

**CHAPTER 12**  
**Action Research in the**  
**Field of Human Rights**

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For ten days, I watched and listened to youthful but also experienced human rights advocates wrestle with their legal training as they recounted their experiences defending communities that had lost their livelihoods through the expropriation or despoiling of land, water, and air. In each case, these human rights advocates documented the way communities had fought back against an array of enemy agents that included multinational corporations, regional governments, and nation-states, while seeking to contain their own internal divisions.

I heard these chronicles from the trenches as we traveled across the Colombian landscape—itsself the scene of invasive extractive industry and violent battlegrounds. Even though Dejusticia took meticulous care to open our eyes to a panorama of atrocity, it was difficult to appreciate the traumas that lay hidden in the beautiful Colombian landscape.

Recognizing the limits of my knowledge, my hosts have nonetheless asked me to reflect on the presentations made during those days, now written up as a series of complex case studies. I have no expertise in the area of human rights, so my contribution is inevitably limited, based on my interest in action research and public sociology on the one hand, and in responses to neoliberalism on the other. I have struggled to make sense of these studies of dispossession.

Coming from practicing lawyers, the presentations were concerned with the way the law has become entangled in these struggles. As an autonomous field, the legal system operates with its own established rules that, in principle, can be changed only in rule-defined ways. In the social and political “minefield”—to use César Rodríguez-Garavito’s felicitous phrase—of dispossession,

full of undetonated and unknown explosives, the law loses its autonomous character. Instead, it becomes a manipulated resource, used by opposing parties, in a much broader struggle. It is a single stand in a complex patchwork of unstable relations. How then to conceive of the prosecution of human rights in this minefield?

What distinguishes all these cases is the willingness of the human rights advocate to leave the courtroom and the library and to join her “clients” in the minefield of daily struggles. This raises four issues with regard to the character of action research—that is, research undertaken with a view to alleviating misery and marginality. First, what is to be the relation between the activist and the community for whom she seeks to be an advocate? While the law may provide an important point of entry to the community, participation leads to relinquishing the protection of professional status and plunging into an indeterminate and complex set of relations. Second, to be effective in this context, it is necessary to reconnoiter the nature of these relations of the minefield, to analyze the balance of forces that they embody. Third, that minefield itself has conditions of existence and change that lie outside its terrain, and here too the activist must undertake an assessment of what those external forces are, and how they constrain as well as facilitate change. And we should be careful not to reify those external forces as either static or homogeneous. Finally, it is necessary to conceive of the individual cases as connected to one another, both conceptually in the way they are understood as a common project, and materially in the way they face common antagonists. I will draw on the cases in this book to underline these four dimensions of action research.

### Taking a Position in the Field

How can the human rights advocate enter the minefield? She can, most straightforwardly, treat the community as a client, *representing* its interests in the legal arena, and in that way hoping to alleviate some grievance. But in so many of the cases described here, the advocate is doing something else beyond the law—*documenting*, as Asanda Benya writes, so that others will know the human toll of dispossession. The advocate is bearing witness to the suffering of the people whom she represents.

But, as Ida Nakiganda writes, the advocate may also see her role as *educating* people about their rights, as so many indigenous communities are ignorant both of their rights and of the ways in which those rights can be violated. Powerful actors such as multinational companies are experienced in the art of deception, in concealing the consequences of their interventions, presenting their interests as the interests of all. Advocates can map out the maze of actors within a minefield, determining the interests that lie behind each.

Often, advocates will work with and conscientize community leaders, believing that these leaders represent their communities. And here there is always the risk that the community leader—deliberately or not—presents a misleading image of the community as a harmonious whole, bound by spiritual unity, thereby concealing divisions that become apparent only after extensive engagement. Thus Arpitha Kodiveri, writing about indigenous communities living in the Sariska Tiger Reserve in India, comes to recognize that they do not all share the same interests—some are interested in relocation whereas others are committed to fighting for their rights within the reserve. She sees her role as *mediating* between different groups with conflicting interests, trying to build consensus so that divided they can still move forward together.

Outside actors with interests of their own will try to create rifts within suffering communities through discriminatory interventions (such as intimidation or bribes), a point made in Mariana González Armijo's account of the struggles between communities in the Mexican state of Oaxaca in the course of defending their water supply. The human rights advocate is concerned with counteracting this *war of position* from above with a war of position from below.

Human rights activists do not and cannot act alone. Their strength depends on a supportive community both within and outside the minefield. As Omaira Cárdenas Mendoza and Carlos Andrés Baquero Díaz demonstrate, collaboration is especially important when one is dealing with a confrontation of legal systems, traditional and modern, tribal and state, customary and capitalist.

### Examining the Dynamics of the Field

The relations that human rights advocates adopt toward a community will, in part, depend on the depth and scope of their field

research—research that develops an understanding of the dynamics of the minefield, including the place of the law. A not unusual situation is the one described by María José Veramendi Villa regarding the Peruvian metallurgical complex at La Oroya, where copper, zinc, and lead are smelted and refined, leading to heavy contamination of the air. Doe Run Peru, an affiliate of the US company Doe Run, has owned the complex since 1997. Though it has denied the existence of environmental problems, investigations show the city to be dangerously polluted. Residents had assumed this to be part of a reality about which nothing could be done, until various environmental groups and human rights activists informed them that it was a violation of law. Arousing the collective in this way eventually led to, on the one hand, a constitutional tribunal ruling that called for the complex's closure and, on the other, threats and public humiliation directed at those who had cooperated with the investigation—threats arising from employees who feared for their jobs. The state's ruling came in 2006, and when nothing was done, residents of La Oroya took their case to the Inter-American Commission on Human Rights. Residents are still waiting to hear from this body. Here is a straightforward case in which the law, seemingly in their favor, has so far had little effect on industrial practices. The fight continues. Understanding why there has been no action for seven years, whether from the Inter-American Commission on Human Rights or the Peruvian state, requires us to take the investigation beyond the hierarchies defined by the minefield.

Wilmien Wicomb, an attorney working for the Legal Resources Centre in South Africa, offers a slightly more optimistic narrative of legal intervention. She organized the legal defense of a community's fishing rights in the Dwesa-Cwebe Nature Reserve in the Transkei, specifically their customary rights of access to waters that had been declared a "marine protected area"—protection mandated as part of the racial structures of the old South Africa. The local community continued to fish there as a matter of survival but was subject to harassment, arrest, and even killings by the reserve's rangers. The situation came to a head in 2011 with the arrest of three fisherpeople found in the protected area. During the trial, the defense, organized by the Legal Resources Centre, appealed to the post-apartheid constitution that recognized

customary law as equal to state law. The judge pronounced the fishermen guilty under the law but also declared the law to be unjust, and so sentences were suspended. The fisher community celebrated this public acknowledgment of their rights as a great political victory, but the next steps brought out unanticipated conflicts within the community that threatened a successful challenging of the law. The law becomes a vehicle for articulating grievances and mobilizing political support, which in turn draws wider forces into the battle for social change—a battle whose outcome is far from assured.

A parallel case of the confluence of indigenous and state law can be found in the collaboration of Cárdenas (representing the Indigenous Legal Aid Clinic of Santa Marta) and Baquero (from *Dejusticia*) to defend sacred sites in Colombia's Sierra Nevada against the construction of a new port. Together, they draw on international law—particularly the right to free, prior, and informed consultation as articulated in the International Labour Organization's (ILO) Convention 169. The meaning of "prior consultation" becomes a terrain of mutual incomprehension and antagonism between corporations and indigenous communities, leading the latter to withdraw from the engagement. Instead, they petition the Constitutional Court, which had previously supported their cause, while the construction continues.

From these cases emerge lessons about the potentiality and limitations of the law when defending indigenous rights. First, the law requires the creation of a fictitious community, the adoption of what Wicomb calls "strategic essentialism," that can mask internal divisions when it comes to implementation. Second, pursuing legal channels can be mobilizing, but it can also be distracting. Ultimately, the outcome is dependent not on what is "right" by the law—always subject to interpretation and manipulation—but on the balance of forces that can be calibrated only by going beyond the minefield.

### Exposing the Wider Context

If the case studies offer one lesson, it is that the outcome of any struggle for human rights cannot rely on the law, which is only a strategic resource in a wider struggle. This assemblage of case studies points to the cumulative power behind the forces of

dispossession. Maximiliano Mendieta Miranda chronicles the extreme case of Paraguay, where the state opens its arms to foreign capital for the exploration of hydrocarbons. Companies run roughshod over the rights of indigenous people, regardless of their enshrinement in the Constitution and in Convention 169, ratified by the state and calling for free, prior, and informed consultation. Consultation, when it exists at all, is a ritual that is neither free, nor prior, nor informed. Paraguay's hydrocarbon law openly violates Convention 169, and when companies move in, they become the state, ruling in their own interest. Here we are dealing with a dictatorial state that serves the interests of the extractive industry and cattle ranchers by its absence as much as by its presence; and a president who might be willing to recognize the rights of indigenous peoples is peremptorily impeached.

Cristián Sanhueza Cubillos paints a similar picture for Chile. Whether it be the right to free, prior, and informed consent or the Environmental Impact Assessment System, the stipulations are either ignored or turned into a ritual acknowledgement that pays little attention to the rights of indigenous people facing expropriations through hydroelectric plants or extractive industries. In his view, the law facilitates the access of companies, even if it also offers a terrain for defensive and ultimately ineffective protest by their victims.

Yet there are occasions when the balance of forces can favor indigenous communities. González writes of rural settlements (*ejidos*) that oppose the conversion of a dam into a hydroelectric plant that threatens their water supply. Community representatives courageously rejected the alternatives proposed by Conduit Capital, despite all sorts of concessions, and the project was actually cancelled, at least temporarily, to the chagrin of the company. What factors led to this outcome? In her assessment, it was the company's egregious violations of human rights and governance norms, combined with the community's memory of the devastation wrought by the original dam, its determination to defend its rights at all costs with the support of local authorities and other civil society organizations, and the oppositional stance of the new governor, all overdetermined by impending presidential elections. In short, a series of political contingencies turned the balance of power in favor of the community—contingencies

that might easily dissipate and restore Conduit Capital's plan. One might say that her case is the exception that proves the rule: namely, that the commodification of nature prevails except under very unusual circumstances.

One way of extending struggles beyond the immediate minefield is to take on a multinational company at the global level. This requires the extensive collaboration and networking of human rights activists, environmentalists, and other transnational groups. Marisa Viegas e Silva works for one such organization, *Justiça Global*, that partakes in the international movement against the Brazilian colossus Vale, one of the biggest mining companies in the world and the biggest producer of iron ore, much of it coming from the Brazilian Amazon. The movement, known as AV (the International Movement of People affected by Vale), documents Vale's destructiveness across the planet, its strategies of cooptation and minimalist "social responsibility," and its ideology of development that hides staggering profits, all made with the support of the Brazilian state. This giant with feet of clay, as she calls it, has a particularly appalling record of devastation along the railroad created in the Carajás National Forest, where the company mines the iron ore. Through exemplary campaigns—such as the resettlement struggle of the small community of Piquiá, a place made uninhabitable by steel plants—AV was able to call global attention to Vale's egregious human rights record.

In extending beyond the minefield of local engagement to the broader set of forces operating at the national or even global level, action research has both analytical and political importance. On the one hand, it offers a more realistic assessment of the conditions of possibility and change at the local level; but, on the other hand, it invites strategic moves to organize support beyond the immediate situation. Convention 169 and the Inter-American Commission on Human Rights offer opportunities for leveraging human rights issues in contexts where there are no other openings. Such an approach may put pressure on nation-states to recognize human rights violations, revealing who is on whose side. It is important, therefore, not to think of the world beyond the minefield as a homogeneous one, uniformly hostile to human rights. The world beyond the minefield can be as divided and fractured as the minefield itself—as we saw, for example, in the



case of Colombia's Constitutional Court, which is often at odds with apparatuses of the state. Even in limited democracies, parties can make political hay by taking the offensive against external agencies or corporations that violate human rights. Again, the analytical and the strategic importance of extending out reinforce each other.

### Developing a Broader Framework

We come now to the final focus of action research, going beyond not just the minefield but beyond the individual case itself to develop a more general approach to human rights—an approach nonetheless based on these individual cases. Perhaps it is in the nature of legal advocacy to think in terms of detailed “cases,” but we also need to go beyond cases. Taken one by one, each of these cases represents what David Harvey calls “militant particularism”—in each instance, human rights advocates help an indigenous community fight for its rights against overwhelming odds. Even if they appeal to common agencies or ideas, the narratives of our ten cases conceive of indigenous communities in their particularity. Here, AV is a partial exception because the focus is on Vale's global operations rather than on a single community, potentially tying together the experiences of different communities strung out across the world. Still, the bonds of solidarity are a response to Vale. Can we develop a framework that would facilitate networks of solidarity, linking social movements seeking redress for different modes of dispossession?

The cases described here, with the exception of the women of Marikana, all involve dispossession from nature—that is, from land, water (clean water or fishing waters), or clean air. This process of dispossession is a violent one, supported and enacted by the state and corporations, often in collaboration with each other. The dispossession is in pursuit of profit through the transformation of natural resources into commodities. Thus, dispossession may lead to commodification, but it also leads to ex-commodification—that is, the production of useless entities, toxic air, polluted water, and contaminated land. Dispossession, then, is simultaneously the production of useful commodities for profit and waste resources for communities. But commodification and ex-commodification apply to other entities apart from nature. When

labor and money are commodified in an unregulated fashion, they can also lose their use value—labor becomes precarious and money turns into debt. They are all what Karl Polanyi calls fictitious commodities—entities that lose their use-value when they become objects of exchange.

We are living in a period of marketization that deepens and extends commodification on behalf of capitalist profit. Such an understanding of the world brings together the struggles in Wonderkop at the site of the Marikana massacre, in Piquiá, in the Sariska Tiger Reserve, in Guaraní Ñandeva, in La Oroya, in Santa Marta, in Los Reyes, and in Hobeni Village. For these struggles to be enjoined in practice, they first have to be connected in theory—a theory of capitalism that drives market expansion, a theory of *regimes of dispossession* (to adopt Mike Levien’s term) that makes such unregulated marketization possible and that shapes the interests of the dispossessed. These fragmented and apparently disconnected struggles have to be seen in their unity both what they are against and the alternatives they harbor. In this era of marketization, what is at stake is planetary survival, and that is what human rights must ultimately be about: the right of human survival against the forces of capitalism. And such is the project that Dejusticia has unleashed in bringing together these resolute human rights advocates.

## References

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