

Spectacular and systematic human rights abuse in Mexico P
Abuso espectacular y sistemático de derechos humanos en México

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ABSTRACT

This paper served as an introduction to the special issue of this journal on Human Rights. It starts with a general introduction to the concept and logic of human rights, as well as a framework for understanding the different types of law and international norms that are often referred to in discussions on Human Rights. The central part of the text discussed systemic or structural human rights abuses, which were often less visible than ‘spectacular’ events. The article explored why certain rights (for example economic rights) are harder to politicize as explicit human rights issues, giving consideration to both the institutional landscape, the social position of the affected social groups and the rights themselves. It concluded by stressing the importance of framing all human rights abuse as human rights abuse, which requires sustained research attention for systemic problems of vulnerable groups.

Keywords: Deservingness, human rights, international law, systemic abuse.

RESUMEN

Este artículo sirve como una introducción a la edición especial de esta revista en Derechos Humanos. Empieza con una introducción general al concepto y lógica de los derechos humanos, así como también un marco referencial para entender los diferentes tipos de leyes y normas internacionales a los que se refieren usualmente en Derechos Humanos. La parte central del texto discute los abusos sistémicos y estructurales a los derechos humanos, los cuales son menos visibles que los eventos “espectaculares”. El artículo continúa explorando por qué ciertos derechos (por ejemplo los económicos) son más difíciles de politizar como problemas explícitos de los derechos humanos, considerando tanto el escenario institucional, la posición social de los grupos afectados, y los derechos como tal. Concluye enfatizando la importancia del encuadre de todos los abusos de derechos humanos como abusos, lo cual requiere de atención por parte de los investigadores para los problemas sistemáticos de los grupos vulnerables.

Palabras claves: Abuso sistemático, derechos humanos, ley internacional, mérito.

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1.- INTRODUCTION

“The logic of human rights (...), is the logic of human society, one that is dialogic, democratic, equitable, and grounded in the synergetic processes of everyday life” (Blau, Moncada, 2013, p. 179).

Mexico has seen a very broad palette of human rights violations in the last three decades. When one gazes over the list of rights mentioned in the Universal Declaration of Human Right (United Nations, 1948), examples of each are readily available. Starting with the violation of the right to self-determination and political participation with the rigged 1988 elections which introduced the era of neoliberalism; to the endless (and during election times weekly) reports of voter suppression and coercion. From the many murdered journalists to the routine censorship of local media. Neither should we forget structural shortcomings in access to education on the countryside or the decades of insufficient pensions and other parts of the right to social security. In the field of security years of reporting by Non-Governmental Organizations (NOG's) like Amnesty International on torture cases could be noted, as well as the abysmal conditions of Mexican prisons. Two topics that attracted moderate attention in the last years deserve special mentioning. First, the nation's notorious Internal Security Law of 2017; of which the American Commission on Human Rights expressed concerns for allowing the military to increasingly invade public space and more easily break up protests. Second, the increasingly illuminated reality of massive human rights breaches (torture, rape, murder, discrimination, etc.) of Middle-American transnational migrants who try to cross Mexico to the U.S.. Yet of all Human Rights [from here onwards also written as HR] scandals, the 'Ayozinapa' mass murder of 2014 is by far the most politicized case in recent history. The disappearance and murder of 43 protesting students in the state of Guerrero triggered large street protests in the capital, attracted international media attention and was subject of an investigation by the Inter-American Commission on Human Rights.

However not all HR violations are created equally. For all the commotion it generated, the morbid spectacle of Ayozinapa drowns in the sea of political violence and daily underreported systematic violations and disappearances. For example a strong candidate for the most commonly breached universal human right is the daily violation of the right to just and favorable working conditions. Among other problems, the International Labour Organization (2014) estimated that nearly 60% of Mexican workers have informal jobs, with the minimum wage in the formal sector historically falling below the patrimonial poverty line (although the new government announced improvements in the latter case). Existing rights including severance pay are rarely enjoyed, as most worked don't reach the requirements or are cheated out of them (Valencia, Foust, Tetreault, 2012, p. 35). Rarely were Mexican labor conditions constructed as a human rights issue, even if the suffering (and probably avoidable death toll) of this and other structural causes of poverty far exceed that of a single spectacular act of violence. This imbalance is institutional, because even if a case regarding labor conditions would attract such media attention, it would not be received by the Inter American Court of Human Rights which only deals with civil and political rights.

Observations like the previous one form the starting point of both this text and the special issue of this journal, which both will take an interdisciplinary approach (Freeman, 2002; De Feyter, 2008). This introductory text is theoretical of nature, based on both the respective international laws and secondary literature on the history, philosophy and sociology of human rights. For various examples it will also draw on insights from our research on migration (Inzunza, Ghys, 2018) and poverty (Ghys, 2018). In what follows we will first offer a general conceptual introduction to human rights for those unfamiliar with the topic. After this we continue the theoretical reflection on why some rights and groups seem less deserving of attention and intervention than others.

2.- THEORETICAL FRAMEWORK

A brief introduction to human rights

This brief overview of the field of human rights serves as orientation for readers new to the topic, as well as to bind together the inevitable slight variations in views on this issue amongst the authors in this special journal issue. We will not attempt to be original; the following borrows heavily from the influential conceptualization in Jack Donnelly's standard work *Universal Human Rights in Theory and Practice* (2013). We will first highlight some essential elements of the concept of human rights, and later discuss the relation between various human rights treaties.

First of all, Human Rights are the rights one has for being human, aimed at protecting human dignity. Human rights are individual entitlements, not to be confused with the objects of those rights or the corresponding values (Donnelly, 2013). They refer to a legal relationship, encoded in various human rights treaties that are part of what would be called public international law (Shaw, 2014), and thus implying commitments from states. Human rights place right holder A in a special relationship to state B (either the one who's territory A is in or belongs to as a national). This commitment includes not only a duty to respect the right (for example not to censor), but also to protect (for example from systematic insecurity risks) and fulfill (to provide access to education). Although technically this responsibility belongs only to the state, there has been much debate in the last decades on expanding this to other powerful actors such as multinationals (Ruggie, 2013). We will limit ourselves to an orthodox state centered interpretation, where human rights are ideally made enforceable under national law.

If human rights are the rights one has for being human, they would logically apply to all humans, which brings us to the topic of the universality of HR: they apply to everyone and they apply to them equally. This universality (and this global applicability) has been object of sustained debate since the signing of the original 1948 Universal Declaration. Besides the effective large overlapping legal consensus on the HR treaties (despite the often cynical support, see Smith-Cannoy, 2012), other proposed grounds for HR include human needs, natural law and religious reflections. One of the most appealing grounds for human rights is that they protect people from two major threats to human dignity introduced by modernity: the capitalist market and the modern state (Donnelly, 2013). Giving at least one of these institutional contexts is present in almost all nations, HR could be seen as a universal protection and promotion of human dignity:

“Fundamental rights provided the conceptual and institutional tools to help protect individuals from the increasingly invasive powers of state, market, etc., while at the same time guaranteeing the free and equal access to modern social institutions such as mass education, public healthcare and labour markets, which provided them with the means - both material and symbolic - to construct their life-projects” (Madse, Verschreagen, 2013, p. 7).

Although interesting, the debate on universality is of no direct concern to us given the national focus of this special journal issue. Although its HR track record would not betray it, Mexico is one of the 48 founding signatories of the original Universal Declaration of Human Rights. It was also an early signatory of the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), and has ratified the American Declaration of the Rights and Duties of Man (1948) also known as the Bogota declaration.

The last aspects of HR we will highlight in this introduction is their indivisibility and inalienability. Human rights are not a menu of options, but are presented as one indivisible whole in the Universal Declaration of Human Rights (United Nations, 1948). However, various actors (including governments) have tried to weaken this notion by giving preferential treatment to certain right, a topic we will discuss further in the next section. The fact that HR are inalienable implies that one cannot stop having human rights because one cannot stop being human (Donnelly, 2013). This does not mean that every human is in a position to enjoy them at any time (for example children cannot vote). One can also still get trapped in certain zones of ‘exception’ where the enjoyment of certain rights is temporarily suspended (compare Agamben, 2005). This includes situations such as being in prison or in situations of statelessness or undocumented migration, as Hannah Arendt pointed out early (1951). However none of these situations imply that human rights can be categorically earned or lost, they always remain with the individual. This matters highly, since HR violations are often targeted at marginalized groups that are dehumanized by more powerful ones.

In terms of strictly legal entities, the field of HR encompasses various treaties and laws, which can cause confusion on which rights are actual human rights. The surrounding legal regimes further encompass various institutions that promote, monitor, protect and enforce them, which often offer their own formulations, interpretations and relating values. To structure the discussion, we will present various types of HR-related law in an onion model with the Universal Declaration at the center, and with each additional layer being further removed from the core concept of HR. Notice that this ordering is purely for didactic and conceptual purposes; it does not imply any hierarchy in power or enforceability (often on the contrary).

At the core we have the original list of thirty articles in the Universal Declaration of Human Rights (United Nations, 1948), also referred to as the UDHR. These form the normative core of the global human rights regime, and are what most people (both laymen

and experts) refer to when generally talking about human rights. Since it is a declaration and not a treaty, it serves as a foundational norm that in the international field has no legal power of and in itself (although some countries copied it into their constitution). The most prominent treaties operationalizing these norms are the International Covenant on Civil and Political Rights (United Nations, 1966) with 171 signatories; and the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966) with 166 signatories.

In a second tier we find various additional international rights declarations that follow the concept of Universal Human Rights and share similar institutions (the U.N. treaty bodies). These include the right of woman; the rights of handicapped people, the rights of the child, etc. Although these parallel treaties are sometimes referred to as human rights and enjoy as much (if not more, in case of the rights of the child) universal support, they differ in a number of ways from the UDHR regime. First of all, they usually practically apply to certain groups (woman, indigenous people) instead of the entire human race, offering additional protections. Second, they are part of mostly younger legal regimes that don't have the same history and (depending on the region and treaty) institutional support and authority that the more known Universal Human Rights have. For example Mexico signed and ratified amongst others the Convention on the Elimination of All Forms of Discrimination Against Women (United Nations, 1971); the Convention on Rights of the Child (United Nations, 1989) and the Conventions on Rights of Persons with Disabilities (United Nations, 2006).

In a third type of rights that are sometimes brought into (Mexican) human rights discussions are constitutional rights. The Mexican constitution grants various rights to inhabitants that in concept, tone and authority are sometimes similar to Universal Human Rights, but hold no relation to international law. In Mexico's specific case this also includes certain additional rights to groups like indigenous people.

Under the fourth layer of laws relevant to this debate we can group all kind of international 'soft' law. Here we refer to other international treaties that do not generate binding obligations towards citizens or take the form of rights, but that can inform legal judgement and implementation of human rights. These include important international texts such as for example the Paris Agreement on climate change (U.N., 2015), the Global Compact for Migration (U.N., 2018) or interpretations of human rights by the relevant treaty bodies, U.N. commissioners or organizations like the International Labour Organization. In the remainder of this text we will limit ourselves to the first core layer when referring to Human Rights.

Some rights are more equal than others.

Our focus in this special issue is on systemic and enduring human rights violations and deprivations. In this context systemic refers to these violations being part of the everyday functioning of society. This can either be because they are structurally (for example in the economic model) or legally locked into the operation of society, and/or because they are widely ignored. For example the non-enjoyment of the right to social security and protection from destitution due to old age was structural in so far it followed from the overhaul of legally guaranteed pensions in 1995 (OECD, 2016, pp. 42-44). Combined with the highly informal labor market, these reforms left many elderly people structurally without any or sufficient pensions. Enduring violations are thus normalized as part of everyday life, in contrast to 'spectacular' Human Rights violations such as active genocide or the imprisonment of an opposition leader that refer to a specific (media) moment or case. Systemic HR problems such as the issue of disappearances can of course generate a 'spectacular' moment like in the Ayozinapa case where 43 students disappeared at once. However, as Darwin Franco indicates (see elsewhere this issue), the wide media attention for this event did not necessarily illuminate or even benefit the handling of the wider problem of disappearances. Another example of a systemic HR issue is the daily and deadly hazards (torture, murder, rape, disappearance, starvation, sickness, etc.) that transnational migrants are exposed to on their journey up North¹. Although these sometimes involve government forces and shortcomings of the duty to protect, one could argue that these issues (mostly caused by organized crime) are not the intended consequence of a single governmental action. Yet they are systematic in the way they have been ignored for

¹ The author was involved in a research projects that included 60 interviews with transnational migrants. Although the research question centered around their sources of information and imaginaries of the journey and destination (and thus contained no direct questions on abuse); our interviewees were flooded with horror stories of rampant HR violations. Only recently has this topic attracted more mainstream attention.

decades. Flagrant disregard for the plight of migrants became part of the long list of irregularities, impunities and institutional failure that together formed the paradoxical normality of Mexican surrealism.

Yet some issues are able to attract more attention than others, and some (such as the right to fair pay) are barely conceived as human rights issues (see the entry by Beatriz Inzunza elsewhere in this issue for more on imaginaries of human rights). In this it is crucial to keep in mind that Mexico is not a 'rogue' country that doesn't recognize or makes reservations on human rights, but instead a founding signatory of human rights and overall loyal participant in additional international HR law². The question thus becomes why this society recognizes human rights and at the same time accepts certain systematic violations as everyday normality. The following is not meant as an exhaustive analysis of why certain human right violations become normalized or generate no paths to justice. Instead, we intend to draw a broad overview of possible perspectives that can help provide background to the further contents of this issue.

One set of reasons clusters around the particular group that is experiencing difficulties in enjoying their human rights. This might have to do with the perceived deservingness of particular social groups. Besides power, individuals and groups also hold a certain status (or symbolic capital) within society, which among other things influences what societal rewards or punishments society is willing to grant them. This shows clearly in for example the field of poverty reduction and social assistance (Gans, 1996), where audiences and politicians often favor the 'deserving' poor (widows, the physically impaired) over 'undeserving' poor such as the unemployed. Various groups in society suffer from similar forms of 'symbolic violence' (Bourdieu, 1984): they are denied respect and recognition from groups with higher prestige, which reinforces inequality. But we could apply this to Human Rights more generally, especially when dealing with groups that break or broke certain societal norms. Research by Drolet, Hafer and Heuer (2016) indicates that "if the target of Human Rights violation engaged in highly morally reprehensible behavior in the past (even behavior that is not directly related to the violation), people will perceive the target as deserving of extremely negative treatment" (p. 430). This is troubling for HR, since these rights are supposed to be a safeguard exactly when one is not respected in society (Donnelly, 2013). One example would be the seemingly generalized political and public disregard for the abyssal conditions of certain Mexican prisons; of which some are so abandoned that they are left to self-governance of the prisoners. Prisoners are the ultimate 'undeserving' group, since even without knowing them one can assume the crimes they committed to end up in prison violated explicit societal norms. Violations of their human rights are thus easily ignored and might even be approved by other social groups. From the perspective of policy makers, prison reform might yield considerable societal and security benefits, but giving attention to the HR of prisoners is an unattractive political position given they are seen as undeserving. Besides, In Mexico they don't have the right to vote (Cantú, 2011)³.

The latter ties into the factor of the relative powerlessness of certain groups. Although their rights are preexisting and don't need to be conquered or earned, various groups in practice lack the power to enforce them. This can be because they lack other civil rights or stand in an exceptional relation to the law, such as is the case with (undocumented) migrants or the aforementioned prisoners. Or because they lack the economic, social and/or political influence in Mexico (Ghys, 2018) or access to justice (lawyers, courts) to demand the active respect of their labor rights. It is for example harder for poor farm workers to draw attention to evident violations of labor rights, than for judges and other magistrates to attempt using HR to shield them from wage reforms. Additionally, if not automatically provided, rights must be claimed via legal instruments and courts, which is simply an unlikely course of action for various vulnerable groups (Madsen, Verschreagen, 2013). This not only assumes the availability and accessibility of adequate legal recourse, but also a level of awareness and knowledge of one's own rights and the will, time and resources to engage in legal processes. As with rights in general, the poor tend to be least capable of enforcing them: "It is well known that most failures in assuring human rights are more or less directly related to poverty" (Madsen, Verschreagen, 2013, p. 10). This also draws attention to the need of Human Rights education

2 To add a point of comparison: while Mexico early on signed and ratified additional conventions on the rights of children, woman, and people with disabilities, the United States did not ratify any of the aforementioned.

3 Another example of a group lacking this right that is often constructed as undeserving is transnational migrants. While the problem itself has been largely ignored for decades, in the second half of 2018 transnational migrants suddenly lost much of what remained of their 'deservingness' in the eye of large parts of the Mexican public. After a brief wave of immigration and the reaction of U.S. president Trump, migrants fell victim to an intense stigmatizing (social) media campaign. Working on this topic, I found myself surprised at the speed and effectiveness of assault on deservingness, making drawing attention to the savage abuses this group experiences harder overnight.

and making people familiar with their rights and the available channels of claiming them.

A last variant are groups whose rights (and sometimes bodies) are rendered invisible. Abuses that we do not know, such as that of trans migrants in the woods or those tortured and illegally imprisoned, cannot attract attention. Darwin Franco's contribution in this issue details how for example many disappeared persons are rendered invisible in multiple ways, hiding the true extend of the problem. Complaints of abuse might also be silenced within the justice system itself, given Mexico's notorious reputation for corruption and impunity in both police forces as the court system. The underreporting of abuse in media, especially if it involves the silencing of that same media (a HR abuse in itself), further adds to the problem.

Another cluster of reasons for variations in attention for HR issues are not connected to the victims but to the rights themselves. Human Rights, like other institutions, are socially constructed: they are what we through social interaction make of them (Berger, Luckmann, 1966). That means that regardless of their roots in any type of law, in practice our perception and valuation of them, as well as the corresponding institutional resources largely determine how 'real' the role of a certain human right is in the lives of people.

The universality of human rights is sometimes challenged by not giving social, economic and cultural rights (work, social security, education, etc.) the same importance as civil and political rights (Blau, Moncada, 2013). As Donnelly (2003) explains, this partly stems for cold war debates in which some mainly U.S. intellectuals adhered to a philosophical tradition that regarded civil and political rights (plus property) as the only 'true' rights. Without delving into this debate, we agree with Donnelly that there are no conclusive arguments for this view, which is essentially a political one favoring a certain conservative ideological constellation. We hold that the various human rights reinforce each other and dividing them often makes little sense in practical situations in which political and socio-economic exploitation go hand-in-hand (Donnelly, 2013). The practical impact of violations of economic rights (for example starvation or lack of healthcare) are certainly as tangible for people involved than violations of for example the right to protection from torture. Even if we leave these ideological discussions behind, one must be aware that there are also practical discriminations against social and economic rights relevant to our Mexican context. For example the Inter American Court of Human Rights which has jurisprudence over Mexico only covers the American Convention of Human Rights, which only induces civil and political rights. International NGO's like Amnesty International and Human Rights Watch have historically focused much more on civil and political rights. This makes attracting wider (international) attention to social and economic rights (which are amongst the most frequently violated) harder, depoliticizing issues like exploitation and inequality.

Besides the geopolitical context, while various rights such as freedom of speech can be inconvenient to all sorts of governments, the less politicized social and economic ones can also run counter to the interests of capital. Rights regarding social protection often imply redistribution via taxation (Royce, 2015), and rights to fair working conditions and vacations can delay capital accumulation. Regarding the latter, while the state is legally responsible for not offering the required protection/provision, worker right issues are often experienced versus private companies who might violate national laws but are technically not bearers of HR obligations. This can contribute to the overlooking of social and economic rights violations as real human rights issues. A similar situation can occur when governments are dissuaded from improving Human Rights conditions by other more powerful countries. For example Mexico faced pressure from the United States over the last decades to discourage and hinder the passage of Middle American migrants.

Lastly, certain rights might run counter to the survival of the political class as such (Donnelly, 2013). While this might be broadly imaginable for any right given particular circumstances, for instance of government falling over its ability to reach consensus of an issue relating to family rights, some rights are more evident candidates. Freedom of press comes to mind in the Latin-American context, as well as rights to legal recourse and protection from violence and torture. Although these issues might be more easily recognizable as HR violation (see discussion above), governments might have very strong interests in depoliticizing them, for example by framing disappearances as side effects of criminal lifestyles.

3.- CONCLUSIONS

This introduction was not intended to disclose original analysis or findings, but rather to guide the reader towards the Mexican context, and to offer frames of understanding how the central problematic could play out in the remaining contributions. However, it also draws attention to the need to keep framing human rights abuse as human rights abuse. While the same event, for example the

denial of joining a trade union, can be viewed and politicized from many perspectives, the human rights approach deserves its own space. It empowers victims and transforms them into right holders, firstly in a normative sense (knowing one is right), secondary in a legal sense if appropriate resources are available. If these resources are not available, the first provides a ground to struggle for the second. Yet HR also create arguments and legal obligations to provide, protect and respect in instances that could otherwise be framed in terms of regrettable but anonymous inefficiency, crime or corruption. They point towards the needs for (and right to) continued institutional improvement aimed at increasing the human dignity of all people.

This call extends to academic research itself, more precisely to keep directing attention to groups that are stigmatized, deemed undeserving or dangerous, as well as those that are hard to study. Continuing the sociological angle, we must admit that practical considerations are part of research designs and the choice of topics, and certain potential research questions raise more practical barriers than others. Besides cultural barriers, this could be as simple as being repulsed by reasons of plain physical location: 'dangerous' neighborhoods, remote countryside, traveling populations, etc. A second step is studying how these groups in their practical context can use their human rights, or draw attention to their inability to do so, in achieving more dignified lives. As mentioned before, such research lies at the crossroads of law, sociology, the field of social work, and the political and communication sciences.

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