finalized visualization of the architecture but rather an invitation to the reader, together with the writer of this piece, to start imagining its engineering and, in doing so, begin reclaiming the spaces hijacked by the establishment stuck in the web of imperatives manufactured by neoliberalism.

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"We Used to Have Clean Water": The Fishers of Juá and the Challenge for Human Rights

Rodrigo Magalhães de Oliveira

Dorival Caymmi was one of Brazil's great musicians. His compositions portray the life of artisanal fishermen: the start of the fishing journey at the break of dawn, when the tide goes out and the fisherman immerses himself in his solitary trade; the fisherman's relationship with the sea, the moon, the sun, and the waves; the *saudade* of those who stay on dry land awaiting his return. One of his most famous songs is about a woman bidding farewell to her fisher husband: "I am praying for good weather, *meu nêgo*, that the weather won't be foul." In the fishing trade, good weather is a guarantee not only of safety but of abundance: a return with a net full of fish.

For the artisanal fishing community of Juá Lake, the weather is not good. And it has been getting worse in recent years. Connected by a small channel to the Tapajós River, a right-bank tributary of the Amazon River, Juá is located in the urban expansion area of Santarém, the city where I live in the Brazilian Amazon. Property development in the area has led to the silting of the lake, whose water, once clear and blue, is now turbid and muddy.

The abundance of fish in Juá is a thing of the past, part of the memories of fishermen who now come back with empty gillnets.[1] Raimundo dos Santos Ferreira, a sixty-five-year-old black fisherman from the region, told us how he saw "the city arrive to Juá." He explained in a trembling voice, "We don't have a lake anymore … Today there's just a swamp that we can't even bathe in." Raimundo is among the more than 240 families of the traditional fishing community in Juá whose livelihoods and survival are now being threatened by the lake's degradation.

As we sat on the lakeshore, Raimundo recounted a story of contrasts—between the abundance of the past and the scarcity of the present—as his grandson, nestled between his legs, gazed at us distractedly.

1 Thin nylon nets used by artisanal fishers in the Amazon.

This multigenerational encounter, revealed in the picture below, led me to wonder, How will the children and grandchildren of Juá's fishing families survive? And in a broader sense, will our future generations have access to the common goods that nature offers us?

PICTURE 1

Raimundo dos Santos Ferreira and his grandchild

Source: Ministerio Público Federal (2017)

For years, I have worked as a lawyer at the Brazilian Public Prosecutor's Office (Ministerio Público Federal, or MPF)—an entity whose constitutional mandate is to defend collective rights—to support the efforts of artisanal fishing families from Juá Lake. Among the collective rights we defend are those of Indigenous peoples and other traditional communities, as well as the right to a healthy environment.

In late 2017, residents of Santarém were caught by surprise when the state granted a license to a private development project in the subbasin of Juá Lake. The project, which had been suspended in early 2013 after irregularities were found in the licensing process, is the main culprit in the lake's siltation.

Numerous social movements in the region have sought the MPF's assistance in demanding measures to contain the silting, as well as reparation measures to address the social and environmental damage that has already been done. One of our lawsuits was brought to trial and resulted in the project's suspension, on the grounds of irregularities in the environmental licensing process, the failure to conduct a free,

prior, and informed consultation with the artisanal fishing community, and the need for the company to adopt ethno-reparation measures for the fishing families and measures to restore the lake's degraded areas (Ministerio Público Federal 2017).

Raimundo seemed to have little hope that our actions could transform his future. During our conversation, his tone oscillated between bitterness—characteristic of those who are hardened by daily violence—and lament, without suggesting that he believed in the possibility of the lake's recovery. For the fishers of Juá, the basic question is whether human rights will be able to get them their lake back—whether human rights will be able to guarantee them the elements necessary for their lives, including clean water, a balanced environment, food, and preservation of their livelihoods.

To write this chapter, I performed a bibliographic and literature review on Juá Lake's silting and on artisanal fishing communities in the region; conducted field visits to the area; and interviewed fishermen, local residents, researchers, public officials, and leaders of Colônia de Pescadores Z-20, the largest organization of artisanal fishers from Santarém.

The Artisanal Fishers of Juá Lake

While Caymmi's songs portray the sea fishing of northeastern Brazil, here in the Amazon, fishing takes place mostly in freshwater—in the numerous rivers, channels, lakes, *igapós* (black-water flooded forests), ponds, and *igarapés* (streams) that make up the massive Amazon basin. The tall waves and vulnerability of the open sea are substituted by dark, flowing waters, giant trees on the riverbanks, and narrow streams in the jungle that forms a dome over fishers' heads.

Such images are an intimate part of the Amazon's landscape. To give an idea of the importance of fishing in this region, in 2012 in Pará State alone—one of the nine states of the Brazilian Amazon, and home to the city of Santarém—there were 223,501 artisanal fishers registered in the federal government's database, representing more than a quarter of all registrations in the country (Rabelo et al. 2017). Few economic activities are as important to the region's population as fishing. Here, one often hears people comment that the rivers are supermarkets, streets, and playgrounds, alluding to their importance for the economy, for families' diets, for transportation, for entertainment, and for social life.

Fishing in the Amazon is not only an essential source of income but also an important cultural activity for the different peoples and communities who live in the region. Historically, most of the Amazon's

Indigenous communities have practiced fishing, as have traditional riverine communities, such as the fisherpeople of Juá. "Traditional peoples and communities" are a legal and anthropological category that includes a wide range of ethnic groups, including those who do not identify as Indigenous or as Quilombolas (as some Afro-Brazilians refer to themselves).

According to article 3 of Decree 6040 of 2007, traditional peoples and communities are

> culturally differentiated groups who recognize themselves as such, who possess their own forms of social organization, and who occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral, and economic reproduction, utilizing knowledge, innovations, and practices generated and transmitted through tradition.

In the words of anthropologist Paul Little:

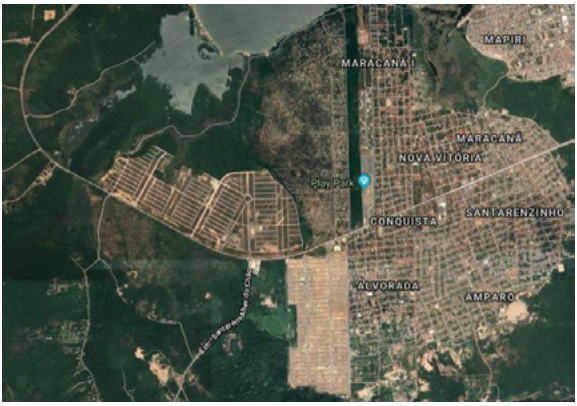
> Extractivist populations represent other social groups included in the traditional category and tend to be recognized by the products they extract and sell—rubber, cashew, papaya, and fish—despite this being only one element of a complex system of adaptation that includes hunting, fishing, agriculture, and raising small animals. In terms of their relationship with land, what characterizes extractivist groups in the Amazon is the familial and social appropriation of natural resources, whereby "plots" are farmed by families, hunting and fishing resources are handled in the collective sphere, and the collection of resources destined for the market is performed according to collectively established rules of usufruct. (2002, 9)

These groups occupy land and appropriate natural resources in a variety of ways. Cultural diversity and its different forms of territorial expression should go hand in hand with the different forms of land recognition in Brazil. But this is not the case. Little draws attention to the fact that traditional communities dedicated to the extraction of fishery resources—such as riverine and artisanal fishing communities—face a number of barriers in securing official recognition of the areas they occupy and use, which are not necessarily "lands" but sometimes sections of a river, lake, or sea.

This is one of the difficulties faced by the traditional fishing community of Juá Lake. The state's failure to officially recognize the lake as a territory traditionally used by fisherpeople makes it susceptible to private appropriation: a number of summer houses occupy the sandy shores, while the surrounding forests are the site of real estate developments and squatter settlements.

MAP 1

Juá Lake (above), Tapajós River (north), Cidade Jardim residential development (center), and Santarém urban expansion (east)



Source: Google Maps (2019)

In the map above, Juá Lake is at the top, and Santarém's expanding urban area is to the right. The fishing families have lived for at least five or six decades in the area surrounding the lake (in what is now the neighborhoods of Mapiri, Maracanã, and Santarenzinho, among others). Over the past two decades, the city has caught up with these families and is now catching up to Juá, as Raimundo warned us.

The fishing community, whose living environment was once rural, is now surrounded by neighborhoods. According to an essentialist understanding, these families do not constitute a "traditional community" since they are not located in a rural area, are not isolated from society at large, and do not have a well-defined geographic boundary. In other words, the fisherpeople of Juá do not occupy an exclusive physical space but are instead living within the interstices of the city. This makes them invisible in the eyes of the population. Before becoming involved in their case, I had not understood the complex web of social, familial, cultural, economic, and political relations that these fisherpeople maintain among themselves.

The main activity that brings them together and makes them a traditional community is the artisanal fishing that they perform in Juá Lake, a territory that functions as a "factor of identification, defense, and strength," in which the "bonds of solidarity and mutual assistance show a set of rules established on a physical foundation that is considered shared, essential, and inalienable" (Almeida 2004, 10).

They have an important community-based system of fisheries management, with customary rules on the proper management of fishing at the local level. These rules are formalized through "fishing agreements" that establish seasonal restrictions (bans on fishing at certain times of the year), spatial restrictions (bans on fishing in certain areas of the lake), species-related restrictions (bans on the fishing of certain species at particular life stages), and instrument-related restrictions (bans on the use of certain fishing gear that is considered to have a high impact and that prevents certain species from reproducing). These rules aim to ensure the sustainability of the fish stock.

According to Yohanna Rabelo et al., the fishing activities in Juá Lake

> are artisanal and small scale, are varied, and have a complex knowledge base influenced by traditional customs and embodied across generations; work, social, and production relations are characterized by labor performed by family members or neighbors, constituting an important means of subsistence for the communities that emerge around the lakes. (2017, 76)

Therefore, the lake is a traditionally used territory by the fishing community and, due to its status as a common good, is an essential component of the relationships that community members establish among themselves, especially with regard to navigation and fishing, as well as of the establishment of customary rules on fishing. The group's collective identity is also forged on the basis of a relationship of otherness and conflict with other subjects, such as larger-scale commercial fishers and other fishers who utilize harmful equipment, as well as the Brazilian state itself. More recently, the fishing community of Juá has also been engaged in a conflict with the property development project and has been demanding public and private measures aimed at recovering the lake's healthy state, as it was prior to the silting, when their lives were quite different.

Times of Plenty

It was 2 p.m. and a hot 37°C on December 7, 2017, when we visited Juá Lake to speak with the fishing community. The site was nine kilometers from downtown Santarém, toward the airport. We arrived via a narrow dirt road and then walked to the beach, where some of the families live. In spite of its degradation, Juá Lake is still a large green area in the midst of the city.

When we got there, we sat in a circle with residents Raimunda dos Santos Ferreira and her husband, José Maria Gomes Ferreira, who goes by Pelé. Raimundo and his grandson joined us a bit later. We were also

accompanied by Anísio Azevedo Pires, leader of Colônia de Pescadores Z-20; Domingos Aquino Bentes, president of Santarém's Fishing Council and also a member of Z-20; and Diego Maia Zacardi, a professor at the local public university and an expert in fishing and water resources.

Our conversation was long and casual. I was fascinated to learn that Juá, in its recent past, had been a true natural refuge, with dozens of species of birds, alligators, and mammals, and with an abundance fish—in terms of numbers and species—"jumping around the canoes," as Anísio recalled. Pelé told us wistfully about how it was common back then to see 200 canoes fishing at the same time in one stretch of the lake. He noted, "How I would've liked for you all to have come then, in 2010, 2011 … to offer you a huge *tucunaré* [a local delicacy]." During that era, Juá's hundreds of artisanal fishing families earned their living almost entirely from fishing, which they complemented with small-scale farming.

Our conversation reinforced the importance of Juá Lake for the community's extractivist fishing practices. The Tapajós River, which connects to Juá, is a "clear water" river with a low suspended sediment load, unlike the Amazon River and many of its tributaries (Scoles 2016). This low level of sediment means fewer numbers and varieties of fish. Due to these natural circumstances, fishing in the Tapajós takes place not in its main channel but in its lakes and *igapós*, where the catch is easier thanks to the shallower waters, greater amounts of algae and detritus, and abundant nutrients from the flooded forest.

According to the leaders of Colônia de Pescadores Z-20, 80% of the artisanal fishers from urban Santarém fish in lakes and *igarapés*, not in the Tapajós River's main channel. With regard to Juá Lake specifically, the lake's proximity to the city reduces costs related to transportation and ice (for preserving the catch), and its morphology is conducive to the use of small boats that require little gas. These characteristics, added to the fact that many of the city's lakes have been drained or polluted as a result of urbanization, make Juá Lake one of Santarém's most important fishing sites. Nonetheless, in recent years, it seems to be acquiring the same contaminated fate as the city's other lakes.

"Sometimes We Don't Even Catch Enough to Eat"

Our conversation carried on. The families' stories of abundance were always told in the past tense. Today, they face another reality: "Whenever it rains, mud washes down, and the river turns white and we can't fish. Dead fish appear … after every flood, the river turns into milk," Pelé and Raimunda told us.

"There's no lake anymore—just mud. It's not even good for bathing … The fish that were once there are gone. Now we just catch tiny little fish," Raimundo told us, awakening the attention of his grandson, who looked him up and down. He concluded, "The property development has caused a lot of damage. We used to have clean water."

We asked Pelé to take us for a boat ride because we wanted to see the magnitude of the silting firsthand. We hopped onto his *rabeta*—a motorized canoe made of aluminum—and scooted around the lake. In addition to the murkiness that stood in contrast with the Tapajós River's crystalline waters, we spotted several sandy ravines and weeds that didn't used to be there, according to our guide. But the biggest sign of degradation was the absence of fishermen practicing their trade.

This void gave the landscape a melancholy feel, very different from what we had pictured when the families told us stories about 200 canoes jostling for space in a single pocket of the lake. We saw only two fishermen during our ride, and we approached their canoe to ask them how their day's work was going. Hilário and Antônio Naldo, who had been fishing in Juá Lake for more than fifty years, complained, "Man, we haven't caught anything yet. Things aren't what they used to be, now it's really hard … Now we cast the net 100 times to catch six fish. Sometimes don't even catch enough to eat." We asked them what they eat when they don't catch anything, to which they replied: "We eat water and flour."

The fishermen also explained to us that the lake's silting has led to changes not only in the number of fish but in the type of fish: species with greater commercial and nutritional value are being gradually replaced by "mud fish," which are more resistant to the new ecosystem.

The main cause of the lake's silting occurred during 2012–2013, when the real estate developer felled 187 hectares of primary forest around the lake's elevated areas—some of the deforested sections are sixty meters above sea level—to build the residential compound in the sub-basin (see the deforested area in map 1, in the center). As a result, the rainwater that falls in the deforested area drains directly into Juá Lake. In the absence of proper containment measures, the rain falls on the bare soil, where it causes erosion and floods that carry huge amounts of dirt to the bottom of the lake.

Through laboratory tests, researcher Zelva Cristina Amazonas Pena has found numerous alterations in the lake's water quality that are indicative of heavy siltation[2]: higher temperatures, reduced oxy-

2 "Aquatic ecosystems have an important relationship with terrestrial ecosystems. The presence of riparian forests promotes the interception of heavy rainfall on the soil, regulating infiltration, reducing surface drainage, and

gen levels, greater electrical conductivity, increased levels of total dissolved solids, higher concentrations of particulate matter, and higher concentrations of organic and inorganic material. The water samples with the highest levels of silting were those collected from the part of the lake that receives the rainwater draining from the deforested area.

This degradation has affected fishing families, who used to earn most of their income from fishing and who have now had to migrate toward other economic activities, whether in whole or in part (Corrêa et al. 2018), or take on informal employment.[3] From an economic standpoint, the precarity of fishing families' lives is clear, given that these new activities do not ensure their financial autonomy or even food security, as Hilário and Antônio Naldo told us.

To continue their traditional work, some community members ride their boats to other channels and lakes in the region, which triggers a negative chain reaction: this decreases the fish supply in these other ecosystems, which in turn leads to conflicts with other fishermen who have already claimed these spaces. These faraway trips also reduce the yield of the fishermen, whose need to travel greater distances means that they must acquire bigger boats and more gas and ice.

The sociocultural organization of Juá Lake's fishing families has also suffered significant harm. Many have been forced to move to other neighborhoods, especially to distant peripheries of the river, which has led them to abandon fishing and has caused social, familial, cultural, and economic friction, which in turn makes it harder for the community to mobilize politically. New generations are no longer carrying on the tradition of fishing—not because they wish to pursue other activities (since their participation in the market economy takes place in less-than-optimal conditions anyway) but because the current state of the lake leaves them no other choice.

This makes me think of Raimundo's grandson. Being just three years old, he has never experienced the "old" Juá Lake—the lake of plenty, referred to in the past tense by his parents and grandparents. I imagine that his grandfather has been unable to pass down his fishing knowledge. Indeed, a fisherman cannot exist without a sea, without a river, without a lake. I worry as I think about the child's future and that of other young members of these fishing families. Unlike their

thereby soil erosion. When the forests around the bodies of water suffer any type of degradation, this is reflected in hydrological processes, starting with erosion, increasing the deposition of particulate matter and the sedimentation and siltation rates" (Pena 2016, 6).

3 Interview with Socorro Penna, Universidad Federal del Oeste do Pará, November 3, 2018.

ancestors, who battled against the cruelty of slavery and the country's military dictatorship (1964–1985), Raimundo's grandson lives during an era of human rights that appears incapable of changing his luck.

The Challenge for Human Rights

We had to try to break this cycle for Juá Lake and for Raimundo and his grandson, and to ensure basic human rights for the area's fishing families. We filed a lawsuit alleging a lack of prior consultation and demanding that the company implement ethno-reparation measures for victims and environmental measures to restore the area's degradation. All of these claims were upheld by the court ruling that suspended the development project.

Considering Brazil's typically conservative and formalist judicial tradition, some of our legal strategies were rather unorthodox. We built our lawsuit on the basis of dialogue with affected groups, researchers, social movements, and public officials. Our lawsuit's discussion of the existence and impacts of the silting gave priority to the accounts of the fishing families, which were interspersed with data produced by academia in such a way that melded traditional knowledge and scientific knowledge into one. Scientific research served to corroborate the perceptions of the fishermen with regard to the reduction in the fish supply, the sensory properties of the water, and even the transformations to their way of life.

Our dialogue with the fishing families and our inclusion of their stories in our lawsuit softened some of the invisible barriers between ourselves and the claimants (for example, determinants such as class, the formalism of the legal field, and other factors), helping us view one another instead as colleagues. At the same time, we questioned the positivist tradition whereby only scientific knowledge and evidence are deemed credible, and we put judges face to face with the feelings and lives of those who would be affected by their verdict. Meanwhile, by complementing testimonies with scientific data, we reduced the possibility that the fishing families' stories would be disputed at a judicial level. This was possible thanks to an interdisciplinary approach that combined various strands of knowledge, including geoprocessing and cartography, limnology, sanitary and environmental engineering, and anthropology.

The interplay between these different types of knowledge, in addition to our fieldwork, allowed for a complex, contextual approach to the case. Instead of representing the environment, human beings, and culture as separate spheres, we painted Juá Lake's silting problem as a

human rights issue with intrinsically social, cultural, and environmental facets.

I think that the most promising aspect of our work in terms of human rights was its rupture with essentialist notions of ethnicity that conceive of traditional communities as bound to a rural environment that is isolated geographically and has a well-defined border. The truth is that although the fishing families of Juá live in an urban setting, this has not prevented them from upholding their sociocultural ties with one another or from identifying as a traditional community. The court's ruling, by recognizing the right to prior consultation and Convention 169 of the International Labour Organization as applicable to the fishing families of Juá, broadened the Brazilian judicial branch's typical understanding regarding which groups are considered to have distinct cultures.

Convention 169 is an international treaty that guarantees the rights of Indigenous and tribal peoples. Among the rights it protects is the right to be consulted before the adoption of any legislative or administrative measure that affects them directly, as was the case with the administrative decision of the Brazilian state to grant a prior license for the residential compound's construction. Some Latin American countries, such as Chile and Peru, apply Convention 169 only to Indigenous peoples. Colombia, on the other hand, has officially recognized its application to Afro-Colombian populations, including Palenqueros, Raizales, and Afro-Caribbeans, who are considered "tribal" peoples.

Officially, Brazil recognizes Convention 169 as applying only to Indigenous peoples and Quilombolas, whom it considers to be tribal peoples. However, there is a strong movement among traditional communities that seeks their recognition as tribal peoples and thus as subjects of the rights enshrined in this international instrument. In this regard, the court's ruling in the Juá case was doubly groundbreaking because it not only acknowledged the right to prior consultation as applying to traditional communities but also recognized the fishing community of Juá as a traditional community, with all the particularities it implies.

In retrospect, I think that our lawsuit employed some promising strategies in terms of making human rights more effective and awarding them greater social legitimacy: engagement with civil society, constant dialogue with the affected group, the creation of a network of actors (albeit at a local level), the combination of different types of knowledge, interdisciplinarity, and, above all, an expansive interpretation of human rights. These strategies culminated in the court's recognition of the Juá Lake fishing community as a traditional community,

which broadened the country's traditional judicial notions of ethnicity. The court's ruling, issued in January 2018, ordered the suspension of the property development project, which is being represented by one of Brazil's biggest environmental law firms.

That said, to date, no consultations have been carried out with the community, and the company has not implemented any ethno-reparation or environmental recovery measures. And the worst of it: no steps have been taken to curb the silting, which means that the lake's situation has not only not improved but is continually getting worse. All of these measures were ordered by a court, but none have been complied with. In other words, despite our sophisticated litigation strategy and judicial victory, we have thus far been unable to change the lake's fate or guarantee the conditions necessary for Raimundo's grandchild to enjoy the lake and learn to fish from his grandfather.

"I Am Praying for Good Weather, *Meu Nêgo*, That the Weather Won't Be Foul."

Once again, I notice Raimundo's hardened expression in the photograph. Is there evidence for hope (Sikkink 2018)? Will Juá Lake recover, and will its fishers see their basic human rights restored?

Questions like these are being asked around the world, speculating on the effectiveness of human rights as a vehicle for social change and for improved quality of life. Such questions are premised on the realization that human rights seem to have failed to fulfill their promise, a feeling that is intensified if we take note of the rise in authoritarian populism worldwide (Rodríguez-Garavito and Gomez 2018). Indeed, this occurred in Brazil with the election of far-right president Jair Messias Bolsonaro, whose discourse and policies are openly anti-human rights. Against this backdrop and the current noncompliance with the Lake Juá ruling, we would be well to respond cynically to these questions.

This chapter does not seek to offer an in-depth analysis of the failures or successes of human rights, for that is a task that many intellectuals and academics are better poised to tackle. Here, I offer a less skeptical perspective based on my personal and professional experience in the case of Juá, and I place myself among those who call for a reflective reshaping of human rights and of the strategies for ensuring their fulfillment.

Embarking on such an endeavor requires changing the way we analyze the success of our lawsuits, so that our evaluation is not limited to "material and direct" effects but also considers "indirect and

symbolic" effects, in line with the analytical framework proposed by César Rodríguez-Garavito and Diana Rodríguez-Franco (2015).

Despite the fact that our lawsuit's main request (the rehabilitation of Juá Lake) has yet to be fulfilled, we can identify other "direct material" effects of the ruling: the suspension of the project's construction and an end to the institutional inertia exhibited by the city and state agencies responsible for awarding environmental licenses ("unblocking effect"), which finally began to engage more seriously with the case.

There are also the direct symbolic effects of defining and perceiving the case as encompassing not only an environmental rights violation but a violation of the Juá fishing community's right to its traditional use of a common good; such an understanding offers greater mobilizing potential. The lawsuit also highlighted the public-private confusion surrounding the property development project, whereby the mayor's office defended the company without considering the interests of the public at large.

The most relevant symbolic effect was that of raising public awareness of urban sprawl, the right to the city, the importance of an ecologically balanced environment, and the importance of artisanal fishing for the nourishment of the entire population. The case has even led to debates around the prevention of future violations, such as through the adoption of protective measures for urban springs.

Moreover, I can see two important indirect material effects. The first is the company's change in attitude regarding the halting of construction and the need to preserve its image. This made it amenable to negotiating a settlement that would meet our demands.

But the most important effect was the court's recognition of the right to prior consultation—not because of the right itself but because of the implication of this recognition in terms of seeing the fishing families of Juá as a traditional community subject to the protection of Convention 169. Had this not been the case, the fishing families would have continued to be seen as individual and non-ethnic subjects by the state and the company. The court thus broadened human rights to include a new subject within the scope of "traditional communities," an approach that would not have emerged under an essentialist understanding of ethnicity, which tends to predominate in the Brazilian judicial field. This is a material—and not just symbolic—effect because it strengthened political mobilization among the fishing families of Juá and the Colônia de Pescadores Z-20 (a movement that was the result of this very mobilization), which even developed its own protocol for prior consultation (Colônia de Pescadores Z-20 2017).

Another way to reduce the skepticism around human rights is to acknowledge both their potential and their limitations. For example, we would be wise to stop dissecting our cases in terms of the rights that were violated, and instead identify the social factors underpinning these violations. This would allow us to see how human rights tools are often activated against extremely powerful social, political, economic, historical, and structural forces and are thus unable to produce change on their own.

When we analyze the Juá Lake case merely in terms of violations of socioeconomic rights, we oversimplify the magnitude of the human rights challenge at hand. By contrast, if we view the conflict as the result of the expression of a specific urban development project—in which capitalist urbanization, environmental degradation, rural flight, ethnocentrism, and environmental racism loom large—we can acquire a more precise understanding of just how complex such human rights challenges are. In this regard, although the case of Juá does not involve a large multinational extractive company—as is common with many of the great human rights controversies of our times—it is also not the result of a strictly local phenomenon. Rather, it is the product of a broader process similar to those occurring in many parts of the world.

This reframing of our cases can help us reactivate the discussion on the specific circumstances in which human rights can be a tool for structural change. It also highlights the importance of politics itself as a way to facilitate some of these transformations.

I return once again to the photograph. I stare at it for a long time, wondering if Raimundo was among the many black Brazilians who came to Santarém after being displaced from their rural Quilombola settlements by large landholders and developmentalist projects. In such a case, the phenomenon of deterritorialization would be linked to his African ancestors, kidnapped as slaves and brought to America, and to the lake's modern-day degradation, which threatens the fishers of Juá, Raimundo, and his grandson.

This image of Raimundo and his grandson invites us to think about the future. I do not know if the lake will ever recover, or whether the fishing families will continue to identify as being "from" Juá. In the meantime, our reflective approach can lead us down new paths that extract the maximum potential of human rights, thus helping break this common destiny: the endless cycle that this photograph seems to show.

I still believe that the weather will improve for the fishers of Juá.

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Notions of the "Sacred": A Tale of Two Cases of the Right to Nature in India

Arpitha Kodiveri

Introduction

The Lanjigarh aluminum refinery rests in the foothills of the Niyam Dongar mountain, where it spews its toxic waste into the waters of the Niyamgiri hills. In 2013, a classic David and Goliath battle was underway in these relatively peaceful hills. The Dongria Kondh community residing in these hills refused to allow Vedanta, a multinational mining company, to mine the abode of the god Niyam Raja, or the King of Law. Their story is similar to many that have transpired in the world: an Indigenous community seeking to protect their ancestral lands from acquisition and exploitation by a multinational mining company. Yet the difference here was that India's Supreme Court sided with local residents by recognizing the religious rights of the Dongria Kondh community and the power of the village assembly to decide whether the multinational company could enter their territory.

In a similar vein, in 2017, the Uttarakhand High Court declared that the Ganga and Yamuna Rivers possessed the rights of legal persons. In its judgments, the court invoked its right of *parens patriae*, ruling that the rivers could bring a case before the court if these rights were violated. Although these rulings left the scope of such rights undefined, they were a momentous development in Indian jurisprudence, as they were the first time that a river was accorded rights. Importantly, the court's holdings were based on the sacred status of these rivers in Hinduism.

In this chapter, I draw on these two case studies to explore the challenges associated with debates over the rights of nature and the right to nature in the Indian context, arguing that the recognition of such rights by Indian courts will have to be tread carefully. I conclude by offering an alternative approach to these rights that is more inclusive than one that ignores the social reality in which they are situated.

Case One: The Niyamgiri Judgment

"The hill range that you see belongs to the Niyam Raja. It is sacred and has sustained us. It is a life-giving force," said a Dongria Kondh resident of the Niyamgiri area.[1] The Niyamgiri hill range is a massive expanse of hills and valleys that stretches between the Rayagada and Kalahandi districts of Odisha, a state in eastern India. The area also happens to be rich in bauxite and has been the site of conflict between local residents and Vedanta Resources Limited, which has sought to mine bauxite on this sacred landscape in order to supply material to its nearby refinery.

In 2006, Vedanta sought a forest clearance for the Niyamgiri area. Forest clearances, issued by the Ministry of Environment, Forests and Climate Change, are required for any entity wishing to divert forest areas for an industrial or development activity such as mining. In this case, the forest clearance for the diversion of the Niyamgiri mountain was approved. Meanwhile, the Indian government was in the process of enacting a new law—the Forest Rights Act of 2006—recognizing the rights of forest-dwelling communities to forests, including the right to reside in forest areas and manage customary land. This legislative development changed the arc of decision-making on questions concerning forest diversion in Niyamgiri, as the community's forest rights had to be accommodated in the process. Two public interest litigation cases challenging the forest clearance were filed by concerned citizens—namely, Biswajit Mohanty, the secretary of the nonprofit organization Wildlife Society of Orissa, and R. Sreedhar, co-founder of Bionics Environmental Solutions, an environmental think-tank. The lawsuits, filed before the High Court of Odisha, highlighted the violation of the Environment Protection Act, the Forest Conservation Act, and the Panchayat Extension of Scheduled Areas Act (Kohli 2009). The court, however, ruled that the clearance was justified and deferred to the ministry. This decision by the court came under scrutiny based on a review petition filed by lawyer and activist Siddharth Nayak seeking to examine whether the approval of the forest clearance should hold given the ecological and cultural impact of mining on Niyamgiri, as well as the Forest Rights Act's recognition of forest rights.

This review petition, filed before the Indian Supreme Court, triggered a judicial review of the ministry's decision to grant the forest clearance, as well as the establishment of two committees tasked with examining the nature of the impacts that mining would have on the

1 Interview with Rinjo Sikaka, Niyamgiri, July 2018.

local community, particularly with regard to violations of the Forest Rights Act. In its final ruling, issued in 2013, the Supreme Court held that the Gram Sabha (village assembly)—and not the Ministry of Environment, Forests and Climate Change—should decide whether mining should take place in Niyamgiri.[2] The court's holding was based on the following:

- Adherence to the spirit of decentralized decision-making in "scheduled areas" (constitutionally protected areas that are inhabited largely by tribal communities), as set forth in the Panchayats (Extension to Scheduled Areas) Act of 1996, a law recognizing the power of local governments to make important decisions on questions of development in their region.
- Recognition of forest rights under the Forest Rights Act, meaning that the consent of the Gram Sabha must be obtained before a forest diversion can take place.
- Recognition of the local community's right to their religion, whose protection necessarily entails a community-led decision regarding whether mining should be allowed.

The Supreme Court's judgment was a landmark judgment in many ways, as it resulted in an environmental referendum for the first time in India's history. The twelve Gram Sabhas were given the opportunity to decide whether mining should take place in the Niyamgiri hill range. They chose not to allow it.

Notion of the "Sacred" and the Rights of Nature

In this case, the rights of nature—that is, the right of the Niyamgiri hill range not to be mined—were vested in the Dongria Kondh community, which was to decide whether mining could take place. It can be argued that this case was not explicitly about according nature its rights, yet I see this judgment as being inclusive of the rights of nature since the Dongria Kondh community was tasked with speaking on behalf of the Niyamgiri hill range on the question of mining. The rights of nature are embedded within the right of the Indigenous community to their sacred landscape. In other words, the right of the Niyamgiri hill range to survive is intertwined with the Dongria Kondh community's right to their sacred landscape. The Supreme Court's judgment, recognizing this customary and religious right, said:

2 *Orissa Mining Corporation Ltd v. Ministry of Environment and Forests*, Writ Petition (Civil) No. 180 of 2011.

> We are, therefore, of the view that the question whether STs [scheduled tribes, who enjoy protected status] and other TFDs [traditional forest dwellers], like Dongria Kondh, Kutia Kandha and others, have got any religious rights i.e. rights of worship over the Niyamgiri hills, known as Nimagiri, near Hundaljali, which is the hill top known as Niyam-Raja, have to be considered by the Gram Sabha. Gram Sabha can also examine whether the proposed mining area Niyama Danger, 10 km away from the peak, would in any way affect the abode of Niyam-Raja. Needless to say, if the BMP [Bauxite Mining Plan], in any way, affects their religious rights, especially their right to worship their deity, known as Niyam Raja, in the hills top of the Niyamgiri range of hills, that right has to be preserved and protected. We find that this aspect of the matter has not been placed before the Gram Sabha for their active consideration.[3]

From this, we can infer that the notion of the sacred recognizes the relationship of the Dongria Kondh community with Niyam Raja. The Dongria Kondh are believed to be descendants of Niyam Raja, and their land is governed by customary laws that call for the protection of the mountain range. In acknowledgment of this cultural link to the land and the governance system of the local community, the Supreme Court granted the Gram Sabhas the power to decide whether Niyamgiri should be mined.

Here, the idea of the sacred needs to be understood through a historical lens whereby the Dongria Kondh community has co-evolved with the Niyamgiri hills to form a "biocultural landscape" (Bavikatte 2014). This biocultural landscape continues to evolve, yet the management practices deployed over the landscape are negotiated through myths and notions of the sacred. The idea of the sacred is closely linked with the desire to conserve an ecologically important asset for the community. It is here that the Niyamgiri is seen through the utilitarian lens as a mountaintop that, being full of bauxite, stores water and enables surrounding water sources to remain perennial. This is of utmost importance for the agricultural practices of the Dongria Kondh community. The amalgamation of the sacred with ecological pragmatism does not reduce the cultural importance of the relationship between the Dongria Kondh and their deity but provides another perspective on the sacredness of the Niyamgiri.

Drawn from this historical relationship to the sacred landscape, the right of the Niyamgiri hill range is articulated through ancient myths and customary laws. The community's right to nature in many ways is dependent on stewardship. In this instance, the Dongria Kondh are seen as natural stewards of the Niyamgiri hill range. Stewards are

3 Ibid., para. 58.

needed to be able to articulate the voice of nature in a legal dispute and to be able to do so based on a certain relationship shared between the community and the environment. Stewards are, in some ways, translators between the abstract notion of the rights of nature and the concrete contours of the demands of these rights that inform a legal dispute. The question of who is the steward becomes key in a debate on the right to nature. In the case of the Niyamgiri, the right to nature articulated by the Dongria Kondh community depends on their sacred association with the landscape. Does this mean, however, that the Dalit or other local communities also dependent on the Niyamgiri hill range do not share this sacred bond and are thus deemed unworthy stewards?

It is not that the right to nature should not be recognized; instead, I think embedding it within a particular understanding of the "sacred" can have exclusionary effects. While the sacred relationship of the Dongria Kondh community to the Niyamgiri should be acknowledged and recognized, a broader framing of association to the landscape should be plotted on the basis of which the rights of nature should rest. In the case of Niyamgiri, limiting the articulation of the rights of nature through the lens of the sacred has two limiting effects: first, the Dalit community, which has depended on the Niyamgiri area for many years, is not given equal standing in the decision-making process of the future of Niyamgiri, because the community's dependence on the land does not arise out of a *sacred* bond; second, as the Dongria Kondh community, like other Indigenous communities in India, are being culturally influenced through different forces, their identity has evolved. Be it through market or external religious forces, the community identity has changed and, with it, so have their notions of development. Freezing their understanding of the sacred in law and attributing the responsibility of stewardship to the community can reduce choice in the constant process of transformation.

In a conversation with a young Adivasi (the term used to describe Indigenous persons in India) in Sundergarh, Odisha, I questioned her about the responsibility to conserve as part of the process of recognition of rights under the Forest Rights Act. She responded:

> We do acknowledge that we would like to conserve our lands, yet it is difficult for me as I aspire to go to the city to work and study. I fear that the burden of conservation is falling on my shoulders and I am unsure if I can take on that responsibility. I am not shying away from it but I feel restricted, as I would like to pursue my other ambitions.[4]

4 Interview with a young Adivasi, Sundergarh, Odisha, July 2018.

In this brief conversation, I was exposed to the tussle that many young Adivasis face: the choice to transform while adhering to their customary values and practices. This binary can be avoided if our understanding of stewardship is made more inclusive of other communities. This, of course, adds another layer of complexity: Who would these communities be, and what would such an inclusive understanding of stewardship achieve? Yet if conservation is perceived as a burden by some Adivasis, it is only fair to share the burden across all beneficiaries of conservation.

* * *

In this case, both the right of the Niyamgiri hill range and the customary rights of the community were protected. Embedding the rights of nature within the religious rights of a community can be beneficial in ensuring that the right to nature is easily articulated; however, this can also result in excluding others from stewardship. This slippery slope of the rights of nature and the notion of the sacred takes on problematic forms in the Indian context, where diversity in social composition results in exclusion and one has to strive for an inclusive frame to ensure democratic decision-making. The questions that remain are these: Who is a worthy steward to articulate the rights of nature? What criteria must the steward fulfill to be considered a worthy steward? And lastly, isn't the sharing of a sacred bond a limiting criterion in recognizing a right to stewardship?

Case Two: The Ganga and Yamuna Rivers

In 2017, the Uttarakhand High Court issued two rulings granting the Ganga and Yamuna Rivers the rights of legal persons.[5] The court recognized that these rivers suffer a great deal from the threats of pollution and climate change. Using the *parens patriae* doctrine, the court intervened on this important issue to protect the rights of rivers. As the court wrote in one of these rulings:

> Rivers and Lakes have [the] intrinsic right not to be polluted. Polluting and damaging the rivers, forests, lakes, water bodies, air and glaciers will be legally equivalent to harming, hurting and causing injury to [a] person. Rivers, Forests, Lakes, Water Bodies, Air, Glaciers and Springs have a right to exist, persist, maintain, sustain and regenerate their own vital

5 *Lalit Miglani v. State of Uttarakhand and Others*, Writ Petition (PIL) No. 140 of 2015, judgment of March 30, 2017; *Mohd Salim v. State of Uttarakhand*, Writ Petition No. 126 of 2014, judgments of December 5, 2016, and March 20, 2017.

ecology system. The rivers are not just water bodies. These are scientifically and biologically living.[6]

The court went a step further in extending the rights to forests, lakes, and other water bodies. Its decision in the *Salim* case was a product of a public interest lawsuit filed to prevent sand mining and other illegal activities along the rivers. While the ruling marked a remarkable and explicit shift in India's environmental jurisprudence toward acknowledging the rights of nature, the court's reasoning involved a problematic focus on the sacred nature of certain rivers in Hinduism. According to the judgment in *Salim*, rivers must be granted the rights of juristic persons given their sacred significance:

> All the Hindus have deep Astha in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well-being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial.[7]

Thus, while the court clearly recognized that the Ganga and Yamuna Rivers have inherent rights, it located these rights within the rivers' sacred status in Hinduism. The problem that arises from this sacred association is its effect of excluding lower-caste communities, such as the Dalits, who have been historically denied access to water by virtue of being Dalit.

Notion of the "Sacred" and the Right to Nature

The notion of the sacred in this case is closely attached to Hindus' relationship with the Ganga and Yamuna Rivers. The court, recognizing the significance of these rivers in Hindu mythology, stated that Hindus revere the rivers as deities. The language of the sacred can be seen throughout the judgment, which includes references to the significance of the banyan tree in Hindu culture and to the Hindu myth of the Mahabharata to support the importance of the banyan tree in Hinduism. The amalgamation of the sacred with ecological pragmatism can also be seen in this judgment, particularly its acknowledgment that the conservation of the Ganga and Yamuna rivers and their tributaries will ensure the survival of communities dependent on the rivers for water.

In doing so, however, the court ignored, and even exacerbated, the exclusionary basis on which conservation takes place in India. For example, in an encounter that I had with a Dalit farmworker on the banks

6 *Lalit Miglani*, supra note 5.

7 *Salim v. State of Uttarakhand*, *supra* note 5.

of the Ganga River, I asked how the pollution of the Ganga affects him, to which he responded:

> The Ganga is polluted, but my people have never had access to her water. As holy and pure as she is considered, we are perceived as polluted. The pollution of the Ganga is an outcome of excessive waste being thrown into the water, yet my people do not pollute as much but rather clean the waste, yet I at times do not have access to her water.[8]

This telling exchange with the Dalit farmworker shows the cracks and fissures generated by the notion of the "sacred" in a dominant Hindu society divided on the basis of caste. Mukul Sharma cautions us in his seminal work *Green and Saffron* (2011) that India's emerging form of "saffron environmentalism" excludes Dalit communities and further restricts their access to resources. Dalit communities are often left out of the environmental discourse even though they have an important stake in it, having suffered historical injustices in the form of restricted access to resources. A new wave of Dalit politics has begun to take shape to challenge this, whereby Dalit communities are asking for access to land in Gujarat and other parts of India.

The implementation of the Uttarakhand court's decision in *Lalit Miglani* is dependent on the Ganga management board and a group identified as stewards:

> The Chief Secretary, State of Uttarakhand, Director NAMAMI Gange Project, Mr Praveen Kumar, Director (NMCG), Mr Ishwar Singh, Legal Advisor, NAMAMI Gange Project, Advocate General, State of Uttarakhand, Dr Balram K Gupta, Director (Academics), Chandigarh Judicial Academy and Mr MC Mehta, Senior Advocate, Hon Supreme Court.[9]

While this list relies excessively on state actors, it does include room for public participation. The question that remains is, To what extent will Dalit communities that are dependent on these rivers be included in the decision-making process? In this regard, the choice of the steward becomes a difficult task—one that is further complicated when operationalized on an uneven terrain determined by caste identity and people's religious association with the river.

The Dalit farmworker, reflecting on his relationship with the Ganga, said, "It is one determined by fear. We are not supposed to access the water, so when we do, we feel like we have committed a crime."

This sense of fear and exclusion can be aggravated by the protection of the Ganga River informed by its cultural significance to Hindus.

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8 Interview with a Dalit farmworker, Uttar Pradesh, July 2015.

9 *Lalit Miglani*, supra note 5, para. 3.

If sacred association becomes the frame to selectively grant the rights of legal persons to resources, it will reduce the development of jurisprudence to those cases where Hindus consider certain resources as sacred, meaning that some resources will remain protected while others will be exploited. In this light, it is worth reexamining the question of cow protection. Cow protection has gained significance since the right-wing Hindu government assumed power in 2014. This has resulted in stricter implementation of the country's beef ban and protection of cows against slaughter. Such implementation has taken a violent turn, with *gau rakshaks* (self-proclaimed groups of cow protectors) enforcing the ban through public lynchings. Though this is an extreme example, the protection of the Ganga River could also one day follow this violent modality of enforcement.

* * *

While the Uttarakhand High Court's judgments in *Lalit Miglani* and *Salim* marked an important shift in environmental jurisprudence in India by recognizing the rights of nature, it also risks being subject to misuse in the present Hindutva climate. There is a need to move away from the Hindu framing of the sacred toward a more inclusive understanding of different communities' cultural association with the rivers. This can help make the notion of "steward" more expansive and inclusive.

The Problem of the "Sacred" and the Need to Move beyond It

In the cases of both the Niyamgiri hills and the Ganga and Yamuna Rivers, the sacred plays an integral part in determining how the rights of nature are recognized and governed. But there are two key problems with using sacredness as the basis for such recognition. First, doing so creates an artificial hierarchy in the relationships that different communities share with resources, whereby those who share the sacred bond are seen to have more power in determining its rights. Second, it narrows the definition of "worthy steward" to those communities that share this sacred bond; thus, in the case of the Ganga and Yamuna Rivers, non-Hindu communities are not seen as equal arbiters in determining the rights of the rivers.

There is a need to move beyond the grounds of sacredness in recognizing the rights of nature. Jettisoning this framing has the advantage of moving toward a more inclusive social milieu that can implement the rights of nature. The rights of nature devoid of a particular emphasis on the sacred can enable a jurisprudence to emerge that radically

challenges the exclusionary basis on which conservation takes place in India. Reducing the emphasis on the sacred does not erase that relationship but rather makes room for other relationships shared with the resource, which may be both exploitative and protective.

India's jurisprudence on the right to nature can enable better protection of the environment, but it has to be implemented within a pluralistic notion of stewardship in which different communities are equally responsible for conservation, even if they have different ways of associating with the resource in question.

This might seem idealistic, but in a diverse country such as India, the recognition of sacredness will exclude communities and, in this process, heighten existing divisions, as shown by the two cases highlighted here. I would like to conclude with an exchange with the Dalit farmworker in Uttar Pradesh, who recently filed a claim to forest land that was rejected. He believes that the rejection was because of his caste identity:

> I have grown up in these forest areas, I associate with the forest through the stories of my grandmother and the myths that continue to be passed on from my generation to the next. As Dalits, we never owned resources, we could only access them with permission. My relationship with the forest has also been one of exclusion, yet I want to live here and own land here as this is home.

It is evident that diverse communities associate with nature through different stories, myths, and understandings. In light of this, it becomes pertinent to move beyond the sacred and embrace a pluralistic cultural understanding that informs the discourse on the rights of nature.

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Back to TOC

"I Go to the Toilet and the Crap Disappears"

Yamile E. Najle

Limited data available on this topic suggests that a large proportion of wastewater in developing countries is discharged partially treated or untreated directly into rivers, lakes or the ocean.
—World Health Organization (2019)

The toilet—what a wonderful invention! It receives our pee and poop, and, together with the city's sewage system, swallows all the crap we no longer want. It takes the disgustingness, the stink, and the most private outputs of human bodies elsewhere. It leaves no trace, taking everything far away.

Have you ever thought about what there would be if the toilet didn't exist? Smell. Sickness. Death. Thanks to the brilliant work of Sir John Harrington, we have toilets. While the toilet as such was not invented until 1851, ancient peoples, long before the birth of Jesus Christ, used latrines and sewage systems to take their wastewater far away (We Are Water Foundation 2017).

Also, did you know that we produce between 800 and 1,500 milliliters of pee each day (Wikipedia 2021)? Do you dare to guess how much poop we produce each day? According to physiology texts, we expel an average of 150 grams of excrement on a daily basis. Let's dare to multiply the numbers:

The city of Córdoba, Argentina, has approximately 1.5 million inhabitants (Municipalidad de Córdoba 2017).[1] This means that we need to dispose of approximately 1.5 million liters of pee and 225,000 kilos of poop each day; 45 million liters of pee and 6.75 million kilos of poop each month; and 540 million liters of pee and 81 million kilos of poop each year. In addition to these spectacular figures, we should add industrial wastewater, which also passes through the city's wastewater collection system for treatment and removal.

Córdoba's wastewater treatment system has been in shambles for more than forty years. It is infuriating to know that the wastewater processed by the Bajo Grande treatment plant is discharged into the Suquía River with virtually zero treatment. This plant, which processes the wastewater of nearly half of the city's households, is located ten

1 In 2010, the year of the most recent census, the city of Córdoba had a population of 1,329,604.

kilometers from the city center. Next to the plant is the Chacras de la Merced neighborhood, while some thirty kilometers downstream is the village of Capilla de los Remedios.

Those of us who live in the city of Córdoba (particularly Chacras de la Merced) and in nearby riverside towns such as Capilla de los Remedios must grapple daily with the fungi, bacteria, parasites, and viruses that are part and parcel of this wastewater. We live at the mercy of city authorities, industrial executives, and complacent citizens, and we are hostage to the incompetent, slow, inefficient, and thus complicitous judicial system that leaves us defenseless in the face of this dire public health situation.

Córdoba's future looks stinky and rotten, with no relief in sight.

Let's Play with Our Imagination

Perhaps most of us human beings believe that whenever we flush a smelly hunk of brownish hues down the toilet, it disappears as if by magic. We believe—perhaps innocently—that the excrement, poison, condoms, soaps and detergents, garbage, fats and oils, medications, and other unwanted residues simply go down the tubes, never to matter again. This couldn't be further from the truth!

What we residents of Córdoba don't realize is that after we flush away our human, material, and industrial waste that is generated on a daily basis, this same refuse materializes about ten kilometers outside the city center. Then, with any luck, we place it on a magnificent transformative journey toward Mar Chiquita Lake,[2] one of the world's largest saltwater lakes, located about 200 kilometers downstream.

Since everything is merely transformed, not lost, perhaps our journey—in this new but definitely not improved aspect—will take us through the river's mud or fish to reach this spectacular lake, which is considered a key site for the conservation of biodiversity. With a lot of luck, and if we like to travel, the migratory birds that visit the lake will take us to other latitudes.

2 Mar Chiquita Lake (also known as Mar de Ansenuza Lake) is the world's fourth-largest salt lake. It has been declared a site of international importance under the Ramsar Convention (an international treaty signed in 1971 for the conservation and sustainable use of wetlands). In August 2021, the legislature of Córdoba approved a bill (No. 10778) ceding this provincial park to the federal government to create the Ansenuza National Park and Reserve. The lake is an important natural resource that, together with the Río Dulce wetlands, would constitute more than 600,000 hectares protected in perpetuity by the Argentinian government.

Our Impact on the River

The waters and fish of Suquía River have died as a result of our actions and omissions. We rely on kilometers of pipes to channel everything we don't want, taking it far away from our senses—and once it's gone, end of story. We are noble, respectable, clean, and perfumed citizens who quietly send everything that disgusts us away on a trip. We look the other way, not worrying about the treatment of the waste we produce and discard.

Argentina's Institute of Animal Diversity and Ecology has published a compelling report entitled *Indicators of the Environmental Conditions of the Suquía River Basin Downstream from the Sewage Treatment Plant* (Instituto de Diversidad y Ecología Animal et al. 2018). The report explains how the water quality indicators measured by scientists—which include twenty physical, chemical, and biological parameters taken between five and one hundred kilometers from the treatment plant—reveal values that are incompatible with aquatic life.

You may be surprised (or not) by the following statement: We human beings are sick, very sick. Indeed, the report notes, "The treatment plant's urban effluents are important sources of medications and steroids found in surface watercourses" (ibid., 1). The drugs and steroids flowing through the river are the ones that we eliminate from our bodies; the water analysis found traces of drugs that treat hypertension, psychiatric disorders, and kidney and lung problems. The report observes, "In the fish collected from Capilla de los Remedios and Río Primero, we detected twenty human and veterinary medications that had accumulated in these organisms, suggesting that the fish are exposed to these substances" (ibid., 2).

Whether or not we are sick, we need to take note of our sanitation system. The scientists' report reminds us that our fecal matter, through its bacteria, has already become part of our fish:

> *Escherichia coli* bacteria were isolated from the digestive tract and muscles of the *Jenynsia multidentada* species. It is worth highlighting that these bacteria are not part of fishes' normal flora and that their presence in fish muscle indicates a high concentration in the environment. (ibid., 3)

For those who have forgotten what the definition of "to kill" is, I would like to point out that one of the meanings included in the Royal Spanish Academy's Spanish dictionary is "to extinguish or put out a flame or light" (Real Academia Española n.d.). Our sicknesses, everything that we expel and do not want, do not just disappear. We Cordobeses have extinguished the light of the Suquía River.

Wastewater regularly floods the streets of Córdoba. The sewage that arrives to the Bajo Grande wastewater treatment plant, by not being properly treated, poisons the river and harms the health of those living in nearby neighborhoods.

Contact with wastewater causes a number of ailments among city residents: diarrhea, fever, vomiting, and even "hemolytic uremic syndrome, which can cause serious harm to small children and older persons" (Navarro 2006). In downtown Córdoba, "beautiful" fountains spray a plethora of harmful viruses, fungi, bacteria, and parasites. We expel them, and then they come back to get us!

Residents of Chacras de la Merced, which is located next to the wastewater treatment plant, have unfortunately resigned themselves to this reality (Viano 2018), and residents of Capilla de los Remedios also know what it means. The level of pollution is so high that in 2018 it incited residents of Capilla de los Remedios to launch a campaign known as "We just want to breathe." Their situation is, in their own words, *desperate*, and we cannot describe it any other way knowing that they only want to, well, breathe.

These residents must live with the nauseating stench of the river that seeps through the town and its homes. The viruses, bacteria, parasites, and fungi that live in the river invade their bodies. Residents have clamored for someone to listen to them, but it seems that the selective hearing of city officials and the province's judicial system does not grasp the fact that

> "We cannot live any longer, we cannot sleep, our children are sick and cry at night," said [Gómez, local mayor] … The massive amounts of untreated liquids causes the release of toxic gases that harm the community. Gómez noted that there are cases of gastroenteritis, tightening of the throat, asthmatics under medical observation, and eye irritation. Because of the stench, residents reported that their children are unable to sleep at night. ("Capilla de los Remedios, un pueblo contaminado" 2018)

The various complaints filed by residents laid blame on the untreated discharge from Bajo Grande that ends up in the Suquía River, endangering them and others living downstream, including the communities of Río Primero, Chacras de la Merced, and Malvinas Argentinas.

Residents complained, and the city ignored them. They complained, and provincial courts looked the other way. Public officials and judges are responsible—through their actions and omissions—for the contamination that is getting worse each day.

Córdoba's wastewater collection and treatment system collapsed a long time ago, and public officials, politicians, judges, and residents know it. The problem is no longer limited to the riverside populations (who live adjacent to the treatment plant and have always suffered its impact) but now affects all of us directly, through blockages and overflows in the city's center. The city's negligence has no limits, and the contamination knows no borders. Everything returns.

Those living near the Bajo Grande treatment plant tried for a long time to get city officials to listen, to see, and to smell, so that each and every one of us could take charge of our waste and the system could function as it should. The authorities, as intellectual and material authors of the crime, did not take heed. So residents initiated legal proceedings before the provincial courts, which also seemed not to understand what a life among sewage means. Perhaps now that the problem is reaching the city's center—as a result of increasing sewage overflows—officials and judges will realize that they have to do something.

In 2004, residents of Chacras de la Merced won a legal battle when a civil court held that the river's contamination from the wastewater treatment plant should be kept to a minimum.[3] But today, the pollution is worse, and residents of another area—Capilla de los Remedios—who live approximately thirty kilometers downstream, cannot breathe. The contamination marches onward with overwhelming force. The river can no longer self-purify, and Córdoba's courts, which were called on to intervene in the matter—have proven incapable of enforcing residents' constitutional rights.

In 2010, residents filed another lawsuit[4] to seek reparations for the degradation caused to the Suquía River. After eleven years of litigation, in 2021, the court finally declared the obvious, holding the city and province of Córdoba responsible for the environmental damage in question. The judge ordered the defendants to publish a report and to design a remediation program, deferring a definitive ruling until after these elements have been presented. The city appealed the decision. Córdoba's judicial system is slow. I don't know how much longer we can wait.

In mid-2018, 664 residents of Capilla de los Remedios filed a complaint before the federal justice system alleging that the city of Córdoba,

3 *Marchisio, José Bautista y Otros – Amparo*, Expediente 3984408, Juzgado Civil de 8º Nominación.

4 *Fundación Centro de Derechos Humanos y Ambiente (CEDHA) y Otros c/ Municipalidad de Córdoba*, Expediente 5297611, Juzgado Civil de 14ª Nominación.

by allowing the river's contamination, was making them sick.[5] Thus far, eight city officials have been charged with the federal crime of contamination in light of the fact that the pollution extends beyond provincial boundaries.[6] This has helped restore—even if just a little—our faith in the democratic system. We are crossing our fingers that the judicial system will go all the way and will convict those responsible for this heinous crime. As the saying goes, hope is the last thing that is lost—and it is what helps us move forward.

Their Responsibility, My Responsibility, Our Responsibility

What can I tell you that you don't already know, or imagine, about our leaders in office? In Córdoba, former mayor Ramón Javier Mestre[7] based his reelection campaign on our excrement. He praised the fact that his administration had been building more sewage networks in the city, highlighting that it was a sign of Córdoba's progress.

Perhaps he forgot to mention that the sewers were bursting, that the river was dead, and that residents of certain neighborhoods (both within and outside his jurisdiction) can't breathe thanks to his leadership. He also forgot to mention that thanks to his terrific work, we are contaminating Mar Chiquita Lake, located 200 kilometers downstream. Surely this was an innocent oversight; indeed, this is what our courts seem to believe, given that they have done nothing to hold him accountable.

The sewers are bursting into the streets and are a daily source of contamination, but Mr. Former Mayor, reflecting on his administration's work, said:

> If you search the annals of history, you won't find a mayor who has done as much sewer work as me: 230 kilometers of fine [screen] network. And 45 drainage channels that can't be seen but that benefit 400,000 Cordobeses who today are not being flooded. (Guevara and Marconetti 2019)

5 There are also numerous similar criminal complaints before the provincial courts that have not made any progress, and some of which were even dismissed before going to trial. In 2008, residents of Chacras de la Merced denounced a similar situation before federal authorities, which began investigating but then stated that they lacked jurisdiction over the matter.

6 *Gataldi, Omar Arsenio; Salum, Matías Alejandro; Bardagi, Danuel Andrés; Grion, Luis Emilio, Rustan, Gabriel y Otros p.ss.aa Infracción art. 55 y 56 Ley 24051*, Expediente FCB 32042/2018/CA1.

7 He was elected mayor for the 2011–2015 term and then reelected for another term ending in 2019.

He neglected to mention that he extended the sewage networks without foreseeing the timely and efficient treatment of wastewater; he forgot to mention that he did not do the most important thing: treatment, which cannot be seen. The words of two Bajo Grande plant workers are clear: "they expanded the house but they forgot to expand the bathroom, and the toilet can't cope" (Romero 2021).

We residents are being inundated by sewage runoff, and the river is making us sick. I wish our ex-mayor could tell us how to improve our quality of life when we carry sewage in our shoes and on our pants after treading city streets.

I neglected to tell you—and I apologize—that as our former mayor boasted of having expanded the sewage network, he simultaneously expanded the environmental and health emergency of the Bajo Grande treatment plant ("Bajo Grande" 2017). This environmental emergency has been steadily on the rise since 2014. We live in a state of emergency, and it appears that this will be the natural way of things.

I don't know what you think, but I believe that our leader knew what he was doing and, with his constant declarations of environmental emergency, was covering his back—maybe just like we do, when we press the button on the toilet, say goodbye to everything we don't want, turn off the bathroom light, and, just like that, watch the crap go away. But then we carry it back to our homes on our beautiful shoes or get it on our feet when we use sandals—but, well, that's another story.

There's no doubt that the first responsibility lies with the Mayor's Office, which has been negligent and careless in its response to the problem, which fails to provide us with information, which does not listen to the public, and which knowingly commits the criminal offense of contamination without taking the steps necessary to change this. Public officials should be held civilly and criminally liable.

The courts also bear responsibility, for despite having been called on multiple times to intervene, they deny us—as citizens and residents—access to justice and the right to care for our lives, health, and environment. In doing so, they are shrugging off democracy and their primary gate-keeping function as courts.

We are also responsible, for we have a responsibility to be aware of the waste we produce, the need to treat it correctly, and the importance of actively calling on the government to respect our rights. Even more importantly, we have a responsibility to demand that these officials and judges be personally held accountable for their poor performance. There is no excuse for those who are supposed to look after the common good! We must strive to repair the damage caused by their negligence in performing the very functions for which they were elected.

The city has proven useless in solving this problem. The courts have proven ineffective in doing their job and in enforcing our rights. The province is building a new plant that, according to forecasts, will not resolve the issue and which will mean that we are spending more public resources on creating more and better pollution. It seems that history does not stop repeating itself!

Back in 2004, after the first court ruling ordering that the contamination generated by Bajo Grande be kept to a minimum, an expansion of the plant was already underway. The result: today, a river whose pollution levels are higher than ever before. For example, in 2019, the level of fecal coliforms was 24,000 times higher (2,400,000%) than the maximum permitted level[8] and the phosphorous emissions were 1,200% higher.[9] It is worth noting that neither then nor now has there been room for public participation. Neither then nor now is anyone listening to what the people have to say.

This sad reality tells us that we Cordobeses, sadly, do not learn. We punish ourselves and nearby communities on a daily basis with the excrement and waste that we produce. We steamroll rights with impunity and we kill nature.

This story leads us back to the city where the toilet was invented: London. During the summer of 1858, a nauseating and overwhelming stench blanketed the entire city. Everyone suffered. Rich and poor residents alike inhaled the foul odor of excrement rising from the River Thames. This "Great Stink" led to one of the greatest developments in the city's history (Mann 2016). At that moment, 160 years ago, London developed a sewer network that still serves as a model today.

This Londonesque past seems to be unfolding in Córdoba. Perhaps ten years from now, we will realize that we were rotting in our own pollution. And only then, when we can't sleep at night because of the stench and when our grandparents die of cholera after eating a salad watered with sewage, will we understand that we must do something. Surely by the time we come to this realization, we will have already

8 Environmental analysis performed in September 2019 and incorporated into the lawsuit *Gataldi, Omar Arsenio; Salum, Matías Alejandro; Bardagi, Danuel Andrés; Grion, Luis Emilio, Rustan, Gabriel y Otros p.ss.aa Infracción art. 55 y 56 Ley 24051*, Expediente FCB 32042/2018/CA1.

9 According to scientific expertise provided on July 5, 2021, in the lawsuit *Gataldi, Omar Arsenio; Salum, Matías Alejandro; Bardagi, Danuel Andrés; Grion, Luis Emilio, Rustan, Gabriel y Otros p.ss.aa Infracción Art. 55 y 56 Ley 24051*, Expediente FCB 32042/2018/CA1.

completely destroyed the life of the river and Mar Chiquita Lake. Certainly our life as we know it today will have vanished.

I hope that you can help me stop Córdoba's Great Stink before it arrives. I hope you can help me rescue our future.

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Sitting by the River and Washing Your Hands with Spittle: The Story of Informal Miners of Obuasi

Richard Ellimah

In Obuasi, a mining community in Ghana, informal miners have vowed that they will not sit by the river and wash their hands with spittle. They will participate in mining, with or without a concession.

One journalist described it as "a scene from an American action movie." Another told me he had never felt so threatened in his life and that he hoped he would never have to encounter such a situation again. The date was February 2, 2016. It was a Saturday. John Owusu, a senior manager in charge of corporate affairs at AngloGold Ashanti, a multinational mining company operating in Ghana, had just been killed. Owusu had been run over by a company vehicle being driven by a colleague—the company's security manager—as they were fleeing from a group of rampaging illegal miners.

As details of Owusu's unfortunate death started emerging, the nation was once again compelled to confront the reality of the consequences of a festering problem that should have been resolved so many years ago: informal mining. That fateful Saturday morning, Owusu had, in the company of senior management and some journalists, decided to take a tour of parts of AngloGold Ashanti facilities that had been compromised by the intrusion of informal miners. As they approached an area of the mine called Cote D'Or, a group of informal miners who had cut through the metal fence started pelting them with stones and other objects. Some of them, wielding dangerous weapons such as machetes, started rushing toward the fact-finding delegation. Fearing for their lives, Owusu and his team quickly took to their heels. Unfortunately for Owusu, as he ran, the security manager who had reached his car earlier drove in reverse and knocked him down. Owusu was rushed to the AngloGold Ashanti Hospital, where he died a couple of hours later.

Over the next few weeks, as the nation was swallowing a painful cocktail of anger, frustration, and disappointment, it had become increasingly obvious that the conundrum of informal mining had to be resolved. This was not the first time that informal miners had invaded the concession of Ghana's third-largest gold-producing company. Throughout the life of the 100-plus-year-old mine, invasions of

informal miners had been a regular security problem. Occasionally, there would be news of one or two deaths of informal miners in the company's underground mine. But the sequence of events that culminated in Owusu's death was on a scale never before seen. It looked more like an organized invasion by thousands of youth from the mining communities. Clearly, the company's security was overwhelmed by the invasion.

Perhaps Ghanaians had become tired of the frequent casualties in the informal mining sector. Perhaps Owusu's death was seen as one too many. But whatever it was, such tragic deaths had to stop. And that meant ensuring that the nation no longer played the ostrich.

In this chapter, I trace the reasons behind the invasion of AngloGold Ashanti's Obuasi mine and explain how years of economic injustice meted out to the youth from the Indigenous mining communities played a key role. I further look at how a human rights organization, the Centre for Social Impact Studies, fought to get these miners access to their own concession through years of advocacy and participation in a government-established "movement committee" to move the informal miners from AngloGold Ashanti's mine to their own concession.

Introduction

Mining has long been a fundamental part of Ghana's economy. Over the last two decades, gold mining has been a leading contributor to the country's gross domestic product. Rich deposits of gold, diamond, bauxite, manganese, iron ore, and, more recently, oil and gas are being mined by big multinational companies in different parts of the country. Recently, Ghana overtook South Africa as the African continent's leading gold producer and became one of the world's top ten most significant gold producers (Njini 2019).

The mining industry is seen as one of the most strategic sectors of the Ghanaian economy. Due to this status, the government gives the sector, particularly multinational companies, its utmost attention. This is also because the state is, by law, an equity holder in all mining operations (receiving a minimum of 10% of every mining operation's shares). Even before the introduction of industrial mining to the Gold Coast in the 1880s, Indigenous people were mining gold, though doing so as artisans. Mining was such an important economic activity that it formed a pillar of the traditional economy (the other pillar being agriculture). During the dry season Indigenous peoples did mining, and during the wet season they went to the farms. Over time, as the trade in gold gained prominence after the imposition of British colonial rule

in 1844, more Indigenous mining entrepreneurs started emerging. One such mine owned by Indigenous people is the Obuasi mine.

Obuasi and the Mine

For centuries, Obuasi's economy has been supported by agriculture (in the rainy season) and mining (in the dry season). A very well-developed mining industry emerged in the Adansi and Bekwai areas. Gold from mining served both cultural and industrial needs. For instance, in Akan traditional society, it is customary for every family to have some gold products (such as gold dust, a gold loom, and gold jewelry). A sophisticated goldsmith industry that carved diverse forms of gold artifacts for the chiefs for royal purposes had developed in Adansi centuries before the arrival of European explorers.

The main method of mining then was artisanal, and it was passed on from generation to generation. No chemicals were used, and only rudimentary tools were adopted in the actual extraction of the gold. As a result, there was very little or no harmful effect on the environment. This history is important to erase the erroneous impression that Europeans introduced mining to Ghana.

Two Indigenous Fante (a tribal group from Southern Ghana) entrepreneurs owned the current Obuasi concession, considered one of the richest in the world. Chief Joseph Biney and Chief Joseph Ellis mined the concession that they acquired from Adansi and Bekwai chiefs from 1890 until 1897, when they were compelled to sell it off to British merchant Sir Edwin Arthur Cade due to colonial policies that prohibited the ownership of mines by Indigenous people. Cade then renamed the mine Ashanti Goldfields Corporation. The company operated under different ownership structures until 2004, when it merged with AngloGold of South Africa to create AngloGold Ashanti, currently the second-largest mining company in the world.

The concession given to Ashanti Goldfields Corporation was for 485 square kilometers, which until 2016 was the biggest mining concession in Ghana, spanning five administrative and political districts: Obuasi Municipal, Bekwai Municipal, Amansie Central, Adansi North, and Adansi South. These five administrative districts have a combined population of almost 700,000.

With one company's concession swallowing up these five districts, it was practically impossible for Indigenous miners to legally do mining in any of these areas, no matter how technically or financially competent they were. This decision by the state to give this large concession to one mining company—effectively making it impossible for

Indigenous communities to carry out a traditional economic activity—lies at the bottom of today's frequent conflicts between AngloGold Ashanti and the informal miners, who have been described as "illegal miners" because they do not own any concession.

The 1992 Constitution of Ghana vests the ownership of mineral resources in the president of the republic, who holds it in trust for the people. In practical terms, therefore, one could find minerals on their own piece of land but would not retain ownership over them. In other words, land ownership does not automatically confer legal access to minerals found on or under a person's land. A landowner would still have to apply for a mining concession and acquire a license before they could mine. To the extent that these miners—who may be landowners or who may belong to families who own land in Obuasi—do not possess the requisite mining permit or lease, they are described as illegal miners.

Furthermore, there is another legal complication because the Minerals and Mining Act of 2006 that governs mining in Ghana has no provision for artisanal mining. The law contains only a few provisions on small-scale mining, not artisanal mining, which is the traditional livelihood of some of the communities around Obuasi. As a result, there is no specific legal provision that protects the traditional livelihoods of Indigenous miners.

So whereas the law does not explicitly bar the Indigenous peoples of Obuasi from "eating" from their own land, the administrative procedures required to register a concession and acquire a license effectively bar them from mining, even in their own backyard.

Challenges of Informal Mining[1]

Marginalization of the Sector

A colonial legacy that marginalized all forms of mining by indigenes still drives much of the discourse around informal mining today. The unfortunate posture adopted by policy makers is that any form of mining by indigenes is "galamsey" and therefore illegal. This perception has driven much of the policy response to the illegal mining challenge that the country faces. The very confusion over nomenclature speaks volumes about this unfortunate legacy. At different times, the literature on small-scale mining oscillates between "illegal mining," "galamsey," "small-scale mining," "artisanal mining," and "informal mining," among others. This marginalization finds expression in the

1 Much of this section is taken from Ellimah (2017).

lack of state support for the sector. At the moment, big multinational companies such as AngloGold Ashanti, Newmont, Goldfields Ghana, Barrick Gold, and Golden Star Resources still hold on to large concessions, many of which, ironically, they do not use for mining businesses. This has pushed informal mining further away from the opportunities that legally registered small-scale mining enjoys. For instance, because AngloGold Ashanti held on to a 485-square-kilometer concession, it was practically impossible for anybody to be granted a concession in Obuasi and four other districts.

Weak State Support for the Sector

The passage of a small-scale mining law in 1989 showed a certain willingness on the part of the government to recognize the informal mining sector and to fully integrate it into national development. To deepen its level of commitment, the Minerals Commission also created a small-scale mining department, ostensibly to focus on promoting a sanitized informal mining sector capable of supporting local economic development. Unfortunately, even though the legal and institutional structures exist to support the sector, the Minerals Commission's focus has unfairly been tilted toward promoting large-scale mining investments. For instance, license acquisition is still largely centralized in Accra in spite of numerous complaints from miners calling for the process to be decentralized. This, when compared to the rapidity with which the government acts on concerns of the Ghana Chamber of Mines, exposes the government's weak support for the sector.

Weak Integration of the Sector into Local Economies

Informal mining has the potential to support the local economy if the right measures are adopted to integrate it into the economy. For instance, it contributes to local employment generation, rural industrialization, and the development of critical infrastructure in rural communities that are often untouched by central or local government. However, because the sector has operated more like an underground economy as a result of the lack of coordinated and strategic support from government, these benefits are yet to be realized.

Rudimentary Use of Technology

Informal mining is still characterized by the widespread use of rudimentary equipment and technology. Probably as a result of the sector's historical background as an artisanal craft, there does not appear to be any rush to introduce technology that could improve its productivity. The outcome is inefficiency in the extraction of the gold. For instance,

due to the use of obsolete technology, informal miners are not able to recover much of the gold that they produce. The introduction of more advanced technology would improve gold recovery and increase the miners' earnings, which would ultimately lead to an improvement in the local economy.

Lack of Financial Support

Unlike other businesses, informal mining operators struggle to gain access to financial support from the banking sector. Banks are reluctant to lend money to licensed informal mining operators, whom they consider to be engaged in a high-risk economic activity. Another reason cited for this unwillingness is the volatile nature of the industry, which stems from the volatility of metal prices on the international commodity market. Given that much of their financing comes from sources such as family and friends, informal mining operators' ability to expand their operations and compete with global players in the industry is limited.

As a result of these challenges, the informal mining sector has been described as an orphan sector of Ghana's economy. When the Centre for Social Impact Studies was formed in 2011 in Obuasi, one of the organization's first assignments was to advocate before the government to compel AngloGold Ashanti to release a part of its concession to informal miners. This was far from being an act of charity, the organization argued, but rather a necessary intervention to ensure economic justice.

As part of this advocacy effort, the organization organized the first forum on small-scale mining in Obuasi in 2014. The forum brought together a range of stakeholders, including the Minerals Commission, the Environmental Protection Agency, the chief executive of the Obuasi Municipal Assembly, civil society groups, traditional authorities, and informal miners. AngloGold Ashanti was also represented by its senior manager in charge of sustainability. In his presentation, the senior manager announced that the company had decided to release 60% of its concession to the government and, in that regard, had submitted an amended plan to the government. He then went ahead and asked the informal miners to redirect their anger toward the government so that it would approve the company's proposal.

The next phase of the Centre for Social Impact Studies' advocacy was to push the government to approve the release of this 60% and then, most importantly, grant portions of this 60% to the informal miners who had struggled to get their own concession for so many years. Supported by the organization, the miners wrote several letters to the

government, calling on it to release the concession to them. But these letters did not yield any positive results. The government merely responded that it was still studying the amended plan submitted by the company and that it would respond in due time. It had become apparent that the entire plan had been locked up in the usual civil service bureaucratic bottlenecks.

Invasion of AngloGold Ashanti's Obuasi Mine

After failing to get the government to speedily address their demand for their own concession, informal miners in Obuasi decided to do things their own way: invade AngloGold Ashanti's underground mine. This daring move became possible because the mine had already been put on "care and maintenance" two years earlier, so no active mining was underway. Estimates by the Minerals Commission put the number of miners who invaded various portions of AngloGold Ashanti's concession at around 4,000.

Faced with an embarrassing crisis that threatened to mar the country's reputation as a preferred destination for mining investment in West Africa, the government facilitated various interventions—including mediation meetings between the Mining Committee of the Obuasi Municipal Assembly, the Obuasi Municipal Security Council, the Ashanti Regional Security Council, and traditional authorities—to move the informal miners from AngloGold Ashanti's concession. However, these interventions failed to attain their desired objective, as the miners insisted that they would not vacate the company's concession until the government released its own concession to them. In other words, there was a stalemate. This impasse persisted until an unfortunate incident occurred: the death of John Owusu.

Owusu's death changed the narrative, sending a strong message to all stakeholders about the seriousness of the situation at hand. This was when the government quickly stepped in and inaugurated a "movement committee" on August 1, 2016, that would use dialogue to resolve the impasse.[2] As the name suggests, the movement committee was tasked with drawing up a roadmap for moving informal miners from AngloGold Ashanti's concession to their own concession.

Given that the conflict involved a number of stakeholders with competing interests, the government was careful to ensure that the committee's membership was reflective of this diversity. The committee was composed of the following representatives:

2 In addition to Owusu's death, several other factors precipitated the creation of this committee. For more on this issue, see Ellimah (2017).

1. Minerals Commission (three representatives)
2. Ghana Police Service (one representative)
3. Obuasi Municipal Assembly (two representatives)
4. Ghana Chamber of Mines (one representative)
5. Ghana National Association of Small Scale Miners (one representative)
6. Obuasi Small Scale Miners Association (two representatives)
7. Adansi Traditional Council (one representative)
8. AngloGold Ashanti (two representatives)

Representatives of AngloGold Ashanti, however, recused themselves from the committee because of a lawsuit that the company had initiated against the government of Ghana. The Minerals Commission served as a facilitator of the entire process, providing logistics to ensure the committee's smooth operation. The Ghana Police Service, as a key provider of security, was represented by a senior officer. The Ghana Chamber of Mines, as the umbrella body of mining companies in the country, had one representative who represented the interests of the industry. The host district, Obuasi Municipality, had two representatives, whose main duty was to provide feedback to the Municipal Assembly to help it provide input for the process. One of the assembly's representatives doubled as the public relations officer of the Obuasi Small Scale Miners Association. I was selected as the Municipal Assembly's second representative given the work that my organization had done to advocate for informal miners' economic empowerment for their own concession.

Terms of Reference of the Movement Committee

The committee's aims included the following:

- Develop and implement a roadmap in collaboration with the Minerals Commission to ensure the small-scale miners' peaceful relocation to the surrendered area of the AngloGold Ashanti concession.
- Assist in the formation of small-scale mining cooperatives, where necessary, to enable these miners to apply for small-scale mining concessions in the surrendered area.
- Assist the Minerals Commission in allocating concessions to interested small-scale mining cooperatives. The criteria for concession allocation would give priority to miners currently working on the AngloGold Ashanti concession who were duly registered by the Minerals Commission for relocation.

- Propose any other suggestions that would lead to the effective relocation of the small-scale miners to the surrendered area of the AngloGold Ashanti concessions.

The Minerals Commission was very particular about the work of the Movement Committee for two main reasons: (1) it wanted the success of the Obuasi "experiment" to be used as a basis for the resolution of conflicts in other mining communities in the country, and (2) it wanted to make a strong case before the International Centre for Settlement of Investment Disputes in Washington, DC, that the government was taking steps to resolve the impasse that had pushed AngloGold Ashanti to sue it in the first place.

The committee adopted an unconventional approach in its work. Above all, we decided to engage the informal miners directly by arranging sessions with the various "ghetto leaders" (the informal miners are subdivided into groups called "ghettos," which include about fifty members each, and the ghetto leader heads them). The uniqueness of this strategy lay in the fact that Ghana's mining regulatory bodies, such as the Minerals Commission and the Environmental Protection Agency, have a policy of not engaging with "illegal" miners. We shattered this policy and held dialogues with the miners to better understand their position. It was extremely beneficial!

Further, we engaged AngloGold Ashanti and succeeded in securing the company's commitment to lease some of its mining equipment to prepare the area of the concession that we had demarcated for use by the informal miners. Geologists from the Minerals Commission came and performed some tests to check the mineralization of the demarcated concession, confirming that the area had sufficient quantities of gold to sustain the informal miners over time. By end of the committee's mandate in September 2016, almost all the illegal miners had vacated AngloGold Ashanti's concession. We had formed the miners into groups, each with appropriate identity cards, and allocated them portions of the prepared concession in their own names. What had seemed like an impossible task just a few years ago had become a reality, thanks to the ingenuity of the movement committee.

Success Factors[3]

In addition to the committee's unconventional approach, several other factors contributed to the successful resolution of the crisis that had lingered for about three decades.

3 This section is taken from Ellimah (2017).

Availability of Alternative Concession

It is important to note that the decision of AngloGold Ashanti to give up 60% of its concession to government was a major breakthrough in the resolution of the impasse. All along, the main argument that the illegal miners gave for invading the company's concession was that they did not have a concession of their own, due to AngloGold Ashanti's ownership spanning five administrative districts (Obuasi Municipal, Bekwai Municipal, Amansie Central, Adansi North, and Adansi South Districts). With the company shedding off 60% of its concession, the government now had the basis for negotiating the miners' eventual removal.

Broad-Based, Representative Group

The inclusion of all interest groups was key to the success of the task at hand. The key stakeholders involved in the conflict were AngloGold Ashanti, the Small Scale Miners' Association, the Ghana National Association of Small Scale Miners, the Minerals Commission, the Ghana Chamber of Mines, the Obuasi Municipal Assembly, the Adansi Traditional Council, and the general public.

Open and Frank Discussions

From the onset, the committee adopted an open and frank approach to its work. All stakeholders who appeared before the committee were given the opportunity to express themselves freely, mostly in the local dialect (Twi). The committee helped the informal miners understand that they could articulate their fears, challenges, and motivations without risking intimidation or retaliation. This opened the door for the informal miners to offer suggestions on how the conflict with AngloGold Ashanti could be resolved. They had a lot of workable ideas that they shared with the committee.

Cooperation with AngloGold Ashanti

For the committee's work to be successful, the support of AngloGold Ashanti was critical. Though the company recused itself from the committee because it had already initiated legal proceedings against the government of Ghana before the International Centre for Settlement of Investment Disputes—and felt that actively participating in the committee's proceedings would compromise the outcome of this case—it was very supportive nonetheless. The company provided important documentation that helped the committee demarcate the concession that would be given to the informal miners. It also provided the

committee with vehicles and other logistical support needed to undertake the committee's assignment.

Feedback to Public

The people of Obuasi—and, by extension, Ghana—were keenly following the progress of the committee's work. The stakes were high. Residents of Obuasi held on to the belief that a successful resolution of the impasse would revive the town's comatose economy. Very much aware of this high expectation, the committee periodically provided feedback to the public through weekly radio interviews. On a few occasions, the committee also issued press statements to explain the progress of its work. I played the role of a liaison between the committee and the public, granting interviews to the media, particularly local radio stations.

Conclusion

The movement committee officially ended its mandate on September 30, 2016, after several weeks of intense efforts. Its work proved that through dialogue and sincere engagement, the age-old economic injustices suffered by the people of five districts could be corrected, creating a model that other parts of Ghana going through similar challenges could adopt.

As a result, the people of Obuasi and four other districts can finally sit by the riverside and be able to wash their hands with the free-flowing water from the river. For once, they are empowered to also dip their hands in the pot and eat the best of the land. That has been possible through the power of dialogue!

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Human Rights Has a Case of COVID-19

Slavenska Zec

June 5, 2019, was not just another birthday. That day, I received a phone call informing me that I had been awarded a scholarship to study in Spain for a year. I envisioned an unforgettable personal and professional experience that would leave a profound mark on me for the rest of my life. For the first time ever, I would get to visit the Old Continent, where I would absorb its varied landscapes and learn from excellent jurists.

I spent months waiting, saying goodbyes, and getting ready. I had never left Argentina for such a long period of time, and I could already sense the homesickness that I would feel from being thousands of kilometers away from my country and my loved ones. And at that moment, I could not imagine for even a second the tremendous blow that the entire world and humanity were about to suffer—a blow that neither money nor social status could prevent.

When I arrived at Madrid's Barajas Airport, the city had an immediate impact on me. Its grandiose buildings and avenues reminded me of my beloved Buenos Aires. The similarities between the two cities were striking.

Madrid's majestic beauty dazzled me with every step I took. The juxtaposition of two different worlds and eras was stunning: old buildings and streetlamps intertwined with modernity and the impact of the present day. Without realizing it, I ended up living in the city's historical center, La Latina, whose name alludes to author and educator Beatriz Galindo, nicknamed La Latina for her skill in Latin. Galindo played an important role during the sixteenth century, which is why her nickname appears in many places, including La Latina theater around the corner from my apartment, which was initially a hospital opened in 1499 by Galindo herself.

With beautiful and colorful old buildings nestled in its narrow streets, La Latina was always in a partying mood. The orange facade of my building, bearing an antique plaque with the message "asegurada

de incendios" (insured for fire)—a common feature of residential buildings in the area—let me know that I was home. It was an eighteenth-century building typical of old Madrid, with wooden scaffolding and balconies overlooking an inner courtyard. The neighborhood, dotted with bars and restaurants, attracted crowds of people in search of beer and tapas. The inclement weather didn't seem to discourage the daily visitors who flocked to this area, which seemed to be full of life 365 days a year. Just around the corner was the Mercado de la Cebada, brimming with fruit, vegetable, and butcher stands, where people came to purchase fresh food as part of a long tradition that I embraced almost automatically. The Segovia Viaduct, the famous Royal Basilica of Saint Francis the Great and its imposing dome, and walks along the Manzanares River toward the Puerta de Toledo all became part of my new reality.

I discovered that Madrid is a city booming with life, freedom, and laughter. People strolling and riding bikes. People getting together for picnics and other gatherings in the city's many parks. I loved getting lost in the old town, wandering its narrow and colorful streets; it was a marvelous postcard, and I was sketched into it. Walking by old shops, climbing the Cuesta de los Ciegos' 200-plus stairs to behold the unparalleled and majestic view, gazing at the Gran Vía or the Metropolis Building from high-up terraces, and enjoying the blazing sunsets behind the famous Almudena cathedral or the Royal Palace were some of the loveliest experiences.

I remember how excited I was when I started my classes in this new city. When I met my classmates, who had come from around the world, I never thought that I would forge such deep friendships despite the great differences—evident from the outset—that existed between us. Those first few months in Madrid were among the happiest. My days would begin with an early morning walk to class through the city's narrow streets. The trek couldn't have been more pleasant: first downhill, until I reached Calle Segovia, then onto the picturesque and enchanting Calle Rollo, then across Calle Mayor, so busy with tourists. A bit farther down was the majestic Royal Palace, which never ceased to amaze. There, next to the Senate and in front of this architectural treasure, was where I spent my mornings, sometimes making a quick escape to Mr. Vázquez's café across the street.

And so time went by until January 2020, when talk of a deadly virus in China began to surface. It was sad news, but it seemed such a foreign and faraway problem that we barely paid any heed. Nonetheless, in Wuhan, the number of cases was quickly rising, and Chinese authorities confirmed that they were not cases of SARS or MERS, two viruses

that were already well known. A few days later, they announced that it was a new coronavirus, which the World Health Organization would later call COVID-19.

Symptoms of this virus included a dry cough, sore throat, headache, and fever, among other things. By mid-January, cases began appearing in other countries: Thailand, Japan, and the United States. The situation grew increasingly worrisome, and the Chinese government imposed a temporary lockdown in the city of Wuhan. At the end of that month, Europe reported its first case of COVID-19—in France—thus adding to the 2,700 cases already identified in China and 50 in the rest of the world. Eighty deaths had already been caused by this new illness, and the World Health Organization declared the outbreak a public health emergency of international concern. Over the course of a few weeks, the number of COVID-19-related deaths worldwide reached 2,000 ("Cronología del coronavirus" 2020).

Despite this gruesome global landscape, daily life in Spain went on as usual; the outbreak that was beginning to hit many countries still seemed a distant reality here, where there were just a handful of isolated cases. Most young people believed that the illness was like a basic flu. But for my friend Santiago, it was nothing of the sort.

Santiago's job required him to make regular trips to Italy, and on his last trip back to Madrid he encountered something unexpected in the airport: two people dressed in white protective clothing and wielding a strange contraption in their hands. They were pointing state-of-the art thermometer guns at passengers' foreheads to check their temperatures. Santiago didn't understand what was going on, and the situation left him bewildered. Two weeks later, as he was working out at the gym, he suddenly felt tired and discovered that he a fever of 39°C.

He figured that it was just a case of the seasonal flu. But when he didn't feel better the next day, he decided to call the hotline for suspected COVID-19 cases. The operator asked him if he was having trouble breathing, since this was the only criterion that justified sending a health worker to a person's home. Otherwise, the person would be told to remain at home and not go to the hospital. After Santiago described his symptoms to the operator, they told him that they would enter him into the database as a COVID-19 patient despite the fact that he had not undergone a swab test, which was the only true way to confirm such a diagnosis. This raises a serious question: How reliable was the figure being disseminated in the media concerning the number of people infected with the virus?

The following week, Santiago's health deteriorated. He was feeling increasingly overwhelmed and anxious. Even though he was calling

the hotline daily, he always got the same response: "Stay home and don't go to the hospital." The uncertainty from not knowing what exactly he was suffering from, together with health authorities' refusal to send a health worker to his home, led him to speculate on his diagnosis. He thought about his family, who was thousands of kilometers away and who was unaware what he was going through because he didn't want to worry them. He felt guilty and afraid of infecting his housemates with a disease that he knew nothing about.

His condition worsened: he began to feel short of breath, had excruciating back pain that prevented him from sleeping, and had a persistent dry cough. He had never had a fever for an entire week before. He phoned the hotline again and, despite his symptoms, was told that he was young and could "wait it out" at home. The following Sunday, he couldn't take the suffering anymore. So, ignoring their advice, he decided to go to the hospital—alone and unable to ask anyone for help.

Exactly one week had passed since the onset of his symptoms. That night, when he left the apartment to walk toward the metro, he encountered a surreal sight: the streets were deserted, dark, and cold. He had never felt so alone in his life. During the forty-minute metro trip to the hospital, he didn't see any other people on the trains. Once he arrived at the hospital and underwent a basic exam, he was hospitalized and placed on oxygen. This new virus had given him severe pneumonia, and if he had waited a few days more—he told me later—he wouldn't be here to tell his story.

The solitary nature of this disease was clear. Santiago was alone in a room; nobody could visit or get close to him, and his meals were left at the door for him to retrieve. While he knew that this was the right thing to do to prevent further contagion, he couldn't help but feel discriminated against. After four days of hospitalization, his health improved notably and he was sent home, where he was instructed to quarantine for two weeks. Many months after this ordeal, he still feels the consequences of this illness, including decreased lung capacity due to pulmonary fibrosis, a wound that he hopes will one day heal.

Onset of the Public Health Emergency in Spain

On March 14, 2020, Prime Minister Pedro Sánchez declared a state of emergency in Spain to stem the virus's spread. Days before, the media published photographs from Wuhan in which health workers were celebrating the last patient's release from the makeshift hospitals that had been built to treat COVID-19 cases. Meanwhile, everything was just getting started in Spain. According to the country's Constitution, the

executive can declare a state of emergency for up to fifteen days, after which point Parliament may vote to extend it. Prime Minister Sánchez explained that the country was facing an "extraordinary crisis," making it imperative to "mobilize all of the state's resources to better protect the health of citizens" (Merino 2020).

Thus, through this emergency measure and in the name of public health, the government began regulating and restricting citizens' liberties. In essence, the situation gave way to a ban on people leaving their homes for any reason other than grocery shopping, purchasing medicines and essential items, traveling to work (for the few activities that remained open), and providing care for older persons, children, people with disabilities, or vulnerable groups. Overnight, the government decided that people couldn't go outside to take a walk, to do exercise, to visit a sidewalk café, or to let their children play outside. No longer could people move about, see family and friends who were not part of their household, or even have a simple rendezvous outside. Leisure and entertainment venues—bars, restaurants, movie theaters, clubs, and theaters—were closed, and with them retail outlets that sold nonessential items such as clothes. Schools and universities also closed their doors. People were banned from holding wakes and funerals, and they couldn't visit places of worship. Nor could they visit their loved ones in retirement homes or hospitals.

Goodbye, March. COVID-19, by this point declared a pandemic, was a crisis affecting all sectors. Madrid, beautiful as always and quiet as never before, was unrecognizable. It was deserted and devoid of tourists. Kilometer Zero, where you usually couldn't even walk because of the throngs of visitors, was now completely empty. El Retiro Park, generally so full of life and people, was closed. The Gran Vía, accustomed to nights of neon lights and musicals, was now longing for its restless days and golden nights. It was impossible not to feel a knot in your stomach when seeing the city so dull and gloomy, but I should admit that even during those grim days, Madrid's beauty remained unchanged.

The aim of Spain's lockdown—and those imposed elsewhere—was, at least in theory, to "flatten the curve" of the pandemic. In other words, the aim was to reduce the rate of contagion in order to reduce the number of people requiring medical care, with the ultimate goal of preventing a collapse of the health care system, a fact that would be inevitable if a large portion of the population were to require care at the same time. Thus, the social and political debates that had been part of the daily landscape were now replaced by COVID-19 as the only topic of interest.

With the entire Spanish territory under lockdown and the virus progressing faster than the measures designed to stop it, staying at home was seen as a heroic act. In this same vein and thousands of kilometers away, you could hear the words of Argentina's president, Alberto Fernández, encouraging citizens, "If the pandemic is teaching us anything, it's the need for solidarity. Nobody saves themselves alone" (Fernández 2020).

Despite these words seeking to instill optimism, my world was slowly coming apart; the city that had once dazzled me was slipping from my grip. My daily routine was turned upside down. Our classes began to take place online as a result of the abrupt school closures. There were no more walks or gatherings with friends, and my communication with the outside world was reduced to digital exchanges. In this science fiction movie that we were now living, contact with natural sunlight became a privilege of those who were fortunate enough to have exterior-facing windows in their apartments. To my chagrin, this was not my case; I accessed this "privilege" only once a week, when I went out to purchase groceries. The long lines to enter supermarkets—which would normally be enough to annoy any ordinary citizen—became the perfect excuse to stay outside and take in a few rays of sunshine.

Never before had I imagined the fright that one could feel simply by another's presence or proximity. A simple sneeze became a terrorist act that made bystanders nervous and jittery. Any one of us could be a potential carrier of this new and contagious coronavirus. Against this backdrop, would machines and other technological tools design a new digital world devoid of physical contact in an effort to reduce the virus's spread?

The apocalyptic news reports were even more dangerous than the virus itself, and the resulting panic was compounded by the severing of the most vital and essential relationships that we human beings can have. This state of collective fear translated into a fear of being infected by others, which many governments used as a Trojan horse to exert social control through the restriction of people's liberties. Citizens, paralyzed by fear, acquiesced to these limitations, which government propaganda presented as measures to protect people's health and security, without considering the damaging mental health effects that they would have.

Indeed, one of the most unpleasant consequences of the fear produced by the pandemic was the very representation of contagion, which formed the basis for the extraordinary measures introduced by governments. The measures adopted to contain the pandemic thus

ended up transforming each and every one of us into a danger for others. But even sadder were the restrictions on liberties implicit in these measures and which led to the deterioration of human relationships. We could not come into close physical contact with siblings, parents, or friends, needing to maintain a two-meter distance at all times. Hugs became a distant memory, an unfulfilled longing.

The lack of a vaccine for this virus, and uncertainty about when it might ever come, heightened this collective fear. Added to this were people's stress and other preexisting medical conditions that, despite their impact on quality of life, were practically excluded from the agendas of governments and media outlets. The countless layoffs and closures of small and medium businesses, the deep economic crisis, and the effects of confinement were gradually impairing the mental health of many. Two cases close to me served as examples: individuals who decided to end their lives after being cornered and crushed by the unsurmountable economic impacts of the pandemic.

Spain's public health emergency—and the collapse of its funeral industry—reached such an extreme that the regional government of Madrid repurposed the ice rink at Palacio de Hielo into a morgue for COVID-19 bodies. The authorities claimed that the rink was the perfect temperature for storing bodies. Under the headline "The Great Ice Morgue," *El Mundo* published a bleak image of dozens of coffins lined up on the rink, a sign of death and despair ("La gran morgue de hielo" 2020). Atocha railway station was deserted, and its beautiful inner courtyard sealed off.

How nostalgic I was for those happy days in Madrid, when we were free and didn't know it, I thought. How much I longed for a Sunday in the Feria del Rastro market, for a breakfast at one of those cozy little cafés along the narrow streets of Malasaña and Chueca neighborhoods. I wondered when the moment would arrive when we could once again get together, chat, and laugh until the wee hours of the night, and when Madrid would go back to being a party.

Our Infected Human Rights

On another note, one of the main concerns posed by the pandemic was the possibility of a health system collapse. The saturation of hospitals meant that not everyone who needed emergency care—whether due to COVID-19 or other conditions—could receive it. Thus, discussions began to emerge about the possibility of using triage to determine which patients would receive care, based on their chance of recovery.

Such "prioritization criteria" are worrisome due to their potential to cause discrimination and unequal treatment. In this regard, the Spanish daily *El Español* caught the public's attention when it published the COVID-19 protocol sent to nursing homes by Madrid's health authorities, which discriminated against older persons with certain disabilities (Rodríguez 2020). In essence, the protocol indicated that persons with motor control impairments or cognitive impairments should not be transferred to a hospital, even if they presented a respiratory infection as a result of COVID-19 infection.

The newspaper article explained that the protocol sought to avoid "the serious consequences that would be generated by the collapse of [the health system]" and that its main aim was "to identify patients who would benefit from referral to hospital facilities to improve their prognosis of survival and quality of life in the short and long term and … respond adequately to the principles of bioethics and health professionals' code of conduct." The president of the Madrid chapter of the Spanish Committee of Representatives of Persons with Disabilities categorically rejected this protocol due to its discriminatory criteria, noting that it failed to consider the vulnerable status of persons with disabilities and treated them as less deserving of medical care. In this light, he called for its swift abandonment. The public's deep unease with this protocol—especially among organizations representing older persons and people with disabilities—led Madrid's Department of Health to modify the protocol by eliminating all references to patients' degree of functionality as a criterion for care.

Across the Atlantic, in my country, older people were victims two times over during the pandemic: first, for being the main victims of the coronavirus and, second, for being the target of new discriminatory measures rolled out by the government. Indeed, the city of Buenos Aires decided to roll out a "Mandatory Circulation Permit" for individuals over the age of seventy, prohibiting them from leaving their homes without prior authorization. This permit required them to request approval every time they wished to leave the house, even to purchase basic goods. In Buenos Aires, 80% of COVID-19 deaths were among older persons, and although the aim of this measure was to "persuade them not to go out and to ensure preventive distancing" ("El defensor de la tercera edad" 2020), the decision to isolate this risk group in this way was extremely controversial and ended up being the subject of judicial scrutiny.

The presiding judge in a lawsuit brought against this measure declared the measure unconstitutional, arguing that "requiring all older persons over the age of seventy to call the 147 citizen services hotline

prior to making short and necessary trips to stock up on cleaning supplies [and] medicines is a requirement that is more burdensome for this group of people than for the rest of the population" ("Declaran inconstitucional el permiso" 2020). He added that despite the good intentions of the government of Buenos Aires, the measure involved "discrimination on the basis of age, which violates the rights and guarantees of the age group on which it is focused" because "it is a requirement that is more burdensome for this group of people than for the rest of the population, which exceeds the contours of the isolation measures for people at large." He pointed out that the measure "diminished the personal autonomy and decision-making capacity" of this group "on the basis of age alone" (ibid.).

Meanwhile, the Inter-American Commission on Human Rights (2020) expressed its concern about the possible harmful consequences that the pandemic posed for older persons, who are more vulnerable and at risk of discrimination and stigmatization when seeking health services. It urged states to adopt all necessary measures to prioritize medical care for older persons based on differential and preferential treatment to avoid ageism. The commission called on states to ensure that medical protocols, bioethical guidelines, and treatments related to COVID-19 were implemented without discrimination on the basis of age. Although we can see that the general advice of international bodies and other experts is to ensure enhanced protection for older persons and those with disabilities, the policies carried out by many states were, by all accounts, clear violations of these people's rights.

Toward a New Normality

Finally, after extending the state of emergency multiple times, the Spanish government presented its Plan for the Transition to a New Normality, which embodied a gradual and asymmetric approach to de-escalation. Each one of the plan's four phases would last at least two weeks, would be determined according to province, and would involve the reopening of certain activities subject to restrictions.

The first time that we were allowed to perform individual exercise outdoors, it seemed as if everyone in Madrid had suddenly become a runner. As I took my first steps outside, I encountered a multitude of people running through the streets, probably searching for that same sense of freedom that I was yearning.

After so many weeks without seeing each other, Madrid welcomed us with beautiful spring days and parks bursting with flowers. It felt like a privilege to be able to enjoy a breath of fresh air on a sunny day,

and I was grateful that I could do it. Are we facing a new era in which we must be thankful for every morsel of freedom? As the days passed by, I walked Madrid like never before. I made the most of those few hours that we were allowed to leave our homes, and I discovered incredible nooks full of history and beauty. I realized that the Egyptian Temple of Debod boasts magnificent sunsets and that a secret little forest near Moncloa offers a panoramic view of the entire city.

And so the weeks went by, and with them, the various phases that slowly expanded our liberties. Every two weeks, almost religiously, Parliament debated whether to extend the state of emergency—and each time, the prime minister received increasingly less support for this measure.

After a very long wait, the "new normality" arrived to Spain on June 21, 2020—a status with a clear start date but whose end date we still don't know. This will probably be determined by the arrival of a new vaccine for COVID-19, whose development was still underway at the time of writing this chapter. With the arrival of this new normality, Spain's autonomous communities were empowered to create their own rules, restrictions, and prevention measures in the face of the public health crisis. People could also circulate freely throughout the country, and the country's border was reopened for nonessential travel. Spain maintained the general preventive measures of social distancing (1.5 meters), handwashing, and coughing with a mask on. Masks were mandatory in enclosed spaces, on public transportation, and in outdoor areas where social distancing could not be ensured. Most autonomous communities set a 75% capacity limit for hotels, bars, restaurants, and cafés, and postponed the reopening of nightclubs, which would eventually have to operate with reduced capacity and where customers would be required to sit at tables.

The Return Home

A month later, it was time for me to return to my country, a move that filled me with a mixture of joy—to see my loved ones—and angst—because Argentina, unlike Europe, still had a fairly strict lockdown in place. A special flight operated by Aerolíneas Argentinas exclusively for Argentine citizens and residents took me back home. I felt a rush of emotion when the captain announced to us, "Welcome, you're home now." The image of Buenos Aires' gigantic Ezeiza airport was astounding. It was completely deserted and silent; our flight was the only one to land for days. As we exited the airport, a line of buses waiting outside to take those of us from other parts of the country to our respective

provinces. After a ten-hour bus ride, my fellow bus passengers and I arrived to Córdoba's bus terminal, where we had to fill out some paperwork and have our temperatures taken; we then had our noses swabbed and were allowed to leave in an authorized vehicle. We were instructed to go directly to the address that we had declared on our forms and to do a strict two-week quarantine.

At the start of the pandemic, on March 20, 2020, and with 158 confirmed cases, President Fernández issued a DNU, or "necessity and urgency decree," that established mandatory social and preventive isolation that put Argentina on strict lockdown. Five months had passed since then, and despite the various relaxations of restrictions in some parts of the country, it was clear that we were far from reaching a "new normality."

One of the world's longest lockdowns had changed my country completely. People were intensely afraid, and it was hard for me to pinpoint the reason behind this fear: was it fear of COVID-19 or fear of the authorities who were constantly threatening us with expensive fines or criminal charges if we disobeyed the rules? Circulating outside of one's city wasn't allowed, so I couldn't see my sisters or their children, who lived some thirty-five kilometers away. The downtown area was full of homeless people: entire families suffering the winter cold that refused to let up. Thousands of businesses closed their doors, the printing of currency skyrocketed, and, with it, so did inflation.

In early August 2020, the president declared, once again, that social gatherings would be banned for at least two more weeks. People were in low spirits, frustrated by these announcements that seemed to never end. The president had already issued around fifty DNUs since the start of the pandemic.

The president's concentration of power, and the concomitant weakening of the legislative and judicial branches, has been undeniable. The separation of powers—the basis for representative democracy—was created to ensure checks and balances in government. Montesquieu (1748), arguing in favor of such a system, famously stated that "every man invested with power is apt to abuse it, and to carry his authority as far as it will go … To prevent this abuse, it is necessary, from the very nature of things, [that] power should be a check to power."

However, that system of checks and balances wasn't working, and the continued restrictions being placed on our constitutionally protected rights and liberties were not even being discussed in Congress. Are we facing a crisis of democracy? Do human rights have a future? Or, to the contrary, will our most fundamental liberties be suspended in the name of public health without even first undergoing congressional

debate? If the legislature's power has vanished, will the judicial branch ensure the constitutionality of such measures, or will it remain silent, as it has tended to do until now?

Perhaps, as great English novelist Aldous Huxley once said, "that men do not learn very much from the lessons of history is the most important of all the lessons of history." But despite this disheartening situation, I remain hopeful that things will change and that the Argentinean people will prosper and rise again, as we have done many times throughout our difficult history.

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Operation Hurricane: Digital Surveillance Aimed at Criminalizing the Mapuche Cause

Sebastián Becker Castellaro

Since the year 1400
the Indians have been mired in sorrow,
in the shadow of their huts
you can see them crying softly.
500-year-old totora[1]
that will never dry up.
Rise up, Callupán.

Arauca has a sorrow
blacker than its waistcloth,
It's no longer the Spaniards
who make them cry.
Today it's the Chileans themselves
who steal their bread.
Rise up, Pailahuán.

—"Arauco tiene una pena," Violeta Parra, 1960

September 23, 2017. The Chilean press announced that the national police force, the Carabineros, had captured the perpetrators of the most recent arson attack in Araucanía, a disputed territory being claimed by the Mapuche people. The attack, which the government was quick to call a "terrorist attack," involved a series of fires set in different parts of Araucanía, including the burning of around fifty logging trucks (Asencio 2017). A lumber worker described it thus:

> It's a huge tragedy for us as workers … These are terrorist acts because they don't have any other goal. Many people are connecting this to the Mapuche movement, I have a Mapuche last name, and it has never crossed my mind to do a thing like this. ("Ataque en Los Ríos" 2017)

According to the press and to authorities, the perpetrators were none other than the leaders of the Arauco Malleco Coordinating Committee (CAM by its initials in Spanish), the most controversial of Chile's Mapuche organizations. Spokesperson Héctor Llaitul and his son Ernesto Llaitul were among those arrested. The police also arrested Jaime Huenchullán, a leader of the Autonomous Community of Temucuicui, as well as members of the Weichan Auka Mapu (WAM) group.

The CAM is a Mapuche organization whose main political demand is the recovery and control of ancestral lands ("Héctor Llaitul" 2013). To this end, it seeks to reclaim Indigenous lands through "sabotage and/or boycott of the presence of national and transnational capital in Wallmapu [Mapuche lands]" (ibid.). The WAM, a splinter group of the

1 A reed plant native to Chile.

CAM, has a similar goal of reclaiming traditional lands; however, it embraces more violent actions without dialogue, and it lacks organizational and ideological clarity ("WAM versus CAM" 2021).

The police operation following the arson attack appeared to be taken from a Hollywood movie: agents wearing protective gear and wielding machine guns raided Héctor Llaitul's home as the whole country watched. After his arrest, Llaitul was taken via helicopter to the city of Temuco, where he was handed over to federal authorities. Through these images, the press paraded the CAM leader's arrest as a true republican victory. The police did their job, and the "terrorists" were behind bars (picture 1). It was a national victory.

PICTURE 1

Héctor Llaitul and seven Mapuche leaders arrested for burning trucks in Araucanía and Los Ríos

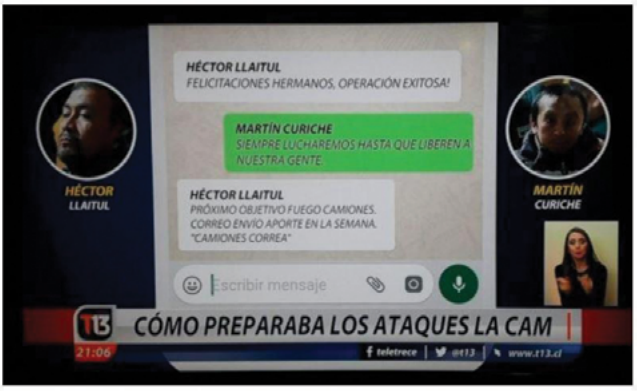
Source: Radio Bío Bío (reprinted with a CC-BY-NC license)

Then, in a communications bombshell, the Carabineros shared the incriminating evidence with the press. Seeking to unmask the perpetrators of this heinous crime, they shared chats from WhatsApp and Telegram allegedly proving that the attack had been organized by Héctor Llaitul and his henchmen. The press faithfully assumed that the arrested men were the material authors of the arson attack. Canal 13, one of Chile's main television stations, showed on prime-time news how the men had supposedly planned everything via instant messaging.

There was no doubt: they were guilty. Picture 2 shows how Canal 13 portrayed the breaking news story.

PICTURE 2

Transmission on Canal 13, September 25, 2017



Source: Derechos Digitales YouTube channel

The men were charged with "illicit terrorist association," one of the most serious crimes under Chilean law.[2] Not only did the government put its full support behind the investigation, but Deputy Interior Minister Mahmud Aleuy even decided to travel to Argentina in light of the fact that the chats had shown high-caliber weaponry originating from that country. Specifically, the chats mentioned two rifles, twelve pistols, ten revolvers, six shotguns, 250 shotgun cartridges, 550 30-mm bullets, and 84 9-mm bullets (Canal 13 2018). Aleuy met with Argentina's minister of security, Patricia Bullrich, to discuss a plan for locating Mapuche weapons and Argentine Mapuche terrorist groups. But soon, the police's version of events would end up being the object of great international ridicule.

Three weeks after the Carabineros' victorious arrests of these "terrorists," something unexpected happened: the Supreme Court determined that the government had insufficient grounds to keep the Mapuche leaders in prison because the evidence presented by the police was incoherent and inconsistent. Patricia Cuevas, a lawyer for one of the accused, had announced immediately after their arrest that "in

2 See Villegas (2013) for an interesting interpretation of the intention behind the counter-terrorism law: "the Constitution itself clarifies that terrorist crimes are the most serious within penal law … The terrorist—like *homo sacer*—suffers social marginalization and stigma even after serving his punishment, which entails in one way or another the impossibility of social reintegration."

the raids, there were no incendiary devices, balaclavas, there was no benzine, there were no firearms or ammunition" ("Abogada explicó razones" 2017). And although the Carabineros had conducted simultaneous raids to prevent the alleged perpetrators from coordinating with one another, they did not gather sufficient evidence of the crime of "illicit terrorist association." The first holes were thus appearing in the government's case.

Another point made by Cuevas, and which would have a significant impact on the case's fate, concerned the method of interception of the incriminating chats. The lawyer emphasized that "what was intercepted here was WhatsApp and Telegram, supposedly, but these services have foreign servers. It's important to know how this information was obtained" (ibid.).

Several shortcomings in the government's investigation were coming to light. For example, beyond the WhatsApp and Telegram chats that had been provided by the police, there was no further evidence incriminating the accused. And the chats relied solely on pseudonyms without a clear connection to the persons who were arrested. Many questions needed to be answered: Were the Carabineros capable of intercepting instant messaging that uses end-to-end encryption and which neither the CIA or the NSA have been able to break (Barrett 2017)? What was (or is) the Carabineros' surveillance capacity? "Operation Hurricane," as the case was known, raised many questions and offered few answers.

Interception of WhatsApp and Telegram Chats

Faced with the public relations crisis of having to free the "main suspects" of the terrorist attack, Chile's president lambasted the Supreme Court's decision:

> A Supreme Court chamber, because of a formality that could have been resolved, decided to free eight individuals who are allegedly being investigated for having burned a church with children and women inside. ("Piñera criticó libertad de comuneros mapuche" 2019)[3]

The Public Prosecutor's Office, the entity charged with prosecuting criminal activity in Chile, sounded the alarm bells. The office argued that it needed to analyze the robustness of the evidence (namely, the WhatsApp and Telegram chats that were intercepted). To this end, it requested independent expert opinions concerning the credibility of

3 Author's note: it is worth pointing out that the president's claim about the crimes being investigated was completely untrue.

the intercepted communications, given that the entire case essentially rested on this evidence alone.

At the same time, civil society began demanding answers, and the first warning signs emerged concerning the government's surveillance technologies. While it was impossible to know what kind of surveillance devices were being used by the Carabineros (Garay and Rogoff 2018), media outlets took note of the impossibility of the police having intercepted WhatsApp and Telegram chats. An article published by legal and technical experts underscored that the police's version of the story was implausible because the encryption used by these apps was unbreakable:

> "Encryption" is a technique that takes a message and transforms it in such a way that nobody, except the recipient, can understand it. This process is conducted through the use of "ciphers," which are like digital padlocks (together with their keys) for messages. If I want to send a message to my wife, without my boss being able to see it, I take the message and I lock it with a padlock that only my wife can open with a key that is unique to that padlock. Nobody can "open" the message while it's traveling through the internet.
>
> Unlike the physical world, in the digital world there are no tools like a "crocodile clip" or a "Napoleon" that I can use to "force" the lock. The closest thing to a digital crocodile clip would be to try every possible key, one by one; and it is extremely difficult (if not impossible) to guess the correct key. WhatsApp messages are sent through AES-256, an encryption that uses 256-bit keys (in other words, a mix of 256 ones and zeroes).
>
> If my boss wanted to guess the key that I sent my message with, they would have to try, on average, on the order of $5*10^{76}$ keys, or a 5 followed by 76 zeroes. In other words, they would have to try more keys than the number of stars in the entire universe. If my boss had access to a million supercomputers, like the K computer manufactured by Fujitsu, it would still take 10^{47} years; that is, more than a septillion times the age of the universe. (Álvarez Valenzuela and Bravo Lillo 2018)

In other words, the chance that the police had intercepted Telegram or WhatsApp messages was simply impossible. The expert opinions commissioned by the Public Prosecutor's Office confirmed what had been, up until that moment, just a rumor: the evidence was false, the chats were never intercepted, and the Carabineros had in fact fabricated a communications and legal hoax against the Mapuche activists in order to imprison them.

Operation Hurricane burst.

What had seemed a juicy news story where the "good guys" caught the "bad guys" turned into a scandal of a dimension never seen before in Chilean history. The expert opinions commissioned by the Public Prosecutor's Office demonstrated that the police had falsified and planted evidence. And this scandal reached up to the highest levels of authority. The national prosecutor described the situation as "irregular, serious, and unprecedented" ("Operación Huracán" 2018), while the Carabineros' then director of intelligence, former general Gonzalo Blu, staunchly defended the case, noting that "the situation described by the Public Prosecutor's Office does nothing more than protect those people who have dedicated their lives to inflicting fear and damage in the southern regions of the country" (T13 2018).

The deputy interior minister had to retract his words and explain that his visit with Argentina's minister of security had not been to pursue arms trafficking between Chile and Argentina. In fact, he wrote a letter to CIPER, an online investigative journalism site, in which he tried not to attribute his Argentina trip to Operation Hurricane, despite multiple press statements indicating the contrary (Sepúlveda 2018a; "Aleuy aseguró que no viajó a Argentina para profundizar el montaje de la Operación Huracán" 2018). Everything up to that point was scandalous.

PICTURE 3

Mahmud Aleuy, deputy interior minister

Source: FotosTVN (reprinted with a CC BY-NC-ND 2.0 license)

Just a few days after the deputy minister's letter, CIPER (n.d.) revealed that former captain Leonardo Osses, in charge of the operation's intelligence unit, had sent an email to the computer technician who created the "Antorcha" malware—the program allegedly capable of intercepting WhatsApp conversations—containing the same messages and in the same order that they appeared in the cellphones seized from the Mapuche leaders, which were presented as evidence to justify their arrest, detention, and criminal charges. CIPER was unequivocal in this regard: "[there was] a transfer of text messages." In other words, there was evidence of the police—in an effort to frame the Mapuche leaders—planting evidence on the cellphones that were handed over to the Public Prosecutor's Office. The prosecutor in charge of the case described the situation thus:

> We have found that there was manipulation of the evidence and that the files containing the alleged conversations incriminating these individuals could have been artificially installed on their phones after they were seized, since they correspond neither to the format or to the location in which messaging is stored on the telephone devices. ("PDI allana oficinas de Carabineros en Temuco" 2018b)

The police were quick to respond. Osses, one of the main officials responsible for Operation Hurricane's failure and accused of manipulating evidence against the Mapuche activists, made the following statements during an interview with one of Chile's major newspapers (Núñez 2018):

> **Do you rule out the existence of the planting of evidence in Operation Hurricane and San José de la Mariquina, known as Hurricane II?**
> Yes, completely.
>
> **Do you have knowledge that the High Command of the Carabineros tested the application's functioning?**
> I mean, it was tested at the time.
>
> **And the high command? At the Carabineros' level of maximum intelligence in this country?**
> Our director, yes.
>
> **Do you mean General Blu?**
> Yes.

The evidence that had been planted was so inconsistent that it bordered on the absurd. According to the Public Prosecutor's Office, of the four cellphones analyzed, only two had WhatsApp on them, one had Telegram, and the fourth didn't have any instant messaging platform. In other words, not only did the phones lack the very apps on which the police had claimed the messages had been intercepted, but

the supposed conversations took place between different platforms (something that is logically impossible). According to the Carabineros, while Llaitul chatted from Telegram, Curiche (one of his alleged accomplices) responded via Facebook Messenger. Moreover, three of the files containing "incriminating evidence" were revealed to have been created *after* the arrest of the Mapuche members and the seizure of their equipment.

PICTURE 4

Special Commission of Inquiry for Operation Hurricane; Leonardo Osses (right) next to his lawyer

Source: Chile's Chamber of Deputies (reprinted with a CC BY-NC-ND 2.0 license)

Despite the police's media blitz aimed at legitimizing their case, the justice system came down full force on those responsible. Blu, the Carabineros' former director of intelligence, was forced to resign, and an investigation was opened against him on charges of falsification of evidence, illicit association, and falsification of a public instrument. The courts ordered his pretrial detention because "his liberty constitutes a danger to the success of the investigation and to the security of society" ("Tribunal confirmó prisión preventiva" 2018). The former general issued an apology "to all those affected, not just the Mapuche but to everyone affected" ("General (r) Blu pide perdón" 2018). Alex Smith, the technician responsible for developing the "Antorcha" software, was ordered the same fate.

PICTURE 5

Gonzalo Blu after being ordered pretrial detention

Source: Radio Bío Bío (reprinted with a CC-BY-NC license)

All of the chats presented by the police as evidence contained similar elements related to the arson attack's organization and to the delivery of weapons and economic aid. For example, the following conversation between "CID" and "Negro" (Sepúlveda 2018c), widely published in the press, features a self-incriminating and unplausible tone:

> negro: audio.mp3
> CID: congrats buddy
> CID: so far this year we have about 30
> negro: I want 100 minimum
> …
> Kuri: we will always fight
> Kuri: until they free our people
> negro: GIF
> negro: next objective
> negro: fire
> negro: Camiones Correa
> negro: I'll send documents this week
> Kuri: GIF

The Chilean state's attempts to criminalize Indigenous leaders are not new. In 2014, the Carabineros' criminalization of Mapuche activists led to a complaint before the Inter-American Court of Human Rights, in which the state was held responsible for several rights violations.[4] In this regard, the Carabineros' mise-en-scène of Indigenous leaders is part of a much larger structural problem: the state's racial domination

4 *Norín Catrimán et al. (Leaders, Members and Activists of the Mapuche Indigenous People) v. Chile*, Inter-American Court of Human Rights, judgment of May 29, 2014.

and structural violence against the Mapuche people. Héctor Llaitul, in a series of interviews following his arrest, described this phenomenon fittingly: "this organic fabrication that emerged in Operation Hurricane bordered on the ridiculous, since they tried to portray us as a criminal organization and not as a Mapuche organization" ("Héctor Llaitul y Operación Huracán" 2018). In short, in Operation Hurricane, the Chilean state, through its police force, put on a show to once again criminalize Mapuche claims and to strengthen the historical racism endured by this group.

The Criminalization and Ethnic Subordination of the Mapuche People

The press labeled the Mapuche as "delinquents," the authorities have been calling them "terrorists" for decades, and there is a general impression among the public that rural violence in Chile is due to the Mapuche people. The Mapuche defend their situation, arguing that "it's not terrorism but resistance" or "it's civil disobedience." Moreover, they have a cultural and historical basis to their claims: the Mapuche lack meaning without their land. Without these lands, they are not Mapuche.

The state's logic of stigmatizing, criminalizing, and repressing the Mapuche people can be found in such abstract planes as the nation's Constitution. To date in Chile, there is no constitutional recognition of Indigenous peoples; that is, from a constitutional perspective, Indigenous peoples do not exist in Chile, and no previous constitutions have ever included such recognition. This oversight helps us understand, on the one hand, the historical and political repression suffered by the Mapuche people at the hands of the state and, on the other, the cultural and iconic importance of Mapuche culture in the popular uprising of 2019 that led to the 2020 vote in favor of a constitutional assembly. Furthermore, it is of deep symbolic importance that the president of the Constitutional Convention (2021–2022) is Elisa Loncón Antileo, a Mapuche academic who has crusaded for the linguistic rights of Indigenous peoples.

According to Salvador Millaleo (2015, 295), a professor of constitutional law and expert on Indigenous issues, "the state has concentrated its sources of power, especially its symbolic resources, to dissolve ethnic-cultural differences through the use of its symbolic power and to integrate them into its political body loyal to state authority."

PICTURE 6

A 2013 march for Mapuche resistance

Source: *Mapuexpress* (reprinted with a CC BY-NC-SA 2.0 license)

In this way, the Chilean state has deployed the full range of its institutional machinery, including the press, to incriminate Indigenous political activists for terrorist acts. This reflects the shaping of symbolic resources to create the image of the "Mapuche terrorist."

We can observe the symbolic power described by Millaleo in a range of processes, from the

> integration process of the inappropriately named "Pacification of Araucanía" to the dictatorship and even today, [through] the exercise of certain types of violence, whether symbolic or physical, "by reason or by force,"[5] on the part of the Chilean state. (Mella and Le Bonniec 2004, 355–6)

In Operation Hurricane, police surveillance and the interception of communications became the state's new way of reaching the core of the CAM and breaking the rule of law to satiate the racist sentiment that pervades Chilean institutions. Technology became a factual and violent tool for disrupting indigenous people's demands in Chile, in turn violating due process and "bypassing the right to equality before the law, with serious consequences for the exercise of rights by the specific groups that are the focus of such surveillance" (Garay and Rogoff 2018, 5). Thanks to the ineptitude of the Carabineros, the public was able to

5 "Por la razón o la fuerza" is the motto inscribed on the Chilean coat of arms.

see the concrete ways in which Mapuche leaders were being criminalized and how state agents were employing legal subterfuge and surveillance devices to exclude Indigenous leaders from democratic debate.

The national media also played an important role in Operation Hurricane by encouraging and reinforcing the police's version of events, thus perpetuating such criminalization. If we add to this the less-than-stellar performance of the courts and the Public Prosecutor's Office, the result is a perpetuation of stereotypes and prejudices against the Mapuche people that equate their political claims with violence and, as noted at the start of this chapter, "terrorism" (Becker Castellaro 2015).

The Construction of the "Mapuche Terrorist"—or How the State and the Press Launched a New Campaign to Criminalize the Mapuche Cause

Operation Hurricane revealed, among other things, how the rule of law had failed the Mapuche people. The lack of judicial control had allowed the police to intercept communications, conduct raids, and even fabricate evidence.

As observed by some of the judges in the Inter-American Court of Human Rights in the case of *Norín Catrimán v. Chile*, prejudices are evident in the way that Chilean prosecutors and judges fulfill their duties and in the way that the counter-terrorism law is applied (Becker Castellaro 2015). In Operation Hurricane, the judges in Chile did not zealously safeguard the fundamental guarantees of the Mapuche activists who had been arrested. As noted by one of the lawyers in the case:

> From a formal point of view, there are control mechanisms. The point is that we focus only on the formality; what you see is judges forgetting that they're judges with a last name—*jueces de garantía*[6] [supervisory judges]—and if they are going to be presented with a case, they have to analyze and see whether it's prudent or not to agree to a limitation of fundamental rights. And the result is that the judges—and I include here ministers in light of the counter-terrorism law—what they do is practically a type of checklist, but they don't get into the substance to discuss elements that are super important.[7]

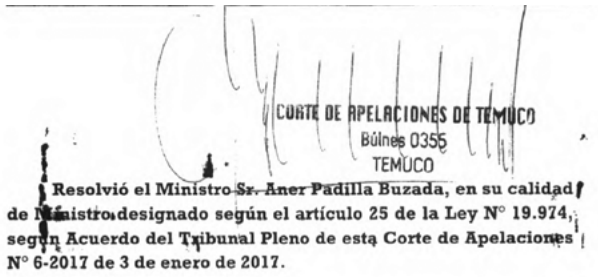
6 Supervisory judges are those tasked with having special knowledge of the steps required in a given criminal proceeding and with providing the necessary judicial authorizations requested by the Public Prosecutor's Office to undertake any actions that deprive, restrict, or interfere with the exercise of constitutionally guaranteed fundamental rights.

7 Statement by one of the case's lawyers during a roundtable organized by Derechos Digitales. To protect their confidentiality, their names has been withheld.

The lawyer's view speaks for itself. As we can see in the court order that granted the police permission to "access" the private communications of the leaders, the judge of the Appeals Court in Temuco, Aner Padilla, did not conduct any examination concerning the legality, necessity, or proportionality of the case at hand when allowing this interception of communications.[8] In other words, there was no justification in law as to why the communications of the Mapuche leaders were to be intercepted. Further, the law did not order the judge to do this.

PICTURE 7

Signature of Judge Aner Padilla



Source: Chilean judicial branch

The police used a deficient legal structure for intelligence to mount a (false) criminal case. Arguing that they were investigating "violent actions that affect the public order and domestic security," they drew on a rule that "allows the police to act without proper control by the Public Prosecutor's Office, as if they were an intervener in the criminal process and not an auxiliary in the administration of justice" (Violler 2018). In other words, an ad hoc (and rights-deficient) norm was activated in order to sidestep legal safeguards that would allow for controlling the police's actions, which, as noted by the nongovernmental organization Derechos Digitales, did not encompass basic human rights principles (Becker et al. 2018).

We can thus see how the symbolic power of the Chilean state is materialized through the police's surveillance of Mapuche communities. That is what Operation Hurricane is about. The Carabineros, through digital surveillance, managed to eschew due process and criminalize the claims of the Mapuche people. They have done this in recent years not only through the surveillance of Mapuche leaders but also through

8 The ruling is Sentence 6-2017 of the Court of Appeals of Temuco, issued by Aner Padilla in his capacity as presiding judge under article 25 of Law 19974 (on file with the author).

the massive and indiscriminate surveillance of "politicians, judges, prosecutors, lawyers, actors, and journalists, the majority of whom have no relation to the Mapuche cause" (Garay and Rogoff 2018, 6). This can be explained only by the fact that there is no legal framework to control police surveillance, which means that anyone could be a target.

Indeed, journalists have been reported to be the targets of electronic spying by the police. According to CIPER, the same police unit that falsified evidence against the Mapuche activists harassed and monitored Mapuche media outlets, particularly *Mapuexpress* and *Werkén*. As noted in the CIPER report (Sepúlveda 2018b), the police were monitoring how journalists (in this case, Richard Curinao) were interacting with Mapuche political leaders, in addition to "intercepting" their chats that we now know to be false. One such chat reads as follows:

> Mapuchon lef: kill the fucking police !!!!!!
> Mapuchon lef: NIGHT (fire emoticon)
> Mapuchon lef: SEND (camera emoticon)
> Mapuchon lef: HOW THE BLOCKADE IS GOING!!!!
> Mapuchon lef: THE IDEA IS TO BLOCK ACCESS
> Mapuchon lef: TO THE NORTH AND
> Mapuchon lef: (fire emoticon) GRASSLANDS
> Mapuchon lef: ALL NIGHT
> Mapuchon lef: MARICHIWEU !!!!!!

"I was totally unaware of this spying on my email. And those messages … I never wrote them. I never write like that," Curinao—one of the individuals whose cellphone had supposedly been intercepted by the Carabineros—told CIPER in the same news story.

Lastly, we must not forget the role of the press in Operation Hurricane. As noted at the beginning of this chapter, news outlets (mainly Canal 13 and Emol) were quick to declare the Mapuche activists guilty without first verifying the information or researching how these private communications had been obtained. There was no fact-checking or information analysis, and the media outlets simply reproduced fake messages aimed at branding Mapuche leaders "terrorists" (T13 2017; "'Guluche' y 'viernes de fuego'" 2017).

For Vladimir Garay (2018), "the press's performance in this case was problematic because they limited themselves to broadcasting official information and not asking the right questions." Furthermore, the press failed to provide any other kind of information that would allow the public to form an objective opinion on the case and failed to share information such as that featured by CIPER to counteract the communications maelstrom being unleashed by the government and the police.

This professional omission of a press that favors a criminalizing discourse toward the Mapuche people is a serious one. It is unfathomable that Chile lacks a press incapable of disputing "official information." Operation Hurricane not only revealed a weakness in the type of information that Chileans are receiving but also showed how, without a robust press, democracy itself is in danger. It isn't necessary to go into detail here about the importance of a strong and empowered press for democracy. Suffice to say that if the press is unable to do more than publish official versions of events (as recounted by the government and the police), it becomes difficult to argue that there is a genuine right to access information in Chile.

It is thus clear that Operation Hurricane represented an entire machinery of civil and police authorities that endorsed and normalized state abuse against Mapuche activists. On top of this was a press naive enough to push the idea that everything was fine and the police had "caught the bad guys." The press proved to be an active supporter of the stereotypes that the police wanted to use to delegitimize the Mapuche cause.

Finally, Operation Hurricane shed light on the symbolic violence that has been waged for years against the Mapuche people. I refer here to the discourse whereby "the Mapuche walk around burning trucks, limiting progress and peace in Chile." This has been thanks to digital surveillance devices that everyone knows about but few seem to understand well. The police, the justice system, and the Chilean press participated once again in the creation of these stereotypes. As Chilean composer Violeta Parra laments:

> It's no longer the Spaniards
> who make them cry.
> Today it's Chileans themselves
> who steal their bread.

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Bakur: Chronicles of Unrealized Futures

Enis Köstepen

Now that we have moved into the third decade of the 2000s, there are many stories that could capture the political turbulence and the rise of violence and authoritarianism in Turkey in the second decade of this century. The story of *Bakur*, a Turkish documentary about political conflict, holds many such examples. Bakur means north in Kurdish, referring to the northern part of the historical Kurdistan divided between Turkey, Iraq, Syria, and Iran. The documentary holds both violence and authoritarianism in its narrative, and this narrative itself has become part of the political conflict it depicts. In this chapter, I will chronicle the story of *Bakur*, a film by Çayan Demirel and Ertuğrul Mavioğlu about the lives and politics of Kurdistan Workers' Party (PKK) guerrillas and commanders shot during Turkey's peace process, which was doomed to fail in 2015.

2013: New Beginnings

In January 2013, a news item hit Turkish newspapers. A committee formed by the senior MPs of the pro-Kurdish leftist party, Peoples' Democratic Party, met with Abdullah Öcalan, the imprisoned leader of the PKK who has been in a specially guarded prison on İmrali Island since 1999. İmrali is located in the Marmara Sea, Turkey's interior sea connecting the Aegean Sea and the Black Sea.

Since December 2012, there has been news that meetings are underway between the state intelligence agency and Öcalan. This news has regenerated hopes for peace concerning Turkey's Kurdish conflict. There had been previous attempts at ceasefires and negotiations throughout the armed conflict, which started in 1983, but, unfortunately, none of them ever came to fruition, creating a decades-long conflict with a human toll of more than 40,000. No one knows the exact death toll.

The PKK, which began as an armed Marxist-Leninist organization, was formed in 1978 by a group led by Öcalan. The path leading to

the PKK's formation dates back to the early 1970s, when Öcalan and other leaders were active in the student movement. After Turkey's 1980 coup, the PKK's leadership moved to Lebanon. Since then, first Syria and then Northern Iraq have become home to headquarters for the PKK's leadership and training camps for new cadres. In 1984, the PKK initiated its first guerrilla attack against the Turkish state, calling for an independent Kurdish state in the eastern and southeastern regions of the country. Following Öcalan's capture and imprisonment in 1999, the PKK began to reformulate its demands into the recognition of Kurdish identity and political autonomy, which would be guaranteed through a new constitution. Forming an independent nation-state was no longer a goal. Nonetheless, this shift in goals did not imply abandoning its armed struggle. For over three decades, Turkey's eastern and southeastern region has been a war zone. Besides the human loss caused by the armed conflict, millions of victims have been created through extrajudicial killings, forced disappearances, torture, and forced evacuations from rural settlements.

The news in January 2013 was received by the public with caution, but it was big news. Unlike many other previous attempts, this time the public was addressed and informed regarding the process. This time, the talks were not secret. This publicness reached a peak on March 21, when Öcalan's letter announcing the start of a new peace process was read in Diyarbakır—the cultural and "political" capital of Kurds in Turkey—to hundreds of thousands of people. One of the crucial points in the letter was Öcalan's announcement that the time had come for the guerrillas to exit Turkey. He called for a shift from armed struggle to democratic politics. The next day, the letter was in newspaper headlines, with hopes rising among many people. This was something new, something more ambitious than ever. Most of the media outlets—whether opposition or pro-government—were supportive if not neutral.

The possibility of peace on the horizon has been coeval with increasing public dissatisfaction with the authoritarian tendencies of the Justice and Development Party (AKP) government—which has been in place since 2002—and Prime Minister Recep Tayyip Erdoğan. In April 2013, just a few weeks after Öcalan's call for peace, Turkey's leading socialist journal, *Birikim*, published a cover story titled "Authoritarian Democracy," with subheadings mentioning "hegemony," "deep state," "Turkish-style presidency," and "Bonapartism gone awry." Thus, despite the burgeoning hopes, questions were being raised about the prospects of the new forms of political power in Turkey.

In two months' time, at the end of May 2013, the biggest public protest in recent Turkish history broke out in downtown Istanbul. It all started with the entrance of construction machines to Gezi Park, located in Taksim, the heart of Istanbul. As part of the contested pedestrianization of Taksim Square, there was a plan to rebuild the historical military barracks in Gezi Park. The removal of the trees there was seen as the initiation of that construction project, which would have eradicated one of the few green areas in the city. As the machines started removing trees, activists initiated a watch and stayed overnight to block new tree removals. However, the police launched a brutal attack against the activists at dawn, initiating bigger gatherings and protests during the day. The police's increasing attacks on the crowds led to more people pouring into Taksim and struggling against the police's water cannons and tear gas canisters. When the police left the square on June 1, it was the beginning of a twelve-day period in which Taksim Square became the people's. With the police brutality being broadcast on alternative media and social media channels, protests started in almost all of Turkey's cities. In Istanbul, the last police attack in the park on June 13 ended the protests. June 2013 was thus a brief but historical moment for many generations in Turkey. It was a moment in which people of different political leanings came together and initiated exchanges, even if limited. Most importantly, it was a moment of politicization for youth in a way they had never thought possible.

Documentary filmmakers Ayşe Çetinbaş and Çayan Demirel were among the many Istanbulites who participated in the Gezi protests. And in the midst of all the excitement, empowerment, and anxiety that accompanied being in the park, they received a call from their journalist friend Ertuğrul Mavioğlu. Mavioğlu, who had previously traveled to Northern Iraq to interview PKK commanders, told them things would be okay if they decided to start documenting the retreat of the guerrillas in the wake of Öcalan's important letter. With this phone call, the power of the present moment at Gezi got juxtaposed with the possible peace awaiting in the future. This is how the story of the documentary *Bakur* began.

2013–2014: Production

With Çetinbaş serving as the film's producer, Demirel and Mavioğlu teamed up as the directors. Çetinbaş and Demirel together have made some of the most important documentaries on state violence in Turkey. For example, *Dersim 38* tells the story of the 1938 massacres in Dersim following a Kurdish uprising against the centralist and nationalist

politics of the newly founded Turkish republic. And *Diyarbakır Prison No. 5* tells the story of the torture and resistance against it in Diyarbakır prison in the aftermath of 1980 coup in Turkey. Mavioğlu has been a leading journalist over the years who has fought on behalf of freedom of the press. This was an ideal team to undertake such a challenging project. Though a ceasefire had been reached, it was still a project that had to be executed with the utmost caution and in a covert manner. Indeed, even though I myself was in the filmmaking business and part of the editorial collective publishing the film monthly *Altyazı Fasikül*, I didn't hear about the project for a very long time.

Discreetly, Demirel, Mavioğlu, Koray Kesik (cameraperson and director of photography), and Ahmet Bawer Aydemir (sound recordist) formed a small team and traveled to the guerrilla camps. Their first stop was Dersim, Demirel's hometown. Although there was a ceasefire, they were cautious not to put themselves and the people they met under risk. They traveled back and forth during production and shot more than 120 hours of footage in forty-five days. Producer Çetinbaş, meanwhile, organized the team's logistics and ensured the safety of the footage. If the footage had been confiscated by the security forces, it would have damaged the production process and put the guerrillas they interviewed under high risk. In the interview I conducted with Mavioğlu and Çetinbaş in 2015 after the film was completed, Mavioğlu said that at the beginning, the guerrillas were suspicious of their presence and didn't want to talk in front of the camera. But as they observed how the film team was living with them in the camp, they started to feel more comfortable. Still, in some of the interview questions, they would say that these were not questions they could answer and pointed toward the higher-ranking commanders.

Mavioğlu said that his division of labor with Demirel was clear. He was the one responsible for words and sentences, as that was his profession: "When we started to edit the film, I was keen on what words and sentences should be in the film. However, we both agreed that this should not be a boring, talking heads documentary. We were ready to give up on words for the sake of pictures" (Mavioğlu and Çetinbaş 2015). Their vision of the film was to create a representation of the guerrillas on their own terms and reflect their daily experiences during a historical point in the conflict.

In the fall of 2014, I was invited to a rough-cut screening of the film. Almost six years after that screening, I still remember how struck I was when the film ended. It was basically a gift to the peace process that was still underway back then. The filmmakers succeeded in setting an observational and truthful tone in which the everyday lives of the

guerrillas, the historical trajectory of the armed movement (especially the formation of women's forces), and Turkey's stunning geography were depicted in a close-up but balanced manner. As Mavioğlu told me in our interview, "We wanted [the guerrillas] to express themselves. We asked for the one who could express him or herself best to talk to the camera. Our effort was to understand their lives and politics." Çetinbaş recalled the discussions she had with Demirel during the production period. She said, "I was watching the footage, and all the guerrillas were happy and confident. I was constantly asking Çayan [Demirel] whether they were shooting other types of portraits or not" (ibid.). She added that this does not need to be related to a contention on politics or internal rift among the guerrillas:

> They are living under tough conditions. They could be depressed, etc. … Çayan was constantly telling me, "No, this is what we see …" In the end, I was also convinced that, during the time period we were in production, during the time our camera was recording, this is what we had within our frame. (ibid.)

From that rough-cut screening, I also remember that though they initiated the film's production with the aim of documenting the retreat of the guerrillas, as time passed, both the retreat and the peace process between Öcalan and the state failed to progress as parties desired. Thus, the directors decided not to focus on the retreat but instead keep it as a major topic of discussion with the guerrillas they interviewed. One of the most striking points made by one of the guerrillas in the film was that even if they one day disarmed, they wouldn't want to leave the mountains. He said, "I would prefer to wander this geography like a dervish, and teach what I can to the people."

In the conflict resolution lexicon, DDR—which stands for disarmament, demobilization, and reintegration—is a key process aimed at establishing guarantees of non-recurrence of a conflict. It is a very challenging process that needs to be regulated and controlled in each conflict zone according to the needs of the armed groups and the communities. The film showed how DDR is not only a technical, logistical, and social policy process but also a process closely related to the subjectivity of the guerrillas that they've built over the years in fighting, in surviving, in politicizing. Another discussion I still remember following the rough-cut screening was the duration of the interviews with the high-ranking commanders. Some of the participants at the screening thought that these commanders' political statements did not fit well with the film's portrayal of guerrillas' everyday lives. I remember commenting that the commanders' presence gave a different kind

of authority to the documentary. The filmmakers had precious access to these individuals, which they took advantage of by executing these interviews. Mavioğlu also told me in our interview that they decided to depict the history of this armed movement instead of limiting themselves to the everyday life of the guerrillas during the ceasefire. I left the screening with an inkling that I had just seen something that would soon break ground. I was anticipating the world premiere of the film. It was the first time that such a documentary would be released in Turkey depicting the guerrillas in their own words.

2015: World Premiere and the Collapse of a Possibility

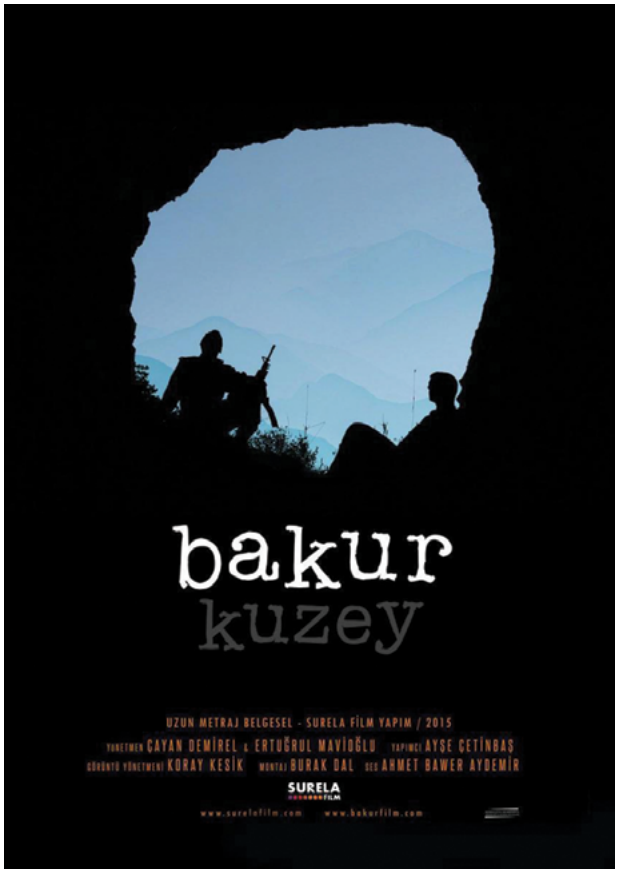
With the announcement of the Istanbul Film Festival's 2015 program, *Bakur's* world premiere was set for April 16, 2015. However, there was unfortunately no time for celebration. On March 18, 2015, the day after the film's editing was completed, Demirel's heart stopped for fifteen minutes. Thanks to an ambulance that happened to be passing by, he survived, but with serious brain damage. While he was still in the hospital, the press screening of the film took place. And following this screening, a smear campaign was launched by pro-government media outlets.

The smear campaign was apparently a symptom of the ups and downs of the peace process that was unable to gain momentum within Turkey's contentious political sphere. The film was accused of heroizing "evil terrorists." Following the smear campaign, the state took action, and the Ministry of Culture and Tourism warned the film festival that if local films in the festival did not obtain the necessary "registration document" from the ministry identifying the rights-holders and the viewer classification rating, they could not be screened. The story of the "registration document" in Turkish film festivals is another story in the Turkish film culture's fight against censorship and an issue that had troubled Demirel and Çetinbaş in their previous films. Though the Ministry of Culture used to require this document for all local productions that would be screened at film festivals (foreign productions were exempt from this requirement thanks to a previous struggle in the 1980s), in practice, most film festivals were not making this a requirement.[1]

1 With a new regulation that came into force in 2019, film festivals are allowed to screen local and foreign films without a registration document to audiences over the age of eighteen. See https://www.resmigazete.gov.tr/eskiler/2019/10/20191022-8.htm

FIGURE 1

The film poster for *Bakur*



The filmmakers had planned to apply for this document; however, both Demirel's illness and film festivals' common practice of not making this a requirement had led to their postponement of the application. On the day of the world premiere, the Ministry of Culture notified the festival's organizers that *Bakur* lacked the necessary certificate, which prompted the organizers to cancel the film's screening. Other filmmakers participating in the festival came together immediately and decided to boycott the festival. One by one, films scheduled for the national competition began pulling their titles, and the national competition was canceled. During the canceled screenings, the theaters became the base for gatherings where the audience and filmmakers discussed how to tackle the censorship. A protest meeting and an alternative screening

of a documentary—*Yollara Düştük* (*We Hit the Road*)[2] on the struggle against censorship in film in the 1970s by Turkish filmmakers—was organized to close the festival "unofficially." In the face of a blocked future, previous struggles from the 1970s were recalled and remobilized. *Bakur* could have initiated a broad public debate on the peace process, especially on the possible DDR—instead, it initiated a debate on censorship and freedom of expression. In hindsight, this angle was in fact much more in line with what awaited Turkey's political landscape.

The Film Itself

Despite all the prohibitive developments, thanks to *Bakur's* world sales agent, Sideways Films, the documentary was made available on YouTube under a registered account titled "Reel Truth Crime" until the end of 2020. As of May 2021, a fifty-one-minute version of the original ninety-two-minute film was available.[3] Of course, there are also many bootleg copies available on YouTube and other online platforms. With over 650,000 viewers globally, the film's online circulation makes the local ban partially irrelevant for the film's international life. However, starting with the ban at the Istanbul festival, the film's life in Turkey has been altered dramatically.

One of the striking features of *Bakur* is its ability to meld the everyday lives of low-ranking guerrillas with the ideological formations of the PKK as told by the commanders. The viewer sees not only what they eat for lunch or which games they play as part of their physical exercise and military strategy training, but also the "feminization" of the guerrilla and the reformulation of women's role in the Kurdish movement.

Of course, considering the timing of the production of the documentary, the most timely theme is the initiation of the peace process and the guerrillas' retreat from Turkey. One of the biggest issues during the peace process was that this retreat did not go as fast as the government had wanted and was halted at one point by the PKK due to the absence of supportive measures from the Turkish state. Hence, over the course of the film's editing, the filmmakers took special care not to frame the film as a documentary about the retreat of the guerrillas. It should also be noted that the film goes beyond mere interviews with commanders about politics. It features low-ranking guerrillas' thoughts on the peace process and the Kurdish movement, as well as

2 The film is available at https://youtu.be/8axHCQRqjU0

3 The film is available at https://youtu.be/1et3O5ngqRU

their love for Kurdistan. It also shows the books they read in the winter caves, a tailor who sews guerrillas' garments, and the PKK's system of law and order in terms of prosecution and imprisonment. *Bakur* offers a glimpse of a whole world of relationships that have been cultivated over the years to create a sustained armed resistance against the Turkish state.

With its power to blend the everyday life and the political choices of the guerrillas, *Bakur* allows the viewer—whatever their perspective on the PKK—to see the armed movement outside the dehumanizing discourse of the anti-terror apparatus that has been expanding over the years. So considering that the film's premiere was to be held in April 2015, when the peace process was still officially underway, what led to the ban of its screening? Although it's not clear which relationships of power and actors were involved in the ban, it was a symbolic signal of what would follow in the summer of 2015.

June 2015 Elections, the End of the Peace Process, and Back to Arms

The summer of 2015 created an incredible momentum toward authoritarianism and a backslide in democratic and peaceful aspirations in Turkey. Ironically, this momentum was formed following a historical achievement in Turkey's multiparty democracy, which had been in place since 1946. The Peoples' Democratic Party, which is a pro-Kurdish, leftist party, surpassed the 10% threshold in the general elections. This democratic success shattered the political status quo. Despite the fact that the AKP received 41% of the votes and became the leading party, it lost its majority in Parliament and was unable to form a single-party government. However, what could have been an opportunity to form a big coalition among the opposition parties ended with the Nationalist Movement Party's insistence in not taking part in any coalitions. As the AKP's half-hearted coalition attempts failed, a reelection was announced for November 1, 2015.

At the same time, the security forces rolled out round-the-clock curfews in Kurdish towns on the basis of ditches dug, barricades erected, and the declaration of autonomy by Kurdish activists, youth, and militants. The ceasefire between the PKK and the state ended after the killing of two policemen on July 22, 2015. This took place just two days after a bomb attack against socialist students who were gathering in the border town of Suruç in Urfa to take humanitarian aid to Kobane, an autonomous Kurdish polity in northern Syria. The bombing left thirty-one people dead and over one hundred wounded. With the

end of the peace process and the start of curfews in Kurdish towns, armed conflict resurged. The curfews spread to many other cities and towns and extended into 2016. Hundreds of civilians were killed. According to the International Crisis Group (2021), as of April 29, 2021, at least 5,372 people had been killed, including 545 civilians, 1,285 state security forces, 226 individuals of unknown affiliation, and 3,316 PKK militants.

In the midst of this political turbulence, filmmakers were divided on the boycott decision given at the Istanbul Film Festival. The Adana Film Festival was approaching, and the debate was whether to continue boycotting festivals asking for the "registration document." As a producer with a new film set to premiere at the Venice Film Festival in 2015, and a participant in the protests and forums against the banning of *Bakur's* screening, I was closely following these debates. Unfortunately, the filmmaking community—despite being able to come together and react quickly—was not organized enough to sustain long-term struggles. There was a wave of pessimism, with many filmmakers arguing that the boycott was damaging their films and preventing films from meeting with the audience. Thus, the boycott ended quickly, and many filmmakers, including myself, submitted their films—along with the required registration documents—to the Adana festival. Some of my friends and I attempted to find a middle ground by publishing a press release stating our reluctance, but we failed. However, independent of the politics of the filmmakers and the politics of the country, the film *Bakur* started circulating from venue to venue through informal and formal screenings just after the ban in May and June. Today, it has achieved a cult status among the Kurdish movement and Kurdish youth.

2018: Second Year of State of Emergency and a Trial

The elections in November 2015 ended with the expected result of the AKP receiving a majority. The continuous armed conflict throughout the summer and the state security discourse accompanying the fighting had led to the increase in the AKP's votes. During the summer, the AKP presented itself as a guarantor of security and stability. However, the end of the peace process and the reelection of the AKP has not ended the political turbulence in Turkey. An entirely new fracture destabilized the political landscape in the summer of 2016: a failed coup attempt. This event, initiated by factions of the Turkish military on July 15, was suppressed through nightlong operations and popular

mobilizations. Although the history of this coup attempt remains to be written, the attempt was orchestrated by the Gülen movement's cadres in the military and state. The Gülen movement, known as Hizmet (meaning service), is an international religious movement led by Fethullah Gülen. The movement is powerful in civil society (with affiliated foundations, associations, and think-tanks), in the media (with affiliated TV channels and newspapers), and in business (with affiliated corporations and business associations). In addition, since its alliance with the AKP, it has been expanding its cadres in public offices, including the judiciary, public administration, and the police and military. Gülen, who is now eighty, has been living in the United States since 1999. Despite the Turkish government's demands for his extradition, he continues to live there and address his movement's surviving elements after the Turkish state's crackdown on the movement.

The coup attempt led to the formation of a state of emergency that lasted until 2018, causing an unending list of human rights violations, especially in the fields of freedom of expression and right to assembly. State security, sustaining the future of the state, and fighting terrorism have become keywords in the government's political discourse. During the same turbulent period, the AKP, with the Nationalist Movement Party's support, advocated for a new presidential system to solve the country's problems and secure its future in the face of multiple threats. Of course, this new system would also be a means to bolster the authoritarian tendencies of Erdoğan, Turkey's strongman. In 2017, during the state of emergency, Turkey held a referendum under undemocratic circumstances, and Turks voted to reform the country's Constitution and to change its form of government to a presidential system, reinforcing the already existing authoritarian tendencies of the AKP government. In 2018, Erdoğan was reelected president.

In the midst of this political oppression, in July 2019, the directors of *Bakur* were found guilty of disseminating terrorist propaganda by a penal court in Batman, a Kurdish majority city, due to a screening of *Bakur* that had taken place in May 2015. They were each sentenced to four and a half years in prison. As of May 2021, the decision was being evaluated by the court of appeals.[4]

4 In February 2022, as this book was being finalized for publication, the lawyers representing *Bakur's* directors received news from the court of appeals that the prison sentence had been revoked and that the directors would undergo a new trial.

As the abovementioned death toll collected by the International Crisis Group portrays, in the absence of a peaceful resolution, the Kurdish conflict will continue to suppress the democratic rights of the Kurds and cause deaths on both sides. While the COVID-19 pandemic has caused the public debate to shift, the criminalization and imprisonment of Kurdish journalists, politicians, and activists continues. Despite the end of the official state of emergency in 2018, the new presidential system that has been put in place in allows Erdoğan to rule as if Turkey were under a continuous state of emergency. The context of the pandemic also allows for arbitrary restrictions, such as the banning of gatherings and protests, due to public health concerns.

As the possibility of a peaceful resolution has disappeared over the years, Demirel has improved his ability to live with a disability. That said, his vision, speech, and movement are still limited. In 2019, as friends of Demirel, we produced a short video entitled *Our Friend Çayan*.[5] The video offers a glimpse of his everyday life in light of his current health status, where he is dependent on the help of his partner, family, and caregivers. The execution of his prison sentence will not only be a violation of his freedom of expression but also a disruption to his ongoing treatment and his bond with his loved ones, both of which are crucial for his recovery. The first screening of our video took place at the Hangi Insan Haklari? Film Festivali (Which Human Rights? film festival) in Istanbul in December 2019. At that screening, the group who has been organizing actions to keep the case of *Bakur* lively and visible in the public debate grew. Prior to the outbreak of the pandemic, we had been meeting regularly and organizing events to support Demirel's case against Turkey's social security system, which denied him the right to a disability pension. Fortunately, in September 2020, a court ruled on his right to such a pension. Also as part of this campaigning, *Our Friend Çayan* found a place in an international online curated TV/art project during the COVID-19 shutdowns titled *Isolation TV*. I think it was fitting to include *Our Friend Çayan* in the second episode, "A Most Sensitive Nucleus." As described by the program, "Reflecting on ageing and vulnerability, it includes works that demonstrate caring and protection, considering the 'old' as the valuable, (learned, wise, knowing, familiar) and the 'vulnerable' as precious (irreplaceable, requiring protection, delicate)" (Isolation TV 2021).

5 The film is available at https://www.youtube.com/watch?v=V6Rj3vXQkdk

While the focus of this chapter has been on *Bakur*, as one can imagine, under Turkey's political context, *Bakur* is not the only documentary whose future has been disrupted. There are many documentaries whose screenings have been canceled at the last minute, and even documentaries that were not dared to be screened in Turkey. One could add that there are documentaries that were not even dared to be made. Thus, there are hours of footage waiting to be released. We don't know what kind of a future they will belong to or when. However, maybe it is apt to say that the concept of *Isolation TV* applies to these documentaries as well. They are the "vulnerable": precious, irreplaceable, requiring protection, and delicate.

Bakur, a film that aimed to be part of a hopeful transformation of politics in Turkey, has itself become a site of antidemocratic suppressive politics. Recently, cultural anthropologist Banu Karaca commented that the Turkish state and its judiciary uses a method of displacement when it wants to deal with political documentaries. Instead of actually addressing the social and political problems depicted in the documentaries, it chooses to turn the depictions themselves into a "problem" and deal with this new "problem" brutally (Köstepen 2021). This is a pity for the case of *Bakur*. One of the actions of the human rights nongovernmental organization I work at is to submit amicus curiae reports to the national and international justice systems. An amicus curiae literally means "friend of the court," and it consists of legal advice presented by someone interested in, but not a party to, a particular case. What I have tried to convey here is how a documentary that could have been an amicus curiae to the peace process instead became an enemy of the state with the collapse of the peace process.

Last but not least, I should add that some of the guerrillas in the documentary were killed during clashes following the end of peace talks. Thus, *Bakur* today is not only a missed opportunity in terms of becoming an amicus curiae to the peace process but also an elegy. It is an elegy for the peace process, for the "characters" killed, and for Demirel's physical capacity to direct. However, we would be wise to recall the beautiful title of a Turkish feature dealing with the Kurdish conflict that was inspired by Louis Althusser's memoir, *The Future Lasts Forever* (Nar Film 2020). Thus, one day, yesterday's potential amicus curiae—and today's enemy of the state—could get transformed anew. This is where the beauty and the power of political creative works like *Bakur*, with all their subversive and tragic potential, lie.

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Back to TOC

The Rise of Autocracy in Hungary

Evgeny Belyakov

When I first moved to Hungary from Russia in 2008, I was very enthusiastic. Hungary seemed to be one of those post-Communist countries that despite having been traumatized by the repressions of Communist era and the economic hardships of its transition to democracy in the 1990s was, nevertheless, on the right track. At least, so it seemed to me. I had just been admitted to the Central European University (CEU), located in Budapest, Hungary's magnificent capital. While the country was visibly not among the richest in the European Union—in fact, it was visibly one of the poorest—my first impression was very positive: I felt that as a young researcher and political activist, this place seemed the right sort of place for me. As opposed to Russia, which by then had long crossed the line of turning into a newly reemerging authoritarian regime, Hungary seemed to be full of exactly the kind of opportunities that I was searching for. I felt that my desire to change the world would find fruitful soil here, in "a normal European country," as people back in Russia would say to describe any European country west of the former Soviet border.

Back then, in 2008, Hungary, along with many other former Communist states, had just joined the European Union (EU). At that time, the EU was seen as a beacon of hope and progress, and many young Hungarians whom I met were full of expectations. The government in Budapest was in the hands of the Socialist Party, which presented itself as an open-minded and pro-EU force. The zeitgeist in the air was that history had truly ended, as Francis Fukuyama had once erroneously predicted, and that the fate of Hungary was now sealed and connected to the Anglo-Saxon style of capitalism and democracy.

Yet, as I soon discovered, this seeming optimism around me was mixed with very complex, sometimes invisible to an outsider, frustrations and tensions. Some of these frustrations went back to the nineteenth century and had to do with old intellectual debates among Hungary's extensive intelligentsia. These debates—which can be

broadly defined as the right versus the left—were now fueled by new developments, such as the legacy and trauma of the Communist era, Hungary's role in the Second World War, the economic hardship of the 1990s, and Hungary's accession to the EU. The debates reflected different, sometimes opposing, visions of what kind of Hungary should emerge in the post-Communist era. And the liberal left, which felt triumphant in most former Communist states in the 1990s, was rapidly losing its ground.

Despite all the pro-European rhetoric about adherence to democratic "European" norms, the ruling Socialist Party was simultaneously subject to severe criticism due to its alleged corruption and mismanagement of the economy. Hungary, like many other formerly Communist nations, had to go through a devastating period of "shock therapy"—in other words, rapid privatization—in the 1990s, which led, as some scholars argue, to a "monumental disaster in terms of its impact on social welfare" (Klaudt 1995, 368). These controversial economic policies, which came to be known under the term "neoliberalism," were signature policies of many post-Communist governments, including Hungary, Poland, Ukraine, and Russia. Influenced by the triumph of Ronald Reagan and Margaret Thatcher in the West, politicians in the former Communist camp rushed to adopt similar policies, believing that unbridled capitalism would be a panacea for the ills left over from the Communist era. In Hungary, ironically, these ultra-capitalist policies were implemented by the Socialist Party, which was an heir to the old Communist-era governing Workers' Party.

Thus, in hindsight, it should not have surprised me that there was plenty of dissatisfaction throughout the country and that this dissatisfaction would manifest itself through the rise of the populist right and the radical right. The combination of the two factors—disappointment over economic management and a sometimes exaggerated perception of the connection between the new Socialist Party and the old pro-Soviet regime—created a perfect storm. Against the backdrop of economic anxieties, radical right groups could easily argue that the new left was nothing more than a slightly refurbished Communist group that continued exploiting the country—only this time instead of Marxism-Leninism, it employed neoliberalism.

At first, I did not pay much attention to what was going on in Hungarian politics, as I was engrossed in my studies and university life. Gradually, though, I started noticing the undercurrents of Hungarian politics, given that the tensions between the left and the right were often displayed on the streets and the physical presence of the radical right in public places was hard to ignore. During my first couple of

years in Budapest—which, coincidentally, were also the last two years of the pro-EU Socialist government—I witnessed several marches of neo-Nazis and other militant groups, whose members often carried torches and dressed in military-style uniforms, harassing participants of Pride and other LGBTQI events, as well as human rights activists at various protests and meetings. Although they did not necessarily attack people physically, they were easily able to scare participants and disrupt the events, which they deemed to have been organized by "communists" (a term which, as I would later learn, applied to virtually anyone who was not a zealous fan of the radical right movement).

One of my first encounters with the radical right occurred during the Budapest Pride Parade in 2009. The event was as much fun as it was horrifying. Leaving aside the fact that it was my first-ever Pride march—meaning that it was already meant to be a once-in-lifetime experience for me—that year was one of the most memorable in the history of Budapest Pride given that tensions between Hungary's left and right had reached a peak and, as a result, several thousand Pride participants had to face a similarly sized crowd of neo-Nazis. During the march, we had to walk through the streets of Budapest behind metal fences and rows of armed policemen as the radical right—essentially a euphemism for "neo-Nazis"—promised to disrupt the events and provoke riots like they had done the previous year, in 2008 ("Budapest Gay Pride" 2008). This year, police and Pride participants were better prepared; nevertheless, several times during the march, neo-Nazis managed to break through the police cordon. At the end of day, Pride participants were put on a special train in the Budapest Metro and evacuated several stations away to avoid crossing paths with the hostile neo-Nazis.

My second memorable encounter with the radical right occurred in the spring of 2010, when my Latin American friend and I were attacked by two skinheads on the Budapest Metro. It is worth noting that I was barely affected, as the two neo-Nazis concentrated all their anger toward my non-white friend: he was knocked out and spent a week in the hospital. When the police arrived at the scene, they tried to blame me and my unconscious friend, alleging that we had been the ones who started the fight. As the two skinheads escaped and my friend was hospitalized, I was taken to the main Budapest police station, where I spent several hours in detention. Later, charges were brought against me for an alleged violation of public order, but luckily I had a good lawyer who took my case, and I was vindicated the following year.

But for a very long time, Hungarian politics did not bother me much. As I mentioned, I was a graduate student, and as any graduate

students knows, one barely finds time to sleep. I was studying at CEU, a Budapest-based American-style university that was founded after the end of Communism by Eastern European intellectuals with the explicit goal of "facilitat[ing] the transition from dictatorship to democracy in Central and Eastern Europe and the former Soviet Union" and "building open and democratic societies that respect human rights and adhere to the rule of law" (Central European University 2021b). Even in the context of growing radicalization among the right, it felt somehow that Hungary was largely safe and secure, especially since the rule of law was still present (as exemplified by my final acquittal in court) and elections were relatively free and fair. Moreover, if independent institutions such as CEU were thriving, then these groups of radical fanatics, I thought, had zero chance of succeeding. Their existence seemed an anomaly, a mere side effect of democratization—a side effect that, given the region's troubled past and experience with totalitarianism, was not surprising.

In 2010, when I was doing my second year of studies, the right-wing party Fidesz (which is today often described in the Western media as "radical right" rather than simply "right") scored a landslide victory in the parliamentary elections, earning two-thirds—in other words, a constitutional majority—of the seats, while the Socialist Party was crushed and lost its majority. Moreover, Jobbik, another radical right (sometimes openly neo-Nazi) party, increased its seats from 2% to 17%. As soon as the new right-wing government was formed, it lost no time in rolling out a series of reforms that would drastically change the face of Hungarian politics and, as some of my Hungarian friends say, redefine Hungary's identity as a country.

How It Began

One of the first initiatives of the newly elected Prime Minister Viktor Orbán was to rewrite the Constitution. He had the necessary two-thirds majority in Parliament, which meant that the new Constitution was passed into law in 2011. Liberal and left-wing parties opposed the reform, claiming that it violated basic principles of democracy. They pointed to, among other things, the Constitution's references to God; its definition of marriage as a union between a man and a woman; and its proclamation that life begins at conception (Pop 2012). The new Constitution also reformed the judicial system, forcing more than 200 judges into early retirement and paving the way for new pro-ruling party judges to be appointed (European Commission 2012).

Meanwhile, the media felt the government's first attacks against it when Parliament adopted a controversial new media law that created a media supervision body whose members were appointed by the ruling party. Under the new law, all media outlets were required to register with this body in order to operate lawfully, and they were to be monitored for "imbalanced news coverage," with their materials being subject to inspection as to whether they were "insulting" to a particular group or "the majority" or in violation of "public morality." "Gross" violations could result in the denial of an outlet's registration. The law also removed legal protection for journalists' sources, granting wide grounds for the media authority to order disclosure (Human Rights Watch 2011). Despite massive protests against these reforms, Orbán and his party seemed to get away with anything due to the broad support they had received during the elections and due to the very limited, sometimes purely symbolical, criticism coming from EU headquarters.

To make things even more dramatic, the new ruling party ordered all state institutions to place a written manifesto in their halls. The manifesto proclaimed that Hungary had eliminated totalitarianism in 1990, which was followed by a long period of transition. And only now, the manifesto proclaimed, with the victory of Fidesz in 2010, was the transition over and Hungarian democracy restored.

In June 2012, I left Hungary and went on a long journey, taking several jobs across Europe, mostly in the field of human rights and journalism. I did not really have the time or energy to follow the developments in the country where I had spent the previous four years of my life, but occasionally I would come across headlines such as "Thousands Attend Hungary 'Public Outrage Day' Protest" (2014) or "Around 100,000 Hungarians Rally for Democracy as Internet Tax Hits Nerve" (Dunai 2014). Orbán's right-wing party not only continued to push its conservative agenda but also increasingly imposed its polices through authoritarian methods that were more characteristic of those used by Vladimir Putin in Russia. And even though these developments were troublesome, I personally was not really worried since, at least in my view and from my experience, Hungarian society was mature enough to see the writing on the wall and to resist the government's attempts to establish a full-blown authoritarian regime. I still believe that I was right about that, but I could not have predicted the turn of global events that was about to follow.

Luckily for Orbán, the so-called European refugee crisis of 2015 came along, and since many refugees were passing through Hungarian territory on their way to mainland Europe, his government had a unique political opportunity to go full-blown authoritarian. Fear of immigrants, particularly those coming from the Middle East, has long been used by the right in Europe to promote its political agenda—but the massive influx of tens of thousands of people, especially during the summer of 2015, made it possible to bring this fear-mongering to a completely new level. Thousands of refugees, mostly from Syria, were on the move that summer after ISIS took control of large parts of the Middle East, and several foreign powers, such as Russia, launched large-scale military operations on Syrian territory. Escaping the calamities of war and the terror of ISIS, these refugees moved to neighboring Turkey and later to Europe. Hungary was not really among the most desirable destinations for these refugees; however, in order to get to Germany, which was a popular destination, they often had to pass through Hungarian territory first (Nelson 2015).

Orbán decided to seize the opportunity. The huge flow of refugees enabled him to launch an effective public relations campaign.

First, his administration used the state-controlled media to depict these refugees as an existential threat to Hungary and the EU. Orbán himself was portrayed as a protector of Europe from the "Muslim threat." As he wrote in an opinion piece for a German newspaper, "Those arriving have been raised in another religion and represent a radically different culture. Most of them are not Christians, but Muslims. This is an important question, because Europe and European identity is rooted in Christianity" (Mackey 2015). In line with this idea of refugees as a threat to society, government authorities denied basic assistance to those who were passing through Hungarian territory and treated them with violence, in violation of multiple international humanitarian norms (Office of the United Nations High Commissioner for Human Rights 2015).

Second, on June 17, 2015, as part of its mission to "save Europe," the Hungarian government announced the construction of a fence along Hungary's border with Serbia to prevent additional refugees from crossing through. Despite warnings from the EU, the government forged ahead with its plans, finishing the first part of the fence by the end of August. But the fence did not stop thousands of refugees who were passing through Hungarian territory by train, mostly heading for Germany. By early September, reports of hundreds of refugees stuck at

Budapest's Keleti train station and sleeping on the sidewalk around it were seen all over the world. The Hungarian police did not allow these trains to proceed to Germany—where the refugees were much more welcomed—but instead removed their travelers, sometimes forcibly, and tried to send them to local refugee camps.

In the midst of this chaos and Hungarian authorities' inhumane response, many residents of Budapest decided to provide assistance to the refugees who were stuck at and around the Keleti railway station. Among these volunteers were the students and faculty members of CEU, the university I had attended several years earlier.

Relatedly, a CEU student-led initiative was launched at the height of the 2015 refugee crisis. This initiative was used as a platform for anyone who wanted to provide assistance to the arriving refugees, from food and shelter to internet and mobile connections. In addition to students, CEU alumni and faculty played an active role in mobilizing resources and raising awareness regarding the unfolding events. Some students who had enough living space at home even let refugee families sleep in their houses.

While civil society assumed the responsibilities that should have been fulfilled by the state, Hungarian authorities actively stood in the way of their efforts. Through the obedient pro-government media, Orbán's party launched a ferocious campaign against the organizations and groups that were offering assistance to the refugees. This campaign depicted anyone helping refugees as non-patriotic and working for "foreign interests."

The campaign paid special attention to George Soros, a famous philanthropist and a Hungarian-born Jewish American who has long been a bogeyman in Hungary and around the world. Since Soros himself is originally from Hungary (he escaped the country as a little child after the Second World War) and holds very liberal views on many political issues, including the refugee crisis, he was an easy target of a hate campaign. The pro-government media and right-wing bloggers began routinely accusing the groups helping refugees of working for "Soros agenda." The Orbán administration went even further and introduced legal restrictions that prevented nongovernmental organizations from helping "illegal immigrants." The refugees themselves became a symbol of the watershed between the right and left in Hungarian politics, and anyone on the left who defended the rights of refugees was depicted as unpatriotic and even treasonous. Soros himself, according to the Hungarian media, had a secret plan to destroy Hungary through an influx of refugees who would subvert Christian traditions and thus shatter the foundations of Hungarian society and state.

These bizarre stories, which seemed to be coming straight out of a playbook of a medieval anti-Semite, had been already floating around the radical right media worldwide for a while. But in Hungary, such conspiracy theories were elevated to the level of official discourse. Sadly, they found fruitful soil in contemporary Hungary for a number of reasons.

First, the rise of the radical right in the early 2010s was accompanied by the rise of anti-Semitism. And the narrative that depicts Jews as rich and secretly plotting to destroy Christianity has been a pillar of anti-Semitism in East and Central Europe since the Middle Ages. The Hungarian government literally accused Soros of plotting to destroy Christianity. Why would an almost-ninety-year-old liberal philanthropist want to destroy Christianity? The answer was not explicitly given, but it was suggested quite forcefully, since everyone in Hungary knows that Soros is Jewish. Despite the ugliness of this propaganda, Orbán and his accomplices managed to strike a good balance in their rhetoric because they would always go just far enough in their statements so as to be able to provide a plausible degree of deniability.

Second, this propaganda turned out to be effective because by Orbán's second term, 90% of all media outlets in Hungary were owned by either the state or a Fidesz ally (Beauchamp 2018). After the 2010 landslide victory, the Orbán administration used different tactics to force private media outlets under its control. Thus, by the time the refugee crisis unfolded, it was easy for Orbán and his spin doctors to convince the electorate to believe these bizarre theories.

Even though CEU played a significant role in helping refugees, and even though CEU professors and affiliated researchers openly criticized the Orbán administration's approach to handling the refugee crisis, the university faced no immediate reprisals from the Hungarian government. It seemed almost as if CEU was immune to political retaliation even though its founder was the very George Soros who had been deemed chief villain by the government. In the country's stiffening political environment, then, CEU seemed an oasis of freedom and democracy protected by an invisible force. Or that's what I thought. How wrong I was.

In early 2017, I finished my work at the Prague Civil Society Center, a nongovernmental organization focused on human rights protection and the promotion of democracy in Eastern Europe and former Soviet states. Since I was also about to turn thirty, I decided to take a break from the calamities and pressures of human rights work and spend several months in solitude, ideally far from politics. I decided on a remote village in the Carpathian Mountains of Ukraine. As someone

who had been working in human rights activism for many years, I had seen with my own eyes the kind of psychological burnout that human rights activists are susceptible to, and in order to avoid the same fate for myself, I took this break as a preventive measure. The mere physical distance of the Carpathian Mountains from all the stir of politics gave me the long-needed feeling of being truly left alone.

My plan was to stay in these Ukrainian mountains as long as I could, until I felt ready to return to activism and work. But it was not meant to be, for a mere two months later, on March 28, 2017, the government of Hungary did something that I honestly—and probably naively—thought it would never do. It moved to shut down my alma mater, CEU.

To be precise, the government proposed an amendment to Hungary's education law that directly targeted the university and made its operations in the country almost impossible. According to the proposed reform, which was quickly passed by Parliament, any university offering diplomas from two countries—which CEU did, since it offered both Hungarian and American diplomas to its students—should also physically operate in those two countries (Central European University 2017). Even though government officials claimed that these attempts were not directed specifically at CEU, Orbán made it clear in his public statements that the new regulations were aimed at CEU and its founder, George Soros. Orbán did not try to hide his dislike of Soros and what he called "Soros University." Meanwhile, the state-controlled media launched a campaign against CEU, depicting it as a source of liberal and anti-Hungarian propaganda.

It was during these days of anti-CEU propaganda that I swiftly interrupted my solitary retreat in the Carpathian Mountains and rushed back to Budapest. My outrage was overwhelming, as I felt that attacks against CEU were attacks against me. So much of the person I had become was due to the people and ideas I encountered while at the university. Thus, the government's offensive was literally a case in which the personal was political. By demonizing CEU and depicting it as an enemy of Hungary, the Orbán administration was also demonizing its students and alumni, discrediting our work, our research, our lives.

When I arrived to Hungary just days after Parliament's adoption of the anti-CEU bill, the streets of Budapest and many other Hungarian cities and villages were filled with anti-Soros billboards, depicting the aging billionaire as a mastermind behind the refugee crisis of 2015. In April and May 2017, I joined tens of thousands of protesters to repeatedly march through the streets against the government's reform; however, our protests and campaigning were unsuccessful. To the

contrary, the government struck back with even more intense propaganda against CEU and Soros. The university, according to the government's logic, was a tool for the evil billionaire to impose his grandiose plans. Apparently, Orbán and his media had not forgotten the assistance that CEU and its students had provided to refugees just over a year ago. For the government, it was the perfect moment to attack CEU—not only was the university's pro-refugee role still fresh in the country's memory, but the international context was also very favorable. Donald Trump had just been inaugurated as US president, and Soros was portrayed by the pro-Trump media as a similar bogeyman in the United States. Trump personally accused Soros of interfering in US politics. Thus, Trump's election inspired authoritarian leaders such as Orbán to go even further and show the true extent to which they were willing to go.

Despite the hostile political context of this new amendment, CEU decided to try to fulfill the regulatory requirements that would ensure its continued operation in Hungary. To this end, the university opened a second campus in New York (Central European University 2021a). Now, the last step in the process was for the government to sign an agreement with the State of New York. Yet even though the university fulfilled the necessary requirements and the State of New York confirmed to Hungarian authorities that the university was now offering educational activities in New York, the Orbán administration refused to sign an agreement, offering no clear explanation (Central European University 2018). This was a truly Orwellian catch-22—the government did not allow an institution to fulfill its obligations before the very law that this same government had demanded that institutions observe. The university ended up being in full compliance with the law, but without the government's recognition of this fact, its effort was in vain.

By October 2018, all attempts to find a solution that would enable CEU to remain a US-degree-granting institution in Budapest had failed. In December 2018, the university announced that it was planning to move to Vienna, as remaining in Hungary was impossible. Despite an international outcry, multiple protests, and letters from the representatives of major international academic institutions, Orbán was resolute in seeking revenge against one of his country's most prominent universities. And for me, just like for thousands of CEU students, alumni, and residents of Budapest, it marked the end of an era—a very sad end in which an authoritarian government was enjoying victory after victory and in which justice was nowhere to be found. After my sudden return to Hungary, despite all of these disappointing developments, I decided

to stay in Hungary for the long haul. I had already once escaped an authoritarian regime, when I left Russia as a young student. I did not want to escape again—after all, if everyone kept running away, there would be no one left to fight.

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Back to TOC

Tolls of Victims, Zero Accountability

Osamah Alfakih

Before May 22, 1990, Yemen was divided into two countries. The Yemen Arab Republic was in the north and was established in September 1962, and the People's Democratic Republic of Yemen was in the south and gained independence from the British occupation in October 1963. Both countries witnessed different cycles of violence, which eventually led to human rights abuses, particularly arbitrary detention and enforced disappearance. These abuses continued after the countries' unification in 1990 until the revolution in February 2011 and the subsequent armed conflict, which began in September 2014.

The revolution was a turning point in the history of Yemen. It was the moment when the Yemeni people decided to publicly express their pain, grievances, and dreams of rule of law. People took the streets of Sana'a and Taiz to call for a change in the political regime, given that President Ali Abdullah Saleh had been in power for more than thirty years. Other cities followed the wave, with residents protesting in streets and squares. They called for an overthrow not only of the president but of the entire package of values that the regime had embraced, including corruption, human rights abuses, and nepotism.

I still remember the initial days of the revolution and being in Change Square near Sana'a University along with a few people, including workers and students, who were peacefully protesting. We were not just a group of protesters; we were dreamers who longed for a better future, governmental institutions, and a political regime that respects human rights. Protests were taking place in different Yemeni cities, such as Sana'a, Aden, Taiz, and Mukkala, and there were many events during 2011 at which protesters were attacked, killed, injured, and detained. One such event, which I witnessed, was on September 18, 2011. The protesters had expanded to Al-Zubairy Street, a main street in Sana'a, where the pro-Saleh Central Security Forces (currently known as the Special Security Forces) were spraying them with water cannons and tear gas. Forces from the First Armored Division, which

defected against Saleh, were present alongside the protesters. That afternoon, after I left the office to finish some work in a café because there was no power in the office due to a fuel shortage, I found myself right behind the pro-Saleh forces, with the protesters on the other side of the street. Around 6 p.m., I started hearing gunshots, artillery, and heavy clashes, which were getting closer to the café. It was very complicated to go home given that the streets were full of checkpoints; eventually, I had to take a long route in order to arrive safely.

Seeing these and other armed clashes made me feel a sense of helplessness. As I watched news broadcasts covering the violence, I kept wondering, is this it? I felt that it was essential to do something to overcome this feeling of powerlessness. One day in September 2011, I received a text message from a friend telling me to come to the square the next day to shoot a film. This was the beginning of my journey with #SupportYemen media collective, an initiative created at a critical time in the country, when armed conflict was ongoing between military units loyal to Saleh and others opposing him. The main purpose of establishing this collective and releasing our first video, *Support Yemen: Break the Silence*,[1] in October 2011 was to remind Yemenis and the international community about the basic demand of the people at the very beginning of the revolution: social justice. The sounds of munitions and guns were not what we had called for in the streets!

The Transition Period

A few months later, in November 2011, the Gulf Cooperation Council Initiative was signed in Saudi Arabia by Saleh and opposition leaders. This political agreement not only killed the revolution but also breached Yemen's international obligations and failed to respect human rights (Amnesty International 2012). It guaranteed Saleh and his associates immunity from criminal prosecution in exchange for resigning from office. The immunity law—whose provisions were negotiated as part of the initiative—was passed by Parliament in January 2012 and was meant to ensure a smooth transfer of power.

From March 18, 2013, to January 24, 2014, the National Dialogue Conference (NDC) was held to cement this transfer of power, but this conference was quite removed from on-the-ground realities. Although a committee of civil society members and other experts had drafted "20 points" listing a wide range of issues, including grievances from previous armed conflicts, to be implemented as part of

1 Available at https://www.youtube.com/watch?v=t3w1wjjLb5Q.

the process to prepare the political climate and public opinion for the NDC, the various political actors involved ignored calls to incorporate these points into the transition process and instead moved the NDC forward without them. Unsurprisingly, the political transition collapsed, and the country entered a new cycle of armed conflict when the Ansar Allah armed group (as known as the Houthis) and forces loyal to former president Saleh forcibly seized control of Sana'a on September 21, 2014.

March 26, 2015, marked the escalation of the armed conflict in a way that Yemen had not experienced in its modern history. That day, around 2 a.m., I was awoken by massive explosions and the roar of war jets. I could feel the jets flying at low altitude, and the pressure they generated was enough to open the door of my room with tremendous force. Minutes later, I turned on the television to see the news, and the first thing that appeared was a press conference being given by the Saudi ambassador in Washington, DC, to announce the military campaign of a coalition led by Saudi Arabia against Houthi and Saleh forces to restore legitimacy in Yemen and to support the Hadi government. I received dozens of calls from friends in Yemen and from around the world who wanted to check on me and my family. I also called some friends to check on them, and the common feeling at that moment was shock. Yemen was turning into a battlefield for a proxy war between Saudi Arabia (which is leading a coalition of different states and supporting the internationally recognized government) and Iran (which is supporting the Houthis). Yemenis have witnessed various forms of grave violations of international humanitarian and human rights law committed by all warring sides. These violations include attacks on civilians and infrastructure (including hospitals and schools), arbitrary detentions, enforced disappearance, torture, child recruitment, and attacks on civic space.

Like all of the events of political unrest and armed conflict that Yemen has been experiencing for decades, there have been many victims during this war. But the victims of the past and the present remain invisible. One of the reasons for this is the failure of political agreements to ensure accountability. Once politicians sign an agreement after a conflict, they do their best to avoid accountability and redress. They want to cover their dirt because they are all involved in abuses in one way or another. As a result, the perpetrators walk free, and victims and their loved ones are left in agony waiting for justice. Indeed, the United Nations has declared Yemen the world's worst human-caused humanitarian crisis in light of the colossal number of victims of human rights abuses. The war is now in its sixth year, and my colleagues and I

dream of seeing the perpetrators held accountable and of victims finding justice.

My Personal Journey

My journey with human rights work started when I was in high school in 2004–2005, with the beginning of the Saada wars. Even though the real armed clashes took place in the north, Sana'a was home to waves of arbitrary detentions against people based on their surnames, under the presumption of their loyalty to the Houthis. As a result, some friends and people I knew were arbitrarily detained and forcibly disappeared for some time. I did not understand why the authorities were causing such injustice. I started looking at the issues around me from a human rights lens, and I joined civil society initiatives calling for the release of detainees. It has become my goal since then to be specialized in the field of human rights.

After graduating from university in 2010, I worked with a variety of local and international organizations, including Human Rights Watch, where I focused on issues related to prisons, torture, migrants, and human trafficking. In 2015, I was accepted by three UK universities to pursue a master's degree in human rights; however, I was unable to meet some of the requirements of their scholarship programs and could not travel because of the war circumstances and the closure of Sana'a airport. I thus changed my mind and stayed in Yemen. Between April and July 2015, I worked with Human Rights Watch and Amnesty International, documenting violations committed during the initial months of the escalation of the armed conflict. In July 2015, I joined Mwatana for Human Rights, an independent Yemeni organization founded by Abdulrasheed Alfaqih and Radhya Almutawakel, who are also old friends I met during my activism in 2006. In spite of risks and difficulties, working in the field of human rights is where I feel that I can have a positive impact on victims' lives. I have come across dozens of incidents where victims were voiceless and nobody paid attention to them. It feels good to publicize their words and tell the world that these individuals are not mere numbers; behind each number is a person's life impacted or destroyed. One of the greatest moments I enjoy at Mwatana is when I hear happy stories from the legal support team about people who had been arbitrarily detained and whose release we managed to secure so they could reunite with their families and loved ones. These are priceless moments!

As a human rights defender working for an organization that is attacked by all sides because of its neutral reporting, I have to be very

careful in my answers to the questions of strangers and security checkpoint personnel so that I don't become a victim of arbitrary detention or enforced disappearance. Mwatana and its staff are vulnerable to attacks (including smear campaigns on social media and detaining staff) by all parties to the conflict due to our reporting that exposes the violations committed by of all of them. Each side accuses us of working for the other. Human rights work is hard in a normal and stable situation, let alone in a war zone and among warring sides that do not respect humanitarian work. Some of our staff have been attacked while working in the field, and many, including myself, have been negatively impacted because of our work interviewing, reviewing, and verifying hundreds of interviews with victims, relatives, and eyewitnesses.

In addition to experiencing trauma, stress, and anxiety, I often become depressed and frustrated when I see human rights violations and try to imagine the future, particularly when there is currently no vision for accountability or redress. However, I still believe that things can change. The documentation and advocacy work that is being conducted by independent human rights organizations is planting the seed for something concrete in the future that can achieve accountability and justice for future generations. Although it is a long process ahead, I dream of being able to see this change while I am still alive.

It is a tough matter to imagine the future of human rights in a context where suffering has been accumulating for years. While writing this piece, I went through ups and downs, trapped between pessimism and optimism, despair and hope, and past and present. Below, I will take one step back and start from 2011.

Sana'a, March 18, 2011: Friday of Dignity Massacre

One of the bloodiest events that I experienced was the Friday of Dignity in March 2011 in Sana'a. The victims of that day still have unanswered questions.

It was one of the Fridays of the revolution when protesters gathered in Change Square near Sana'a University. But it was not like previous Fridays. I was at the northern side of the square around 12 p.m., and protesters were praying. At the southern side of the square, a wall had been built a few days earlier to prevent protesters from expanding. Once the protesters finished praying, I heard shooting on the southern side. Panic ensued, and protesters started chanting against the regime. I walked closer toward the southern side and saw fire, smoke, and shooting.

Unconsciously, I walked toward the fire in an effort to see what was going on. As I walked, I saw groups of protesters carrying people with gunshot wounds to their heads and chests. I knew that there was a massacre going on at the moment. Armed groups (supporters of former president Saleh) were shooting at protesters, and next to them stood the Central Security Forces, which were headed by Saleh's nephew Yahya Mohammed Saleh and had attacked protesters on different occasions before. Protesters, mostly youth and students, were being shot randomly. I had not realized how close I was to the shooting. I heard bullets passing by my head and saw some bullets hit the ground. I immediately retreated in the other direction.

Meanwhile, there were calls in the square to donate blood, so I went to the field hospital that used to be a mosque but which had been transformed in the early days of the revolution to provide first aid to protesters. Injured protesters were arriving to the field hospital in groups. There were just a few doctors relative to those injured and killed. It was the first time in my life that I saw bodies and blood in that way. Whenever I remember that day, I can recall the smell of blood and death. The hospital was full, but people kept arriving. Volunteers covered the yard outside with blankets, where they laid the dead bodies. There was no space. I remember volunteers bringing blankets and medicines to the hospital, and ambulances trying to move victims to nearby hospitals. I remember a woman in the yard asking a doctor, "My son was shot in his head. His name is Essa Alshami. Do you know him? Is he still alive?" This situation went on for around three hours.

Some blood donors and I were taken by ambulance to a nearby hospital to donate, and there were lines of people (non-protesters) waiting to give blood. I went back home around 6 p.m., and I felt a mixture of unexplainable feelings: sadness, anger, shock. The following day, I saw the name of Essa Alshami among the list of those killed, who numbered at least forty-five (Human Rights Watch 2013). I remembered his mother and was heartbroken while trying to imagine her situation. It took me days to partially recover. It still haunts me now.

Since the current armed conflict began in September 2014, I have interviewed numerous victims and eyewitnesses of human rights abuses. Those abuses include airstrikes, shelling, arbitrary detention, enforced disappearance, summary executions, and other abuses. The situation has not changed, whether for the victims of the current armed conflict or for the victims of the period before.

Some court sessions took place. But no justice was served for those victims or their families. They were left without answers. Who ordered

the killing of the protesters? Who was involved? Who facilitated the massacre? Why didn't the Central Security Forces intervene?

As long as the armed conflict is still ongoing—and as long as there is no functioning government, including an independent judiciary—there is no hope. Even before the current war began, the judiciary was not independent. I thus do not trust that the national judiciary will be able to serve justice. But I have a dream that someday we will have an independent judiciary that can reopen this case and give victims, their families, and the public answers, hold those responsible accountable, and deliver justice.

Taiz, July 24, 2015: Airstrikes

Before joining Mwatana, I was on a field mission with two researchers from Human Rights Watch during which we visited six different Yemeni areas in almost a week. We were documenting airstrikes launched by the military coalition led by Saudi Arabia and the United Arab Emirates (UAE) that killed and injured civilians, and we listened to many painful testimonies. I still remember the tears on the faces of the men and women we interviewed.

During the field mission, on July 24, 2015, airstrikes struck two residential compounds of the Mokha Steam Power Plant in Taiz, which housed plant workers and their families (Human Rights Watch 2015). We knew about the incident and decided to visit the city of Hodayudah because survivors were moved to its hospitals. We recorded some testimonies, and the next morning we decided to visit the site of the airstrikes. There was smoke, and I could smell burned bodies and blood. Rubble was everywhere, and some relatives and survivors were searching in the rubble to retrieve whatever they could of their belongings. It was a devastating scene.

We started taking testimonies and interviewing eyewitnesses. I interviewed several people, but I will never forget Shawqi Taresh, the last man who appears in a video[2] on YouTube that has been seen more than 23,000 times. I interviewed him in person before filming his testimony. When I finished the interview, I had to walk away momentarily because I couldn't hold my tears anymore. And after we filmed him, my colleagues were emotional. During the filming, one of the things Shawqi talked about was his inability to understand why the airstrikes would target a residential compound. I wonder how he is doing now. What was his reaction when he received the coalition announcement

2 Available at https://www.youtube.com/watch?v=t_Bjecr7M2s

that the bombing was "a mistake"? How would this peaceful person be compensated after the devastation that turned his life upside down? I will never forget his words: "This is a dirty war … all I have is a pen. I'm an engineer, a technician, an accountant. That's it … I don't own a weapon. I don't believe in it and I don't believe in killing." I dream of meeting him again once he finds justice. I know that even some justice will not make his life as it was before the attack, but like other victims, he should be acknowledged and compensated, and he should have his questions answered.

In August 2016, the coalition established the Joint Incidents Assessment Team. This team, originally consisting of fourteen individuals representing the main coalition members, is tasked with investigating the facts, collecting evidence, and producing reports and recommendations on "claims and accidents" during coalition operations in Yemen. According to this team, the residential compound at the Mokha Steam Power Plant was affected by "unintentional bombing, based on inaccurate intelligence information" (Saudi Press Agency 2016); until now, no compensation has been made to victims or their families.

I have a dream that those who are responsible for this attack and many others, mainly the decision makers, will be held accountable and punished. It is easy for the perpetrators to throw the ones who execute the wrongdoings under the bus and go away. Catching the big heads and trying them is a necessity.

Sana'a, 2016: Torture Committed by the Houthis

No warring party in Yemen has a clean hand; all of them are involved in committing abuses. I have worked on and contributed to dozens of human rights statements, reports, and submissions since I joined Mwatana. I have seen how violations take different forms and expand over time, and how they impact the lives of Yemenis directly and indirectly. On November 10, 2016, around 8 p.m., the Houthis detained twenty-six-year-old Walid al-Ibbi. On November 15, after four days during which Nabil, Walid's brother, was unable to visit him, Nabil was called by one of the prison supervisors. As Nabil recounted to us in an interview, the prison official told him that he could see his brother, but "as a dead body in the morgue of Kuwait Public Hospital. The supervisor added that my brother had committed suicide and was suffering from psychological disorders."[3]

3 Interview with Nabil al-Ibbi, Sana'a, December 2016.

The Houthis claimed that Walid committed suicide, but Mwatana received a copy of the autopsy report issued by the forensic pathologist. I was frozen when I read it, imagining what Walid had faced in prison before his death. The report contradicts the Houthis' claim and shows the brutality of the torture that Walid suffered while in detention. These details would not have come to light without the brother's efforts: the family was about to bury Walid's body, but Nabil refused and called for an autopsy, since he couldn't believe that his brother had committed suicide. This bravery, despite the risks, revealed what truly happened to Walid. The family then filed a complaint in a court, but I do not expect to see any satisfying answers coming anytime soon due to the armed conflict.

I have a dream that they find justice in the future.

Closure of Sana'a International Airport since August 2016

The worsening humanitarian situation and the consequences of the conflict have made a large part of the Yemeni population invisible victims. These consequences include internal displacement, unpaid salaries, and the denial of humanitarian access (for example, through blockades, confiscations, attacks against humanitarian workers, and the looting of aid stores).

Further, the restrictions placed on Yemen's land, sea, and air routes have impacted residents because Yemen imports nearly everything, and twenty-four million people depend on aid. Before the war began in September 2014, many Yemenis sought medical treatment abroad, particularly in Egypt and Jordan. After September 2014, the situation on the ground changed, with Houthis controlling the capital Sana'a; however, Sana'a international airport was still open, and a few airlines were still operating commercial flights. But in March 2015, when the Saudi/UAE-led coalition launched its military intervention, the airport shut down.

Sana'a airport was closed for some time and then reopened. Yemen Airways (which now has fewer than four planes) was the only available option and had to receive clearance by the coalition for each flight in or out of the airport. But in August 2016, the airport was completely shut down for commercial flights and open only for humanitarian flights (for United Nations staff, humanitarian workers, and aid) operated by the United Nations and other organizations, such as Médecins Sans Frontières and the International Committee of the Red Cross.

Therefore, for me as a Yemeni wanting to travel abroad for whatever reason, I had to go through a lot, including long land travel that takes between twelve and twenty hours to get to Aden or Seiyun airports (which are in the south and under the control of the internationally recognized government and the coalition), very costly tickets, the uncertainty of finding a suitable date, and countless security checkpoints operated by the various warring sides.

Actually, when Sana'a airport was officially shut down in August 2016—a few weeks before my trip to Bogotá, Colombia, for the annual global workshop organized by Dejusticia—it was already too late to rearrange my travel through Aden or Seiyun airports. Instead, I had to postpone my participation until the following year's workshop. When I finally traveled for the 2017 event, it took me almost five days from the time I left home in Sana'a until the time I arrived in Bogotá. My journey began on August 14, 2017, when I took a twenty-hour bus ride from Sana'a to Seiyun and rested for about seven hours before catching an eight-hour bus from Seiyun to the borders of Oman. There, I was supposed to get an entry visa for Oman, which I had already arranged through a travel agency in Sana'a. However, I faced a difficulty when entering Oman that was eventually sorted out. I then had to take different connecting flights until finally arriving in Bogotá on August 18. It was an overwhelming and emotional trip. I had mixed feelings of anger, humiliation, and frustration. I was exhausted physically, mentally, and emotionally and was cursing the war and its lords and supporters. Why should I have to go through this abnormal process every time I travel abroad?

Whenever I travel to or from Yemen, I have to prepare myself for this hardship and take a few days upon my arrival (either in Yemen or abroad) to collapse, cry, reflect, hold myself again, and move on.

Now, this is my personal experience and I'm supposed to be a young, "healthy" person in his early thirties. Can you imagine those who are in need of medical treatment abroad? Many of these people have only two options: either die silently or die on their way to Aden or Seiyun airports. I personally have known different people who died before traveling abroad, including Elham, a relative of mine, who died just before her flight departure from Aden airport in 2017.

Elham had a medical condition and had been in a coma for two weeks at a hospital in Sana'a. Her husband was unable to evacuate her from Sana'a, so he secured an ambulance to move her from Sana'a to Aden (about twelve hours away), where she could then take a flight to Jordan. But she died right before boarding at Aden airport. Her

husband was traumatized and never came back to Sana'a because it reminds him of his wife.

Elham's is only one of hundreds of thousands, if not millions, of invisible painful and devastating stories. People are victims not only because of the closure of Sana'a airport but also because of the Houthi blockade on Taiz city, unpaid salaries for public employees, hunger, and other war-related abuses and consequences.

What type of mechanism or judicial system can compensate and serve justice to these victims?

Future of Accountability

I believe that accountability is a key element for ending impunity and cycles of violence in Yemen.

After the objections of Saudi Arabia, the UAE, and their allies (particularly the United States, UK, and France) against the establishment of an international independent mechanism for human rights violations in Yemen in 2015 and 2016, the United Nations Human Rights Council finally succeeded, in September 2017, in establishing the Group of Eminent Experts on Yemen. The creation of this group was due in part to significant advocacy by civil society. To date, the group has released three reports on the human rights situation in Yemen between 2018 and 2020.

When we speak about accountability, we especially mean criminal accountability. Perpetrators must be held accountable, and victims deserve compensation and redress. Otherwise, the warring parties feel as if they can commit as many violations as they want and walk away comfortably with impunity. Therefore, we at Mwatana, along with our partners from around the world (including Human Rights Watch, Amnesty International, the Cairo Institute for Human Rights Studies, Crisis Action, and others) have started discussing what options we have, given the impossibility of referring the Yemeni situation to the International Criminal Court by the Security Council and its five permanent five state members—veto!

The best option we had up until 2021 was to call on the Human Rights Council in September 2020 to renew and strengthen the mandate of the Group of Eminent Experts and include the criminal aspect. Fortunately, following months of advocacy before states and other key actors, on October 6, 2020, the Human Rights Council adopted a resolution to renew and strengthen the group's mandate, including to collect, preserve, consolidate, and analyze information and pursue options for

accountability and redress. These are concrete steps toward criminal accountability in future.

But in October 2021, member states of the council disgracefully ended the mandate of the Group of Eminent Experts (Nebehay 2021). It was disappointing to leave civilians in Yemen with no international mechanism.

In the future, and in spite of the inherent political difficulties, Yemen needs the establishment of an international criminally focused investigative mechanism. Toward this goal and in response to the failure of the Human Rights Council, a coalition of more than eighty organizations has called on the United Nations General Assembly to "establish an independent and impartial body that would investigate and publicly report on the most serious violations and abuses … while also collecting and preserving evidence and preparing files for possible future criminal prosecution" (Mwatana for Human Rights 2021). In addition, the Security Council can refer Yemen's situation to the International Criminal Court. This would help break the cycle of violence in the country because it would usher in a new approach that Yemen has lacked for decades. If we wish to establish durable peace in the country, we must not only have a peace agreement that ends the armed conflict but also have the elements to prevent future conflict—accountability and redress.

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Tagged for Slaughter: To Be a Human Rights Worker under a Dictatorship

Mary Louise Dumas

We dream of peace—a peace based on justice and not the silence that comes from the mute and the dead.

This is one of my most overused lines. But I never really imagined what it is like to be silent. Silenced.

That morning of May 22, 2018, I did my usual routine: woke up quite early because of the extreme heat, put my playlist on full blast, and checked my emails. At the top of my inbox was an alert from a colleague showing me screenshots of a Facebook page with unknown administrators, set up solely for slandering the Rural Missionaries of the Philippines–Northern Mindanao Region (RMP-NMR), the organization I had been affiliated with since 2015. One screenshot had my name on it:

> Louise Dumas, a.k.a Carl Francis, leader of the "Legal-Actions of Communist Party in Northern Mindanao."

Still not fully awake, I felt dissociated from what I was reading. *Is this post referring to me?* It was my photo during a session I had facilitated at the 2017 ASEAN Civil Society Conference held in Quezon City. My first honest reaction was to laugh. Legal actions of the illegal Communist Party.[1] It was beyond ridiculous.

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1 The Communist Party of the Philippines was founded in the 1930s, when the country was a colony of the United States. The party was legal and even participated in elections. After being banned in the 1950s, it was reestablished in 1968, when the Philippine president was Ferdinand Marcos. The party's armed group, the New People's Army, was founded a year later and has been waging guerrilla warfare against the Philippine government ever since. Several activist organizations went underground when Marcos declared martial law in 1972, creating what became the National Democratic Front of the Philippines, which served as the political wing of the Communist Party. Presently, many legal organizations critical of the government are accused of being legal fronts of the Communist Party-National Democratic Front. Being a "communist" in the country has become illegal. The US Department of State designated the Communist Party-National Democratic Front a terrorist group in 2002 under Executive Order 13224.

But eventually, I sobered up. The allegation was insane, but considering the insanity of the people currently at the helm of the state, much as I wished to just laugh it off, I could not take it so lightly. At that time, the country was under martial law. And contrary to what government propaganda was making people believe, martial law was still what it had been during the Marcos dictatorship—a lack of civilian power, and complete military rule. Whatever sugarcoating there was by the government, that was the essence of the declaration issued in 2017. Whoever was deemed an enemy of the state could be easily "neutralized."

The Declaration of Martial Law in Mindanao and Its Subsequent Extensions

The first time the Philippines was subjected to the horrors of martial law was under the dictator Ferdinand Marcos. Proclamation No. 1081 from September 1972 put the entire country under direct military control. It had allegedly been in response to the threat of the Communist Party of the Philippines, founded in 1968, and its armed wing, the New People's Army, which was established in 1969. But instead of effectively stopping the growing rebellion in the country, the declaration had been used by the president's family and cronies to amass wealth and power and to quash any opposition.

For fourteen years, human rights were buried with the victims of tortures, rapes, and massacres perpetrated by state and state-sanctioned forces, blanketing the country in fear, insecurity, and, most of all, rage. This rage, drenched in blood, culminated in the peaceful mass protests of what would later be called the EDSA Revolution. The revolution toppled the dictator and restored democracy in the country. In 1987, the Philippines changed its Constitution to make sure that dictatorships would not happen again.

But three decades later, we once again saw the subversion of our supreme law and the subtle spread of martial rule. Accompanying the moves of the state was the spread of historical revisionism designed to entice the new generation with the promise of what a "new" martial law could offer—security, peace, and discipline. The institutions and people who understood the real claws of martial law—the curtailment of civic spaces, the deterioration of democracy—were under attack. We could see this in the widespread "red tagging" (accusing someone of being a communist) of human rights defenders—the lawyers, journalists, church people, civil society organizations, and activists who bravely spoke out against the state.

Thus, on May 23, 2017, despite the safeguards in the 1987 Constitution, President Rodrigo Duterte was able to declare a "selective" martial law. This action was allegedly aimed at stopping the ISIS-styled group Dawlah Islaimiyah from taking over the Islamic city of Marawi in Mindanao. Its effectivity was originally set for sixty days, but on July 23, 2017, it was extended with the approval of the majority of the House of Representatives and the Senate on the grounds of eradicating the ISIS-influenced group.

Then, for a second time, in a special joint session of the House of Representatives and the Senate on December 13, 2017, another extension of martial law was approved. This time, it was under the pretext of going after the Communist Party. And so 2018 saw intensified violence from state forces in their rampage against communism—a blanket crusade that targeted activists, human rights groups, and government critics in general. Martial law aided the lack of legal procedures in the state forces' attacks.

Fast forward to July 4, 2018. I had already resigned from RMP-NMR, as I was feeling too much pressure. I am generally a low-key kind of person, but my work during the short three years that I worked at the organization had evolved into responsibilities that constantly pushed me into some level of public existence. I thus opted to work with an organization whose work was still focused on Indigenous peoples and local communities, but in a more supportive and guiding role. Here, it was not our call if a community chose to fight back or not. Our job was to let them know what they were entitled to and the difficulties they might encounter. It was up to them what actions they might want to take.

I was in the field that day when I got the news that several activist leaders I had worked with had been arrested. However, since the state had warrants for only two of them (and the charges had been murder, as well as other crimes that the state usually slaps against alleged members of the New People's Army), twelve of the fourteen individuals were subsequently released. But it was only the prelude to what would soon become a nightmare in the following months. Despite the individuals' official release, state forces did not stop the attacks against them and their organizations.

Datu Imbanwag

On the morning of January 28, 2019, Jomorito Goaynon, known to his community as Datu Imbanwag, chairperson of Kalumbay, an umbrella organization of Indigenous peoples' organizations in Northern Mindanao, and Ireneo Udarbe, chairperson of the peasant organization

Kilusang Magbubukid ng Pilipinas–Northern Mindanao Region, left their office to attend a dialogue between Pig-uyonan, a Higaonon organization in Talakag, Bukidnon, and the 65th Infantry Battalion of the Armed Forces of the Philippines, which was conducting operations in their communities.

Earlier that month, Datu Imbanwag had filed a complaint before the Commission on Human Rights against the 65th Infantry Battalion for harassment and forced surrender. A banner bearing his picture and accusing him of recruiting Lumad communities to the New People's Army had been hung in the municipality of Talakag, and Pig-uyonan and its leaders and members had been accused of belonging to the rebel group.

The two left their office in Bulua around ten o'clock that morning. Their last communication to a staff of Kalumbay had been to inform him that they were stuck in traffic. But when they did not arrive at the meeting place and could no longer be reached on their phones, their colleagues became worried and released a notice of their disappearance that evening.

The following day, the military admitted that it had "arrested" Datu Imbanwag and Ireneo. Later on, it was revealed that they had been violently taken by state forces. Indeed, on that morning of their commute, they were being tailed. The jeepney route they took passes by Barangay Patag, where the base of the 4th Infantry Division of the Armed Forces is located. At the junction, their jeepney was stopped. The two were forced out of the vehicle. Datu Imbanwag struggled to keep his bag with him, knowing how members of the military are adept at planting guns or explosives during their raids and abductions. But he was hit repeatedly, and he and Ireneo were taken to the camp.

After months of litigation, the judge ruled that there were no grounds for the arrest and that the case filed against them was flimsy. Ireneo was set free. However, Datu Imbanwag remained in detention and was transferred to another court. This was because state forces had already filed another case against him—this time in the province of Bukidnon.

Prior to Datu Imbanwag's abduction and detention, he had already faced trumped-up charges during the course of several campaigns conducted by Kalumbay. Before he became the chairperson of Kalumbay, whose member organizations span the provinces of Bukidnon, Misamis Oriental, and Agusan del Norte (all territories of the Higaonon people in precolonial times), he was already leading a campaign in his hometown of Cabanglasan, Bukidnon. There, the organization Pigya-yungaan, which is also a member of Kalumbay, had been campaigning

against the entry of banana plantations in their territory. Datu Imbanwag had been fighting against his own uncles and cousins—leaders of the community who were supporting the plantations on the condition that they be put on the company's payroll. The entry of the plantations also gave rise to paramilitary groups in their community, and the threat had forced him to relocate his family to Cagayan de Oro City.

Despite these dangers, Datu Imbanwag proceeded to lead Kalumbay, taking part in various campaigns that member organizations launched in their areas—against oil palm plantations, on behalf of higher wages for agricultural workers, and on behalf of their right to ancestral territories.

The Casualties of Peace and "Progress"

As Filipinos, our experiences and perceptions of martial law vary depending on one's personal circumstances—geography, economic stature, networks, and, most importantly, political stance. I am from Mindanao. But even if there is indeed huge support for Duterte from down south, there are dissenting voices, silenced by force and by social pressures. Some examples:

- On June 16, 2019, Liovigildo Palma, a fifty-seven-year-old farmer from San Fernando, Bukidnon, was shot dead by a masked gunman. He was a member of Kasama-Bukidnon, a farmers' organization in the province and an affiliate organization of the nationwide peasant group Kilusang Magbubukid ng Pilipinas.
- On July 8, 2019, Datu Mario Agsab of the Umayamnon people was shot dead in his home in Cabanglasan, Bukidnon. Identified perpetrators include a member of the Civilian Armed Forces Geographic Unit of the Philippine Army's 8th Infantry Battalion. Datu Mario was a leader of an Indigenous peoples' organization, Pigyayungaan.
- On August 2, 2019, Guillermo Casas and his wife Jocelyn Casas were shot in the same town by a similarly masked gunman. Guillermo died on the spot. Both were also members of Kasama-Bukidnon.
- On August 10, 2019, Alex Lacay, a member of the Kaugalingong Sistema Igpapasindog to Lumadnong Ogpaan (KASILO), was shot by alleged members of the Philippine Army while riding a motorcycle to the market.
- On August 12, 2019, Jeffrey Bayot, also a member of KASILO, was shot as he entered his home in Quezon, Bukidnon. The suspects were believed to be members of the state forces.

KASILO, an organization of the Indigenous Manobo communities in the southern part of Bukidnon province, has been targeted by state forces for allegedly supporting the New People's Army. In truth, these communities have been fiercely advocating for self-determination over their ancestral lands so that they can stop the encroachment of plantations and hydropower projects that do not take into consideration residents' traditional occupations—mainly subsistence farming and fishing.

KASILO and Pigyayungaan are member organizations of the regional alliance Kalumbay. "Kalumbay" is a Higaonon word that translates to "of the same line." The alliance fights for Indigenous peoples' rights, especially their rights to territory, to self-governance and self-determination, and to their culture and traditions.

"We are not into crime prevention … it's neutralization … then we can solve the problem," said President Duterte in his speech to the 803rd Infantry Brigade of the Philippine Army on October 2, 2018 (Esguerra and Gabieta 2018). He elaborated:

> Hindi mo kailangang magtanong pa kung may warrant warrant d'yan basta may dala ka nang baril d'yan, sparrow ka, you can be neutralized. (You don't need to ask if there is a warrant. If you have a gun, you're a sparrow, then you can be neutralized). (ibid.)

This statement sparked a new trend in the state's effort to "neutralize" the enemy. State agents can plant a gun in any crime scene, no further questions are asked when someone walking the street is suddenly shot dead, no one wonders why a wedding is bombed or why a man having dinner with his family has his brains shot out by police. It even started a bad joke among human rights advocates: maybe the Philippine Army and the National Police should manage the Department of Agriculture—they are so good at planting evidence.

Attack against Institutions that Support Human Rights Defenders

One afternoon in February 2020, I got a call from a former professor. That day, I was assisting with a training for Indigenous women leaders in a densely forested venue, and my cell phone reception was not good. She informed me that flyers were being distributed in a mall where my former department was holding a photography exhibit. The flyer alleged that our department's program (which uses a range of activities to immerse students in economically marginalized communities) had ties to RMP and some youth activists who had allegedly

been recruiting students to the New People's Army. On the flyer was a photo of one of these accused activists—lawyer Czarina Musni, RMP's previous project manager—together with some teachers from the university's high school department. The photo was not in any way related to the content of the malicious article but was rather a picture from the signing of a memorandum of agreement for an activity in which RMP helped develop a social outreach module with Indigenous communities designed for high school students.

The university president later issued a statement denouncing the accusation. Eventually, the attack against the university—a private university run by a religious order—died down. However, the vilification of Musni did not abate.

Musni had joined RMP-NMR through our project Healing the Hurt. Before serving as project manager, she had volunteered to lead the support network Higala sa Lumad, which provided humanitarian relief to Lumad communities fleeing their homes during military operations, linked human rights defenders with lawyers and other services, and helped disseminate information on issues concerning Indigenous peoples in general.

Musni is the youngest daughter of two lawyers who had also been active human rights defenders. Her mother, Beverly S. Musni, had been the spokesperson of Karapatan Alliance for the Advancement of People's Rights–Northern Mindanao for several years. In addition, they are both active members of the Union of Peoples' Lawyers in Mindanao (UPLM) and the National Union of Peoples' Lawyers. They gained the ire of the government due to the fact that UPLM lawyers accept clients who are alleged communist rebels. These are clients whom other lawyers have a bias against and refuse to work with for fear of being associated with them and consequently attacked by the state.

Conclusion

The attacks against these institutions and the individuals moving them were cowardly. They were in the form of mobile messages from unknown numbers, made-up Facebook accounts, and unsigned pamphlets distributed during public gatherings. While the military and other state forces denied orchestrating the attacks, at the same time they did nothing to investigate them.

Almost three years have passed since the declaration of martial law. Three years since President Duterte took office and put his chosen ones in power. In that short time, the office of the RMP-NMR has moved three times and has changed staff almost every other month

because of the insecurity of the work, particularly in the field. To work on human rights at this time is almost suicidal. Nonetheless, a few of us have chosen to continue doing human rights work—and are now likely under government suspicion of leading underground movements.

But what are our concerns relative to the concerns of the thousands of Indigenous families who have been forced to leave their homes? What are the harassments we face relative to the communities who face bullets and bombs? Relative to the pain of the families whose children have gone missing, only to resurface cold and very dead?

In this grave situation, we keep doing what must be done. We all have to go on. It is not bravery. Well, maybe some of my colleagues are brave, but I, for one, am not the brave sort at all. I fear a lot of things. To have fears is normal and totally human. But to be immobilized by our fears is another matter. We fear, but we continue our dissent against the atrocities levied at us, at many of the Mindanao peoples whose humanity has been denied by this government. We continue to fight simply because it's the only way to move forward and effect the real change we want to see.

I wish I could truthfully write that. I wish that it were the end of this chapter, a message of hope. But the fact is, I am not brave enough to break through my fear. I have once more taken refuge in working behind screens—working in an air-conditioned office, seldom seeing what is happening on the battleground. Sometimes, when I do my monitoring rounds, I pass by stretches of roads that hold memories of resistance. In one area of the city, what used to be organized urban poor families bravely defending their homes and livelihoods against demolition are now construction sites, road-widening casualties. In one farming area, what used to be a strong community whose stories of defiance against armed goons is now host to a military detachment. The highway, despite martial law being lifted on December 31, 2019, is still dotted with military checkpoints. As buses pass through it, passengers obediently get off, show identification cards, board the bus again. It has become routine, ordinary, part of life.

So has my region become peaceful? On January 31, 2020, a seventh-grader shot a thirteen-year-old student in a private school in Cagayan de Oro City. On February 28, 2020, a traffic enforcer was shot dead. On January 8, 2021, the homes of an Indigenous community reclaiming their territory in Bukidnon were demolished by a ranch owner. So were several houses in an urban poor community hit by a road-widening project in Cagayan de Oro City.

Is my region peaceful? No one is protesting.

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Reimagining the Future of Human Rights:

Social Justice, Environmental Justice, and Democracy in the Global South

This book is the collective effort of participants from Dejusticia's annual Global Action-Research Workshop for Young Human Rights Advocates. The talented writers featured here are graduates from previous workshops who came together again in 2018 to explore the intersection between research and activism and what it holds for the future of human rights.

The authors in this book question traditional methods and explore new ways and visions of advancing human rights in the troubled context in which we live today. Do the struggles of small-scale miners in Ghana, the use of strategic litigation in Lebanon, and the recognition of the rights of nature in India represent evidence for hope? Or is the opposite true, and, as shown in the chapters on martial law in the Philippines, the treatment of wastewater in Argentina, and in the internal conflict in Yemen, human rights have failed to deliver on their promises?

Whatever the answer, *Reimagining the Future of Human Rights* invites us to reflect on the work of human rights in different contexts and the challenges that activists face, but also the progress they have made. The chapters in this book offer a snapshot of the current state of human rights that can help guide our work as activists and researchers.

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