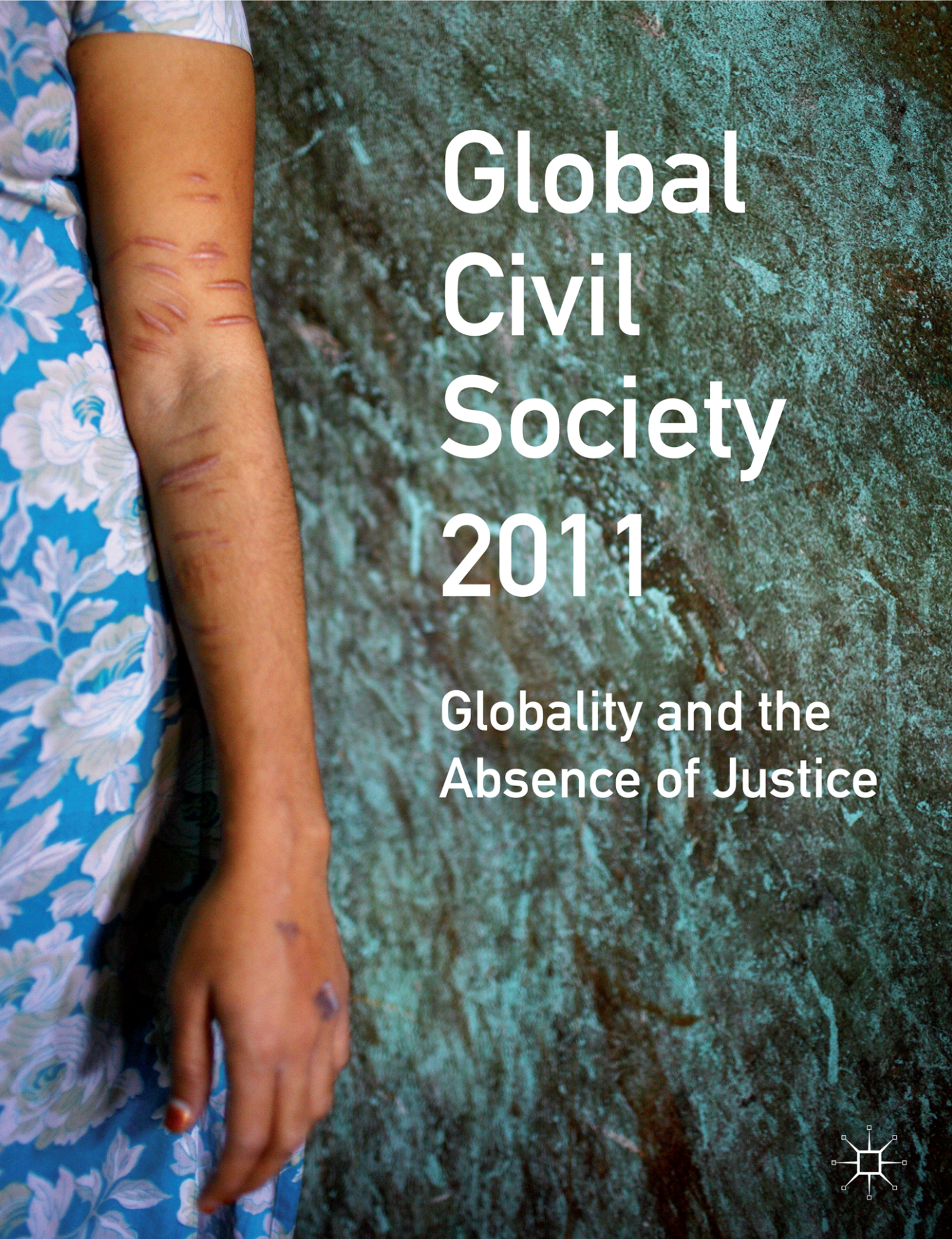

Global Civil Society 2011

Globality and the Absence of Justice

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Editors: Helmut Anheier, Marlies Glasius, Mary Kaldor,
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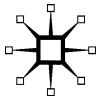

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Her path-breaking book, *Transitional Justice* (Oxford University Press 2000), examines the twentieth-century transitions to democracy in many countries. Born in Argentina, Ruti's interest in the topic grew out of the dilemmas confronting that society in the transition out of junta rule. Her forthcoming book *Humanity's Law* (Oxford University Press 2010) explores a paradigm shift in the global rule of law. Ruti's extensive body of scholarly writing on comparative law, human rights and constitutionalism is published in many law reviews, including 'The Law and Politics of Contemporary Transitional Justice' and 'Humanity's Law: Rule of Law for the New Global Politics', both in the *Cornell International Law Journal*, as well as 'Comparative Constitutionalism in a Global Age' in the *Harvard Law Review*. She has contributed dozens of book chapters to published volumes relating to law and politics and also writes on human rights issues for a broader audience, having published in the *New York Times*, *Legal Affairs*, Findlaw.com and *Project Syndicate*.

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INTRODUCTION: GLOBALITY AND THE ABSENCE OF JUSTICE

Martin Albrow and Hakan Seckinelgin

The globality of demands for justice in our time, in the senses of their ubiquity, of worldwide supporting movements and of concern for the future of humankind, presents a major challenge to all previous understandings of justice. We can no longer be comfortable with a tradition expressed in David Hume's (1998/1751: 13–27) eighteenth-century beliefs that justice exists only to support society, that civil society is promoted by justice, and that it is realised in national laws, when it is the worldwide *absences* of justice that overwhelmingly animate the global social movements of the present time.

Global civil society has produced a new dynamic of claims and counterclaims for justice that extends far beyond the discursive frame of the conventional nation state (Fraser 2009), even though the main recourse for redress of grievances is still to states. The interplay of theory and practice is inherent in that dynamic, and our aim in this volume is not to test the theories of justice of a John Rawls (1971, rev. 1999) or an Amartya Sen (2009), but to commend for theoretical reflection the felt injustice and perceived absence of justice inhabiting the struggles of global civil society actors.

In our preparation we engaged in an iterative process of debate, bringing together scholars and campaigners in workshops in Seoul, Bangkok and London, supported by the Institute of Social Research, Korea University, Chulalongkorn University, Bangkok, the Tata Institute of Social Sciences, Mumbai and LSE Global Governance. It is from that process that these introductory reflections emerge and we want to express our profound gratitude to all those who took part in what was often a moving, even gruelling, journey of empathy and intellectual excitement.

Global movements to redress inequalities derive their strength from combining and sharing the grief and grievances of groups with transnational identities, however varied their experience in particular national systems. Ethnic, religious and gender identifications will be fired by felt injustice to their members – Muslims by insults in Denmark, Irish anywhere by British rule in Northern Ireland – or indeed inspired by their triumph over adversity wherever it appears in the world – blacks everywhere by the end of South African Apartheid, gays worldwide by small advances to equality within the Christian churches.

The transnational scope of claims for justice has more than consequences for individuals. It represents the collectivisation of the sense of injustice. What is usually known as identity politics as the successor to the class politics of industrial society is a direct result of the mobilisation of membership groups sharing a disadvantaged position relative to others in the global discourse of injustice and inequality. The transnational networks of 'self-representation' that Martin Vielajus and Nicolas Haeringer describe provide a voice for the marginalised who might otherwise be unheard in local isolation.

In multiple ways global civil society has created and expanded a new space to reinstall justice as inspiration and arbiter of laws. It has adopted and developed a social and economic rights agenda, originally arising out of the imperialism and class conflicts of industrial society, and employed that to confront injustice anywhere in the world. As an example, the Tax Justice Network, two of the founders of which, Matti Kohonen and John Christensen, outline their motives and strategy in this volume, demands an end to the exploitation of legal lacunae within and outside the borders of states that permit the widespread avoidance of tax. In an extreme case, the continuing contemporary prevalence of slavery, Kevin Bales and Jody Sarich show how even universal condemnation in national legal systems is inadequate to defend human rights without worldwide campaigning. As Bales says, 'Internationally the response to no other serious crime is as dependent on the initiative of groups outside the criminal justice system to bring justice to the victims of crime.'

The campaign described by Heisoo Shin to secure compensation for the 'comfort women' of the Japanese military in the Second World War offers a paradigmatic example of the strategies available for contemporary global mobilisation against state crimes.

The collectivisation of felt injustice draws on the experience of grievance by people in similar situations

anywhere in the world and for however long an account of the offence is maintained in folk memory or historical record. The geographer David Harvey proposes that time/space compression in contemporary culture gives rise to a postmodern confusion of juxtaposed, fragmented images and experiences that brings all identities into question. 'Excessive information, it transpires is the one of the best inducements to forgetting' (Harvey 1989: 351). By contrast, global civil society is driven by remembering. The globalisation of claims for justice allows the individual person to account for his or her own life and identify with the fate of others in a way that obliterates spatial and temporal separations. Beyond this it generates a discourse where individuals can identify with the fate of succeeding generations and the collective wellbeing of humankind as a whole. Gil-Sung Park and C.S. Moon show how those Koreans who flee from the North to seek refuge in the South depend for their reception in part on the Citizen's Alliance for North Korean Human Rights, which activates international interest in providing for their welfare.

Claims against any one nation state by its victims are now pursued by global alliances, by expatriates but also by sympathisers abroad with no ties to that state. The issue of justice between generations now troubles anyone who asks what kind of world is left for those born after us when we of this time have finished exploiting the earth's resources. In a global frame, where the fate of the human species sets the outer limits of justice claims, the scope for new injustice narratives depends only on the extent of the imagination of collective actors as they are constituted in the conflicts of any one period of time. Elazar Barkan shows that there is no pure historical narrative that can exempt itself from the adjudication of claim and counterclaim and refuse to engage in the settling of accounts. The challenge, as in the resolution of any conflict, is to find language that enables all sides to move forward while remaining true to the facts. The acceptance of historic responsibilities precedes free partnership in meeting future collective challenges to each and every party to past conflicts.

Those responsibilities extend to the material conditions of human existence. Public goods are as much demand-led as material goods and the linguistic commonalities in speaking of 'goods' and 'values' for both material and spiritual things reflect their rootedness in the physical needs and social requirements of human beings. Dorothy Guerrero points out that the global climate justice movement is intimately entwined with the wider struggle of the global justice movement against the extremes of inequality. Rather than an appeal to universal principles, it is the global impact of climate change as a threat to human existence, and the differential effects on various populations that animate the campaigns of environmental activists. Madushree Sekher and Geetanjoy Sahu's chapter indicates that even if there is an acknowledgement of the global nature of environmental problems, a just distribution of resources to address material needs is locally negotiated. Layne Hartsell and Chul-Kyoo Kim show the entwined fate of local production and national sovereignty in a globalised market for food.

In sum, this Yearbook both examines the nature of justice, in the way its relationship with law is unpacked; and also explores the ways in which global/civil society actors participate in justice debates. We therefore go on to ask: what does a global/civil society lens reveal about justice? And what does the globality of justice lens reveal about civil society?

What Does a Global/Civil Society Lens Reveal About Justice?

One of the central issues highlighted in this volume is the way civil society engagements with injustices in different contexts challenge the abstract view of justice that is often constructed from within a legal framework. For many scholars and activists too, the existence of injustice is considered to be the function of absence, failure or inadequacy of legal forms. This perspective is also observed at the global arena. In the long struggle to gain justice for the Japanese 'comfort women' the creation of global or international legal instruments and processes is seen as one way of dealing with blatant injustices. But it is no exaggeration to suggest that when confronted with injustices many react by considering law as the only delivery mechanism for justice. There is a certain 'fetishisation of law' (Comaroff and Comaroff 1999: 14). In most cases legal modalities are used as templates where experts feel that a legal modality has delivered just outcomes in particular contexts. These debates are underpinned by the assumption that rational law in general can be considered to be applicable in diverse contexts. Another important aspect of this is the assumption of the possibility of universal laws to which we, all humankind, aspire. These seem to exist independent of particular experiences.

We observe this implicit understanding in the symbolic representations of justice as a female figure, a goddess, who underpins the abstract universality. She holds, on the one hand, scales and, on the other, a sword. In the

conventional form the goddess' eyes are blindfolded. The image is of an authority holding the scales of justice by which people's actions will be measured and then justice will be exacted, as suggested by the sword. The inclusion of the blindfold signifies the impartiality of justice both in measurement and also in its enforcement. While many focus on the scales and the sword as two sides of the justice debate, their appearance as a part of one authority is an important signifier too. It seems to suggest a process that maintains harmony in society. The appearance of this symbol in many countries within the context of legal institutions underpins a central relationship between justice and law. The appearance of the goddess in the formal spaces of law symbolises the belief that legal process is endowed with qualities of fairness that seems to have transcendent qualities. This appearance is related to the idea of community as expressed by Cicero: 'those who share Law must also share Justice; and those who share these are to be regarded as members of the same commonwealth' (1997/52BC: 27). His assumption is that the spirit of justice in a community is reflected in law.

In the global context this attitude towards positive law also anchors international policy and advocacy interests as an aspirational goal that is attributed to humanity's progressive development. It implicitly suggests an assumed content for justice that reflects moral sentiment in a global community. We only need to think of the immediate post-Second World War period when both the Universal Declaration of Human Rights and the Constitution of India enshrined these universalistic aspirations which, as Rohit Mutatkar shows, have enduring and progressive consequences to this day.

But we also observe in this volume the pre-legal formation of norms and values within a global frame of social relations where debates about justice do not assume the existence of a global community, but begin with the experience of felt injustice. They are the counterpart to the intense debates prior to the founding legal documents of the postwar period, but under conditions transformed by globalisation, we do not know the outcome of those debates. We are concerned here with struggles to define the relations between justice and law, a theme with deep roots in Western social and political theory. Until the sixteenth century the dominant tradition led through mediaeval Christian scholasticism back to Aristotle. It viewed both judicial and distributive justice as aspects of the general balance of the good life, all contributing to the general fulfilment of human potential on this earth. The laws of the legislator were then firmly subordinate to reason or to God, however represented. The words of St Augustine, cited as authority by St Thomas Aquinas, expressed it most succinctly: 'A law which is not just cannot be called a law' (1954: 137).

Thomas Hobbes' challenge to clerical opinion, 'For what is good law? By a good law I mean not a just law: for no law can be unjust' (1955: 227), was a major step toward secular modernity later completed when Jeremy Bentham wrote off the natural law foundation of justice as 'nonsense on stilts'. Through the modern period the growing technical and economic strength of the legal profession, coupled with varieties of the doctrine of legal positivism, promoted a widespread view that justice was a matter of legal process. The secession of reason from religion gave licence to rationality to treat justice as a technical problem.

The Yearbook contributions challenge this long-standing assumption that law is the place-holder for justice and it can be delivered in any context as a technical intervention. They highlight existing claims of injustice that need to be considered before a discussion of global justice is articulated and delivered as a legal technical intervention. They point to the perceptions of injustice in particular localities experienced by diverse groups in which pre-legal norm and value formation is implicit and challenges existing legal systems. How else can substantive justice be achieved without the struggles of the deprived and exploited peoples of Burma? Maung Zarni finds no other way that can come about when the international system effectively supports the military's use of oppressive law. In this way the diverse contributions also question the cosmopolitan instinct to universalise what is seen as just law in abstract across many communities. They push us to consider, if we were to follow Cicero, could we assume the existence of a global community where all parties share the same law?

The idea of being part of the same law suggests a social negotiation about the substance of justice that people feel is applicable to them, a community of shared justice. It suggests that there is a process of social legitimacy that underwrites a legal form, therefore requiring us to embed ideas of law and judicial systems within claims of injustice and demands for justice, and in turn to see these in relation to fundamental social dynamics and the historical development of social systems. We therefore can't avoid seeing this discussion in the most general frame of a theory of society. In turn, understandings of justice embedded in universalistic forms informing global

civil society aspirations need to accommodate profound social transformations of global social relations.

Given the way the specialised social sciences had developed by the end of the nineteenth century and the increasing complexity of legal systems and the sophistication of legal training, it is not surprising that the outstanding modern interpretations of law in relation to wider society should have been made by scholars trained initially as lawyers. We may think first of Max Weber and later, in the last century, Niklas Luhmann in particular. Weber's sociological perspective on law (Weber 1954: 7) viewed it as embedded in a wider social order, regarded by its members as legitimate, holding that it needed an enforcement staff to become an effective social fact. From a cognitive standpoint it was necessary to accept that historically and in practice wider society was the foundation for law. Luhmann (1985/1972: 145) identified the abstraction of the legal principle from the practice of law as a major human invention, initially arising from what was seen as equitable and just, with the oldest evidence for this in Mesopotamian legislation in which political rulers had the 'declared aim of protecting the weak against the strong, the poor against the rich'.

In each case, however, the thrust of Weber's and Luhmann's sociology of law was to focus on the conditions and consequence of the rise of modern judicial systems, the legal profession and the development of positive law. The growth of formal, rational features of law became the central facet of Weber's thesis of the rationalisation of the modern world. For Luhmann the functional differentiation of the sphere of law itself posed fundamental problems for general social theory, namely how any sphere becomes differentiated. In the case of law it meant that 'non-being and injustice are expelled from the system into an undifferentiated and absolutely chaotic beyond' (Luhmann 1985/1972: 276; see also Agamben 1998). In quite different ways both Weber and Luhmann clearly appreciate the embeddedness of law in wider society, the determining influence of norms of legitimacy and the sense of injustice. It was only their own cognitive interest in law that meant they accorded correspondingly less attention to these wider questions.

Global civil society has no such professional inhibition about the scope of its interests. The sense of injustice, to itself and to others, is its main motivating impetus to action. Scholars, on the other hand, even when motivated in the same way as the subjects of their study, cannot rely on a missionary zeal to win respect for their work. They need to apply the same drive and methods for understanding the sense of injustice, and the demand for justice, as Weber and Luhmann employed in the case of law. And they need to turn that scholarly gaze on global civil society itself and help it develop the same reflexivity that law and legal scholarship have long enjoyed.

Civil Society Viewed Through the Lens of the Globality of Justice

The global reach and scope of civil society activities in the world today requires us to rethink ideas of justice that were forged initially in the world empire of the Romans, then shaped by the universal claims of various theologies, and again reshaped in the era of the modern nation state. The globality of justice claims in our time has three main aspects. The first is the ubiquity of their appearance, the incidence of a similar injustice, anywhere or everywhere in the world. The second is the extension of their reach to every part of the globe of movements for social justice, for women, workers, or indigenous peoples. The third is the focus on problems that affect the future of the human species on this planet such as the climate-change discussions. We contend that the combination of these civil society features, widely acknowledged as 'global', also represent a less well recognised intellectual challenge. The global civil society lens, presented above, points to multiple and extant injustice claims. These challenge global instincts and highlight some of the constraints in thinking about justice debates in an abstract global manner.

Séverine Bellina finds a fundamentally polysemic, polycentric diversity in the ideas of justice that animate civil society actors. If, as in Aristotle's view, 'injustice arises when equals are treated unequally and also when unequals are treated equally', then the formal treatment of the concept of justice, as a top-down imposition, can never be adequate for the ever-changing contingencies that arise out of the continual process of human transformation of self and its conditions of existence. Iavor Rangelov and Ruti Teitel show the development of community involvement in para-judicial discourse supplements, and often replaces, recourse to legal procedures that cannot be adequate for the enormity of the collective crimes. At the same time, as they point out, it is the diversity of civil society justice conceptions that generates the new discourse. It is this diversity that can be the fertile bed for the full and free communication on which future cooperation depends. In the end this quasi-judicial discourse may also, as illustrated by Ruth Kattamuri and

Amalie Kvame Holm, give way to a forgiveness that can forestall any formal procedure.

The performances and qualities that may be relevant for judging the achievement of justice at any one time will depend always on the feelings and standards that human beings impart to their relations with each other in that particular context 'explained by, natural and widespread human sentiments greatly modified by very variable customs and social histories' (Hampshire 2000: 37). What we now recognise is that while global problems such as climate change, violence and poverty are driving concerns for global justice and articulation of global solutions, people are located in 'divergent imaginations and memories' leading to diverse claims (Hampshire 2000: 37). As a result, global civil society actors face multiple challenges in thinking about justice both globally and within particular contexts. Hence in the context of Sierra Leone we find differing ways of delivering justice through the Special Court as described by Sara Kendall and Alpha Sesay, and in Sofia Goinhas' account of the Bo Peace and Reconciliation Movement.

As editors we view global civil society from the aspect of its testimony, its own narrative, where justice is entwined with actors' accounts, in much the same way as Martha Nussbaum (1995) argued that a sense of justice is intricately implicated equally in the literary imagination and in the work of the judiciary. Her inspiration was Adam Smith's 'judicious spectator', the imagined arbiter implied in ethical judgements as well as in decisions on taste, propriety and the expression of emotion generally. Globality is not her theme, but it has always been central to the concerns of the Yearbook, and her remarks on poetic justice tangentially allude to a key and novel feature of our time that separates us from Smith. In claiming that an 'ethics of mutual respect for human dignity will fail to engage real human beings unless they are made capable of entering imaginatively into the lives of distant others', she speaks the language of a global age.

For Smith was clear that distance diminished sympathetic engagement with the fates of others. In our time, space/time compression allows us to feel close to the sufferings of those in Haiti, Chile or China and also to do something to alleviate their distress. Whereas for Smith there was a hierarchy of concern, beginning with our family, diminishing as it extends to the nation and at its weakest in far-flung parts of the globe, for global civil society poverty relief or human rights campaigns recognise national boundaries only as hurdles to be jumped. It is no longer self-evident that charity begins at home; almost the opposite, that charity is boundless in its concern.

This shift in the locus of the debate about the source of justice from nation state to a possible global order prompts a challenge to canonical discussions of justice. Kant's original introduction of the idea of a cosmopolitan ethic was motivated by the co-presence of the stranger in the midst of the community. Moral duties of benevolence, respect and tolerance for the other were different in kind from the reciprocal obligations owed by one member of a community to another or by family members to each other. The subsequent rise of the welfare state and associated ideas of economic and social justice replacing traditional social orders accentuated the divide between citizen and non-citizen, those with privileged claims on state resources and those without. At the same time as state and society increasingly came to be equated with each other the legal order was put explicitly to serve social ends.

The transformative effect of globality is to promote a new cosmopolitan version of social and economic justice that challenges the rights of citizens over non-citizens and limits the scope of national systems of social and economic justice to discriminate on grounds of birth or place of origin. The sheer administrative impossibility of treating all claims as justiciable in a time of an international division of labour, mass travel, and transfers of residence leads nation states to blur citizenship boundaries, to make reciprocal arrangements with other states and thus to expose their own social order to negative comparative evaluations by civil society groups. Social justice has therefore escaped the boundaries of national community, and even where national claims to citizenship are the focus of concern, as in Japanese-Korean relations (see Hwaji Shin, Chapter 14, Box 14.1) the wider world community exercises a critical influence. For global civil society it is axiomatic that national legal systems must be open to criticism from outside, from abroad and from within, and however much global civil society relies on national authorities to administer justice, their performance has always to be judged by standards that can never be purely those of the particular nation state. At the same time there is no longer an appeal to an agreed source of those standards in divine or natural law. So where do they come from? Whose right is to declare them? Is the most likely outcome that described by Fang-Long Shih in Taiwan, where we only have fractures and discontinuities between state apparatus, religious idioms and civic organisations? Is there no authoritative source, and all we have is a struggle of opinion?

The classic rationalist tradition of theorising justice from Kant to Rawls seeks to ground it in formal principles disregarding the particular substance of any claim, whether by invoking a categorical imperative or arguing the case for fairness behind a veil of ignorance. In either case the quest behind the reasoning is for a set of axioms that can command universal acceptance. But ratiocination is not the only source of law. As Millie Creighton shows, the strength of the campaign to export Article 9 of the Japanese Constitution depends not on its legal form but on the depth of a local experience that becomes exemplary and paradigmatic for the world.

Our dominant concern in this transformative process is to help channel the intellectual enlightenment that arises out of practical engagement with global issues back into the mainstream of academic thinking. In his foreword to the first edition of this Yearbook Anthony Giddens (2001: iv) summed up its editors' vision with the concluding words 'that the Yearbook project itself should be an ever-deliberative exercise in global civil society'. This phrase refuses the separation of thought and action, and invites academic/practitioner collaboration. And in being both 'global' and 'civil' it reflects very well the emerging boundary crossing practices of our time that challenge older nation-state definitions of the proper separations between public and private, legal and moral, personal and political, foreign and domestic. It implies, in other words, a profound ontological shift toward concepts and categories becoming the outcome, and not the frame, of global civil society practices.

If global civil society practitioners are the organic intellectuals of the global age, in rejuvenating old ideas and generating new ones by addressing the challenges that cross borders and outstrip the capacities of any single community, they need to reconsider and recast their legitimacy to act in a dynamic manner. For their legitimacy cannot be taken for granted or assumed to reside in their cosmopolitan intentions. Their aspirations to engage in justice debates need to engage with already existing claims of injustices and the perceptions of justice that are implicit in these claims.

Conclusion

There are some simple observations for today that we can make about justice that parallel Hume's plain statements from 250 years ago. People's needs and sufferings make others think how unjust their circumstances are. Injustices are the motivation for actors to engage with others' lives and this engagement makes them think about the nature of justice. In other words, justice is a category that is defined and redefined on the basis of its absence. The diverse contexts of engagement with the globality of injustice produce the challenge to rethink justice in our time.

From our discussion we would like to draw out five potentially transformative processes at work in the response of global civil society to that challenge: the drive to restore the primacy of justice over law; the legitimising of felt injustice; the cosmopolitanisation of social justice claims; the collectivisation of felt injustice; and the expansion of the space/time scope of justice. Their interaction over the coming years will determine the possibility of developing any shared idea of justice belonging to humankind as a whole. Neither its nature nor its existence is a foregone conclusion.

There was a time when intellectuals would have said that differences in the concept of justice between contexts and cultures depended on the level of civilisation. In other words, they could all be ordered along the same dimension. We no longer have confidence in this formula for we have learnt that the capacity of human beings to manage their relations between each other in accord with a shared idea of justice varies independently of the advance of knowledge and technology. Perhaps the best we may hope for is that concepts of justice may develop that can persuade enough people to work together to arrest a headlong rush to collective self-destruction. It is for the reader to judge how far the efforts of global civil society actors to remedy injustices measure up to this minimum requirement.

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CHRONOLOGY OF SELECTED GLOBAL CIVIL SOCIETY EVENTS RELATING TO THE GLOBAL FINANCIAL CRISIS

April 2009–March 2010

26 June 2009, Canada
The Global Social Economy Group (GSEG), an umbrella group of trade unions, NGOs and other civil society groups, critically assesses the outcome of the United Nations economic conference on the financial crisis. The GSEG award the collected governments a meagre score of 11 out of a possible 35 points, expressing the failure of the UN conference to adequately provide resources necessary for developing countries to cope with the ongoing crisis.

5 October 2009, Belgium
Thousands of farmers from across the European Union demonstrate outside the EU's Brussels headquarters during a meeting of agriculture ministers to protest against falling milk prices.

7–10 July 2009, Italy
Anti-globalisation protesters are arrested in Rome, as leaders gather for the G8 summit.

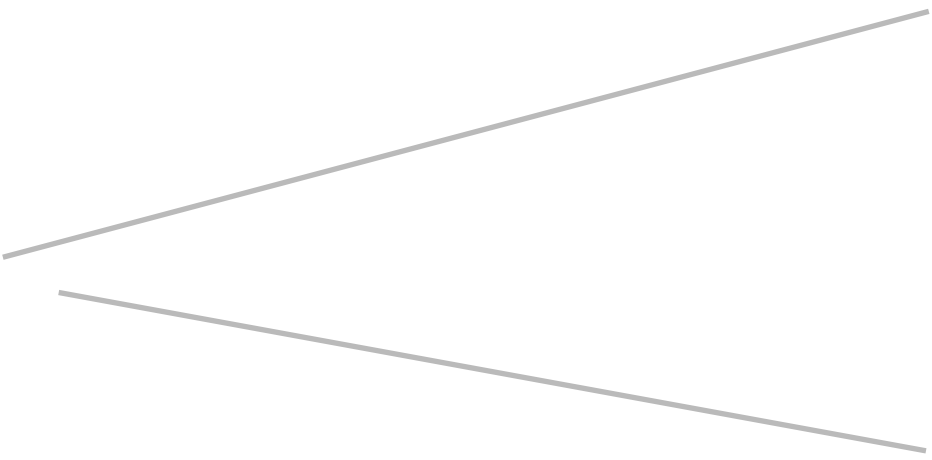
24–26 June 2009, USA
The UN Conference on the World Financial Crisis and its Impact on Development is held in New York and attended by world leaders and more than 200 representatives of civil society organisations to suggest measures for mitigating the effects of the financial crisis on emerging economies and developing countries.

24 April 2009, USA
Global Justice Action, an anti-capitalist group, organises anti-IMF and anti-World Bank protests during the latter's spring meetings, reacting against the pledged US$1.1 trillion rescue fund agreed by the G20 at the London Summit, whilst highlighting the lack of sufficient aid pledged for Africa.

24–28 January 2010, Brazil and worldwide
The World Social Forum celebrates its tenth year by decentralising its annual event in favour of events around the world throughout the year bound together by the theme of crisis, referring not just to the economic crisis but to crises of environment, food, energy and humanitarian crises. The decennial begins with a meeting in Porto Alegre, Brazil, with further events scheduled throughout 2010.

26–28 March 2009, Peru
World Social Forum thematic summit on 'Civilization Crisis, Good Living and Alternative Paradigms' is held in Cuzco.

1–2 April 2009, UK
In the midst of the global financial downturn, the London Summit 2009 brings together the leaders and finance ministers of the G20 countries to discuss institutional and regulatory response and reform. The summit sparks the ire of international protesters who call for systemic change mostly aimed against globalised capitalism, though the date becomes a rallying event for other activist groups and campaigners to call attention to anti-war and climate change issues. Violent clashes between London police and protesters lead to hundreds of arrests and injuries as well as the death of an innocent bystander assaulted by riot police.



2 April 2009, Serbia
Serbia agrees to austerity measures, including wage- and pension-freezes, in order to secure a €3 billion loan from the IMF. Trade unions representing hundreds of thousands of state sector employees threaten protests unless government officials are also subject to the spending cuts.

6–7 October 2009, Turkey
In Istanbul, the annual meeting of the IMF and the World Bank is greeted with anger as more than 100 anti-globalisation protesters demonstrate near the meeting venue.

1 May 2009, Europe
The first International Labour Day of the global financial crisis sees an increase in protests across Europe. Registered events, protests, and marches in France approach 300, attracting between 465,000 and 1.2 million people. In the world's developing nations and for those in irregular or informal employment, however, the spirit of the day has not yet marked relief from economic insecurity, poor working conditions, or child labour. For example, in Rwanda, irregular workers note the day, but are unable to surrender a day's worth of earnings to recognise it.

PART I

Forgive and Forget? Collective Memory and the Quest for Justice

INTRODUCTION

GLOBAL CIVIL SOCIETY: CONTEMPORARY RENEGOTIATIONS OF THE PAST

Mary Kaldor and Sabine Selchow

In 2005, a field of 19,000 square metres containing 2,711 grey slabs was inaugurated as Germany's 'Memorial to the Murdered Jews of Europe'. From above it looks as if the ground is moving, as if a wave was about to engulf its surroundings – the nearby Brandenburger Tor, the Reichstagsgebaeude, which is the seat of the German government, the Fuehrerbunker and the site where Hitler's Reichskanzlei used to be. Situated in the heart of Germany's (new and old) capital, Berlin, the site could not have been more symbolic. The inauguration followed years of intense and complex debate within civil society – about whether it is possible to represent something that is beyond the human imagination, about who and which victims were being memorialised, about the dangers of closure and whether Germany should or could ever 'move on', and how. Fundamentally, the memorial is about how Germany sees itself. It was not a memorial demanded by victims; it was clear to everybody that this was not so much a debate about the history of the Holocaust, that it would not replace the importance of the historical sites of the mass murder and their crucial educational task. The Holocaust Memorial, as it is usually called, was from the beginning about contemporary Germans and their collective future. As Juergen Habermas suggests (1999), the existence of the memorial means that future generations of Germans cannot avoid taking a position on what the Holocaust means to their collective identity

The identity of modern nation states has tended to be associated not with past crimes but with past victories (or defeats) in war. British identity, for example, has something to do with Agincourt, Waterloo or the Second World War. Serbians remember the defeat of Prince Lazar by the Turks at the battle of Kosovo Polje in 1389. These memories are reproduced and embedded by a civil society that is contained within mental or territorial national borders. The chapters in this part of the Yearbook, by contrast, are about the victims in wars and genocides. They are about the role civil society plays in these global times in reconstructing memories of the tragedies that were generally left out of national narratives.

On the one side, these chapters tell us something about the complex global interconnections and networks of actors that are involved in the struggle over the opening, (re)writing and closing of national collective narratives. They show us the interplay of global frames and local claims. Heisoo Shin, for instance, provides a detailed account of the formation and globalisation of the South Korean 'Movement for the Victims of Japanese Military Sexual Slavery'. She traces the movement's struggle to make South Korean 'comfort women' 'visible' and to inscribe them into Japanese collective memory. Shin highlights the role played by global civil society actors and how they resulted in what Keck and Sikkink (1998) call a 'boomerang effect' in strengthening the struggle for the recognition of the existence and suffering of these 'comfort women', and helping to change the way the Japanese remember what happened in the Second World War. Today, the notion of 'comfort women' itself has become part of the vocabulary of the global human rights regime; as such, the story is about a double boomerang. It has not only opened up the Japanese narrative of its past but also serves other global activists as a strategic point of reference in their own struggles, substantiating the notion of gender-related war crimes.

A similar dynamic of global and local interplay is captured in Fang-Long Shih's chapter about the 'White Terror' in Taiwan. Here, the link between local activists and global civil society, especially Amnesty International, not only served as an international shield in the face of the arrest of political activists. It also helped to break down the discursive barrier, which accounted for the closeness of Taiwanese society, namely the social order that was naturalised through the Confucian ethical injunction that 'juniors' cannot punish 'seniors'. As we learn from Shih, it was the rewriting of this injunction that opened the country and started the democratic transition in Taiwan.

But the chapters in this part are not just about the interconnectedness of civil society actors and the significance and power of global networks and links in the rewriting of national collective narratives. They also raise questions

about the very nature of collective national narratives and national identities in contemporary times. It is not only that national narratives are opened up and extended through global exchanges, but there are also new *types* of narratives that arise today and, in fact, that are needed in order to avoid and overcome contemporary conflicts. Thus Elazar Barkan addresses the critical issue of 'conflicts over historical narratives', as in Israel and Palestine. Barkan stresses the political responsibility of historians to engage in civil society in order to 'facilitate a counter-movement to the claims by nationalists in many countries who perpetrate propaganda and historical mythologies under the guise of history aiming to inflame conflict'. For him, historical scholarship can serve as a form of conflict prevention in that it can, based on historical facts, construct 'a powerful counter-narrative that can inform public discourse and undermine the nationalist exclusionary claims of truth well before a crisis takes hold', 'a narrative that bridges the differences' between the conflicting partners. In a similar vein, in their chapter on forgiveness, Ruth Kattumuri and Amalie Kvame Holm highlight the task of civil society to the 'individual concerns' of the victims as the basis for the creation of new narratives, 'a new vision of society' that makes 'forgiveness' possible and overcomes trenches.

In other words, it is not so much the interplay of global civil actors that is important but the way the 'other' is reconceptualised in the context of globalisation. Indeed, this may be at the heart of what we mean by global civil society. The 'Memorial to the Murdered Jews of Europe' is a materialisation of new attempts to inscribe the other and the suffering of the other into one's own collective memory of the past (see Habermas 1999). By telling the story of what happened to the 'other', civil society constructs collective narratives that are different in kind in that they include the 'other' in new ways and draw on memories of past crimes as well as achievements.

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CHAPTER 1

SEEKING JUSTICE, HONOUR AND DIGNITY: MOVEMENT FOR THE VICTIMS OF JAPANESE MILITARY SEXUAL SLAVERY

Heisoo Shin

On 13 January 2010, several hundred people, including a few surviving former 'comfort women,' rallied in the freezing –15 °C weather in front of the Japanese embassy in Seoul, Republic of Korea, demanding legal reparation from the Japanese government. This was the 900th Wednesday demonstration, a weekly event that first started on 8 January 1992 and continued for the next 18 years.

'Comfort Women':[1] From Invisible to Visible

Who are the 'Comfort Women'?

The 'comfort women' – who are they? They are the victims of the Japanese military sexual slavery before and during the Second World War. It is estimated that as many as 200,000 girls and women from Korea, Taiwan, China, Philippines, Malaysia, Indonesia, East Timor, Japan and the Netherlands were forcibly drafted or tricked into service as 'comfort women'. Most of the 'comfort women' were Korean since Japan annexed and colonised Korea from 1910 to 1945.

In early 2010, two more survivors passed away, leaving a total of 86 known survivors in their eighties and nineties out of the total 208 officially registered victims in South Korea. It is very possible that there are more survivors who have not come forward. But it is not easy to reveal your identity as a former sex slave.

After the Second World War, the International Military Tribunal for the Far East was set up in 1946 to prosecute the war crimes by Japan. The Tribunal was run by twelve judges and eleven prosecutors who were from the US, the UK, France, Australia, New Zealand, the Netherlands and the USSR, as well as China, India and the Philippines. The chief prosecutor was an American, and thus the US played a key role.

The Far Eastern Military Tribunal did not recognise crimes against the 'comfort women', despite much evidence available to the US military. In contrast, another military tribunal held in 1948 in Batavia, Indonesia, prosecuted crimes against the Dutch 'comfort women' and sentenced Japanese officers and soldiers to death or imprisonment.[2]

Postwar South Korean-Japanese Relations and the 'Comfort Women' Issue

In the early 1960s South Korea and Japan began negotiations to normalise their diplomatic relations. During this process, however, the 'comfort women' issue was neither recognised nor raised. In 1965, against fierce objections from student movements and civil society, the Korean military government finalised the agreement with Japan in which it received financial aid in the form of economic cooperation; US$300 million as compensation for the colonisation and US$200 million as a loan.

Koreans drafted as forced labour during the Second World War received some compensation, but 'comfort women' were not even recognised. Without open or detailed discussions of the extent of damages and victimisation, the agreement concluded that all other claims related to the war or colonisation would be null and void. This later became the source of dispute between the two countries.

Forming a Coalition to Address Military Sexual Slavery – the Korean Council

Initial public awareness of the 'comfort women' began in 1988. Professor Yun Jung-Ok of Ewha Womans University made a trip to Japan in search of the evidence of the 'comfort women' and presented her findings to the international symposium on Women and Tourism Culture organised by Korea Church Women United. After the symposium a task force was formed to further examine the issue. The visit of South Korea's President Roh Tae-Woo to Japan in May 1990 provided momentum. The subsequent discussions in the Japanese Diet included a statement by a Japanese government official that the recruitment of the 'comfort women' was done by private entrepreneurs.[3] This denial prompted 37 women's rights and social movement organisations to form a coalition which established the Korean Council for the Women

Drafted for Military Sexual Slavery by Japan (the Korean Council) in November 1990. The Korean Council consisted mostly of women's organisations, including the Korea Women's Hotline and Korea Women's Associations United, but also included a few religious organisations such as the Buddhist Human Rights Committee and the National Council of Churches. At the time, nobody expected that the coalition would last for two decades.

The First Victim Comes Forward

The following year, Kim Hak Soon decided to come forward with her story and contacted the Korean Council. After her story was aired on television on 14 August 1991, other survivors soon followed her lead. One month later, the Korean Council installed a hotline for the survivors, and their stories began to emerge.[4] The 50 years of silence was broken and the invisible victims stepped out into the visible world.

The emergence of many survivors prompted the Korean government to form an inter-ministerial committee to handle the 'comfort women' issue. The Ministry of Health and Welfare announced that survivors could be officially recognised as victims of Japanese military sexual slavery after verification of records. Moreover, with the passage of the 1993 legislation,[5] victims began to receive a monthly subsidy and free medical care, and were given the right to rent public housing. They also received a one-off lump sum of 5 million won (approximately US$5,000).

Seven Demands to the Japanese Government

In January 1992, during the then Japanese Prime Minister Miyazawa's visit to Seoul, the Korean Council organised a protest in front of his hotel. This was the beginning of the now-famous weekly Wednesday demonstrations that have continued for 18 years. The Korean Council made the following demands to the Japanese government on behalf of the victims:

- Acknowledgement of the crime
- Full disclosure of the facts
- Formal apology
- Legal reparation
- Erection of a monument
- Correct description in history textbooks
- Punishment of those responsible (added in 1993)

The government of Japan, however, did not accept any of the above demands. Its position has only shifted a little over time; from 'no involvement of the army at all', to the 'partial involvement of the army, but with no coercion', and finally to admission of 'partial involvement of the army with partial coercion'. But Japan steadfastly maintained 'no legal responsibility on the part of the Japanese government'.

Bringing the Issue to the International Arena

The Japanese government's refusal to admit any legal responsibilities for its military's wartime sexual slavery forced the Korean Council to seek out a new strategy – an international appeal. Beginning with its first participation in the UN human rights system in 1992, the Korean Council began its tireless efforts to appeal to the international community over the next two decades.

The First Oral Interventions and Testimony by Survivors at the UN

In August 1992, four representatives from the Korean Council, including Ms Hwang, a survivor, and myself, attended the Sub-Commission on Prevention of Discrimination and Protection of Minorities[6] held in Geneva. This was not only my first participation in the UN human rights mechanism but also the first attempt by a Korean civil society organisation. I had to learn quickly how to register myself, how to make an oral intervention, how to lobby the independent experts of the Sub-Commission and how to handle the press at the Palais des Nations.

On behalf of the Korean Council, two interventions were made – one on the agenda item of contemporary forms of slavery and the other on compensation. And to advocate the 'comfort women' issue more effectively, we held the first press conference at the Palais des Nations, on the morning of 18 August 1992. Ms Hwang talked about how she was forcefully drafted, about her unbearable ordeal as a 'comfort woman', and her life of shame upon her return to Korea. After the press conference, an ABC reporter interviewed Ms Hwang. But there was not a single Korean media correspondent covering this event in Geneva.

At the subsequent public testimony, about 100 people attended to hear what a former 'comfort woman' had to endure. This historic event took place largely due to the efforts of NGOs from two countries: the Korean Council in Korea and the Fact-Finding Group on Forced Displacement of Koreans in Japan. Ms Hwang's testimony attracted the attention of the media, as well as the human rights NGOs and the governments concerned that were participating in the Sub-Commission, such as South and North Korea, Japan, the Philippines and the Netherlands.

The Issue is Brought to the UN Commission on Human Rights

The initial success at the Sub-Commission encouraged the Korean Council to push its advocacy through the UN Commission on Human Rights. In contrast to the Sub-Commission, which is composed of independent experts who conduct studies on various issues of human rights, the Commission on Human Rights is an inter-governmental body, composed of government delegates. While any issue relating to human rights could be tabled for discussion, the adoption of a resolution was dependent upon highly political decisions or negotiations.

The financial burden allowed the Korean Council to send only one person, myself, to the Commission. The oral intervention was made on agenda item 19, the report of the Sub-Commission. I repeated the arguments we had made at the Sub-Commission, asking for the UN's investigation into the issue of military sexual slavery by Japan.

This time, there was a public forum prepared jointly with the Western victims of the Second World War who were prisoners of war, from Canada, Australia, the UK, and so on. For the first time I met a Dutch 'comfort woman', Ms van der Ploeg, who was a member of the Dutch Foundation of Japanese Honorary Debt and very much wanted to speak. I was highly disappointed, however, at the attitudes of the Western men. She was not given a chance to speak as a panellist, despite my suggestion that I would give her half my allotted 15 minutes. After the forum, I received much feedback and advice from my friends that I should not work together with these men on the issue of Japan's war responsibilities.

Testimonies at the Working Group on Contemporary Forms of Slavery

Our next targeted body was the annual meeting of the Working Group on Contemporary Forms of Slavery, which met in May 1993. This group was composed of five experts from the Sub-Commission. Unlike the Sub-Commission or the Commission that required oral interventions made in one of the six official UN languages (English, French, Spanish, Russian, Chinese and Arabic), the Working Group allowed survivors to give the testimonies in their own language. A South Korean survivor and a North Korean survivor told their stories. A presentation focusing on victims in the Philippines and another presentation on the judgement of the Dutch Military Tribunal in Batavia followed. A video presentation on the Tokyo International Public Hearing was also made which was followed by a presentation on legal issues.

Theo van Boven, as the UN Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, had sent a letter to the Working Group in advance. His letter indicated strong support for examining the issue of sexual slavery:

> if this is the wish of the Working Group, he is ready to undertake a study on the situation of women forced to engage in prostitution during wartime on the basis of the documentation received by him and in the light of the basic principles and guidelines which will be included in his final report to the Sub-Commission. (van Boven 1993)

The Japanese government struggled to block any resolution on the issue by the Working Group by arguing that the UN was 'not an organ for discussing past issues of particular countries, especially which occurred before its establishment'. While the Japanese government denied any legal responsibilities, it hinted about the possibility of compensation through a charity: 'apart from any legal aspect of the matter, the Government of Japan is now giving serious consideration as to how it might best convey its feelings of compassion to those who suffered' (Japanese delegation statement 1993).[7]

The 1993 Vienna World Conference on Human Rights

Another opportunity to raise the issue was at the UN World Conference on Human Rights held in Vienna in June 1993. During the Vienna Conference, the Center for Women's Global Leadership (CWGL) at Rutgers University organised a Global Tribunal on Violations of Women's Human Rights. I was involved in establishing and running the Center during my doctorate programme at Rutgers and maintained my involvement after returning to Korea.

At the Tribunal, 33 women from 25 countries gave vivid testimonies in five areas: human rights abuse in the family, war crimes against women, violations of women's bodily integrity, socio-economic violations of women's human rights, and political persecution and discrimination. In the section on war crimes against women, Kim Bok-Dong, a South Korean survivor of Japanese military sexual slavery, gave her testimony. Acting as a 'judge' at this Tribunal, Ed Broadbent, former Canadian MP and president of the International Center for Human Rights and Democratic Development, stated that rape, forced

prostitution and forced pregnancy in times of war are forms of torture and crimes against humanity, which must be prosecuted.[8]

The report of the Tribunal was orally submitted to the World Conference on Human Rights by Charlotte Bunch, director of CWGL, and Florence Butegwa, coordinator of Women in Law and Development in Africa (WILDAF). One of their seven recommendations was the establishment of a Special Rapporteur with a broad mandate to investigate violations of women's human rights.

At the closing of the conference, the Vienna Declaration and Programme of Action was to be adopted. The draft document contained a section titled 'The equal status and human rights of women', under which paragraphs 36–44 covered various aspects of women's human rights. Regarding violence against women in war, draft paragraph 38 read as follows (my italics):

> In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women … Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. *Violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.* (UN 1993)

The Japanese government wanted to block any possibility that the 'comfort women' issue would be expressed in the above language and therefore tried to change the sentence to read '*Current* violations of this kind, including in particular' (my italics.) Together with Etsuro Totsuka, a Japanese lawyer, I appealed to the government delegates against the Japanese government's attempt to change the wording, distributing handouts for many days at the entrance of the conference room. The result was a victory for the Korean Council. Instead of 'Current', the word 'All' was inserted.

The 1995 Beijing World Conference on Women

After the Vienna World Conference on Human Rights, several similar tribunals took place at the UN World Conferences, especially at the Fourth World Conference on Women held in 1995 in Beijing, China.[9] The Beijing Conference was unprecedented in terms of magnitude and enthusiasm of NGO participation, involving around 40,000 women and men. The demand clearly expressed at the Vienna Conference to define 'women's rights as human rights' grew even louder and was crystallised at the Beijing Conference.

The Korean Council organised an Asian Tribunal on Military Sexual Slavery by Japan, where South Korean 'comfort woman' victim Jung Seo-Un, and supporting organisations from North Korea, Taiwan and the Philippines, made presentations on the situations of the victims and their associations.

In addition to advocacy activities at the NGO Forum, I also participated in the official Conference to lobby the government delegations again. The Women's Conference discussed the draft Beijing Declaration and Platform for Action, which contained twelve critical areas of concern, including the area of 'women and armed conflict'. The Beijing document represented a step forward from Vienna by adding punishment of the crime against women during wartime and compensation for the victims (UN 1995).

The First Fruits of Success and Japan's Defence

The Appointment of a Special Rapporteur on Systematic Rape and Sexual Slavery During Wartime

The first testimonies at the UN delivered directly by North and South Korean survivors of military sexual slavery had produced a report of the Working Group to the Sub-Commission in May 1993, which set out a favourable environment for our campaign. In August, the Korean Council had participated in the Sub-Commission for the second time, and our goal was to appoint a Special Rapporteur to study the 'comfort women' issue.

We collected and analysed information about each of the 26 experts of the Sub-Commission, their positions regarding the 'comfort women' issue and also their competence. One European expert was highly respected and influential because of her expertise, but took a position that Japan had a moral, rather than legal, responsibility for the 'comfort women'. An African expert was quite antagonistic to the 'comfort women' issue, believing that anything related to colonialism would turn the clock backward. The biggest problem was, however, the presence of a Japanese expert, whose position mirrored that of the Japanese government. There was no Korean expert on the Commission. The Chinese expert, while understanding the issue, was inactive, reflecting his government's reluctance to raise the issue at that time. Under these circumstances, it seemed almost impossible to have a Special Rapporteur appointed.

The Korean Council shifted its strategy to include the issue in a broader mandate, which would be to study any wartime crimes of systematic rape and sexual slavery. During the 45th session of the Sub-Commission in August 1993, the Korean Council made several interventions and succeeded in persuading the Sub-Commission to adopt a resolution to appoint a new Special Rapporteur to conduct a study on systematic rape, sexual slavery and slavery-like practices during wartime, including internal conflict. Linda Chavez, an American expert, was appointed as the Special Rapporteur and was expected to submit a preliminary report at the 46th session in 1994 and her final report at the 47th session in 1995.

This must have been the swiftest success achieved by any NGO in the UN's human rights mechanism history. Just one year previously, the NGOs had tabled the issue of 'comfort women' to the Sub-Commission on Human Rights. Now with the appointment of a Special Rapporteur, the serious violation of human rights against 'comfort women' was to be examined.

To our surprise and dismay, however, the appointment of the Special Rapporteur was blocked. The Commission held in early 1994 did not approve the Sub-Commission's decision, citing too many studies commissioned by the Sub-Commission.

An innovative strategy was devised to push for the reappointment of the Special Rapporteur. We offered to relieve the financial burden of the UN by covering the costs associated with travel and accommodation through fundraising. The strategy succeeded so that the 1994 Sub-Commission rediscussed the matter and requested Ms Chavez to submit a working paper on the situation of systematic rape, sexual slavery and slavery-like practices during wartime to its next session in 1995.

The UN Commission's Special Rapporteur on Violence Against Women

In 1994, the UN Commission on Human Rights made a remarkable decision. In response to the demands of women's organisations at the Vienna Conference, the Canadian government proposed the appointment of a Special Rapporteur on violence against women. The women's groups, NGOs, and the Canadian delegation worked very closely on the content of the draft resolution, especially the mandate and name of the Special Rapporteur, which was finally agreed as the Special Rapporteur on violence against women, its causes and consequences. After heavy lobbying by the women's groups, a Sri Lankan lawyer, Radhika Coomaraswamy, was chosen as the first Rapporteur.

As the Korean Council wanted the new Special Rapporteur to conduct a study into the issue of Japanese military sexual slavery, I felt that the most effective way to persuade her would be visiting her in her home country. I met Ms Coomaraswamy at her office at the International Center on Ethnic Relations in Colombo. After a two-hour conversation, the Special Rapporteur willingly accepted my request and agreed to take the issue of 'comfort women' as the subject of her first mission.

Two UN Mission Trips in 1995 on the Issue of Japanese Military Sexual Slavery

Now the Korean Council had successfully secured two Special Rapporteurs committed to work on the 'comfort women' issue – the Special Rapporteur of the Commission on Human Rights on violence against women and the Special Rapporteur of the Sub-Commission on systematic rape, sexual slavery and slavery-like practices during wartime. Both Special Rapporteurs made their trip to the countries concerned in 1995.

During 20–31 May 1995, Ms Chavez, the Sub-Commission's Special Rapporteur, took a mission trip to the Philippines, the Republic of Korea and Japan and interviewed surviving 'comfort women', former soldiers of the Japanese Imperial Army and representatives of NGOs, including the Korean Council. She also met with the government officials of the three countries. As requested, she submitted her working paper after the trip (Chavez 1995) to the 47th session of the Sub-Commission in August 1995. In the following year, Chavez submitted her preliminary report (Chavez 1996), in which she outlined the history of systematic rape as instrument of policy, the relevant existing international law norms, responsibility, forums with potential jurisdiction, sanctions, reparations, deterrence and prevention, problems such as impunity, and then conclusions and recommendations. On 13 May 1997 she sent her letter of resignation to the High Commissioner at the Centre for Human Rights, expressing her wish that the study be continued by another member of the Sub-Commission. She was subsequently replaced by a new expert nominated by her government.

Radhika Coomaraswamy, the Commission's Special Rapporteur on violence against women, its causes and consequences, conducted a study mission in South Korea and Japan in July 1995. She was scheduled to visit North Korea as well but was unable to do so due to flight problems; instead, her representative visited

North Korea to collect information. During her visits, Ms Coomaraswamy met with about 80 people, individually or in groups, including government officials, representatives of women's organisations, lawyers, historians and researchers, and the press. Most important were 15 former 'comfort women' in North and South Korea.

The Coomaraswamy Report on Japanese Military Sexual Slavery

The findings of the Special Rapporteur's study mission were published in January 1996 and submitted to the 52nd session of the UN Commission on Human Rights. Entitled 'Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime' (UN 1996), it explained the historical background, the positions of the governments of North Korea, South Korea and Japan, and included the following recommendations addressed to the government of Japan:

- Acknowledge that the system of 'comfort stations' was a violation of international law and accept its legal responsibility for that violation.
- Pay compensation to individual victims of Japanese military sexual slavery according to the principles outlined by the Sub-Commission's Special Rapporteur on the right to restitution, compensation and rehabilitation for the victims of gross violations of human rights and fundamental freedoms.
- Make a full disclosure of documents and materials in its possession with regard to 'comfort stations' and other related activities of the Japanese Imperial Army during the Second World War.
- Make a public apology in writing to individual women who have come forward and can be substantiated as women victims of Japanese military sexual slavery.
- Make awareness of these issues by amending educational curricula to reflect historical realities.
- Identify and punish, as far as possible, perpetrators involved in the recruitment and institutionalisation of 'comfort stations' during the Second World War.

The Special Rapporteur added three recommendations at the international level. First, NGOs should continue to raise these issues within the UN system, including seeking an advisory opinion of the International Court of Justice or the Permanent Court of Arbitration. Second, the North Korean and South Korean governments may consider requesting the International Court of Justice to help resolve the legal issues concerning Japanese responsibility and payment of compensation for the 'comfort women'. Third, the Japanese government should act upon the above recommendations as soon as possible.

During the 52nd session, the Japanese government lobbied hard, and tried everything to block the adoption of the Special Rapporteur's report by the Commission. There was even a non-paper secretly circulated to the member states of the Commission, which the government of Japan had to deny the existence of (Totsuka 2001).

For the adoption of the Special Rapporteur's report, the Korean Council sent four representatives to the Commission session. Working with the NGOs from other countries, the Korean Council representatives formed the International Coalition to support the Report of the Special Rapporteur, and urged the Canadian delegation to initiate the resolution that the Commission should adopt the Special Rapporteur's report. The result of all pleas, persuasions, negotiations and even threats was reflected in the language of the resolution: the Commission on Human Rights '*welcomes* the report of the Special Rapporteur on violence in the family [UN 1996] and *takes note of* her report on the mission' (my italics). The phrase 'takes note of' was used by the Japanese government to distort the reality and to imply that the Special Rapporteur's report was not accepted by the Commission. The fact is that the Commission did accept the report.

The Japanese Asian Women's Fund versus Legal Accountability

Despite the recommendations of the Special Rapporteur on violence against women, the government of Japan has responded in the most passive and resistant manner. Even with acknowledgement of the operation of 'comfort stations' by its army, the Japanese government had maintained the position that everything was settled by the San Francisco Peace Treaty and bilateral treaties.

In August 1994, Japanese Prime Minister Tomiichi Murayama issued a statement expressing his 'sincere and profound remorse and apologies on the issue of wartime "comfort women"'. In the following year, marking the 50th anniversary of the end of the Second World War, the government of Japan announced the establishment of the Asian Peace and Friendship Fund for Women, which became known as the Asian Women's Fund. The Special Rapporteur on violence against women was informed that the fund was established as an effort 'to find an appropriate way to enable a wider participation of the

people to share the feelings of apology and remorse'. It was made clear that the fund would offer 'atonement money' to the surviving victims in only three countries: the Republic of Korea, Taiwan and the Philippines.

During the Fund's operation from 1995 to 2007, confrontation against the fund by the 'comfort women' survivors and their supporting organisations, especially the Korean Council, continued. In the three countries, accepting the atonement money by some victims has created divisions and conflicts among the organisations and the victims themselves.

Since the establishment of the Fund, the debates on Japanese military sexual slavery at the UN Commission on Human Rights had been focused on the Fund. The government of Japan argued that the fund was the necessary assistance for victims, accompanied by the Prime Minister's letter of apology. The Korean Council and other NGOs fought against the Japanese government's denial of any legal responsibility. An additional obstacle was the misconception of the fund by the Western media, which misinterpreted it as implying an 'apology' or 'compensation'.

In truth, the money from the fund was not compensation but an act of charity. The so-called series of 'apologies' by successive Prime Ministers of Japan did not represent an official apology. When a Prime Minister expressed his 'apology', he was acting as an individual, not in his official capacity. At the same time, other members of the cabinet would repeat remarks such as 'it was good that Japan colonised Korea' or 'the Asia Pacific War was to liberate Asians from the Western imperialism'. Former Prime Minister Shinzo Abe rejected his previous government's official position and said that 'there was no evidence of forcible mobilisation of the "comfort women"'.

The Korean Council objected to the Asian Women's Fund, since the Fund was not a legal compensation but an expression of charity for the victims. The government of Japan clearly and steadfastly maintained that the military sexual slavery was not in violation of international law and thus the Japanese government had no legal responsibility. Under these circumstances, the Korean Council was certain that receiving the money would disempower the victims in their struggle for justice and dignity. The Korean Council confronted the Asian Women's Fund by raising its own funds for the survivors and by demanding that the Korean government provide the same amount to the survivors.

Unlike the Korean Council, the Filipino organisation could not agree and as a result it was divided into two. In Taiwan, the victims and the Taipei Women's Rescue Foundation maintained the same position as the Korean Council. In South Korea, since the passage of legislation in May 1993, the victims have been financially supported by government funding. Similarly, the Taiwanese government has provided a considerable amount of money, about US$40,000, to each survivor. On the other hand, the Filipino victims were not provided with any tangible support.

As the majority of victims continue to refuse to receive charity money from the Asian Women's Fund, the initial offer of 2 million yen was raised to 5 million yen. The additional money was allocated from the Japanese government budget, which clearly showed that the fund was established to avoid the legal responsibility of the state. To some victims in needy situations, the manoeuvring of the Asian Women's Fund and its offering of considerable sums of money were hard to refuse. In January 1997, the Fund announced that seven Korean survivors had received money. Only then did the Korean government realise the need to provide similar amounts to the survivors. In 1998, the Korean government decided that each surviving Korean victim would receive an additional 38 million won.

No one from Taiwan received money from the Fund. The Filipino government had expressed its positive recognition of the Fund when Japan announced its establishment. All except one of the Filipino victims accepted money from the Fund. At the end of its operation, the Asian Women's Fund announced that 285 former 'comfort women' from the Republic of Korea, Taiwan and the Philippines had accepted the atonement money, but neither the number from each country nor the names of the recipients was made public. One South Korean victim living in Daegu heard a rumour that her name was included in the list of recipients. She demanded verification from the Asian Women's Fund, and only after repeated demands and a visit in person could she actually confirm that she had been included as a recipient. She announced in a press conference that she had never received the money.

The Final Report of Special Rapporteur McDougall of the Sub-Commission

In 1997, the Sub-Commission accepted the resignation of Linda Chavez, and Gay McDougall, the alternative member from the US, became the new Special Rapporteur. Being an international human rights lawyer, Ms McDougall quickly finished the final report on systematic rape, sexual slavery and slavery-like practices during

armed conflict as mandated (UN 1998) and submitted it to the 1998 Sub-Commission.

Her 62-page report detailed the arguments and the relevant aspects of the issue and reconfirmed the earlier position of Ms Coomaraswamy, the Commission's Special Rapporteur on violence against women. Ms McDougall's report used much stronger words – for example, defining the 'comfort stations' as rape centres. In the final part of her report, Ms McDougall concluded that 'the Japanese Government remains liable for grave violations of human rights and humanitarian law, violations that amount in their totality to crimes against humanity'. The Special Rapporteur found the Japanese government's claim – that Japan has settled all claims from the Second World War through peace treaties and reparations agreements – unpersuasive. According to the Special Rapporteur, when the peace and reparation agreements were negotiated, the Japanese government did not admit its military's direct involvement in the establishment and maintenance of the rape centres. This '… must, as a matter of law and justice, preclude Japan from relying today on these peace treaties to extinguish liability in these cases' (UN 1998).

Solidarity With Women's and Human Rights NGOs

Solidarity with the women's movements in Japan and other Asian countries

From the start, the women's movement in Japan showed solidarity with the Korean women's movement. When the issue of 'comfort women' was first raised in Korea, women in Japan responded immediately, and many small groups sprang up in various cities to learn about the issue. More than 30 women from Japan came to the first Asian Solidarity Conference in August 1992 in Seoul organised by the Korean Council.[10] The activities of the women's groups helped to raise awareness of the issue and make it visible in Japan. Various women's groups have invited survivors to Japan and held public forums where they would testify in public about the atrocities committed against them.

The alliance between the Korean and the Japanese women's groups, however, did not always progress smoothly, especially on the position taken by the government of Japan. When the Korean Council decided to raise the issue of punishment of those responsible, their Japanese counterpart resisted the idea. It was unimaginable to consider punishment, since it immediately raised the issue of the responsibility of the Japanese Emperor. After series of discussions, Japanese women's groups reluctantly approved the Korean Council's demand to raise the issue of war responsibility and punishment. In early 1994, the representatives of the Korean Council submitted to the Tokyo Prosecutor's Office a request for the indictment of those responsible in the Japanese Imperial Army during the Second World War. The Tokyo Prosecutor's Office, however, refused to even receive the submission.

There were also solidarity activities with other Asian victimised countries. The Philippines followed the Korean model and began demonstrations in Manila. Taiwan also joined in, as well as Indonesia and the Netherlands. China, however, was slow, and it was not easy to identify who was doing research on the 'comfort women' issue. Ultimately, the Asian Solidarity Conference on the Japanese Military Sexual Slavery became the venue to share information and come up with common strategies and future directions of the movement.

Critical Assistance by International NGOs

In raising the 'comfort women' issue through the UN human rights mechanism, the assistance of global civil society was critical. In order for the Korean Council to attend any sessions of the UN, accreditation was required. Only the NGOs with consultative status with the UN Economic and Social Council could get accredited and attend or speak at the meetings. A helping hand came from the World Council of Churches (WCC), a Geneva-based international NGO of ecumenical churches. During the initial years, the Korean Council participated in the UN Commission on Human Rights and its Sub-Commission as a member of the WCC. A few years later, the Korean Council was supported by another international NGO, the World Alliance of Reformed Churches (WARC).[11] After WARC, Asia Pacific Forum on Women, Law & Development, a women's network based in Chiang Mai, allowed the Korean Council to be accredited under its wing.[12] It was only in 2002 that the Korean Council could get accreditation through a Korean NGO with consultative status, Korea Women's Associations United.

Another international NGO gave a critical push in tabling the 'comfort women' issue in the international human rights discourse at the initial stage. The International Commission of Jurists (ICJ) accepted the request of the Korean Council to carry out a field mission on the issue of 'comfort women'. The ICJ commissioned two of its members, Professor Ustinia Dolgopol of Australia and Snehal Paranjape, an Indian lawyer, to conduct the study. In April 1993, the two women, excited

and committed, visited the Philippines, the Republic of Korea, the Democratic People's Republic of Korea and Japan. The report of the mission was published as a book in 1994 (Dolgopol and Paranjape 1994). Its concluded that Japan violated international law and was under obligation to pay compensation to the victims.

There were many individuals who provided indispensable help in the Korean Council's journey through the international human rights system, especially the work of Totsuka Etsuro, a Japanese attorney. His advice and guidance enabled the Korean Council to start its work at the United Nations human rights body actively and effectively from the beginning. Interestingly and significantly, he had already raised the issue of the 'comfort women' at the Commission on Human Rights in February 1992 upon the request of the Fact-Finding Team for the Forced Labor of Koreans in Japan. In addition, another foundation was laid in May by Mr Totsuka at an auxiliary body of the Sub-Commission, the Working Group on Contemporary Forms of Slavery. The International Abolitionist Federation, through the International Coalition against Trafficking in Women, also raised the 'comfort women' issue as an issue of trafficking and forced prostitution. Therefore, when the Korean Council attended and spoke about the 'comfort women' issue at the Sub-Commission, the base for discussion had been laid soundly.

International Advocacy Activities

As the 'comfort women' began to be known to the world, there had been invitations to the Korean Council to make presentations on the issue at various international gatherings. The issue of 'comfort women' was included in numerous conferences, workshops and seminars, such as a public forum at Georgetown University Law School in Washington DC, a discussion in Amsterdam organised by a national organisation and a seminar on 'Right to the Truth: Amnesty, Amnesia and Secrecy' sponsored by the Catholic Institute for International Relations in London.

I still remember one encounter very vividly at the Georgetown forum. After my talk, a Japanese graduate student at the school approached me in tears and apologised. The young Japanese woman didn't know the crimes Japan had committed during the Second World War, since she did not learn any of them at schools in Japan. Obviously, correct teaching and learning of history is very important.

International advocacy campaigns and trips abroad, often with the survivors, were a very meaningful and effective way of educating the public and publicising the issue. The survivors, however, after giving a testimony in public, had to re-experience and relive the anger, agony and pain. After a testimony, a survivor would typically break into a sweat and redden, and smoke in the bathroom, trying to calm down. In the initial years, there were frequent requests, especially from Japan, for public testimony by a survivor. On one occasion, a Japanese audience member asked a rude and insensitive question: 'So how much money do you want?' The survivor felt that such question was a real insult. All her courage to come out and talk about her painful and still 'shameful' experiences was met by a cold and insensitive response, reducing the issue to a mere matter of money. Before discussing any monetary compensation, it was important to first acknowledge the serious violation of human rights – the crimes of drafting, enslavement and coercing the 'comfort women' into sexual slavery. Compensation is what naturally follows from the criminal act.

Public Forums on Violence Against Women During War and Armed Conflict

Clearly, whether war crimes or crimes against humanity of a sexual nature committed in the past were punished or redressed would affect the crimes occurring today. In the initial years of its advocacy, the Korean Council organised public forums entitled the issue of 'comfort women'. Since 1997, however, the Korean Council has held public forums in Geneva with more expansive themes, focusing on violence against women during war and armed conflict.

In its struggle to seek justice and reparation for the Korean and other Asian 'comfort women' victims, the Korean Council learned about other violations. It was informed by women from Bangladesh that there was the same number of Bangladeshi women, about 200,000, who were raped by Pakistani soldiers during the independence movement. As the Korean Council became more familiar with the proceedings at the UN Commission on Human Rights and its Sub-Commission, it included in its public forum panel other cases of violence against women during wartime. These other cases included rapes in Myanmar by Burmese soldiers, especially against ethnic minority women, Sri Lankan rapes of women by both the government army and the Tamil Tigers, and the cases of women in Sub-Saharan countries who were raped by family members forced by the military.

Cooperation with North Korea

As the Japanese military sexual slavery issue became widely known, North Korea realised the importance of this issue in dealing with Japan, especially because there were still no formal diplomatic relations between the two countries. In 1992, North Korea established the Committee for Measures on Compensation to 'Comfort Women' for the Army and Victims of the Pacific War and sent its representatives to UN meetings and other international gatherings.[13]

Of course there cannot be any real NGO in North Korea, a country ruled by an autocratic leader with absolute power and control. The representatives of the North Korean Committee did not have their own opinion on the issue of 'comfort women'. Any suggestion we made was responded with a reply that they would discuss and let us know. It was even suspected that the victims' testimonies were strictly controlled by the North Korean government. In reality, the cooperation was between the Korean Council, an NGO in South Korea, and the government of North Korea. When there was no exchange between the two Koreas in the early 1990s, the 'comfort women' issue opened a channel of communication and cooperation between the two Koreas.

The cooperation and collaboration between South and North Korea on the 'comfort women' issue began in Geneva and continued in Tokyo and the Beijing Conference. There were also a few exchange visits between Seoul and Pyongyang. The most dramatic cooperation was seen at the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery held in Tokyo in 2000. This cooperation has continued a few more times, including symposiums in Seoul and Pyongyang.

In Search of Other International Venues

The Permanent Court of Arbitration

In its search for other international avenues to resolve the military sexual slavery issue, the Korean Council has knocked on the door of the Permanent Court of Arbitration (PCA) located in The Hague. While the International Court of Justice (ICJ) is only accessible to the member states of the UNs, the PCA was also open to individuals or organisations. In 1994, I visited, together with the Japanese attorney Etsuro Totsuka, the beautiful Peace Palace and met with the Secretary General of the PCA. Our attempt, however, was short-lived. The government of Japan did not agree to bring the issue to the PCA arbitration table, and we had to seek other venues.

The International Labour Organization

The next step was to appeal to the International Labour Organization (ILO). Since the ILO is a tripartite body composed of governments, employers and workers, the Korean Council had participated in the ILO as a part of the workers. Since Japan ratified the Forced Labor Convention in 1932, we approached the issues as Japan's violation of the Forced Labor Convention.

It was in 1995 that the 'comfort women' issue was first raised at the ILO through the Japan Teachers Union, which was soon taken over by the Korean Federation of Trade Unions (KFTU) and the Confederation of Korean Trade Unions (CKTU). The Korean Council participated in the ILO for several years either as a member of KTFU or CKTU. In 2003, we had our highest hopes for the Japanese sexual slavery issue to be adopted as a subject of examination at the International Labor Conference. The Committee of Experts published a 15-page report on Japan regarding its violation of Forced Labor Convention 29. As the final conclusions on victims of wartime sexual slavery, the Committee of Experts wrote, 'The Conference Committee may wish to consider whether to look at the matter on a tripartite basis' (ILO 2003: 130).

Given the fact that almost 20 per cent of the ILO budget was dependent upon Japan, it would not be easy to put Japan under examination. In 2004, a Japanese expert, who was member of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, and sided with the Japanese government on the issue, became a member of the ILO Committee of Experts. This new development made it impossible to put the Japanese sexual slavery issue at the ILO Conference Committee of Standards.

The UN Committee on the Elimination of Discrimination against Women

Another entity the Korean Council approached was the Committee on the Elimination of Discrimination against Women (CEDAW Committee). A state party to the CEDAW Convention is obliged to submit a report every four years on the progress on implementation of the Convention. Japan ratified the CEDAW Convention in 1985, and its second periodic report was considered by the Committee in January 1994.

While the Korean Council was busy raising the issue at the UN Commission on Human Rights and was not yet familiar with the treaty monitoring system, Japanese NGOs submitted alternative reports containing information on

the 'comfort women' issue. Out of 23 experts of the CEDAW Committee, three raised the issue and suggested that the government should pay overall compensation to the surviving victims without a court hearing and should create a Women's Fund in memory of those who had died. The answer by the Japanese government was the same as the answer at the Commission on Human Rights: 'the Government had extended its apologies to all those who had suffered damage', and 'the Government was considering how best to express its remorse' (UN 1994: para. 578).

In July 2003, the CEDAW Committee again considered the report of Japan during its 29th session. Because of the discussions and recommendations on the issue of wartime 'comfort women' in the previous examination by the CEDAW Committee, both the 4th report of Japan submitted in 1998 and the 5th report submitted in 2002 contained information on the issue. The 5th report in particular provided more detailed information on the measures taken regarding the issue, including the explanation on the Asian Women's Fund. An extraordinary number of NGO representatives from Japan, altogether 58 people, participated in the session. This time the Korean Council and other NGOs from other countries also submitted shadow reports. They criticised the inadequacies of the measures taken by the Japanese government and demanded a formal apology, legal reparation and correct history teaching.

During the Committee's consideration of the 4th and 5th report of Japan, four experts, including myself, raised the issue of military sexual slavery.[14] In the following days, the diplomat from the Japanese Mission met separately with three of the four experts, excluding me, and tried to persuade them not to include the 'comfort women' issue in the Committee's concluding observations to Japan. The three experts informed me that the Japanese diplomat even warned that if the Committee included the 'comfort women' issue, it would harm the Committee's credibility. This behaviour of trying to affect the Committee's work or threaten the Committee members is highly unacceptable and problematic, since any treaty body should be independent in its working method, especially from the influence of the state party under consideration. In the end, the Committee did include the 'comfort women' issue in its concluding observations and recommended that Japan would 'endeavor to find a lasting solution for the matter of "wartime comfort women"'. The CEDAW Committee again considered Japan's 6th report in July 2009, and again included in its recommendations that the government resolve the 'comfort women' issue.

Using the treaty body monitoring system was useful in creating pressure on the Japanese government by asking questions regarding the issue in an open international forum, especially about the measures taken by the government of Japan. However, there is no mechanism to enforce the implementation of the recommendations contained in the concluding observations issued by the CEDAW Committee.

Other Treaty Bodies

In addition to the CEDAW Committee, there are other human rights treaty bodies with which the issue of sexual slavery by Japan could be raised. Japan has ratified core human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture (CAT) and the Convention on the Rights of the Child (CRC), which could consider the issue of Japanese military sexual slavery. In fact, the Korean Council submitted an NGO shadow report to the Human Rights Committee which monitors the ICCPR in 1993, together with Korean Lawyers for a Democratic Society (Minbyun).

The People's Court: Women's International War Crimes Tribunal on Japan's Military Sexual Slavery

Even after the 1996 report of the Special Rapporteur on violence against women, there has been no change in the position of the Japanese government. The recommendations to offer a formal apology and pay state reparations to the victims were not heeded. Rather, it continued and strengthened its activities of publicising the Asian Women's Fund and even tried to justify the fund's existence by holding international conferences on the issues of violence against women, including domestic violence and trafficking.

A Tribunal on Japan's Crimes: Half a Century Late, but Necessary

To break the stalemate Matsui Yayori of Japan came up with a brave idea in 1998. Ms Yayori had a deep sense of responsibility for her country's crime of military sexual slavery and was determined not to face the new millennium with the 'comfort women' issue unresolved.

The idea was for a people's court to hold a trial for the crimes against the 'comfort women'. Although there was enough information collected by the US Army at the end of the war, the United States turned a blind eye to the war crimes against women. It was envisioned that the patriarchal and unfinished military tribunal should be redone from feminist and human rights perspectives. The Korean Council welcomed the idea wholeheartedly. The proposal was officially approved at the 5th Asian Solidarity Conference held in Seoul in April 1998.

The Women's International War Crimes Tribunal on Military Sexual Slavery by Japan (the Women's Tribunal) was a product of collaboration among ten countries, with the involvement of international women's rights activists as well as human rights communities. The three countries, Korea, Japan and the Philippines, decided to hold the Tribunal, and as preparations went on, Taiwan and China joined, as well as Indonesia, Malaysia, the Netherlands and the newly independent East Timor. Most importantly, North Korea decided to join, foreshadowing the closest cooperation between the two divided Koreas. The Charter of the Women's Tribunal was drafted, three preparatory meetings were held in Seoul, Taipei and Manila, and the contents of the programme and proceedings began to take shape. Eminent leaders in the human rights community were asked to join as international prosecutors and a panel of judges. After three years of preparation, the Women's Tribunal took place in December 2000 in Japan.

Japanese Emperor Hirohito Sentenced 'Guilty'

The Women's Tribunal was held on 7–12 December of 2000 and the auditorium of Gudan Gaikan in Tokyo was fully packed with 1,100 people, including 200 reporters on the second floor. The 70 surviving victims from ten countries, 35 from South Korea, presented the largest gathering ever of the victims of Japanese military sexual slavery. Their three-day testimonies made the audience shed tears in sympathy. On the first day of proceedings, North and South Korea jointly filed an indictment against the then Emperor Hirohito and other commanders responsible for the war crimes. On the following two days, victims from other countries – China, Taiwan, the Philippines, Malaysia, Indonesia, East Timor and the Netherlands – gave their vivid oral testimonies in person or by video. Two former Japanese soldiers in their seventies also testified about their involvement in the crimes of sexual slavery.

The fourth day was devoted to the current violations of women's human rights during war or internal armed conflicts. In the form of international public hearing, cases of sexual violence against women in the 16 countries, including Rwanda, Afghanistan, Guatemala and Somalia, were presented (Women's Caucus for Gender Justice 2000). The participants were able to see the similarities in the nature of violence against women between the past and the current violations.

On the final day of 12 December, the judgement was handed out. Gabriella McDonald, a judge in New York who acted as the main 'judge' of the Women's Tribunal, read out the decision, 'Emperor Hirohito, guilty'. All victims, the groups of prosecutors of each country and the audience applauded this decision. Although the Tribunal was not a real court, it corrected the deficiencies of the Far Eastern Military Tribunal in the name of a Women's Tribunal.

Achievements, Limitations and Future Tasks

Since the issue of military sexual slavery by Japan was first raised in 1988 in Korea, much has been achieved in seeking justice, honour and dignity for the victims at the individual, the national, the regional, and the international level. The most important achievements are twofold.

Achievement 1: Awareness-raising

The movement to address the issue of military sexual slavery by Japan has greatly contributed to raising people's awareness of the issue and of women's human rights. First, the surviving 'comfort women' victims began to view their own suffering differently. They were ashamed of their experience of rape and sexual slavery before, but in joining the movement, they could proudly present themselves as survivors, since it was Japan, not they, that committed the wrong. Second, the consciousness of the general public has also changed. The weekly Wednesday demonstrations at noon in front of the Japanese embassy in Seoul have continued for 18 years, come rain or snow. It has provided an open forum for citizens to participate in – young and old, women and men, Koreans, Japanese and Westerners visiting Korea. Third, the international community learned about the true nature of the Japanese military sexual slavery system. The rapes and sexual slavery constituted war crimes and crimes against humanity.

Achievement 2: Setting a New Standard

The Korean Council and other organisations involved in the movement against Japanese military sexual slavery

actively participated in the 1993 Vienna Conference and the 1995 Beijing Conference. The activities of the Korean Council at these two global conferences helped to frame the language of the conference documents so that they included measures on violence against women during wartime. The Beijing Declaration and Platform for Action identified violence against women during wartime as war crimes and crimes against humanity and required the governments to punish the perpetrators, provide protection to women and pay compensation to the victims.

Further, this recognition led the Rome Statute of the International Criminal Court (ICC) to adopt the need to identify and punish perpetrators of violence against women during wartime. While the Beijing Declaration and Platform for Action is a policy statement agreed by the member states of the UN, the Rome Statute of the ICC is legally binding on state parties to the ICC. Ms Coomaraswamy, after finishing her nine years as the Special Rapporteur on violence against women, considered the ICC as an example of a new international standard. Taking the example of the 'comfort women' issue, she explained that when the Second World War was over, rape or sexual slavery was perceived as something 'natural' or at least 'inevitable' and thus the act of Japanese military sexual slavery was not punished. Nowadays, rape, sexual slavery, forced pregnancy or forced sterilisation are punishable as war crimes or crimes against humanity. The movements to seek justice for the victims of the Japanese military sexual slavery have contributed to redefining crimes against women during wartime.

The UN Human Rights Mechanism: Its Usefulness and Limitations

Ever since the Korean Council brought the issue to the UN Commission on Human Rights, the Commission proved to be a useful venue to voice the gross violations of human rights and raise people's awareness. Two Special Rapporteurs, one of the Commission on Human Rights and another of its Sub-Commission, conducted separate study missions on the 'comfort women' issue and each produced excellent reports. Also, the CEDAW Committee and other treaty bodies provided unforeseen opportunities to raise the issue regarding Japan's obligation under the international human rights instruments. After examining Japan's reports, the treaty bodies issued concluding observations concerning what measures Japan should take in its implementation of the relevant treaties.

However, all the recommendations addressed to the government of Japan and international public opinion voiced at the UN multilateral or expert bodies have not changed the Japanese government's position on the issue. The biggest limitation or frustration, therefore, is that the resolutions and recommendations of the UN human rights bodies are not enforceable. All the efforts at the international level could not bring the desired justice to the victims of the gross violations of human rights.

Future Tasks/Challenges

Over the last two decades, the number of survivors has decreased by more than half. Since most of them are in their eighties and nineties, they will all pass away within a few decades. While the Wednesday demonstration has been a visible and open forum for ordinary citizens and younger generations to come and meet with the surviving victims, and it has earned a place in history, it cannot be continued forever.

With no enforcement mechanisms by the international human rights bodies, the government of Japan has maintained the same position on assuming no legal responsibilities. Unless a new social force is born in Japan to push for the legal and administrative measures for reparations to the victims of military sexual slavery, there will be no possibility of resolving the issue of war crimes.

Given these circumstances, the strongest counter-measure against Japan's irresponsibility is to remember the wrongdoings of Japan and keep educating future generations. For this reason, the Korean Council decided in 2004 to build a museum to commemorate the 'comfort women'. The VAWW-Net Japan and Taipei Women's Rescue Foundation have come up with a similar idea. The VAWW-Net Japan was able to open a modest museum named the Women's Active Museum (WAM) in 2006. In Korea, planning for the War and Women's Human Rights Museum on a larger scale is under way and will be a tribute to the survivors and a reminder for future generations.

It remains to be seen whether the new Japanese government ruled by the Democratic Party would be able to change the winds of public opinion and come up with new legislation or a decision, so that the unsettled war responsibilities would be finally resolved. If realised, the profound atrocities and the still remaining wounds of the surviving victims could be healed, at least partially, with their honour and dignity recovered at last in the last stage of their lives.

Notes

1. The term 'comfort women' is a euphemistic expression used in Japanese military documents. The correct term in the true sense would be 'sex slaves for the Japanese military'. In this chapter, I use both the military sexual slavery and the more well-known term 'comfort women', but in single quotation marks as agreed between the Korean and Japanese women's movements in 1993.
2. According to the Center for Research and Documentation on Japan's War Responsibility, 14 Japanese military men were prosecuted for their crimes of forced prostitution against 35 Dutch women in the Batavia Tribunal. Twelve of them were convicted, including one sentenced to death.
3. In the Upper House of the Japanese Diet, Mr Shoji Motooka of the Socialist Party requested the government to conduct research on the 'comfort women' issue. Director General Shimizu of the Ministry of Labour rejected the request, saying that private entrepreneurs recruited 'comfort women', who then followed the army.
4. The Korean Council has published the testimonies of the former 'comfort women' in six books. The first book was published in English by Cassell in 1995 (Howard 1995).
5. The legislation is the Act on Livelihood Stability and Commemorative Projects, etc. for Sexual Slavery Victims Drafted for the Japanese Imperial Army under the Japanese Colonial Rule. The 'Commemorative Projects, etc.' was added in 2002. The Ministry of Gender Equality and Family is tasked with taking care of the former 'comfort women' victims of the Japanese army. For government assistance, see the website of the Ministry's e-Museum for the Victims of Japanese Military Sexual Slavery, www.hermuseum.go.kr
6. The name of the Sub-Commission on Prevention of Discrimination and Protection of Minorities was later changed to the Sub-Commission on the Promotion and Protection of Human Rights. With the transformation of the Commission on Human Rights into the Human Rights Council in 2006, the Sub-Commission on the Promotion and Protection of Human Rights was reorganised into the Human Rights Council Advisory Committee, www2.ohchr.org/eng/bodies/subcom/index.htm
7. Such statements made by a government delegation or an NGO are not a part of UN documents. Rather, they are distributed at the meeting room after the intervention.
8. For full information on the Global Campaign and testimonies at the Vienna Tribunal, see Bunch and Reilly (1994).
9. Among many tribunals held during the NGO Forum at the Beijing Conference, the Center for Women's Global Leadership again organised a Global Tribunal on Accountability for Women's Human Rights. At this tribunal, the issue of 'comfort women' was briefly presented. See Shin (1996).
10. In total, there were about 100 participants from South Korea, Japan, Philippines, Taiwan, Hong Kong and Thailand. See the report by the Korean Council for Women Drafted into Military Sexual Slavery by Japan (1992a).
11. The support from the WCC and WARC was possible because the National Council of Churches in Korea, which was affiliated with both, was also connected to the Korean Council through its Human Rights Committee.
12. I myself was a member of APWLD and asked for the accreditation of the Korean Council.
13. Ho Sok-Till represented this organisation in the International Public Hearing in December in Tokyo. 'Report on the Former "Comfort Women" in North Korea', in *War Victimization and Japan: International Public Hearing Report* 1993.
14. The proceedings of the Committee meetings on the considerations of Japan's fourth and fifth reports are available from www2.ohchr.org/English/bodies/cedaw/cedaws29.htmCEDAW/C/SR.617; CEDAW/C/SR.618

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CHAPTER 2

ADDRESSING INJUSTICE THROUGH STATE, LOCAL CULTURE AND GLOBAL CIVIL SOCIETY: THE WHITE TERROR INCIDENTS IN TAIWAN

Fang-Long Shih

This chapter examines the issue of injustice in a Confucian society in Northeast Asia. It uses examples from the White Terror in Taiwan, focusing on three levels at which the demand for justice has been articulated, both during and after the period of the terror: firstly, at the level of the state through political calculation and bureaucratic procedures; secondly, at the level of local culture and through the idioms of religion; and finally, at the level of global civil society. These three levels do not constitute a unified demand for justice nor, indeed, do they offer a coherent response to the problem of injustice. Instead, they reveal fractures and discontinuities through which ideas of justice and injustice are refracted. I consider the Luku[1] incident of 1952–53 and the Kaohsiung incident of 1979, which respectively mark the beginning and the end of the Terror. I conducted my field research on Luku, including interviews with surviving victims and their family members, between 2004 and 2005.

Introduction: Luku During the White Terror Period

The term 'White Terror' was adopted from the Russian civil war of 1918 to 1921 between Tsarist Whites and the Bolshevik Red Army, and in Taiwan it describes the counter-revolutionary, or more precisely, anti-communist, violence exerted by the right-wing Kuomingtang (KMT, also known as the Chinese Nationalist Party) government during the period of martial rule between the 1950s and 1980s. The Luku incident is generally subsumed within this broader term, but more people were either killed or jailed at Luku than in any other single incident during the White Terror as a whole. This section provides the background to what happened at the village of Luku in 1952–53 and its aftermath. It also uses interviews and data from official reports that were formerly secret to show how the incident was deliberately covered up by the then ruling KMT.

The KMT was defeated by the Chinese Communist Party after the Second World War and gradually retreated from China to Taiwan during the late 1940s (Phillips 2007). Upon its arrival, the KMT sought to eliminate the local elites who had been educated by the Japanese colonial government, which had administered the island between 1895 and 1945. This began on 28 February 1947, with what is now known as the '2-28 incident', and in total around 30,000 civilians were killed. This was the beginning of martial law in Taiwan (Edmondson 2002), and was followed by the White Terror, which saw large numbers of Taiwanese accused of being communists and a campaign to eliminate suspected communist bases.

As part of this campaign, between 29 December 1952 and 3 March 1953, 10,000 KMT soldiers under the command of General Cheng-wen Ku surrounded the village of Luku, located in the mountainous area of Shiding on the borders of three other townships: Xizhe, Nangang and Pingxi. According to the KMT Secret Service (the Bao Mi Ju, later renamed Qing Bao Ju, the Military Intelligence Bureau), there was a 'communist armed base' in Luku. The soldiers found a single pistol, 165 home-made bombs, seven mines, five People's Republic of China (PRC) flags, ten Red Army armbands, two banners of the Taiwan People's Militia, and 43 maps (figures from the Bao Mi Ju, cited by Lan 1993: 109–15), and 183 villagers were arrested. Three-quarters of those detained were illiterate, poor, and employed, working long hours in the local coalmines. In total 36 villagers were executed, and a further 97 villagers (including 19 teenagers) were sentenced and imprisoned for a total of 871 years.

For the rest of the 1950s, Luku was without most of its men, who were either dead or in prison. The only people left were widows, grandparents and young children. Soon afterwards, the village was renamed. The village had originally been named 'Luku' during the Qing Qianlong era (1736–95), indicating three caves inhabited by wild deer (Shiding Xiang Gungsuo 2001: 88), but in July 1953 at a joint village assembly of Shiding Township, the acting village Head of Luku, Ming-chao Hsieh, claimed that 'Luku' was a bad name that suggested criminality

and sedition: *ku* connotes a den of thieves or rebels. He suggested changing it to Guangming ('Bright Light'), after the official name of the local temple of Luku Caimiao. The majority of villagers consented, hoping that with this new name perhaps the village's fortunes could be made brighter. The proposal to rename Luku was later approved by the Taiwan Provincial Government and enacted by the Shiding Township Government, and Ming-chao Hsieh was later appointed as the representative of Shiding Township Assembly.

After that time, the name 'Luku' disappeared both from the area and from public government records. The KMT government deliberately suppressed the history of the White Terror from public memory, disconnecting Taiwanese people from their past and causing public amnesia. At the same time, however, it fostered a public fear of communism in order to solidify its political power and interests through martial law. The Luku survivors were terrified by their connection with the incident, and the subject became taboo. Nobody dared to mention it in public, and trust among the villagers was destroyed as they had been forced to implicate one another in their confessions. The Luku residents were already isolated from the outside world, and now they were also alienated from each other. Moreover, from the mid-1960s, one after another, the local coalmines were closed down, and households were forced to move elsewhere in search of employment. The mountain paths around the village were soon overgrown with weeds. One villager, Fan-shu Liao, told me that at that time he had to cut back the weeds from the path to make his way from his home to the fields in order to plant sweet potatoes. It was practically impossible for people to live in Luku when there were no decent jobs or roads. Luku/Guangming village was eventually abandoned and gradually forgotten.

The terrifying trauma of the incident itself, the renaming of the village, the lack of jobs and the poor roads, coupled with the fact that at this time Taiwan was in the grip of a violently repressive, militarised state, meant that the Luku incident was publicly forgotten, in the sense that personal memories of it could not be voiced out loud. The records of it ever having happened were hidden in the Secret Service's files and in the private consciences of the victims and the perpetrators. A Luku villager, Wen-ming Li, told me that 'since my childhood I had been occasionally overhearing my father and village seniors talking about the incident behind closed doors. But, if an outsider was present they would not say anything. There would be no way for them to answer questions asked by strangers about the incident.' Furthermore, the acts of repression and forgetting forced conscious memories into the depths of the unconscious inner life. A widow, Cheng-hsiu Liao, whose husband had been executed during the Luku terror, leaving her with his old mother and six young children, said to me that 'not talking about the incident publicly does not stop me from remembering it. Every night in bed when it is quiet, I think of it and cry into my pillow.'

Addressing Injustice Through the State Apparatus

Martial law was lifted in Taiwan in 1987. The political transition to democracy followed soon after, and in 1991 official recognition was given to the victims of the 2-28 incident. In 2000 the KMT lost power to the main opposition party, the Democratic Progressive Party (DPP, also known as the Taiwanese Nationalist Party), and since then demands for official recognition of the White Terror have been contested all over Taiwan. This section addresses the problem of injustice at the level of the state. I explore the ways in which the White Terror Luku incident has, since the transition to democracy, been investigated and represented by different social groups (particularly political parties) with different political interests and agendas from different perspectives. Indeed, attempts to represent the Terror have formed a critical feature of social and political life in Taiwan over the past two decades. It has been difficult, if not impossible, to construct a shared or agreed memory about the past and political traumas in Taiwan, divided as it is into blue camp (pro-KMT, Chinese nationalists) and green camp (pro-DPP, Taiwanese nationalists).

From the mid-1990s to the mid-2000s, Chi-hui Pan, serving as the Head of Luku/Guangming village, has been assisting Taipei County government in building 30 to 40 roads so that all the houses in Luku/Guangming are now once again accessible. He explained to me that at the time of the Luku incident, there were no roads in the village. He said that it was a dead end, and it was no wonder that so many villagers did not understand the government and were cheated by outsiders. By building roads, he hoped that future generations would have better access to the outside world, a fact that would prevent anything like the Luku terror from happening again.

In the last ten years, Luku people have returned to repair their abandoned houses. In particular, the old people, including surviving victims, now spend their daytime in their houses in Luku, and take the bus home to Nangang or Xizhe before sunset.

In the mid-1990s, a novelist named Po-chou Lan, who is a leftist and supports unification with China, went to Luku to trace Taiwanese communist footprints. Lan made two documentary films based on his research for a Taiwanese television station, entitled *The Red Base* (1997a) and *The Last Battle* (1997b), in an attempt to reconstruct a communist past in Luku and, by implication, in Taiwan as a whole. According to Lan, eight out of the twelve people who were either not charged or judged 'not guilty' were 'real' communists. Only one was a Luku resident and the seven others were outsiders. These eight 'real' communist were all sooner or later after their trials released by the KMT and sent home. But they were, of course, under KMT surveillance for the rest of their lives.

The KMT actions in Luku were not only part of a more general strategy to build a fear and hatred of communism among Taiwan's general population. Communism was effectively demonised, and in Luku itself fear and hatred were projected not merely onto the KMT, but also onto those communist outsiders who had brought state terror to the village. Interestingly, Lan only documents and interviews 'real' communist intellectuals and local elites, with the exception of Fan-shu Liao, who was an illiterate coalminer. Lan pays particular attention to Chun-ching Chen, the only surviving Luku resident who had really been communist. Although Chun-ching had escaped execution by the KMT he was never forgiven by his fellow villagers, friends and family (two of his innocent brothers were executed). He eventually died alone and was buried outside the family tomb.

Through his interviews with Chun-ching, Po-chou Lan attempts to reconstruct and de-demonise the Luku communist past. Sometime after 1947, some ten communist intellectuals had been brought by Chun-ching to Luku, where they settled with his assistance. They intended to establish a 'Red Base' in Luku and organised reading groups and youth groups. When they ran out of money, they were regularly resupplied from another communist base in southern Taiwan. They cut their own wood and cooked for themselves, while grain and clothing were brought for them from the lowlands.

These documentaries were shot with him and his interviewees on location, conducting a conversation about the activities of past Taiwanese communists. Lan explained that by taking his communist interviewees back to sites such as where the reading groups had been held or where the PRC flags had been erected, he hoped to bring their memories back to conscious recall. Also, by showing his relationship to his interviewees and their responses to each other, he hoped to counter criticism from those who want Taiwan to be separate from China (primarily DPP supporters) by demonstrating that Chinese communist stories in his documentaries had not been made up, but were based on factual information, real people and real places. Therefore, Taiwan's communist past is indeed part of Taiwan's real history.

In contrast to Lan's approach, the pro-DPP historian Yen-hsien Chang saw the incident as part of the KMT's history of dictatorship, and in 1997 he and his two research assistants, Shu-yuan Kao and Feng-hua Chen, began to search for those Luku people who were 'non-communists' and therefore 'innocent' of the KMT charges against them. Chang and Kao co-wrote their first volume, entitled *Investigation and Research on the Luku Incident*, in 1998, and Chang and Chen co-wrote their second volume, entitled *The Luku Incident: the Villagers' Frozen Tears*, in 2000. Both were funded and published by the Taipei County Government when Chen-chang Su, a senior DDP member, was the County Head.

Chang's two volumes include interviews with 70 victims or their family members. Aside from Hsun-yan Chen, who was a communist and a resident of Taipei City, the other 69 were innocent of the charges made against them by the KMT. Chang attempts to reconstruct the life histories of these victims with a focus on the difficult times of the Luku incident. At the beginning of his postscript to the first volume, he writes that

> Investigating the Luku incident made me think of the poor peasants and miners who lived in cold villages: through blood relationships and traditional social networks they were caught in what was to them an unrecognisable and unpredictable political whirlpool. They had no way to understand the views of the leaders; they became sacrificial offerings. (Chang and Kao 1998: 318)

In his concluding remarks, Chang states that 'the rulers arrested and tortured the innocent ruthlessly, interrogating them under duress, making false accusations, and sentencing them, neglecting their fundamental human rights. They were forced into silence for many years' (Chang and Kao 1998: 318–19). One of many examples of this injustice is the case of a Luku miner, Te-chin Liao. In an interview with Yen-hsien Chang in 1997, he testified:

> At the time everyone in the village was struggling to eat three meals per day, just wanting to ensure their stomachs were not empty … Although we were in our

early twenties, our understanding of the world was at the level of pre-school children because we had no contact with the world outside Luku. For example, in my case until this happened I had been in Taipei city once … They said we had participated in the Communist Party and worked for the Communist Party and intended to overthrow the government. But, was this possible with our low understanding? What was the KMT? What was the Communist Party? What was the difference between these two parties? We didn't have a clue. Who was a Communist Party member? We could not tell. (Chang and Kao 1998: 90–1)

Te-chin Liao described his detainment, interrogation and sentencing as follows:

Many of the villagers were detained, tortured, and interrogated in a small room in a local temple, known as Luku Caimiao. The room was around five or six square metres. But, there were about 100 men and women crammed into it. So, we each had to squat against the next person's legs … I was detained in this position for almost a month. I was taken for interrogation:

Q: Do you know Mu-sheng Liao?
A: Of course I know him. Mu-sheng Liao is my uncle. We live in the same house. I would be lying if I said I don't know him.
Q: Do you know Chi-wang Chen and T'ian-chi Chen?
A: Of course I know both of them. Chi-wang Chen is our village Head and T'ian-chi Chen is his son. They are both headmen in the village. How could I not know them?

When the soldiers asked me these questions, I answered I knew them and then I was beaten …

Finally, I was sent to the Military Court in Taipei. I was tried by a Judge.

Q: Have you seen any strangers in your village?
A: Yes. But, Judge, is it right that just because I have seen strangers in the village that is evidence of my guilt? ... Judge, do you know everyone you meet on the street?

The Judge did not answer my questions but immediately announced that the trial was over. After the trial, I was beaten ruthlessly until I said I did know some of the strangers in my village. (Chang and Kao 1998: 93–4)

As a result, Chi-wang Chen, T'ian-chi Chen and Mu-sheng Liao were all sentenced to death and Te-chin Liao was sentenced to eight years' imprisonment. There are many more similar testimonies like Te-chin Liao's in Chang's two books. It is interesting to note that Te-chin Liao also provided more or less the same testimony in interviews with me.

One year after Chang's initial investigation in December 1998, the Legislative Yuan passed the Regulations regarding Compensation for those wrongly sentenced (either to imprisonment or to death) during the martial law period either for sedition or as communist spies. This was soon followed by the establishment of the Compensation Fund Corporation, which is a statutory body under the administration of the Executive Yuan although it is not a court. Since April 1999, the Compensation Fund Corporation has been dealing with applications for compensation. The compensation amounts range from New Taiwan Dollar (NT$) 100,000 for one month's imprisonment, up to NT$6 million for execution. In the case of the Luku incident, most of the victims were sentenced to eight, ten or twelve years' imprisonment or to death, and typical compensation payments were in the range of NT$3.6 million, NT$4.2 million, NT$4.6 million or NT$6 million. Indeed, Chang's two volumes have served as kind of endorsement to those Luku people who were wrongly sentenced and thus are entitled to compensation.

On 29 December 2000, the 48th anniversary of the Luku incident and soon after Chang's second volume was published, the Luku memorial was established and formally opened by the Taipei County Government under the DPP administration. The Luku memorial is a sharp but twisted blade made of shining stainless steel. It represents the public recall of the KMT military dictatorship and the torture and murder of civilians. In my interview with Wen-ming Li, I asked him what he thought of the memorial. He said: 'I feel so glad at seeing it! The memorial is itself a licence, a licence which permits us to speak out loud about the Luku past that was held deep inside our minds for years.'

In addition, although the local Yongding School did not teach students about the Luku incident in the classroom, the school organised a trip entitled 'Walking Toward the Future of Guangming' on 17 February 2004. All of the students visited the ruined building of what once had been a branch of their school in Luku/Guangming, as a way of understanding the history and development of their school. On the way, they stopped at the Luku memorial, where the teachers used the 300-word text inscribed there to introduce this local incident to the students. This text only provides the date, the place, the

number of the innocents arrested or executed by the KMT military dictatorship, and recalls the torture and murder of Luku civilians.

By the end of 2003, 7,084 applications for compensation had been received by the Compensation Fund Corporation. Among them, 1,052 were considered fraudulent and a further 57 were refused. If anyone making a claim is found actually to have been a communist, he or she is excluded from compensation. Indeed, even after the lifting of martial law, the fear of 'communists' is still vivid in Taiwan. In my interview with a middle-aged Luku man named Wen-ming Li in 2005, when he heard the word 'communist', goose bumps instantly appeared on his arms. Communism had been demonised by the KMT and is not recognised by the DPP either.

Highly charged and personal memories of violence and terror have been transformed into monuments and bureaucratic procedures, and those memories are periodically resurrected out of anonymity by DPP Taiwanese nationalists as examples of shared sufferings, shared fraternal ties and shared interests (Whitehouse 2000: 21–3); indeed, as markers of Taiwanese community. If the DPP has given the victims of Luku and the White Terror recognition, it is recognition within limits: public monuments and money (so long as one was not a communist – in which case arbitrary arrest, detention, torture and death appears justified) but no trials for those who manipulated the delicate Cold War situation, torturing and murdering civilians in the name of anti-communism. On reviewing Luku and the White Terror, the DPP government was only concerned with erecting a memorial, and granting the victims (narrowly defined) compensation money, but it was unwilling to have the guilty tried and sentenced. This is closer to charity than to justice, like giving money to someone out of sympathy. In short, in Taiwan's divided present, truth, justice and reconciliation come second to short-term political calculation.

Justice and Local Idioms of Address

This section addresses the problem of injustice at the level of local culture. Taiwanese society is a complex of religio-cultural idioms – Confucianism, Buddhism and Daoism – that form important layers of meaning to explain suffering and to address injustice. Among them, Confucianism has established an ethical structure of human relations and socio-political order. According to Confucian thought, the cosmic order is comprised of the triad of Heaven, earth and the human. The cosmic order of Heaven and earth parallels the order of the human community, and the human order is rooted in the family and, in its fullest expression, in the state. Humans are intimately linked to Heaven and earth; they not only worship Heaven and earth, but they learn from Heaven and earth and imitate their actions. Therefore the human order is modelled upon the cosmic order (Thompson 1996: 31–52, Fowler 2008: 65–91). As Wei-ming Tu notes, this worldview is therefore 'holistic' within which '[S]elf, community, nature, and Heaven are integrated in an anthropocosmic vision' (Tu Wei-ming 1998: 27, in Madsen 2002: 192).

The Confucians attempt to offer a moral or ethical answer to the question of the meaning of life and the order of human existence. They indicate that a harmonious and stable socio-political order is not merely based on power but on moral principles. By observing the cosmic and human order, they claim that everything and everybody is in relation to each other in one way or another. Nothing and nobody comes into being in isolation, and nothing and nobody can survive in isolation. As such, the Confucian point of the view of human relations assumes a moral basis for those relationships. The classic Confucian formulation of the 'Five Relationships' is elaborated as follows by Mencius:

> that between parents and children there is affection; between ruler and minister, rightness; between husband and wife, separate functions; between older and younger, proper order; and between friends, faithfulness. (Mencius 3A:4, translated by Bloom 2009: 57)

This formulation clearly places an emphasis on mutual and reciprocal responsibilities. For instance, the parent–child relation stresses mutual affection and complementary reciprocity; the parent raises and educates the child and the grown child ought to pay the debt for this by caring for the older parent. For ruler and subject, the stress is laid on mutual rightness and complementary reciprocity; a subject owes loyalty to the ruler while the ruler ought to ensure the wellbeing of the subject (see Ching 1993: 51–67). However, this formulation can also be understood in terms of top-down hierarchical relationships. As such, these relationships are not egalitarian ideas; rather, they form a hierarchy: parent and ruler are positioned high above as the superior, creative element, while child and subject are positioned down below as the inferior, receptive element. The vertical hierarchy justifies authoritarianism. This is also

the basis for so-called 'patron–client' relationships and for networking.

These ideas and practices have important consequences with regard to conceptions of justice and an open civil society. Richard Madsen argues that the Confucian worldview is 'centered on a holistic "anthropocosmic vision" and unable to make fixed distinctions between public and private, voluntary and involuntary forms of association', and that 'this would not seem a very promising basis for developing a coherent theory of civil society' (Madsen 2002: 192), let alone for a coherent system of justice. Yet Madsen also suggests that

> A civil society grounded in such notions of creative reciprocity would discourage configurations of power that would prevent weaker members from acting as moral agents in the reciprocal exchanges that bind the society together. It would protect from retaliation members who exercised their duty to remonstrate with those in power. It would encourage everyone to receive the kind of education that would enable him or her properly to fulfil their responsibilities. (Madsen 2002: 195)

Certainly, then, Confucian ideas and practices have contributed to the suppression of justice and civil society. However, this does not mean that those who are 'junior' or 'weaker' in Confucian societies do not demand justice. Interestingly, I discovered from my field research on the White Terror Luku incident that although the villagers had no channel for seeking justice within the Confucian cultural mechanism, those affected talked of 'regaining justice' via different routes and through different religio-cultural practices. This can be seen in a number of examples.

I interviewed Chiu-hsiung Chen, who was one of 19 teenagers wrongly held under house arrest for seven years without trial. He told me that he and the others were arrested by a general named Cheng-wen Ku and kept in his houses; the girls were used as his private housekeepers, while the boys were made to provide him with various forms of free labour. Chiu-hsiung emphasised that they needed to keep a good relationship with General Ku when they were seeking compensation, as he was needed as a witness to prove their cases. In accordance with Confucian teaching on mutual and reciprocal benefits, Chiu-hsiung was willing not to denounce General Ku for his past behaviour and Ku in return was willing to cooperate with the process without accepting any personal culpability; for authoritarian Confucianists, this can be justified because 'seniors' are not to be punished for their wrongdoing to 'juniors', as this would go against the Confucian socio-political hierarchical order. Although the compensation deal was regulated by Chiu-hsiung's private connection with his so-called 'patron' General Ku (rather than by impersonally applied laws), this deal did not stop him seeking for the interpretation of justice. Interestingly, Chiu-hsiung told me that he believes that although General Ku was never brought to trial, according to the Buddhist teaching of Karma (cause–effect), General Ku was punished. Good deeds bring about good results while bad deeds bring about bad results. In his old age, General Ku was allegedly abandoned by his family and friends and suffered loneliness and illness until his death.

In my interview with Fan-shu Liao, who was illiterate and was wrongly sentenced, he told me that he had been 'set up' by one of his fellow villagers named Hsi-yuan Chou. A few days before the Luku incident, Liao was resting at home as his leg had been injured during a coalmining accident. One night Chou visited him, saying that his uncle was looking for someone to help on his farm. Liao agreed to do it, and the next day Chou brought a sheet of paper, asking him to sign it explaining that it was a contract for the work. Liao did as Chou requested. Later, Liao was arrested and taken to the military court for trial. Chou was called as a witness, and used the 'contract' as 'evidence' that Liao had joined the communists. Liao could not defend himself and was imprisoned for eight years. By contrast, Chou was awarded a government post. Liao told me that although Chou worked as a government official and had a comfortable life, he died in a car accident while still young, which the villagers claim occurred on the anniversary of the day when many Luku villagers had been executed. With regards to this coincidence, villagers (including Liao) believed that Hsi-yuan Chou was haunted by the ghosts of the executed victims seeking revenge and justice.

Justice and Global Civil Society

This section addresses the problem of injustice at the level of global civil society, focusing on NGOs as one type of civil society actor in global politics (Kaldor 2003: 11–20) and noting the role played by Amnesty International in a particular case study. Amnesty International, typical of an issue-bound campaigning NGO that seeks to challenge 'official' knowledge through grassroots perspectives, was founded in 1961 and awarded the Nobel Peace Prize in 1977. The members 'are ordinary people from around the world standing up for humanity and

human rights' and its purpose is 'to protect individuals whenever justice, fairness, freedom and truth are denied' (Amnesty International 2010). The organisation works for, in particular, the release of what it calls 'prisoners of conscience', defined as 'women and men who have been arrested for their convictions, the colour of their skin, their ethnic origin or their faith – provided that they have not themselves used force or exhorted others to resort to violence' (Nobel Foundation 1997). Its main method is to apply pressure on governments across the globe to end human rights violations occurring within their jurisdictions.

In the previous sections, we saw the hegemonic rule of the KMT party state over Taiwan's civil society during the White Terror, and that, since there is actually an ethical injunction against 'juniors' punishing 'seniors' in the authoritarian Confucian perspective, there is consequently no channel for 'juniors' seeking justice from their 'seniors' within the Confucian cultural mechanism. However, things began to change in 1979 following an event known as the Kaohsiung incident, in which a number of protestors were imprisoned. Relatives went beyond the state and approached global NGOs like Amnesty International to demand justice. This marked the end of the White Terror and also the beginning of Taiwan's democratisation.

Combined with its authoritarian Confucian and Leninist legacies, the KMT established a corporatist structure to control private organisations and thus to restrict individual participation in politics. Instead, the KMT improved investment in the economy and in education, emphasising economic growth with political stability. However, such a policy created the conditions for the emergence of new social forces, such as a private capitalist class, an industrial working class, intellectuals, and professionals such as lawyers and doctors. The emerging middle class, mostly Taiwanese (that is, those people in Taiwan whose ancestors came from mainland China before 1945), demonstrated that one could achieve wealth and status without entering the political domain. But this did not ensure that the new class would never evolve into an alternative political centre. In fact, the energies accumulated in the civil society of 1970s Taiwan gradually articulated a demand for political reform (Gold 1994: 47–53).

An expanding group of citizens led by lawyers, doctors and intellectuals, known as *dangwai* (literally 'outside the party' – the party was, of course, the KMT), began to challenge the KMT's political, social and cultural hegemony in civil society. They organised political debates and published journals to express dissenting viewpoints, thus increasing popular awareness and support. On 10 December 1979 – International Human Rights Day – they led a demonstration in the southern city of Kaohsiung which ended in violence amid accusations of police intimidation and provocation. In this very final manifestation of the White Terror, eight leaders were arrested on charges of sedition and imprisoned following a military trial; 31 others were sentenced by 'civil' courts (Kagan 2000: 67). However, Amnesty International was made aware of the injustice of this case, and under international pressure the KMT government eventually released the eight 'prisoners of conscience'. On 28 September 1986, when most of the leaders were out of jail, *dangwai* activists formally and publicly founded the Democratic Progressive Party. In January 1989 the Legislative Yuan passed a law legalising new civil organisations, including political parties. From that point, Taiwan began to open itself to the outside world, and various social movements were now able to campaign on diverse issues. With the influence of Westernisation, modern Confucian discourse has, as Madsen notes, come to recognise, on pragmatic grounds,

> the necessity for intermediate associations to maintain a large degree of autonomy from the state … An institutional embodiment of this stance is perhaps seen on contemporary Taiwan, which in many ways is witnessing a 'springtime of civil society,' with a tremendous proliferation of intermediate associations – religious, ethnic, commercial, environmentalist, feminist. (Madsen 2002: 193–4)

In particular, achievements have been made in environmental rights (Arrigo and Puleston 2006), gender equality (Lin 2008) and aboriginal rights (Simon 2009), making increasing use of global civic channels to articulate demands, build alliances and gain recognition.

In 2005, Chia-wen Yao, then Head of Taiwan's Ministry of Examination (which oversees civil service and professional examinations), came to London, at my invitation, to give a talk at the London School of Economics on democratic development in Taiwan. Mr Yao was trained as a lawyer and was among the eight imprisoned after the Kaohsiung incident. Completing his talk at the LSE, Mr Yao asked me to accompany him and his wife to the headquarters of Amnesty International in Roseberry Avenue. When he had been arrested in 1979, his wife, Ching-yu Chou Yao, could not find any way in Taiwan to seek justice for her husband, so she

took her appeal all the way to London and to Amnesty International. Amnesty International was an advocate of Mr Yao's case and the other seven throughout the years of their detention. Mr and Mrs Yao wanted to express their gratitude to Amnesty for its efforts during those difficult years. However, it is important to recognise that Mr Yao's release from prison was probably also a result of internal effort and politics in Taiwan rather than just advocacy by Amnesty International.

It is clear that Taiwan's democracy activists were well aware of the growing global human and civil rights lobby; they used Human Rights Day to mark their demonstration against KMT repression, and sought advocacy from Amnesty International not just to publicise their own plight but also the general situation on the island. The democratic transition a decade later marked Taiwan's entry into global civic society. The irony is that as one of the world's unrecognised nations, Taiwan is denied participation in most global forums through which it might be able to demonstrate its sense of co-responsibility in global governance and partnership with other nations.

Conclusion

In this chapter, I have sought to outline three levels at which injustice may be addressed: through the state apparatus, through religio-cultural idioms and through global civic structures and organisations. No doubt, these different modes of address constitute justice and injustice differently, and these differences probably cannot be ironed out according to some ideal model of rationality. The fractures and discontinuities across the three levels point to two facts: the first is Taiwan's own divided present, different anxieties over the past and hopes for the future. The second is that the globalising world of which we are all a part, even as it becomes more and more a single site of action, is increasingly divided by various struggles.

Note

1. In this chapter, place-names and personal names have been transliterated in accordance with conventional usages, which means that spellings are employed as appropriate from both the *hanyu* and Wade-Giles systems of romanisation.

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CHAPTER 3

RECONCILIATION AND TRANSITIONAL JUSTICE: THE CONTRIBUTION OF FORGIVENESS TOWARDS HEALING AND RESTORATION

Ruth Kattumuri and Amalie Kvame Holm

Introduction

Forgiveness is primarily addressed in the transitional justice discourse as a restorative value, as part of several concepts complementing retributive justice (Braithwaite and Strang 2001). Scholars define restorative justice by emphasising it either as a value or as a process, and the same logic applies to forgiveness. It could be conceived as a process where a group of individuals or societies come together to solve issues. Forgiveness can relieve the burdens created by wrongful actions and intolerable debts and suggests that both victim and perpetrator can start afresh (Digeser 2001). It might even imply the re-establishment of moral equality between the parties. This chapter suggests that forgiveness is a valuable and complementary mechanism for healing and restoration of individuals and societies.

Civil society, through direct contact, provides linkages between all concerned and has the potential for motivating forgiveness by providing a crucial arena for dialogue between individuals, groups and political institutions. Civil society mechanisms, both formal and informal, make them more directly connected with communities and individuals. This provides civil societies with greater insights into the workings of people and multicultural groups (formal and informal; secular and religious), as well as enhances opportunities to enable innovative mechanisms for finding solutions for conflict resolution.

Forgiveness and reconciliation cannot be mandated from the top down but could be a dynamic and interactive process between individuals and civil society actors at grassroots level. However, that implies a need to broaden our understanding of forgiveness as a mechanism for healing and restoration of individuals, social and political groups. A number of researchers (Hartwell 2006, Digeser 2001, Montiel 2000, Andrews 2000) argue that the complexity of the concept highlights the need for a more independent and secular interpretation of forgiveness than that typically used.

The moral and religious connotations might inhibit us from understanding the value of forgiveness as a pragmatic, diverse and complementary reconciliation mechanism. At the same time, it is the focus on values that distinguishes forgiveness from traditional notions of punitive justice. Restorative justice is focused on healing rather than hurting. The traditional notion of responding to the hurt of an offence with the hurt of punishment is rejected – along with its corresponding value of proportionality. 'The idea is that the value of healing is the key because the crucial dynamic to foster is healing that begets healing. The dynamic to avert is hurt that begets hurt' (Braithwaite and Strang 2001). Ultimately, seeking forgiveness might be the only way for a society to move on from conflict, as traditional justice is often unavailable or indeed imperfect (Digeser 1998). These things have been important in the last 20 years, at times motivated by civil society, therefore it requires us to understand forgiveness in various forms.

The goal for civil society actors is to develop a collective history, identity and memory as a basis for a new vision of society. The limitations of forgiveness are recognised. Healing is a threefold exercise and constitutes mechanisms of restoration, compensation and reconciliation through acknowledgement of past hurt. Forgiveness enables the opportunity of moving on but cannot be isolated from these factors. The valuable role of trials and Truth Commissions is acknowledged, however these mechanisms need complementation to achieve restoration and reconciliation.

Justice is considered the established paradigm for social repair and the predominant view is that retributive justice is essential for conflict resolution (Digeser 1998). Fletcher and Weinstein (2002) make a convincing argument for expanding the discourse by asking crucial questions pertaining to whether it is possible at all to find a single answer to the meaning of justice, and if justice is the best way to address feelings of loss and helplessness in any society.

The argument of this chapter is that the reconciliation process ought to include a variety of mechanisms. Among these, forgiveness is one way to help people heal that deserves more attention. The linkage between justice and forgiveness is discussed before we scrutinise forgiveness as a concept – both theoretically and from religious perspectives. This is followed by psychologist Robert Enright's (1991) process model of forgiveness, which offers a useful framework for examining how forgiveness can play a role in the reconciliation process. The model lays out a step-by-step process towards unconditional forgiveness, emphasising it as a complex, unilateral process with various pathways. It illustrates an approach to forgiveness that is useful both at the individual and social level, and its benefits are supported by substantial research (Freedman, Enright and Knutson 2005, Hartwell 2006). We then consider examples of personal forgiveness as well as state-led attempts at reconciliation to illustrate the gap between state and individuals in a post-conflict situation. Finally, social healing and the potential benefits of forgiveness for society are discussed.

Justice and Forgiveness

The relationship between justice and forgiveness is fundamental for our understanding of these two concepts, which are heavily interlinked. Digeser (2001) understands justice as 'receiving one's due', while forgiveness is the release of such debts, both monetary and moral. This involves differing approaches to conflict resolution and might also lead to contrasting results. Hence, they are best understood as complementary concepts.

According to the so-called 'normal model of justice', forgiveness simply leaves victims with less than is their due. If justice implies that it is good to receive what is due, and it is possible to obtain justice, how could forgiveness ever be justified? This perspective dominates political theory where forgiveness is disregarded because the availability of 'perfect' justice is considered to trump all other concerns (Digeser 2001). Yet this argument suggests that it is possible to restore justice adequately, which is a problematic assumption – particularly so in a post-conflict situation.

The assumption that justice represents rationality and politics, while forgiveness is personal, perhaps even irrational, is not uncommon and is enforced by limited scholarly attention given to this subject. In competition with justice, forgiveness does not seem to have good odds:

> From a certain perspective, there seems to be something deeply irrational about forgiveness, particularly if rationality is understood as a way to connect available means to desired ends. (Digeser 2001)

Justice is about making the offender pay his or her debt while forgiveness entails achieving a state of reconciliation where the debt no longer serves as the basis for future claims. As such, both concepts seek to settle the past in ways that do not legitimately impede the future (Digeser 2001). However, values such as forgiveness, compassion and mercy inherently rely on a minimum demand of justice being met.

The Concept of Forgiveness

The last decade has seen increasing scholarly interest in forgiveness; nonetheless, this research has been dominated by psychological approaches (McCullough et al. 2005). The process of forgiveness in post-conflict environments has yet to receive the same amount of attention, and scholars across various academic disciplines such as political theory, anthropology, philosophy and socio-legal studies are starting to examine the issue (Hartwell 2006).

The study of forgiveness raises methodological and definitional problems. It is empirically difficult to examine and no clear definition exists. There is also a lack of thorough understanding of the influences of religion, culture and life situation on people's understanding and experience of forgiveness. McCullough, Pargament and Thoresen (2000) express the complexity of forgiveness through these questions: 'what psychological factors are involved in forgiveness? What are its personality and biological substrates? Is the capacity to forgive largely guided by individual factors, situational factors or the interaction of personality and situation? Is forgiveness an unmitigated psychological and social good, or does it involve costs to the forgiver, the person forgiven, or society?'

There is no consensual definition of forgiveness, but conceptual progress seems to have been made (Worthington 1998). Researchers tend to agree that forgiveness is different from 'pardoning', which is a legal term; 'condoning', which implies justification of the offence; 'excusing', which implies the offender has a good reason for committing the offence; 'forgetting', which implies that the memory of the offence has simply decayed or slipped out of conscious awareness, and 'denying', which involves an unwillingness to perceive the harmful injuries that one has incurred (Enright and Coyle 1998, cited in McCullough et al. 2000).

Nonetheless, all the existing definitions share one common concept that, when people forgive, their

responses toward the offender become less negative and more positive. McCullough, Pargament and Thoresen (2000: 9) suggest that forgiveness is 'intra-individual, prosocial change toward a perceived transgressor that is situated within a specific interpersonal context'. They view forgiveness as a process by which the forgiver changes when forgiving. Freedman, Enright and Knutson (2005: 393) emphasise how the relationship between victim and offender changes, but in a unilateral way:

> People, upon rationally determining that they have been unfairly treated, forgive when they wilfully abandon resentment and related responses (to which they have a right) and endeavour to respond to the wrongdoer based on the moral principle of beneficence, which may include compassion, unconditional worth, generosity, and moral love (to which the wrongdoer, by nature of the hurtful act or acts, has no right).

The core meaning of forgiveness as a way to release hurt remains unchallenged (Freedman et al. 2005).

Religion and Forgiveness

The perceived association between religion and forgiveness and its theological baggage might explain the reluctance of researchers to engage with the topic and further adds to the perception of a dichotomy between justice and forgiveness. However, considerations of religion and culture for the process of forgiveness and reconciliation are crucial to our understanding of these mechanisms and should not be underestimated (Fletcher and Weinstein 2002: 637, Hartwell 2006). While important to avoid generalisations, it is valuable for social scientists to examine the long-standing and diverse religious conceptualisations of forgiveness rather than understanding forgiveness as a set construct. Perspectives of forgiveness vary across religious traditions, as do interpretations within the respective traditions. However, the importance placed on forgiveness and justice in most societies reflects a commonality across cultures and religions. Elements from different religions or belief system might in some cultures also be combined. Most studies have focused on forgiveness and Christianity or Judaism and given less attention to the perspective of other religions. Even less work has been done on comparing the concept of forgiveness across religions (Rye et al. 2000).

Nonetheless, structures that encourage forgiveness are found in the major world religions. It is explicitly addressed in Christianity, Islam, Hinduism and Judaism while in Buddhism it is integrated into the concepts of compassion and forbearance (Rye et al. 2000). At the same time in most religions the availability of religious doctrine, which justifies measures of retributive justice and revenge, is noteworthy (McCullough et al. 2005). Religion as a meaning system might be abstract enough to offer justifications for both forgiveness and revenge, providing individuals with rationalisations for their motivation for either forgiving or not forgiving (Tsang et al. 2005).

In the Abrahamic religions (Christianity, Judaism and Islam) humans are expected to imitate God, who has a forgiving nature. Forgiveness is encouraged in Islam and both Allah and Mohammad function as role models for forgiveness (Tsang et al. 2005). In Judaism forgiveness is defined as the removal of a violation, making a renewed relationship between victim and offender possible. However, forgiveness is not required under all circumstances and reconciliation is not necessarily part of the forgiveness process (Dorff 1998, cited in Tsang et al. 2005). Forgiveness is central to the Christian doctrine, and unlike Judaism it does not rely on a remorseful offender. In Hinduism, forgiveness is one of several ethical concepts to be followed on the path to righteousness. According to both Buddhism and Hinduism, unresolved issues will reappear in subsequent reincarnations. Islam, Christianity and Buddhism appear to encourage forgiveness irrespective of whether the offender expresses repentance, or the severity of the crime. Judaism, on the other hand, has clear rules about when one should forgive, and Jews question whether forgiving the Holocaust is possible or desirable (Rye et al. 2000).

Forgiveness in Buddhism is less straightforward. According to Charles Hallisey, a Buddhist scholar, the category of forgiveness per se is not central in Buddhism, but forbearance and compassion are key religious virtues that combined can resemble forgiveness (cited in Rye et al. 2000). Compassion eases the pain and suffering of the offender while forbearance abstains from causing more suffering, both for oneself and others. Hallisey interprets forgiveness as a twofold exercise where the call for retribution is dismissed and resentment and other negative sentiments towards an offender renounced (cited in Rye et al. 2000). Forbearance is considered more inclusive than forgiveness, as it entails enduring the suffering caused by the offender as well as renouncing anger and resentment towards that person. In addition, the virtues of compassion and pity leads the Buddhist to empathise with the suffering of the offender as well as taking steps towards easing this suffering. However, the main

difference from a traditional, 'Western' understanding of forgiveness is Buddhism's focus on the interconnectedness of things. There is no 'offender' to be forgiven, as the victim and the offender are not necessarily seen as separate entities (Higgins 2001, cited in Tsang et al. 2005). It is in the self-interest of the victim to overcome resentment through compassion and forbearance, independent of a remorseful offender. Resentment, the opposite of forgiveness, causes suffering according to karma, the law of moral cause and effect (Hallisey 2000, cited in Rye et al. 2000). As we shall see, there are similarities between this unilateral understanding of forgiveness and unconditional forgiveness as described in the Enright process model.

The Process Model of Forgiveness

The process model of forgiveness, developed by the psychologist Robert Enright and the Human Development Study Group (1992), pioneered forgiveness research (Hartwell 2006, Freedman et al. 2005). The model describes a step-by-step approach to forgiveness and includes elements of revenge and justice until the ultimate goal of genuine forgiveness is reached, which results in the final unconditional release of all animosity by the victim. The sequence is not meant to be rigid but serves to explain how forgiveness is a process with great individual variation. In addition, it highlights the long-term timeframe and the complexities involved in forgiving (Freedman et al. 2005).

The process of forgiveness occurs in 20 units which are further divided into four phases serving as guideposts that most people experience. The first phase is about uncovering the pain and injustices experienced while the second is when the decision to forgive is made, even though the person might not feel ready to forgive at the time. The third phase, called the work phase, involves reframing the offender and the offence by trying to see both the situation and the offender in context. This leads to a better understanding of why the hurtful action happened and an acceptance of the pain and its consequences, and might lead to feelings of compassion and empathy. The last phase represents the outcome. The offended person experiences healing when 'giving the gift of forgiveness' to the offender (Freedman et al. 2005).

One of the main implications of the model for the use in post-conflict situations is its focus on unilateral forgiveness, which does not rely on any action from the perpetrator. A relationship between the victim and offender, where the latter apologises and shows acts of remorse, might make forgiveness easier, but is not necessary for the forgiveness process to move forward. The goal is unconditional forgiveness.

The last two stages, named 'Forgiveness as Social Harmony' and 'Forgiveness as Love' in Enright's 1992 version of the model, are particularly interesting for the purposes of this chapter. In the penultimate phase justice is perceived as a social contract and it entails the acceptance of a variety of opinions. Forgiveness supports social harmony and the view that forgiveness can restore harmony in society and decrease friction is motivating to the forgiveness process. Coercion is not involved, but the focus is still on the obligation towards others rather than on an internally driven will to forgive. Hartwell (2006) observes that the discourse of reconciliation and forgiveness under the South African Truth Commission, post-Apartheid, fits into this description.

In the final stage of the forgiveness model, justice is seen as being a universal and ethical principle about all members of society being ends in themselves. Justice is to maintain the individual rights of all persons. This understanding of justice is, according to the model, considered to lead to a sense of forgiveness as love. The victim has developed compassion for the offender, and realises that a hurtful action by another person does not alter that sense of love, not unlike the Buddhist emphasis on compassion. According to the model only this last step entails genuine and unconditional forgiveness and a complete abandonment of revenge. This stage is an act of self-love and positive group identification. The burden of the offence is released by the victim. Hence forgiveness is not dependent on an offender, social context or a process of negotiated action. This type of forgiveness involves the acknowledgement of the past injustice while releasing the hurt of the act. The victim decides to respond to the injustice with compassion, even though it is not a duty, rather than simply seeking justice through retribution. This is considered the final solution to the offence and it ought not to be revisited by the individual or the group involved (Enright 1992, cited in Hartwell 2006).

Examples of Individual and State-Led Attempts at Reconciliation

Personal Forgiveness

Concrete examples of individual forgiveness illustrate how complex forgiveness is as well as how discreet the process can be. Our understanding of forgiveness as a mechanism for social healing is enhanced by knowledge

of both the interaction between individuals and groups in such a process, as well as by studying how individuals deal with the enterprise.

Gladys June Staines chose to publicly forgive the murder of her husband and two sons in Orissa, India, shortly after the crime (Howell 2009). In 1999, the Australian missionary Graham Stuart Staines was burnt alive by Hindu extremists while sleeping in a van together with his two sons, aged ten and eight (BBC News Online 2005). Four years later, one man was given the death sentence and twelve others life imprisonment for the crime. By that time the widowed Staines had forgiven the perpetrators. In a statement after the conviction, Staines said: 'I have forgiven the killers and have no bitterness because forgiveness brings healing and our land needs healing from hatred and violence. Forgiveness and the consequences of the crime should not be mixed up' (Das 2003). She continued to run the leprosy home that she had set up with her husband despite the continuation of systematic violence against Christians in Orissa (Howell 2009). Staines also oversaw the completion of the Graham Staines Memorial Hospital in her husband's name. In 2005 she was awarded India's second-highest civilian honour, the Padma Shri, by President A.P.J. Abdul Kalam for her social work. At the investiture ceremony Staines said: 'When people come to me and express solidarity with me, I feel that though I have lost my family, I have found another one in all the Indians' (BBC News Online 2005). She once again stressed the importance of forgiveness in an interview with BBC *Woman's hour*:

> If we don't forgive men of the wrong that they do, then how can we be forgiven? … Altogether, I think if we don't forgive, and hold grudges against people, then it affects us, creates bitterness in our own life. (BBC 2005)

Staines encouraged forgiveness and religious tolerance in the public discourse in Orissa and lobbied the government to take more responsibility in the reconciliation process between religious communities. Her exceptional ability to forgive was a positive influence towards reconciliation in the local community. Forgiveness does not come naturally to people and evidence suggests that even though genuine forgiveness does release all feelings of revenge, it must be internally driven and unconditional, making it an extraordinarily difficult state for many to attain (Hartwell 2006).

Even though forgiveness is a desirable restorative value, some crimes might be considered too serious or delicate to be dealt with by most individuals and through a social process. Victim movements caution against putting pressure on victims to forgive by arguing they'll feel better afterwards, as a superficial 'forgive and forget' approach might work against its intentions (Braithwaite and Strang 2001). Ash (1997) points out that forgiveness is far from desirable or possible in certain situations as taken to the extreme it might actually lead to injustices. Forgiveness might imply sacrifices on behalf of victims, setting aside other important values, making certain acts unforgivable by the human spirit (Digeser 2001). In 2006 the Anglican vicar Julie Nicholson resigned as a priest in Bristol, UK, primarily because she could not forgive the loss of her daughter Jenny in the London bombings the previous year. Nicholson publicly announced that she stepped down because she could not forgive the suicide bomber:

> I believe that there are some things in life which are unforgivable by the human spirit. It's very difficult for me to stand behind an altar and celebrate the Eucharist, the Communion, and lead people in words of peace and reconciliation and forgiveness when I feel very far from that myself. So, for the time being, that wound in me is having to heal. (BBC 2006)

Nicholson said that not only could she not forgive the killers, but she did not want to forgive: 'I will leave potential forgiveness for whatever is after this life. I will leave that in God's hands.' Nicholson expressed publicly that she had no compassion for the perpetrators and that she simply could not forgive that they chose to take life. 'I believe some acts are humanly unforgivable and rightly so. That does not mean that in the absence of forgiveness there is the need for revenge and anger and bitterness' (Murray 2006). Nicholson pointed out that even though forgiveness is connected with reconciliation, it is possible to work towards the latter while leaving forgiveness aside. She also warned against feeling pressure to forgive, either from society or religion. When asked whether it was not her Christian obligation to forgive, Nicholson quoted Dostoyevsky's book *The Brothers Karamazov*:

> When your child has been thrown to the dogs a mother dare not forgive. All she can hope to forgive is the pain and anguish caused to a mother's heart, she dare not forgive the act that took her child's life, that act of wickedness … As a mother I dare not forgive. I have to speak as I feel, not how I feel I should feel according to a doctrine. Forgiving would be like saying this is okay. (Murray 2006)

Nicholson's account of how difficult, if not impossible, forgiveness after personal loss can be, illustrates how intricate the concept of forgiveness is, and highlights the need for an approach which is sensitive to individuality. A public forgiveness discourse should leave space for individual diversity while taking steps towards a collective narrative of reconciliation.

State Justice and Forgiveness

Reintegration and reconciliation were the driving motives behind the historic apology from the Australian government to its indigenous Aboriginal population in 2008. The case illustrates how civil society actors are often needed to negotiate the reconciliation process between the state and individuals. First of all, such an apology relies on the preposition that a state or a nation can be accountable for the actions of individual citizens (Digeser 1998: 701). Political forgiveness is distinct from personal forgiveness as it operates from the top down. The state is mediating or even imposing the process of reconciliation by seeking to normalise social relations, while at the same time relying on the ideas of personal forgiveness to operate (Derrida 2001, cited in Moran 2006). The official apology by the Australian government, for policies of assimilation that took place from the nineteenth century to the early 1970s, shows the weakness of limited reconciliation attempts. Prime Minister Kevin Rudd apologised in parliament to all Aborigines: 'we apologise for the laws and policies of successive parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians' (BBC News Online 2008).

The move was met with a mixed response from civil society. A spokesperson from the rights group the National Aboriginal Alliance said 'the word sorry is one that Stolen Generation members will be very relived is finally being used' (BBC News Online 2008). At the same time, a number of Aboriginal leaders criticised the fact that the apology was not accompanied by any compensation. As one leader put it: 'Blackfellas will get the words, the whitefellas keep the money' (BBC News Online 2008). The Prime Minister outlined a new policy of commitment towards the Aborigines and annual assessment of progress made. In February 2010 the annual report on the status of indigenous Australians was publicised and Rudd admitted progress towards improving living standards of Aborigines had been slow and far from satisfactory. Indigenous children under the age of five are still twice as likely to die as non-indigenous infants, referred to by the Prime Minister as a 'shameful statistic'. While Rudd pledged to provide extra government funding for support services to mothers and babies, he also described the issue as a top priority (Bryant 2010):

> Generations of indigenous disadvantage cannot be turned around overnight. We know it will need unprecedented effort by all parts of the Australian community. But there is no greater social challenge to Australia than closing this yawning gap.

Moran (2006) is sceptical of this narrow focus on symbolic reconciliation and points out that making a distinction between symbolic and material aspects of the process has proven unsuccessful in post-conflict processes in countries such as South Africa, Argentina and Chile. By not offering compensation or other measures of justice, the Australian government seemed to ask for its crimes to be forgiven and forgotten rather than fundamentally seeking forgiveness and reconciliation. Rudd was hoping the apology would mend the breach between white and black Australians and move the nation towards reconciliation and recognition. According to the study 'Bringing Them Home', at least 100,000 Aborigines were taken from their parents – they are the Stolen Generations (Human Rights and Equal Opportunity Commission 1997). The official apology came almost 40 years after the programme ended.

When is the attempt to seek forgiveness and apologies good enough? As is the case with Truth Commissions, the creation of a common narrative by acknowledging wrongful actions needs to be linked with concrete efforts at reconstruction. Its impact would otherwise be weakened. Simply telling the 'truth' – Rudd recognising what happened – is unlikely to help individual victims who rely on some tangible response such as reparation in order to avoid being left with a sense of helplessness and being sacrificed for the sake of society or state (Fletcher and Weinstein 2002). In this case, the long-term characteristics of forgiveness as a process seem to have been underplayed and not sufficiently complemented by other measures of justice. Unhelpfully, political forgiveness is often depicted as a rational and detached response to violence and injustices even though it is unlikely to be removed from the emotional aspect of healing after conflict.

Moran (2006) concludes that the history of reconciliation in Australia has been far from successful: 'Irrespective of which understanding of Australian reconciliation one adopts, it is plain that it has not achieved the desired results.' She points out that the existing framework for reconciliation, based on the state, has constrained the

process towards transformation of society: 'Australian reconciliation has, for the most part, been a federal government policy – initiated, implemented, limited and finally "provided" by the various governments and governmental bodies' (Moran 2006: 132).

Hartwell (2006) suggests that the acknowledgement of the complexity of the interaction between group and individual is key to a positive social transformation, an element that has been lacking in Australia. A top-down approach to reconciliation and forgiveness simply cannot lead to healing and a new collective narrative.

Truth Commissions highlight the tension between justice, forgiveness and reconciliation in a public context. As an official body set up to investigate human rights abuses or violations of international law, it is often referred to as having a cathartic effect on society by officially acknowledging a silenced past (Hayner 1994). Its aim is social rather than legal justice, as a Truth Commission does not seek formal legal accountability in order to prosecute individuals responsible for crimes (Hayner 1994: 604). Truth and reconciliation commissions can offer an important complement to both traditional trials and forgiveness, but the contribution is somewhat ambiguous.

Moon (cited in Skaar 2009) raises a number of important questions about such commissions which are directly relevant to the forgiveness discourse: 'does truth lead to reconciliation? Does truth heal? Can there be reconciliation without an account of past atrocities?' In her recent book *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission*, Moon shows how such assumptions became part of the reconciliation process in post-Apartheid South Africa, but only partially capture the truth. She argues that reconciliation is a political practice rather than a normative or purely moral enterprise. Political reconciliation was the main goal of the truth and reconciliation commissions rather than restorative measures, even though it also promoted interpersonal forgiveness and acknowledgement. This conflict was problematic for the victims. The perpetrators were granted immediate amnesty in return for full confessions, rather than remorse. Victims, on the other hand, had to wait years for financial reparation by the government (Moon, cited in Skaar 2009). This critique stresses the tension between justice and forgiveness as well as between individual and social forgiveness. Society or the state cannot forgive on behalf of individual victims. Because of the 'emotional' nature of forgiveness, it needs to be addressed in a way that is sensitive to the individuals involved. It is vital to avoid the perception of forgiveness being imposed by the state or political institutions.

Through collective dialogue civil society can play a key role towards reconciling a new vision of society with a shared history and identity. An official account of past atrocities and acknowledgement of responsibility by the relevant parties is important, however difficult it might be to establish 'the truth'. Such steps ought to be combined with restorative measures as well as approaches towards forgiveness.

Forgiveness and Civil Society

By accommodating forgiveness, civil society actors can play a crucial role for conflict resolution and can motivate reconciliation and justice by mending the gap between state and individuals. As we have seen, reconciliation is not an action that can be easily mandated by the international community or the state.

Reconciliation involves the acknowledgement of past hurt, compensation as well as the establishment of a new vision of society (Moran 2006). It is most fruitfully understood as both a short- and long-term development. In the short term, it is a pragmatic cooperation process between former enemies seeking to rebuild economic, political and social institutions. In the long term, it is a procedure which might encompass multiple generations. The process of social healing is strongly influenced by three main factors: the interaction between various perceptions of justice, the formation of identity as either victim or perpetrator and finally, the personal and political processes of forgiveness as well as revenge (Hartwell 2006). In many cases, the process of establishing who are victims and who are offenders is far from clear cut, making it problematic to suggest who should forgive whom. In addition, it is often the case that the presence or availability of an offender capable of apologising and asking the victim for forgiveness is lacking. The offender might be unavailable or unapologetic. The quality of local, national and international leadership is key in this process, as is an understanding of the cultural and societal norms that impact the prospect of reconciliation. Civil society can influence the collective narrative of justice, memory and identity in this fragile process. However, Moran emphasises the importance of the parties in a reconciliation process to share a common language and cultural understanding of terms such as forgiveness, apology and compensation. This is fundamental for

their ability to meet with parity in a dialogue mutually conducive to reconciliation (Moran 2006).

Even though the state can only do so much towards social transformation, the determinants that influence individual behaviour both during and after conflict are social. Mass violence is a problem of community and not only individual responsibility therefore the solution post-conflict must be collective. At the same time, even though mass violence is a totalising experience, it is ultimately an intimate and personal one, as noted by Jaspers (1947). It is this individual experience which will influence one's perceptions post-conflict and these voices must be taken into account when considering the best approach to social healing. These issues highlight the potential role in the reconciliation process of all those institutions between the individual and the state: family, schools, private organisations, faith-based organisations, private workplaces, social movements and communities.

As Hartwell (2006) points out, Enright's model for the process of forgiveness opens up the possibility of individuals to forgive other individuals rather than their representative group, and hence might offer a way to overcome the controversial issue of identifying victims and offenders. The model also emphasises that the forgiveness process is fundamentally an individual act based on a choice of forgiving and moving on, which does not rely on the presence of an offender. This approach can equally be shared by a group with common goals and extended to motivate collective decisions that can have tremendous benefits for communities and societies confronting the difficult task of moving on from past atrocities. As we have seen, the interaction between individual and community or society is crucial in this process.

Hartwell (1999) describes the forgiveness process as a 'constantly evolving, dynamic interaction' between bottom-up and top-down actors. Individuals influence group behaviour and identity, while groups led by acknowledged leaders, influence individual beliefs. From fieldwork interviews in post-conflict Serbia, Northern Ireland and South Africa, Hartwell's most significant finding was the long-term nature of the forgiveness process: a phase of passive resentment tends to characterise the current post-conflict generation while a need for seeking forgiveness can be found in subsequent generations or in diasporas. The phase refers to 'a forbearance from revenge accompanied by a reluctance to forgive', an emotionally ambivalent attitude which can be politically useful due to its pragmatism. These findings show the need for a practical approach to forgiveness, such as the one outlined in the process model by Enright (1992).

A point of divergence among forgiveness scholars is the relationship between victim and offender. Can forgiveness be unconditional? Alternative forgiveness models emphasise the dialogue between victim and offender. Andrews (2000) describes a 'negotiated forgiveness' process focused on confession, ownership and repentance as well as a 'positional forgiveness' process where individuals are seen as part of a group. Positional forgiveness is concentrating on the individual's role in the conflict, as offences are more often than not committed as a group member rather than as an individual. Andrews (2000) suggests that such an approach to the offence is fruitful because social position can be confronted, understood and potentially forgiven. However, these methods can be accommodated by the Enright model as earlier stages in the forgiveness process.

Montiel (2000) advocates an approach where forgiveness is acted out collectively in what she refers to as 'socio-political forgiveness'. A whole group of victims release their collective resentment and condemnation of the group considered to be the offenders. Such a process depends on a number of particular factors for it to be effective: leadership, individual support of the public narrative of forgiveness and restoration of intergroup social fairness. The leaders of the victimised groups should be able to relate to the perpetrators in a forgiving, but effective manner and the public declarations of forgiveness have to be sensitive to the positions of the individuals involved. One of the main challenges when encouraging forgiveness is not to underestimate the pain and hurt of the individual who might not be in a position to forgive. Initiatives towards reconciliation and a perception of reinstating justice are crucial and work in combination with the offender's repentance and apology and the individual victim's readiness to forgive. Hence, Montiel (2000) highlights the need for socio-political mechanisms of justice for a productive forgiveness discourse, the point being that forgiveness compliments the traditional justice approach to reconciliation.

Conclusion

A productive approach to the intricate concept of forgiveness is to consider it a process of multiple stages. Even though it is the focus on values that distinguishes forgiveness from other types of justice, a pragmatic

understanding of the enterprise as an approach to social healing is valuable. The argument of this chapter is that forgiveness ought to be considered an important complement to traditional measures of justice. However, it does not preclude justice and essential compensational measures.

We have examined the complexities involved in the forgiveness discourse, especially related to the discreteness of the concept and the problem of promoting it top-down from the level of the state. Ultimately, forgiveness does not have to rely on action by the offender, but might in fact be a unilateral process, particularly in its final stages. Nonetheless, it is recognised that unconditional forgiveness is extremely challenging and does not come naturally.

Civil society offers an arena where individuals, groups and political institutions can interact and work together towards forgiveness and reconciliation. Civil society actors can be sensitive to individual concerns while creating a new vision for society based on a collective narrative of history, memory and identity. The process model of forgiveness describes how an 'education' in forgiveness can help individuals towards that goal.

Most importantly, forgiveness must be internally driven and not motivated by external pressure. If internal motivation can be encouraged, forgiveness can release the hurt of past atrocities, enable healing and reconciliation, and offer the parties in a post-conflict situation the possibility for restoration and moving ahead.

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CHAPTER 4

HISTORIANS AND CONFLICT RESOLUTION: THE CHALLENGE OF ADVOCACY TO SCHOLARSHIP

Elazar Barkan

In the last couple of years, Russia has on several occasions engaged in historical memory combat with some of its neighbours. In May 2009 Russian President Dmitry Medvedev established a special presidential wide ranging commission for 'historic truth' with the goal 'to counteract against attempts to falsify history that undermine the interests of Russia'. This political statement, which some commentators saw as having 'strategic importance', was published on the eve of the military parade in Moscow to commemorate the Second World War Victory Day. This move to defend the motherland against 'the falsifiers of history' was directed at, among others, Ukraine and the Baltic states, but even more so against internal dissent (Felgenhauer 2009). The suppression of freedom of speech is one of the most pointed attacks on human rights in Russia and now Russia has officially opened 'the history wars' as a new frontier.

Later in 2009, as part of the commemoration of the start of the Second World War, Poland's parliament accused the former Soviet Union of genocide for the execution of Polish prisoners of war in Katyn Forest in 1940. This was part of a declaration that charged the Soviet Red Army of war crimes after they invaded Poland in 1939 (UPI 2009). This followed a summer of historical salvos, including a charge by a Russian Defence Ministry website that Poland caused the war because it provoked Hitler; and Medvedev denying any Soviet responsibility for the war (*The Economist* 2009, Gutterman 2009).[1] In the meantime, Yevgeny Dzhugashvili, grandson of former Soviet dictator Joseph Stalin, sued one of Russia's leading newspapers, *Novaya Gazeta*, for falsifying Stalin's record by accusing him of crimes against the people (Weir 2009).

It was against this background that the 70th commemoration of the Katyn massacre was built as historical turning point in the relations between Russia and Poland when Putin, as a hardliner, invited Polish Prime Minister Donald Tusk to a joint commemoration. A Russian television channel showed on the eve of the ceremony Andrzej Wajda's Oscar-nominated *Katyn*, which showed explicitly not only the Russian crime, but also the cover-up. The ceremony as a rapprochement was meaningful, yet Putin was criticised that his comments really created equilibrium between perpetrators and victims, between Russian and Polish victims of Stalin's oppression. This substantive dispute was dramatically overshadowed three days later, when President Lech Kaczynski and 95 others, including many senior Polish government leaders, were killed in a plane crash on their way to a second commemoration in Katyn. In what became known in Poland as Katyn 2, Poland's elite was decimated for the second time in a most symbolic and painful way on the site that harbours the Polish identity intertwined with Russian oppression. Yet the Russian response was full of empathy. From the joint investigation, to aid and national mourning, the aftermath of the tragedy seemed to provide a space to bridge animosity, to allow both sides to integrate the commemoration and the plane crash into joint memory.

I write this days after the accident. Memory is not linear, and it may well change in time. But the early indications are that Russia responded initially in a conciliatory way (even if it left much to be desired) and, when faced with an opportunity, may have provided building blocks for a memory of Katyn in Poland that will include Russian empathy, not exclusively the Russians as perpetrators and deniers.

What this new attention to history as politics in Russia underscores is that, similar to human rights, history and the question of redress has become central for international politics in a way that abusers are becoming interested in it as much as advocates. History is clearly subject to falsification, and the attempt by abusers to own the process is not dissimilar to efforts by countries like Cuba, Saudi Arabia and China, which are getting themselves elected to the United Nations Human Rights Council in order to undermine the vigilant human rights system. When it comes to history, the challenge facing historians and advocates is to build a vibrant civil society

advocacy movement that will counteract the manipulation and exploitation of history to provoke conflict and abuse of human rights.

This chapter responds to two needs: scholarly and political. The scholarly need is a desire by academics faced with real world challenges to be more involved, to become relevant. These challenges are most often concerned with social justice and human rights, though not exclusively. The second need is political: to develop a discourse that is able to engage and counter public beliefs and mythologies that serve as fodder for ethnic and national conflict, opening space for better understanding with the 'other'. This dual goal is attainable subject to a strict separation between the politics of advancing non-confrontational history, and writing a professional history that is not directly shaped by political needs. More on the dilemma later. For now, it is adequate to be aware that for a historical discourse to be effective, and not manipulative, it has to represent first-rate professional history.

The need for reparatory history emerges most clearly in cases where there is an urgent need to amend past wrongs, or where the demand for historical redress continues to fan a violent conflict. Reparatory history is increasingly being viewed as a right for redress, and has become a wide-ranging aspirational goal of the politics of transition as well as a tool of conflict resolution. The scope of possible redress includes retributive justice (courts, tribunals, Truth Commissions) restorative (reparation; restitution of property; restitution of cultural property; historical commissions) and symbolic, such as apologies. Each of these provides a form of atonement. To understand the appeal of redress, we have to go beyond legal analysis to explore the centrality of identity in redress, in particular the role of history in identity as a frame of analysis.

The force of morality in redress revolves around (1) the question of explicit *recognition* of wrongs as a precondition for redress, and (2) the relation of material redress to symbolic quest. While the form of redress varies (restitution, reparations, or retribution), for redress to play a role in conflict resolution and reconciliation it has to transcend the quest for justice and the individual guilt and responsibility, and address the group identity, paying attention to the ethics of rights and historical imagination.

One example of this type of involvement was evident in January 2009 when a group of Kenyan historians and intellectuals participated in a conversation on the role history can play in addressing ethnic animosity in the country. The politics of ethnicity is at the heart of Kenya's identity: parties, relationships, networks, and much of the social relations are grounded in ethnicity, ethnic memory and ethnic fear, or in what is known as 'tribalism', that is the Kenyan designation of 'negative ethnicity'. Prior to the December 2007 election – and the post-election violence – many politicians exploited selective narratives around 'domination', 'marginalisation' and the 'land issue' to advocate violent approaches to serve their electoral purposes.

Redressing the past is at the core of human rights discourse in Kenya these days. This is not limited to naming and shaming current abuse, it is a struggle over justice and impunity, it is a strong sense that lack of accountability is at the heart of a failed state, or at least the risk that Kenya may turn into one. Human rights in this sense is not only prospective, but retroactive. What would constitute accountability is not spelled out, and presumably there is no static target but rather a process. This will depend on the way the various commissions and other civil society organisations perform. One example will illustrate this. In the workshop that explored historical advocacy, there was a voice – at first hesitant – which argued that Kenyan historians have avoided their public responsibility to address the urgent issues of society by 'hiding' in colonial history, which is safer, and does not force the encounter with contemporary political divisive issues. There was general agreement in the room with the statement, and one of the motivating factors for future work stemmed exactly from this challenge. The fear of engaging potential issues that forces the scholar out of the ivory tower and presents challenges and even the risk of violence is justifiably a critical impediment in social involvement.

This example can provide the context for reading the challenge presented by Stanley Katz in 2002. This desire for engagement and the need for advocacy was presented as a needed response to the rampant globalisation and the trauma of 9/11. Katz appealed to intellectuals to go beyond efforts of 'making our universities just' and underscored that the demands from ourselves as intellectuals must be higher than from mere academics under normal circumstances (2002: 437). It cannot be adequate to limit the teaching and research to further just knowledge and education. Instead the goal should be to advance action and worldly involvement: 'Our task, then, is to find and fund limited and well-defined projects that will apply our theoretical training and experience to urgent problems whose full complexities have as yet gone untended' (Katz 2002: 438). I believe such desire is widespread. It has been articulated differently over

the years in various discourses, but it is critical to the understanding of the dissonance between academia and the world.

The political needs are obviously many and diverse. I would like to point to the needs of addressing historical conflicts specifically, which is another way of addressing Katz's call to 'apply our theoretical training and experience to urgent problems whose full complexities have as yet gone untended'.

This need stems from the recognition that many political conflicts, internationally and domestically, are rooted in conflicts over historical narratives. The concept of 'historical conflict' demands clarification. Many conflicts, probably all conflicts, have historical context. In contrast certain conflicts are 'historical' in the sense that it is the legacy of the conflict that continues to haunt the present, the memory that shapes the identity of the protagonists and its ramification, more than the dispute as an ongoing conflict. The historical context of a conflict is distinct from a historical conflict. These are two separate categories. The historical contexts of conflicts are all around us: postcolonial conflicts in Africa, the Middle East, Russia and Georgia, we can go on. In each the history of the conflict is critical for an understanding, but the conflict is about the present: territory, resources, power. In contrast, a *historical conflict* is about our perspective of the past, the legacy of which has ramification at present. The Armenian genocide is a well known example. The legacy of the Second World War between Japan and China is another. How many died in Dresden and what is the significance of the numbers? In these cases it is the divided memory and the lack of acknowledgment that shape the current relations, more than, for example, trade disputes, territorial ambitions or electoral politics.

The historian's expertise is obviously useful for both types of conflicts. Understanding the historical *context* of a conflict may allow politicians to engage differently in efforts to resolve the disagreement. In cases of *historical conflicts*, however, the historical narrative is the very core of the conflict. In this case constructing a narrative that bridges the differences and negotiating the polarized perspectives provides for a direct intervention at the heart of a conflict. It is a *new tool* of conflict resolution. Katz's call for involvement led to a project to examine the possibilities of scholars combining their work with activism, and it was reported on in a workshop at Skidmore devoted to discuss the intellectual and practical opportunities under the title 'Irenic Scholarship and Public Affairs'. Jeffrey Perl's report focused attention among others on the relationship of truth, interpretation, and justice to scholarship, each of which is critical for the enterprise of advocacy (2006). I shall return to the issue of methodology.

A third manifestation of the demand for scholars' involvement in advocacy and a call for engaging historical scholarship as central to conflict resolution comes from the international community. In a report by a new UN organisation, the Alliance of Civilizations,[2] the core recommendation concerning the Middle East conflict was the construction of 'the mutual recognition of the competing narratives that emerged following the establishment of the state of Israel'. The report states that

> The competing narratives of Palestinians and Israelis cannot be fully reconciled, but they must be mutually acknowledged in order to establish the foundations of a durable settlement. To this end we recommend the development of a White Paper analyzing the Israeli-Palestinian conflict dispassionately and objectively, giving voice to the competing narratives on both sides, reviewing and diagnosing the successes and failures of past peace initiatives, and establishing clearly the conditions that must be met to find a way out of this crisis. Such a document could provide a firm foundation for the work of key decision-makers involved in efforts to resolve this conflict. (Alliance of Civilizations 2006)

It may take more than a report to achieve this goal, but the challenge is made clear. How do we get there? I believe we should recognise two dichotomies: (1) that between professional and non-professional history; and (2) that between scholars interested in the theoretical aspects of the profession and those who are less worried by epistemological concerns. Both dichotomies suggest a need for expanding the role of history beyond the professional norms today. The interest in history far transcends the profession, and often the academic dichotomy is counterproductive. Outside academia, the belief in objective history and in history as science is widespread, and historians should remember this when they engage in epistemological or methodological conversations with implication for public discourse. The epistemological concerns may be more significant for the 'internal' debate. The public discussion, in contrast, is informed by realism which seems often alien in academic circles. Such epistemological concerns are obviously overshadowed by public history as demonstrated for example by the historical laws in France, where the legislature has, among

other things, recognised the positive role of colonisation (2005), censored the denial of the Holocaust (1990) and acknowledged the 1915 Armenian genocide (2001).

The dichotomy between real world historical advocacy and academic epistemological concerns over the nature of historical realism does raise concerns related to the nature of historical rhetoric by advocates. On the one hand, there is the concern about levels of theoretical complexity that will alienate advocates and the public, on the other hand there are professional concerns related to advocacy.

For scholars and advocates to cooperate there has to be a middle road where the constructed narrative has to address major issues of the identity of the nation, and ethnicity, while making it accessible to the public. That in many cases will mean a simplified version of history, but one that is not on a slippery slope to propaganda. The first order is 'Not to Lie'.

The dictum that historians should not lie or perpetrate myth, that is, historians should not advance presentist claims that have no historical foundations, is neither new nor controversial. This remains true even if the presentist claims are motivated by ethical or political concerns. For example, in rejecting ethical presentism as a legitimate motivation for historical scholarship, Gordon Wood confronts the claim 'that the Iroquois confederation was an important influence on the framing of the Constitution in 1787' and states that:

> Although there is not a shred of historical evidence for this claim, the fact that it might raise the self-esteem of Native American students is sufficient justification for some scholars that it be taught. (Wood 2009: 3)

I believe this should not be a controversial proposition. Accepting the 'authenticity of the past' as a requirement for historical narratives is a must not a virtue. Conversely, although being motivated by contemporary issues is frequently a worthy rationale for an inquiry, constructing a historical narrative to fit a contemporary purpose cannot be the end goal. The conventional story of historians' apprehension regarding truth narrates the theoretical struggle with objectivity, philosophy and science as standards of truth to be emulated. The historiography of the tentativeness of historical truth has become the convention of the profession. Carl Becker's 'Everyman His Own Historian' (1931), delivered as a Presidential address to the American History Association, has routinised this anxiety before almost any of today's historians were born. This is not a postmodern phenomenon, indeed it is at the heart of modernism since the late nineteenth century, but has become much more pronounced over the last three decades.

Much has been written in efforts to extricate the profession from the provisional nature of knowledge and anchor it in objective truth, but to no avail. I am glad to accept this limitation. Social scientists and historians are content to settle for a pragmatic truth. Among the many formulations of this pragmatism, Vincent Crapanzano recalls Hermes' promise not to lie as an adequate standard (1992). This shift from anxiety about the inability to ascertain the absolute truth, to accepting it as a defining condition, is not a challenge to the existence of truth, but rather a limitation on the need to narrate an absolute and exclusive truth. Overcoming the anxiety of not knowing the absolute truth is an important step in the service of conflict resolution and redress.

The Goal of Historical Activism

There is a growing public recognition of the political contribution of redress to resolving historical disputes, human rights and conflict resolution, and to peacebuilding, as well as to enhancing social cohesion. This broadly comes under the category of transitional justice, which is a growing field both within civil society and academia (see, for example, Kritz 1995, Hayner 2001, Teitel 2000). This terminology mirrors the goals of international organisations and development agencies, and I formulate these specifically in these categories to underscore the political nature of the work and the challenge of activism.

Motivated by the work of human rights advocates, the question for scholars is in what ways can a civil society organisation support these goals? The eventual mission I believe is to facilitate a *counter-movement* to the claims by nationalists in many countries who perpetrate propaganda and historical mythologies under the guise of history aiming to inflame conflict. In times of crisis, nationalists always find audience and supporters. In contrast it is more difficult to prop a liberal, non-nationalist, rational position. A wider perspective of history, and of national rivalry, especially in times of conflict, has no 'traditional' or 'natural' constituency of advocates. The goal of historical activism is to facilitate a powerful counter-narrative that can inform public discourse and undermine the nationalist exclusionary claims of truth well before a crisis takes hold, and in the best of cases, it is a long-term process.

The method to achieve this is to attempt and demarcate the borders of the nationalist narrative and to examine it in conjunction with those who are impacted by it, namely

the others in the story, but who are not in a position to narrate it. Since no national narrative is told in a vacuum, the goal is to bring together scholars from both/all sides of a conflict to write joint narratives that would contextualise the national history.

Shared Narratives

The observation that historical narratives are partial should not be controversial, even if our aspiration is to transcend it. In this they are not different from other systems of knowledge. Constructed and partial truths are the foundation of science and define its epistemological framework (Clifford 1995). While partial truth has provided the comfort zone for scholars for over a generation, for James Clifford, for example, it remains disconnected from many who seek truth as reality not merely an approximation of it, disconnected from the public who looks for guidance in history, who look for objective and scientific history (Clifford 1995). One challenge is to reconnect between the recognition of partial truth and the public desire for more than partial truth. ('Partial' in this case should be understood as not complete, but also as partisan).

But if the nature of partial truth is that it has a 'social location' and is constructed within structures – economic, political – one goal might be to expand its social location. The recognition of the social construction of truth and knowledge, historical in this case, directs our attention to what constitutes the relevant 'social' group that does the construction. In science, we know who qualifies as an authority, at least we have a discipline – the history of science – that conducts an intensive exploration to locate the site of legitimisation which has progressed from the genius to the paradigm to the production of material culture (Rabinow 1996).[3] For history as a method of conflict resolution I would like to suggest the analogous notion of 'shared narrative' as a legitimising methodology.

The term 'shared narrative' is used in this context to describe a historical construction that intertwines and brings closer the perspectives of two or more national histories that are in direct conflict. The shared narrative is unlikely to be linear or mono-vocal and will most likely have distinct registers. There may be meta-agreement and a variety of interpretations about the local and the specifics, or the other way around. The aim of a shared narrative is to erase the exclusionary dichotomies along national lines, and to redirect the multiplicity of methodologies or interpretations along professional rather than identity divisions. Although there may remain empirical disagreements, the critical rupture will not be among the participants in the shared narrative, but between the historians who participate in a shared solidarity and the nationalist histories. For the public the conflict is very real, and the division is along two camps. This has to be recognised as a frame, a context that is also essential for scholars who feel a commitment to the cause.

Or put differently if truth is what scholars find able to agree upon, that is 'solidarity' shared among 'a community of like-minded' (Rorty 1989) – the shared narrative goal is to expand that community to provide a solidarity bridge between two opposing identity communities in a conflict. Since truth is defined as 'what our group believes in', a shared narrative will aim to have its foundation in both groups. The affinity of the group to the narrative is constructed both by having its concerns providing the building blocks of the narrative, and by identifying with the scholars who are members of 'our group'.

The dilemma of who is a member of 'our group' should include both content and appearance. Ethnic affinity is essential but not sufficient. Shared beliefs and a commitment to national narratives seem to be a requirement, but we do not have adequate data. The inverse, being a member of the enemy, is certainly an obstacle, but may not be an absolute deal breaker.

Sharing may sound benign, but the process of constructing narratives is at times risky and subjects historians to public pressure or more. One would be amiss not to note that the uncertainty of a shared space may be a lightning rod for nationalists. The scholars must be courageous to present a counter-nationalist narrative, be willing to construct and sign up to a narrative that criticises the national myths and that gives 'comfort to the enemy'. In certain cases it leads participants to transgress the law. In Turkey, scholars and others have been often indicted for offending the nation by referring to Armenian genocide (under Article 301 of the criminal law), and Hrant Dink, a Turkish citizen and journalist of Armenian heritage, not a historian, was assassinated following his indictment for publicly destabilising the demarcation between the nationalist narratives and participating in a dialogue of Turkish and Armenian historians. Russia is reviving the Soviet oppression, this time against falsifiers of history.

Let me give a couple of examples from recent work with scholars who participated in attempts to build a shared narrative. I worked with a group of Palestinian and Israeli scholars on such joint narratives. One was a historical atlas of the 1948 war, another was on shared

sacred sites, and a third one was on a history of Haifa. The atlas has gone a long way towards completion, but political deterioration in the region, and finally the Gaza war of December 2008 led to a suspension of the work. It is unclear whether it will be renewed, and whether it will be done by the same participants. The project lasted a few years, and had suffered from the political tension, yet it went a long way forward, even during the second intifada.

Challenging the national narratives can be approached from various angles. Such was the participation of one of the Israeli scholars, who is politically idiosyncratic, and is viewed publically as a radical right-winger, but does not see himself as such. His presence in a group working with Palestinians ruffled emotions, was agreed upon by both Palestinians and Israelis, in part not only because the expertise he brought to the team was greatly appreciated, but also because of the notion that his presence would symbolise to Israeli readers that their national concerns were included and fully represented in the emerging shared narrative. It is noteworthy that the professional standards of this scholar made him politically unpredictable; that is, although nationalist, he would support a 'Palestinian' position because he believed it to be historically true, even if it was counter to received Israeli narrative. Solidarity and partially in this case were both destabilised, because the professional solidarity was in tension with the national solidarity. This tension can only take place in doing, not theorising about it.

While the realist objection to the pragmatist or the constructivist is that it provides no assurances against extremism, the shared narrative offers a methodological rather than a theoretical response. The concept of negotiation for knowledge production is employed by Bruno Latour and Steve Woolgar to provide for the construction of meanings from social interactions in order to determine whether specific measurements will or will not count as facts (Latour and Woolgar 1979). I say this is without getting into the debate about the correspondence theory of truth, approximate truth or otherwise, accepting that 'shared narratives' describe adequately, reliably and accurately the history for all members of the group. Indeed, if this is what paradigms are, shared narratives may well be the embodiment of paradigms.

The constraints of solidarity means avoiding focusing on alternative radical extreme groups who confine their communality to in-members, and instead to expand the solidarity to all those impacted by the constructed narrative. This is a gradual process and nobody would imagine drafting anybody to join a solidarity circle, but I believe that the more it becomes recognised as a methodology, it can appeal to other parts of society.

One can assume that the conflict and the nationalist histories that drive the conflict are often (perhaps always) based on memory that is flat, binary and simpler than the complex historical record. Therefore it is probable that a rich narrative will undermine nationalist perspectives and will provide for a more nuanced history. Yet there are many cases where one-sided memory (a group's beliefs, identity, self-perceptions) actually coincides with the historical research, where victims are victims and perpetrators are perpetrators. In such cases, the overwhelming evidence – necessary to produce a coherent and unambiguous narrative – may well persuade the party whose myth is shattered that their self-perception and the way they view their history ought to be revisited. Shared narrative is not about splitting the difference.

Demarcating the Historical Narrative

Most writings of national histories are partisan, in one way or another, and place one's subjectivity at the centre of the narrative. The challenge is to bring conflicting subjectivities into one discussion. One type of tangible construction of shared narrative can be seen in reparation agreements, which provide explicit and quantitative examples for negotiation over memory and victimisation (Barkan 2000).

Some of the ways in which society address the worst violations, such as genocides or the Holocaust, provide clear examples of constructing a shared history. A reparation accord, for example, is a complex negotiation, and the agreement includes monetary and symbolic aspects. The reparation takes into account myriad considerations, but most importantly the various perspectives of the protagonists, victims and victimisers alike, who come to recognise each other's story in the narration. In this case the perpetrators may be able to contextualise their guilt, or alternatively recognise it, but either way turns it into a foundation of new relations between the groups. This form of closure, one that acknowledges the current memories of each side, provides the structure for a shared narrative, and finds a place for an alternative account to coexist with one's own national story. This kind of a closure is more than merely an agreement of material claims; it is also bartering of memory. While each side can turn around and reinterpret the memory, indeed the meaning of the reparation agreement, an agreement does signal that there is more to the shared narrative than diverged perspectives on the conflict. And

like any historical writings, or politics for that matter, it is a process, not the final destination.

The absence of finality in a shared narrative is also one of the distinctions between judicial and historical narrative. Historical narrative is always prone for revisions. Which means it can correct mistakes. While judicial process is subject to rules and procedure, which may lead to the wrong outcome, a determination that is viewed by the impartial observers as false and wrongheaded, the decision is irreversible outside the system. When the International Criminal Tribunal for Rwanda finds Colonel Théoneste Bagosora – the highest official in the Rwandan Ministry of Defence – guilty of the killing of several ministers, Belgian soldiers, and several other killings, but not guilty of the genocide, the judgement does not begin to approximate the historical truth.

It is imperative to recognise that different levels of complexity exist for various constituencies. The dilemma is not to dismiss positivist knowledge, or facts, but to look for a process of translation between alternative interpretations. The issue is not to argue that facts are 'fabricated', in the sense of being wrong, or that 'anything goes' (Feyerabend 1975), but rather to explicate the way facts exist, can be presented and constructed in alternative – but limited – ways. Their existence means that certain aspects cannot and should not be constructed away; at least not by those who are interested to engage the real-world constituency. Genocide is a very slippery concept, but to argue in Bosnia that the killing in Srebrenica was merely fabricated, not a positivist fact, or to focus on the symbolic, would not get the historian very far. Certainly not as an advocate who wishes to embrace social responsibility. Even if the International Court of Justice absolved Serbia of guilt of committing genocide in Srebrenica, the dispute is over varieties of truth, legal, historical truth, but not to deny that there is truth.

Historical narrative is always subject to revision. Producing and publishing a shared narrative in this case aspires to construct a shared reality in the public minds. While it can be revised, at least the memory of having reached an agreement, of concurring on a set of facts, becomes part of the narrative of the conflict and its negotiations.

The Methodology of Negotiating Histories

Perl presents the task of irenic scholarship as writing history by concentrating 'on evidence of ambivalence, ambiguity, unclarity, paradox, covert agreement, and the mutual dependence of diametrically opposing claims'. This he contrasts with 'historians whose methods impress nonscholars – those methods tend to be positivist'. And he asks:

> Is reconciliation the likely upshot when participants in negotiation take for granted that 'sides' are non-metaphorical, that facts are 'plain', and that truth and justice are 'causes' that peacemakers are called upon to 'serve'? (Perl 2006: 11)

I quote this because I see this polarisation as very useful to think through the methodology that is required in order to address conflict. The opposition, we are told, is between the sophisticated scholars ('students of the symbolic') who are contrasted with the 'positivist' scholars who are not trained to 'recognise the premises that enemies may share'. To achieve reconciliation, we are told, the enemies should not be viewed as two sides, because this is too simplistic.

The question is then raised of whether there is a polarisation between the sophisticated scholar and the scholars who participate in the exercise of writing shared narratives, between a focus on evidence of ambivalence, ambiguity, paradox, in contrast to the positivist scholar who focuses on empirical evidence. I see such a description as displaying more a cultural than a methodological dissonance. I believe empiricism is the strongest rhetorical tool for the historian, even when this points to ambiguity – more than any symbolic interpretation – that can be persuasive and bridge differences among conflicting identities, in particular for the wider public that consumes history as a narrative of identity. On the other hand, to view the scholar as above the fray, not sharing solidarity and as divorced from real-world conflicts, is to isolate the scholarly discussion away from 'real' people who view their groups as existent and anything but metaphorical. To imagine a cosmopolitan perspective, rather than a situated voice within a context, can display either conceit or lack of awareness. There is a distinction between attempting to write beyond one's identity and pretending that one does not have an identity. The relation to power is as pertinent. Power, academic or otherwise, must be taken into account, and acknowledging it is essential. Civil society advocates do not have the privilege to deny their own agency. Ignoring the group solidarity in the name of sophisticated ambiguity is unlikely to appeal to the public or create trust. I believe we have to remember that the explicit goal of historical reconciliation is to engage groups that view themselves as enemies. Hermeneutics involves cultivating the ability to understand perception from somebody else's point of view, and to appreciate

the cultural and social forces that may have influenced their outlook. This includes enmity, vengeance and ill-will. The challenge is how to transform, translate, and deduce the interpretative, in a way that has real world and policy meaning.

Empathy and solidarity become the foundations for empirical scholarship that aims at narrowing differences both at the positivist and interpretative level. New empirical data that lead to reframing the narrative is still positivist history. Only when the simple empirical history is clarified is there a space to engage the interpretative symbolic sphere. The irenic activist-scholar has to recognise the empirical reality from others' subjectivity, to recognise the limitations of negotiations and to work towards a shared space. Solidarity has to face competing loyalties. When Israeli and Palestinian scholars agree to a shared narrative on the Al-Haram al-Sharif/Temple Mount, dating back to the seventh century, but they disagree on the earlier period for political reasons, the empiricist has to recognise both the conflicting historical and political solidarities. Describing the disagreement, and doing it jointly, is one minimalist form of shared narrative.

The Role of Civil Society

Motivated by the recognition that redress represents a critical human rights set of issues, and that the construction of the past is informed by competing solidarities, civil society organisations can address issues of redress in various locales and learn from the experience in a comparative way. The immediate goal ought to be to bring scholars to work together and recognise the points of friction that incite conflict, which (damaging) mythologies are strongly held, and which have more the nature of a political expediency.

By engaging scholars who are part of the political mainstream, the methodological hypothesis is that broadly speaking the conversation would mirror the public solidarity and uncover the public willingness (or unwillingness) to confront various historical myths. By engaging both sides of a conflict, the contradictions between the conflicting myths or disagreements are made explicit, and each side can be made aware of the limitations of its own narrative within a larger framework, and examine these empirically by facing the counter-empirical evidence. Assuming that the participants in the discussion are inclined to look for common ground, the enterprise should aim to find shared perspectives and explore the specific empirical basis of various beliefs. Further, by engaging different contexts for various issues in one discussion, the obvious becomes questionable, the familiar unfamiliar, and new issues need to be explained. The competing solidarities will continue to reflect the significant distance between national and ethnic narratives. The ability to create shared narrative is not meant to convey undue optimism, merely a step in a process of conflict resolution.

A group of Palestinians and Israeli scholars, alluded to above, has been engaged in the last few years in writing a shared narrative. The first task was to identify issues that are controversial, consequential and feasible for an empirical investigation within the constraints of a limited budget. They decided to attempt two specific projects: writing an atlas of the 1948 war, and a joint narrative of sacred sites. Each of these created its own difficulties. The atlas presented challenges from the mundane – such as which maps exist, which will need to be created, what should be displayed – to the principled and unanticipated issue of annotating the maps. What is the narrative that is to be included? How much background? What is pertinent? How to describe and name sites and events? These and similar issues had to be worked out, some of which were divided along national lines; others were more professional dilemmas. The language problem was resolved by embracing English as a working language and committing to publish in three languages, including naming places in each language. Most of the maps from the period are British, and the needed additional maps were created by Palestinian and Israeli geographers. Several technical issues had to be resolved – including, for example, the size of a dot on a map to indicate a place. The dilemma was that too large or small dots of colour represent the map and the area differently, and convey seemingly alternative realities, somewhere between the Palestinians' narrative of a populated country taken over by colonialists, to the Zionists' narrative of a land with no people to a people with no land. These fundamental issues had to be negotiated over the size of the dot on the map. When both sides agreed on it, they constructed a *via media* of a shared narrative.

A different issue arose over how to describe and narrate mixed cities. The existing maps do not delineate the ethnic divisions within the cities. This was one type of map that had to be drawn from historical data, which are anything but self-evident. Describing the process of the modernisation of Palestine can go back to the early Zionist settlement in the second half of the nineteenth century, or back further to the eighteenth century and the

rule of Dahir Al Omar. Choosing any one of these frames clearly has a political impact.

A second Palestinian-Israeli working group was engaged in intense negotiation over which sacred sites to include in the joint narrative. One issue was how to create parity. The project had to be manageable, so not all sites could be included. But does the list have to present a similar number of sites for each group? Since there are many more Muslim and Christian sites, what constitutes parity? A straightforward statistical representation could not work. Instead, an agreement needed negotiation of what would present to the reader both a sense of shared land, and the numerical imbalance between both sides. Whether shared sites are a source of conflict or coexistence is in part a matter of representation. Too often the nationalist narrative does not present an alternative.

The ultimate intended audience of a shared narrative is the public, which must include the scholarly community as the experts. This influences the methodology. Although the negotiations first began with the recognition by the scholars that each side was trying to persuade the other of its own position, it became clear, even if it was not always remembered or explicit, that the final texts and maps have to be acceptable – or at least defendable – to both publics. Too much imbalance would delegitimise the project. The constructing of the shared narrative has first to persuade the participants as proxies for the public.

One successful small project was writing a historical guidebook of Nebi Samuel, north of Jerusalem. The name of the site alludes to the three religions all of which believe in the Prophet Samuel. The place is fascinating: on top of the mountain from which the Crusaders reputedly first saw Jerusalem stands a building which used to be a monastery and currently houses a mosque on the ground floor and a synagogue in a cave underneath. Both are active, in particular on Friday afternoon. In the middle of the mosque there is a small vent to allow air circulation in the synagogue, which is opened during Jewish prayers. Administratively the site is in the West Bank, but on the western side of the separation wall. As a result, the Palestinian inhabitants of the village around the site do not have Jerusalemite IDs, which means that they exist literally in no-man's land, facing enormous obstacles in travelling either in Israel or in the Palestinian Authority. The site was subject to extensive archaeological excavations, done by the Israeli 'Civil' authority.

The goal of the joint narrative was to write a historical guide book that could perhaps be used to advocate for turning the place into an archaeological park. The plan was supported by the local Palestinian villagers. One civil society organisation, the Palestinian partner institute, that sponsored the other groups balked because it argued that the park would be on land that had been confiscated, and would legitimise the confiscation. In contrast, the villagers were more amenable because they were hoping for employment opportunities. A representative of the Jordanian Wakf (which is in charge of the Al-Haram al-Sharif) did see the merit in the work and became a partner. The shared research and writing was done. The historical narrative exists.

In the meantime, work on the atlas progressed and stalled depending on the availability of scholars, budget – and politics. During the last four years political developments have included Hamas taking over Gaza, the Palestinian Authority splitting and Israel conducting two wars; overall the situation seemed to be deteriorating. Indeed, the first meeting of the group commenced on the very evening, 7 October 2004, that Sinai terror bombings (including the Taba Hilton Hotel) killed 34 people. For a moment the project seemed stillborn. The participants, however, have continued to work throughout the violence in the region, although frequently Israeli security measures or Palestinian protests at Israeli violence made meetings or progress slow, if not impossible.

The project encountered continuous political objections. When a refugee working group was formed, an Israeli NGO refused to participate for political considerations and withdrew its sponsorship, although it remained interested and on the sideline. As the political situation between the Palestinian and Israelis deteriorated, the outer circle of the project – not the scholars themselves but the sponsoring Palestinian NGO – has raised objections to the enterprise and by 2009 even resorted to the language that the narrative reflects 'the existing "master narrative"' of the war with only nuanced additions from the Palestinian side. This was despite the fact that each text had been written by Palestinian and Israeli scholars and was discussed and vetted by the group. Clearly the political tension influenced the perception and the representation. The historical narrative is subjected to political considerations. When the Israeli NGO wanted to re-engage in the discussion (excluding the refugee topic), the Palestinians refused. In both cases the decisions were taken by the boards of the organisations, both of which declare their commitment to peace and are willing in principle to cooperate (in the Palestinian case, despite an official boycott in the Palestinian Authority of cooperating with Israelis) yet both are rubbed wrongly

by various contentious representations of history that are too controversial politically. Most recently, the Palestinian anger against Israeli attacks on Gaza has led to intense conversations and a decision to freeze the joint work.

Even if as individuals the scholars may be more inclined to act within academic solidarity, and accept the academic aspect of the project (and even continue shared work in a very difficult political situation), the project aspired to have a political reach, and engage civil society organisations that are semi-political. The scholars were selected by semi-political bodies and, as such, some decisions have been made for political not academic considerations. Not the substance of the text, more the pace and direction of the project. Like every negotiation, the pros and cons have to be evaluated. In this case the attempt to go beyond individual scholars and engage organisations framing the project in a particular way. To the degree that politics shape the limits of the scholarly discussion, the scholarship is subjected to political considerations. This is true even when the participants view the goal of historical reconciliation as both important and feasible. These individuals and groups are markedly more open to reconciliation than the public at large. These difficulties suggest the steep climb ahead in constructing shared narrative.

This is one example of many ethnic and nationalist conflicts that are rooted in unresolved historical disputes and injustices. The goal of civil society ought to be to confront these distortions and myths of history by fostering joint work in order to lead to 'islands' of recognition, reconciliation and understanding of 'the other', which can provide building blocks that will contribute towards the groundwork for peace. These 'islands' are of respected scholars and civil society leaders from opposing sides of a conflict. They could work together to create and disseminate shared narratives that provide reliable facts and commentary as a basis for public debate and discussion. Through these collaborative efforts, academics and civil society organisations ought to develop civil society networks of engaged scholars.

Conclusion

Let me conclude by revisiting the scholarly reflection about the role of history and historians in responding to the ethnic violence. The first point can be viewed by revisiting the Kenyan 2007 violence. It is clear that the hostility erected walls between scholars. At Moi University in Eldoret, for example, ethnic fear and animosity forced historians to stop communicating with each other. Several months later, mea culpa among historians was pronounced. Upon self-reflection, historians took the blame for segregating professional history from those who consume history, which they view as a major failure and challenge. Similarly, the tendency of scholars to distance themselves from topics with contemporary relevance was viewed as a serious intellectual and professional shortcoming. As a result, a Forum for Society and History was established in Nairobi in January 2009, with an explicit goal of encouraging intellectuals to come out of their ivory towers and actively participate in the public sphere. Two forms of solidarity are envisioned: a multiethnic forum, and a forum of academics with the public. In the words of the organisers, 'historians were warned not to assume the role of being the sole creators or consumers of a people's history' (Barkan 2009). In short, to allow for inclusion of diverse participation, and to tell the Kenyan story 'in as accurate and as objective manner as possible … to use history to dispel urban legends, rumours and popular untruths' (Barkan 2009). There is much work to be done. As I write this, the reports from Kenya emphasise that Kenyans are not ready to leave camps and that there are fresh queries over Rift Valley 'arms race' claims (Ross 2009).The level of militias rearming in preparation for the 2012 elections may be denied by the government, but thus far every effort at redress, from a Truth, Justice and Reconciliation Commission (TJRC), to historical investigation, to tribunals, is in limbo. Indeed, the TJRC seems on the verge of collapsing, and avoiding violence in 2012 would be a significant achievement at this stage. The role of civil society and of academics in that preventive effort is not altogether clear at this stage.

A less violent and a more promising situation exists in Poland, which has seen its history shape and reshape its national identity and its status as a victim as well as its responsibility for the perpetration of historical crimes. In the early twentieth-first century (following the responses to Jan Gross Jedwabne and other political changes in the country,) there was a thawing of historical repression over the complicity of Poles in the Holocaust, but there was also a backlash. A conference I co-organised, with the goal of producing shared narratives between Jewish and non-Jewish views on the war, may have been too inclusive of nationalists and the political right. Consequently it ended with shared history but divided memories. The short version of the discussion is that a couple of the participants continued to place the responsibility for

the Polish animosity towards Jews (otherwise known as anti-Semitism) on the Jews for their support of the Soviet violence, known as the role of the *zydo-kommuna* (Barkan et al. 2008).

Since 2003, with the political shift in Poland to the right, there has been a greater emphasis on 'positive' history writing, focusing on the good relations among Poles and Jews, and treating the collaborators during the War as an exception – 'a few bad apples' – in a history of centuries of Polish hospitality and close relations. The new master narrative aims to show that the Jews have suffered much more in other parts of Europe, and that Poles overall have been very generous to Jews. This is the narrative that Jewish representatives – such as those working with the new Jewish museum in Warsaw – are happy to embrace. In this case it is not the animosity that is buttressed by amnesia and distortions, but reconciliation. This type of scholarship presents a different challenge to historians and to civil society organisations which have the goal of both historical accuracy and reconciliation. The historical recognition ought to include both: anti-Semitism and coexistence. The challenge may be not to repress the memory of either. At the moment there is growing divergence between the received historical perspectives and the newly official constructed narrative. The terrain is defined by increased limitation on historians (for example, the denial of archival access for research conducted by the Institute for National Memory in the early twentieth-first century) as well as the desire to underscore historical coexistence.

Historians face the increased challenge that advocacy and redress as a human right issue continues to increase in importance. The most significant part of redress is recognition, which is within the scholarly terrain to demythologise nationalist histories that denigrate the other and incite conflict. But reconciliation built on historical myth may be in its own way counterproductive, and may diminish the value of the enterprise if it is viewed as propaganda. This is particularly so because the role of history in contemporary politics is central, and historians must recognise that isolation has detrimental impact and contributes to political violence in many societies. Scholars may not be able to stem the violence, but I believe they should try. In large doses, such advocacy can be healing for societies. Too much bad and wrong history is traded by nationalists without a counter-movement that can respond. Fortunately, there are many scholars who wish to participate as advocates and utilise their expertise to do so. I believe we have a responsibility to facilitate such advocacy: to create the tools and build the organisational capacity. The combination of technology, new media and human rights commitment may yet lead to a new type of advocacy – scholarship.

Notes

1. Other instances included a Kremlin-controlled television channel which claimed that Poland had conspired with Nazi Germany against the Soviet Union. Russian intelligence echoed this in a new dossier.
2. Explicitly recalling and rejecting Samuel Huntingdon's *Clash of Civilizations* thesis.
3. Rabinow talks about 'truth' that has 'its social location' (Rabinow 1996: 54).

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PART II

Networking for Global Civil Society

INTRODUCTION

OF TIES, HOLES AND FOLDS: THE POWER OF TRANSNATIONAL CIVIL SOCIETY NETWORKS

Helmut Anheier

Many religions contain references to the role of the humble and righteous ones that by virtue of their devotion prevent the world from degenerating into barbarism. Some believe that there are at least 36 such righteous people in the world at any point in time. However, nobody knows who they are, and even the righteous ones themselves may be unaware of their status. How could these 36 hidden 'saints', leading exemplary lives, change the world for the better, one could ask? This is where networks come in.

Consider, as a first alternative, the possibility of disciples: if each of the 36 had, let's say, the same number of followers, the world would have 1,296 righteous ones. If each of these had 36 in turn, their total count would reach 46,656, and, if we continued this thought experiment further, we would by step 4 reach the population of Britain, and by step 5 just about one-third of the world's population today.

Of course, so far we have assumed that none of the disciples are connected. No overlapping ties exist among them. The structural image of the group is that of a radial network with 36 righteous nodes in the centre, and many more arranged along multiple lines of connectivity that branch out by the thousands and then millions without ever crossing. Yet our everyday experience (as well numerous sociological studies) show that lines do cross, and that there are overlapping connections among our friends, acquaintances and colleagues past and present.

Assume that at each step, 18 of the 36 disciples had ties not with a single righteous one, but with any of the other disciples already in the network. So in effect, at each step, we would add 18 new ones, and allow for 18 existing followers to connect with others at random. The resulting network would have a smaller scale or reach (68 million members at step 5), but it would have structure: some parts of the network would be denser, others less so; some would be relatively isolated, and others well linked. Overall, the network would resemble a clustered set of 'islands of connectivity,' denser in the core, and sparser towards the periphery.

It is these 'island-like' structures spanning countries, organisations, communities, groups, and families that allow the power of transnational networks to unfold. The networks reported in the chapters by Kevin Bales and Jody Sarich on anti-slavery movements, Matti Kohonen, Attiya Waris and John Christensen on tax justice, and Martin Vielajus and Nicolas Haeringer on self-representation have such structures (as do the cases analysed by Sofia Goinhas on community-based justice, and by Séverine Bellina on global social justice elsewhere in this volume). These networks may have begun small, and in one location or country, but they then spread out across borders, linking different groups, professions and other advocacy networks, encountering opposing groups, or making allies. The result is a complex web of affiliations that integrates network members in manifold ways into other groups, and thereby creates opportunities for action locally as well as globally.

Sociologists call the 'small world phenomenon' the likelihood that our own personal network (often unexpectedly to us) overlaps with that of someone else we encounter seemingly at random, and we discover common of friends and acquaintances (the intersection of two networks). They also point to the tendency of networks towards homophily, that is, to become self-referential in terms of social class, professional, religious or ethnic background, as we tend to associate with people who are more like, rather than unlike, ourselves (McPhearson et al. 2001).

In the past, homophileous networks remained largely contained in national class structures and were strongly patterned by religious, ethnic or other divisions. In a globalising world, however, these lines cross in ways that are not only exceedingly complex but that achieve their own patterns or island-like structures. Activists make use of such structures in furthering their cause.

Indeed, it is useful to think of activists as entrepreneurs, and their entrepreneurial quality is to take advantage of structural positions. The three chapters in this section

of the Yearbook give testimony to the key roles activists play in mobilising resources, framing issues, and pushing agendas, by making entrepreneurial use of networks, whether in the case of the anti-slavery movement or tax justice. In each of these cases, activists ultimately succeeded when they managed to connect and recombine network configurations, be they people, constituencies, organisations or other coalitions. Spotting such possibilities for bringing network elements into some form of transnational advocacy coalition, and aligning them accordingly vis-à-vis domestic and global interests is a quintessential entrepreneurial act.

Some network configurations facilitate entrepreneurship more than others, and thereby make successful coalition building and advocacy more likely. One is called the weak-tie phenomenon (Granovetter 2005), as shown in Figure I.1 (A). Assuming that both networks present strong friendship ties, the dotted line between them represents a weak tie such as mere acquaintance rather than some form of friendship between persons A and B. Along such weak ties, information can jump from one 'island' to another, it facilitates innovations and diffusion professes. Weak ties allow entrepreneurs to take advantage of the mobilisation potential of two networks without integrating them.

The structural hole is another configuration (Burt 2005). Here the entrepreneur spots a missing link between two clusters and connects them, as Figure I.1 (B) displays. The entrepreneurial act of person E is one of closure and brokerage between two groups that would otherwise be unrelated. The structural hole is filled, and the separate networks are now connected.

A third configuration is the structural fold (Verdes and Stark 2010). In this case, entrepreneurs are located in two or more groups at the same time (Figure I.1 (C)). Formally, the entrepreneur E is located in the intersection of groups rather than being the interlocutor above. This allows for internal as well as external influence, and the act is one of inter-cohesion within and across groups.

Of course, connecting weak ties, closing structural holes and creating folds for intergroup cohesion are not mutually exclusive options. Successful entrepreneurs of advocacy coalitions take advantage of all three, and do so in varying combinations over time. Imagine the world

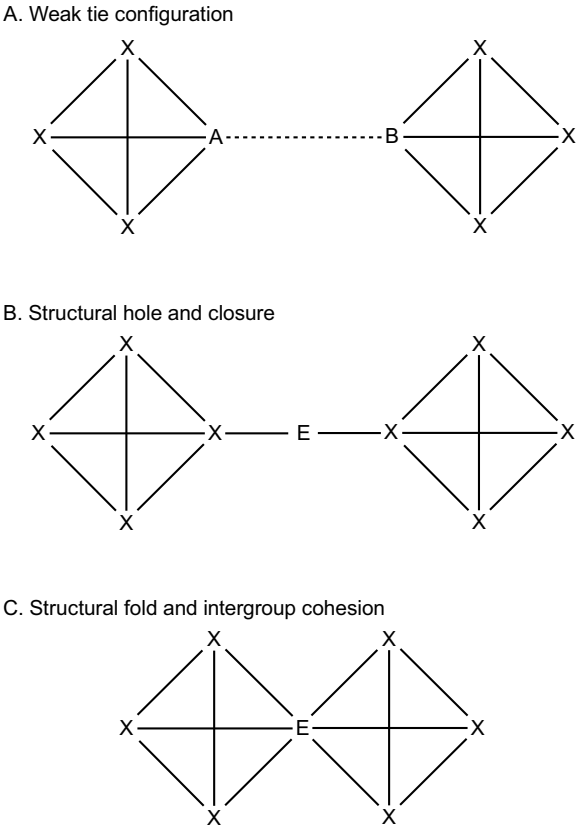

Figure I.1 Ties, Holes and Folds

that could have been, if the 36 righteous ones been aware of each other and learned the power of networks, rather than the art of individual devotion alone!

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CHAPTER 5

ANTI-SLAVERY AND THE REDEFINING OF JUSTICE

Kevin Bales and Jody Sarich

Across time and cultures slavery has been, and is, ubiquitous. From the beginning of written history and into the twentieth century, slaves provided both the motive power of empire building and were the householder's clever and useful beast of burden, while sustaining the power that in turn legitimised their subjugation. The abolition of legal slavery, a process taking nearly two centuries once begun, was a profound transformation in human history, no less a legal and economic reformation than a shift in individual and social consciousness. In the twenty-first century, our response to this crime is still shaped by the themes of slavery past but with little knowledge of slavery present. We see that lack of knowledge in the fact that the application of systems of justice to slavery is by no means common, and is often seen as novel.

That rarity of a justice system response is surprising given that slavery is illegal in every country and that all relevant international bodies have condemned it absolutely. But unlike other serious crimes, whether committed within the context of a functioning legal system or within the chaos of civil war and disintegrating government, slavery is more likely to be detected and investigated, and the victims rescued and supported, by non-governmental organisations (NGOs) or through the actions of the enslaved themselves than by local or national governments. Despite these grassroots efforts, however, the most likely outcome in all countries when the crime of slavery is committed is that there will be no intervention whatsoever, legal or informal, and the slave will be used and disposed of exactly as the criminal chooses. Even in the richest countries, human rights groups and charities must beg for funds to investigate this crime themselves and sustain any survivors they might liberate rather than assume that governments will fulfil their responsibility of law enforcement and victim protection. Internationally, the response to no other serious crime is as dependent on the initiative of groups outside the criminal justice system to bring justice to the victims of crime.

The efforts of twenty-first-century individuals and non-state actors to inform and provoke judicial and law enforcement reform on behalf of the enslaved is an extension of the broader history of the anti-slavery movement and of slaves' and ex-slaves' acute awareness of and willingness to defend their rights. Yet, having reached this era in which the laws are in place, we must continue to face the critical, and often humbling, question of why these laws often do not operate in a more meaningful way. This requires a critical examination of the legal construction(s) of the crime of slavery, a more nuanced understanding of how cultural forces shape the availability of justice, and a fresh look at the underlying philosophies at play regarding how the rule of law is realised on the local and national levels.

Just as slavery is a legacy of our collective past, from which we learn of the frailty and resilience of human nature, so too is the historical fight against slavery. From the past we learn that the strategies that were necessary then to build the anti-slavery movement that abolished legal slavery are the same as those necessary now to strengthen the rule of law, so that slaves may fully enjoy the freedom that abolition and emancipation provided. It becomes clear that just as the legal reformation that abolished slavery was largely the result of bottom-up activism, the effective building of the rule of law, and the social and legal reform necessary to make those laws function, is a bottom-up effort as well.

The Size of the Problem

It is very difficult to estimate the extent of contemporary slavery given its hidden nature. The most methodologically sound studies suggest that the number of slaves in the world today is around 27 million (Bales 1999, Kara 2009, Beate and Belser 2009).[1] Less reliably, there is an often-quoted estimate of 800,000 people caught up in international human trafficking each year. Human trafficking and slavery are also regularly referred to as the third-largest money earner for organised crime after weapons and drugs, but while it is likely to be lucrative (otherwise criminal networks would not be involved) there is no proof for this assertion. In spite of the attention given to international 'human trafficking', the term used

to describe the movement of a person into a situation of slavery, the presence of trafficking represents a minority of all cases of slavery. The largest number of slaves are sedentary and often in hereditary forms of collateral debt bondage slavery in South Asia. The regions of Southeast Asia and North and West Africa are likely to have the next largest numbers in slavery. That said, no country appears to be immune to this crime and victims numbering in the thousands are found in North America, Europe, Japan, and other developed countries with reasonably functioning legal systems.

While the essential attributes of slavery are the same across time and space, there is one change in the nature of slavery unique to the present moment: the market price of slaves has collapsed. Using an index based on the prices of livestock, land, and farm worker wages over time, the acquisition cost of human beings has dropped from an historical average of around £30,000 to about £60 today. The 19-year-old farm worker in the antebellum period in Alabama that cost $1,200 in 1850 dollars (the cost of building a house or of 100 or more acres of land) can be acquired for $100 to $500 today.[2] This price collapse is supply driven. Of the 6.7 billion people on the planet, about 1 billion are living on $1 a day; of this billion, perhaps 600 million to 800 million are living in countries where the rule of law is not effective. Economically desperate, without resources or the protection of law, the physically viable (thus most useful as slaves) are easily harvested from this pool of the vulnerable by those with access to the tools of violence and trickery and the willingness to use them. The very low cost of slaves makes slavery potentially more profitable as well as less likely to be a long-term investment. Low initial investment means maintenance is neglected since replacement can be more cost effective than care. Like plastic pens or styrofoam cups, the cost of slaves is now so low that they are seen as disposable inputs into criminal enterprises rather than capital investments. Not surprisingly, slavery seems to have grown and proliferated as criminal networks enjoy the opportunities of globalisation. The global spread of slavery is important when considering its relationship to systems of justice since slavery takes many forms and seems to thrive both in contexts where the rule of law works well and, especially, where it does not.

Locating Slavery Within the Rule of Law

Slavery is a specific crime, but it is also normally bundled in its commission with other crimes such as rape, assault, false imprisonment, smuggling, and document fraud. Statistically, governmental corruption is the most powerful predictor of the amount of slavery within a country and the amount of human trafficking from a country. For that reason, the existence of the rule of law is crucial in preventing slavery. Bondage is seen to increase rapidly when legal, economic, and social security is reduced due to civil war, ethnic conflict, environmental or economic catastrophe, or the impact of pandemic disease.

A further key point concerning how the rule of law might affect contemporary forms of slavery is that in spite of the involvement of large-scale criminal networks, slavery is a highly atomised crime, with millions of small-scale slaveholders operating at the edges of both local and national societies, legal systems and economies, in places where law enforcement may never reach. In addition, as a crime of power, slavery's targeted victims tend to suffer exclusion and discrimination because of ethnicity, 'race', gender, religious affiliation, or simple poverty. These types of cultural exclusion often restrict the availability and meaningful use of systems of justice where they do exist. In Pakistan, for example, non-Muslims are often denied access to employment and housing in an informal system that echoes the 'Jim Crow'[3] period of the American Deep South. That discrimination extends to the justice system and non-Muslims who have been caught up in slavery see that perpetrators are less likely to be prosecuted and find it all the more difficult to press cases for compensation.

This pattern of exclusion from equal application of the law is by no means restricted to Pakistan. In Japan, foreign-born women who have suffered enslavement are more likely to be deported than given support, whether legal or in government-linked human services agencies that have 'rescued' them from slavery. The same was true of the US until recently. Generalisations are always risky, but it would be hard to find a society whose patterns of discrimination and prejudice do not apply equally or especially to the populations at risk of human trafficking and enslavement.

Given the minimal justice system response to slavery, it is fair to ask why this might be so. One factor limiting a coordinated legal response is the wide variation in how slavery, a condition that exists in many forms, is defined, both in law and in the popular understanding linked to policy formation. By focusing on one attribute of the crime, such as the movement involved in human trafficking or the contrived financial obligation of debt bondage, most legal definitions miss its essential nature and location: the social, economic and, at times, emotional

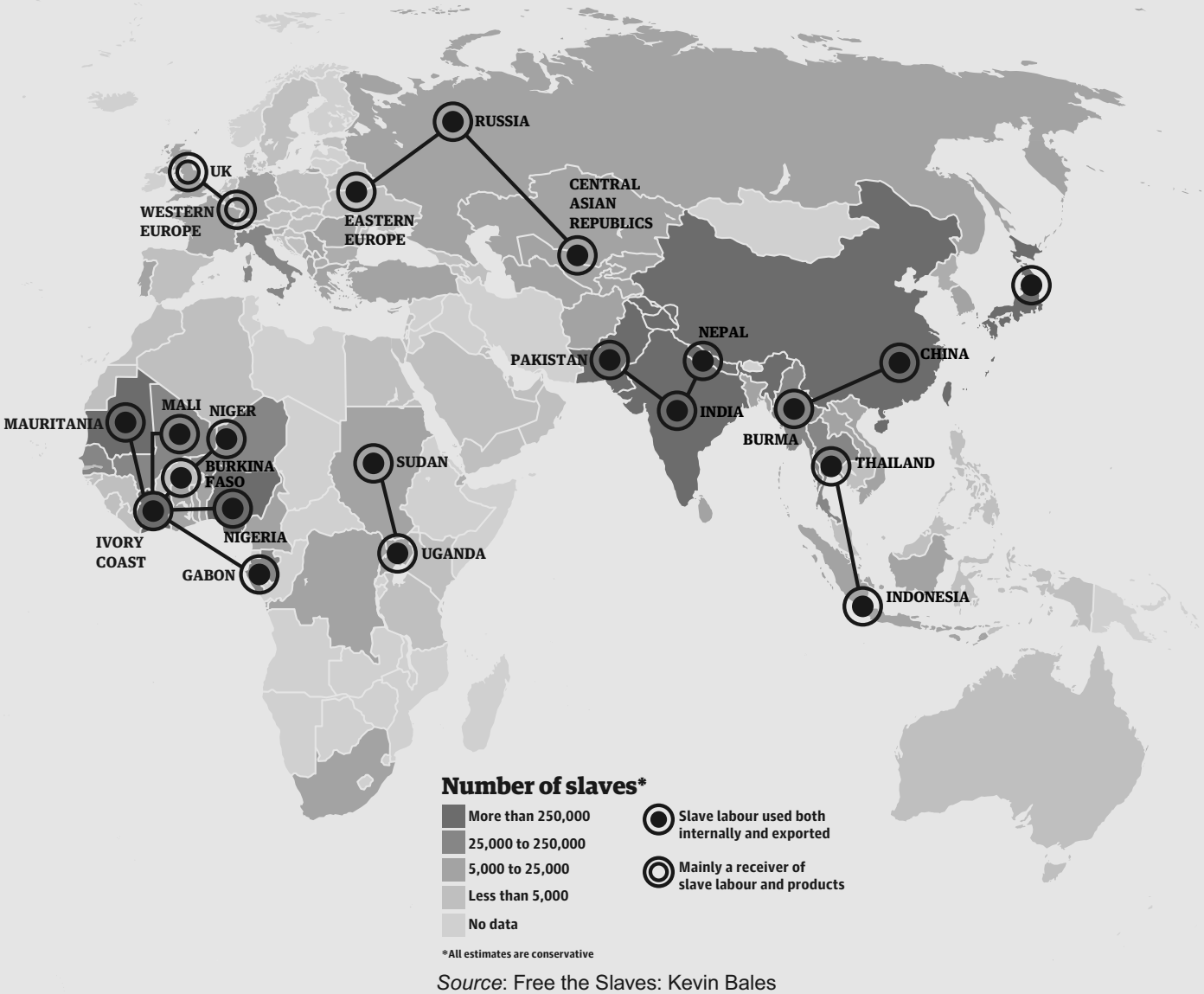
Figure 5.1 Measuring Slavery

How do we know that there are 27 million slaves worldwide? The honest answer is that we do not know for sure. The figure is an estimate resulting from a long and detailed study that Kevin Bales outlines in *Understanding Global Slavery – A Reader* (Bales 2005b).

The main reason that we do not know how many slaves there are in the world today is that slavery is a crime. The perpetrators conceal their crimes, adapting their activities as the contexts in which they operate change. For example, those engaged in human trafficking capitalise on the dispersion of economic activities and attenuation of state control that are characteristic of globalisation. Those who retain workers in conditions of debt bondage exploit the malleability of cultural norms, to commit crimes of slavery in broad daylight. Like any crime, slavery must be understood in context. The fact that it takes so many forms partly explains why no universally agreed definition of slavery exists. The lack of such a definition impedes the already difficult task of measurement, particularly comparative measurement. And the 'dark figure' of slavery – the difference between its official reported and actual incidence – is understood to be considerable.

Bales approached the task of estimating the extent of slavery by employing systematically as many sources of information as he could find. Initial background research led to fieldwork for an exploratory qualitative comparative case study of five industries in five countries. Interviews with key actors, including slaveholders and slaves, helped him to build up a working understanding and definition of slavery. This was taken forward into the next, international phase of research, in which he scrutinised all available reports and data sets relating to forced labour, for countries and for regions and industries within countries. Those sources included US government agencies, the ILO, independent experts, NGOs, national governments, academics and journalists. Additional, crucial sources of information were those not in the public domain: unpublished reports, proceedings and his own observations from meetings of some of the above organisations, which alerted him to potential biases in published figures. Bales then presented the estimates of slavery that he derived from these sources according to his working definition, to many experts. Their critiques, and suggestions of new sources of information, led to further adjustments. His final figures are presented in Bales (2005b). They are given as intervals rather than single figures, conveying the extent of uncertainty surrounding his estimates.

The estimates of slave numbers, which are illustrated in this map, are those at the lower end of the expected range. In the map, darker colours indicate higher numbers of slaves. It shows clearly that the majority of slaves are found in Asia, particularly India, and in a number of West African countries. The circles highlight the main patterns of movement of slave labour. The circles for Western Europe and the US (double rings) indicate that these regions are significant recipients of slave labour and products. The black circles denote countries where slave labour is both exported and used within the country. Clusters of these are notable between countries in West Africa, in Asia, and in Eastern Europe and Central Asia.



Source: Free the Slaves: Kevin Bales

relationship between slave and slaveholder. Slavery is a relationship marked by extreme inequality, violence, control, exploitation and loss of agency. Examining the nature of this relationship across time, across cultures, and across types of enslavement, and seeking its common elements, suggests this working definition of slavery: *a person under the complete control of another person; this control maintained through physical and/or psychological coercion; and that the aim of this control is exploitation, normally economic, but including sexual use and/or for conspicuous consumption.*[4] Aristotle stated that 'the ox is the poor man's slave'. In his day it was not necessary to explain that a slave was the money-making tool and toy of the person with sufficient resources to control and exploit him or her. In ancient Rome, slaves were referred to as *instrumentum vocale*, 'a talking tool'. Today, however, a series of terms has been laid down like linguistic strata on top of the fundamental crime of slavery.

The fact that legal definitions tend to focus primarily on one or more types of acts involved in enslavement, as opposed to the essential economic exploitation and power relationship unique to slavery, results largely from the need of a judicial system to create narrowly drawn and easily interpreted legal elements of a crime so as to promote efficiency, due process and clarity within the legal process. The act of 'transport' may be easier to identify and prove and far less open to interpretation than the concept of 'control' over another person. Yet it is important to note that the technicalities involved in constructing a legal system, while necessary for the rule of law, also function to shape public notions of what constitutes a crime and whether that crime has actually taken place. The drafting of criminal law in this context tends to confuse public understanding of the extent and nature of the crime of slavery. For example, the end of legal or chattel slavery led many people to assume that slavery itself had been eliminated, with the result that any similar (or identical) crime was perceived to be something else. For that reason the de facto enslavement of African-American workers in the United States, after the Civil War and the enactment of the Thirteenth Amendment to the Constitution abolishing legal slavery, was referred to as 'peonage' (Blackmon 2008). The enslavement of indigenous populations by colonial powers in the late nineteenth century, while meeting all the criteria of the definition of slavery, was termed 'forced labour' or called by a number of local names such as 'the levee' or 'corvée' which implied voluntary participation in community work projects (Hochschild 1999). It was easier for the British colonial administration of the Indian subcontinent to leave power elites in place and rule through them, so the hereditary forms of debt bondage slavery were interpreted as simple economic obligations. Even though present motivations are different, the effect on public consciousness is the same. In the twenty-first century, journalists and policy makers, assuming slavery is in the past, will regularly refer to extreme violent control and exploitation lasting years and meeting all the criteria of enslavement as 'slave-like'.

If allocation of resources internally and patterns of international funding to and within other countries are anything to go by, most policy makers in developed countries assume that the answer to contemporary slavery is to increase the reach of justice from the top down. The UN Office of Drugs and Crime (UNODC), for example, has set out an anti-slavery plan that emphasises enacting laws and increasing prosecutions. UNODC carries out considerable training of higher-level law enforcement, such as police commissioners, prosecutors and the judiciary, and, increasingly, police and other personnel at the local level (UNODC 2008).

A second major thrust of UNODC is to see that national laws are brought into line with existing UN conventions. This has led to further complication, and some confusion, since the UN convention most often used to guide the development of national law is not directly concerned with slavery, but with one of its ancillary and supporting activities: human trafficking. Within the Convention on Transnational Organized Crime (2000) is a supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). This Protocol is often used to guide the legal definitions embedded in national laws. It defines the crime as:

> Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (Article 3, subparagraph (a))

The result is that 'trafficking' is used as an umbrella term for all forms of slavery and national laws are skewed toward a subset of enslavement. Conceptually, it is as if all forms of writing – novels, plays and poetry – were considered to be subsets of 'letter writing.' And since the Protocol is used as a guideline, the definitions that result in the laws of individual countries diverge further (Bales and Robbins 2001).[5]

Another factor impedes the delivery of justice to the enslaved in virtually every country. There is a significant lack of resources to enforce the laws, however they are written, against slavery and trafficking. While the United Nations works hard to provide information and training, it is rarely able to provide the needed resources to fund anti-slavery operations, though it does lobby governments to increase their law enforcement budgets in this area. In most countries, a vicious cycle supports underfunding of anti-slavery work. With few trained personnel in law enforcement and scant resources devoted to the crime, arrest and conviction rates are low in all countries while law enforcement funding tends to follow the crimes with the highest arrest and conviction rates. The resulting cycle of neglect is exacerbated by the fact that trafficking and slavery cases are often more difficult to investigate than other crimes. A law enforcement officer in San Diego, California, made this clear when he explained:

> When I find a bag of cocaine I know exactly what to do, how to maintain the chain of evidence, and who I should be most interested in terms of arrest. When I open the back of a truck and find eight or ten people, is this trafficking or smuggling? Are they all victims or are some of them actually perpetrators? Odds are they will speak a language that I don't know, and unravelling what is actually going on is difficult. Clearing this case will take much longer than a drug case and that doesn't endear me to the boss. (Bales 2005a)

The US is a good example of the low level of resources devoted to combating slavery. According to White House budget figures, the federal expenditure on drug enforcement, not counting any incarceration costs, was just under $12.5 billion in 2006. Expenditure on all anti-trafficking and anti-slavery projects by the federal government in 2006 was about $200 million, or less than 2 per cent of the expenditure on drugs (Bales and Soodalter 2009). Given the severity of the crime of slavery, this discrepancy is puzzling.

A coincidence in criminological statistics demonstrates this contrast. According to the US State Department, there are about 17,000 people trafficked into slavery in the US in any given year; coincidentally, according to the FBI criminal statistics, there are also about 17,000 people murdered in the country each year. That many countries in the recent past, including the US, considered the crime of enslavement or slave trading a capital offence demonstrates the seriousness of the crime in national contexts. Note that the national success rate in the US in resolving murder cases is about 70 per cent; around 11,000 murders are 'cleared' each year. In contrast, according to the US government's own numbers, the annual percentage of trafficking and slavery cases solved is less than 1 per cent. If 14,500 to 17,500 people were newly enslaved in America in 2006, for example, in the same year the Department of Justice brought charges against only 111 people for human trafficking and slavery, and 98 were convicted (US Department of Justice 2007). Other cases were brought by Immigration and Customs Enforcement. State and local law enforcement may also prosecute slavery cases, but the national total would still remain in the low hundreds.

Another indicator of the lack of appropriate resources is the extensive involvement of voluntary organisations and charities in supporting both the investigation and prosecution of slavery cases and the support of survivors of the crime. To draw again on the comparison to the crime of murder, in nearly all countries, to a greater or lesser extent, there are voluntary organisations concerned with slavery and trafficking that are raising funds and expending them in roles that parallel that of law enforcement agencies. Most citizens in most countries would consider it absurd to make regular charitable donations to combat the crime of murder. The enforcement of laws against homicide is universally considered to be the responsibility of governments. Clearly, the legal responsibility for enforcing anti-slavery laws lies squarely with governments as well. But even in the countries of the rich North, were it not for charitable donations and the activities of NGOs, many crimes would go uninvestigated and many victims unsupported.

The lack of agreement in the legal definitions of slavery, the fracturing of the crime into subsets (including some that have never been tested and refined through jurisprudence such as 'the removal of organs'), the existence of systematic exclusion from justice of populations most affected by slavery, and the serious lack of resources to enforce anti-slavery laws all point to a situation in which the enslaved will have little hope of relief. Yet that situation is from the point of view of

the victim who has experienced enslavement in a context preferable to the most common lived experience of slaves. In those areas of the world where the largest amounts of slavery exist, the rule of law rarely reaches the majority of the population. Intervening at the top level of the justice system, whether with training or new laws, is flawed but critical. Most importantly, it is only one part of what is needed to reduce slavery and it is unlikely to be the most effective.

Emancipation From the Ground Up

Emerging evidence suggests that to bring justice and liberation to those in slavery it is necessary to build justice from the community upwards, for example, through self-help groups or community vigilance committees. In areas with the greatest amount of slavery, justice systems are often dysfunctional and become active only under pressure from those who are most in need of justice. Likewise, training the judiciary and high-level law enforcement officers will not be effective if local police are not trained to identify and act upon slavery cases. Working from the top down or through diplomatic channels helps to create a context for change, but central to the process of stopping slavery is the identification of where a justice system is damaged and the nature of that damage. For example, are high court judges willing to uphold the law if well informed? Is there a functioning system of public defenders or of human rights lawyers? At what point in the system (if any) does justice stop being for sale or dispensed at the whim of the local elites? Can local police be counted on to, at least, remain neutral as NGOs carry out projects that result in liberation? In addition to systemic corruption in the form of political influence and bribery, institutional racism, gender discrimination, and ethnic or caste prejudice can blinker the justice system. The 'Jim Crow' system of the American Deep South operated different systems of justice for whites and blacks; a similar pattern is repeated throughout the developing world at the provincial and local level. There may be law, but it is without equality. In places where the rule of law does not exist, to stop slavery it is necessary to take on the challenge of how to reclaim or institute justice, a task as challenging as ending the poverty that leads to vulnerability or slavery itself. Fortunately, current practice suggests that it is not necessary to reform an entire justice system to generate effective responses to slavery.

Two key points present grounds for optimism in bringing justice to the enslaved. The first is that around the world, local groups, sometimes alone, sometimes working with international NGOs, are building security and justice through collective community decision-making. Such collective action has significant spin-offs that tend to extend economic justice within the community, increase access to education and medical care, and amplify participation in the political process. When local community action is evaluated in terms of the extent to which those in slavery are liberated and able to achieve lives of economic autonomy, education, and dignity, and whether the community itself is able to dramatically reduce or entirely eliminate enslavement, this 'bottom up' approach to justice is seen to be much more effective than work from the top down in countries where the rule of law is underdeveloped. The approach can be thought of as addressing the problem at the appropriate scale from a communitarian perspective. Transformation of a national system of justice is a long-term task, addressing slavery within a single community is difficult but a much more clearly demarcated activity, and the success or failure of the work is much more easily determined (see Box 5.2).

Community-based work to achieve justice has the advantage that it can have immediate results, along with the disadvantage that a long process of individual actions is normally required to establish the boundaries of law. The most common form of slavery in South Asia, for example, is hereditary collateral debt bondage. This type of slavery is rationalised by a loan, normally sought in response to a family crisis, which requires that all labour of all family members (since they have no other valuables), will belong to the lender as collateral until the loan is repaid. The lender's control of all labour extends to the descendents of the borrowers. Many families in South Asia are known to be in their fourth or fifth generation of hereditary collateral debt bondage slavery. The profitable paradox of this form of slavery for the lender is that since all work done by the debtor family only counts as collateral held by the lender, it is virtually impossible for the borrower to acquire the cash needed to repay the loan. As an act of 'kindness', or through agreement when the loan is contracted, the lender will supply the family with a daily ration of food and often a hut to live in, and the cycle of dependence and slavery begins. Any attempt by the family to leave the control of the moneylender/slaveholder is met with violence. Key features of hereditary collateral debt bondage slavery are high levels of child labour, high levels of sexual violence directed toward the women of the indebted family, and an isolation of the bonded family that creates a psychology of dependence and acceptance. This form of slavery is illegal in India, the debt has no

Box 5.1
Liberation in Northern India

An example of this process of liberation occurred in 2009 in Northern India, demonstrating this community-organisation model of bringing justice. In the state of Uttar Pradesh around 25 families live in the hamlet of Birampur. For generations most of these families have been held in hereditary collateral debt bondage slavery, primarily in agriculture. Anti-slavery workers began meeting quietly with the families of Birampur in late 2008. By early 2009, now knowledgeable of their human and legal rights, the families had made plans for alternative income generation. With the protection of the anti-slavery group, an NGO, the community of families told their slaveholders that they would no longer work without pay or be under their control. On the day of this announcement violent reaction by slaveholders was deflected by the presence of both the NGO workers and a local police officer. By late February 2009 a small 'transition school' was organised, children were removed from the fields, and handicrafts, gardening, and some paid employment were helping to build economic autonomy. At the same time, the anti-slavery organisation helped the families make claims for the grants due to freed slaves and to petition for their rights under India's National Rural Employment Guarantee Act, which ensures 100 days of paid work each year for the unemployed. When a corrupt local official withheld their pay under the employment programme, the ex-slaves went to him as a group and forced him to release their earnings. Surprised by this unanimous community rejection of bondage and the presence of outside anti-slavery workers, the slaveholders were at first quiescent.

Then, in early August 2009, ex-slaveholders teamed up with three local police officers to conduct a 'search' of the hamlet (note the ambiguous role of local law enforcement). The corrupt police cited a robbery in a village several miles away as the rationale for the search, and going from hut to hut they, along with the ex-slaveholders, threatened families and smashed furniture, cooking utensils, and stoves. Shocked and uncertain in the face of this violence, the villagers began to talk over the situation with anti-slavery workers. Together they arrived at a plan that involved calling on other civil society actors to take part. With the support of nearby villages, a large delegation from Birampur went to the police station to lodge a complaint where the three officers were stationed, then went on to District government officials to do the same, and finished by calling in journalists to report on the attacks and their aftermath. While it may be some time before the ex-slaveholders stop trying to reassert their dominance, the ex-slaves continue to build confidence and power to deter attempts to control them. Through this process, the rule of law is solidified at the community level even though the village exists within a larger context of governmental corruption and neglect. Many of the anti-slavery workers that organised bonded workers in Birampur were themselves ex-slaves from the surrounding area. In 2010, the inhabitants of the village began reaching out to other nearby villages that remained in slavery, in part because they wish to share the good results of liberation, and because they know that a network of free communities is that much more secure. At the community level, freedom, which includes the establishment of the rule of law, can be viral.

Kevin Bales

legal basis, and the lender can be prosecuted. But in spite of millions living in debt bondage slavery, prosecutions are rare, convictions even more so, and incarceration of offenders practically unknown. On the other hand, in India at least, those enslaved against such debt are entitled to a series of government grants and assistance programmes if they are freed, and this process does function for a minority of those liberated.

A second point suggesting optimism in the face of national-level neglect or lack of resources is drawn from history. In trying to discover how to bring justice to those communities where the rule of law is weak, corrupt or non-existent, it is worth looking back and asking how those countries with a viable rule of law today achieved this status. The US in the late nineteenth century was a close parallel to the current conditions found in many

countries of the developing world today. At that time, governmental corruption was widespread; cities were often run by an oligarchy of officials, police and organised crime groups. And, if contemporary accounts are to be trusted, human trafficking was widespread. In a situation that mirrors current migration patterns, women from the American South and poor countries (at that time primarily those of Southern and Eastern Europe, China and Japan) sought work and new lives in the rapidly growing and industrialised cities of the northern US. Some were falsely recruited in their communities of origin for jobs that did not exist; others were recruited or kidnapped on their arrival. While some were forced into work as domestics or in other jobs, many were pressed into prostitution and debt bondage. This form of human trafficking and enslavement interlinked with a series of contentious social issues of the time, especially immigration, ethnic prejudice and race. Whipped up by the muck-racking press of the time, public outrage grew over the abuse of these women, the 'degradation' that prostitution brought to male American workers, the use of drugs to control enslaved women, the supposed control of the trade by 'undesirable' groups such as Chinese, Jews or African-Americans, and the great profits from the trade flowing to corrupt officials. 'White Slavery' became a rallying cry for anti-corruption reformers, who pointed to the economic as well as human cost of the trade. Public campaigns against this form of slavery provided a key plank in legislative and other efforts to reduce corruption and institute the rule of law.

In contrast with the present, a key distinction of that time was that those freed from slavery during the White Slavery campaigns rarely took part in the rebuilding of an expectation and implementation of the rule of law. Today, freed slaves often play an integral part in the extension of justice. A good example is Brazil. There, grassroots organisations, linked together primarily through activists within the Catholic Church, have distributed millions of copies of an accordion-fold cartoon leaflet that explains the risks and warning signs of enslavement, an individual's rights under anti-slavery and labour laws, and the steps to take if slavery is uncovered. Having learned their rights and given a conduit to uncorrupt federal law enforcement, poor workers, some of them in debt bondage, press for both liberation and rights within local communities. Aware that many of the commodities produced with slave labour feed into the global economy, an umbrella organisation, Reporter Brasil, provides information about local cases to the national press and a governmental 'dirty list' of tainted companies and products. In this way a bottom-up approach generates a top-down strategy that compels corporations to choose between adherence to a code of conduct that actively excludes slavery and requires monitoring the product chain, or face government sanction and the embarrassment and possible penalties of a lawsuit in the Inter-American Court of Human Rights.

This community-centred approach also addresses broader issues of economic justice. Poverty and corruption are the key predictors of slavery and human trafficking, but it would be wrong to assume that the causal arrow flies in only one direction. Freed slaves are exquisitely sensitive to their rights, however vaguely understood they might be. As hungry for justice as they have been for food, in the context of liberation justice is immediate and personal: the cessation of physical and sexual assault, the opportunity for their children to leave the workplace and enter school, the ability to acquire medicine and medical care in emergencies, and the human dignity that comes with autonomy. Having overcome the great personal injustice of slavery, freed slaves often turn their attention to the many lesser injustices around them – police corruption, theft of public resources and abuse of official positions. And while poverty is a condition supportive of enslavement, it is not necessary to end poverty before liberation is possible. Instead, it has been shown that liberation is a powerful anti-poverty approach. Freed slaves dramatically increase their productivity when given a chance to work for themselves and their families. Additionally, they become what no slave is allowed to be – a consumer. When increased productivity is translated into consumption of basics like food, clothing, education and shelter, local economies begin to spiral upward. Put simply, there is a freedom dividend. Ending slavery in a community can rapidly reduce poverty as well as increase the rule of law as ex-slaves assert their emerging power and increasingly gain the power to hold state officials accountable.

Slavery and the Growth of Global Justice

The circular relationship between liberation and justice is much broader and much older than what we see in present anti-slavery work. In fact, it can be argued that globalised ideas of justice, the same ideas that today guide the principles embodied in international human rights conventions and national laws, were born of the first anti-slavery movement. The first non-governmental, non-sectarian group dedicated to the achievement of a human right was formed in London in 1787. The work

of this committee grew rapidly and within 20 years it had achieved its first major goal: the prohibition of the slave trade within the British Empire. This task, and the rapidity of its accomplishment, is all the more remarkable given that economic historians suggest that slave-based enterprises and the slave trade of the late eighteenth century were equivalent in economic size and power to the global automotive industry of the twenty-first century.

To understand the interrelationship between slavery, anti-slavery work, and modern concepts and systems of justice it is important to track the parallel paths of the process that constructed and extended the law to embrace the enslaved in the eighteenth and early-nineteenth centuries. While work within parliaments and governments slowly succeeded in altering and improving the legal context for human rights, NGOs were engaged in direct actions of liberation and resistance. Unlike most of the NGOs of today, many of their actions were illegal and for that reason the details are less likely to be included in the historical record. But it can be argued that the strategy of the anti-slavery movement of the eighteenth and early nineteenth centuries created the seminal template of how the protection of human rights can be achieved and realised. This large-scale and multifaceted set of actions that formed the first successful international human rights campaign in history (Martinez 2008) can be seen as a paradigm shift and a model for addressing other human rights violations. Far from merely a quaint anecdote from the eighteenth century, too historically distant to accomplish more than a remote sense of inspiration, what began with that committee formed by twelve men meeting in a printing shop contains lessons relevant to all human rights work today.

A debate continues about the degree to which economics and the rise of industrial capitalism compelled the end of slavery, yet there is little doubt that British government actions were motivated by a variety of different factors, that moral progress played a fundamental role and that domestic political pressure was key (Davis 1966, 1975, Drescher 1977, 1986, Eltis 1987, Williams 1994). And while there has been discussion of how people came to believe that slavery was a universal wrong (Bales 2004), what is less understood is how people came to perceive their actions, their petition campaigns, as striving for *justice*. We would suggest that the first is a question of individual conscience and the second is a question of how the individual conscience is driven to engage with the law on a global scale. The engagement with the breadth of the law concerns the extension of justice. It is about how people come to understand the shape and underlying philosophy of the law itself. There was, in the emerging anti-slavery movement, a shift toward recognising the individual (inalienable) rights of slaves. And while this was not the first time in which people advocated for another 'group' of people, it was the first time this was attempted on a global scale. Moreover, it was a movement that reshaped ideas about the rights of individuals away from rights as they pertain to membership in specific groups toward a more universal assignment of rights. This shift, first located in the anti-slavery movement, broadens the idea of justice and uncouples it from the control of the state. It is necessary to look back to the beginning of legal rights to fully explore this.

Individual Rights versus Group Rights

The Code of Hammurabi[6] assigns blame to an individual who transgresses the law. In order for a legal system to function, any law must hold individuals accountable for transgressions. Historically, a transgression was most often determined by an individual's membership in a socially- and legally-defined group. In any legal system, people had (and still have) rights in relation to one another. In the Code, for example, the content of one's rights often depended on whether one was slave or free, widow or son, and so forth. Modern legal systems are framed the same way, with rights and responsibilities largely dependent on which group one falls into in any particular circumstance; there are different obligations depending on whether one is a parent or child, an employer or employee, or an owner or renter. So the fact that the law must be applied to individuals in order to function does not change the concurrent fact that, in those examples, the 'rights' belong to individuals only if they are members of that 'group'. Therefore, the set of rights that are given to all renters (or all masters) is a 'group right'. Yet a law that gives masters the right to whip their slaves (a 'group right') also confers an 'individual right' in the sense that it allows an individual to do something independently.

What changed during the Enlightenment and was played out in the first anti-slavery movement was a greater acceptance of the notion of 'individual rights' in relation to natural or inalienable rights and the codification of those rights in law. The concept of 'natural rights' or 'individual rights' in this sense holds that individuals have rights that are universal, given by nature or God, which man-made laws cannot determine or alter. Although the notion of universal or inalienable rights (even of slaves) was valued by philosophers and others as early

as the Sophists, the codification of universal rights, is seen in the late eighteenth century in the Declaration of Independence, the Bill of Rights and the Declaration of the Rights of Man.

Abolitionists fought, not for the legal rights of a 'group' at all, even though they spoke of 'slaves'. They fought for slaves' natural rights, their universal human rights, to be codified in domestic laws and treaties. Although the right to freedom from bondage was theoretically seen as something that laws could not alter, abolitionists certainly understood that cementing this right within the law itself was the only way that slaves would achieve actual freedom. It was not the first time in which people fought for the human rights of a group in general. In Britain, for example, people argued for the rights of the poor and prison inmates before then. But it was the first time in which people fought for the human rights of a group on an international scale and for the extension of justice on a global scale to achieve that end.

There is a further key point that links slavery, anti-slavery movements and the expansion of justice. The anti-slavery movement affected a multifaceted shift in consciousness; one could even argue multiple shifts, amongst a significant part of the British population and beyond. In order to succeed in their goal, the original anti-slavery campaigners had to convince individuals that slaves were not simply chattel but were human beings worthy of respect, advancing notions of equality and the inalienable rights of slaves, and they had simultaneously to convince individuals that they should and *could* play a part not only in local but also in *global* legal reform.

Although there were human rights movements in Britain at the same time as the abolitionist movement, there is a marked difference in the scope of consciousness of those movements. Movements supporting the rights of prison inmates were not fighting for the human rights of all prisoners worldwide. Those seeking the amelioration of poverty were not arguing that the poor of Africa deserved minimum standards of living. In contrast, the anti-slavery movement simultaneously sought recognition for the universal rights of slaves and to build a legal framework to guard those rights in other countries.

So how did the abolitionist movement manage to do this? We know from prior scholarship that abolitionist literature, speeches and other testimony made people in Britain sympathise and perhaps even to identify with the humanity of slaves, which compelled more and more people to join the movement against slavery. But engendering feelings of empathy and even denouncing something as wrong is different to choosing to take political action against it. Feeling that one's own government's laws should mirror one's own sense of right and wrong is different to feeling that all laws in every nation should be changed. And feeling that it would be unfair if all nations did not act consistently with one's own belief system is not the same as the knowledge (and faith) of one's own power to force legal reform on a global scale.

The anti-slavery movement of the past (and we would argue today as well) mobilised the masses to act politically, not only to change the actions of their own government but also to compel their government to persuade *other* governments to act and construct systems of justice coherent with the idea of universal rights. Although the narrative of the history of international human rights law commonly begins after the Second World War, the fact is that the abolitionist movement, hundreds of thousands strong in Britain alone, pressured governments to pressure *other* governments to alter their domestic laws, form treaties, and to establish and participate in international 'Mixed Courts of Justice' as early as the early and mid-nineteenth century (Martinez 2008: 596). Although the Nuremberg Trials have received more attention, the anti-slavery movement was responsible for the first international human rights courts in history, as early as 1817. Likewise, the British Navy's Anti-Slavery Squadrons of the South Atlantic and the Indian Ocean operated for decades in international waters, intercepting slave traders flying the flags of other countries, confiscating ships and cargoes, and freeing slaves, all at considerable cost to the Exchequer and in terms of lives lost. Being against slavery was about more than what was considered 'just' in terms of fairness. It was about freeing slaves and changing lives by insisting on and imposing justice in the form of legal *accountability* worldwide.

By advocating for global legal reform and international accountability, as well as enforcing it through military action, anti-slavery campaigners and their supporters were clearly calling for justice. In countries such as Britain and the United States, the people's notion of justice was changing – or, more accurately, what was changing was their idea of *who* deserved it. The same is true of anti-slavery movements emerging in the developing world today, particularly those comprised of the formerly enslaved, whose notions of justice undergo a parallel, far more poignant, transformation as they come to realise that they are deserving and able to create justice for themselves and within their communities. Slavery and the battle against it, perhaps because it is

a fundamental violation of human rights, continue to be a catalyst for the formation of new ideas and new structures of justice. If there is an equation which when solved transforms systems of justice from both bottom up and top down, then its answer comes from examining how the anti-slavery movement convinced so many people that they had a personal, actionable investment in whether legal justice was served in parts of the world they would never visit and given to people they would never meet.

Slavery and Justice

Justice grows from the redefinition of action. The anti-slavery movement may be the best illustration of this truth. As the first human rights movement, it set forth a new definition of a class of actions, actions previously seen primarily as economic activities, that together make up the process of enslavement and exploitation. This redefinition of the actions inherent in slavery was unique in two ways and set out a new concept of applied justice that now guides our thinking, policy and philosophy of rights. This transformation set in motion a wave of redefinition of the rights assigned both to individuals and classes. That wave continues to sweep across time and populations, identifying new activities for reconceptualisation and change, leaving behind in its passing a reorientation of justice.

The location of this wave at any one time is easily identified by the controversy it engenders. The process of redefining both the status of slaves as deserving of rights, and the actions that have suppressed those rights, was and is an area of conflict. The action of enslavement, or of homophobic discrimination, or of sexually or racially based prejudicial treatment in the law or the economy, serves interests that will resist any alteration to existing systems of control and exploitation. At the same time, the redefinition that underlies all human rights and notions of social justice is something like the fruit of the tree of knowledge. Once bitten, once ingested, once the thinking is transformed, reversal is all but impossible. Once out of the 'closet' – whether as a freed slave, an emancipated woman or a gay person living fully in society – re-suppression requires enormous investments of time and energy, and is unlikely to ever be complete.

It is clear that justice is not limited to courtrooms and arrest procedures. It is an ethical category of people's lives that encompasses notions of crime and consequence as much as it encapsulates the way in which people comprehend the fundamental fairness of the circumstances in which they find themselves. Any plan to create legitimate laws, law-making processes and fair and equal legal institutions simply cannot inspire sustained popular support if it is not based on a clear understanding of the local population's own ideas of what constitutes legitimacy, equality and fairness in their own lives. This applies to the people of nineteenth-century Britain as much as it applies to the twenty-first-century Cambodian slave. Top-down judicial reform is critical, but it simply has no purpose and no real impact on an individual's everyday consciousness if it does not address her own sense of justice. The legitimacy of any legal system, the rule of law itself, relies on this simple fact. So we must pay close and self-critical attention to the shape of the administrative structures that can strengthen the rule of law, that provide us with a sense of order reflective of our human rights. And we must listen especially to each slave who finally felt a sense of justice for what had befallen her, both in the context of a legal setting and within her own heart.

Notes

1. There is also a discussion of the challenges of measurement in Bales (2005b).
2. The pre-Civil War period in the southern United States provides what may be the most complete records of slaves, their prices, their use as collateral, their depreciation over time, the cost of insuring them, and the profit margins to be made through their use. The slave most often bought or sold in the records is a 'Prime Field Hand', meaning a young and healthy agricultural worker without any other specific skills. Throughout most of the 1850s the price of prime field hands stayed around $1,000 to $1,200 dollars. An introduction to the extensive historical and cliometric literature on this topic would include Fogel (2006), Johnson (2001) and Stampp (1989).
3. See, for example, Vann Woodward, with McFeely (2001).
4. There continues to be debate concerning how to define slavery. A strong argument has been made by Allain (2009) that legal definitions should focus on the definition set out in the League of Nations Slavery Convention (1926), which defines slavery as 'Slavery is the status or condition of a person over whom any or all of the powers attaching the right of ownership are exercised.' This is not unreasonable for legal definitions given its history, but is awkward and confusing because of the concentration on the concept of 'ownership', requiring extensive explanation when the actual ownership of slaves is illegal. The point of ownership is control, and stripping away the legalism of 'ownership' allows a more succinct and clear understanding of the actual phenomenon. This is our working definition and was first introduced in Bales (1999).
5. See Bales and Robbins (2001) for a comparison of the various League of Nations, UN and ILO conventions concerned with slavery. This article provides in greater detail information on the overlap and divergence in the definitions of slavery and trafficking in these international instruments. It draws upon

a report made to the UN Working Group on Contemporary Forms of Slavery, prepared by Anti-Slavery International and (see UN Doc. E/CN.4/Sub.2/1998/14, para. 22 (1998)). On the international stage, the prohibition of slavery remains a peremptory norm accepted by the international community of states from which no derogation is ever permitted.

6. The Code of Hammurabi (*Codex Hammurabi*) is a law code, created around 1790 BC in ancient Babylon and enacted by the sixth Babylonian king, Hammurabi. For a modern published version, see Horne (2007).

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CHAPTER 6

PATHWAYS TOWARDS TAX JUSTICE

Matti Kohonen, Attiya Waris and John Christensen

I reckon that this was the only time, anywhere in the world, that a bell, an inert dome of bronze, after so often tolling the death of human beings, sadly pealed the demise of Justice. The funeral dirge of the village near Florence was never heard again, but Justice continued – and continues – to die every day. Right now, at this moment as I speak to you, both far away and nearby, on our doorsteps, someone is killing it. Each time it dies, it is as if it had never existed for those that trusted in it, for those that expected from Justice what we all have the right to expect: justice, simply justice.

José Saramago, World Social Forum (2002)[1]

This chapter considers the history of a particular campaign for social justice in which the three authors have played a central role. The founding of the Tax Justice Network (TJN) – a rights-based vision of a transparent and a democratic economy – is a combination of diverse pathways, best described as an assemblage of actor, value, issue-based and material elements. The network's aspiration is to shift the development agenda from aid and a limited vision of human rights, to an enlarged and internationalist vision of development as state building, requiring the mobilisation of domestic resources and public finances. We understand human rights as fundamental to social development, and promote their evolution through welfare regimes. The role of civil society lies in working with governments and counterbalancing special interests that have shaped tax policy over previous decades.

The death of Justice, as the Portuguese writer so well describes it, is evident for those who experience it, while the bells sounding its death remain silent to those not knowing the Justice who just died. TNJ's narrative of justice describes its hitherto silent deaths in the tax departments of major transnational corporations in Katajanokka, Helsinki, in the banking subsidiaries located on Castle Street in St Helier, Jersey, in the chambers of law offices located on Lincoln's Inn Fields in London, or at the high court hearings in Nairobi that fail to rule on cases involving illicit financial flows at their source.

By talking about pathways, we do not place central importance on the personal biographies. Instead we draw on personal experiences to illustrate turning points and moments of engagement with an experience of the death of justice, since it is often the case that an understanding and an articulation of justice is evoked first through a sense of injustice. The narrative form that is adopted here links the personal experiences as turning points and moments of engagement that the authors discuss in relation to the political and social forces that were predominant in the past three decades. This idea of turning points is explored in the social entrepreneurship literature (Bornstein 2004, Dees 1998), which also stresses resources and opportunities (Light 2008) elaborating some of the material elements discussed below. Having traced the turning points, we attempt to separate between issues, values, modes of action and actors (Offe 1985), as is often done in research concerning 'new social movements', where it is not just the actors themselves but values and identities that matter. Finally, we wish to add an element lacking in new social movement theory, which is that such social aspects cannot be separated from further material aspects, actors are indeed socio-material assemblages (Latour 2005, Law 1999).

The authors understand TJN in terms of the resources and material settings involved in building the campaign, which is why we describe these in detail since such aspects are often ignored by scholars who prefer to discuss values as detached from their material settings. A campaign never exists as a pure or 'purified' idea: ideas have settings and require paper to print them, time and energy to write them, travelling to put ideas together from distant bits of information and expertise, and finally Internet sites and postage stamps to disseminate them. Neither is the issue of taxation clear cut to those who see tax as something that should rightfully be avoided and evaded, basing their entire careers on such practices. The language of tax reflects this: 'tax havens', 'tax holidays' and even 'tax amnesties' are terms that convey a sense that these are desirable policies, despite overwhelming evidence that the phenomena they describe are wholly undesirable.

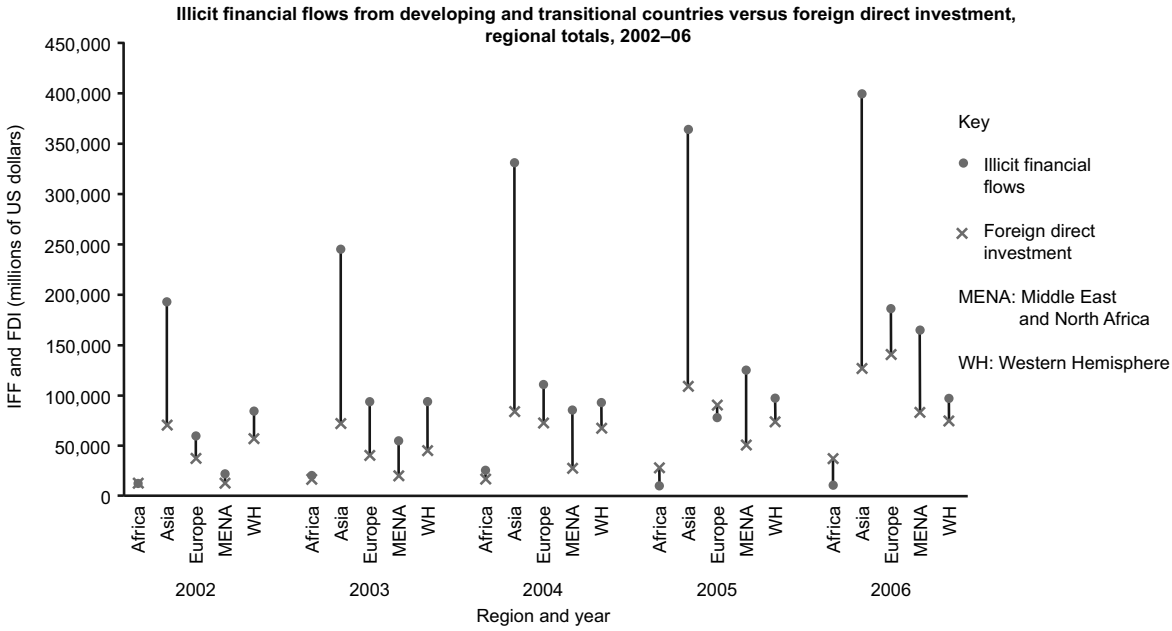
TJN is a civil society organisation promoting transparency in international finance and opposing secrecy. The network was founded in November 2002 at the European Social Forum in Florence, and launched in March 2003 at the British Houses of Parliament. It is a civil society network and a virtual think tank, combining non-governmental organisations (NGOs), trade unions, faith movements, journalists, researchers and professional specialists. In 2010 TJN had national or regional chapters in six continents and over 30 countries. The network supports a level playing field on tax and opposes loopholes and distortions in tax and regulation, and the abuses that flow from them. TJN promotes progressive tax policies where the wealthier you are, the higher proportion you pay in terms of income taxes, based on taxpayers' ability to pay as a foundation for tax justice. Today progressive taxation includes actions that reduce ecological harm. TJN opposes tax evasion, tax avoidance and all the mechanisms that enable owners and controllers of wealth to escape their responsibilities to the societies on which they and their wealth depend. Tax havens, or secrecy jurisdictions as we prefer to call them, lie at the centre of our concerns, and we oppose them. In 2005 we estimated the amount of private assets held in secrecy jurisdictions at approximately US$11.5 trillion (TJN 2005). The value of corporate assets held and transacted through these countries or jurisdictions is likely to be much greater.

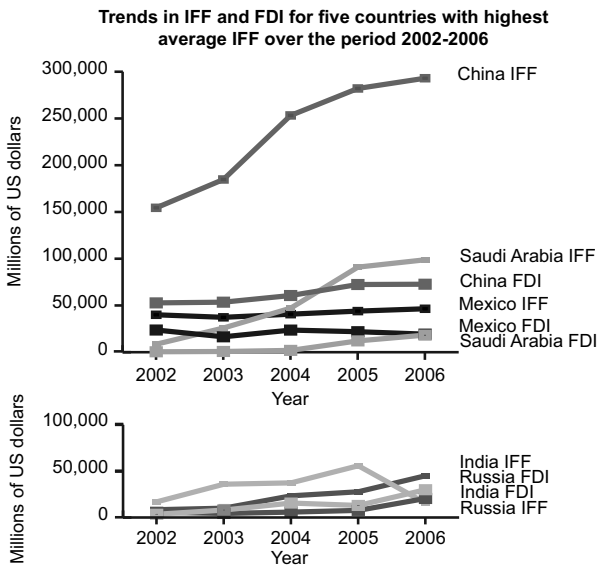
Despite being a relative newcomer to civil society, the genesis of TJN lies in personal experiences stretching back several decades. In the case of John Christensen, concerns about injustice emerged from his activist role in the anti-Apartheid campaigns in the 1970s and his involvement with Oxfam, in the emerging fair trade agenda and rural cooperative development work in India in the early 1980s. The values of the cooperative movement played a key role in these programmes, which relied on member democracy, distribution of surpluses according to usage, and a commitment to education. It was during research for a Master's in Philosophy in cooperative law and its application in Asia that John went to Kuala Lumpur, Malaysia, in 1985, where he found disturbing evidence of corruption and illicit cross-border financial flows through secrecy jurisdictions. Acting on a tip-off from a Malaysian colleague, he investigated how so-called deposit-taking cooperatives set up in Malaysia were money-laundering illicit flows through secret structures created in Hong Kong, Brunei and his home island of Jersey (Christensen 1985), which was emerging as an important secrecy jurisdiction at that time. Witnessing first-hand how the savings of predominantly rural communities were being siphoned off to secrecy jurisdictions provoked a deep sense of injustice in John. This coincided with the frenzied years of financial market deregulation in the UK during the period of Margaret Thatcher's governments, which provided the satellite centres of the City of London, such as Jersey, with ample opportunity to attract footloose capital: since the time of the 'Big Bang' deregulation of the City of London, the volume of personal wealth deposited and managed in Jersey has risen from almost nil to currently over US$500 billion (over US$5 million per head of population). Globally, around one-third of all private wealth is deposited in some 70 secrecy jurisdictions, and an estimated half of world trade is invoiced through secrecy jurisdictions to shift profits into low or zero tax locations, making Jersey, for instance, the largest exporter of bananas to the UK supermarkets. The *death of development*, therefore, was visible in Malaysia in the mid-1980s, and it was these concerns about how financial market deregulation was shaping criminogenic tendencies in the global markets that prompted John to shift his research focus away from cooperatives and microfinance to capital markets and secrecy jurisdictions, from concentrating on the mechanisms to assist poor people to focusing on the mechanisms that have enabled rich people to massively increase their share of global income and wealth. This concern triggered his decision to return home to Jersey in 1986 to seek work in the financial sector and ultimately become economic adviser to that island's government (Christensen 2007a).

Most, if not all, common law countries begin the training of lawyers with the famous phrase 'law is not just'. This principle was confirmed repeatedly during Attiya Waris' years in law school in the 1990s, and subsequently when she worked as an advocate of the High Court of Kenya. Later, she moved to work as a researcher with the UN International Criminal Tribunal for Rwanda where she heard adverse public comparison between the completion rate of court cases in the Yugoslavia and Rwanda tribunals, the latter being constantly criticised for poor performance. However, the difference in funding available to the two was never highlighted, which led her to a realisation overlooked by so many: 'justice costs money'. On a different level, accused genocidaires preferred to be tried before the Rwanda Tribunal not only because the UN would not sanction capital punishment but also because the UN had built prisons based on international standards that were far higher than those in both Tanzania

Box 6.1 Illicit Financial Flows from Developing and Transitional Countries

This box illustrates the extent of illicit financial flows (IFF) from developing and transitional countries during the period 2002–06, estimated by Global Financial Integrity (GFI). Illicit financial flows are money that is illegally earned, illegally transferred or illegally utilised. They result from trade mispricing and fake invoicing at the commercial level (constituting approximately 65% of total IFF), from criminal economies (approximately 30%), and from corruption (approximately 5%) (Baker 2005: 172).





IFF source: Global Financial Integrity (2009)
FDI source: UNCTAD (2009)

The first graph depicts yearly estimates of total IFF alongside foreign direct investment (FDI) flows for five regions (see GFI 2009 for definitions). Clearly, IFF (denoted by circles) outpace FDI (denoted by crosses) in most regions in this period – Africa, with low levels of both IFF and FDI, is the exception. Asia's high and increasing IFF is a striking feature of this graph. For each region-year, the black vertical line between markers emphasises the difference between IFF and FDI.

The following graphs show trends in IFF and FDI for the 'top five' countries in GFI's study, divided between two graphs for ease of reading; trends in IFF and FDI are not uniform, so the lines overlap somewhat. The first graph shows dramatic increases in IFF for China and Saudi Arabia against only moderately increasing FDI, and roughly constant levels of IFF against variation in FDI in Mexico. The second graph shows similarly that in India, IFF increases at a faster rate than FDI, whereas in Russia, IFF appears to drop markedly between 2005 and 2006.

and Rwanda; money and finance seems to be recurring themes in promoting both justice and injustice.

Attiya's studies for a Master's in Law in Human Rights and Democratisation in Africa coincided with a period when grand corruption by despotic rulers such as Mobutu Sese Seko of the Republic of Zaire and the benefactors of the Apartheid regime in South Africa was being uncovered. This piqued her interest in why so many resource-rich African countries and people are poor and, that, while in principle due to vast natural resource exports and thriving agriculture perhaps these countries did not have to be absolutely poor. She decided to further delve into state resources and taxation and how the state should respond better to the needs of society, prompting her to search for ways of reducing Africa's dependence on aid and increasing its reliance of tax (Waris 2008), which inevitably led her to TJN.

The decision for Matti Kohonen to join the World Social Forum in January 2002 in the southern Brazilian city of Porto Alegre arose from his student activism at the London School of Economics and Political Science (LSE). Having followed the emerging global justice movement from his high school years onwards between Finland and France, in March 2001 he founded the LSE Attac Society, the first of its kind in the UK, along with a group of other students, aiming at establishing a Tobin Tax on currency transactions, and to stimulate debate on controlling international financial flows. This issue – along with other justice campaigns – was debated in front of a full house at the LSE Old Theatre on Valentine's Day 2002, followed by a week of related events involving over 1,000 participants, ending with a 'carnival crush' to raise funds to pay for them. Not all the students were convinced, however, since a motion in favour of the Tobin Tax (Kohonen 2002) was voted down at the Union General Meeting of the LSE Students' Union in November 2002, which was timed in the wake of the first financing for development summit in Monterrey, Mexico, where proposals for enhanced international tax cooperation were being placed on the global development agenda – the rest of the summit largely failing to raise more finance in increased aid or debt relief.

Matti's interest in financial markets can be traced to his childhood in Tampere, Finland, where a financial crisis had ravaged the economy in the early 1990s. The crisis had a dramatic impact: unemployment reached almost 19 per cent and the banking bailout costs escalated to 13 per cent of gross domestic product, paid through cutbacks and privatisation in public services. The Nordic Financial Crisis was of course only one in a series of crises, predominantly in developing countries during the 1990s. Events like these in Finland, and on a worse scale in Indonesia, Thailand and Brazil in the late 1990s, eventually led to the founding of the Attac movement in 1998, through an editorial (Ramonet 1998) in the monthly *Le Monde Diplomatique* calling to 'disarm the market'. The movement gained global prominence at the time of the Argentinian crisis in the early 2000s, which contributed partly to the choice of the location of the World Social Forum in southern Brazil. The origins of the crises in Finland in the early 1990s, and in Brazil in 1999, as well as the crisis in the US and the UK in 2008, lay in measures such as the deregulation of foreign currency borrowing, and the ending of interest rate controls, leading to borrowing fuelling capital flight on an unprecedented scale.[2] During his childhood, seemingly mythical locations such as the Cayman Islands and other secrecy jurisdictions entered popular urban myths in Finland, where capital flight manifested in the form of school friends disappearing from the neighbourhood, allegedly fleeing to Calgary or Florida and leaving only their unfinished detached houses behind them. Economic security could no longer be taken for granted in Finland since the *death of welfare* was ever more obvious, ironically first in Finland and New Zealand in 1990, countries that had been precursors in giving the vote to women, thus laying the foundations for the welfare state in the early twentieth century. Subsequently, the same development was felt across the world as the onslaught of financial crises brought the welfare model to its knees, deepening social insecurity and inequality both in the global North and South (Mestrum 2009), despite tremendous economic growth over the same period.

This crossing of pathways led to Matti inviting John to address a meeting at the University College London (UCL) in October 2002, organised by the Attac London group, which included members of the readers' association of *Le Monde Diplomatique*, as well as student activists and academics. By that time John had quit his home and job in Jersey and was working as a corporate risk consultant in London, while maintaining links to his island and becoming increasingly aware of his role as a dissenting voice on tax havens. After the UCL event John was persuaded by the British NGO War on Want to participate at the European Social Forum (ESF) in Florence, Italy, in November 2002, and propose, already prior to the ESF, the creation of a global network on tax justice. Immediately after the network was founded, John called the Moroccan secretary of the UN Ad Hoc

Group of Experts on International Cooperation in Tax Matters, Dr Abdel Hamid Bouab, to announce recent civil society interest in tax wars, tax evasion and harmful tax practices. The phone went silent for a while. John asked whether Dr Bouab had dropped off the line, but after the pause he replied: 'I've waited 20 years for civil society to pay attention to this issue,' and he promised to organise assent for TJN to attend and participate at the next session. TJN was the first genuine civil society organisation to attend a session of this previously obscure group, otherwise attended by lawyers representing tax havens who used their observer status to lobby on behalf of their clients' interests. The Ad Hoc Group was upgraded in 2005 to the status of permanent committee, which meets annually as the UN Committee of Experts on International Cooperation in Tax Matters.

Keeping links alive to his home country of Finland helped Matti tap into lively discussions between members of Attac Finland and the Network Institute for Global Democratisation (NIGD), which jointly organised a seminar at the University of Tampere continued at the University of Helsinki the following day. These links also contributed towards raising necessary resources in the form of travel bursaries and student stipends that kept the campaign alive. It was therefore university campuses and the student movement, as well as NGOs, which provided the initial material setting for the creation of TJN. It should be noted that the World Social Forum (WSF) frequently organises on university campuses; for instance, in Porto Alegre the event was held at the campuses of the Federal University and the Pontifíca Universidade Católica of the state of Rio Grande do Sul during the academic holidays in the southern hemisphere.

The social forums provided another material setting for the establishment of TJN through the concept of the 'open space' (Teivainen 2002, Whittaker 2002). This is crucial to understanding how social forums function as a participatory space, where anyone who agrees its principles can propose and organise an event. This method of organising has enabled the formation of new movements, since no single authority can determine which events can take place within the space of the WSF (Laine 2009). The WSF and similar fora therefore act both as an incubator for new ideas and a cross-networking space – a term used to describe the networking between networks – for movements to come together in a periodic manner. This creates a 'practical utopian' space where alternatives can be more readily explored. The WSF and its regional, thematic and national forums have no final declaration and work through a loose coordinating group, the International Council (IC), the highest governing body, which meets regularly (Patomäki and Teivainen 2004). The IC determines the locations of the next forums, its process and overall strategies, and while it aims to provide avenues for 'creative contamination' of pathways, it has no role in deciding who can participate at plenary sessions, seminar and workshops.

TJN has also tried to develop its agenda through the creation of open spaces where new ideas can be explored and new coalitions formed. This is evident in particular in our regional research and advocacy training seminars, where we largely rely on partner presentations, a vision of an advocacy cycle (CAFOD, Christian Aid and Trócaire 2008), and 'tax forum' discussions that feed into our strategy at different levels. An advocacy cycle starts from identifying and monitoring the problems, followed by research and information gathering, to mapping the stakeholders in a power map, to then being able to interpret policy and target advocacy efforts towards those who hold the keys to change. A cycle ends with monitoring and evaluating, which often serves as a beginning for a new advocacy cycle. We have an ambitious outreach programme, whereby we organise regional seminars in every continent annually, in addition to supporting selected pilot countries. The network functions mainly in the virtual sphere, not least our animated blog where we often break stories (TJN 2009a). Our other linkages take the form of email lists, monthly board meetings conducted by telephone, and an open circulation newsletter, *Tax Justice Focus*, which is open to guest editors who can explore themes related to economic justice such as the gender impacts of unfair taxes. The International Secretariat is best described as a communications hub, very much an evolving one, which constructs, collects and disseminates information.

TJN also reflects a new type of civil society organisation, where we base the movement entirely on membership democracy, and an open manifesto for tax justice, leaving regional and national groups with space to define their understanding of tax justice within existing social and political economic contexts. TJN organises itself through a biannual Tax Justice Council, the most recent was held at the WSF in Belém, Brazil, in January 2009. At council meetings the members determines strategic objectives and elect a board that acts as the executive of the global movement. The next council meeting is planned for the WSF in Dakar, Senegal, in January 2011, thus following

the cycle established by social movements in the global South in mobilising around diverse social justice issues.

Philosophically the network adheres closely to cooperative principles (ICA 1966), where economic and social justice is achieved through democracy combined with awareness raising and popular education initiatives. Autonomy of affiliated groups, not always given in NGO networks, was deemed central to mobilising campaigns at the local and national levels. Every network needs its principles and values to avoid it being used for purposes that are either outside or even outright in contradiction to its overall objectives. This is why we have a common declaration, translated into eight languages (TJN 2003). The loose network structure encourages local initiatives and easy adherence to the core principles laid down in the Tax Justice Declaration. But TJN, much like the WSF, faces the problem of interacting with more bureaucratic organisations, and while acting autonomously on a common set of principles can be a strength, it is also a weakness in terms of sustaining our activities in the long term.

A consultative process towards founding of the Tax Justice Network Africa followed similar principles. The process was formally kicked off at the WSF in Bamako, Mali, in 2006, where a series of seminars and workshops were convened to support dialogue between different elements of African civil society.

One outcome of the consultative process in Bamako was a shift towards a greater emphasis on sustainable public finances in order to strengthen campaign links with Jubilee South Africa, NIGD, Christian Aid Africa, Comité pour l'Annulation de la Dette du Tiers Monde (CADTM), the Attac movement, and West African NGOs working on budget monitoring. The immediate outcome of Bamako was the decision by various African groups to prepare for the launch of an African tax justice network at the WSF in Nairobi in January 2007. This required a frenetic round of further consultation in the intervening twelve months to prepare the launch and an accompanying research workshop hosted by the University of Nairobi, Department of Sociology. Since 2007 Tax Justice Network Africa has worked with its own steering committee, who last met in person during a Pan-African Civil Society Research Conference on taxation in Nairobi on 25–26 March 2010, which led to the issuing of the *Nairobi Declaration on Taxation and Development* (Tax Justice Network Africa 2010b).

It was while preparing for the Nairobi WSF that John met Attiya, then a lecturer at the University of Nairobi and a doctoral student of Sol Picciotto, an academic whose work inspired the creation of the Tax Justice Network. Despite having travelled very different trajectories, John and Attiya found immediate common ground through the connections they made between human rights, development and tax justice, as well as the links between tax havens, poverty and corruption. As part of a group of senior advisers to TJN, Sol has made a broad contribution through an effective linkage between researchers/NGO advocacy specialists and expert knowledge, a connection that is often difficult to achieve due to differing working methods and styles of argument between professional worlds and social movement cultures.

TJN senior advisers are invited to join the network in their individual capacity, allowing an element of flexibility from their academic or professional careers. Many of the international advisers have for a long time followed the issues of international taxation in their careers, but have lacked a platform to speak to wider audiences to voice concerns about the inherent injustices in the current system. It is through such advisers that we have permanent representation at the United Nations, on the UN Tax Committee and, when needed, on the UN's Economic and Social Council (ECOSOC) and Development Programme (UNDP), to contribute to debates concerning development financing. We have also established a Washington, DC-based coalition, New Rules for Global Finance, a link with the UNDP in the form of the programme South-South Sharing of Successful Tax Practices (S^4TP) where Southern governments and tax administrations in particular share experiences on policy and technical matters. Our senior advisers can be called upon when we face a particular technical difficulty with a tax law or accounting issue, and in return they are recognised for their expertise and invited to join our events.

In addition to senior advisers, we have a distribution list of 1,200 academics to whom we send regular updates via our quarterly newsletter *Tax Justice Focus* in the hope that something that we say in terms of advocacy issues could be translated into research agendas. Tax Justice Network Africa has also started a newsletter, *Africa Tax Spotlight* (Tax Justice Network Africa 2010a), a trend we hope each regional network will follow in due course. While we cannot influence research agendas through funding, we do organise research conferences to explore themes and invite papers on topics that become important to our advocacy work.

Amongst other things, the discussions in Bamako in 2006 also encouraged John to start preparing the launch

of TJN's highly successful campaign on the supply side of corrupt practices. This campaign proceeded via a workshop at the 2006 annual conference of the Royal Geographical Society on the theme 'The Geography of Corruption', to a workshop at the 2007 WSF (Christensen 2007b) where the decision was taken for the research and development of a new global corruption index. Launched in November 2009, the Financial Secrecy Index (TJN 2009b) explicitly makes the link between secrecy jurisdictions and the facilitation of grand corruption. John's paper presented at the 2007 WSF, 'Mirror, Mirror on the Wall, Who's the Most Corrupt of All?' is seen as being seminal in the transition from a focus almost exclusively on bribe taking by public officials to a wider perspective on corruption which considers all types of practices that undermine the integrity of the institutions, laws, rules and systems around which societies organise.

TJN's relaunch of the corruption debate at the 2007 WSF in Nairobi shifted the focus of anti-corruption efforts to consider more closely how secrecy jurisdictions create the 'supply side of corruption'. The efforts by the UK government, however, skirted round the role of secrecy jurisdictions in facilitating corrupt practices, despite the issue having been signalled in internal government correspondence dating back to the 1960s, as the following secret Bank of England letter makes clear:

> We need, therefore, to be quite sure that the possible proliferation of trust companies, banks, etc., which in most cases would be no more than brass plates manipulating assets outside the Islands, does not get out of hand. There is, of course, no objection to their providing bolt-holes for non-residents … (Bank of England 2009)

One of the strengths of TJN's pluralistic network model lies in the way we have been able to integrate the corruption debate into a wider debate about the importance of public finances in developing countries. This debate is rooted in the report of the 2002 International Conference on Financing for Development (the Monterrey Consensus) which stressed the importance of 'domestic resource mobilisation' and international cooperation on tax matters (UNFfD 2008: Article 16). The Monterrey Consensus provided the intellectual framework on which TJN could subsequently base its work on illicit financial flows and tax evasion, finding a political ally in South African Finance Minister Pravin Gordhan. As one of the strongest advocates for tax justice in Africa, he has publicly commented on the lack of coherence among the leaders of developed nations who call for additional aid flows but do nothing to stop illicit *out*flows of finance from their countries towards secrecy jurisdictions in the global North. This annual outflow from developing countries and transition countries is estimated at US$900 billion (Global Financial Integrity 2008), while cumulative effects between 1970 and 2008 for African countries alone is estimated at between US$854 billion and US$1.8 trillion (Global Financial Integrity 2010).

This explains why TJN has consistently emphasised the role of tax bargaining in the process of state building and democratisation since the very beginning. Tax bargaining (Bräutigam 2008) is a continuous process that solidifies democracies, but the processes can become flawed in situations where the voices of citizens are unevenly represented and special interest groups are politically dominant. Instances of this can be found in settings ranging from the party political funding anomalies in the UK and the vote-buying scandals during the 2008 Kenyan elections, to the ongoing outcry over funding of political foundations in Finland. Party political systems are in crisis over their funding sources in all these countries, eroding public trust in democratic institutions. The global shadow financial system provides the necessary secrecy space and infrastructure for political corruption across the globe, even in the countries such as Finland, which is perceived as the fifth least corrupt country in the world (Transparency International 2009). When the Second Minister of Finance, Suvi-Anne Siimes, responsible for taxation, was asked in 2002 at the Finnish parliament to justify the 'nominee registry', which exempts foreign investors who register through nominee brokers from any requirement to declare beneficial ownership, the minister responded as follows:

> If a single state, such as Finland, would take as its task to go beyond well-established international practices regarding the obligation for identification, it would create an obvious risk that significant investment communities would pull out investments from Finnish securities. In many countries, bank secrecy rules even prohibit the disclosure of the identity of the client to foreign state authorities. (Finnish parliament 2002; author's translation)

Assisting corruption and illicit financial flows into industrialised countries has become such a norm that its tentacles extend to legal instruments such as the 'nominee registry' through which 40.6 per cent of all securities in the Helsinki Stock Exchange were owned in early 2010

(Euroclear 2010). These practices facilitate corruption, bribery and illicit capital flight that deprive poor and rich countries alike of much needed public financing.

Indeed, there is an urgent need to redefine the geography of corruption. Territories known as tax havens are primarily supplying secrecy rather than just tax evasion or avoidance services: the latter can only be exploited effectively if the former is available. This explains why the term 'secrecy jurisdiction' more accurately describes the function of these places as locations for merging illicit financial flows into the mainstream financial markets. So while Sassen (1998) talks about the 'global city' being the location of finance, to be more precise it is estimated that 70 per cent of hedge funds are based in the Cayman Islands or Jersey, while their fund managers may actually work and live in Mayfair, London. This is because many secrecy jurisdictions are simply booking centres for assets, highly specialised in providing light-touch regulatory environments to specific niche markets (Palan et al. 2010: 136). Recent research ranks the City of London as the world's fifth most important secrecy jurisdiction (Tax Justice Network 2009b). Perhaps surprisingly to most people, the United States ranks first, with states like Delaware, Nevada and Wyoming providing highly secretive facilities for incorporation and financial reporting.

Transnational corporations (TNCs) benefit vastly from such territorial ambiguities. The current legal understanding of TNCs is that they are comprised of semi-independent national subsidiaries of larger global firms whereas in reality they operate as integrated units. Therefore, assuming that subsidiaries of a TNC trade with each other much like unrelated parties according to the prevailing 'arm's length' principle (Neighbour 2002) is pure legal fiction (Picciotto 1992, 1999), since most multinationals rely heavily on discrepancies between national tax regimes to avoid paying taxes at source.[3] The phenomenon in question can be broadly called trade mispricing (Christian Aid 2008), and it takes place mostly within a corporate group, and sometimes with seemingly unrelated parties (Baker 2003, 2005). Underpricing or overpricing trade, thinly capitalising loans or misrepresenting other flows, are among the most common drivers of the phenomenal rise in global trade flows. It is these operations that enable the lowering of the effective tax burden of large transnational corporations by anything between 5 per cent and 20 per cent. Inter-company trade today constitutes 60 per cent of all world trade (Neighbour 2002), historical data showing that the figure was over 70 per cent of US-Japan imports in 1999 (OECD 2002). This phenomenon both in inter-industry trade in addition to inter-company trade is known as 'slicing up the value chain' (Krugman 1995), which is a key driver of world trade by so-called 'super-trading' nations and territories that often match with the TJN list of secrecy jurisdictions. Much of the slicing up of the value chain is done via the creation of fictional services, as is aptly demonstrated by the global banana trade where large slices of the accounting value of a banana are attributed to services such as 'use of distribution network' based in a Bermuda subsidiary, or 'management services' based in Jersey, while none of the big banana groups has ever been managed from the Channel Islands (Griffiths and Lawrence 2007, Christensen 2009).

TJN proposes a plethora of solutions to such problems, including a detailed proposal for an international country-by-country reporting standard that would provide governments with information about a TNC's operations in each country where it operates, and a multilateral framework for tax information exchange between countries based on automatic exchange processes rather than the 'on request' sharing agreements being promoted by the Organisation for Economic Cooperation and Development (OECD) and G20 countries. Global governance is sought as a solution to tax injustices because otherwise secrecy jurisdictions claiming nominal sovereignty while blocking all steps to effective tax cooperation will continue to operate with devastating consequences. On the national sphere, we find that there is no 'one size fits all' solution to tax matters, even though many multilateral agencies promote precisely such piecemeal solutions to fiscal problems (Marshall 2009). Instead, we promote tax advocacy in civil society as a methodology in articulating tax justice demands

Globalisation can and should be brought under transparent and democratic scrutiny. Indeed, it is 'secrecy' that we oppose most, in all of its forms, since it has also fostered a 'social silence' (Tett 2009) around the expansion of new instruments in markets such as derivatives and swaps, and the immense wealth accumulated by the 'golden boys' of finance. The jubilation about the wealth of high net-worth individuals (Merrill-Lynch 2009), or 'Hen-Wees' as they are called in banking circles (Christensen 2005), has helped to construct and reinforce a new power structure, with financial capitalism having the upper hand over both the productive economy and the democratic accountability of government. We live in an era of financial secrecy, and it is this analysis that brings

tax havens closer to the traditional campaigns for justice and democracy in which we wish to locate ourselves. In practice, we demand an end to the secrecy facilities provided by tax havens, and we advocate increased tax cooperation, particularly taking account of the needs of the people of the global South who suffer most severely from illicit financial flows and tax evasion.

The history of many injustices are indeed written in tax laws, as Schumpeter (1954) noted. Double-tax treaties that Kenya signed on achieving independence have given tax privileges to foreign companies investing in Kenya that are not available to domestic companies. The UK's non-domicile provisions have allowed over 100,000 of the world's wealthiest people to escape tax on incomes and capital gains arising outside the UK. Combined with the 1936 Duke of Westminster ruling of the House of Lords, which effectively licenses the tax avoidance industry to devise ever more ingenious ways of avoiding tax, the UK has made a major contribution to the development of tax haven activity across the world. The 'nominee registry' practice makes Finland an attractive location for illicit capital flight, thus facilitating tax evasion abroad among other components of the phenomenon. Illicit financial flows through these structures find their way from Kenya to London and Helsinki through various secrecy jurisdictions dotted around the world. It is both the content and the practice of these laws that create the injustices that we campaign against.

Notes

1. This speech, titled 'Death of Justice' '(Saramago 2002), will be used as a metaphor for different perceptions of justice and injustice for the three authors.
2. It was common to borrow money without guarantees at the time; a simple guarantor's signature was enough, which then led to guarantor defaults on a huge scale.
3. This is assuming that we could actually identify the true value of a singularised product service, an argument often used by accountants when faced with charges of transfer mispricing. The alternative proposal is the unitary model, where the total tax of an TNC would be distributed on a proportional formula across to all countries where it operates.

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CHAPTER 7

TRANSNATIONAL NETWORKS OF 'SELF-REPRESENTATION': AN ALTERNATIVE FORM OF STRUGGLE FOR GLOBAL JUSTICE[1]

Martin Vielajus and Nicolas Haeringer

From Self-Support to Self-Representation

'Have-nots', 'Voiceless': this is how a set of self-help groups, grassroots organisations and social movements of marginalised people chose to define their identity.[2] Far from under-evaluating their capacities, these 'negative' terms constitute the first step in their attempts to directly represent the victims of particular forms of injustice and are the basis for their cohesion and legitimacy. Unlike NGOs, their members are directly affected or concerned by the issues they address. They usually organise themselves around peer-based solidarity and exchange, at a very local scale, in order to face the most daily and concrete challenges (access to services, medication, sanitation, community development, and so on). Often serving as 'support groups', their members provide help to each other, blurring the traditional distinction between 'beneficiaries' and (service) 'providers'. But the choice for peer-based organisations goes beyond the need to provide appropriate and efficient local support. Promoting self-representation is a way for individuals suffering from exclusion or oppression to break with fatalism, shame and stigmatisation. As soon as they refuse to consider that their situation results from personal failures, groups start considering their collective situation as a form of injustice and thus tend to reframe the way such injustice is perceived and addressed in the public sphere.

Such struggle at the same time has an organisational and a cognitive dimension: one of their members' features being that they suffer from injustice that is not acknowledged, or doesn't appear as such within the usual sense of justice (Renault 2004) – a consequence of the divorce between politics and the (concrete) experience of injustice (Renault 2004). These groups are therefore confronted with the challenge of politically representing the invisible forms of injustice (rather than simply 'describing' them). In other words, they have to propose forms of organisations that are dedicated to the direct representation and participation of invisible and marginalised groups (the organisational challenge), as well as to suggest alternative frameworks through which to tell and denounce the injustice these groups suffer from (the cognitive challenge). This attempt to build alternative forms of organisation pushes up against the legitimacy of traditional global civil society actors, and notably large professional NGOs active in their sector. Dealing with global issues, these groups, although less visible than traditional NGOs, are gaining legitimacy and recognition, and are gradually becoming formalised partners in public policy spheres of various levels.

Here we are looking at three forms of marginalisation that have generated this type of collective organisation of 'victims', through the involvement of groups of actors, active in systems of mutual help, in a dynamic of transnational network creation.

1. HIV/AIDS sufferer movements are a compelling example: in many countries the will of sufferers and users of direct representation around HIV issues has contributed to reinforcing links between local self-help groups and local, national and international advocacy arenas. The emergence of this method of direct organisation of HIV sufferers has also been at the heart of the redefinition of the determining factors behind the epidemic, contributing to the reorientation of the direction of public policies in this sector.
2. Movements created by marginalised urban groups have also undertaken the development of self-representation networks on a transnational level, relating to self-built housing (for example, Slum Dwellers International, Alliance Internationale des habitants, and so on), street vendors and informal workers (for example, Streetnet). These organisations share the task of influencing local, national and international urban policy based on the representation of the poorest urban populations organised in local self-help groups. In this sector, by its nature challenging to understand from the standpoint of external experts, the mobilisation of local groups has enabled the development of new

methods of information collection and the promotion of innovative approaches.

3. Movements that bring together grassroots women's groups have been able to benefit, over the years, from a growing visibility at the international level. Through an exchange of experiences and analyses among women's groups based in varying contexts, these networks facilitate collective definitions of the various types of 'gender-based oppression' and injustice suffered by women. From emphasising the types of economic, social and political marginalisation (such as the Grassroots Organizations Operating Together in Sisterhood) to shedding light on forms of religious or legal oppression (such as Women Living Under Muslim Law), these organisations have used the common experience of their members as central tools for their advocacy activities on a transnational level.

Looking at the variety of their struggles and their forms of organisations we will discuss the dual challenge – the organisational and cognitive – that motivates the action of these transnational networks of self-representation in terms of the struggle for social justice:

- The challenge of an alternative representation of injustices, focusing their struggle on the issue of visibility and direct participation of their members in public decision-making, in fields that concern marginalised populations (the organisational challenge).
- The challenge of informing the debate on global injustices by positioning the exchange of experiences of their members as an expert tool in its own right (the cognitive challenge).

Contributions from some of these organisations will constitute a substantial part of this chapter to describe in greater detail their experiences and their objectives, and to help us to identify the variety of their answers within this dual challenge.

The Organisational Challenge: Illuminating the Invisible

> While other organisations … often look at skills and expertise, our entry point is our identity: we identify with the problem, and we want to be part of the solution. Organisations from our sector often look at us as beneficiaries of services … We're not perceived as experts, as actors, even if we're sure that we have something to contribute.
>
> Waheeda Shabazz, US Positive Women's Network

Living with HIV and AIDS, *being a* 'slum dweller' or a 'street vender', or *being born* a woman in a grassroots community are far from describing homogeneous realities or a single form of marginalisation. They rather portray a very diverse and wide range of personal situations, cultural backgrounds, as well as processes of social exclusion. Moreover, they deal with forms of injustices that are hard to perceive by those that experience them, more naturally appealing to fatalism or personal failure than to the denunciation of social processes and injustice. Reaching the stage of highlighting affliction as resulting from injustice requires the identification of the recurrence of such injustice through the sharing of the diversity of situations and the building of frameworks to facilitate the recounting of these injustices. In other words, collective organisation is crucial.

Thus, organising collectively is at once in itself a challenge, an objective and a political statement. It is a 'fight for the switch' which aims at throwing the spotlight on isolated and excluded groups. Self-representing networks firstly claim recognition, in order to 'become an actor' and be 'acknowledged' as such by institutions and other civil society actors at any scale. To break isolation and shed light on their situation, grassroots activists affirm their identity – as indigenous, homeless, HIV-positive – in a way that reverses stigma and turns it into the basis of their identity as political actors.

The call for justice of these networks is thus firstly a call for visibility and participatory decision-making processes, as the exclusion and injustices their members suffer from renders them socially invisible. At the same time, this invisibility is a cause and a consequence of their daily experiences, public institutions and authorities perceiving them less as 'actors' than as 'collateral victims' of housing policies, international negotiations on tropical forests, economic growth, health policies, and so on.

As described in Box 7.1, the story and the objectives of the network Grassroots Organizations Operating Together in Sisterhood (GROOTS) is very illustrative of that struggle for visibility: 'GROOTS stands out for not being an organisation where staff and other people are speaking for themselves, but rather for creating a space for grassroots voices to take the dominant stage' (Sandra Schilen, GROOTS). The network, which has progressively gained a wide international legitimacy

Box 7.1

Reframing Participation: Grassroots Women Claim Global Recognition as Community Developers

Grassroots Organizations Operating Together in Sisterhood (GROOTS) is a global network connecting grassroots women leaders and their community organisations across 27 countries. Although member groups reflect different local organising approaches they commonly focus on reducing women's poverty and promoting forms of community development that empower women economically, socially and politically. In GROOTS, members lead thematic initiatives that support and document grassroots women's groups efforts to tackle serious problems – HIV/AIDS, climate change and natural disasters, food and livelihood insecurity, lack of access to decent housing, water, sanitation and healthcare – in a manner that improves the quality of life of their families and communities and presses government officials and public institutions to recognise and resource their leadership and contributions.

The commitment to organising globally from the standpoint of grassroots women's contributions to community development emerged from network leaders' analysis of how to strategically contradict dynamics that commonly oppress and subordinate poor women across cultures and contexts. Leaders have shared multiple examples of how male dominated power dynamics (private and public) denigrate and casualise the labour, care-giving, resource and social mobilisation that grassroots women's groups commit to improving daily life and community conditions. They also cited how political officials (local authorities and higher) commonly refer to and treat them as 'beneficiaries' (or recipients) of government programmes and services during planning and negotiation sessions, as if they were dependents of the state rather than emancipated, equal citizens bringing priorities, plans, and expertise to elected officials and public servants, who should respect and be responsive to them. To counter this marginalisation, GROOTS supports grassroots women's groups to position themselves as community problem solvers and information holders who represent an important constituency capable of mobilising families and other community groups. For example, Garifuna and Mayan women's groups coping with climate change and disaster risk in Honduras and Guatemala are training women leaders in a many villages and towns to physically map and analyse the hazards and vulnerabilities that could threaten their families and communities, present their findings and proposals to local authorities, and build relationships with governmental ministries in charge of environmental and disaster management to implement proactive plans where women can be development workers and community monitors. Similar processes are underway in informal (slum) communities in Kingston in Jamaica, Lima in Peru and Manila in the Philippines (and elsewhere). To consolidate grassroots women's knowledge and press for women-led, pro-poor approaches, GROOTS facilitates peer learning exchanges and grassroots advocacy delegations so women can transfer their good practices and lessons learned, and engage policy makers and donors on the value added when these approaches are resourced and scaled up locally to globally.

GROOTS also designs strategies, and indeed was founded, to challenge exclusionary practices that obstruct grassroots women's groups from participating in international and regional agenda setting and policy-making processes that frame development programming and financing (global to local). To contradict elite discourse among policy makers, development professionals and many international civil society representatives (in which it is common and acceptable to talk about and for poor women and their communities), GROOTS supports grassroots women leaders to function as expert practitioners and global network representatives in key global policy debates so they can represent their experiences, priorities and proposals directly (without intermediaries). A good example of this is the seven-year network effort to organise women functioning as home-based caregivers to families coping with HIV and AIDS in Africa into Home based Caregivers Alliances so they can advocate with appropriate officials for formal recognition and compensation as development workers in the war against AIDS. Grassroots caregivers have thus lobbied the Global Fund to Fight AIDS, Tuberculosis and Malaria as well as UN member governments and development aid officials attending the 2009 UN Commission on the Status of Women focused on reducing the burden of women's unpaid care work.

With the Huairou Commission, and support from the UNDP Gender Unit, GROOTS members have led a 'Compensation for Contributions' action research project interviewing a representative sample of caregivers in

six countries, which illustrates the number of hours and resources women contribute, the conditions and outcomes of their work, and the cumulative significance of this work continent-wide to strengthening healthcare services and economically empowering poor women. With the report about to be published, delegations of grassroots women leaders are meeting with their government ministers and HIV/AIDS officials in Kenya, Uganda, South Africa and other participating countries to press them to commit a fair share of AIDS resources to women's care-giving work (nationally and locally), and to establish demonstration programmes that test how to best socially recognise, support and remunerate home-based care in a manner that collectively uplifts organised groups of women that were the first to shoulder the burden of care.

Groups in GROOTS have spent years building relationships and organising structures (federations and networks of women's and self-help groups and producer cooperatives, for example) to challenge the exclusion and marginalisation women face due to their caste, class, ethnicity *and* gender. The network adds value to this by strategically supporting members to strengthen and scale up their organisations by adopting effective strategies learned from grassroots peers, by federating and creating networks at the state/country level that expand their reach, and by formalising grassroots women's priorities and leadership within mixed organisations and in their partnerships with NGOs. At its core, GROOTS is illustrating the critical importance of requiring and facilitating the participation of women's groups that work to promote inclusive, pro-poor development and governance in their poor communities and worldwide. Challenging global civil society (and others) to breakdown their own resistance, the network is demonstrating how valuable and impressive this constituency has become in the global movement for progressive social change in the short and long term.

Sandra Schilen (GROOTS) http://www.groots.org

and is now a well known partner for the UN and other international organisations, has indeed been a pioneer in placing the claim for direct forms of representation of the 'have-nots' at the core of its global struggle for justice.

However, a key question relates to understanding how the internal governance of these networks allows them to concretely ensure the direct and consistent participation of their members at every level where public policies are being made, from the local to the global. To that major organisational challenge, networks of self-representation tend to respond in three ways that we propose to explore in more detail along the following lines: by strengthening the capacities of their members, in order for them to engage directly in public dialogue and extend collective representation at all levels (empowerment); by avoiding an excessive formalisation of these transnational networks in order to leave space for the diversity of profiles and interests of their members (informality); and by promoting flat and inclusive forms of decision-making inside the networks (horizontality).

Empowerment

Most of these networks dedicate an important part of their activities and funds to empowering their members in their capacity to represent and advocate for their collective identity. Most of them have developed a large range of practical training sessions intended for grassroots leaders (speaking in pubic, formulating political proposals, networking and managing intercultural conflicts, and so on). Notably, these empowering tools have been developed by networks of people living with HIV. The network of Women Organized to Respond to Life-threatening Diseases (WORLD) has, for instance, put a great focus on organising special training sessions for members in order for them to join and enlarge the 'speakers' bureau', and directly advocate for the rights of people who live with HIV, as well as for the prevention of further infections. The speakers address diverse audiences: from the local level (schoolchildren, members of youth groups, recovery centres, social services providers, pregnant teenagers, those recently diagnosed HIV-positive), to media and various institutional arenas. They tell stories about how HIV impacts their lives, their families and their communities, putting experience sharing as a way to increase HIV-positive women's autonomy. In the same way, the International Community of Women with HIV/Aids (ICW) organises regular 'speaking in public' workshops, so that as many of its members as possible can represent the network in conferences, meetings, dialogues with institutions, awareness-raising initiatives, and so on. In that field, the experience of the US Positive Women Network, a national member of the WORLD network,

Box 7.2
Power Base, Not Support Group

In the US, a voting bloc of 1.2 million people could swing elections, breathe life into healthcare reform, and create a publicity nightmare for private companies gouging consumers and service providers. That's what it would look like if every HIV-positive person in the US was informed, organised, prepared and equipped to buy, vote and act in our own best interest. Why aren't we? The answer lies in the systemic disenfranchisement of certain communities, and power dynamics perpetuated by the status quo.

The HIV epidemic in the United States has changed dramatically over the past three decades – from an epidemic primarily affecting gay and bisexual Caucasian men in major urban areas to one characterised and exacerbated by multiple oppressions including racial, gender and economic inequity. While in 1987 women comprised 8 per cent of US HIV infections, by 2006 women represented 27 per cent of the US epidemic. Black Americans comprise only 13 per cent of the US population, but nearly half of the HIV epidemic. And people vulnerable to acquiring HIV in the US are disproportionately poor.

Women have unique vulnerability to HIV and unique life factors that may impact our access to care once testing positive; a national study of HIV-positive people's utilisation of care found that 76 per cent of HIV-positive women in the US had a child under the age of 18 in their homes. Yet many services were developed at a time when the epidemic looked demographically very different than it does today, and don't truly account for family responsibilities, women's biology and life cycles. In addition, the rights of women living with HIV – including the right to access comprehensive sexual and reproductive health services, employment and high-quality healthcare – are consistently violated.

As the epidemic's burden has shifted, the domestic response to HIV must consequently shift to account for the needs of communities of colour, those decimated by poverty, and the hundreds of thousands of women and families living with HIV.

Cultivating and supporting leadership by communities directly affected by the epidemic is a critical component of this response, and investing in HIV-positive women's leadership has been a commitment of Women Organized to Respond to Life-threatening Disease (WORLD), since our founding in 1991. WORLD was founded by Rebecca Denison who, after testing positive, was unable to find services designed especially for women, so she started a support group for women living with HIV. That support group today has grown into an organisation with 13 staff, with a peer advocacy programme, and providing training, capacity building, leadership development and policy analysis nationally.

In June 2008, at a meeting of 28 HIV-positive women, of all colours and ages, we launched the US Positive Women's Network (PWN), a national membership body of women with HIV working for federal policy change. Some of us were born HIV-positive. Some were born outside the US. Some of us were born male. Our common thread: all were HIV-positive. We left that meeting with a firm commitment to work collectively to improve the lives of women living with and affected by HIV in the US – and the beginnings of a strategy to do so. PWN's founding members understood that the US HIV epidemic is a spotlight that shines upon systems of inequity and multiple oppressions – including but not limited to prejudice relating to race, class, gender, and sexual orientation. We also understood that as HIV has become a chronic, long-term diagnosis, the needs of people affected with HIV have changed substantially – to include the rights to employment, healthcare, pregnancy and parenting, and intersections between imprisonment and HIV. Founding members define the work of PWN as an 'upstream' approach to the gendered nuances of the US HIV epidemic, which identifies root causes, understands their consequences, and works to change structures and systems to improve prevention and care outcomes for women.

Born during an historic presidential election, PWN took its first steps under the Obama administration's flagship work on healthcare reform and development of a National HIV/AIDS Strategy. This political context shaped our initial policy campaigns and advocacy work. As a national membership body of HIV-positive women, inclusive of transgender women, working for federal policy change, we prioritised three strategies to achieve federal HIV policies grounded in the reality of women's lived experiences.

Identifying, Cultivating and Supporting Leadership by HIV-positive Women

There have been HIV-positive women leaders since the early days of the US HIV epidemic – fighting for an expanded diagnosis of AIDS that includes women-specific conditions,

inclusion in clinical trials, and better prevention and care efforts for their communities. Many founded innovative organisations providing women-focused services – including The Women's Collective in Washington, DC; BABES Network in Seattle, WA, Healthy University in Kansas City, KC and The Well Project, an online resource.

However, when scanning the landscape for new and emerging leaders, including more recently diagnosed women and women of colour, there is almost a state of emergency. We decided to prioritise community-building among HIV-positive women advocates, provide mentoring opportunities for women entering the advocacy arena; and invest in training HIV-positive women as policy experts and advocates. We achieve this through in-person and teleconference trainings, an online policy discussion list-serve, and cultivating mentoring relationships between HIV-positive women and allies.

Building Capacity for Collective Action among Advocates for Women Affected by HIV

There are many organisations and individuals in the US working to improve the quality of life for women affected by HIV. However, to date there have been few resources specifically directed towards increasing the opportunities for women-focused HIV advocates to collaborate on a shared agenda to impact policy.

We decided to focus on creating and assisting with toolkits and other resources for use by women-focused HIV advocates. Examples to date have included a tip sheet on providing comments for the National HIV/AIDS Strategy (NHAS), talking points for NHAS community meetings, a primer on understanding federal agencies and their role in addressing the HIV epidemic, and training on setting up and conducting meetings with elected officials.

Since our inception, the PWN has grown to a vibrant membership of nearly 2000 HIV-positive women and allies from throughout the US. We have trained nearly 300 women in advocacy and public speaking skills, and hosted several teleconferences to provide information and space for dialogue on key policy issues. The PWN has also secured representation on three federal advisory bodies: the Presidential Advisory Council on HIV/AIDS, the Office of AIDS Research Advisory Council, and the CDC/HRSA Advisory Council. With our allies, we have helped to shift the way women living with HIV are organised and perceived.

Engaging in Policy Analysis and Campaigns to Change Policy

PWN has provided policy analysis in the form of policy briefs, papers, comments, blog posts, and input into key decisions. In these forums, we have consistently argued that the US HIV epidemic cannot be addressed solely by targeting populations or behaviours. To achieve equity and success in prevention and care efforts, we must address the underlying social and structural factors that put some communities at disproportionate risk – before and after HIV infection.

We organise for research and investment to promote a structural and collaborative response to the HIV epidemic that truly upholds women's human rights, including locating comprehensive sexual and reproductive health services with HIV services. We demand implementation of a more comprehensive and sophisticated system to target and resource services for communities at structurally elevated risk of HIV – not just individuals who self-report behavioural risk. We call for increased diversity, usability, accessibility and affordability of HIV prevention mechanisms that can be controlled by women.

Addressing the US HIV epidemic for women will necessitate creating a social and political environment where women's health and right to access medical services is no longer an acceptable bargaining chip for political parties, as it was in the recent healthcare reform debate. And, above all, it demands a continual commitment to address racial, gender and economic injustice throughout the entire healthcare system.

We are the US Positive Women's Network, informed; organised and unified. We undertake this work out of a sense of love and responsibility for our communities, and our deep desire to leave a better world for the next generation. We understand that until we address the underlying factors fuelling the epidemic – poverty, homophobia, racism, stigma, a broken healthcare system, and socialised expectations around gender and sexuality – we will never truly address the epidemic. We commit to utilising a non-oppressive framework for engagement – beyond constituency-based messaging and identity politics. And we will continue to fight for policies and programmes that uphold our rights as HIV-positive women and allow us to participate with dignity as productive members of society, to live with the quality of life we deserve.

Naina Khanna (WORLD, PWN) http://www.womenhiv.org

described in Box 7.2, gives a detailed illustration of how the organisation has been active in 'training HIV-positive women as policy experts and advocates'.

Informality

Transnational groups of self-representation are almost systematically structured as loose networks rather than rigid hierarchies, as a consequence of the diversity of their local constituencies. They usually appear as collectives of 'weak ties', where networkers need neither to give up their identity nor to bargain their principles and values (as opposed, for instance, to a trade union, whose cohesion comes from their strong social homogeneity, or a political party, whose cohesion is based on shared ideological positions).[3] They rather require agreement on a common project, such as the defence of a particular population, a social confrontation; and to clarify a few methodologies and principles whose boundaries will be flexible enough to bring together a variety of participants, organisational cultures or traditions. However, such collective structuring confronts the networks with a major risk of informality: the dilution of the network's collective message and, eventually, the loss of its cohesion. By broadening the social base of their activities these networks are confronted with the necessity of reinforcing their official existence in the face of potential donors, and of public authorities, in order to create a position in the highly competitive civil society field.

This formalisation dilemma is situated firstly in the way in which the members and individuals of the network are affiliated, which in turn highlights precisely who is being represented. An issue that some networks have concretely experienced, as illustrated in Box 7.3, the network of Women Living Under Muslim Laws (WLUML) has remained very loose and informal, based on the individual engagement of its networkers rather than formal membership, in order to protect its members in a very sensitive field. However, this choice for an informal affiliation to the networks put its collective identity and collective message into question: 'Being a non-membership network, we have the issue of who can speak on behalf of the network. We have no designated spokesperson, no designated members. So we have to ensure a consistent message' (Aisha Shaheed, Women Living Under Muslim Laws).

This dilemma is also situated in terms of the status of the local organisations that are members of the network. It questions the way they formalise their local collective support activities, but also the way they formalise their linkages through official regional or thematic common structures. The experience of Slum Dwellers International (SDI) provides us with a useful example in this case:

> Slum Dwellers International … is in a way moving on a trajectory from being a loose network to becoming a coalition of organisations of the urban poor. There are constant debates inside SDI around the level of institutionalization required by international agencies of this kind. The challenge between formality and informality defines every single working day of every single member of this network. It's rooted in the fact that the majority of members (over 3.5 million people) come from an informal context. Every one of them comes from a situation in which the informality is the most effective tool to ensure survival in the environment in which poor people are discriminated and excluded. But when you start to engage with formal institutions, city authorities, national governments or international agencies, there is a need to move towards the formalization of the way your organisation is structured. The more you formalize, the more you put at risk the energies, the efforts, the capacities, the potentialities that exist in informal institutional arrangements. And this tension between informality and formality governs the way SDI operates on a day-to-day basis. Where there is a need to find resolutions to this, SDI prefers to put the stress on informality rather than on formality. (Joel Bolnick, Shack/Slum Dwellers International)

Horizontality

The search for visibility creates organisational constraints in terms of decision-making processes inside the networks. Network forms are often quite unsuited to the notion of delegation and their privileged decision-making method (consensus) facilitates the cohesion of broad and diverse groups. This method enables the inclusion of marginalised and peripheral groups, whose aim is precisely to gain visibility. As it requires frequent negotiations, it creates opportunities for regular and rich meetings, and for the recognition of the legitimacy of all actors: the goal is not (only) unanimity, or broad adhesion to the decision, but the discussion that necessarily precedes any decision. Thus, open decision-making processes allow for a greater acceptance of the differences that coexist within a network and help to ensure its members' continuous participation. It is a way of accepting diversity, as consensus building implies integrating the various positions of actors on one issue, rather than choosing one to the exclusion of

all others. In her account of direct forms of democracy within US social movements and organisations, Francesca Polletta explains: 'far from being at odds with the demands of political effectiveness, participatory decision-making can help activists build solidarity, innovate tactically, secure the leverage of political opinion, and develop enduring mechanisms of political accountability' (Polletta 2002: 13).

However, this search for horizontality can be an obstacle to the implementation of internal democracy. If power structures aren't made clear, forms of domination can emerge. As long as power remains unacknowledged, these inequalities cannot easily be overcome. Conversely, flat forms of organisation can push groups to develop excessively procedural ways of working. Procedures might be perceived as a way to reveal power relations and to anticipate conflicts or difficulties, however, they contradict the individual factors: network regulation is also, if not mostly, based on interpersonal relations – hence the importance of developing 'a sophisticated set of normative understandings, that accompany the formal rules, a kind of etiquette of deliberation' (Polletta 2002: 16).

The choice for horizontality and informality is quite common for such reticular forms of organisation. Obviously, it is a way for the demands for recognition and participatory decision-making processes to not solely have external implications but also apply to the internal structure of their own organisations. However, this choice also appears as an organisational necessity: the social heterogeneity of these networks (that is, the variety of their members – some of them even gather individuals and groups together) turning smoothness and horizontality into the few, if not the only, forms of organisations available.

Networks of self-representation thus tend to search for alternative modes of organisation able to 'represent' the invisible forms of injustice that their members suffer from. But they also often propose to reframe the way these injustices are traditionally addressed, through the collection of a large range of local experiences and the gathering of grassroots data.

Cognitive Challenge: Reframing Global Injustices Through Local Experiences and Grassroots Research Processes

> We conduct and carry out research, because globally, when you talk about any issue, you'll be asked 'do you have the evidence?' There, we try as much as possible, especially using our membership, to carry out research, so that our advocacy is informed by the research that we do with our constituency.
>
> Lilian Mworeko, International Community of Women living with HIV/AIDS

The fight for social justice of marginalised groups has a strong cognitive dimension, which Emmanuel Renault describes as follows: 'rather than simply theoretically representing experiences, it is necessary to struggle against cognitive obstructions to victims' speaking out about injustices and thus to contribute to the elaboration of a framework that enables them to qualify some social experiences as unfair' (Renault 2004: 335). This fight for social justice is thus channelled through the building of 'grassroots' knowledge. Reflexivity and expertise indeed open the possibility for transforming the building of frameworks for the recounting and denouncing of injustice, that is, not to consider that people suffer from affliction (caused by indeterminate factors) but that they are the victims of processes of social exclusion. Moreover, this approach can help groups to make their claims heard by giving them more legitimacy in the public sphere.

Networks of people living with HIV/AIDS, grassroots women and marginalised urban populations have been pioneers in promoting such innovative forms of 'grassroots expertise', based on a direct collection of information about the contexts and the experiences of their members. This promotion of grassroots expertise is built on the conviction that research is not neutral and that favouring one research orientation and methodology more than others has clear impacts both on the definition of specific forms of 'injustice' they suffer and on the design of relevant solutions. It is also based on the refusal to divide the world of ideas between those who know (experts) and those who do not (lay people). The need to engage in grassroots and peer-based research has thus once again to do with invisibility: invisibility is not confined to the political and the public spheres, it also spreads out to the academic world. Research on issues that affect grassroots communities can sometimes ignore them and forget to integrate their visions and their experiences as well as ignore their creativity and the kind of (informal) social relations they develop. By intending to reframe the perceptions of injustice through innovative ways of informing them, these networks actually aim at two complementary goals:

- On the one hand, the strengthening of a common understanding of injustice inside the network.

- On the other hand, the promotion of new data and new frames of research to address these injustices, in order to change public policies in their field.

Identifying Recurring Patterns, from the Diversity of the Members' Situations, in Order to Better Draw the Contours of a Common Understanding of Injustice

Collective research, led by the network's constituency, often helps its members clarify how to name the source of oppression, marginalisation and injustice they suffer from and fight against. A good illustration of this process can be found in the experience of the movement of Women Living Under Muslim Laws (Box 7.3). WLUML has developed innovative ways of dealing with decentralised and polycentric research: the implementation of the Women and Law Program clearly illustrates how a long-term research programme, initiated by a

Box 7.3
Women and Laws: Solidarity through Legal Literacy

Women Living Under Muslim Laws (WLUML) is a transnational, feminist solidarity network. WLUML was formed as an Action Committee in 1984 in response to three, unrelated cases in Muslim countries and communities in which women were being denied rights by reference to laws said to be 'Muslim'. In Algeria, three women had been jailed without trial for discussing with others the contents of a new set of personal laws that would severely undermine women's rights. In India, a Muslim woman challenged the existing Muslim personal laws in the Supreme Court on the basis that these laws violated the constitutional rights of Muslim women as citizens. In Abu Dhabi, a pregnant Sri Lankan woman was found guilty of adultery and condemned to be stoned to death (Shaheed 2004).

In response to these cases, and a growing recognition of the interconnectedness of women's rights struggles in contexts of fundamentalisms, nine women and one man from Algeria, Bangladesh, India, Iran, Mauritius, Morocco, Pakistan, Sudan and Tanzania came together to form the WLUML Action Committee to provide concerted support to local women's struggles. From the outset, WLUML has challenged the myth of one, homogeneous 'Muslim world'. The network now extends to countries and communities in all continents, providing support, information and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam. It links:

- women living in countries or states where Islam is the state religion, secular states with Muslim majorities as well as those from Muslim communities governed by minority religious laws;
- women in secular states where political groups are demanding religious laws;
- women in migrant Muslim communities in Europe, the Americas, and around the world;
- non-Muslim women who may have Muslim laws applied to them directly or through their children;
- and women born into Muslim communities/families who are automatically categorised as Muslim but may not define themselves as such.

The WLUML network does not have a membership system, instead linking individual women and organisations as 'networkers' and 'active networkers' through a shared sense of solidarity: recognising that struggles for social justice and gender equality are collective, intersecting and mutually interdependent. Women-at-risk and those who defend the rights of women may request support from the WLUML network around specific cases or issues, but are not beholden to their affiliation with WLUML. This emerges from the appreciation that international pressure and visibility may advance a cause, but in other situations, may compromise these very actions. The network's structure is further defined by three Coordination Offices (Asia, Africa-Middle East, and International), as well as a rotational management structure (WLUML 2006a).

The WLUML transnational network focuses on breaking the isolation of activists in their communities, by sharing information, strategies and support across contexts. To this end, the WLUML network has undertaken various collective projects including the Women and Law Programme (W&L Programme), which started in the early 1990s and continued for over a decade.

The Women and Law Programme

The wide-ranging action-research undertaken through the W&L Programme offers a good example of the issues, strategies and principles of transnational networking, which not only produced extensive and innovative information on women and laws in Muslim contexts, but strengthened the

WLUML network and developed its structure. Throughout the 1990s, a multidisciplinary team of activists from around two dozen countries, across Asia, Africa and the Middle East, undertook an action-research project, documenting how various legal systems affect the lives of women. This is most notable in terms of Family Laws or Personal Status Laws, those which govern issues of marriage, divorce, custody, transmission of citizenship, and so forth (Shaheed et al. 1999). However, the reality of law in women's lives required them to take into account not only codified law but also addressed the implementation of laws and actual practices. Within the W&L Country Projects, activists focused upon the issue of customary laws and practices – some of which may contradict civil or religious laws – with a recognition that women internalise constructions of womanhood in their societies. Therefore, the knowledge that other 'Muslim women' in different contexts may have more or less rights in a given situation can be immensely powerful in questioning and critiquing constructions of womanhood and 'Muslimness' (WLUML 2006b). This approach meant the W&L research not only collected data on these plural legal systems, but also reinforced the need to demystify these laws. Hence, the WLUML network refers to 'Muslim laws' (those written and implemented by humans), rather than 'Islamic law', as modern laws and customs said to be Muslim are not divinely sanctioned, but rather grow out of interpretations by people in specific historical and political situations.

The process of research at the country level was undertaken by a broad range of individual and organisational networkers. Although there was regional coordination, women retained their autonomy and control over the country-level research. Numerous initiatives have grown out of the W&L action-research, which include packaging the research findings in diverse mediums for different levels of advocacy, from lobbying for law reform, to directly providing women with information about their legal rights.

The research continues to be used in various outreach, training, and campaigning efforts. For example in Sri Lanka, after completing the country research for the W&L Programme, the Muslim Women's Research and Action Forum (MWRAF) published the research findings in several publications in English and in Tamil. These publications filled an enormous information gap on Muslim law in Sri Lanka and were targeted at academics, lawyers and activists. Some of the material was also simplified and printed as legal literacy booklets for a lay audience. Using a multi-pronged approach, MWRAF conducts workshops and lectures on the law for different sections of the community and uses the media to unravel and distinguish between what is ordained by Islam and what is custom (Kodikara 2003). Similar approaches were used in most focal countries.

Regional meetings also helped consolidate the research and strengthen the network. In the Africa and Middle East region, coordinators of the research brought together the country reports from Nigeria, Gambia, Senegal, Sudan, Cameroon and the Palestinian community in Israel, to develop a regional synthesis of the research, while in parallel all groups widely disseminated and translated information for their local and national-level advocacy.

In 1999, it was decided to consolidate and synthesise the extensive research of the W&L Programme. This synthesis culminated in the publication of WLUML's *Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World* in 2003 (now available in an expanded and revised third edition). The process of synthesising this vast amount of information was undertaken with a conscious desire to work collectively in the editing and production process, to ensure the research was presented accurately and that networkers fed into the conclusions and analyses. *Knowing Our Rights* contains over 300 pages of information collected by women in around 20 countries, and while it does not claim to be definitive, especially as laws and customs are ever-changing, it remains an innovative and unique tool for activists, legal practitioners, policy makers, and researchers (available to freely download from the WLUML website). It has been translated and adapted into Indonesian, and other language versions are underway, including French and Farsi. The publication is regularly used in training workshops conducted by WLUML and others. For women it can be very powerful to learn that in one Muslim-majority country, polygyny is illegal because it is considered to be un-Islamic (for example, Tunisia), while in another it is legal because it is considered to be permitted by Islam (for example, Sudan).

This awareness-raising and sharing of information is an important part of the process of demystifying the laws and customs that govern women's lives, and assessing how religion and politics intersect to define what is licit and what is illicit. Violations of women's rights are exacerbated by limited access to justice systems when seeking accountability and justice. Helping make women aware of the rights they are entitled to, whether through civil, religious or customary laws, can empower women to break taboos by seeking formal justice in cases of family law, navigate the local and national legal systems they face, and recognise which gender-based injustices are legitimised in the name of culture, religion and tradition.

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large range of national networkers, has helped them collectively identify what they perceived as shared forms of injustice and oppression, legitimised in the name of the Muslim tradition.

Promoting Alternative Information and Data to Reframe the Way Policies and Norms Address Injustice

Promoting grassroots expertise is also a way of providing alternative information, proposing new data and innovative collection methods to political actors, and contributing to transform the way injustice are addressed in the public sphere.

As mentioned earlier, the experience of organisations of people living with HIV and AIDS is a very good example of how the fight for the recognition of experience as a relevant source of knowledge has contributed to a change in health policies. Over time, organisations of people living with HIV and AIDS have advocated and demonstrated their expertise on the disease and its impact.

The unique experience of the mobilisation of sufferers around the issue of HIV/AIDS has been a key boost for the overall questioning of health governance systems as well as for the promotion of 'sanitary democracy' practices which enable the representation of the sick in the decision-making and regulatory bodies as well as in the testing and treatment processes. This evolution marks the transformation of the status of knowledge in this area and the emerging vision of sick people as cutting-edge experts who are directly involved in the production of knowledge, through the analysis of their very own experiences. In real terms, the underlining of the experience of these sufferers has enabled a shift in the traditional debate about the epidemic and has tried to establish a new understanding of the types of injustice that the traditional debate brings about. Indeed, these organisations have largely looked to broaden the understanding of the issues beyond the simple medical treatment of the illness so as to put forward its socio-economic effects (see the experience of the Positive Women's Network, Box 7.2). Through putting forward an improved understanding of the profiles of the ill, of their experiences of prevention and of treatment, but also of the stigmatisation brought about by the sickness, these organisations have contributed to 'de-technify' the public debate in this area, while putting at the centre of this debate a discussion about the rights of the sick and promoting their direct involvement in the decision-making processes.

The promotion of grassroots expertise has also been a particularly important advocacy tool for networks of marginalised urban actors, in a field that remains mostly characterized by the informality of the exchanges, the lack of clear data and, more generally, a diversity of local realities that remain hard to grasp for traditional expertise:

> We believe strongly that good research can assist our work, because we come from a sector which is usually invisible. There are bad statistics, or no statistics. And when we do have research, it helps us a lot to get policy change. (Pat Horn, Streetnet)

The work of Women in Informal Employment: Globalizing and Organizing (WIEGO, a member of Streetnet) is a good illustration of the value of such grassroots research processes. WIEGO has developed a specific statistical collection programme, surveying the grassroots realities of the informal economy and the situation of those working in it (size and composition of the sector in different national contexts, earning and poverty risks of informal workers, and so on). With the notion of the 'informal sector' being a blurry and a rather restricted concept, which lacks in-depth analyses of the way it was experienced by informal workers, WIEGO has sought to renew the type of data available in this field. Such a process has been implemented in close collaboration with national statistics offices, international organisations (notably the International Labour Organization) and research institutions, in order to ensure the integration of such data in larger national and international development policies. The WIEGO initiative is thus intended to renew traditional frameworks of analysis on informal employment and to reframe economic policy research and development alternatives around this issue, by more directly involving the experiences of its members.

As illustrated by WIEGO, in order to strengthen the legitimacy of this emerging form of expertise, networks of self-representation have usually developed their research processes through a close partnership with larger academic institutions. Trying to fulfil what they perceive as a gap between empiricism and academic knowledge, they usually engage in a two-way process: turning experience into a recognised source of knowledge; but also promoting knowledge that would be useful to grassroots actors. Such partnerships with universities are also often a way for grassroots knowledge not to be limited to the field of 'counter-expertise', but to gain political and academic legitimacy. Finally, partnering with academia through this research process can also be a way to integrate some of the perceptions and concerns of these networks in the curriculum of future political élites in that field.

Conclusion: Opening Access to the Political Sphere

Transnational networks of self-representation are principally based on three goals which their organisational and cognitive challenges cover: building a 'positive relationship to self', reframing claims and perceptions of justice in their fields, but also opening 'paths to access the political sphere' (Renault 2004: 331). Their search for political recognition is concretely translated into attempts to enter into dialogue with public authorities. Transnational engagement, despite its costs and barriers, can be a powerful strategy, to heighten opportunities or to break with limited access at the national level. Some groups will manage to get in touch with their own government via transnational forums whereas doors will remain closed at the national level. Civil society being a very competitive area, transnational structuring might also unblock perspectives, as experienced by GROOTS:

> politically, there is so much competition that it is very hard to get local organizing recognized either at the local level or at the national one. So the network has been very crucial to legitimate globally the successes and the priorities grassroots women reflect and also bring that success back to the local and regional levels. You'll find numbers of leaders who've met their ministers or majors at international meetings who will never see them or receive them locally. (Sandra Schilen, GROOTS)

The challenge then turns into ensuring that transnational arenas do not artificially shed light on invisible groups by only offering them ephemeral recognition.

The UN has represented (and still does) an important and often-used source of opportunities and of hope for a durable recognition for these networks. No doubt the bulk of the UN's relations with civil society are still mainly with large NGOs, which have widely contributed over the last 20 years to opening up the UN decision-making process in order to make it more participatory and transparent. UN officials are thus accustomed to dealing with established organisations whose elites often share common traits with them (mobility, language, and so on.) Still, they frequently raise the issue of the representative nature of these traditional partners and increasingly recognise the legitimacy of networks of self-representation to represent a fundamental missing voice in UN forums and consultations. Such dialogue, however, remains far from obvious for the UN agencies, many of which have difficulties in acknowledging and understanding these networks' specificities, claims and goals. Moreover, some groups report that dialogue difficulties have become more persistent in the last decade:

> There's been an enormous backlash … that has turned the UN into what it is today. In the nineties, there was an enormous civil society movement, to frame the global issues around the environment, around hunger, around women's empowerment and equality, around population issues …We were punished for that activism. And that space shrinks. Governments turn the United Nations into something for governments. Global policy makers know they need the poor. They know they need solutions … But they have no principles for…consulting with those most affected … disassociating them from the solutions they press for. (Sandra Schilen, GROOTS)

In that context, entities such as the United Nations Non-Governmental Liaison Service represent key interfaces, and are active in helping these groups succeed in their struggle for recognition (see Box 7.4).

Notes

1. This chapter is one of the outcomes of an international action research project, initiated by the Institute for Research and debate on Governance (IRG) and the Ford Foundation with a series of civil society networks. The dialogue with these networks has notably led to a series of video interviews, the organisation of a joint seminar and the production of a series of papers, which constitutes the raw material on which the analysis will be developed. Except when specified, all quotes are from videos interviews and interventions during these seminars.
2. These groups cover very different organisational choices and cultures – as evidenced by the variety of terms used to define them in the first sentence of this chapter. Although any attempt to unify such a diverse set of actors could be artificial or only heuristic, we believe that they share key features, and that they all engage to ensure the direct participation of marginalised people. Hence our choice to use the generic yet unusual term, 'networks of self-representation'.
3. In his 1973 essay 'The Strength of Weak Ties', Mark Granovetter shows how our relations with people we are not strongly tied to can be more powerful than those with our family or close friends. Here we use this notion in a broader sense, to suggest the heterogeneity and the diversity, yet efficiency, of networks.

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Box 7.4
The Dialogue between the United Nations System and 'People's Organisations'

The United Nations' relationship with civil society organisations has greatly evolved over the past two decades as these organisations have become essential partners not only in the design and implementation of humanitarian, peace-building and development programme activities, but also through informing the deliberations and negotiations at the UN. This increased engagement has undoubtedly strengthened the UN and the intergovernmental debate that takes place within its forums, and has actively been promoted as part of the ongoing institutional changes or 'UN reform' underway in the organisation in recent years.

Yet this process has not been linear or cumulative, and has not applied equally to all sectors of civil society. The UN system has established relations mostly with traditional NGOs of various kinds, including humanitarian and development NGOs, advocacy groups and faith-based organisations. It has been more difficult for the UN to engage with 'people's organisations' (or 'networks of self-representation') such as small-scale farmers, indigenous peoples, migrant workers and other groups, whose members represent constituencies directly affected by global policies. People's organisations are still primarily seen as service providers and partners in the implementation of projects rather than legitimate participants in policy making. However, this varies considerably from one UN entity to another, depending both on their mandate and organisational structure.

Several factors can explain the UN's limited engagement with people's organisations. In large part the causes can be found in the intergovernmental nature and culture of the UN as well as in the nature of people's organisations.

First of all, it is difficult for UN agencies to deal with so vast and heterogeneous a category as civil society. The false perception that civil society is a single undifferentiated whole and that one can suffice with the participation of some NGOs is still prevalent. Yet people's organisations are structured and organised differently from those of other civil society organisations. More importantly, people's organisations are neither homogenous, nor will they take a single position in political debates. They have their own culture and vision of policy making, which often diverge from the forms of collaboration and consultations that UN entities have established. The difference in language and frame of thinking is another obstacle. The UN institutional culture tends to take a defensive stance against new language and paradigms introduced by people's movements. Further, given the intergovernmental nature of the institution, it is also objectively difficult for UN entities to deal with some of the political issues that these groups raise, such as the right to food, to secure land tenure, or to migrate across borders. Ultimately much depends on the willingness of governments to take new ideas on board.

That said, in some cases more intense engagement is not preferred by people's organisations as they do not always have an interest in engaging with international institutions. For strategic reasons, some organisations prefer to focus on the local level where they feel they can have a more direct

impact. The relevance of international norms on the ground is also not always evident to some groups.

Despite these difficulties, positive experiences of engagement with people's organisations in various parts of the UN system and at different levels exist. There are many examples where people's movements have been successful in shifting the frame of debates and introducing new paradigms. The achievements of the global women's movement are the first to come in mind. Over the past 40 years, women's groups have been able to bring their perspectives and concerns to the ongoing global struggles for social justice and equality. The important gains in the areas of gender equality and women's empowerment, such as the recently adopted resolution for the establishment of a composite UN gender entity (UNGA 2009) would not have been possible without their relentless pressure.

The adoption of the UN Convention on the Rights of Persons with Disabilities in 2006 is another case in point. The Convention marks a paradigm shift in how disability is perceived: persons with disabilities are no longer seen as 'objects' of charity but rather as 'subjects' with rights. This shift was the result of the unprecedented high level involvement of persons with disabilities and their organisations in the negotiations and drafting of the Convention. Most of the text of the Convention was written by the members of the International Disability Caucus (IDC) a coalition of over 70 disabled people's organisations and allied NGOs.

Some UN entities have developed ways to involve people's organisations in the workings of their governing bodies. For instance, within the Joint United Nations Programme on HIV/AIDS (UNAIDS), the position of NGO delegates – which includes associations of people living with HIV/AIDS – on the UNAIDS Programme Coordinating Board is important for the effective inclusion of voices of people living with HIV/AIDS in the key global policy forum for HIV and AIDS. Other mechanisms have been set up to enable a greater engagement of people's movements, for example, the Farmers' Forum of the International Fund for Agricultural Development (IFAD) and the Permanent Forum on Indigenous Issues. As civil society and people's organisations largely connect to each other through the Internet, new media and other social networking sites, a new trend is also developing within many UN entities to better use the means at hand to reach out to and engage with these groups.

Over the past years, the United Nations Non-Governmental Liaison Service (NGLS) has made a determined effort to deepen awareness of the benefits of engagement with people's organisations. In this regard, the NGLS has just published a report on the UN's engagement with people's movements, entitled *Strengthening Dialogue: UN Experience with Small Farmer Organizations and Indigenous Peoples* (UN NGLS 2009). This publication aims to raise awareness among UN officials of the added value people's organisations can bring to the agenda and work of the United Nations. Moreover, the NGLS generally tries to ensure that a diversity of civil society organisations are given a voice at major international policy events.

The UN can build on various existing initiatives to better engage with people's organisations. However, considering the lengthy nature of any process in global governance, the diversity in people's organisations and in UN institutions, it will take time to further institutionalise and strengthen this process.

United Nations NGLS, http://www.un-ngls.org

PART III

Environmental Justice

INTRODUCTION

HUMAN BEINGS AND NATURE: A STRUGGLE FOR ENVIRONMENTAL JUSTICE

Hakan Seckinelgin

The relationship between the environment and the human species have produced contentious outcomes for nature and for humanity. The questions of justice in this context need to consider various aspects of this relationship. At its most basic level, human species change their environment to sustain themselves from the output they yield from nature. This engagement in its multiple forms affects the existence of other species. In this process different communities across the world have created wide-ranging relations with their environments through, for instance, animal domestication, farming, forestry or fisheries. Changing needs could damage habitats for other species or human species and other species compete for resources such as water. Madhushree Sekher and Geetanjoy Sahu's chapter focuses on the way local concerns about the environment are negotiated and challenged by outside forces. It also explores how these relations lead to the subjugation of other species for the benefit of humans. It goes without saying that the transition from rearing animals to industrial production of livestock and intensive fishing alters the relationship between human beings and nature.

Utilisation of natural resources and animals by one particular human community impacts the lives and livelihoods of others, initially within the vicinity and gradually further away. For example, industrial fishing by a few nations has affected livelihoods and communities across the globe. Another example is evident in the processes leading to, and the consequences of, climate change. These factors could also be seen as developing a gradually more antagonistic relationship. The gradual change is conditioned by changing ideas about the relationship between humans and other species (Seckinelgin 2006). For instance, Immanuel Kant's work located human beings in a privileged position as rational beings within the broader nature, which could only be understood through human rationality (Kant 1995, 1997). Karl Marx considered the existence of nature through the way human labour creates a use-value through engagement with it (1976: 323, 493–4 fn4).

Combined with the ever growing technological possibilities for control of the environment, these ideas have expanded the ideological distance between the human species and nature. The issue of justice emerges within this complicated context. First, it is about unjust relations between human and non-human species and the consequences of that. Hunting or trading endangered species, and intensive poultry farming and fishing raise questions of injustice in terms of the continued existence and welfare of other species. Civil society activism locally and globally has developed many strategies to engage with these debates and influence the many international conventions, which underline the importance of biodiversity, regulate the trade in endangered species, set fishing limits, maintain a delicate balance to keep the whaling ban intact, and shape national laws regarding industrial animal production. In many instances these conventions attempt to regulate animal welfare according to human interests (Rachels 2004). But this begs the fundamental question of whether animals have rights to exist independent of human interest and, without an answer to that, debates about justice have only limited utility. Evidently this question cannot be raised by the other species themselves to challenge the existing relationship. It creates a distance in which the interest of a particular group constructs non humans in terms of their resource utility, analogous to the way human communities construct other people in far away locations on whose resources they rely.

The second justice issue in this context relates to the unjust impact of resource utilization among human species, which affects different communities as well as nature. People's diverse experiences of climate change raise challenging questions about injustice among different communities. The future of small island states is a critical issue. What happens when island habitats become unsustainable for human occupation? Where will

their inhabitants go? In Africa, people will be exposed to severe impacts of climate change when they contributed least to the creation of the problem. How will their needs be addressed? Who will be responsible and thus obliged to respond? At the same time, countries including the Republic of Korea, Norway, Saudi Arabia, Italy, Switzerland, Canada, Qatar and China are subsidising corporate acquisition of agricultural land across Africa, in order to counter potential food shortages, or for biofuel production for their own needs. What do these arrangements imply for the agricultural needs of African people in many countries where farming is already under stress? These issues pose existential questions for the future of food security in Africa and elsewhere.

The justice claims implicit in these questions reveal the shortcomings of the existing international system both in terms of political institutions and in terms of international trade, which dominates mechanisms of resource allocation. Dorothy Guerrero's chapter considers how the politics of civil society and the international system clashed during in the Copenhagen Climate change processes, and led to the development of the Climate Justice Network. The chapter by Layne Hartsell and Chul-Kyoo Kim highlights the tensions in Korea regarding food security, which developed as a result of interstate relations and concerns about food safety and farmers' livelihoods. They report how citizens developed a strong counter movement, initiating extensive protests that led the government to reconsider decisions about food imports.

The major challenge presented in these contributions is the way the international system gives more space to nation-state interests – defined with little attention to people's needs and in deference to global political economy concerns – than to the voices of people facing the consequences of climate change. Even when there are spaces, the system lacks the means to mediate between different demands for environmental justice generated by (at times) divergent civil society actors. One could argue, to paraphrase Onora O'Neill (2002), that any political solution that starts with states, though they need to be part of the discussion, is unlikely to offer a meaningful engagement with the experiences and felt injustices in the face of global environmental change.

The nature of injustices is intergenerational across the globe, requiring us to reflect on the relationship between humans and the environment and articulate our responsibility across generational distance. Considered together with the animal rights debates, the characteristic of the injustices outlined above reveals the limits of many discussions today. Even if we agree with those who argue that technological developments will address some of the adverse effects of the relationship between humans and nature, these remain key issues in terms of interspecies and intergenerational justice.

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CHRONOLOGY OF SELECTED GLOBAL CIVIL SOCIETY EVENTS RELATING TO CLIMATE CHANGE AND OTHER ENVIRONMENTAL ISSUES

April 2009–March 2010

15 September 2009, Canada
25 Greenpeace activists bring Royal Dutch Shell's mining to a halt in the Alberta oil sands in protest at the impact of the mining operations. On 3 October, 19 Greenpeace activists occupy three stacks at the Shell Scotford upgrader site in Fort Saskatchewan to protest against the Alberta development.

16–17 January 2010, Spain
The EU Informal Environment Council in Seville, following the failed COP15 conference, discusses the role of civil society and highlights the importance of collaboration between government, the private sector, and civil society.

7–18 December, Denmark
Global leaders convene in Copenhagen for the 2009 United Nations Climate Change Conference (COP15).

24–25 September 2009, USA
The American Civil Liberties Union (ACLU) files a federal lawsuit against the city of Pittsburgh and the United States Secret Service on behalf of six activist groups representing thousands of civil society demonstrators. The groups, including anti-war and environmental campaigners, were denied permission to demonstrate at the G20 summit in Pittsburgh. Further lawsuits against city officials and police officers are filed in subsequent months for harassment and intimidation of activists during the summit.

May–June 2009, Peru
On 18 May, indigenous Peruvian protestors force the closure of a state-owned oil pipeline in order to pressure the government to rescind foreign investment agreements threatening exploitation of Amazon land.
In June, indigenous protesters win a hard-fought victory for protection of native lands, as the Peruvian government is forced to repeal investment agreements that would have allowed development by foreign mineral interests.

24–28 January 2010, Brazil and worldwide
The World Social Forum celebrates its tenth year by decentralising its annual event in favour of events around the world throughout the year bound together by the theme of crisis – economic, environmental, food, energy and humanitarian. The decennial begins with a meeting in Porto Alegre, with further events throughout 2010.

Autumn 2009, UK
In late August, activists in London occupy a public park to call attention to the threat of global climate change and the complicity between corporate interests and climate change policy. Protesters demonstrate outside the European Climate Exchange, a bank, an airport, and government buildings. On 12 October Greenpeace activists confront politicians with a manifesto of demands to cut carbon emissions, halt airport expansion, and increase the development of clean, alternative energy technologies.

5 December 2009, Europe
Prior to the COP15 conference, climate change activists throughout Europe organise demonstrations to highlight the importance of the meeting. In Berlin, activists masquerading as world leaders sit in a 4,000 litre aquarium to symbolise rising sea levels. Street marches in London draw 20,000 people, and Greenpeace protest in Paris is attended by 1,500.

18 January 2010, Pakistan
More than 300 civil society group representatives attend a conference sponsored by the UN Joint Programme on the Environment in collaboration with Pakistan's Environment Ministry. The Environment minister announces the Grassroots Initiative Programme, which will provide funding to civil society organisations addressing national and global environmental problems.

2 October 2009, Philippines
Civil society groups meet in Iligan City, Mindanao, to agree a strategy to combat climate change threats in the Philippines.

9 November 2009, Kenya
Following the UNFCCC climate change talks in Barcelona, the Platform of Pan African Climate Justice Alliance condemns the summit as signalling that the upcoming climate conference in Copenhagen would be 'a worrying repeat of the past', accommodating the interests of the most powerful states and ignoring those of developing countries.

16 November 2009, Zambia
Zambian civil society organisations meet in Lusaka to discuss the effects of climate change and draft recommendations for world leaders at December's COP15 conference.

9 September 2009, Indonesia
After years of pressure from civil society groups, the World Bank reports that it will stop funding palm oil extraction in Indonesia following a reassessment of the social and environmental costs, as result of civil society lobbying, which forced the Bank to admit earlier assessments had been dominated by commercial pressures.

CHAPTER 8

COMMUNITY-BASED ENVIRONMENTAL GOVERNANCE AND LOCAL JUSTICE

Madhushree Sekher and Geetanjoy Sahu

Introduction

With the millennial goals aiming to halve the number of people living in extreme poverty by 2015 (MillenniumEcosystemAssessment 2003), there is now an added urgency to conserve resources and bring a convergence between conservation objectives with poverty reduction strategies so that the latter goal is met without 'subsidies' from nature that could prove to be environmentally catastrophic (Anderson et al. 1991). Thus, protecting and conserving the environment is accepted as not only key to achieving the 'environmental sustainability goal' but also 'socio-economic wellbeing' of the poor (Deverajan et al. 2002). Clearly, in recent years there has been a convergence in the call for a 'greener earth' and the call for 'inclusive' development processes focusing on human wellbeing, which prescribe a redistribution of income and a reduction in the degree of vulnerability by lessening environmental degradation. This paradigm shift demonstrates the relationship between environmental degradation and issues of social justice, rural poverty and human rights (Gadgil and Guha 1993, Guha 1989, Kothari and Parajuli 1993, Peluso 1993, Shiva 1993). There are a number of studies today that underscore the conservation and poverty-inequity link, and emphasise that 'nature' cannot be treated separately from other development concerns because environment quality matters to the poor (Brosius et al. 1998, Duraiappah 2004, WRI 2005).

A transnational movement has now emerged, based particularly on advocacy by civil society groups working with local communities, on the one hand, and transnational organisations/international development agencies, on the other, to build and extend new versions of environmental and social advocacy that link social justice and environmental management agendas (Brosius et al. 1998). This has given a global character to concerns of environmental justice, linking community action and resource management practices in one corner of the world to the larger civil society responses at the global level.

An important development in this regard has been the increasing focus on community-based natural resource management programmes, policies and projects, with the aim of promoting local participation in 'conservation and development' (Jodha 1992, Meinzen-Dick et al. 2002). This is based on the premise that local populations have greater interest in the sustainable use of local natural resources, considering that their lives and livelihoods are often heavily dependent on them. Being more cognisant of the intricacies of local ecological processes and practices, local communities could successfully manage resources by crafting appropriate rules and conventions, thus implying an acknowledgement in the environmental governance[1] discourse that neither privatisation nor a strong state are the only choices for achieving the goal of environment sustainability (Ostrom 1990).

The support for grassroots initiatives by global civil society in response to the transnational goals of justice, environmental quality and sustainability can be discerned from the following:

- The conservationists' efforts to involve local people in transnational conservation and resource management goals as a means of protecting biological diversity and habitat integrity (WWF-World Wide Fund For Nature 1993).
- The efforts of international development organisations (multilateral lending agencies, donor institutions and conservation organisations) to push for the participation of 'user-groups' in the resource development projects they support, which has redefined the claims of local communities for control over natural resources (Baland and Platteau 1996, World Bank 1999, Berkes and Folke 1998).
- The claims made by civil society activists in international forums for the need to respect local rights, knowledge and culture of indigenous communities, which provide possibilities for building environmental movements and raise issues of social justice (Durning 1992).

In insisting on the link between environmental degradation and social inequity, and by providing a concrete scheme for action in the form of the community-based natural resource management model, global civil society has sought to bring about a fundamental rethinking of the issue of how the goals of conservation and effective resource management can be linked to the search for social justice for poor and marginalised communities (Brosius et al. 1998). Implied in the link between environmental degradation and social inequity is recognition that the benefits of environmental conservation and protection should be shared in an equitable manner and that the interests of those dependent on the natural environment for their survival cannot be excluded. This, in turn, is manifest in 'distributive justice', which is the de facto principle in environmental governance parlance.

The emerging discourse on 'justice' in the context of community-based environmental governance process needs to be viewed in this context, particularly in developing societies like India, where lives and livelihood are heavily dependent on the local natural resources. Local justice in community-based strategies mirrors three trends on resource conservation and its sustainable development:

- It reflects an acknowledgement of the importance of devolution of management authority to local user groups/communities[2] and decentralisation of authority to local levels of government.
- It focuses attention on the link between the conservation efforts of the central players in the resource management process (both resource managers and the ecosystem service beneficiaries)[3] and the benefit stream accruing to them; and
- Admits the importance of the role of 'ecosystem service intermediaries'[4] (institutions) as a conditioning factor, shaping the institutional environment, in the conservation effort.

This provides a distinctive standpoint for examining the linkages between community-based resource management initiatives, the institutions that underlie them and the issue of local justice: how do the local user-communities/collective societies deal with the issue of 'justice' in their efforts to protect and preserve local natural resources, and what are their perceptions of 'justice?'; what are the conditions that determine the communities notions of justice?; and what implications does this have for the 'global justice' discourse? Imperative in this discussion is a need to examine how the environmental governance strategies involving community participation impact the flow of benefits to those involved in conserving the ecosystem and how 'just' the process is from the perspective of the communities involved or affected.

This chapter seeks to address this issue, in particular to look into the role of user-level strategies[5] and how these institutional arrangements contribute to local justice. The chapter is intended as an overview of issues, examining the connection between local organisations and the role of the incentive mechanisms in the governance process that shape resource management efforts by, for and with community involvement. The 'incentive mechanisms' are analysed in the chapter to understand how they define 'justice' to the community/communities involved in the resource management process. It does this through different complementary lines of discussion, based on evidences from various cases of participatory/community-based resource management practices, with the focus being on India and the sub-continent.

First, the chapter presents the conceptual framework for examining the relationship between institutions, community-based environment governance process and the issue of 'local justice' in ecosystem management. Second, the chapter makes an empirical enquiry in understanding the relationship between community-based environmental governance and local justice through two case studies: Dahanu Environmental Protection case and the community forest management case in Orissa. As part of this, the chapter also discusses the resource governance process and the opportunities to stakeholders for positive environmental stewardship. This implies a reference to the issue of 'local justice' built into the management process. The third section makes an inventory of the incentive (or disincentive) measures in the environmental governance process that function as mechanisms through which members get/perceive 'justice' for their efforts to conserve local resources and, thus, continue to make concerted efforts to reach specific conservation and sustainable management goals. Finally, the chapter presents a summary of the existing scenario and outlines the emerging issues.

A Conceptual Discussion

Amongst the challenges to sustainable and effective protection of natural resources and the need to tackle environmental problems, none is more pertinent than understanding the role of those affected by the goods and the services provided by ecosystems, their role in resource management, and the benefits that accrue to them for their efforts in protecting and conserving resources.

Resource management requires some form of collective action to coordinate individual actions, necessitating the development of rules for the use of resources (including refraining from or forgoing legitimate use), as well as rules and decision-making structures for monitoring and sanctioning, and conflict regulation (Ostrom 1992). A critical question in this regard is: under what conditions do communities organise to manage natural resources? While there is no single answer, various factors have been identified as conditioning investments made (by resource managers and beneficiaries) towards resource management that can be broadly grouped as:

- The biophysical and socio-economic context of a particular setting, having reference to the attributes of the resource and the user-groups, and their livelihood concerns (Wade 1988, Ostrom 1990, Bardhan 1993, Tang 1992, Ghimire and Pimbert 1997, Gjertsen and Barrett 2004).
- The policy and legal regime that ensure tenurial rights over land and other natural resources, giving authorisation and control over the resource to the user-group, as well as access and usufruct rights (Bruns and Meinzen-Dick 2000, Hanna and Munasinghe 1995, Schlager and Ostrom 1992).
- Institutional arrangements that determine the investments in management by the users (beneficiaries) and managers. This has reference to the processes that create space for representation of the interests of groups of beneficiaries, managers and other stakeholders with indirect interests (for example, government or multilateral regulatory agencies) in the resource, such as decision-making, service provisioning, resource flows and accountability, as well as monitoring and enforcement mechanisms (Swallow and Bromley 1995, Agarwal 2001, Gibson et al. 2005, Ostrom 1992).

However, to date the thrust of literature on natural resource management has largely been from the collective action and property rights perspectives (Zanetell and Knuth 2004). In light of the current trends to transfer responsibility and control over natural resources from state to local communities, and the emerging debate on global justice, there is a need to reconsider the national resource management process in order to conceptualise and understand the issue of 'local justice', which raises the following questions:

- What are the compensatory mechanisms in the organisations for positive ecosystem stewardship and how are they developed?
- What is the logic of benefit sharing in the organisations – are direct, tangible benefits the major incentive, or in-kind (intangible) rewards, such as strengthening social networks for greater livelihood and social security in adverse times, also important inducements?

According to the literature, social optimal outcomes in managing resources accessible for community usage may be undermined, creating incentives to free-ride, unless collective action among users reflects a utilitarian relationship based on individuals' notions about investments, rewards and costs (incentives) arising from the organisational practices determining collective action (Bardhan 1993, Agarwal 2001, Baland and Platteau 1996, Ostrom 1990, Sekher 2001). This is in line with the theoretical conceptualisation of 'equity', acknowledging the presence of fairness, in the distribution of resources and benefits, including perceived rewards such as 'recognition' for the conservation efforts, as a marker of justice (Cochran and Ray 2009). For example, Rawls (1971, 2001), in his framework of 'choice', spoke about positive rights – a system in which every individual has access to a minimum level of primary goods, such as food, shelter and opportunities. While retaining this liberal egalitarian approach, Sen challenges the neo-classical understanding of human wellbeing as defined within the utility/commodity space, and which postulates human wellbeing as not so much in terms of what people are or do, but in terms of what they are free to be and do/what they are able to be and do (for example, being able to participate in the life of the community). By making individual freedom and pluralism central to human wellbeing, the capability approach of Sen provides the general framework for analysing individual advantage and deprivation in contemporary society. In this context, what is important for justice to be achieved is not so much the quality of life people are living, but the quality of life available to them within a set of 'functioning' – the 'functioning' of the society/community; the functioning of the state/government; and the functioning of the market (Sen 2009, 1992). At the same time, Sen's capability approach postulates that equity as 'fair allocation' may not be always feasible, considering that people may have disparate capabilities and needs, and should therefore be entitled to disparate share of social goods. For example, in

a minor irrigation programme, while a Rawlsian approach would consider an equitable water distribution regime, the capability approach of Sen would articulate a need for water to be allocated in accordance with beneficiaries' particular circumstances/needs.

While the role of transaction costs and property rights in shaping collective actions cannot be ignored, the central factor is how this contributes to the net benefits perceived by the participants managing the resource, which is indicative of whether the process is just or unjust and, in turn, guides their decisions regarding their involvement in the community management activities. The key issue is that while institutional interventions for collective resource management (for instance, the user organisations) ensure that use rates do not result in asset depletion, a benefit stream also needs to be secured to group members, incorporating their interest, thus providing incentives to the users for adopting or accepting cooperative strategies.

It is these considerations that provide the conceptual justification in this chapter, which conceptualises a causal relationship between the existing organisation and the resource governance process (the institutional condition), which in turn determines the opportunities to the stakeholders for environmental stewardship (both to the beneficiaries and the resource managers) and the reward system (distribution of resources/benefits – which constitute makers of justice in the system) for making investments to protect and conserve the resource (Figure 8.1).

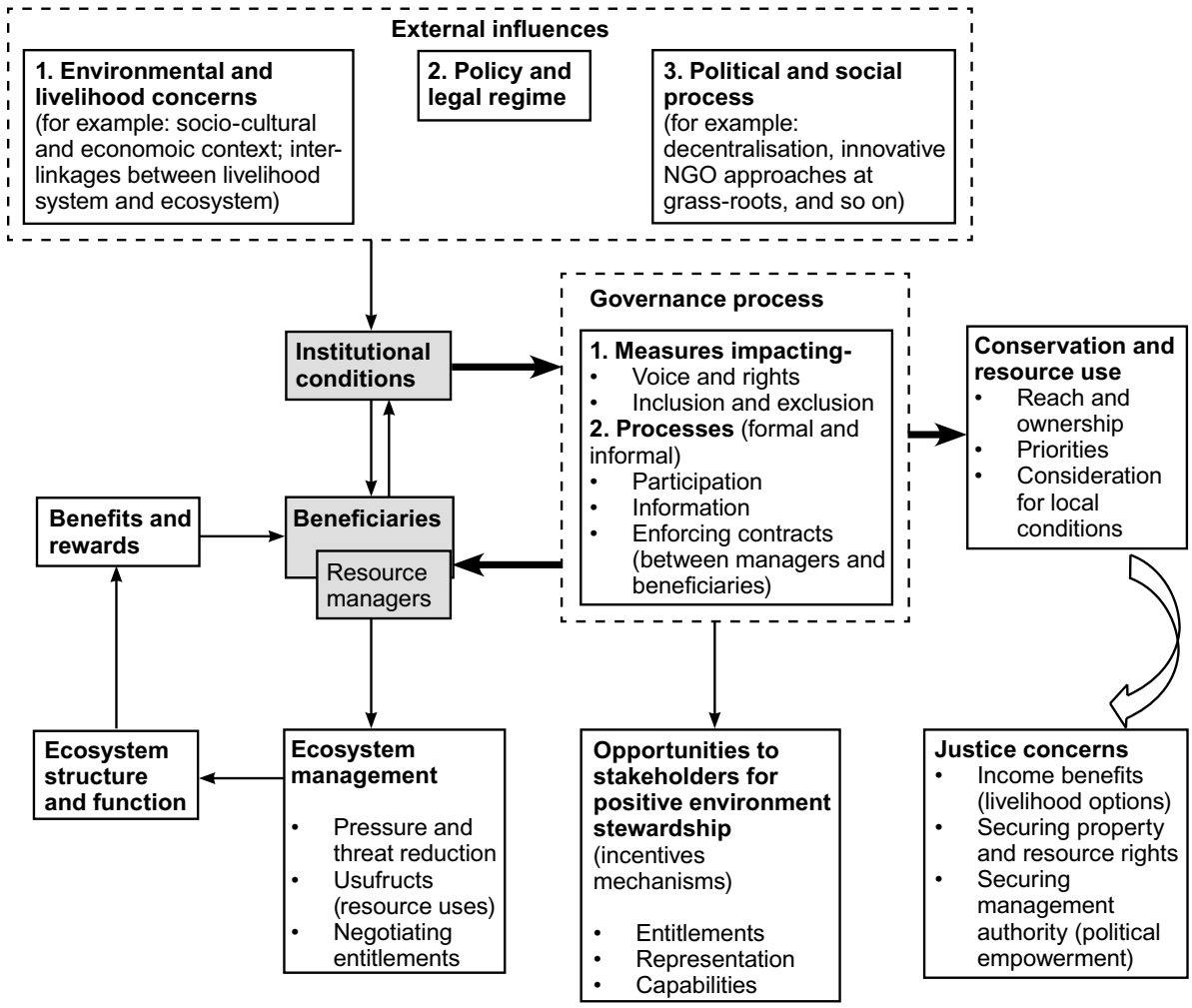

Figure 8.1 Links between Community-Based Ecosystem Management and Justice

Community Initiatives and Justice in Environmental Governance: The Case of India

The existing pattern

While environmental policies in India are institutionalised through formal processes, the task of environmental protection and implementation is organised both formally and informally, embodying local decision-making structures, and NGOs, besides government agencies and international development institutions. This has made environmental governance in India both a *multi-stakeholder and a multi-layered process*. Particular reference needs to be made to local communities that are organised through formal and informal local participatory organisations and extensively contribute to environmental governance at this level in three ways:

- Meeting the twin objectives of livelihood security of the affected community and conservation/protection.
- Ensuring that the local environment management process is built on consensus around the issues critical to all concerned.
- Contributing to the capacity of the affected community to participate in negotiations over resource rights, ensure accountability and ensure equity in the community.

Within this process, the community initiatives build possibilities for addressing issues of 'justice' at two levels: (1) within the community, by building and extending environmental quality concerns with concerns for social justice so that both the beneficiaries and managers benefit (*local justice*), and (2) at the larger national and global level, by providing possibilities for linking environmental and social advocacy with social justice in the environmental management agenda (*global character of environmental justice*).

While doubts have been raised about the capacity of community/peoples' organised initiatives to lobby and participate in negotiations over resource rights (with observations that better-off members receive the greatest benefits (Kashwan 2005, Agarwal 2003)), there is no doubt about the importance of such institutional strategies to the overall success of the environmental governance process in the country. On similar lines, one also needs to acknowledge the presence of numerous NGOs and environmental movements working on various environmental problems. The presence and activities of such institutions and organisations imply the existence of a process of negotiated solutions in the implementation of environmental policy with concerns for equity and justice.

Methodology issues

The arguments in this chapter are drawn from two community environmental governance initiatives: (1) community-based forest management in Orissa, and (2) the Dahanu Environmental Protection initiative in Maharashtra. Their similarity in terms of the community involvement in environmental management allows us to examine how such governance addresses the concept of justice and why it is an important part of environmental protection at the micro level. The approach adopted in this chapter is much more concerned with processes of environmental governance, and how community-based environmental governance makes a difference. A combination of personal interviews and analysis of various official documents helped to examine the role of community involvement in environmental governance at the grassroots level.

Case 1: Community Forest Management in Orissa

Orissa is the central-eastern state of India. It is among the most backward regions of the country. Having a recorded forest area of about 36 per cent of its total and per capita forest coverage of about 0.23 hectares, compared with the national average of 0.11 hectares, the state has more forest cover than many other states (FSI 2000). By legal status, reserved forests in the state represent almost half the forested area (47.37 per cent) and the remaining are protected and unclassed/undemarcated forests (FSI 2000). While rights and privileges of local communities are restricted in reserved forests and are more liberal in demarcated protected forest, the undemarcated protected forest is generally treated as open access land and is therefore degraded, except where community protection has started. Interestingly, Orissa has among the largest number of indigenous community forest protection groups in the country. Though the number of such groups and accurate estimates of the forest area protected and regenerated by them are not available, between 8,000 and 10,000 villages are engaged in community-initiated forest protection.[6] The field study on which this chapter is based was conducted in two purposively selected villages: Koshaka (Village 1) which had a heterogeneous population and Gundurabari (Village 2) which had a homogeneous (tribal) population.

In this case study it was observed that rule-preference among the resource users is central to the strength of such

community-based institutional strategies (Sekher 2004). It can therefore be viewed as indicative of the institutional robustness and understanding it is important for insights into members' cooperation. A listing of the major rules under the two community strategies was attempted and these were broadly categorised as:

- Rules for delineating the leaders (the resource managers) and the members (the resource beneficiaries).
- Rules specifying guidelines for resource maintenance and protection.
- Rules laying down access, use and enforcement guidelines.

These rules formalised user-interactions apropos the protected forest, not only within the protecting community but also with other village communities in the vicinity (secondary user-groups). The first set of rules specified the manner in which the larger group ordained authority (both managerial and beneficiary-authorities) within the collectives. The second and the third set of rules laid down the norms for resource consumption and users' conformance to the conservation efforts.

A low level of disagreement with the existing rules was observed in the two cases, primarily with regard to the rules determining access to the resource. The existing access guidelines in Koshaka totally prohibited entry into the protected forest area during the initial five years of protection and subsequently imposed seasonal restrictions on usufruct collections.[7] In Gundurabari, on the other hand, the existing access rule permitted usufruct rights to the user-group members from the beginning of the protection activities, but the collection of timber was allowed on payment of a nominal fee to the village fund. Under such conditions of regulated access, the relatively poor[8] among the villagers showed some disagreement with the rule, preferring instead unrestricted usufruct rights from the beginning of the conservation activity (the 'Preferred Rule 1'). But in both villages people showed a willingness to pay a nominal fee for collecting timber from the protected patch, which was permitted only for domestic consumption (the 'Preferred Rule 2'). It is important to note that this willingness to pay is for a forest product that, though important, directly did not impact their livelihood, and hence was not considered 'unjust'.

It is obvious that an important reality often ignored by development protagonists is that there are certain areas where, despite inequalities, people residing in a particular locale do act together for a common cause which the collective perceives to be 'just'. This is often in the realm of scarce natural resources, such as forests, used as 'commons' where there is a perceived flow of benefits to the community and wherein everyone loses out in the absence of cooperative efforts to preserve them. The community-forest management initiatives in the two villages ensured benefits from the resource, and therefore incentives to protect it, thereby enabling perceptions of a just solution. At the same time, it also needs to be stressed that the rules specifying restrictions on access were location-specific, shaped by indigenous reasoning and hence were not perceived to be 'unjust' and did not face opposition.[9]

In these cases, a supportive role was played by a local NGO, the Regional Centre for Development Cooperation, headquartered in the state capital, Bhubaneswar, and with staff in the localities as supportive intermediaries with the community initiatives. The NGO mobilised participatory practices in the villages through information sharing and creating awareness, playing a role in dispute resolution not only among group members and but also between the user-community and 'out-groups'[10] (neighbouring village communities which were not involved in managing the particular forest tracts), besides raising issues about the need for pro-poor resource conservation with the government. In this role the NGO needed to be versed in the particular dynamics of pro-poor community forest management practices. Its staff working with the community forest management groups helped to form a network, the *Jungle Suraksha Mahasanga* (the 'Forest Protection' mahasangha), which was a voluntary platform of the various groups or *sanghas*, which lobbied government.

This case study indicates that cultural compatibility, together with an understanding of the socio-psycho conditions, is important for determining what is 'just' and 'unjust' in community-based environment governance situations. Rationality is embedded in the local, and the nature of both the community's identity and their socio-cultural conditions, define institutional mechanisms and justice, particularly distributive justice. This distributive justice embedded in the resource management strategies is defined by group members forming the collectives, and is different from the contractual conception of the Western justice system (Mathew and Pellissery 2009)

Case 2: Dahanu Environmental Protection through Community Initiatives

Dahanu is situated 120 kilometres north of Mumbai, in the Thane district of Maharashtra, and is one of the last green belts along the country's rapidly industrialising

western coast. In 1989 the state government of Maharashtra approved a proposal of the Bombay Suburban Electricity Supply Company (BSESC), to set up a coal-based thermal power plant in Dahanu Town. On 29 March 1989 two members of Dahanu Taluka Environment Protection Group, Nergis Irani and Kityam Rustom, along with Bombay Environmental Action Group, filed writ petitions, first in the Bombay High Court and then in the Supreme Court of India challenging the decision of the central government to build the power plant.[11] They lost the case, with the court citing the necessity of energy to power the city of Mumbai as strong grounds for sanctioning the project. To allay petitioners' apprehensions of environmental damage, the court directed that requirements restricting sulphur dioxide emissions should not be relaxed without full consideration of the consequences.

Even though Dahanu had been declared an ecologically fragile area, political and industrial interests continued to bring forward development projects, sidelining regulations that ban construction and development within 500 metres of the high tide line. This led environmentalist Bittu Sehgal to file a writ petition in the supreme court in 1994, asking the court to implement the notifications in Dahanu Block.[12] The court then appointed the National Environmental Engineering Research Institute to investigate the issues and based on this report, the court upheld the Dahanu Notification prohibiting any change of land-use in the region and ordered that a committee of experts be formed under the Environmental Protection Act 1986 to ensure implementation of laws protecting Dahanu's eco-fragility.

Community participation in implementing environmental judgement in Dahanu

While the Supreme Court of India allowed the BSESC to set up the power plant on certain conditions, including sulphur dioxide controls, no attempt was made to follow these. The local community under the banner of Dahanu Environmental Welfare Protection Group took up the issue with the specially constituted quasi-judicial authority, the Dahanu Taluka Environmental Protection Authority (DTEPA), which passed an order on 12 May 1999 directing the company to initiate the required conditions. Over the years, the company tried to escape this mandatory environmental clearance by challenging the order in the High Court of Mumbai and the Supreme Court of India, actions that were rejected. In March 2005, the Dahanu Environmental Welfare Protection Group filed an application with the Dahanu Authority seeking redress in the form of a 300 crore Rupees bank guarantee from the company to demonstrate its commitment to installing a pollution control device in an ecologically fragile zone. After several hearings and corresponding appeals, a deadline of October 2007 for installation was accepted by parties along with a bank guarantee of 100 crores.[13] When contacted about the status of implementation, the chairperson of the Authority acknowledged that the deadline had been met (Sahu 2008a).

Community strategies

Ever since Dahanu was declared an eco-fragile area in 1994 and the court's direction to implement the notification in 1996 through the DTEPA, political parties across their ideological differences have not only defaulted on implementation but have been actively lobbying to rewrite legislation to benefit developers. There have been several serious attempts to de-notify Dahanu as well as disband the Dahanu Authority by a coterie of powerful industrialists, builders and local politicians. Since its inception, the Maharashtra government has been hostile to the notification, allege environmentalists (Sahu 2008b). Most surprisingly, in January 2002, the Ministry of Environment and Forests, an agency that should be protecting Dahanu and other eco-fragile areas, filed an application in the supreme court demanding an end to DTEPA on the grounds that it had already completed its work and Dahanu was too small an area to have its own authority. The ministry claimed a single authority was sufficient to monitor all eco-fragile areas. The Dahanu Environmental Welfare Protection Group fought this application and in January 2004 it was dismissed.

Both the ministry and Maharashtra government have shown little willingness to engage in constructive discussions with the local community, and seemed prepared to ignore the deep environmental and social problems of the development projects. The ministry has starved the Authority of operating funds, although it has continued to function without these resources. The fault of the Authority seems to be that it took action. It would appear that the government does not appreciate efficiency at the cost of dissatisfying the industrialists. The DTEPA may just have been too effective for a government-appointed committee: it has experts and not figureheads on its board.

How community involvement made a difference

There are three crucial factors that determined the success of Dahanu Environmental Welfare Protection Group in ensuring the effective implementation of

environmental judgments through the court appointed monitoring committee. First, the Dahanu Environmental Welfare Protection Group has been quite open to ideas and viewpoints of different stakeholders in dealing with various environmental issues. Unlike other environmental groups in India, the NGO has conducted regular meetings and public hearings with affected people, as well as with state agencies. The very idea of the NGO was to evolve a more sustainable development approach with emphasis on the rights of local people.

Second, effective leadership and a consistent approach has been an important factor in the NGO's success. It is led by Nergis Irani, K.T. Rustham and Michelle Chawla, who believe in strict implementation of environmental laws. Their commitment is expressed in the following: 'There are several industrial zones in Maharashtra for development activities; then why not spare two per cent land of Dahanu from development activities'? They also noted that around 60 per cent of the people of Dahanu Taluka are Scheduled Tribes who depend upon agriculture and fishing activities, for whom modern forms of development are not going to generate any kind of livelihood.

Third, the relationship between the court-appointed DTEPA and the NGO has been a significant factor in its effective functioning. Coordination among the DTEPA members and its adherence to procedures as directed by the court has been exemplary, if not unique in India. None of the derailing strategies – from the Ministry of Environment and Forests to the political and industrial lobby – have succeeded in influencing the impartial and independent function of the Authority. This reflects members' sustained willingness to render the decision-making process more democratic and participatory. Furthermore, in its strong stand against the local political and industrial establishment, the DTEPA has effectively reflected the hopes and aspirations of environmentalists and local community members.

Positioning the Discussion

The essential aspects of local justice in community-based environment governance strategies can be examined through the prism of co-management – an organised collective where resource managers and resource beneficiaries are organised into structured units that are identifiable, be it formal (induced strategies) or informal associations (community initiatives). They could be represented by intermediaries like a local NGO, or administrative arm of government at the local, national and even global level, which help in the negotiation and implementation process. Implicit in this is the manner in which institutional conditions shape and determine users' capacity to collectively work as resource managers and secure their rights to the resource.

User Organisations and Community Participation in Resource Management: Compensation for Environmental Services[14]

Appropriately designed co-management arrangements can be used to strengthen the position of the poor, that is they benefit from their natural resources, and thus obtain justice. In this process, the role of communities and their institutions (including customary laws) can be a strong incentive for pro-poor voluntary contractual arrangements.

Recognising the role of transaction costs and property rights in shaping incentives and the success of participatory resource management, the crucial factor in co-management is changes in the net benefits perceived by the participants while using a community resource which, in turn, guide their decisions in addressing the 'disequilibria' that stimulated the change (Sekher et al. 2006). It is through interactions in co-management strategies that one inculcates the value of ecosystem services. If the community appreciates the value of the ecosystem services, it becomes easy to create mutual understanding about the forms of benefits accruing and a consensus about 'justice' under the co-management strategy. In such situations, the instruments of benefits need not only be market-based mechanisms; non-market instruments such as increased recognition of land rights and increased participation in decision-making processes could be included. Both of these constitute incentives, and would thus be a marker for 'local justice', for co-management institutions that can be as appealing as market-based instruments. In terms of the costs that these instruments may incur, the transfer of land ownership rights implies a possible loss of power by previous landowners, who may be private owners or the government. Similarly, any increased participation or voice that is enjoyed by one actor (in this case the stakeholders in the co-management strategy) may result in another actor (potentially a private interest group, government agency or even communities outside the particular co-management structure) experiencing a corresponding reduction in user rights or position of power in decision-making processes. Thus compensation/benefit-flowing mechanisms centring on co-management

structures need to take into account interactions with different stakeholders, with a view to assisting the vulnerable groups to express themselves, participate in decision making and thus benefit from the process.

Various aspects of governance incentives that serve as rewards for resource users and managers, and determine their sense of justice in the system, can be derived from the conditions underlying co-management arrangements as outlined in Table 8.1. The incentives could emerge from:

- The livelihood concerns of the user-groups involved in or affected by the co-management exercise and how the strategy shapes access to and use of the resource. While under induced initiatives the incentive for the different stakeholders (the beneficiaries, the managers and the intermediaries) could be fixed or guaranteed under the co-management contract, in community self-initiatives it could be balanced by the community's perceived conservation need and dependence on the resource.
- The intrinsic value attached to the resource determined by the perceptions and culture of the community/user group. While this condition can be an important incentive in community self-initiatives with high value attached to protecting and conserving the resource notwithstanding the benefits/usufructs accessed from it, in induced strategies this may not be a strong incentive for community action.
- Property rights constitute an important incentive mechanism in co-management arrangements, providing the local user-group with control and use rights over the resource. In induced arrangements these could involve sharing arrangements based on formal agreements, contracts or statutory provisions. In community self-initiatives property rights are principally based on customary norms.
- The enforcement mechanisms in the co-management arrangements could be an important incentive by vesting in communities the authority to regulate the use of the resource and to resolve conflicts. While in the induced strategies, this could be prescriptive and thus provide greater certainty to the community regarding their roles, in the community initiatives this is dependent on the latter's own rationalisation.
- The right to participate in decision-making regarding the use and management of the resource can be an important incentive for communities, giving them the power to negotiate within the user-group as well as between user-group and others, including government and non-governmental actors. In induced arrangements this negotiating authority is formal and brokered, while in the community self-initiatives it is informal and based on their priorities and interests.

Table 8.1 Governance Incentives in Community-based Resource Management Strategies that Shape the Way Justice is Perceived

Conditions for co-management	**Incentives**	**Nature of the incentive in –**	
		Induced Initiatives	**Community self-initiatives**
1. Livelihood concerns	Access to and use of resources – for example, in case of forests, access to produce such as fuel wood, fodder, timber and NTFPs	Guaranteed/fixed access driven by a minimum threshold resource condition	• High dependence • Access balanced with community perceived conservation need
2. Intrinsic values (for example, sacred groves in India)	Perceptions attached towards the resource	Low value attached by community	High value attached by community
3. Property rights	Control and usufruct rights over the resource	Elaborate sharing arrangements on statutory foundations	Sharing arrangements based on customary foundations
4. Enforcement mechanisms	Authority to enforce contracts	Prescriptive	Community embedded rationalisation
5. Collective decision-making (negotiating power within the user group and between user group and others)	A voice in the resource management	Formal and brokered	Informal and based on 'accommodation'

Conclusion

A holistic consideration for community-based co-management strategy as an enabling institutional mechanism for ensuring local justice in resource access and use, thus requires that it is sensitive to the social issues, rules of the game, and underlying economic conditions, including benefit-sharing. This impacts the transaction cost for the community to collectively take up resource management and conservation activities.

The social issues addressed by co-management arrangements could be cultural concerns, traditional institutions and practices, gender issues, literacy levels and landlessness in the community – which have a bearing on people's capacity and interests to undertake such activities. The rules of the game are essentially what determine the rights and responsibilities assigned to various parties, including the user group and intermediaries like government and non-governmental organisations, and also ensure that the community has the opportunity for self-determination. The options for resource sharing under co-management arrangements could translate to lower transaction costs for the community through increased access and more secure tenurial rights/ownership, which have strong implications for the community's perception of justice in the system. This is where the issue of equity comes in as an important consideration in a 'just' institutional strategy. The sense of satisfaction among local communities taking up ecosystem management activities in turn dictates the legitimacy and acceptability of the initiative and will determine the success of the co-management effort.

While recognising the opportunities afforded by co-management approaches, it is important to understand the caveats that may act as constraints. Among the outstanding issues that need to be resolved are:

- Adequate information about physical linkages and changes in economic value induced by changes in ecosystem status.
- Need to strengthen institutional frameworks, including the question of property rights; for example, in India property rights are not defined on public lands, which come under the administration of government revenue department. This raises the question of who is to be compensated if any resource management activities are taken up by locals on such lands.
- Need to determine rights to ecosystems and the threshold of use/modification. What is the limit on the individual/community's right to pollute or harvest? This would require a baseline of minimum acceptable behaviour vis-à-vis ecosystem use.

These constraints can lead to high transaction costs for the stakeholders involved, including the communities managing the resource. Similarly, high transaction costs may be incurred due to the intrinsic characteristics of the co-management process, which requires time intensive negotiation and process coordination with interested parties at different organisational levels – local, provincial and national. This is where intermediaries, such as NGOs and other civil society groups, can play a critical role by, for instance, helping to create functional markets, building capacities of local communities through information sharing and education, and brokering equitable contractual arrangements.

Notes

1. Environmental governance is defined here as: organised solutions involving state agencies, civil society groups including community/local resource-user collectives, and private businesses, and the measures and policies that shape programme formulation, development, and implementation to govern the environment. In this sense, the contributions of the civil society/community-based participatory initiatives cannot be ignored.
2. The term 'community' covers three levels of action, namely, locality, community/village and group/neighbourhoods (World Bank 1999).
3. The resource managers are also referred to as 'ecosystem service modifiers' – those entities whose actions modify the management and use of the ecosystem. They could be individuals, groups, families or communities. 'Ecosystem service beneficiaries' are defined as entities that benefit from the services generated by the ecosystem (Swallow 2005).
4. The organisations/people (public authorities, NGOs, community-based organisations, and so on) that shape the interaction between the resource managers, the beneficiaries of the ecosystem services, and the ecosystem itself.
5. User-level organised strategies are defined here as local membership based organisations that facilitate collective management of resources by those who utilise and receive benefits from them. The focus in this chapter is on such settlement or system-level organised strategies, like village forest protection groups or water users associations in irrigation systems, including social movements through which environmental activism may be represented.
6. These are rough estimates of the number of villages having community-initiated forest protection processes, as reported during the field study by the Regional Centre for Development Cooperation.
7. Every year restrictions are imposed on collections for about two months following the summer to allow for natural regeneration during the rains and also to prevent theft of fallen trees or trees burnt in the summer heat.

8. In this analysis landholding of the villagers was taken as a proxy for household economic status.
9. The seasonal restriction on access to the protected forest in Village 1 was during the monsoons when the dependence of locals on the forest for their livelihood was comparatively less. Besides, the restriction was grounded in local understanding: the forest, primarily *Sal* trees, had good economic value and, unless checked, there was a possibility of theft of the timber from trees uprooted by the heavy rains common during the monsoon months. Likewise, in Village 2 the collection fee on timber was nominal and people did not object to it, as the money was used for the annual village festival in honour of the village deity, thus attaching sanctity to an economic activity to secure acceptance.
10. The threat from the 'out-groups' was mainly because their stake in the protected forest was now regulated, unlike the pre-protection period when the resource was treated as an 'open access resource' with all having equal stake in it. Both the study villages reported that such conflicts with other groups were prevalent during the initial days of their forest protection efforts. One method that the villagers adopted to resolve the conflicts was to go in a group to the village/s committing the encroachment and conduct meetings there. This provided a method of disseminating information about the group's protection initiatives and the usufruct rights that the out-groups were permitted, besides building conservation awareness among them. This method of information sharing rather than straightaway adopting punitive measures helped to secure the out-groups' cooperation for the conservation efforts.
11. *Dahanu Taluka Environment Protection Group* v. *Bombay Suburban Electricity Supply Company Ltd*. with *Bombay Environmental Action Group* v. *State of Maharashtra and Others*, Supreme Court of India, 1991 (2) SCC 539.
12. *Bittu Sehgal* v. *Union of India*, Supreme Court of India, W.P. (Civil) No. 231 of 1994.
13. For more details, see Michelle Chawla 'Dahanu: The Environmentalists versus The People'. http://infochangeindia.org/200504055755/Environment/Features/Dahanu-The-Environmentalists-versus-The-People.html.
14. This issue is discussed in detail in Sekher et al. 2006. The paper contributed to a more detailed paper 'Organization and Governance for Fostering Pro-Poor Compensation for Ecosystem Services' (Bracer et al. 2007).

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CHAPTER 9

THE GLOBAL CLIMATE JUSTICE MOVEMENT

Dorothy Guerrero

Climate change has climbed to the top of the political agenda in the last three years. It is the focus of intensive UN meetings, gatherings of major economic formations like the G20 and G8, the World Trade Organization (WTO), the Major Economies Forum, and new policies of international financial institutions (IFIs). The publication of the Fourth Report of the Intergovernmental Panel on Climate Change (IPCC) in 2007 and the Stern Report in 2006, as well as the recognition that we have already reached 'peak-oil' reveals the gravity of the crisis to everyone. However, the urgency of abating global warming, reducing greenhouse gases in our atmosphere and finding safe and alternative sources of energy are not being met with the political will that they require.

The United Nations Framework Convention on Climate Change (UNFCCC) process of climate negotiations is now approaching its third phase. The first covered the years 1992–94 wherein the basic framework and approval of the UNFCCC itself came into force. The second, 1995–2005, included the negotiation, adoption and elaboration of the commitments under Kyoto Protocol. The Kyoto Protocol, which was adopted in 1997 and came into force in 2005, has a first commitment period that runs up to 2012. This includes laying out quantitative emission reduction targets for developed countries (Annex 1 in UNFCCC parlance) and development of market-based mechanisms that include emission trading to achieve those targets. The third phase, which the Copenhagen negotiations tried to conclude, is about post-2012 after the first period of the Kyoto Protocol expires. Since 1994, state officials, corporate representatives and lobbyists, environmental and social movements, the media, and various experts who have focused their attention on the problem of climate change, have been attending the annual Conference of the Parties (COP) of the Convention. Parties to the Protocol also meet annually in the Meeting of the Parties, the MOP.

Until COP13 in Bali, climate negotiations were, by and large, attended by governments, business lobbyists, scientists, indigenous groups and environmental NGOs. However, in 2007, in response to the growing urgency and the heightened awareness of the climate crisis, many NGOs and social movements involved in a broader range of issues, in particular economic justice and rights issues, travelled to Bali to participate in COP13, as well as organising pre-COP13 events and parallel events during the talks. A space called 'Solidarity Village for a Cool Planet' was organised by social movements and anti-globalisation groups a few days before COP13 where different seminars linking social justice issues and climate change were held. A number of side events during COP13 were held there too.

The 2009 Conference of the Parties to the UNFCCC (COP15) held in Copenhagen, Denmark, was the most crucial meeting so far in the long history of the climate negotiations. It was attended by more than 100 heads of government or state. Its psychological and political importance was caused by the approaching expiration of the first period of the Kyoto Protocol in 2012 and the need to come up with new agreements for the second period. Despite pressures from various constituencies and increased global awareness about what is at stake in the negotiations, COP15 failed to achieve the badly needed commitments from governments, especially the developed countries, to reduce carbon emissions, and address key issues of finance, technology and adaptation. What was produced was a document called the Copenhagen Accord, which was discussed only by a small group of negotiators. Many civil society groups allege that the manner of coming out with the Accord questioned the whole legitimacy of the UNFCCC process.

In the run-up to COP15, many different campaigns and political positioning from the different environmental and social movements were observed. However, the most notable and interesting development is the emergence of a global climate justice movement that links the problem of climate change with the limitations and harm brought about by neo-liberal economic policies, which are generally viewed by 'alter-mondialists' or alternative globalisation movements to be oriented towards competitiveness, maintenance and furtherance of the power of Northern governments, corporations and societies.

A Call for System Change to Stop Climate Change

Some of the groups following the negotiations' process complain that the last 15 years of intergovernmental politics under the UNFCCC ignore fundamental realities of global resource management, which they blame as a cause of environmental degradation and that has placed millions of lives and livelihoods at risk. They further argue that shifting the blame and responsibilities to developing countries also hinders the possibilities for development of these countries. They criticise the framework of discussions and the solutions currently offered to cool the planet, for not challenging corporate power, the way natural resources are used, how and for whom goods are produced and the lifestyle of the global upper and middle classes. What is indeed missing in the UNFCCC process and the national plans of governments to solve climate change is the principle of justice. (There is also a critique of the current development model, although this may be more implicit than explicit.)

During COP13 in Bali, Indonesia, a parallel people's forum was organised wherein representatives of various movements and NGOs gathered to share views about the urgency of the need for radical solutions that are just, equitable and effective on climate change. A new network called Climate Justice Now! (CJN!) was launched on the final day of COP13. CJN! emerged from the fusion of red and green internationalism tradition and the global justice movement's history and practice of plural and horizontal movement building (movement of movements).

Civil society has been active in the UNFCCC process and to some extent managed to impact the process from the very start (Arts 1998). Later on, however, the movement that pushed for the implementation of the convention has been displaced by highly specialised environmental NGOs, who engage in the climate negotiations as policy experts and, in some cases, quasi-negotiators, through their participation in the national delegation of their respective countries. They are mainly within the Climate Action Network (CAN), which is the most dominant civil society grouping in the negotiations. CJN! was formed by some groups and individuals who were dissatisfied with the positions and processes of CAN, together with the social movements and NGOs from the alter-mondialist movements that are raising the social justice dimensions of climate change and are highly critical of market 'solutions' like carbon trading.

CJN! activists agree that the fundamental and undeniable truth in the climate change issue is that the principal drivers of climate change are the wealthy minority of the world's countries, the multinational corporations, through their extraction of natural resources and implementation of large-scale projects that produce large amounts of greenhouse gasses, and the institutions that promote such activities. Despite their low or even zero contribution to global warming, the poor countries and their populations are now being made to shoulder the burden of reducing global greenhouse gas emissions through dubious mechanisms like carbon trading.

There are two kinds of carbon trading: cap and trade, and offsetting. A cap is a legal limit set on levels of permissible pollution within a given time period, the level of which are supposed to reduce over time and thereby restrict pollution. Governments hand out 'carbon credits' (or permits to pollute) to major industries/companies based on projections of historical emissions provided by the industry itself to calculate their initial caps. Companies can trade their permits with another. The permit allows companies to choose between cutting their own emissions or buying cheaper carbon credits, which are supposed to represent reductions elsewhere. Offsets on the other hand are often presented as emissions reductions. The UN-administered Clean Development Mechanism (CDM) is the largest facilitator of the scheme, wherein 'emissions-saving projects' outside the capped area are financed to stabilise emission levels while moving them from one location to another, normally from Northern to Southern countries. The problem with these two approaches lies on the fact they have not and will not reduce emissions from the source. While cap and trade in theory limits the availability of pollution permits, 'offset' projects are a licence to print new ones. The two systems therefore undermine each other – since one applies a cap and the other lifts it. They do not give incentive to reduce pollution but rather provide a way for companies to continue producing and earn money while doing it (Lohman 2006).

Many CJ activists believe that the idea of inventing a property right to pollute is effectively the privatisation of the air. At the same time, the corporations most responsible for pollution and the World Bank – which is most responsible for fossil fuel financing – are behind the market. There are also many existing loopholes in the scheme that can aid those who would want to cheat. Most importantly, many of the offsetting projects – such as monoculture timber plantations, forest 'protection' and

landfill methane-electricity projects – have devastating impacts on local communities and ecologies. Some of the principles agreed at the CJN Bali founding meeting in 2007 include:

- A just solution to the climate crisis must confront the problem of over-consumption on the North and also amongst elites in the South.
- The climate crisis was caused by the paradigm of capitalist development.
- Northern governments must commit themselves to radical, mandatory cuts in GHG [greenhouse gas] emissions.
- Land, water, forests, energy, the atmosphere, and labour must not be privatised, commoditised, and traded.

(CJN! 2007)

CJN! affiliates from the developed and developing countries believe that current policies are being implemented to protect the interest of the owners of assets and the global middle classes, which also include those from economically emerging countries like China, India, Brazil and South Africa. For CJN!, the solution to the problem of climate change is to veer away from the Western lifestyle and patterns of wealth accumulation and consumption wherein the sense of security is equated with resource-intensive growth (CJN! 2008). Hence the climate crisis is not just an environmental issue. It is a global crisis with severe impacts to the ecosystem which many poor people depend on for their livelihoods and existence. Millions of lives are at stake, and indeed the very future and form of the world as we know it. It is beyond markets and technology, but rather linked to almost every aspect of our societies, economies and ecosystems: science, politics, economics, technology, finance, governance, institutions, social struggles, consumption and re/production, water, health, land, biodiversity, and so on. Climate justice activists claim that the just and sustainable solutions are possible, but it will require an overhaul of the global political and economic system and everyone must act now.

The Emerging Global Climate Justice Movement

The emerging global climate justice movement is still a work in progress. There is even a struggle for interpretation of the term 'climate justice' and there are already concerns that the term is being co-opted by different constituencies including the business community whose advocacies are by and large in direct opposition to those of CJN! In the build-up to the Copenhagen mobilisations a new loose alliance was initiated by some radical Danish and European autonomist groups and networks, many of whom had been involved in G8 actions in Heilingendam, and climate camp activists from across Europe. They were joined by some movements from the global South such as Via Campesina and Jubilee South and after several intensive three-day meetings, the Climate Justice Action (CJA) was formed.

Many CJA members, based on their observation of the climate negotiations, believe that the UN process will not solve the climate crisis. CJA's Call to Action Statement for COP15 said:

> We are no closer to reducing greenhouse gas emissions than we were when international negotiations began fifteen years ago: emissions are rising faster than ever, while carbon trading allows climate criminals to pollute and profit. At present, the talks are essentially legitimising a new colonialism that carves up the world's remaining resources. For CJA, real solutions mean: leaving fossil fuels in the ground, socialising and decentralising energy, re-localising food production, recognising and repaying ecological and climate debt, respecting indigenous peoples' rights, and regenerating our ecosystems.

The fiasco surrounding the Copenhagen negotiations produced outrage, disappointment and disgust from the movements and NGO networks that attended it. The strong-arm tactics of the US, EU and UK governments (arm-twisting and blackmailing of developing countries) and news leak of a secret deal early in the first week galvanised 100,000 people to march in sub-freezing temperatures for six kilometres towards the Bella Center (the venue of the UN talks) on 12 December to push governments to take effective action on climate change.

Over 900 people were arrested in the march. Pre-emptive and selective arrests, and raids in sleeping and meetings places of CJA activists followed. By the end of the first week almost 2,000 people had been arrested, almost all of whom had committed no crime. As it became clear in the second week that the talks would not and could not produce real, effective and just solutions to the climate crisis, and NGO participation was substantially reduced inside the Bella Center, CJN! and CJA organised the 'Reclaim Power' day of action. Reclaim Power included many elements: a big street march attended by 5,000 people, non-violent direct action attempts to enter the conference area, a walkout of around 300 accredited

NGO representatives and official delegates from the Bella Center, and a People's Assembly.

According to the joint CJN-CJA Reclaim Power Call Out, the objective was 'not to close down the summit, but rather, for one day, to open a space for a People's Assembly where real solutions to the climate crisis and ways to expand the global climate justice movement could be discussed'. Despite the 12 December arrests, police raids and selective detention of activists from CJA and CJN! before 16 December, the alliance managed to organise a People's Assembly a few hundred metres from the UNFCCC venue as part of the Reclaim Power action. The joint CJN-CJA call was a result of a compromise between the groups within the two networks that are in outright opposition with the UN and those who see it is important to support Southern governments in the negotiations and oppose specific proposals from rich countries.

In the six-month build-up to Copenhagen and during COP15, the following ways of mobilising and public awareness raising were used. These forms of action and the combination of these mobilisations are now part of the new repertoire of action of global movements:

- Huge global days of action – for example, the October 2009 mobilisation of 350.org network, which created 5,200 demonstrations in 181 countries. The CNN called it 'the most widespread day of political action in the planet's history'.
- Huge international conferences/assemblies – like the People's Assembly in Copenhagen during the Reclaim Power action, which was attended by around 5,000 people; the KlimaForum, which was organised as the parallel civil society event to the UNFCCC drew more than 50,000 participants.
- Smaller, coordinated local mobilisations with acts of peaceful civil disobedience, such as climate camps, occupations and so on.
- Huge marches/mass protests – for example, the 12 December demonstration, attended by 100,000 people, was the biggest climate demonstration so far. It was participated in by 21 blocs/groupings, the biggest of which is the 'system change not climate change bloc' which CJA and CJN are part of.

The Old and New in the New Global Climate Justice Movement

While Copenhagen has been a disaster for just and equitable climate solutions, it has been an inspiring landmark in the battle for climate justice. The linking of various social justice issues with the problem of climate change, coupled with radical anti-capitalist analysis and out-of-the-box solutions favouring equity and sustainability (that are still developing within the emerging global climate justice movement), have great potential for bottom-up social transformation. For climate justice activists, the severity of the climate crisis brought back the eco-socialist argument that capitalism not only generates war, poverty and insecurity but that it also potentially threatens human survival in vulnerable areas. The right to development and the need for alternative development also raises class issues and the divide not only between rich and developing countries but also between the rich and poor within countries. Solving the climate crisis affects all aspects of societies – economy, technology, trade, equity, ethics, security, as well as relations within and among countries.

A major principle in climate justice that is closely related to the old global campaign on indebtedness of developing countries is that of Climate Debt, which argues that the rich countries have used up more than their fair share of the atmospheric space because of their lifestyle and manner by which they achieved their development. The atmospheric space is humanity's commons where we share equal rights and equal responsibilities. As argued by the Third World Network, the past, present and the proposed future share between rich and poor countries of this commons shows a grave inequality. If the principle of per person emissions is applied it will show that the countries in the North, which have 20 per cent of the world's population (all of which are listed in Annex 1 of the UNFCCC process) have produced 70 per cent of the total global emissions since 1850. In comparison the South, with 80 per cent of the population, contributed only 30 per cent of the global emission (Third World Network 2009). This idea of per person emission of the North (or historical emissions) is the foundation of the argument that the people of the North actually owe a historical 'emissions debt' to the people of the South.

Climate Debt is twofold:

- For overusing and substantially diminishing the Earth's capacity to absorb greenhouse gases and in turn denying it to the developing countries that most need it in the course of their development, developed countries have run up an 'emissions debt' to developing countries;
- For the adverse effects of these excessive emissions, which contributed to the escalating losses, damages

> and lost development opportunities facing developing countries, the developed countries have run up an 'adaptation debt' to developing countries. The sum of these debts – emissions debt and adaptation debt – constitutes the 'climate debt' of developed countries.

The concept is very akin to Jubilee South's debt campaigns against the payment of odious and foreign debt owed by poor countries to international financial institutions. Jubilee South is a global movement that works on debt, finance and services issues. Climate Debt is proposed as a formal principle in the UNFCCC process by more than 50 countries including Bolivia, Bhutan, Malaysia, Micronesia, Sri Lanka, Paraguay, Venezuela and the Group of Least Developed Countries (representing 49 of the poorest and most vulnerable countries). The group demands that Annex 1 countries have the obligation to pay for developing countries' transition to low-carbon economies.

The development of the climate justice movement is viewed by other networks as a mere rebranding of existing radical and socialist networks and its politics as a derivative of previous anti-capitalist groupings. The climate debt argument, despite its origins from environmental and indigenous groups from the South and wide acceptance from movements that focus on finance and the operations of international financial institutions, is also criticised by anarchist activists and some movements for its promotion of the financialisation of nature and the indirect reliance on markets and monetary solutions as catalysts for structural change (Simons and Tonak 2010).

As countered by the Director of the Centre for Civil Society at the University of KwaZulu Natal, Patrick Bond, the climate justice group's position is actually against the commoditisation of the atmosphere, as exemplified by carbon trading and offsets. Bond argues that if articulated fully, climate debt should cover not only the damages done by climate change but also finance for the South's transcendence of extreme uneven development associated with the world economy's export-oriented operation. Payment of climate debt damages and of 'adaptation' financing – if done properly – would ideally permit (and compel) the Global South to delink from all manner of relations with the world economy that damage the climate: fossil fuel extraction, agricultural plantations and associated deforestation, export processing zones, vast shipping operations and foreign debt that forces further attempts to raise hard currency, which in turn pushed countries into unsustainable export-oriented economic development. Climate debt is not a 'simple claim'; it is potentially a complex challenge to capitalism's internal logic of commoditisation and neo-liberal policy expansion (Bond 2010).

The same argument was already carried by the statement of the CJN! Working Group on Climate and Finance (CJN 2009) which was issued after their meeting held parallel to the United Nations intercessional meeting in Bangkok in October 2009. Participants called for:

- The recognition of the Global North's historical responsibility and obligation to guarantee reparations for ecological debt, including climate debt, owed to the Global South.
- The creation of alternative funding mechanisms and flows that recognise the above and respect, protect and promote the sovereignty and rights of peoples and nature.
- An immediate end to any role for international financial institutions in climate financing, and other financial mechanisms and institutions that exacerbate and intensify climate change and increase ecological and other debts.
- Rejection of market-based instruments which do not solve the climate crisis – but instead increase climate debt by allowing the North to offset its own greenhouse gas emissions by transferring its emissions reduction obligations to the South.

Climate debt analysis delinks reparations obligations from market mechanisms and legitimately argues to change the development model followed by almost all developing countries, which rely on export-oriented agriculture, extraction of minerals and petroleum, cheap manufacturing platforms and metals smelting, mass-produced consumer imports, indebtedness to international financial institutions, supply of migrant labour to more developed countries, foreign direct investment, aid dependency, and so on.

Despite the lack of normal attributes of a network like a secretariat, the Copenhagen mobilisations and the adopted processes of consensus decision making followed by both CJN! and CJA managed to challenge the powers of big governments and powerful corporations during COP15. Indeed, a new model of dealing with climate change was born in Copenhagen and the failure of COP15 even liberated many activists in reasserting their anti-capitalist roots. The last COP has also shown signs of a climate movement split as the activists that campaigned

inside and outside the Bella Center were two groups – those who didn't want a deal in the first place, and those who did. Another divide is between environmental groups that support market mechanisms and green growth on one hand and the anti-capitalist groups on the other.

Many networks under CAN, and the Global Campaign for Climate Action, including the WWF-World Wide Fund for Nature, Conservation International, the Environmental Defense Fund, the National Resource Defense Council, and even the Sierra Club and Greenpeace, which have strong corporate connections, campaigned that the 'world wants a deal' and asked governments to 'seal the deal'.

On the other hand, the Climate Justice groups, including Via Campesina, Jubilee South, Friends of the Earth, Rising Tide, ATTAC networks, Climate Camp, the Global Forest Coalition, the Indigenous Environmental Network, and many more, campaigned for 'No Deal is Better than a Bad Deal' or even 'Seattle the Deal' as demanded by some campaigners. ('Seattle the Deal' was earlier proposed by the late Dennis Brutus, a guru of the Durban Group for Climate Justice in South Africa.) The KlimaForum, the parallel civil society space to the UN talks in Copenhagen, came out with the statement 'System Change Not Climate Change'.

Post-Copenhangen and Beyond

After Copenhagen CJ groups begin to shift their focus to local campaigns, targeting fossil-fuel plants and mines. In the South, awareness-raising focuses on the negative implications of carbon trading and mechanisms to reduce emissions from deforestation and degradation in developing countries (REDD), because many local government plans encourage local communities to engage in offsets and REDD-related projects because of the funds available for them. REDD is one of the carbon offsetting mechanisms. Those against it argue that it poses a key moral and legal problem – to whom do forests belong and who has the rights to sell forest carbon credits? Indigenous peoples and other forest-dependent communities strongly oppose REDD because it will further contribute to their lack of rights and security of tenure to forest land.

In response to the mainstream environmental argument that the promotion of an alternative normative lifestyle will help cool the planet, the CJ groups argued that such an individualist approach will only produce limited results. As long as governments rely on unbridled growth to pull the poor from poverty, the environmental costs to such growth will continue to pile up. Technological fixes and business-as-usual will also not counter the destructive impacts of endless economic expansion.

The current discussion about organising national and regional activities together with global campaigns during major events of the CJ movement, affirm that the struggles for environmental justice (and to some extent environmental racism) have been happening for many decades in most of the 'global South' communities. Future actions must build on such struggles and embody the current concerns of groups, whether in the North or South. In the joint evaluation and strategy meeting of CJN and CJA on 19 December 2009 the following key points were adopted:

Continuation of demands at the global level:

- huge emissions cuts from developed countries
- climate debt repayments
- rejection of false solutions (for example, carbon markets), and safe and sustainable alternative source of energy.

Support similar demands at the national and local levels, plus:

- state investments in transformed energy and infrastructure
- national and local level mobilisations and organisation of People's Assemblies
- raise public awareness about the cost of business-as-usual solutions through direct activism.

Climate justice activists believe collective social change is essential, not one of individualised purchasing habits.

As an answer to the failure of Copenhagen, President Evo Morales of Bolivia called for a World People's Conference on Climate Change and the Rights of Mother Earth to develop a 'people's agenda' for climate change. More than 31,000 people from 126 countries attended; 40,000 people came to the closing ceremony led by President Morales, and representatives of around 70 governments listened to the voices of civil society. A total of 180 self-organised events by different networks on every aspect of climate change policy were held, with more than 50 scientists, social movement leaders, researchers, academics and artists as speakers.

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CHAPTER 10

FOOD SOVEREIGNTY AND FOOD POLITICS IN SOUTH KOREA

Layne Hartsell and Chul-Kyoo Kim

Introduction

Food is an essential need, vital for health and wellbeing, and it is also a central part of culture, ecology and security. The right to food is guaranteed under a number of international agreements and is codified into law under Article 25 of the United Nations Universal Declaration of Human Rights (UN 1948). Therefore, governments and agencies are required to take action to protect and secure peoples' right to food. Food security and sovereignty are matters of justice, nationally and internationally.

In a 2008 speech, World Food Programme (WFP) Executive Director Josette Sheeran said that a 'silent tsunami' of hunger was sweeping the world's most desperate nations (MSNBC 2008). A year and a half later, we see skyrocketing world grain prices have indeed brought a crisis of global proportion, pushing the world's poor to the brink of starvation, where an additional 100 million more people have fallen into the desperate poverty associated with food insecurity and its manifestation of hunger and starvation. Consequently, the numbers of people dying of starvation have increased. Underlying the crisis is the fact that starvation and hunger were already on the rise; the spike in food prices pushed many beyond their already precarious livelihood.

Since the peak of food prices in 2008, prices have decreased but remain high in historical terms. Also, prices are volatile, creating greater insecurity. The underlying set of causative mechanisms proves an imminent threat to the health and to the lives of those living in serious poverty, pushing the realisation of the UN Millennium Development Goals further into the future. Currently, more than 1.02 billion people are suffering from hunger and poverty. As the food crisis spread in 2008, food riots arose across the globe and planners were prompted into holding the second food summit of the decade. This summit was held at the United Nations Food and Agriculture Association (UNFAO) in Rome, in November 2009. The message from the summit was that food security had emerged as one of the top political items of global society and security, and thus a key global challenge.

The food crisis is both structural and contingent upon current conjunctures. On the one hand the crisis is 'structural', in the sense that it reflects the relatively long process of evolution of the global food system. The crisis should be understood in the context of the legacy of the 'second food regime', based upon factory farming and the Fordist food system, and the subsequent rise of the 'third food regime' or a global 'corporate regime' based on transnational companies and free market ideology/neo-liberalism (Friedmann and McMichael 1989, McMichael 2005). On the other hand, the crisis has taken place because of more recent conditions and contingencies including low harvests, or the effects of climate change, speculation in the food market, the conversion of grains into biofuels, and the rise in petroleum prices. Understanding both the structure of the system, its historical aspects and the current causative mechanisms, provides a better perspective on how the current crisis can be alleviated and how future crises can be avoided (Magdoff 2008).

In this chapter we explore the issue of the food crisis by examining the vulnerable Korean food system both in terms of production and consumption. Then we highlight the candlelight vigil of 2008 against US beef imports, from a food sovereignty perspective. Finally, we propose possible solutions to assist in the attenuation of the current crisis and to prevent future crises. Food security, food safety, nutrition and sustainable agriculture must all be brought together as a priority on political agendas. The complexity and the challenge of the situation can be met by balancing actors on the policy level, and by redress and address from governments and agencies. Thus the entire process should be coupled with the inclusion of those living at the village level – farmers, local leaders and indigenous NGOs.

Food Sovereignty and Globalisation

There has been growing concern among farmers over the threat of globalisation and the increasing influence of transnational agribusinesses. This concern and people's will for an alternative gave birth to the concept of food

sovereignty. In 1996, members of Via Campesina, the influential worldwide peasant farmers' association, introduced the concept of food sovereignty as their alternative to the major world summit meetings. such as the UNFAO in Rome, describing it as:

> the right of peoples to define their own agriculture and food policies without any dumping [to protect and regulate domestic agricultural production in order to feed people] … access of peasants and landless people to land, water, seeds and credit…the right of farmers, peasants to produce food and the right of consumers to be able to decide what they want to consume … the recognition of women farmers' rights, who play a major role in agricultural production and food [culture]. (Via Campesina 2003)

In short, food sovereignty addresses what can be considered an integral programme encompassing the human, cultural aspects of food and nourishment: health, empowerment, self-reliance, ecology, community, sustainability, localisation, transparency, consumers' rights and equality. The food crisis is more than a sharp increase in food prices, it is a symptom of a larger crisis of the lack of food sovereignty.

In recent years, civil protest has arisen, worldwide, to challenge what is seen by civil society to be a decrease in freedom and safety concerning food, which we have translated above into the concept of food sovereignty as put forth by people who are affected by global free market policies. In South Korea the food crisis and the food sovereignty movement have taken a historically particular form unique to local conditions, yet its global context is shared with other countries. The global context (globalisation), crop specialisation or monoculture, and the increased role of transnational agribusiness, all are part of the changing relationship between the state, the economy, society and the ecosystem. A defining characteristic of globalisation is the dominance of transnational capital, which is able to move 'at will' around the globe, and the integration of institutions of economic policy: the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO). The process is one of new institutional arrangements aimed at desectorisation, therefore, the concept and physical reality of a national economy consisting of industry and agriculture has been significantly eroded. On a concrete level, protective measures were taken away from the rural poor whom are usually farmers, which led to the predictable consequences we see today.

It should be noted here that the US has been playing the major role in institutionalising free trade norms, converting agri*culture* into agri*business*. Since the 1970s the US has become the major exporter of agricultural goods, which has helped the country cope with the chronic problems of overproduction and trade deficits. For example, the US had more than US$12 billion of trade surplus in farm goods in 2002. Because of its enormous power and historical hegemonic actions, the US is seen as the leader in the movement towards free trade of agricultural goods in the WTO talks. The current free trade regime in agriculture has been catastrophic for poor farmers, leading them into cash crop production and selling to the world market through transnational agribusiness companies. In many cases farmers were pushed into bankruptcy, and the rural poor have been forced to migrate to the cities. This forced migration is a tragedy for rural communities and it seriously threatens the existence of food production systems of the South. As the policies have been imposed, livelihoods have deteriorated and people's health and wellbeing have suffered (McMichael 2005).

Globalisation involves radical changes at the level of consumption as well. Increasingly, food consumers around the world depend upon global food companies and powerful supermarkets, for example, Cargill (agribusiness) and Wal-Mart (grocery). More foods are imported from other parts of the world, fast food restaurants have become an integral part of culture, or 'eating-out culture', homogenisation of the diet has taken place, and people have become dependent upon the industrial Fordist food system. The Fordist system is made up of large-scale production and consumption with predictable socio-economic effects. These changes have led to a process called distancing, that is , the increase of social and physical distance from 'farm to mouth' (Brewster 1993). Once again, the US has played a central role in the process. In 2000, Japan, Canada, Mexico, Korea, and Hong Kong were the top five importers of US processed food in value terms. The high 'food dependency' of Koreans on the global market, especially on the US, has been a major characteristic of the food crisis in Korea. While this crisis is not as severe as in India or Africa, it shares a similar pattern to those in other areas of the world where the current market system has been imposed or perhaps forced.

The Food Crisis and Self-Sufficiency

The food crisis in South Korea is most visible in relation to its extremely low rate of food self-sufficiency, which

makes the country's food system vulnerable. Using grain as an example, the Korean self-sufficiency rate was approximately 26 per cent in 2007. If rice is excluded, grain self-sufficiency is even lower, at 4.6 per cent. It is estimated that the total wheat supply for the Korean market was more than 4.08 million tons and the self-sufficiency rate of wheat was only 0.2 per cent, requiring most wheat to be imported (see Table 10.1). The supply of maize was the largest among the grains at 9.4 million tons and most of it (6.8 million tons) was used for feeding animals to produce meat. The self-sufficiency rate for maize was 0.8 per cent. Another important product in South Korea is soybeans – 1.1 million tons were imported in 2007, with the majority used for animal feedstuff. The self-sufficiency rate for soybeans was better than wheat and corn, but still low at 13.6 per cent.

Wheat is used in Korea to produce foods such as Ramyeon, a popular noodle dish, regular noodles such as spaghetti and udon, and a variety of cookies, biscuits and cakes. Korea produced approximately 91,956 tons of wheat in 1980 but domestic production shrank after 1984 when the government eliminated the 'wheat purchasing programme' that had subsidised farmers and thereby supported the country's wheat sector. As the price of wheat on the world market increased in early 2008, the price of those foods made of wheat also increased sharply in Korea. The increased price of Ramyeon posed a serious difficulty for people on low incomes because while it is popular generally, it is an essential staple for the poor. Similarly, the different types of noodles sold at Chinese restaurants, for example, Jajang-myeon, became more expensive, and thus less available to those with low incomes. The working class also faced some difficulties with the double-digit price increase of wheat products.

Maize is used in Korea for feed and for producing corn oil. We can see from Table 10.1 that the amount imported reached more than 8.6 million tons in 2006. Approximately 6.8 million tons of maize was used for feedstuff, while another 1.9 million tons was used for processing, including making corn oil. Since almost all maize is imported, the price increase between 2007 and 2008 was a major shock, especially to Korean livestock farms. Some farmers went bankrupt. The term 'agflation' became popular in Korea as consumer prices jumped in March, April and May 2008. Throughout the farming and livestock industry in Korea, the high prices of inputs

Table 10.1 Grain Production and Self-Sufficiency Rates in South Korea (2006)

	Rice	Wheat	Maize	Soybean	Total (rice, wheat, maize, soybean plus others)
Millions of tons produced	4,768	6	73	183	5,434
For food	4,768	–	–	–	5,208
For feed	0	–	–	–	226
Millions of tons imported	238	3,579	8,620	1,154	14,012
For food	238	2,170	1,889	305	4,927
For feed	0	1,409	6,731	849	9,085
Surplus from previous year (total stocks of grains, in millions of tons)	832	500	766	73	2,507
Total (millions of tons)	5,838	4,085	9,459	1,410	21,953
Self-sufficiency rate (% grain domestically produced in 2005 out of domestic demand in 2006)	98.9	0.2	0.8	13.6	28

'–' indicates less than 0.5 million tons.

such as petroleum, fertiliser and feedstuffs were serious enough to prompt some farmers to give up farming. Farmers and ranchers are known to say 'feedstuff eats cows and pigs instead of animals eating the feedstuff'. To make the situation significantly worse for Korean beef ranchers, the Korean government opened the Korean market to US beef, which also raised public concerns about the safety of US beef production. The influx of inexpensive US imports decreased beef prices in South Korea. Korean beef ranchers suffered a second blow when a massive popular demonstration arose in the spring of 2008 about concerns over 'mad cow disease' or bovine spongiform encephalopathy (BSE), and imported beef, as well as free trade agreements allowing such unpopular policies. The consumer, not knowing where their beef came from, reduced consumption. Therefore, as imports of US beef entered the country, and as domestic consumption decreased, Korean farmers faced a double-headed crisis.

The Candlelit Vigil and Food Politics

In the spring of 2008, the strain gave way. Though many in Korean society were concerned, it was teenagers who first began demonstrations by holding candlelit vigils in Seoul on 2 May 2008. On that day, more than 10,000 people protested, demanding an import ban on US beef. Before the event, people had exchanged their views via the Internet and organising ensued online and through more traditional forms of communication. The vigil continued for more than 100 days. On special days, such as 10 June, a public holiday honouring the mass democratic uprising in 1987, more than a million people gathered, chanting for food sovereignty, democracy, and the resignation of President Myung-bak Lee. Lee apologised on 19 June for his inconsiderate handling of the issue and his administration made revisions to the import terms of US beef, including a voluntary quality management system and stricter controls on parts of cows that have a high possibility of inducing BSE, known as specified risk materials (SRM). However, many Koreans felt that these measures were insufficient to guarantee the import of safe beef.

Many who had not been active in recent social movements in Korea – from teenagers and mothers with children to the elderly – participated in the vigils and various street activities to express their alarm. Previously, Korea had had strict regulations on US beef in order to satisfy consumers' concerns over BSE and the protection of Korean ranchers' livelihoods. However, on 18 April 2009, a day before the meeting between President Lee and US President George W. Bush, it was announced that Korea would lift its import ban on US beef. The announcement was seen by the Korean public as a surprise gift to President Bush and the US beef industry. All beef, regardless of age, was to be imported to Korea, including SRM.

The case of Korean resistance to US beef is both symbol and substance of a food crisis and politics in Korea as the country reacts to a liberalised national market in the context of globalisation and the US. The resistance is a symbol of Korean aspirations to food safety and food sovereignty – the right to guarantee healthy, safe food for the nation. The substance is the concern of Koreans over US practices in the beef industry that are considered to put consumers at risk of BSE, E. coli or other pathogens, which might arise due to industrial feed, breakdowns in animal husbandry processes, negligence in inspection policies and practice, and other radical changes imposed on beef cattle during their lifetimes. Specific social issues were highlighted because of BSE; for example, the disease revealed on a mass scale the problems and risks of modern global food systems. The Korean resistance is part of a food crisis engendered by the global food system and reflects ongoing unpopular free trade agreements. Korean consumers responded both on the grounds of food safety and on sovereignty when their President made the decision to accept US beef without consulting the National Assembly, or the people in general. Korean society responded with the demand for food safety and food democracy.

The Korean government's willingness to open the domestic market to US beef had a great deal to do with President Lee's intention to finalise the US – Korea Free Trade Agreement (FTA), even at the cost of sacrificing the Korean food sector. Because the government did not guarantee the right to food, Korean consumers began to seek alternatives to protect their families and Korean producers. These efforts include consumer cooperatives, which produce and sell mostly organic food, and connect consumers and farmers through visits and festivals. Their membership and the sales of organic food have increased dramatically, by up to 100 per cent from 2008 to 2009. They emphasise the importance of reducing 'food mileage', increasing the 'food dollar' for farmers, and constructing local food systems. The success of these coops indicates that people are becoming active on food safety and sovereignty in order to bring about food democracy.

Another World Is Possible

Over the past decade, forums such as the World Social Forum and movements such as Via Campesina have provided space and voice for alternative policies regarding food sovereignty and local food systems - and as opposed to food security.

We would propose several changes in the Korean food system to become more sustainable and to achieve genuine food sovereignty. First, the self-sufficiency rate should be increased by producing more wheat, corn and soybeans. This diversification in production could be achieved by collaboration between NGOs, cooperatives, universities and the central government. Second, the number of socially and ecologically responsible consumers should be increased through education via the same institutional mechanisms. Rather than waiting for civil unrest and fear to continue unaddressed, and risking the unrest growing into the extreme of 'mad cow irrationality', both the government and civil society should take a proactive stance and move forward with education based on scientific evidence and cultural preservation. Programmes should focus on the broader ideas of sustainability, 'glocal', 'voting with the pocketbook/wallet', community gardens and greenbelts. The desire has already arisen as consumer cooperatives that emphasise safe, wholesome food, are registering rapid increases in new members. Third, a 'dietary revolution' that reverts to consumption of mostly fruits, grains, vegetables and nuts, and less meat, would be an excellent choice for a social movement. The reduction or elimination of meat from the diet would lead to remarkable changes in society and the natural environment since it would no longer be necessary to cut large areas of rainforest trees for meat animals, to import large amounts of *feed* grains, and to waste massive amounts of water on inefficient diets. In addition, sustainable, efficient practices would honour the natural life process of animals, rather than treating them as commodities; increase public health and decrease carbon dioxide emissions from dependence on fossil fuels and, more crucially, from the cutting of forests. Fourth, there should be further experimentation with, and implementation of organic agriculture, based on its proven growth in rich countries, as a way to achieve wholesome food and responsible land and water management; and to provide a sustainable local economy for farmers.

The innovative techniques of organic farming coupled with the policies of social justice and sovereignty could be a part of the solution of the 'in-migration crisis' towards cities such as Seoul. Also, the increased outputs from modern organic farming and higher nutrient concentrations would help to meet the needs of the malnourished. Organic agriculture would help to rejuvenate rural communities, and provided the proper policies and supports were put into place, farmers would be able to create sound livelihoods and achieve a reasonable measure of material wealth, which would give a basis for thriving families and communities, along with a concomitant increase in conservation of natural resources.

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PART IV

Transitional Justice

INTRODUCTION

GLOBAL CIVIL SOCIETY AND TRANSITIONAL JUSTICE

Marlies Glasius

Transitional justice is a contradiction in terms. The concept of transition presupposes a linear trajectory from either a war situation or an authoritarian system, or both, to a stable, peaceful liberal democratic system. As famously pointed out by Carothers (2002), this ideal trajectory rarely reflects reality. Even when it does, the expectation that justice, for instance following Kofi Annan's (2004) definition of 'accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs', can be done *during*, not after, such a transition is ambitious to say the least.

But this does not make transitional justice a hollow phrase. The new concept itself has created new dynamics. It expresses a utopian aspiration that institutional and societal transformation towards more equitable arrangements go hand in hand with accountability for past wrongs. As Rangelov and Teitel note in their chapter, it has been stretched from application to post-authoritarian state transformation in Latin America to 'entrenched justice-seeking', long after but also in the midst of conflict, under democratic, authoritarian and hybrid regimes, and regardless of borders. Equally important, the perceived means of transitional justice have been broadened from national prosecutions and truth commissions to international courts on the one hand and quasi-traditional local institutions on the other. The forms of justice institutions have proliferated, but the solutions they can offer can never come close to meeting the exponentially increased and often conflicting demands for justice.

Hence the legitimacy of such 'solutions' is constantly challenged. Legitimacy is perhaps an even more slippery concept than justice, but as Bellina's chapter shows, it may lend itself better to disaggregation. First, as Bellina discusses, the legitimacy enjoyed (or not) by a particular formal or informal, local, national or international justice institution or authority as such can be distinguished from the legitimacy of the value systems that underlie its modes of operation and decision-making. Second, one may distinguish between the (input or procedural) legitimacy of the rules and process of justice, and the (output or substantive) legitimacy of the effectiveness of its outcomes. In practice, these forms of legitimacy are interlinked, and some level of legitimacy on all these measures is usually required for social endorsement. Finally, normative legitimacy (according to a particular value system, for instance human rights) can be conceptually distinguished from what Bellina calls symbolic legitimacy, or what Buchanan and Keohane (2006: 405) call sociological legitimacy: in other words, support. But again, the two are in practice inseparable: Bellina argues that it is very difficult to think of any institution or value system as just if it enjoys no social support. On the other hand, as Fichtelberg (2006) and others have powerfully pointed out, majority support alone as benchmark could end up justifying deeply unjust practices, even genocide.

Taking all these measures of legitimacy together, the legitimacy deficits of transitional justice institutions appear over-determined. The justificatory basis for the administration of criminal justice is weak in stable, prosperous liberal democracies. The stronger reality of legal pluralism in post-colonial states further weakens it. The idea of values held in common, of which criminal justice could be an expression, is further compromised in societies where mass violence has recently occurred. Apart from these common challenges, each type of institution comes with its own problems. International prosecutors and judges have tended to be ignorant of whatever may remain of any common cultural legacy in post-conflict or post-authoritarian societies. State institutions have often been weakened, and can rarely fully escape association with a particular side in a recent ongoing conflict, undermining the requirements of independence and impartiality. Both have been accused of privileging formal, individualised, retributive justice over social, collective, restorative processes. Truth commissions alone on the other hand may be seen as 'forced reconciliation' without redress. Traditional institutions have a tendency to reinforce existing power inequalities (along gender, class, caste, ethnic or generational lines); in fact they may rest on 'invented' tradition, or be inappropriate as responses to episodes of mass violence. Such institutions

may face bleak dilemmas between stabilising decisions that reinforce existing social inequalities at the expense of the marginalised, or destabilising decisions that may spark violence and increase insecurity.

Yet even as they fail to meet expectations, these institutions are not without effect. The interactions between global civil society and transitional justice institutions catalyse particular types of changes. First, as noted by Rangelov and Teitel, they have been drivers of the reconfiguration of justice institutions away from the state. Next to the now classic forms of national truth committee and national prosecution, we see international and hybrid courts as well as the formalisation of traditional justice institutions, all relying on civil society organisations for information, witnesses, and outreach. At the same time, exemplified for instance by the Sierra Leone mediators and Malian legal clinic described in the following pages, constellations of local, national and transnational actors devise new do-it-yourself justice institutions which may become formalised or wither away.

Second, the less transitional justice institutions are perceived to be delivering justice, the more they have the inadvertent consequence of sparking debates about what are desirable forms of accountability (Glasius 2009). Global civil society gives shape to these debates and will co-determine what configurations of justice institutions will, in the long term, be seen as capable of delivering sufficient fairness to deserve to survive. In this context, Bellina formulates the aspiration that intercultural dialogues and hybridisation of human rights norms may generate more explicitly intercultural variants of the Habermasian ideal of justice through deliberation.

However, it must be noted that opportunities for 'legal forum-shopping', brought to our attention in the literature on legal pluralism, do not indicate any kind of anarchic egalitarianism. Typically, they occur in circumstances of very unequal power relations (Oomen 2010). Nonetheless, as exemplified in numerous examples in the following pages, the dynamic interaction between civil society actors, transitional justice institutions and transitional justice rhetoric can empower victims, increase space for debate, raise questions about accountability and, occasionally, deliver justice.

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CHRONOLOGY OF SELECTED GLOBAL CIVIL SOCIETY EVENTS RELATING TO ELECTIONS

April 2009–March 2010

7 April 2009, Moldova
Moldovan opposition and civil society petition the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE), and the UN to investigate the results of the parliamentary election on 5 April. Tens of thousands of protestors rally in Chişinău, the Moldovan capital, to contest results.

June and August 2009, Iran
Months of protests and state crackdowns are sparked by the victory of Mahmoud Ahmadinejad in the presidential elections. The protesters, many of whom support opposition leader Mir-Hossein Mousavi, are joined in solidarity around the world by those calling for an end to political repression. On 2–5 August, another round of opposition protests in Tehran denounce the inauguration of President Ahmadinejad – the disputed victor of the presidential elections – as well as condemn the ongoing mass trial of more than 100 people taking part in post-election protests

25 July 2009, Iran and worldwide
A Global Day of Action for Human Rights in Iran is held in more than 110 cities around the world, calling for an end to the persecution of opposition campaigners imprisoned following the disputed presidential election of 12 June. The global protests are organised by 'United For Iran' and supported by NGOs including Amnesty International, Human Rights Watch, and Reporters without Borders. Appeals are made to the UN to investigate the regime's violent and repressive crackdowns.

January 2010, Nigeria
Learning from the disastrous Nigerian general election of 2007, civil society groups take a greater role in electoral reform to prevent similar fraud in 2011. The Civil Society Coordinating Committee leads nationwide efforts at grassroots training and education with support from international organisations including UNDP and DFID, mobilising residents to take a greater stake in the democratic process.

20 August–2 November 2009, Afghanistan
In the second presidential election under the current constitution of Afghanistan, widespread reports of fraud from the group Free and Fair Election Foundation of Afghanistan, as well as low voter turnout, coercion, media censorship and a protracted post-election contest, end in the appointment of incumbent President Hamid Karzai. The main opposition leader, Abdullah Abdullah of the United National Front, withdraws in protest from the planned run-off election.

23 July 2009, Kyrgyzstan
Despite a formal agreement on election procedure between the Kyrgyz Central Electoral Commission and civil society groups in June, the presidential elections are marred by voting irregularities documented by local activists. Protests erupt following the landslide victory of incumbent President Kurmanbek Bakiyev, and the principal election monitors, the OSCE, announce they would support legal action against the election results if prompted by civil society groups. Following violent uprisings in April 2010 fomented by increasing dissatisfaction with the incumbent administration, President Bakiyev formally resigns, shifting power to the opposition.

14 March–May 2010, Thailand
Demanding a dissolution of parliament and new elections, hundreds of thousands of protestors opposing Prime Minister Abhisit Vejjajiva mount a mostly peaceful demonstration beginning in March. As protests continue into April and May, violence erupts between state security forces and the protesters, known as the Red Shirts, who support deposed former Prime Minister Thaksin Shinawatra. After months of clashes, dozens dead and more than 1,000 injured, new elections are tentatively scheduled for 14 November.

26 January 2010, Sri Lanka
Victory for incumbent Sri Lankan President Mahinda Rajapaksa prompts thousands of opposition protesters in Colombo to contest the results of the presidential election amid accusations of fraud.

8 August 2009, Myanmar/Burma
Riot police patrol Rangoon to prevent activists from recognising the 21st anniversary of the pro-democracy demonstrations that brought Aung San Suu Kyi to prominence as the leader of the country's political opposition. The anniversary comes as Suu Kyi awaits sentencing for violating the terms of her house arrest after an American man, uninvited, swam to visit her. The verdict is postponed, apparently in order to prevent sparking retaliatory uprisings from Suu Kyi's supporters during the anniversary. However, the date is recognised by protesters outside Myanmar embassies in Bangkok, Kuala Lumpur, and Hong Kong. Three days after the anniversary, on 11 August, Suu Kyi is sentenced to a further 18 months' house arrest, which will ensure she is once again unable to stand in the 2010 Burmese general elections.

CHAPTER 11

A PLURAL APPROACH TO THE DEFINITION OF SOCIAL JUSTICE

Séverine Bellina[1]

Introduction

This chapter sets out a pragmatic approach to social justice, developed on the basis of a crosscutting analysis of thoughts and experiences collected and analysed by the Institute of Research and Debate on Governance (IRG) in the course of its activities. We aim to establish, beyond the normative approach, the notion of justness around which social justice policies are mainly deployed; on what basis actors (individuals or groups) recognise, accept and have confidence in powers, leaders, norms, regulatory systems and so on; what makes sense in terms of social justice in a given society. When, all told, has legitimacy been achieved?

Indeed, thinking on social justice has, in the main, developed within a liberal, Anglo-Saxon economic framework which adopts a prescriptive, all-embracing perspective on the notion of justness. Such approaches propose a general definition or general principles for defining the notion of justness angled at the battle against inequality. However, the concept of what constitutes an inequality is relative (Müller 2009). That which an outsider might regard as a situation of inequality may not necessarily be perceived as unjust by the society concerned if it is in line with a representation of the accepted social order. With this in mind, Michael Walzer founded his theory of 'complex equality' upon the reality on the ground, and also upon diverse interpretations of justice (depending on the goods concerned); it asserts that justice is always relative to the representations and shared values within a community at a given place and time, and that this varies according to the socio-cultural and historical context (Walzer 1983).

By proposing an examination of social justice through the lens of civil society, this Yearbook points to the diversity of contexts and praxes. Whilst focusing on the multiple locations and wellsprings of social justice above and beyond public institutions and international law, this edition also highlights the fact that the notion of justness has a range of different representations and meanings, depending on the groups and situations concerned. Two key ideas emerge from this perspective, around which we shall structure our arguments:

1. Global social justice is based on multiple sources of legitimacy. In practical terms, it arises from a multitude of actors (civil society, public institutions, political parties, states, international organisations, courts, and so on), normative systems (rights conferred by a state or states (ILO 2008), based on customs or religions; or professional rules), authorities (ministries, judges, ombudsmen, traditional or religious leaders, NGOs and partnerships) and territories (geographical or network-based) – as well as from the interactions of the above.

   This diversity of sources giving rise to social justice reveals a multiplicity of conceptions of, and praxes connected with, what a given group accepts as just or feels to be unjust. Christoph Eberhard's example of the Indian custom of virginity tests demonstrates very clearly that something which might be interpreted as unjust (as real violation of women's rights) also constitutes a cultural foundation of the social order of a given group, and highlights the complexity involved in avoiding this dualistic view (see Box 11.1). Hybridisation – which is a vector of change – of the different regulatory systems must take into account the underlying values of each. The example of mediation in Mali (between 'modern' and 'traditional' justice) developed by Néné Konaté and Elisabeth Dau illustrates this well (see Box 11.2).
2. This diversity is not necessarily centrifugal, once we go beyond a monist and monocentric interpretation. When viewed through an intercultural prism, an element of connectivity becomes apparent: a shared sense of the notion of justness. The multiplicity of practices and representations gives a measure of the complexity entailed in structuring the regulation of the domain of social justice. This will not be achieved via the top-down identification or definition of a common denominator but by the construction of a hybridised shared meaning (unity), rooted within these

differences. This shared mindscape is constructed out of the interactive dynamics of the sources analysed above. It is therefore imperative that we encourage these different sources to interact with each other, such interactions revealing themselves as 'territories' of global social justice founded on a shared mindscape, for the notion of justness.

We shall discuss two attempts at an intercultural definition of this notion. The first, proposed by Mélisa Lopez, analyses the jurisprudence of the Inter-American Court of Human Rights (IACHR) (see Box 11.3). The decisions of this court are indeed based upon an intercultural approach, hybridising the Inter-American Convention on Human Rights with domestic social regulation, which not only ensures that the convention is respected but also that the resulting decision is socially effective. Above all, this favours the creation of a new regulatory framework, which is dynamic (evolving) and hybrid in nature, and which decompartmentalises each system without allowing them to become locked in mutual ossification. Then Néné Konaté and Elisabeth Dau present the Multi-Actor Forum developed in Mali, which aims to be a public space for the joint elaboration of public policies that are more deeply rooted in the realities and expectations of Malian actors (see Box 11.4).

We shall therefore examine social justice in both its senses – as authority and institution, on the one hand, and as a founding value of social meaning, on the other. It is in fact proper to examine the production of social justice in all the complexity of its concrete expressions. This is a field complicated not only by the multiplicity of actors but also by the various territories. Most studies of global social justice point to the absence of global governance for social justice and refer in particular to the absence of a global government capable of implementing global state actions with regard to social justice. What characterises the current context is not so much the global territory of each local intervention, but rather the intensification of interactions between the different geographical tiers. The particular tier (local, national or global) is not of relevance here, but rather how these interact. This reciprocal relationship of mutual adjustments and redefinitions through territorial interaction (on a geographical or network basis), from the local to the global, underlies our entire way of thinking. The norms, institutions and praxes at a global, regional and national level are enriched by the diversity of local norms, institutions and practices … which are themselves being adjusted and redefined through their interaction with the higher levels in the 'ebb and flow of centripetal universalisation and diversifying specialisations' (Ost n.d.) characteristic of globalisation. It is within this 'glocalised' geography of cross-level interactions between territories and action networks that we place ourselves.

The Polycentricity and Polysemy of the Notion of Justness: the Plural Legitimacy of Social Justice

This Yearbook sets forth the diversity and richness of social justice practices carried out by the range of civil society actors at global level. These practices represent many spaces and mechanisms for the promotion and delivery of social justice as well as a concrete definition of the notion of justness.

Sources of Social Justice: Plural and Diverse

Practices of promotion and production of social justice carried out by civil society develop alongside, in competition, or in complementarity with states and cross-border regulations, with which they also interact. For examples, we need look no further than religious organisations providing education and security services 'without' the state (such as Hezbollah in Lebanon), Colombia's constituent assemblies, or a parallel credit system, such as that set up by the Mouride Brotherhood in Senegal.

The existence of these practices on the one hand, and of tools and national and international institutions on the other, are occupying the theatre of social justice. Popular and civil society practices of social justice as well as international norms and mechanisms are vectors for the structuring of global regulation in the field of social justice. Therefore, a dualistic approach privileging either international norms or civil society practices cannot account for its reality. The links or absence thereof, the gaps and complementarities, constitute together social justice at work, from the local to the global. Arising from multiple sources, social justice is polycentric.

Each source is a vehicle for regulation (mediation, sanction, service delivery, framing international law, and so on). It consists of normative systems, the authorities that embody and carry it out (judge, chief, state or international organisation officer, NGO president or director) alongside the values on which it is founded and which are, of course, constantly evolving.

Let us pause a moment to better 'picture' this polycentricity and normative pluralism. Thanks to the crosscutting analyses developed with our colleagues on state legitimacy, we arrived at a (non-exhaustive, loose) typology of the sources of legitimacy on the basis of the role they play in the process of legitimation of power (Bellina 2010). It seems relevant to mention this analytical framework for it helps us understand normative pluralism by way of identifying processes, norms, types of action and references called upon by the actors to define, promote and deliver, in this instance, social justice. It also helps us better understand the possible and actual interactions between these diverse sources:

- *Input legitimacy* relates to the rules and procedures (participative processes, bureaucratic management, legal system, activism, lobby, and so on) whereby pro-social justice public policies are devised and adopted.
- *Output legitimacy* is defined according to the efficacy and the quality of the services provided as judged against popular expectations (security, food safety, social services, and so on). The legitimacy of many actions of civil society organisations is derived from this source, either by directly providing public or basic services or by taking action through advocacy and denouncement.
- *Rational legal legitimacy*[2] is founded in particular in national and international normativity on the basis of hypothetical universally accepted standards, such as human rights or the International Labour Organization's declarations on social justice for a fair globalisation. Whether on the authority of international law or international organisations, this legitimacy exerts a major influence on state law and also on the 'traditional' practices of social justice. Indeed, a noticeable discrepancy is frequently observed between the principles, rights and obligations enshrined in international agreements and (cross-border) laws, and what makes sense to the relevant actors.
- *Symbolic legitimacy* relies on shared beliefs as the basis for what seems desirable, to be striven for; in short, for the actors' symbolic and material expectations that are linked to these beliefs and nurtured by practices. Shared beliefs are thus evolving and anchored in values that express a collective ethos. They are key to the adoption of an idea or the practice of what is 'just' for the actors. The recognition and use – and thus the effectiveness – of a normative system, or the resort to the relevant authority, hangs on this acceptance. Beliefs and representations impact material effectiveness (specifically the delivery of basic services) and symbolic relevance (Bellina et al. 2010). This is where an increasing discrepancy arises between the norms underpinning cross-border legality and popular expectations. One of the best-known examples illustrating this point is the case of the international norms related to human rights, the formulation and content of which are sometimes perceived as disconnected from the symbolic dimensions attached to the representations of the notion of justness in diverse societies.

Social Justice is Based on the Interactions between its Sources

It has been noted that the sense of justness and therefore of fulfilment of social justice is rarely anchored in just one of these sources. Symbolic force, rationale to act and varied contexts, make meeting the actors' material and symbolic expectations (those of individuals or groups) very exacting because they are the result of a pragmatic mix. Therefore, beyond the worth and the existence of each source, it is first and foremost their coexistence and the nature of their interactions that represent and define the practices and the conceptions of social justice and therefore underpin the notion of justness in a given society. Thus, restricting the analysis of social justice to international normativity, on the one hand, or to customary practices, on the other, would not help in grasping the heteronomy prevailing in social praxes. As already mentioned, the overlaps are based, among other things, on the (evolving) values at the root of each regulatory system. Indeed, the sense of what is just is steeped in mindscapes and interpretations both individual (bearing in mind caveats to the notion of individuality across cultures) and collective, according to single or multiple actors' material and symbolic expectations and their interests at a given time.

In the end, the integration of the diverse normative systems (the experience of inter-normativity) takes effect at the level of each actor. Most of the time, each person or group has several incarnations, depending on which status is being referred to (gender, family, ethnic group, nationality, modernity, tradition, and so on); it is rare for a person to be linked to only one set of norms. And it would be even more unlikely for them to be in a situation

pertaining exclusively to one of those sets (land conflict, human rights violation, and so on). Their behaviour before such an array of norms is then framed in terms of confrontation, hybridisation, overlap, entanglement and transgression. This translates into hybrid regulation, a mix of traditional and official responses, the alchemy of which balances the material and symbolic efficacy the actor anticipates from it. The matrimonial regime or that relating to succession in West Africa is a point in case. For instance, in Senegal, the socially recognised marriage is the traditional one. It is also recognised in positive law but has no currency with the public authorities. So, as Assane Mbaye explains, many couples first marry according to tradition and then later notify the registrar, not to observe state law but because this will entitle them to family allowances (Mbaye 2010).

Social Justice Rests on a Broad Range of Representations

Often underestimated, indeed ignored, shared beliefs are a source of legitimacy crucial for grasping the reality of societies and what makes 'sense' for them. Using social practices of justice as an entry point is a good way to reintroduce this dimension in the analysis. It makes it easier to grasp the representations and reasoning that give their meaningfulness to social practices and thence their legitimacy to social justice practices. There is, incidentally, not just one approach to the notion of justness that could be seen as more valid for the whole world, but multiple representations of the notion of justness.

As shown by Christoph Eberhard in Box 11.1, the same situation can be perceived as an intolerable breach of human rights for some, and as being in the nature of things, regarding tradition, for others, including those at the receiving end. The notion of justness is thus culturally, psychologically, mythically and socially anchored. It further varies according to social structure and time. In this respect, it is worth remembering that tradition in not synonymous with past, or ossified reality. Tradition, Chateaubriand wrote, is innovation that worked.

It raises the question of the discrepancy, indeed of the gap between existing normative tools and traditional practices steeped, at a given time, in a representation of a particular notion of justness. Experience has shown that forbidding these practices in the name of human rights observance doesn't work … for the practices endure elsewhere. That is because their symbolic force in the representation of the world that they convey remains significant in terms of social regulation. This reality must be taken into account, for only the knowledge and understanding of the values that underpin it, along with what the actors make of these values, can advance needed adjustments. Such an approach does help to clarify what, in the relevant actors' minds, satisfies their sense of justness and the accomplishment of social justice. This is about understanding what seals the adhesion to a normative system (hence its deployment) and trust in (a religious, traditional, legal) authority.

Many analyses bear this out. Thus, in the domain of justice, and specifically regarding justice in West Africa, Assane Mbaye writes:

> the bypassing or sidelining of State justice in some environments – rural in particular, … also connotes the absence of an answer from the legal package to the psychological and cultural expectations governing the confidence of those who turn to the Law and the national courts. (Mbaye 2010: 79)

This fits in with the observations of many civil society organisations, that are members of Juristes-Solidarités (2006). Their work around legal clinics, the Tribunes d'Expressions Populaires and the Balcons de droits, shows that, day to day, justice fulfils its role in terms of conflict settlement, and thus social regulation when it (that is, the institutions and authorities through which it is enacted) enjoys the people's trust, who from then on turn to it. With this in mind, the International Council on Human Rights Policy advocates the acknowledgement of legal pluralism to enhance human rights effectiveness (International Council on Human Rights 2009).

Indeed, whether in Latin America or Africa, the sense of justice rendered seems more closely attached to the idea of 'relational transaction towards securing the future than [of] reinstating the victim in their rights' (Mbaye 2010: 79), and even in the case of litigation between two individuals it puts collective interests before sanctioning the person identified as cause of the dispute. Justness pertains to upholding or restoring social cohesion, not to decreeing a sanction on the basis of non-observance of positive law. Unjustness stems from the disruption of social harmony. The concept of sanction exists in traditional regulation, but its efficacy relies on the symbolic dimension it takes on.

The intervention of traditional and religious authorities often eases the reframing of a conflict resolution process within a strong symbolic dimension, which influences the reaction to it. In fact, 'modern' justice only provides for one of the stages of the traditional process of conflict

Box 11.1

Women's Rights versus Virginity Tests in an Indian Context

Saansi is a tribal community inhabiting some districts of Rajasthan, India, in which girls are obliged to undergo a virginity test, known as *kukri ki rasam*, to give proof of their purity or virginity on the first night of marriage. It consists of placing a white thread on the marriage bed on the first conjugal night of the newly married couple. The following morning, members of the groom's family inspect the thread for traces of blood. The bloodstained thread is supposed to be proof of the rupture of the girl's hymen. If the thread is not found stained, the girl is declared impure. The outcome of the test determines the validity of the marriage.

In the cases where a girl is not able to pass the test, she is obliged to declare the name of the person with whom she allegedly had relations before her marriage. Then, either the person whose name she declares or the family members of the girl are required to pay compensation to the in-laws' family, so that they can accept an 'impure bride'. If the girl or her family members contend the results of the test, the girl does not name anyone, or her family refuses to pay compensation, the issue becomes a public matter. The case is brought in front of the *panchayat*, or community council, where the accused girl and her family are given an opportunity to prove the girl's innocence in front of the whole community. The burden of proof lies with the girl and her family. The community council prescribes three kinds of tests: the fire test, the water test, and the oath-giving. The first one involves walking with burning embers on their hands for 100 yards with some leaves wrapped on the palms. If the person undertaking the test comes out unscathed, the girl is proved to be pure. The second involves staying under water while somebody from the groom's side walks a predetermined distance. Inability of a person to stay under water for this particular duration results in failure and the girl is declared impure. The third procedure, a more simple one, demands taking an oath about the girl's innocence by somebody from the bride's side in a temple in front of God and some community members.

The outcome of the above tests determines the validity of the declaration of the girl's in-laws. If the girl's family members pass the test, the case stops, and no further action is taken. The in-laws do not get any money and they have to keep the bride in their house. There have been cases where the in-laws have also been fined for making false allegations. On the other hand, in the case of failure, the girl's family or the person with whom she allegedly had relations before marriage is required to pay a fine to the groom's family, before they accept her again in the house. The fine seems to make the bride 'pure enough' to live with her husband and the girl becomes once again 'worthy'.

For a human rights' perspective, the very practice of *kukri ki rasam* may appear primitive and oppressive. But it makes sense to the members of the community, even though they may condemn its misuse. It is an integral part of their culture and a means of pursuing their values. The three tests constitute the normal state of affairs and the normal frame of action. The practice is also justified as being well intentioned as it is aimed at preventing pre-marital sexual relations. The payment of fine is justified as a form of punishment of the girl's parents for not being able to protect her chastity, and for the boy, with whom the girl allegedly had relations before marriage, for being irresponsible enough to establish sexual relations with an unmarried girl. For the groom or his family the amount of the fine is a compensation for the violation of their right to a chaste wife/daughter-in-law. The community members argue that it is only recently that their practices are under critical scrutiny from the outside world. But with the exception of some sporadic cases, they argue that they have managed their affairs peacefully and efficiently.

Discussion with women of the community reveals that they subscribe to the practice due to its perceived antiquity, connection with their tradition and also because they do not have any other alternative besides silently accepting it. Defiance normally results in expulsion or boycott from the community or strong opposition from rather influential members of the group, which threatens their basic survival in absence of any other reliable external support. Most of the women accept this practice and the resulting injustices as their fate due to being born a woman.

Notwithstanding these justifications, it cannot be denied that these practices go against the ideology of human rights based on the autonomy of the individual and free choice of sexuality and sociability. It must also be noticed that modern law also applies to the situations that are ruled by custom, thus giving rise to situations of legal pluralism, that may or may not, according to the circumstances of each case, give the actors the freedom of 'forum shopping', of choosing to bring their issue into the forum which is most likely to further one's interest –

keeping in mind that different forums may be tried out. For example, after having been denied a decision considered as just in one forum (for example, the *panchayat* informed by custom) one then brings the case in front of the state administration whose action is informed by modern law. Other possible fora are women's associations and human rights NGOs.

Nowadays, the interactions between 'tradition' and 'modernity' are on the rise in India, with the creation of informal state institutions for the protection and the promotion of women's rights. While this increasing interaction of communities with NGOs and other national and regional bodies like the National Commission for Women or the State Women's Commissions have brought some positive results, the progress is much slower than expected. In addition to this, scepticism on behalf of the traditional communities against these informal state institutions can be observed. How, then, to move into a 'dialogical in-between'?

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resolution. For instance, in West Africa, it can be described as comprised of three levels: settlement of the conflict, reconciliation of the parties (with a view to re-establishing social harmony), and ceremony – the way to publicise the 'concord' resulting from the mediation but also to address its symbolic dimension, as it takes into account the diachronic aspect of social harmony in its significant relation to the invisible world (Mbaye 2010: 83–4).

The litigating role of post-colonial state justice and the conciliatory function of traditional justice are not mutually exclusive, Assane Mbaye (2010: 81–2) reminds us, as long as the symbolic dimension in which traditional justice is founded – that is, mediation and conciliation – is taken into account. One of the key principles in any attempt to embrace legal and normative pluralism, or more broadly to make diverse sources of social regulation interact constructively, thus calls for the knowledge and assimilation of 'underlying' values and their interpretive standards.

Still considering the dispensation of justice, the Alliance to Refound Governance in Africa advocates the institutionalisation of mediation as a move in the direction of normative pluralism towards a justice effectively providing peace and social harmony. Such a proposal relies on observation, which shows the quantitative and qualitative importance of resorting to mediation, including in cases when the offence falls under criminal law. Thus in some African countries (for example, Mali, Niger and Tanzania), state legislation incorporates in its positive law land commissions, bringing together local and national government as well as traditional and religious authorities. These land commissions have the task to resolve land conflicts ahead of state court action. We could also mention the self-appointed country watch groups in Peru, which have conflict resolution and social action roles, and for whom integration into state law is 'an ongoing process of struggles and consolidation' (Sanchez Botero and Molleda 2009).

Should the institutionalisation of mediation be divorced from the underlying values that underpin its social worth, it would become ineffective. I am very keen to stress here that asserting the pressing necessity to take into account the shared values that underpin the way a given group understands the notion of justness and social justice does not imply that I subscribe to a culturalist approach. The idea is precisely to leave behind the universalism/culturalism dichotomy by taking up a pluralist positioning founded in an intercultural approach. The idea is to move off-centre (de Sousa Santos' heterotopias, 1995–2006), to think of a universalisation built from multiple and diverse viewpoints (Ost n.d) – that is, a 'pluriverse' embodying our plural world built on the dialectic 'unity in diversity' (Eberhard 2008).

Towards a Plural Definition of the Notion of Justness: An Intercultural Approach and Hybridisation

Moving from the recognition of de facto normative pluralism to a plural approach makes for a qualitative leap and a paradigm shift. The adoption of a plural approach to the definition, elaboration and implementation of the norm, or of public action, supposes that unity is conceived of in diversity and therefore in interactions. The plurality of social spaces and of social dynamics calls into question the effectiveness of global social justice in terms of interactions. It rests less on social claims or provisions than on the dissemination of wholesale interaction processes. Preventing diversity from connoting division requires a good deal of work on shared meaning. More specifically, the latter arises not only from seeking commonalities

Box 11. 2
Between State Justice and Customary Law Mediation as a Vector of Social Justice?

In Mali 99 per cent of land-related litigation cases are resolved via social mediation, the remainder being either taken before state courts or left unresolved. This invites questions about the causes of the litigants' disaffection with the state justice system and on the dynamics at work between the 'real Mali' and the 'legal Mali'. Justice, removed from social realities and human practices, discredited and alienated from those under its jurisdiction, patently suffers from a deep crisis of confidence. It became apparent that issues of access to justice and protection of citizens' rights are not framed only in terms of infrastructure but also in terms of understanding, recognition, legitimacy and authority. These questions called for scrutiny of the way diverse values, mechanisms of conflict resolution are mobilised and affected access to justice and the protection of citizens' rights in Mali, as experienced in cases of land litigation.

The Conflict

Historically, around 1916, the village chief of Nanguila, which is about 100 kilometres from Bamako, allegedly lent his nephew a plot of land beyond the river where he and his family could live and benefit from the collective right to use the land with other Nanguila inhabitants. Later, on this lent plot of land, his nephew created the village of Gueleba. As both villages grew, a conflict linked to the farming of this plot arose first in 1936, then in 1960, in 1969, 1991 and again in 1996. Both villages claimed the right of use of the land. Gueleba villagers appointed a lawyer and the case was brought before the court in Bamako, which, following a study by the Institut d'Économie Rurale (Institute of Rural Economy), asserted that the disputed plot of land formed part of Gueleba. Proceedings instigated through the civil courts led to a judgment by the Supreme Court, which found in favour of Gueleba.

The implementation of this finding caused a conflict, as Nanguila village did not accept its validity for, they claimed, it did not take history into account. And so, at the beginning of every rainy season, the conflict started afresh and violence erupted seriously enough to require the intervention of the police to restore order. In 1996, the violence resulted in an injunction being served on Nanguila's village chief, along with 17 of his advisers. It is said that the village chief died as a result of this injunction, which he experienced as a humiliation.

Relations between the two villages had severely deteriorated. Existing marriage and blood bonds between the villages notwithstanding, the villagers no longer crossed the other village or presented condolences when there was a death. Every neighbouring village sided with one or other of the feuding villages.

The Role of Civil Society and Mediation

Alerted by paralegal professionals on the spot and with the support of one national NGO, 3 AG, the legal clinic, DEME SO, decided to offer mediation. It took the following steps: provided the communities with the contents of the Domain and Land Tenure Code; emphasised a conflict resolution approach; identified the actors in the conflict and trusted individuals, such as traditional and religious authorities, to work towards a final settlement of the conflict; sought and obtained support for its action from the traditional, administrative, legal and political authorities; devised and implemented a mediation plan; organised an official ceremony for the signature of the peace agreement; and finally set up a follow-up committee.

This committee, made up of resource persons, was created in order to agree the final details of the peace agreement, which aimed to restore good neighbourly relations. This was achieved with the presentations of condolences for the deaths that occurred during the conflict and with the resumption of farming activities as before.

Since 1998 no incident has been reported. The peace agreement achieved via social mediation that endorsed the right of the user, even though it was not established in law, prevailed over the Supreme Court's decision in favour of Gueleba commune. Meanwhile, proceedings were being introduced by writ of subpoena summoning 17 people from Nanguila commune to appear before the magistrate of Bamako's Appeal Court. In response, both communes decided to inform the court that they would settle their difference by themselves.

This case of land conflict has highlighted the pluralist dimension of laws and norms in Mali, bearing out the primacy of socially legitimised decisions over judicial legally founded ones. It would be unwise to think in polarised terms of tradition and modernity, idealising the traditional systems while diabolising the state system.

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Permanent Secretaries to the Multi-Actor Forum

but also from understanding and integrating what is at the core of the difference between the diverse actors present. Consensus does not necessarily focus only on 'universalisable' interests, but also on what makes 'us' distinct (Ost n.d.).

How, then, is one to adopt an approach seeking to grasp the other's worldview in a way that privileges the awareness of what is different in her representations? How to adopt a reasoning which helps clarify on which representations the notion of justness is grounded in the other's and in one's own worldview so as to arrive at a shared definition of the notion of justness? It is about, as François Ost advocates, thinking about both terms, in the 'particular-universal' dialectic, in order to distinguish their differences as well as their commonalities. The cross-cultural dialogue is the instrument for thinking otherness. This cross-cultural dialogue rests on three ethical demands: the non-setting of a 'particular' as ranking principle; the surpassing of any 'particular'; and as a corollary the non-assimilation or non-dilution within any 'particular' and thus the negation of any common principle, be it real or ideal. 'Difference' is the founding principle of otherness and of comparativism; this harks back to the founding postulate of anthropology.

This is less about establishing shared principles than instituting a 'we' by privileging forums whose virtue lies with connecting (in particular, helping to connect differences). This production of shared meaning arises from the insertion of these interactions in the public sphere (forums of interaction between non-state actors, including the private sector and public institutions). If social regulation evidences the effective management of pluralism at actor level, the public sphere is the forum for the expression of the differences that make us complementary. The public sphere is the setting for actors' creative freedom when their interest in bringing proceedings is aimed at satisfying a collective interest. Here, the plural approach comes into its own towards the elaboration of normativity.

The Intercultural Approach to the International Norm Regarding Human Rights: An Intercultural Methodology

On this issue of plural elaboration of the norm, and specifically that concerning human rights, IRG hs undertaken a comparative study of Africa and Latin America and Europe (forthcoming), looking at the work of international jurisdictions. It seems essential and urgent to pinpoint the processes and forums in place where such an approach is applied. International conventions regarding human rights certainly represent the 'universal' international normativity most called upon as such. The definition, implementation and institutional apparatus of international conventions in this field represent one mainstay of the theory of social justice and of the elaboration of global governance. Crucial to the understanding of the world and of the person, human rights are daily confronted by a full range of representations and cultural praxes, as well as social practices (organised or otherwise), complementary to or competing with one another. This conundrum is currently the stuff of many analyses conducted from local to global level, by non-state actors to public institutions concerned with the crucial stakes they represent in the setting up of a 'just global order', hence of a legitimate global governance. Regional human rights courts are the living laboratories where international law and social practices daily test each other. They offer rich pickings for the study of what could be termed a plural international law. In this respect, the jurisprudence developed within the Inter-American Court of Human Rights is very innovative and might concretely pave the way towards a plural elaboration of international law.

The judges' positioning as well as the jurisprudence established by the IACHR carry some considerable weight towards the potential evolution of other international courts tasked with implementing international norms concerning human rights. This partakes of and participates in an informal process of parallel structuring of the global legal order by way of the phenomenon Ost has called the 'judges' dialogue'. Although he does not underestimate the challenges presented in particular by factors of competition or 'law and forum shopping' practices, the author sees in these exchanges a dynamic that will foster a cultural 'off-centring' of the judges, enabling them to appropriate 'otherly' norms, principles, reasoning and values and thus to render decisions rooted in hybridism. It is all the more true that such dynamics also prevail, at least in Latin America, at state level, notably for the conciliation of the juridical principle of equality and the anthropological principle of diversity by constitutional courts (Sanchez Botero and Molleda 2009). Likewise, a cross-cultural expertise is being developed with a view to provide the judges with factual data and perhaps also probings leading to such case law and intellectual innovations.

Box 11.3

Towards an International Law as Founded in a Pluricultural Approach? The Inter-American Court of Human Rights

Management of Pluricultural Realities

The American Convention on Human Rights (ACHR) is executed and interpreted by the Inter-American Court of Human Rights (IACHR)[3] which is an autonomous judicial institution of the Organization of American States (OAS). In so doing, the Court has proved to be a forum for the discussion and management of the diverse cultural and normative realities coexisting in South America. In 2001 the Court reached a turning point with the Mayagna Awas Tingni case,[4] which challenged the interpretation of the Convention to take into account indigenous peoples' diverse worldviews. In this case Nicaragua had granted a foreign company a concession for timber extraction on the ancestral land of Mayagna (Sumo) Awas Tingni community. The IACHR looked to the principle laid down by the European Court of Human Rights (ECHR) whereby international human rights norms are 'living instruments'[5] to be interpreted according to the evolution of living conditions:[6] these norms must be adapted and construed according to the context in which they apply. In particular the Court must take into account the indigenous populations' right to cultural identity. The implementation of this principle has opened the inter-American juridical system to the indigenous peoples' diverse cosmovisions. The adjustment of international instruments to relevant contexts acknowledges that other social practices exist and that, as a result, the Inter-American system of Human Rights has a duty to engage with these realities. When called upon to define what a violation of indigenous peoples' rights is, it must take them into account.

The Elaboration of Plural International Law in the Field of Human Rights

The IACHR rulings regarding indigenous communities have improved intercultural understanding of human rights, enabling a finer grasp of the notion of damage according to the cultural values of a given indigenous community. Such an approach fosters the hybridisation of the normative systems drawn upon (the ACHR and local norms) by the actors involved. It reinforces the rulings of the IACHR since they correspond to a conception and a purpose of justice accepted and recognised by all concerned.

Recognition of the Collective Ownership of Ancestral Land

In the Mayagna Awas Tingni Community case, the IACHR adopted a cross-cultural approach and handed down a founding ruling whereby it confronted the challenges of taking into account multiculturalism when implementing the ACHR. This decision was the first international court ruling to enshrine indigenous peoples' collective rights to land and other natural resources. In this instance, on the basis of statements from members of the community involved and expert appraisal, the IACHR concluded that, for the indigenous people, land is considered as collective ownership for it is not concentrated in the hands of one person but in those of the group and its community. Likewise, in the Court's eyes, the nature of the relation indigenous peoples have to the land must be recognised and understood as the essential basis of their culture, spiritual life, economic survival, as well as the preservation of their identity and the transmission of their culture to generations to come.

In 2007, in the case of the Saramaka people versus Suriname,[7] the IACHR continued in this vein when asserting that the state could not authorise the development of economic projects in indigenous peoples' territories if those projects put the survival of the people concerned at risk. The Court stated that in order to assess such a risk, the state must consult the indigenous people before implementing its projects. In this way, IACHR case law contributes to the management and protection of autochthon peoples' ancestral land (Otis forthcoming).

The Influence of Native American Peoples' Worldview in the Conception of Moral Prejudice

In 2004 the IACHR set forth a conception of moral prejudice on the basis of a cultural and collective perspective in the case of 'the Plan de Sánchez massacre versus Guatemala'. In this instance the Guatemalan military massacred 268 people from the Maya Achi people. The survivors were forced to bury the incinerated bodies of the victims on the site of the crime.[8] The Court found that the fact that the community could not bury those killed according to their traditional burial rites – and subsequently had to incinerate them – was a moral prejudice.

At the time of reckoning of the damage, the Court took into account that in the Maya Achi people's tradition, rites and custom are central to community life. The community's spirituality is expressed in the close relationship between the living and the dead. It is translated, through the practice of burial rituals, into a kind of ongoing contact, of solidarity with the ancestors.

Likewise, in 2007, in the instance of the Escué Zapata versus Colombia,[9] the Court, on the strength of community members' evidence, took into consideration the importance of the relationship between the living, the dead and the land within Nasa culture for its estimation of moral prejudice. The indigenous leader, Escué Zapata, had been arrested and killed a few miles from his home, by the Colombian army, for hiding arms at his home. The soldier who witnessed the scene alleged that he was killed during shooting by the army in response to guerrilla aggression when Zapata was being arrested.

In this culture, when a child comes into the world it is as if it sprouted from the earth, remaining bound to it by the umbilical cord; and when a person dies, they must be sown in the earth. The IACHR considered that the protracted wait for the return of American Indian Zapata's mortal remains, after he was arbitrarily killed by the Columbian army, had negative spiritual and moral effects for his family and culture, and that it impacted beyond on the territory's harmony .

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For a Plural Definition of the Notion of Justness: Collective Space of Dialogue and Intercultural Dialogic

How, then, is one to define a commonality that would be neither top-down dispensed (and disconnected from what binds the individuals) nor associated with a particular community? How is a commonality to be achieved that is the result of collective will, arising from shared commitments and responsibilities? How is one to slip into this in-between, to occupy this gap necessary to communication and to action, instituting 'gathered plurality' and 'concerted action'? Indeed, how is one to enable a multiplicity which does not summon up withdrawal but is instead a real mediation of the will to act together, rather than the sum of private wills to act; a shared world rather than private worlds? How is the confusion to be avoided between the private or social sphere where the interaction between sources of legitimacy takes place, and the public sphere which is the theatre of interactions between public institutions, non-states actor and private actors, and which is the crucible of political regulation? We would do well to privilege connectivity spaces, public forums that enable the existence and intermingling of particular communities, which are not defined as joint entity but as togetherness. Thereafter the public forum can be defined as an 'instituted locus of togetherness that links the plurality of particular communities, brings lived worlds into political view and that, keeping common places in their intervals and connections, brings forth a common world' (Tassin 1991).

I prefer the notion of collective space to that of public space because the latter refers to a Western and state-centred conception of the public realm. The notion of collective space for dialogue further allows emphasis on the unknown and specific nature of the type of collective liable to result from such dialoguing dynamics. This is about capturing the analytical dimension of the phenomenon. In the wake of Christoph Eberhard and Michel Callon, Pierre Lascoumes and Yannick Barthe used the notion of a hybrid forum in which

> What is at stake for the actors is not just expressing oneself or exchanging ideas, or even making compromises; it is not only about reacting but constructing … this approach … moves from the domination of one discourse (monologue) or the juxtaposition of discourse (plurilogue) to a genuine dialogue that dares delve into the 'inter' in confrontation and probing of each other's viewpoints. (Callon et al. 2009: 39–40)

A number of precautions are to be thought through for those spaces to genuinely enter a dialogical dynamics, notably an ethics of dialogue and the processes leading to a participative elaboration of a willed togetherness, whether it comes in the shape of an international norm or a local public policy. Thus it would be fitting to privilege the implementation of intercultural dialogues at world level, evolving over time towards the participative elaboration of principles and modalities of social justice.

The setting of such processes in a long and non-linear timeframe, which allows time to build trust, and to connect mutual mindscapes is critical to their execution.

Box 11.4
Mali's Multi-Actor Forum on Governance

'A Palaver Tree to Exchange, Learn and Build'

The Multi-Actor Forum on Governance in Mali is an arena that came about in June 2008 as a result of a critical analysis exercise centred on legitimate governance. Initiated in the framework of an international, cross-disciplinary and multi-actor conference, it was sustained by the interest of three partners: the Malian government via its Commission for Institutional Development, the Alliance to Refound Governance in Africa (ARGA) and the French embassy through its Cooperation and Cultural Action Service. This partnership later opened its doors to other (public, private and civil society) national and international actors who expressed a wish to contribute to its long-term development. Analyses from a study looking through initiatives, strengths and weaknesses in the Malian governance area since the 1990s laid bare discrepancies between the official public institutions and actual practice of power by diverse actors in West Africa, and specifically in Mali. It exposed the necessity to engage in a diagnosis of the country's governance status in order to identify the points of leverage that could change mindsets and practices, and to invent new governance modalities steeped in Malian reality. The idea of an informal forum for debate and peer learning was mooted with a view to steer Malian governance actors away from reproducing existing modalities. According to founder members, such an innovative framework for the collective production of knowledge and skills was liable to inspire Mali's civil society actors and representatives of local and national administrations, as well as donors: the Multi-Actor Forum on Governance was born.

An Arena for Collective Sharing of Experience

The forum brings together some 40 permanent members reflecting, to a degree, Malian society's diversity and its international partners, including central administrations, representative and supervisory institutions, local representatives, local associations, the private sector, trade unions and professional associations, traditional and religious leaders, academics, research and training centres as well as international technical and financial partners. The forum also invites relevant guests (ten per session) to participate in debates.

As a collective arena for sharing experiences, the forum has produced a code of conduct (*charte éthique*) and a methodology founded in practice. Enriched by the diversity of perspectives, the forum systematically articulates the study of concrete cases, and broader considerations are analysed in order to better understand the current situation and devise more lateral solutions to the governance crises in Mali. Analysis can thus be made into how to mobilise and articulate current shared values and traditions to build social regulations modalities adapted to national and global challenges of governance.

Thematic debates deal with subjects as crucial for public governance as the delivery of basic public services, access to justice and citizens' rights, the electoral process, the governance of aid, the institutionalisation of local powers, and so on. The summarised debates and recommendations aimed at education centres and the media are made available online after approval by permanent forum members.

The forum seeks to establish a participative approach to achieving diagnoses on the basis of which alternative proposals for public policies are framed. With the conviction that the improvement of governance cannot be divorced from better interconnection between Malian society and its institutions, these proposals are directed at all governance actors in Mali, be they institutional, public or private. This synergy is also found in international partners' programmes, notably France, in the framework of its support to the forum and to resulting actions affecting central and local public servants. Civil society could also benefit from specific support through the funding of advocacy training activities and the organisation of awareness workshops

The forum's documents are disseminated widely to relevant actors and practitioners liable to draw inspiration from them and it is developing a communication strategy to create broad public debate on governance issues in Mali. To this end, the forum seeks to connect with local actors, including the illiterate or non-francophone who are often overlooked. The Multi-Actor Forum is thus a catalyst for the critical analysis of governance issues, used notably by the Commission for Institutional Development responsible for institutional and state reform in Mali. Through the organisation of popular forums in national languages using theatre, sketches and debates, the forum seeks to reach a range of target audiences throughout the regions in order to disseminate proposals emerging from its debates.

Néné Konaté and Elisabeth Dau,
Permanent Secretaries to the Multi-Actor Forum

Mutual familiarising and opening up demand that concepts of personal, professional, intellectual or institutional territories be left behind. This supposes repeated exercises inviting dialogue, in varied forms, around shared activities, themes and problems, but more importantly the co-elaboration of joint objectives. More than regularity or linearity, the frequency and the facilitation of the network that has thus been formed are key vectors of collective dynamics that are anything but straightforward and take many an unexpected turn.

In tune with many authors and voices, this plural approach to the definition of social justice opens up prospects and challenges equal to the complexity of our glocalised societies and to the creativity of societies. Some will see in it the perspective of democratisation of democracy, and others of a dialoguing democracy. Indeed, it is the founding paradigm of our willed togetherness united in our diversity which is at stake.

Notes

1. I would like to thank those colleagues who have contributed either directly or indirectly to this chapter and in particular Elisabeth Dau, Christoph Eberhard, Néné Konaté, Mélisa Fernandez Lopez, Assane Mbaye, Evelise Plenet and Françoise Pinteaux-Jones for the translation.
2. In reference to power, organisations and normativities defined on the basis of the primacy of the modern state law, be it national or international (interstates).
3. The IACHR was created in 1979 and has its seat in San José. Its main purpose is to arbitrate and to advise. Under the ACHR, only the IACHR or a state party can refer a case to the court. Unlike with the European Court for Human Rights, the citizens of member states are not allowed to take their case to the court directly. Individuals who believe that their rights have been violated must first lodge a complaint with the Commission, which rules on the admissibility of the claim.

   If the case is ruled admissible, and the state deemed at fault, the Commission will generally serve the state with a list of recommendations to make amends for the violation. Only if the state fails to abide by these recommendations, or if the Commission decides that the case is of particular importance or legal interest, will the case be returned to the Court.
4. *Corte I.D.H, Caso de la Comunidad Mayagna (sumo) Awas Tingni, la communauté Yakye Axa* v. *Nicaragua*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2001. Serie C No. 79.
5. This principle was established in the cases *Johnston et alia* v. *Ireland* (No 9697/82) judgement of 18 December 1986, ECHR and, *Pretty* v. *United Kingdom* (No 2346/02) judgement 29 April 2002, ECHR.
6. Opinión consultiva OC-16/99 de 1 de octubre de 1999. Serie A No. 16. párr 114. 'El Derecho a la Información sobre la Asistencia Consular en el Marco de las Garantías del Debido Proceso Legal.'
7. *Corte I.D.H Caso del Pueblo Saramaka* v. *Suriname*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 28 de Noviembre de 2007. Serie C No. 172 Voir aussi. Francisco Rivera and Karine Rinaldi, 'Pueblo Pueblo Saramaka Vs Suriname: el derecho a la supervivencia de los pueblos indigenas y tribales como pueblos [Indigenous and Tribal Peoples' Right to Survive as People]' in *Revista CEJIL* 2008.
8. *Caso masacre Plan Sánchez* v. *Guatemala*. Fondo. Sentencia del 29 de abril de 2004. Serie C No 105.
9. *Corte I.D.H. caso Escué Zapata* v. *Colombia*. Fondo, Reparaciones y Costas. Sentencia de 4 de Julio de 2007. Serie C No. 165.

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CHAPTER 12

TRANSITIONAL JUSTICE IN SIERRA LEONE

Sofia Goinhas, Sara Kendall and Alpha Sesay

Case Study 1: Community-Based Justice and Reconciliation

Sofia Goinhas

Countries emerging from civil conflict invariable face the important question of how to reconcile critical issues of justice and accountability left by the war, with the need to consolidate a peace process (Huyse and Salter 2008). A recent study (Hayner 2009: 5) identifies this as a 'peace versus justice dilemma' which arises out of 'a tension between prioritizing the end to a conflict … versus prioritizing justice and the rule of law, insisting on criminal prosecutions as a non-negotiable component of any successful peace process'.

The same study reveals that the majority of peace agreements address issues of justice and accountability in some manner and a number of judicial and non-judicial justice tools are normally used. These include criminal accountability, truth and reconciliation commissions, reparations, reform of the security and judicial sectors, disarmament, demobilisation and reintegration of ex-combatants and indigenous or community-based justice (Hayner 2009).

This case study examines the practice and consequences of community-based justice in the context of Sierra Leone's post conflict period. The civil war started in 1991 when an insurgency force called the Revolutionary United Front (RUF), led by Foday Sankoh, invaded the country from the Liberian border, with the backing of the then powerful Liberian rebel leader Charles Taylor. The RUF soon gained control of the diamond-rich mines, which enabled them to continue to fund the war.

The rebels claimed that their aim was to overthrow the government and end three decades of one-party system, bad governance, corruption and social and economic hardship for ordinary Sierra Leoneans. While there is no doubt that bad governance and marginalisation pervaded the country, the political ideology of the RUF was never clear. Nevertheless, at least at the beginning, the rebels captured the imagination of some, including marginalised young people and the rural poor.

The civil war was particularly marked by the RUF's brutal practice of amputating limbs of civilians as a terror tactic. The war also displaced thousands of people, many children were forced into fighting and it is estimated that two thirds of Sierra Leonean women were raped during the war. Most of the violence took place in the rural areas of Sierra Leone and this also where many of the scars still remain.

Since the end of the conflict in 2002, Sierra Leone has used a combination of the above mentioned tools to structure its transitional justice and reconciliation process. These tools have been used by the government of Sierra Leone with the support of the international community. The country has found itself in the unique position of creating both a Truth and Reconciliation Commission and a Special Court. It has also undergone a process of disarmament, demobilisation and reintegration (DDR) of ex-combatants and a reform of the security and justice sectors. The Lomé Peace Agreement, signed in 1999 (Sierra-Leone Web), provided the framework for the transition in a process that involved the international community, Sierra Leonean political leadership, traditional leaders and civil society.

Initially the so-called 'peace versus justice' dilemma swayed firmly in favour of consolidating peace. In the interest of national reconciliation, the Lomé agreement granted rebel leader Foday Sankoh and all combatants and collaborators absolute and free pardon. It also granted the RUF a share of the power in the new government, with Sankoh as Vice President as well as chairman of a commission with clear powers to regulate the country's diamonds. This power-sharing agreement, in which the rebels got four ministerial posts, created a lot of anger and frustration among Sierra Leoneans. Many believe that peace would not have been possible without an amnesty at the time (Hayner 2007). But civil society and UN officials argued against an amnesty; as Hayner explains, civil society's focus was on the creation of a Truth, Justice and Reconciliation Commission, mandated to subsequently make recommendations regarding prosecutions. When the behaviour of the rebels led to a near breakdown of peace in 2000, two more agreements were signed in Abuja and peace finally arrived in 2002.

Article XXV1 of the Lomé Peace Agreement asked for the creation of a Truth and Reconciliation Commission (TRC) to:

address impunity, break the cycle of violence, provide a forum for both victims and perpetrators of human rights to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation. (Sierra-Leone Web)

The TRC was mandated to create 'an impartial, historical record of the conflict', 'address impunity; respond to the needs of victims; promote healing and reconciliation; and prevent a repetition of the violations and abuses suffered' (TRC 2004: 24–5). Unlike the South African TRC, there was no language making an amnesty conditional to cooperation with the TRC. The agreement also foresaw the creation of a Special Fund for War Victims and later the TRC recommended the creation of a reparations programme. The TRC heard more than 9,000 statements, with hearings were held throughout the country as well as broad consultations with civil society.

The report was released in 2005 and it contains a historic record of the violations and recommendations for the future. Four years later, the government of Sierra Leone has not yet fully implemented the recommendations and the reparations programme has been severely delayed.

After the rebels disrupted the peace process and Sankoh was arrested, judicial accountability was now seen as necessary (Hayner 2007).[1] In 2002 a Special Court for Sierra Leone was created through an agreement between the government of Sierra Leone and the UN. The Special Court was established to try those who bear the greatest responsibility for war crimes and crimes against humanity committed during the civil war. The Court indicted 13 individuals both from the rebels and government-affiliated forces. Three of them have died; a fourth one has disappeared, believed dead. The remaining have been put on trial and prosecuted, while Charles Taylor is still on trial in The Hague.

Arguments have surfaced regarding the appropriateness and effectiveness of some of these tools. The Special Court has been a very expensive measure, which only brought to justice a limited number of individuals. Many Sierra Leoneans will think that those who bear the greatest responsibility for the atrocities have not been brought to justice. The TRC was an important step in the national reconciliation process but the follow up has been less than ideal. Victims remain without compensation, whereas 70,000 ex-combatants were seen to be rewarded for their wrongdoing through the DDR process.

Despite criticism, these have been important elements in the country's transitional justice and reconciliation process, put in place to address immediate criminal accountability and national reconciliation issues as well as providing longer-term solutions to Sierra Leone's justice and security sectors. But the war affected mostly the rural communities, where ordinary Sierra Leoneans have been left to confront the legacy of the war on a daily basis. Promoting reconciliation and resolving conflict at the community level should have been a much stronger element in consolidating peace in Sierra Leone. It is at this level that families have been broken, in which grievances and deep resentments festered, where social hierarchies were disrupted and even reversed, and so many were left traumatised.

Here, community-based justice could have played a very significant role, as almost 80 per cent of the population relies on traditional (chieftaincy-based) systems of justice and reconciliation. To a certain extent, the TRC involved traditional, civil society, and religious leaders in truth-seeking and national reconciliation processes and included rites of forgiveness in the process. The Act that created the TRC also gave the Commission the possibility 'to seek assistance from traditional and religious leaders to facilitate public sessions and in resolving conflicts' (Truth and Reconciliation Commission Act 2000: 7.2). But this has not translated into a meaningful process.

The aim in traditional or indigenous justice and reconciliation is respectively 'to establish the truth without fear or favour after allowing each party to express themselves' and to reunite 'groups or parties who have been fractured as a result of conflict' (Alie 2008: 133). This process is community-centred and underpinned by values of transparency, impartiality and fairness. Justice and reconciliation are inseparable. The ceremonies involve rituals such as cleansing ceremonies, songs and dance. The end result may also involve some kind of reparation to the aggrieved party.

Community-based justice and reconciliation continues to play a major role in conflict transformation in Sierra Leonean communities. As mentioned earlier the majority of Sierra Leoneans rely on it. As Alie (2008) describes, in Sierra Leone traditional justice and reconciliation involves a plethora of actors such chiefdom administrations, local courts, tribal headmen, community and religious leaders and diviners. While normally headed by men, woman are sometimes represented but overall the system is not beneficial to women, and young people are not

considered mature enough to be involved in dispensing this kind of justice.[2]

The importance of functioning alternative conflict resolution mechanisms in post-conflict Sierra Leone that can complement the still weak justice system was clearly outlined in December 2007, when the United Nations Peacebuilding Commission and the government of Sierra Leone adopted the Peacebuilding Cooperation Framework, a joint commitment to address the challenges and threats most critical to consolidating peace. The framework acknowledges that despite some progress made in the re-establishing of judicial institutions throughout the country, lack of access to justice for the majority of the population, coupled with lack of capacity in the judicial system, remain serious concerns for peace and stability. The framework highlights the need to intensify measures to raise the population's confidence in the justice system and to ensure timely and equal access to justice and considers the support for traditional and unofficial dispute mechanisms and community-based mediation and 'peace-monitoring' initiatives to be critical.

However, the war severely damaged the social fabric of the country and this had serious consequences for these indigenous institutions, which were already marred by distrust. Traditional chiefs were targeted by the rebels as they were seen as being part of the unfair and corrupt status quo that prevailed in the country for 30 years. While many elders fled the war, youths stayed behind and got involved in fighting as well as in the atrocities committed. As the war ended, many youths were left unemployed, unwilling to relinquish power and further marginalised by their own communities.

As with the country's justice and security sectors, the traditional chieftaincy-based system also needs reforming. Given the decades of poor governance and the disruption created by the war, it is easy to understand why community-based justice and reconciliation was not in a position to contribute meaningfully to Sierra Leone's national reconciliation process[3] (Campaign for Good Governance, Sierra Leone 2009). As a result, conflict and tension continued to prevail with no genuine opportunities for resolution and reconciliation at the community level. It is in this scenario that Sierra Leone's national reconciliation process has been quietly enriched by a civil society initiative which has helped deliver justice directly, on a daily basis and at the core of the communities that were the most affected by the war. In Sierra Leone, civil society took justice and reconciliation in its own hands.

The Bo Peace and Reconciliation Movement (BPRM)

> To improve the political, social and economic well-being of people and to reduce the negative impact of conflict on communities in Sierra Leone by contributing directly to reconciliation processes, peace building, conflict transformation.
>
> BPRM 2009

In 1996 while the war was still raging, Conciliation Resources (CR) was invited to travel to the southern region of Sierra Leone to observe how civil society groups were involved in engaging with the RUF rebels to encourage their demobilisation and reintegration.

CR, an independent charity with more than 15 years' experience working with people affected by war and conflict around the world, works in partnership with local and international civil society groups to prevent violence, promote justice and build lasting peace in war torn societies.

CR's experience in southern Sierra Leone highlighted the importance of involving local organisations in peace-building efforts and led to the first training workshop on contemporary conflict resolution methods for local organisations. This, in turn, inspired nine civil society groups[4] to create a voluntary community-based peace-building organisation, the Bo Peace and Reconciliation Movement.

Their aim was to develop a new approach to conflict transformation and reconciliation that could serve their traumatised and aggrieved communities, in response to the deficient justice and reconciliation systems in the country. BPRM wanted to unravel the deep resentment and simmering conflicts left by the war as well as help reintegrate ex-combatants into their communities. Equipped with the new skills, they developed a methodology that combines both conventional and traditional methods of reconciliation and conflict transformation. In practice this means that the process includes the use of such tools as well as carrying out ceremonies from traditional justice and reconciliation rituals. In this way, BPRM combines its knowledge of conflict transformation with a deep understanding of their own societies' social and cultural practices, which enables them to fully engage with the communities.

The foundation of their methodology is the use of Peace Monitors, who are highly respected individuals in communities and seen as sensitive and unbiased intermediaries. Trained in methods of conflict transformation, justice and human rights, which are then combined with local

traditional approaches to justice and reconciliation, Peace Monitors are able to intervene in disputes and negotiate peaceful solutions. The parties and community members are encouraged to analyse the causes, consequences and solutions to the conflict and involve methods such as, for example, role-play and conflict mapping, as well as to conduct traditional ceremonies (for example, a libation ceremony to appease the Gods). No fees are taken or fines issued. As a rule, BPRM only enters a situation if both parties/communities and their traditional leaders agree to their intervention. Peace Monitors are always carefully chosen to ensure they mirror the parties/community social composition (similar age, sex, political standing and sometimes religious affiliation). This encourages a connection between the peacemakers and the conflict parties and instils confidence. The approach also prioritises the inclusion of marginalized groups, such as women and young people in the conflict transformation processes. The processes can take weeks or even months, depending on the nature of the dispute.

Another key element of their approach is focused on making the process sustainable. After BPRM is asked to intervene, the Peace Monitors then identify and train community members as Volunteer Peace Monitors (VPMs). Through building networks of community Volunteer Peace Monitors in rural communities, BPRM is able to mobilise people to seek justice in situations where formal justice is not accessible. The VPMs help settle disputes between people and groups, identify early warning signs of conflicts and do public education, advocacy, conduct public awareness campaigns and transmit peace and human rights messages. As with the Peace Monitors, the VPMs are chosen to represent adequately the different constituencies in their own communities. Since 1996, over 300 VPMs have been trained by BPRM in the communities in southern Sierra Leone.

BPRM then supports the VPMs to form Chiefdom Peace and Reconciliation Committees, which are permanent structures that continue to support their communities to resolve new disputes and maintain peace. In order to ensure the sustainability of these committees and maintain the voluntary nature of the approach, BPRM also provides skills training to encourage income-generating activities in the communities. There has been a strong emphasis on mainstreaming gender in this approach, and today, 37 per cent of Peace Monitors are women and 50 per cent of the Chiefdom Peace and Reconciliation Committee members are also women.

BPRM's home-grown initiative has enabled community members to see themselves as peace makers, with BPRM facilitating the process and giving technical assistance to ensure success, credibility and sustainability. BPRM allows the people to own the process by involving them in all aspects.

Today BPRM is a national NGO with twelve years of experience in community-based conflict transformation. It has recently changed its name to Peace and Reconciliation Movement, Sierra Leone (PRM SL). Every year PRM SL responds to over 200 conflicts, which have evolved from war-related grievances to now include domestic violence, gender-based violence, land cases, organisational and community conflict and chieftaincy conflicts in 30 chiefdoms, including the reintegration of many ex-combatants into their communities, in three districts of southern Sierra Leone. Over 80 per cent of the cases were amicably resolved, with some referred to appropriate authorities. It has gained recognition by authorities at local and national levels and established links with local and state actors such as chiefdom administrations, police, local councils, district and provincial security committees. In 2007, Conciliation Resources helped PRM SL build a permanent structure to house the organisation in its home town of Bo, southern Sierra Leone.

Notes

1. While the creation of the Court was initially justified by the UN disclaimer, it proved to be of no legal value and the SCSL determined that the domestic amnesty granted in the agreement had no effect in relation to the Court (Hayner 2007).
2. Sierra Leone introduced chiefdom administration (Native Administration) in 1937. The chiefdoms are divided into sections, towns and villages. The overall administrative leader is the paramount chief and he and his subordinates are responsible for justice, law and order and are also custodians of the traditions and customs of the people. Paramount chiefs are elected for life and can only be deposed by the President of Sierra Leone. In 1963 the system was changed and traditional authorities no longer preside over court cases and their jurisdiction is limited to minor civil cases (Alie 2008).
3. A recent study reveals that chiefdom governance has been identified as a major issue for community members participating in conflict transformation sessions. Despite the challenges, most ordinary Sierra Leoneans want to see the chieftaincy system reformed, not abolished (Campaign for Good Governance, Sierra Leone 2009).
4. The Amputees Dependent Association, the Drivers Union, Ex-combatants Association, the Jaima-Bongo Descendants Association, the Sierra Leone Awareness Movement, the Muslim Youth Movement, the Sierra Leone Red Cross, the Teachers' Union and the Petty Traders Union.

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Box 12.1
PRM SL's Approach

Pre-visit

- Collect information/facts about the conflict
- Identify stakeholders
- Make appointment, verbal and written, for a reconciliation meeting date and place

Reconciliation Meeting

- Analyse conflict using contemporary conflict analysis tools such as, for example, a conflict tree (root cause of conflict, stakeholders' views, differences in ideas, common ground, the level of conflict and potentials of the conflict)
- Mediation process
- Win-win method (no pronouncement of wrong on either side but rather lead conflicting parties to realise their faults and mistakes and reach a common understanding)
- Counselling
- Facilitation

Libation Ceremony

- To appease gods of the land as a traditional rite
- Sacrifice of lamb and prayers
- Eating and dancing (traditional dance)
- Disputing parties interact and even ask for forgiveness where necessary according to indigenous justice and reconciliation traditions

Training

- Conflict analysis tools
- Characteristics of peace monitors or volunteer peace monitors
- Human rights and gender issues
- Limitations of the approach
- Roles and responsibilities of volunteer peace monitors
- Limitations of volunteer peace monitors
- Community interaction

Formation of Chiefdom Peace and Reconciliation Committee (CPRC)

- Chiefs and elders appoint members of CPRC Committee
- Equipped with the new skills, the CPRC is charged with the responsibility to resolve conflict in their communities amicably and report on their activity to BPRM monthly

Follow-up Visits

- PRM staff makes follow-up visits to monitor and maintain peace
- Referred cases are taken to the police station
- Successes and failures of peace monitors and their constraints are looked at

Source: http://www.c-r.org/our-work/west-africa/building-paths/index.php

Case Study 2: Seeing Justice Done: Outreach and Civil Society at the Special Court for Sierra Leone

Sara Kendall and Alpha Sesay

Well into its third phase of institutional activity (Teitel 2003), the field of transitional justice has grown increasingly self-reflexive about its audience and its objectives. It is now common for transitional justice proponents to claim that justice must not only be done but must also 'be seen to be done'. Responding to this imperative to make their work more visible, international criminal tribunals have attempted to directly engage with the people of the regions where mass atrocities occurred. Outreach programmes are increasingly common features of third-generation tribunals such as the Special Court for Sierra Leone. This was the first internationalised criminal tribunal to develop a dedicated outreach section, the Office of Outreach and Public Affairs. The Extraordinary Chambers in the Courts of Cambodia (ECCC) followed with an outreach programme in its public affairs section, and The Hague-based Special Tribunal for Lebanon (STL) established an outreach office in Lebanon. These institutions often turn to local sources of knowledge to offset linguistic barriers, cultural differences, and physical distance from trial proceedings. Outreach units have partnered with international and domestic non-governmental organisations to benefit from their existing connections with local populations. These collaborative relationships between post-conflict courts and civil society organisations appear to reflect an emerging global civil society (Glasius 2009). They also raise questions about where the work of retrospective legal institutions should begin and end while revealing the limits and possibilities of donor-driven criminal justice.

As the first internationalised criminal tribunal to develop its own outreach section, the Special Court for Sierra Leone (SCSL) offers an important case study of tribunal outreach and its relationship to civil society. From its conception the Special Court had consciously attempted to distinguish itself from its institutional predecessors. Unlike the international criminal tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY), for example, the Special Court was deliberately located in the country where the conflict took place. The Court has often been referred to as a 'hybrid' form of post-conflict justice because it included national elements in its work, such as a statute that empowers it to apply both Sierra Leonean and international criminal law and through mixed personnel from Sierra Leone and abroad.[1] Unlike the ICTR and the ICTY, the Special Court established a dedicated outreach section within its registry that began operations shortly after the first indictments were issued in 2003. This case study briefly describes the Court's establishment before analysing the role of civil society organisations in its outreach efforts.

The Special Court for Sierra Leone

Following a decade of conflict in the 1990s, the government of Sierra Leone requested United Nations assistance in holding individuals accountable for the crimes that had been committed in its territory. The Special Court for Sierra Leone was established in 2002 through a treaty between the United Nations and the government of Sierra Leone. It was given a limited mandate to prosecute 'those bearing the greatest responsibility' for crimes under international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone from 1996 to the declared end of hostilities in 2002. In keeping with this limited mandate, the Court's first prosecutor only indicted a total of 13 individuals from different factions of the conflict. Two indictees died in Court custody, a third was believed to have died before the Court could locate and try him, and the whereabouts of a fourth remains unknown. Thus eight individuals appeared in three combined trials in Sierra Leone's capital, Freetown, and as of the time of writing the trial against former Liberian president Charles Taylor continues in The Hague.

Two Special Court trial chambers convicted these eight alleged commanders of the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC), and the Civil Defence Forces (CDF) on a number of counts, including crimes against humanity, war crimes, and other serious violations of international criminal law. Most of the charges were upheld on appeal with some variations in sentencing. The Court has broken new legal ground by successfully prosecuting novel crimes under international humanitarian law such as the use of child soldiers, forced marriage, and the first prosecution of attacks against UN peacekeepers. Its Appeals Chamber has further addressed the controversial mode of liability known as 'joint criminal enterprise' that emerged from the jurisprudence of the UN ad hoc tribunal for the former Yugoslavia.

Whilst providing a new body of legal decisions to be analysed by the growing professional field of international criminal lawyers, the Court's work has also produced a number of challenges for domestic outreach. For

example, the original Prosecutor's decision to indict members of the pro-government Civil Defence Forces, including its now-deceased leader, Sam Hinga Norman, a sitting minister at the time, was considered controversial by a significant part of the Sierra Leonean public who regarded Norman as a war hero. The role of former Sierra Leonean President Kabbah in relation to the Court was another source of confusion. The former President had requested the Court's establishment in order to prosecute rebel forces, and Norman had served as his own Deputy Defence Minister. Some critics felt that if Norman was indicted, Kabbah should have been indicted as well. Other Sierra Leoneans were concerned that many notorious rebel commanders had not been indicted and were moving freely in Sierra Leone, and some people thought that soldiers from the West African intervention force known as ECOMOG should have been indicted as well for failing to follow the laws of armed conflict.[2] The Court's relationship with the Sierra Leone Truth and Reconciliation Commission (TRC), which was operating simultaneously during 2003, also produced challenges for court outreach, particularly regarding perceptions that the TRC might turn over information to the Court (Boister 2004, Dougherty 2004). Some scholars have suggested that this may have deterred some combatants from testifying at the TRC and thus jeopardised the integrity of its historical record.

In addition to confronting the domestic political issues raised by the indictments, the Court faced a number of logistical challenges in bringing its work to the people of Sierra Leone and the West African region. Accessing the Court required entering an inhospitable compound surrounded by barbed wire and armed guards, and this alone may have deterred some members of the Sierra Leonean public from entering. Apart from days when high profile testimony was heard, the crowd in the Court's public gallery was often thin to nonexistent. Outreach teams working outside Freetown had to contend with challenging road conditions and unreliable power supplies when airing video summaries of Court proceedings, and much of the Sierra Leonean population was unable to use the Court website due to unreliable and expensive internet access. Nevertheless, the Court has made commendable efforts to engage with the population of the West African region through its Office of Outreach and Public Affairs and through collaborating with civil society actors. Public opinion surveys conducted by the BBC and the Court itself have indicated a high level of regional support for the Court's work.

Special Court Outreach Operations

The outreach section of the Special Court for Sierra Leone describes its central objective as 'bringing the work of the Court to the public' (Special Court 2009). The current Outreach Coordinator understands the role of his section to entail communicating with the people of the region in order to link them to Court operations (Sesay 2010). The section initially focussed its attention on engaging with victims and ex-combatants within Sierra Leone. It has since broadened its focus to include educating the people of the region about the rule of law and human rights. The Court employed district outreach officers in each district of Sierra Leone, and their activities included running town hall-style meetings, airing video summaries of trial proceedings, facilitating school visits to the Court compound, participating in radio programmes, and offering public lectures on the Court's work. The outreach section also produced printed material on the Court's legal background, such as a publication in Krio – Sierra Leone's lingua franca – explaining the basics of international humanitarian law and the process of the Court. In addition to employing staff in each district of Sierra Leone, the outreach section has also forged partnerships with civil society groups, media organisations, and international agencies.

From its inception the outreach section focused on issues of legacy, including knowledge transfer to local bodies such as the judiciary, the police, and the military. It has formed partnerships with civil society organisations to help facilitate rule of law projects and domestic capacity building. As the outreach section does not receive funding from the Court's general budget, it has had to rely on external funding that came primarily from the European Commission and the MacArthur Foundation.

Civil Society Activities

As the first dedicated outreach section established in an international tribunal, the Special Court for Sierra Leone had to draw from the prior experience and connections of civil society groups to engage with the local population. Civil society organisations disseminated general information about the Court's work, advocated for specific groups such as war-affected children and women, and helped facilitate trainings of government employees at prisons and courts in rule of law issues. The following account of these Special Court-civil society

partnerships is by no means exhaustive, particularly as NGOs have continued to proliferate in Sierra Leone, but it does give a general sense of which outreach objectives been most widely addressed.

Strengthening the rule of law was one of the main objectives of Court outreach. In the early stages of Court operations the Sierra Leone branch of No Peace Without Justice created a lawyer's guide to the Court and collated official Court documents. The Sierra Leone Court Monitoring Programme (SLCMP) was established by the Freetown-based Coalition for Justice and Accountability and the New York-based International Center for Transitional Justice. It has since changed its name to the Centre for Accountability and Rule of Law to reflect the expansion of its work beyond monitoring activities to a broader interest in domestic judicial reform and human rights initiatives. The outreach section also trained local government councils and the domestic judiciary in topics related to international humanitarian law, fair trial rights and women's rights.

Court outreach also partnered with local civil society groups to advocate for vulnerable populations within Sierra Leone. It worked with child advocacy groups to address how war-affected children perceived issues of justice and the work of the Special Court. It partnered with women's advocacy organisations such as the Sierra Leone Market Women's Association to develop regional seminars on the work of the Court and transitional justice more broadly; and it collaborated with Prison Watch, a local civil society group, to provide training for all prison officers in Sierra Leone.

Domestic capacity building has been another substantive concern of the outreach section. The Court worked to develop 'Accountability Now' Clubs amongst post-secondary and university students to provide a forum for discussing transitional justice and human rights. These clubs have since been mobilised to support the work of Sierra Leone's Anti-Corruption Commission. Civil society groups are also closely involved with the Court's Legacy Working Group, and they can participate in an interactive forum once a month with representatives from the branches of the Court. Civil society organisations appear to have developed a symbiotic relationship with the Court, which draws upon existing civil society networks for more refined knowledge of target populations and existing lines of communication, whilst civil society groups benefit from the greater visibility and access to resources that the Court's work affords them.

The Taylor Trial

Outreach efforts shifted substantially following the apprehension of former Liberian president Charles Taylor in 2006. On the one hand, Taylor's arrest and transfer brought a renewed international interest in the work of the Special Court. On the other hand, the decision to try Taylor outside of Sierra Leone presented a new set of challenges to Court outreach in its efforts to engage the people of the region. Taylor's transfer to the premises of the International Criminal Court in The Hague for security reasons was not without controversy, and a coalition of domestic civil society groups filed an amicus brief contesting the removal of the trial from the Court's base in Freetown. A UN resolution requested that the Court 'make the trial proceedings accessible to the people of the subregion' (UNSC 2006), and the Court responded by developing a number of initiatives that sought to connect with the people of Sierra Leone and Liberia.

Following Charles Taylor's arrest and transfer, the outreach section visited Liberia to gather information on perceptions of the Court. Liberian civil society organisations also travelled to Sierra Leone in 2006 for training with their Sierra Leonean counterparts in an experience-sharing seminar. The Court instituted an Outreach Secretariat of Liberia (OSEL) with a head office in Monrovia, and it forged connections with a broad network of Liberian civil society organisations. The Court outreach section has facilitated trips to The Hague for civil society members from Sierra Leone and Liberia who want to view the Taylor trial. Support from the BBC World Service Trust and the civil society organisation Search for Common Ground enabled local media to travel to The Hague to cover the trial for a few weeks at a time. In Liberia, inhabitants of different districts viewed tapes of the Taylor trial and were invited to discuss the contents of the tapes and share personal views.

The proceedings were broadcasted at the Special Court premises in Freetown, but these transmissions were discontinued after it became clear that too few people were attending. The Open Society Justice Initiative maintains a website with daily trial updates and a forum for viewer comments which has fostered a lively debate amongst viewers from the West African region. Accessing the Internet is often difficult and expensive for people in the region, however, and some of the regular contributors appear to be Taylor supporters who use the forum to advance their political positions. Recent interviews conducted in Freetown indicated that Sierra Leoneans' interest in the proceedings at the Special Court appeared

to be waning (Sesay 2009–10). This declining interest may be a consequence of the length of the Taylor trial, which is well into its second year. Legal technicalities of the trial process, including procedural delays, lengthy direct and cross-examinations, and legal issues that emerge during the course of the trial have made it difficult to maintain the attention of the general population.

Conclusion

The process of making justice more visible is beset by a number of challenges, including trial fatigue, funding constraints, and competing visions of what court outreach should entail in practice. Outreach staff and NGOs field many questions unrelated to the work of the Special Court, particularly involving victim compensation and development (Chatham House 2007). The Court's own work is beset by tensions between its legal mandate to punish a small number of individuals for specific crimes and its social responsibility to develop the rule of law in the West African region. As a retrospective legal institution, the Court is also expected to have a forward-looking pedagogical purpose by many of its proponents.

Confusion regarding the extent of the Court's capacities is reflected in its own literature. An annual report issued by the Special Court describes the mission of the Outreach section as 'educating Sierra Leoneans on the rule of law' (Special Court n.d.). In a recent interview, however, the Outreach Coordinator attributed some of the challenges faced by his section to a 'lack of education about the rule of law and justice in Sierra Leone' (Sesay 2010). This seems to suggest a circular problem: if not the Court, then who should be providing this education?

A 2008 analysis by the Kings College of London War Crimes Research Group concluded that 'whilst the Court has implemented an extensive and ambitious outreach programme and has taken concrete steps to ensure its legacy, the reality falls short of expectations' (Kerr and Lincoln 2008). It may prove overly optimistic to expect such a financially constrained, legally limited body to serve as the locus for transitional justice initiatives in West Africa. Nevertheless, the Special Court has done more than its institutional predecessors to foster civil society networks in Sierra Leone and Liberia, and the interest it has generated within the international donor community may help to produce funding for other organisations with deeper connections in the region.

Notes

1. The extent to which the Court has actually lived up to this 'hybrid' designation as a matter of law remains debatable. Despite its presence in the Court Statute, no Sierra Leonean law was actually employed in the indictments (Kendall 2010).
2. In particular, Mike Lamin, Gibril Massaquoi, Staff Alhaji and the RUF commander known as 'Savage' have been mentioned as deserving prosecution. Many people also thought that the ECOMOG commander known as 'Evil Spirit', who was known for summary executions of perceived rebels, should have been brought to account for his actions.

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CHAPTER 13

GLOBAL CIVIL SOCIETY AND TRANSITIONAL JUSTICE[1]

Iavor Rangelov and Ruti Teitel

Introduction

In 1991, at the time of the Soviet collapse and following the Latin American transitions to democracy in the 1980s, Teitel coined the term 'transitional justice' to account for the self-conscious construction of a distinctive conception of justice associated with periods of radical political change on the heels of past oppressive rule (Luban 2006). Such political change was strongly associated with state-building and post-conflict transition, although, as Hannah Arendt and others have noted, even at Nuremberg a sense of reckoning with humanity itself was present. A more global aspiration of accountability became submerged in the focus on regime change and constitutional (re) construction. At that time, the foundational debates associated with transitional justice's modern beginnings almost exclusively referred to state actors, institutions and purposes (Teitel 2000).

These debates were seen as somewhat zero-sum in a framework centred on punishment and impunity, reflecting the role of the state that loomed large in all of these questions. The related modalities of transitional justice involved retributive, investigatory and reparatory processes and often elaborated various administrative and constitutional conditions and qualifications. In such periods, it became clear that the law operates differently than in ordinary times, and that justice-seeking would hardly conform to an ideal fitting for a steady-state legitimate regime.

Since these early debates, the field has developed to include a broader array of actors, institutions, and purposes – beyond the state and its exercise of punitive power. As other actors began to recognise their aims and advanced alternative understandings of legitimacy, this inevitably shifted the terms of the evolving debates about justice and broadened the potential bases for legitimacy. At present, given changes in background conditions such as the post-Cold War moment and other political fragmentation associated with late unfoldings of decolonisation and globalisation, these issues are conceived and debated differently. Today, global accountability is present, front and centre, and transitional justice manifests itself frequently if not predominantly in situations other than regime transformation and constitutional (re)construction. We are in what might be called the 'global phase' of transitional justice.

The globalisation of transitional justice and its emergence as a separate field of academic study have been accompanied by growing scholarly interest in the role of civil society in transitional justice processes around the world. Nevertheless, the literature on civil society and transitional justice remains rather limited in its focus and scope. On the one hand, a number of scholars have examined the role of civil society in the proliferation of justice norms and institutions at the international level and the politics of international justice in the societies to which it has been addressed (Glasius 2006, Hill 2008, Allen 2006, Haslam 2007, Peskin and Boduszynski 2003). On the other hand, there is a body of literature that comprises national case studies and theoretical explorations of civil society and transitional justice in relation to the state (Brysk 1994, Crocker 2000, Backer 2003). By contrast, this contribution seeks to analyse global civil society and its role in transitional justice by placing the multiplicity of actors, discourses and structures, which constitute the field of transitional justice, in their increasingly globalised context.

Transitional Justice Globalised

The first dimension associated with the global phase of transitional justice is the move from exceptional transitional responses to what might be characterised as a normalised or entrenched justice seeking, now increasingly disassociated from the politics of transition and linked to periods of conflict, whether past or ongoing. This can be seen at the United Nations in the expanded focus on justice beyond periods of transition (United Nations 2004), as relating to a moment where there is a sense of perpetual transition and justice seeking becomes generalised and entrenched. The normalisation of transitional justice is reflected in the interrogation or blurring distinctions between conflict and post-conflict, state and non-state, and global and local; that is, the overlapping regimes of

war and peace historically associated with international/national jurisdiction. One can see evidence of this normalisation of transitional justice in the increasing turn to law in the regulation of violence not merely ex post but also ex ante in societies facing a threat of pervasive use of violence, and in the shifting and adapting relationship between ongoing violence and law that can be traced from the Balkans in the early 1990s to current debates about the local significance of transitional justice in Afghanistan.

Almost two decades after the first round of modern transitions following communist collapse and junta rule, recent years have seen an apparent revival and expansion of transitional justice throughout the world addressing earlier situations, such as the trial of former President Alberto Fujimori in Peru, and a revival of postponed justice-seeking efforts in a large number of countries, for example, Argentina's reopening of three-decades old crimes against humanity trials (Corte Suprema de Justicia 2005) and related debates underway in Brazil. Other instances of rather belated responses include the prosecutions policies in Morocco and Cambodia, convened more than 30 years after the end of the Khmer Rouge regime to prosecute the surviving Pol Pot regime leaders responsible for the atrocities in the Khmer Rouge's killing fields. Moreover, non-criminal processes and institutions such as truth commissions are also proliferating in the pursuit of ways and means to deal with long-standing conflict, from East Timor to Liberia, or to address long-simmering divisions such as South Korea's Truth and Reconciliation Commission

Just how *global* is the trend? To what extent does the phenomenon reflect 'Western exceptionalism'? On its face it may well appear that the action always seems to be elsewhere, and that the major actors on the world scene, like the United States and United Kingdom, have not had to account for their actions whether historically or in the 'war on terror'.

Yet, there are other layers to these differences, for one can also see that there are no monolithic blocs – that is, at present the West is divided in its approach to transitional justice: while the US has historically supported ad hoc tribunals and truth commissions connected to particular historical events and conflicts (such as Nuremberg and the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, among others) other actors, such as the EU and member states, have tended to support other institutions and mechanisms predicated upon international law and society more directly, such as the International Criminal Court (ICC).

However, these differences can be overstated. Another perspective on this is that all of these developments, whether conceived in or characterised as exceptional/contextual versus universal/international law terms have a clear politics. And here we can see the picture is blurry from a North/South or West/East perspective: for example, where European countries have engaged in conflicts grounded in universality, on a closer look we find these are based also on more particular, even political dimensions, as for instance with Pinochet, where all involved have close historical and cultural ties to the relevant states and actors. Conversely, in regards to internationalism it might be worth reconsidering US relations to international law and institutions, as it has certainly worked with the ICC regarding Darfur, and whatever the breakdown today, more along various geopolitical bases, because non-signatories include China, Russia, India and much of Asia, all of which raises questions regarding the politics of transitional justice as it is being reconceptualised from a global perspective.

The second dimension of the current stage of transitional justice refers to the growing variety of actors, beyond the state, who are agents in the globalisation of transitional justice. These actors include multilaterals and regional actors such as the United Nations and the European Union and suggest an ongoing entrenchment of the work of transitional justice in a number of institutions as part of commitment to the rule of law (United Nations 2004), as well as sub-national and transnational entities including but not limited to civil society. While the role of global civil society is discussed at length below, here it is important to note that this globalising dimension pertains to the change from conceiving transitional justice in terms of traditional state-centric obligations to a broader array of interests and non-state actors whether in the role of perpetrators, victims or advocates. This dimension is associated with broader global processes such as the rise of the private sector, the weak state phenomenon, the post-Cold War moment and the unfoldings of decolonisation over the past decades.

In light of these important dimensions of change one can see that there is an added transformation: namely, that these various actors have diverse interests and aims at stake in transitional justice and yet they adopt a largely judicialised discourse. One can see that these transitional justice processes, previously conceived as occurring within the 'black box' of the state, now

involve deliberations which appear porous and subject to influence by entrenched international norms and by established regional bodies, such as the European Court of Human Rights and the Inter-American Court of Human Rights. Furthermore, there is a steady trend towards the dedication of institutions to individualised accountability but also to more generalised truth-seeking and the restoration of the rule of law. Beyond the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, another symbol of the regularisation of law as a mechanism in politics is the permanent ICC, a new institution, which despite its intended universal ambitions has been deployed so far only in the context of ongoing conflicts and abuses in Africa.

In addition to the ICC, other forms of transnational courts dealing in transitional justice include 'hybrid' bodies such as those in Sierra Leone, Kosovo and Lebanon. There continues to be interest in institutions of judgement, for example, tribunals, but unlike the twentieth-century archetypes, which were clearly enmeshed with the project of the modern state, at present, these are more likely to involve a transnational dimension, relating to a geopolitical balance of power; for example, the Extraordinary Chambers in the Courts of Cambodia (ECCC), a mixed national-international body convened to prosecute the remaining surviving Pol Pot regime which while convened domestically depends upon significant assistance from abroad. Another example is the War Crimes Chamber in Bosnia and Herzegovina which has been evolving from a hybrid to a domestic court (Ivanišević 2008); and the trial of Charles Taylor, prosecuted not in Liberia but instead as part of the Special Court for Sierra Leone, on the premises of the ICC in The Hague – and with a truth commission in the US, home of a large part of its diasporic community.

Moreover, there is also the globalisation of the transitional legal responses to other phenomena with increasing emphasis beyond the state and related multilateral institutions, to a host of private actors. The changes are reflected in the confluence of the public and the private, seen in the characterisation of the behaviour requiring redress (that is, heightened emphasis on the individual) and in the evolution and (re)formulation of rights claims by private actors (see Yugoslavia case study below). There is also a call for complex forms of accountability, although still nominally dominated by criminal justice, involving 'universality jurisdiction' in places like Belgium, Spain and the UK, a modality which in part reflects some of the changes associated with the rise of private actors implicated in violent conflict both as perpetrators – paramilitaries, warlords and military contractors – and as civilian victims, who now bear a great toll in contemporary conflicts (Kaldor 2007).

Given notable changes in the processes of lawmaking, such as a shift from legislation to judicialisation, and a related shift from the state to private actors, the law today is enmeshed with multiple politics and purposes. The ad hoc international criminal tribunals and the ICC, in particular, have become evident sites of the new global politics of contestation between multiple actors, including states as well as multilaterals, NGOs, victims groups, corporations, individuals and peoples. These intra-conflict tribunals illustrate also the newer uses of justice seeking ex ante – as in Uganda and more recently in Sudan, where the ICC's first indictment of a sitting head of state has sparked controversy and contestation among regional actors such as the African Union and African civil society. This exercise suggests an expansive judicialisation and raises a more fundamental question about the global phase of transitional justice and its plural purposes: to what extent can justice advance not only democracy but also peace and security?

These changes have important implications for assessments of transitional justice, for the very question of just how to evaluate the impact of transitional justice begs the question of by what measure? Furthermore, to measure the effects of what and for what purpose? The prism of numbers in custody may well reflect an outdated state-centric approach and offer a limited assessment. From the global perspective elaborated here, the relevant effect transcends state compliance, to extra-territorial forms of adjudication often initiated by non-state actors such as communal actors, NGOs, private parties. Hence, one of the apparent successes of the ICTY might be its orbit of normativity beyond the immediate jurisdiction, in particular the ad hoc effect on local courts in the Balkans and even beyond to other areas. These developments suggest a new, global politics of transitional justice, played out in the shadow of the law and its institutions. Indeed, the politics of transitional justice is made explicit in the asserted aims of the new tribunals, which, even in the chartered terms of their jurisdiction-granting instruments, now routinely include 'political' aims such as peacemaking, reconciliation, and security, as declared in both the ICTY and ICC preambles.

In places like Afghanistan and Iraq, justice seeking often appears to be in clear tension with security on the ground. Sometimes the debate is framed in terms of peace versus justice. In this regard, some scholars have

suggested the 'irreconcilability' in the aims of transitional justice (Leebow 2008). But the multiplicity of goals and the possibility of tensions and trade-offs between them in specific contexts hardly justify a conceptualisation of the problem as a 'tragic choice'. At this juncture, there are numerous experiments in the realignment of the national-international balance and in new hybridisations, as well as transnational judicialisation, which one might see as associated with global rule of law. These developments pose challenges even within the state, as each jurisdictional scenario is tied to a nexus which arguably fulfils diverse and distinct rule-of-law values.

While the mechanisms of national justice afford local accountability, the international approach, as advocated by a range of actors from the European Union to Human Rights Watch and others, appears to afford a modicum of legal continuity through the ICC and its charter, an apparent international penal code. This alternative legal system appeals to values of fairness and neutrality via universality. Accordingly, the availability of each jurisdiction advances important but often competing rule-of-law values. Whether these ambitious justice-seeking processes to advance security and rule of law work or not, recognising the changing claims being made may well help to explain the proliferation of transitional justice over the last decade. Thinking about these developments explicitly in terms of their association with contemporary politics may well illuminate transitional justice's connection and correlation to globalising politics (Teitel 2003).

The shift from state-centric to global transitional justice is evident in Argentina, one of the first transitions associated with the 'third wave' of democratisation in the late twentieth century (Huntington 1991). In Argentina, 30 years after junta rule, there is now a significant revival of human rights-related prosecutions. The impetus for this process was the interaction between the state and civil society actors, such as the movement of the mothers of the disappeared, the 'Mothers of the Plaza de Mayo', as well as other interest groups and the media. These developments reflect a dimension of the global move away from state to non-state actor centricity in the politics and law of transitional justice.

Indeed, a focus on civil society offers a useful lens to examine the politics of transitional justice associated with the present moment. The exploration of global civil society that follows reflects the characteristics of the shift to global transitional justice discussed so far: the normalisation of justice seeking across a range of social conditions (conflict, peace, transition) and, crucially, the retreat of the state-centric framework of justice and the ensuing multiplicity of actors and purposes that are currently jostling to take its place. The next section discusses global civil society in the former Yugoslavia and highlights how these actors have shaped the politics and processes of transitional justice in the region since the onset of war in the early 1990s, while the final section broadens the lens to reflect on the nature of global civil society and assess its role in transitional justice.

Box 13.1
The Faces of Civil Society

Jacqueline Moudeina

For Jacqueline Moudeina, 11 June 2001 was the day that changed everything. The Chadian human rights lawyer – seen by many in the Sub-Saharan African nation as persona non grata – had helped organise a peaceful women's demonstration outside the French embassy in the capital N'Djamena, in response to recent elections that were widely criticised as being fraudulent. The police and military came to break up the demonstration, and in order to disperse the crowd, a grenade was thrown specifically in her direction; it exploded close to Moudeina, leaving her with a crushed leg and bleeding heavily from shrapnel wounds. She was airlifted to France and endured three different reconstructive surgeries and was on bed rest for over a year. '[The assassination attempt] pushed me to fight even more and rather than being intimated by those persecutions, I decided to be involved', she says. 'When you start fighting against something like impunity, it's quite common to be threatened like this [so] this brought to my mind the idea that I had to be even more in the loop.' Moudeina, who is only the second female lawyer in Chad's history, was seen as a threat by ▶

the government of President Idriss Déby Itno because of her campaign for the truth about the more than 40,000 people killed, and the thousands who went missing, between 1982 and 1990, under the dictatorship of the President's predecessor, Hissene Habre. In January 2000 Moudeina and her colleagues opened judicial proceedings against Habre in the Senegalese courts (where he is exiled) as well as courts in Brussels. Though the high court in Senegal stated that local authorities were not competent to rule on the Habre case, the country has steadfastly refused to extradite him to Belgium for trial. So far the current government in Chad – many of whom also served under the Habre regime – has refused to pressure the Senegalese over the extradition. During October and November 2009, Moudeina and her colleagues went to Senegal to meet members of civil society. 'Our purpose was to show them a film made by a French TV channel (Canal +) on the tortures orchestrated by Habré', she says. 'It was really important to do this, especially because the civil society in Senegal is starting to realise what happened in the past and they are also starting to understand why we want Habré to be condemned.' She says that in the fight against impunity everybody must be involved. 'People from civil society are the main characters and if something has to change it will be thanks to them.'

Natasa Kandic

Few people in the Balkans are as loved and loathed in equal measure as Natasa Kandic. The founder of the Humanitarian Law Center (HLC), a Belgrade-based NGO that documents human rights atrocities during the wars in Yugoslavia during the 1990s, Kandic has been called a traitor for ignoring the plight of Serbian refugees while fighting for justice for other ethnicities. Yet she was also named one of *Time Magazine's* European heroes in 2003 and has received the prestigious Martin Ennals Award for Human Rights Defenders. 'I always say I am on the side of facts', says Kandic when asked how she responds to her critics. 'I have never been criticised that our facts weren't true.' Those facts spoke for themselves in 2005 when Kandic obtained what many dubbed the 'smoking gun video' showing a Serb paramilitary group called the Scorpions executing six Bosnian Muslim prisoners. That shocking video finally provided proof that Serbia had a role in Srebrenica, the massacre of over 7,000 men and boys which was the worst mass execution in Europe since the Second World War. Kandic and the HLC have been very involved working with the ICTY in terms of not only providing the courts with extensive documentation of war crimes but also helping to encourage and support victims who are called to testify. 'We started to work with the ICTY back in 1994 and based on our documentation they started to investigate war crimes including rape, which was the first time a tribunal worked on that', Kandic says. 'The most important role for human rights defenders is to have the capacity to represent victims in court and to monitor, participate and fight for justice for the victims and for the truth.' Asked what will be the future of the HLC after the ICTY mandate ends in 2011, Kandic says she sees the organisation becoming similar to the Simon Wiesenthal Center. 'We want to continue to collect material, to locate war criminals and to harass public opinion', she says. 'We want to always make pressure and to participate in the establishment of the historical memory of what really happened.'

Youk Chhang

For the past 15 years, Youk Chhang has been piecing together the fragmented memories of the past to recapture what was lost – family – and to rebuild what was broken – the fabric of Cambodian society. As founder and head of the Documentation Center of Cambodia (DCCAM), the largest repository of historical documents on the Democratic Kampuchea (DK) regime, Chhang has compiled and documented evidence for a seemingly endless list of atrocities, committed in a chillingly short period of time. From 1975 to 1979, the Khmer Rouge's DK regime were responsible for the deaths of between 1.2 million and 1.7 million Cambodians, around 30 per cent of the population. 'It's all about family', Chhang tells me. He is relaying the 'why' behind his commitment to documenting the past. 'I would like to live with my mother, sister, brothers, but they aren't around anymore', he stresses. 'The family structure was destroyed by the Khmer Rouge.' Chhang regularly visits the countryside to gather evidence and hear the stories of the loss felt by other survivors like himself. 'Every time I manage to discover the missing piece of document for the people who look for the loss of their loved one, [I feel] very proud', he says. The culmination of this work was recently manifested at the trial of Kaing Khek Iev (also known as Duch), head of a notorious interrogation and torture centre of the Khmer Rouge, the S-21 prison. Duch has admitted to overseeing the torture and murder of 12,000 individuals at the prison. As the first high-ranking DK official to be brought to trial, Duch is at the centre of quite a momentous moment

in Cambodia's and the court's history. While Chhang had decided to abstain from becoming an official part of the hybrid court (the Extraordinary Chambers in the Courts of Cambodia), the documents DCCAM have compiled – what he calls raw data – have been the source of 85 per cent of the evidence used by all sides within the court. 'We want to provide the facts … we don't want to take sides, we just want the truth. When you go to the field, survivors don't use the word justice, they use the word truth', says Chhang. Unfortunately, the ages of four other Khmer Rouge officials awaiting trial may preclude these documents from ever seeing their day in court. While justice may prove to be elusive in this case, the work of DCCAM and Chhang ensures that the truth of the genocide is readily available to the scores of survivors, perpetrators and the future generations of Cambodia. 'I refer to Cambodia as a broken society … each Cambodian is a broken individual. But yet there is hope', reveals Chhang. His hope is rooted in the courts, in the documentation process, and in educating the Cambodian young about the years of the Khmer Rouge regime.

Francisco Soberon

For Francisco Soberon, the pursuit of justice in Peru has been a long and winding road. The story of Peru in the late twentieth century is not an unfamiliar one for Latin America. An uprising triggers political violence. The government responds with an overzealous crackdown characterised by military control, disappearances, corruption, oppression and torture. In Peru, the violence began in 1980 with unrest set off by the leftist Shining Path and ended in 2000 with former President Fujimori fleeing the country after having overseen a regime that committed grave human rights abuses. Yet the search for justice and reconciliation continues to this day. From the beginning, Francisco Soberon has put himself and his organisation, APRODEH, in the middle of it all, by supporting victims, investigating and documenting human rights abuses and assisting cases in the Inter-American Court of Human Rights (IACH). Trained as a lawyer, Soberon quickly understood that a path to justice would not pass through national courts. 'In Peru, the first 20 years [of violence] saw an abdication of the national judiciary system because of political pressure and the use of military courts as mechanisms of impunity', explains Soberon. 'These were the political and the institutional obstacles that hindered us … that is why [we had] to use the international mechanisms first with the UN and then the Inter-American system.' The case of Barrios Altos, where members of death squad Grupo Colina (composed of members from the Peruvian Armed Forces) murdered 15 civilians, was the first victory. The IACH repealed the amnesty law issued by the Peruvian government in 1995 that had protected the perpetrators of the crime. It was also the case for which Fujimori was found guilty by the IACH in April of 2009. Yet justice and reconciliation do not always accompany one another. 'Reconciliation is a process', says Soberon, suggesting that on its own the Fujimori case does not yield automatic reconciliation. For Soberon, the Peruvian government lacks the political will necessary to develop this reconciliation process. In national courts, for example, many investigations never came to trial due to interference by the government and the military. The state has also failed to implement the recommendations of the Truth and Reconciliation Commission of Peru (completed in 2003); these cover individual reparations, education initiatives to prevent the recurrence of abuse, and other institutional reforms. '[If] you don't have truth and if you don't have access to justice, and reparations to victims and memory [so that] new generations remember what happened in the past, then it is impossible to talk about reconciliation', warns Soberon.

Ginanne Brownell, freelance journalist, and Helene Theros, Communications Officer, Qatar Foundation International

The Former Yugoslavia: A Case Study

Global civil society emerged as an agent that shaped the discourse and structures of transitional justice in the former Yugoslavia from the very beginning of the conflict in the early nineties. The international human rights movement played an important role in the establishment of the ICTY in 1993 and since then it has influenced the activities of the court in a myriad of ways (Hazan 2004, De Cesari 2005). For example, women's advocacy groups and networks such as the Ad Hoc Women's Coalition against War Crimes in the Former Yugoslavia successfully lobbied for the criminalisation of rape and violence against women in the statute of the ICTY and for prosecution of wartime rape once the court became operational, culminating in the landmark *Foca* trial.

Individuals and groups from the anti-war movement that had developed in the former Yugoslavia during the

war in Croatia and Bosnia became actively involved in these early transnational efforts for justice; indeed, the idea for establishing an *ad hoc* tribunal came from civil society in the region itself. At the same time, local human rights groups and independent media engaged in war crimes documentation and reporting during the conflict, seeking to keep the issue of human rights violations in the public domain and building a basis for subsequent debates and processes of transitional justice. Nevertheless, as civil society became increasingly fractured along ethnic and national lines in the course of the nineties, the issue of justice for mass atrocity was often ignored or dominated by nationalist elites and non-state actors in the region, reflecting the unequal relations of power entrenched by the conflict. In the period between the signing of the Dayton peace accords in 1995 and the Kosovo crisis at the end of the decade, the ICTY was seen as an insignificant and weak institution, mostly irrelevant to local politics and victims. Domestic war crimes trials, on the other hand, were either absent or marked by ethnic bias in the administration of justice and revenge at the local level, as in Croatia's large-scale prosecution of Serbs *in absentia* (Rangelov forthcoming).

The situation began to change in the new century, as transitional justice processes gained momentum and galvanised heated public discussion across the region. These changes were prompted by a series of political shifts in the region and beyond: the opening up of Serbia and Croatia after the end of the regimes of Slobodan Milosevic and Franjo Tudjman; the emergence of broad consensus in the post-Yugoslav countries for integration in the EU; the growing assertiveness of the ICTY and its alignment with international actors such as the EU and the United States. The expansion of transitional justice that ensued has been marked by intensive civil society engagement with multiple domestic and international actors. In that process, civil society has become a powerful force, both enabling and contesting transitional justice and its increasingly internationalised structures and processes.

A growing number of international actors have become involved in transitional justice issues in the former Yugoslavia over the years, creating new opportunities for civil society. Undoubtedly, the EU and its conditionality for cooperation with the ICTY has been the most important catalyst in the region. It has allowed local civil society groups to address their claims directly to Brussels, as Serbian NGOs did in a series of public letters to the Union in 2006, and to mobilise support in Europe in order to put pressure on governments in the region. Other organisations that have assumed prominent roles in the field of transitional justice and have created openings for civil society include the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, the United Nations Development Programme (UNDP), and various organs of the international administrations in Bosnia and Kosovo. International foundations and other donors have provided crucial support for civil society activities, notably the Open Society Institute, C.S. Mott Foundation, the European Initiative for Democracy and Human Rights of the European Union, USAID and the government of the Netherlands.[2]

The internationalisation of transitional justice in the former Yugoslavia is perhaps most visible in its formal institutions and processes. Criminal prosecutions have taken place in a mixture of international, hybrid and domestic jurisdictions and have been marked by the growing interpenetration of international and domestic law and governance. As part of its exit strategy, the ICTY has begun to transfer cases to national courts in the region and the OSCE has been tasked with the oversight of these proceedings on behalf of the Tribunal. In Serbia, ICTY-referred and other war crimes cases are tried by a special War Crimes Chamber of Belgrade District Court, while in Croatia five district courts have been designated for that purpose and granted extraterritorial jurisdiction. Hybrid domestic-international chambers have been established in Kosovo and Bosnia. The War Crimes Chamber of the State Court of Bosnia and Herzegovina, for example, is part of the domestic legal system but it is staffed by a mixture of local and international judges and applies both domestic and international law. Other international and hybrid mechanisms include the Human Rights Chamber (reparations) and police certification process (vetting) conducted under the auspices of the Office of the High Representative in Bosnia, and the International Commission for Missing Persons (ICMP) (Rangelov and Theros 2009).

Civil society has shaped and often enabled the activities of these and other transitional justice structures in a number of ways. The ICTY has been closely scrutinised by international advocacy groups, such as Amnesty International and Human Rights Watch, as well as by legal scholars and practitioners. A range of civil society actors have contributed with documentation and evidence, participated in proceedings through amicus curiae interventions, and conducted outreach activities on behalf of the court in affected local communities. Civil society participation has been even more important

for institutions based in the region itself. In Bosnia and Herzegovina, associations of families of the missing have been integral to the workings of the ICMP. In Serbia, the Humanitarian Law Centre has played a key role in the trials at Belgrade's War Crimes Chamber: supporting prosecutors with evidence and documentation, enabling the participation of witnesses who otherwise might be reluctant to testify, representing victims and their families from Croatia, Bosnia and Kosovo in the proceedings (as victims advocate counsel), and securing their presence in the court room to monitor the trials.

At the same time, however, civil society has shaped and interacted with these structures also through a series of public contestations, which have been at the heart of the politics of transitional justice in the former Yugoslavia. A prominent example is the so-called 'patriotic bloc' in Serbia, comprising elements from the intellectual elite, the Serbian Orthodox Church, and the nationalist press. These groups and individuals have consistently portrayed the ICTY as an anti-Serb body in the public domain, pointing to the disproportionate number of indicted Serbs, and contributed to the eventual shift at the Tribunal towards a policy of pursuing 'ethnic balance' in the trials.

The ICTY has ended up indicting major figures on all sides of the conflict, depicting national war heroes as war criminals: Milosevic, Bosnian Serb leaders Radovan Karadzic and Ratko Mladic, Bosniak commander Naser Oric, Croatian generals Janko Bobetko and Ante Gotovina, and former Prime Minister of Kosovo, Ramush Haradinaj. In that process, civil society critics of the Tribunal across the region became increasingly vocal and prompted the court to expand its outreach activities, focusing in particular on local communities and victims affected by the crimes listed in the indictments. War crimes trials in domestic courts have also spurred much civil society protest and contestation. When in 2001 a court in Rijeka indicted Croatian General Mirko Norac for war crimes against Serb civilians, associations of war veterans and right-wing political groupings organised a rally in Split with some 150,000 people chanting 'We are all Mirko Norac' and 'Hands off our Holy War' (Peskin and Boduszynski 2003). At the same time, 10,000 people attended a counter-demonstration in Zagreb, with the slogan 'Our voice for the rule of law'.

In the course of these contestations, civil society has emerged as an arena where conflicting interpretations of justice have been articulated and negotiated by a range of domestic and international actors. The ICTY, in particular, has provided a common frame of reference for civil society in advancing competing conceptions of justice in support and opposition to the court. Advocates of the Tribunal have often placed universal human rights, accountability and ending the culture of impunity at the heart of their aspirations for justice. Many of its critics in the region have attacked the court from different ethnic and national positions, while often sharing a particularistic conception of justice and understanding of the ICTY as an exercise in meting out collective guilt and punishment. Other voices in civil society, particularly prominent among victims groups, have contested international criminal trials with an alternative concept of justice that emphasises restitution and reparation, rather than retribution. Yet, other actors have assessed the Tribunal against understandings of transitional justice that reflect broader purposes such peace, reconciliation and political transformation.

The discourses and narratives advanced by global civil society reflect these plural and often conflicting interpretations of justice and the fault lines in the domain of contested politics, where they have been articulated and debated. What must be emphasised in the case of the former Yugoslavia is that civil society debates about transitional justice have not been contained within the state or even the region as a whole. Instead, they have reached out and implicated a range of international actors and structures, such as the ICTY and the EU, and have connected to various global discourses and narratives. For example, human rights groups and reformist political circles have deployed the language of universal human rights and international law when articulating their justice claims, and increasingly have sought to invoke the discourse of European integration and 'Europeanisation'. On the other side, the 'patriotic bloc' in Serbia has connected its rhetoric to an 'anti-globalist' discourse and segments of the global left, such as the UK Committee for the Defence of Slobodan Milosevic, which had enlisted Harold Pinter.

These developments are perhaps best illustrated by the Coalition for RECOM – a regional civil society initiative for the creation of an interstate, independent regional commission to investigate and publicly disclose the facts about war crimes and serious human rights abuses committed on the territory of the former Yugoslavia during the conflicts in the 1990s. What began as a conversation between three leading human rights groups – the Humanitarian Law Center (Belgrade), Documenta (Zagreb), and Research and Documentation Center (Sarajevo) – is currently a regional civil society movement

that comprises hundreds of NGOs and victims groups from all post-Yugoslav countries. The Coalition has so far conducted over 100 regional and grassroots consultations with broad segments of civil society and at the time of writing is preparing to launch a public campaign to attract broader support and collect one million signatures, before submitting its demands for establishing RECOM to the parliaments in the region. The discourse of restorative justice and truth-seeking advanced by the movement has been connected both to the ICTY, conceiving of RECOM in terms of the Tribunal's legacy and addressing the limitations of retribution as a form of justice, and to the processes of European integration. The EU has already extended some support to the Coalition, both financial and political, while other actors such as the OSCE and the ICTJ have provided assistance and sought to advance the cause of RECOM within the region and internationally.

Global Civil Society and Transitional Justice

The case study of the former Yugoslavia highlights three main characteristics of global civil society and its role in transitional justice, prefiguring the central argument of this contribution. First, civil society includes a broad range of actors and forms of engagement in transitional justice and its scale of operation and organisation extends from the local and national to the regional and global. Second, in the current period civil society relates to a polycentric framework of governance and interacts with increasingly internationalised structures and processes of transitional justice. Finally, civil society advances plural and often conflicting conceptions of justice and serves as an arena where the discourse and practice of transitional justice are contested and negotiated, both within and beyond the state. It is the combination of these three features that distinguishes the 'global' character of civil society and its role in contemporary transitional justice.

There is a vast body of literature that examines the different types of civil society actors that operate in the transnational sphere, such as social movements, NGOs, networks and diasporas (Keck and Sikkink 1998, Cohen and Rai 2000, Anheier and Themudo 2002, Kaldor 2003, Cohen 2008). Transnational actors have served as a powerful force in setting the agenda, constructing the infrastructure, and steering the course of transitional justice. Advocacy networks have played an important role in the development of international law and judicial institutions; for example, the Coalition for the ICC, which is currently comprised of 2,500 organisations around the world (URL, Glasius 2006). Other actors have shaped the debates and politics of transitional justice through advocacy and lobbying: global NGOs like Amnesty International and Human Rights Watch, or transnational communities, such as the Jewish, Armenian and Turkish diasporas. In the case of the pan-Asian 'comfort women' movement, civil society even created its own justice mechanism – the Women's International Tribunal on Japanese Military Sexual Slavery (Chinkin 2001).

Regional civil society networks and coalitions can be found in virtually every global region where transitional justice has been a salient issue in the past three decades. Already in the 1980s, human rights organisations and victims groups in Latin America sought to create regional linkages in order to strengthen their efforts for addressing the violations and repression of authoritarian regimes across the continent. For example, associations of relatives of victims of forced disappearance met in 1981 in San José and founded the Latin American Federation of Associations for Relatives of the Detained-Disappeared (FEDEFAM). The Federation held annual congresses between 1981 and 1993 and included member associations from Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Uruguay. More loosely organised regional coalitions are often established in order to respond to specific events or intervene in ongoing debates. Following the decision of the African Union in July 2009 to withhold cooperation with the ICC in the arrest and surrender of Sudan's president Omar al-Bashir, 164 African NGOs across the continent issued a statement urging state parties to the ICC to reaffirm their commitment to cooperate with the Court (HRW 2009).

Many of the organisations that signed this petition are engaged primarily in local struggles for justice, such as the Coalition Congolaise pour la Justice Transitionnelle in Ituri, the Samotalis Coalition of Human Rights in Hargeisa, or the Crisis in Zimbabwe Coalition in Harare. This suggests that civil society actors often operate simultaneously in multiple domains of transitional justice, both within and across borders. Beyond NGOs, at the local level one finds a broad range of civil society actors involved in the politics and processes of transitional justice: social movements, civic organisations, media, public intellectuals, women's groups, victims associations, war veterans, churches, and a range of religious, ethnic and tribal structures at the communal level. In most contemporary conflicts and post-conflict environments, various international actors are also present and active on the ground. In Kabul, the Open Society Institute convenes

Box 13.2
Religious Actors in Transitional Justice

Religious non-state actors have been actively engaged in promoting, supporting, and shaping a range of initiatives designed to bring justice, reconciliation and peace. These faith-based actors are notable for their diversity; although some have been at the forefront of campaigns to promote legalist strategies that focus on justice for mass atrocities, many of these actors embrace alternative strategies that emphasise themes of restoration and reconciliation rather than criminal justice. Faith-based actors have worked at both the elite and grassroots level to mediate peace settlements, pressure political elites to support justice initiatives, reframe understandings of justice and reconciliation, reconstruct communities and build local institutional capacity. Notable among this diverse range of actors are the Catholic Church, the Mennonite Central Committee, the National Association of Evangelicals and the World Jewish Congress.

A large number of religious actors, sometimes referred to as capacity builders (Boesenecker and Vinjamuri 2008), share the belief that strategies of reconciliation grounded in public forgiveness and truth telling are critical to peace. In many religious traditions, faith calls for forgiveness and reconciliation rather than retribution, and themes of forgiveness and apology appear in a variety of faiths. Even where retribution is preferred, it usually takes the form of reparations or restitution, in conjunction with apology, instead of punitive (and impersonal) trials.

Capacity builders have preferred strategies that emphasise rebuilding divided societies through the creation of networks of trust and personal relationships, attending to social justice issues and eliciting conflict resolution strategies from within local communities. Attention to long-term, comprehensive reconciliation with a particular emphasis on post-conflict structural change means that capacity-building actors most fully embrace restorative justice.

In Guatemala, the Church played an important high-level role in brokering the 1996 peace agreement that ended a long, brutal civil war. The peace agreement featured a limited amnesty and alongside this the Church issued a major document calling for repentance and forgiveness among all parties as a response to the past (Philpott 2009). In response to the amnesty law, the Church instituted the Project for Recovering Historical Memory (Recuperación de la Memoria Histórica, or REMHI) to document human rights abuses in the conflict, even though many of those implicated were protected by the amnesty. The overarching goal of attaining peace and securing justice not through retribution but through other forms of reconciliation such as truth recovery reflected the particular conception of justice held by the Church. The organisational infrastructure of the Church facilitated the REHMI project's effort to document human rights abuses (Sanford 2003). Moreover, the Church implicitly embraced the possibility that the success of REMHI may have rested on the amnesty when it stated: 'We wanted the report to create a social reconstruction, not be a cause of conflict' (USIP 2001).

Despite this strong preference for reconciliation by many religious actors, there have been a considerable number of religious actors that have actively supported international justice in the form of war crimes trials. During the Second World War, the World Jewish Congress actively lobbied the War Crimes Commission to prosecute those responsible for the Holocaust. More specifically, it pressed for the extension of the concept of 'war crimes' to cover the atrocities being committed against European Jews (Kochavi 1998). More recently, both the National Association of Evangelicals and the Vatican have been strong proponents of the International Criminal Court.

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a Working Group on Transitional Justice, which meets every two weeks and brings together representatives from the International Center for Transitional Justice, the United Nations Mission to Afghanistan, and a host of local civil society groups.

These multiple scales of organisation and operation of civil society relate to broader processes that have been explored at length in the literature on globalisation. The relationship between civil society and political authority is often seen as being reconfigured in the current period, reflecting the shift from statism to a layered, polycentric framework of governance that extends both below and beyond the state (Held 1999, Kaldor 2003, Scholte 2005). While the state undoubtedly remains an indispensible and central arena for civil society, scholars have highlighted civil society interactions with 'international society' and with the various regimes and institutions of transnational governance (Clark 2007, Steffek et al. 2008). These developments can be observed quite clearly in the field of transitional justice. Civil society stands in relationship not only to the state but to regional and global governance as the number of actors on the world stage that have a stake in transitional justice continues to grow, including the EU and the Organisation for Security and Cooperation in Europe, the African Union and the Inter-American Human Rights System, the United Nations and the International Criminal Court.

The other major development concerns the growing internationalisation of transitional justice processes and structures, which often provide the focus of civil society participation and contestation around the world. This development is palpable in places like the Balkans and Rwanda, where the international ad hoc tribunals have shaped local justice debates and policies on the ground. In fragile and conflict-affected states, which often provide the context of contemporary justice seeking, international administrations, UN bodies, regional organisations and civil society actors are often enmeshed with local legal and political institutions in various 'hybrid' arrangements that reflect the growing interpenetration of domestic and international law and governance. In the last decade, hybrid courts and chambers have been established in East Timor, Bosnia and Herzegovina, Cambodia, Kosovo and Sierra Leone. A number of Truth and Reconciliation Commissions have been created either under the auspices of international bodies or with significant international involvement, such as those in Guatemala, East Timor, El Salvador, and the Srebrenica Commission in Republika Srpska. International actors are also integral to the workings of many national institutions. For example, the ICTJ has been a key partner in the 'conflict mapping' activities of the Afghanistan Independent Human Rights Commission.

One important implication of the internationalisation of transitional justice processes and structures concerns the reconfiguring of the relationship between state and society and the restructuring of relations of power within civil society itself, which unfold in complex and often contradictory ways. In the Western Balkans, for example, the role of the ICTY and the EU can be assessed in terms of creating space for marginalised civil society groups to raise the issue of justice and keep it on the agenda in a largely hostile environment of postwar states dominated by nationalist projects and elites implicated in the violence of the previous decade. Over the past ten years in particular, the involvement of these actors and the ability of various civil society groupings to connect to them have contributed to the pluralisation of transitional justice to incorporate both domestic prosecution and an emerging restorative dimension, reflecting the plural interpretations of justice that can be identified across the region.

Other cases highlight more mixed dynamics and imply that the internationalisation of justice processes and structures might be accompanied by the emergence of new forms of unequal relations of power in global civil society. The role of the Inter-American Human Rights System in the truth and reconciliation process in Peru has been described as facilitating the emergence of a local counter-political culture and social movements, on the one hand, while also creating expectations for unrealistic levels of compensation and potentially undermining reconciliation, on the other (Laplante 2007). In the case of the ongoing involvement of the ICC and various international human rights NGOs in Uganda, scholars have suggested that the international might be 'colonising' the local, depriving local actors of their political agency and inhibiting the advancement of locally meaningful processes and conceptions of justice (Clarke 2007; see more broadly Clarke and Goodale 2009). These developments suggest that the normative implications of the internationalisation of transitional justice pull in different directions but also highlight the need for an analytical framework that comprehends both the agency of global civil society in that process and its inherently discordant and fragmented nature.

The discourse of transitional justice reflects these tensions between the local and the global, as well as the many alliances forged across these domains. This discourse

Box 13.3
Civil Society Resistance to Normalising Turkish-Armenian Relations

Given the difficult history between Turkey and Armenia, even when Armenia gained independence from the USSR in 1991 the two countries did not establish diplomatic relations and, as of May 2010, the border remains closed. Beginning in 2000, however, high- and low-profile contacts began to take place between Turks and Armenians. Rapprochement efforts gained momentum in 2008–09 when Armenia and Turkey were drawn to play in the same 2010 World Cup qualifying group. The bilateral discussions led to the announcement of the 'Road Map to Normalisation of Relations' in April 2009, and the 'Protocol for the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey' and the 'Protocol on the Development of Relations between the Republic of Armenia and the Republic of Turkey' in August 2009. Although the two protocols were signed in October 2009, as of May 2010 these have not been ratified by the parliaments of Armenia and Turkey. This is largely due to disagreements around two key issues: the unresolved conflict in Nagorno-Karabakh and the international efforts aimed at genocide recognition.

Alongside these state-led efforts at normalising relations, there have been many developments at the level of civil society. First, there is more space in Turkey, however limited, for the emergence of different voices and narratives which challenge the state's thesis and the official historiography regarding the Armenian question and the issues of minorities more broadly. Second, contacts between civil society actors in Turkey and Armenia have become more numerous in recent years and such meetings have started to challenge long-held stereotypes and to create greater empathy for the 'other'.

But just as there are those civil society actors which seek to engage in dialogue and to improve relations, there are also those that reject any form of rapprochement as conceding and capitulating to 'the enemy'. Turkish and Armenian nationalist organisations and political parties continue to enjoy broad support among the masses. For instance, Turkish nationalist civil society organisations reproduce the official state line concerning the massacres of the Armenians in the Ottoman Empire in 1915. Some even go further and demand apologies from the Armenians for their killing of Turks. Some Turkish NGOs also criticise the normalisation efforts as a betrayal of Turkish–Azerbaijani brotherhood. For example, during the 14 October 2009 World Cup qualifying match between Turkey and Armenia, while the government banned the display of Azerbaijani flags in the Bursa stadium, the We Are All Mehmets Union of Forces NGO handed out Turkish and Azerbaijani flags in front of the stadium (Today's Zaman 2009). The name 'We Are All Mehmets' is a play on the 'We are all Hrant', which appeared at the funeral of the Turkish Armenian journalist Hrant Dink who was a staunch supporter of Turkish-Armenian reconciliation. Another nationalist civil society organisation that has sought to curb, if not entirely silence, debate around the Armenian issue is the Turkish Lawyers' Union (TLU). Led by the lawyer Kemal Kerincsiz, this NGO is largely responsible for bringing to court most of the cases under Article 301 for 'denigrating Turkishness'. In 2005, the TLU unsuccessfully attempted to block the conference 'Ottoman Armenians During the Decline of the Empire: Issues of Scientific Responsibility and Democracy', which was eventually held at Bilgi University and was the first instance of the issue of the Ottoman Armenians being discussed in such a high-profile event in Turkey.

Meanwhile, although there is scepticism and concern in Armenia as to what normalisation will mean, until now, there has been less outright opposition to the ongoing efforts. Indeed, even the leading opposition party, the Armenian National Congress, led by former President Levon Ter-Petrossian, is in favour of normalising relations and has only expressed concern with the proposed historical sub-commission and what impact the normalisation may have on the resolution of the Karabakh conflict. The bulk of the vocal opposition to normalisation efforts comes from certain Armenian diaspora organisations and political parties, particularly those aligned with the Armenian Revolutionary Federation, Dashnaktsutyun (ARF). The ARF has always portrayed itself as the champion of the Armenian Cause (*Hai Thad*) and in 2001 it fiercely criticised the US-sponsored Turkish-Armenian Reconciliation Commission by questioning its legitimacy and representativeness.

Following the announcement of the protocols in August 2009, the Armenia-based branch of the ARF pulled out of the coalition government and began to criticise the government's attempts at normalising relations with Turkey. In diaspora communities in Europe, the Middle East and North America, the ARF, along with some other diaspora organisations, ▶

organised protests in response to President Serzh Sargsyan's visits. The ARF also supported the creation of the online 'Stop the Protocols' and the 'Justice Not Protocols' campaigns. By framing the issue as a trade-off between normalisation/peace versus justice, the ARF claims that the Armenian government is betraying the Armenian Cause by attempting to normalise relations with Turkey in the absence of Turkey's recognition of the genocide.

It should be noted that there are different types of diaspora organisations and some demonstrated their support to Sargsyan during his world tour. Thus it would deny the complex reality to demonise or view the Armenian diaspora as a monolithic entity. That said, it is important to point out that vast majority of Armenians in Armenia and the diaspora, regardless of their political affiliations, support the view that the Turkish government should acknowledge the massacres committed against the Armenians living in the Ottoman Empire as genocide. As several civil society leaders in Armenia whom I interviewed stated, recognition must come from within Turkey and not from the parliaments of third countries. Moreover, not all Armenians share the ARF's more maximalist demands from Turkey which include the so-called '3 Rs': Recognition, Reparations and (land) Restitution. Many respondents I interviewed in Armenia and in diaspora communities in Europe and North America favour more restorative justice approaches that would hinge on ending the denialist tactics of the Turkish state and instead focus on restoring the dignity of the victims and rehabilitating the memory of the Ottoman Armenians.

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is shaped by civil society through public contestation and debate, as various actors advance plural and often conflicting interpretations of justice. Table 13.1 conveys a sense of the diversity of global civil society conceptions of justice and the norms, purposes and identities that underpin them and drive their protagonists in different parts of the world.

Civil society contestations often involve the articulation of competing claims based on alternative understandings of justice; for example, the choice between restorative and retributive forms of justice that has animated debates about dealing with past repression in South Africa and elsewhere (Rotberg and Thompson 2000). Particular concepts of justice like 'restitution' and 'reparation' have also created divisions and disagreement in civil society. The restitution movement for the internment of Japanese Americans during the Second World War split into two wings in the 1980s over the issues of scale and approach to restitution, as the Japanese Americans Citizens League favoured moderate compensation and legislative politics, while the National Council for Japanese American Redress preferred to work through the courts and demanded higher damages (Barkan 2001). The more globalised is the discourse of civil society, the more plural and contested become the meanings and implications of justice, as illustrated by ongoing debates about the ICC involvement in Uganda and Darfur. In this analysis, then, global civil society emerges as an arena of contestation and negotiation of the discourse and practice of transitional justice, both within and beyond the state.

Conclusion

Global transitional justice is a contemporary phenomenon that is manifestly demonstrable across regions, across time periods, beyond the state, involving diverse actors with diverse political stakes and interests. As such, the trend today has an unclear political trajectory; but what is clear is that such judicialisation comes into play often out of periods of political impasse, as well as evidently one that brings in other players – namely diverse judiciary at a variety of levels, as well as diverse multilateral institutions, civil society actors and individuals, all involved in practices and processes of adjudication, claims-making, representation, investigation, litigation, publication. So it is that a judicialised discourse regarding issues of transition and accountability is becoming normalised and entrenched, establishing rights and duties of diverse actors. Often, these norms are substantially downstream from their origins, and therefore their instantiation depend upon on an increasingly global judiciary for interpretation.

Through patterns of what one might term cross-judging, that is, adjudication across a proliferation of international, regional and domestic tribunals, among other things, one can see that transitional justice indubitably has a global normative reach, with effects far and wide on the discourse and structure of international affairs, itself shaping or prefiguring a community of judgement. The

Table 13.1 Discourses and Conceptions of Justice in Global Civil Society

Discourses of justice	Concepts and interpretations of justice	Civil society actors
Human rights	Civil and political rights	Cairo Institute for Human Rights Studies, Egypt; International Federation for Human Rights (FIDH); Sudanese Organization Against Torture (SOAT)
	Accountability and ending impunity	Aegis Trust, UK; Justice for Darfur; Madres de Plaza de Mayo – Linea Fundadora, Argentina; Victims Rights Working Group, Uganda
	Economic, social and cultural rights	Socio-Economic Rights and Accountability Project (SERAP), Nigeria; Civil Society Alternative Process of Sierra Leone (CSAP-SL)
	Restitution and reparation	Africa Reparations Movement; Association des Veuves du Génocide Agahozo (AVEGA), Rwanda; Legal Resources Foundation, Zimbabwe; REDRESS, UK
	Historical justice and right to truth	Catholic Justice and Peace Commission, Liberia; La Fundación Grupo de Apoyo Mútuo, Guatemala; Mothers of Srebrenica, Bosnia and Herzegovina
Political and social transformation	Peace and reconciliation	Catholic Relief Services, USA; Centre for the Study of Violence and Reconciliation (CSVR), South Africa; Conciliation Resources, UK
	Democracy and participation	ASEAN Inter-Parliamentary Myanmar Caucus, Southeast Asia; Campaign for Good Governance, Sierra Leone
	Healing and rehabilitation	Healing Through Remembering, Northern Ireland; Institute for Healing of Memories, South Africa; Maoist Victims Association, Nepal
Identity and culture	Gender and feminism	Ruta Pacifica de las Mujeres, Colombia; Women's Caucus for Gender Justice, Coalition for the ICC (CICC); Women in Black
	Ethnicity and nationalism	Armenian National Committee of America (ANCA); Assembly of Turkish American Associations (ATAA); Committee of Homeland War Associations, Croatia; 'Obraz' Fatherland Movement, Serbia
	Religion	Faith and Ethics Network for the ICC, United States; Justice and Peace Commission of Diocese Dili (JPC), East Timor; World Council of Churches (WCC)
	Indigenous culture and tradition	Acholi Religious Leaders Peace Initiative, Uganda; American Indians Against Desecration (AIAD), United States; Civic Council of Popular and Indigenous Organizations of Honduras (COPINH)

turn to transitional justice as a response to conflict can be viewed as worthy alternative to the prolongation of violence, yet often the turn to law is seen as inherently depoliticising. But this is too facile: long-range study will be needed to see how the proliferation of transitional justice is affecting politics in the international arena. As the other contributions to this Yearbook also make clear, the proliferation of actors, institutions and claims for justice suggests a layered and complex relationship of law to politics and a justice discourse that is invoked widely and often on various sides of a controversy. Moreover, the pervasive nature of the discourse is also currently reshaping a number of other related legal fields such as human rights and humanitarian law, with claims-making of both an individual and collective nature in these terms.

Once seen in globalising terms it becomes clear that there are plural and sometimes competing conceptions of justice, but that the discourse inevitably restructures the shape of contemporary political problems, redirecting the ways and means of conflict resolution and repair, enabling and interrogating transformation within and beyond the state. We have argued that global civil society plays a central role in this process and have traced its modes of organisation, operation and engagement with the broad range of actors with stakes in contemporary transitional justice. Global civil society represents a site of struggle for discursive hegemony over the meaning and conception of justice, as much as it invokes countless political and legal struggles in practical terms. The implications of this argument suggest both a new type of global politics

of justice seeking and a reconfigured framework of legitimation beyond the state, as global civil society becomes an arena where the legitimacy of justice claims and structures is produced, contested and negotiated.

Notes

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2. Funding has been extended also for civil society initiatives in the fields of art and culture, such as the tour of the South African play 'Truth in Translation' across the Western Balkans in 2008, funded by C.S. Mott Foundation. See Jaruzel (2008).

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PART V

State, Nation and Global Justice

INTRODUCTION

STATE, NATION AND GLOBAL JUSTICE

Chandan Sengupta

In addressing the issue of global justice, one critical question is how nation states in a highly interdependent context arrive at a just resolution of some of their burning internal and external issues, given that there are conflicting demands and claims of justice by states and nations in an unequal world. However, there is often no discernible substantive difference between national and global justice concerns in an increasingly interconnected world, even as that connection may not be uniform. How do the forces of globalisation and global events influence and are influenced by the struggles for justice and its delivery mechanisms in terms of specific issues within and between states? This part examines these concerns through an Asian prism, starting from the easternmost part of the region, as a critical exemplar of the global process.

Clearly, within somewhat similar social and cultural constructs of nation states in the region, there is a wide variety of justice concerns and actions by civil society groups. For example, in Millie Creighton's chapter, the disquiet is embedded in the larger issues of human security, peace and tolerance expressed though concern over the retention of Article 9 of the Japanese Constitution that upholds renunciation of war and militarism. Even the issue of immigration and minority justice, illustrated by Hwaji Shin's examination of Korean residents in Japan (Chapter 14, Box 14.1), is gaining prominence in this globalised country. Militarism and human rights abuses are old concerns in Burma and the contemporary Burmese struggles for justice raise many issues of just living. In India, alongside continuing poverty and inequality amidst high economic growth, the just treatment of social groups such as the 'untouchable' castes and various tribal groups, who face multiple vulnerabilities, remains a major social issue.

How do these justice concerns and civil society responses assume a global character? The Japanese pacifist Article 9 movement is now a global movement for peace and stability. In the global summit of Article 9 held in Japan in 2008, civil society groups and public intellectuals from countries including the US urged nations to adopt and use the article as a mechanism for the renunciation of war and militarism and promotion of global peace. For minorities living in Japan, global human rights norms and transnational rights networks provided the impetus to local activism and facilitated solidarity among previously disconnected individuals and action groups. Gil-Sung Park and C.S. Moon's chapter shows that the local issue of the just settlement of the North Korean refugees raises the larger global justice and democratic question of citizenship. They illustrate how South Korean civil society operates through an informed and broader partnership with local organisations. The Citizens' Alliance for North Korean Human Rights has achieved considerable success in its attempt to gain international publicity and resource mobilisation for the social justice cause of North Korean refugees. Such actions have significantly enhanced the scope of global-local alliances for Korean civil society with several global dimensions: global corporate social responsibility, international research-curriculum, expatriate communities and philanthropic organisations.

Maung Zarni's chapter about the various justice concerns in the context of Burma's authoritarian regime links justice-disabling factors to the global influences on domestic power as result of the country's geo-strategic significance to rising neighbours such as China and India, and the dominant global development paradigm as well as other factors. Local community organisations are engaged in various empowerment initiatives, including organising literacy, raising awareness about the value of obtaining National Registration Cards as citizens, and re-sensitising communities to the issue of justice, despite the difficulties of any openly organised struggles under the military junta. With support from the Amnesty International and other human rights organisations, global Burma Campaigns have expanded the global civil society spaces for voices to impact on the international human rights agenda.

Finally, Rohit Mutatkar reflects on the domestic-global justice interface in the context of a plural society such as India, highlighting the multidimensional aspects of global justice based on an examination of historical injustices to caste groups, and their continuation in various forms,

as well as the continuing disparity in development against the backdrop of India's rising economy under globalisation. Many local civil society organisations in India have partnered with global forums to raise specific incidents of injustice. Far from seeking global legitimacy for local struggles, these local or national efforts aim at creating a global movement against the adverse effects of global processes. The World Social Forum movement for an alternative world is a classic example of such initiatives. The forum has an India chapter to internationalise local problems. Even the largely indigenous problem of caste injustice in India is now a part of global Dalit struggles; currently there are strong pleas from various associations to support the UN's efforts to convince the India government to treat caste as an aspect of racial discrimination. While the rights-based civil society movements for justice in India have been influenced by global human rights campaigns, some of the former's methods now offer models for justice struggles in the other parts of the world. For example, activists who advocated for India's Right to Information Act 2005 and the National Rural Employment Guarantee Act 2005 are training civil society organisations in Kenya, Mexico, Malaysia and Indonesia on the innovative method of 'social audits' as a means of public scrutiny.

As global civil society is a concrete rather than abstract open space for global action, the national-global interface in the area of justice requires recognition of the national and local processes that give rise to conditions of justice and interventions specific to the context. The five authors discuss the different trajectories of local civil society activism in their respective locations, their specific engagements and networking with regional and global groups. The common content of these actions has further widened the scope for global solidarity and interventions in global justice and human right issues.

CHAPTER 14

JAPAN'S ARTICLE 9 RENUNCIATION OF WAR AS A MODEL TOWARDS JUSTICE AND A GLOBAL CIVIL SOCIETY OF PEACE

Millie Creighton

Introduction

The year 2010 marks the culmination of the International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001–10). This UN project of promoting a Culture of Peace was initiated in 1994 on the premise that in order to develop such an orientation human beings had to consciously strive towards it, internationally or globally. The UN then designated the opening year of the new millennium, 2000, as the International Year for a Culture of Peace and Non-Violence for the Children of the World, followed by the decade 2001–10, to open the twenty-first century with this call towards peace.

In order to strive towards a goal, a template for how to assert and actualise the steps towards it is important. According to many people struggling to preserve and spread it, Article 9 of Japan's constitution, the clause eliminating the right of the state to wage war, is a model for achieving an International Culture of Peace. For example, in 1999 The Hague Appeal for Peace selected Article 9 of Japan's constitution as a model for all countries in order to reduce the threat of war.

Japan's constitution was drafted at an opportune moment in human affairs and intellectual thought, following the worldwide experience of suffering and devastation brought on by the Second World War. It was also an historical moment when there was a widespread idea globally that, with the introduction of nuclear weapons and possibilities of nuclear war, human beings had reached a crossroads and must find a way to suppress warfare or risk possible species extinction.

While Japan's postwar, so-called 'Peace Constitution' (Junkerman 2005) remains in place 64 years later, Article 9 has not gone uncontested. Among the most important debates permeating Japanese society, are those focused on Japan's constitution and whether Japan should or should not eliminate Article 9, in which it rejects war and militarism. While such debates began soon after its promulgation in 1946, they again rose to intensity in the latter years of the first decade of the twenty-first century. These debates over Article 9 are not solely an issue for Japan, but are important throughout much of Asia, and of global relevance regarding struggles for peace as an essential part of achieving justice and global civil society. The affirmation that Article 9 of Japan's constitution was a global, not just domestic, issue was asserted in May 2008 through the initiation of the Global Article 9 Conference to Abolish War, held in Japan (at four coordinated locations), which was attended by 30,000 people from around the world. The slogan 'Article 9 is a world treasure' (*Kenpo Kyujo wa sekai no takaramono*) positions it as of value not only for Japan but also for the world.

In order to consider Article 9 in relationship to justice and global civil society, this chapter presents background on the passage of Japan's post-Second World War constitution and debates over whether it is indigenous or externally imposed, along with analysis of cyclic attempts to eliminate Article 9 largely promoted by government representatives and counter attempts to preserve it by the general citizenry and populace of Japan. It discusses the relevance of Article 9 to Okinawa, which hosts most of the US military bases in Japan, and how this has been linked to other countries such as Germany. It explores why Article 9 is important in the region and the continuing attempts to deal with historic memory and the traumas of the pre-war and war periods elsewhere in Asia. This chapter presents the Global Article 9 Conference to Abolish War held in May 2008 as an attempt to promote Article 9 as a model for all constitutions in order for humanity to aim towards a world without war, thus promoting a 'Culture of Peace', as a necessary condition of a just global civil society. It includes individuals' experiences of war as insights into why Article 9 has been embraced as a necessary counter to war that may serve as a model to other nations and peoples. Finally, it addresses the value of Japan's Article 9 as a model to enable the world to actualise an International Culture of Peace in the culminating year of the UN decade advocating that.

War and Peace and Justice

As Tolstoy's novel *War and Peace* reminds us, war and peace are often linked in human thinking. In order to consider justice and global civil society, it is important to also consider how they are linked to justice. Hence, rather than only war and peace, I also wish to discuss war and justice, and peace and justice. War inherently involves injustice, thus in order to aim towards a just global civil society, it is necessary to strive to eliminate war. People may speak of a 'just war'[1] or of waging war in the name of bringing justice. In such cases, there is a perceived concept of a wrongful situation that needs to be addressed to restore a sense of justice. However, there is another way to understand the relationship of war and justice. War, even when supposedly perceived as a 'just war', by its very nature brings injustices. War in the twentieth century became an engagement in which civilian deaths and casualties equalled or outnumbered those of non-civilians (for discussions questioning distinctions of civilians and non-civilians, see Ueno 2004). Injustice occurs because those who die or suffer from war are often those who did not have any power or control over the circumstances that led to war, or the circumstances that led some to consider it 'justifiable'. War is contrary to justice when civilians and those with little control over the situations leading to war are killed. War is also contrary to justice through the negative effects on the life courses of those who do not die – but remain forever affected. For many survivors, war results in medical, psychological, and social disorders that impede the rest of their lives. Only in recent decades, and largely through research on the problems of returning American veterans of the Vietnam War, has Post Traumatic Stress Disorder (PTSD) become more understood, while it has likely existed throughout human history. War impedes processes through which children develop, learn and grow, creating injustices in their life trajectories. It is now clear that even 'pre-children' are negatively affected by war, in ways that unjustly alter their lives. In the aftermath of the first atomic bombs used on civilian populations in Hiroshima and Nagasaki, came the knowledge of damage to foetuses by exposure to radiation. They would – in many cases – be born, but their life courses were unjustly altered, some dying shortly after birth or at young ages, others suffering development problems and others having mental disabilities due to brain damage *in utero*. Debates over the use of Agent Orange as a defoliant in the Vietnam War, along with further knowledge of radiation poisoning, raise the issue of human beings not yet conceived at the time of war, unjustly suffering from war-related birth defects in subsequent generations.

War can be linked to famine or scarce resources with particular negative effects on growing children and youth. War can interrupt the education of children or youth, negatively affecting their adult lives long after the war has ended. It is pertinent that the United Nations chose in its naming of a year and decade emphasising peace, not only the idea of peace, but a specific reference to children. War as the counter to peace negatively affects children – and as a result negatively affects the adult lives of those who were affected as children. War-induced damage to children through their experience of violence, through encounters with food or other resource deprivation during their developmental years, and through the denial or rupture of education, are damages to people that are unjust even in cases where the war is argued to be a 'just war'.

War is counter to concepts of justice through the abrogation of civil liberties. As such war is inherently linked to social injustice, along with legal and political injustice. War is often linked to discrimination or stigmatisation of certain groups or individuals within societies. Attorney Peter Irons (1983) called his book about the Japanese American internment during the Second World War – which decades later would be officially recognised by the US government as an injustice (just as the Canadian government would also eventually acknowledge regarding the internment of Japanese Canadians) – *Justice at War*. The title actually points to the suspension or lack of justice when countries, or groups, are at war.

War contributes to regional or global inequalities that counter justice. Countries or regions inflicted by war may have more difficulty developing economically or implementing social programmes, lessening their ability to thrive in the global context. Within countries, some areas may be required to carry the burden of housing or supporting the infrastructure of military capacity, rendering them less capable of developing other industries or area programmes, which contribute to their remaining more marginalised socially, economically or politically than other areas, perpetuating regional inequalities within countries.

Warfare is inherently at odds with the concept of civility, which underlies the concept of civil society. Since war is both in opposition to the very nature of civil society, and since war inherently creates injustice, a sincere international attempt to eliminate war must be part of actualising justice and global civil society.

Having discussed war and justice, it is time to discuss peace and justice. Since war causes injustice, some have suggested peace should be designated as a human right. One can argue it would be impossible to guarantee such a right. However, other things designated as human rights are denied or violated. Despite this, their designation as human rights creates an onus for peoples and governments to strive for them. To further explore Japan's so-called 'Peace Constitution' as a model towards peace, excerpts from its preamble and Article 9 renouncing war and militarism are presented next.

Preamble of the Constitution of Japan, Paragraphs One and Two

> We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved never again to be visited with the horrors of war through the actions of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of humankind upon which this Constitution is founded. We reject and revoke all constitutions, laws ordinances, and rescripts in conflict herewith.
>
> We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationships, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society by striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all people of the world have the right to live in peace, free from fear and want.

Article 9 of the Constitution of Japan: Renunciation of War

> Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.
>
> In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

Whose Constitution?

Japan's current constitution has been in place for over 60 years. Drafted during the early post-Second World War period, while Japan was under occupation by the US in the name of the allies, it was promulgated on 3 November 1946 and put into effect on 3 May 1947. Critics and those who would change the constitution argue it was written by outside powers (suggested to have been dictated by the Americans) and forced upon Japan in the aftermath of its defeat. This is often the strongest case against it, and against retaining its renunciation of war clause, Article 9 – an argument frequently made by politicians who assert that Japan should be allowed to become a 'normal' country – meaning one that is militarised. Ironically, it is not only Japanese politicians desiring further militarisation who give this reason. They have been joined at different points in post-Second World War history by those American leaders who want Japan to take a greater military role. Challenges to Japan's Peace Constitution came in the early 1950s, when the US wanted Japan to join it militarily in the Korean peninsula. According to many analysts, Japanese adherence to Article 9 and its postwar constitution kept the country from entering militarily into the Korean Conflict. Given that tensions still exist between Korea and Japan over the historic memory of Japan's colonial invasion and takeover, Japan re-entering any part of Korea in any sort of military capacity soon after the Second World War would have been immensely problematic.

The issue of whether Japan's postwar constitution could be castigated as the 'MacArthur Constitution' to rationalise eliminating Article 9, was the focus of a pivotal essay by constitutional law scholar, Ukai Nobushige, published in 1955 under the title 'The Power to Create the Constitution and the Power to Destroy It' (*Kenpo o tsukuru chikara to kowasu chikara*) (1955). Ukai argues strongly for retention of the permanent disarmament clause, and his essay is thought to represent liberal scholarly opinion in Japan from that period (Hibbet and Itasaka 1965: 125). In contrast to those claiming the constitution was imposed upon Japan by a foreign country or countries, Ukai asserts that statements in it (see the excerpts above), such as 'the Japanese people resolve not to be forced into the horrors of war again

by the actions of government' ('*Nihon kokumin wa ... seifu no koi ni yotte, futatabi senso no sanka ga okoru koto no nai yo ni suru koto o ketsuishi*') represent the true feelings of the Japanese people, whether penned by outside influence or not. Ukai suggests the Japanese people embraced the constitution as their own, recognising the ease with which government leaders can drag people into war without such protection, an assertion reiterated in John Dower's (1999) Pulitzer Prize-winning history of postwar Japan. Ukai also asserts the true power to make the constitution came not simply through writing it, but through the Japanese people's grasp of it as recognising their own will – in particular Article 9 as the disarmament clause – and embracing it to protect their safety and the safety of their lifestyle (in Hibbet and Itasaka 1965: 181).

Even if drafted under the US occupation, these were ideals of the time that may not have found full acceptance by all within the US. That the Japanese responded with enthusiasm to these new philosophical waves is reaffirmed in Dower's discussion of how the postwar publishing industry flourished with popular demand for works dealing with such thoughts. The ideals expressed were also those thought to be the foundation for a society based on the concepts of justice and civil society. According to Dower (1999: 187):

> By the time *Sekai* appeared on the scene, U.S. occupation ideals had been clearly articulated. The editors summarized these as democracy, respect for individuality, freedom of speech and religion, and world peace – and then took care to emphasize that these ideals were to be pursued not because the victors had ordered this to be done, but 'because they are based on the demands of human nature and universal justice.' The list of tasks to be accomplished was endless, but central to all endeavors was the creation of a society based on social justice and responsive to the will of the people. Only that kind of society would prevent tyranny and dictatorship from arising ever again in Japan. Such sentiments – painful, earnest, self-critical, intensely idealistic – found expression in hundreds of postsurrender periodicals.

There are other indications that the idealism and fundamental concepts of universal justice and civil society underpinning the Japanese constitution were intellectually situated in postwar international discourses rather than emanating from a purely American ethos. The language of the constitution's preamble, and its assertion that humanity had reached the stage where people must reject war as a means of resolution of conflict, parallels language used in establishing the United Nations and concepts of international law emerging at that time. Additionally, there were non-Americans involved in the committee drafting the constitution, notably, Beate Sirota Gordon, an Austrian-born woman who had grown up in Japan from the age of five, was fluent in Japanese and conversant with Japanese culture. Gordon surveyed various European constitutions in her role, and is credited with Article 24, which promotes the rights of women through granting equality of the sexes. It is noteworthy that such an Article was not part of the US constitution, and that 40 years after the enactment of the Japanese constitution, in the mid-1980s, a movement to pass a very similar clause as an amendment to the US constitution, known as the Equal Rights Amendment (ERA), granting women and men equality under the law, raised high levels of debate in the US and ultimately could not be passed. This suggests the Japanese constitution cannot be considered as simply a reflection of American sentiment or culture, but contains other international currents, and a high level of social idealism aiming at a just civil society.

Japanese discussion of the constitution and Article 9 show that the Japanese are not a monolithic people or homogeneous in intellectual thought or political attitude. There have been repeated cycles of political leaders from within Japan's dominant party, the Liberal Democratic Party (LDP), holding power through most of the 60-plus years following Japan's defeat arguing that the constitution does not represent Japan or the Japanese because it was imposed by outsiders, despite repeated polls showing higher numbers of Japanese people favour it and retaining Article 9. A renewed attempt to eliminate Article 9 during the tenure of Prime Minister Koizumi Junichiro in the first decade of the twenty-first century seemed to gain momentum with many observers thinking the government might be able to push through a revision. However, during this time the grassroots movement of Save Article 9 groups developed throughout Japan. This movement, begun by nine people including scholar Oda Makoto and Nobel Prize winner Oe Kenzaburo, promoted the formation of local groups wishing to preserve Article 9. Before long, more than 3,000 such groups had been formed in Japan, and by 2008 there were 7,000; most in Japan but some elsewhere (Kyujo no kai 2008). They also served an educational purpose by explaining to other – often younger Japanese – what sort of things could be allowed, such as the resumption of a draft, if Article 9 was eliminated. The Save Article

9 movement was not limited to Japan. Often initiated through the efforts of Japanese living overseas and gaining other non-Japanese members, Save Article 9 groups were also formed in the US and Canada (the Vancouver Save Article 9 (VSA9), for example). While seeking protection for Article 9, such groups are also often involved in other peace promotion activities.

More than 50 years after Ukai's essay, the Save Article 9 movement reiterated the idea that it was the people who had the power to create or change the constitution, as they fought to preserve it against the actions of their own government leaders. According to some politicians and analysts, the government's attempt to eliminate Article 9 was a factor in the 2007 defeat of the LDP in the upper house elections, leading to anxiety about the lower house elections, resulting in attempts to play down the issue of Article 9. The LDP suffered a stunning defeat in the 2009 elections, losing control of the Diet – an extreme rarity in the nearly 65 years since the end of the Second World War. Although this was seen by analysts in large part as a response to the lengthy economic recession, the defeat of the LDP in the earlier upper house elections in 2007 was partly seen as due to the push for constitutional reform and viewed as a reaffirmation of the Japanese people's commitment to Article 9. The dramatic election results led political opponents of the Article to decide that the time was not right to consider revision then. In contrast to the years preceding these elections in which many LDP leaders were actively calling for constitutional reform and the elimination of Article 9, there has been very little media discussion of any politician expressing a pro-constitutional reform stance since (see, for example, the special constitutional coverage of the *Mainichi Shinbun: Tokyo Chokan* [Mainichi Newspaper: Tokyo Edition], 3 May 2010).

The Relevance for Okinawa as a Particular Cultural Region

The Japanese president of one Save Article 9 group voiced the opinion that those wishing to eliminate Article 9 would also be likely to restrict human rights. To many, Article 9 represents both a commitment to those outside Japan, particularly in Asia, in terms of its renunciation of the kinds of acts committed in its imperialistic pre-war and war periods, and also a movement to embrace the dignity of minority groups within Japan – long denied in Japan's rubric of homogeneity – or at least that these sentiments go in tandem, respect for diversity of those outside Japan and respect for diversity of those within Japan (see Creighton 1997, Weiner 1997, Chan 2008 (especially pp. 249–94)). Japan's initial rise to militarism, conducted in the name of the emperor, went hand in hand with attempts to deny and control minorities within the nation. The idea of a 'homogeneous' population or *tanitsu minzoku* (one people nation) under the emperor was used to compel the populace towards accepting this militarism and the continual denial of diversity within the country. Many Japanese see support for Article 9 as part of recognising wrongs committed against other Asian nations by Japan, while recognising minorities and their value within Japan, in contrast to what Befu has called the 'habitas of homogeneity' (2009) and acceptance of people with disabilities once stigmatised and hidden.

Japan's role as a world advocate for pacifism based on Article 9 and the rights of Okinawans (those from Okinawa and the other islands of the Ryukyu Island chain) as a minority come together strongly. Okinawans have been strong supporters of Article 9 due to their particular wartime experiences. Okinawa experienced the only land battle of the Second World War in which hundreds of thousands of civilians were estimated to have been killed, along with the military. Many felt Okinawa was used as a buffer zone to protect the rest of Japan because of Okinawa's different culture and location from mainstream Japanese (referred to as *wajin* in Japanese or *yamatonchu* in Okinawan). After the war, Okinawans also felt buffeted between Japan and the US, first by Okinawa becoming a US territory until 'reversion' to Japan in 1972, which required accommodations not imposed on other areas of Japan; then by the fact that, through treaties allowing US military bases to 'protect' the country, over 75 per cent of those bases are located on Okinawa, which represents 1 per cent of Japan's land base.

Okinawans also often feel they have experienced attempts at 'cultural genocide' in Japan's project to create homogeneity. Conducting research on Japan's minorities, I once interviewed an Okinawan living in the US who was active in the movement to 'regain' the Okinawan language, through promoting and teaching Okinawan classes in and outside Japan. The Okinawan language suffered because of assimilation attempts, including those in the post-Second World War, through which the Japanese government tried to eliminate the language to bring Okinawans into Japan's homogeneity myth. This man explained how Okinawans were required to post a sign inside their own homes over their family eating table that said 'Speaking Okinawan is not allowed, speak only Japanese'. As the 'designated speaker', he was the only one

Box 14.1
Globalisation and Korean Activism in Japan

Although it requires extensive comparative studies to fully comprehend the relationship between globalisation and civil society, a brief look at minority activism in Japan since the 1970s sheds light on an important aspect of this process.

Japan is known as infertile soil for civil society partially due to the dominant presence of the state and market in the public sphere. However, this situation is changing; recent research shows that civil society in Japan is expanding (Schwartz and Pharr 2003, Shipper 2008). Most of the existing studies on civil society focus on the developments since the 1990s as a watershed of the shifting relations between the state and society in Japan. However, empirical findings from the case of Korean activism in Japan suggest that a shift had already been underway since the 1970s. Large scale collective activism among resident Koreans started in the 1970s and played a significant role in facilitating civil activism among people in Japan as well as bringing forth some of the significant policy changes in the immigration and citizenship legislation of the 1990s. Globalisation was one of the key factors in the rise of resident Korean activism in Japan.

Discussion of minority politics in Japan may seem odd given the conventional image of Japan as a homogeneous nation. But Japan also had an extensive history of conflicts and interactions with minority groups within its territory (Befu 2001, Oguma 1998, Lie 2001). Most notably, Imperial Japan in the twentieth century colonised its neighbouring countries to build a Pan-Asian empire and brought a significant number of the colonial labour population, mostly from Korea, to its mainland. By the end of the Second World War, nearly 2 million Koreans were working on the Japanese mainland. All colonial subjects were given Japanese citizenship although they were hardly treated as equals to the Japanese in practice.

Most of the Koreans returned to their homeland after the war, but restrictions on the amount of assets they were permitted to take with them, as well as the increasingly unstable political condition on the Korean peninsula, discouraged repatriation. Consequently, 600,000 Koreans remained in Japan and approximately the same number continues to live in Japan today. The remaining Korean population quickly became viewed as a socio-economic burden on postwar Japan's reconstruction. In 1952, the Japanese government unilaterally revoked citizenship from the remaining Korean residents in Japan and started treating them as deportable aliens with newly enacted restrictive immigration laws (Shin and Tsutsui 2007).

In addition to their loss of citizenship, Koreans in Japan continued to suffer from formal and informal discrimination and prejudice. Most of them were both residentially and occupationally segregated. Although many resident Koreans in Japan attempted to fight against the oppression, strong solidarity among them did not grow due to their divided political affiliations between North and South Koreas. Although each division formed its own advocacy group (that is, the pro-South Korea organisation Mindan, and the pro-North Korean organisation Chongryon), they hardly collaborated with one another. The lack of a unified voice, a substantially reduced population, intensified segregation from mainstream opportunities, and increasing cultural assimilation, gradually made resident Koreans invisible in the public eye (Lie 2008). It was in this context that postwar Japan's self image as a homogeneous democratic nation became dominant and the struggles of marginalised minority groups in Japan were largely pushed aside from public discourse.

However, in the mid-1970s, a group of young resident Koreans overcame the North-South division and started collective protests across Japan against the country's restrictive immigration and citizenship policies. We witness a cluster of watershed events of resident Korean collective activism from the 1970s to the 1980s. Unlike the previous activism of Mindan and Chongryon, Korean activists during this period were much more successful in earning both international and domestic attention and mobilising not only resident Koreans but also Japanese citizens to join their movement. Subsequently, they were able to exercise some influence over national politics which led to some significant legal changes in Japan.

We observe a significant impact of global factors on the rise of solidarity and subsequent policy changes triggered by the movements of the 1970s. First, activists engaged in this minority movement chose a new framing. Rather than underscoring their connections with their homeland states in North or South Korea or conceptualising their claims narrowly as the issue of a particular ethnic group, they used more universalistic language and framed their cause as an issue of universal human rights. Previous resident Korean activists relied on ties with their homelands in order to construct group solidarity. By speaking the language of ▶

universal human rights, the activists of the late 1970s made significant efforts to unite not only with Koreans but also with sympathetic Japanese people.

Another noteworthy impact of globalisation manifests in the relationship between Japan and global human rights institutions, particularly the United Nations Human Rights Council (UNHRC) (Tsutsui and Shin 2008). By the 1970s, Japan had risen from the ashes of war-induced destruction and transformed itself into one of the global economic powers. With a strong economy under its belt, the Japanese government began to seek for global recognition of its prominent political presence in international politics. It was not only the state, but also minority activists, who sought for international recognition. Since the early 1980s, resident Korean and other Japanese human rights activist groups began lobbying efforts in the United Nations in order to promote international awareness of the discrimination against resident Koreans. These activists also collaborated with other international minority rights groups. With their international lobbying efforts, UNHRC began to pay attention to the issues of resident Koreans in Japan and pressed the Japanese government to change its immigration laws for violating resident Koreans' human rights. As the issues of the Korean minority were addressed at the United Nations, the foreign media began to expose the Japanese government's exclusive attitude and treatment of its minority and immigrant populations. The Japanese government initially defended their laws and policies. However, as Japan ratified several international treaties regarding the rights of minorities, the Japanese state eventually accepted the United Nations' recommendations and made significant revisions to its laws.

All these changes reflect the normative shift in international society and the arrival of global human rights norms in Japan. The penetration of global human rights norms changed the cognitive framing among local actors and facilitated a solidarity and collaboration among previously disconnected individuals, which was a key generator for significant bottom-up pressure to the state. Furthermore, global human rights also provided international opportunities, resources, and publicity to create external pressure on the government. Unlike several decades ago when their voices were virtually ignored in the international arena, the international human rights forums since the 1970s did respond to the resident Koreans' claims. Transnational networks of human rights activists provided tactical advice and material support for their activism and helped minority activists from Japan to promote international criticism and pressure on the Japanese government.

The rise and outcome of their collective activism demonstrates the importance of both local activism and globalisation. Resident Koreans' experiences suggest that neither their local activism nor the global norm of human rights alone could produce concrete policy changes in favour of minority groups in society. But when they are combined together, they could create forces to revitalise the solidarity within the divided minority communities, and to create both bottom-up and top-down pressure on the state to reform its policies.

Recently there has been a passionate discussion about whether the Japanese state should allow resident Koreans and other permanent residents in Japan to have voting rights in local elections. It remains to be seen if resident Koreans and other minority groups will be able to create enough international and domestic pressure on the state to respond to their demands for voting rights. But the continuing activism among minority groups in Japan demonstrates that minority mobilisation in Japan, spurred by globalisation, continues to generate a great challenge to the existing exclusive conceptualisation of citizenship in Japan.

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FSI at Stanford University, 2008–10

of several siblings who learned the language, so someone could communicate with the elderly grandmother.

Societies that wage war are often involved in possible actual genocide through the possible elimination of a particular group of people or genetic pool. Although not related to 'genes', the concept of 'cultural genocide' is now recognised: the right to one's culture, cultural practices and the ability to pass one's culture to following generations is threatened. This has been a problem for Okinawans and other minorities in Japan – and is now being addressed. Many feel that the removal of Article 9 would work against such social consciousness.

Grasping the international ramifications of Article 9, Okinawans have formed networks with those in other countries who experience the problems of housing US bases, leading in particular to Okinawan links with Germany. Workshops dealing with such issues were part of the Global Article 9 Conference to Abolish War.

Every year for three days in May, corresponding to the weekend closest to the anniversary of the reversion of Okinawa to Japan, a peace march is held on the main island of Okinawa. May is also the month in which the Constitution Commemoration holiday occurs (3 May), so the Okinawan Peace March has become associated with the constitutional holiday and Article 9.

The Relevance for Inter-Asian Regional Relationships

Many people suggest Article 9 of Japan's 'Peace Constitution' is relevant to Japan's East Asian neighbours such as Korea and China in that Article 9 represents to those countries Japan's recognition of its pre-war militarism and colonial incursions, wartime behaviour, and a 'promise' not to allow such action again. While unresolved tensions over historic atrocities and colonialism are not the primary focus of this chapter, in response to the discussion about why the Japanese did not engage in self-reflection over the country's pre-war and wartime atrocities to the extent of Germans, the historic context that discouraged this needs to be considered. There is evidence that ordinary Japanese citizens did begin to acknowledge, discuss and reflect upon the injustices conducted by their country during the war – which had hitherto been presented to them by their wartime government as valid or noble – and began writing about the wrongs the Japanese military had committed in China and Korea. According to Dower (1999: 504–8), as these reflections began to appear, US occupation forces censored them and stopped the process, primarily due to concerns about communism in China and North Korea spreading, and thus not wanting the Japanese to reflect on or publish such accounts, or to begin to empathise with their East Asian neighbours.[2] Within a few years after the end of the Second World War, the US was involved in military conflict in Korea and clamped down on such reflections. According to Chalmers Johnson, author of *Sorrows of Empire* (2004), Article 9 represents Japan's apology for its military imperialism towards the countries of Asia, and to eliminate Article 9 would be to renounce the apology (Junkerman 2005). Whether perceived as an 'apology' or not, people in other Asian countries support Article 9. Issues regarding war trauma have not subsided and emotions run high in other Asian countries over these. Although Japan's government has diluted the peace resolution of Article 9 through interpretations of what its so-called Self-Defence Forces can do, and the proportion of the national budget that can be spent on them, elimination or revision of Article 9 would be seen as a threat and/or insult to many of Japan's neighbours that experienced its pre-war and wartime aggression.

'Imagine 9': the Global Context of Article 9

'*Imagine 9*' is the title of a book for children (and adults) by Hoshikawa Jun and Kawasaki Akira. Readers are asked to 'imagine 9' not just as a clause in Japan's constitution, but as an enactment throughout the world. Building on the imagery of John Lennon's song, 'Imagine', it suggests a world of peace, justice, shared humanity and global civil society. In another attempt to make Article 9 more accessible to children and youth, artist Naruse Masahiro designed a cartoon mascot figure known as *Kyuto-chan*, a pun combining the Japanese version of the English word 'cute' with the Japanese word *kyu*, which means 'nine' (Junkerman 2009: 6) for the global Article 9 campaign.

With similar intellectual currents to those flowing internationally following the horrors of the Second World War, the Global Article 9 movement suggests humanity must at least attempt to move beyond war, as we have reached a point where war threatens annihilation of the entire species, rather than merely an activity leading to winners and losers. One of the arguments used by those opposed to retaining Article 9 is that Japan should be allowed to become a 'normal country', meaning it should have the same right to a military as other countries. The Global Article 9 movement inverts this, arguing that the concept of a 'normal country' needs to change to the idea that normal means non-militaristic and dedicated to peace, betterment of human lives, and enactment of a just civil society globally, or at least is dedicated to achieving such goals.

This led to the Global Article 9 Conference to Abolish War held in 2008, a series of coordinated gatherings, including a main conference in Chiba, on the outskirts of Tokyo, and regional events in Osaka, Hiroshima and Sendai, Japan, starting on 3 May, the national legal holiday in Japan known as Constitution Commemoration Day (*Kenpo Kinenbi*) in honour of the Japanese postwar constitution. Below I outline my experiences at this summit.

The Global Article 9 Conference in Chiba

I arrived at Narita Airport on 3 May 2008, the 61st anniversary of Japan's constitution taking effect, for an opening reception for international guests to the Global Article 9 Conference. The entertainment included a musical group of youth from India – who also brought a peace message. They said they supported Article 9

because they did not want to see their government invoke militaristic involvements against countries like Pakistan, with the group's leader referring to Pakistanis as 'our friends'.

The first formal day of the conference, 4 May, offered speeches and more entertainment. The venue, which holds about 12,000 people, was soon packed and it was reported that 3,000 people waited outside because there was no more space inside. Showing strong commitment, rather than leave they gathered in a nearby park. Some of the speakers, including Nobel Peace Prize winner Mairead Maguire, addressed this audience, as well as speaking to those in the 'official' venue inside. Maguire spoke about how groups she had established to end violence in Northern Ireland had worked towards that goal, despite those who said violence was too ingrained for it to be stopped. She called for all peoples to embrace the idea of 'Article 9' (however it is labelled) as something for all nations to adopt.

Beate Sirota Gordon, who features in films about Japan's constitution, also spoke. An Austrian-born woman who grew up in Japan, Sirota Gordon got a job under the MacArthur occupation which led to her input into the Japanese constitution, in particular Article 24, which grants equal rights to women. Aged 84 in 2008, she was the only person involved in the drafting of Japan's constitution still alive. Sirota Gordon addressed the criticism that the constitution was written by outsiders (or by Americans) by saying that Japan is often characterised as a country that takes in things from elsewhere, embraces them, transforms them and makes them its own. Cora Weiss, the President of the Hague Appeal for Peace, also spoke, as someone long active in peace education and the nuclear disarmament movement.

The second day of the conference shifted to an emphasis on workshops and panels, including one organised by Vancouver Save Article 9, which brought together people from Russia, Germany, Costa Rica, Ghana, Canada, Japan and the Japanese diaspora. The inclusion of Costa Rica is noteworthy in that it has a similar clause in its constitution, as do Panama and Austria; Japan is not 'unique' in this regard. The Costa Rican government initially allowed it to be listed on President Bush's Coalition of the Willing of countries supporting the idea of a US-led military movement into Iraq. A young Costa Rican man took the government to court, won the judgement based on the constitution, and Costa Rica was removed from the listing.

Another workshop dealt with the issue of Okinawan bases, and included participation from German representatives who were fighting the presence of foreign military bases in their country. Shouldering the burden of 75 per cent of the American military bases located in Japan, Okinawans are experientially aware of the tensions, violence and sexual assaults that accompany them. They are also aware of the ways in which military bases counter local autonomy and self-government and prevent further development of local industries – particularly tourism, a potential economic advantage for a tropical island like Okinawa, but one it cannot develop to the fullest because of American bases along the best coastline areas.

Cultural events workshops included 'Sing for Peace', with a large audience led in singing by an organised choir. People with disabilities were visible among the audience – something not often the case in Japan until fairly recently because of stigma, to individuals and their families, once associated with disabilities. As choral leaders sang and signed, deaf members of the audience joined the singing by signing. The conference brought out repeatedly, in different ways, how issues of war and peace are related to issues of the environment, and people's abilities to obtain local self-governance and autonomy (democratic ideals for a just civil society). Here, those struggling for a global culture of peace were also struggling for societies more accepting of diversity.

The Concurrent Regional Article 9 Conference in Sendai

On 6 May I attended one of the concurrent Article 9 conferences, which were held in Hiroshima, Osaka and Sendai. I chose Sendai in the Northern Tohoku region of Honshu (the main island of Japan) because Osaka is the second largest city in Japan, and Hiroshima is often the site of peace-related events, so I thought Sendai would give the best indications of a truly regional gathering. While smaller than the Osaka and Hiroshima gatherings, thousands gathered in Sendai. Many were older *Obaasan* (grandma) and *Ojiisan* (grandpa) types, who themselves had experienced the Second World War. They also seemed to represent an 'average' segment of Japanese society – not necessarily people who were usually politically oriented, and many who seemed to be rural farmers. Many of those I met were from the Sendai area and neighbouring areas such as Fukushima and Akita, and there were also groups from Hokkaido. It was exciting to see this level of support from ordinary Japanese farming communities, and to march with them on their Peace Walk from the community hall to a Sendai park at the end of the day's

events. Mairead Maguire, who had addressed the Chiba conference, also spoke in Sendai. Since Sendai is not as populated nor identified as an international cosmopolitan city to the same extent as the Tokyo/Chiba area, the excitement over her visit as a Nobel Peace Prize winner seemed even more intense.

During the Peace Walk to the park following Maguire's speech, attendees chanted:

Ken po Kyu jo ma mo ro	[Let's protect the Constitution's Article 9]
Se kai ni hi ro ge yo	[Let's spread it out to the world]

While listening to the marchers – not just youth, not just activists, and not particularly political extremists of any kind, but average often older, often rural dwellers of Japan chant this, I thought about how it is often said that the Japanese constitution was written by outsiders and thrust upon the Japanese. Here were large numbers of Japanese embracing it, not rejecting it as something from outside, and actively asserting that as Japanese they should help spread it to the world.

Peace Events in Okinawa

The year of the Global Article 9 Conference, the three-day annual Peace Walk commemorating the 'reversion' of Okinawa to Japan from its status as a post-Second World War territory of the US until 1972, took place on 16–18 May (the Friday, Saturday and Sunday following the 15 May anniversary of 'reversion'). Hundreds of people participated, including many who had been at the Tokyo/Chiba Global Article 9 Conference or one of the regional conferences. As underlined at the Chiba conference, the US bases are a key concern of Okinawans. On Friday 16 May the Peace Walk involved a 20-kilometre hike from the Naha civic centre to the Himeyuri Commemoration Hall. The Himeyuri Corp (Princess Lily Corp) refers to a group of 222 female Okinawan students conscripted into military nursing by the Japanese army just before the Battle of Okinawa (see Angst 2001). People often think they were 'nursing students' or of university age. However, the students, considered the best at the time, came from different parts of Okinawa and the Ryukyu Islands to attend two linked schools for girls in Naha, the central city of Okinawa, which were the equivalent of today's junior and senior high schools, for ages ranging between 12 and 19. The Japanese military decided to use them as nurses, placing them in caves at the forefront of the battle to tend dying Japanese soldiers and dig graves for them. Of the 222 female students conscripted, about 155 died either tending the soldiers during the battle or after they were abandoned by the Japanese military in the desperate and brutal flight that followed. I met with a Himeyuri survivor, who was 12 years old when she became a member of the last entering class in Showa 19 (1944). (After this class was admitted, the school stopped accepting students due to the escalation of the war.) Thus she was 13 years old when she was conscripted into military nursing service in 1945. Unlike most of her fellow students, she survived the war, in part because when the Japanese military abandoned them, leaving them to flee the incoming US forces, she found her mother who was carrying her younger siblings. She recalled how she kept getting behind, and her mother kept scolding her to keep up. Her last memory of them involved her mother again pausing to admonish her to keep up – when she saw her mother and siblings killed by an explosive. She has dedicated her efforts towards peace education and preventing war, as many of the Himeyuri students-turned-military nurses did, because of their experiences of the traumas of war and their desire to pay tribute to their classmates who died.

Stories from the Time of War

I present below three stories of Japanese/Okinawan war survivors. Stories have long been used as a method in anthropological work and to convey the experience of one culture to people in another (Cruikshank 1990). They can also convey experiences of an historical epoch, or extreme circumstances to those without them. Stories are a means through which people construct an individual and collective or cultural memory, and come to terms with the past. According to Briggs and Mantini-Briggs (2003: 78), stories involve 'the ongoing struggle to construct – to understand – the identities, relations, and actions of the past'.

A Tokyo Bomb-Raid Survivor

While those supporting Article 9 marched in Sendai, groups opposing it positioned themselves along the Peace Walk path. At other venues, opponents appeared as zealous ultra-nationalists, driving cars with boldly painted rising sun images on them, blasting loud chants. However, in Sendai they appeared stationed along the route peace marchers passed with subdued black limousines from which piped forth a beautiful melodious tune.

One of the people I met in Sendai was a 78-year-old survivor of the Second World War, who had lived through

the Tokyo bombing raids as a 15-year-old boy. He said it was an experience he could never erase from his memory, and ever after he has felt the need to work towards world peace. He explained about the opponents in the black limousines, indicating they were playing a song many of the marchers – who were his age – would know. The song was 'Umi Yukaba', written by a famous composer for the military endeavour during the Second World War. He pointed out that the song is very beautiful and the lyrics tell how, if you die for the emperor at sea (*umi*), your body will be wrapped by the water, and if you die for the emperor on land your body will be wrapped by moss. He said that growing up in Tokyo then, he too was raised to be a 'good military boy', so at first thought it would be noble to die for the emperor, as the song suggested. However, after experiencing the bombing devastation of Tokyo and the suffering of war, he grew to see that it had all been false and how they had been drawn into it, with the very aesthetic beauty of the song part of how this was done. He said that by stationing themselves not in outrageous looking, sound-blasting trucks, but in elegant limousines and playing this beautiful song, opponents knew it would have an effect on those older marchers raised into this ideology like himself. In hearing this song, he is aware of how a false glorification of war can be portrayed through aesthetic elements, making it even more important that people in the world struggle to resist this tendency and not allow war to happen again. (For other examples of how aesthetics were used to promote militarism see Ohnuki-Tierney 2002.)

Some might think his early indoctrination as a youth into believing in the war suggests the Japanese populace could not ascertain the negative actions of their own government, or change course after the war. However, his story reveals the reverse: even before the end of the war, and despite the indoctrination, his mind questioned the validity of it all, and his experiences of war led him to renounce militarism as a noble endeavour, and commit himself to working towards peace efforts.

An Infant Survivor of the Battle of Okinawa

Many people I met in Okinawa told me stories underlying their commitment to Article 9. A bar owner indicated he was one year old at the time of the battle. He said he is alive now only because his family decided to flee to the north. Their decision was linked to having an infant, making it difficult to compete with the larger numbers of people fleeing to the south. The Battle of Okinawa largely took place in the southern half of the island. He said more people fled to the south because the Japanese military was there and they believed they would be safer in the south because the Japanese military would protect them. However, they were largely the ones slaughtered in the ensuing melee because it was the Japanese military the Americans sought to defeat. Although he was telling his own story, since he was only one at the time, it is clear that his understanding of it resulted partly from hearing it told by others, likely family members who survived and believed that fleeing to the north, in the opposite direction of the military, helped them survive.

Another Battle of Okinawa Survivor, from Mother to '*Yoku Gambaru* Grandma'

I met another man, not yet born at the time of the war, who also attributed his existence to the fact that a relative decided to flee to the north instead of southward toward the Japanese military. Her story has become his family's story. In this story, a woman is credited with strength and given a central role, with her relatives attributing their lives to *yoku gambaru Obaasan*. *Obaasan* means 'grandmother' or 'grandma', and *yoku gambaru* could be translated as 'perseveres well', thus the 'grandma that perseveres well', but that does not give the full sense of the Japanese *gambaru*, so it seems best to call her the '*yoku gambaru* grandma'.

When everyone fled his grandmother also took what seemed the more risky trek northward. Although her husband had been called up to be a soldier and sent off, she was not alone – she had four small children and did her best to prompt, push and drag them along as she struggled to save them, while the battle raged and people were desperately in flight. It is now, in our career-conscious world, frequently pointed out that there is no ideal time to have a baby. Although this saying might not have been common at the time, '*yoku gambaru* grandma' could probably relate to it well, because she happened to be pregnant at the time, and as it might be said in Japanese, *shikata ga nai* ('it can't be helped'), had to give birth to child number five in the midst of fleeing, showing that the processes of life go on despite extreme historic events going on around one. She managed to do this, and also managed to continue on her northward trek towards refuge, dragging her now five children, including the baby, with her. I asked the man telling me this family story how many of them survived. He told me all of them did, and the baby was his father. I asked about his grandfather. He

never returned from the war, and was presumed dead, so the teller of the tale said; 'I never met him, and my father never met him either.' I reflected that this also meant that, even after the war, '*yoku gambaru* grandma' had to continue to *gambaru* well because she had to raise five children on her own in impoverished, devastated, war-torn Japan.

When I asked if, after all that, she had been able to live a long, normal life, he exclaimed, 'Oh, she is still alive.' In Okinawa, there is a custom called *kajimaya*, referring to a 'pinwheel' (*jaya* is the Okinawan version of *kaze* or 'wind', and *mayu* the Okinawan version of *mawaru* or 'turn about'). Elderly people in their 99th year by the old way of counting (in which each year that a person lives in for any part of it is counted rather than the Western way of counting full years from the moment of birth or from the last birthday, such that people might be 97 or 98 by the Western way), dress in colourful clothing and carry a pinwheel in a procession. The aim, since they are on the verge of 100, is to 'convince' the gods to let them live past 100 and if possible a truly full life – envisioned as 120. As an anthropologist, I think this is a most interesting custom, directed in part at god or the gods, which is not so much worshiping the gods or appealing to them for a longer life, but an attempt to 'trick' the gods or 'fake them out'. Placing those in their 99th year in colourful clothing and carrying a children's toy gets the gods' attention and makes them think these individuals are still children, so they will delay coming for them. He indicated that the coming year, '*yoku gambaru Obaasan*' would be in her 99th year, so the family was planning her *kajimaya* festival. After everything else in life that '*yoku gambaru* grandma' had to survive, maybe reaching the age of 100 did not seem that big a task.

In retelling these Okinawans' stories I suggest they provide a lesson regarding Article 9. A current challenge to Article 9 is that Japan needs a strong military for protection because of growing fears of North Korea and of a strengthening China. However, all those I met in Okinawa who were survivors or descendants of survivors of the Battle of Okinawa came from families who dared to, or were forced to, follow the reverse logic and fled in the opposite direction of the Japanese military. Those who sought protection by fleeing in the direction of the Japanese military more likely perished. It augments the arguments of those who claim that a strong Japanese military is more likely to enmesh the Japanese in peril, rather than save them from it.

Conclusion

Peace is pivotal to the enactment of global civil society. War is counter to the very concept of civility, and lays in its wake injustices to those it touches. Thus, in order to encourage justice and global civil society, there must be attempts to secure a global civil society of peace. The United Nations chose the year 2000 as the International Year for a Culture of Peace and Non-Violence for the Children of the World, followed by the decade 2001–10, with this call for global attempts to establish and maintain peace. This chapter has suggested that Article 9 of Japan's constitution may serve as a model, the spirit of which can aim peoples and nations towards rejection of war and commitment to peace. When The Hague Appeal for Peace selected Article 9 of Japan's constitution to serve as a model for all countries in order to reduce the threat of war in 1999, it stated: 'every Parliament should adopt a resolution prohibiting their government from going to war, like the Japanese Article 9'.

Pivotal to attempts at creating a just civil society globally is an unwavering and sincere human commitment towards eliminating war, in order to reduce fears for personal security and to enable people everywhere to pursue their cultures and lifestyles with dignity. The preamble to Japan's 'Peace Constitution' not only asserts the desire for a just peace, but recognises that this must involve more than the absence of war, as exemplified in the statement '*We recognise that all people of the world have the right to live in peace, free from fear and want*.'

Former US President Jimmy Carter received the Nobel Peace Prize for his peace efforts after his presidency. He and Rosalynn Carter established the Carter Center, dedicated to peace efforts. Inverting the energy involved in 'waging war', their Center espouses the goal of 'Waging Peace'. Just as health is more than the absence of illness, this concept of peace recognises that along with the need to prevent war there is a need to uphold civil justice and human rights, including health, security, wellbeing and the right to pursue one's culture. Thus, according to Carter (2008: dedication page):

> Peace is more than just the absence of war. People everywhere seek an inner peace that comes from the right to voice their views, choose their leaders, feed their families, and raise healthy children.

While peace is more than just the absence of war, the attempt to abolish war is a preliminary step towards a just global civil society of peace. Despite debates over who

wrote Japan's postwar constitution, postwar Japanese legal scholar Ukai (1955) asserted that it is ultimately the Japanese people who make or break it. The Japanese people have maintained it, and in the past decade have established a grassroots movement of Save Article 9 groups to thwart government attempts to eliminate it. This constitution also reflects significant currents of international thought circulating in the aftermath of the Second World War, as peoples throughout the world grasped not only the desirability of ending war for the future of humanity, but the possible need to do so for humanity to have a future. Thus the Japanese constitution, and Article 9, can be understood as a document in which these lofty ideals were enshrined for the world. In this sense, Article 9 may indeed be the 'world treasure' its supporters claim, written by the experiential wisdom of history, and a model for other nations to adopt in order to lead the world towards a global culture of peace, an inherent foundation in aiming for justice and global civil society.

Notes

1. Questioning distinctions between 'just' and 'unjust wars' Ueno (2004: 156) contends this is defined by perspective and historical outcome; 'just' if won and 'unjust' if lost.
2. Dower (1999) documents the reactions of Japanese intellectuals and average Japanese when they begin to learn of the nature of the atrocities committed in China (Nanjing) and the Philippines, their calls for self-reflection and remorse, and their initial writings or poems expressing this. However, such writings were censored from publication and such critical self-reflections on war guilt suppressed by the US authorities.

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CHAPTER 15

DELIVERING SOCIAL JUSTICE FOR NORTH KOREAN REFUGEES IN SOUTH KOREA: GLOBAL AND LOCAL SPHERES OF CIVIL SOCIETY

Gil-Sung Park and C.S. Moon

Most people around the world have probably heard of the issue of North Korean refugees,[1] as news footage of their flight towards freedom and appeals by the refugees and activists for the enforcement of human rights standards in North Korea have been plentiful in the media during the past decade. However, perhaps overshadowed by the political aspects of the issue, the question of their settlement in South Korea (where the vast majority currently resides) has been relatively overlooked. This chapter seeks to illuminate some of the issues North Korean refugees face in South Korea, particularly with regard to educational and employment opportunities, and to focus on the interplay between global and local civil society as a crucial means for finding solutions to the problems they face.

Once North Korean refugees arrive in South Korea, life becomes a mixed blessing of both unprecedented liberties and extreme difficulty in adjustment. The fact that they are Koreans who share the same bloodline, language and history (up until the division in 1945) only serves to accentuate the sense of comparative depravation and hurt pride. The plentiful availability of material goods in the South become reminders of how hard it is to purchase them, while the availability of educational opportunities become reminders of how much more difficult it is for North Korean refugees to take advantage of them compared to South Koreans. Such issues are typical of refugees in a new society and are often overcome either by hard work or the passing of time and generational change. However, in order to provide at least the opportunity to become equals in society, assistance toward North Korean refugees' settlement in South Korea, especially in the areas of educational opportunities and work, is extremely important.

It is our understanding that delivering justice for refugees means a 'soft landing' for settlement in their new society. In this regard the most crucial component of the settlement is the stability of everyday life, mainly hinging upon education and work. However, in a highly politically charged society such as South Korea, there is the added limitation of government policy. In this regard the 'civil society alternative' becomes a complimentary option. Furthermore, recognition of global civil society as an enormous, growing and invaluable resource is necessary. The need to widen the scope and breadth of the global and local nexus is further strengthened by the process through which, like it or not, problems of the local often become those of the international, and likewise solutions to problems in other societies can become solutions to one's own.

Two Koreas Apart

In order to understand why there is so much difficulty in refugee settlement, it is crucial to understand how different the two Koreas have become over the past 60 years. The issue is much more than the difference in political regimes.

The image of 'Korea' as perceived by South Koreans has traditionally been that of one nation, one history and one culture. Its school educational curriculum has contained teachings that stress the common bond among all Koreans, homogeneity of bloodline, and the whirlwind of often tragic history during the twentieth century, and more recently the dramatic improvement in living standards and individual liberty during the latter part of the century.

As a result, South Koreans have developed enormous pride in their achievements, to the extent that its history of democratisation and economic development has become the signature identity of what it means to be a Korean citizen. In other words, the identity that South Koreans have become most comfortable with is the notion that the difficulties of the past are behind us and that the plateau reached will likely be sustained for the foreseeable future.

This context is important when examining the issues relating to the lives of North Korean refugees resettling in South Korea because the two Koreas that once shared much history and hardship together have diverged so much in every possible way. While the North chose the path of

an autocratic socialist state, the South eventually chose to embrace capitalism and the free market. While the North chose to limit personal freedom and control information, the South proceeded along the path of democracy and individual liberties. The end result after 65 years of two very different systems are two peoples that began from the same starting point but ended up with varying levels of differences in language, culture, and, perhaps most significantly, the psychology of how to survive in society.

The problem is further compounded by the fact that when North Korean refugees arrive in South Korea, the so-called integration process, or understanding of the other, will not likely be a two-way street but one that in most cases requires only the people from the North to abandon their way of life. Hence, while individual liberty and political freedom that accompany one's entry into South Korea will no doubt be welcomed by all North Korean refugees, ties to their own past, in terms of how they perceive the role of society, leadership, competition and competitiveness, will haunt their adjustment to the new setting for many decades to come.

From the South Koreans' point of view, the generational turnover during the past 60 years has resulted in a younger population that is much less willing to place value in unification than the previous generations. The newfound prosperity of recent decades has also made South Koreans much less willing to see North Koreans as brethren to one day unite with and more likely an annoyance and threat to the South's continued prosperity.

In very recent years, another variable has emerged in the increased possibility of the collapse of the North Korean regime. North Korea's increasingly weakening governance structure, news of its leader's ill health, and the increasing amount of information about the outside world penetrating its borders, have made North Korea experts frequently comment upon contingency planning in the event of a sudden change on the Korean Peninsula, especially in the past year or so.

When South Koreans come into contact with North Korea-related issues, their reactions are increasingly negative, as many have come to see the potential of a collapsed North Korea and the consequential South Korean takeover of the region as a financial and social burden that may harm South Korea's prosperity and reduce standards of living. As perceptions of North Korea turned from a feared enemy to burdensome neighbour, attitudes to North Korean 'defectors' (as they used to be termed) as national heroes, have also changed to 'economically and socially challenged people'.

From the South Korean government's point of view, the rapid rate at which North Korean refugees now arrive in the South has transformed the administration's support policy from what used to be a simple guarantee of livelihood in South Korea into a major welfare programme for an increasingly significant and rapidly growing segment of the population. This challenge takes on added significance when one considers that these pioneers in Korean social integration will serve as the bridge to the integration of 23 million North Koreans in the post-unification era. The financial resources necessary for this task, while gradually increasing, are still woefully inadequate, while the scattered efforts by government and non-governmental groups make it increasingly difficult to identify which programmes are most effective and are most in need of funding.

Who are the North Korean Refugees?

As of December 2009, there were 17,984 North Korean refugees living in South Korea (Ministry of Unification 2010). Their rate of arrival into South Korea accelerated approximately from the year 2000 onwards due primarily to the famine during the mid to late 1990s that resulted in many North Koreans crossing the border to China in search of food (Ko et al. 2004; Good Friends 1999). As a result, a large number of such North Koreans stayed several years in China as illegal refugees, after which some have found their way to South Korea (Commission 2000, Chang et al. 2008). As the number of North Korean refugees in South Korea increased, this led those initial refugees to find ways of bringing their families over.

North Korean refugees are legally considered to be 'Korean' citizens, yet, to their frustration, they are classified by some scholars among the several emerging minority groups in South Korea who are changing the demographic landscape of the otherwise very homogeneous nation. In recent years, South Korea has become a major destination for foreign migrants from all over Asia, coming by way of marriage and employment. North Korean refugees are different from these minority groups in that they neither have the option to return to nor visit their former homes for fear of prosecution. Although they speak the same language as South Koreans, the transition from a controlled socialist society to a capitalist one that stresses self-reliance, often renders the North Korean refugees' linguistic advantage futile.

Women tend to be the vast majority of North Korean refugees, as the above-mentioned statistics show, 67 per cent of all North Korean refugees in South Korea were

women. There are a few reasons for this: first, that women in North Korea are exempt from many of the military duties that are mandatory for men; second, that migrating to China is much easier for women than men since many can fill the void in women-specific jobs left vacant by Korean-Chinese women finding employment in South Korea; third, that many women can survive more easily in China by marrying Chinese farmers; and finally, that some defection brokers find it easier to handle women than men (Baek 2002).

In terms of the age groups of those who migrate, the biggest group were those in their 30s, followed by those in their 20s, 40s, teens, and those under ten. This proportion had largely stayed constant. In terms of education levels, only 21 per cent received some sort of post-secondary education or higher, while 79 per cent achieved high school or lower.

It is also interesting to note that over 70 per cent of North Korean refugees come from the northeastern-most province of Hamkyungbuk-do (Kim 2007). This is largely due to the ease of crossing the North Korea-China border in that region. Hence, it is not uncommon to find North Korean refugees with particular cultural, culinary, or social affinities toward the Hamkyung region.

In terms of the professional backgrounds of the refugees, according to December 2009 statistics, 41 per cent of North Korean refugees were classified as labour-intensive workers and 47 per cent were either unemployed or in non-self-sustainable situations (that is, having other people on whom they rely to earn a living). This statistic is important for their employment status once they are in South Korea, because it indicates the proportion without immediately transferable skills for the workplace in the South.

The stated reasons for migrating from North Korea vary. Interviews with newly arriving North Korean refugees in 2006 showed the following, in decreasing order of importance: hardship in life, reuniting with previously defected relatives living in the South, grievance toward the North Korean regime, fear of persecution, and family problems. This contrasts with the 1999 statistics when hardship in life was ranked fourth (Ministry of Unification 2004).

Education and Employment Opportunities

As soon as North Korean refugees arrive in South Korea they are debriefed by the South Korean government and then sent to the Hanawon facility where they receive education and training for living in South Korea. After Hanawon, they are provided with a stipend and mostly go on to live in government-subsidised housing across South Korea. The majority of arrivals end up living in Seoul-Incheon-Gyeonggi Province areas.

For many North Korean refugees, this is the point at which the mix of excitement of freedom and difficulties of settlement in South Korea begins. Once in South Korea, North Korean refugees attending school face the immense dual challenge of discrimination (mostly based upon their North Korea origin, but also regarding language and at times physical features) and their lack of understanding of South Korean society. Both factors adversely affect employment, social standing and self-esteem.

The situation is particularly dire regarding the education of refugee youth, with 2006 statistics showing that, of the 903 North Korean refugee children/youth between the ages of seven and 24 now in the South, only 63.5 per cent were attending school. The dropout rate for refugee children is many times that of other Korean students, and increases as the students become older (Kim 2007). It is reported that the dropout rate for North Korean refugee students attending middle and high school is 11 per cent, which is ten times that of South Korean students (Yonhap News Agency 2009). This dropout rate is the most serious problem in the education of North Korean refugee students.

The reasons cited for leaving school include difficulty following instructions, discrimination by peers and social isolation. Often refugee students are much older than their class peers due to the catch-up necessary after having received no education while hiding in China. Even when refugees stay in school, many develop disciplinary problems.

While one could state that such problems are not uncommon among young people in general, the average South Korean student would have a wealth of resources and disciplinary pressure to overcome such problems, such as parental guidance and private tutoring to augment their competitiveness. Refugee youth, however, often find their parents in as difficult a situation as themselves, both in terms of economic and social standing, so that they must rely on self-initiative and self-motivation.

Communication is also a serious problem. School instructions are difficult to follow and friends are difficult to make, as the North Korean dialect and age differences reinforce discrimination by peers. The irrelevance of most of the North Korean educational curriculum to studies in the South and, in some cases, years of having no education whatsoever are also largely to blame for the refugee

youth's lack of motivation for studying. As a result, they find it difficult to compete with other Korean students who are well trained in studying for exams, while also hindered by the fact that many of the textbooks used in universities are in English.

It is also the case that many students lose interest in their studies and take an indefinite leave of absence. Motivation is a particularly difficult issue, as many North Korean refugee students feel that their comparative disadvantage is structural, rather than something that can be overcome. Furthermore, some parents who are unfamiliar with university education discourage their children from pursuing it so that they can contribute to the family income. Thus it is rare to find role models who have achieved the ultimate goal of finding regular employment based upon a university degree.

The problems of adjusting to the general South Korean school system have led to a number of alternative schools which supply primary and secondary education only for North Korean refugees. The Hankyoreh School and Yeomyung School are two such examples where the educational curriculum, methods, class times (since many have to earn a living during the day) and learning environment are customised to the specific needs of the refugee student. These alternative schools have been recognised as a success thus far, with the government granting them legal educational institution status in spite of some commenting that huddling North Korean refugees together does not promote integration.

Education for young people is a major part of the South Korean government's provision for North Korean refugees. Schooling through high school is free for all refugees as it is for all South Koreans. Yet such investment into public education is diluted by South Korean families' ability to support extra-curricular or supplementary lessons at after-school *hakwons*, or private academies, which make a difference to the level of education a student receives.

The South Korean government's support for higher education is also quite generous: refugee students are provided with a full scholarship (100 per cent for public universities and 50 per cent for private universities, with the remaining 50 per cent paid for by the university). Admission to an undergraduate programme is relatively easy, since refugees are admitted under special consideration. While generally there is no tuition support for graduate studies, if the student already has a BA degree from North Korea they may ask the government to pay for graduate school tuition instead.

The other important challenge that the North Korean refugees face upon settlement in the South is that of finding jobs and keeping them. Much like the above-mentioned issues of education, there are issues emanating from the North Korean background that hinders one's ability to find and sustain employment. Whereas the South Korean government guarantees education as a basic right to all citizens, employment in a free market society is a different matter. As a result, the government could only encourage and offer employment incentives to North Korean refugees as well as salary sharing incentives to potential employers who, in turn, have the right to accept or refuse job applicants.

The January 2010 statistics show that the unemployment rate of North Korean refugees is 13.7 per cent, compared to 3.1 per cent in the whole of South Korea (Munhwa Ilbo 2010). The number of women participating in economic activity is higher than men (58.7 per cent compared to 41.3 per cent) due to their larger population, but the rate of participation among women (41.3 per cent) is much lower than that of men (69.2 per cent). In addition, those living in the rural areas had a much higher rate of economic participation (56.8 per cent) than those in the Seoul and surrounding areas (45.8 per cent) (NKDB 2009: 9).

This leaves a significant portion of the North Korean refugee population neither in employment nor looking for it. When asked the reasons for not looking for a job, the answers were in the following order: bad health (35.2 per cent), raising a child (19.8 per cent), and attending school (19.2 per cent). Some 6.5 per cent replied that they did not bother looking for employment because they had no chance of being accepted.

Perhaps the most important figure, especially with regard to the current discussion, is the salary levels of those refugees employed. The above-mentioned May 2008 sample shows that the average monthly salary of a North Korean refugee worker is 937,000 Korean Won (around US$780), even though 40.1 per cent are working more than 54 hours per week. This compares with an average of 2,476,000 Korean Won (US$2,063) for the whole of South Korea.

Such a low level of income has resulted in 60.2 per cent of North Korean refugees receiving government welfare payments in addition to the settlement assistance they receive upon arrival (this expires after a certain period). The government offers additional monetary support that allows for vocational training, obtaining of licences, and

employment encouragement support (for workers who have worked for at least twelve months).

In spite of this government support, many refugees complain that sustaining long-term employment is extremely difficult, as most employers that hire North Korean refugees do not offer medical insurance, whereas if they are unemployed the government will pay for medical costs. In other words, unless the place of employment is large enough to offer medical support (a primary issue for many North Korean refugees), there is very little incentive to seek work in small industries, since it means the loss of medical benefits. Indeed, many North Korean refugees openly say that it is more profitable to receive government welfare assistance than to stay in full-time permanent work. Hence it is common for them to work in short-term, part-time jobs.

Many refugees find employment difficult due to health issues, much of it a result of their harsh living conditions while in the North or the duration of their journey southward. In addition, many complain of the difficulty performing work-related tasks without the same level of educational/training background that South Korean workers have, or the lack of understanding about how to behave in certain social contexts. This leads to situations where the worker becomes increasingly fearful of making mistakes in the workplace under the watchful eyes of fellow workers. When asked if they have faced a situation of discrimination at the workplace due to their North Korean background, 67 per cent answered 'yes', citing discrimination in human relations, promotions and salary (Free North Korea Radio 2009). While it is not clear whether the South Korean worker would discriminate simply based upon one's North Korean background, this response shows the difficulty that is being perceived by refugee workers and how he/she may feel alienated, not get along in social settings and not understand specialised technical terms or English-based words.

Government Limitations and the Civil Society Alternative

These problems in educational and employment opportunities arise not from the fact that South Koreans are trying to take away such opportunities but from the structural shortcomings arising from North Korean refugees having to adjust to very different surroundings. Because of the different background, it is difficult for a teacher or employer to have the same expectations towards a North Korean refugee that they would towards a South Korean person. Hence, extra assistance is much needed to help North Korean refugees catch up with the South Koreans. This is where both governmental and non-governmental assistance comes in.

In addition to the direct welfare payments to North Korean refugees supported by the South Korean government, many NGOs helping North Korean refugee settlement also receive funds from the government, often competing with other NGOs for the same funds in the process. Under these circumstances, one can argue whether the dependency upon government funds would qualify these organisations as NGOs, yet in South Korea this model of the government assisting NGOs through both direct and non-direct methods is relatively well-established. Even so, these efforts have not been able to match the rise in needs or the pace at which refugees arrive, resulting in shortages of material, financial and human resources to help with the initial settlement, let alone continued supervision and assistance.

The issue is further complicated by the fact that North Korean refugees and the civil society organisations providing for their welfare have been often misinterpreted and caught in the ideological struggles of South Korean politics. While at times perceived as 'leftist' by certain segments of society due to their North Korean background and sometimes going as far as being called North Korean spies, at other times they were branded as right-wing groups for their criticism towards the North Korean regime and involvement in North Korean human rights activities. Clearly there are both progressive and conservative segments within the North Korean refugee community as well as the NGOs that support them. It is also true that, currently, the more political North Korean refugee groups are leaning more towards the right due to their anti-North Korean regime stance. However, the 'politics' of the community must not detract from the fact that the refugees need assistance to help them settle in South Korea, as well as opportunities to improve their lives.

From the South Korean government's perspective, there is the added burden of having to maintain a diplomatic relationship with North Korea in order to resolve the many security and diplomacy-related issues. Understandably, supporting North Korean refugees' organisations in the South may give off unintended signals to the North Korean state during sensitive diplomatic negotiations. This is perhaps the major reason why the issue of North Korean refugees' assistance has never risen to the top of

the political and media agenda, in spite of its importance, but has been carried out with minimal publicity.

Thankfully, there are a number of non-governmental programmes aimed at helping refugees with health issues, job training, and remaining in school, especially through remedial programmes of various kinds. While there are a few large organisations that conduct welfare and training programmes for a large number of recipients, there are also many others operated by religious associations as well as personal donations that assist a few people each. These organisations vary in terms of the weight given to religiosity versus secularism and welfare versus political activism, and North Korean refugee-run versus South Korean-run operations. In spite of the fact that each organisation would lean in one of these directions, most have, or at least aspire to, administer some programmes that aim to address education, employment and health-related services necessary for the North Korean refugee community.

Some of these organisations are run by refugees and some by South Koreans. While it may be preferable to have the North Korean refugee community administer as many self-help programmes as possible, the very nature of their 'migrant' status and resulting learning curve on resource mobilisation in South Korea gives the South Korean-led organisations an advantage in providing immediate services as well as organisational sustainability. In addition, the scarcity of resources has created much internal competition among North Korean refugee-led organisations that do not allow for a coordinated and cooperative approach. However, in the long run, criticism toward the current system of settlement, broader and deeper understanding of the needs of North Korean refugees, as well as self-motivation, will strengthen the role played by North Koreans groups. The sheer number and variety of self-help organisations being established, ranging from political activism to university student groups, as well as early arriving refugees becoming counsellors, are indicative of the growing capacity of North Korean refugee-led organisations in the future.

As mentioned above, the current level of North Korean refugee-related NGO support is relatively small and scattered. Yet, before blaming the government for their lack of support, one has to raise the question of whether these NGOs are equipped with the logistical, managerial and research-related expertise to administer much larger grants or longer-term projects, as only a few of these organisations can guarantee longevity, effectiveness and logistical competence.

Global and Local Interplay

Amidst these mounting challenges in South Korean society, it is interesting to see that concerns and awareness about North Korean refugees is paralleled by the rise of international migration as a major issue for both international governments and global civil society. International migration has become one of the most compelling issues in the context of globalisation, as borderless societies and cultures have excited the imagination of those who see the benefits of economic gain and diversity of cultural products globalisation can offer. While the issue of refugees can be somewhat different to that of migration in other parts of the world, there are clearly related elements in the settlement of North Korean refugees in South Korea. And it is a major benefit for South Korea that it could draw upon the resources from international society to solve or at least assuage the challenges in its domestic sphere.

While the globalised awareness of the impact of international migration may be a relatively recent phenomenon, there are many lessons to be drawn from historical examples of migration from many different societies as well. The modern history of Western Europe offers many examples of international migrants populating previous nation states, as well as the most relevant recent example of the reunification of East and West Germany, which is similar to the two Koreas in that people of the same nation and language integrate with one another after decades of ideological divide. The cases of former Eastern bloc countries coming to terms with democracy and the free market also provides for invaluable precedents that would be a great resource for those working on behalf of North Korean refugee settlement in South Korea. While South Koreans have learnt much from East and West Germany's integration, the end result in terms of the public's perception has been grossly tilted towards the problems in German unification rather than the achievements in overcoming those problems. More effort must be made by South Korean organisations and groups involved in refugee resettlement to find out how the governments and civil society of Europe are dealing with international migration and social integration.

North America also presents many cases of social division with regard to immigrant and host communities, as well as civil society responses to assuage the associated

problems. Both Canada and the United States are countries formed by immigrants and have experienced both the best and worst in accommodating new social groups as they have arrived over the past two centuries (Berry 1987, Caplan et al. 1989, Haines 1997). Further, the racial conflicts of American inner cities over the past several decades have an uncanny resemblance to many of the issues North Korean refugees face in South Korea. Whether it is the usage of same language yet differing accents, disparity in income, discrimination, cultural differences, education opportunities, employment, or administration of welfare programmes, there seems much to learn from how the US is coping with racial divides, especially from effective government or civil society programmes or policies. One example may be 'affirmative action', a policy that is already in place for North Korean refugees in Korea. Thus far, it has not received any criticism from other segments of South Korean society but once the programme is expanded and the budget increased, examining and learning from the inception, implementation and aftermath of affirmative action in the United States will be very useful. The North American example is also helpful in that many South Korean immigrants have experienced difficulties in adjusting to a foreign society that is somewhat similar to that of North Korean refugees in South Korea. The sharing of success stories and advice on how to cope with the current difficulties seems a role that is a natural fit for members of the Korean-American or Korean-Canadian communities.

Another area where global civil society could help North Korean refugees immensely is in social welfare programmes. It is not uncommon to hear of many organisations in South Korea wanting to do more to help North Korean refugees but not having the ideas or resources to do so. Although their intentions are admirable, they have never had to deal with a significant refugee or migrant population in Korea.

As such, this presence of a global informational as well as financial resource is crucial to helping North Korean refugee settlement in several ways, especially for the South Korean civil society organisations that are more or less tasked to carry out government-supported (albeit in short supply) programmes for settlement, and to make recommendations to the South Korean government on policy for North Korean refugees. While access and use of international resources by Korean NGOs is still in its infancy, there have been several examples that could serve as models for the future.

Collaboration between Local NGOs and the International Community for Greater Public Awareness

One area of global and local interplay concerning resources for North Korean refugee settlement is in the area of international public relations. If raising awareness is the precondition for gaining support from the international community, the Citizens' Alliance for North Korean Human Rights (NKHR) is one such organisation that has recognised this early on and has successfully mobilised resources from various international entities.

The core of NKHR's work is the provision of education and training programmes for young volunteers who help North Korean refugees, and remedial education programmes for refugee students in need. From early on in its foundation, NKHR has invested heavily in raising awareness in both Korean and English languages in the form of newsletters and good relations with the diplomatic community, and international conferences. The result of such publicity has been the identification of international personalities, NGOs and funding organisations with expertise to help or that share an interest in promoting certain values related to North Korean refugee welfare. NKHR has been effective in building a cooperative relationship with foreign non-profit organisations such as the US National Endowment for Democracy.

It should be pointed out that the NKHR's international public relations campaigns have concentrated much on the North Korean 'human rights' issue, but have served as an effective launching pad for international interest in providing welfare for North Korean refugees in South Korea as well. As such, the power of international publicity in an era of global media, resources and civil society is enormous and will likely mobilise more help towards the North Korean refugee community in the future. NKHR's steady provision of international access to information and insight regarding the North Korean refugee issue also helps global civil society sift through the assumptions and possible misjudgements they might otherwise make, enabling more relevant and customised resources for North Korean refugees to benefit from.

Nevertheless, the advantage of such a formula for working with international community is not without its challenges. As highlighted above, the South Korean political context has resulted in a working environment that is not entirely favourable to organisations dedicated to North Korean human rights in that many linkages with international organisations or governments are more

often than not scrutinised through the lens of ideology. The highly politically charged atmosphere in South Korea results in the defining of individuals and organisations simply as 'friend' or 'foe', with very little middle ground. The situation is exacerbated by the tendency towards binary categories: pro- or anti-North Korea, and pro- or anti-US, rather than a commitment to social values pertaining to economics and welfare.

Collaboration between Local NGOs and Multinational Corporations

Another model for global and local interplay in providing for the North Korean refugees in South Korea can be found in the Foundation of Young Professionals Institute of Korea (YPIK). The YPIK is an NGO dedicated to researching economic and welfare policy issues as relating to Korea's youth as a whole. Its approach to tackling both the education and employment difficulties of North Korean refugees has been unique in that it sought help from the international corporate community, namely the Microsoft Corporation's Unlimited Potential Program. Aided by Microsoft funding, the YPIK sought out models in global civil society for a programme that would help young North Korean refugees and selected the US-based Network for Teaching Entrepreneurship (NFTE). The NFTE's stated mission of 'teaching entrepreneurship to help young people from low-income communities build skills and unlock their entrepreneurial creativity' seemed very appropriate for the North Korean refugee community in tackling their challenges in education and employment. Essentially, the NFTE's curriculum teaches how to set up a business and become profitable, for the purpose of reducing the economic and educational gap between the North Korean refugees and South Koreans.

As such, the emergence of the corporate community or foundations as an essential part of global civil society, especially through its corporate social responsibility programmes, present enormous opportunities in terms of resources for North Korean refugees' welfare in South Korea. The funding from Microsoft, an entity that clearly has an interest in creating a good image for itself on the international stage and in emerging markets, has created favourable public relations by supporting YPIK. Given that corporate social responsibility is a sector that is expected to grow further in the future, South Korean NGOs' development of relationships with corporate entities will be very useful. In addition to the relationship with Microsoft, the YPIK-NFTE relationship is a perfect model of South Koreans seeking ideas and solutions from global civil society for what is essentially a domestic issue. Indeed, the media has covered the rise of many successful businesses founded by North Korean refugees as a result of the programme.

As was the case with the previous model, engaging multinational corporations to gain funding for domestic issues does pose significant challenges. Although companies with established corporate social responsibility programmes generally allow for much freedom in the design and management of such, North Korean refugee-related organisations in South Korea find it a challenge to meet the high standards required, especially in the application process as well as in the substantial and financial reporting. Nevertheless, gruelling as the process of obtaining funds may be, it is an education that will benefit the NGOs in the long run.

Collaboration between Local NGOs and the Korean Expatriate Community

The other model for global and domestic interplay comes in the form of Korean expatriates. The Saejowi (Organization for One Korea) started as a social group of like-minded individuals seeking to prepare both North (North Korean refugees) and South Koreans for future unification and has long provided medical assistance as well as other practical educational programmes for housewives, elders and more recently a lecture series for university students. The organisation had been a domestically supported welfare organisation for North Korean refugees but in 2008 had the opportunity to develop a programme supported by a Korean-American philanthropist. The donation was facilitated by the US-based Give2Asia organisation, which essentially played the informational and logistical medium for allowing a US-based individual to donate to an organisation in Asia. As result of the donation, the Saejowi organisation was able to develop a pilot programme for university students' leadership education that has gained momentum enough to see its third class of students.

There are two aspects of global and domestic interplay in the case of Saejowi. One is the above-mentioned presence of the Korean expatriate community as possible philanthropists. The earlier generation of Korean immigrants who went abroad understand more than anyone else the difficulties of adjusting to a new society and could identify with the challenges faced by North Korean refugees in South Korea. The fact that

many have overcome disadvantages abroad and become successful, some to the extent that they have become philanthropists, is an inspiration for North Korean refugees. In addition to the Saejowi example, some Korean-Americans have been known to support North Korean refugee communities through religious networks as well. The other global and domestic interplay here is the presence of a truly international philanthropic matchmaking organisation in Give2Asia, without which the benefactor and beneficiary would not have met. The establishment of such an organisation is a clear indication of the growth and potential 'global' dimension of seemingly domestic issues, and a helpful model that the South Korean NGOs seeking global resources should consider.

In addition to donations, the Saejowi organisation has enlisted the help of Korean-American medical students in operating its healthcare assistance programmes. It has been a longstanding tradition for second- and third-generation Korean-Americans to visit their parents or grandparents' homeland, especially during vacation breaks. While most come to learn the language and spend time with family, Saejowi's medical student volunteers have not only been able to assist with the healthcare of North Korean refugees but also learn more about the living standards of North Koreans in general. Many have returned home to inform colleagues of the needs, encouraging new volunteers and volunteering again themselves.

The pull of the homeland is strong, not only because of the common lineage but also due to the inherent need for individuals to learn about or come to grips with one's own roots. The rationale for Korean expatriates' support of North Korean refugees is stronger when considering that the expatriates (especially the older generations) have experienced first-hand the tragedy of a civil war as well as the hardship of adjusting to a new society themselves. Indeed, many expatriates find commonalities between their own experience with poverty and lack of opportunity, and those of the North Korean refugees. Considering these factors, the possibilities for continued funding is strong and the opportunity structure very good. Nevertheless, such an emotional attachment can be a double-edged sword in that anticipation about good results may lead to emotional letdowns. And again, the ideological divide mentioned above permeates the expatriate community, and thus will remain a huge hurdle for many years to come. In order to minimise the problems associated with such factors, it is important for the NGOs to provide regular updates on the progress of programmes as well as careful explanation of their objectives.

Conclusion

The three models outlined above for meeting the challenges of North Korean refugee settlement in South Korea touched upon several dimensions inextricably linked with global civil society: international publicity, international corporate social responsibility, international research-curriculum, expatriate communities and international philanthropic organisations. Each of the models had significant roles in the promotion of North Korean refugee welfare through contact with global civil society: working with international organisations for public awareness, involving multinational companies' corporate social responsibility, and involving the Korean expatriate community for funding and volunteering support. Yet the efficacy of these models should not hide the challenges in implementing them. Chief among the many hurdles in realising support for the welfare and social justice of North Korean refugees is the ideological divide among Koreans that unnecessarily politicises issues. In addition, the logistical and financial requirements for funding is a process that has to be learned, while reliance upon external support and funding must take into account the wishes, small and big, of those providing the funds.

For now, these are possibilities for the future, as all these models are in the relatively nascent stage of development. The three organisations described represent a fraction of those supporting North Korean refugees in South Korea but they stand out particularly in terms of their cooperative relationships with international civil society on North Korean refugee welfare issues. The scope and breadth of such domestic and global interplay should be increased. Indeed, many South Korean NGOs are increasingly appealing to the international community for funding, as the number of refugees grows rapidly.

In summary, the task of integrating a significant refugee population is a great challenge for South Korean society, which has always seen itself as homogenous and perennially catching up with the more advanced countries in the world. At the same time, it is useful to reflect upon South Korea's achievement in democratisation and economic development, by which it has become a more benevolent society where all does not hinge upon short term economic gain but the improved welfare of its citizens, including those who are newly arrived. In order to further these achievements, effort must be made on several fronts:

1. Both government and NGOs must do more to raise awareness among the South Korean public about the lives and context of North Korean refugees. Education

programmes must be present alongside opportunities to the people of North and South understand each other better. Furthermore, the risks of what might happen if the two sides cannot get along must be communicated.

2. Future programmes for North Korean refugee settlement must help them overcome the psychological barriers to integration, as opposed to merely teaching how to make a living in a free market society. This should include education on the culture of debate and dispute resolution, as well as asserting their right to overcome the fear of being alienated.
3. Issues surrounding the welfare of North Korean refugees must be divorced from the 'politics' of most things related to North Korea. This may be difficult to achieve in a highly politically charged society such as South Korea, but we should keep in mind that failure to do so would result in more societal divisions in the long run.
4. Capacity-building for NGOs supporting North Korean refugee welfare is direly needed. Professionalisation of staff in the areas of planning, logistics, public relations, and accounting are the bare minimum. These aspects are usually learned through experience, but the rapid increase in refugee numbers show that time is short.
5. The need for more financial and human resource investment in the welfare of North Korean refugees. An increase of funds must be accompanied by in-depth research measures. Study tours to help support organisations gain more intellectual capital and comparative perspective should be greatly supported.

To achieve the above, recognition of global civil society as a growing and invaluable financial and intellectual resource is necessary. This need is particularly acute given the eventual unification of the two Koreas, but no less important in the most definite reality of a massively growing population of North Korean refugees settling in South Korea. Reaching out to the international community not only for funds but also for ideas, model programmes and comparative research related to social integration can yield innovative solutions.

Note

1. There is a divide among scholars on how to describe the North Korean refugees, with some preferring 'defectors', 'refugees', or '*saetuhmin*' (literally 'people in new homes' in Korean). While the term *saetuhmin* is used as the politically correct term to describe the population, some scholars use 'migrant' as the term that most accurately describes their status. However, most persons in the course of interviewing the community have expressed 'refugee' as the preferred and most accurate term, stating that they don't have the option either of returning to or of visiting their former homes in North Korea through fear of prosecution, and thus they strongly reject the term 'migrant'. Based upon this rationale, we have decided to use the term 'refugee' in this chapter.

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CHAPTER 16

THE BOTTOM-UP PURSUIT OF JUSTICE: THE CASE OF TWO BURMAS

Maung Zarni

> *WE THE PEOPLE OF BURMA including the Frontier Areas and the Karenni State, Determined to establish in strength and unity, a SOVEREIGN INDEPENDENT STATE, To Maintain social order on the basis of the eternal principles of JUSTICE, LIBERTY AND EQUALITY and To guarantee and secure to all citizens JUSTICE social, economic and political, LIBERTY of thought, expression, belief, faith, worship, vocation, association and action; EQUALITY of status, of opportunity and before the law, IN OUR CONSTITUENT ASSEMBLY this Tenth day of Thadingyut waxing 1309 Buddhist Era (Twenty-fourth day of September, 1947 A.D.), DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.*
>
> Preamble, The Constitution of the Union of Burma, 1948[1]

Introduction

Since independence from Britain in 1948, Burma has evolved, ironically, into what I call 'an internal double-colony', that is, a political, economic and ideological edifice which rests on the twin pillars of 50 years of neo-totalitarian military rule and the Bama or Burmese majority's 'big brother' ideological perspective and practices (with regard to the country's ethnic minorities).[2] These justice struggles between the ruling elite which, immediately upon Burma's independence, was made up of non-communist Burmese nationalists and minority feudalists, on one hand, and the Communist Party of Burma (CPB) and ethnic minorities[3] who sought secession or ethnic autonomous statehood within the Union of Burma, on the other, can only be understood in the larger context of regional and global developments (such as the Cold War, the post-Cold War developments in the region and the global political economy of 'energy security'). Unless the regional and global dynamics of power and the scramble for energy tilt in favor of putting 'people before profit' it is inconceivable that even a semblance of justice, equality and liberty will prevail in Burma (Zarni forthcoming 2010).

This chapter examines ongoing injustices in two Burmas: the Burma that has been under the firm control of the country's ruling military regime since 1962, and the other Burma where civil war has raged on and off for the past 60 years. I grew up in Burma under the first military rule of General Ne Win (1962–88) and have extensive firsthand knowledge of the other Burma as I trekked through one of the world's largest minefields, the Karen state in Eastern Burma, snaking along the Salween River that separates Eastern Burma and Thailand. Two Burmese colleagues,[4] who reside in military-controlled Burma, provide their analyses, developing their respective understandings of the prevailing injustices and the system that has produced them. I attempt to marry their readings of grassroots pursuit of justice and my observations about the global and historical dimensions of local injustices.

Global Factors Impeding the Local Pursuit of Justice

Economically and strategically, Burma is vital to the competing strategic visions or national interests of China, India, the Association of South East Asia Nations (ASEAN), and a small but vital part of the global extractive industry's 'virgin' frontiers. Notwithstanding the vociferous international debate around Western economic sanctions against Burma as a pariah state, energy interests including Australia, Italy, France, Japan, the US, Russia, Canada, and so on, are represented in Burma's multi-billion-dollar gas and oil projects, not to mention the presence of state energy firms and investors from China, India, South Korea, Malaysia, Thailand, Indonesia and the Philippines. An overarching question is the role of exogenous forces in the unfolding national tragedy of Burma – a classic 'natural resource curse' under the watch of the Burmese generals and their distinctly internal colonial polity. Below are identified six global factors that I consider structural barriers to the pursuit of justice by Burmese citizens and communities as they strive against ethnic and economic injustices, human rights atrocities and human insecurities.

1. Burma's geo-strategic significance to emerging global powers, such as China and India, as well as to ASEAN, which contrasts sharply with her policy insignificance to pro-change Western powers (Zarni and Oo 2004).
2. A 'development model' (Rist 2008) that is killing or displacing communities across Burma: for example, construction of a 771-kilometre oil pipeline from the coast of Western Burma to southern China; a 400-kilometre natural gas pipeline from Burma's southern Coast to Thailand; the damming of rivers for giant hydroelectric projects intended for sale of electricity to neighbouring China and Thailand; and massive mining projects, all in ethnic minority regions (see, for instance, *China Daily* 2009, EarthRights International 2009, Swe 2009).
3. China's rise and its immediate consequences for the balance of domestic power in Burma. For example, Burma is one of the very few issues, besides Taiwan, which Beijing has cast its Security Council veto over, making it impossible for Western supporters of the Burmese pro-democracy opposition to use the Security Council to pressure the regime towards dialogue, reconciliation and reforms. (For a Chinese perspective see Chen 2009.)
4. India's withdrawal of support to the opposition in the 1990s in order to contain China in Burma. As Joseph Allchin, an analyst with the Democratic Voice of Burma, wrote:

   > India has consistently sought closer ties with the junta since the late 90s when the government seemingly made a U turn on previous support of the Burmese democracy movements. This U turn was epitomised by the controversial Operation Leech, in which a number of Burmese opposition activists were lured to Indian territory only to be killed or arrested. The reasoning seems to be the increased energy needs of India and a competitive geo-political rivalry with China for influence over the region. India has a number of business and military deals with the junta; ranging from the recent inception of a Tata truck factory to military training and importantly, Indian state owned gas companies operating in Burma's lucrative Bay of Bengal gas fields. (Allchin 2010) (For an Indian perspective see, for example, Kuppuswamy 2003).

5. No strategic or real Western support for change, owing to the 'Low to No' policy significance of Burma beyond liberal rhetoric ('No Nukes, No Oil, and No Terrorism, No Solidarity', as a Western diplomat friend once said, only half-jokingly);[5] and
6. The near total absence of 'political enlightenment' among the power elite or ruling classes in Asia generally and in Southeast Asia, except in Indonesia, and conversely, the regressive shift towards mass consumerism within these societies (as opposed to democratic norms and intellectual freedoms). Indeed, Burmese and Cambodian human rights activists were barred from meeting Southeast Asian heads of states and/or leaders at the ASEAN leadership summit in the Thai beach resort of Hua Hin. Consequently, the socio-cultural and ideological basis on which a 'pan-Asian' solidarity and progressive liberal movement could be built is lacking among Asia's power elites. Instead, an essentialist 'Asian' triumphalism has prevailed in the wake of the decline of Western powers and influence. Such a perspective is typified in the writings of Kishore Mabubani (2008), Dean of the Lee Kwan Yew School of Public Policy at the National University of Singapore and Permanent Secretary at the Foreign Ministry (1993–98). Indeed, blind faith in the possibility of infinite economic growth (Rist 2008), inspired by the 'successes' of the 'Asian Tigers' has become one of the key barriers to achieving social and ethnic justice in Burma and throughout Asia.

Of all these exogenous factors, the fact that Burma has become inseparably linked to China's long-term national strategic vision is the most consequential, with an adverse impact on the pursuit of justice by grassroots communities across ethnic and class lines. This is evidenced in the policy calculations and practices of both the central government in Beijing and its provincial power centres, such as the capital of Yunnan, Kunming. China's determined opposition against any Burma resolution at the Security Council, which would have the potential to alter the country's domestic balance of power in favour of liberal democratic opposition, speaks volumes about the seriousness with which Beijing views the strategic value of its southern neighbour in its long-term national vision.[6] Burma is the only access for southern China to the Indian Ocean, which is vital to China's pursuance of its military ambitions. In addition, with a shared 2,200-kilometre border, Burma is China's biggest corridor for overland trade and transport with mainland Southeast Asia. Historically, China has had close ties with armed minority organisations, for instance the Kachin Independence

Organization (KIO) and the United Wa State Army, which have served as a strategic buffer between the two countries. For Yunnan province, Burma is the largest trading partner, a growing foreign market and its largest source of raw materials (Li and Lye 2009).

Exacerbating the above factors that inhibit the pursuit of justice are the state-centred paradigms within the social sciences, the absolutist reading of 'state sovereignty', which is embedded in the national ideologies of emerging regional and global powers, and the structural and institutional limitations and failures of global institutions such as the United Nations, its constituent agencies (in particular the Security Council) and international financial institutions.

The colonial state in Burma under native military rule clearly lacks the capacity for genuine reform, as evidenced, to provide just one example, by the regime's alleged 'crimes against humanity', according to the UN human rights envoy Tomás Ojea Quintana, who reported to the UN Human Rights Council in Geneva that '[t]he possibility that the gross and systematic nature of the human right violations [in military-ruled Burma] may entail crimes against humanity must be seriously examined and addressed accordingly' (Quintana 2010).

Background: Post-independence Burma and Its Crisis of Internal Legitimacy

A chapter about justice, or more accurately the lack of it, in Burma after half a century of military rule must encompass a brief discussion of some fundamental issues that have remained unaddressed since independence in 1948. At the heart of these issues, which have affected the perceptions and struggles for justice in Burma, is the deeply colonial nature of the state that emerged, ironically, out of the process of decolonisation.

For the sake of analytical clarity, this chapter treats Burma as a modern political construction. While historically relevant, Burma as an ancestral land of different ethnic communities is of secondary importance to the discussion of local justice here. In the words of my late friend Chao Tzang Yawnghwe, a scholar, Shan Prince and Marxist-influenced revolutionary, 'the people were in effect all slaves whose lives, property and land were "owned" by their respective feudal rulers, be they Shan, Bama, Mon, Arakanese, etc.' (Yawnghwe 1997, personal communication). It seems intellectually and politically fruitless to manufacture ethno-nationalist and dynastic histories of Burma, given that ruling elites in Burma's pre-colonial polities treated the 'masses' of all ethnic backgrounds little better than serfs. A more fruitful approach would treat Burma as a 60-year-old young modern polity created as a result of the Second World War, the subsequent dissolution of *Pax Britannica*, and shaped by the international political economy of the Cold War era.

To the Burmese Maoists, the political independence granted by Britain after 120 years of colonial rule was a sham because of the maintainance of 'military ties' and the extraction of significant reparations for British commercial interests as part of the independence agreement. To ethnic minorities who had during pre-colonial times lost their sovereign kingdoms or autonomy to Burmese warrior kings, or who were never under Burmese rule, the post-independent state did not mean post-colonial polity. Rather it was simply the changing of colonial guards – from the alien hands of the British from afar to those of their Bama or Myanmar neighbours.

To make matters worse, in 1962, 14 years after independence, the military staged a decisive coup vanishing any prospects of satisfactorily addressing through parliamentary mechanisms the issue of state legitimacy, specifically the fundamental issue, from the perspective of ethnic minority groups, of ethno-colonialism by the dominant ethnic majority. A few years after the collapse of the first military regime (1962–88) in the midst of the popular revolts of 1987–88, even Robert Taylor, whose sympathetic readings of Burma's 'army-state' have earned him international notoriety, said:

> despite acknowledging the illegitimacy of military government soon after the 1962 coup, the government of General Ne Win was never able to create the conditions which would allow the army to step back from high office. The BSPP never became the mass popular party that it was supposed to be … As the regime aged, it became less likely that power would be yielded as personal interests became embedded in the system of shortages, and the black market became part of the system of political and financial support for many high officials. (Taylor 1991: 134–5)

Even if one overlooks this internal coloniality it is impossible not to notice the spectacular failures of the army-state to acquire 'performance legitimacy', in contrast to the development of the Asian Tigers under authoritarian regimes.[7]

The economic structure of the Burmese economy has remained virtually the same over the past 62 years: the proportions of different agricultural sectors (comprising

agriculture, forestry, livestock, hunting and fishing) to GDP in 1938/39 and 2003 were 47.9 per cent and 51.9 per cent respectively (Myint 2006). Even in comparison with Asia's 'Least Developed Countries' (for instance, Laos, Cambodia, Bhutan, and so on), Burma under military rule fares worst. A recent study conducted by a team of researchers from Harvard University and their counterparts from Burma's Agricultural University at Yezin concluded that 'the current economic conditions [in various rice-growing areas] are without precedent in living memory' (Assessment of the Myanmar Agricultural Economy 2009). In the words of one researcher, 'the general economic conditions for Burmese farmers are worse than those that existed in the colonial economy under British rule at the height of the worldwide Great Depression in the 1930s'.[8]

Today Burma's ethnic and political communities are locked in long-running and bloody conflicts over conflicting historical memories, national and ethnic visions, and economic interests. At the time of the 1988 revolt there were 25 resistance groups fighting for ethnic equality, political independence and/or social justice against the central. These organisations could be grouped together under two umbrella networks, namely the Beijing-backed Burmese Communists (namely the Communist Party of Burma) and a multi-ethnic alliance of organisations fighting for a federated Union of Burma. Together they controlled between 25 per cent and 30 per cent of the total land area of modern Burma (Smith 1999). The State Peace and Development Council has addressed none of the key issues that gave rise to these justice and equality struggles. On the contrary, the clique of generals who have hijacked the country's armed forces for their personal economic gains and political power. As a leading expert on the country's military put it:

> [with] absolute autnority, backed up by the mohopoly' of the instruments of violence and the absence of checks and balances, the Tatmadaw government has increasingly become the captive of a small group that [have] failed to differentiate between private, corporate, and public interest. (Aung Myo n.d: 39)

The ruling clique are moving ahead with their plan to build a system of political apartheid with a thin veneer of 'constitutional rule' and trappings of a democracy, such as bicameral parliament and 'elections', wherein the military will occupy the first tier of national politics and rule in perpetuity as guardians of the country.

Burma defies conventional definitions of a 'failed state'[9] because it has so far been capable of controlling territories and populations directly, or through a patchwork of semi-autonomous administrative arrangements (except for armed conflict zones that make up most of the eastern borders).

According to Arthur, who monitors developments in Burmese civil society and analyses policy discourses on democratisation, conventional wisdom about the country has focused on achieving an elite agreement as a way of inducing 'positive change' on the ground. Such perspectives stress the role of elites in state building, institutional reform and reaching a compromise among themselves for democratisation, while underestimating the resolve of the regime to crush any efforts, external or internal, to change the power dynamic witin Burma's polity.

In Arthur's view, the 'regime security' state devotes its resources and possesses the will to ensure that no alternative organisation that is not under its direct or indirect control has the opportunity and autonomy to build a social base. One example of the strictures against civil society organisations is indicative of the extent of control exerted by the regime: the authorities imposes restrictive measures against a national voluntary organisation that helps to organise proper burial and funeral rites, especially for the poor in urban areas. If the state interferes with communal or organisational efforts to help bury the dead, imagine how much interference there is for those organisations and networks that help the living.

For ethnic nationalities or minority communities the issue of justice has additional socio-cultural, political and economic dimensions. Because the regions they inhabit are rich in natural resources such as precious stones (jade and rubies), teak and other valuable hardwoods, uranium, gold, copper and coal, and border with countries that serve as lucrative trading gateways, the twin issue of access to economic and commercial opportunities and the share of the proceeds concerns the distributive aspect of social justice for the ethnic minority peoples across Burma. Furthermore, because the state has been engaged in what Charles Tilly (1996) calls 'top-down' state-building, imposing its standardised versions of official history, language, culture, anthem, curriculum, and so on, it generates 'bottom-up' demands for cultural and ethnic equality on the part of elite members of Burma's ethnic minorities.

No discussion of injustices in Burma would be complete without mentioning the horrendous forms of systematic injustices such as gang rape, summary execution, forced

labour, the use of villagers as 'human mine-sweepers', burning of villages, and so on, that a substantial proportion of multi-ethnic populations in conflict zones suffer, as well as the social and ecological destruction wrought in the name of 'development'. As James C. Scott argues cogently, many of these communities have opted to remain on the margins, literally and geographically, of the country, rather than submit to being incorporated as second class citizens, as in the case of majority Bama public, or colonial subjects as in the case of non-Bama minorities (2009). There are many official reports on human rights atrocities committed by the state in remote areas in the name of 'nation-building' and 'national sovereignty'. Currently, the existing policy discourse seems bent on defining Burma's problems only as the issue of 'democratisation' via the military-sponsored 'elections'. Even if this electoral process were 'free, fair and inclusive', as called for by the UN, the European Union and the US, the electoral politics under military rule will not usher in a new era of ethnic equality and social justice (Channel News Asia 2010). US Assistant Secretary of State Kurt Campbell, who travelled to Burma in May 2010 to meet with regime officials and opposition leaders, including Aung San Suu Kyi, remarked:

> unfortunately, the regime has chosen to move ahead unilaterally, without consultation from key stakeholders – towards elections planned for this year. As a direct result, what we have seen to date leads us to believe that these elections will lack international legitimacy. (Campbell 2010)

So far the international community has, however, failed to take seriously the grievances and the extent of violent and bloody injustices that these ethnic communities in the 'other Burma' have endured as they resist being colonised by the centralising militaristic state. Over the past ten years, most Western government officials with whom I have discussed these ethnic grievances are indifferent to such. Some half-approvingly observe that the days of these resistance fighters are numbered, while others disdain continued resistance to the Burmese junta. Through their prism, resistance to state-building is futile, stupid and therefore not to be encouraged.

My conversations with Karen guerrilla fighters in Eastern Burma amply demonstrates that ethnic minorities fully appreciate the nature of the battle they are fighting. They know they are dealing with matters of life and death, the survival of their communities on their ancestral land. In this, they are not only confronted with a state that has attempted to annex and submit their territories to central administrative control, but also the 'pro-development' forces, both domestic and international, which want to dam their rivers, promote commercial agriculture, fell their rainforests, set up factories on sustainable farmland, and turn hundreds of thousands of refugees, internally displaced persons and economic migrants into an army of exploitable wage labourers. According to the Thailand Burma Border Consortium, the umbrella network of refugee relief agencies, between 1996 and 2006 Burma's military regime dismantled or forcibly relocated over 3,000 villages in Southern and Eastern Burma that are home to at least six major ethnic minorities, for commercial, strategic, (economic) developmental and military reasons (2006). The consortium believes around half a million people have been displaced as a result.

State-centred Neo-orientalism and Conventional Wisdom About Burma

The fundamental problematique of the state in Burma, which is the main source of economic, gender and ethnic injustices, would be incomplete without a discussion of the 'justice-unfriendly' way in which Burma's problems are framed in the academic literature. This literature is littered with descriptions and analyses of Burma that fail to conceptualise critically and problematise the post-independence state and its presumed legitimacy, as well as the virtues and desirability of the current global system of nation states.

Because mainstream academic discourses on Burma fail to take full account of the colonial nature of the post-independence state, they remain largely hostile to a justice-sensitive reading of Burma. Scholarship and analysis influenced by humanistic values of the author are considered less 'objective' or too emotional. Understandably, a general concern among scholars for unhindered access to the country, particularly the military-controlled areas that comprise 80 per cent of the country's land mass, has also created a scholarly context wherein researchers, academics, writers and in-country journalists all engage in self-censorship, tip-toeing around justice-related issues or tailoring their arguments so that they are devoid of independent and critical edge. Further, the typically state-centric perspectives of Burma's political economy result in analyses that make light of the issue of justice. The British colonial polity of the old Burma, which George Orwell, a police inspector in that era, characterised as 'a system of theft', morphed into a post-independence system of loot, rape and slaughter.

While the colonial-era studies conducted by Christian missionaries, European mercenaries and British colonial administrators were Kiplingesque, post-independence research on Burma studies has remained distinctly neo-Orientalist during the past six decades. Two of the best known contemporary Western writers on Burma do not even acknowledge that the natives have either the 'state' or 'civil society', as either a politico-linguistic tool or socio-historical reality. An example is David Steinberg's 1997 essay 'A Void in Myanmar: Civil Society in Burma'. According to Mary Callahan (2007), there is no word for 'state' in the Burmese language, apparently oblivious to the fact that the Burmese world of politics has an ample body of politico-linguistic tools that adequately capture various technologies of the state – in both Weberian and Foucauldian senses. For instance, the original Burmese term *Let-Net Naing Ngan Daw* or 'the fully armed state' comes closest to the Weberian definition of the state with its morally sanctioned monopoly over the use of coercion.

If Benedict Anderson's notion of nations as 'imagined communities' is to apply to the state formation and 'nation-building' in Burma, Burma studies does not allow the natives' 'imaginations' to be informed by principles of justice, equality or liberty. That is, as long as Burma's process of state-making and war-making conforms to the liberal West's faith in the current world system of 'states', with their sacrosanct monopoly of coercion and violence against anyone who resists the central state's forcible integration and assimilation.

Burma Studies has by and large chosen to remain silent on the fundamentally criminal and colonial nature of Burma's 'state-building' process, while in effect finding fault with the natives' languages, imaginations, social organisations and polities, without any empirical basis. In short, neo-Orientalism is the deeply troubling epistemic framework on which virtually all modern constructions of Burma are based.

Writing in the 1920s and 1930s, Rabindranah Tagore recognised the bloody and criminal nature of building civilisations (and nation states based on national and civilisational discourses). According to Tagore, civilisations are built on human corpses. Half a century later, Charles Tilly echoes this sentiment when he observes:

> If protection rackets represents organized crime at its smoothest then war making and state making – quintessential ultimate protection racket with its advantage of legitimacy – qualifies as our largest organized crime. Without branding all generals and statesmen as murderers or thieves … a portrait of war makers and state makers as coercive and self-seeking entrepreneurs bears a far greater resemblance to the facts than do its chief alternatives: the idea of a social contract, the idea of an open market in which operates of armies and states offer services to willing (citizen) consumers, the idea of a society whose shared norms and expectations call forth a certain kind of government. (Tilly 1985: 169)

On their part, Burmese scholars and writers, both minority and majority, from the British colonial period onward, have constructed their own versions of neo-Orientalist historical discourses coloured by different strains of patriotisms and ethno-nationalisms. Consequently, their historical analyses fail to problematise the rather bloody process of state building under native rule. Thant Myint-U's *The River of Lost Footsteps: A Personal History of Burma* (2007) is a contemporary case in point, while Lian H. Sakhong's *In Search of Chin Identity: A Study in Religion, Politics and Ethnic Identity in Burma* (2003) typifies an ethno-historiographic work.

Most Burmese historians and writers specialising in the pre-colonial histories of Burma are 'dynastic historians', a pejorative reference by James C. Scott to historians and students of South East Asia who uncritically treat the deeply pathological process of state formation in the region, and glorify their 'pet' monarchical pasts while making light of the systemic ugly social and ethnic realities on the ground (2010).[10] Ironically, Toe Hla, secretary of the Myanmar Historical Commission, is one of the few Burmese historians whose scholarly writings are sensitive to the pathetic material conditions in which the bulk of pre-colonial subjects live under native monarchical rule.

The Vanishing Discourse of *Taya Mya Ta Mu* or 'Justice-Equality' among the Urban Elite

My colleague Arthur perceptively observed the 'justice-numbness' of contemporary commercial and technocratic elites (2010). Historically, the attitude of the local elite has hardly altered, despite fundamental changes in Burma's polity. Writing in the *Rangoon Gazette* (1923) in British Burma, Mr Fogarty, a senior colonial administrator, had this to say about a typical elite attitude towards the less fortunate brethren: 'to the best of my observation, Burmese of education and well-to-do persons, both officials and non-officials … regard themselves as a class apart from the poorer Burman' (quoted in Tha Khin 1923). Nearly a century after Fogarty's remark the urban elite in

Burma, often Western influenced and well travelled, view themselves as a superior class above ordinary people, and disdain those who clamour for justice-equality. Similarly, the thousands of officer cadets who graduate from the country's defence academies each year are conditioned to perceive themselves as the nation's future ruling elites, exuding a corporate worldview reminiscent of the typical attitudes of colonial administrators.

Because the National League for Democracy (NLD), the broad-based flagship political opposition under Aung San Suu Kyi, has been unable to bring about democratisation since its birth amidst nationwide revolt two decades ago, the urban commercial and bureaucratic elite have decided that incrementalism or 'gradualism' (Carothers 2007) is the only way to bring about social change. Unlike the traditional Buddhist Order, with its sense of spiritual and social responsibility, Burma's commercial and technocratic elite are unprepared to confront the military and its repressive state or consider acts of resistance and confrontation futile. On the contrary, they exist in a form of symbiosis with the military state. Not unlike academic discourses, they talk about modern state building and remain indifferent to issues of justice. For them, injustices are a small price to pay for building a developmental state informed by the dominant Bama's economic nationalism. Indeed the victims have only themselves to blame. In the words of the Burmese political scientist Kyaw Yin Hlaing:

> Burma has been cursed by a bad government and a weak and ineffective opposition … It will be nonetheless difficult to find a way out of the political deadlock for the exile groups so long as each pursues ideological rigidity and remains intolerant of alternative methods to resolving the situation. Without a paradigm shift, the (Burmese) political activists will find that they themselves are their biggest enemies. (Hlaing 2007: 46, Taylor 2009)

While the criminal nature of state-building in Burma is irrefutable, there have also been ideological/cultural articulations employed by the predominantly Buddhist rulers of Burma's various feudal polities, as well as by the Burmese nationalists, parliamentarians and generals alike. No state, however violent, can rely on force alone to rule or govern a population within its territorial confines. It needs to manufacture among the population a Foucauldian 'governmentality', a dynamic link between the 'microphysics of power' and the macrostructure of a state. Aung San Suu Kyi, the icon of Burma's struggle for justice and freedom, fully understands the centrality of justice in building a peaceful social order:

> there is no intrinsic virtue to law and order unless 'law' is equated with justice and 'order' with the discipline of a people satisfied that justice has been done … The Buddhist concept of law is based on dhamma, righteousness or virtue, not on the power to impose harsh and inflexible rules on a defenceless people. The true measure of the justice of a system is the amount of protection it guarantees to the weakest. (Suu Kyi 1990: 177)

'Indigenous' Discourses of Power and 'Justice'

Ideologically, Burma is considered one of the 'Indianised' states of Southeast Asia in that its political culture, the 'Dharma'-driven spiritual outlook – at least for the dominant Buddhist Burmese and other predominantly Buddhist minorities, such as the Arakanese, the Shan, the Mon, and so on – is rooted in the Buddhist civilisation of the ancient India of Ashoka the Great (304–232 BC). These Buddhist communities modelled polities on the Hindu-Buddhist moral universe where the king occupied its secular centre. The monarchs viewed themselves – and were viewed by their subjects – as 'would-be Buddhas'. These Buddhist kings were, at least in theory, bound by the discourse of the 'righteous monarch'. They were not law-makers, nor were they above the Buddhist-Hindu laws of personal ethics and public moral laws. One of their main duties was to help create socio-economic and administrative conditions that would enable their subjects to pursue righteous livelihoods so that the latter could gradually build up their store of Karmatic capital for their next incarnation. At the time, the hegemonic view was that the kings were kings because they had, in their cycles of life, accumulated a greater quantity of Karmatic fortune or capital than anyone else. Only Buddhist clergy had greater spiritual quality and therefore Karmatic power. Such was the institutional arrangement throughout indigenous monarchical rule, within which justice was pursued or delivered at various levels of the Buddhist feudal societies of Burma. To be sure, the arrangements were not always effective in ensuring a righteous ruler, but they did provide some 'checks and balances'. Noteworthy is the invention of a cultural/spiritual mechanism, known as the guardian angel who dwells in the monarch's white umbrella, whose sole mission it was to constantly remind the monarch of the need to behave in accord with the Buddha Dharma,

in his dual role as an individual human being and a ruler with greater kingly social responsibilities. Likewise, the centuries-old traditions and behavioural regulations of the Sangha or Buddhist Order impose effective limits on the political uses of monks' enormous social influence in society. The farther removed a Buddhist monk from the spheres of economic and political powers, the more intense his mindful living and the greater the socio-cultural and spiritual standing he (or she) has in the eyes of lay society.

Thus the two most powerful segments – monks with socio-cultural influences and kings with their kingly powers – of society were constrained before the colonial annexation. On their part, 'commoners' or lay people had powerful psychological mechanisms, which are supposed to regulate their daily actions and behaviours. Burma's Buddhisms were intertwined with the pre-Buddhist faith in spirits. As such, Buddhist laity believed that every Buddhist person has an assigned guardian spirit that quietly approves or disapproves of an individual's thoughts and deeds, depending on its accordance with Buddha Dharma. A person is what he or she does. And the greater the disapproval, the greater the price exacted from the individual in this world. This price is in addition to the negative Karmatic score cards that one must keep. This deterrence against committing injustices at the personal and societal level played a key role in the creation of a 'Buddhist governmentality'.

With regard to social organisation,[11] there was a culturally prescribed public morality according to which society at large evaluated the everyday social and economic acts of its members. There may not have been the Burmese equivalent of Rousseau's 'social contract' between the ruled and the ruler, but the monarchical societal and political landscape was nonetheless a web of justice- or righteousness-minded institutional arrangements. Needless to say, pre-colonial Burma's social realities existed in sharp contrast to this idealistic picture of premodern 'Buddhist' polity and social order.

Despite the rhetoric of Karuna or universal kindness that supposedly permeated Buddhist society, the social order contained layers of depressed classes whose material existence was meticulously regulated and enforced by the dominant social classes (Tha Khin 1923). Aside from caste-like systems, there were many instances where ideological/cultural mechanisms, such as those mentioned above, failed to restrain or prevent tyrannical rulers from pursuing their own imperial or monarchical missions (for example, temple- or pagoda-building projects undertaken with what would today be called 'forced labour') at a time when the country may have been on the verge of famine, or conscripting impoverished peasants for military expeditions in neighbouring kingdoms.

The parallels with present-day Burma are clear. Although the Buddhists of the old Burma did not worship gods in the ways the ancient Greeks did, the Buddhist masses read into natural disasters, plagues, military defeats of reviled monarchs, crop failures and mass starvation signs of Karmatic punishment resulting directly from rulers' failure to govern justly. Cyclone Nargis, which devastated Burma's Irrawaddy Delta and killed an estimated 150,000 people, was interpreted by locals as a sign of the moral failings of the generals who do not live by the Dharma of Lord Buddha.

The Army State and its Lack of Domestic and International Legitimacy

The issue of justice in Burma goes well beyond the abstract nature, context-dependency or contested meaning of justice. The materiality of injustices, or lack of justice at multiple levels and domains of public life, is clearly discernible. The generals' decision to disregard people's appeals for emergency relief supplies, drinkable water and shelter in the wake of Cyclone Nargis, put the plight of the Burmese public on the extreme end of the scale of justice–injustice in society (see Human Rights Watch 2010). Even compared to other paternalistic and autocratic regimes in Asia, the State Peace and Development Council (SPDC) seems incomprehensibly inhumane and incompetent at state-building. And the level of sadistic violence it displayed towards the Buddhist Order was unprecedented.

Some may see these atrocities as callous reactions to extraordinary events. When it comes to social, political and economic development during nearly 50 years of state-building, the regime has performed extremely poorly according to many surveys and indices on corruption, human security, governance, political freedoms and human development. For example, Transparency International ranked Burma the third most corrupt in the world in its Corruption Perceptions Index 2009. In terms of press freedom, Freedom House's 2009 report listed Burma among the ten worst countries alongside Belarus, Cuba, Equatorial Guinea, Eritrea, Iran, Libya, North Korea, Turkmenistan and Uzbekistan (Freedom House 2010). The most recent United Nations Human Development Index ranks Burma (or Myanmar) 138th out of the 182 countries surveyed (UNDP 2009). In terms of gross domestic product per capita, Burma is

ranked 167th, just above Rwanda. It spends less than 2 per cent of its national budget on health, and looking at the quality of life as measured by multidimensional poverty instruments, the typical Burmese male faces a 20 per cent probability of not reaching 40, while 32 per cent of children under five are malnourished and underweight (UNDP 2009). It is hardly surprising that life expectancy in Burma is 62, the second lowest in Southeast Asia after Cambodia. More than 30 per cent of the population had an income level well below the threshold necessary to provide for basic food and other survival needs. In ethnic minority regions, the percentage rose to 50 per cent. The average Burmese household spends more than 70 per cent of its income on food alone, a clear indication of how tough it is for citizens to meet even basic survival needs (UNDP 2006).

Regarding the quality of government, the military regime ranks lower than the Cambodia and Laos. According to governance indicators for 1996–2009 (Kaufman et al. 2009), Burma is ranked lower than East Timor in terms of the prevalence of the rule of law. In the same survey, Burma is bottom of the eight Asian countries; North Korea is the only country worse than Burma in its control of corruption, while in citizen's voice and government accountability, even North Korea ranks higher than Burma! Where Burma outperforms Asian and other ASEAN states is in opium production and military expenditure. During 1995–2007, Burma's opium production was higher than that of Laos, Thailand or Vietnam, according to the United Nations Office of Drugs and Crime's World Drug Report (2008).

Grassroots Strategies for Seeking Justice in the Two Burmas

Let me now turn to some of the ways in which communities and citizens across both Burmas are trying to rectify the unjust situation resulting from governmental failures and internal colonial wars by the state. As Grace points out in her conceptual framework (see Figure 16.1) the government's failures since independence have had a cumulative impact on society at large, irrespective of one's ethnic background, religious faith, or profession. Failure to address people's sense of injustice at what is being done to them, either individually as citizens or to their ethnic communities, is amplified by the lack of proper institutional arrangements whereby the wrongs could be righted. More often than not, governmental interventions aimed at righting the wrongs have proved completely ineffectual, leaving people dissatisfied or even more aggravated. Ultimately such individuals may seek their own just solutions to personal or communal grievances.

Citizens Seeking Justice: The Military-controlled Burma

This section examines various non-violent and violent strategies that citizens (civilians, soldiers, the dominant ethnic majority and minorities) deploy in their search for justice. 'Climbing the mountains' is a colloquial euphemism used by ethnic minority youth from the mountainous borders of Burma that means heading to greener pastures in China, India or Thailand, instead of going to the Burmese cities of Mandalay, Rangoon or Taunggyi. For the several million economic refugees from Burma a precarious (and frequently illegal) life as migrant workers is preferable to the poverty, hopelessness and political repression at home. Some have gone beyond Burma's Asian neighbours through the extensive networks set up by their ethnic brethren, Christian churches and relief agencies overseas. For example, a significant number of the Chin in Western Burma, which borders northeast India, have reached the US and other Western countries. However, the road to greener pastures is fraught with many dangers, including the risk of being shot by the military of nations to which they flee (Ambika and Martin 2010).

Those who chose to remain in their communities and stand up for their own people risk persecution at the hands of the regime's security apparatuses. According to a report by Amnesty International that draws on accounts by 700 activists from seven of the largest ethnic minorities:

> The government of Myanmar violates the human rights of ethnic minority political opponents and activists in a myriad of ways, including torture and other ill treatment; discrimination on the basis of religion and ethnicity; unlawful killings; and arbitrary detention for short periods or imprisonment. (Amnesty International 2010)

Those who are more risk-averse resort to other measures such as seeking assistance from international non-governmental organisations to address unjust treatments, partnering with influential people or organisations – for example, military families – that can provide protection and patronage as they seek a secure livelihood, and assimilating into the cultural mainstream; for example, by adopting a different religion.

Aside from these individual strategies, a growing number of informal community-based networks and

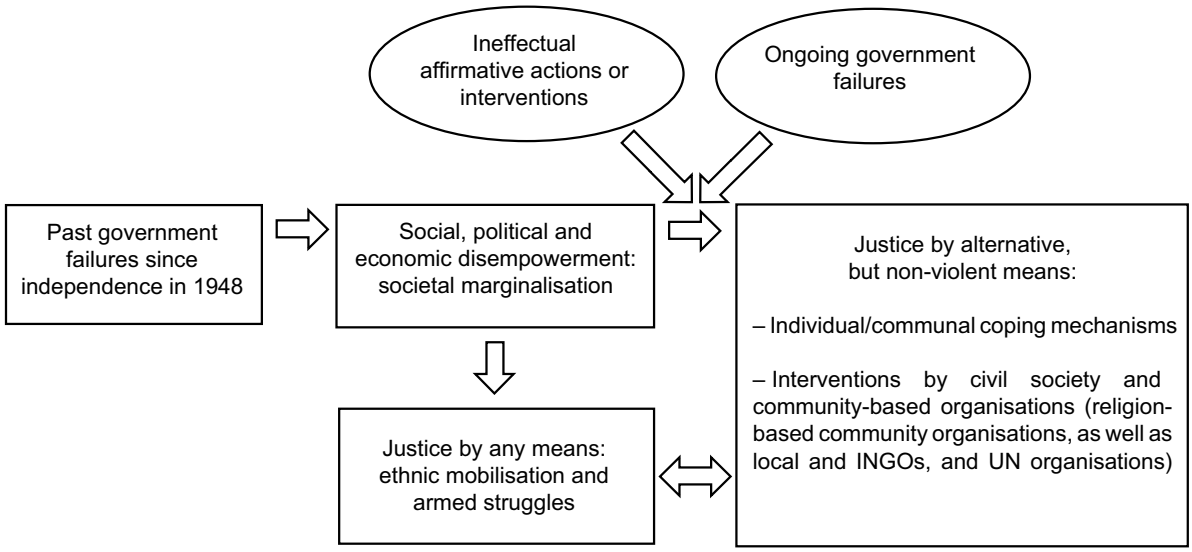

Figure 16.1 Burma's Domestic Sphere of Injustices and Dynamics of Seeking Justice

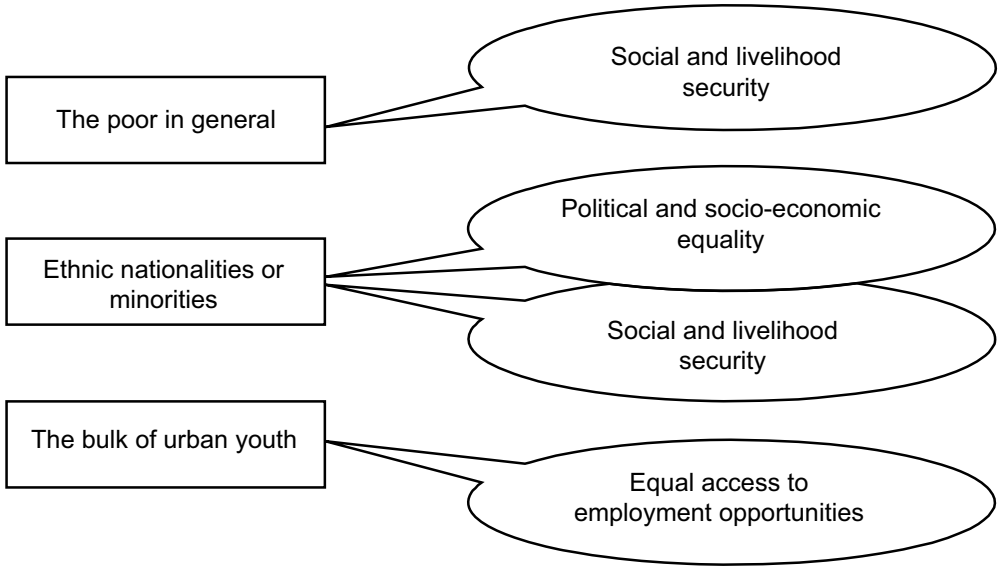

Figure 16.2 Perceptions of Justice

organisations, as well as local branches of international non-governmental organisations, operate various empowerment initiatives including civic education training workshops, literacy campaigns, raising awareness about the importance of National Registration Cards (which enable people to vote), initiating and facilitating discussions about justice issues in religious circles and around the Buddhist principles of righteous rulership, organising paralegal training for community-based organisations and community organisers, and initiating livelihood programmes – such as rice banks, credit unions and buffalo banks (from which cyclone-devastated wet rice farming communities could hire buffalos at affordable prices) – to address food insecurity.

One of the most little-known overlooked aspects of contemporary Burma is that a majority of soldiers – who are micro-instruments of population control, political and ethnic repression, as well as regime security – feel a deep sense of injustice about the existing system. My in-depth interviews with many ex-military and intelligence officers, as well as my observations and conversations with serving military officers over the past 15 years, have convinced me that there have always been fair and justice-minded soldiers who want to replace the unjust and self-aggrandising cliques of generals and their cronies with a system of humane governance that is responsive to people's needs, concerns and aspirations. Many of these soldiers are not liberal democrats but they are potential reformers, and they exist at all levels of Burma's power structure.

Since the inception of military rule in 1962, successive regimes have faced various challenges from within the military, involving attempted palace coups. For instance, a coup attempt in 1963 led by Brigadier Aung Gyi and Colonel Kyi Maung was nipped in the bud, and a well-planned but ultimately abortive coup in 1976 by a group led by Captain Ohn Kyaw Myint. In my research into deserting officers, they invariably cite injustices done to them personally or to their families as a powerful trigger for their desertion. At the time of writing, an acquaintance, ex-Major Win Naing Kyaw, a graduate of the elite Defence Services Academy, and former personal staff officer of the late Lieutenant-General Tin Oo, is on death row for allegedly leaking state secrets about the regime's ties with North Korea to the opposition. In 1976, when I was barely a teenager, a close family friend, Captain Ohn Kyaw Myint, aide-de-camp to General Thura Kyaw Htin, then the Chief of Staff of the armed forces, was executed for leading an abortive coup against the regime's leadership. The intervening years also witnessed large-scale purges of senior officers who were perceived to threaten the regime.

While these elite may be best positioned to initiate attempts to remove tyrannical generals and change the existing unjust polity for the better, privates and other ranks have also been known to take the law into their own hands, especially when they have been subject to a pattern of personal injustices, acts of humiliation or physical abuse and punishment by their superior officers. It is a cliché among the rank-and-file soldiers to say that abusive military officers should be more worried about 'the bullet from behind' than enemy fire in 'counter-insurgency' operations against resistance groups.

Citizens Seeking Justice: Dormant and Active Armed Conflict Zones

If the military are tempted to seek justice by killing their superiors, it is hardly surprising that ethnic resistance groups have no shortage of recruits, for men, women, and even children in Burma's conflict zones live in constant fear of their villages being burned, their female relatives being raped, their able-bodied male relatives press-ganged into serving the military, their livestock and rice supplies looted, and even of summary execution. On 25 February 2010, the Karen Women's Organization, based in the Thai-Burmese border town of Mae Sot, released a report, *Walking Amongst Sharp Knives: The Unsung Courage of Karen Women Village Chiefs in Conflict Areas of Eastern Burma*, which contains the testimonies of 93 Karen women, a third of whom reported beatings, torture or rape by the Burmese military (2010). This report followed many others that also document the regime's authorised use of sexual violence, including gang rape, against ethnic minority women. The Karen Women's Organization report observes:

> [n]ot only do troops constantly demand labour, food, building materials, 'taxes' and intelligence, but they are clearly authorized to use terror tactics to subjugate villagers to prevent them from cooperating with the Karen resistance.

Karen National Liberal Army (KNLA) fighters trekking uphill in Eastern Burma's war zone. (Photo: Ayehlaphyu M. Mutraw)

In the context of war, discussions about solutions or institutional arrangements whereby justice could be delivered may seem academic. While those whose daily

lives are soaked in systematic injustices and insecurities may and do long for a life free from violence, the most pragmatic solution for them is to hold onto their AK-47s or M-16s. In the absence of the local rule of law and effective international peace interventions, sub-machine guns and a few rounds of ammunition would do. No one has the right or moral high ground to denounce those who bear arms against a ruthless colonial oppressor with overwhelming firepower, a fact which has not been lost on Burma's symbol of non-violent resistance, Aung San Suu Kyi, who has consistently refused to condemn those engaged in armed struggles against the Burmese military junta.

After the collapse of the previous military regime in the midst of a popular revolt in the fall of 1988, the new military which came to power after a bloody crackdown of the revolt struck a series of disparate ceasefire agreements with ethnic armed resistance organisations. By the mid-1990s, there were 20 ceasefire arrangements. In October 2004, the regime sacked the architect of these ceasefires, General Khin Nyunt, the third most senior general and head of the country's intelligence services, on grounds of insubordination. Following his removal, the regime has taken an uncompromising stance towards ethnic resistance groups. Since mid-2009, the Burmese regime has issued one deadline after another for the ceasefire groups to transform their armed resistance organisations into the Border Guard Force (BGF), which will be placed under the direct command of the Tatmadaw or the Armed Forces. Out of a dozen or so genuine ceasefire armed groups – as opposed to groups that surrendered to the regime – smaller and weaker groups have decided that they have no other choice than to submit to the junta's ultimatum and play the 'election' game. Stronger ceasefire groups, including the 10,000-strong Kachin Independence Organization and the United Wa State Army have declined to come under the junta's command unless the regime addresses long-standing issues regarding ethnic cultural and political autonomy, as well as the nature of the state. On 22 February 2010, the BBC reported the possible revival of civil war between the ceasefire Kachin Independence Army and the state after an uneasy 17-year ceasefire. A young KIA cadet, Dashi Zau Krang, singled out ethnic inequality and suppression as the reason behind their willingness to choose war over subjugation: '[t]he Union of Burma was formed on the basis of equality for ethnic people, but there has been inequality throughout history and we are still being suppressed' (Leithead 2010). It is noteworthy that while citizens in the other Burma and their armed organisations may be separated and isolated from mainstream society under the regime's direct administrative control, they are an inseparable and important part of civil society in Burma. For they too seek citizens' political autonomy vis-à-vis the colonising army state.

Conclusion

As captured in Grace's conceptual framework, from the country's inception as the Union of Burma, a voluntary union of federated ethnic states (including the Bama or Myanmar, Shan, Kachin and Chin) as the direct result of the British Raj's dissolution in colonial Burma, the state has failed to address legitimate and popular demands for justice and equality, be it ethnic, socio-economic and civic. The failures of the past six decades have in a dialectical manner come to serve as new causes for new conflicts. And yet the militarists that hijacked the country's armed forces and made the state and army inseparable during the past 50 years are determined to impose their often-recited neo-totalitarian vision of 'one voice, one vision, one nation' over the civilian population. State-centred and neo-Orientalist constructions of Burma contribute to such a vision, regardless of the varied intentions of scholars. Influenced by the fear of Balkanisation in Burma, virtually all international Burma discourses, academic or policy, perceive the army state in Burma as the only unified national institution capable of keeping the country together albeit at gunpoint. Indeed, for them the state in Burma is too big to fail, never mind that this state is the very source of political instability, which, by its refusal to address legitimate issues of injustices, nurtures even stronger desire for ethnic freedoms and political secession among the country's ethnic minorities, which make up 40 per cent of the population.

In pursuing their zero-sum politics where there is no space for compromise, negotiations and reconciliation,[12] the Burmese junta is, according to military sources within the country, said to be looking at Sri Lanka as a successful model of handling ethnic armed resistance, in the wake of Colombo's decisive military victory over the Liberation Tigers of Tamil Eelam (LTTE). During his whirlwind state visit in June 2009 to Nay Pyi Taw, Burma's new capital, Sri Lankan President Mahinda Rajapaksa advised his Burmese counterpart to crush Burma's defiant minorities. If Sri Lanka serves as an inspirational source for Burma's internal colonisers, where do the forces of resistance and justice-seekers turn to for inspiration, support and solidarity?

Burma as a modern, post-independence polity is the direct outcome of a long process of encounters, violent and otherwise, between internal and external historical, economic and ideological forces. As such, what happens within its national boundaries, most specifically the pursuit of justice by Burma's peoples, is as much affected by local dynamics of events and processes as by the larger, external historical events and processes.

To be sure, there are global enabling factors and solidarity for those seeking justice, based on differing but grounded perceptions of injustice, including sympathetic mass media, international human rights regimes, global solidarity organisations, ethnic diasporas from Burma, humanitarian organisations and some Western powers, that is, global civil society. It may be argued that the political vocabularies in which Burmese justice-seekers of all ethnic, professional and gender backgrounds, articulate their visions and mission statements, as well as their grievances, are products of contemporary global political discourses. Since Burma emerged from the Cold War era, a hermit-like state thanks to the anti-dictatorship uprising in 1988, there has been an increase in transnational solidarity and support for the local people's struggles for justice in Burma. The Free Burma Coalition (that I co-founded and coordinated, 1995–2004), which built an international campaign in support of the Burmese opposition movement led by Aung San Suu Kyi, would have been inconceivable without this transnational solidarity and access to Western information technologies (Klein 2000, Zarni 2000).

But in the final instance, there are global factors such as national interest, energy security, the scramble for raw materials, security cooperation, and corporate profits, which are proving to be far more powerful than the moral solidarity of the world's citizens and the lukewarm support of liberal democracies. Burma under military rule has already become a classic example of the 'natural resource curse'. The bottom-up pursuit of justice in the two Burmas remains an unrealised goal. On their own, the civil society activities outlined in this chapter are unlikely to change things for the better, as long as regional, global geo-political and economic equations tilts in the regime's favour.

Notes

1. Capitals and italics in the original.
2. The bulk of the country's dominant ethnic group Bama or Myanmar have by and large internalised an ethnic superiority complex vis-à-vis other ethnic groups who, like the former, are indigenous to the country. For a brief but critical reading of inter- and intra-ethnic relations in Burma see 'Confronting the Demons' (Zarni 2009).
3. Wittingly or unwittingly, some Western experts on Burma repeat the military's propaganda that the term 'Myanmar' reflects the multi-ethnic make-up of the country. But in reality Burma's ethnic minorities, who live in isolated ethnic pockets that dot the border areas, have distinct ethno-cultural identities. Although these identities shift, depending on political and geographic locations, rarely do they use dominant ethnic labels such as Bama, Myanmar, Burmese or Burman.
4. Because these two colleagues live and work in Burma, I will refer to them as 'Grace' and 'Arthur', with their consent and for their safety.
5. Personal communication with numerous governmental officials in Asia, Europe and North America over 15 years.
6. This section is based on a balanced and comprehensive analysis of China's policy towards Burma (Li and Lye 2009).
7. For a critical review of Taylor's *The State in Myanmar* see Reynolds (2009).
8. For an excellent discussion of the political economy of 'Asian Tigers' see C. Johnson (1987).
9. Personal communication, Bangkok, Thailand, November 2009.
10. Question and Answer with James C. Scott following his public lecture to mark the launch of *The Art of Not Being Governed*, Institute of Security and International Studies, Chulalongkorn University, Bangkok, 11 March 2010.
11. *Vinaya Pitaka*, a body of Buddhist law, is designed to govern the conduct of *Bikhu* and *Bikhuni* (that is, male and female members) of the monastic order; but Buddhism is silent on issues concerning non-monastic organisations (Aye Kyaw 1992).
12. For a critical reading of the junta's stand on national reconciliation and political compromise see 'An Inside View of Reconciliation' (Zarni 2010).

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CHAPTER 17

STATE, CIVIL SOCIETY AND JUSTICE: THE CASE OF INDIA

Rohit Mutatkar

Introduction

India has historically been a society of different ethnic groups, religions, languages and with people living in regions with diverse characteristics. While India has preserved and strengthened its plurality through many centuries, it has also been a hierarchical society with embedded inequality due to a historically iniquitous social structure. India is presently the largest democracy in the world in terms of its population. On the economic front, it has emerged as one of the fastest-growing economies in the world in recent years. Yet it also accounts for one of the largest proportion of the poor in the world, and contemporary Indian society is characterised by the presence of vast socio-economic disparities. While development policy and implementation in India has largely been the mandate and responsibility of the state, there have also been strong civil society campaigns in recent years which have been pushing the state towards fulfilling its responsibility. These campaigns have been with respect to universal values such as human rights and strengthening democracy through accountability, and may be considered a part of global civil society movements on these issues. Thus India may represent a global icon in terms of understanding multiple dimensions of injustice in the context of human deprivations in a diverse social setting, and civil society interventions towards mitigating these injustices.

This chapter seeks to give an overview of India as a case study in this regard, and is structured as follows. The next section discusses the historic injustices in Indian society that arose due to the hierarchical social structure and then outlines key features and provisions of the Constitution of India, which provide the vision of an egalitarian Indian society, and which were intended as a guideline for policies of the state. The multiple dimensions of socio-economic disparities that are a feature of contemporary Indian society are then outlined, as well as some key issues about why the state has failed in this regard. Against this backdrop, recent important civil society campaigns resulting in landmark rights-based legislation are discussed. The conclusion discusses the implications of the above for the discourse on global civil society and justice.

Historic Injustices in India and the Response of the State

Historically, Indian society has been a hierarchical and compartmental society, within which a vast number of groups have maintained a distinct and diverse style of life. This hierarchy is said to have evolved thousands of years ago (approximately 1700–1000 BC) through the division of Indian society into the four 'great classes' (referred to as 'Varna', whose literal meaning is 'colour') and the institution of 'caste'. The upper classes in the hierarchy referred to the priestly and teaching class, the ruling warrior class, and the trading or merchant class, while the lowest were the servant class, whose duty it was to serve the higher classes. 'Caste' was the functional unit of this social structure and refers to an endogamous group, with hereditary membership, linked to one or more traditional occupations, and having a more or less determinate position in a hierarchical scale of ranks (Basham 1954, Galanter 1991).

The position of a caste in the hierarchy corresponded to its relative ritual purity and also expressed its political and economic power. The caste groups at the bottom of the social hierarchy, even beneath the fourfold classification, were those engaged in defiling or unclean occupations such as sweepers, scavengers, attendants at cremation grounds, leather workers and so on. They were regarded as 'untouchables' by other caste groups and their physical touch and even shadow was supposed to be polluting. As a result, the social distance between the untouchables and higher castes also took the form of laying down a physical distance that should prevail between them. The untouchables had to stay outside the main habitat of the village, there were restrictions on their movement, they were denied access to public facilities such as drinking water from the well, denied access to services, there were restrictions on the style of clothes they wore and the body parts they could cover, and they suffered many

more indignities resulting in one of the most degrading forms of human existence (Basham 1954, Galanter 1991).

Outside the caste hierarchy and with a distinct cultural identity were 'primitive' people living in geographical isolation in the forests and hills, and usually referred to as tribal people. Due to isolation from those people living in the geographical mainstream, the tribal people remained relatively immune from the complex network of social relationships and hierarchies associated with the caste system, but this isolation also resulted in their living in a 'time-freeze' and their consequent marginalisation, by being bereft of the processes of change that took place in mainstream Indian society. The difficult terrains, which characterise regions of tribal habitation, suggest that historically they may have been pushed into living in such regions by outside invaders. Viewed in this context, tribal people are often referred to as 'indigenous people' or the original inhabitants of the soil.

The untouchable caste groups and the tribal people thus remained historically marginalised and socio-economically backward as compared to the rest of society, though due to different typologies of exclusion. Many religious and social reform movements took place in India against the caste system, but it remained immutable and provided the basis of a socially, economically and politically unequal Indian society through many centuries. The social disadvantages of the untouchable caste groups and the tribal people in India may also be considered to have a global counterpart in the context of the indignities associated with racial inequalities and issues of indigenous people in different parts of the world.

The historically rooted disadvantages of these groups were also recognised by the leaders of India's freedom struggle such as Gandhi and Ambedkar, who sought to combine the struggle for political freedom with movements for social reform. It was envisaged that in an independent India, political equality would need to be accompanied by social and economic equality. These ideals of the freedom struggle were reflected in the Constitution of India, which came into effect in 1950. The drafting of India's constitution was also influenced by universal concerns at that time, such as the Universal Declaration of Human Rights in 1948, to which India was one of the original signatories (Ray 2003).

The constitution in its preamble resolves to secure to all its citizens, 'Justice, social, economic and political.' Equality is the central principle in the Constitution of India, which is interpreted to mean not only equality before law, but equality of status and opportunity to all citizens (GoI 2008). The Fundamental Rights in the Constitution of India consist of various civil and political rights, which are justiciable, while various economic and social rights were included in the Directive Principles of State Policy, which were intended to be a guideline for policies of the state, but were non-justiciable (Ray 2003).

A key feature of the Constitution of India is the presence of provisions to remedy historic injustices to certain sections of society, so as to provide them with equality of opportunity. The constitution created the categories of 'scheduled caste' and 'scheduled tribe' corresponding to the 'untouchable' caste groups and tribal people and included provisions for their 'protective and promotive discrimination'. Thus, while the constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, it also specifies that nothing shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.

The principle of justice underlying constitutional provisions for equality of opportunity is thus based not only on a formal notion of equality before law and prohibition of discrimination on the basis of social identity. It is based on a more substantive notion of equality, which recognises that historic injustices may need to be addressed through protective and promotive discriminatory policies, so as to provide the historically marginalised sections of society with equal opportunities. Thus, equality of opportunity needs to be preceded by policies based on the principle of equity, which would create a level playing field through addressing historic injustices (GoI 2008).

Under the direction of the Constitution of India, there have been a multitude of affirmative action policies for the scheduled castes and scheduled tribes (who together comprise about a quarter of India's population). Seats are reserved for scheduled castes and scheduled tribes in legislative bodies at the state and central government, in appointments to public sector jobs and in admissions to government educational institutions. In addition, virtually every ministry at the central and state (provincial) levels has a vast number of provisions for the welfare of these groups. Together these represent the largest attempt ever made by any country to integrate historically marginalised groups of people into the development mainstream (Galanter 1991).

In subsequent years, certain affirmative action policies have also been extended for 'other socially

and educationally backward class of citizens', through creating the category of 'other backward classes'. These broadly correspond to other caste groups historically low in the social hierarchy, but who were not untouchables, though there has been much debate regarding their identification (Galanter 1991). The government has, however, sought to exclude economically better-off sections of this category from the benefits of any affirmative action policies by classifying them as a 'creamy layer'. The category of other backward classes does not have the provision of reserved seats in legislative bodies. This provision, however, has been introduced for women in India with the objective of their political empowerment. Thus one third of the elected seats in India at the local rural and urban council level, and sub-district and district level are reserved for women, and this provision is in the process of being extended to the state (provincial) and central legislative bodies.

Box 17.1

Racism, Caste-Based Discrimination and Global Civil Society

The concept of the 'Dalit counterpublic' serves well for understanding the contemporary Dalit movement which has effectively globalised the issue of caste. The Dalit counterpublic is the public sphere that stands in contestation with the mainstream Indian public sphere. Its existence is based on the premise that Dalits are excluded from the debates in the Indian public sphere. The articulation of the Dalit movement about caste discrimination and its equivalence with racism is to be seen in the context of this Dalit counter-public. The space has inclusive inter-public relations within it. The interaction between the Dalit counter-public and Indian public sphere, however, involves 'forced one-way communication'. It is this Dalit counter-public that is increasingly reaching out to a global audience (Hardtmann 2010).

Internationalising Caste: The Early Period

The earliest attempts to take the issue of caste to the international level were made as far back as 1982 by some organisations of Dalit immigrants in North America and Dalit groups active in India. The Dalit Liberation Education Trust (DLET) in India, Volunteers in Service to India's Oppressed and Neglected (VISION) in the US, and the Ambedkar Center for Peace and Justice (ACPJ), Canada, had succeeded in creating interest among the London-based Minority Rights Group (MRG). MRG formed a subgroup to work on the issues of untouchability and caste-based discrimination (Bob 2007). In the same year Dr Laxmi Berwa, a Dalit activist, sent a testimony to the United Nations Sub-Commission on Human Rights with the support of DLET, VISION, Ambedkar Mission (Canada) and Shri Guru Ravidas Sabha (US). In 1983 a representative from All India Backward SCST and OBC Minority Employees Federation attended the International Conference against Discrimination in Osaka, Japan. Later Bhagwan Das, Dalit activist, publisher and advocate in the Supreme Court, gave another UN testimony and also addressed the 1984 World Conference on Religion and Peace in Nairobi (Dash 2007). This Dalit activism went against the Indian government's official stand which preferred to treat untouchability and caste-based discrimination as an 'internal' problem. However, an excerpt from the first testimony presented by Dr Laxmi Berwa explains the rationale behind this activism of Dalits:

> The free world owes a duty to the Untouchables, as it does to all suppressed people, to break their shackles and set them free and help restore human rights to them. The Indian Prime Minister should know that when it is a question of slavery, bonded labour, violation of civil and human rights and atrocities on harmless people it is not an internal problem. It is a problem which will haunt all honest, free people with a conscience, any person with a compassion for humanity, any person with respect for human dignity, whether these people are in India or abroad. Whether they are Indians or non-Indians, blacks, white or Oriental. (quoted in Dash 2007: 20)

Despite the denial of the Indian government, the issue of caste-based discrimination was addressed in various international forums such as the World Conference on Human Rights Vienna (1993) and the World Summit on Social Development Copenhagen (1995) in the following years (Pinto 2002).

However, until the late 1990s, Dalit activists failed to attract the attention of such 'gatekeeper' NGOs on human rights as Human Rights Watch (HRW) and Amnesty International, despite repeated requests. They also tried tapping UN

organisations and bodies but without success (Bob 2007). It was only in 1996 that UN formally recognised caste as a form of racial discrimination through the UN Committee on Elimination of Racial Discrimination (CERD). In 1997 Human Rights Watch decided to prepare a report on caste-based discrimination in reversal of their earlier policy. This was a result of the lobbying by Dalit activists over the decade and also due to recognition of caste-based discrimination by CERD. It was the process initiated by HRW in which they organised a convention of grassroots Dalit civil society groups in India that gave rise to the National Commission for Dalit Human Rights (NCDHR) in 1998 (Bob 2007).

Dalit groups started becoming visible on the internet from the mid-1990s. The earliest initiators were affiliated with Christian transnational networks. However, it was the NCDHR that systematically built up an international network. In 1998 they organised the First World Dalit Convention in Malaysia in which Dalit activists from India, South Asia, South Asian diaspora and representatives of the Burakumin community of Japan participated (Bob 2007). The International Dalit Solidarity Network (IDSN) was launched in 2000 by Dalit activists to provide coordination among overseas organisations. Today it consists of four national federations (the NCDHR, Nepal's Dalit NGO federation, Sri Lanka's Human Development Organization and Japan's Buraku Liberation League), twelve 'international associates' and seven national solidarity networks (Bob 2007).

Through concerted efforts, the NCDHR has sought to put caste-based discrimination into the global discourse of human rights. Through a sustained campaign initiated since its inception in 1998 they portrayed the problem of Dalits not as Indian but as Asian – they argued that untouchability and associated discrimination was a South Asian phenomenon. They estimated the number of Dalits in Asia at 260 million. The audience NCDHR sought to address included the Indian government, the international human rights community and the UN. Interestingly, the tension between Gandhi and Ambedkar, the leader of Indian Dalits, was blunted in this international discourse on caste. The NCDHR resembled the radical Dalit outfit of the 1970s Dalit Panther in its approach, except for the softening of its stance with respect to Gandhi (Hardtmann 2010).

The UN World Conference Against Racism (WCAR), Durban, 2001

The issue of caste discrimination was raised on an unprecedented scale around the time of the UN WCAR in Durban. Though caste-based discrimination was not recognised as a form of racism in the conference, both Dalit men and women had a visible presence in the conference (Hardtmann 2010).

Prior to the 2001 Durban conference, Dalit activists from various regional and local contexts got together. Among a number of preparatory meetings a consultation was organised by the International Human Rights Law Group in 2000, bringing together representatives from different discriminated communities in various countries, human rights organisations, and UN human rights bodies. At the UN preparatory committee, which discussed caste discrimination, HRW made oral and written submissions in favour of including caste discrimination in the WCAR agenda (Hardtmann 2010).

Indian Dalit politicians also played a role in the larger process. For instance, Prakash Ambedkar, leader of a political party committed to the cause of Dalits, was part of the NCDHR and was also part of the delegation that met with the UN Sub-Commission on the Promotion and Protection of Human Rights in 2000 (Hardtmann 2010). The sub-commission decided that 'descent-based discrimination' should be included in the agenda at the Durban conference, a decision that the Indian government opposed on the grounds that caste is not race. The government took a similar stance with CERD in 1996 and maintained it in 2000.

The language of Dalit activists had changed from 'caste-based discrimination' to 'discrimination based on work and descent'. In the first half of 2001 the atmosphere of the second preparatory committee meeting was tense. The shift to 'discrimination based on work and descent' had already obscured the relationship between 'racism', 'caste discrimination' and 'discrimination based on descent and work'. In that meeting the text circulated did not even refer to 'discrimination based on work and descent' made by Barbados and Switzerland. The NCDHR struggled with their demand to get those paragraphs back into the document without success. These paragraphs were among six such that were dropped. In the process, Dalit activists were forced further away from the original 'caste-based discrimination'. Ambrose Pinto mentions how countries and organisations like Guatemala and the European Union which had earlier supported the cause of Dalit NGOs had to withdraw their support because of the growing pressure from the Indian government (Pinto 2002).

Those activists who participated in pre-Durban negotiations and in the conference relayed the progress of negotiations, not only with the above-mentioned audience but also with the Dalits in India and with the Dalit diaspora through the IDSN.

In the meantime the report submitted by Goonesekere to the UN sub-commission acknowledged the existence of caste-based discrimination and recognised it as a violation of human rights. Its need to be discussed in UN was emphasised. Though the issue was not aired at the Durban conference, through the Goonesekere Report, caste got a place in the formal international context (Hardtmann 2010).

However, the Indian government maintained that caste-based discrimination was not an issue fit to be discussed in the Durban conference. They rejected its comparison with racism and argued that it was an internal matter. On the other hand, Dalit activists felt that it was a problem that should be brought to the notice of the world community.

In Indian academia it is argued that race as a concept stands null and void because its scientific validity has been refuted (Beteille 2001). However, the Dalit demand nowhere equated specific castes with racial categories. They accepted that caste was a social category and had no genetic basis. But the idea of caste having some biological basis exists in the popular imagination. The perpetration of brutal violence and discrimination against Dalits and other lower castes draws justification from this misconception (Omvedt 2001). Indian sociologists had also turned a blind eye to the rich debate among American sociologists over the use of caste as a concept to understand racial discrimination in the American Deep South (Berreman 1972, Sharma 2002).

After Durban: Post-2001

In 2002, while concluding its discussion of descent-based discrimination, CERD strongly condemned caste. They heard testimonials from Dalits of South Asia, Burakumin of Japan, Osu of Nigeria, and caste communities in Senegal, Niger, Somalia and Kenya. The UN Sub-commission on the Promotion and Protection of Human Rights, which is the think tank of the UN Commission on Human Rights, appointed Yozo Yokote and Asjborne Eide to write an expanded working paper on caste and similar discrimination based on descent (Pinto 2002).

Later on, Dalit activists became directly connected with the global justice movement. They have participated in the World Social Forums held in Mumbai (2004), Porto Alegre (2003 and 2005) and Nairobi (2007). In Nairobi, activists from Senegal, Nepal, Kenya, Sri Lanka and Japan described how caste discrimination was a part of their societies as well. There are new kinds of collaborations linking Dalit activists and other movements such as peasant movements originating in Latin America (Via Campesina), the movement among urban homeless in France (no-Vox) and the Burakumin movement in Japan (Buraku Liberation League) (Hardtmann 2010).

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Poverty and Disparities in India

At the time of independence, the bulk of India's population was living in poverty and the productive capacity of the economy was also very limited. The development planning process in India therefore adopted its main goal as 'economic growth with social justice', with a focus on the reduction of poverty. Since then the Indian economy has made rapid strides and particularly after liberalisation of the economy in the 1990s has registered high growth rates. In recent years, the Indian economy has emerged as one of the largest and fastest-growing economies in the world. However, endemic deprivation coexists in India along with achievements on the macro-economic front, and large sections of the population continue to remain socially, educationally and economically deprived. This is reflected in various indicators such as poverty, illiteracy, infant mortality and under-nutrition among children.

India also accounts for a large proportion of the global burden of these deprivations, thus having implications for any discussions on global justice in the context of world poverty. For example, while India has made progress in the reduction of poverty, about a quarter of India's population (about 250 million people), even by the most conservative estimates, continues to live below the poverty line (GoI 2006a). The relative magnitude of these deprivations within India is reflected in socio-economic disparities among various sections of society, namely, regional disparities (inter-state, intra-state, rural–urban), inter-group disparities (caste, tribe, religion) and gender disparities. The absolute and relative magnitude of deprivations in India provides the issues along which injustices in India may be interpreted.

Contemporary rural India is characterised by the notable feature of a hierarchy among social group categories in development outcomes, across a range of socio-economic indicators, with scheduled tribes or scheduled castes at the bottom, followed by other backward classes and then the category of other social

groups at the top. It is estimated that in rural India about 80 per cent of the poor belong to the scheduled caste, scheduled tribe or other backward classes. Thus, despite affirmative action policies to address historically rooted group inequalities, poverty and inequality in India is characterised by being a group-level phenomenon. Moreover, social group categories such as scheduled caste and scheduled tribe themselves comprise more than 400 caste and tribal groups respectively, and there are known to be disparities among such ethnic groups within social group categories.

In recent years, the issue of poverty and deprivation among Muslims in India has also come into the limelight, raising further issues of group-level poverty and deprivation in addition to caste and tribe. Muslims comprise about 13 per cent of India's population, and in absolute numbers India has the second-highest population of Muslims in the world. A committee appointed by the government to look into the social, economic and educational status of Muslims in India found that their levels of poverty are next only to that of historically disadvantaged social group categories (GoI 2006b). This committee has recommended setting up an equal opportunities commission, which would focus on group inequalities, and has also recommended policy measures that would give incentives to employers to have a more diversified workforce.

Poverty and other deprivations faced by people in India also have a strong regional dimension. Thus, while states such as Kerala and Himachal Pradesh have made considerable progress with respect to poverty reduction and other social indicators, some of the northern states such as Bihar and Uttar Pradesh continue to be laggards in this respect (Dreze and Sen 2002). There are also wide regional disparities within many states which have given rise to a perception of injustice among people from the backward regions and also demands for the creation of a separate state. In some cases, higher poverty in a particular state or region is also strongly related with the composition of the population. Thus Orissa, a state with one of the highest levels of poverty in India, also has a large proportion of scheduled tribes in its population.

Similar to many other countries in the world, there are stark gender disparities in India, which is reflected in many socio-economic indicators. However, in India these disparities also have a regional dimension. For example, discrimination against female children appears to be most pronounced in the state of Punjab, which has the lowest sex ratio in the 0–6 age group among all Indian states, because of rampant female foeticide or infanticide, while also being a state with one of the highest per capita incomes in the country. Regional disparities in India are however most pronounced with respect to rural-urban disparities, which are reflected in many economic and social indicators. A relative neglect of the development of rural areas has been reflected in stagnation of the agricultural sector, in which 60 per cent of the Indian workforce is concentrated, resulting in agrarian distress and the phenomenon of farmers' suicides in some parts of the country. Regional and social group disparities in India have also contributed in the spread of violent protests across many tribal and rural areas in recent years, which represent a huge challenge to the state and civil society.

The magnitude of deprivation in India in spite of progressive social legislation, affirmative action policies and democratic ideals and institutions, illustrates the distinction between what Sen (2008) refers to as an arrangement-focused view of justice and a realisation-focused understanding of justice. While India seems to have done well with regard to the former, it has not done well with regard to the latter. This raises issues regarding identifying the lacunae in the nature of policies and their implementation, and democratic practice in India. These could be identified in several respects, many of which are interrelated.

Firstly, the nature of the policy paradigm in India appears to be biased towards achieving faster economic growth, with not much emphasis given to progress on social indicators, which is important to address the multidimensional nature of human development. Thus, while policy-makers in India routinely make announcements regarding economic growth targets and these targets are closely monitored, the magnitude of under-nutrition of India's children does not receive similar attention. As a result, India has the dubious distinction of more than 40 per cent of children in the 0–5 age group being undernourished, which is one of the highest levels of child under-nutrition in the world (IIPS 2009). This statistic has declined very slowly in spite of high rates of economic growth (Dreze and Sen 2002). In a comparative international perspective, the neglect of human development is also reflected in India's rank of 134 out of 182 countries in the UN Human Development Index (UNDP 2009).

Secondly, the nature of the growth process itself, particularly after liberalisation of the economy and consequent processes of globalisation, appears to be skewed in favour of certain sections and sectors of

the economy and dominated by corporate interests, accentuating the already existing socio-economic disparities. Thus, while economic reforms introduced in the country in the early 1990s helped to create greater opportunities for those with education, skills, resources, infrastructure, and those with power and influence, they failed to address the most deprived sections of society and those living in backward regions. The economic reform policies led to more opportunities for growth in the corporate sector, but did not address the needs of the agricultural sector. A greater role for the private sector in the post-liberalisation policy regime also reduced priority for public investment in infrastructure, agriculture and the social sectors. As a result of these processes, though the Indian economy in the aggregate grew much faster after liberalisation, the most disadvantaged sections of society could not participate in this growth, thus further widening the disparities in society (Rao 2009).

Consequently, the country is now represented by two contrasting images, namely, the image of a globalising India and one of the world's fastest-growing economies, on the verge of entering the first world; and the contrasting image of an India where millions of people still struggle for food and their day-to-day survival. These disparities have been accepted, at least in principle, at the policy level and the approach paper of the 11th Five Year Plan in India therefore has as its objective not only 'faster growth' but also 'inclusive growth' (GoI 2006a).

Thirdly, the poverty alleviation policies have largely been relief-driven and have not been able to address the structural causes of poverty. What the poor require by way of government assistance are relief interventions to tackle their immediate survival concerns and sustainable livelihood interventions, which would help them to come out of poverty and reduce dependence on relief interventions. Affirmative action policies for historically disadvantaged social group categories based on the constitutional provisions mentioned earlier may have led to upward mobility among certain sections of these groups, but they have also led to divisive identity politics thus diluting their intended potential as a tool for social justice. The practice of untouchability has reduced, but it continues to exist in spite of being banned by law; and caste-based discrimination is also still observed. There has been very little attempt to empower the historically disadvantaged groups such as tribal people by reaching out to them, making them aware of the provisions for their welfare and increasing their capacity to access them. Policies of reservation on the basis of social identity have led to tensions among various sections of society. These are reflected in perceptions of injustice, especially among those people who are economically backward, but do not belong to a historically marginalised social group category and thus have reduced opportunities for admission to public educational institutions and recruitment to public sector jobs, on grounds of meritocracy.

Fourthly, and perhaps most importantly, the development policy and implementation mechanism has largely been top-down, with the most deprived sections of society being regarded as 'beneficiaries' of government schemes, rather than being entitled to food, livelihood, education and healthcare as basic rights, as indicated in the Directive Principles of State Policy in the Constitution. Systems of accountability in India have also been very weak, resulting in the lack of any framework within which these rights could be realised. Democratic practice in India has been far from participatory and has been marred by a lack of transparency in the governance process, resulting in the poor being the worst victims of large-scale corruption and lack of implementation of schemes and programmes intended for them. The 73rd and 74th amendments to the Constitution sought to decentralise powers to the rural and urban local bodies, which would lead to people's participation in the development process and greater accountability at the local level, but most state governments in India have not fully implemented the required devolution of powers (Dreze and Sen 2002).

The magnitude of deprivation in India, even after six decades of development planning, reflects the failure of the state in many respects to translate constitutionally guaranteed rights and guidelines for policies into development practice. Addressing the multiple dimensions of deprivation faced by large sections of India's population and promoting inclusion in the economy and society is the key challenge for development policy and practice in India. This would require a focus on the process of development, by empowering the deprived sections of society, through recognition of their rights as human beings and as citizens of India, and through a corresponding strengthening of governance through improved systems of accountability.

This has been sought in India in recent years through people's struggles and civil society campaigns which have been instrumental in landmark rights-based legislation with respect to the right to information, the right to work, the right to education, forest rights for tribal people, and the ongoing struggle for the right to food. Such legislation based on a rights-based approach to development marks

a paradigm shift from the service delivery or provider-beneficiary approach of earlier government schemes. The following section discusses some of these success stories of civil society campaigns in India.

Recent Civil Society Campaigns in India for Rights and Accountability

The multiple dimensions of injustice in India and the drawbacks in state policies and implementation have prompted a multiplicity of responses from civil society. Thus civil society has engaged with a large number of issues at various levels ranging from atrocities against vulnerable sections of the population such as scheduled castes and women, land alienation and displacement of the tribal population, to interrelated issues with a global dimension such as opposition to the neo-liberal policy regime. These issues have also been articulated at global civil society forums such as the World Social Forum, which was held in India in 2004, and which have helped to identify common concerns and areas for civil society interventions across the world, based on universal values, in an era of globalisation.

The recent civil society campaigns in India for rights and accountability could thus be viewed as an important success story of civil society intervention in a global context, and not only confined to India. These campaigns have focused on issues of injustice cutting across different sections of society, irrespective of social identity, but with obvious greater implications for the most deprived sections, who have themselves been a leading part of these campaigns. The campaigns could be viewed from alternative legal standpoints from which they draw their legitimacy. They could be viewed from the perspective of the Directive Principles of State Policy in the Constitution of India, in which economic and social rights are enshrined, or from the viewpoint of the Universal Declaration of Human Rights and also other international conventions and treaties such as the International Covenant on Economic, Social and Cultural Rights (1966) to which India is a signatory (Dreze 2004). The judiciary in India has also played an important role in interpreting some of these rights as linked to the right to life, which is a fundamental right under the Indian constitution. An important campaign that underlined the linkage of economic and social rights with democratic rights is the right to information movement, which resulted in the Right to Information (RTI) Act (2005). The RTI Act is particularly important, both due to the significance of the Act itself, as well as the nature of the struggle which led to the legislation. The people's struggle for the right to information, which went on for over a decade, was carried out by some of the poorest sections of society, under the initiative of organisations such as the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan and also through initiatives by prominent activists in other parts of the country such as Anna Hazare in Maharashtra. The struggle linked the right to information to the right to life and was based on the recognition that real change in society can come about only if people can hold the government and public servants accountable, so that they are forced to respond to the needs of the poorest citizens. But accountability cannot come without information regarding government decisions and functioning. The RTI Act empowers people to secure access to such information available with public authorities (Roy et al. 2008).

In the context of the campaign initiated by MKSS in Rajasthan, the struggle had its origin in complaints by the rural poor that they were not being paid the full statutory minimum wage due to them in government public works. They asked the local government officials to see the records in order to establish their claim of work, but were refused permission on the grounds of the Official Secrets Act 1923, under which information with the government is secret and may not be revealed and which was a key feature of the entire structure of governance in India. Through such experiences, which were common throughout the country, the poor began to see the importance of information for their livelihood and survival concerns and made the connection between right to know and right to live. This gave birth to a movement for the people's right to information that connected economic, social and democratic rights and helped the issue grow from a grassroots struggle to national legislation, with implications for the practice of democracy (Kidambi 2008, Roy et al. 2008).

In the initial stages of this struggle, people were aware of corruption in government functioning and wasteful expenditure, but dismissed it as a waste of government money. It is only when they realised that even the poorest person pays tax that a change in perception took place that corruption and waste of government money is misuse of people's money. They understood that the salary of government functionaries comes from the taxes that are paid by the people, and therefore these functionaries should be accountable to the people. This led to the slogan 'Our Money, Our Accounts', which together with 'Right to Know, Right to Live' became the defining slogans of the movement and has also changed the discourse on the right to information across the world (Kidambi 2008, Roy et al. 2008).

The right to information campaign and the legislation of the Act has had a substantial impact on and linkages with other civil society campaigns. For example, the women's movement is using the Act to track progress on punishment for atrocities against women; civil liberties and human rights groups are using it to ensure transparency and accountability of the police and custodial institutions; people displaced by large dams and projects have been using it; and there are many examples of poor sections of society using it to bring out the truth in their battles for survival. Thus the right to information is being used not only in fighting lack of transparency in governance and corruption, but in the larger struggle of making democratic structures more accountable (Roy et al. 2007).

The campaign made use of innovative tactics to put pressure on the government and to make the movement participatory by providing a platform for the poorest sections of people to air their views and shape the campaign. One of these strategies was a people's audit of government programmes, in which local people can come and testify about what they have seen and experienced through the mode of a 'public hearing', to which government officials are invited to hear the testimonies. The RTI Act has resulted in such audits being institutionalised by the name of 'social audits' in social development programmes of the government as transparency safeguards, where the government accounts are supposed to be audited by local people and civil society groups, and the government provides the infrastructure for the same (Kidambi 2008). There was extensive public consultation in the formulation of the RTI Act. There were nine states that passed the right to information law before the national law came into effect. The process of demanding a law, drafting model legislation and putting pressure on the state governments for enactment involved a large civil society mobilisation. This has helped strengthen citizens' demands for public consultations and participation in the formulation of other legislations as well (Roy et al. 2008).

One such legislation, which has been equally historic in its significance and a success story of civil society, is the National Rural Employment Guarantee Act (NREGA) 2005. This is a law whereby anyone in rural areas who is willing to do unskilled manual labour at the statutory minimum wage is entitled to be employed on public works within 15 days. If employment is not provided, an unemployment allowance has to be paid. The work guarantee in NREGA is subject to an initial limit of 100 days per household per year, and only one person per household. However, it marks a big departure from earlier government relief employment schemes, such as the food for work programme, which were not founded on a rights-based approach, and is the first step towards realising the right to work in India. There are also transparency guidelines in the Act, such as the mechanism of social audit to prevent corruption, and the implementation of the Act is sought to be participatory through the involvement of democratic institutions at the local level (Pankaj 2008).

The socio-economic context to the NREGA was the poverty and disparities in Indian society. In the national elections of 2004, the then ruling party, buoyed up by India's macro-economic achievements, fought the elections with the slogan 'India Shining', but was defeated. This election result was perceived as a rejection by rural voters of the nature of economic reforms that had not addressed their concerns. It in this context that the NREGA legislation was passed by the new government in 2005, under pressure from left parties and from civil society organisations (Pankaj 2008). An opportunity for civil society organisations to be directly involved in the drafting of the NREGA as well as the RTI Act was enabled by the setting up of a National Advisory Council, a non-governmenal body intended by the ruling party coalition as a platform for an interface with civil society for policy suggestions and implementation of government programmes. It included prominent social activists like Aruna Roy and Jean Dreze who played a major role in drafting the laws, and put pressure on the government to enact them, in spite of adverse propaganda by corporate interests and the bureaucracy.

The demand for the right to work, however, arose as part of the Right to Food Campaign in India in 2001, in the context of a public interest litigation filed by the People's Union for Civil Liberties (PUCL) in the Supreme Court of India, which is known as the 'right to food case'. This was against the backdrop of the prevalence of hunger in drought-affected areas of the country coexisting with millions of tonnes of food grain stocks held by the Food Corporation of India. This case led to various Supreme Court Orders on the Right to Food, which included the Supreme Court directing all state governments to introduce cooked midday meals in primary schools within six months, and a similar order calling for the provision of functional *anganwadis* (childcare centres under the Integrated Child Development Services Scheme) in every habitation (Dreze 2004, Right to Food Campaign 2008).

The Supreme Court Orders helped to generate a momentum for the right to food in India, and led to a mobilisation of civil society organisations which networked

with each other to form a Right to Food Campaign. The right to work formed an important demand of this campaign, which arose from the demand of poor people at the grassroots level and was an important factor in civil society mobilisation for enactment of the NREGA. The present government in India has interpreted its victory and return to power in the 2009 elections as a result of progressive legislations such as the NREGA and has also proposed a Food Security Act. However, in its existing draft this focuses only on subsidised food grain to the poor. This falls short of the issues raised by the Right to Food Campaign, who interpret the right to food much more strongly, as ensuring freedom from hunger, malnutrition and other deprivations associated with the lack of food, and focusing on children to have the first claim to such a right. This is especially significant in India where the food security and nutrition indicators are among the worst in the world. Thus the Right to Food Campaign has drafted an alternative Act called the Food Entitlements Act, and are involved in a struggle for their draft to be accepted by the government for legislation (Khera 2009).

The right to information, the right to work and the right to food campaigns in India have been interlinked and have drawn on each other. The RTI and NREGA have been termed 'people's acts' due to their emergence from people's struggles and participation in their drafting. The right to information movement has even been compared to a second war of independence in India, indicating that people have struggled to gain control over governance and have exposed plundering by the country's ruling elite. However, while these Acts do contain mechanisms of accountability and transparency, the experience since their enactment in 2005 has also shown the need for constant monitoring and mobilisation by civil society to ensure that they are effectively implemented. In spite of their enactment, many people in India remain unaware of them or do not know how to use them. The civil society struggles with respect to these rights have thus entered a second phase of enforcement, in which it would also be important to campaign for decentralisation of powers to democratic institutions at the local level and enhancement of their capacity. Recent years have witnessed the enactment of other rights-based legislations in India, as a result of civil society initiatives and struggles, such as the Right to Education Act (2009), which recognises the right of children to free and compulsory elementary education. There has also been a landmark Forest Rights Act (2006), which seeks to recognise the rights of tribal people over forests and forest land. These Acts are in the process of implementation, and civil society has a very important role to play in empowering the most deprived sections of Indian society to be able to realise their rights.

Box 17.2
Holding the State Accountable

The passage of two recent and historic laws in India – The Right to Information Act 2005 (RTI) and the National Rural Employment Guarantee Act 2005 (NREGA) – have been the result of very long and intense struggles waged by civil society in the country. These civil society actors have also made some very creative interventions in strengthening and enforcing the correct implementation of these laws.

As soon as the RTI Bill was passed by the Indian parliament in May 2005, and implemented from 13 October 2005, numerous groups and individuals all over the country began filing for information in various government offices to activate the Act, and also initiated training programmes aimed at common people on its use. To make this Act a powerful tool, a massive nationwide awareness-cum-assistance campaign, 'Drive against Bribe', was held by a consortium of civil society organisations in 48 cities to encourage citizens to demand their legitimate rights from government departments, without paying a bribe or facing harassment. However, within the first year of the implementation, the government became apprehensive and decided, without any public discussion, to amend the Act by taking away the category of 'file notings' from public disclosure – tantamount to taking the spirit out of the Act. This led to an immediate and strong protest initiated by the National Campaign for People's Right to Information (NCPRI) along with a number of grassroots groups all over the country. A series of activities planned during the sit-in protest – such as street plays, the *ghotala rath yatra* ('chariot of scams'), a nationwide referendum, talks at schools and colleges, signature campaign, daily meetings with members of parliament and party members, and so on – pressurised the government and eventually led to the withdrawal of its plan of bringing in amendments without public discussion.

There has also been a continuous effort by civil society to enforce Section 4 of the Act which concerns the suo motto ▶

disclosures in government offices. Civil society organisations (CSOs) have set up RTI helplines, in some cases in conjunction with the government, to facilitate the usage of RTI and help people seeking information. Various media houses along with CSOs have held campaigns, started weekly columns and television programmes on RTI, its usage and emerging issues in its implementation.

A comprehensive assessment of the implementation of the RTI Act was recently conducted by the Right to Information and Assessment Group along with a number of prominent institutions and people's groups all over the country. The findings revealed that the need for the RTI Act is the demand for information from the people, especially as a means of empowerment to address their basic problems. The key to increasing accountability of public authorities also lies in bringing about attitudinal changes – which is something that takes time, and the RTI Act was welcomed as a step in the right direction.

As highlighted in this chapter, the civil society campaign around the Right to Food played a leading role in the passing of the National Rural Employment Guarantee Act (NREGA) in 2005. An innovative feature of the NREGA is that it gives a central role to 'social audits' as a means of continuous public vigilance. One simple form of social audit is a public assembly where all the details of a project are scrutinised. However, 'social audit' can also be understood in a broader sense, as a continuous process of public vigilance. This particular process has allowed a number of organisations to mobilise the rural poor to ensure entitlements and also participate in the various aspects of the Act.

So when the NREGA was launched in the state of Rajasthan, activist groups and individuals in the state came together under the banner of the Rozgar Evum Suchna Ka Adhikar Abhiyan (Campaign for Right to Livelihood and Right to Information) and took up an entire district to develop a model of public monitoring of the NREGA. A thousand people walked across 237 *panchayats* spreading awareness about the Act, checking compliance of the various provisions and whether the entitlements were being met. Many more social audits have followed since 2006 in various parts of the country, raising and identifying deviations and also strengthening the design of the programme by making practical suggestions.

On the initiative of people's groups in Rajasthan, a 'NREGA dialogue' takes place every month where officials from the concerned departments and representatives of people's groups come together to discuss issues arising from the implementation and address them together. Such dialogues have further contributed to strengthening the design of the scheme. A number of student groups and their universities also have been involved over the last few years in conducting small surveys and studies to monitor the implementation of the NREGA, based on which advocacy with local bureaucracy has been possible. The NCPRI and the Right to Food campaign also periodically hold state- and national-level conventions where people come together to discuss, strategise and plan for future action.

The campaign has also been successful in getting significant 'interim orders' on various government schemes (such as the midday meal for children, old age pensions, the Public Distribution System, and so on) from the Supreme Court and it now monitors these orders through their representatives in each state and in collaboration with state commissioners appointed by the Supreme Court.

The civil society campaigns in India are inspiring and contributing to similar issues in other countries. For example, training programmes on 'social audits' have been carried out by activists from India for civil society organisations in Kenya, Mexico, Malaysia, Indonesia and other developing countries, and there is an increasing request for such training and sharing of experiences.

In Kenya, the organisation Muslims for Human Rights (MUHURI) received training from the International Budget Partnership and experts from India on social audits to involve communities in monitoring budgets and holding their government accountable for managing the public's money and meeting the needs of the poor. Such training and subsequent public hearings and monitoring have resulted in people now being empowered to raise fundamental questions and exact accountability from their governments.

The Indian RTI Act has led neighbouring countries, such as Bangladesh and Nepal, to enact similar legislation. While many other countries have similar freedom of information laws, the RTI Act in India is considered to be one of the strongest in the world, and therefore it has inspired demand for strengthening of legislation elsewhere. The NREGA has also become a model for other countries; for example, South Africa recently asked the Indian government to help it replicate a rural job scheme. The UNDP has also recommended to poor countries that they learn from the NREGA model, and has expressed a willingness to facilitate a sharing of ideas.

Thus, from creating and articulating a right to participating in the drafting of a law, its passage and then initiating periodical monitoring to ensure entitlements, civil society in India has been paving roads, slowly changing the path of politics from a representative democracy to a participatory one. In doing so, it is also inspiring and providing support to other countries to emulate and adopt lessons from the Indian experience.

Priyanka Varma, activist working on issues of transparency and accountability in governance

Conclusion

As the world's most diverse and largest democracy, with one of the fastest-growing economies but also with the largest number of poor in the world, the experience of India provides an interesting case of the multiple dimensions of injustice and the interface between the state and civil society towards mitigating these injustices. The multiple dimensions of injustice ranging from historic injustices to regional disparities at various levels and gender disparities with a regional dimension indicate the multiple claims on justice and the complexity of trying to understand the responsibility to mitigate these injustices in terms of the global justice discourse.

The recent success stories of civil society campaigns in India with regard to economic and social rights and strengthening democracy through accountability are an important step towards realising the basic rights of citizens as enshrined in the Indian constitution, and particularly of the most deprived sections of society. They have also contributed towards an ongoing change in the discourse on development in India towards a rights-based approach. These civil society campaigns draw their strength from human rights and democracy being accepted as universal values, and through the shared platform of global civil society would also contribute to the strength of civil society movements across the world in this regard. This is especially in a context where people living in many other countries face similar issues of socio-economic deprivation and lack of accountability in governance, and where the neo-liberal policy regime is putting pressure on the state to reorient its focus from broad-based development and realising the basic rights of citizens to narrow corporate interests and a focus only on economic growth. The sustainability of civil society interventions in this regard would also depend on how far they are able to strengthen democratic institutions at the lowest level, which would give the most deprived sections of society an opportunity to shape their own agenda and campaign against injustices.

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