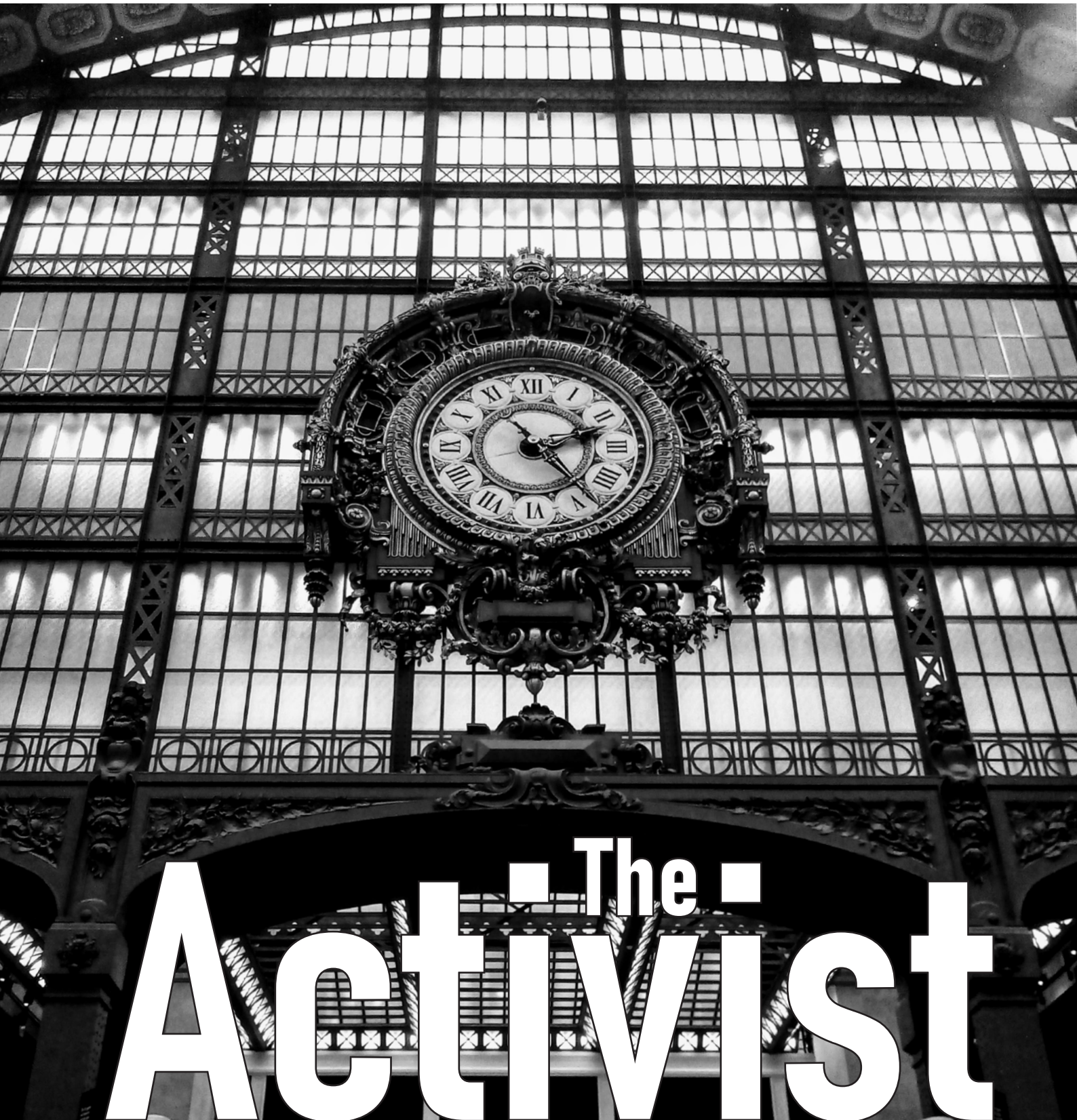# The Activist

**HRSI's annual student–led human rights journal**

CEU

# About HRSI

Human RightS Initiative (HRSI) is an awareness raising and capacity building organization based at Central European University (CEU) in Budapest. It was founded in 1999 by the students of the CEU Legal Studies Department, Human Rights Program. Since then, it has grown into an internationally-recognized human rights organization, focusing on youth involvement, informal education and student participation. HRSI's mission is to promote social engagement through awareness raising and capacity building. Our main target groups are CEU students and alumni, local and regional NGO staff and activists.

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Cover photography submitted by Funmilayo Akinpelu.

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# The
# ACTIVIST

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Thank you to everyone who supported our editorial team!

# Editorial Foreward

Previous editions of the Activist covered rapid changes, and it responded to those changes. While COVID-19 spread far and wide at an unprecedented speed, its effects on societies can be considered the antithesis of breakneck social transformation: it brings us all, the actors of this supposedly global fabric, to a grinding halt.

In this prolonged pause, we have been forced to take stock of where we are as individuals and in our societies. When people are told to stay at home, they confront the dynamics of their living situation, whether that is their relationship to being alone or to being with their family. Beauty can arise, as often-neglected relationships are reinvented, but problems can be made more salient. Skyrocketing rates of domestic violence worldwide make this clear.

Beyond our homes, as human movement is rendered more visible, our streets have become starker social laboratories. Reports of race-based violence against Asians in Western countries are harsh reminders that divisive attitudes are always lurking beneath the surface. These same fears and intolerances have resulted in Africans in Asian countries losing their homes. In times of uncertainty and scarcity, perceived or real, divisive attitudes can bubble to the surface.

At the local level, we can see the strength of our community ties, our social services, and the institutions we never notice functioning until they come into direct contact with our individuality. Or, we can feel their absence. In Budapest, I have seen people coming together to sew masks and donate food from their pantries to first responders, but I have also seen the underlying inequities and power imbalances highlighted when rates of street harassment spiked here.

Local law enforcement and mobilized militaries have been given even-expanded rights. Some are comforted in this new reality, but for those whose actions or identities face discrimination or criminalization, their vulnerability to those who swore to protect them is heightened. Simultaneously, it is harder than ever to hold those who retain power accountable for their actions. Journalists are suddenly cut off from the spaces and sources they relied on to inform the public. Activists, too, are closed off from their causes, which can make it difficult to decide what to prioritize in these trying times.

For me, this pandemic and the myriad of tragedies — of person and health, of governance, and indeed of human rights — accompanying it do not point to any failure larger than that of globalization. International financial systems, which resulted in limited prosperity, have been prioritized over the instruments that we now see as necessary in responding to a truly global problem. In a world where trade partnerships are broken easily and without repentance and countries see public health as a competition of manufacturing and trade, our world is truly one of scarcity. Cooperation rather than competition is paramount,

but the global systems entrusted with protecting our health, our environment, and our dignities have proven faulty. What we are left with is an opportunity to imagine new systems.

There is cause for hope. Human resilience and adaptability have allowed some aspects of life to continue. The ability of people to organize — whether it's for birthday parties in Zoom calls, virtual raves to fundraise for LGBT+ causes, or online psychosocial support for vulnerable populations — highlights adaptability. Many people and organizations have found less costly and more effective ways to deliver messages and services that they will carry forward when the pandemic ends. I recently spoke to harm reduction activists across Europe who shared that their expanded online presence brought new clients into their work, and the difficulties of service provision under lockdown showed them new ways to reach out to clients, better serving their health and social needs.

Disparities in COVID-19 infection and death rates highlighted long-standing racial inequities in U.S. American society. The collective anger that this injustice brought out was compounded by more police brutality against black Americans, especially the killing of George Floyd this past month. The subsequent resurgence of the Black Lives Matter movement was only possible by the current state of society, with people more plugged-in than ever. When smartphones and screens become even more central

in transmitting information about the state of our world, attention can settle where it should have long ago. As citizens in cities and towns across the world show up — either to virtual spaces or by taking to the streets — Black Lives Matter has gone global. People are angry not only at racism in the United States, but the racism reflected in their own societies. We are witnessing what is perhaps becoming the largest civil rights movement in history.

In some ways, COVID-19 stopped us in our tracks, but it did not put injustice to rest. These essays are largely asking the questions: Where are we, and how did we get here?

The CEU community is characterized by many things, including diversity, commitment to excellence, and a thirst for knowledge. All of these aspects are displayed in these essays. What makes me believe in the CEU community and the potential it holds, however, is another tenet that shines through in this collection of words and images: hope. Every author — though some express disappointment, and some even rage — seeks to push dialogue forward: for transparency, for public knowledge, and for action. I hope that these works can be used to help us all evaluate where we are and see where we may like to go next.

- Hannah Taylor, Editor-in-Chief

# Ethnicizing British Citizenship: The Cause and Consequence of the Windrush Scandal

**Cheyenne van der Zanden** reflects on the evolution of British citizenship law and the adverse impact of the Hostile Environment Policy on immigrants from the Caribbean and West Indies, suggesting that a process of ethnicization of citizenship is both the cause and consequence of the 2018 Windrush Scandal.

Roughly 600,000 people immigrated to the United Kingdom from the Caribbean and the West Indies between 1948 and 1971, nearly all of them upon invitation by the British government to work to help rebuild the country after the Second World War.[1] Most newcomers from the Commonwealth countries arrived in the United Kingdom assuming that their status as British citizens was secured for them and their children. However, as their homelands gained independence, their right to remain in their new country became uncertain. Over a half century later, the status of many of these immigrants who came to be known as the Windrush Generation, remains uncertain. Some have faced deportation, have been denied access to healthcare and government benefits, or have lost their jobs, sparking a scandal in the United Kingdom in 2018.

> **"Regardless of racist intentions in either the twentieth century British legislation or consequences of recent legislation, its outcomes have disproportionally harmed non-white immigrants originating from former colonies."**

The policies leading to the Windrush Scandal in the United Kingdom are a clear example of how lenient or restrictive immigration and naturalization policies of the past and present are the consequence of, and simultaneously shaped by, perceived membership of the national community. In the past two decades, a 'restrictive turn' has been detected in the immigration policies of many Western European countries.[2] It is argued that states with a historically jus sanguinis regime, which is one guided by the principle that a child's citizenship is determined by that of their parents, have opted for a de-ethnicization when there is immigration and for re-ethnicization when there is emigration.[3] As the United Kingdom had a jus soli regime, one guided by the principle that those born in a state's territory have a right to citizenship, for a long time, it falls outside this trend. Still, a restrictive turn can still be recognized. The 'ethnic' element of re- and de-ethnicization

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1    The British Nationality Act 1948 designated everyone born in the British Empire the equal status of "Citizens of the United Kingdom and Colonies" and those born in the newly independent colonies "Commonwealth Citizens."

2    Maarten Vink, "Comparing Citizenship Regimes," The Oxford Handbook of Citizenship, eds. Rainer Bauböck et al. (Oxford: Oxford University Press, 2017) 221–244.

3    Christian Joppke, "Citizenship between De- and Re-Ethnicization," European Journal of Sociology 44, no. 3, (2003): 429–458.

refers to a jus sanguinis approach, rather than to ethnicity. However, I propose that 'ethnicization' is a fitting term to describe the process of changing the citizenship regime to exclude the ethnic 'Other.' I will therefore argue that immigration restrictions that have disproportionate consequences for non-white immigrants from former colonies are testimony to the ethnicization of British citizenship law.

Until 1948, all inhabitants of the commonwealth were British Subjects. When the empire began to fall apart, the British Nationality Act of 1948 codified the extent of jus soli in the context of decolonization. The act refers to all inhabitants of the British Empire as 'Citizens of the United Kingdom and Colonies' (CUKCs), and the inhabitants of the newly independent territories as 'Commonwealth Citizens.' Members of both these groups had movement and settlement rights throughout the Commonwealth. It was under this legislation that the majority of the members of the Windrush Generation arrived and settled in the United Kingdom.

Since then, the immigration and naturalization policies have changed often, becoming increasingly restrictive. After 1962, a passport from the UK or Ireland would grant settlement rights.[4] However, from 1968 onwards, additional proof of an ancestral connection to the United Kingdom was required.[5] This primarily affected non-white CUCKs, as white Commonwealth citizens could generally prove a connection through blood. From 1971, CUKCs who had been residents for longer than five years, and those with ancestral connection received the right of Abode.[6] A decade later, these individuals were granted British nationality when they registered within five years.[7] However, obtaining this status did not change the rights of long-term residents. Additionally, a registration fee and a widespread lack of awareness of this possibility resulted in many not taking this opportunity. In an attempt to protect the unregistered Commonwealth immigrants from enforced removal, they were granted a right to appeal in case their status was questioned.[8] However, this protection was short-lived.



The Empire Windrush arriving at the Tilbury Docks in Essex, on June 22, 1948, bringing the first members of the Windrush Generation to the United Kingdom. (Source: Getty Images)

The Immigration Act of 2014 and the Immigration Act of 2016 were directed towards recent and future immigrants. Their main aims were to prevent illegal immigration. However, these acts indirectly caused uncertain citizenship for some members of the Windrush Generation. They eliminated the right to appeal. The two immigration acts were part of the Hostile Environment Policy. This policy required landlords, employers, the National Health Service and banks to ask for proof of legal residence in the United Kingdom before offering services.[9] By creating unbearable circumstances for immigrants, the assumption was that they would leave voluntarily. However, suddenly members of the Windrush Generation who did not register as British nationals decades before, were refused healthcare, fired from

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4       The Commonwealth Immigrants Act 1962.
5       The Commonwealth Immigrants Act 1968.
6       The right of Abode entails a right to live and work in the United Kingdom.
7       The British Nationality Act 1981.
8       The Immigration Act 1999.
9       United Kingdom, House of Lords, Taylor, Russell. "Impact of 'Hostile Environment' Policy Debate on 14 June 2018." Impact of 'Hostile Environment' Policy Debate on 14 June 2018, House of Lords Library, 11 June 2018.

their jobs, evicted from their homes and, if they could not prove uninterrupted residency since their arrival, deported.[10]

The inconsistency of the law came to light in 2017 and diplomats from the Caribbean Islands made an appeal to Theresa May, Home Secretary when the Hostile Environment Policy was created, in early 2018. Only after a journalistic investigation and a subsequent storm of media attention did the government seem alarmed enough to take action. Affected residents, who had a right to British nationality under the 1981 legislation, have now regained their right to appeal when they are threatened with deportation, and to receive free legal assistance in proving their right to citizenship. However, this remains difficult as it has come to light that the passenger records of the ships that brought the majority of the Windrush immigrants to the United Kingdom have been destroyed upon request of the Home Office several years ago.[11] Besides a formal apology and a yearly 'Windrush Day' celebrating the Windrush Generation, little has been done so far to compensate those harmed by the Hostile Environment Policy. Thus far, only 36 victims have received the promised financial compensation.[12]

The reoccurring blunders of the United Kingdom concerning citizenship and immigration call for a change in the manner in which British immigration law is adopted and implemented. Regardless of racist intentions in either the twentieth century British legislation or consequences of recent legislation, its outcomes have disproportionately harmed non-white immigrants originating from former colonies. Whereas in the era of the British Empire no distinction was legally made between Subjects from the colonies or from the British Islands, post-colonial legislation does make such a distinction, even among those with equal entitlement to citizenship.

The United Kingdom has never acknowledged the discriminating effect of its immigration legislation on non-white Commonwealth citizens and its accommodation to white Commonwealth citizens,[13] it remains to be seen if it will do so regarding Windrush and future cases.

Cheyenne van der Zanden is a Second-Year MA student in Nationalism Studies, originally from the Netherlands.

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10      Amelia Gentleman, "Families and Lawyers Call for End to Deportations of Long-Term UK Residents," The Guardian, 9 Feb. 2019. www.theguardian.com/uk-news/2019/feb/09/families- and-lawyers-call-for-end-to-deportations-of-long-term-uk-residents.

11      Amelia Gentleman, "Home Office Destroyed Windrush Landing Cards, Says Ex-Staffer," The     Guardian,  17  Apr.  2018. www.theguardian.com/uk-news/2018/apr/17/home-office destroyed-windrush-landing-cards-says-ex-staffer.

12      Amelia Gentleman, "Only 3% of Windrush Claimants Have So Far Received Compensation," The Guardian, 6 Feb. 2020. https://www.theguardian.com/uk-news/2020/feb/06/windrush-victims-still-waiting-for-payments.

13      See for comparison Chagos Islanders v. the United Kingdom (application no. 35622/04), East African Asians v. the United Kingdom, and The British Nationality (Falkland Islands) Act 1983 (1983 c. 6).

# Bisexuals: the Invisible Majority

**Ieva Laugalytė** looks into the struggle of bisexual people to find their place both within the LGBTQ+ community and in the outside world, instead of being forced into a binary system of homo/heterosexuality.

According to a study by Gary Gates, 52% of individuals who identify as LGBTQ+ in the United States are bisexual.[1] Notwithstanding the fact that bisexual people make up the largest sub-group within the community, their representation has been a point of contention. Characterized by bi-erasure and a denial of their existence, bisexual people struggle to find their place both within the LGBTQ+ community and in the outside world, often forced into a binary system of sexuality which largely denies their own.[2]

To begin with, it seems essential to discuss what bisexuality as a sexual orientation entails because its misrepresentation allows some members of the LGBTQ+ to neglect bisexuality altogether. It is argued by some that the term bisexuality endorses a binary understanding of gender and, since gender is not binary, the term is said to be exclusive and outdated.[3] Sometimes this claim could go as far as to conclude that all bisexual people are transphobic by definition. The term bisexual originated in the



(Source: Vicky Leta/Mashable)

1       Gary J. Gates, "How Many People are Lesbian, Gay, Bisexual, and Transgender?", The Williams Institute, 2011, https://williamsinstitute.law.ucla.edu/publications/how-many-people-lgbt/.
2       Gender and Sexuality Center, "Bisexuality, Pansexuality, Fluid Sexuality: Non-Monosexual Terms & Concepts", 2016, https://diversity.utexas.edu/genderandsexuality/wp-content/uploads/2016/03/NonMonosexual-Identity-Definitions-2016.pdf.
3       M. Paz Galupo, Johanna L. Ramirez and Lex Pulice-Farrow, ""Regardless of Their Gender": Descriptions of Sexual Identity among Bisexual, Pansexual, and Queer Identified Individuals", Journal of Bisexuality 17, No. 1 (2017): 108-124.

late 19th century when little was known, or at least acknowledged, about gender fluidity and the prefix "bi" did indeed intend to reflect the attraction to the two then-recognized genders, which excluded people of other gender identities such as transgender or non-binary folks.[4] However, this rhetoric has been significantly modified by the publication of "The Bisexual Manifesto" which clearly spelled out that bisexuality is neither binary nor does it advocate for the existence of only two genders.[5] Numerous bisexual organizations and activists have continuously advocated for this definition. For example, the activist Robyn Ochs famously said: "I call myself bisexual because I acknowledge in myself the potential to be attracted romantically and/or sexually to people of more than one sex and/or gender, not necessarily at the same time, in the same way, or to the same degree."[6] Thus, while bisexual people as people of any other sexual orientation might be transphobic or promote binary understanding of gender, bisexuality per se does not imply nor reinforce any of these standpoints.

Though, precisely the non-monosexual nature of bisexuality is one of the causes of many misconceptions that surround bisexuality and contributes to its erasure. Bisexuality is often viewed as some sort of a crossroad between becoming either a fully-fledged homosexual or a committed heterosexual, thus, it does not come as a surprise that it is by far not uncommon for bisexual people to hear phrases such as "pick a side"[7] or "it's just a phase."[8] When I came out as bisexual, the reactions I received varied a lot but the one that struck me the most was of a person

> **"Bisexual identities are often belittled, overlooked and even denied, and, what I find the most ironic of it all, forced into a binary system of homosexuality and heterosexuality, where you feel obliged to choose either one of them for your identity to be validated."**

wishing me good luck in discovering my identity. It took me a while to realize that it was actually them who needed to get acquainted with my identity.

Around 14% of Americans do not believe that bisexuality is a "real" sexual orientation, and I assume the data would reveal very similar patterns elsewhere if it existed.[9] Thus, bisexual identities are often belittled, overlooked and even denied, and, what I find the most ironic of it all, forced into a binary system of homosexuality and heterosexuality, where you feel obliged to choose either one of them for your identity to be considered valid.

What is seriously concerning, though, is that a big part of anti-bisexual discourse comes from within the LGBTQ+ community itself. The existence of this hostility could be at least partially explained by the straight privilege that bisexuals are assumed to hold as some can easily pass as heterosexual, which in turn allows them to better fit into a society built upon heterosexual norms.[10] While this is true in some cases, such as how identifying as bisexual and holding hands in public with a partner of the opposite sex may not attract any unwanted attention, it once again pushes bisexual people into the binary framework of sexuality ignoring their own separate identity, making them the victims of their own success. I personally lost the count of how many times I was confronted for being bisexual but dating a person of the opposite sex; and sadly, it is the situation that a lot of bisexual folks find themselves in every day. Kyli Rodriguez-Cayro relevantly points out that "[i]dentifying as bisexual often feels like you're stuck in limbo — not

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4       Douglas Harper, "Bisexuality", in Online Etymology Dictionary, 2001, https://www.etymonline.com/word/bisexuality.
5       "The Bisexual Manifesto", in Anything that Moves, 1990, https://bialogue-group.tumblr.com/post/17532147836/atm1990-bisexualmanifesto.
6       Robyn Ochs, "The Definition of Bisexuality (According to Bi Organizations, Activists, and the Community)- Tumblr Mobile Edition", Robyn Ochs, 2016, https://robynochs.com/2016/04/18/the-definition-of-bisexuality-according-to-bi-2/.
7       Zachary Zane, "Being Bi, You Can Still "Pick a Side", Bi.org, 2018, https://bi.org/en/articles/being-bi-you-can-still-pick-a-side.
8       Kate Estrop, "It's not a Phase…or Can it Be?", Bisexual Resource Center, 2016, https://biresource.org/its-not-a-phase-or-can-it-be/.
9       Brian Dodge et al, "Attitudes toward Bisexual Men and Women among a Nationally Representative Sample of Adults in the United States", American Public Health Association Annual Meeting & Expo, Denver, CO: American Public Health Association, 2016, https://apha.confex.com/apha/144am/meetingapp.cgi/Paper/345941.
10      Brittney White, "The Myth of Straight Passing Privilege", Bi.org, 2016, https://bi.org/en/articles/the-myth-of-straight-passing-privilege

"gay" enough for some, and not "straight" enough for others."[11]

Bisexuals lack recognition both within and outside of LGBTQ+ which seemingly puts them into a dangerous place. In the United States, on average, 30% of bisexual women and 25% of bisexual men live in poverty, in comparison to 23% and 20% of homosexual women and men respectively.[12] In addition to this, bisexual people are more likely to experience mental health issues, such as anxiety, depression, and other mood disorders, and face an elevated risk of suicide compared to both homosexual and heterosexual people.[13] While it is hard to give a definite answer as for why the numbers are as they are, if you asked me whether bi-erasure could potentially contribute to the negative outcome as we see it today, I would say yes.

It is evident that bisexual people face a significant threat of their identity being erased, followed by a constant fight for their place both inside and outside of LGBTQ+ community. That does not need to be so – instead of asking people to put themselves into binary categories, we should rather learn to accept their separate identities. Instead of wondering whether some of us are more privileged than others, we should rather accept that each might have distinct struggles that are neither more nor less important; and instead of trusting erroneous statements, we should rather demand for more scientific inquiry.

Ieva Laugalytė is a First-Year MA student in Political Science, originally from Lithuania.

11      Kyli Rodriguez – Cayro, "5 Myths About Bisexuality that Contribute to Bi Erasure", Bustle, 2017, https://www.bustle.com/p/5-myths-about-bisexuality-that-contribute-to-bi-erasure-2418689.
12      Lee M. V. Badgett., Laura E. Durso and Alyssa Schneebaum, "New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community", The Williams Institute, 2013, https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-New-Patterns-of-Poverty-Jun-2013.pdf.
13      Tonje Persson and James Pfaus. "Bisexuality and Mental Health: Future Research Directions", Journal of Bisexuality 15, 1 (2015): 82-98.

# Was Deleuze Right About Human Rights?

**James Cartlidge** employs the commentary of 20th century philosopher Giles Deleuze to revisit the universal acceptance and application of human rights.
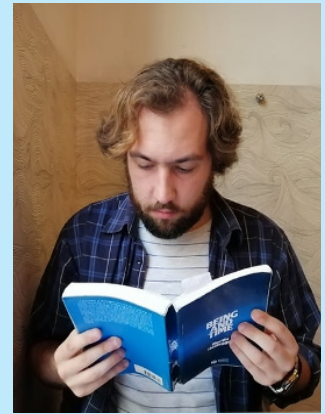


How could anyone object to every person's right to a fair trial, free expression, or freedom from racial discrimination? Debates continue about what constitutes human rights and how many exist, but most would agree that there are universal rights people are entitled to simply because they are human. Evidence of this assumption abounds in our politics today: there are many human rights organizations and international treaties denouncing various types of human rights violations, and others promoting the rights of particular groups, like children and migrant workers.[1] It is puzzling, therefore, when human rights are attacked by respected intellectuals. The philosopher Gilles Deleuze was one of the most influential academics of the 20th century, and he hated the idea of human rights.[2] For Deleuze, "there are no human rights", they are "pure abstraction […] for odious intellectuals who have no ideas."[3] In this time of global crisis, when basic human liberties are
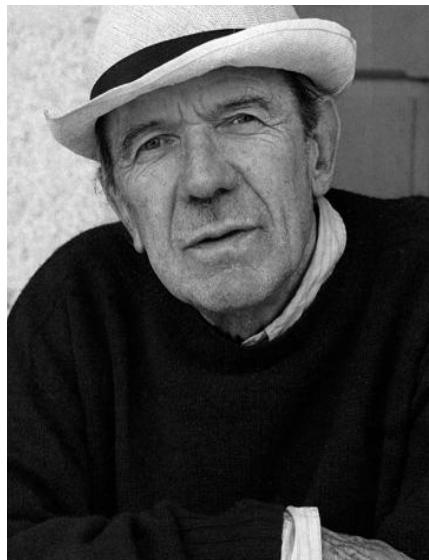


Gilles Deleuze (Source: Ignjat Nikola/Creative Commons)

restricted for the greater good, the idea of universally-applicable human rights is worth critically revisiting.

For Deleuze, to do philosophy was to create concepts and apply them to problems. "The bad philosopher […] creates no concepts, uses ready-made ideas […] and poses no problems."[4] In his opinion, the ready-made idea of 'human rights' creates no practical solutions to problems, which are always situations that must be handled by justice systems. Solving cases of injustice, "is not a question of applying 'the rights of man', but […] inventing forms of jurisprudence".[5] Jurisprudence, like philosophy, is creative; it creates laws and rights. This process is always "a question of situations, situations that evolve"[6]; consequently, that laws and rights must respond to cases as they develop.

The universalized rubric of human rights does not help

1        "Core International Human Rights Instruments," United Nations Population Fund, accessed April 20, 2020 , https://www.unfpa.org/resources/core-international-human-rights-instruments.
2        Gilles Deleuze, and Claire Parnet. L'Abécédaire de Gilles Deleuze, 'A to Z' Interviews, Produced by Pierre-Andre Boutang, Sodaperaga Productions, 1996.
3        Ibid.
4        Ibid.
5        Ibid.
6        Ibid.

in this endeavour and fails to do justice to the shifting nature of global politics. David Kennedy echoes this concern: "a one-size-fits-all emancipatory practice underrecognizes and reduces the instance and possibility for particularity and variation."[7] The discourse of 'human rights' can be applied anywhere, but such ready-made vocabularies obscure the complexity and singularity of actual cases and therefore fail to offer solutions. For Deleuze, "life unfolds case by case,"[8] and cases demand specific attention that universalized concepts cannot provide.

Let us consider the unfolding situation involving a large number of Rohingya Muslims. After a military-led crackdown in Myanmar condemned as genocidal by the UN Human Rights Council, about 730,000 Rohingya fled, most of whom are now living in overcrowded camps near one of Bangladesh's top tourist destinations.[9] The Bangladeshi government proposed a controversial solution they hoped to implement in November 2019.[10] They planned to ferry the refugees to an almost-certainly uninhabitable island 18 miles from the coast – a place prone to flooding, cyclones, accessible only in winter and a haven for pirates.[11] In regard to this situation, we could apply the conceptual framework of human rights, using its theoretical vocabulary to analyse exactly which rights are being violated and how. Based on such analysis, solutions could be recommended to the international community. But for Deleuze, this activity and way of speaking is empty compared to the jurisprudential processes that actually solve these problems.

When it comes to the legal processes required to solve this situation, the discourse of human rights won't feature because it will be subsumed by

> **" Deleuze highlights a sharp divide between theory and practice regarding solutions to human rights abuses and the practical limits of the concept of human rights."**

legislative language and practice; not universalized human rights but particular laws, legislation and rights which respond to the situation – where any real solution would lie.

"Fighting for freedom is to engage in jurisprudence,"[12] not to theoretically apply a ready-made, universal concept. Deleuze highlights a sharp divide between theory and practice regarding solutions to human rights abuses and the practical limits of the concept of human rights. While I think we should be suspicious of concepts that claim to be applicable to every political situation in the same way, we should not, as Deleuze perhaps does, lose sight of what was valuable about the concept to begin with, or the fact that human rights movements and institutions play a more constitutive role in certain jurisprudential processes today.

But Deleuze's critique might still tell us something valuable: that the nature of entitlement to basic rights is not universal in any practically relevant sense. Just as entitlements to rights are not fixed or unchanging, the situations that surround and give rise to them are not either. Situations arise and evolve, so we must continually create new laws and rights that respond to them, while reinforcing the ones we already have. Fighting for rights is a continual, practical, legal endeavour. Hence, theoretically analysing situations under a conceptual framework of human rights can be an interesting intellectual exercise, but that is all there is to it; practical solutions to intolerable situations lie elsewhere.

James Cartlidge is a PhD student in Philosophy, originally from the United Kingdom.

7    David Kennedy. "The International Human Rights Movement: Part of the Problem?," The Harvard Human Rights Journal, 101 (2002): 111.

8    Gilles Deleuze and Claire Parnet. L'Abécédaire de Gilles Deleuze, 'A to Z' Interviews, Produced by Pierre-Andre Boutang, Sodaperaga Productions, 1996.

9    "Report of the independent international fact-finding mission on Myanmar," United Nations Human Rights Council, 39th Session, September 2018, https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf.

10    Paul Ruma. "Bangladesh to Move Rohingya to Flood-Prone Island Next Month", Reuters, (Oct 20th 2019), , https://af.reuters.com/article/worldNews/idAFKBN1WZ0DT.

11    Antoni Slodkowski. "Pirates, Cyclones and Mud: Bangladesh's solution to the Rohingya Crisis", Reuters, (February 3rd, 2017), , https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/pirates-cyclones-and-mud-bangladeshs-island-solution-to-rohingya-crisis-idUSKBN15I0QG.

12    Gilles Deleuze and Claire Parnet. L'Abécédaire de Gilles Deleuze, 'A to Z' Interviews, Produced by Pierre-Andre Boutang, Sodaperaga Productions, 1996.

# Problematizing media representations of climate change in Africa and proposing 'worlding' as a solution

**Funmilayo Akinpelu** analyzes the poor representation of African climate change in the Western media, questioning why so many remain ignorant of the effects of climate change in Africa and why African activists seem denied equal voice in an inherently global phenomenon.
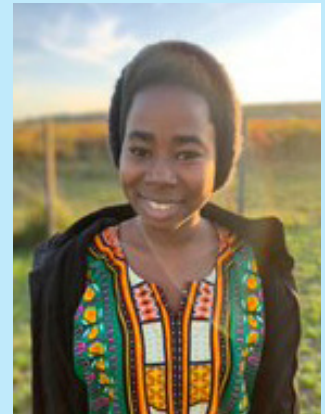
It has become less fashionable to talk about the weather in clichés like the morning blues, gloomy afternoons, and chilly nights. Instead, two words have become vogue: climate crisis. As is, climate crisis issues have become inundated with neoliberal 'globaloney' as humans attempt to flex their knowledge by ranting and broadcasting videos of thirsty koalas, kissing dolphins, or ravenous pandas on social media, hoping to preserve dying ecosystems with the allure of picturesque rhetoric. These voices are amplified by what Arjun Appadurai, an Indian-American expert on globalization, calls "the rapid flow of mass-mediated images, scripts and sensations."[1] What a time to be alive!

However, the polarity of climate crisis media representations can no longer be ignored. Regions outside the Westernized world – especially in Africa – have had the climate crisis familiar to their parts of the world obscured. Despite Africa producing only 4 percent of global carbon emissions, the UN Environment Programme (UNEP) estimates that by the end of 2020, between 75 and 250 million people in Africa will be exposed to increased flooding and erosion caused by climate change.[2] The UNEP also predicts that a mere 2°C surge in global warming would result in low crop yield, causing 50 percent of Africans to be at the risk of malnourishment.[3] Yet, a large number of Africans do not know this or have not been made aware of the full implications. While it is easy to blame this on the apathy of most African leaders, the situation is more complex than it seems. For one, although media viewership on climate issues has largely been de-territorialized, images of climate change are, by means of international agency, centered on Western countries. Climate-related catastrophes occurring in Africa are often hidden beneath alternate frequencies of mainstream media platforms and social media campaigns. Hence, while the wildfires ravaging the

> **"Lopsided reportage creates techno-racial disparities and discourages intercontinental collaboration, undermining the values that globalization embodies."**

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1    Arjun Appadurai, Modernity at Large: Cultural Dimensions of Globalization, Public Worlds, ed. Dilip Gaonkar and Benjamin Lee, (Minneapolis: University of Minnesota Press, 1996), 4.

2    Hannah Ritchie, "Global Inequalities in CO2 Emissions," Ourworldindata.org; United Nations Environment Programme, "Responding to Climate Change," Unenvironment.org, https://ourworldindata.org/co2-by-income-region.

3    United Nations Environment Programme, "Responding to Climate Change," Unenvironment.org, 23 October 2017, http://www.unenvironment.org/regions/africa/regional-initiatives/responding-climate-change.

A sign by youth climate activist Vanessa Nakate (Source: Vanessa Nakate/Twitter).

Amazon rainforest and the bushfire smoke in Australia might be well-reported, the ongoing, raging flames in the Congo rainforest are swept under the rug.

Furthermore, young climate activists are having their exigent messages constantly flattened by media corporations. They have become frequent guests of talk-show presenters, late-night comic hosts, and just about any popular media personality. These media personalities emphasize how young and brave these 'kids' are, thereby commodifying these activists and thrilling viewers at the expense of enlightening them about urgent climate crises. Furthermore, the world leaders to whom these activists address their concerns always seem to feel 'children' should not meddle in adult matters. Expectedly, it is the disgruntlement of the leaders that mainstream media focuses on rather than the messages of young activists.

The hero-ization of these activists stems from the dynamic 21st century perception of celebrity-hood, which has turned climate activism into a distracting and performative circus, where small-scale, non-Western green initiatives are rarely acknowledged.[4] For instance, Olive Emodi's 'End Single Use Plastic in Nigeria' or Vanessa Nakate's '#SaveCongoRainforest' have mostly been ignored by the mainstream media, while joint environmental actions, such as the ongoing '#FridaysforFuture' campaign, are underreported or presented as the initiative of a single mastermind.[5] This lopsided reportage creates techno-racial disparities and discourages intercontinental collaboration, undermining the values that globalization embodies.

This necessitates the recalibration of media representations on climate in order to encompass those whose voices are smeared, diminished, or silenced. To do this, Martin Heidegger's concept of 'worlding,' as appropriated by scholars Rob Wilson and Christopher Leigh, can be adopted.[6] However, the most applicable meaning of worlding in this context is contained in the process of 'de-distancing,' in which the old structure of the world that encourages multiplicities, pluralities, and interspaces is defamiliarized, broken down, and reconfigured in

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4        John Comonitski, "How Generation Z Has Changed Who Our Celebrities are," Ted.com, Filmed February 2019 at Penn State University in Pennsylvania. TED video, 14:12. https://www.ted.com/talks/john_comonitski_how_generation_z_has_changed_who_our_celebrities_are.

5        News Central TV, "Breakfast Central: Impact: The Dangers of Single-Use Plastics (Olive Emodi)." Youtube.com, Published 30 January 2020. YouTube video, 19:12. Accessed 28 April 2020. https://www.youtube.com/watch?v=le4M75dyJ7s; Vanessa Nakate, "162 Days Ago, I Started Striking to #savecongorainforest. This Forest Is Home to Millions of Species of Animals and Plants Millions of Lives Heavily Depend on the Existence of This Forest Today Am Striking Again and Demanding for Protection of Our Lung Join Us #saveourforest," Twitter.com, (5 April 2020).

6        Rob Wilson, "Afterword: Worlding as Future Tactic," The Worlding Project: Doing Cultural Studies in the Era of Globalization, ed. Rob Wilson and Christopher Connery (Berkeley: North Atlantic Books, 2007), 209–23.

new, regenerative ways.[7] In essence, by making deliberate efforts to cater for one another's ecological life-worlds, the planet can be reshaped. Mainstream and social media reports have the power to not only create awareness about climate activism but to provoke revolutionary actions that contribute to the process of worlding a new clime.

While writing this essay, I was seized by the fear that my observations were unfounded and insensitive, finding fetters where only plastic straws existed. However, on 24 January 2020, Vanessa Nakate, a Ugandan climate activist, was cropped out of a group photograph published by the Associated Press that featured four other (all-white) climate activists, reminding me that this concern goes beyond my own imagination.[8] On this note, one would think that I should be advocating for African voices to be given a place on the map of climate action. But no, I am not enthused by the idea of scouring for and plastering the faces of colored climate activists all over news reports, because climate activism should not be about advocating for the freedom of speech in this moment but instead for promoting action. Reports on climate change need to be more racially and geographically inclusive. Any place where Earth writhes in discomfort, whether it is in Europe, Africa, or Antarctica, let the camera lenses be there.



Shown (top to bottom): The cropped photograph for the World Economic Forum (Source: Markus Schreiber/AP); the original photograph that includes (left to right): Vanessa Nakate, Luisa Neubauer, Greta Thunberg, Isabelle Axelsson, and Loukina Tille (Source: Markus Schreiber/AP).



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7       Wilson, "Afterword".
8       Caleb Okereke and Stephanie Busari, "She Was Cropped out of a Photo of White Climate Activists. Now, She Says It's Time to Stop Erasing African Voices," CNN.com, 5 February 2020. https://www.cnn.com/2020/01/30/africa/uganda-activist-vanessa-nakate-cropped-intl/index.html.

# Riwal Revisited: How the UNGPs have failed to hold transnational businesses accountable in the Occupied Palestinian Territories

**Yara Naser Aldin** explores how the international community has failed to hold transitional companies liable, and to provide just remedy for Palestinians following the construction of Israel's Annexation Wall.

Since the Israeli Occupation of the Palestinian territory in 1967, the conflict has reflected the basic images of life and death. While everyone, from state to non-state actors, is fighting for power, control, and land, average citizens are caught in the crosshairs. Israel is party to numerous international human rights treaties and under International Humanitarian law (IHL) it is considered an Occupying power in East Jerusalem, the Westbank and Gaza. Laws of occupation are derived from the Hague Regulation of 1907, the Fourth Geneva Convention of 1949 and many other international human rights on economic, civil and political treaties.[1] Additionally, the international court of Justice has also affirmed the obligations of Israel under IHL and IHRL in the occupied Palestinian territories (oPt).[2]

In the case of the oPt, there are several international and local organizations that monitor and document the violations of international law committed by the occupying power, as well as associated third states

and private actors involved. However, the economic and corporate aspects of the occupation have been neglected in these analyses and in the monitoring of rights and obligations in East Jerusalem, the West-Bank and the Gaza Strip.[3]

This paper seeks to illustrate the violations of the occupying power and businesses involved in the oPt in relation to the construction of the Annexation Wall by highlighting an important case study "Riwal, Lima Holding" and its relation to the construction of the Wall. I will concentrate on the obligation and 'responsibility' of businesses to 'respect' and the duty of states to protect human rights under the Guiding Principles of Business and Human Rights (UNGPs). And finally, how businesses should be held liable for the frequent disregard of human rights responsibilities in relation to the oPt and Palestinians.

The Wall, referred to by Israel as the 'Security Fence', and by others as the Annexation Wall, is composed

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1      Al-HAQ, "Business and human rights in Palestine"(March 2013): 11-12 , http://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Business%20and%20Human%20Rights%20Booklet.pdf.

2      ICJ Advisory Opinion, "Legal Consequences of the Construction of a Wall" (2004), https://palestineun.org/icj-advisory-opinion-on-the-wall/.

3      Diakonia, "The Unsettling Business of Settlement Business, May 2015, p. 4, https://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/briefs/the-unsettling-business-of-settlememt-business.pdf.

The Annexation Wall, the wall that was built by the occupying authority "Israel" on the Occupied Palestinian lands dividing the Country into West-Bank and Jerusalem. People behind the Wall "West-bank and Gaza" are prohibited from entering inside the Wall into Jerusalem only under critical circumstances and by providing a permit for them which needs to be applied for and 90% of these applications get rejected. This Wall was built and constructed by the help of domestic and international companies; one of them is the Dutch company "Riwal, Lima Holding." (Source: Fadi Arouri/Xinhua Pool)

of concrete barriers, barbed wire and fences. It was built on the land of the West Bank, including East Jerusalem, and was recognized as illegal by the International Court of Justice (ICJ) in its advisory opinion on the Wall in 2004.[4]

In 2002, Israel started seizing land for the construction of the Wall, alleging it was in response to the attacks that began in the year 2000;[5] "The Wall's path was determined on the basis of security needs and topographical considerations, it would not annex Palestinian lands and no Palestinians will have to relocate."[6] What in fact happened behind the "security" allegations was the first phase of building the Wall which led to the loss of nearly 30 water wells, uprooting of over 80,000 trees, demolishing homes, and confiscation of hundreds of thousands of dunums of farmland.[7] Even access to basic services, ranging from medical care to education, was obstructed for the sake of constructing the Wall.[8] The Wall subdivided and isolated Jerusalem and encircled other Palestinian communities which resulted in physical, food and psychological insecurity for Palestinians in the oPt.[9]

**"The Riwal case clearly illustrates that mechanisms on a domestic and international level have proven to be insufficient as they fail to hold businesses and state actors liable."**

Lima Holding BV/Riwal is one of the companies that played a role in the Israeli construction of the Annexation Wall.[10] It is a Dutch private rental company that provided mobile cranes for putting in place the high concrete elements that make up the Wall.

Al-HAQ, an independent non-governmental human rights organization, decided to start an investigation with other partner organizations on Riwal's activities in the oPt. Consequently, ALHAQ submitted a criminal complaint to the Dutch prosecutor against Riwal's parent company, Lima Holding in the Netherlands

4      Ibid.
5      American Muslims for Palestine, "The Second Intifada," 2012 , https://www.ampalestine.org/palestine-101/history/intifadas/second-intifada-introduction.
6      Israeli Ministry of Foreign Affairs, "Saving Lives: Israel's Anti-Terrorist Fence – Answers to Questions," (2004), http://www.mfa.gov.il/MFA/MFA-Archive/2003/Pages/Saving%20Lives-%20Israel-s%20antiterrorist%20fence%20-%20Answ.aspx#3.
7      UN Relief and Works Agency for Palestine Refugees in the Near East, "OPT: Special Report on the West Bank Security Barrier," 15 July 2003, https://reliefweb.int/report/israel/opt-special-report-west-bank-security-barrier.
8      Ibid.
9      Al-HAQ, "Business and human rights in Palestine, March 2013, p.11-12.
10     Ibid.

in 2010 alleging; first, that Riwal was complicit in the commission of war crimes and crimes against humanity through the aid it gave for construction of the Annexation Wall and the illegal settlements in the Palestinian villages of Al-khader and Hizma.[11] Second, Riwal's activities contributed to the breach of the basic human rights for Palestinians such as the freedom of movement in their own country, which became more confined, and the denial of access to their own property, electricity and fresh water.[12]

The duty of the government is to monitor and uphold the international human rights standards. Under IHL, the home state is always obliged and has a duty to protect human rights from any violations by business enterprises.[13] In 2004, the ICJ found that Israel is in great breach of its obligation towards Palestinian's rights. With the construction of the Wall, the ICJ states that it severely hinders the most important right for the Palestinians which is the right to self-determination, which made it clear to the international community that they shall not provide any aid or assistance in construction of the Wall.[14] The UNGPs which apply to all business enterprises[15], state in Pillar Two of its principles 7[16], 13[17], 22[18] and 23[19] that in cases of finding through its own due diligence or any other way that it took part or caused any breach of human rights, it is responsible to actively engage in remediation[20]. Moreover, it states that businesses should immediately cease the activity that is
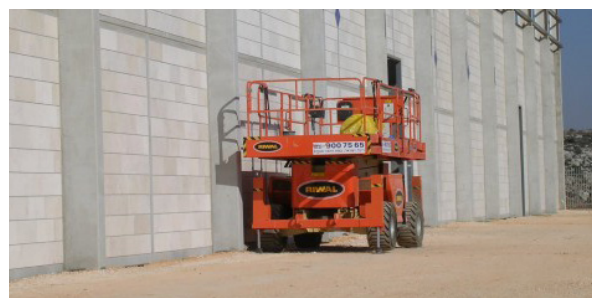


The Dutch company Riwal supplies its mobile cranes, with its logo on it, to the Occupying authorities "Israel" for the construction of the apartheid/ Annexation Wall and the illegal settlements on occupied Palestinian lands. Riwal is in violation of the UNGPs, which obligates corporations to comply with the duty to respect Human Rights in their operations, especially in conflict affected areas. (Source: NCRV)

causing such impact[21] and use its powers and abilities to mitigate any possible remaining impact[22].

In the case of the oPt; The problem remains that the abuses to the most basic human rights are heightened and no action has been taken yet.[23] Israel, as the occupying power, bears the primary duty to protect these rights. It has failed to comply with its duty to urge businesses to respect the rights of the persons living in the oPt.[24] On the contrary, the Wall and Settlements facilitate infringement upon the rights of Palestinians.

11      Marya farah and Maha Abdallah, "Security, Business and Human Rights in the Occupied Palestinians Territory" Cambridge University Press 4, no.1, January 2019, p. 7, https://www.cambridge.org/core/services/aop-cambridge-core/content/view/04EDB57C90062714498CCE8A37034DE3/S2057019818000275a.pdf/security_business_and_human_rights_in_the_occupied_palestinian_territory.pdf.
12      Ibid.
13      Diakonia, "The Unsettling Business of Settlement Business", supra note 4, p: 8.
14      Al-HAQ, "The Annexation Wall and its associated regime," 2012, p.53, http://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Annexation_Wall_english.pdf.
15      [...] 'In a situation of occupation, international humanitarian law establishes specific obligations on the occupying power, codified in treaties (including the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949) as well as customary international law, which includes the obligations in the Hague Regulations of 1907, annexed to the Convention with Respect to the Laws and Customs of War on Land'.
16      John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy", principle 7.
17      Ibid, Principle 13.
18      Ibid, principle 22.
19      Ibid, principle 23.
20      Ibid.
21      Guiding Principles on Business and Human Rights, principle 13, supra note 17.
22      United Nations human Rights office of the high commissions, "Statement of the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory," 2014, p.8, https://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf.
23      Marya farah and maha Abdallah, "Security, Business and Human Rights in the Occupied Palestinians Territory", supra note 11.
24      Diakonia, "The Unsettling Business of Settlement Business", supra note 4, p.14.

Riwal, having its home state business in Israel, did not only breach its obligation under international law to respect human rights, but turned out to be in great breach of its obligation under the UNGPs as well.[25] The involvement of the illegal activity of constructing the Wall and settlements which lead to an abusive breach of the rights of the Palestinians in this area is an issue that has not been solved. Even when the OHCHR and the ICJ affirmed the breaches and the responsibility of corporations involved in these acts, the Dutch prosecutor simply dismissed the claim believing that Riwal is not liable under these allegations.[26]

The UNGPs are non-binding. However, they are highly respected and appreciated on an international level. In my opinion, Riwal case clearly illustrates that mechanisms on a domestic and international level have proven to be insufficient as they fail to hold both businesses and state actors liable, or provide remedies, redress or any kind of compensation for those affected. Monitoring businesses' operations is a must, they must and should take responsibility for their violations. There should be an annual modification and revision on their policies and Human Rights Due Diligence under the UNGPs. By respecting and implementing the UNGPs, the international community can move towards better solutions by investigating the business activities of companies which profit from the construction of the Wall and other unlawful Israeli activities. There must be assurances that Palestinians' legal rights, including the right of self-determination, be fully respected and implemented in order to reach a peaceful and just resolution of the conflict.

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25    Commentary of the UNGPs, principle 19, supra note 17; "once the enterprise has identified that it has caused or contributed to adverse human rights impacts through construction of the Wall or anything else in the oPt, they should provide remedies through legitimate processes".

26    [...] The Netherlands National Prosecutor's office (NPO) decided to end its investigation claiming that the company only had a "small scale" of work as well as its equipment were used "occasionally and only for few days". Thus, dismissed the claim believing that Riwal is not liable under these allegations.

# No Jobs, No Money? Envisioning Social-Welfare in the 21st Century

**Julian Willming** discusses how the next technological revolution will disrupt the current welfare state model and envisions an alternative.





(Source: The National Archives)

This Wanted Sign was posted after a group of delinquents entered textile factories and destroyed what was then considered highly innovative machinery. This group, known as the Luddites, set stocking frames on fire, demolished weaving looms, and stole from factories that would automate their jobs. As an expression of techno-resistance, the Luddites became the first and largest protest movement to reject job displacement during the First Industrial Revolution. In response to widespread fear of unemployment, European countries invented a social structure that is still maintained today: the welfare state. By ensuring workers' rights and redistribution of wealth and health insurances, it emerged to prevent rebellion in times of disruption.

Arizona, 2018. The picture on the right portrays a middle-aged Arizonian holding a gun in his right hand, ready for a hunt. Specifically, he is hunting self-driving Uber taxis that were being pilot tested in Tempe, Arizona. After these automated cars replaced local taxi drivers and were involved in several accidents in the area, the residents decided to sabotage the vehicles.



(Source: Chandler Police Department)

What do these two examples of delinquencies communicate about future technological progress? Firstly, that individuals fear unemployment and consequential suffering that is triggered by technology. Secondly, individuals will fight against technological advancement unless social policies are able to pacify the public.

According to McKinsey, up to 50% of jobs will be automated by 2045.[1] Beyond vocations that we consider easy to automate, such as accounting or manufacturing, highly-intellectual areas like teaching, journalism and law will also be impacted by radical disruptions. The biggest contributor to this trend is Artificial Intelligence (AI), which are agentic machines capable of performing tasks that require "human" intelligence. AI is increasingly becoming better, faster and more accurate in conducting work processes than any human being.[2] While many robotics are already in use, for example in the automobile industry, other industries still lack the data and digital infrastructure that feeds AI.

The question of how AI will enter the job market has triggered scientific debate. On the one hand, futurists like Martin Ford, author of Rise of the Robots, argue that the impact of AI is underestimated and will hit us faster and harder than we can imagine.[3] On the other hand, more conservative developments are predicted by scholars such as Robin Hanson, who think AI will slowly disrupt the job market over the next 200 years, but not as early as 2045. Interestingly, Hanson bet 1,200 USD that AI will not diminish the fraction of labor of total income in the US.[4]

It does not matter whether Hanson or Ford is right; technological progress is irreversible. Automation will be different from temporary unemployment, like that triggered by the housing bubble or the current COVID-19 pandemic. Sooner or later, we can expect vulnerable people to be unemployed because their work will be automated first. While some can be re-trained, not everybody is able or willing to go to evening classes to learn how to code. While products become cheaper due to cost savings in shops, basic needs such as energy supply and housing are not significantly affected by increased technological efficiency and could therefore become unaffordable for displaced individuals.

**"While humans fancy a new car every five years and thus stimulate the economy, robots do not. Robots only consume energy and space."**

A Luddite 2.0 scenario does not seem unlikely anymore. The difference from the 1820s is that our current system is not an aristocracy but, in most countries, a democracy in which individuals are allowed to vote every few years. Citizens' hopelessness, triggered by impending mass unemployment, could therefore be channelled towards a platform of anger: right-wing populism.

In order to combat this, another question must emerge hand in hand with the disruption of the job market through AI: How will, or more importantly, how should we design our social welfare system in a post-AI era? Current social welfare states work in a simple manner; the workforce pays an income tax and the accumulated levies are redistributed to less advantaged groups such as the unemployed. The working and middle-class are the backbone of the entire social welfare state. However, once AI enters the job market, millions of now-taxpayers will become an economic burden. Moreover, the workforce is not simply paying taxes but they also make up the most important group for mass consumption. While humans fancy a new car every five years and thus stimulate the economy, robots do not. Robots only consume energy and space. Decreased tax revenue for the state and diminished consumption power of citizens therefore will require a new way of thinking about social welfare.

One vision is the decoupling of economic well-being from work. A Universal Basic Income (UBI) would ease the fundamental assumption that income is only achieved through work. In a post-AI world, it would guarantee a prosperous life for the victims of

1    "AI, Automation, and the Future of Work." McKinsey and Company Global Institute, 2017 , https://www.mckinsey.com/featured-insights/future-of-work/ai-automation-and-the-future-of-work-ten-things-to-solve-for.
2    Ibid.
3    Ford, M. Rise of the Robots: Technology and the Threat of a Jobless Future. New York City: Basic Books, 2015.
4    Hanson, R. "How to survive a robot uprising." Reason, April 2015, , https://reason.com/2015/03/03/how-to-survive-a-robot-uprisin/.

automation. The UBI must, however, be high enough to ensure a quality living standard. Its financing can be managed via a more progressive tax system. A first political step could be the discovery of new sources for state revenue other than labor tax. This could be a synergy of a carbon tax, the increase of the financial transaction tax, or a robot tax, which is a levy for business owners to compensate cost savings through machines.[5] Unfortunately, such discussions have not entered the political arena, yet.

Julian Willming is a First-Year MS student in Environmental Sciences, Policy and Management, originally from Germany.

Amidst the Fourth Industrial Revolution led by AI, our current social welfare system is stuck in the 19th century. Radical technological disruptions necessitate us to contest previously unquestioned constructs like jobs and innovate a novel social security net to ensure a prosperous future that individuals can look forward to. The future is ours to create, not to resist.

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5      Fouksman, E. " Why universal basic income costs far less than you think." The Conversation, August 14, 2018 , https://theconversation.com/why-universal-basic-income-costs-far-less-than-you-think-101134.

# 500 Years of Indigenous Resistence in the Americas

**Lauren Grant** invokes bearing witness as an 'ethico-political labour' in capturing and presenting her photographs, representing the suffering, resistance and advocacy movements of Indigenous peoples in Canada and Guatemala.
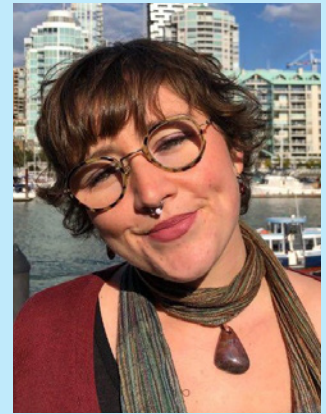
Bearing witness is widely regarded as a powerful tool of advocacy. It is an 'ethico-political labour' which is not passively done, but is an active form of engagement that requires emotional and physical energy. It is important to note that bearing witness is never neutral and always subjective.[1] It is often used as a form of activism, which strives to give voice to oppressed peoples in the face of mass suffering. This photo essay explores, in particular, the suffering of Indigenous communities in the Americas. In order to cultivate empathy against indifference, it reflects efforts to bear witness and counteract the silencing of colonial legacies and the injustices that accompany them.

This photo essay encourages the reader to bear witness to the importance of resistance and advocacy for Indigenous movements. The photos and captions stem from my research endeavors: my trip to Guatemala, whereby I had the privilege to work with women-led, Indigenous rights organizations in 2016, and my previous position as a housing worker for an local non-profit, predominantly serving Indigenous women in Canada. In this photo essay, I wish to illuminate my own acts of bearing witness to the suffering, advocacy and resistance of the various Indigenous communities, namely Mayan Indigenous communities in Guatemala and First Nations women in Canada, respectively.

Furthermore, these photos showcase how the indigenous communities highlighted, bear witness to centuries old violence, marginalization and oppression through their resistance and advocacy.

Each resistance movement captured in the photographs is grounded in suffering with roots beyond present-day concerns; roots which explain, remember, disrupt, retell and bear witness to legacies 500 years long. Risking lives to testify and demand justice; to march and to cry out the names of stolen sisters; and to chase Goliathan corporate giants off stolen lands in the face of draconian backlashes, these resistance and advocacy movements are situated in a legacy of violence, dispossession and displacement of Indigenous peoples and their livelihoods.

Below I depict their tireless and timeless fight against colonization, genocide and the sustained manifestations of violence against them in Guatemala and Canada today.

Recognizing my participation as a non-Indigenous woman, bearing witness to these resistance and advocacy movements, I seek to inspire this form of advocacy for others by presenting these photographs. I invite the reader and viewer to recognize and reflect on their exemplary participation in bearing witness to centuries old explanations for violence against Indigenous communities, which has never ceased.

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1        Kurasawa, Fuyuki. "A Message in a Bottle: Bearing Witness as a Mode of Transnational Practice." Theory, Culture & Society 26, no. 1 (January 2009): 92–111. doi:10.1177/0263276408099017.

# 'La Puya' Environmental Justice Resistence Site
## Guatamala: The municipalities of San Pedro Ayampuc and San José del Golfo – September 2016



A small building at La Puya Environmental Justice Resistance site is painted with art featuring a woman crying. She wears a bandana across her mouth that reads "Todxs somos La Puya/We are all La Puya." Also written is, "Confia en la lucha/Believe in the struggle."

The land defenders at La Puya represent the battle for land: a fight against dispossession and displacement, destruction of self-determination and livelihood 500 years fought by Indigenous communities both in Guatemala and world-wide.

When I visited La Puya, an environmental justice resistance site in 2016, Indigenous, human rights and land defenders had maintained occupancy there for almost five years. Residents near the proposed site of El Tambor Mine began their resistance to the project through a peaceful, 24-hour blockade on the 2nd of March 2012.[2] "Criminalized by multinational corporations (MNCs) and the Guatemalan government for peacefully and legally expressing vision of self-determined development,"[3] Mayan Indigenous communities in the country stood against the mining company who "legitimized the use of force by the Guatemalan state and perpetuated physical and psychological violence"[4] in response.

Although "impunity remains the norm in Guatemala, and violence inflicted upon... [human rights defenders] goes unpunished in 99 percent of all cases,"[5] Indigenous peoples have been defending their lands since the arrival of the settlers. Their advocacy and resistance efforts have been persistently met with unrelenting and alarming rates of violence, threats and attacks on their lives, most prevalently for opposition to large-scale development projects"[6] in the settler-Guatemalan state.

2        "Guatemala Human Rights Commission." Guatemala Human Rights Commission RSS. Accessed May 9, 2020. http://www.ghrc-usa.org/our-work/current-cases/lapuya/.
3        Pedersen, Alexandra. "Landscapes of Resistance: Community Opposition to Canadian Mining Operations in Guatemala." Journal of Latin American Geography 13, no. 1 (2014): 187-214. Accessed April 23, 2020. Page 188. www.jstor.org/stable/24395842.
4        Ibid.
5        Ibid, page 192.
6        UN Committee on the Elimination of Racial Discrmination (CERD), Concluding observations on the combined sixteenth and seventeenth periodic reports of Guatemala, 27 Mary 2019, CERD/C/GTM/CO/16-17, §27.

# The March of Missing and Murdered Indigenous Women
## Canada: Downtown Eastside, Vancouver, B.C.
## - February 2019



A frontline of marchers at the annual Women's Memorial March to honor and remember Missing and Murdered Indigenous Women from the community in Vancouver, Canada. The marchers hold signs with photographs of loved ones, murdered and disappeared.

Each year on the 14th of February, Indigenous women march on the(ir) unceded territories;[7] those of the Musquem, Squamish and Cosalish peoples, to honor and acknowledge the women gone missing and murdered in and from the community.

When I attended the Women's Memorial March in 2019, it during its 28th consecutive year. Since its beginning in 1991, "more than 970 names have been added to a list of women who have gone missing or been murdered in the Downtown Eastside."[8]

Occupying the streets with somber signs and photographs of loved ones murdered and disappeared, these women march to the beat of their ancestral drums to disrupt the silence, with its deep colonial, strangling grip. With each step they expose that these deaths and disappearances are "caused in the framework of gender oppression and other forms of oppression and therefore are avoidable."[9]

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7    The term 'unceded territories' has become a mainstream way to disrupt and retell legacies of ongoing, Settler Colonialism, namely by remembering and acknowledging that the lands which comprise the present-day Canadian State are stolen lands. In this regard, the term is often used synonymously with 'stolen' or 'taken,' implying the force with which this occurred. It is a practice of 'respect,' particularly in Canadian-Indigenous formal relations, civil society, educational institutions, and so on, to refer to the lands in this way, particularly at the start of an event, presentation, meeting, gathering etc. with a verbal land acknowledgement. Indigenous Corporate Training Inc. encourages use of the terms in business relations between Indigenous peoples and companies.

8    Kerr, Jessica. "Thousands Turn out for Downtown Eastside Women's Memorial March in Vancouver." Vancouver Courier, 15 Feb. 2019, https://www.vancourier.com/news/thousands-turn-out-for-downtown-eastside-women-s-memorial-march-in-vancouver-1.23635054.
The Downtown Eastside neighborhood of Vancouver, B.C. Canada has the unfortunate nickname as "the nation's poorest postal code." The area is an approximately ten block neighborhood which is characterized by its visible extreme poverty; a rampant opioid epidemic in full swing; a housing crisis, displacing far too many due to inadequate housing, temporary shelters, and the streets, and with a severely disproportionate rate of Indigenous peoples.

9    Fregoso, R. L., & Bejarano, Cynthia L. (2010). Terrorizing women : feminicide in the Américas. Durham [NC]: Duke University

The marchers expose that many of those victimized were "homeless or precariously housed at the time of... disappearance of death."[10] They march because 31% of all First Nations women are living in poverty in country,[11] and because Indigenous women in Canada go missing or are murdered at a rate four times their representation in the state;[12] a rate twelve times greater than that of non-Indigenous women.[13] Through resistance, too long a determining means for survival, the marchers unveil that "genocide is a root cause of the violence perpetrated against Indigenous women and girls."[14] They expose that impoverished conditions of living, inflicted to bring about their physical destruction,[15] have fostered the socio-economic, health and cultural vulnerabilities that have "lead to [the] death[s] and disappearances [of Indigenous women] ... which permeate all aspects of Canadian society today."[16]

# Las Mujeres Valientes
## Guatemala: The town and municipality of Nebaj in the department of El Quiché - September 2016



A group of Ixil Maya Indigenous women sit beside each other in their traditional clothing. They tell their stories: their testimonies of survival to the Guatemalan genocide and centuries old legacies of colonialism.

The Brave Women are a powerful group of Ixil Mayan Indigenous women seeking to disrupt the sustaining legacy of silence and impunity for sexual gender-based violence committed against them in the contemporary, during the genocide and against their peoples for the past three hundred years.

Press, page xx.

10    National Inquiry into Missing and Murdered Indigenous Women and Girls (Canada). (2019). Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls. Privy Council Office, page 543.

11    Feminist Alliance for International Action (FAIA) Canada. Submission to the UN Committee on Economic, Social and Cultural rights.

12    Martin, C. M., & Walia, H. (2019). Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside.

13    Ibid.

14    National Inquiry into Missing and Murdered Indigenous Women and Girls (Canada). (2019). Supplementary Report: Genocide. Privy Council Office, page 8.

15    UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6.

16    Supra 15.

Risking their lives, they have brought forth their testimonies, which are too often all they have left.

When I sat down to hear The Brave Women's stories of survival, it was near twenty years since the genocide against their peoples had ended, and 500 hundred years since their colonization by the Spanish. As a consequence of both of these processes, Indigenous women's bodies came to signify the "intergenerational transmission of culture." This discourse has produced conditions which give way sexually violent attacks on Indigenous women's' bodies: raping and egregious, public brutalization and mutilation, a widespread phenomena of fem(in)icide met with impunity and integral to the destruction of the Maya Indigenous peoples' sovereignty and continuity.[17] In addition to the Guatemalan State's 98 percent impunity rate for violence against women and crimes of femi(in)cide, inadequate guarantees of Indigenous women's rights more generally have persisted. Indigenous women continue to face insurmountable barriers to justice by way of corruption and even, after 23 years, failures by the State to implement the 1996 Agreement on Firm and Lasting Peace which followed the genocide, "especially with regard to reparations for crimes perpetrated against women during the internal conflict and pledges relating to the advancement of women."[18]

# Conclusion

Despite the uniqueness of each of the experiences of socio-economic marginalization, exclusion and violence, met by advocacy and resistance of Maya Indigenous and First Nations communities respectively, bearing witness has held prominent importance throughout. The ways in which such movements have themselves born witness, has encouraged me, as an advocate and researcher to do the same: situating my findings and claims within a 500 years legacy of resistance. It is my hope that this photo essay has encouraged the reader and viewer to not only bear witness to legacies which inform advocacy and resistance movements, but more largely to consider their positionality to the communities they research and serve. I hope I have encouraged the reader and viewer to situate themselves within these advocacy and resistance movements as they bear witness to them.

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17    de Finney, Sandrina. "Indigenous girls' resilience in settler states: Honouring body and land sovereignty." Agenda 31, no. 2 (2017): 10-21, page 13.
18    UN Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations on the combined eighth and ninth periodic reports of Guatemala, 22 November 2017, CEDAW/C/GTM/CO/8-9, §22.

# Influencing in times of coronavirus: misinformation and the threat to public health

**Rebeca Marques Rocha** discusses how COVID-19 has highlighted the critical role played by social media influencers in times where public health is at stake.
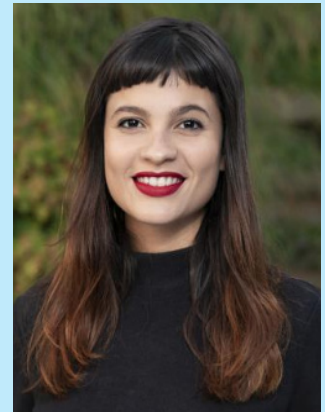


(Source: Cottonbro/Pexels)

Networks connecting people worldwide have rapidly developed in the past decade. Currently, about 45% of the global population use social media.[1] These tools have drastically changed people's interactions with news outlets, with social media becoming the most preferred source of information in Brazil, the US, and Italy.[2] Also, a study found out that 63% of young people in the UK consider social media to be a good source for getting health advice.[3]

However, these platforms can be filled with content lacking scientific ground acting as vectors for the spread of misinformation. Currently, fact-checking monitoring is performed by third-party companies worldwide. However, reports only cover 42% of responses given to contents within the first hour of posting – a worrisome number when considering the overall daily engagement of social media users.[4]

1       Jason Mander and Duncan Kavanagh. Global Web Index 2019. (California, Global Web Index, 2019). https://www.globalwebindex.com/reports/trends-19.

2       Nic Newman; Richard Fletcher; Antonis Kalogeropoulos and Rasmus Nielsen K. Digital News Report. (Reuters Institute, 2019). https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2019-06/DNR_2019_FINAL_0.pdf.

3       Chris Elmore, and William Wragg, New Filters to Manage the Impact of Social Media on Young People's Mental Health and Wellbeing. (London, Royal Society for Public Health, 2019). https://www.rsph.org.uk/our-work/policy/wellbeing/new-filters.html.

4       Antigone Davis, Our Commitment to Keeping People

Influencers are individuals on social media who closely manage their published contents in personalised ways that attract a large number of followers. On Instagram alone, there are about 500,000 active influencers.[5] Some of them can reach up to 208 million people with their posts, impacting their decisions on consumption, lifestyle, self-image, and health.[6]

These people make a living out of their online profiles. Through partnerships with companies and brands, they become ambassadors for a product or service, receiving a percentage of the sales that can be attributed to their promotional contents.[7] Some of the most influential accounts are able to profit about $1.2 million per single post published.[8]

Influencers can also promote collective damage. In one example, important personalities helped promote anti-vaccine campaigns through social media accounts.[9] The Australian influencer Taylor Winterstein, with more than 40 thousand followers on Instagram, claims in her profile bio that she is "[m] obilizing the next generation of parents to take back control." In this sense, the spread of misinformation by personalities with influential accounts poses a direct risk to public health.

**Average Daily Social Media Time**

| Region | Time |
|---|---|
| Asia Pacific | 2h13min |
| Europe | 1h50min |
| Latin America | 3h27min |
| Middle East | 3h03min |
| North America | 2h04min |

(Source: Global Web Index, 2019)

**The coronavirus outbreak**

In relation to COVID-19,[10] which was officially declared a pandemic on March 11th 2020, the role of influencers must be called into question. The virus spread through more than a hundred countries and infected over a million people, forcing governments to call for state emergencies and national lockdowns[11]– an attempt to flatten the infection spread curve.

With interactions restricted to online platforms, people's relationships with social networks changed. After the first month of lockdown, the amount of time spent by users on social media increased by 44%.[12] The boom in posts related to COVID-19 also unleashed an "infodemic."[13]

In such a scenario, influencers' online presence raises new concerns. Several accounts have been reported for spreading coronavirus misinformation.[14]

Safe. (Facebook, February 11th, 2020). https://about.fb.com/news/2020/02/keeping-people-safe/. / Nick Clegg. Combating COVID-19 Misinformation Across Our Apps. (Facebook, March 25th, 2020). https://about.fb.com/news/2020/03/combating-covid-19-misinformation/.

5        Instagram Newsroom, 2019. Accessed: April 10th, 2020. https://about.instagram.com/blog/announcements/Instagram/.

6        Smit CR, Buijs L, van Woudenberg TJ, Bevelander KE, Buijzen M. The Impact of Social Media Influencers on Children's Dietary Behaviors. (Front Psychol, 2020 Jan 10). doi:10.3389/fpsyg.2019.02975/. / K. Pilgrim, and S. Bohnet-Joschko, Selling health and happiness how influencers communicate on Instagram about dieting and exercise: mixed methods research. (BMC Public Health, 2019 Aug 6). https://doi.org/10.1186/s12889-019-7387-8 / Quick V.M., and Byrd-Bredbenner C. (J Hum Nutr Diet, 2014 Jul 2013). doi:10.1111/jhn.12060.

7        Influencer Marketing Hub, Influencer Marketing Benchmark Report. (Influencer Marketing Hub, 2019). https://influencermarketinghub.com/resources/influencer-marketing-benchmark-report-2019/.

8        "How much does Kylie Jenner earn on Instagram?" BBC, July 26, 2019). https://www.bbc.co.uk/newsround/49124484; Qudsi, Ismael El, What To Expect For Influencer Marketing In 2020, Forbes, February 6,  2020. https://www.forbes.com/sites/forbesagencycouncil/2020/02/06/what-to-expect-for-influencer-marketing-in-2020/.

9        David Grimes R., "From Vagina Eggs to Anti Vaxxers: Is It Time for an Influencer Detox?" The Guardian, January 21, 2020. https://www.theguardian.com/lifeandstyle/2020/jan/21/from-vagina-eggs-to-anti-vaxxers-is-it-time-for-an-influencer-detox.

10        According to the World Health Organization (2020), Coronavirus (COVID-19) is an infectious disease caused by a novel virus. The disease causes respiratory illness (like the flu) with symptoms such as a cough, fever, and in more severe cases, difficulty breathing.

11        World Health Organization. Coronavirus disease (COVID-19) Pandemic. (WHO, 2020). https://www.who.int/emergencies/diseases/novel-coronavirus-2019.

12        Amy Watson. "Consuming media at home due to the coronavirus worldwide 2020, by country." (Statista. 2020 March, 2020). https://www.statista.com/statistics/1106498/home-media-consumption-coronavirus-worldwide-by-country/

13        Julia Wong C,  "Tech giants struggle to stem "infodemic" of false coronavirus claims." The Guardian, April 10, 2020. https://www.theguardian.com/world/2020/apr/10/tech-giants-struggle-stem-infodemic-false-coronavirus-claims

14        Tanya Chen, "Influencers Are Sharing Bad "Tips" And "Information" About COVID-19 On Instagram." Buzzfeed, March 13, 2020. https://www.buzzfeednews.com/article/tanyachen/hey-influencers-who-are-sharing-bad-tips-and-information.

A third of the global population introduced coronavirus lockdowns, increasing social media engagement by 44% (Source: Engin Akyurt/Pexels)

Health and fitness coach Krystal Nielson, with 602,000 Instagram followers, claimed that a detox diet could prevent COVID-19 infection, using the same post to advertise her new 10-day-detox program.

However, under countries' lockdown, content monitoring has been compromised. The need to comply with local GDPR requirements[15] complicated – or even blocked – the transition of moderating social media activities to home offices.[16] With the increase in content sharing, the already overloaded fact-checking effort was severely hit, forcing tech giants to make a "risky bet in artificial intelligence."[17]

**"The pandemic has revealed the negative impacts of social media influencing on public health systems."**

The pandemic has revealed the negative impacts of social media influencing on public health systems. With the outbreak, monetization of influencers' accounts through brand marketing has dramatically decreased. Many brands reduced their marketing efforts, as a widespread economic recession is expected to hit the commercial sector worldwide.[18] Nevertheless, the lockdown has left individuals bored and eager to interact online. Hence, influencers focusing on fitness, cooking, and well-being are experiencing a growth in audience engagement.[19]

In these circumstances, influencers' promotional contents fell short of safety standards. Recently, it

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15      Abbreviation to "General Data Protection Regulation".

16      Sam Biddle,  "Facebook contractors must work in offices during coronavirus pandemic — while staff stay home". March 12, 2020. The Intercept. Accessed: April 10, 2020. https://theintercept.com/2020/03/12/coronavirus-facebook-contractors/.

17      Casey Newton, "The Coronavirus Is Forcing Tech Giants to Make a Risky Bet on AI." The Verge, March 18, 2020. https://www.theverge.com/interface/2020/3/18/21183549/coronavirus-content-moderators-facebook-google-twitter.

18      Hannah Elliot, "When the Picture Isn't Pretty: How Influencers Are Adapting to Lockdown." Bloomberg, April 1, 2020. https://www.bloomberg.com/news/articles/2020-04-01/how-social-media-influencers-are-affected-by-coronavirus-shutdown.

19      Lauren Hallanan," "COVID-19 Has Hurt China's Influencers (Or Has It?)." Jing Daily, March 11, 2020. https://jingdaily.com/covid-19-has-hurt-chinas-influencers-or-has-it/.

has been revealed that a number of accounts are attempting to seize the momentum by advertising products and services deceitfully connected to COVID-19 prevention and treatment.[20]

When it comes to false content reaching big audiences, once it goes online, the damage is done. Even if eventually put down, these materials have already influenced a sizable number of people.[21] Social media companies have tried to promptly come up with solutions for the "infodemic", but some of the clear-cut removal policies raise concerns.[22] With approaches focused primarily on content created to purposely induce harm, misinformation spread by influencers – presented in the guise of seemingly personal posts and opinions – often fall within monitoring's blindspot.

Freedom of speech is the foundation of contemporary democracies. Indeed, the Universal Declaration of Human Rights urges governments to protect citizen's freedom of expression. However, in article 29, it also calls for everyone's duty to the community and respect for others' rights and freedoms, and to ensure that actions meet, "the just requirements of morality, public order and the general welfare in a democratic society."[23]

The COVID-19 pandemic has highlighted how the right to freedom of speech might be abused for exploitative purposes, unleashing harmful impacts to public wellbeing. The right to health is mentioned in article 25 of the 1948 UDNHR, and it was emphasized by the 1966 International Covenant on Economic, Social and Cultural Rights.[24] Ultimately, the biggest challenge for States is to draw the delicate threshold defining the limits between collective and individual rights.

Recognizing the relevance of social media, the Finnish government has created a public agency focused on presenting influencers as critical social actors.[25] The main goal of the policy is to use influencers to spread reliable official information about the COVID-19, reaching sections of the public usually not reached by conventional news outlets.[26]

The long-term outcomes of such an approach are yet to be seen. However, the partnership with the government has the potential to permanently consolidate influencers as a reliable source of information. On an adverse note, such a move could bring negative impacts to conventional news outlets, decreasing audience engagement or even delegitimizing the channels.

Coronavirus and the events that have occurred in its wake has revealed the critical position of social media influencers in contemporary societies.[27] Such a role calls for responsibility, and demands that accountable measures be taken with regards to the monitoring of public discourse. This might be a unique chance of implementing innovative approaches for fixing such a structural problem as the one addressed in this article. COVID-19 has exacerbated the influencers' fever, but, in this case, governments might have just the right formula for a powerful vaccine.

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20      Joey D'Urso, 2020. "Facebook Is Clamping Down On Coronavirus Misinformation In English, But Hoaxes Are Going Viral In Other Languages" Buzzfeed, March 13, 2020.
21      "The EU Digital Strategy Unpacked: How the European Union Plans to Tackle Disinformation over the next Five Years." EU DisinfoLab, March 2, 2020. https://www.buzzfeed.com/joeydurso/facebook-coronavirus-misinformation-viral-hoaxes. https://www.disinfo.eu/advocacy/the-eu-digital-strategy-unpacked-how-the-european-union-plans-to-tackle-disinformation-over-the-next-five-years.
22      Steven Feldstein, "The Road to Digital Unfreedom: How Artificial Intelligence is Reshaping Repression." (Journal of Democracy, Johns Hopkins University Press, January 2019).
23      The United Nations. Universal Declaration of Human Rights. (Paris, The United Nations, 1948 December 10).
24      UN General Assembly, International Covenant on Economic, Social and Cultural Rights. (16 December 1966, United Nations, Treaty Series, vol. 993, p. 3). https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.
25      Melissa Heikkilä, "Finland taps social media influencers during coronavirus crisis." Politico, March 31, 2020. https://www.politico.eu/article/finland-taps-influencers-as-critical-actors-amid-coronavirus-pandemic/.
26      Jon Henley, "Finland enlists social influencers in fight against Covid-19." The Guardian, April 1, 2020. https://www.theguardian.com/world/2020/apr/01/finland-enlists-social-influencers-in-fight-against-covid-19.
27      "Platforms' responses to covid-19 mis and disinformation." EU DisinfoLab, April 1, 2020. https://www.disinfo.eu/resources/covid-19/platforms-responses-to-covid-19-mis-and-disinformation.

# The resource curse: the impact of Dodd–Frank on local conflict in the Democratic Republic of Congo

**Zuzana Petrová** explores the nature of conflict minerals in the Congo, and the possibility that President Trump's goal to roll back one of America's biggest financial reforms could be one of the best chances for peacekeeping in the region.
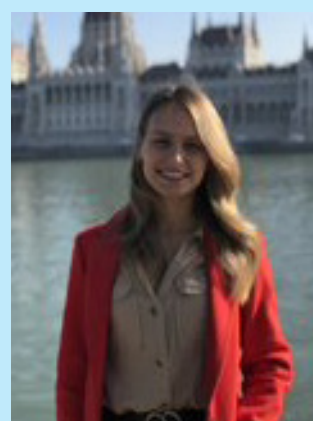
Many academic studies have shown that having a wealth of natural resources tends to negatively impact countries and their governance, strengthening authoritarian regimes, increasing corruption, and triggering violence.[1] The Democratic Republic of Congo (DRC), one of the world's major   mining



Trump v. Dodd-Frank (Source: Sara D. Davis/Getty Images)

centers, is estimated to be worth 24 trillion USD in its raw mineral reserves, yet because of a vicious cycle of conflicts that centers around these natural resources, the vast majority of its population is very poor.[2] To help end the illegal trade and exploitation of minerals, the United States, under the administration of Obama in 2010, added Section 1502 to the Dodd–Frank Wall Street Reform and Consumer Protection Act (simply known as Dodd–Frank). The small, but relevant Section 1502, known as the "conflict minerals" provision,[3] is a disclosure measure that requires publicly-listed companies to determine with 'due diligence' whether products in their supply chain contain conflict minerals[4] originating from the DRC or neighboring countries, and report on their findings to the US Securities and Exchange Commission every year.[5]

1       Michael Ross, "What Have We Learned about the Resource Curse?" The Annual Review of Political Science 18, (December 2014), 239-59, accessed on 5 March 2020. https://doi.org/10.1146/annurev-polisci-052213-040359.
2       United Nations Environment Programme, "The Democratic Republic of the Congo: Post-Conflict Environmental Assessment Synthesis for Policy Makers," Unep.org, (2011); Nik Stoop, Marijke Verpoorten, and Peter van der Windt, "More legislation, more violence? The impact of Dodd-Frank in the DRC," 'PLoS ONE' 13, no. 8, (2018), accessed on 28 January 2020. https://wedocs.unep.org/bitstream/handle/20.500.11822/22069/UNEP_DRC_PCEA_EN.pdf?sequence=1&isAllowed=y.
3       The Global Witness, "US Conflict Minerals Law," Globalwitness.com, (15 November 2017), accessed on 5 March 2020. https://www.globalwitness.org/en/campaigns/conflict-minerals/dodd-frank-act-section-1502/.
4       Tin, tungsten, tantalum, and gold – often referred to as the 3TG – are critical to the electronics, aerospace, automotive, and jewelry industries. See Mvemba Phezo Dizolele, "Dodd-Frank 1502 and the Congo Crisis," Csis.org, Center for Strategic and International Studies, (22 August 2017), accessed on 5 March 2020. https://www.csis.org/analysis/dodd-frank-1502-and-congo-crisis.
5       The Global Witness, "US Conflict Minerals Law."

Is a Conflict-Minerals Law helping or harming African miners? (Source: Eric Feferberg/Getty Images)

In 2017, President Trump threatened to suspend Section 1502.[6] His motivation for wanting to repeal the act is mostly related to the high administrative costs of 'due diligence.'[7] The debate that followed was very passionate, especially among Democrats who saw the legislation as an essential condition for peace in the Congo.[8] Even though this suspension never came into force, the conveyed interest of Republicans in suspending Dodd-Frank can be seen as a reminder of how the act, which had "noble intentions but mixed effects," remains highly controversial.[9]

Policy adviser Carly Oboth and activist Arvind Ganesan, among others,[10] were against Trump's attempted suspension of Section 1502. According to these activists, the suspension of Dodd-Frank would be a gift to armed groups in the DRC who wanted to profit from the minerals, encouraging secretive and corrupt business practices and undoing the progress already made.[11] However, to the contrary, many researchers in the Congo welcomed the potential suspension, with an open letter stating that "the conflict minerals movement has yet to lead to meaningful improvement on the ground and has had a number of unintended consequences."[12] Why? As

6    Ed Pilkington, "Proposed Trump executive order would allow US firms to sell 'conflict minerals'," Theguardian.com, The Guardian, (8 February 2017), accessed on 5 March 2020. https://www.theguardian.com/us-news/2017/feb/08/trump-administration-order-conflict-mineral-regulations.

7    The costs were estimated at 3-4 billion USD upfront and approximately 200 million USD annually thereafter. This was highlighted in an explanatory statement to Trump's draft executive order. See Ed Pilkington, "Proposed Trump executive order would allow US firms to sell 'conflict minerals'."

8    Mvemba Phezo Dizolele, "Dodd-Frank 1502 and the Congo Crisis."

9    Nik Stoop, Marijke Verpoorten, and Peter van der Windt, "Trump threatened to suspend the 'conflict minerals' provision of Dodd-Frank. That might actually be good for Congo," Washingtonpost.com, The Washington Post, (27 September 2018), accessed on 5 March 2020. https://doi.org/10.1371/journal.pone.0201783.

10    Arvind Ganesan is the director of the Business and Human Rights Division of Human Rights Watch; Carly Oboth is a conflict resources policy adviser at the international nongovernmental organization Global Witness. See the Global Witness, "US: Don't Suspend Conflict Minerals Rule, Reversing Dodd-Frank Rule Could Enrich Abusive Armed Groups," Globalwitness.org, (9 February 2017), accessed on 5 March 2020. https://www.globalwitness.org/en/press-releases/executive-order-suspending-us-conflict-minerals-law-would-be-gift-warlords-and-corrupt-businesses-says-global-witness/.

11    The Global Witness, "An executive order suspending the US conflict minerals law would be a 'gift to warlords and corrupt businesses'," Globalwitness.org, (8 February 2017).

12    Seventy signatories, "An Open Letter: Dear Governments, Companies, Non-Governmental Organizations, and Other

lecturer Sara Geenen wondered: is it possible that "Trump is right on Congo's minerals"?[13]

One of the consequences of the act was the effects on mineral exports from the DRC, forcing between hundreds of thousands to above two million Congolese miners out of work.[14] Though the act did not criminalize mineral purchases from the DRC, it acted as a de facto ban of such purchases because the simplest way for companies to deal with the 'conflict-free' label was to avoid purchasing minerals from these zones altogether.[15]

Consequently, even though the intentions of Section 1502 were noble, the violence in affected areas persisted due to some of the act's inefficiencies. The act failed to cut off the resources of warlords who controlled the mining areas. It also overlooked other factors causing local violence, such as poverty, corruption, and land conflicts, neglecting the complexity of the situation.[16] Even though rebel militias lost their mining profits, they substituted their sources of income with other products.[17]

## ""Is it possible that 'Trump is right on Congo's minerals'?"

The European Network for Central Africa (EurAc) proposes that the mineral resource is not the primary cause of conflict in mining areas.[18] Other determinants, such as acquisition and control of land and questions of citizenship need to be taken into consideration as drivers of conflict.[19] The EurAc report emphasizes the conditions necessary for a more responsible sourcing of minerals; it recommends that actors create reliable systems to trace the minerals, assist and supervise artisanal miners to increase their wages and productivity, and encourage the implementation of community development projects at a local level.[20]

Another clear but neglected priority is to address the total impunity of national militaries.[21] However, such measures are only effective if locals who know what is happening on the ground are involved in policy making.[22]

So, how can the 'umbilical cord' between the conflict and mineral resources be cut by the US without further negative effects? President Trump has not offered a solution so far. Any policy measures are unlikely to properly deal with the conflict in these areas if they only focus on certain, narrow issues regarding the

Stakeholders Implicated in Efforts of Various Kinds Related to the Issue of 'Conflict Minerals'," (2014), accessed on 24 April 2020. https://ethuin.files.wordpress.com/2014/09/09092014-open-letter-final-and-list.pdf.

13      Sara Geenen, "Trump is right on Congo's minerals, but for all the wrong reasons," Theconversation.com, The Conversation, (22 February 2017), accessed on 8 March 2020. https://theconversation.com/trump-is-right-on-congos-minerals-but-for-all-the-wrong-reasons-73320.

14      Laura Seay, "What's Wrong with Dodd-Frank 1502? Conflict Minerals, Civilian Livelihoods, and the Unintended Consequences of Western Advocacy - Working Paper 284," Cgdev.org, (5 January 2012), accessed on 6 March 2020. https://www.cgdev.org/publication/what's-wrong-dodd-frank-1502-conflict-minerals-civilian-livelihoods-and-unintended.

15      Pöyhönen Päivi, Kristina Areskog Bjurling, and Jeroen Cuvelier, "Voices from the inside: Local views on mining reform in eastern DR Congo," Goodelectronics.org, Finnwatch and Swedwatch, (1 October 2010), accessed on 6 March 2020. http://goodelectronics.org/publications-en/Publication_3586.

16      Séverine Autesserre, "Dangerous tales: Dominant narratives on the Congo and their unintended consequences," African Affairs 111, no. 443, (April 2012), 202-222, accessed on 6 March 2020. https://academic.oup.com/afraf/article-abstract/111/443/202/16975?redirectedFrom=fulltext.

17      Such products are palm oil and cannabis. See United Nations Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," Un.org, (2 December 2011), accessed on 6 March 2020. https://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738.

18      European Network for Central Africa, "Accompanying Measures to the EU Regulation on Responsible Mineral Sourcing Towards an improved governance of the artisanal mining sector in the DRC," Eurac-network.org, (March 2017), Accessed on 6 March 2020. https://www.eurac-network.org/sites/default/files/position_paper_-_eng_accompanying_measures_to_the_eu_regulation_on_responsible_mineral_sourcing_-_march_2017.pdf.

19      Ibid. See also Aloys Tegera et al., "Open letter," (2014), accessed on 7 March 2020. https://ethuin.files.wordpress.com/2014/09/09092014-open-letter-final-and-list.pdf.

20      European Network for Central Africa, "Accompanying Measures to the EU Regulation on Responsible Mineral Sourcing Towards an improved governance of the artisanal mining sector in the DRC."

21      Ibid. For example, in September 2016, the Congolese army launched investigations into three generals and two colonels for their alleged involvement in South Kivu mines, then just a month later they announced there would be no prosecutions.

22      Nik Stoop, Marijke Verpoorten, and Peter van der Windt, "Trump threatened to suspend the 'conflict minerals' provision of Dodd-Frank. That might actually be good for Congo."

mineral supply chain. Conflicts tend to have local roots, therefore in order to establish peace and cease fighting, peacebuilding efforts need to engage with the societies on every level.[23] For example, the United Nations' Peacekeeping Force (MONUSCO)[24] plays an active role in the DRC, helping with the development of certification schemes, traceability systems for mineral supply chains, and due diligence measures,[25] while also providing services for the disarmament, demobilization, and reintegration of ex-combatants and other related activities.[26]

The roots of the conflict goes deeper than the mineral resources. If the conflict is mainly addressed by focusing on only one aspect of the puzzle, capturing only part of the reality will not create desirable outcomes.[27]

In conclusion, the resource curse is a real, complex phenomenon that cannot be easily solved just by placing embargoes, bans, or boycotts. Dodd-Frank transferred the battles from minerals to other, unregulated products, which evidences that it does not work as intended.[28] When addressing the case of the DRC, the issues closely linked to conflict minerals, such as violence, corruption, and land conflicts are too complex to be solved by people who are ignorant and so far away. For any proffered solution to be effective, it needs to include not only mining sector reforms, but also consider peacebuilding efforts and intense political discussions poised to deal with the problems of governance and the impunity of military involvement.[29] One artisanal miner from Bukavu, a city in eastern DRC, put it this way, "We are tired of all these decisions on [sic] our lives, being taken elsewhere. How can you refuse to buy the minerals that we export, but at the same time sell weapons to our armed groups? In both cases, you are denying us a chance to live."[30] In the end, it is possible that Trump's attempt to suspend Section 1502 was probably right, but for all the wrong reasons.[31]

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23    Séverine Autesserre, "The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding," (Cambridge: Cambridge University Press, 2010), accessed on 6 March 2020. https://www.cambridge.org/core/books/trouble-with-the-congo/7BB825CE2132698D505F0A11B04A01B5#fndtn-information.

24    Alexandra Novosseloff, "The Effectiveness of the UN Mission in the Democratic Republic of the Congo," theglobalobservatory.org, The Global Observatory, (19 December 2019), accessed on 28 April 2020. https://theglobalobservatory.org/2019/12/effectiveness-un-mission-democratic-republic-of-the-congo/.

25    The Enough Team, "A Comprehensive Approach to Congo's Conflict Minerals – Strategy Paper" Enoughproject.org, (24 April 2009). See also Ken Matthysen and Andrés Zaragoza Montejano, "Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities," Reliefweb.int, (2013), accessed on 26 April 2020. https://enoughproject.org/reports/comprehensive-approach-conflict-minerals-strategy-paper.

26    MONUSCO, "DDR/RR," Unmissions.org, accessed on 28 April 2020. https://monusco.unmissions.org/en/ddrrr.

27    Séverine Autesserre, "Dangerous tales: Dominant narratives on the Congo and their unintended consequences."

28    Dominic Parker and Bryan Vadheim, "Resource Cursed or Policy Cursed? US Regulation of Conflict Minerals and Violence in the Congo," Journal of the Association of Environmental and Resource Economists 4, no. 1, (2016) 1-49, accessed on 6 March 2020. https://www.journals.uchicago.edu/doi/10.1086/689865.

29    Sara Geenen, "Trump is right on Congo's minerals, but for all the wrong reasons." See also European Network for Central Africa, "Accompanying Measures to the EU Regulation on Responsible Mineral Sourcing Towards an improved governance of the artisanal mining sector in the DRC."

30    Ibid.

31    Ibid.

# Afghan Women: Captives of religious dogmatism and a patriarchal society

**Asil Zarang** argues that religious dogmatism, a patriarchal society, and the state's inability to protect women's rights are among the principal factors which put women who live in Afghanistan in vulnerable positions.

2020 marks the fifth year after an appalling atrocity was committed in broad daylight against a young woman in Afghanistan. In 2015, a video of a young Afghan woman who was falsely accused by a man of burning a copy of the Quran and was ruthlessly lynched by a mob in the center of Kabul, went viral. 27-year-old Farkhunda Malikzada was attacked by a group of angry men.[1] Gender in itself does not play a prominent role in defining or questioning religious issues in Afghanistan. However, the interaction of gender and religious extremism, when present, places women in a vulnerable position in society. The purpose of this essay is to provide a conceptual analysis of the conviction of women based on religious premises, underlining the instrumental elements that legitimize such criminalization and ultimately put women in vulnerable positions.

The prominence of religious extremism in government, extreme interpretation of the Sharia Law and prevalent misogynist ideologies make women vulnerable across levels of Afghan society.

**"It is dangerous for anyone, ranging from citizens to human rights advocates and even academics to question the malignant effects of religious extremism on women."**

Afghanistan's history reveals the relatively steady strides made with regards to the success of women's rights advocacy in the country. For example, Afghan women were first eligible to vote in 1919 – only a year after women in the UK were given voting rights, and a year before the United States allowed women to vote.[2] But women's rights increasingly rolled back at the onset of conflict between Mujahideen groups and the then government forces in the 1980s and 1990s.[3]

The harshest wave of religious extremism dates back to the 1990s, when a group of eighty Afghan Islamic scholars in Peshawar, all of whom were from the seven parties which formed the Mujahideen, issued a fatwa, a non-binding legal pronouncement on an interpretation of Islamic Law. This fatwa banned women from wearing noisy bangles, perfume or western clothes. Women were also banned from walking in the middle of a street, talking, laughing or joking with strangers and foreigners.[4] This doctrinal belief was further strengthened by the Taliban when they enforced

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1      Alissa Rubin, "Flawed Justice After a Mob Killed an Afghan Woman," The New York Times (26 December 2015), <https://www.nytimes.com/2015/12/27/world/asia/flawed-justice-after-a-mob-killed-an-afghan-woman.html> accessed 31 March 2020.

2      "Women in Afghanistan: The Back Story," Amnesty.org, https://www.amnesty.org.uk/womens-rights-afghanistan-history, accessed 27 April 2020.

3      "Women in Afghanistan: The Back Story."

4      Kathy Evans, "Fatwa Tells Women How to Dress," The Guardian (UK), 23 June 1990.

their version of the Sharia law. They banned girls and women from going to school, working, leaving home without a male chaperone, accessing health care delivered by men — which came to constitute virtually all forms of healthcare as women were banned from working. They also banned political participation of women.[5]

After the fall of the Taliban, we are witnessing a new phase in Afghan women's lives and history. Most of the abovementioned bans lost effect and are no longer exercised. Furthermore, the international community's commitments to support women's empowerment in Afghanistan elevated optimism. For the first time the Law on the Elimination of Violence Against Women (EVAW) was promulgated in 2009.[6] However, the aspirations created in the aftermath of a tragic period have not translated into actions. This law has been little more than a symbolic achievement.[7] In fact, violence against women is perpetrated by both State and private actors.[8] The consequences of such violations have been disastrous for Afghan women and girls. For instance, gender-based violence has propelled many Afghan women and girls to attempt suicide.[9] Women also remain subject to patriarchal expectations. According to UNICEF's recent report, 35% of Afghan girls get married before the age of 18 and 9% are married before their 15th birthday.[10]

A key challenge that impedes advocacy for women rights is the dominance of religious dogmatism and counterintuitive approach of the Ulema scholars in the Afghan society.[11] It is dangerous for anyone, ranging from citizens to human rights advocates and even academics to question the malignant effects of religious extremism on women. Given the government's apathy about this crisis and the shielding of these topics from constructive discourses and dialectics; traditionalists and fanatic religious clerics have been able to significantly impede advocacy for the realization of women's rights in Afghanistan. Those who dared to voice their concerns were either labeled as apostates, anti-mujahedin or agents of the west, thus making it risky for them to live in Afghanistan.[12]

The entrenched patriarchal structure of the society contributes to the nurturing of a male-dominant society. Similar to other patriarchal settings, the central social unit in Afghanistan is the extended family in which the senior man has authority over all members, including younger men. Micheline Centlivers-Demont writes that:

> "the roles and status of [Afghan] women are, before everything else, based on women's reproductive functions: physical reproduction and social reproduction. At the center of a system of exchange that is based not on the individual but on entire families, wives are acquired by a transfer of goods from the husband's family to the bride's, a transfer that ensures to the former the young women's reproductive functions."[13]

Therefore, the patriarchal society in Afghanistan is one in which all positions of power and privilege are occupied by men.[14] This has resulted in the high rates of femicide, led to low female literacy, high fertility rates and their eclipsed participation in the formal sectors of the country's economy.[15]

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5        Ibid.
6        Mehdi J Hakimi, "Elusive Justice: Reflections on the Tenth Anniversary of Afghanistan's Law on Elimination of Violence Against Women," 22.
7        Ibid.
8        Ibid.
9        "Why Female Suicide in Afghanistan Is so Prevalent," BBC News, <https://www.bbc.com/news/world-asia-44370711> accessed 14 June 2020.
10       "Afghanistan - Child Marriage Around The World. Girls Not Brides." Girls Not Brides, https://www.girlsnotbrides.org/child-marriage/afghanistan/ accessed 25 April 2020.
11       A body of Muslim scholars who are recognized as having expert specialist knowledge of Islamic sacred law and theology.
12       Wimpelmann Torunn, 'The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan. Oakland: University of California Press, 2017. P. 76.
13       Micheline Centlivres-Demont, "Afghanistan, Identity, Soceity and Politics Since 1980," I.B. Tauris & Co Ltd, 2015. P. 31-32.
14       Valentine M Moghadam, "Revolution, Religion, and Gender Politics: Iran and Afghanistan Compared."  10 Journal of Women's History, 10 (1999): 172.
15       John Caldwell, Theory of Fertility Decline (New York: Academic Press, 1982); Deniz Kandiyoti, "Bargaining with Patriarchy," Gender & Society 2, no. 3 (1988): 274-89; Naila Kabeer, "Subordination and Struggle: Women in Bangladesh," New Left Review 168 (March-April 1988); and Valentine M. Moghadam, "Patriarchy and the Politics of Gender in Modernising Societies: Iran, Pakistan,

A protest demanding justice for the lynching of the Afghan woman, Farkhunda, in Kabul. (Source: Getty Image)

The Afghan state continually fails to protect women's basic rights. After almost two decades of the Taliban's ouster, despite the international community's vast support, legal protection for women remains an acute challenge for the Afghan state. The case of the first female nominee for the Supreme Court of Afghanistan who was rejected by the Parliament on the grounds that menstruating women are not allowed to touch Quran, is evidence of the protracted denial of women's rights.[16] Such a move particularly by the law-making branch of the State is an alarming sign that religious extremism still exists even among the so-called elites in Afghanistan and this is a cause for considerable sorrow.

In conclusion, religious dogmatism and extremism, a prevalent patriarchal society, and the Afghan state's inability to protect women's rights are among the principal factors which shape women's vulnerabilities in Afghanistan. These factors allow such an atrocity as that committed against Farkhunda.

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Afghanistan," International Sociology 7, no. 1 (1992): P. 35-53.
16      Sune Engel Rasmussen, "First Female Nominee Fails to Win Seat on Afghan Supreme Court," The Guardian (8 July 2015) https://www.theguardian.com/world/2015/jul/08/afghan-supreme-court-female-nominee-anisa-rassouli, accessed 10 April 2020.

# Realizing the Freedom from Labor Exploitation: A Collaborative Approach to Global Labor Governance

**Miguel Luis U. Arias** outlines a governance path forward that fosters accountability and compliance with international labor standards to realize the right to a favorable and just working conditions.

The Informal Economy (Source: Financial Tribune)

The labor market is drastically changing. Non-standard forms of employment have increased following rapid technological change propelled by globalization.[1] There is a growing concern over safeguarding the rights of workers in these new forms of employment, where current regulatory tools are unsuitable.

On one hand, firms use technology and global value chains to maximize profit and increase efficiency. However, this complex international division of labor makes it difficult for governments to protect laborers within the bounds of their respective jurisdictions, exposing laborers to possible exploitation. Governments are then faced with a trade-off of increasing measures to protect its workers at the expense of losing firms who may seek other countries with more relaxed labor regulations. Those who

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1    "New forms of employment," Eurofound, Publications Office of the European Union, 2015, https://www.eurofound.europa.eu/publications/report/2015/working-conditions-labour-market/new-forms-of-employment.

choose to favor firms encourage a race to the bottom[2] enabling businesses to continue their exploitative practices. The absence of a regulatory bed that will effectively respect, protect and fulfill the right of individuals to just and favorable work conditions[3] calls for a global labor governance regime. Such a regime must be appropriately designed to respond to the challenges brought by the rapidly evolving labor market.

The International Labor Organization (ILO) is the main global institution that enforces international labor standards (ILS), and is primarily focused on regularly reporting the initiatives taken by member countries to implement the standards they have ratified.[4] However, the ILO has limited enforcement powers to induce compliance from member countries. In the absence of sanctions, the ILO instead provides technical assistance to member countries to aid compliance with ILO standards.[5] The absence of hard measures to force compliance with ILS is heavily criticized by labor unions and compliant countries, undermining their legitimacy and relevance.

> **"The challenge lies in how internal labor regulations can become competitive for these firms to push each other up, instead of racing to the bottom and backsliding into a labor market bereft of standards."**

Enforceability of ILS is becoming more private as regulators choose to use soft measures to induce compliance, showing a clear shift from a state-based to a private market-driven labor governance regime.[6] The state-based regime is characterized as authority-oriented, uses hard law through the use of sanctions, is mandatory, and requires compliance by governments.[7] On the other hand, a private regime is characterized as market-oriented, uses soft law through the use of incentives and information, is voluntary, and requires compliance by businesses.[8] Drawing on Hassel's 2008 article, this paper aims to evaluate the dominant models of labor governance regimes and recommends a collaborative regime which suits the right of workers to just and favorable work conditions.

## Private Labor Governance Regime

The current regulatory regime in ILS is the private labor governance regime. In this model, there is no single regime, but rather many unconnected institutions that set the regulatory bed for compliance. Governments engage firms with incentives for them to voluntarily comply with labor regulations. Firms choose whichever practice coincides with their organizational goals and independently determine how their business operates through internal regulations. The private sector can promote good internal regulatory practices such as corporate social responsibility and compliance with quality management systems (e.g., ISO) and codes of conduct (e.g., United Nations Global Compact). The challenge lies in how internal labor regulations can become competitive for these firms to push each other up, instead of racing to the bottom and backsliding into a labor market bereft of standards. A highly deregulated labor market is not suitable to ensure



Models of Private Labor Governance Regime and Traditional Regime of Labor Regulation (Source: Anke Hassel)

2        Ronald Davies and Krishna Chaitanya Vadlamannati, "A race to the bottom in labour standards? An empirical investigation," Journal of Development Economics (103) 1–14. (2013), https://doi.org/10.1016/j.jdeveco.2013.01.003.
3        "International Covenant on Economic, Social and Cultural Rights," OHCHR, 1966, https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.
4        Gary Burtless, "Workers' Rights: Labor Standards and Global Trade," The Brookings Review, Vol. 19, No. 4 (Fall, 2001), pp. 10–13.
5        Ibid.
6        Anke Hassel, The Evolution of a Global Labor Governance Regime, (2008).
7        Ibid.
8        Ibid.

the realization of workers' rights because it lacks accountability.

## Traditional Regime of Labor Regulation

Critics of neoliberal thought and the capitalist order want the traditional regime of labor regulation to be restored. In this way, governments are in absolute control. They use their full agencies to make sure that all firms within their jurisdiction follow their set of labor regulations. It ought to be mandatory for all firms to comply with the labor laws or they will find themselves penalized for non-compliant behavior. In this model of governance, there is more than one core institution that sets the playing field on labor regulations. These institutions could be parallel and related to each other. Their norms should not be conflicting. Despite the dominant and heavy use of hard enforcement mechanisms, this model will not ensure the realization of rights of workers given the top-down approach used in the development and implementation of standards. Hence, regulations may not mirror or have considered the local, complex, diverse, dynamic, and unpredictable[9] realities of laborers in the workplace and varied capacities of firms.

## Collaborative Global Labor Governance Regime

The core institution leading the regulatory regime should be the ILO, with the state, private sector and labor unions closely integrated to the system. The ILO is ideally positioned to borrow from the practices of collaborative or networked governance[10] as better approaches to ensure the realization of workers' rights. While governments serve as leaders at the level of state operations, ILO leadership at the global level ensures that the private sector and labor unions are equally accountable in making sure that all involved actors comply with the set of standards they have agreed to establish. It is important to note that the development of ILS and the identity of the ILO is tripartite. Yet, the implementation and enforcement of these standards at the state level are not necessarily so. Hence, tripartism must be maintained and practiced at the level of state implementation. This model combines a mix of hard (mandatory) and soft (voluntary) regulatory mechanisms, providing

strength in the enforcement of ILS, while maintaining a developmental character by helping non-compliant firms to work on their deficiencies to eventually become compliant.

## Conclusion

It is strongly recommended that the global community explore the transition to a collaborative global labor governance regime. Maintaining the private labor governance regime lacks the enforcement power of the traditional regime while returning back to the traditional regime of labor regulation is bereft of the flexibility the private regime offers. Hence, a combination of soft and hard tools present in both traditional and private regimes known as **smart regulatory tools** is the most appropriate to be utilized in a collaborative governance regime. However, this governance model can only work in an environment that allows the legitimate operation of an active and engaged civil society (including labor unions) and a strong organized labor that exacts accountability to governments and firms in respecting, protecting and fulfilling the right of individuals to just and favorable work conditions.

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9        Robert Chambers, Whose Reality Counts? Putting the first last, London, UK: Intermediate Technology Publications. (1997).
10        Gerry Stoker, "Public Value Management: A New Narrative for Networked Governance?," American Review of Public Administration 36(1): 41– 57, (2006). and Janine O'Flynn, "From New Public Management to Public Value: Paradigmatic Change and Managerial Implications," The Australian Journal of Public Administration 66(3): 353-366, (2007).

# For our health and the planet's

**Tram Pham** highlights calls for governments and citizens to take active measures to lessen the negative effects of microplastics on health and the environment while scientific evidence in this area develops.



The world is currently facing a pandemic that has infected nearly 3.6 million people across 212 countries and territories to date.[1] Inger Andersen, the UN's environmental chief, emphasized that the pandemic should be considered a message from nature about the devastating impacts of putting too much pressure on it.[2] The positive side of this pandemic is that nature is recovering because of the minimized presence of human beings. Nevertheless, in this period of social isolation, nature is also facing problems caused by the plastic waste of hospitals, quarantine stations, and delivery services. In this context, it is difficult to ask people to pay attention to the environment and the harmful effects of single-use plastic. However, it is of great importance to recognize that human health will be likely affected by microplastics in the long run.

In a June 2018 article for National Geographic, Elizabeth Royte discusses whether tiny bits of plastic in the fish and shellfish people eat can harm people's health. Scientists need five to ten more years to know the full impact of marine microplastics on human health, but it, and even other types of microplastics, pose a threat to our lives. Instead of remaining passive, we should take more action.

> **"It is dangerous for anyone, ranging from citizens to human rights advocates and even academics to question the malignant effects of religious extremism on women."**

It can be shocking news that we consume microplastics every day and that there are many ways in which people are exposed to microplastics. Digesting marine food is not the only way in which humans can be exposed. A study conducted by the University of Newcastle, Australia, found that "an average person potentially consumes as much as 1769 particles of plastic every week."[3] This can be higher for people who work in the establishments producing plastics or plastic products, at waste management facilities, or at recycling factories. In developing countries such as Vietnam and India, it is a common practice that impoverished people collect plastic bottles with their bare hands in landfills to earn money. Even some skincare products, toothpaste, or detergents intentionally contain plastic microbeads.

Microplastics consumption is both a human rights and public health issue. Scientists have already started to study the impacts of microplastics on human health; however, doing so has proven to be a challenge, as scientists cannot ask people to eat plastic, and plastic can act differently depending on the context.[4] In our daily lives, we are exposed to many things that contain microplastics, which is why it is quite difficult

1       "Coronavirus update." https://www.worldometers.info/coronavirus/#countries.
2       Damian Carrington, "Coronavirus: Nature is sending us a message, says UN Environment chief," The Guardian, 25 March, 2020. , https://www.theguardian.com/world/2020/mar/25/coronavirus-nature-is-sending-us-a-message-says-un-environment-chief.
3       Dalberg Advisors, Wijnand de Wit, and Nathan Bigaud, 2018, "No Plastic in nature: Assessing plastic ingestion from nature to people." http://awsassets.panda.org/downloads/plastic_ingestion_press_singles.pdf.
4       Elizabeth Royte, "We Know Plastic Is Harming Marine Life: What About Us?" National Geographic, July, 2018. https://www.

for scientists to conduct exposure assessments to measure or estimate the intensity, frequency, and duration of our exposure to microplastics. They would then need to carry out a dose-response evaluation to detect the relationship between varying does and incidences of adverse effects in an exposed population. Finally, scientists would need to provide an evaluation of the overall quality of the assessment and the degree of confidence that should be assigned to the output, therefore describing the risks that microplastics can cause to people. Such research studies and assessments take a long time to yield conclusive results.

Although there has not been enough scientific evidence to prove the correlation between microplastics and human health, states should implement measures to tackle this issue. As stated in Article 25 of the Universal Declaration of Human Rights, everyone has the right to a standard of living adequate for their health and well-being. Specifically, citizens have the right to live in a "safe, clean, healthy, and sustainable environment," a right legally recognized by more than 150 states.[5] That is why states should play a leading role in ratifying agreements and implementing measures that aim to tackle the issues caused by microplastics.

States should take the precautionary principle[6] and implement market-oriented measures. Regarding market-oriented techniques, governments can impose a hefty environment tax on the facilities producing and using single-use plastic or reduce taxes for enterprises producing and using biodegradable products instead of plastic ones. In this case, governments should regulate the definition and categories of biodegradable into legal regulations. Additionally, because the world already has a significant amount of plastics, governments could grant a subsidy to recycling facilities that not only recycle plastic but also meet environmental standards set by government agencies to do so
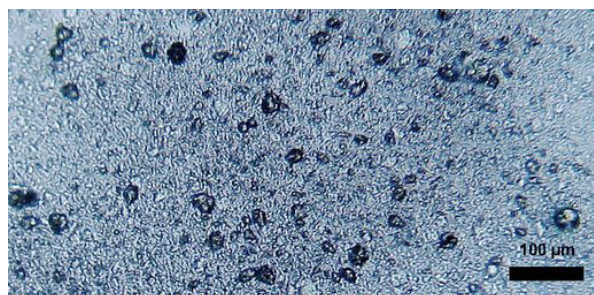

Microplastics in toothpaste. (Source: Dantor/ Wikimedia Commons)

effectively. Besides, before imposing any environmental regulations, governments should make use of risk assessment techniques to set priorities and tailor regulations that fit well in their socio-economic context. A specific roadmap should be included to ensure the achievement of the initial objectives.

Improving public understanding is pivotal because if states cannot raise their citizens' awareness of this issue, the next generation will be the ones to suffer from it. Refusing unnecessary single-use plastics, avoiding products containing microbeads, carrying reusable products, and recycling[7] are several ways recommended by the Food and Agriculture Organization of the United Nations to curb the amount of microplastics we encounter in our daily lives.

While waiting for the scientific evidence to concretize the widespread impacts of microplastics on human health, we need to curb the amount of plastic produced and used in the world to minimize the adverse effects of microplastics on our lives. In general, it is a multi-faceted and unresolved problem. The efforts of just one country or one individual cannot solve this issue. Therefore, the solution should involve a close and active collaboration between governments and individuals.

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nationalgeographic.com/magazine/2018/06/plastic-planet-health-pollution-waste-microplasticss/.
5       United Nations Human Rights Office of the High Commissioner, "Call for Inputs: The right to a safe, clean, healthy and sustainable environment." https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/TheRightSafeClimate.aspx.
6       When an activity raises threats of harm to human health or the environment, precautionary measures should be taken, even if some cause and effect relationship are not fully established. There are four elements of precautionary principle: (i) Preventative action should be taken in advance of scientific proof of causality, (ii) The proponent of an activity, rather than the public, should bear the burden of proof of safety, (iii) A reasonable range of alternatives, including no-action alternative, should be considered and (iv) For decision-making to be precautionary, it must be open, informed, and democratic and must include potentially affected parties.
7       "5 ways to reduce our reliance on plastics," Food and Agriculture Organization of the United Nations. http://www.fao.org/fao-stories/article/en/c/1196346/.

# Human Rights and Political Culture: COVID-19 Pandemic Emergency Responses

**Lishu Gang** discusses policy responsiveness and the political culture of human rights using different countries' COVID-19 emergency measures and insights from around the world.

Politico-juridical analyses dealing with the human rights dimension of restrictive COVID-19 government responses have inspired many heated debates. Various human rights groups and watchdogs have been monitoring and continue to monitor infringements and violations of human rights.[1] In this article, I will offer another approach to human rights considerations in policy making and policy effectiveness. The conceptual framework I devise has three angles. First, considering human rights as a legal regime to see if government policies take a rights-based approach. Second, considering human rights as politics to see if policies take a rights-respecting approach.[2] Third, considering human rights as a political culture to see if policies can reach a responsive citizenry. While legal and political approaches to analyzing pandemic responses are important, I will demonstrate the value of focusing on the informal, bottom-up, and agent-based processes within societies.

A person suspected of having the coronavirus in Wuhan, China, was taken from an apartment. (Source: Hector Retamal, AFP/Getty Images)

Legal and political institutions in place inform policies in a structured and systematic way. Human Rights Watch has published a comprehensive document listing the pertinent rights relevant to COVID-19

1　Amnesty International, "Explainer: Seven Ways the Coronavirus Affects Human Rights," Amnesty International, February 5, 2020 , https://www.amnesty.org/en/latest/news/2020/02/explainer-seven-ways-the-coronavirus-affects-human-rights/.
2　Michael Ignatieff and Amy Gutmann, Human Rights as Politics and Idolatry (Princeton, NJ: Princeton University Press, 2001), 21-22: "Human rights is nothing other than a politics, one that must reconcile moral ends to concrete situations and must be prepared to make painful compromises not only between means and ends, but between ends themselves."

under international human rights law, such as the right to health[3] or the freedom of movement.[4] This list also provides prescriptions for policies related to pandemics that are observant of international law.[5] Accordingly, certain rights and freedoms may be restricted depending on whether it is an absolute or qualified right,[6] and whether the restrictions are justifiable and proportionate. Authorities in China reportedly used intrusive and extreme containment measures, such as building metal barricades in front of doors to facilities housing those with suspected COVID-19 cases. This would be considered a breach of these aforementioned rights.[7]

Treating human rights as a regime or an instrument has its limitations, however. Not long before the United States became the epicenter of the global outbreak, The Atlantic published an article arguing why democracies are better at handling epidemics.[8] The reasoning mirrors Nobel Laureate Amartya Sen's support for democracies. Sen argues that constitutional democracies safeguard the freedom of the press, prefer reason rather than coercion in public policy, and favor cooperation with other countries.[9]

**"Improving public understanding is pivotal because if states cannot raise their citizens' awareness of this issue, the next generation will be the ones to suffer from it."**

All these features are said to create an interlocking system where politics speak and act in a language of rights and, therefore, are better at protecting lives. However, as governments weigh their obligations towards upholding rights such as the right of peaceful assembly,[10] health,[11] and free movement, a question surfaces: Will their citizens follow or honor their decisions? American citizens were said to be able to "count on the objectivity and accuracy" of the CDC,[12] but one-fifth of Americans do not value or trust the CDC.[13] It then becomes harder to know how people will react to policies, as is evident by the public gatherings in the U.S. to protest stay-at-home orders.[14] Now that more time has passed since The Atlantic's publication, democracies, too, have shown inadequacies in their COVID-19 crisis management.

A perspective is necessary that goes beyond the counting of rights and their violations: policymaking and policy outcomes cannot be determined solely based on institutional capacities of rights-provisions. Closer attention needs to be paid to how a complex political culture will affect people's responses to rights-based policies. In a country like China, people's

3       UN General Assembly, International Covenant on Economic, Social and Cultural Rights, Article 12(1), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: https://www.refworld.org/docid/3ae6b36c0.html,accessed 28 April 2020.

4       UN General Assembly, International Covenant on Civil and Political Rights, Article 12, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: https://www.refworld.org/docid/3ae6b3aa0.html,accessed 28 April 2020.

5       "Human Rights Dimensions of COVID-19 Response." Human Rights Watch, March 19, 2020, https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response.

6       While the right to health is an absolute right, the social and economic rights recognized in international law take into consideration the differentiated capacities countries have to guarantee the citizenry such a right. For example, the standard of physical and mental health looks differently in countries in different stages of economic development. The failure to realize social and economic rights, therefore, needs to consider whether a state is deliberately perpetrating and neglecting rights violations or whether a country' structural features (e.g., economic and financial institutions) prevent a state from achieving the highest standard of rights provisions possible. See Allen E. Buchanan, "Why 'International Legal' Human Rights?," in Philosophical Foundations of Human Rights, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo (Oxford, England: Oxford University Press, 2015), 244–62.

7       Gerry Shih, "In China's Virus-Hit Heartland, Fear and Loathing on the Road to Wuhan," The Washington Post, February 5, 2020, https://www.washingtonpost.com/world/asia_pacific/in-chinas-virus-hit-heartland-fear-and-loathing-on-the-road-to-wuhan/2020/02/05/983751a4-4739-11ea-91ab-ce439aa5c7c1_story.html.

8       Ariana A. Berengaut, "Democracies Are Better at Fighting Outbreaks," The Atlantic, February 24, 2020 , https://www.theatlantic.com/ideas/archive/2020/02/why-democracies-are-better-fighting-outbreaks/606976/.

9       Amartya K. Sen, Human Rights and Asian Values (New York: Carnegie Council on Ethics and International Affairs, 2003).

10      UN General Assembly, ICCRR, Article 21.

11      The positive obligations on the governments include "prevention, treatment and control." UN General Assembly, ICESC, Article 12(c).

12      Berengaut, "Democracies Are Better at Fighting Outbreaks."

13      Nathaniel Rakich, "Who Do Americans Trust Most On COVID-19?." FiveThirtyEight, April 16, 2020 , https://fivethirtyeight.com/features/americans-trust-the-cdc-on-covid-19-trump-not-so-much/.

14      Lois Beckett, "Protesters Decry Stay-at-Home Orders in Maryland, Texas and Ohio Capitals." The Guardian, April 18, 2020, https://www.theguardian.com/world/2020/apr/18/stay-at-home-order-protest-lockdown-maryland-texas-ohio.

Protestors in a 'reopen' demonstration in Harrisburg, Pennsylvania, USA on 20 April 2020 (Source: Nicholas Kamm, AFP/Getty Images)

trust in the government may be low due to the lack of openness and transparency,[15] but the public trust in professional scientific and medical opinions is high.[16] Therefore, many Chinese were, in fact, taking extreme precautions themselves and acted to keep the people around them in check, such as by reporting violations of lockdown measures.[17] The social and cultural pressure put on the average Chinese citizen to be careful and to take both their own and other's health seriously in an epidemic has shown to help the containment from the bottom-up, rather than relying on top-down implementation.

The shifting perspective from formal politics to agent-based political mass culture is not necessarily the same as advocating for a laissez-faire attitude. The key framework of policymakers is often: How do you get people to do what you want them to do? The problem with this question is paternalism, which both democracies and non-democracies utilize through compliance tactics ranging from coercion to nudging.[18] The way many governments communicate the reasoning for their policies may also dismiss autonomous agency, by implying that the government knows what is better for you and for everyone. From a broader perspective, the right question to ask is, instead: How do you help people make the right decision? The emphasis is not that institutions know the right decisions, but that institutions enable people to make decisions that create a culture and conditions that facilitate individual and collective flourishing.

In the rights-as-a-culture approach, decision-makers take into consideration all the above political culture and behaviors. For example, the German government has had concerns over implementing expansive and overreaching measures because an

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15      Soonhee Kim, "Public Trust in Government in China and South Korea: Implications for Building Community Resilience," Chinese Public Administration Review 7, no. 1 (2016): 35076. There is discrepancy, however, in terms of interpreting trust either as a sign for political legitimacy of the government or as governance competency. Here, the focus is on competency. If it is about trust in government's legitimacy, according to the newest Edelman Trust Barometer, China is the place where citizens have the highest public trust. See Edelman, "Edelman Trust Barometer," Global Report (Chicago, IL: Edelman, January 21, 2020) , https://www.edelman.com/sites/g/files/aatuss191/files/2020-01/2020%20Edelman%20Trust%20Barometer%20Global%20Report_LIVE.pdf.

16      National Science Board, "Science and Technology: Public Attitudes and Understanding." in Science and Engineering Indicators (Alexandria, VA: National Science Foundation, 2018), https://www.nsf.gov/statistics/2018/nsb20181/assets/nsb20181.pdf. There are some ambiguities in the variable "public trust in science" in China as scientific communication mostly takes the form of official government source; regardless, no matter through official science communication or informal engagements such as through private events, platforms and channels, scientists in China are viewed as credible. See Joy Yueyue Zhang, "The Credibility Paradox in China's Science Communication: Views from Scientific Practitioners," Public Understanding of Science 24, no. 8 (2015): 913–27.

17      Paul Mozur, "China, Desperate to Stop Coronavirus, Turns Neighbor Against Neighbor."The New York Times, February 3, 2020, https://www.nytimes.com/2020/02/03/business/china-coronavirus-wuhan-surveillance.html.

18      Richard H. Thaler and Cass R. Sunstein, Nudge, 1 online resource (304 pages) vols. (New Haven: Yale University Press, 2008), https://www.overdrive.com/media/C6856A8D-70EC-4FD0-B231-49007682507B.

A sign outside a pub in Stockholm, Sweden. (Colm Fulton/Reuters)

authoritarian past in the twentieth-century and an alert citizenry might lead to skepticism, resistance, and backlashes.[19] Take Sweden as another case, where public trust in political and scientific institutions is relatively high and the government has confidence in a well-informed citizenry.[20] The state generally takes a rights-respecting and culturally responsive approach that citizens respect human rights and the government cultivates the respect of rights and mutual trust.[21] Besides, some other societal features such as the high percentage of single-person households and low population density have led to a policy orientation drastically different from other European countries.[22] Sweden did not enforce a lockdown of any kind, with restaurants, cafes, and shops still open. This approach has drawn criticism within Sweden and outside, particularly as Sweden, at the time of writing, had the highest death toll per million in the Nordic region.[23] On the other hand, citizens' voluntary compliance rate shows positive responses as mobility and travel in Sweden dropped significantly.[24] It is nevertheless a test on the emergency response as well as long-term political resilience: Would bad outcomes leave a scar and lead

to declining public trust in institutions? Would the government's strong advisory attitudes, in fact, gain more support because people feel assured in their own decisions and actions?

The ways people respond to government restrictions play a role in which rights violations are made prominent and which policies produce the most effective rights-provisions. While ensuring that restrictive policies do not violate the relevant human rights, it is necessary to go above and beyond legal and political institutions and use a bottom-up approach to understand the interactions between policies and people's cultural attitudes and behaviors. A dynamic approach combining institutional policies and cultural considerations gives important insights on how to create a rights-respecting and rights-oriented culture and reach a more responsive and responsible citizenry.

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19      Constanze Stelzenmüller and Sam Denney, "COVID-19 Is a Severe Test for Germany's Postwar Constitution." Lawfare (blog), April 16, 2020, https://www.lawfareblog.com/covid-19-severe-test-germanys-postwar-constitution.

20      Jon Henley, "Don't Judge Sweden's Light Touch on Covid-19 yet, Says Minister." The Guardian, April 27, 2020 , https://www.theguardian.com/world/2020/apr/27/dont-judge-swedens-light-touch-on-covid-19-yet-says-minister.

21      Anders Tegnell, 'Closing borders is ridiculous': the epidemiologist behind Sweden's controversial coronavirus strategy [Interview], April 21, 2020, https://www.nature.com/articles/d41586-020-01098-x.

22      Eurostat, "Over Half of Sweden's Households Made up of One Person." Eurostat, May 9, 2017, https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20170905-1?inheritRedirect=true.

23      Johan Ahlander and Philip O'Connor, "Sweden's Liberal Pandemic Strategy Questioned as Stockholm Death Toll Mounts." Reuters, April 3, 2020 , https://www.reuters.com/article/us-health-coronavirus-sweden/swedens-liberal-pandemic-strategy-questioned-as-stockholm-death-toll-mounts-idUSKBN21L23R.

24      See also for population information and citizen compliance rate, Jenny Anderson, "Sweden's Very Different Approach to Covid-19." Quartz, April 27, 2020, https://qz.com/1842183/sweden-is-taking-a-very-different-approach-to-covid-19/.

# The potential and limits of consultations with indigenous peoples

**Amparo Carrión Domenech** looks at the participatory rights recognized to Indigenous Peoples, focusing on the consultative process of Free Prior Informed Consent. She argues that FPIC serves as a safeguard to ensure indigenous peoples' self-determination and explores some of its legal and practical limitations limitation.

The Sarayaku people are a small isolated population in the Amazonian region of Ecuador for whom the jungle is their sacred land. As part of a state developing policy in 1992, the Ecuadorian government defined the ownership of these territories, awarding land rights to indigenous populations while retaining control over their resources. In 1996, the state and private companies signed contracts to extract hydrocarbons from areas inhabited by Sarayaku people. Although the oil company engaged in communications with the indigenous communities, with armed forces present, no formal procedure existed to ensure the communities' role in decision-making. The government instead passed a new regulation supporting extracting activities, disregarding the wishes of the people living on the land. A long legal battle unfolded in 2002. Only in 2012, the Inter American Court decided on the case and found various violations regarding land rights, participation, cultural identity, fair trial, life and personal integrity.[1]

> **"Improving public understanding is pivotal because if states cannot raise their citizens' awareness of this issue, the next generation will be the ones to suffer from it."**

This case clearly illustrates how indigenous peoples are often unable to take part in making decisions that determine their future. Indigeneity is difficult to define, however the principle of self-determination lays at its core.[2] Self-determination for indigenous populations entails a recognition of their autonomy in defining their interests and priorities within the structure of the state.[3]

The right to Free, Prior and Informed Consent (FPIC) is an extremely valuable safeguard for indigenous peoples' participation to ensure their right to self-determination. FPIC is the idea that a substantive dialogue between the state and indigenous population must exist on matters that directly or indirectly affect the communities. Consultations which adequately regard indigenous peoples' rights to FPIC, when properly implemented, ensure the presence of indigenous voices in decision-making processes and reinforce their participation and inclusion. FPIC has the

1 IACtHR, case Sarayaku v Ecuador (2012).

2 Discussions among scholars and international institutions debate around what constitutes indigenous identity, in more essentialist or constructivist approaches. Posing a strict definition might exclude some groups, whereas a broad concept has the risk of being overinclusive and politicized. See J.J. Corntassel, "Who is Indigenous? 'Peoplehood' and ethnonationalist approaches to rearticulating indigenous identity," Nationalism and Ethnic Politics. 9, No. 1 (2003).

3 The concept of self-determination was often taken for claims of independence, whereas states' interests were territorial integrity. This tension was articulated in the Universal Declaration on the Rights of Indigenous Peoples by conferring indigenous peoples' 'internal' self-determination. See M. Barelli, "Shaping Indigenous Self-Determination: Promising or Unsatisfactory Solutions," International Community Law Review 13 (2011).

The Inter-American Court of Human Rights has been quite prolific and sensitive to acknowledging indigenous peoples' rights. As in the case Saramaka v Suriname (2007) or the case Sarayaku v Ecuador (2012), which established the principle of obligation of FPIC in a broad sense. (Source: Pueblo Sharayaku/Cultopias)

potential to protect different aspects of indigenous peoples' lives such as their collective property rights and their cultural rights.

International bodies have developed jurisprudence which deals with the Right to Free, Prior and Informed Consent, holding it to amount to a state obligation towards the right of indigenous peoples. However, this consultation procedure that recognizes indigenous peoples as equal parties remains under state supervision. It therefore generates an international obligation to carry out localized 'bottom-up' consultation that procures indigenous participation. Many questions concerning the effectiveness of FPIC in practice remain. I will argue that three problems have caused the failure to regulate and control FPIC: its overly broad definition, fragmented regulation and problematic enforcement.

Firstly, there is no universal definition of FPIC.[4] The vagueness of the concept hampers a well-established common understanding. The Permanent Forum on Indigenous Issues attempted to interpret the elements of FPIC but did so only in general terms.[5] In this interpretation, FPIC calls for no coercion, intimidation or manipulation; enough time for deliberation before a project is executed; and access to sufficient and accurate information on the project and its impact. It furthermore requires good faith in respect to indigenous' traditional decision-making process and their relevant participation.

Scholars and courts have taken different approaches to the role of indigenous peoples in order to elaborate on these very general stipulations. J. Anaya and S. Puig researched these different approaches: states seeking legitimation by consultation (instrumentalist), radical consent or veto power by the indigenous groups (maximalist), consultation with limited power of approval (minimalist), and lastly, state responsibility to ensure fair agreement (human rights). The authors advocate for this last approach because it provides an adequate balance of interests at stake and mitigates power disparities. In this interpretation, FPIC entails "more than a mere right to be informed and heard but not absolute right

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4       S. J. Rombouts, Having a Say: Indigenous Peoples, International Law and Free, Prior and Informed Consent (Oisterwijk: Wolf Legal Publisher, 2014).

5       Permanent Forum on Indigenous Issues Economic and Social Council, Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous Peoples (New York, January 2005) UN Doc. E/C.19/2005/3, para 46.

to veto."[6] However, the Inter-American Court has concluded that consent, rather than consultation, should be required under certain circumstances.[7] The role of consent and the extent of participation are widely contested.

Secondly, the regulation of FPIC is assessed differently in various spheres of international law, and hence relies on different understandings of the concept. The fragmentation of its regulation hinders the much-needed consistency and certainty. Despite the existence of international guidelines, it remains unclear how these ought to be executed.[8] In environmental law FPIC is broadly recognized and ensures indigenous peoples' participation and traditional knowledge. The World Bank pinpoints concerns about indigenous people, requiring borrowers to consult them. The International Labor Organization protects the FPIC to the extent required,[9] however, the ILO binding conventions have limited ratifications.

In UN treaties, the FPIC is addressed in various ways. The Committee on the Elimination of Racial Discrimination demands states to "seek consent," while the Committee on Economic, Social and Cultural Rights stresses the "need of consent when cultural resources are involved."[10] The most comprehensive document, Article 32 of the UN Declaration on Indigenous Peoples, requires a more demanding standard: negotiation "in order to obtain their free and informed consent." Consequently, the international norm observed prescribes the level of involvement of indigenous peoples. The international recognition of FPIC is clear, but its regulation is inconsistent. These discrepancies hinder the construction of common standards for the direct involvement of indigenous people in decision-making.

Thirdly, the enforcement of FPIC can be highly problematic. The implementation of FPIC relies on states as duty bearers of human rights. Yet, FPIC can easily fall in an 'implementation gap' when there is no institutional mechanism or a lack of political will.[11] Moreover, the process of FPIC faces great challenges. Potential conflict of interest may arise in circumstances of power imbalance, such as, a lack or distortion of information, a lack of cohesion in indigenous communities, and the absence of independent mechanisms.[12] If a party feels unsatisfied, there is generally no available mechanism to appeal to. Furthermore, if a court determines that there was a violation the possibilities of repairing it are limited. The consequences of an irregular FPIC can be devastating for indigenous people, so the process must be monitored with greater attention.

Overall, despite the international recognition of Free Prior Informed Consent, it is still an ambiguous concept that faces great challenges in practice. The attempts to ensure flexibility through broad and general regulation risk overseeing the substantive relevance of FPIC. Proper implementation, instead, would give recognition and empowerment to indigenous peoples. In the dialogue that is then established between states and indigenous communities, costs of economic 'development' and states' decisions will no longer disproportionately fall on just one part of the population.

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6        S James Anaya, S. Puig, "Mitigating state sovereignty: The duty to consult with indigenous peoples," University of Toronto Law Journal 67, no.4 (2017): 453.
7        IACtHR Case Saramaka People v. Suriname, para 134.
8        M. Barelli, "Free, prior and informed consent in the aftermath of the UN Declaration on the Rights of Indigenous Peoples: developments and challenges ahead," The International Journal of Human Rights 16, no. 1 (2012).
9        ILO Convention No. 169.
10       M. Barelli. "Free, prior and informed consent in the aftermath of the UN Declaration on the Rights of Indigenous Peoples: developments and challenges ahead" The International Journal of Human Rights, 16, no. 1 (2012): 8.
11       J. B. Henriksen, "The UN Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples" Forum conference report 2010: Indigenous Participation in Policy-making: Ideals, Realities and Possibilities. (University of Tromsø, 2010).
12       J. Carling, former General Secretary in Asian Indigenous Peoples Pact institution, "Indigenous Peoples' right to free, prior and informed consent (FPIC) in policy making and development," Forum conference report 2010: Indigenous Participation in Policy-making: Ideals, Realities and Possibilities (University of Tromsø, 2010).

# Allegories of Empty Spaces

**Funmilayo Akinpelu** shares her reflections on ideas of belonging and home as the COVID-19 renders previously bustling spaces empty of humanity.



Emptiness is, for me, a fitting metaphor for relating to the world's most recent trying experiences. When forced out of corridors of mobility by an enemy that is invisible yet cannot be unseen, I have been confronted with questions about the interactions between humans and the world, and with one another.



Location: Budapest, Hungary

Walking down a constricted flight of stairs, taking two steps at a time, or stealing a hurried look at a clock in fear of being late are simple pleasures that, for me and many others, have now become luxuries. It is against the backdrop of these flimsy thoughts and the expendable motions which I now crave, that the austerity of movement experienced by some humans in the world becomes starkly disturbing to me.

Location: Monor, Hungary

Stillness usually connotes steadiness, a fixture of placehood, and a serendipitous discovery of homeliness. However, this is not the case for all. Now that the world appears to be asleep, I have come to realize that a number of people are stuck in shadowy Elsewheres. The public injunction is to stay at home, but going home has become complicated, not just because a virus is on the loose, but because the opening and closure of borders are navigated with a geopolitical compass that recognizes nationalistic rather than humanistic prerogatives. I have always believed that everywhere a human, regardless of race or nationality, finds abode, they find home. Now, I question this belief and wonder whether there really is such a place as 'homeland'. I am questioning whether where I currently am is where I belong; if I even belong anywhere or whether I am simply lost — now, stuck — in transition.

The world is sleeping with her eyes wide open and nothing good ever comes out of that, only listlessness, anxiety, and the calcification of embryonic worries into real mental travails. To be human at a time like this is not to worry about little things, but to worry about their absence. It means to notice the absence of hands clutching iron bars and the scanty presence of usually-plentiful bodies standing under a grim sky. Nothing drains the mind faster than when spaces of communal interactions empty with a snap. The emotional disquiet that stirred in me, upon seeing once-crowded spaces empty of humans, made me more aware that there are multiple interfaces within the site of the human body, and that we need to focus not only on physical wellbeing but also on mental wellness.



Location: Budapest, Hungary

Location: Budapest, Hungary

Now, more than ever, I am reminded of how my microcosmic existence in the world is of profound significance. The value of every human life, regardless of age, form, status, or nationality, is accentuated against the backdrop of absence. Humanity stands out against emptiness and bared infrastructure, exposed to the harshness of disuse. Every human is in need of as much comfort as these folded seats would have offered to someone holding a baby or in a wheelchair.

Due to the world's current drowsy and languid ambience, I have been forced to look around and observe my surroundings more, noticing things I once took for granted – a walk or chit-chat in the park, the animals, insects and the trees. In contrast to the soullessness of virtual interactions, the physicality of face-to-face dialogue, the tactile stimulation of easy laughter aroused by a pet, the scintillating freshness of natural scenery, all evoke an awareness of what should really matter. They show us what we must fight to save.



Location: Budapest, Hungary

Location: Budapest, Hungary



The COVID-19 global pandemic has amplified divergences, with xenophobia on the rise and an invisible virus colored with the description of a nation, of a collective of people. On the other hand, now more than ever, convergences that have erstwhile been lost in the crowd have become visible to me. I now know that the world is conflicted with universal angst. I now know that, for most humans, living is not the same without the noise of hurried footsteps and whispered conversations. I now know that to be human is to crave for light especially when darkness becomes vast and overwhelming.

With empty spaces lurking everywhere, home seems farther away than ever. I find myself constantly negotiating the dynamics of belonging, finding reasons to ask questions about where national identity and humanity meet borders. The facade of the world as a global village neatly falls apart as migration corridors tighten till all that is left are shadowy alleyways. This feeling of being in between closed spatialities at a time like this has made me realize that human rights activism is needed now more than ever to defend humans against geopolitical constrictions so that, in case of crises, many can always find their way back home.



Location: Monor, Hungary

All the mornings of watching the sunrise from my room have made me imagine the world as a phoenix, rising out from the ashes of a long, dull sleep. I wonder what the world will wake up to. Will it be institutional chaos? Stricter migratory restrictions? Widespread social anxiety? Heightened inequalities? Climate disruptions? Really, I fear the worst. I also hope for the best. I envision the aftermath of the pandemic becoming a time when humans finally awaken to the urgency of tackling long standing problems confronting mankind and rising to the task of making the world a place of congenial habitations rather than an assemblage of empty spaces.



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