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Leaving No One behind in Human Rights Research

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Editorial

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Introduction

The 2030 Agenda for Sustainable Development¹ represents the international community's current plan of action to achieve peace and prosperity and to protect people and planet. As the preamble to the document explains, all countries and all stakeholders came together to:

... free the human race from tyranny and poverty, take bold and transformative steps to shift the world on a sustainable and resilient path... As we embark on a collective journey, we pledge that no one will be left behind...

The commitment to leave no one behind may well haunt the drafters of the Agenda for some time to come. Human rights protection potentially plays an important role, particularly for groups that are marginalized within their own society. Since human rights are now generally recognized as a matter of international concern, framing a claim in human rights terms opens up the possibility of drawing on support from external forces.

The pledge to leave no one behind may, however, also be read as a challenge for human rights research. This piece investigates how human rights research can respond to the experiences of those left behind by State and society. In doing so, I draw on earlier socio-legal research carried out jointly by domestic universities in China, the Democratic Republic of Congo and India and the University of Antwerp Research Group on Law and Development on the local use of human rights by marginalized groups (Chen et al. 2016; De Feyter et al. 2017; Sundi Mbambi and Hammonds 2018)².

¹ UN General Assembly resolution A/RES/70/1 (25 September 2015), adopted by consensus.

² The Localizing Human Rights Working Paper series is available in open access at: <https://www.uantwerpen.be/en/rg/law-and-development/publications/localising-human-rights/>.

1. Marginalized Groups as Knowledge Creators in Human Rights Research

I have argued elsewhere that in order to achieve true universality of human rights, there is a need to take into account human rights understandings and practices of local groups as a starting point for the further interpretation and elaboration of human rights norms, and for the development of human rights action, at all levels ranging from domestic to global (De Feyter 2007, 68).

The Inter-American Court of Human Rights' handling of the *Awas Tingni* case served as an inspiration. In its judgment³, the Court held that the right to property was to be interpreted in such a way as to reflect the community's understanding of property. Evidence was taken both from indigenous leaders and anthropologists. The Court relied on social science findings to establish a communal right to land and land use of the indigenous community. In doing so, it concurred with the European Court on Human Rights' long held view that human rights treaties are to 'be interpreted and applied so as to make its safeguards practical and effective'⁴.

Human rights research stands to gain from taking into account the knowledge of local groups on how they perceive of human rights, on how they use them, and on what factors determine in practice whether human rights claiming leads to effective protection or not. Even if the research design opts for a multi stakeholder analysis of a human rights situation affecting marginalized groups as a minimum the experience/knowledge of those suffering abuse should be documented and given sufficient weight.

In our localizing human rights fieldwork, we put the bulk of the resources into gathering the views of the groups bringing the human rights claim: rural-urban migrants in China, slum dwellers in India, rural villagers in the DRC. It is not self-evident in law-oriented research to perceive of the knowledge of marginalized groups as being of normative value. Law sources are usually in written form and produced by legal professionals (such as legislators and judges). The interpretive community of human rights (understood here as those having the authority to give meaning to human rights) (see Fish 1980) tends to consist of lawyers, not of common women and men, who may well be illiterate. As the late Antonio Papisca reminds us, however:

the international legal recognition of human rights obliges us to [start] from its original holder, the human being with his or her inherent

³ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. IACtHR 31 August 2001, Series C No.79 (2001).

⁴ *Soering v. United Kingdom*. ECtHR 7 July 1989, Series A No. 161, par. 87.

rights internationally recognized (bottom-up citizenship). We are legitimized to think 'new' by Article 7 of the Declaration [on human rights defenders] that states 'everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance ... New citizenship, in tandem with the impact of the necessary intercultural dialogue aimed at democratic inclusion, can revitalize the public sphere in a perspective of multilevel and supranational governance' (Papisca 2011, 92-93).

Papisca's admonishment on the necessity of an intercultural dialogue on human rights encouraged us to carry out our local human rights research in the Global South.

Human rights awareness in the Global South often results from an encounter with the global language of human rights that developed out of a specific post World War II historical context. In development studies, strong arguments have been made in favour of a decolonial approach to concepts inherited from 'the Eurocentric project of modernity'. Grosfoguel suggests that rather than rejecting modernity, the decolonial approach requires that one 'subsumes/redefines the emancipatory rhetoric of *modernity* from the cosmologies and epistemologies of the subaltern' (Grosfoguel 2011). There is a need to move to a 'decolonial universal' by respecting the multiple local particularities in the struggles against patriarchy, capitalism, coloniality and Eurocentric modernity. In a human rights research context a decolonial approach leads to a particular interest in how the global language of human rights is modified by the matrix of place.

We found that local understandings of human rights do not necessarily coincide with their meaning in international human rights treaties, because local understandings respond to real human rights needs rather than to constitutional or international law. A fusion between global concepts and local understandings was beneficial to producing effective human rights protection. Slum dwellers in New Delhi thus affirmed that they had a *haq* to water and sanitation, which they perceived of as an individual entitlement vis-à-vis the government (see Madhok 2017, 485-509). As the concept of *haq* was familiar to many, it provided a vessel for the reception of the contemporary notion of human rights. Contemporary human rights language was introduced in the slums by actors that were ready to support the slum dwellers, such as non-governmental actors, public interest lawyers and politicians. As a result, the concept of human rights used by the slum dwellers represented an integration of the concepts of *haq* and contemporary human rights (particularly as provided in the Constitution of India, which in turn is open to interpretation in the light of global human rights language).

The slum dwellers' understanding was informed, but not limited to the law. Its content was somewhat indeterminate, and malleable, inspired by the threats people experienced in their daily lives (De Feyter et al. 2017).

2. Researching Human Rights among Marginalized Groups

Human rights research among marginalized groups is demanding. Challenges relate to the research team composition, the selection of the site and the topic, the relationship between the group and the researchers, and the issue of benefit sharing.

2.1 Research Team Composition

Researchers in anthropology commonly reflect on their own identity, and how identity impacts on the research that is undertaken. In legal research, the 'I' tends to remain hidden.

In interdisciplinary human rights field work among marginalized groups, it is certainly useful to reflect on one's own position vis-à-vis the group, and to enable the reader to assess to what extent that relationship has impacted on the research undertaken. It is relevant to know whether the researcher belongs to the group or not; how his/her social status compares to that of the interviewees; whether the nationality or country of origin of the researcher was a factor in the selection of the case study; whether the researcher is or was associated with a human rights organization, a political party, a (domestic or foreign) government or a corporate foundation and what the impact was of all these elements on the validity of the research process. Many come to human rights research from a background based on personal experience or conviction, and it adds rather than detracts from the value of the research to share the background with reader.

Interdisciplinary human rights field work presents the individual researcher with a daunting task, because most researchers are trained in a single discipline. Few researchers combine excellent skills in qualitative data analysis and in international treaty law.

In a research team, different team members bring different skills to the table. Nevertheless, team members will need to transcend their disciplinary boundaries. A meaningful conversation within the team requires that all team members develop at least a basic understanding of the 'other' discipline, and an openness to engage within their own discipline with insights from other disciplines. This is often easier said than done. When presenting the results of our study on the use of the right to water and sanitation by slum dwellers in New Delhi, one commentator deplored the limited scope of our

study because our findings (that resulted from a time-consuming, relatively costly project) did not provide enough substance for the drawing up of a detailed bill on the right to water and sanitation. Certainly, it is not self-evident to draw generalist conclusions that can be translated into law from particular, localized social science research (in our case, in four slums in one city in India) (see also Vick 2004). On the other hand, as McFarlane and Desai correctly argue, precisely because the geographies of water and sanitation provision in slums are diverse and contingent, rights can only emerge ‘through a focus on the everyday experiences, claims, negotiations and struggles that continually take place ... in informal settlements’ (McFarlane and Desai 2015). Research and policy should, they argue, pay more attention to spatial and temporal heterogeneity:

Working in and with sites of entitlement at the neighborhood level and across multiple actors is in our view the most effective route to lasting sanitation and water improvement, even though it is slow and particularist (McFarlane and Desai 2015, 453).

In any case, it should still be possible to legislate e.g. on the human rights duties of municipal authorities.

In the localizing human rights field work we used two different models of gathering data among local groups. One model was to work with a large group of interviewers that were specifically trained for this purpose, and that paid short-term visits to the local group, building the minimal trust necessary to conduct interviews. The interviewers were often master students that used jointly developed semi-structured questionnaires, and that were guided in their work by expert facilitators. In the other model, the field work was undertaken by a single experienced researcher who immersed himself in the life of the community for a longer period of time, and who was supported by an interdisciplinary team that primarily acted as a sounding board.

Each model has its pros and cons. Even after a training seminar and a series of test interviews, the sensitivity of inexperienced interviewers may vary. Master students may be socially and culturally far removed from the interviewees, as we experienced in New Delhi when we struggled to develop a policy on how to deal with caste differences between interviewer and interviewee. Dependence on a single researcher requires confidence in that person, as it will be very difficult to verify her/his experience and observations. For our research in the DRC, we looked for a researcher who had at least a basic understanding of the local language of the villagers in the Bas-Congo, could read legislation in French, and report in English. The researcher who managed to fulfil all these requirements still faced cultural

barriers both at the local university and in the villages because he was not from the region and was thus considered a ‘foreigner’.

Inevitably, a multicultural composition of the research team adds a layer of complexity. A common understanding on the research objectives and interventions and on the methodology will need to be forged across cultures. This may well be a time-consuming exercise, but it is also a valuable learning experience for all involved, particularly in the area of human rights. Multicultural human rights research teams are themselves (modest) experiments in an intercultural dialogue on human rights.

2.2 Selecting the Topic/the Site/the Local Group

Greg Halseth and co. open their book on community-based research with an acknowledgement that selected local communities are often ‘located near a university, which makes them easy (and affordable) for researchers to access’ (Halseth et al. 2016, 3). Admittedly, that was the case in each of the three case studies we engaged in. Halseth and co point out the risk that communities may be over researched, leading to research fatigue among the potential respondents. That was not a problem we faced; there had been little prior social-legal research in our study areas. We did find, however, that people living in poverty are often very busy ensuring that they have access to basic amenities, and this impacts on the amount of time they are willing to spend on engaging with a research project.

It is easier to build on a prior personal or institutional relationship with a group when starting to build a research project. When no such relationship exists, the team may need to rely on gatekeepers, i.e. on actors that are already present among the relevant group and can facilitate access, such as non-governmental organizations. Gaining access through gatekeepers affects how the research team will be perceived within the local group. In addition, the gatekeeper may well be an actor in the human rights situation, and thus constitute an object of research for the research team. Maintaining a critical, independent view of the gatekeeper’s activities may not be straightforward.

Another sensitive issue in the initial stages of the research is the mapping of power dynamics within the local group. The use of human rights by a group is influenced by internal power relations. Human rights claims tend to be decided upon by the leadership, while other pressing human rights issues may not be addressed because they affect less influential members. Uncovering these inequalities may lead to tensions between the research team and the local group. Power dynamics influence the whole research process including the fieldwork (e.g. in patriarchal societal systems interviewing

women without the presence of men may be difficult), so it is unavoidable to raise them at an early stage.

In the localizing human rights project we left the choice of the human rights theme to our local partner university, because we trusted its assessment both of the feasibility of the research and of the relevance of the theme to society. Particularly in countries where undertaking independent human rights research is not self-evident, the best option may be to leave the choice of the topic to a trustworthy local partner. In all three case studies we investigated, we found that notwithstanding our initial focus on a specific right, on the ground rights were intertwined, and were perceived as such by the local groups. The choice of an initial focus on a specific right in our research design did not prevent us from engaging in a broader human rights analysis.

2.3 During Field Work

In a recent contribution on research ethics for human rights researchers, George Ulrich distinguishes between various categories of ethical issues that arise in human rights research (Ulrich 2017). Some of the categories (that Ulrich discusses in far greater detail) relate directly to the relationship between the researchers and the local group:

No harm issues include: not exposing research participants to human rights violations that are caused by their participation in the research; not causing them mental harm as a consequence of interviews; informing on access to human rights protection when participants face threats to their human dignity; dealing on a case-by-case basis with human rights violations that the researchers witness;

Communication issues include obtaining informed consent of research participants and displaying sensitivity during interaction;

Beneficence: ensuring that the research benefits research participants.

It is best practice to engage in advance planning on all these matters. Ideally, research team members are able to rely on an agreed prior policy when confronted with difficult decisions in the field. Such policies should be shared as much as possible with the local groups at the outset, in order to avoid raising expectations that the researchers cannot fulfill. It is particularly important to be transparent about the benefits that the research may or may not bring to the relevant local group (see the section below).

Although our field work was screened in advance by an Ethics Commission at the university, we did not draft a written policy that defined our relationship with the local groups. Issues such as the necessity to obtain informed consent, and the need to show sensitivity were addressed in training sessions. Our research did not put interviewees at risk of (further) human rights violations,

but in one instance – a partial demolition by the police of a slum that was also a research site – our field researchers were confronted with actions that at first sight did not meet international human rights standards. The researchers alerted a non-governmental organization about the events. They also assisted that organization in appealing to a United Nations human rights Special Rapporteur to initiate an urgent action. Our research design did not envisage such interventions (motivated by ‘beneficence’). Our aim was to observe the use of human rights by the slum dwellers and to assess whether human rights claiming lead to effective protection. By intervening, we became an actor and influenced research outcomes. Ultimately, we decided to be transparent about the intervention in our research findings and its potential impact on the research results (see De Feyter et al. 2017). With hindsight, we should have discussed and agreed a clear policy on how to handle this type of situation at the time of the project design.

2.4 Sharing Benefits

Human rights research among marginalized groups does not automatically empower them, nor does it necessarily lead to improvements in the human rights situation. Human rights awareness may be strengthened, and the capacity of the group to claim human rights may increase, but whether this really happens depends first and foremost on the group itself. Local groups may just as well decide that it is not in their interest to make use of human rights, or they may lack the cohesion to engage in collective action.

At first sight a commitment to share the research findings with the local group seems unpretentious, but it requires careful planning. Academic language and writing styles are not suited for communicating with marginalized groups. Other types of instruments that allow a sharing of results with the group apart from the academic ‘products’ of the research, should be budgeted for. Such instruments could include the use of infographics to visualize results, the production of concise summaries in layman’s language, the production of audiovisual material (such as a clip that can be shared on social media) and talk at follow-up meetings. A commitment to share the results requires either that the team has the necessary skills or that the means are available to outsource. It also requires that funding agencies are willing (or convinced) to provide funds for non-academic outputs.

The local group may contest the ownership of the research findings and the intellectual property rights attached to it. If no immediate benefits accrue to the group from the publication, the group may feel that their consent to contribute benefitted only the research team. A disagreement may also emerge on who decides what gets published, particularly if the fieldwork

uncovers sensitive human rights issues within the community (e.g. on exclusion on the basis of gender or other characteristics). The leadership of the local group may then consider that the publication is contrary to its interests (Pittaway et al. 2010), and dispute the right of the researchers to publish without its consent.

It is useful to think strategically about how to present the study in a way that benefits the human rights of the local group. Perhaps certain aspects of the study, even if they are not the most innovative from an academic perspective, will attract attention to the study as a whole. When we launched the study on the use of human rights by slum dwellers at a NGO seminar in New Delhi, civil society actors encouraged us to stress the importance of caste in the use of human rights, even if that had not been a central concern in the study. They argued that highlighting the caste perspective would draw a response from local government and politicians, and would thus offer better chances of follow-up on the overall findings by public authorities.

Another issue that arises after publication relates to the monitoring of the use that is made of the research findings by various actors. Although one cannot prevent selective use, providing for the capacity to monitor use at least allows responding when use is detrimental to the group that consented to the research.

A research protocol may be agreed between the researchers and the local group, in which the research team agrees to provide direct benefits to the local group in return for its participation. The nature of these benefits needs to be negotiated. Benefits could consist of training modules and materials on mobilization and organization, or on substantive issues (e.g. on the structure of local government and the courts). Perhaps the research team can facilitate connections to other local groups that face similar difficulties, or to thematic networks. The local group may wish to establish a relationship with the researchers and their institutions beyond the research period and the research theme.

Action research goes significantly further. Action researchers commit themselves to ‘a form of research which challenges unjust and undemocratic economic, social and political systems and practices’ (Brydon-Miller 2003, 11). In an action oriented approach to human rights research, the role of the research team is to engage in research that supports the human rights objectives and the needs for change that the local group has defined.

Action researchers do not study a human rights situation as detached observers, but put their knowledge and skills at the disposal of the group’s human rights agenda. This starting point has important consequences for the research design (Houh and Kalsem 2015):

- The local group determines the research problem that needs to be addressed;

- The knowledge of the group is retrieved and fully respected throughout the research. The local group and the researchers engage in a process of collective learning;
- The research team facilitates problem solving by the group; it is for the group to generate a practically viable solution to the problem;
- The research team commits to action: the research analysis of the problem must be followed by action that results in a more just situation.

Houh and Kalsem acknowledge that during their research project (on predatory lending practices in Cincinnati) the relationship between the low-income community members and the academics as privileged outsiders to the community was a recurrent concern. It required constant self-awareness and sensitivity to ensure that the researchers' commitment to empowerment did not result in assertion of control over the group (Houh and Kalsem 2015, 271).

Final Observation

Interdisciplinary human rights research that focuses on collecting the knowledge of marginalized groups and values that knowledge as a source of human rights law and policy also challenges universities as workplaces where the research is carried out.

Compared to desk research, socio-legal human rights research is time-consuming and expensive. It does not sit comfortably with academic evaluation criteria for securing tenure and promotion at faculties organized along disciplinary lines. It may require revisiting the criteria for top publications, including the preferencing of disciplinary scientific journals. It may require ignoring top journals and publishing in open access.

It is a responsibility for senior academics to create and maintain research environments at universities that nurture human rights research that benefits and engages with those left behind.

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