

# human rights

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ON ETHICS AND  
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# dialogue

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¡¡CARAJOS!!

## MAKING HUMAN RIGHTS WORK IN A GLOBALIZING WORLD

Perspectives from  
Bolivia • Burma • Ecuador  
Sierra Leone • Peru • Turkey  
Cambodia • El Salvador

this issue

# MAKING HUMAN RIGHTS WORK IN A GLOBALIZING WORLD



**Cover Photo:**  
Demonstrators in Cochabamba, Bolivia, demand that Aguas del Tunari leave the country and relinquish control of the water system. The sign reads, "The water is ours, damn it!!" —a phrase that is now quoted by water activists in Brazil, South Africa, Canada, and around the world.  
Photo by Tom Kruse

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I am often asked two separate but related questions: First, have the forces of globalization, on balance, helped or hurt the cause of human rights? And second, how can international human rights commitments and monitoring mechanisms be more effectively put to use to address problems commonly associated with global markets and policy-making?

Contributors to this issue of *Human Rights Dialogue* reflect on a range of issues that bear on these questions, including the extent to which changing international circumstances have required changed tactics to protect human rights; the kinds of strategies that could potentially be effective for engaging international institutions and multinational corporations in human rights questions; and the prospects for working more with other actors such as environmental organizations, indigenous groups, labor unions, and even national governments to address problems related to globalization.

In many ways, these path-finding essays are encouraging. They illustrate the new and innovative ways in which international human rights commitments are being used, and sometimes even reinterpreted, by civil society in its struggles to reform unjust institutional arrangements. During my time as United Nations High Commissioner for Human Rights, I was often struck by the ways in which civil society is actively using the tools of the legal commitments governments have made under the six core international human rights instruments, deepening public discussion of pressing practical concerns.

Indeed, several of these articles indicate that globalization has advanced forms of transnational cooperation that provide new opportunities for promoting human rights. **Kate Geary** and **Nick Hildyard**, for example, describe the ways in which the Ilisu Dam Campaign brought together a diverse group of activists in the United Kingdom and Turkey to stop construction of a dam project that was funded by nine different countries. **Abu Brima** explains how civil society groups in Sierra Leone formed strong and diverse alliances within their country and with human rights groups in Europe, Canada, and the United States to stop a brutal war funded by the trade of diamonds, while **Corene Crossin** details how the international diamond certification process has brought civil society groups, national governments, and diamond industry representatives from over seventy countries to the table. **Timothy Ryan**, in his discussion of how American labor unions are building international solidarity by assisting and supporting unions in the South, shows that transnational networks have also played a crucial role in struggles to improve working conditions.

Yet although one of the key drivers of globalization—expanded global communications—has indeed fostered the transnational networks that have been critical in spreading the human rights message and strengthening its legitimacy

worldwide, these articles also suggest that other features of globalization have posed serious threats to the rights of people in many countries. In significant ways, power has shifted from the public to the private, from national governments to multinational corporations and international organizations. This has resulted in a gap in accountability for human rights protection and an absence of transparency and broad public participation in critical policy decisions. Several of the contributors express people's increasing frustration about their lack of means through which to participate in and structure the decisions that affect their communities and nations. As **Justin VanFleet** shows in his essay detailing the effects of the intellectual property regime on indigenous knowledge holders, international rules and institutions can pose real threats to the cultures and livelihoods of people who play little or no role in shaping them. In developing countries in particular, activists often perceive their respective national governments as unwilling or unable to stand up to or influence their political and economic conditions, which are shaped by the policies of developed states, powerful nonstate actors, and international rules and institutions. **Argentina Santacruz** and **Juana Sotomayor**, for example, illustrate how their organization is attempting to hold the Ecuadorian government accountable for the human rights impacts of its unconditional acceptance of policies that prioritize foreign debt servicing, which have been encouraged by the International Monetary Fund. **Marcela Olivera** and **Jorge Viaña** describe their struggle to induce the Bolivian government to overturn its policy of privatizing their water system that was strongly advocated by the World Bank. Finally, **Marianne Mollmann** points out the ways in which agencies within developed countries can directly affect the work of activists in developing countries through policies such as aid conditionality.

Moreover, as several contributors suggest, the traditional state-based framework of human rights obligations has become less than adequate in a world in which the fulfillment of rights in developing countries often depends on the political and economic institutions of developed states, multinational corporations, and the structure of international institutions. Finding ways to enforce human rights standards in these new environments is often quite difficult, but Burmese activist **U Maung Maung** and Colombian activist **Javier Correa** have, with the help of **Terry Collingsworth** and the International Labor Rights Fund, made creative use of the U.S. legal system to hold multinational companies accountable for rights abuses.

Despite the many changes that globalization has wrought, primary responsibility for protecting human rights must remain with national governments. Indeed, as **Flavia Barros** points out in her discussion of monitoring the impacts of projects supported by international financial institutions, the most effective way to safeguard human

## INTRODUCTION by Mary Robinson

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rights is often to strengthen the capabilities of national governments in developing countries to represent the interests of their people at the international level. Moreover, as **Carolina Quinteros** urges in her essay on the anti-sweatshop movement, the best long-term strategy for securing working citizens' rights in the Global South is to build the capacities of their national governments, since the priorities and aims of activists cooperating in transnational networks can sometimes conflict, making it difficult to sustain progress on issues of common concern. Furthermore, one of the most effective ways to uphold human rights standards is to enshrine them in national legal systems, as **Danwood Chirwa** explains in his essay on privatizing essential services in South Africa.

Although the essays featured in this issue of *Human Rights Dialogue* address a diverse range of issues, each reflects a growing recognition that, if fundamental rights are to be implemented, it is essential to ensure that obligations fall where power is exercised—whether it is in the local village, the corporate board room, or in the international meeting rooms of the WTO, the World Bank, or the IMF. The new project I am currently developing—the Ethical Globalization Initiative—seeks to work with those who are committed to bringing the values of international human rights to the tables where decisions about the global economy are being made. The Ethical Globalization Initiative is driven by the conviction that, in order to build a world where security is underpinned by sustainable development and social justice, and where globalization works to the benefit of all the world's people, it is vital that multilateralism and respect for international law, and international human rights law in particular, work as well. We hope to be a thought leader and promoter of good practices or model projects, such as those described in these essays, which demonstrate how human rights approaches can produce results. We also plan to be a chorus leader, linking local activists and realities with academics and policy development, which together can influence decision-makers at different levels.

All of the contributions to this issue of *Human Rights Dialogue* make clear that in addition to the need for new approaches, our understanding of human rights obligations must continue to evolve, adapting to the existing and changing needs of groups that are struggling to achieve social justice. We must not shrink from the notion that we can shape a more values-led globalization, one that ensures the basic rights to food, safe water, education, shelter, health care, and political participation are met in a sustainable way. In so doing, we must first see to it that our governments, operating independently and through the framework of international organizations, ensure that their own policies, practices, and programming do not exacerbate rights deprivation elsewhere; the same pressure must also be applied to multinational companies and other private actors—those who have benefited most from global changes. Only then can human rights be made to work in a globalizing world. **hrd**

## AT THE TABLE

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**Flavia Barros** has been the executive secretary of Rede Brasil since 1998. She has also served as coordinator of the Women's Initiative for Monitoring Global Financial Institutions. [www.rbrasil.org.br](http://www.rbrasil.org.br)



**Abu Brima** is the founder and national coordinator of the Network Movement for Justice and Development, a coalition group promoting justice and sustainable development in Sierra Leone. He spearheaded

the Campaign for Just Mining and is also a leader in the National Forum for Human Rights, which began a nationwide campaign to educate paramount chiefs and traditional rulers on the Truth and Reconciliation Commission in Sierra Leone.



**Danwood Mzikenge Chirwa** is a research fellow in the Socio-Economic Rights Project at the Community Law Centre, University of the Western Cape in South Africa. He is also a lead researcher on the

Socio-Economic Rights Project's joint endeavor with the Local Government Project exploring privatization. Before joining the Community Law Centre, he practiced law in Malawi. [www.communitylawcentre.org.za/ser/index.php](http://www.communitylawcentre.org.za/ser/index.php)



**Terry Collingsworth** is a labor and human rights attorney specializing in trade and international labor rights issues. He has been executive director of the International Labor Rights Fund since 2001, and general counsel

since 1989. On behalf of Burmese victims of forced labor, he initiated a landmark case under the Alien Tort Claims Act, seeking to hold Unocal liable for human rights violations in Burma. He has filed similar cases against Coca-Cola in Colombia, Exxon Mobil in Indonesia, and Del Monte in Guatemala. [www.laborrights.org](http://www.laborrights.org)

**Javier Correa** is the president of the National Union of Food Industry Workers of Colombia (SINALTRAINAL) and a former Coca-Cola employee.

**Corene Crossin** is the campaign researcher at Global Witness and works on research projects relating to the governance of natural resources and transparency. Recently, she worked on a World Bank forestry governance initiative examining the political, sociological, and technical aspects of "conflict timber" in Sub-Saharan Africa; she is also the co-author of a World Bank report that critically examines commodity tracking regimes. [www.globalwitness.org](http://www.globalwitness.org)



**Kate Geary** is an environmental and social justice campaigner. She is currently working with the Baku Ceyhan Campaign to challenge British Petroleum's new oil pipeline from the Caspian to the Mediterranean. [www.bakuceyhan.org.uk](http://www.bakuceyhan.org.uk)



**Nicholas Hildyard** was a director of the Ilisu Dam Campaign. He is a founder and director of The Corner House, a U.K. research and advocacy group focusing on human rights, the environment, and development. Before forming The Corner House, he was co-editor of an environmental magazine the *Ecologist* from 1976 to 1997. [www.thecornerhouse.org.uk](http://www.thecornerhouse.org.uk)



**Marianne Mollmann** is the co-coordinator of the Women's Working Group of the International Network on Economic, Social and Cultural Rights, based in New York. In 2002, she worked with the Centro de la Mujer Peruana Flora Tristan in Peru and the Center for Reproductive Rights and Policy in New York, studying the consequences of the Global Gag Rule in Peru in order to establish how these situations could be classified as human rights violations through a redefinition of traditional international human rights law. [www.crlp.org](http://www.crlp.org)

**U Maung Maung** is a General Secretary of the Federation of Trade Unions–Burma. Forced to leave Burma during the military crackdown in 1988, he and other exiled

workers and students formed the FTUB in 1991. [www.tradeunions-burma.org](http://www.tradeunions-burma.org)



**Marcela Olivera** manages and consolidates international networks for the Coordinadora de Defensa del Agua y de la Vida and the Federation of Factory Workers in Cochabamba, Bolivia. She is also organizing a social committee on water in the South Zone of Cochabamba, one of the poorest neighborhoods in the city. [www.sitiocompa.org/English/members/bolivia.htm](http://www.sitiocompa.org/English/members/bolivia.htm)

**Carolina Quinteros** was the executive director of the Independent Monitoring Group (GMIES) in El Salvador, an organization that monitors codes of conduct in *maquila* factories, from 1996 to 2003. She currently resides on the Board of Directors. Her work with GMIES has led her to participate in several national and international campaigns demanding corporate social responsibility and better labor conditions from large apparel companies and their suppliers in El Salvador. [www.gmies.org](http://www.gmies.org)



**Mary Robinson** is the executive director of the Ethical Globalization Initiative. She served as United Nations High Commissioner for Human Rights from 1997 to 2002 and as President of Ireland from 1990 to 1997. Before her election as President in 1990, Mrs. Robinson served as senator for twenty years. She was called to the bar in 1967, becoming a senior counsel in 1980, and a member of the English Bar (Middle Temple) in 1973. [www.eginitiative.org](http://www.eginitiative.org)



**Timothy Ryan** is the Asia regional program director for the American Center for International Labor Solidarity (Solidarity Center), based in Washington, D.C. In this position he oversees all Solidarity Center programs in Asia. Prior to this position, he spent eight years in Asia as the Solidarity Center's field representative for Sri Lanka and Indonesia. [www.solidaritycenter.org](http://www.solidaritycenter.org)



**Argentina Santacruz** has worked with the Centro de Derechos Economicos y Sociales (CDES) in Ecuador since June 2001. In her current position she works on issues pertaining to globalization and prepares materials and documents for several CDES training projects. She was also the outreach coordinator of the ESCR-Network in the Andean region. [www.cdes.org](http://www.cdes.org)



**Juana Sotomayor** is currently the coordinator of the Training and Promotion of Economic, Social and Cultural Rights program at the Centro de Derechos Economicos y Sociales (CDES) in Ecuador. She joined CDES in January 2001 after several years of experience in adult education and the development of training materials and programs. As a fellow for the Carnegie Council's Human Rights Initiative in 2000, she researched the public legitimacy of economic, social, and cultural rights in small towns in Ecuador. [www.cdes.org](http://www.cdes.org)



**Justin VanFleet** is the project coordinator for Science and Intellectual Property in the Public Interest at the American Association for the Advancement of Science's Science and Human Rights Program in Washington, D.C. He is co-author of a forthcoming publication, "Your Traditional Knowledge and Biological Resources: A Handbook on Issues and Options for Traditional Ecological Knowledge Holders in Protecting Their Intellectual Property and Maintaining Biological Diversity." [shr.aas.org](http://shr.aas.org)

**Jorge Viaña** is currently an editor of *ASI ES*, an alternative newspaper in La Paz, Bolivia. He also works with migrant workers and indigenous peoples in La Paz, and organizes women, unemployed workers, and indigenous youth into grassroots organizations in the urban and the suburban zones of Bolivia. [users.resist.ca/~asies](http://users.resist.ca/~asies)

# BUILDING GLOBAL SOLIDARITY

Timothy Ryan

Over the past forty years, the AFL-CIO has established several regional institutes to promote democratic, independent trade unions in Asia, Africa, Eastern Europe, and Latin America. The institutes' work has focused on assisting unions to develop their capacity to advance workers' rights and interests, and part of that capacity is organizing. In 1997, under the leadership of President John Sweeney, the four institutes were consolidated into the American Center for International Labor Solidarity (Solidarity Center). Reflecting the new domestic agenda of the Sweeney administration at the AFL-CIO, the Solidarity Center's work began to focus increasingly on organizing activities in conjunction with its overseas partners around the world.

In part, this shift in focus is a direct effect of globalization, which demonstrated with increasing impact the seamlessness of markets that once existed within nation-states and now operate worldwide. Right-to-work states in the American South once put downward pressure on labor wages and standards in northern, heavily unionized states; now the same process is happening on a global basis. This can create perceived tension between unions in developed and developing countries. Organized workers in Europe and the U.S. fear job loss to countries with much lower standards and weak enforcement, and workers in developing countries are unsure whether efforts to improve conditions by organizations such as the Solidarity Center stem exclusively from protectionism.

The Solidarity Center's work in Cambodia helps to illustrate these tensions and how the Center has overcome them. In this case, a strong focus on organizing, coupled with provisions of a unique trade agreement that rewards compliance with international labor stan-

dards, has shown Cambodian workers that American labor is interested in providing assistance in order to improve working conditions while providing more access to the American market for Cambodian-made garments. While organizing is essential, countervailing pressures on economic globalization through a variety of additional mechanisms, such as a U.S.–Cambodia bilateral trade agreement, are key to ensuring the success of organizing drives. Several factors form the underpinning that makes

organizations. Five years ago, Cambodia barely had a garment industry, much less the promise of independent unions or collective bargaining. Now Cambodian workers are using a unique confluence of forces, assistance, and mechanisms—domestic and foreign, governmental and nongovernmental, and trade and labor rights-based instruments—to organize. Like many of its neighbors, Cambodia has very little tradition of democratic development, extremely weak rule of law, corrupt government institutions, and is



Photo courtesy of the Solidarity Center

Cambodian garment workers at a union meeting.

The Solidarity Center is working with labor groups in Cambodia to maximize the forces and mechanisms critical to gaining and sustaining strong labor rights.

progress on labor rights—in concert with assistance, international solidarity, and ILO conventions—more achievable in Cambodia than in many other developing countries.

The Solidarity Center's work in Cambodia dates to 1994, when it instituted a program to assist the Cambodians in revising their labor law and began to work with nascent Cambodian labor

subject to the pressures of globalization. Without the ability to organize real unions, workers have practically no means to secure their rights or redress of grievances.

The Solidarity Center is working with labor groups in Cambodia to maximize the forces and mechanisms critical to gaining and sustaining strong labor rights. One type of assistance

Cambodian workers are utilizing is technical expertise that various labor bodies, including the Global Union Federations, individual unions, and union centers from America and Europe, provide to help build unions' capacities to organize, defend their legal rights, and bargain for better wages and working conditions. Jason Judd, the Solidarity Center field representative in Cambodia, estimates that, of the 200 garment factories in Cambodia, a large proportion appear to have real independent unions.



Photo courtesy of the Solidarity Center

Members of an independent garment workers' union in Cambodia cast ballots in the election of their union officers.

for five months on false charges drummed up by the management and the police. With support from the Solidarity Center, as well as pressure from U.S. unions and the U.S. government, lawyers from the NGO Legal Aid of Cambodia freed the union leaders. After their release in November 2002, the company began to bargain with the union for the first time.

The most important tactic being used in Cambodia is the unique U.S.–Cambodia Textile-Apparel Trade Agreement, signed in 1999, which links access to the U.S. market and garment quota levels to the respect for core labor standards, particularly ILO conventions 87 and 98 (freedom of association and the right to bargain collectively), as well as compliance with Cambodia's own labor laws. If Cambodia enforces its laws and core labor standards, it stands to gain higher levels of garment exports to the United States.

Other elements that follow from this agreement

Trade Agreement, a factory must participate in the ILO's monitoring program.

Another element essential to the efficacy of the agreement is the role that the U.S. Department of State, Department of Labor, and the U.S. Trade Representative play in pressuring the Cambodian government to implement the labor rights provisions of the trade agreement. This pressure produces an ongoing engagement between Cambodian and U.S. government agencies, as well as more engagement between the Cambodian government, unions, and the garment manufacturers.

The significance of the multilateral approach is that all players have a stake in the outcome of the process. Cambodian workers benefit from this approach because their unions are strengthened. American workers are aided because they assist in putting brakes on "the race to the bottom"—the lowering of wages and standards in a global marketplace. In the process of putting pressure on manufacturers, American workers and their unions also establish relationships that can lead to their own negotiations. Close

## In the process of putting pressure on manufacturers, American workers and their unions also establish relationships that can lead to their own negotiations.

A second tactic is solidarity work by U.S., European, and increasingly, other developing country unions in order to put pressure on specific companies. When workers at the Korean-owned Sam Han garment factory in Phnom Penh tried to build an independent union in July 2002, Soum Tola, the president of the union, was savagely beaten three times by company thugs. He quit his job out of fear for his life. Neither the police nor the Ministry of Labor took any interest in the case. Support from the U.S. garment union UNITE, labor education and assistance from the Solidarity Center, and a story in the *San Francisco Chronicle* captured the attention of The Gap, one of the factory's biggest buyers. A problem that was unresolved for two months was fixed in two days. The management at Sam Han has stopped the harassment and offered to reinstate Mr. Tola. In another case, two union leaders from the Taiwanese-owned Tommy Textile factory were imprisoned

are key not only to making the agreement work, but also to maximizing the impact of the other forces and assistance mentioned above. First and foremost is the growing labor movement, and the protection for organizing and bargaining rights that the agreement and work by the Solidarity Center help provide. The unions' success will ensure sustainable worker protection.

The U.S.–Cambodia Textile-Apparel Trade Agreement has also led to the creation of a unique ILO program (funded by the U.S. Department of Labor) that monitors nearly all 200 garment factories for labor law violations, makes recommendations, and reports publicly on the progress, factory by factory. In order to qualify for the increased quota shipment to the United States under the Textile-Apparel

communication between the ILO program, Solidarity

Center partners, the Cambodian labor ministry, and UNITE results in speedier resolution of many particular cases of labor rights abuse. As a result of this experience, the Solidarity Center and its partners in Asia and around the world are looking at all issues that affect labor rights and conditions. This comprehensive approach has resulted in more coalition-building, more cross-regional initiatives, and a more inclusive view of our work with our partners. **hrd**



Photo by Brett Bjill

Garment workers making towels at a textile factory in Cambodia.

## AND CONFLICT

Globalization and the mobility of capital have forced the Latin American labor movement to work on an international level and incorporate many new actors in the struggle for labor rights. The shift toward transnational coordination in the labor movement has achieved important victories in making large apparel companies responsible for workers in their supplier chains. While this transnational coordination has often been effective in achieving higher labor standards and curtailing human rights violations in *maquila* factories or factories in free trade zones, it is frequently complicated by competing motivations and conflicting interests, which can limit the effects of joint action.

In Central America there are many examples of transnational cooperation successfully forcing large brand-name companies to stop human rights violations in their suppliers' factories. Mandarin, Do All, Hang Chan, and Amitex are only some of the factories in El Salvador where, after a mass dismissal for union discrimination, famous brands like The Gap, Liz Claiborne, and Phillips Van Heusen, among others, called on their supplier to correct these violations. In all of these cases, labor and human rights organizations in Central America worked together with activists from Canada, the United States, and Europe to force the brand-name company to act.

**While transnational coordination has often been effective in achieving higher labor standards, it is frequently complicated by competing motivations and conflicting interests.**

The organization I work with, Independent Monitoring Group (GMIES), is a Salvadoran group that monitors labor conditions in El Salvador. It was formed in 1996 with the mission to monitor and record labor

abuses in *maquila* factories. The independent monitoring of labor conditions is often the result of the joint action of national and international actors working to pressure the national government, contractors, brand-name companies, and consumers to address labor rights violations. By auditing and releasing public reports, independent monitoring groups have contributed to resolving serious violations of labor rights, such as excessive working hours, forced overtime, sexual harassment, and lack of freedom of association. While this shift toward more transnational coordination in the labor movement has allowed labor groups in developing countries more access to factories, more ability to monitor labor conditions on-site, and more immediate results in labor disputes, it has also created tensions between groups, limited the autonomy of local groups, and left some workers behind.

Some of these tensions can be seen in the relationships between Northern and Southern labor groups. Labor activism around *maquila* factories often involves relocating the sphere of action and building transnational alliances, which allow workers to reach consumers in the North. Consumer pressure is essential to persuading apparel companies to act responsibly. However, these alliances are not free of difficulties. The geographic segmentation of production

labor conditions in the South and called for consumers to buy only products made in the United States. Recently, their attitudes and tactics have been changing as it appears almost impossible to make these jobs come back to the United States. Some of these organizations are starting to recognize that, even if factories will not come back to the United States, their support for workers in the South could improve labor conditions in both the North and the South. However, it is likely that some Northern activists will continue a protectionist stance, since organizations based in the North have their own political interests. On March 9, 2002, the Salvadoran newspaper *La Prensa Gráfica* quoted a U.S. union representative who argued that, since NAFTA was signed, the U.S. textile and apparel industry had lost 450,000 jobs. The U.S. unionist predicted that her union would work to stop more jobs from leaving the United States.

American activists like this one are willing to contribute to the cause of workers in the South only when it suits their own needs. This can be problematic when workers in the South want to launch a campaign around issues that are not in the direct interests of Northern activists. (Activists in the United States often target a couple of brand-name companies for abuses committed by their suppliers but abuses that occur in the factories of other brands are overlooked.) In this transnational movement, where solidarity is still possible, activists in the South are not the ones defining the agenda.

Another change in the labor movement is the participation of national and foreign NGOs who typically have not been involved in labor-related activities. Among these NGOs, women's rights organizations and human rights groups are the most active. Women's

has put workers from the North at a disadvantage. When some of their jobs were relocated to the South, Northern activists initially reacted with a protectionist line. In the early 1990s, many American organizations publicized bad

organizations have begun to defend labor rights using alternative strategies for organizing women *maquila* workers. Emphasis has been placed on women's rights and situations that are not traditional labor union grievances such as maternity benefits, sexual harassment, child labor, women's empowerment within the organizations, and double shifts of female workers. Human rights groups put labor violations into the framework of human rights and translate those abuses into a more provocative language that identifies workers as victims of human rights violations in order to bring more attention to their problems.

The relationships between these actors are often rather contentious. Unions complain that NGOs are infringing upon their work and trying to replace the union as the workers' representative. Some unions emphasize that unlike union leaders, these organizations are not elected by the workers. NGOs, especially women's NGOs, maintain that they highlight demands specific to their constituencies—usually demands the unions have not taken into account.

Since the mid-1990s, the consuming public has become involved in the struggle for workers' rights—a shift that has been both positive and problematic. Campaigns that connect brand names to labor rights grant a political value to the act of purchasing and demonstrate the power that consumers can have in defending workers in the South. The problem with this type of advocacy is that the consuming public only gets information about

brand-name companies that are targeted by labor rights groups. Many other companies that commit abuses are never targeted and their abuses go unnoticed.

The mobility of capital and the many transnational strategies that are

## The challenge continues to be the same for labor organizations in the South: to strengthen the state in such a way that it can safeguard working citizens' rights.

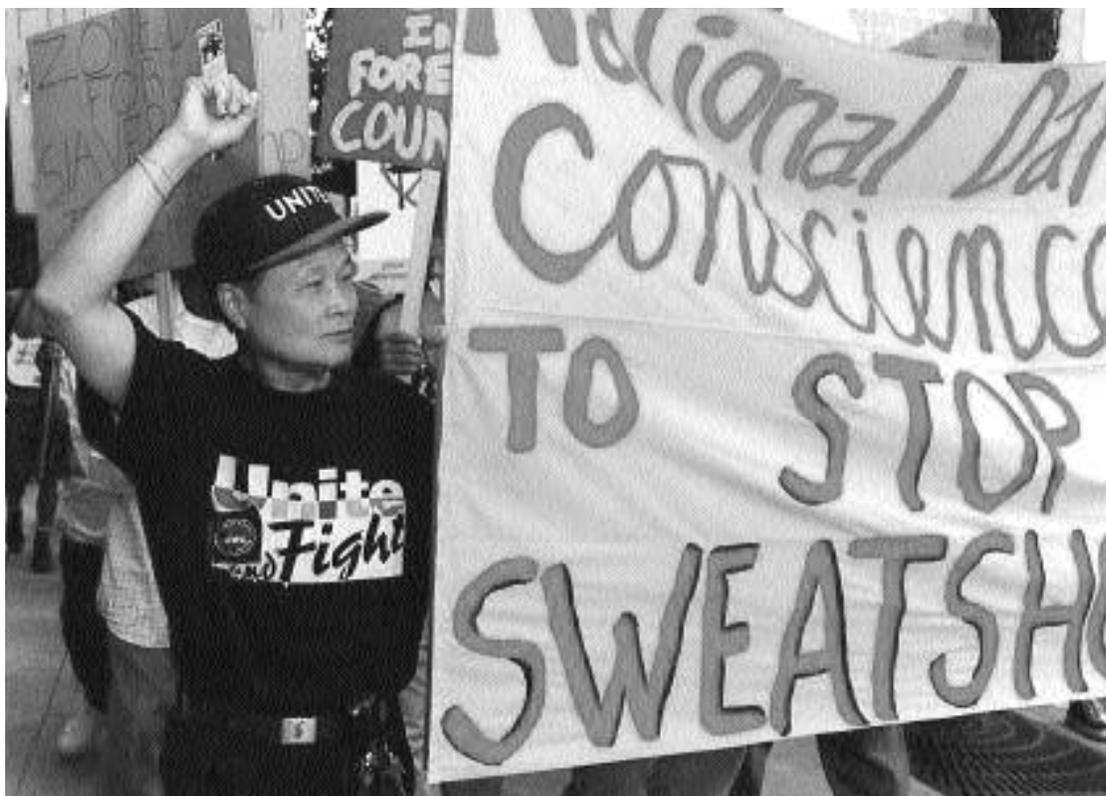
now undertaken to defend workers' rights do not necessarily target the state. Cases are more quickly resolved through the intervention of brand-name companies that contract the factory than through direct state action. While this model manages to endow transnational companies with responsibilities and pressures them to guarantee the conditions of the workers who make their products (an important breakthrough), this model provides little opportunity for workers who are not employed by the production chains of multinational corporations and it has little effect on the other factories

operating within the country that are oriented to the local or regional market.

Developing countries lack institutional frameworks and our governments lack seriousness in confronting the challenges their people face.

This does not leave many alternatives to the type of vulnerable advocacy arrangements described above. Even if some transnational actions are successful, the challenge continues to be the same for labor organizations in the South: to strengthen the state in such a way that it can safeguard working citizens' rights. [hrd](#)

For more on the debates between local and international labor rights advocates, see the codes of conduct issue of *Human Rights Dialogue*, available online at [www.carnegiecouncil.org/viewMedia.php?prmID=634](http://www.carnegiecouncil.org/viewMedia.php?prmID=634).



San Francisco garment workers take part in a march on the National Day of Conscience against Sweatshops, April 4, 1997.

Photo by David Bacon, Impact Visuals

# WINNING THE WATER WAR

Marcela Olivera and Jorge Viaña

“Rights are not given. Rights are won. Nobody is going to fight our fight. We struggle together for what is just, or we tolerate the humiliation of bad government.” This communiqué from Coordinadora de Defensa del Agua y de la Vida (Coalition for the Defense of Water and Life) from January 11, 2000, initiated the turning point in the fight for the Bolivian people’s right to water.

Since 1985, Bolivia—along with several other Latin American countries—has undergone a process of structural adjustment. As part of the package of policies promoted by the World Bank and International Monetary Fund, most of the public companies in the country were privatized. In 1999, the Bolivian government proceeded with the privatization of the water system in Cochabamba, the third largest city in Bolivia. It handed over the service to the consortium Aguas del Tunari, whose major shareholder is the transnational corporation Bechtel.

The World Bank, the IMF, and the Bolivian government went beyond the privatization of water to demand a regulatory framework that would give foreign companies complete control over the water system and its infrastructure. Federal Law 2029 was created to eliminate the people’s guarantees to water distribution in rural areas. The government expropriated the water and irrigation systems to Aguas del Tunari, as the sole concessionaire with rights to the water. Irrigating farmers, communities, and neighborhoods on the periphery of the city, all of which relied on autonomous

water service, suddenly lost all rights to these water sources.

Before any infrastructure investments were made to ensure improved or expanded services, rates increased overall, even tripling for some of the poorest people. In a country where the minimum wage is roughly \$60 a month, many of us received water bills of \$20 and more. Water was shut off completely for others. People who had built family wells or water irrigation systems decades earlier suddenly had to pay Aguas del Tunari for the right to use this water. While the company sought a 16 percent annual return on its investment, price hikes simply put water out of the reach of many people.

water cooperatives (both urban and rural) that were not connected to the central water grid, but were affected by the privatization. It also represented people already connected to the public grid, but who came to the conclusion that the rates were not affordable and were exaggerated and abusive. This coalition also represented unionized workers whose experience helped our organizational continuity in moments of conflict.

The Coordinadora mobilized several large-scale protests that were met with much police resistance and violence. The government responded by signing an agreement with the Coordinadora promising to review the law and the contract, but it refused to lower the water tariffs.



Demonstrators carry the Bolivian flag in a demonstration in the streets of Cochabamba on February 4, 2000.

Photo by Tom Kruse

The lack of credibility of politicians, business people, and state institutions, and their open commitment to the privatization of water utilities, compelled us to form the Coordinadora de Defensa del Agua y de la Vida. The Coordinadora represented farmers, committees, and

In protest, the people refused to pay their water bills for almost two months.

When it became evident that the agreement was not being honored, a new protest was announced. The Coordinadora called for a peaceful taking of the central plaza. It was a

profoundly symbolic act to demonstrate the unity and degree of legitimacy behind the articulated demands. The government and the departmental elites announced that they were not going to allow any protests and ordered that the planned demonstration be repressed by local police and officers brought in from other parts of the country.

The confrontation lasted two days. 175 protesters were injured. Finally a new agreement was reached by the Coordinadora and the government. Water rates were frozen at 1999 price levels. Commissions comprised of professionals, peasant irrigators, labor leaders, environmentalists, and government officials were formed to review the law and the contract.

The protests in February 2000 secured respect for the people's right to participate and their right to water. The people forced the government to enter into direct negotiations over both the Bechtel contract and

water law should be changed to guarantee local control of rural irrigation systems. The *consulta* gave new legitimacy to these demands and expanded popular involvement in our struggle. The water revolt was not just about making water affordable, but also about the people's demands that it be controlled not by a foreign corporation but by people and their communities.

## The attainment of civil and political rights such as the right to participation, decision-making, free speech, and assembly is crucial to ensuring access to essential services such as water.

At the beginning of April, with the government and Bechtel still refusing any permanent rollback in water rates, protest leaders declared what they called *la ultima batalla* (the final battle), demanding the cancellation of the water contract and changes in the national water law. After two days of protests that shut down the

city, government leaders agreed to meet with representatives from various social sectors: business people, government representatives, and farmers. In the midst of the meeting, police—under orders from the national government—burst in and arrested the

entire Coordinadora leadership. The people of Cochabamba flowed into the streets. Armed police and soldiers were sent in to break up the protests. President Banzer declared a state of martial law, but the number of people in the streets grew even larger and the actions of the government grew more violent, culminating in the death of a seventeen-year-old boy who was killed by a soldier. The demand expressed by the more than 80,000 people in the streets was not just that Bechtel leave the country, but that the president be removed as well, and that a popular constituent assembly be formed.

The local water consortium, SEMAPA, is now run by representatives from the

Coordinadora, community leaders, and members of the local government. Recently, SEMAPA appointed a new Board of Directors formed by two representatives of the Cochabamba Municipal Council (one being the mayor himself), the union of SEMAPA workers, the College of Engineers, and three representatives who were directly elected by the population through open elections in the three districts of the city. SEMAPA and the Coordinadora have created an important opportunity to demonstrate a workable alternative to the privatization of water delivery. This collective process that relies upon neither the government nor transnational corporations is the only rescue from debt and inefficiency that does not compromise the people's right to water.

This victory was just the beginning of the real struggle to make human rights more than just a formal illusion. What was won through the water war was the right to participate in the governing of our country and the distribution of our resources. Neoliberalism has robbed us of our right to participate in decision-making for almost two decades. The attainment of civil and political rights, such as the rights to participation, decision-making, free speech, and assembly is crucial to ensuring access to essential services such as water. Government control of essential services, as opposed to private ownership, provides the people with more opportunities to exercise their civil and political rights, but direct public participation is critical to ensuring the government acts responsibly. This victory has opened the road for the long struggle of building our own democracy, in which representatives serve the people and not the reverse. [hrd](#)

Photo by Tom Kruse



Demonstrations in April 2000 eventually led the city of Cochabamba to be shut down.

the new national water law that threatened to take away communities' control of their local water systems.

During these negotiations the Coordinadora carried out a *consulta popular* in which tables were set up in public spaces throughout the Cochabamba valley. People were asked what demands the Coordinadora should carry to government officials. Nearly 60,000 participated, almost 10 percent of the entire population. In a clear expression of the widespread doubt that the corporation would ever serve the people's interests, 95 percent voted that the Bechtel contract should be broken entirely and that the national

entire Coordinadora leadership. The people of Cochabamba flowed into the streets. Armed police and soldiers were sent in to break up the protests. President Banzer declared a state of martial law, but the number of people in the streets grew even larger and the actions of the government grew more violent, culminating in the death of a seventeen-year-old boy who was killed by a soldier. The demand expressed by the more than 80,000 people in the streets was not just that Bechtel leave the country, but that the president be removed as well, and that a popular constituent assembly be formed.

Finally, after a week of confronta-

# PRIVATIZATION AND SOCIOECONOMIC RIGHTS

Danwood Chirwa

Despite open resistance from some local NGOs, since 1994 South Africa has been implementing a policy of privatization in a range of areas, including basic services such as trash collection, electricity, housing, food, and water supply. Access to these services is directly linked to the enjoyment of such economic, social, and cultural rights as the right to water, health, and housing.

Early indications suggest that privatization has been unsuccessful in securing these basic services for all South Africans. The Rural Development Services Network estimated, for example, that service charges in the black townships of Fort Beaufort with respect to water provision and trash removal increased by almost 600 percent between 1994 and 1996. These townships also witnessed a significant increase in sanitation charges between 1995 and 1998 despite having only a “19th century bucket sanitation service.” These trends were accompanied by a 100 percent increase in water connection costs. It has also

by giving explicit recognition to a range of socioeconomic rights in addition to civil and political rights. This recognition was informed by, among other things, the realization that redressing the deep systemic inequalities left behind by the apartheid regime and securing the meaningful enjoyment of citizenship rights by everyone in the newly-founded democratic era requires the protection of both sets of rights.

The socioeconomic rights guaranteed in the constitution include the right of access to health-care services, sufficient food and water, adequate housing, and education. The state is obliged to take legislative and other measures within available resources to ensure the progressive realization of these rights. Significantly, the constitution makes it possible for these rights to apply in the private sphere. Section 8(2) stipulates that a provision in the bill of rights binds “natural or juristic person” alike “to the extent that it is applicable,” depending on “the nature of the right” and “the nature of

financial institutions and other donors. It has been incorporated in various multilateral trade agreements that promise improved efficiency in the delivery of and, ultimately, enhanced access to, basic services. Likewise, private actors involved in providing services relating to socioeconomic rights are obliged to ensure that they do not interfere arbitrarily with the enjoyment of the relevant rights. They are also under an obligation, to a certain extent, to promote these rights. The possibility of holding such actors directly responsible by a court of law exists under the constitution.

Several studies on privatization in South Africa have been conducted, but few have been approached from a human rights perspective. Most human rights activists lack the necessary background in economics to investigate the issue thoroughly, and most economic policy experts lack a comprehensive understanding of human rights. Therefore, a definitive answer to the question of whether privatization promotes or limits access to socioeconomic rights in South Africa has not yet been formulated. Recognizing this problem, the Community Law Centre of the University of the Western Cape designed a project to evaluate how the privatization of essential services has affected vulnerable groups’ access to socioeconomic rights. Central objectives of the project are an exploration of the obligations of the state and nonstate actors arising from these rights, how such rights are affected by privatization, and what these rights entail for privatization.

The other focus of the project will be on whether privatization is implemented in accordance with democratic norms and practices such as those relating to access to information and

## Several studies on privatization in South Africa have been conducted, but few have been approached from a human rights perspective.

been estimated that since 1994 about ten million people have had their water supply disconnected and roughly two million people have been evicted for failure to pay water bills.

In South Africa, the critical question in analyzing the privatization of essential services is whether the policy is consistent with constitutional imperatives—especially those relating to socioeconomic rights. The 1996 Constitution of South Africa departs radically from traditional constitutions

any duty imposed by the right.” Privatization should not limit existing enjoyment of socioeconomic rights. The constitutionality of privatization will also depend on whether it contributes to the progressive realization of relevant socioeconomic rights. Failure to satisfy either of these demands would mean that the policy is unconstitutional and that the state is in violation of its constitutional obligations.

Privatization has become a dominant economic policy prescribed by

public participation. This component was informed by evidence of a number of bad privatization deals entered into by municipalities. These deals were conducted in violation of key procedural rules set out by the relevant Act of Parliament and in disregard of fundamental democratic norms relating to

## A definitive answer to the question of whether privatization promotes or limits access to socioeconomic rights in South Africa has not yet been formulated.

public participation in the privatization process and provision of adequate information to the public on privatization initiatives. They resulted in unnecessary litigation involving huge legal costs and the loss of enormous sums of money by the municipalities.

The research will result in a comprehensive background paper for a conference on privatization to be held in September 2003. Drawing participants from within and outside South Africa, the conference will provide a platform for building a vibrant local and international network aimed at ensuring that socioeconomic rights are not compromised by privatization. The conference will aim to bring various stakeholders together to provide a holistic evaluation of this policy. It is anticipated that the outcome of the background research and workshop will inform submissions for policy and legislative reform within South Africa may lead to possible litigation around these issues.

A major challenge of the project will be locating and cultivating common ground in the various positions on privatization. Views on privatization are diverse and often conflicting, ranging from total opposition to it through a partial acceptance limited to privatization of certain goods and services, to

total acceptance.

Another challenge will be reaching a consensus on the extent to which private actors could be held accountable to human rights obligations engendered by socioeconomic rights. The horizontal application of human rights is still novel in contemporary constitutional law. Although the constitution does recognize horizontality of its bill of rights, little comparative jurisprudence exists that establishes the precise obligations of private actors. Furthermore, academic opinion is still divided in South Africa

on the important question of whether the bill of rights applies directly to private actors or indirectly through common law. It is unclear whether one can bring an action against a nonstate actor based directly on a constitutional human rights provision. This problem is exacerbated by the fact that the obligations of states engendered by socioeconomic rights are also still underdeveloped. These factors restrict the ability of many human rights groups in South Africa to hold private actors responsible for violations of these rights.

It is hoped that this project will stimulate in-depth research, open discussion, and bring more clarity to the complex obligations of states and nonstate actors to provide access to socioeconomic rights in the context of privatization. [hrd](#)

For more on the economic and social rights enshrined in the South African Constitution, see "Applying Human Rights to the HIV/AIDS Crisis," by Nathan Geffen in the health issue of *Human Rights Dialogue*, available online at [www.carnegiecouncil.org/viewMedia.php?prmlD=358](http://www.carnegiecouncil.org/viewMedia.php?prmlD=358).



Women at a standpipe in Empangeni, South Africa

Photo by Bob Carthy, CBC

# PRIORITIZING RIGHTS

Argentina Santacruz and Juana Sotomayor

International multilateral banks and governments often encourage countries to honor the payment of their public foreign debts regardless of how this affects national budget allocations for the implementation of rights such as primary education or a national health system. They argue that countries that do not pay their debts will not be able to continue borrowing, nor will they attract international investment. This argument ignores the fact that, although countries continue to devote large percentages of their budgets to these payments, their indebtedness continues to grow. Moreover, a major portion of new debt is devoted to covering former debts with other international financial institutions. Consequently, most of the money borrowed each year does not go toward improving the living conditions of those who pay the debt and lack services.

In February 2003, the newly elected President of Ecuador, Lucio Gutierrez, signed another agreement with the International Monetary Fund. The country's twelve million inhabitants understood that this new Letter of Intention meant more indirect taxes, less social investment, the accumulation of new debt, and an explicit guarantee that a large portion of the national budget would be devoted to servicing foreign debt indefinitely.

In Ecuador, the allocation of funds for foreign debt service in the national budget far surpasses that earmarked for education and health. In the 2002 budget, a total of \$1.85 billion was allocated for public debt servicing (34 percent), while budgets for education and health totaled \$575 million (11 percent) and \$297 million (5.5 percent) respectively. Prioritizing the blind payment of foreign debt has meant repeated violations of economic, social, and cultural rights, since the government is forced to divert funds that should otherwise be used to ensure mini-

mum standards and obligations on human rights to which it is bound by the Ecuadorian Constitution and international human rights instruments that Ecuador has ratified.

Since 1997, the Centro de Derechos Económicos y Sociales (CDES), an Ecuadorian NGO, has responded to this trend by documenting and challenging the link between so-called budget constraints, foreign debt servicing, and economic and social rights. Using the human rights framework, we seek to raise awareness and to encourage citizens to speak out against the violations that ensue when the government—often at the urging of international actors—prioritizes foreign debt servicing over social investment. Our actions have included public campaigns and citizen participation in budget allocation and monitoring, as well as legal cases that challenge the government on legal grounds, both nationally and internationally, for not fulfilling its obligations in terms of economic and social rights.

After having exhausted all domestic procedures to challenge human rights violations, including two judicial mechanisms regulated by the Ecuadorian Constitution (*acción de amparo y acción de inconstitucionalidad*), without having achieved any rulings in our favor, in

sive realization of the right to health, and has failed to offer any judicial remedies or mechanisms for such violations to be challenged.

The petition claims that the need to guarantee and implement economic and social rights requires governments to prioritize the fundamental rights of the population above other obligations, such as debt service payments or compliance with IMF conditionalities. During the period referred to in this petition, foreign debt servicing was not only protected, but actually increased, while Ecuador was asked to reduce its public health budget substantially and the country suffered a major economic crisis—60 percent of the population fell below the poverty line. The petition asserts that these policies violate the Ecuadorian Constitution, as well as the American Convention. The petition also points out that the policies are discriminatory since the groups most affected by the lack of resources are children, women, and the poor who lack access to adequate health care.

Since international courts have yet to deal extensively with economic and social rights violations, the petition illustrates the various ways in which these rights are judiciable. The petition has been delayed by various circumstances and, while the Commission has not yet

## A rights approach to challenging foreign debt burdens can highlight the need for states and international actors to prioritize human development.

December 2000, CDES filed a petition on behalf of the National Union of Workers of the Ministry of Health before the Inter-American Commission on Human Rights. This petition argues that, by drastically reducing its national health budget in 1998, the Ecuadorian government has violated its citizens' right to the progres-

sive realization of the right to health, and has failed to offer any judicial remedies or mechanisms for such violations to be challenged.

admitted the petition, it has been a powerful tool to show both legal practitioners and activists the often-neglected connections between macroeconomic policy and human rights.

CDES has also used the human rights framework to help develop social monitoring mechanisms. In 2001, the

Inter-American Platform for Human Rights, Democracy and Development, of which CDES is a member, organized a series of local and national ethical tribunals in Peru, Bolivia, and Ecuador. This led to the “Andean Ethical Tribunal against Foreign Debt,” a regional event in November 2001 in Quito hosted by civil society to promote accountability of state and nonstate actors in massive violations of rights. It brought together a summary of documented cases, the results of local and national public hearings, high profile experts on debt, economic and social rights lawyers, and well-known judges and public figures from each country to identify obvious violations of rights. All cases were built around national legislation and international commitments of the country in question, particularly constitutional provisions regarding economic and social rights.

One of these cases, documented by CDES, shows how the acquisition of four

debtors fell behind in their payments and the government of Ecuador became responsible for this debt. For the past fifteen years, and after seven agreements with the Paris Club, the debt has risen from its initial amount of \$13.6 million to \$50 million. So far, Ecuador has already paid \$26.8 million. To make matters worse, the current location of the ships and their use remain unknown.

## During the period in which foreign debt servicing was not only protected, but actually increased, Ecuador was asked to reduce its public health budget substantially.

This debt has obviously not benefited the people of Ecuador—so much so that civil society in Norway and members of the Norwegian government have admitted that they are ashamed that these loans could have been issued.

On these grounds, CDES requested a final expert opinion from the

place on national budgets. Although the amount of this debt is tiny in comparison to the country’s total debt-servicing payments, the amount allocated yearly to the payment of this particular debt could be used to pay 42 percent of the country’s vaccination campaign, which would benefit 672,000 children under five—roughly one-third of the population this age. It could also be used to

cover the salary of all public teachers in the country for six months. Therefore, this money could significantly contribute to the progressive realization of economic and social rights.

In conclusion, a rights approach to challenging severe and increasingly common foreign debt burdens can highlight

Photos courtesy of Centro de Derechos Económicos y Sociales



In February 1999, CDES staged a demonstration protesting external debt. The event was called *La Repartición del Pastel Presupuestario* (How the Budget Cake Is Divided). The flags, representing how the budget was prioritized, show that the Ecuadorian government allocated nearly half of its annual budget to external debt.

ships by an Ecuadorian private company in 1979–1980, for a total of \$56.9 million, later, in 1983, became part of the foreign public debt Ecuador negotiated with the Paris Club and Norway. With all its complexities, this case is relevant because it shows in concrete terms the elements essential for the recognition of illegitimate debts.

These ships were originally bought by a private company with Ecuador as the guarantor. The Norwegian government promoted the sale of these ships to Third World countries as a way of helping Norwegian ship companies avoid bankruptcy. A few years later, the private

Commission for the Civil Control of Corruption—by law an autonomous entity in Ecuador in charge of denouncing and monitoring corruption cases in public policies and actions. Its report, made public in November 2002, “requests from the national authorities, through diplomatic channels, the cancellation of all of the obligations contracted between the Norwegian government and Ecuador through the Paris Club, because of their illegitimacy.”

CDES has launched this case in part because it strongly believes that such a clear international precedent could help to ease the burden that illegitimate debts

the need for states and international actors to prioritize human development instead of getting caught in the vicious cycle of debt accumulation. While Ecuador’s debt is large, these judicial and social approaches can bring progress in the realization of human rights standards and obligations. [hrd](#)

For more on the legal obligations of the Ecuadorian government to safeguard its citizens’ health, see “Using Indicators to Guide Advocates,” by Sarah Zaidi in the health issue of *Human Rights Dialogue*, available online at [www.carnegiecouncil.org/viewMedia.php?prmid=358](http://www.carnegiecouncil.org/viewMedia.php?prmid=358).

# MONITORING INTERNATIONAL FINANCIAL INSTITUTIONS

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## An Interview with Flavia Barros

Rede Brasil, founded in 1995, is a network of social movements, NGOs, and civil society organizations; it monitors the social and environmental impacts of projects and policies that international financial institutions (IFIs) such as the World Bank, the Inter-American Development Bank, and the IMF are financing or implementing in Brazil. The sixty-four organizations that are currently affiliated with Rede Brasil focus on a diverse range of issues, including urban development, land reform, agriculture, environmental protection, workers' rights, and gender equity. By disseminating information and facilitating dialogue among these groups, Rede Brasil helps them to understand better the organizational and decision-making structures of international financial institutions, and provides a forum for them to share experiences and design common strategies to address more effectively the problems that projects financed by IFIs sometimes present. As with any large and diverse group of organizations, disagreements naturally arise among member groups. The framework for dialogue that Rede Brasil provides to its affiliated organizations has helped to build a substantial consensus concerning the impacts of the policies and programs of IFIs, and the best strategies for addressing them.

*Dialogue: Are you using a human rights framework or human rights language in your work?*

*Barros:* Rede Brasil has not addressed the policies of IFIs explicitly in terms of human rights. The main obstacle to using human rights language in our work is the criticism from IFIs themselves. These institutions tend to argue that this is a "politicization" of their work. Instead of human rights language, they prefer concepts such as

the "human face" or "social face" of development projects. For reasons of their own, they clearly don't want to include human rights language in their work.

Our work in monitoring the social and environmental impacts of these institutions, however, provides valuable information for human rights assessment. Moreover, our advocacy for the right to information regarding the actions of IFIs, the need to improve communication between IFIs and those affected by their policies, and the importance of increasing participation by affected groups in the decision-making processes expresses our commitment to human rights. In the coming year we plan to begin addressing several issues more explicitly in terms of human rights, and are exploring the possibility of legal/judicial actions alongside political/legislative actions to address problems related to the activities of IFIs in Brazil.

*Dialogue: What have been the primary challenges that Rede Brasil has faced in its work?*

*Barros:* The primary challenge we face is one of developing strategies to remedy the lack of information regarding the activities of IFIs in Brazil. Other significant obstacles to our work include the lack of effective mechanisms in these institutions for enabling civil society groups to participate in their decision-making processes, and the fact that the Brazilian government (like the governments of other developing countries) remains largely unaccountable for the impact of IFI policies and projects to which it has "agreed."

*Dialogue: What kinds of strategies have you used to hold IFIs to account for their role in causing social problems? Has your work proven to have an impact in the decision-making of these*

*institutions with respect to their work in Brazil?*

*Barros:* We make use of several mechanisms that exist within these institutions. The World Bank's Inspection Panel, for example, is a mechanism through which complaints concerning projects can be lodged. If a complaint is accepted, this panel requires an investigation of the implementation of the related projects financed by the World Bank. With the help of Rede Brasil, our country has brought more complaints before the panel than any other. The Inter-American Bank's Independent Investigation Mechanism works much less efficiently than the World Bank's panel, and we presented a complaint through it for the first time last year.

The use of mechanisms provided by these institutions is not sufficient to monitor them effectively. Both the World Bank's Inspection Panel and the Inter-American Bank's Independent Investigation Mechanism are still far from being autonomous with respect to the major interests and policy directives of their institutions. The decision to consider a complaint is still decided by board members of these organizations; board members also influence selection of the staff who carry out these investigations. The official procedures required to file a complaint against the institutions are very complicated, and the communities affected by the projects often lack the expertise to understand them or negotiate them successfully.

*Dialogue: What are some of the other ways you monitor these institutions?*

*Barros:* We focus a great deal of our attention on monitoring the process of negotiation between the Brazilian government and the IFIs. We hold the IFIs

accountable by lobbying the Brazilian government to make responsible decisions concerning agreements with these institutions, taking into account the full impact of its decisions on Brazilian society. The Country Assistance Strategy—official country reports by which the World Bank determines its credit strategies in each country for several years—was, for example, treated as confidential and kept from public scrutiny in the past. Recently, however, the Brazilian report has become publicly accessible due to our pressure on the government. The World Bank itself has subsequently decided to publish the Country Assistance Strategy reports on its Web site.

## Our work in monitoring the social and environmental impacts of these institutions provides valuable information for human rights assessment.

*Dialogue: In the process of monitoring international financial institutions what kind of relationship have you had with the Brazilian government?*

*Barros:* Our relationship with the Brazilian government has changed as the government itself has changed. In the beginning, much of our work depended on the support of international NGOs. In order to influence decisions by IFIs concerning our country, we would build partnerships with international organizations and NGOs from the North, especially the United States. Through their pressure on the U.S. Congress, we could see the impact of our pressure. Our influence was therefore indirect. As democracy has deepened in Brazil, we have built more direct channels of communication and advocacy to our government regarding the policies of IFIs.

During the period of the Cardoso administration, our representatives in these institutions built alliances and agreements according to the vested interests of the political and economic elite. Therefore, the priorities of development projects and policies were not the ones we needed. Last year the Cardoso administration entered into agreements with the IMF and made commitments to sustain the actions required by it, and a new

agreement was approved without any deliberation by the Brazilian parliament. This was a clear violation of our constitution. The Senate has a legal obligation to participate officially in any process that can lead to the approval of such agreements. In this case, however, it was completely bypassed by the executive power. We denounced this to the public prosecution office, but, unfortunately, we learned that the current government is nevertheless legally bound by the agreement entered into last year—even without the approval of the national parliament. These agreements will have a major adverse macroeconomic impact on our country—one that will affect the poor especially.

that does not respond to the priorities defined by our new government. Yet right now there is very little publicly available information on this new program, and we are pushing the World Bank to disclose more about it. One of our main obstacles, however, is that our government does not have a great deal of power within the IFIs. We hope we will have the chance to discuss our representation on the boards of these institutions with the new government and can participate in creating new mechanisms of accountability.

*Dialogue: What are the most promising strategies for holding international financial institutions more accountable in the future?*

*Barros:* Even if there are channels for civil society organizations to participate directly in these institutions, the best way to monitor IFIs is through our government. We are presently assembling a



U.S. Treasury Secretary Paul O'Neill (left) and Brazilian Finance Minister Pedro Malan confer ahead of the Spring 2002 meeting of the Development Committee.

Photo courtesy of the International Monetary Fund and World Bank Group

Another important issue is that the majority of the resources loaned by the institutions to Brazil is still made conditional upon the acceptance of structural adjustment reforms. Our current government has no power to change this, even though these resources should really be allocated for social policies. The World Bank is in the process of approving a new adjustment program for Brazil—one

group of parliamentarians to discuss and monitor the action of IFIs and, through this group, we expect to reinforce the process of building a sovereign relationship with these institutions. We believe that by strengthening our government we will be better able to influence IFIs. It is time to reverse the strategy of thinking globally and acting locally. We need to think locally and act globally. **hrd**

# PROTECTING KNOWLEDGE

Justin VanFleet

The traditional concept of knowledge in many local and indigenous communities is based on a belief that knowledge is inherently communal, in the public domain, and can be constantly modified from within in order to sustain the community and culture, and to maintain biological resources necessary for survival. Industry in developed countries, familiar and comfortable with the legal definitions of intellectual property rights (IPRs), is exploiting the wealth of traditional knowledge by claiming exclusive proprietary rights over it. These rights are sought for the goal of generating corporate financial gains, and are acquired without the prior informed consent of traditional knowledge holders.

The dangers of allowing the intellectual property regime to continue its current path are clear. When governments of developing countries—legally bound by international intellectual property (IP) agreements and treaties—recognize foreign proprietary rights over traditional knowledge, the local cultural systems associated with the traditional knowledge are directly affected. In the context of the international globalization of markets, trade is central to the economic development of developing countries. The Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) was mandatory for all World Trade Organization members supported primarily by industry in developed countries. When developing countries were faced with the option of accepting TRIPS standards, or of losing their right to participate on equal footing in the multilateral trading system, most developing countries chose the former. Yet upholding these IP standards can prevent local and indigenous communities from using their knowledge for medical care, agricultural production,

or sacred purposes, thus undermining their social, economic, and cultural rights.

One issue perpetuating the incompatibility between IPRs and human rights is the lack of formal documentation of knowledge in local and indigenous communities, which makes it virtually impossible to disprove an outsider's proprietary intellectual property claim over traditional knowledge. If there is no existing documentation of traditional knowledge in a printed publication, patent offices often consider claims based on traditional knowledge as "novel." For example, due to the lack of formal documentation, a U.S. citizen owns the rights to the ayahuasca plant, a sacred plant that has been used in the Amazonian region of Ecuador. Another example is the Mexican yellow bean, which has been cultivated and bred for centuries by Mexican farmers and has become a common staple in Mexican cuisine. Mexican farmers have exported these beans to the United States for decades. In 1994, a U.S. citizen brought yellow beans to the United States and self-pollinated them. Due to a lack of documentation suggesting that the bean was a product of traditional Mexican farmers, he was able to acquire a patent on the yellow bean in the United States. The owner of this patent then sued Mexican exporters of the yellow bean, claiming that they were infringing upon his patent. This case of biopiracy has caused Mexican farmers to lose the

rights to their bean-breeding knowledge in the United States. If the patent is extended to other countries, the rights of the farmers will be even further curtailed.

Human rights organizations are taking action to level the playing field for local and indigenous communities faced with the globalization of an IP regime. Since an international registry for traditional-knowledge holders has yet to be created, some NGOs have created databases with the specific purpose of documenting public domain traditional knowledge for patent offices. Patent offices can then check applicants' claims against existing traditional knowledge to determine whether inventions are truly "novel." The American Association for the Advancement of Science's Science and Human Rights Program has created a database for this purpose. This database, Traditional Ecological Knowledge Prior Art Database (T.E.K.\*P.A.D.), currently archives over 30,000 records of traditional knowledge and is accessible via the Internet for patent examiner use. By disclosing information in this database, traditional-knowledge holders are able to protect the moral interests related to



Photo by Mario Ardon Mejia

The traditional cultivation practice of this farmer in Honduras is managed by the indigenous lencas and has multiple environmental and economic advantages.



Ecuadorian farmer planting her potato experiment.

the knowledge. The database is used by patent offices when performing prior art searches on patent applications. Prior art refers to all of the information currently existing in a given field or subject area in the public domain. In order for a patent to be approved, the patent application must contain a novel invention or discovery not currently disclosed in the public domain's prior art database. If traditional knowledge is documented in this database, patent applications claiming this knowledge as "novel" can potentially be denied. Additionally, placing knowledge in the public domain enhances the public's right to access the benefits of scientific advancement.

T.E.K.\*P.A.D. is publicly available on the Internet and recognized by the U.S. Patent and Trademark Office and other international government-based patent authorities as an official database for prior art searches. The database is the end result of data contributions from several grassroots organizations as well

as herbal companies interested in giving proper credit to innovations based on traditional knowledge. Anil Gupta, coordinator of the Society for Research and Initiatives for Sustainable Technologies and Institutions (SRISTI) states: "SRISTI has been campaigning for an international registry for over a decade so that grassroots innovators and TK holders can get short term protection."

## Human rights organizations are taking action to level the playing field for local and indigenous communities faced with the globalization of an intellectual property regime.

Some NGOs have used a traditional human rights approach to confront the intellectual property regime. The Action Group on Erosion, Technology and Concentration, a Canadian NGO, publishes periodic press releases when acts of biopiracy occur. This retroactive

"name-and-blame" approach complements the proactive approach used in the T.E.K.\*P.A.D. project. By drawing the public's attention to the issue of biopiracy, several patent claims on traditional knowledge have been voluntarily withdrawn or challenged in patent offices.

The United Nations has several initiatives to examine the issue of human rights and intellectual property, one of which is the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and

Genetic Resources, Traditional Knowledge, and Folklore (IGC-GRTKF). In 2000, the WIPO General Assembly established the IGC-GRTKF to explore issues related to the protection of traditional knowledge. Although it is not a legislative authority, the IGC-GRTKF can make suggestions and recommendations to other WIPO bodies. The IGC-GRTKF will hold its final meeting in June 2003 and will later submit conclusions to the WIPO General Assembly. According to the American Folklore Society, "WIPO should take the necessary steps to ensure that conclusions of the IGC-GRTKF and similar bodies incorporate the identified needs of indigenous peoples and traditional knowledge communities who are the primary guardians and interpreters of their cultures."

The challenge for human rights advocates is to identify an effective long-term strategy for dealing with intellectual property issues. An effective approach must examine the responsibilities of developed state actors, developing state actors, and international organizations. Developed states have an obligation to promote agreements that respect internationally recognized human rights standards. Developing states have a duty to engage in international agreements that do not potentially violate the human rights of their own citizens. Furthermore, current international treaties relating to intellectual property

must be revised so that they do not compete with human rights standards.

Structuring the intellectual property system to promote rather than undermine human rights is a difficult task. The first step in addressing this is to create an awareness and consensus among human rights advocates that the intellectual property system has the potential to jeopardize the right to food, health, culture, and access to the benefits of science—rights that are at the core of the Universal Declaration of Human Rights. **hrd**

# GAGGING DEMOCRACY

Marianne Mollmann

The United Nations Human Rights Committee has declared Peru's restrictive abortion laws a violation of the right to life and freedom from torture. While the Peruvian government must be held accountable for this oppressive practice, the United States has also contributed substantially to the situation through its reimposition of the so-called Global Gag Rule (officially known as the Mexico City Policy). As the world has become increasingly globalized, it is often difficult to determine who should be held responsible for human rights violations. As a result, impunity continues in cases like this where abuses are perpetrated indirectly through aid and trade conditionalities imposed by foreign states or organizations.

The Global Gag Rule restricts U.S. aid by terminating U.S. Agency for International Development (USAID) funds for any non-U.S.-based NGOs involved in voluntary abortion activities, even if these activities were undertaken with non-U.S. funds. While the Helms Amendment has restricted U.S. funds from being used for abortion or

Under the Global Gag Rule, it is illegal for an organization that receives donations from USAID to lobby its own government for decriminalization of abortion, though it would be able to lobby for stricter punishment for women who have undergone voluntary abortions. The intention of the policy is to limit the speech and action of foreign-based NGO recipients by depriving them of all U.S. government funds

**The United States has also contributed to Peru's restrictive abortion policy through its reimposition of the so-called Global Gag Rule.**

if they carry out certain acts deemed undesirable by the U.S. administration. In essence, if an organization is dependent on U.S. aid, or if it is concerned about potential funding, it is prevented from participating in the democratic process of its own country unless it agrees with the current U.S. government on abortion issues. This has obvious consequences for the exercise of two central human rights: free-

few exceptions. As a consequence, few legal abortions are carried out, whereas 350,000 Peruvian women annually submit to illegal and often unsafe abortions. Complications as a result of unsafe abortions and hemorrhaging are among the top reasons for the exceptionally high maternal mortality rate in Peru. The law also requires doctors attending to women they suspect of having gone through an illegal

abortion to turn these women over to the authorities.

Blanket prohibitions of abortion and violations of doctor-patient confidentiality have been deemed inconsistent with internationally recognized human rights norms by the UN's Human Rights Committee and Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW Committee). Specifically, the Human Rights Committee has declared the restrictive abortion laws in Peru a violation of the right to life and freedom from torture, and the CEDAW Committee has noted that a breach of patient confidentiality negatively affects women's health—particularly in the context of illegal abortions. A mandated breach such as the one required by Peruvian law is therefore inconsistent with women's right to health. The UN bodies recommend dialogue and open debate on the topic so as to solve abortion-related conflicts in a democratic manner and avoid the human suffering undisputedly caused by illegal and hence unsafe abortions.

**Under the Rule, it is illegal for an organization that receives donations from USAID to lobby its own government for decriminalization of abortion.**

voluntary sterilization activities overseas since 1973, the Global Gag Rule goes further, restricting foreign-based NGOs from using their own funds to provide legal abortion services, lobby their own governments for abortion law reform, or provide accurate medical counseling or referrals regarding abortion, even when these activities are in accordance with the laws of their own countries.

dom of expression and participation in a democratic society.

In the case of Peru, this dialogue regarding abortion and reproductive rights is not just important as an expression of democracy, but also as a means of finding a solution to the quite serious human rights violations that result from the restrictive law. Abortion is currently illegal in Peru by legislation and the law provides for

In Peru, there should therefore be plenty of room for NGOs concerned with the health of women, and their reproductive rights in particular, to work for decriminalized—and thus safer—abortions. However, this is precisely the work that has been constrained by the Global Gag Rule. Over the years, Peru has been one of the main recipients of USAID funding for reproductive health work and, though most organizations do not depend on USAID for their survival, most do not wish to upset a potential substantial funder.

The Global Gag Rule also imposes rules and restrictions on foreign NGOs that would not be accepted as legal in the United States. The U.S. Supreme Court has insisted on the right to abortion as an integral part of a woman's right to physical self-determination. Moreover, it is highly unlikely that the same court would find constitutional the kind of limitations on the right to freedom of expression contained in the Global Gag Rule. This situation, in which the U.S. government can impose on others what it cannot impose on its own citizens, borders on neo-imperialism, a notion not lost on NGO representatives and health professionals in Peru. It is, indeed, hard to see how the stifling of free debate in Peru in order to maintain laws that have been deemed contrary to human rights is helpful for the ideals of democracy and freedom that the U.S. government purports to support through its development work.

Some argue that trade and aid conditionalities such as the Global Gag Rule fall under the discretionary

powers of any government; that if a state wishes to donate resources to another state, it is free to set any conditions it chooses. I disagree. As global citizens in the international community, states have an obligation to act responsibly by showing due diligence and assessing and foreseeing any adverse consequences their actions might have on others. We would, for example, expect a state to refrain from selling instruments that might be used for torture to another state that is known to participate in such practices. Moreover, it seems counterintuitive that the United States should not be held responsible for the restrictions on freedom of speech resulting from its actions in Peru, when identical restrictions would not be tolerated at home. While it may be counterintuitive, unfortunately it is not yet counter to international human rights law.

The Global Gag Rule makes it painfully clear that human rights violations that are the consequences of cross-border policies fall through the rather sizeable loopholes in traditional human rights law. There is little doubt that the consequences of the Global Gag Rule have the potential to cause or to maintain a situation of great suffering and violations of human rights norms. If the Peruvian state were the main actor, the women subjected to the restrictive abortion laws in Peru would have access to at least one international remedy—the UN Human Rights Committee. However, as the main actor is a foreign government, neither domestic nor international remedies are available and the violations continue unpunished. Clearly, international human rights law needs a serious overhaul in order to catch up with the globalized world. [hrd](#)

Human rights violations that are the consequences of cross-border policies fall through the rather sizeable loopholes in traditional human rights law.



Women at a market in the southern Andes.

Photo courtesy of Peru Support Group

## INVESTORS TO ACCOUNT

Few infrastructure development projects have caused as much international controversy in recent years as the proposed Ilisu Dam in the Kurdish region of Southeast Turkey. Scheduled for construction on the River Tigris, the dam is intended to generate 3,600 gigawatt-hours of peak hour electricity a year and is Turkey's largest planned hydroelectric project. The dam would displace over 78,000 people, the majority of them Kurds, who suffer repression and human rights abuses under the Turkish state. The project would disrupt downstream flows of the Tigris to Syria and Iraq, jeopardizing agricultural production and heightening tensions in an already explosive area. Famed as the "cradle of civilization," the region would lose much of its ancient cultural heritage, such as the 10,000-year old city of Hasankeyf, to the dam's vast reservoir.

Plans to build the Ilisu Dam were first mooted in 1954. Although the design for the dam was approved in 1982, the project remained on the drawing board until the late 1990s, partly due to a lack of financing. Immersed in a war with the Kurdish Workers' Party in the 1980s, the Turkish government could not afford to finance the project. The conflict was also one reason why the World Bank was unwilling to finance the infrastructure project. In 1996, the Turkish government sought to raise the necessary finance by offering Ilisu to the private sector. A Swiss turbine manufacturer and a British construction company, Balfour Beatty, were contracted for the project. The rest of the consortium of construction companies was made up of companies from Italy, Sweden, and Turkey.

With approximately half of the construction costs made up of imports from Western Europe and the United States, the companies in the consortium sought government-supported export credit

guarantees from the export credit agencies (ECAs) of Austria, Germany, Italy, Japan, Portugal, Sweden, Switzerland, the United Kingdom, and the United States. Export credit agencies are government bodies that use taxpayers' money to promote a country's foreign trade by insuring companies against the main commercial and political risks of operating abroad, in particular the risk of not being paid by creditors.

The vast majority of ECAs have no mandatory environmental standards and, like the World Bank, all lack mandatory human rights guidelines. Yet ECAs are now among the most powerful players in international business. In 2000, ECAs issued \$58.8 billion worth of new export credits. This compares to a total of \$60 billion given out globally in overseas development assistance and \$41 billion provided as loans by multilateral development banks, such as the World Bank or the Asian Development Bank. Thus, a large part of global capital investment is not regulated. ECAs remain among the least accountable and transparent of publicly-funded institutions. For example, despite recent reforms, the U.K. Export Credits Guarantee Department is still not obliged by law to release details of the projects it finances. It only does so for certain projects—and then only with the permission of the client company.

Concern over the construction of the Ilisu Dam has centered largely on the fail-

ure of the project to meet international standards for infrastructure projects involving forcible resettlement and shared rivers. As planned, the dam would flood an area the size of the U.K. city of Manchester (313 km<sup>2</sup>), submerging or partially submerging some 183 villages and hamlets. Yet, at the time that the project was provisionally approved by the supporting ECAs, no resettlement or compensation plan had been drawn up for the estimated 78,000 people, mainly ethnic Kurds, who could be affected by the dam. The dam was not held to any international standards relating to resettlement—including those of the World Bank, the OECD Development Assistance Committee, the World



Activists opposing the Ilisu dam project launch a report about the social and environmental impacts of the project outside the head office of Balfour Beatty.

Photo by Ritchie Andrew

Commission on Dams, and the U.S. Export-Import Bank. There had not been any consultation whatsoever with potentially affected people or their elected representatives; indeed, until late 1999, local mayors had not even been informed that the project was going ahead. Finally, the dam's environmental impacts were also largely unassessed.

In the U.K., a coalition of environmental and human rights groups, including the Kurdish Human Rights Project

(KHRP) and Friends of the Earth, quickly emerged to oppose U.K. funding for the project. Together the groups formed the Ilisu Dam Campaign. Initially, Ilisu was seen as primarily an environmental issue. In that respect, the campaign marked a departure from the usual work of the KHRP, which focuses on cases involving the abuse of civil and political rights. However, the routine abuse of basic human rights in the Kurdish region of Turkey rapidly emerged as a major issue, centering on the right of affected people to express their opinions about the dam, their rights to be heard and to receive information, and their rights to security, culture, land, and livelihood. The Ilisu Dam Campaign thus presented the opportunity for human rights groups to forge alliances with environmental groups, archaeologists, academics, and trade unionists. Given the number of global actors in the project—from dam-building companies to private banks and government bodies—the campaign necessitated an international, multi-pronged approach.

The Campaign generated widespread public support and action—achieving extensive media coverage—and used many tactics, including the credible threat of legal action, missions to the region, press coverage, political work, communication between the Campaign and local groups, grassroots letter-writing, demonstrations, public meetings, coalition-building, international networking, and shareholder activism.

Key to the Campaign's success was its careful documentation of the situation on the ground, made possible by numerous fact-finding missions to the Ilisu region. This enabled campaigners to challenge the "official" reports presented by proponents of the dam regarding the number of people affected, lack of consultation, and broader social, environmental, and cultural impacts.

The injustices of the Ilisu project struck a chord with the U.K. public, engaging many who had never campaigned before. On the one hand, people were disgusted that the U.K. government was backing the project in their name

holder activists. The Campaign had distributed hundreds of shares to its supporters, but also to others campaigning against the company's activities—from the railway workers' union to anti-road protesters. This not only built solidarity between diverse campaigns—Janine Booth of the railway workers' union RMT says, "We saw a link between Balfour Beatty's profiteering in the UK railway industry and its planned profiteering in the Kurdish area of Turkey. We took part in each other's protests"—but also highlighted one of the Campaign's key arguments: that the lack of adequate corporate standards

## The majority of export credit agencies have no mandatory environmental standards and, like the World Bank, lack mandatory human rights guidelines.

while refusing to allow public scrutiny of the project's "Environmental Impact Assessment and the Resettlement Action Plan for Ilisu." On the other hand, people were outraged that the dam would visit further oppression on an already uprooted and traumatized people—the Kurds.

The groundswell of public furor in the U.K. helped to make Ilisu so controversial that even a huge multinational like Balfour Beatty was forced to listen. In 2000 and 2001, Balfour Beatty saw its Annual General Meetings dominated by challenging questions from irate share-

embroiled the company in reputation-damaging projects.

On November 13, 2001, in a major victory for the Campaign, Balfour Beatty announced its withdrawal from the Ilisu project on social, environmental, and economic grounds. Its Italian partner, Impregilo, has since also pulled out. The companies' withdrawal effectively means that the Ilisu dam project no longer has the financial support of the U.K., U.S., and Italian governments.

One core campaign objective still remains to be met, besides that of seeing the dam stopped once and for all: to force the U.K. and other export credit agencies to take on board the lessons of Ilisu. The Campaign will continue to push for ECAs to adopt binding standards on human rights and the environment by informing parliamentarians, the press, and other opinion makers, by working with trade unions and non-governmental organizations, and, above all, by reaching out to the public. While mandatory standards will not in themselves prevent destructive projects, the Campaign believes they are a vital tool in pushing for broader structural change that aims not only to ensure that development serves the poor but also to reclaim public institutions for the public good. [hrd](#)

Photo by Hugh Warick



Welsh activists join Kurdish campaigners on the banks of a dam in North Wales.

# MINING FOR THE PEOPLE

Abu Brima

In spite of its rich mineral and natural resource base, Sierra Leone today is the poorest country in the world, still struggling to overcome the legacies of one of the cruelest wars in the history of Africa. For eleven years, protracted conflict forced about 500,000 Sierra Leoneans to flee the country, turning them into Africa's largest refugee population. At least 75,000 Sierra Leoneans lost their lives, more than 10,000 had their limbs mercilessly chopped off, and over 5,000 child soldiers fought alongside adults. Instead of mineral resources being used for development, they were used to finance the war—robbing present and future generations and placing Sierra Leone last on the UNDP Human Development Index. The complex humanitarian situation, a product of the war, exacerbated the already grim quality of life. This human tragedy is fueled almost completely by diamonds.

When war broke out in 1991, diamonds, the mainstay of the economy of the country, were used by the Revolutionary United Front (RUF) rebels as a currency for the brutal war. The history of links between the rebellion and the estimated income accrued by the RUF is not well documented, but it is estimated that the RUF and its business associates probably earned between \$25 million and \$125 million annually between 1991 and 1999. Easy to dig clandestinely with the approval of local chiefs and officials, and easy to smuggle to transit countries and international markets, artisanal diamonds are not easily taxed by the government. Little official revenue is collected from mining, dealing, and exporting licenses, or from export taxes.

Local civil society responded to the humanitarian disaster by forming a coalition in January 2000 led by the organization with which I work, Network Movement for Justice and Development (NMJD). NMJD is a human rights coal-

ition established in 1988 with the aim of promoting justice and sustainable development at all levels in society. We formed this coalition through the Campaign for Just Mining with the active support of the Civil Society Movement of Sierra Leone in 2000.

The report that became the entry point into the collaborative campaign, titled "The Heart of the Matter: Sierra Leone, Diamonds and Human Security," made clear the critical role diamonds played in facilitating brutality on civilian populations in Angola, the Democratic Republic of Congo, and Sierra Leone. The coalition was formed with the aim of ensuring that the Sierra Leone diamond industry operates legally, openly, and for the benefit of Sierra Leoneans—diamonds must become an asset, rather than a detriment, to peaceful long-term development. The Campaign promotes "just mining" policies and practices in Sierra Leone by demanding that the country and the industry adopt a human rights framework in mining policy formulation and implementation.

In the past, mining was the preserve of government and a few individuals, mainly foreign nationals. The Campaign had to develop new ways to incorporate civil society. This entailed innovative strategizing. To empower the people and make them

owners and beneficiaries of their resources, we formed alliances with numerous sectors of civil society, educated the public, and confronted those with a vested interest in maintaining the status quo.

The first step was to establish task force coalitions of civil society groups all over the country. After significant outreach, task forces comprised of human rights groups, environmental organiza-



Diamond diggers search for diamonds in Sierra Leone.

Photos by Isabelle Holferlin, Social Alert

more recently, district levels—allows for participatory structures for education, mobilization, and action on mining issues. The rights of the people to participate fully in policies and decisions affecting their lives are essential to establishing accountability and social responsibility in the mining industry and to curtailing the abundance of weapons of war bought with the proceeds from minerals.

Expanding and strengthening strategic alliances with international organizations was essential. The task force coalitions worked in close collaboration with international groups such as Partnership Africa Canada, Global Witness, International Peace Information Service, Action Aid, Oxfam, and Amnesty International. This collaboration focused international attention on the issue of conflict diamonds and elevated the struggle to an international level. Collaboration with international groups also allowed us to participate in the development of the Kimberley Process, a global certification process for rough diamonds.

To date, the Campaign has been successful in exposing the links between the war in Sierra Leone, rough diamonds, and the arms trade. The national and international attention led the United Nations and

the United Kingdom to bring the war to an end.

As a result of the lobbying efforts of the Campaign for Just Mining and its partners, the government of Sierra Leone has established the Diamond Area Community Development Fund. This fund secures a percentage of the export tax that the government gets for the sale of diamonds and allocates it to the development of mining communities. The Ministry of Mineral Resources, the Campaign for Just Mining, and the Campaign's partners are now working on mechanisms to establish and ensure participatory, transparent, and accountable structures in communities to decide how the funds should be used. The Ministry of Mineral Resources has also agreed to release funds to the Department of the Environment for mine-site rehabilitation.

The Campaign provided space for civil society involvement in the monitoring, management, and development of equitable mining policies and practices. Through the establishment of the Diamond Area Community Development

Fund, and by creating task forces at the regional and national levels, there is increased opportunity for mining-affected communities to become aware of their rights and demand benefits from mining activities.

Much has been achieved since the Campaign was formed two years ago, but serious challenges remain for the future control, management, and trade of diamonds. The mining policies of Sierra Leone need to be reformed radically to reflect local and indigenous ownership, as well as participatory, depoliticized decision-making. There is still a great need for corporate social responsibility, beneficiation schemes for communities and miners, cooperation among key ministries, and effective collaboration between the government and civil society. The work of the Campaign needs to be based in the chiefdoms and communities so that the people can understand the policies and laws, make demands, negotiate from a position of strength, and advocate for their human rights.

The level of destruction that took place was only possible with the support and collaboration of a broad collection of individuals, companies, agencies, and countries involved in diamond and arms trade. By forming coalitions such as the Campaign for Just Mining, civil society in Sierra Leone is laying the foundations for democracy, economic development, sustainable peace, accountability, and corporate social responsibility in the mining sector—foundations that will ultimately lead to the respect, protection, and fulfillment of human rights standards. Knowing how governments have failed their people in the past, civil society must take the lead. **hrd**



Revolutionary United Front diamond diggers in Kono District, Sierra Leone.

Photo courtesy of Partnership Africa Canada

To empower the people and make them owners and beneficiaries of their resources, we formed alliances with numerous sectors of civil society.



A diamond digger going home after working in the mine.

Photo by Isabelle Hoferlin, Social Alert

Conflict diamonds, or blood diamonds, which are easily exploited by terrorist groups and rebel movements or their allies to finance conflict and gross human rights abuses, were first brought to the world's attention by Global Witness and later by Partnership Africa Canada through their reports on how the revenue accrued from diamond sales funded rebel groups in Angola and Sierra Leone. The findings of these NGOs were later supported by UN Security Council expert panel reports on Angola and Sierra Leone, which resulted in a Security Council ban on diamonds not certified as "clean." These reports put the international diamond industry on notice that the previous industry practice of buying and selling rough diamonds on a "no-questions-asked" basis was unacceptable.

The complexity of supply routes of diamonds and the number of actors involved in the trade of rough diamonds required an international process to monitor it effectively. The Kimberley Process began in early 2000 when South Africa's Minister for Mines and Energy Affairs, Phumzile Mlambo-Ngcuka, convened a meeting of interested NGOs, diamond industry representatives, and senior government officials in the diamond-mining town of Kimberley. This was followed by a working group meeting in Luanda in June 2000, where a core group of representatives outlined several concrete elements of a new global scheme to prohibit trade in conflict diamonds. The following two years of tough negotiations between the three segments of the Kimberley Process—NGOs, the industry, and governments—culminated in the Kimberley Process Certification Scheme (KPCS), a unique global mechanism designed to control international trade in diamonds that went into effect on January 1, 2003. About seventy diamond-producing and consumer countries are currently participating in the KPCS.

The KPCS requires that each shipment of rough diamonds exported across an international border be contained in a tamper-resistant package and accompanied by a government-validated

Kimberley Process Certificate. Certificates are required to be forgery-resistant and include a unique number and information describing the diamonds contained in the shipment. Diamond shipments are only to be exported to another Kimberley Process participant country and uncertified shipments are not permitted to enter any participant country. The rationale is that only diamonds certified as "clean," or conflict-free, will qualify for entry into the international market, thereby rendering any uncertified diamonds illegal.

After pressure from Global Witness and other NGOs, the diamond industry agreed to implement a self-regulated system of warranties. This system will complement the certification of rough diamonds by requiring industry bodies to endorse each invoice of sale of rough or polished diamonds and diamond jewelry with a statement affirming that the diamonds are conflict-free. Records of the transactions will be required in order to facilitate the tracking of diamond trade flows.

While the Kimberley Process is a great step forward in making the international trade of diamonds more accountable, success of this system hinges on the effective implementation and enforcement of the KPCS by both governments and industry. Civil society groups and NGOs are particularly concerned with the diamond industry's system of warranties that is being administered through an industry-based, self-regulating, and voluntary system. There are serious questions about whether such a system will be sufficient to create a chain-of-custody diamond-tracking mechanism capable of deterring noncompliance with the KPCS. Regular verification by third-party checks is essential to identifying weak links or gaps. The Kimberley Process plenary meeting held in April 2003 failed to discuss and take action to address this major weak-

ness. The system will only be credible if each government's laws and regulations are evaluated to make sure that conflict diamonds are not entering the legitimate diamond trade.

Another significant problem has been the absence of a comprehensive system for gathering and analyzing diamond production and trading information. Until recently, there had been little detail on what kind of information participants would be required to gather and how it would be shared and used. Significant progress was made to address this issue at the recent plenary meeting. Participants agreed to a system for the collection of statistics and will be required to submit data on exports and imports for the first

**The Kimberley Process represents a rare chance for national governments and civil society groups to work in partnership with a major commercial industry.**

quarter of the year by May 31, 2003. The Canadian government, which played a key role in this issue, will manage the system and create a pilot Web site where statistical information will be reported and can then be analyzed.

The Kimberley Process was originally driven by international shock and concern that a gemstone was connected to grave human rights abuses. The Kimberley Process represents a rare chance for national governments and civil society groups to work toward peace in partnership with a major commercial industry. Whether the Kimberley Process will prevent conflict diamonds from entering the international diamond market is now dependent on whether the agreement is effectively implemented and strengthened over time. Without independent, regular monitoring of all national Kimberley Process arrangements, and meaningful implementation of the diamond industry's self-regulated system of warranties, it will be virtually impossible to assess whether the KPCS is preventing conflict diamonds from entering international trade. [hrd](#)

# BEYOND REPORTS

Terry Collingsworth

## AND PROMISES

Since its inception in 1986, the International Labor Rights Fund (ILRF) has been working to develop mechanisms to secure labor rights in the global economy. Since labor rights are a subset of human rights, the ILRF initially used traditional human rights tools, such as documenting severe and extremely abusive practices including child labor, forced labor, and violence against trade union leaders, as well as promoting research and policy advocacy. Because multinational corporations (MNCs) have played a crucial role in shaping the architecture of the global economy, and because they alone have the capacity to reshape it and alleviate its most abusive practices, much of the ILRF's effort has focused on holding them accountable for their actions.

Although our use of traditional human rights tools enabled us to make some progress, we were frustrated by the lack of means for effectively enforcing human rights standards in the global economy. Since there were no mechanisms in international law that would allow us to enforce these rights, we began to explore the possibility of finding remedies in the domestic legal system. An answer to the enforcement question came to us when we were working to address the use of forced labor in Burma by the Unocal Corporation, a U.S.-based oil company, and Total (now ElfTotalFina), the French oil giant, in the construction of a natural gas pipeline. We began the experiment of using the Alien Tort Claims Act (ATCA) to initiate human rights cases against the most egregious violators of human rights in the MNC community. The ATCA, a U.S. federal statute that dates back to 1789, provides that "the district courts shall have original juris-

dition of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

The use of ACTA was revived in the 1970s in cases seeking to hold former dictators and torturers accountable after they had obtained refuge in the United States. During that period, the ATCA was found by several courts to provide a viable cause of action to address human rights violations. The seminal case was *Filartiga v. Pena-Irala*, 630 F. 2d 876 (2d Cir. 1980), where the Second Circuit Court of Appeals held that an alien could sue in U.S. federal court for a tort that violates the law of nations, and that torture was a clear violation of the law of nations. Since that ruling, the ATCA has been used routinely to reach direct perpetrators of human rights abuses. Interpreting the statute in a new way, the ILRF took the next step and, based

were not directly involved but knowingly benefited from slave labor can be held accountable for human rights violations. In another case, we have charged Coca-Cola with the murder and terrorizing of trade unionists in Colombia. Coca-Cola has argued that it cannot be held liable in a U.S. federal court for occurrences in Colombia, adding that it does not own, and therefore does not control, the bottling plants in Colombia. We hope that this case will develop a standard under which a multinational corporation cannot profit from human rights violations while limiting liability to a local entity that is a mere facilitator for the parent company's operations.

In these two cases, as well as other cases that we have initiated against Del Monte, Exxon Mobil, and Drummond Coal, we hope to establish the ATCA as one of the most effective tools yet in the effort to halt extreme

**We were frustrated by the lack of means for effectively enforcing human rights standards in the global economy.**

on the rulings of the Nuremberg Tribunals, applied the ATCA to MNCs that are complicit in human rights violations committed in the course of commercial activities.

Our organization is currently involved in five different lawsuits based on the ATCA, enabling us to become a leading force in using this federal law to hold corporations accountable for their actions abroad. Against Unocal, for example, we have been able to argue a case on the basis of the Nuremberg Principle, which was used during the trials of business leaders who had profited from slave labor provided by the Nazis. This principle holds that private firms that

abuses against workers. Yet, despite our success thus far, there are many limitations to using litigation to target MNCs. Litigation is time-consuming, expensive, and often politicized. For example, the Unocal case is now approaching its eighth anniversary, the plaintiffs have been left in legal limbo all of this time, and the ILRF has struggled to raise funds to confront Unocal's seemingly unlimited legal war chest. Furthermore, since the law relies on a narrowly defined Law of Nations standard, it is limited in its ability to address other crucial human rights concerns related to wages, sweatshop labor, and health and safety standards. In addition, because it is a

U.S. federal law, the ATCA can be used only against corporations that are based in the United States and fall under U.S. jurisdiction. It is not appropriate, then, to shift to an exclusive reliance on ATCA litigation.

We view litigation as a piece that had long been missing from prior campaigns. We defined the ideal campaign as having three components: an ATCA case based on solid evidence that an

## We view litigation as a piece that had long been missing from prior campaigns.

MNC was participating in established human rights violations for profit (in order to provide a viable and concrete case); the presence of an “on the ground” entity in the country where the violations occurred that would be able to build on any political momentum created by a global campaign and sustain it independently of the case; and a credible campaign to educate consumers and citizens in the market countries to apply direct pressure on the target MNC to change its practices.

Our current campaigns will hopefully provide a successful model of this cooperation. Although the ACTA cases have perhaps served as the catalyst for cooperative, strategic action, it is unlikely that litigation alone will bring major change. What is needed is an organization that will remain vigilant to ensure that

the situation does not deteriorate, or that the resolution of a lawsuit serves only to address the concerns of the small group of claimants. Moreover, since MNCs obviously have the ability to hire scores of lawyers and drag litigation out for years, grassroots campaigns are necessary to ensure that the companies become aware that a drawn out legal battle will be costly in other ways even if the litigation itself ultimately fails. Consumers want to know that a company

they support is not complicit in human rights violations, and that the company has done all it reasonably can to prevent such abuses from occurring. In the present state of evolution of the global economy, few companies can actually meet that standard, but we are well on the way to developing a process to make each of them accountable, one by one if necessary.

While using this approach, the ILRF is working simultaneously to push for the adoption of a universal

social clause that can help protect workers’ rights. We have developed a model provision for human rights to be added to trade agreements and are working with other human rights groups to build support for this effort. At this point, MNCs are aggressively complaining about being subject to ATCA suits, but they offer nothing more than voluntary codes of conduct as the alternative. Hopefully, a few visible victories in the ATCA cases will provide the incentive for the business community to proceed with a good faith discussion of an alternative that creates binding, globally applicable protections for workers, much like those that MNCs have designed to protect their own property rights in the global economy. [hrd](#)

For more on legal approaches to enforcing human rights standards, see the litigation issue of *Human Rights Dialogue*, available online at [www.carnegiecouncil.org/viewMedia.php?prmID=608](http://www.carnegiecouncil.org/viewMedia.php?prmID=608).



Women’s rights and human rights groups protest outside of Unocal’s annual shareholders meeting on May 18, 2003.

Photo courtesy of the Burmese American Democratic Alliance

Human rights abuses in Burma are a long-standing problem, and the only solution is to replace the existing totalitarian regime with an open and democratic government. The United Nations has issued several resolutions demanding that the ruling military regime stop the murdering, torturing, imprisonment, and enslavement of the population. International pressure on the Burmese military regime, including reports documenting human rights abuses, high-level visits from international organizations, and the imposition of economic sanctions, has brought about some changes that would have otherwise been impossible. Nevertheless, human rights violations are still occurring routinely, the incidence of forced labor is increasing, and the military rulers have shown little or no willingness to accept a democratic government.

The era of globalization has worsened this situation by ushering new actors into the human rights crisis in Burma—namely, multinational corporations (MNCs). Despite Burma's record of torture and forced labor, MNCs continue to conduct business with Burma's military regime. By supporting this regime, MNCs are making it more difficult for the international community to bring about long-lasting, structural, and democratic change in Burma.

In 1992, the American oil company Unocal Corporation embarked on a joint venture with the Burmese military regime and the French oil company, Total, to construct an oil pipeline in Burma. Known as the Yadana Project, this project involved the forced labor of thousands of Burmese villagers. After Unocal and its partners signed the offshore gas project with the Burmese government, an area that used to have only three military battalions expanded to ten. This increased military presence in a place without infrastructure resulted in the military forcing local people to carry equipment for the troops surveying the project. The military also forced people to build the barracks, compounds, fences,

and roads that it needed to provide security for the project. When questioned, Unocal claimed that the human rights violations were committed by the Burmese military and not by the company. In reality, these violations would never have occurred if Unocal had not first initiated this project with the brutal military regime.

As the project progressed, large numbers of Burmese people were pouring across the border with Thailand, reporting that they had been forced to perform labor for the large pipeline project. In response, Khin Maung Kywe, Hla Oo, and myself formed the Federation of Trade Unions of Burma (FTUB) in Thailand. With the help of the international trade unions, FTUB worked to develop independent unions in the ethnic areas of the country and raise international awareness of workers' rights violations in Burma. In organizing unions, documenting violations, and researching the cases, we discovered that Unocal had been informed in February 1994 that forced labor was being used and had decided to proceed with the pipeline project anyway.

Having read of legal approaches used to address basic rights violations in the United States, FTUB decided to use the U.S. legal system to address the labor abuses that Unocal was supporting. We approached several American labor rights organizations for assistance in pursuing this approach. Terry Collingsworth, the Executive Director of the International Labor Rights Fund, joined us as the lead counsel and helped us develop our case.

It was a challenge to convince local villagers to prosecute. Most of these people had never been to a large city. They questioned how we would hold their abusers accountable through a U.S. court when we did not have funds. They did not

know the people we were working with or the legal processes we would use. Furthermore, it was extremely difficult to translate the affidavits from the local languages of Karen and Burmese into English. Throughout this entire process, the plaintiffs and the FTUB members had to maintain a low profile as most were illegal refugees in Thailand. It was, and continues to be, very daunting to take Unocal, an MNC with a budget larger than our entire country's, to court. It has been almost eight years since we filed the lawsuit. We have not yet won the case. It is encouraging, however, that the U.S. court system has taken up (and so far refused to dismiss) a case which in 1996 the Unocal counsel had called "frivolous."

While the case pending is an important part of the struggle, we are using many approaches to improve labor stan-

**By supporting the military regime, MNCs are making it more difficult for the international community to bring about democratic change in Burma.**

dards in Burma. With the solidarity of trade unions across the world, FTUB has lobbied the International Labor Organization to pressure the military regime to respond to the basic human rights norms and standards to which Burma is a signatory. The ILO Workers Group recently requested that the ILO Director General persuade the Asia Development Bank, which has a social contract with the ILO, to stop supporting projects of which Burma is a beneficiary.

There is no doubt that MNCs have benefited from the practice of forced labor in Burma. If MNCs cannot be held liable for their actions in a country like Burma, where there is overwhelming and well-documented evidence of widespread violations of workers' rights, then the rule of law and the global struggle for human rights will have been undermined in countries everywhere. **hrd**

## UNITING AGAINST COCA-COLA Javia Correa

SINALTRAINAL is a union of workers employed in the food industry in Colombia. Members work in the factories of multinational corporations such as Coca-Cola, Nestlé, Burns Philps, Nabisco Royal, Corn Products Corporations, Postobon, Friesland, and Lechesan. The union was developed in 1982 to unite workers who were struggling in factories so that they might address collectively the human rights violations occurring in the commercial food sector. Since its formation, SINALTRAINAL has lost many of its leaders and members—some of whom have been tortured, kidnapped, or assassinated by paramilitary forces that receive financial support from multinational corporations such as Coca-Cola.

Colombian paramilitary forces have routinely entered Coca-Cola bottling plants and threatened SINALTRAINAL members with death in order to force members to renounce their participation in the union. Since 1989, nine Coca-Cola workers have been killed. Over the past ten years, sixty-eight workers have been under death threats, forty-eight displaced, and 5,000 fired. Coca-Cola officers have taken SINALTRAINAL members to court, falsely accusing them of being guerrillas, terrorists, or criminals. Coca-Cola has denied workers and their families their right to health care, suspended the contracts of workers who were found distributing the union newsletter, and even kidnapped workers in order to force them to renounce their contract. The Colombian judicial system has refused to investigate or sanction these abuses, thus allowing these oppressive tactics to continue.

### Merely filing this case has helped to stop the violence against union members.

SINALTRAINAL members have responded in several ways. We have formed the national and international campaign against impunity, Colombia Demands Justice. This campaign is

comprised of many different communities struggling to overcome the devastating effects of state-sponsored terrorism and the oppressive policies of multinational corporations. We have convened public hearings in the United States, Canada, and Colombia to discuss and publicize Coca-Cola's violations of workers' rights in Colombia, and its murder of a union leader, Hector Daniel Usuche Beron. In these sessions, organizations and individuals have testified to the abuses that they have suffered under Coca-Cola's leadership. A resolution calling on Coca-Cola to pay reparations was passed and a plan of action to boycott Coca-Cola products was endorsed. We hope that this boycott will force Coca-Cola and the Colombian government to admit their responsibility for human rights abuses, negotiate reparations with the victims, and protect human rights in the future.

We are also working with the International Labor Rights Fund (ILRF) and the United Steel Workers Union to bring a case within the U.S. court system suing Coca-Cola and its bottling plants for the murder of Isidro Segundo Gil, and for other cases of torture, kidnapping, and death threats.

Following the filing of the case in July 2001, we launched an international

campaign to bring attention to the abuses. The initial major participants were the International Brotherhood of Teamsters, the United Steel Workers Union, the International Food and

Commercial Workers Union, the U.S. Labor Education Project, the Canadian Labour Congress, and the ILRF. Thereafter, the United Students Against Sweatshops joined and took the lead in bringing the issue to college campuses around the United States. Leaders from SINALTRAINAL went on speaking tours, and student activists are now focused on getting their campus administrators to end exclusive supply contracts with Coca-Cola. The message of our campaign is that Coca-Cola not only bears ultimate legal responsibility in this case, but that the company can and should insist that its bottlers in



Photo by Gary M. Leech

Paramilitaries are responsible for the majority of the murders of labor leaders in Colombia.

Colombia immediately stop any further association with the murderous paramilitaries that have been targeting union leaders at the bottling plants.

In March 2003, the federal court in Miami ruled that the case against Coca-Cola could go forward. Merely filing this case has helped to stop the violence against union members, since Coca-Cola's bottlers do not want to see any more violence while it is pending. SINALTRAINAL has drawn up a list of demands regarding the practices Coca-Cola must change if it wants to resolve the dispute. We hope that this combination of political and judicial approaches on both the national and international level will force Coca-Cola to change its practices. **hrd**

## READERS RESPOND

In the Fall 2003 issue of *Human Rights Dialogue*, "Public Security and Human Rights," Innocent Chukwuma is right to argue that a distinction needs to be made in our responses to different vigilante groups in Nigeria: "neighborhood watch" groups and ethnic or political vigilante groups. By working closely with the police and local communities on ways to reduce crime, Chukwuma's organization, CLEEN, has made significant inroads. However, senior federal government and police officials are continuing to condone initiatives such as "Operation Fire-for-Fire." This operation was launched in 2002 to deter criminals, but its main result appears to have been the extrajudicial executions of scores of alleged criminals by the police. So long as the national police force continues to resort to violent and extrajudicial means of combating crime, there is little incentive for popular self-defense groups to do otherwise.

A fundamental shift in attitude toward maintaining law and order is an essential first step in achieving a long-term solution to the security issues that plague Nigeria. The choice should not be between a situation where armed robbers kill innocent citizens and a situation where armed robbers themselves are killed unlawfully.

However, reform of the police alone will not be sufficient. Even if the police were more efficient in their attempts to catch criminals, the failings of the justice system as a whole mean that many of those arrested will either be able to bribe their way out of prison or will remain in detention for many months, even years, without trial. A disillusionment with the justice system, combined with a lack of confidence in the police, has encouraged people to take the law into their own hands.

In addition, the Nigerian government, along with other governments in the region, must urgently take steps to prevent the proliferation of weapons. There has been discussion of tightening regulations, but Nigeria—and West Africa as a whole—remains awash with small arms. Until this deadly trade is stopped, and the various armed groups are disarmed, resorting to violence is likely to remain a common way of "resolving" disputes.

CLEEN and Human Rights Watch have worked together to research this issue and have carried out joint media and advocacy work. This collaboration is an example of how national and international human rights organizations can complement each other's efforts to draw attention to and ultimately prevent serious human rights abuses. While the local expertise, knowledge, and experience to intervene at the grassroots level lie in Nigerian organizations, international organizations can support these efforts by constantly reminding the Nigerian authorities of their domestic and international legal obligations. We also maintain a dialogue with foreign governments who have close links with Nigeria. We ensure that they have up-to-date information on the human rights situation and we encourage them to make sure that any assistance they provide, to the justice sector in particular, includes the delivery of practical human rights training to those involved in the day-to-day administration of law enforcement and justice.

In August and September of 2002, the federal government finally made moves to dismantle the Bakassi Boys' operations in Abia and Anambra states. There is still a long way to go, but if the concerned public, both nationally and internationally, maintains pressure on the Nigerian government to address some of the broader issues outlined above, Nigerians may soon be able to live in genuine security once again.

*Carina Tertsakian*  
Researcher, Africa Division  
Human Rights Watch

**WHAT DO YOU THINK?** Do you have a response to "Making Human Rights Work in a Globalizing World"? Share it with thousands of other *Human Rights Dialogue* readers. Send your comments to Erin Mahoney, Human Rights Initiative, Carnegie Council on Ethics and International Affairs, 170 East 64th Street, New York, NY 10021-7496, USA, fax: (212) 752-2432, e-mail: emahoney@cceia.org. We regret that we will not be able to print every response. Please limit your response to 300 words, and be sure to include your name and contact information. We reserve the right to edit text as necessary.

MAKING HUMAN RIGHTS WORK IN A GLOBALIZING WORLD

EDITOR: Christian Barry

MANAGING EDITOR: Erin Mahoney

ASSOCIATE EDITOR: Morgan Stoffregen

CONTRIBUTING EDITORS:

Jess Messer, Ludmila Palazzo,  
and Lydia Tomitova

COPY EDITOR: Geoffrey G. O'Brien

DESIGN: Hillary Cannon

INTERN: Laura Santucci

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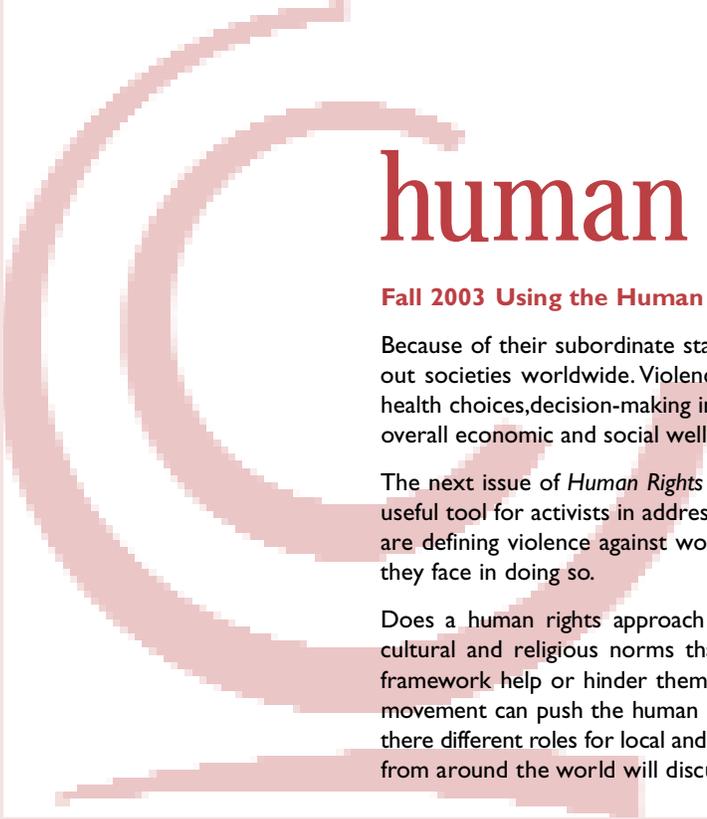
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Editorial and Business Offices:  
170 East 64th St., New York, NY 10021-7496  
tel: (212) 838-4120  
fax: (212) 752-2432  
Web: [www.carnegiecouncil.org](http://www.carnegiecouncil.org)



# human rights *dialogue*

## Fall 2003 Using the Human Rights Framework to Address Violence against Women

Because of their subordinate status as women, women are beaten, battered, and killed throughout societies worldwide. Violence not only threatens women's lives, it severely limits women's health choices, decision-making in the home and in society, participation in politics, education, and overall economic and social well-being.

The next issue of *Human Rights Dialogue* will explore whether the human rights framework is a useful tool for activists in addressing gender-based violence. The issue will examine how activists are defining violence against women, the strategies they are using to fight it, and the challenges they face in doing so.

Does a human rights approach offer a clear definition of violence? How do activists address cultural and religious norms that propagate violence against women? Does the human rights framework help or hinder them in accomplishing this aim? Are there specific ways the women's movement can push the human rights framework to be more useful in addressing this issue? Are there different roles for local and international human rights organizations? Women's rights activists from around the world will discuss these questions in the context of their work on the ground.

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Visit our online version of *Human Rights Dialogue*, featuring annotated links, suggested further reading, and additional essays and responses on making human rights work in a globalizing world. Online at [www.carnegiecouncil.org](http://www.carnegiecouncil.org)

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