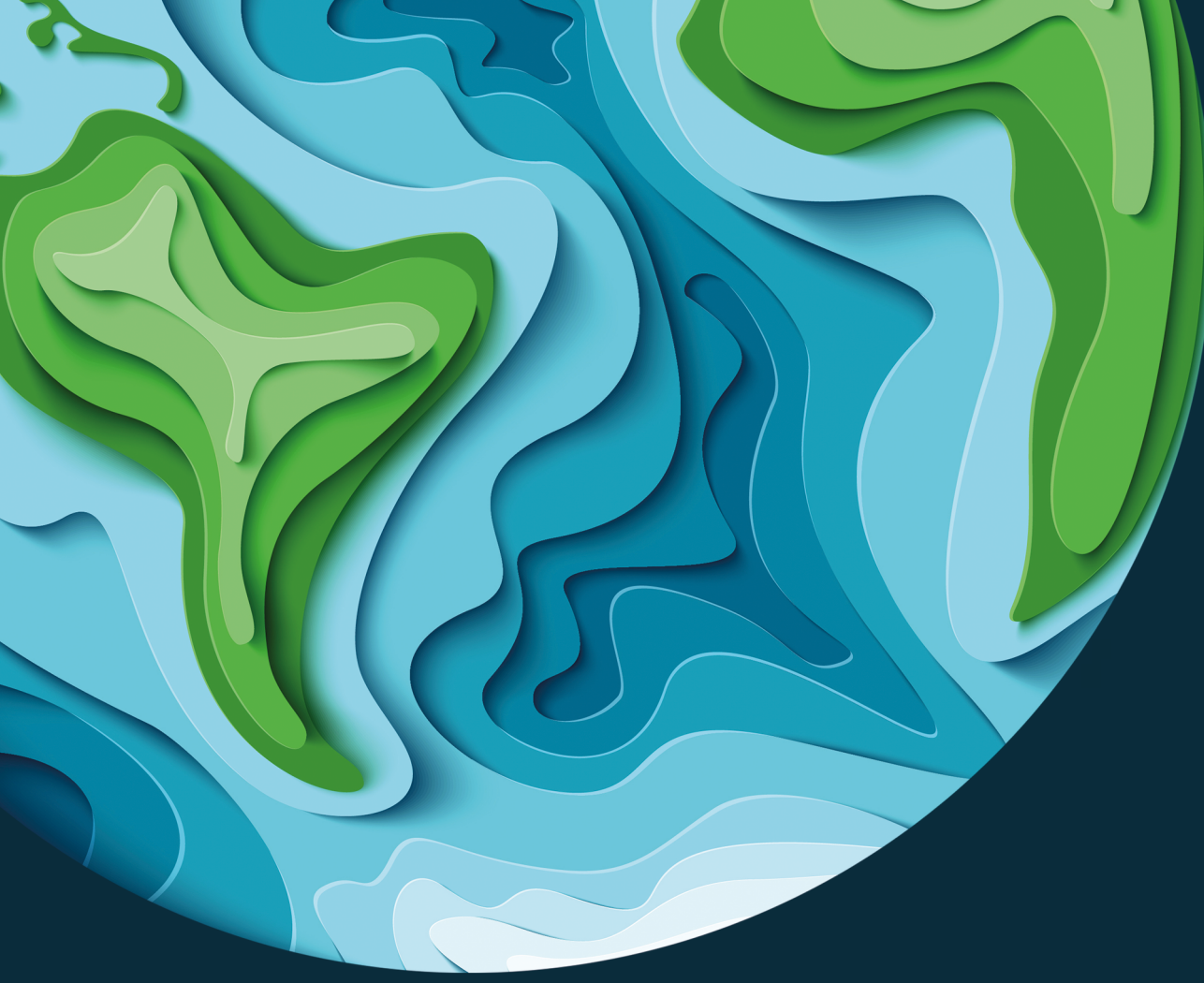

A COLLECTION OF THOUGHTS FROM THE GLOBAL SOUTH ON FOREIGN POLICY AND HUMAN RIGHTS:

Experiences and strategies from the field

conectas direitos humanos

Centre for Human Rights University of Pretoria

CMDPDH

Partnership for Justice

CHRI Commonwealth Human Rights Initiative

FORUM-ASIA

KontraS

SUMMARY

ABOUT THE ORGANIZATIONS

Conectas Direitos Humanos was founded in 2001 in São Paulo, Brazil. More than a non-governmental organisation, we are part of a lively and global movement that continues in the fight for equal rights. Connected via a broad network of partners, spread across Brazil and around the world, we are always available, and we participate in various decision-making debates that advance the path of human rights from the Global South perspective. We work to secure and extend the rights of all, especially the most vulnerable. We propose solutions, avert setbacks, and denounce violations to create transformations.

Website: http://www.conectas.org/en

The Centre for Human Rights was established in the Faculty of Law, University of Pretoria, in 1986, as part of domestic efforts against the apartheid system of the time. The Centre for Human Rights works towards human rights education in Africa, a greater awareness of human rights, the wide dissemination of publications on human rights in Africa, and the improvement of the rights of women, people living with HIV, indigenous peoples, sexual minorities and other disadvantaged or marginalised persons or groups across the continent.

Website: http://www.chr.up.ac.za

The **Commonwealth Human Rights Initiative** (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights, and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Website: http://www.humanrightsinitiative.org

Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH) is a civil society organization that comprehensively accompanies victims of serious human rights violations and contributes to the eradication of the causes that produce them, through the design and execution of legal, psychosocial, research, and advocacy strategies to build a fair and egalitarian society.

Website: http://cmdpdh.org

The **Asian Forum for Human Rights and Development** (FORUM-ASIA) works to promote and protect human rights, including the right to development, through collaboration and cooperation among human rights organisations and defenders in Asia and beyond. FORUM-ASIA is a network of 58 members in 19 countries, as of January 2016, across Asia. It was founded in 1991 in Manila, the Philippines. Its Regional Secretariat was established in Bangkok, Thailand in 1992. Since then, offices have been opened in Geneva, Jakarta, and Kathmandu.

Website: http://www.forum-asia.org

Partnership for Justice (PJ) is a non-profit organization of professionals who share a commitment to equality, justice and globalization of human rights standards. PJ works at all levels to offer services to victims of human rights violations and create linkages for the promotion and protection of human rights in Nigeria.

Website: http://pjnigeria.org

KontraS – the Commission for the Disappeared and Victims of Violence is a non-profit organization founded in 1998 in Indonesia. KontraS aims to establish Indonesia as a just and democratic country where people are free from fear, repression and discrimination.

Website: http://www.kontras.org

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A COLLECTION OF THOUGHTS FROM THE GLOBAL SOUTH ON FOREIGN POLICY AND HUMAN RIGHTS: EXPERIENCES AND STRATEGIES FROM THE FIELD

This publication is the product of a collective effort from seven Global South human rights organizations that dialogued together, in many levels, on how to improve our individual and collective impact on foreign policy and human rights (FP&HR) issues. We decided to join forces through a loose coalition that we named "Strategy Web: A human rights agenda for Southern Global Players' foreign policy" which would provide us with an adequate structure for those conversations and collaborative advocacy actions to happen more frequently, as well as more broadly among all partners.

Rather than establishing a thematic network or coalition around common agreed areas of work, we decided to build a trust space for dialogue and exchange of best practices in working with foreign policy and human rights. Moreover, the idea was to create a space where member organizations can seek for support on a specific action from the other members or partners involved with the Web.

In doing this, we then decided that we needed to collect and systematize our strategies focusing on countries from the Global South in a report, including looking at strategies from civil society groups impacting on the foreign policies of prominent Global South players. The novelty of the project includes an element of bridging both the foreign policy approach and traditional boomerang-effect strategies from rights-groups at a global level.

In this publication, we aim to contextualize selected Global South countries as players on global human rights crisis and describe how the foreign policy of Global South countries can be used to promote and protect human rights abroad, as well as systematize strategies from Global South rights-groups working on foreign policy and human rights.

We look at cases from Brazil, Mexico, South Africa, Nigeria, Mongolia, India, Maldives and Indonesia to achieve this goal and in the hope that we can inspire other organizations and civil society groups to work around foreign policy and human rights.

INTRODUCTION

Foreign policy matters are often complex and/or opaque, and deciphering their codes and *modi operandi* can seem daunting at first; yet they are a central space of public action to shake up stagnant states of status quo in matters of human rights. This is even more important looking from a global South perspective, where we can find important regional (and aspiring global) players eager to increase their role in global affairs.

Across the globe, Civil Society Organisations (CSOs) are learning to be increasingly effective in monitoring, influencing, challenging and engaging with governments to press for foreign policy decisions that impact human rights positively.

Traditionally CSOs working on multilateral institutions focused on states' voting patterns in international human rights bodies such as the UN human rights mechanisms, the Inter-American or the African human rights systems. Such patterns would be recorded, compiled and analyzed, and this would inform advocacy with diplomatic missions in New York, Geneva or elsewhere prior to an important vote at multilateral bodies.

The organizations presenting their experience on foreign policy and human rights in this publication do so based on the belief that lessons they have learned and the failures and successes they have encountered could help other independent organisations and public initiatives.

The publication covers a wide variety of views and experiences from civil society organisations based in the global South. Some come from organisations that have engaged in this field for over a decade and others come from those that began working in this field more recently.

All of the case studies presented within this publication – and they greatly vary in nature, length, origin, and strategies – try to present a fair and genuine account of the facts from the organization's perspective. It is their hope that these accounts will inspire others to work for better foreign policies that positively impact human rights.

DEMOCRATIZATION OF FOREIGN POLICY

In the last few decades, good governance, transparency, accountability and participation have become buzz words in the world of governance. However, in most parts of the world, foreign ministries are routinely exempted from governance reform and they remain shrouded in secrecy and closed to the people they are expected to represent. In today's interdependent and globalized world this democratic deficit is a critical point of concern. The magnitude of this is further amplified when it comes to the central role that foreign policy plays in human rights decision-making at the international level and at international fora.

Civil society organizations (CSOs) and social movements around the world are hard-pressed to remedy the democratic deficit currently associated with human rights and foreign policy. This has been hard, in particular, for CSOs working on human rights in the Global South where human rights narratives have increasingly come under threat equally from both far right discourse as well as intense geopolitical competition over resources. For over a decade a group of CSOs in the Global South have closely followed foreign policy and human rights. In doing so they have learned to influence and strengthen existing foreign policy decision-making mechanisms and processes, push for greater participation and transparency where none existed, and have elaborated intricate, innovative plans of action in instances where they were traditionally not expected to have any influence. This publication presents a variety of case studies and articles that illustrate and record such strategies and experiences to assist future work on the intersection between foreign policy and human rights. In doing so, this publication touches on the following elements:

Foreign policy as a public policy

Foreign policy decisions and positions taken at international fora can be critical for the promotion and protection of human rights both at the domestic and international levels, or for the prevention of human rights violations. Foreign policy, first and foremost, is considered public policy. As such, foreign policy and decision-making processes around foreign policy should be transparent, accountable to the public, and participatory - especially when it comes to human rights issues. The need for discretion and quiet diplomacy on certain issues pertaining to national security matters should not be used as an excuse for foreign policy in general to be secretive, as is often the case.

Some states include some measures of public participation in decision-making processes related to foreign policy, while others are less inclined to involve the public. In some instances, states use formal parliamentary hearings or consultations by the Foreign Ministry to provide CSOs and the public with an opportunity to participate in foreign policy decision making, In other instances inputs are made through informal channels and many other cases there is little room for any inputs. Governments should be encouraged to establish clear substantive and inclusive formal processes for public participation that would lead to effective policy making. As a matter of priority, these platforms should be inclusive of even the most vulnerable and most marginalized communities' interests, in an attempt to make foreign policy more justifiable, effective in the objectives it sets to achieve, and accountable to those on whose mandate it is formed. There are a variety of tools and strategies that may be used to push for the creation of such platforms, some of which will be explored in this publication.

Demystifying foreign policy and making it more accessible

For foreign policy to be a democratic instrument its codes, its functioning, and its jargon need to be more accessible to the public. The public including independent human rights organizations have a right to know what their governments are doing and saying on their behalf at the global stage. A foreign policy that is not participatory and transparent can easily become a tool to bypass democracy and disempower peoples' voices on issues that may actually impact their day-to-day lives. The vast majority of foreign policy exercises take place outside of major international headline grabbing events and are largely invisible in domestic public discussions. Often, foreign policy is projected as being more distant and irrelevant to people's lives in comparison with other spheres of policy-making. It is often argued that it takes place outside national boundaries in distant domains. However, often decisions contained in foreign policy agreements impact people's daily lives in a many concrete ways. For example: it is not uncommon for the rights and livelihood of local communities to be violated or adversely impacted as a result of large-scale economic initiatives for 'positive' bilateral relations, that have little or no safeguards in place; or for agreements over natural resources to cause economic hardships or violent conflict. States have an important duty to demystify these process and make it accessible to the public through public diplomacy initiatives. CSOs also can play an important role in this regard by informing stakeholders or interest groups about ongoing or upcoming foreign policy decisions that may impact their rights, This could include providing guidance to interlocutors at the local levels and to those who are underrepresented in government; and those who live in remote areas who have limited access to information, or don't always have the ability to convey their claims or represent their own interests - civil society plays an important role in ensuring that foreign policy decisions consider the interests of these groups. Articles in this publication will attempt to shed light on how CSOs have played this role by running awareness campaigns, often relaying a message from the general public to the government in the process; informing domestic and foreign diplomats about human rights situations, and applying pressure for them to scrutinise these issues at the international level against international human rights laws and standards.

Mapping Foreign Policy

In this publication, CSOs try to illustrate a variety of avenues available to engage with issues related to foreign policy[1], by sharing their experience of working in different arenas and spaces where foreign policy decisions are made, and highlighting the challenges and opportunities each of these represent. At the domestic/national level, it is useful to first identify and map out the existing apparatus of foreign policy development and decision-making, in order to either take advantage of it, or push for it to be strengthened and expanded. At the bilateral and multilateral levels, it is important to understand where they can have the biggest impact. The focus should not only be on obvious channels around foreign policy such as diplomatic relations, voting patterns in human rights bodies etc, but also at information contained in less obvious sources of foreign policy, such as trade agreements, participation in and statements at international conferences and summits. In conclusion, the following case studies and examples will show that local, national, regional CSOs and the public can successfully impact and operate in spaces previously reserved for states and international organisations. By participating and being present in international economic fora, by demanding participation in debates (through creative means in cases where there are limited resources), and educating themselves and engaging on issues previously considered too 'technical' for non-governmental actors, CSOs have shown that they are able to contribute positively towards

[1] *A detailed mapping of these various possibilities is listed at the final section of this publication.*

DEBATING BRAZILIAN POSITIONS AT THE UNHRC AND INTER-AMERICAN COMMISSION: PERIODIC VIDEOCONFERENCES WITH THE BRAZILIAN MFA AND THE MINISTRY OF HUMAN RIGHTS

CONECTAS HUMAN RIGHTS

Summary

Brazil has raised its international diplomatic profile in recent years through greater participation and leadership in global debates. However, Brazilian foreign policy remains a realm of limited transparency and accountability. The country has an active but capricious foreign policy with regard to human rights. To counter this, Conectas and other entities established a multi-stakeholder platform to promote debates around Brazil's foreign policy. Starting in 2014, the platform has organized regular videoconferences to engage in dialogue around Brazilian positions in international human rights fora, and to promote accountability for positions taken. These videoconferences address both issue-based advocacy objectives and the long-term democratization of Brazilian foreign policy. They provide a space for the public to participate in agenda-setting and for CSOs to gain first-hand information from government officials. Moreover, the videoconferences also provide an opportunity to increase the political cost of decisions that negatively impact human rights, thus improving public sector accountability on foreign policy and human rights (FP&HR). Finally, this piece hopes to illustrate how videoconferences on foreign policy could be a window of opportunity to mobilize other state actors beyond the Ministry of Foreign Affairs, such as the Brazilian Ministry of Human Rights and Federal Prosecutors.

Key words

Brazilian foreign policy, Itamaraty, UNHRC, Inter-American System, Conectas, videoconferences, accountability, democratization, foreign policy and human rights

Strategies

- Monitoring Brazil's actions abroad and influencing positions;
- Setting up multi-stakeholder dialogue and participation platforms and spaces to counter lack of accountability and transparency in Brazil's foreign policy positions and to foster culture of accountability within state bodies;
- Bringing UN debates home and utilizing UN spaces to give visibility to human rights violations taking place in Brazil;
- Democratizing the foreign policy debate and expanding citizen participation in FP&HR-related matters.

A) Brief description of the case/problem

In recent years, Brazil has raised its international profile in achieving the so-called emerging power status. Brazil has attempted to combine economic growth and social inclusion, and increased its participation and leadership in global debates. Nonetheless, Brazilian foreign policy remains as a realm of little transparency and accountability. The Ministry of Foreign Affairs (MRE or Itamaraty) has a traditional monopoly over foreign policy questions, which are dealt with in a generally undemocratic way that tends to be opaque and non-participatory. The country has no White Paper on foreign policy, official information available on the Ministry's website is scarce, and there is no formal participation channel or mechanism with which civil society can systematically engage. With regard to human rights, Brazil has an active foreign policy, mostly at the UN-level, but Brazil's performance is inconsistent and unpredictable. It is highly common for rights groups inside the country to be surprised by Brazilian votes and positions, at the UN Human Rights Council (UNHRC) or at the Inter-American System, for which there is little public accountability both before and after the fact.

To counter this issue, in 2006 Conectas and other entities established the Brazilian Committee on Human Rights and Foreign Policy (Committee) - a multi-stakeholder platform comprising CSOs, State bodies and authorities such as the Human Rights Committee of the House of Representatives and the Federal Attorney's Office for Citizen's Rights (PFDC/MPF)[1].

Since its establishment, the Committee has been able to promote substantive debates round this topic, notably through annual hearings in Congress, during Brazil's Universal Periodic Review (UPR) in 2008, 2012 and 2017, and to a lesser extent during presidential elections in 2010 and 2014. Despite these achievements, dialogue between civil society and foreign policy decision makers remains ad hoc, contingent upon the good will of those holding key positions within governmental bodies.

In order to promote periodic dialogue around Brazilian positions in international human rights fora, in 2014, the Committee proposed setting up videoconferences among its members, which had since expanded to include other organizations and academics, the Brazilian Ministry of Foreign Affairs (MRE or Itamaraty) and the Ministry of Human Rights (MDH). These videoconferences occur six times a year, before and after the three annual UNHRC sessions. As such, they allow for the prior discussion of priorities as well as for public accountability for positions taken. Videoconferences are held using the Federal Attorney General's Office (MPF) system, which has outreach in potentially every state capital.

B) Main strategies of engagement and why they are considered important

The videoconferences respond to both issue-based advocacy objectives and to the longterm democratization of Brazilian foreign policy objectives. Among the advocacy objectives are: *a)* monitoring what Brazil is doing and saying abroad; *b)* influencing positions; and *c)* bringing UN debates home and using UN spaces to give visibility to human rights violations taking place in the country. Among the democratization goals are: *a)* expanding citizen participation in FP&HR-related matters, *b)* creating participation/dialogue spaces with Itamaraty that can then be expanded to other areas, *c)* fostering a culture of accountability within state bodies in relation to foreign policy issues.

[1] *More on the Brazilian Committee at http://dhpoliticaexterna.org.br/. A short analysis of its work can be found in Conectas' publication on strategies for civil society action around foreign policy and human rights, available at http://www.conectas.org/arquivos/editor/files/CONECTAS%20ing_VERSAO04(1).pdf.*

With respect to democratizing the foreign policy debate, it is worth mentioning that the videoconference strategy, which is extremely low-cost, has contributed to filling some participation gaps in three ways: *1)* mobilizing actors beyond the usual suspects based in Brasilia (where most foreign policy debates take place); *2)* mobilizing actors beyond the Committee members; and *3)* enabling participation at an extremely low cost.

C) Main challenges encountered

Some of the main challenges encountered during the first two years of using the videoconferences include:

• *Mobilizing State institutions* (notably the Ministry of Human Rights, which is a weak and toothless body that constantly changes its structure);

• *Expanding participation* to a larger number of groups and individuals, both in major cities (Sao Paulo, Rio de Janeiro and Brasilia), and others. Special attention should be given to Northern states, which are geographically distant from the Central Government and home to many human rights violations, notably those related to access to land and the protection of human rights defenders;

• *Future formalization* of this initiative. This practice has gained a life of its own – most notably inside Itamaraty's Human Rights Division. Since March of 2016, the Committee has manifested its intent to formalize the videoconferences through an official agreement. Strategically, the group has decided that this effort will be led by the Federal Attorney for the Rights of Citizens (PFDC/MPF), which will foster institutional dialogue between one state body and another. However, it is expected that with the new government (since May 2016) it will be even more complicated to garner this kind of commitment from governmental bodies.

• *Assessing impact* is another challenge. Dialogue per se is important, but since its creation there is a need to assess the quality of the debate and its policy impact (on the outcomes). The question is - does this dialogue influence policy-making? And if so, how?

D) Results (successes, impacts, shortcomings and lessons learned)

The videoconferences initiated by the Committee is an innovative tool because it represents one of the few periodic participatory mechanisms currently underway in Brazilian foreign policy. Moreover, through this virtual tool provided for by PFDC/MPF, the policy making process is democratizing by providing access to policy dialogue spaces with the MRE and MDH. The system allows for the simultaneous gathering of participants residing in multiple Brazilian cities (five cities on average nowadays, but this number could grow with future demands coming from other places) at a low cost.

After two years, it is safe to say that the Government is committed to this initiative, most notably the Ministry of Foreign Affairs. This is particularly true when it comes to the head of the MFA's Human Rights Division. Work around this agenda will continue throughout 2018 and beyond, with an increase in dissemination efforts and pressure for the practice to be formally institutionalized.

In terms of impact, these videoconferences are, first of all, a space to influence agendasetting and for CSOs to get first-hand information (such as on-going negotiations on UN experts' in-country visits, or pending Intern American Human Rights Commission (IAHRC) public hearing requests made by the Brazilian Government) from government officials. They also provide an opportunity to increase the political cost of decisions that are contrary to human rights or that impact on human rights, thus improving public sector accountability on FP&HR-related topics. Finally, it serves as a window

of opportunity to mobilize other state actors beyond the MFA, such as the Ministry of Human Rights and some state-based Federal Prosecutors. Beyond that, there is also a list of some concrete issue-based gains, such as making the case for a sustained national dialogue on the proposed treaty on Transnational Corporations and Human Rights, and advancing inter-ministerial coordination in regard to complying with international human rights systems requirements (UN Special Rapporteur visits and Inter-American Human Rights Court inspections).

Finally, when it comes to lessons learned, the following is noteworthy:

1- MOBILIZATION: It is important to invest time in personalized dissemination of videoconference invitations, including through flyers, and improving communication around the specific human rights topics covered in each UNHRC/IAHRC session;

2- QUALITY OF THE DEBATE: In order to avoid empty or evasive responses from governmental representatives, it is important to send an agenda with the main topics of concern/ to be addressed during each videoconference ahead of the meeting day. This has helped to raise the quality of the dialogue, since participants could prepare themselves and gather useful information from other relevant entities/ agencies. It is very helpful in avoiding common responses responses such as "This is not my area of expertise, and I have to verify this information with my colleagues later".

3 – INSTITUTIONALIZATION: It is important to make strategic use of the fact that this dialogue is not only one taking place between the State and society, but also one occurring between three different public bodies (the MFA, Ministry of Human Rights and PFDC, an ombudsman-like institution). This has raised the profile of the initiative and can be used in the future to ensure that the videoconference will continue, in spite of any changes that might occur within these governmental bodies.

DEATH PENALTY PRACTICES IN INDONESIA: BETWEEN PREVENTING CRIME AND LAW ENFORCEMENT REFORM

KONTRAS

Summary

The practice of capital punishment in Indonesia remains a complicated affair. While global trends are leaning towards a moratorium on the death penalty, Indonesia is mainstreaming this practice instead, even though the country already has several progressive movements that are incorporating international human rights standards. There is generally strong public support in Indonesia for the death penalty, framed by the Government as a necessary approach to combat crimes deemed serious, including drug trafficking. The current Government's stance has been firm and uncompromising on this issue, and a 'war on drugs' and 'narcotics emergency' have been declared to garner even wider public support for capital punishment. KontraS, an Indonesian civil society group, is monitoring amendments that could aggravate this scenario, and has also identified several problems regarding fair trials, the miscarriage of justice, and the State's involvement in drug crimes. The Organization is currently engaged in an advocacy campaign geared towards national, regional and international mechanisms to draw attention to the problems with the death penalty and ultimately bring about its abolition in Indonesia.

Key Words

Indonesian Government, capital punishment, death penalty, moratorium, abolition, 'war on drugs', state security apparatus, drug trafficking, miscarriage of justice, fair trial principles, advocacy campaigns

Strategies

- Advocacy with regional and international mechanisms;
- Creation of emergency post to receive citizens' complaints relating to State's involvement in drug trafficking;
- Public campaign on- and off-line;
- Garnering support of UN Special Rapporteurs and of ASEAN Intergovernmental Commission on Human Rights.

I. Introduction

The practice of capital punishment in Indonesia is a very complicated issue. Indonesia ratified the International Covenant on Civil and Political Rights in 2005, which specifically highlights the right to life and the problematic nature of capital punishment. Nonetheless, the practice of capital punishment has become the preferred deterrent for several crimes in Indonesia. The Indonesian Government

behaves ambiguously in this context, and there is a discrepancy between its international and national positions. Indeed, at the national level, there are 15 laws that propose capital punishment for an array of different crimes. These laws have been reviewed by the Constitutional Court, though as a part of the Government of Indonesia, the Constitutional Court also supports the practice of capital punishment.

The law permitting the use of the death penalty for drug crimes was expanded when the Narcotics Law and the Law on Psychotropic Substances were passed in 1997, following the long moratorium on capital punishment that had been in place since the New Order Era. The current Government under President Joko Widodo's leadership has had a firm and uncompromising attitude towards the use of capital punishment. In 2015, President Widodo declared a 'war on drugs', emphasizing how many young people in Indonesia die every year from drug overdoses, and stating his refusal to grant clemency to drug traffickers.

The tendency above could worsen if we take a look at several amendments on the rule of law that the Indonesian Government will attempt to introduce. This tendency has appeared in the amendment of Law No. 1/2016, regarding Child Protection, which prescribes the death penalty and the castration of the alleged criminals. KontraS is also monitoring the amendment of Law No. 15/2003 regarding Anti-Terrorism, which contains several portions where the primary penalty is capital punishment. With respect to the amendment of the Penal Code, there is an increasing amount of articles (26 articles) that potentially will apply the death penalty to various criminal activities such as heinous crimes, corruption, flight crimes, blackmail, and other threatening crimes.

With regard to the Government of Indonesia's track record since President Joko Widodo's election as president, six persons have been executed, and the President has already rejected 39 appeals for clemency by drug traffickers. The practice of executions is widely known as part of a legal system that was promoted by colonial era authorities as having a deterrence effect amongst criminals. Nevertheless, in 2017, the Government of Indonesia has handed down death sentences for 26 drug offences. Through the monitoring in which KontraS engages, several problems have been identified regarding fair trials, the miscarriage of justice, and the involvement of the state apparatus in drug crimes. This becomes more suspicious when the Government strongly campaigns for the death penalty for drug offences as the best practice to erase the track record of the State's involvement in drug crimes.

II. Case Study: Death Penalty and Drug Crimes Policy in Indonesia

The situation worsened when, at the beginning of 2015, the Joko Widodo Administration attempted to present the use of capital punishment for drug offences as an evidence-based policy. Widodo made an aggressive declaration that the country was under a 'narcotics emergency', since he believed that at least 4.5 million Indonesians need to be rehabilitated from drug use. However, the research data related to the use of illicit drugs was, in fact, vague and very questionable. Academics from Oxford University published in the Lancet Journal proved that the data used by the Government of Indonesia was actually a blanket data that reached conclusions without disaggregating the category of persons that use illicit drugs.

The Indonesian Government has declared a 'war on drugs' and a 'narcotics emergency' to garner public support for the practice of capital punishment. Meanwhile, in 2016, the President and the Attorney

General were planning to execute one of Indonesia's notorious drug lords, Freddy Budiman, who testified to Kontras's coordinator Haris Azhar in 2014, at the Nusa Kambangan Detention Center, that he had already received support from the state security apparatus (both the National Military and the National Police) to build a drug industry from inside the detention center. Budiman's testimony has indicated the robust involvement of the state security apparatus in the illicit drug trafficking business in Indonesia. Some police officers were supposed to undergo trials and sentencing for their involvement in Budiman's syndicate. However, the modus operandi was quite unique. The police officers claim to have sold the drugs to Budiman as part of the official investigation, and said that Budiman's money would be used as supplementary funds towards the anti-narcotics investigation.

This information was obtained by Azhar while he was visiting several death-row inmates at Nusa Kambangan in 2013. Azhar disseminated this information on social media several hours prior to Budiman's exection on July 29, 2016. Budiman told Azhar that he was not scared to die and that he was ready to be put to death for his crimes, but he also expressed his disappointment with government officials and law enforcement. He mentioned that the police, the National Narcotics Agency (BNN), and customs officials were involved in his illicit business. The police also demonstrated that certain inmates have broad and substantial access both to officials and to the outside world . Budiman just happened to be the person chosen to bear the brunt and undergo arrest to show the achievements of the security apparatus and law enforcement, but he was still able to maintain his business from behind bars.

After the testimony was made public by Azhar, the police charged him with defamation under the Electronic Transaction and Information Law (UU ITE) and placed him under investigation instead of investigating the police and National Military Forces who were involved in the drug business according to Budiman's testimony.

This case demonstrates the miscarriage of justice and how this story has been obfuscated by the Indonesian Government, the state apparatus, and law enforcement in order to allegedly 'improve the system' and create a movement to assert capital punishment, which is already a government policy that is employed to maintain the public's trust and eradicate such crimes. The Government of Indonesia never took into consideration the issues with the system of law enforcement, fair trial principals, the conditions of isolation, and malpractice before applying the death sentence to drug offen ces and other crimes.

III. Strategy to Prevent the Practice of Capital Punishment and Accountability Measures for Law Enforcement

KontraS is working on a 360-degree advocacy campaign geared towards national, regional and international mechanisms. At the national level, KontraS is conducting several hearings and sending urgent letters to the Indonesian Government detailing findings relating to unfair trials, malpractice, and an investigation at the detention center to monitor the conditions regarding capital punishment, torture, and other cruel, inhuman and degrading treatment against death-row inmates. First, KontraS published a report concerning the facts and malpractice of death sentences handed down to minors, persons with disabilities, and migrant workers.[1] This measure is intended not only to

[1] *See more: Kontras' facts and malpractice. KontraS. 2015. The source can be accessed at: https://www.kontras.org/data/Facts%20and%20Infelicities%20The%20Second%20Batch%20 of%20Death%20Penalty%20Execution.pdf*
[2] *See more: KontraS Press Release: Belum Terjaminnya Hak Para Pelapor. 2016. The source can be accessed at: https://www.kontras.org/home/index.php?module=pers&id=2308*

encourage the Government to immediately consider a moratorium, but also to encourage the public to more deeply examine the legal process and law enforcement with respect to death sentences that should be in line with international and national human rights standards.

One of KontraS's measures was to establish an emergency post "Exposing the State Apparatus". The post was opened to receive citizens' complaints relating to the State's involvement in drug trafficking or other arbitrary acts by the security apparatus in cases of drug use. After 15 days, the post had already received 45 complaints, including 38 cases related to the state apparatus' involvement in drug offences. Of the aforementioned complaints, half (13 cases) were from Jakarta Province.[2]

Thanks to the public campaign that KontraS conducted both on- and off-line, we were able to garner a lot of public attention, since the involvement of the state apparatus in drug trafficking is already a public secret that includes acts of bribery, torture, and arbitrary arrests according to the complaints made to the emergency post. This measure not only entails the public's participation to urge law and security enforcement in Indonesia, but also to incite the Government to establish an independent team to investigate the involvement of the state apparatus in the drug business.

In addition to advocacy at the national level, KontraS routinely engages in regional and international advocacy to foment solidarity and broaden the support of the UN Special Rapporteurs and the ASEAN Intergovernmental Commission on Human Rights (AICHR). We send a series of urgent appeals regarding unfair trial practices and facts on the practice of capital punishment, as well as consult with the AICHR Representative to Indonesia.

IV. Successes and Failures of Campaigning for the Moratorium on Capital Punishment

In KontraS' campaigns and advocacy efforts in favor of the moratorium on capital punishment in Indonesia, we have experienced ups and downs not only with respect to the Government but also the public. There is generally strong public support for the death penalty, since it has been framed by the Government as a necessary approach to combat serious crimes in Indonesia. Particularly within Indonesia, there are some groups, closely affiliated with religious institutions and values as well as with government policy makers, that strongly support the death penalty. The Indonesian people, including the Government, really have a deep concern for religious references in policy-making. Since the main standards in policy-making are predicated upon Islam, and Islam does not explicitly prescribe or proscribe capital punishment, the Government still considers the death penalty as the best deterrence measure against the most serious crimes.

Nevertheless, we have also made significant progress in influencing public opinion and attracting international attention to Indonesia to recommend the abolition of, and as the first step a moratorium on, the death penalty. With the emergency post, we could prove that the law enforcement and security systems in Indonesia still need significant improvement before they can legitimately sentence someone to death. We also have substantial support from academics, public figures, and other stakeholders to combat the involvement of the security apparatus in the drug trade. There have been strong recommendations hailing from international forums, particularly from important stakeholders such as the Secretary General of the United Nations (who personally addressed Indonesia), for the country to place an immediate moratorium on the death penalty.

RECOMMENDATIONS

1. The President should reinstate the moratorium policy in Indonesia. Current legal conditions cannot guarantee that the next death penalty case will not contradict the principals on the right to a fair trial;

2. The President and Attorney General should take responsibility for the violation of the Law on Clemency and Constitutional Court verdict No. 107/PUU-XIII/2015;

3. The President of Indonesia should establish an independent team to assess and research all death-row cases since there are still a lot of unfair trials that go against fair trial principals;

4. The President should consider seriously analyzing and assessing clemency towards death-row inmates, and should further grant clemency to these inmates

FOREIGN NATIONAL PRISONERS IN INDIA

CHRI – COMMONWEALTH HUMAN RIGHTS INITIATIVE

Summary

Cases of foreign nationals who are stuck in Indian jails and simply shouldn't be there, whether because they are mentally ill or are overstaying well beyond the completion of their sentences, or for want of nationality verification, are regularly brought to the notice of the Commonwealth Human Rights Initiative (CHRI), an international organization based in India that works on prison reform. CHRI has directly and indirectly intervened to provide relief to overstaying foreign prisoners. CHRI's direct intervention usually involves acting as a link between embassies and various government departments and networking robustly to obtain travel documents. Indirect intervention involves mobilizing the media, courts and other institutions such as the Human Rights Commission to expedite the process. Thanks to a case-by-case, step-by-step, individualized approach, CHRI has successfully facilitated the repatriation of over 400 foreign prisoners and secured the release of 25 asylum seekers.

Keywords

Foreign prisoners, deportation, legal aid, bilateral relations, prison authorities, repatriation process, nationality verification, indefinite detention, alienation, asylum seekers, right to information, transfer agreements

Strategies:

- Diplomatic outreach and constant coordination with embassies of prisoners' countries of origin;
- Using Right to Information to obtain information about prisoners' identities;
- Trust-building with the Prison Department;
- Mobilizing civil society networks across India
- Regular coordination with the relevant central and state ministries and departments in India;
- Bridging information gap between the United Nations High Commissioner for Refugees (UNHCR) and asylum seekers;
- Strategic advocacy with officialdom: advocacy with the Prison Department resulted in the latter allowing UNHCR unprecedented entry into prisons to conduct refugee status determination interviews of all registered asylum seekers;
- Strategic litigation, as a last resort;
- Media advocacy.

The Context

Foreign national detainees, whose countries' diplomatic missions in India are not able to offer strong protection to their citizens, often find themselves at the receiving end of the criminal justice system. Language barriers and inadequate understanding of India's legal system add to their vulnerability. The susceptibility of such prisoners to violations is further underlined by delayed consular access or lack thereof, lack of strict nationality verification tools, restrictions on making international phone calls, inefficient government-funded legal aid and expensive private legal assistance. The law requires

the deportation of foreign prisoners detained for undocumented entry after the completion of their sentences. Here again there are various hurdles, and several foreign national prisoners continue to languish in detention well beyond the completion of their sentences due to a range of procedural issues.

At every stage of the process, the embassy's support is crucial for foreign detainees. Embassies could particularly play an important role in restoring ties with the detainee's family, facilitating translations and sourcing effective legal assistance. However, CHRI's experience of working with the embassies of over 14 countries, namely Pakistan, Bangladesh, South Africa, Palestine, Nigeria, Afghanistan, Egypt, Ireland, Sri Lanka, Iran, Cameroon, Saudi Arabia, Ukraine and the Kingdom of Lesotho, shows that embassies often do not adequately or consistently fulfill their responsibilities to their nationals detained in India, and need pushing and prodding from people or organizations that persistently pursue a case. In these cases, the nature of the bilateral relations between the country in question and India plays an important role.

Cases are referred to CHRI particularly from jails in the States of Rajasthan (which shares a border with Pakistan) and West Bengal (which shares a border with Bangladesh) by partners in the detainees' countries (particularly Bangladesh), by the prison authorities themselves, or through CHRI's clinics in select jails in West Bengal and Rajasthan. This case study is based on CHRI's experience of dealing with around 80 individual cases of foreign nationals in Indian prisons and also of effecting the repatriation of over 350 such prisoners through public interest litigation.

One will rarely find nationals from the USA, the UK, the EU or Nordic countries in this situation. The embassies of these countries play a crucial role in ensuring total support to their nationals. The same cannot be said for the embassies of several developing countries, particularly South Asian and African ones. Our experience has been that it requires dogged determination and relentless pursuit from organizations like ours to get the embassies to get their act together. Sometimes, even our pressure is not enough, and we need to get media coverage in the prisoners' countries to push their embassies in India into action.

The cases

Foreign nationals in prison beyond the completion of their sentences: Once a prisoner has completed his/her sentence, repatriation requires successful processing of the file by 32 different government desks across India (in the Ministry of Home Affairs, the Ministry of External Affairs and the government of the concerned state, i.e. province, in whose jail the prisoner is lodged, the Foreigner Regional Registration Offices), and the prisoner's home country (including the concerned embassy in India, the Ministry of Foreign Affairs, the departments responsible for nationality verification and arranging repatriation). CHRI learnt about this complicated process through its experience of working on close to 80 cases.

There are no publicly-available standard operating procedures (SOPs) or even SOPs within the concerned government department to guide the repatriation process. This causes the case file to swing back and forth between different departments, resulting in the overdetention of the prisoners well beyond the completion of their sentences, and in the inordinate delay of their release and repatriation.

To get a sense of the endless drama that nationality verification of a foreign prisoner entails, it is important to understand the whole procedural matrix. In cases of undocumented entry and visa overstay, the nationality document (passport), a copy of which is not sent to the prison, is seized by

the police at the time of arrest and filed in a trial court. Therefore, in cases where contact has not been established with the relevant embassy or family during the court trial or the completion of a prison sentence, it ultimately falls on the prison authorities to coordinate with the courts and the police to retrieve the nationality document. Even when the information is made available to prisons, other problems may occur. Often, the courts record the book number of the passport instead of passport number since they are used to Indian passports which only have a passport number. This makes it difficult for the embassy to trace nationality because they do not keep a database of book numbers. The situation is even worse when the language in the passport is not English.

CHRI learnt that in most cases, embassies are not informed of such arrests; even when they are, many do not have the infrastructure, and often the capacity, to visit jails across the length and breadth of India to provide consular access. In addition, access to jails is fraught with complicated protocols that require approvals at two levels, one from the Union Government's Ministry of Home Affairs and the other from the state's (province's) home department. Given this context, in many cases, CHRI has intervened to facilitate telephonic consular access, though that it is never a substitute for in-person access.

Other problems CHRI have encountered include: (i) erroneous recording of home addresses because the prison staff are unable to understand the accents of the detainees (e.g. in cases of Bangladeshi prisoners lodged in states other than West Bengal) which, in turn, delays the nationality verification by the embassy; (ii) embassies asking for photographs of the prisoners, whose faces have been aged by decades due to the stress of prolonged detention, often making it difficult for embassies and local search agencies to find a match.

The burden of this slow-paced and multi-layered bureaucracy is borne by the hapless inmates. It is a traumatic experience for a prisoner to be in indefinite detention which leads to his/her complete alienation. On average, prisoners spend around six months to one year beyondt he completion of a sentence in prison while their files travel sluggishly from one desk to another.

In the absence of strict guidelines and clarity on the procedure to manage repatriation, over detention remains an inevitable additional punishment for foreign prisoners.

Asylum Seekers – India does not have formal legislation to deal with the influx of refugees from neighboring and other countries. That being said, it has maintained an informal open door policy to asylum seekers from Afghanistan, Myanmar, Pakistan, Tibet, Sri Lanka, Somalia and Iraq, inter alia, due to which many asylum seekers flee to India. The absence of a law has resulted in ad hoc determination by authorities being the norm.

Following the recent Rohingya crisis in Myanmar, many Rohingyas fled persecution to other countries such as Thailand, Malaysia and recently to Bangladesh. Many have also been landing up in West Bengal, India, via Bangladesh after embarking on a long and perilous journey filled with disturbing and near-death experiences. Through its weekly legal aid clinics in four Kolkata jails, CHRI learnt that many Rohingyas are arrested for being undocumented while crossing the border. They are mistakenly identified as Bangladeshis due to similarities in facial features and charged under Section 14 of the Foreigners Act which penalizes irregular and undocumented entry into or presence in India. In district courts, stakeholders' lack of knowledge of the Rohingya crisis and refugee law extends to the incorrect recording of the Rohingyas' country of origin as Bangladesh. Even after the completion of their sentences, they are not released because the immigration status of a foreign prisoner only allows for deportation after the completion of a sentence, and they cannot go back to Myanmar for fear of persecution. In addition, on the one hand, due to procedural obscurities involving the powers of the Central and State Governments, the Department of Correctional Services in West Bengal

is precluded from informing the UNHCR about the detention of such persons. On the other hand, the UNHCR is limited in its reach because of its mandate. A combination of lack of opportunity and extensive use of Section 14 exacerbates the situation of the Rohingyas, resulting in indefinite detention without hope of change in their circumstances.

The Strategies

CHRI has staged direct and indirect interventions to provide relief to overstaying foreign prisoners. Direct intervention usually involves CHRI acting as a link between embassies and the various government departments and networking robustly to obtain travel documents. Indirect intervention involves mobilizing the media, courts and other institutions such as the Human Rights Commission to expedite the process. A detailed table of the strategies employed by CHRI is available in the notes at the end of the case study. In short, strategies included:

• Using Right to Information: Besides using RTI to seek information, we went on appeal and presented our case to the Rajasthan State Information Commission, which ordered proactive disclosure of names of overstaying prisoners and their details on the prison website, which continues to be an immense help in identifying and reaching out to such prisoners;
• Trust-building with the Prison Department: We also built credible and strong working relations with the Prison Department so they can see us as allies and not as adversaries.
• Constant coordination with embassies: we prepared fact sheets about the cases for the embassies, followed up with phone calls and visits to the embassies;
• Networking with civil society: we contacted CSOs in the detainee's country of origin, mobilized civil society networks across India to encourage the court to share the entire case dossier with the prison, called upon civil society networks in other Commonwealth countries to initiate local searches for prisoners' families and assist the Government in expediting the entire process;
• Regular coordination with the competent central and state ministries and departments in India: we coordinated with a range of relevant officials, particularly in the Home Affairs and External Affairs Ministries at each stage of the process; our persistence and sincerity of purpose in getting prisoners home safe and fast eventually ensured positive engagement from the authorities, by and large.
• Bridging the information gap between the UNHCR and asylum seekers: Since the UNHCR did not have much information on the Rohingya asylum seekers in prisons, we got the basic registration forms filled out by the asylum seekers in prison and sent them to the UNHCR for further action.
• Strategic advocacy with officialdom: advocacy with the Prison Department resulted in the latter allowing the UNHCR unprecedented entry into the prisons to conduct the refugee status determination interviews of all the registered asylum seekers;
• Strategic litigation: litigation is used as the last resort for particular prisoners when lack of clarity impedes repatriation or release;
• Media advocacy: publishing human interest stories in major newspapers has at times been an efficient way to get embassies to act.

The results

CHRI believes that the most important factor in successfully repatriating over 400 foreign prisoners and securing the release of over 25 asylum seekers lies in its close involvement in each step of a case with every stakeholder. This is an overwhelmingly daunting task, but it is safe to say that it has led to expeditious action in all the cases. The experience of all these cases also underlines the need to have a time-bound standard operating procedure (SOP), guidelines or a monitoring committee in order to effect timely repatriation/release.

This strategy of step-by-step, case-by-case involvement may be effective, but it is defeated by practical considerations as it requires the competencies and capacities of a team of persons dedicated to this work. In the absence of such capacities, it is difficult to obtain productive results. Thus, we align our advocacy efforts with our expertise and capacity. For instance, we successfully utilized our credibility with the Prison Department in West Bengal to push for the UNHCR's access into jails instead of litigating the issue in court, considering the time and resource factor. Meanwhile, CHRI assisted the UNHCR by visiting jails and registering asylum seekers.

On a similar note, CHRI moved the High Court of Kolkata for the repatriation of 350 overstaying Bangladeshi prisoners because it was impossible to work on each case individually. As a civil society organization, we are also constrained to work in an absolutely benign and recommendatory manner. Our efforts may make no difference for a long time, as in the case of a 38-year-old, mentally-ill Bangladeshi woman, Solma. Despite six months of endless phone calls, emails and piles of formal letters to the Bangladesh Deputy High Commission (BDHC) in India, her nationality still could not be verified. It is in cases like these that we reach out to media of a prisoner's home country to bring such stories to public notice. In this case, it seems to have spurred the Bangladesh High Commission, which provided consular access to Solma just a day after the story broke out in Bangladesh. Even so, it took a month and a half after that, and a total of one-and-a-half years for Solma to go back home.

We found that we required different approaches for different countries depending upon the foreign policy of the home country and India's relations with it. The foreign policy defines the scope of the diplomatic missions in such cases. Certain embassies, like the Palestinian or Afghan Embassies, for example, take complete ownership of the process once a case is presented to them, with CHRI acting merely as a facilitator. Unfortunately these embassies are in the minority. Another constraint is that the Constitution of India lists prisons as a state subject and foreigners as a central subject. This confusing quasi-federal matrix delays decision-making, and most of the time, state governments use this irregularity to further their comfortable, cushioned spaces by not taking action. In 2014, the MHA delegated the power to the state home departments to effect repatriation of prisoners, but even as we write this, CHRI is still dealing with cases where the state government awaits official confirmations and communications from the MHA to release a foreign prisoner. With every case, CHRI has to break down the bureaucratic barriers from the start, and that is precisely why there need to be official guidelines, disseminated widely to all functionaries, to deal with such cases.

Another important lesson is that individual action does not change the bigger picture, which means it does not influence policy making. It definitely adds to the comprehensive documentation of each and every obstacle, which will be helpful for developing thorough guidelines/SOPs in the future, but until then it may just be another statistic for the State. That being said, it is difficult for us to stop our individual action work because there are no other groups working on these issues in an engaging way and with a problemsolving approach. This makes us the only functional and hopeful window for the prisoners and even the prison administration in such cases.

We also feel that we have not been able to advocate for stronger implementation of the 2004 Repatriation of Prisoners Act, which provides for convicted foreign prisoners to spend the rest of their sentences in their home countries. To date, India has signed transfer agreements with 42 countries. According to the Prison Statistics of India published annually by the MHA, prisoners from Bangladesh, Nepal, Myanmar, Nigeria and Pakistan comprise more than 90% of the foreign prisoner population in India, and two-thirds are from Bangladesh alone. However, India does not have an agreement on

the transfer of sentenced prisoners with any of the abovementioned countries except Bangladesh. Even with Bangladesh, there are other problems besides technical glitches. It is commonplace for prisoners not to know about the option of such a transfer at all. Most of these prisoners are people, stuck in miserable enclaves, who often inadvertently cross the border. They are poor, unlettered and form an insignificant electorate in their countries. They are not legally sound, and the administrations in both countries do not take sufficient steps to spread awareness about their rights, and in this case, about the agreement. It would be helpful for embassies or immigration officers to provide handouts on 'Know Your Rights' that briefly acquaints a person with his/her rights if confronted with a foreign country's justice system. For instance, British and American diplomatic missions have a section on their websites completely dedicated to their nationals' rights in a given foreign country. However, India has been proactive in establishing agreements with countries where large numbers of Indian prisoners are lodged. Out of the top ten countries, India has agreements with six[2] of them. Such a proactive approach is required by other countries towards their nationals who are stuck in the procedural quagmires of foreign countries.

The Lessons Learned

Individualized action is taxing but works best. However, it requires sustained efforts over a period of time. It also helps in establishing credibility with government institutions, which is essential for building trust and forging the way for systemic changes. The issue of foreign prisoners attracts a lot of security and risk assessment. Dealings with the State are also challenging because citizens are prioritized over non-citizens, and incarceration acts as an added stigma. Thus, the advocacy pitch has to be balanced in a way that addresses administrative hassles and human rights violations. It is extremely important to document all the cases for the larger purpose of systemic reform. In a multi-stakeholder process, it is also important not to give up and to build pressure from all sides to activate all functionaries. The restoration of family ties must be prioritized because it enhances the chances of the prisoners' rehabilitation back home while also facilitating embassies' verification of nationality and expediting the repatriation process.

[1] *SIndians in Foreign Jails, Unstarred Question No. 543, Government of India, Ministry of External Affairs, Lok Sabha, Jul. 20, 2016, http://164.100.47.190/loksabhaquestions/annex/9/AU543.pdf (providing that Saudi Arabia has 1896 Indian prisoners; UAE, 764; Nepal, 614; USA, 595; Pakistan, 518; Kuwait, 325; Malaysia, 293; Bahrain, 235; Singapore, 147 and Bangladesh, 130 prisoners respectively)*

[2] *Saudi Arabia, UAE, United States of America, Kuwait, Bahrain and Bangladesh, See List of Countries with which India has an Agreement on Transfer of Sentenced Persons, Consular, Passport and Visa Division, Ministry of External Affairs, Last updated on Jul. 3, 2017, http://www.mea.gov.in/list-ofcountries.htm*

Annex 1

	Strategy Used	*Type of Detainee*	*Intervention*
Initiation of Repatriation Process	Right to Information and Trust-Building with the State	Immigration Detainee/ Asylum Seeker/ Other Offenders	After identifying delayed initiation of the process as a problem, CHRI obtained an order from the Rajasthan State Information Commission for the proactive disclosure on the state prison website of the names and details of foreign prisoners lodged in Rajasthan jails so that their families, lawyers and other human rights activists can keep a check on their unnecessary prolonged detention. In West Bengal, CHRI obtained information by building credible and strong working relationships with the Prison Departments. The information was then used to ensure that prisoners are able to contact their embassies at least over the phone if not in-person. CHRI is in the process of advocating with the Government of West Bengal for the issuance of a new circular/notification so that all the correctional facilities inform the Government at the time of every foreign prisoner's admission.
Contact with the outside world/Consular Access	Constant Coordination with embassies	Immigration Detainee/Other Offenders	CHRI took initiative by sending the embassies short and crisp fact sheets of the cases along with photographs of their nationals, nationality documents (if available), court orders and any other detail that may help the embassy to verify the nationality. This was followed by weekly phone calls, and where needed, visits to the embassy. This kind of persistent follow-up of a case has always worked successfully. CHRI also facilitated the Restoration of family ties by networking with local NGOs in the prisoner's country. This also assisted the embassies in verifying the prisoner's nationality.
Retrieving Travel Documents	Networking with Civil Society	Immigration Detainee/Other Offender	Travel documents are usually seized by the police at the time of arrest and then filed in court. The court does not send a copy of such a document to the prison. This creates a problem when arranging repatriation, particularly vis-à-vis nationality verification. CHRI relies heavily on its civil society networks across India to mobilize courts to share with prisons the entirety of case dossiers, which includes a copy of the travel document, CHRI also relies on its networks in other Commonwealth countries to initiate local searches for prisoners' families and assist the Government in expediting the entire process while also keeping it on its toes.
Expediting the repatriation	Regular coordination with the competent central and state ministries and departments in India	Immigration Detainee/Other Offender	Headquartered in Delhi, CHRI takes it upon itself to expedite repatriation in each case by regularly coordinating with the Home Affairs and External Affairs Ministries and keeping them apprised of every new development so as to facilitate speedy cognizance.
Presenting the Claim of Asylum	Plugging the information gap between the UNHCR and the asylum seekers	Asylum Seeker	In India, the UNHCR assists the Government in processing the claims of Tibetans and Sri Lankans. It also helps to facilitate voluntary repatriation of Afghan refugees. Many asylum seekers from Myanmar, Afghanistan, Somalia and Iraq also seek assistance from the UNHCR, which conducts their refugee status determination and provides them documentation on the basis of which the Government often issues long-term visas (LTVs). However, for asylum seekers from Myanmar, particularly Rohingyas, this remains a distant dream since many are arrested before they are able to reach the UNHCR. CHRI has worked hard to plug this gap by providing information to the UNHCR and facilitating the basic registration of Rohingyassince the UNHCR could not enter Indian prisons. CHRI conducted a registration drive across West Bengal by interviewing Rohingyas in detention. It got the basic registration forms filled out and signed by the asylum seekers. The UNHCR was sent these basic registration forms, the receipt of which was ensured by CHRI's staff in Delhi. On the basis of these forms, the UNHCR was able to issue 'Under Consideration' certificates to these persons, which means they won't be arrested for undocumented entry.

	Strategy Used	*Type of Detainee*	*Intervention*
Refugee Status Determination Procedure	Strategic Advocacy with Officialdom	Asylum Seeker	CHRI consistently advocated with the Prison Department, primarily emphasizing excessive overcrowding in West Bengal prisons while subtly slipping in the element of registered asylum seekers' unwarranted detention. This resulted in the Prison Department granting the UNHCR unprecedented entry into the prisons to conduct the refugee status determination interviews of all the registered asylum seekers.
Obtaining Release Orders	Strategic Litigation	Immigration Detainees/ Asylum Seeker	CHRI uses litigation as the last resort for particular prisoners when lack of clarity impedes repatriation or release. Mostly, we seek the court's intervention in cases of asylum seekers since there are no strict guidelines on how to deal with them once they cross over to India fleeing persecution. Thus, for most of the cases, CHRI approaches the court or the lawyers for clarification of the legal position on stalling their deportation and ensuring their release.
Expediting Executive Action	Media Advocacy	Immigration Detainees	In many cases, particularly those of Bangladeshi prisoners, CHRI could not move the executive beyond a certain point despite placing constant pressure. In such cases, CHRI successfully activated embassies by publishing human interest stories inlocal newspapers.

MEXICO'S HUMAN RIGHTS FOREIGN POLICY: FROM COMMITMENT TO COMPLIANCE

COMISIÓN MEXICANA DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS - CMDPDH

Summary

In spite of the Mexican Government's public support for human rights mechanisms and institutions, the human rights situation in Mexico has been critical for the past 10 years. Indeed, the war on drugs and the militarization of public security that has accompanied it have resulted in hundreds of thousands of human rights violations, including murders, disappearances and forced displacements. However, despite growing alarm and appeals from international mechanisms, the Mexican Government has denied any wrongdoing, and even launched campaigns to discredit the mechanisms' reports and undermine Mexicans' participation in human rights bodies. In addition, media smear campaigns against human rights defenders have been launched to discredit human rights organizations and defenders in the public eye. Thanks to international support, both from NGOs and international mechanisms and rapporteurs, the Mexican Government is now starting to express, albeit slowly and cautiously, its support to human rights causes and their defenders.

Key Words

Mexican foreign policy; international human rights bodies and mechanisms; war on drugs; militarization of public security; grave human rights violations; murdered, disappeared, internally displaced and tortured persons; human rights defenders; smear campaign; anti-human rights campaign; International Criminal Court; special rapporteurs

Strategies

- Intervention of international human rights organizations;
- Use of international mechanisms by local and international NGOs;
- Advocacy with executive powers;
- Intervention and public condemnation by UN Committee Against Torture.

The Context

Mexican foreign policy on human rights has been well recognized for its cooperation and commitment in all multilateral fora. From 2000 to 2012, international scrutiny and active participation to develop international human rights law were reinforced and promoted within Mexico's human rights foreign policy.

Just to name a few examples, from 2002 to 2008, Mexico ratified an important number of international treaties, such as the Convention on the Rights of Persons with Disabilities, the

Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict as well as the one on the sale of children, child prostitution and child pornography and the Optional Protocol of the Convention against Torture. The Mexican Government also issued the acceptance of individual complaint procedures under the Convention against Torture, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

In addition, Mexico extended an open and standing invitation in 2001 to all thematic special procedures, and in 2002, following an official invitation of the Mexican Government, the Office of the High Commissioner for Human Rights (OHCHR) signed an agreement to establish an OHCHR Office in the country.

Notwithstanding the openness and cooperation demonstrated towards international human rights mechanisms, the human rights situation in the country has been critical for the last 10 years.

The war on drugs declared in the country in 2006 and the militarization of public security as part of the anti-drug strategy have resulted in the increase in grave human rights violations and even of crimes against humanity; according to national and international human rights bodies, over 200,000 people have been killed, more than 34,000 people have been disappeared, at least 329,000 have been internally displaced, and torture is used in a systematic and generalized way as a form of investigation.

Nonetheless, despite the numerous warnings issued by various international organizations over these last 10 years, and their consistent findings on the serious human rights crisis in Mexico, since 2012, the current Mexican Government has continuously rejected their conclusions and recommendations. The Government insists that the human rights violations being denounced are isolated events, and it has been persistently denying the responsibility of the Armed Forces in generalized abuses despite evidence of their involvement in numerous cases.

Even worse, instead of accepting the message and acting upon it, the Government has adopted the counterproductive strategy of 'shooting the messenger'. For example, after the 2014 visit of the UN Special Rapporteur on Torture to Mexico, Mexican authorities published discrediting and insulting statements against him. Such discrediting tactics also occurred in relation to the report issued by the UN Committee against Enforced Disappearance in 2015, and the IACHR Interdisciplinary Group of Independent Experts' (GIEI) Ayotzinapa Report. Furthermore, during the UN Human Rights Council's regular sessions, high-ranking officials from the Mexican Foreign Affairs Secretariat have openly questioned UN human rights mechanisms and discredited the validity and reliability of their reports[1].

Furthermore, actions to undermine the impartiality and independence of international human rights bodies have become evident. On June 16th the Mexican Foreign Affairs Secretariat decided, without

[1] *31st Regular Session of the Human Rights Council. High-level statement of Mr. Miguel Ruiz Cabañas, Vice-Minister for Human Rights and Multilateral Affairs, Mexico (available only in Spanish) at: https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/31stSession/OralStatements/13_Mexico_HLS.pdf*

[2] *22/16 IACHR Publishes Report on the Human Rights Situation in Mexico, Washington, D.C., March 2, 2016: https://www.oas.org/en/iachr/media_center/PReleases/2016/023.asp. Statement of the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, on his visit to Mexico, October 7th 2015: http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16578&LangID=E .*

any explanation, not to nominate a nationally-recognized specialist on torture to occupy one of the 10 seats on the United Nations Committee against Torture (CAT), and instead nominated a retired ambassador with no prior experience in the matter. This policy was repeated on February 28th when the Mexican Government nominated a former ambassador and current Mexican Foreign Affairs Secretariat official before the OAS for one of the three vacancies at the Inter-American Commission on Human Rights (IACHR). The policy of nominating people whose careers have evidently been dedicated to defending the interests of the State to positions in international human rights bodies clearly shows the Government's intention to silence critical and independent voices within these bodies.

The aforementioned actions are part of a general policy to discredit and discount the human rights movement in the public eye, employed as a strategy to deny the current situation of violence and insecurity. Indeed, a country's human rights situation becomes especially alarming when government authorities start attacking the external bodies that denounce abuses in order to justify current government policies, instead of accepting the diagnosis and acting upon it.

In 2015, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Inter-American Commission on Human Rights (IACHR) confirmed the current, grave human rights crisis in Mexico after their respective visits.[2] They also agreed that the rampant insecurity, violence and impunity, as well as alarming statistics on murdered, disappeared, internally displaced and tortured persons, are a cause for grave concern. These results are especially worrisome considering that the country is not involved in any formallyrecognized armed conflict.

The Mexican State's official response to the 2015 IACHR report stated that the IACHR's findings did not "reflect the general situation of the country" 3. Moreover, the Mexican State directly attacked the report, as they considered it failed to "provide a response to the answers that the Mexican State formulated to the Commission." Furthermore, the Mexican Government's response claimed that the report ignored "more than fifty years of progress, challenges, structural changes and processes within the country".

Even if it denied involvement in the abuses, the Mexican Government was accused of tolerating hostility towards regional human rights organizations. IACHR Commissioner Paulo Vannuchi denounced this "strong attack by Mexican public authorities" on the Commission's Independent Group of Experts (GIEI) and expressed the "irreparable damage" inflicted on the Executive Secretary, Emilio Álvarez[3].

The backlash of the human rights foreign affairs policy became so evident that even members of the Mexican Congress claimed that the relationship between the Mexican Government and the human rights international bodies was the worst it had been in decades.[4]

The Smear Campaign Against Human Rights Defenders

Within the country, human rights defenders and civil society organizations started to face a bleak environment and rapidly became vulnerable to criminalization and attacks as a consequence of discrediting tactics and smear campaigns against them in the media.

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[3] *44/16 IACHR Categorically Rejects Smear Campaign in Mexico against Group of Experts and Executive Secretary, Washington, D.C. March 29, 2016, https://www.theguardian.com/world/2016/mar/02/mexico-disappearancesinter- american-human-rights-commission-report*

[4] *Senate press release: "Relationship between Mexican Government and international bodies experience their worst moment in decades: Senator Laura Rojas" (available only in Spanish), http://comunicacion.senado.gob.mx/index.php/informacion/boletines/27243-relacion-del-gobierno-mexicano-conorganismos-internacionales-pasa-por-su-peor-momento-en-decadas-senadora-laura-rojas.html.*

During the first months of 2015, a national and very popular radio program falsely accused human rights defenders and NGOs of operating 'a network of corruption' aimed at making money out of torture allegations. The claims were underscored by Mrs. Isabel Miranda de Wallace[5] , President of the organization Alto al Secuestro (Stop Kidnapping), a former candidate in Mexico City's mayoral elections and a close ally of the current Government.

Not only were national prestigious human rights defenders and NGOs such as the Mexican Commission for the Defense and Promotion of Human Rights, Centro Prodh or Tlachinollan severely criminalized and targeted by this smear campaign, but the recognized regional Centre for Justice and International Law (CEJIL) was also accused of operating illegitimately along with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Juan Méndez, who was accused of supporting 'the network of corruption' formed by these organizations.

In the months that followed, many journalists used the same arguments as Miranda de Wallace, and human rights defenders and NGOs were called 'human rights mercenaries' or 'defenders of criminals'[6], which put all of them in a situation of heightened vulnerability.

Soon enough, the Mexican Armed Forces also joined the anti-human rights campaign. By stating in an article publi shed in a widely-disseminated national newspaper that "Defenders 'taint' trials"[7], the Armed Forces became the State actors who criminalize and defame human rights defenders in the country. According to them, "the Armed Forces have detected cases in which suspected criminals, lawyers and institutions have filed complaints against military personnel for supposed human rights violations in order to 'taint' criminal trials and obtain the release of such suspects." The Director General of Justice at the National Defense Ministry stated that "this strategy tries to thwart the Army's actions in public security tasks".

On July 19th, 2016, during the International Forum: Equity for Victims in Due Process, Mexico's current President Enrique Peña Nieto, alleged that penal processes were frequently misused to benefit criminals. During that Forum, organized by Mrs. Isabel Miranda de Wallace, President Peña Nieto claimed that the National Fund for Help, Assistance and Integral Reparation for Victims was benefiting victimizers instead of the victims themselves[8].

Meanwhile, the smeary and discrediting articles in national newspapers increased after the UN Committee against Torture's landmark decision adopted on September of 2015 regarding an individual case against Mexico submitted by the CMDPDH9. On June 16th, 2009, Ramiro Ramírez Martínez, Rodrigo Ramírez Martínez, Orlando Santaolaya Villarreal and Ramiro López Vázquez were detained without charge as the main suspects of a kidnapping in Mexico. During their arrests, transfer and arbitrary detention in military installations, they suffered repeated acts of torture and ill-treatment in order to force confessions to the crimes of kidnapping and the illegal possession of weapons.

The United Nations Committee against Torture condemned the Mexican State for the torture committed against these four individuals by members of the Mexican Army. Morespecifically, the Committee ascertained that the State party was responsible for the acts of torture perpetrated against the four victims as it had failed to undertake effective measures to impede such acts during the arbitrary detention in military facilities, carry out an effective and impartial investigation of the case, and provide reparations to the victims and their relatives.

[5] *Grupo Formula. "Special Rapporteur on torture makes easy to ask for reparation claiming torture, Miranda insists", 3/08/2016, http://www.radioformula.com.mx/notas.asp?Idn=576357&idFC=2016.*

[6] *El Universal. "Human Rights Mercenaries" (available only in Spanish), 3/09/2016, http://eluniversal.com.mx/entradade- opinion/columna/hector-de-mauleon/nacion/2016/03/9/mercenarios-de-los-derechos-humanos.*

[7] *MILENIO. "Defenders 'taint' trials: Sedena" (available only in Spanish), http://www.milenio.com/politica/Defensores_vician_juicios-Sedena-Justicia_Militar- Gonzalo_Corona_0_722327783.html.*

[8] *"Palabras del Presidente Enrique Peña Nieto, durante la Inauguración del Foro Internacional: Equidad para las víctimas en el debido proceso", (available only in Spanish), http://www.gob.mx/presidencia/prensa/palabras-del-presidenteenrique- pena-nieto-durante-la-inauguracion-del-foro-internacional-equidad-para-las-victimas-en-el-debidoproceso? idiom=es.*

The cases monitored and submitted to international mechanisms by the CMDPDH have been widely disseminated and have highlighted the generalized practices of torture and enforced disappearance in the country.

In addition, on at least seven occasions, different social actors have submitted information to the Office of the Prosecutor of the International Criminal Court (ICC) alleging the perpetration of crimes against humanity in Mexico, in accordance with article 15 of the Rome Statute[10]. Three communications have been submitted by the CMDPDH, jointly with other international organizations such as the International Federation of Human Rights (FIDH), in 2012, 2014 and in July of 201711. These communications aimed at providing the ICC Prosecutor a reasonable basis to believe that crimes against humanity that fall within the jurisdiction of the ICC have been committed in Mexico. Specific information about crimes of torture and enforced disappearance, committed since 2016 and carried out by the armed and police forces, was submitted in order to request the Pre-Trial Chamber to proceed with an investigation proprio motu.

Supporting actions from International NGOS and International Human Right Bodies

International human rights organizations such as ISHR, ACAT, APT, FIDH, OMCT, Robert F. Kennedy for Human Rights and WOLA clearly voiced their wholehearted support for human rights defenders and NGOs through an open letter addressed to President Enrique Peña Nieto. The letter denounced attempts to discredit the work of NGOs and called on the President to ensure that his Government recognized the legitimacy and value of the human rights organizations.

Likewise, in a joint press release, Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders, Mr. David Kaye, Special Rapporteur on freedom of opinion and expression and Mr. Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed grave concern in relation to personal attacks against human rights defenders in Mexico, which to their consideration increases danger, risk, and vulnerability for them and their work. The three UN experts "urged the Government of Mexico to express its full support for the work of human rights defenders and civil society organizations, and to actively counter the current stigmatization campaign to undermine their work as promoters of fundamental freedoms in the country"[12].

International coalitions such as the International Network for Economic, Social and Cultural Rights (ESCR-Net) also expressed their "serious concern regarding the recent smear campaign to which human rights organizations and human rights defenders have been subjected in Mexican media outlets."[13]

According to Chris Grove, Executive Director of ESCR-Net, "the silence of the Mexican executive branch could be interpreted as a sign of approval and consent [of the media smear campaign]. At a moment when many eyes are on Mexico, due to the difficulties that the country is facing, it is important for the Government to adopt a firm position regarding human rights in its domestic and foreign policies, starting with a condemnation of the media campaign of harassment against national NGOS."[14]

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[9] Decision adopted by the Committee against Torture regarding the communication No. 500/2012, http://cmdpdh.org/wpcontent/uploads/2012/12/cmdpdh_notificacion_cat_500_2012_counsel_omct_4civiles.pdf.

[10] FIDH, CMDPDH, CCDH, Mexico Report on the alleged commission of crimes against humanity In Baja California 2006 to 2012, http://cmdpdh.org/project/mexico-report-on-the-alleged-commission-of-crimes-against-humanity-in-bajacalifornia-2006-to-2012/. José A. Guevara. "Why the ICC Should Open a Preliminary Examination in Mexico: Allegations of Torture Committed in the Context of the War on Drugs". August, 2015: https://blog.casematrixnetwork.org/toolkits/eventsnews/op-eds/guevaraon-allegations-of-torture-in-mexico/.

[11] Mexico: Murders, Disappearances, and Torture in Coahuila de Zaragoza are Crimes against Humanity, https://www.fidh.org/en/region/americas/mexico/mexico-murders-disappearances-and-torture-in-coahuila-de-zaragoza-are

[12] Press Release. UN experts urge Mexico to counter current smear campaign and openly support right defenders. Geneva, 6 April 2016: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19784&LangID=E.

[13] Chris Grove, Executive Director of the ESCR-Net. "In Defense of those defending human rights in Mexico" 16 May 2016: https://www.escr-net.org/news/2016/escr-net-denounces-media-smear-campaign-against-mexicanmembers.

[14] Ibid.

In addition, a high-level UN human rights advisory body expressed alarm over a series of verbal attacks and threats against Mariclaire Acosta, one of its members and a victim of the smear campaign, and urged the Mexican Government to ensure that human rights defenders who face threats, attacks on their integrity and intimidation receive adequate protection[15].

During the visit in January 2017 of Michael Forst, the Special Rapporteur on the situation of Human Rights defenders, and after several requests from national and international NGOs and international human rights bodies, Mexican authorities publicly condemned the acts of reprisal against human rights defenders and recognized the legitimacy of the work carried out by these defenders and civil society in Mexico. The commitments made on January 13, 2017 at an international forum dedicated to the protection of defenders by the Minister of the Interior[16] and the Attorney-General in support of human rights defenders represented an action aimed at ensuring that human rights defenders felt safe and empowered in the country.

Moreover, as stated by the Special Rapporteur on the situation of human rights defenders, this was a welcome change in the context of reported statements that either did not recognize the positive role played by human rights defenders in Mexico or depicted them as enemies of the State with links to organized crime.

Lessons Learned

Defending human rights in Mexico has become very risky and precarious work. While attacks and smear campaigns have affected the work of human rights defenders in the country, international NGOs, the UN and the Inter-American System have defended and supported the legitimacy of human rights defenders within the country.

On the other hand, despite the stigmatization of human rights defenders in the country, and the backlash of the Mexican human rights foreign affairs policy, Mexican NGOs have been able to raise international awareness and demand more scrutiny from international bodies. A good example is the official visit carried out by the Special Rapporteur on the situation of human rights defenders, Michel Forst, in January 2017. Despite Mr. Forst requesting permission from the Mexican Government for an official visit in 2015 after receiving a communication from the Mexican NGOs expressing the grave situation faced by human rights defenders in the country, the Mexican Government failed to agree on a date for his visit and purposely delayed it.

This is why Mexican NGOs implemented an advocacy strategy to put pressure on his visit. On May 2016, Mexican NGOs invited the Special Rapporteur on the situation of human rights defenders for an unofficial visit. Within the framework of the presentation of the publication "40 Voices in Defense of Human Rights in Mexico", published by the CMDPDH, Mr. Forst visited Mexico City, Puebla and Chihuahua. During his visit, Mexican NGOs organized encounters with more than a hundred human rights defenders from the country's various states. Mr. Forst also met with authorities from the Foreign Affairs Secretariat and the Secretariat of the Interior. This unofficial visit led to an agreement on the date of Mr. Forst's official visit, as well as to the visit's fruition in January 2017.

As has been previously mentioned, the official visit of the Special Rapporteur on the situation of human rights defenders put pressure on the Mexican authorities to publicly condemn the smear campaigns against human right defenders and to acknowledge the legitimacy of their work.

[15] Press Release. UN experts urge Mexico to ensure protection of rights defenders, as prominent advocate faces smear campaign. Geneva 30 May 2016: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews aspx?NewsID=20032&LangID=E

[16] "(...) I know that the work you carry out is not out of personal interest, but rather out of a commitment to service others and that you face difficult conditions, being far away from your families and many times, facing risks. But your commitment to defend those who have suffered abuses or human rights violations is firm. From this stems the wide acknowledgment that the government of the Republic does of the valuable work that you carry out. Without your actions [of human rights defenders] and those of the defenders who came before you, we could not have the country of greater freedoms that we have today." Miguel Angel Osorio Chong, Secretario de Gobernación (13/01/2017)

CIVIL SOCIETY PARTICIPATION IN FOREIGN POLICY MAKING: AN ASIAN EXPERIMENT

ASIAN FORUM FOR HUMAN RIGHTS AND DEVELOPMENT (FORUM-ASIA)

Summary

Fostering progressive change in Asian States' foreign policy on human rights at international organizations is one of FORUM-ASIA's foremost objectives. In 2014, the organization initiated a process, which includes consultations and workshops with key civil society representatives from across Asia and the Global South, to introduce the idea of transparent foreign policy-making on human rights and engage Asian civil society in foreign policy discussions. Advocacy in Mongolia represents an important outcome in FORUM-ASIA's work to positively influence Asian States' foreign policy on human rights. This advocacy not only resulted in the inclusion of civil society's demands in Mongolia's voluntary pledges and commitments presented to the UN General Assembly to support its candidacy to the UNHRC, but also set clearly-defined positions for crucial human rights debates and decisions at the Council.

Key Words

UN Human Rights Council; International bodies; foreign policy debates and discussions; foreign policy and human rights; Asian civil society; FORUM-ASIA

Strategies

- Introducing the idea of transparent foreign policy-making on human rights and engaging Asian civil society in foreign policy discussions;
- Organizing consultations and workshops with key civil society representatives from across Asia and the global South to assess the capacity of and avenues available for civil society to meaningfully contribute to foreign policy discussions;
- Advocating for the inclusion of civil society's demands in State's voluntary pledges and commitments to the UN General Assembly;
- Working together with Mongolian civil society to pressure Mongolian Government to take positive international positions on critical resolutions at the UNHRC.

Influencing positive changes in Asian States' foreign policy on human rights at international bodies such as the UN Human Rights Council is one of the primary objectives of FORUM-ASIA. Achieving this inevitably requires an open, transparent and participatory foreign policy-making process and a civil society capable and willing to engage in foreign policy debates.

In 2014, FORUM-ASIA initiated a process to introduce the idea of transparent foreign policy-making on human rights and engaged Asian civil society in foreign policy discussions. This included a consultation in Jakarta, Indonesia with key civil society representatives from across Asia and the Global South to assess the capacity of and avenues available for civil society to meaningfully contribute to foreign policy discussions in their respective countries.

It was evident from the onset that there is little or no room for civil society to engage in foreign policy debates. Pervasive secrecy beset foreign policy in most States in Asia – and around the world. Foreign policy is generally considered sacrosanct and is often protected by prevailing conceptions of 'national interest' or 'national security'. Foreign policy debates are deemed to be too complex for people other than the select few diplomats and bureaucrats at the highest levels of the executive branch of governments and foreign ministries. Parliamentary debates on foreign policy are scarce. Civil society and the public are usually barred from foreign policy discussions, and their attempts to access information regarding foreign policy decisions are often treated as infractions on national security and sovereignty.

At the same time, the capacity and willingness of Asian civil society to engage in foreign policy debates have been lacking, perhaps owing primarily to the constant secrecy that permeates foreign policy. Continued lack of access to such debates appears to have perpetuated a lack of awareness and engendered a perception that foreign policy is extraneous and inconsequential to domestic policy. Even civil society actors highly articulate in domestic matters are usually disinclined to take part in foreign policy discussions and unwilling to commit already-limited resources to issues that are seen to be of little consequence to the domestic situation.

This initial discussion in Jakarta was followed by a second civil society consultation in 2015 in Mongolia. It was clear in these discussions that many Asian governments had no intention of opening up foreign policy discussions. Progress towards engaging and influencing positive change in foreign policy would require civil society to act proactively. The consultation in Mongolia provided an important opportunity to put this strategy into practice as it coincided with Mongolia's candidacy for the UN Human Rights Council. At the consultation, it was decided that Mongolian and Asian civil society should advocate for the inclusion of their demands in Mongolia's voluntary pledges and commitments presented to the UN General Assembly to support its candidacy.

Voluntary pledges and commitments on human rights made by candidates running for membership are one criterion that UN member states should consider when electing members of the Council. These voluntary pledges and commitments are key foreign policy documents that lay out a blueprint for States' behaviour internationally, at the Council once elected and at home. While not all States that successfully bid for the Council membership declare their pledges and commitments, the many States that do define them without much transparency. In many cases, such pledges and commitments are detached from reality, and neither the public nor civil society is aware of what their governments promise as potential members of the main international institution mandated to protect and promote human rights worldwide.

Advocacy in Mongolia represents an important outcome in FORUM-ASIA's work to influence positive change in Asian States' foreign policy on human rights. This not only resulted in the inclusion of civil society demands in Mongolia's voluntary pledges, but set clearly-defined positions for crucial human rights debates and decisions at the Council, particularly reflecting emerging concerns of national and international civil society. These range from commitments to consult civil society regularly on Mongolia's work at the Council, to challenging regressive moves to undermine fundamental freedoms and human rights such as freedom of expression, assembly and association, the protection of human rights defenders, working towards expanded mandates of special procedure mechanisms, and addressing crucial domestic concerns.

These pledges and commitments now stand as clear benchmarks to assess Mongolia's performance as a member of the Human Rights Council. They are increasingly used by national human rights groups in their advocacy. Several of Mongolia's commitments represent serious long-standing concerns of national civil society that the Government has been reluctant to adequately address, especially the explicit pledge to protect nomadic populations and their rights to traditional natural resources. Such definite promises to the international community, especially on issues of serious national concern, provide added impetus for national groups advocating policy change on these issues. Backtracking on its promises will only weaken the Government's legitimacy at the national and international levels.

This advocacy initiative illustrated the need for proactive engagement on foreign policy. While governments closely guard their foreign policy decisions, at least some governments appear willing to concede some space to civil society in response to concrete and pre-emptive advocacy by national organisations. Governments, especially when operating within the domestic milieu, may seem reluctant to agree to demands of international organisations that might be considered 'outsiders'. Many international organisations stand accused of exploiting national organisations to push their agenda to get around such difficulties. Therefore, it is crucial to ensure local ownership of advocacy agendas with buy-in from a wide spectrum of national civil society organisations. Positive changeespecially requires sustained long-term advocacy. One of the key factors in the success of this initiative was the genuine local ownership of the advocacy agenda. Local civil society organisations continue to propel this advocacy agenda even after Mongolia's election to the Human Rights Council in October, 2015. For instance, ahead of Mongolia's general election in 2016, national civil society organisations led a campaign to urge political parties and candidates to pledge to implement and monitor the Government's implementation of Mongolia's international obligations, including Mongolia's voluntary pledges and commitments regarding the Human Rights Council.

Once Mongolia was elected as a member of the Council, Mongolian civil society working together with FORUM-ASIA was also able to pressure their Government to take positive international positions on critical resolutions at the UN Human Rights Council, such as the June, 2016 resolutions on civil society space (A/HRC/RES/32/31) and human rights on the Internet (A/HRC/RES/32/13).

Follow-up work such as the workshop organised by FORUM-ASIA with Mongolian civil society partners in December of 2016 to assess Mongolia's first year as a member of the Council revealed familiar patterns. This workshop, attended by grassroots and community-based organisations, as well as national organisations, exposed the significant gap between community-based organisations and national-level organisations with respect to knowledge and awareness of Mongolia's voluntary pledges. Only national-level organisations based in the capital were active in this advocacy initiative in the early stages. Many factors such as limited resources, unique geographic features and other more pressing human rights concerns that compete for the attention of local organisations prevent participation and transfer of knowledge to community-based organisations based largely in rural areas.

NIGERIA AND THE UPR PROCESS

PARTNERSHIP FOR JUSTICE (PJ)

Summary

In Nigeria, CSOs in general, and Partnership for Justice (PJ) in particular, play a critical role in monitoring the implementation of Universal Periodic Review recommendations from one review to another, and also engage the sessions' main stakeholders at all stages of the process. During Nigeria's last review, in 2013, the recommendations focused on corruption, United Nations Human Rights Mechanisms and Treaty Bodies, Economic, Social and Cultural Rights, the Right to Health, the National Human Rights Commission, Women and Children, the National Consultative Forum and Poor Pre-trial Practices. PJ held consultations with the troika, the three countries in charge of Nigeria's review at the time – Djibouti, Switzerland, and Japan – before and during the process to ensure that important issues would appear in the final report and recommendations. CSOs also held meetings with diplomatic representatives and worked with partner organizations in countries that could influence the process. These various initiatives have resulted in positive impact, improving the human rights situation as well as the CSOs' ecosystem in the country.

Keywords

UPR, UNHRC, recommendations, monitoring, implementation, human rights obligations, troika, National Human Rights Commission Act, coalitions andnetworks, awareness campaigns

Strategies

- Media strategies (press briefings, televised interviews, op-eds and articles, inter alia)to raise general public's awareness of human rights issues;
- Application of direct pressure for report to contemplate all sensitive areas of human rights;
- Fostering greater participation through public consultations organized in partnership with Government;
- Engagement with diplomatic missions of the troika (the three countries' delegates assisting Nigeria's review) prior to and during deliberations;
- Sharing of recommendations with other diplomatic missions present in Nigeria;
- Engagement with relevant stakeholders such as Ministry of Foreign Affairs, National Human Rights Commission, Federal Ministry of Women Affairs, police, Ministry of Justice, key CSOs active in monitoring UPR process at national and state levels;
- Appeals to partner organizations in other countries to have their countries submit recommendations to Nigerian Government through their embassies;
- Further consultation with UN Human Rights Council during adoption of Nigeria's report;
- Work in networks and coalitions;
- Awareness campaigns.

The Universal Periodic Review (UPR) provides a mechanism for monitoring and following up on UN member states' human rights obligations and commitmentsas well as the implementation of these obligations. The Review identifies the strengths and weaknesses of governments in fulfilling their

human rights obligations; it provides an opportunity for human rights to be placed on governments' agendas and for civil society organizations to remind governments once more of their human rights obligations before the international community.

The effectiveness of the UPR is, to a large extent, contingent upon the involvement of CSOs in the entire process, including, in no small part, monitoring the recommendations' implementation from one review to the next and actively engaging in the session. CSOs in Nigeria contributed to this review process at all stages: before the UPR Working Group's examination of the state report, during the UPR Working Group (WG)session, in the period between the WGsession and the United Nations Human Rights Council (UNHRC) plenary session and finally during the UNHRC plenary session. Nigerian CSOs also follow up on the Council's recommendations. After each member state's review, CSOs have the opportunity to monitor the implementation of the recommendations contained in the outcome document. CSOs are able to highlight areas where governments fell short in their implementation and can call on the Human Rights Council to conduct follow up work as needed in the period between reviews.

During the last UPR process in 2013, Nigeria accepted 184 recommendations and noted 35,which makes a total of 219 recommendations.

Some of the recommendations that were highlighted by CSOs are:

1. Corruption

Recommendations:
• There is the need for independency of anti-corruption agencies;
• A law to protect individuals who report corruption cases should be provided;
• The Freedom of Information Act should be fully implemented at all levels of government;
• The Government should empower the police and other anti-corruption agencies on human rights laws so they can perform their functions with the required independence, credible leadership and adequate funding.

2. United Nations human rights mechanism and treaty bodies

Recommendations:
• Maintain an open and standing invitation to United Nations human rights mechanisms, particularly the Special Rapporteur against torture, and speed up the submission of pending reports to treaty bodies;
• The national committees on the various treaties should carry out their mandate in collaboration with CSOs;
• There is need for more activities to strengthen CSOs on UN mechanisms.

3. Economic, Social and Cultural Rights

Recommendations:
• Stop gas flaring and other polluting activities in the Niger Delta's hydro-carbon sectors; there should be stiffer penalties for gas flaring and other polluting activities;
• Implementation of the UNEP report;

• Reform of environmental laws to reflect current realities and to give the relevant agencies and citizens more powers to hold violators accountable;
• Full implementation/enforcement of the Fiscal Responsibility Act.

4. Right to Health

Recommendations:
The National Health Policy Bill should be reviewed by the House and also strive to ensure that popular voices are reflected in the final version before the President's assent.
• A special committee under the health sector should be mandated to effect a mechanism on the infant mortality rate;
• The enactment and enforcement of laws at national and state levels to protect the rights of persons living with HIV;
• The Government's executive armshould take steps to annually reportto the legislative arm the steps taken to realize the health objectives set forth in the 1999 Constitution.

5. National Human Rights Commission

Recommendations:
• Nigeria should encourage full implementation of the amended Act;
• The Commission should be provided with adequate funding;
• There should be due process and appropriate recruitment of the Commission's members;
• A mechanism should be set up to compel security operatives alleged to have indulged in acts of torture and other inhuman and degrading treatments to appear before the Commission when summoned.

6. Women and Children

Recommendations:
• Accelerate the speedy passage into law of the Violence against Persons Prohibition Bill (VAPP);
• Make efforts to implement the recommendations of the Convention on the Elimination of Discrimination Against Women (CEDAW);
• Full compliance with the Child Rights Act at all levels;
• The repeal of section 55 of the Penal Code in the North.

7. National Consultative Forum:

Recommendations:
• The Federal Government should ensure the possibility of making the National Consultative Forum an annual affair in order to promote dialogue and comprehension in the field of human rights;
• There should be a midterm implementation review of the recommendations;
• The Government should involve CSOs, including CSOs engaged in the UPR process and other treaty body procedures and human rights debates in general.

8. Reform of Poor Pre-trial Practices

Recommendations:
• The Government of Nigeria should work with state governments to introduce judicial practice directions limiting the length of pre-trial detention;

• The Government of Nigeria should establish a tracking system by which the federal and states attorney generals can effectively monitor the inflow and outflow of criminal suspects through the system with a view to ensuring that no one stays longer than necessary;
• The Government of Nigeria should expand the already existing Police Duty Solicitors Scheme, which is managed by the Legal Aid Council and deploys young lawyers to police stations, beyond the six states in which it currently operates.

Partnership for Justice (PJ) has been at the forefront of creating awareness about the United Nations Human Rights Council's recommendations and partaking in the process to advance human rights in Nigeria. During the 2009 review process, PJ engaged in media advocacy through television and radio interviews, talk shows and open-ended questions to inform media professionals and the public at large about the UPR and the need for stakeholders to effectively engage in the process. Invitations were sent to different media outlets for a press briefing about the UPR, after which we received a series of media invitations.

PJ also sent memoranda to the Government on the need to organise wide consultations and ensure that key human rights issues concerning women and children, gender-based violence, persons with disabilities, the right to health, economic, social and cultural rights, corruption, and poor pre-trial detention practices were included in the government report.

In addition, PJ also carried out the following activities:

• *Consultations with the troika* (Djibouti, Switzerland and Japan), the three countries that would lead the deliberations on Nigeria's report) *prior to the review of the country report:* PJ sent them a memorandum on the need for a law on violence against women in Nigeria. This document was necessary and a response to the Government report that gender-based violence was adequately covered under existing law.
• *Engaging the troika during deliberations with government delegates:* During the review, PJ continued to engage with the troika and other members of the Council, especially on issues affecting women in Nigeria.
• *Engagement of other diplomatic missions in Nigeria and in their home country thanks to partner organizations:* In particular, PJ focused on countries that had yet to send their questions to the Council and encouraged such countries to raise their concerns on the Council floor. This strategy was very successful as many countries spoke on the need for a better legal framework that adequately protects women in Nigeria, especially the domestication of CEDAW. One such country was Brazil through the NGO Conectas Human Rights, which raised the issue of violence against women and girls. We also wrote to the embassies within Nigeria proposingthat the recommendationsmade by their countries include the need to address gender-based violence. Most of these suggested recommendations were made to Nigeria.
• *Further consultation with the UN Human Rights Council during the adoption of Nigeria's report:* Since the review, PJ has been monitoring the implementation of the 30 recommendations made by the UNHRC. It has engaged in meetings with relevant stakeholders such as the Ministry of Foreign Affairs, the National Human Rights Commission, the Ministry of Women Affairs, the police, the Ministry of Justice, and key CSOs active in monitoring the UPR process at the national and state levels to determine the extent to which the Government is willing to implement the recommendations.

PJ can identify the following as the UPR's positive impacts on human rights in Nigeria between 2009 and 2013.

> Government/CSO collaboration: The UPR encouraged collaboration between state institutions responsible for promoting human rights and civil society organizations. In preparation for the UPR, the Federal Government submitted a national report on the human rights situation in Nigeria, the steps it has taken and the challenges it faces in promoting and protecting human rights in Nigeria. This report was drafted with some inputs from civil society. This national report contained the Government's agenda to live up to its obligationsregarding human rights treaties, laws and policies.

> Government's adoption of the NAP: After decades of campaignsin favor of the adoption of the National Action Plan for the Promotion and Protection of Human Rights (NAP), the Federal Government finally adopted the NAP as part of its national report to the UN. The NAP is a commitment to concrete measures that can be adopted to build and entrench the culture of human rights for all and serves as an audit of the human rights situationin the country, identifying areas that need improvement. To further demonstrate its commitment to advance human rights in the country, the Government deposited the NAP at the Office of the High Commissioner for Human Rights in Geneva. PJ has created awareness about the NAP inNigeria'ssix geopolitical zones. It has deposited copies of the Plan with different stakeholders across the country.

> Amendment of the National Human Rights Commission Act: At the end of the review process, the UN Human Rights Council made 30 recommendations on ways to improve the human rights situation in Nigeria. The Government accepted all these recommendations with an undertaking to implement them. In line with these recommendations, the Federal Government recently amended the National Human Rights Commission Act, giving the Commission more powers and independence in line with the Paris Principles. It is expected that the Commission's new statuswill enable it to carry out its duties to protect human rights in the country.

> Government officials' improved awareness of human rights and the role of CSOs: The adoption of the NAP as part of the national report submitted to the Human Rights Council led to improved awareness of human rights among policymakers. The national consultations led to strategic linkages between the Government and CSOs. It also led to greater media coverage of human rights violations in Nigeria during the review period.

Collaboration during the UPR has established linkages with government departments that were hitherto difficult for CSOs to access. For instance, PJ has been able to organize two consultative meetings with officials of the Ministry of Foreign Affairs on how to implement the UNHRC recommendations and also held a meeting with the officials on the 2013 midterm review. This collaboration, made possible by the UPR, creates a platform to hold the Government accountable for its human rights commitments and provides an avenue for dialogue with government officials with respect to proposed project activities. PJ plans to continue such collaborative meetings with a view to continue holding the Government accountable regarding its human rights commitments.

Another key aspect of this project was to strengthen CSO engagement with the NAP and the UPR through awareness and mobilization activities and to formulate a participatory framework for the activities' implementation. Participants at the "Zonal Conferences" include key human rights

activists and government agencies actively involved in the promotion and protection of human rights in Nigeria's sixgeopolitical zones.

A series of regional conferences were held in Nigeria's six geopolitical zones between 2010 and 2011 for the 2013 review. During the process, a report and a detailed letter were sent to the Ministry of Foreign Affairs to remind the Government of its obligation to involve CSOs and its commitment to organise yearly meetings with the CSOs as partners in the advancement of human rights in Nigeria. Without such involvement, the purpose of the UPR would be defeated. Important outcomes of these conferences were the formation of the Coalition of Nigerian Human Rights CSOs on the UPR ahead of the review in October 2013 through a link server for easy communication and contributionsfrom CSOs and partners towards the reports onthe human rights situation in each of Nigeria'ssix geopolitical zones. PJ also published a *Human Rights Handbook* that contained a simplified edition of the NAP, as well as the government report to the Human Rights Council and the recommendations accepted by the Government during the 2009 review.

Challenges

Access to funding from donors, corruption, as well as the unwillingness of victims of human rights violations to speak out remain important challenges to the further advancement of this work in Nigeria.

Tools available for Civil Society Organizations in Nigeria to tackle those challenges

> Coalitions/ Networks – Most CSOs in Nigeria that work with human rights are now carrying out human rights actions through coalitions and networks. This has improved the trust from funders/ donors and has helped curb corruption in the system to a large extent. By their own initiative, some funders/donors have taken time to investigate CSOs by having meetings with them, by maintaining constant communication and by disseminating information to both parties.

> Awareness campaigns, the dissemination of information and educating the victims and their families are also tools used to tackle victimization or the blaming of the victim of the violation or incident. The victims and their families are guaranteed protection thanks to safe platforms and spaces such as temporary or halfway houses and shelters, and the assurance that the perpetrators will be brought to justice.

SOUTH AFRICA AND THE INTERNATIONAL CRIMINAL COURT – WHEN ACTIONS SPOKE LOUDER THAN WORDS

CENTRE FOR HUMAN RIGHTS UNIVERSITY OF PRETORIA

Summary

This article will explore the role that civil society played leading up to South Africa's decision to withdraw from the International Criminal Court (ICC), as well as the subsequent events that effectively reversed this decision. Indeed, despite South Africa's widely applauded commitment to international criminal justice, and its domestication of the Rome Statute, it has failed to uphold its duties under both the Rome Statute and the ICC Act. In June 2015, South Africa hosted the African Union (AU) Summit, and one of the people expected to attend was President Omar Al-Bashir from Sudan. The ICC had charged President Al-Bashir with ten counts of crimes, and two arrest warrants were issued against him in 2009 and 2010. In spite of international media campaigns and litigation efforts led by CSOs, South Africa did not arrest President Al-Bashir. Pressure from CSOs led to South Africa withdrawing from the ICC, a decision that was reversed shortly thereafter following a legal action again led by CSOs.

Key Words

International Criminal Court, role of civil society, criminal jurisdiction, crimes against humanity, genocide, war crimes, Rome Statute, beacon of human rights, non-interference, strategic litigation

Strategies

- Policy engagement;
- Advocacy;
- Strategic litigation.

Introduction

n an age of 'deglobalisation', and resurgence in conservatism globally, the question is often asked – what is or should be the role played by civil society in international affairs? Does civil society really have an impact, and if so, is this impact always a positive one? South Africa's move to withdraw from the International Criminal Court (ICC), as well as the subsequent decision to remain a member, was the culmination of a series of events involving civil society that transpired in South Africa and abroad. Some have blamed civil society directly for ultimately forcing South Africa to submit its notice of withdrawal, causing more harm than good in the process.

However, many would argue that civil society also played an instrumental role in reversing the South African Government's decision to withdraw. This article will explore the role civil society played leading up to South Africa's decision to withdraw from the ICC, as well as the subsequent events that effectively reversed this decision. The article will give a brief introduction to the ICC and South

Africa's history with the Court, followed by an overview of key events and the strategies employed by civil society to counter some of these events.

The context

The ICC, based in The Hague, the Netherlands, is an international legal body with permanent criminal jurisdiction to prosecute crimes against humanity, genocide, and war crimes. It was formed under the Rome Statute and opened in 2002. There are currently 124 state parties to the Rome Statute. The ICC, being an international body, relies on its members to play certain roles in the execution of its mandate. For example, once the ICC charges an individual with a crime, it relies on its member states to apprehend the individual and hand him/her over to the ICC for prosecution.

South Africa signed and ratified the Rome Statute in 1998, becoming the 23rd state party. To domesticate its international commitments under the Rome Statute, the South African Parliament adopted the Implementation of the Rome Statute of the International Criminal Court (ICC Act), which became law in August 2002. In fact, South Africa was one of the first countries to domesticate the Rome Statute. It was a noteworthy development in South Africa, since prior to this, the country had no domestic legislation on the subjects of genocide, war crimes and crimes against humanity and no prosecutions of international crimes that had taken place in South Africa.

The case

Despite South Africa's widely-applauded commitment to international criminal justice, and its domestication of the Rome Statute, it has failed to uphold its duties under both the Rome Statute and the ICC Act. In June 2015, South Africa hosted the African Union Summit, and one of the people expected to attend was Sudanese President Omar Al-Bashir. The ICC had charged President Al-Bashir with ten counts of crimes - five counts of crimes against humanity, and more specifically murder, extermination, forcible transfer, torture and rape; two counts of war crimes, more specifically intentionally directing attacks against a civilian population or individuals not taking part in hostilities, and pillage; and three counts of genocide. These crimes allegedly took place between 2003 and 2008, and the ICC issued two arrest warrants for President Al-Bashir in 2009 and 2010.

Leading up to the AU Summit in 2015, several human rights groups argued that South Africa had a commitment to arrest President Al-Bashir if he entered the country. Despite these claims, President Al-Bashir entered the country and attended the AU Summit. While the AU Summit was ongoing, several groups approached the High Court in South Africa to gain clarity over whether or not the South African Police Service had the authority, jurisdiction and obligation to arrest President Al-Bashir. The High Court ordered that President Al-Bashir was not allowed to leave the country, pending a decision on whether or not he should be arrested. While the main hearing was taking place a few days later in the High Court, President Al-Bashir left the country through a military airbase outside Pretoria.

Over the next year, the Southern Africa Litigation Centre (SALC) spearheaded several cases that were brought to the courts in South Africa regarding the Government's failure to honour its commitments under the Rome Statute and the ICC Act, and its failure to uphold a court order to prevent President Al-Bashir from leaving the country. Early in 2016, the Supreme Court of Appeal of South Africa ruled that the failure to arrest President Al-Bashir was unlawful, in response to which

the South African Government lodged an appeal to the Constitutional Court, the highest court in the country. The matter was scheduled to be heard on 22 November, 2016, but on 19 November, 2016, the South African Government announced its intention to withdraw from the ICC and also gave notice of its withdrawal from the Constitutional Court case.

South Africa's notice to withdraw caused international shockwaves. Widely criticized by civil society, South Africa stated in the notice of withdrawal that it "has found that its obligations with respect to the peaceful resolution of conflicts at times are incompatible with the interpretation given by the International Criminal Court". In addition, the South African Government reiterated its commitment to African solidarity, referring to ongoing efforts around the creation of a regional criminal court. Shortly after South Africa gave notice of its intentions to withdraw from the ICC, two other African states (Burundi and The Gambia) issued similar notices of their intentions to withdraw from the ICC, with former Gambian President Yahya Jammeh stating on television that the ICC was "an international Caucasian court for the persecution and humiliation of people of color, especially Africans". Experts suspected that Uganda, Kenya and Namibia would follow suit.

Subsequent to South Africa's decision, and especially in light of the 'domino effect' it apparently caused in Africa, civil society was criticized by political commentators and academia on the role that it had played in pushing South Africa to the point of withdrawal. Since it was mainly civil society that tried to force the South African Government to abide by its obligations under the Rome Statute and the ICC Act, critics were of the opinion that South Africa's withdrawal should have been one of the foreseeable outcomes of the South African Government's reaction to the judicial proceedings, a point critics feel CSOs should have considered when developing their campaigns.

It is helpful to note that since the advent of the post-apartheid era, South Africa's official foreign policy cites human rights as one of its guiding principles. In the years following democratization in South Africa, the country was praised for being a beacon and example of how human rights could be the guiding light to a healthy foreign policy. It was also during this period that South Africa participated in establishing the ICC and passed the domestication law. However, during the 2000's, South Africa's performance in international fora such as the UN Human Rights Council began to change; it went from being a state party that was seen as a champion for human rights to one that played a more 'neutral' role and placed non-interference in the domestic affairs of others at the centre of its foreign policy. When President Al-Bashir set foot in South Africa in 2015, civil society was faced with a difficult situation. Bearing in mind South Africa's apparent commitments to international criminal justice, and to the ICC in particular, civil society had to choose whether or not (and how) it would engage on the issue, as well as how to get South Africa to act according to its own commitments. Prior to the AU Summit, several civil society members started speaking out about the position that South Africa would need to take, noting that President Al-Bashir was not welcome in the country. Nonetheless, President Al-Bashir attended the event, and the Government refused to follow court orders that could potentially lead to his arrest.

Yet, even after South Africa took the decision to issue a notice of withdrawal from the ICC, civil society in South Africa persisted. A number of civil society organizations, including the Legal Resources Centre and the Centre for Human Rights, challenged South Africa's decision to withdraw in court, claiming that such a decision would first need to be approved by the South African Parliament. In February 2017, the Gauteng High Court ruled that the initial process to withdraw from the ICC was indeed unconstitutional and invalid, and that Parliament would need to be consulted first. As a result

of the High Court decision, the South African Government revoked its notice of withdrawal, leaving its membership status in the ICC unchanged.

The strategies

During the course of South Africa's relationship with the ICC, civil society (both local and international) mainly used three strategies to address the issue – policy engagement, advocacy, and strategic litigation. Of course, each of these strategies was employed during different phases of South Africa's dealings with the ICC and was contingent upon the nature of the organization in question. The following paragraphs will briefly mention how each strategy was used to engage with the issue of international criminal justice.

As is often the case, civil society engaged with the policy and decision-making bodies mainly leading up to the ratification of the international agreement (the Rome Statute in this case), and the adoption of the domesticating instrument (the ICC Act). While South Africa signed on to the Rome Statute relatively early, significant lobbying efforts by civil society was still key. Civil society partook in efforts to domesticate this instrument, and the ICC Act got pushed through Parliament four years after the ratification of the Rome Statute. As was previously mentioned, the significance of this development should not be undervalued, as it was the first time South African law allowed for jurisdiction over international crimes.

Throughout South Africa's membership at the ICC, civil society has played a key role in advocating for South Africa to abide by its obligations under the Rome Statute. The advocacy efforts have often gone hand in hand with strategic litigation. In addition to the strategic litigation that is discussed above regarding the arrest of President Al-Bashir, civil society (again spearheaded by SALC) also strongly engaged in advocacy efforts and pursued strategic litigation to the effect that South Africa investigate crimes against humanity that took place in Zimbabwe. What became known as the Zimbabwe torture case' raised a number of very complex issues under international criminal law and pushed the envelope on issues such as extraterritorial obligations and universal jurisdiction. However, civil society celebrated the fact that the case (which was successful) at the very least meant that South Africa could not be used as a safe haven for persons committing crimes abroad, when those crimes are prohibited by the ICC.

The important role and value of litigation throughout the process cannot be overemphasized. There is a wide range of different views among legal scholars and practitioners on the role that courts should play in a democracy, with some in support of a very active role while others feel that an overactive judicial system or activist oriented judiciary is detrimental to the democratic fibers of a society. Regardless, the system was very effectively used by civil society to, at the very least, get the South African Government to seriously take stock of its commitments under the ICC (and potentially under international human rights law, more broadly), and cast light on the fact that foreign policymaking should be subject to democratic principles.

South Africa's ICC saga raises interesting questions about states and their commitments under international human rights law and the role that civil society plays, and should play, when engaging with these issues. Some feel that South Africa's initial decision to leave the ICC was a direct result of civil society's continuous pressure and interference in what was perceived to be international politics. Others, including the majority of civil society organizations involved in this story, feel that those that tried to pressure South Africa into fulfilling its international obligations were doing exactly what civil society is supposed to do – acting in the best interest of the public.

The series of events over the past few years raises key questions about South Africa's sincerity when it comes to commitments with regard to international criminal justice and security. Is signing on to these agreements just a form of paying lip service to principles the Government is not willing to uphold? If that is the case in the context of international criminal justice, what would prevent the State from behaving similarly with respect to other human rights commitments? If anything, South Africa's ICC saga highlights the fact that it is imperative for states to consider the consequences of their actions in international fora. If states are not willing to act onthe commitments they make, those commitments mean nothing.

The Lessons Learned

The fact that South Africa was held to account (at least to some extent) for its actions, and ultimately forced to revoke its notice of withdrawal, can be seen as a massive victory for civil society. In the process, the courts also highlighted the democratization process of foreign policy, noting the role of institutions like Parliament. The story of South Africa and the ICC over the past few years serves as a great stepping stone for future civil society strategies around engagement on issues such as foreign policy, proving that there is a rightful role for civil society organizations to play at the intersection between foreign policy and human rights, and international affairs more broadly.

CASE STUDY – THE MALDIVES POST-EMERGENCY NOVEMBER 2015

COMMONWEALTH HUMAN RIGHTS INITIATIVE - CHRI

Summary

In recent times, the democratic principles of the Maldives, traditionally a moderate Muslim country, have undergone a rapid decline, reinforced in both law and practice. This is accompanied by an equally rapid and seriously disconcerting radicalization of the majority of the population. Over time, the international community has expressed and demonstrated its concern for this deterioration and has applied pressure on the Government to reverse these trends.

Key Words

Commonwealth, constitutional freedoms, special envoys, collapse of democratic institutions, accountability, due processes, rule of law, mistrials.

Strategies

• Monitored and analyzed developments in law and policy that impacted rule of law; • Documented human rights abuses and erosion of rule of law by regularly monitoring developments and tracking cases, and through periodic visits, multi-stakeholder interviews and informal interactions;
• Maintained visibility by periodically issuing press statements, writing articles and opinion pieces in the local press, and organizing events to share research findings and analyses;
• Maintained contact with government and opposition, shared information regularly, and maintained continual communication with partners;
• Kept track of key players on the scene and their interpersonal dynamics. This is particularly important because Maldives has a small population, and personal rivalries and family feuds are a huge factor driving politics in the country;
• Monitored, informed and engaged with international mechanisms focused on the Maldives, especially Commonwealth mechanisms;
• In loco fact-finding mission;
• Targeted advocacy with countries with an interest in the Maldives;
• Advocacy with the Commonwealth;
• Media campaigns.

Introduction

The Republic of The Maldives is an archipelago (cluster of islands) in the Indian Ocean strategically located at the center of major oil export routes. It is also a major tourist destination in South Asia, and was known to be a moderate Islamic country for centuries. The country has witnessed a rapid decline in democracy, the rule of law and basic rights, reinforced in both law and practice. This is accompanied by an equally rapid and seriously disconcerting radicalization of the majority of the population. A handful of human rights activists and organizations in-country that have been resisting both these negative trends are under serious threat of survival, along with journalists, bloggers and anyone that challenges the Government's narrative.

The international community has been closely monitoring the Maldives, particularly since the controversial transfer of power in February 2012 that led to the ouster of President Mohamed Nasheed, Maldives' first democratically-elected head of state. Resolutions by the European Parliament, the UN Special Rapporteur's visits and reports, the Commonwealth's appointment of special envoys and its offer of technical assistance, press statements from the Canadian, UK, and US Governments (among others) and fact-finding reports from international organizations such as Amnesty International are all examples of sustained efforts to put pressure on the Maldivian Government to reverse these trends. Yet the present administration remains defiant and has even put forward its candidacy to the UN Security Council for the term 2019- 2020. Nonetheless, it is important to ensure there is no letup in the international pressure on the Maldives. Previously, when the democracy movement broke out following a case of custodial death in September 2003, international pressure was a key factor in prompting then President Gayoom to roll out democratic reforms. This history is important to bear in mind. It points to the role the international community at large can play in influencing developments in a small island nation with an economy that is heavily dependent upon tourism and foreign imports. Today, when the nation's democratic institutions are floundering, and the current administration is not just rolling back constitutional freedoms but also cementing ties with regimes like Saudi Arabia's and China's in a bid to gain strategic advantage, the need for liberal democracies and international organizations to sustain the pressure is all the more critical. This slide towards authoritarianism poses a real danger to regional stability.

On a positive note, local civil society, although small, is putting up a brave resistance, and opposition parties have joined hands to fight authoritarianism. These developments need both political and technical assistance for greater impact.

The Case

The problem was the collapse of democratic institutions and rule of law, the arrests of opposition leaders and well-documented mistrials, the crackdown on protests and on the media, the rampant arbitrary arrest of protestors, the enactment of regressive lawsa recent one being The 2016 Defamation and Freedom of Speech Act (which criminalizes speech or content "if found to be either defamatory or anti-Islamic, or for breaches of social norms or national security"), threats against civil society and any kind of opposition, and the total lack of due process in several cases (not just highprofile ones) involving the opposition. In November 2015, the Government also declared a state of emergency (SOE) which, though short-lived, made clear the Government's intent.

Since the transition to democracy in the Maldives in 2008, CHRI has engaged with and provided technical expertise to successive governments, civil society and independent oversight bodies such as the Police Integrity Commission, the Human Rights Commission of the Maldives and Information Commission, has close partnerships with human rights groups in-country, and is seen by them as a credible, international human rights organization based in the region with a focus on systems and institutions, particularly in the areas of access to justice and access to information. Local partners were keen on CHRI strengthening on-going advocacy efforts internationally, as a South Asia-based international organization that has an abiding interest in the Maldives.

The Strategies

CHRI considered several factors, including geo-political influences on the Maldives, our own mandate as an international organization based in Delhi with a Commonwealth focus, and our expertise in policing and access to justice. We consulted extensively with local partners on what added value we can bring, given that international human rights organizations such as Amnesty International were closely monitoring and reporting on the high-profile arrests and trials. Amnesty International had issued a report, and other organizations had done so as well. We decided to leverage the fact that we are based in India (Maldives's largest neighbor in South Asia with geo-strategic interests), our networks in South Asia, knowledge of and engagement with Commonwealth processes, experience with and knowledge of systems in the Maldives, and networks across the political spectrum over several years of engagement (which are so crucial in the now highly-polarized country).

CHRI has done the following consistently over a period of time[1]:
• Monitored and analyzed developments on law and policy that impacted the rule of law;
• Documented human rights abuses and the erosion of the rule of law by regular monitoring of developments and tracking cases, and through periodic visits, multi-stakeholder interviews and informal interactions;
• Maintained visibility by periodically issuing press statements, writing articles and opinion pieces in the local press, and organizing events to share research findings and analyses;
• Maintained contact with government and opposition, shared information regularly and maintained continual communication with partners;
• Kept track of key players on the scene and their interpersonal dynamics. This is particularly important because Maldives has a small population, and personal rivalries and family feuds are a huge factor driving politics in the country;
• Monitored, informed and engaged with international mechanisms focused on the Maldives, especially the Commonwealth mechanisms.

When the state of emergency was declared in November 2015, CHRI switched gears and got into campaign mode. It became crucial to push for accountability from outside, as independent institutions were being compromised and undermined with no letup within the country, and the state of emergency, though short-lived, left no doubt about the Government's intentions and confirmed the slide to authoritarianism.

Specific strategies we have used since November 2015 include:
• Mounting a fact-finding mission immediately after the lifting of the SOE

The SOE was declared on 4th November, 2015 and lifted on 10th November; our factfinding took place from 22-26 November, 2015.

The mission was immensely helpful as we had already been doing background research and legislative analyses, as well as translating policy documents.

[1] *See Annex 1 for a detailed timeline of the case.*

CHRI deliberately chose to have a South Asian mission, as it would have wider acceptance and greater impact. This was also in keeping with the advice we received from partners on the ground. We conceived the mission as an independent, objective fact-finding one of impartial experts, put together and assisted by CHRI. We chose a high-profile and diverse team comprised of independent and credible experts from India, Pakistan and Sri Lanka. The team was headed by a former ambassador from India who has also served commendably as a member of the National Human Rights Commission, and included a well-known legal expert from Sri Lanka, who is currently an Information Commissioner, and a reputed independent human rights lawyer from Pakistan. CHRI managed the groundwork, the preparations, the coordination, the appointments, the terms of reference and the report writing, with due regard to the independence, expertise, and experience of the members.

Another important factor was the focus of the enquiry. It had to complement and add value to reports of other international human rights groups (that focused on highprofile political prisoners' cases), and be in tune with CHRI's own systemic-focus approach and long-term engagement in the Maldives. The mission looked at: **1.** The functioning of the Maldives Government, and its willingness to uphold constitutional rights, the rule of law and good governance; **2.** The relationship between the executive, the People's Majlis, the judiciary and independent institutions, civil society and the political opposition; **3.** The specific role of the Government in the current deterioration of democracy and the rule of law; **4.** The role of and current challenges before independent institutions and civil society; **5.** The steps taken by the Government to counter the decline in the rule of law, good governance and democracy; **6.** Effectiveness of the recourse to remedies for human rights violations; **7.** Causes and ramifications of the November 2015 SOE; **8.** Implications and recommendations regarding Maldives' status in the Commonwealth. The Constitution of the Maldives, Commonwealth commitments, and international human rights law formed the backdrop against which the fact-finding mission analyzed the legal framework and situation on the ground. It is the depth of the enquiry, the framework and the institutional focus that rendered the fact-finding mission useful to foreign missions and various mandate holders of relevance, including the Commonwealth Secretary General's Special Envoy to the Maldives.

During the visit, the fact-finding mission interviewed representatives of the ruling political party and the opposition, officials from independent bodies (namely the Anti- Corruption Commission, the National Integrity Commission and the Prosecutor General's Office), members of civil society, journalists from independent media outlets and legal practitioners. Unfortunately, and despite numerous requests, the mission was not able to meet any government officials, all of whom, the mission members were informed (by the Maldivian High Commission in Delhi in response to our request for appointments), were "not in town" on the dates of the mission. Yet, upon arriving in Malé, the team discovered that most of the officials with whom we had requested to meet were in the capital at that time. Subsequently, the team filed individual meeting requests with several ministries but was not given appointments in most cases. Although the mission was granted advance permission to interview the imprisoned former President Mohamed Nasheed, just 15 minutes before the scheduled time the meeting was cancelled for unspecified reasons. Our request for clarifications, filed with the Maldives Correctional Services and the Home Ministry, remains unanswered. **As we had followed the right procedures, all this worked in our favor and onlyserved to further strengthen the findings and recommendations.**

• Targeted advocacy with countries with an interest in the Maldives

Equipped with our recent fact-finding report, we met with high commissioners in Delhi and London, targeting the countries that were in the Commonwealth Ministerial Action Group (CMAG), and sent

out the report to a targeted list of people (including high commissions in Colombo) with the potential to exert influence in different ways. We also did briefings, facilitated and organized by the EU delegation in Delhi, for highranking diplomats from EU countries.

It was important to target the high commissions / embassies in Delhi and Colombo as their input is crucial in determining the countries' policy in relation to the Maldives.

Organized a report launch in London at the Canadian High Commission that was attended by various high commissioners and the Commonwealth Secretariat's key staff (also as part of our Commonwealth advocacy).

Kept up the communication by sending our various press releases, statements and regular updates from the ground on the lack of progress on any of the identified problem areas. Met with the Indian High Commissioner in the Maldives during our follow-up visit in September 2016.

• Advocacy with the Commonwealth

As a Commonwealth organization, we chose to target the Commonwealth for our advocacy as it was our natural port of call, and the Maldives was in clear breach of core Commonwealth values and has been under the consideration and scrutiny of the Commonwealth Ministerial Action Group (CMAG) since 2012. The Commonwealth Ministerial Action Group (CMAG), tasked with addressing serious or persistent violations of Commonwealth values, has met thrice in 2016 to discuss the deteriorating standards of democracy and human rights in the Maldives. The country has also been receiving technical assistance from the Commonwealth; the Commonwealth has a focus on small states, and four of Maldives' neighbors in the South Asian region (Sri Lanka, India, Pakistan and Bangladesh) are Commonwealth countries for whom the Maldives is of strategic importance. Given all this, we expected that the Commonwealth would have some leverage with the Maldives Government. **Our factfinding mission, report and updates from the ground put us in just the right position to give input to CMAG's efforts by synchronizing the timing of our report, statements and events with theirs.**

• Media Campaign

It was important to keep up our visibility in the local media, in the region and in key countries through timely press statements, articles and opinion pieces in print and online media, and to maintain engagement through social media. Reaching out through social media was important in this context given that mobile internet outreach in the Maldives is 40%, and it was also a great way to reach out to the diaspora and generate discussion, especially among young people.

Successes and Failures

The biggest success of our intervention was that there was a lot of commonality between the problem areas we had identified in our report and in the areas identified by the Commonwealth. We have reason to believe that our inputs were given serious consideration, and fed into both CMAG's stances and the envoy's report. We did not manage to push for stronger action, like a direct threat of suspension from the April Commonwealth meeting for lack of progress, and suspension from the September meeting for not paying any heed to repeated Commonwealth statements demanding progress.

The value of our holistic focus on the rule of law and democracy in the Maldives was recognized by international actors including governments (EU and CW member states) and civil society groups, and, we believe, had an impact on their interventions in relation to the Maldives.

We believe that the most important ingredient of our success was the fact that we have been actively and consistently involved and engaged with the Maldives and various stakeholders in the country over a long period of time. This involvement and engagement were beneficial when we had to respond quickly post-SOE, get together an excellent team from the region, and arrange meetings at short notice with the right people from across the spectrum. Our long-term engagement also means that we have enough background research and perspective to build upon.

There are practical considerations of costs, visas, and optics (how something is viewed by the various people you are targeting for your advocacy). In this case, we feel things worked out neatly as we could keep costs reasonable with a regional team, visas were not a problem for citizens of neighboring countries, and our own strategy was in sync with what our partners wanted and was able to help things along with our primary focus, the Commonwealth and CMAG (which is ideal when you are advocating).

When we go into challenging mode in our engagement with the Maldivian Government, the space for engagement in the immediate future shrinks. This is something we have had to factor into our interventions. It does help our credibility in the long run, and our intervention is valued for being based on principles, knowledge of local institutions and experience. Here, it helps that this is not a one-off intervention, but rather part of an on-going engagement because that is when an intervention is most effective and credible.

An important point to note about our role is that when confrontation with the Government over the slide to authoritarianism brought local CSOs in direct conflict with the Government, and their access became highly restricted, as an international organization based in the region with contacts on all sides, we could still access the Government and conduct our own independent assessment and advocacy, in-country and internationally. At a time when the few local rights-based organizations are targeted and regularly threatened, the value of constant vigilance by organizations like ours cannot be overstated.

In terms of setbacks, we did not anticipate that the Maldives would leave the Commonwealth, even before the Commonwealth took any concrete action such as suspension. Therefore, although we were successful in our advocacy on the one hand, on the other the decision of the Maldives to leave the Commonwealth altogether has meant we will have to recalibrate our advocacy. We may have done well to focus our energies on more than one forum, but we might not have had the same impact. This is always a difficult choice – which forums to focus on and to what extent- - and has to be weighed against our own strengths and capacities.

Things we would have liked to do better

We would have had more purchase from key countries such as India if we had been better able to showcase the irrefutable link between the rapidly-deteriorating human rights situation and their strategic interests.

We would have liked to improve our engagement with diplomats and bureaucrats in Delhi and London on a more regular basis, and engage not only at the high commissioner level, but also at the first secretary level and with other relevant desks.

Another limitation / failure was our inability to access local language press directly. We could also not go to the islands, as the costs were prohibitive, and time was of the essence, particularly for the fact-finding mission.

Recommendations

Campaigns that are part of, and come out of a long-term engagement are more useful, impactful and effective. A focus on systems and institutions is important, even when high-profile individual cases are getting a lot of attention. Lastly, we can't help but wonder if we could have done something differently to prevent the Maldives from leaving the Commonwealth. There, it is advisable to constantly weigh how much international pressure is optimal at any given time. The Gambia quit the Commonwealth in similar fashion in October 2013; the new Government has expressed its desire to come back into the fold in 2016. We will push the Commonwealth to use the opportunity to reinforce demonstrable commitment to its core values as the criteria for new membership or reentry. There is hope.

Annex 1

Timelines at a glance			
Month	***The Maldives government***	***CMAG***	***CHRI***
November 2015	SOE declared by the Government of The Maldives– 4 November Emergency withdrawn – 10 November		CHRI fact-finding mission to the Maldives - 22-26 November
January 2016			CHRI publishes report of its fact-finding mission to the Maldives CHRI shares report with CMAG
February 2016		CMAG delegation to the Maldives from 6-8 February CMAG holds an extraordinary meeting to review the Maldives on 24 February; issued a statement laying down six priority points of action for the Maldives	CHRI shares a memo based on its fact-finding report and recommendations with CMAG CHRI's response to the CMAG statement – whose priority areas are very close to CHRI's own recommendations

Timelines at a glance			
Month	*The Maldives government*	*CMAG*	*CHRI*
April 2016		CMAG meets to review progress against the priority areas - 20 April; issues a concluding statement	CHRI submission to CMAG - 18 April CHRI's response to the CMAG statement – 22 April
September 2016		CMAG meeting to review the Maldives and review progress on its 6 point recommendations - 23 September	CHRI's follow-up technical visit to the Maldives: 4-7 September CHRI's submission to CMAG before their meeting on 23 September on the Maldives' progress against the priority areas since the April meeting CHRI response to CMAG statement on the Maldives - 28 September
October 2016	Maldives announces that it is quitting the Commonwealth - 13 October		Joint statement issued by CHRI together with human rights groups and activists from South Asia in response to Maldives' decision to quit the Commonwealth - 16 October
Since October 2016			CHRI continues to monitor developments, maintain contact with partners and is reviewing its internal strategy focusing on the UN

A SUMMARY OF STRATEGIES ON FOREIGN POLICY AND HUMAN RIGHTS

This section covers an overview of the strategies presented at this publication around the work on foreign policy and human rights from a Global South perspective. This is based on the case studies and experiences from the organizations that are part of this publication and is not an exhaustive list of actions and strategies.

Knowledge and data gathering

• Monitor national actions abroad and influence positions, for instance monitor the state's stances, positions, blocs and coalitions in international and bilateral diplomatic relations; (use online tools such as rights docs, RADAR)

• Use right to information/access to information laws to obtain information for action, advocacy and research;

• Bridge information gap between relevant international bodies and specific interest groups, e.g. making sure communities on the ground understand their rights under international systems etc.

• Monitor and analyze developments in law and policy that impact rule of law, human rights principles & standards as the basic ground work for advocacy;

• Document human rights abuses and erosion of rule of law by regularly monitoring developments and tracking cases, through periodic visits and through the media, multi-stakeholder interviews and informal interactions;

• Create emergency communication lines to facilitate safe whistle-blowing or complaints from the public that could strengthen your case - e.g. using the post to receive citizens' complaints relating to the state's involvement in drug trafficking as evidence to expose the magnitude of the problem;

• Keep track of the changing political context, key players on the scene and their interpersonal dynamics, for any intervention to be more effective and relevant.

• Conducted in location fact-finding mission in situation of egregious violations, preferably with credible, independent members.

Use of regional and international mechanisms and international strategies[1]

• Use UN human rights bodies and mechanisms (special procedures of the Human Rights Council, UPR, treaty bodies, OHCHR) to publicize human rights violations taking place in a country in order to put pressure on the that country;

• Use regional mechanisms, such as the Inter-American Human Rights System, African

[1] *This publication only focuses on influencing foreign policy. For information on how to engage on the UN system and other regional mechanisms, please go to the publications recommended.*

Human Rights System, European Mechanisms, ASEAN/AICHR to add pressure on foreign policy positions;

• Publicize in-country the positions states take on human rights at UN and regional mechanisms at national debates;

• Add human rights as a consideration in foreign policy on the agenda of international NGOs and national organizations;

• Generate pressure on foreign policy positions taken by states through public condemnation of human rights situations at regional and UN levels;

• Coalition building with national organizations on the country's positions in international forums;

• Engage with diplomatic missions and foreign ministries to influence their foreign policy on human rights situations;

• Targeted advocacy with foreign ministries of states with economic and political stakes in the human rights situation;

• Monitor and advocate on state nominations to positions on multilateral bodies and at UN and regional mechanisms.

Media strategies

• Making use of public campaigns, both online (social media, email listservs etc.) and in person (disseminating information through pamphlets, flyer, or posters/ speaking at events or public gatherings, protests etc.);

• Making use of traditional media strategies - briefing journalists, radio and television presenters, newspaper agencies and others about the details of your campaign, to ensure accurate and strategic reporting on the case;

• Raising awareness of the general public on human rights broadly, but your specific case and the human rights implications in particular - perhaps also highlighting why these are legal obligations (if applicable);

• Create a media information kit with easily digestible information (using infographic, short audiovisual, Q&A format etc.)

• After the groundwork has been done, it is important to maintain visibility by periodically issuing press statements, writing articles and opinion pieces in the local press, and organizing events to share the status and progress of your campaign, and progress on the issue more broadly.

Domestic advocacy

• Trust-building and regular coordination with relevant ministries and government departments (if possible and applicable);

• Strategically targeting relevant branches of government - e.g. executive, judicial, or legislative;

• If useful, targeting and making use of opposition parties in government;

• Setting up multi-stakeholder dialogue and participation platforms/ spaces to counter lack of accountability and transparency in the state's foreign policy positions, with an added goal to foster culture of accountability within state bodies;

• Engage with other relevant stakeholders, particularly independent national/provincial bodies with a human rights mandate - e.g. national human rights commissions, other government agencies or bodies (gender commissions, equality commissions, etc.)

• Ensure collaborations with other civil society organizations, academics where possible (see civil society section below for more information);

• Require the legislature to urge the executive to present their yearly foreign affairs priorities.

Strategic litigation

• In some cases a campaign may require strategic litigation - this would typically target legislative or regulative frameworks, existing jurisprudence, or specific government actions;

• The strategic litigation methodologies (identifying partners to include, courts to approach, issues to raise etc.) would depend very much on the facts of each case;

• Strategic litigation could happen at different levels - from the lowest to highest domestic courts, up to sub-regional (e.g. ECOWAS Court of Justice) and regional courts (e.g. African Court on Human and Peoples' Rights);

• There are also quasi-judicial mechanisms that could be used for strategic 'litigation' - e.g. African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights, UN Treaty Bodies etc.;

• Strategic litigation could be led by traditional methods of direct litigation, or adding arguments to cases as amicus curiae (friends of the court) - this would be strengthened by working closely with partner organizations.

Civil society

• Collaboration and cooperation with other civil society organizations is strongly encouraged (both domestically and internationally);

• Government should be engaged collectively by civil society where advisable;

• Using civil society to bring public voices to government on issues related to foreign policy and human rights;

• Appeal to partner organizations in other countries to have their states bring recommendations to relevant governments through platforms such as the Universal Periodic Review (UPR), state reporting under regional bodies, treaty body reporting, etc.

• Identifying relevant civil society networks and coalitions that would advance your work, and utilizing it as such;

• Collaborate with international organizations based in the main cities of access to international human rights bodies (Geneva, New York, Brussels, The Hague, Vienna);

• Setting up platforms and tools to ensure continuous communications between civil society organizations working on issues together;

• Mobilize civil society partners to assist at the domestic and international levels;

• Engaging in peer learning and knowledge sharing exercises with other civil society organizations - both domestically and internationally

MAPPING FOREIGN POLICY AN HUMAN RIGHTS

As this collection of pieces has illustrated, while foreign policy was traditionally considered to fall within the domain of government, there are in fact a number of important players, platforms, and decision making structures that are relevant in this context. Mapping out and understanding the different relevant structures – inter alia, institutions, organizations, and persons – that make up the foreign policy decision-making apparatus at the national, regional and international levels, is a critical first step towards any sort of work that aims at monitoring and influencing foreign policy that impacts human rights.

The organizations involved in this publication have identified and tested various ways of demanding greater democratization in the field of foreign policy, with varying levels of success. Broadly speaking, the strategies contained in this publication can be divided into two main categories - one concerns making use of existing and official spaces devoted to foreign policy and human rights discussions, and the other concerns "non-traditional" or "unofficial" spaces where foreign policy that may impact on human rights is discussed and developed.

The following section will attempt to give some guidance, based on the experience of the organisations involved, on who, where and how to engage on foreign policy in the context of human rights. This is by no means an exhaustive list of persons, institutions, platforms or structures. It merely suggests a number of possible directions in which organizations ought to be looking if they want to work in this area.

> When mapping out the foreign policy landscape, it makes sense to start at the national or domestic level, looking at existing apparatus of foreign policy making. Who are the main actors involved in foreign policy decisions? Who is consulted in the decision-making process? What are the provisions about foreign policy in the constitution or domestic legislative framework, if any? What is the budget allocated to foreign policy and how is it distributed? What role, if any, does the parliament play in foreign policy matters? Are there formal or informal commissions dedicated to foreign policy, and can civil society participate? What are the various treaties and international agreements that the government has signed on to, and are they complying with it?

Here are a few indicators that can help answer some of the above questions:

- Press releases and publicly available records of activities from ministries that deal with foreign affairs, or other government departments, regarding human rights issues at the international level could be an important indication of the official positions of your government;

- Foreign policy white papers are very useful, and indicate some level of commitment to transparency and accountability;

• Complete and updated website in your official language, allowing access in real time to national stakeholders;

• Existence of laws aimed at limiting civic space is an important danger sign

• such as laws that limit or prevent foreign contributions to CSOs;

• Legislative/Parliamentary Foreign Policy and/or Human Rights Committees' agenda of public hearings, considerations of bills, etc., which constitutes a relevant instrument to reinforce checks and balances;

• National human rights institutions can play an important role, especially if they have an international agenda; and at the national level they could act as an important bridge between foreign policy and human rights issues;

• Journalists who write about foreign policy are critical in providing information to the public, and it is important to ensure that they cover human rights issues, broadening the community engaged in foreign policy and human rights;

• Official social media accounts of government institutions and representatives can serve as an instrument for engagement between state officials and citizens;

• Assessing whether high level authorities include human rights issues in their foreign policy speeches, as this could indicate whether or not it is an important priority in the government's international agenda – and if it is it could act as an indicator of the direction in which the government plans to take such issues internationally;

• Existence of freedom of and access to information laws and their application to foreign policy matters, indicating the priority given to transparency in State actions.

> The second 'level' of potential foreign policy indicators relate to bilateral relationships between states. At the bilateral level, many different criteria need to be considered and taken into account, some more obvious than others. What countries do your government have diplomatic relations with? What is the role played by embassies and permanent missions? Are there any human rights cooperation agreements or mechanisms of dialogue between countries? Are there any human rights provisions in other bilateral agreements on cooperation, security, defense or economic affairs? Has the country ever applied or supported sanctions on another country because of human rights issues? Has there ever been a decision to reduce or stop cooperation because of human rights violations committed by one of the parties?

Following are a few of the indicators that can be used to evaluate the proximity between countries, and might offer potential channels to influence:

• Visa policies are often a valuable indication on the formal bilateral relations between states - where no Visa requirements exist, it usually indicates good relationships, whereas very strict or high costing requirements often indicate less good relations;

• When state officials carry out international missions, it is important to assess whether or not human rights is a consideration. This would in turn give some idea on the priority of this issue in the foreign policy agenda;

• Declarations to the press about human rights issues abroad is usually an indication that the state is taking a position and considers an issue worthwhile;

• The programme of work of embassies and whether they hold meetings with a human rights focus is also a way to evaluate how this issue is handled by official channels;

• It is useful to assess whether or not embassies or state representatives are open to meeting with civil society;

• Level of convergence between two states in voting pattern at the United Nations on human rights resolutions, evaluating the distance between State policy and practice;

• Another useful practical indicator of bilateral relations is whether or not a state receives refugees from another state;

• Support of international or bilateral sanctions against another state is often an indication of the relations between those particular states;

• Economic ties and cooperation between states may be a good indication that there is a good bilateral relation in place;

> The third 'level' of foreign policy engagement would be at the broader international or global level. UN agencies and other multilateral mechanisms (UN General Assembly, UN Human Rights Council, UN Special Rapporteurs, UPR processes, etc) collectively make up an essential and critical part of the human rights framework. These multilateral forums and mechanisms are the most traditional and the most visible spaces of influence of countries' decisions on human rights. They often also provide dedicated spaces for NGOs to engage with, though some would argue that it may not always be the most effective channels to use.

In order to effectively access and use international mechanisms, civil society can look at a number of indicators:

• Participation in important human rights conferences may provide an opportunity to engage on a specific subject or with a particular state;

•The number of diplomats, allocated in diplomatic missions, dedicated to multilateral human rights debates could be an indicator of a state's commitment to effective dialogue and participation (together with the broader allocation of resources to the issue);

• Special mechanisms and procedures of the UN and regional bodies need to be

invited and accepted on country missions. This is often a good indication that a state is committed to a particular issue and open to being analysed (and criticised if necessary);

• Financial contributions to international organizations and humanitariancrises could be a sign of long-term engagement with multilateral bodies;

• Voting patterns on human rights issues at the United Nations and regional human rights bodies could be a good indicator of a state's commitments to specific human rights issues;

• Status of ratification of human rights treaties as well as arms treaties and bilateral agreements and arms deals could be regarded as a measure of importance given to international law and international peace and security policies;

• The implementation of recommendations made under the UPR is demonstrative of respect to this unique global instrument of scrutiny of human rights violations and dialogue on best practices;

• Implementation of international recommendations and decisions is a goodindicator of sincerity of foreign policy and human rights policy;

• Appointment of nationals for relevant international human rights positions, showing the interest given by State to international machinery of global system of human rights;

• Membership – formal or informal – of coalitions or groupings could be a benchmark of relevance given to interstate dialogue;

• Meeting with civil society held before or after the UNHRC, treaty bodies meetings, and any other relevant human rights mechanisms meetings, shows a commitment by the State to be confronted with new ideas and situations, and its openness to dialogue and engagement with other stakeholders;

> The final category of foreign policy engagement could be considered the 'nontraditional' spaces of foreign policy making in the context of human rights. Increasingly, NGOs have to look outside the 'traditional' human rights institutions, as many international institutions and fora are dedicated to other issues, but may have very real impacts on the rights of people. Examples include economic or financial gatherings, gatherings on international or mega-sporting events, or business gatherings. It is very important for CSOs to push for human rights to be considered in the context of these discussions, and to make sure that it is included in the agenda of these meetings, even if its events where the participation of CSOs is not expected or even welcomed.

• The private sector is very often involved in human rights violations. This involvement could be by allowing, facilitating or even perpetrating violations of human rights. CSOs need to look at the way the private sector is enabled to act in any given context,

and the rules that regulate its behavior. For example, the existence of human rights safeguards – or lack thereof – in national, international or development banks could be an indication of whether or not companies are required to respect human rights;

• Traditional and social media have become very powerful tools of influence. Media campaigns that use social media can quickly draw visibility on issues, and shape public opinion in the process. Monitoring and engaging with social media accounts of certain foreign policy stakeholders is an interesting way to not only get information, but also provoke some interaction and public pressure;

• Academia plays an important role in shaping the minds of current and future policy-makers, and ultimately that of voters. It is important to engage with the academia. Academics can be important actors both as government and as experts who moonlight as government advisors and representatives;

• Other stakeholders such as philanthropists, celebrities, individual activists, and well known netizens could have great influence on public opinion, or even politics. It is important to consider whether these actors could be engaged and used for strategic objectives around foreign policy and human rights;


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