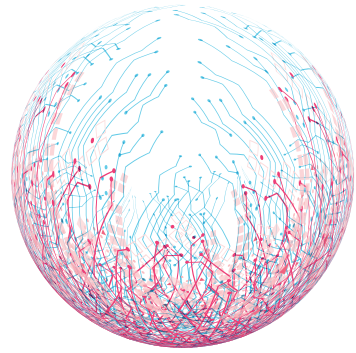
Transnational Advocacy Networks

Twenty Years of Evolving Theory and Practice



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Cecília MacDowell Santos

* I am grateful to the human rights activists who gave me interviews and shared documents on the legal cases. Special thanks are due to Deise Leopoldi and Maria da Penha Maia Fernandes.

In the past two decades, nongovernmental organizations (NGOs) working in Latin America have increasingly engaged in transnational legal mobilization, using the inter-American human rights system to pressure states to make legal and policy changes, to promote human rights ideas and cultures, and to strengthen the demands of social movements (C. Santos 2007). In addition to professionalized human rights NGOs, diverse feminist and women's NGOs, as well as victims of human rights abuses, 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 illustrates what Margaret Keck and Kathryn Sikkink (1998) call "transnational advocacy networks" (TANs). Indeed, the human rights and feminist NGOs involved in transnational legal mobilization 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" (ibid., 8), researchers have shown that the relationship between transnational activist actors is often asymmetrical and contentious (e.g., Thayer 2010; Mendez 2002; Farrell and McDermott 2005; Rodríguez-Garavito 2014). The emerging scholarship on transnational legal mobilization tends, however, to overlook the relationship between NGOs centered on different issue areas (human rights and feminism, for example) and between NGOs and the victims whose knowledge and experience serve as the basis for transnational legal mobilization practices. Thus, an examination of the ways in which human rights and feminist NGOs, as well as victims of women's rights abuses, interact with one another might reveal who is considered a legitimate actor in the international human (and women's) rights field, and whose strategic vision

on human rights and transnational justice becomes hegemonic within this field.

Drawing from research on women's human rights cases presented against Brazil to the Inter-American Commission on Human Rights (IACHR), this chapter shows that the practice of transnational legal mobilization is contentious and involves unequal knowledge-power relations.[1] International and domestic human rights NGOs that specialize in transnational human rights litigation, feminist advocacy NGOs, grassroots feminist NGOs, and victims alike engage in transnational legal mobilization and exchange different types of knowledge. However, the work of translating their knowledge through transnational legal mobilization can both build and break solidarity. The legalistic view of human rights held by the more professionalized NGOs tends to prevail over other perspectives. In what follows, I will draw on two cases of domestic violence to illustrate these points. Before examining these cases, I briefly explain the approaches to human rights and transnational legal mobilization that inform my analysis.

Transnational Legal Mobilization as Translation of Human Rights Knowledges

The legal mobilization of 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 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

1 This chapter draws on research conducted for the project "What Counts as 'Women's Human Rights'? How Brazilian Black Women's and Feminist NGOs Mobilize International Human Rights Law," supported by the Faculty Development Fund at the University of San Francisco. This project was part of the larger research project "ALICE – Strange Mirrors, Unsuspected Lessons: Leading Europe to a New Way of Sharing the World Experiences," coordinated by Boaventura de Sousa Santos at the Center for Social Studies at the University of Coimbra, during 2011–2016. A preliminary version of this chapter was presented at the workshop "Transnational Advocacy Networks: Reflecting on 15 Years of Evolving Theory and Practice," held at the Watson Institute for International Studies, Brown University, April 2015. An expanded version was published in the *Journal of Human Rights Practice* in 2018 (C. Santos 2018).

discourses as practices embedded in power relationships, but she goes beyond a global-local dichotomy, showing that "local" actors, such as rural women workers in Northeast 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 victims of human rights abuses are not isolated "local" actors, either. While local actors' legal and political strategies to achieve 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.

The "epistemologies of the South" (B. Santos 2014) framework provides further analytical insights to conceive of transnational legal mobilization as a practice of translating diverse human rights knowledges beyond the global-local divide. The global South is understood in both a geopolitical sense and an epistemic one, the latter of which corresponds to an "ecology of knowledges"—that is, diverse types of knowledge produced by marginalized groups in the global South and North alike (ibid.). Scientific/legal knowledges can also be part of the ecology of knowledges insofar as they contribute to the struggles of oppressed communities and individuals. Acknowledging the existence of this ecology of knowledges, learning from them, and working *with*, not *for*, the oppressed, are considered part of global social justice work. Under this perspective, intercultural translation is necessary to forge alliances between marginalized and privileged epistemic communities (ibid.). Yet it is important to ask what kinds of transnational legal mobilization practices correspond to an "epistemology of the South."

According to Boaventura de Sousa Santos and César Rodríguez-Garavito (2005), "subaltern cosmopolitan legality" is the type of transnational legal mobilization that challenges hegemonic conceptions of law. Subaltern cosmopolitan legality includes an expansion of the conceptions of law in four major ways. First, legal mobilization must be combined with political mobilization. Second, legal mobilization must go beyond individualistic conceptions of rights, even though struggles for individual rights need not be abandoned. Third, subaltern cosmopolitan legality can include legal, illegal, and nonlegal strategies. Finally, the struggles must be articulated at different scales of action—local, national, and transnational.

Cheryl Holzmeyer's (2009) analysis of TANs and grassroots mobilization in the case of *Doe v. Unocal* illustrates how the transnational legal mobilization of human rights can constitute subaltern cosmopolitan legality. In this case, she found that the human rights discourse served as a common vocabulary and counterhegemonic resource for

the case's litigators and grassroots activists not directly involved in the lawsuit. In addition to having indirect material effects on the organizational capacities of these actors, mobilization around *Doe v. Unocal* had the symbolic effects of rights consciousness and transnational solidarity. While Holzmeyer acknowledges the existence of tensions between these two sets of actors (litigators and activists), the focus of her analysis is on the synergies between them. As illustrated by the following cases of domestic violence brought to the IACHR against the Brazilian state, transnational legal mobilization can spark both alliances and conflicts, building and breaking solidarities throughout the course of litigation.

Mobilizing Women's Human Rights before the IACHR: Who May Cross the Gate?

Types of Cases, Knowledges Mobilized, and Legal Mobilization Strategies

Since the 1990s, international and domestic human rights NGOs have increasingly sent petitions to the IACHR to denounce human rights abuses in countries throughout Latin America. The domestic adoption of regional human rights norms in most of these countries has created opportunities for transnational "strategic litigation" led by NGOs (Cardoso 2012). Brazil, for example, ratified the American Convention on Human Rights in 1992 and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (known as the Convention of Belém do Pará) in 1995. In 1998, it recognized the jurisdiction of the IACHR.

NGOs select "paradigmatic cases" to show that a particular type of human rights violation is endemic and requires both individual remedies and domestic legal or policy changes. They form TANs to promote the rights of groups and individuals who are marginalized and subjected to abuses, including children in situations of vulnerability, indigenous peoples, black people facing racism, women in situations of domestic violence, and so on. The petitioners often include international and domestic NGOs, as well as victims. In the cases relating specifically to women's human rights filed against Brazil, various types of NGOs are part of the litigation process, including international and domestic human rights and feminist NGOs, blacks' rights NGOs, and grassroots feminist and social movement organizations.

The IACHR's annual reports do not consistently present data on the petitions and cases. Drawing on the reports from 1969 to 2012, I

have identified approximately eighty cases filed against Brazil that received admissibility and inadmissibility decisions. Of these cases, only seven concerned women's human rights; they focused particularly on violence and discrimination against women (C. Santos 2018). Given the small number of cases and the year of the first petition (1996), it is clear that the IACHR is new terrain for all of these actors' engagement with transnational litigation on women's human rights.

But what the IACHR's reports do not tell us is how litigators develop and negotiate 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 human rights and women's rights TANs? 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*—shed light on these questions.

The case of Márcia Leopoldi, a young woman who was assassinated by her ex-boyfriend, was filed before the IACHR in 1996. This was the first case on women's human rights to be presented against Brazil. The petition was signed by the Center for Justice and International Law (CEJIL), Human Rights Watch/Americas, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), and União de Mulheres de São Paulo. The second case, filed on behalf of Maria da Penha, a woman who survived attempted murder by her ex-husband and who became paraplegic as a result of this aggression, was filed in 1998. The petition was signed by Maria da Penha Maia Fernandes, CEJIL, and CLADEM. Both petitions alleged violations of the American Convention on Human Rights and the Convention of Belém do Pará. Drawing on interviews with the NGOs' representatives and the victims, I identified the following types of knowledge mobilized by the petitioners: human rights legal knowledge; feminist legal advocacy knowledge; feminist popular knowledge; and corporeal knowledge.

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 human rights system. CEJIL works with the system to strengthen it and to promote human rights and democracy. Founded by attorneys in the United States, the organization has offices in various countries in the Americas, including Brazil. It is a major legal actor in the cases presented against Brazil in the IACHR; indeed, it is a petitioner in five of the seven aforementioned cases on women's rights. CEJIL selects and mobilizes its cases in partnership with local NGOs and local attorneys, who follow up on the cases in the relevant domestic courts and help

with mobilization outside of courts. When choosing its cases, CEJIL also ensures that the victims consent to filing the complaint and are willing to cooperate with the legal action. These conditions help guarantee the "success" of the case. A "good case" is one that exemplifies a pattern of human rights violations and can be used to establish a judicial precedent and promote domestic policy or legal changes. A successful case does not necessarily mean that the IACHR will find the state guilty of the alleged violations. Instead, it might involve a friendly settlement between the petitioners and the state. But what is necessary is that the case be admitted by the IACHR so that it can be used as a weapon to pressure the state in question. Thus, CEJIL takes care to frame its cases according to the procedural and material normative requirements for admissibility. The organization's strategic use of international human rights norms is counterhegemonic to the extent that it confronts the anti-human rights discourses and practices of state and nonstate actors. Yet CEJIL's legalistic perspective may also be viewed as hegemonic vis-à-vis nonlegal subaltern cosmopolitan mobilization practices.

The second type of knowledge, feminist legal advocacy knowledge, also relies on a legalistic framework of human rights. It is used by both domestic and international professionalized feminist NGOs 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. Like CEJIL, CLADEM has regional offices in different countries in Latin America, including Brazil. Unlike CEJIL, however, CLADEM does not specialize in transnational litigation and does not center exclusively on the use of the inter-American system. But it has begun to develop a "global legal program" dedicated to transnational strategic litigation both in the inter-American system and before United Nations bodies. Finally, also like CEJIL, CLADEM mobilizes its cases in partnership with local NGOs.

The third type, feminist popular knowledge, is mobilized by grassroots organizations such as União de Mulheres de São Paulo. These are voluntary associations that use the women's rights discourse and laws to empower women, change cultural norms and stereotypes on gender, and reform state institutions and political cultures. They work both against and with the legal system, organizing campaigns and protests denouncing impunity and seeking the enactment and enforcement of domestic violence policies and legislation. União de Mulheres, which was established in the early 1980s, is one of Brazil's oldest and most active feminist grassroots organizations. Since 1994, it has offered courses on feminist popular legal education (*promotoras legais populares*)

that are taught in part by feminist law professors and legal professionals (including members of CLADEM–Brazil and other feminist NGOs). Even though União de Mulheres provides legal advice and emotional support to women who are victims of domestic violence, it does not initiate litigation either locally or internationally (*Márcia Leopoldi v. Brazil* is an exception). While União de Mulheres shares CEJIL's and CLADEM's goals to promote human rights, justice, and policy reform through transnational legal mobilization, its approach to the state and to domestic and international legal systems is not legalistic. Instead, it approaches legal mobilization from a critical, oppositional perspective. Legal mobilization is seen as an additional weapon that must work in the service of social and political struggles—the objective is not to strengthen the inter-American human rights system but rather to use the system to strengthen the demands of the women's movement.

Finally, victims of human rights violations bring in a distinct type of experience and knowledge. Not all victims may gain consciousness of their rights or fight for justice. But the victims and their family members who are 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 transformed into a type of corporeal knowledge that drives a reaction or a struggle for justice. Survivors of domestic violence, such as Maria da Penha and the sister of Márcia Leopoldi, have gained consciousness of their rights and have learned about the legal system in the process of fighting for justice, which started before they met their NGO allies. Their corporeal knowledge, their personal experience learning about law and facing an unjust legal system, and their representation of the double act of violence (interpersonal and institutional) through the oral and written narration of their stories were crucial for the transnational legal actions that they initiated in partnership with the human rights and feminist NGOs that crossed their paths as they searched for justice. These victims became rights holders and activists, they gained consciousness of their human rights as women, they taught and learned from the NGOs, and they became actors in TANs, even if temporarily and not necessarily by joining a human rights or feminist organization.

Under this perspective, the *Leopoldi* and *Maria da Penha* cases illustrate that cosmopolitan and local actors learn from one other's knowledges of harm and rights violations, as well as from their legal and political repertoires of action, resources, and strategies. These actors' subjectivities and identities may be transformed in the process of transnational legal mobilization. Moreover, this process involves not only

alliances but also tensions and conflicts. The actors may produce what I dub a "convergent translation" of their knowledge, building solidarity and a common strategy to pursue justice. Yet a "divergent translation" may lead to breaking solidarities in the process of legal mobilization.

Convergent and Divergent Translations: Building and Breaking Solidarities

Márcia Leopoldi was assassinated in 1984 by her ex-boyfriend, José Antonio Brandão Lago, in the city of Santos, near the city of São Paulo. Following her death, Deise Leopoldi, Márcia's only sister, began to struggle for justice. Coming from a white, upper-class family, Deise was able to hire well-known attorneys to assist the public prosecutors in charge of the case. In the second trial that took place in the early 1990s, the jury found Lago guilty. He was sentenced to fifteen years in prison. However, he fled and was not arrested by the police until 2005. This arrest was made possible thanks to Deise's appearance on the popular TV show *Mais Você*, broadcast every morning by the network Rede Globo. Deise was invited to talk about domestic violence, and during her appearance she took the opportunity to show Lago's picture.

By that time, Deise had become a feminist activist and was a member of União de Mulheres de São Paulo. She had heard about this organization through one of the lawyers working on the case. In 1992, she contacted União de Mulheres in search of support. That same year, she joined the organization, where she participated in its campaign "Impunity Is an Accomplice to Violence." The case of Márcia Leopoldi served well for the purpose of this campaign. União de Mulheres actively mobilized around the case by organizing a protest outside the courthouse when the second trial was held, publishing a poster with Lago's picture, and even publicizing the case during the Fourth World Conference on Women, held in Beijing in 1995.

In 1994, CLADEM–Brazil and União de Mulheres de São Paulo began to discuss the idea of filing this case before the IACHR. This discussion took place when CLADEM–Brazil members taught classes in the first course on popular legal education for women, organized by União de Mulheres. The following year, Brazil ratified the Convention of Belém do Pará. CLADEM–Brazil members thought that the case would be ideal for testing the application of the convention and for pressuring Brazil to establish domestic violence laws and policies. During that time, Brazil had created over 200 women's police stations (police stations specializing in crimes with women victims) throughout

the country, but there was no comprehensive law or policy to effectively confront the problem of domestic violence against women. CLADEM–Brazil and União de Mulheres thus agreed on the importance of bringing the case to the IACHR and sought the support of CEJIL in doing so. CEJIL had not yet mobilized on a women's rights case, so this provided the organization with an opportunity to expand its scope of work, using the Convention of Belém do Pará to hold the Brazilian state accountable while setting judicial precedent for the entire Latin American region. Thus, all actors learned and benefited from this alliance in the *Leopoldi* case. Meanwhile, Deise was hopeful that justice was going to be finally delivered.

However, the IACHR did not open the case immediately. It took two years for the commission to assign a number to the case (petition number 11,996). And it was only in 2012— sixteen years after the petition was filed—that it published a report, deeming the case inadmissible (report number 9/12). According to the IACHR, the case had been resolved domestically when Lago was arrested in 2005. CEJIL and CLADEM–Brazil agreed with the IACHR's position. In fact, their representatives in Brazil had a disagreement with Deise Leopoldi and União de Mulheres over whether to pressure the IACHR to admit the case once Lago was arrested. Deise and União de Mulheres considered that Lago had been arrested thanks to their mobilizing efforts. They wanted to use the case to show that the Brazilian state was negligent and did not protect women from violence. To this end, they published a book in 2007 (Leopoldi, Teles, and Gonzaga 2007) providing a detailed history of Deise's and União de Mulheres' struggle for justice in the case. 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 the book to the IACHR in 2010 and requested that the case be admitted. This was the final move that broke their alliance with CEJIL and CLADEM–Brazil. Although União de Mulheres continued to collaborate with these NGOs in other types of mobilization practices and in another case relating to political violence, the transnational solidarity that had been forged with the family victim was broken by the time the IACHR published its 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,

however, do not consider *Márcia Leopoldi v. Brazil* a "successful" case. Although the case is mentioned on CLADEM's website, neither CLADEM–Brazil nor CEJIL have made efforts to bring it to the public's attention, as opposed to the *Maria da Penha* case.

Maria da Penha v. Brazil is a perfect example of all types of effects (material and symbolic, direct and indirect) alluded to by Rodríguez-Garavito (2011) and Holzmeyer (2009). It illustrates a "convergent translation" of different types of knowledge and a process of building solidarity among all actors involved. It also contributed to empowering the victim, who became an activist and joined an organization, though not a feminist or human rights NGO.

Maria da Penha is a white, middle-class, well-educated, disabled woman who lives in the city of Fortaleza in Northeast Brazil. In 1983, she was the victim of attempted murder by her then husband, Marco Antonio Heredia Viveros. He was found guilty by a second jury and sentenced to ten years in prison. But he appealed, and the case was pending in the Superior Court of Justice until 2001. As noted above, *Maria da Penha v. Brazil* was filed before the IACHR in 1998, two years after the *Leopoldi* case. The petition was signed by Maria da Penha, CEJIL, and CLADEM–Brazil. A representative from CEJIL visited Fortaleza in 1998 in search of paradigmatic cases on violence against women. She learned about the *Maria da 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, *Sobrevi . . . Posso Contar* (*I Survived . . . I Can Tell My Story*) (Fernandes 1994). The book narrates her 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 inefficiency of the legal system and the impunity of the perpetrator. Thus, the book and Maria da Penha's involvement in the transnational litigation action were fundamental for CEJIL's preparation of the petition sent to the IACHR and for the development of the case. Yet, a sign of CEJIL's role as the main interlocutor with the IACHR was that only CEJIL had a copy of the petition.

When I visited Fortaleza in 2008 to interview Maria da Penha, I was impressed with her involvement in various activities relating to domestic violence against women. At the time, she was the president of the Associação de Parentes de Vítimas de Violência (Association of Relatives of Victims of Violence). She was also a member of the State Council on Women's Rights. She had just received reparations from Ceará State, as recommended by the IACHR's 2001 report on the merits of her case. 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. 11340/2006, also known as the Maria da Penha Law. This law was given this name by then president Luiz Inácio Lula da Silva as a result of Maria da Penha's successful case. The president invited Maria da Penha to a ceremony in 2006 in Brasília, the nation's capital, for the signing of this law. This ceremony received wide coverage in the media.

Even though this case was not the only factor that contributed to the creation of the Maria da Penha Law and to increased public awareness of domestic violence, it is evident that transnational legal mobilization on the case produced positive material and symbolic effects. In addition to illustrating the alliances between feminist and human rights NGOs, Maria da Penha's story and her persistent struggle for justice also served as inspiration for Deise Leopoldi. Deise contacted Maria da Penha in the mid-2000s to seek advice on how to approach the IACHR. Deise also followed the footsteps of Maria da Penha by writing a book about her struggle for justice. Yet from a legal perspective, the *Leopoldi* case did not carry the same potential to produce legal reform as the *Maria da Penha* case did.

Nevertheless, these two cases illustrate that transnational legal mobilization involves the task of translating different 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 often operate as gatekeepers for accessing the IACHR, they also share this legal knowledge with domestic human rights NGOs in the process of transnational legal mobilization. Moreover, human rights NGOs working at all levels have expanded their issue areas and have made alliances with feminist organizations. However, "local" grassroots NGOs and victims are not necessarily perceived as legitimate legal mobilization actors and members of TANs.

Transnational legal mobilization has the potential to produce not only material and direct effects on domestic laws and policies but also, as noted by Holzmeyer (2009), indirect effects such as the increased organizational capacity of NGOs participating in TANs and the promotion of diverse actors' rights consciousness. In addition, victims are important actors in TANs and can become activists in their own right. Thus, research and legal advocacy on human rights generally and women's human rights in particular must pay attention not only to the 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.

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