

# CONTEMPORARY SOCIO-LEGAL STUDIES

EMPIRICAL AND GLOBAL PERSPECTIVES

Edited by

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**CONTEMPORARY  
SOCIO-LEGAL STUDIES**  
*EMPIRICAL AND GLOBAL  
PERSPECTIVES*



*Faculdade de Direito  
Universidade de São Paulo  
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## 20. Mobilizing women’s human rights: what/ whose knowledge counts for transnational legal mobilization?<sup>156</sup>

*Cecilia McDowell Santos*

### Introduction

Since the mid-1990s, international and domestic human rights non-governmental organizations (NGOs) in Latin America have increasingly engaged in transnational legal mobilization for the promotion of human rights norms in the region. In the past ten years, I have been studying this type of legal mobilization and its impacts in cases presented against the state of Brazil to the Inter-American Commission on Human Rights (IACHR) (C. M. Santos 2007, 2009). In 2012, while I was conducting research for a new project titled ‘What Counts as “Women’s Human Rights”? How Brazilian Black Women’s and Feminist NGOs Mobilize International Human Rights Law’, I was invited by the grassroots feminist organization União de Mulheres de São Paulo (hereafter, União de Mulheres), based in the downtown area of São Paulo, to make a presentation drawing on this research<sup>157</sup>. I then showed a PowerPoint slide including all cases of violence and discrimination against women presented against the Brazilian state to the IACHR. I had identified these cases based on the reports published in the website of the IACHR and by contacting human rights and feminist NGOs. At the end of my presentation, Deise Leopoldi, a member of União de Mulheres, corrected my table and pointed out that the petition to initiate the case of Márcia Leopoldi dated from 1996, not 1998. Deise is the only

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<sup>157</sup> This research was part of the larger research project entitled ‘ALICE—Strange Mirrors, Unsuspected Lessons: Leading Europe to a New Way of Sharing the World Experiences,’ coordinated by Boaventura de Sousa Santos at the Centre for Social Studies at the University of Coimbra, from 2011 to 2016.



sister of Márcia Leopoldi, who was assassinated by her ex-boyfriend in the early 1980s. Because this crime had been committed with impunity, the case of Márcia Leopoldi was sent to the IACHR by União de Mulheres and three regional NGOs: Center for Justice and International Law (CEJIL), Human Rights Watch/Americas, and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM/Brazil). This was the first case of violence against women presented to the IACHR against the Brazilian state.

Yet, until 2012, there was no information on the case of Márcia Leopoldi on the website of the IACHR. I was able to find out about it because I knew the feminist activist Maria Amélia de Almeida Teles (known as Amelinha), a founding member and leader of União de Mulheres. Amelinha had told me that the IACHR had assigned a number to their petition in 1998. However, Amelinha did not have a copy of the petition and was unclear as to its date. CLADEM/Brazil did not have a copy of the petition either. Human Rights Watch had closed its office in Brazil and abandoned the case. CEJIL was the only organization that had a copy of this petition. But its representative in Brazil claimed that disclosing this information could harm the litigation process. Because it would be difficult to trace all petitions initiated by NGOs, I decided to focus only on the cases that were made public on the website of the IACHR. Thus, I did not pay much attention to the case of Márcia Leopoldi and assumed that it had been initiated in the same year as the well-known case of Maria da Penha, which I had selected for analysis.

Besides correcting my slide, Deise gave me a pen drive with copies of all documents relating to the case of Márcia Leopoldi, including the petition sent to the IACHR in 1996. She also made herself available for an interview. Writing about this case would show that it existed and would give visibility to the difficulties facing women's human rights struggles for justice. Some difficulties related to the lack of, and unequal, access to, the IACHR. In order to access justice systems, at both national and international levels, it is necessary to learn about laws and rules of procedure, among other things. CEJIL and CLADEM/Brazil were important allies for their knowledge of international human rights law.



However, the delay of international justice became a critical issue. Moreover, despite these NGOs' position to give up on the case pending in the IACHR when the murderer of Márcia Leopoldi was arrested in 2005, União de Mulheres and Deise had a different vision of legal mobilization and continued to demand a response from the IACHR with the goal of shaming the Brazilian state for the ineffectiveness of its justice system.

The case of Márcia Leopoldi provides an example of what I have dubbed 'transnational legal activism', that is, an activism carried out transnationally by human rights NGOs and social movement actors who use international human rights law not only to seek individual remedies for the victims, but also to pressure states to make legal and policy changes, to promote human rights ideas and cultures, as well as to strengthen the demands of social movements (C. M. Santos 2007). In addition to professionalized human rights NGOs, diverse feminist and women's NGOs have engaged in transnational legal activism as a strategy to reconstruct and promote women's human rights discourses and norms. This type of legal mobilization clearly illustrates what Keck and Sikkink (1998) call 'transnational advocacy networks' (TANs). Indeed, the human rights and feminist NGOs involved in transnational legal activism create networks to communicate and exchange legal and other kinds of knowledge, forming transnational alliances to 'plead the causes of others or defend a cause or proposition' (ibid: 8).

Yet, contrary to Keck and Sikkink's original conceptualization of TANs as 'forms of organization characterized by voluntary, reciprocal, and horizontal patterns of communication and exchange' (1998: 8), the case of Márcia Leopoldi indicates that the relationship between actors involved in transnational activism is often contentious and asymmetrical, as researchers have pointed out (Mendez 2002; Farrell and McDermott 2005; Thayer 2010; Rodríguez-Garavito 2014). The emerging scholarship on transnational legal mobilization (e.g. Cichowski 2013; Holzmeyer 2009; Dale 2011; C. M. Santos 2007) tends, however, to overlook the relationship between NGOs centred on different issue areas (human rights and feminist advocacy networks, for example), or between NGOs and the





victims/survivors (or family victims) whose knowledge and experience serve as the basis for transnational legal mobilization practices. The few studies on the cases of women's human rights presented to the inter-American system (e.g. Gonçalves 2013) do not address such relationships either. Thus, an examination of the ways in which human rights and feminist NGOs, as well as victims/survivors of women's rights abuses, interact with each other might reveal who is considered a legitimate actor in the international human (and women's) rights field, and whose strategic visions on human rights, transnational legal mobilization and transnational justice become hegemonic within this field.

Drawing from research on transnational legal mobilization over cases of women's human rights presented against the state of Brazil to the IACHR, this article builds on the framework of 'epistemologies of the South' (B. de S. Santos 2014) to examine how human rights NGOs that specialize in transnational litigation, feminist advocacy NGOs, grassroots feminist organizations, and victims/survivors (or family victims) of domestic violence against women engage in transnational legal mobilization, negotiate power relations and exchange their knowledge/vision on human rights and justice. The article shows that the practice of transnational legal mobilization is contentious and involves unequal knowledge/power relations. The work of translating knowledge through transnational legal mobilization can both build and break alliances. Most importantly, the legalistic view on human rights held by the more professionalized NGOs tends to prevail over grassroots feminist organizations' and survivors' perspectives on human rights and justice.

In what follows, I will draw on two cases of domestic violence against women—*Márcia Leopoldi v. Brazil* and *Maria da Penha v. Brazil*—to illustrate these points. The article is divided into four sections, in addition to this Introduction and the Conclusion. First, I explain the approaches to transnational legal mobilization and human rights that inform my analysis. Then I briefly introduce the IACHR, its petition system and the types of cases on women's human rights that have been presented against the state of Brazil. This will be followed by the types of knowledge mobilized by the actors involved in the two



selected cases. The last section addresses the ways in which these actors exchanged their knowledge and built or broke alliances in the process of transnational legal mobilization.

### **1. Transnational legal mobilization as translation of human rights knowledge**

The literature on transnational legal mobilization for human rights has expanded in the last decade. It builds on studies of legal mobilization, transnational human rights advocacy networks, and counter-hegemonic uses of law in the context of globalization. Michael McCann (2008) broadly defines legal mobilization as a practice of translating a perceived harm into a demand expressed as an assertion of rights. Litigation is one specific dimension of legal mobilization and refers to the translation of a harm into a ‘complaint’ (of a norm violation) presented to a court. In addition to litigation, legal mobilization can include other actions, such as lobbying, legal campaigns to change or create laws and policies, raising legal consciousness, and so on. In his review of law and social movement scholarship, McCann (2006: 25) praises ‘process-based approaches’ that emphasize ‘various contextual factors’. The author points out that ‘Opportunity structures, movement resources, and discursive terrains or legal consciousness are familiar categories for such analyses’ (ibid.).

This broad conceptualization and multidimensional approach to legal mobilization is useful to uncover the relationships and types of legal knowledge exchanged between NGOs, social movement actors and victims/survivors of human rights violations. However, existing research on transnational mobilization for human rights usually adopts an institutional approach to processes of legalization, compliance, litigation and mobilization waged by NGOs at supranational and national governmental institutions (e.g. Cichowski 2013; Simmons 2009). This literature tends to overlook the discursive struggles within the nongovernmental terrain of human rights activism. John Dale’s (2011) and Cheryl Holzmeyer’s (2009) respective studies of transnational legal action in the case of the Free Burma movement are notable exceptions. Both authors



examine the legal strategies, identities and human rights discourses deployed by the Free Burma movement. Focusing on the relations between culture, structure and states, Dale (2011: 25) defines the ‘transnational legal space’ as ‘a conceptual space of legal discourse that is shifting and contested’.

Going beyond the institutional approach to law and globalization, Boaventura de Sousa Santos and Cesar Rodríguez-Garavito (2005) propose a critical and sociopolitical framework that they call ‘subaltern cosmopolitan legality’ to make sense of the transnational, counter-hegemonic mobilization of law by social movement actors. ‘Subaltern cosmopolitan legality’ is characterized by four expansions of the conception of law and of the politics of legality. First, there must be a combination of political and legal mobilization. In fact, subaltern cosmopolitan legality is a form of political mobilization of law. It presupposes the politicization of the use of law and courts. Legal mobilization, in turn, may involve legal, illegal and non-legal actions. Second, the politics of legal mobilization needs to be conceived of at three different scales—the local, the national, and the global, so that the struggles are linked across borders. Third, there must be an expansion of professional legal knowledge, of the nation state law, and of the legal canon that privileges individual rights. This does not mean that individual rights are abandoned by subaltern cosmopolitan politics and legality, even though there is an emphasis on collective rights. Finally, the time frame of the legal struggle must be expanded to include the time frame of the social struggle that serves to politicize the legal dispute. This means that the social conflicts are conceived of as structural problems related to capitalism, colonialism, patriarchy, authoritarian political regimes, and so on (B. de S. Santos 2005: 30).

Besides the case of the Free Burma movement cited above, the legal defence of leaders and causes of social movements by ‘popular advocacy’ in Brazil is an example of the political mobilization of law. This can be illustrated by the struggles for agrarian reform and counter-hegemonic globalization waged by the Movement of Landless Rural Workers (B. de S. Santos and Carlet 2010). So-called ‘strategic litigation’ (*litígio estratégico*), carried out in Latin America by



human rights NGOs that specialize in litigation to defend a cause, is also an example of the political mobilization of law that can go beyond the limits of the nation state (Rodríguez-Garavito 2011; Cardoso 2012). The ‘transnational legal activism’ practices by NGOs and social movement actors that use the inter-American system of human rights to pressure states to promote legal and policy changes at the domestic level might also serve as an example of subaltern cosmopolitan legality (C. M. Santos 2007). However, while the counter-hegemonic law and globalization scholarship focuses on the legal discourses and strategies waged by social movement actors, it has not paid sufficient attention to the exchange of legal knowledge produced by these actors and the individual victims/survivors of human rights violations.

Transnational legal mobilization for human rights can be viewed as a ‘politics of reading human rights’ (Baxi 2006), that is, a discursive practice of translation that both includes and excludes the representation of varying forms of human rights violations, as well as different ideas and conceptions of human rights and justice. In her approach to the ‘vernacularization’ or cultural translation of global women’s human rights ideas and frameworks into local settings, Sally Engle Merry (2006) refers to transnational activists as ‘translators/negotiators’ embedded in power relations between the global and the local. Millie Thayer (2010) also examines the transnational process of translating gender discourses as practices embedded in power relationships, but she goes beyond a global–local dichotomy, showing that ‘local’ actors, such as women rural workers in north-east Brazil, are not simply receivers of a global feminist or gender discourse; they are already embedded in global feminist discourses. Building on Thayer’s perspective, I would add that the victims/survivors of human rights abuses are not isolated ‘local’ actors either. While the ‘local’ actors’ visions of justice and legal and political strategies to pursue justice may differ from those of legal experts and professionalized human rights NGOs, they also embrace aspects of legalistic views on human rights and justice. Moreover, the victims can become ‘human rights defenders’ in the process of international litigation, as R. Aída Hernandez Castillo (2016) shows in



her analysis of human rights vernacularization and inter-legality between the Inter-American Court of Human Rights and indigenous women's demands for collective reparations in two cases of rape committed by soldiers of the Mexican army.

The 'epistemologies of the South' (B. de S. Santos 2014) framework provides further analytical insights to conceive of transnational legal mobilization as a practice of translation of diverse types of human rights knowledge beyond the global-local divide. The 'South' is understood in both geopolitical and epistemic senses. It corresponds to diverse types of knowledge produced by marginalized groups both in the global South and North (ibid.). This framework starts with the premise that an ecology of knowledges exists in different locales all over the world. 'The ecology of knowledges assumes that all relational practices involving human beings and human beings and nature entail more than one kind of knowledge, thus more than one kind of ignorance as well' (ibid: 188). It is necessary to acknowledge the incompleteness of all types of knowledge and reciprocal ignorance in order to avoid the domination of one type of knowledge over another.

Boaventura de Sousa Santos (2014: 188) claims that 'modern capitalist societies are characterized as favoring practices in which the forms of scientific knowledge prevail'. Because access to the production and distribution of scientific knowledge is unequal, interventions based on scientific knowledge tend to serve the social groups who have access to such knowledge. The monoculture of scientific knowledge makes invisible and renders as nonexistent other types of knowledge. 'Ultimately, social injustice is based on cognitive injustice. However, the struggle for cognitive justice will never succeed if it is based only on the idea of a more equitable distribution of scientific knowledge' (ibid: 189).

In addition to acknowledging the existence and reciprocal ignorance of an ecology of different types of knowledge, the 'epistemologies of the South' framework considers that intercultural translation is necessary to overcome hierarchical epistemic relationships and cognitive injustice. Implicit in this



perspective is the idea that intercultural translation ‘may be useful in favoring interactions and strengthening alliances among social movements fighting, in different cultural contexts, against capitalism, colonialism, and patriarchy and for social justice, human dignity, or human decency’ (B. de S. Santos 2014: 212).

Although Santos does not refer specifically to legal and human rights knowledges, his framework of ‘epistemologies of the South’ can be applied to his approach to counter-hegemonic uses of law in the context of globalization. The legal knowledge produced by the states and legal experts is based on scientific knowledge. Human rights norms established by global and regional intergovernmental institutions are the predominant sources of human rights knowledge. Yet transnational legal activism in the inter-American system involves an ecology of human rights knowledges and practices. While professionalized human rights and feminist NGOs may engage in litigation and promote legal advocacy within the framework of human rights norms, grassroots organizations may confront the limits of legality through non-legal knowledges and practices of human rights mobilization. Victims/survivors of human rights violations may approach legal mobilization and pursue justice based on their own experiences of suffering and vulnerability. In this perspective, it is important to ask how these actors exchange their knowledge on human rights and negotiate strategies to pursue transnational justice.

Combining the ‘epistemologies of the South’ with the ‘subaltern cosmopolitan legality’ frameworks, this article asks under what circumstances transnational legal mobilization practices correspond to a counter-hegemonic legal epistemology of (women’s) human rights. As the cases of domestic violence presented against Brazil to the IACHR will illustrate, not all actors involved in transnational legal mobilization are viewed as legitimate transnational legal activists and equal producers of women’s human rights knowledge. The legal knowledge of professionalized human rights and feminist NGOs tends to prevail over the popular feminist knowledge and practices of grassroots organizations and victims/survivors of human rights violations.



## 2. The Inter-American Commission on Human Rights and cases of women's human rights against Brazil

A brief background of the inter-American system of human rights within the Organization of American States (OAS) is necessary to situate the cases of women's human rights addressed in this article. The OAS was created by the states of the Americas in 1948 to promote peace, justice and solidarity in the region, as well as to defend the sovereignty and independence of the states (Article 1 of the OAS Charter)<sup>158</sup>. Since its inception, the OAS has established a series of regional human rights norms. The American Declaration of the Rights and Duties of Man, adopted by the OAS in 1948, was the only regional human rights instrument until the American Convention on Human Rights (hereafter, American Convention) was adopted in 1969, entering into force in 1978. Among other subsequent instruments, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the 'Convention of Belém do Pará', was adopted by the OAS in 1994, entering into force in March 1995.

The American Convention empowered two bodies to ensure the promotion and protection of human rights: the Inter-American Commission on Human Rights (IACHR or the Commission), a quasi-judicial organ that had already been created by the OAS Charter<sup>159</sup>; and a new judicial organ, the Inter-American Court of Human Rights (IACtHR or the Court). Both organs can decide on cases of human rights violations, but only the Court's judicial decisions are binding. The competence and procedure to submit a case are not the same for the two organs. A case can be sent to the Court only after the procedure before the Commission has been exhausted. Only the Commission and states parties to the American Convention that have recognized the jurisdiction of the Court can

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<sup>158</sup> The Charter of the OAS entered into force in 1951. The history and development of the inter-American human rights system can be found on the website of the OAS at <http://www.oas.org/en/iachr/mandate/Basics/intro.asp>.

<sup>159</sup> The Inter-American Commission on Human Rights is composed of seven members elected by the OAS General Assembly. Candidates are nominated by state members. They are not judges and, once elected, they must represent all of the OAS state members.



submit a case to the Court. Yet not only victims but also any individual or group of persons, as well as any NGO legally recognized in one or more member states of the OAS, can lodge petitions to the Commission denouncing or complaining about a violation of the American Convention by a state party (Article 44 of the American Convention). This possibility of direct access to the Commission by victims and other civil society actors makes it an important legal and political site of transnational human rights mobilization.

In the 1990s, the democratization process and the national adoption of regional human rights norms in most countries in Latin America created new legal opportunities for transnational legal activism (C. M. Santos 2007) and strategic litigation in the inter-American system (Cardoso 2012). Brazil ratified the American Convention in 1992. Three years later Brazil ratified the Convention of Belém do Pará. In 1998 Brazil recognized the jurisdiction of the IACtHR.

Since the early 1990s the main petitioners in cases against Brazil in the IACHR are international and domestic professionalized human rights NGOs<sup>160.4</sup>. The NGOs select ‘paradigmatic cases’ to show that the human rights violations are endemic and require both individual remedies and domestic policy changes. They form transnational alliances with local grassroots organizations, social movement actors and victims to advocate for the rights of various individuals and groups who have been marginalized and subjected to various forms of violence and discrimination. These include indigenous communities, prison inmates, rural workers, human rights defenders, children living in the streets, Black women facing racial discrimination, victims/survivors of domestic violence, family members of disappeared persons, and so on (C. M. Santos 2007).

As mentioned in the Introduction, since the mid-2000s I have been studying transnational legal mobilization in the IACHR (C. M. Santos 2007). In

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<sup>160</sup> According to Par Engstrom and Peter Low (2018), the IACHR annual reports and its petition data from 1999 to 2014 indicate that 67 per cent of the petitioners in cases against Brazil opened for investigation by the IACHR involve human rights organizations. The authors point out that the top five human rights organizations involved in these cases are CEJIL, Justiça Global, Projeto Legal, Comissão Pastoral da Terra, and Fundación Interamericana de Defensa de los Derechos Humanos.





the earlier stage of this research agenda, my approach built on Keck and Sikkink's work on TANs and Santos and Rodríguez-Garavito's approach to subaltern cosmopolitan legality. While I focused on the discourses and legal strategies pursued by NGOs, I did not pay attention to the relationships between NGOs and victims/survivors of human rights abuses. I began to focus only on the cases of women's human rights once I was invited to contribute to the project on 'epistemologies of the South' coordinated by Boaventura de Sousa Santos at the University of Coimbra, from 2011 to 2016. For this project, I build on my previous research, focusing on what counts as 'women's human rights' and what and whose knowledge counts for transnational legal mobilization. This research is based on archival and interview methods. Besides collecting documents on the cases, I rely on old and new interviews conducted with human rights activists and the victims/survivors I have been able to contact.

Drawing on the IACHR annual reports, I have compiled a database of the 'cases' presented against the state of Brazil to the IACHR, from 1969 to 2012<sup>161</sup>. Among over 80 cases, the IACHR's reports on admissibility and inadmissibility show that only seven cases concern women's human rights, focusing particularly on violence and/or discrimination against women. As Table 1 indicates, petitioners include international and domestic NGOs, as well as victims. Various types of NGOs are part of the legal mobilization process, including international and domestic human rights and feminist NGOs, NGOs fighting against racism, and grassroots feminist and social movement organizations. Given the small number of cases and the year of the first petition (1996), it is clear that the IACHR

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<sup>161</sup> The 'cases' refer to the complaints that the IACHR has accepted for investigation and has published in its annual reports. Thus, the number of complaints sent to the IACHR is larger than the number of cases. In the context of authoritarian rule in the Latin American region, the inter-American system did not recognize the responsibility of the states in most cases. During Brazil's military regime (1964–1985), the IACHR did not consider that the Brazilian state was responsible for the alleged human rights violations with the exception of two cases (C. M. Santos 2007). In the 2000s, in the context of redemocratization, it is clear that the IACHR has changed. As Table 1 indicates, among the seven cases of women's human rights violations presented against Brazil and opened for investigation by the IACHR, from 1969 to 2012, only one was considered inadmissible.



is a new terrain for all of these actors' engagement with transnational litigation over women's human rights.

Based on the types of complaints and the norms invoked by the litigants, I classified the seven cases on women's human rights as follows: cases of gender-based violence (four cases); cases of racial discrimination against Black women (two cases); and cases of class-based violence against rural women workers (one case). Among the cases of gender-based violence, three relate to domestic (intimate partner) violence against women and one refers to sexual violence perpetrated by a medical doctor against a female teenager who was his patient. Table 1 summarizes each case by year of the initial petition, names of petitioners, norms invoked to frame the complaints, and type (admissibility or inadmissibility) and year of the respective report published by the IACHR.

Gender-based violence is usually equated with 'violence against women'. It can be perpetrated by both private citizens and state actors. The Convention of Belém do Pará asserts that 'violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere' (Article 1). In 1999, the UN Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee) established in its Recommendation No. 19 that 'Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men'.

Except for the case of *Márcia Leopoldi v. Brazil*, all of the IACHR reports on the cases listed in Table 1 resulted in the admissibility by the IACHR of most or all alleged violations. However, the IACHR reports do not tell us how litigators have developed and negotiated their legal strategies. What role does each actor play in the process of mobilizing women's human rights? Are all types of NGOs and the victims viewed as legitimate actors in the transnational practice of mobilizing women's human rights? Can they all knock on the door of the IACHR? Two cases of domestic violence – *Márcia Leopoldi v. Brazil* and *Maria da Penha v. Brazil* – help to shed light on these questions.



Type of case	Year of petition	Petitioners	Complaint	Norms	IACHR report/year
Márcia Leopoldi Case (domestic, partner violence)	1996	CEJIL; CLADEM; União de Mulheres de São Paulo	Assassination of Márcia Leopoldi by ex-boyfriend	American Convention on Human Rights; Belém do Pará Convention	Inadmissibility (2012)
Simone Diniz Case (racial discrimination)	1997	Simone Diniz; CEJIL; Sub-Committee of Human Rights of Blacks at São Paulo Bar Association; Father Batista Institute of Blacks	Racial discrimination in the hiring of a domestic worker	American Convention on Human Rights; Additional Protocol to American Convention on Human Rights in the area of Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; ILO Convention No. 111	Admissibility (2006)
Maria da Penha Case (domestic, partner violence)	1998	Maria da Penha; CEJIL; CLADEM	Attempted murder by husband, victim became paraplegic as a result	American Convention on Human Rights; Belém do Pará Convention	Admissibility (2001)
Márcia Barbosa de Sousa Case (domestic, partner violence)	2000	CEJIL and National Movement of Human Rights	Assassination of Márcia Barbosa, perpetrated by ex-lover, a Congressman	American Convention on Human Rights; Belém do Pará Convention	Admissibility (2007)
Margarida Maria Alves Case (classbased violence against rural women workers)	2000	GAJOP-Cabinet for Popular Legal Assistance; CEJIL; National Movement of Human Rights – MNDH; Land Pastoral Commission – CPT; Margarida Maria Alves Foundation for the Defense of Human Rights	Assassination of Margarida Alves, union leader of rural workers	American Convention on Human Rights	Admissibility (2008)
Samanta Nunes da Silva Case (sexual violence)	2003	Themis	Sexual violence perpetrated by a medical doctor	American Convention on Human Rights; Belém do Pará Convention	Admissibility (2009)
Neusa dos Santos and Gisele Ana Ferreira Case (racial discrimination)	2003	Gelede's – Institute of Black Women	Racial discrimination in the hiring of a domestic worker	American Convention on Human Rights; Additional Protocol to American Convention on Human Rights in the area of Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; ILO Convention No. 111	Admissibility (2006)

**Table 1. Cases of women's human rights presented to the IACHR against Brazil (1969–2012)**

**Source:** Data compiled by author from the annual reports published on the website of the Inter-American Commission on Human Rights

<http://www.oas.org/en/iachr>.



### 3. Knowledge mobilized and strategies of legal mobilization

Márcia Leopoldi, a young, white, upper middle class, heterosexual woman, was assassinated in 1984 by her ex-boyfriend, José Antônio Brandão Lago (also known as Laguinho), in the city of Santos, near the city of São Paulo. Deise Leopoldi, the only sister of Márcia, then began to struggle for justice in the Brazilian courts. In this process, she found and joined the grassroots organization União de Mulheres de São Paulo. The case of Márcia Leopoldi was sent to the IACHR in 1996. As noted at the beginning of this article, this is the first case on women's human rights presented against Brazil. The petition was signed by CEJIL, Human Rights Watch/Americas, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM/Brazil), and União de Mulheres de São Paulo.

Maria da Penha Maia Fernandes is a white, middle class, well educated, heterosexual, disabled woman who lives in the city of Fortaleza, in the north-east of Brazil. She survived attempted murder committed in 1983 by her then husband, Marco Antonio Heredia Viveros, and became paraplegic as a consequence of this aggression. Viveros was found guilty by the jury in a second trial and sentenced to ten years in prison. However, he appealed and, until 2001, the case was pending in the Superior Tribunal of Justice. The case of Maria da Penha was sent to the IACHR in 1998. This is the second case of domestic violence presented to the IACHR against the state of Brazil. The petition was signed by Maria da Penha Maia Fernandes, CEJIL, and CLADEM/Brazil. Both petitions, on the Márcia Leopoldi and the Maria da Penha cases, address violations of the American Convention on Human Rights and the Convention of Belém do Pará.

Drawing on interviews with the NGO representatives and the victims, I identified the following types of knowledge mobilized by the petitioners: (1) human rights legal knowledge; (2) feminist legal advocacy knowledge; (3) feminist popular knowledge; (4) corporeal knowledge<sup>162</sup>. These types of

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<sup>162</sup> The interviews were conducted over the past ten years for my ongoing research on transnational legal activism and cases of human rights violations presented to the IACHR by



knowledge illustrate an ecology of women's human rights knowledges. It is important to note that the knowledge and practices of actors involved in transnational legal mobilization are not clearly separated. But it is possible to identify some forms of knowledge that stem from their experience and inform their legal practices and strategies of legal mobilization.

Human rights legal knowledge relies on a legalistic framework of human rights. It is used by professionalized NGOs engaged in strategic litigation within and across borders. CEJIL embodies this type of legal mobilization, specializing in litigation in the inter-American system of human rights. Founded in 1991 by a group of human rights defenders, CEJIL works with the system to strengthen it and to promote human rights and democracy in the state parties of the OAS<sup>163</sup>. CEJIL has consultative status before the OAS, the United Nations, and the African Commission on Human and Peoples' Rights. Its headquarters are located in Washington DC, where the IACHR is also located. But CEJIL has offices in different countries throughout the Americas. In Brazil, CEJIL's office is located in the city of Rio de Janeiro. The office includes one director, who is an experienced human rights defender, and one administrative assistant. CEJIL is a major legal actor in the cases presented against Brazil to the IACHR. Par Engstrom and Peter Low (2018) have identified CEJIL as the top single human rights organization filing the petitions against Brazil cited in the IACHR annual reports from 1999 to 2014. As Table 1 indicates, CEJIL is one of the petitioners in five of the seven cases on women's human rights brought to the IACHR. CEJIL selects and mobilizes its cases in partnership with local NGOs. The victims are also involved in the selection and preparation of the cases. One of the criteria used by CEJIL to select a case includes the victims' authorization to file a complaint and their willingness to cooperate with the legal action, providing all

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human rights NGOs against the state of Brazil. This research has benefited from multiple grants awarded by the Faculty Development Fund at the University of San Francisco. Besides interviews with Deise Leopoldi and Maria da Penha Maia Fernandes, this article draws on interviews conducted with representatives of the following organizations: União de Mulheres de São Paulo, CLADEM/Brazil, and CEJIL.

<sup>163</sup> Further details on the history and work carried out by CEJIL can be found on their website: <https://cejil.org/en/what-we-do> (referenced 2 June 2016).



information needed to support the case. It is also necessary to count on local NGOs and/or attorneys to follow up on the legal case in the domestic court system and to help with the mobilization of the case outside of courts. These are important conditions to guarantee the ‘success’ of the case. A ‘good case’ is one that exemplifies a pattern of human rights violations and that can be used to establish a judicial precedent and promote domestic policy and/or legal changes. A successful case does not necessarily mean that the IACHR publishes a report on the merits of the case and holds the state accountable for the alleged violations. An agreement between the petitioners and the state can be settled in the course of the legal dispute. But it is necessary that the case be admitted, so it can be used as a weapon to pressure the state in question<sup>164</sup>. Thus, CEJIL is concerned about framing the cases according to the procedural and material normative requirements for admissibility. CEJIL’s strategic legal use of international human rights norms is counter-hegemonic as it confronts state and non-state anti-human rights discourses and practices. Yet the legalistic perspective of CEJIL may also be viewed as hegemonic vis-à-vis non-legal subaltern cosmopolitan mobilization practices.

Feminist legal advocacy also relies on a legalistic framework of human rights. It is used by both domestic and international professionalized feminist NGOs engaged in legal advocacy to change national and international policies and laws relating to women’s human rights, and/or to disseminate and implement international women’s human rights norms at the domestic level. CLADEM, a regional network of feminist legal experts established in 1987, carries out this type of transnational feminist advocacy work. It is important to use cases to hold states accountable for the protection of women’s human rights. Like CEJIL, CLADEM has offices in different countries in Latin America. In Brazil, CLADEM has had its offices based in different cities over the years, and has been represented by established feminist law professors, feminist attorneys,

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<sup>164</sup> Other human rights NGOs based in Brazil, such as *Justiça Global* (Global Justice) and *GAJOP* – *Gabinete de Assessoria Jurídica Popular* (Cabinet for Popular Legal Assistance) use the same criteria to select their cases.



and/or feminist activists. In contrast with CEJIL, CLADEM focuses only on women's human rights and seeks to promote legal and policy changes from a gender perspective. Moreover, CLADEM does not specialize in transnational litigation and does not centre exclusively on the use of the inter-American system, although CLADEM has begun to develop a 'global legal programme' dedicated to transnational strategic litigation both in the bodies of the inter-American system and to the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee)<sup>165</sup>. Like CEJIL, CLADEM also mobilizes on the cases in partnership with local NGOs. In addition to the two cases of domestic violence presented to the IACHR, CLADEM/Brazil has presented to the CEDAW Committee one case against the Brazilian state regarding violation of women's human rights. Similarly to CEJIL, the legal feminist perspective embraced by CLADEM, based on advocacy work and litigation, can be viewed as counter-hegemonic since it challenges sexist practices and ideologies promoted by both state and civil society actors. Yet, this feminist legal perspective can also be viewed as hegemonic in relation to grassroots and marginalized forms of feminist activism.

Feminist popular knowledge is mobilized by grassroots organizations like União de Mulheres de São Paulo. These are voluntary associations working to educate women about their rights, using women's human rights discourse and laws to empower women. They also seek to change cultural norms and stereotypes about gender, and to change state institutions and political cultures. They use human rights norms as a legal and political tool to strengthen their causes and promote women's rights. They work both against and with the legal system, organizing campaigns against impunity and protests to have domestic violence policies and legislation established and implemented. Created in 1981, União de Mulheres is one of the oldest and most active feminist grassroots organizations in the city of São Paulo.<sup>166</sup> Since 1994, União de Mulheres has

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<sup>165</sup> See more details on this programme on the website of CLADEM, <https://www.cladem.org/eng/what-we-do/litigation> (referenced 13 May 2018).

<sup>166</sup> For more details on the history of this organization, see União de Mulheres de São Paulo (2011).



offered courses on feminist popular legal education (promotoras legais populares)<sup>167</sup>. Feminist law professors and legal professionals give classes in these courses. Members of CLADEM/Brazil and other feminist NGOs have also contributed to these courses. Even though União de Mulheres has provided legal advice and emotional support to women who have been subjected to gender-based violence, this organization does not initiate legal cases either locally or internationally. The case of Márcia Leopoldi is an exception. While União de Mulheres shares CEJIL's and CLADEM's goals to promote human rights, justice and policy changes through transnational legal mobilization, its approach to the state and to domestic and international legal systems is not legalistic. União de Mulheres approaches legal mobilization from a critical, oppositional perspective. Legal mobilization is an additional weapon that must serve social and political struggles. The objective is not to strengthen the inter-American system of human rights, but rather to use it to strengthen the demands of the women's movements. Thus, the engagement of União de Mulheres with legal mobilization, both locally and internationally, can be viewed as a practice of subaltern cosmopolitan legality. And its approach to women's human rights illustrates an epistemology of the South.

Finally, the victims of human rights violations bring to transnational legal mobilization a distinct experience and type of knowledge that I dub corporeal knowledge. Not all victims may gain consciousness of their rights and fight for justice. But the victims or family victims engaged in legal mobilization share a common knowledge rooted in their bodily experience of physical, psychological and emotional harm. The search for justice is sparked by a distinct experience of indignation that starts with the act of violence and is then transformed into a type of corporeal knowledge that might drive a reaction or a struggle for some kind of justice. The survivors (or family victims) of domestic violence, such as the sister of Márcia Leopoldi and Maria da Penha, have gained consciousness of their rights and have learned about the legal system in the process of fighting for

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<sup>167</sup> Details on this project can be found at <http://promotoraslegaispopulares.org.br> (referenced 10 June 2016).





justice, which started before they met their NGO allies. Their corporeal knowledge, their personal experience learning about law and facing an unjust legal system, their representation of the double act of violence (interpersonal and institutional) through the oral and written narration of their stories, all of these accumulated types of corporeal and legal knowledge were crucial for the transnational legal actions that they initiated in alliance with the human rights and feminist NGOs that crossed their paths in search for justice. These victims became subjects of rights, they gained consciousness of their human rights as women, they taught and learned from the NGOs, they became activists and actors in the field of women's human rights and transnational legal mobilization, even if temporary legal mobilization actors and not necessarily joining a human rights and/or feminist NGO.

From this perspective, the cases of Márcia Leopoldi and Maria da Penha illustrate that cosmopolitan and local actors learn from each other's knowledge of harm, rights violations, and collective and individual histories, as well as legal and political repertoires of action, resources and strategies. These actors' subjectivities and identities may be transformed in the process of transnational legal mobilization. However, this process is charged with not only alliances, but also tensions and conflicts. The actors may produce what I dub a 'convergent translation' of their knowledge, building alliances and a common strategy to pursue justice. Yet, a 'divergent translation' and conflicting views on the use of law may also lead to breaking alliances in the process of legal mobilization.

#### **4. Convergent and divergent translations, building and breaking alliances**

Coming from an upper class family, Deise Leopoldi was able to hire well-known attorneys to assist the public prosecutors in charge of the case of Márcia Leopoldi. In the second trial that took place in the early 1990s, the jury found Lago guilty. He was sentenced to 15 years in prison. However, he ran away and was not arrested by the police until 2005. This arrest was made possible thanks to Deise's appearance in the popular TV show *Mais Você*, broadcast every



morning by the network *Rede Globo*. Deise was interviewed on this show to talk about domestic violence and then took the opportunity to display Lago's picture on national television.

At that time, Deise had become a feminist activist and was member of *União de Mulheres*. She had heard about this organization through one of the lawyers who assisted her (Deise Leopoldi interview with the author, 20 May 2013). In 1992, she contacted *União de Mulheres* in search of support. The same year she joined the organization. She actively participated in the campaign 'Impunity is Accomplice to Violence' that was at that time created by *União de Mulheres*. The case of *Márcia Leopoldi* served well for the purpose of that campaign. As noted by *Amelinha*, 'this was an emblematic case that we used to launch our campaign in a national meeting of women's popular (grassroots) organizations that we organized in 1992 to confront violence against women' (*Maria Amélia de Almeida Teles* interview with the author, 3 March 2006). *União de Mulheres* actively mobilized on this case, organized a protest in front of the court when the second trial was held, made a poster with Lago's picture, and even publicized the case and took this poster to the Fourth World Conference on Women, held in Beijing in 1995.

In 1994, the feminist organizations *CLADEM/Brazil* and *União de Mulheres* began to discuss the idea of sending this case to the IACHR. This discussion took place when *União de Mulheres* offered the first course on popular legal education for women. The following year Brazil ratified the Convention of Belém do Pará, as noted above. *CLADEM/Brazil* members thought then that the case of *Márcia Leopoldi* was ideal for testing the application of the Convention and for pressuring the Brazilian state to establish domestic violence laws and policies. During that time, Brazil had created over 200 separate women's police stations throughout the country. But there was no comprehensive legislation and national policy to effectively confront the problem of domestic violence against women. Feminist members of *CLADEM/Brazil* had drafted a proposal for a domestic violence bill, but their allies in Congress were unable to introduce this bill (C. M. Santos 2010). *CLADEM/Brazil* and *União de*



Mulheres then sought the support of CEJIL to take the case of Márcia Leopoldi to the IACHR. CEJIL had not yet mobilized on a case of women's rights, so this was an opportunity to expand its issue areas, using the Convention of Belém do Pará to provoke a 'boomerang effect' (Keck and Sikkink 1998) while setting a judicial precedent on gender-based violence for the whole Latin American region. Thus, all actors learned and benefited from this alliance around the case of Márcia Leopoldi. Deise was hopeful that justice was going to be finally achieved.

However, the IACHR did not open the case immediately. It took two years to assign a number to the petition (Petition No. 11,996). There was no 'case' number and no decision on this case until 16 years after the petition was filed. In March 2012 the IACHR finally published its report on the case, considering it inadmissible (IACHR 2012). The IACHR considered that the case had been resolved and lost its objective because Lago was arrested in 2005.

CEJIL and CLADEM/Brazil agreed with the IACHR's position. In fact, after Lago's arrest, their representatives in Brazil had a discussion and disagreement with Deise Leopoldi and União de Mulheres over whether they should continue to pressure and request the IACHR to admit the case. Deise and other members of União de Mulheres considered that Lago had been arrested thanks to their mobilizing efforts, not those of the Brazilian state. They wanted to use the case to show that the Brazilian state was negligent and did not protect women from violence. As explained by Deise:

CEJIL was afraid of losing the case. But we wanted to pressure the Commission to make a decision. I told Amelinha that we should prepare a petition and that I wanted to actively participate. I told her, 'we don't know international law, but we know about the substantive right of my sister, based on national laws that were not enforced'. In January of 2005, we prepared a draft of our petition and sent it to CEJIL. They also sent us their draft. They used all of that language of international law, the Convention. But we didn't agree. We went to Rio to discuss the



case with them. (Deise Leopoldi interview with the author, São Paulo, 20 May 2013)

CEJIL was concerned about losing the case because the very object of the complaint – to arrest Lago – had been accomplished (B. Affonso interview with the author, Rio de Janeiro, 17 August 2006). Representatives of CLADEM/Brazil were also concerned about the legal prospects for the case, although they recognized Deise's work and understood how important it was to continue fighting for an admissibility report in the IACHR. Valéria Pandjarjian, a member of CLADEM/ Brazil, followed the case from the beginning to end and was very ambivalent. In her words:

Deise deserves all the credit for the arrest of Laguinho. The Commission and the Brazilian state did not help at all. The Commission did not respond to this case as it did in the case of Maria da Penha. Once Laguinho was arrested, the Commission requested information from us. And now, are we going to continue to litigate? We know this was important for Deise. We know the victims are the ones who need reparation, who must feel there was justice, if it's sufficient or not. But we had a lot of difficulty, because we did not face a favourable situation. Because the most substantive aspect of impunity, the reason that had sparked our use of the Commission, was over. Despite moments of tension, each one of us had a role in this case. And CEJIL is making an effort, searching for a legal interpretation to support this case. But I don't know if we can make any progress, we run the risk of not having the case admitted. (Valéria Pandjarjian interview with the author, São Paulo, 31 August 2006)

The disagreement between Deise and the NGOs was not resolved and culminated in the breaking of their alliance. In 2007 Deise and other leaders of União de Mulheres published a book on the case of Márcia Leopoldi (Leopoldi et



al. 2007). This book provides a detailed history of Deise's and União de Mulheres' struggle for justice. The book also recounts the NGOs' conflicting strategies to pursue justice in the IACHR (ibid: 117). Bypassing CEJIL and its assigned role as the primary interlocutor with the IACHR, Deise and União de Mulheres sent a copy of this book to the IACHR in 2010 and requested that the case be admitted. This was a final move to break their alliance with CEJIL and CLADEM/Brazil. União de Mulheres continued to work in collaboration with these NGOs in other instances of mobilization. But the transnational alliance that had been forged with the family victim was broken by the time the IACHR published the inadmissibility report in 2012.

Despite the IACHR's dismissal of the case, the subjectivity and the identity of the victim – in this case, a family victim – were clearly transformed in the process of transnational legal mobilization. Deise moved to the city of São Paulo, joined a feminist grassroots organization, and became a feminist activist fighting to change the legal system and to end domestic violence against women. CEJIL and CLADEM/Brazil members, however, do not consider this to be a 'successful' case. Although this case is cited in the website of CLADEM, neither CLADEM/Brazil nor CEJIL made efforts to bring it to public attention. CEJIL omits the case of Márcia Leopoldi from its website.

The case of Maria da Penha, on the other hand, is easily found on the websites of both CLADEM/Brazil and CEJIL. On the website of CEJIL, the case of Maria da Penha is an example of successful litigation with an 'impact'. Indeed, the legal mobilization on this case contributed to promoting domestic legal change, legal consciousness of women's human rights, and public awareness about the issue of domestic violence against women in Brazil. In addition, this case illustrates a 'convergent translation' of different types of knowledge and a process of building alliances among all actors involved from beginning to end of the legal mobilization process. It also contributed to empowering the victim, who became an activist and joined an organization, though at first she did not join a feminist or human rights NGO.



As noted above, the case of Maria da Penha was sent to the IACHR in 1998, two years after the case of Márcia Leopoldi. The petition was signed by Maria da Penha, CEJIL, and CLADEM/Brazil. As in the case of Márcia Leopoldi, I interviewed all petitioners.<sup>168</sup> A sign of CEJIL's role as gatekeeper to the IACHR was that only CEJIL had a copy of the petition. A representative from CEJIL visited Fortaleza in 1998 in search of paradigmatic cases on violence against women. She learned about the Maria Penha case through the State Council on Women's Rights of Ceará. In 1994, the Council had published the first edition of Maria da Penha's book, *Sobrevivi... Posso Contar* ('I Survived... I Can Tell My Story') (Fernandes 1994). The book narrates Maria da Penha's corporeal and legal knowledge of violence and injustice. It shows how she became a survivor of domestic violence, describing her search for justice and denouncing the ineffectiveness of the legal system and the impunity of the perpetrator.

When I visited Fortaleza in 2008 to interview Maria da Penha, I was very impressed with her involvement with different activities relating to domestic violence against women. She was then the president of the NGO Associação de Parentes de Vítimas de Violência - APAVV (Association of Relatives of Victims of Violence). She was also a member of the State Council on Women's Rights. She had then just received reparations from Ceará State, as recommended by the IACHR report on the merits of her case published in 2001 (IACHR 2001). She knew all of the institutional agents working for the network of services that had been created in the city of Fortaleza, as mandated by the then newly-created domestic violence statute, Law No. 11,340/2006, also known as 'Maria da Penha' Law. This law was named after Maria da Penha by then President Luiz Inácio Lula da Silva as a form of symbolic reparation to the victim, as recommended by the IACHR. The president invited Maria da Penha to the ceremony held on 6 August 2006 in Brasília, the nation's capital, for the signing of this law. This ceremony was widely publicized in the media.

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<sup>168</sup> I interviewed Maria da Penha twice: the first interview was conducted over the phone (Maria da Penha Fernandes interview with the author 3 April 2007); the second interview was conducted in her house in Fortaleza (Maria da Penha Fernandes interview with the author 19 February 2008). I also interviewed Maria da Penha's attorney in Fortaleza, 21 February 2008.



The significance of this case for Maria da Penha and for the women's movements in Brazil should not be underestimated. Maria da Penha felt honoured by the symbolic reparation she received during the signing of the law, even though she also considered 'very important that those using corporatism to delay justice be held responsible' (Maria da Penha Fernandes interview with the author 3 April 2007). She has become a well-known women's rights advocate and promoter of the Maria da Penha Law in Brazil. The victory in the IACHR also helped feminist NGOs in their campaign for the passing of the new legislation on domestic violence in 2006. In a document prepared by CEJIL, CLADEM/Brazil, and AGENDE – Action in Gender Citizenship and Development, presented to the CEDAW Committee in 2003, these organizations stated: 'The extreme relevance of this case surpasses the interest of the victim Maria da Penha, extending its importance to all Brazilian women... This was the first case in which the Convention of Belém do Pará was applied by an international human rights body, in a decision in which a country was declared responsible in a matter of domestic violence' (CEJIL et al. 2003).

## **Conclusion**

The cases of Márcia Leopoldi and Maria da Penha illustrate that transnational legal mobilization involves a work of translation of different types of human rights knowledges. Even though international human rights NGOs based in the global North tend to have more knowledge of the norms regulating transnational litigation and operate like gatekeepers to access the IACHR, they also share this legal knowledge with domestic human rights NGOs in the process of transnational legal mobilization. Human rights NGOs have also expanded their issue areas and have made alliances with international and domestic feminist NGOs. However, 'local' grassroots NGOs and especially victims/survivors are not necessarily perceived as legitimate legal mobilization actors and members of transnational human rights advocacy networks.



Transnational legal mobilization has the potential to produce not only material and direct effects on the adoption and implementation of domestic laws and policies. As noted by Holzmeyer (2009), increasing the organizational capacity of transnational advocacy networks and promoting diverse actors' rights consciousness are some of the indirect effects that deserve further attention from transnational legal mobilization practice and theory. In addition, as this article has shown, victims/survivors are important actors in transnational legal mobilization practices and can become activists. Thus, research and legal advocacy on human rights and women's human rights must pay attention not only to material impacts of legal mobilization, but also to the interactions between the actors involved and to their subjective experiences, broadening the generally accepted view on who counts as human rights advocates.

Ignoring and devaluing certain forms of knowledge in the mobilizing practices of human rights endangers the very work of promoting global justice. The languages and cultures of human rights need to go beyond a legalist perspective on the needs and rights of individuals and groups. Otherwise, epistemic justice will not be achieved and this will hinder the work for global justice. Mobilizing women's human rights through transnational legal mobilization can make invisible the practices and knowledge of actors who are also fighting for justice. The cases of Márcia Leopoldi and Maria da Penha illustrate that the history of struggles carried out by grassroots organizations such as União de Mulheres and victims/survivors (and family victims) of domestic violence, such as Deise Leopoldi and Maria da Penha, are essential for promoting global justice. They have not only learned from the more professionalized human rights defenders, but also taught their knowledge from their bodily experience and from a long history of individual and collective struggles that can be truly viewed as 'epistemologies of the South'. Recognizing the knowledge and the contributions of these actors to the making of ecologies of women's human rights knowledge is also part of the global justice work that human rights defenders must seek to promote.





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