

Unrealized Rights: Utilizing Human Rights Mechanisms – Are They Worth the Effort?

Wednesday, July 18, 2012

9:00am – 10:30am

Session Organizers:

- Lourdes Rivera, Program Officer, Ford Foundation
- Surina Khan, Director, Gender Rights and Equality, Ford Foundation
- Laura Katzive, Program Officer, Wellspring Advisors

Facilitator:

- Monette Zard, Independent Consultant

Panelists:

- Soha Abdelaty, Associate Director, Egyptian Initiative for Personal Rights
- Kasha Jacqueline Nabagesera, Founder and Executive Director, Freedom and Roam Uganda
- Lilian Sepúlveda, Director of the Global Legal Program, Center for Reproductive Rights

Sponsors:

- IHRFG Working Group on Sexual Health and Rights
 - Ford Foundation
 - The Overbrook Foundation
 - Wellspring Advisors
 - Global Philanthropy Partnership
 - The Moriah Fund
 - Funders Network on Population Reproductive Health and Rights
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Monette introduces the session and the speakers and begins the session by asking Lilian: you personally have extensive experience using the UN system. Could you talk about the Paulina case against Mexico? Why was bringing that case to international?

Lilian: Just briefly to share the facts with you. In 1999, there was a young girl, Paulina, in Mexico, who at 13 was raped by 2 intruders. She sought immediate medical attention. At that point in time, medical assistance meant that she had to be given emergency contraception, but she wasn't. She and her mother immediately requested for an abortion, but it was denied to her. She suffered grievous consequences, and experienced a series of measures that took place over the 8-9 months. She was put in the hospital, and was not allowed to see her family, and had food withheld from her. She was given erroneous information about abortion. She and her mother were driven to the parish, to the priest in order to prevent her from having an abortion. She continued to ask for her legal right to be enforced. Ultimately, the director of the hospital said that if Paulina were to proceed with an

abortion, she would die. As Paulina was not able to seek redress in her country, we as an international organization reach out to Inter-American Commission (IAC).

The case was filed in 2002, by the Center. Very early on, we knew it was going to be a hot potato. They hadn't wanted to address the issue of abortion. We knew the strategy we had to adopt was beyond legal, but a collateral strategy. We are all lawyers, but we worked with experts, and eventually we got the media to bring the case to the public. We didn't allow the Commission to just give out. It is really through the community that visibility has been raised, and gave us time to build a case. And the result was that the Mexican government, this case had no result, which IAC provides. Mexican contacted us as petitioners, saying they want to negotiate. The case is landmark because it is the most comprehensive case on compensation, healthcare, education. It gave her special money set aside to start her own business, free health care, free college education for her son. It was about the needs that Paulina had, but also that it would not happen again. We work hard in drafting a law in the books - the Paulina law. The law mandates states. It is interesting because it is a first time that Mexican government recognizes that that the mechanism did not work; it is a violation of rights. This is the first ever case to do so, and it is often used by advocates. Ten years later, we are still saying. 10 years later, 75% is accomplished, so it is a success.

Facilitator: You detailed the success of the case by bringing some closure and the role of international organization (IO). What makes it successful and the role of the IO in this?

Lilian: I think what makes it successful is we bring different expertise, like the local NGO had the local and cultural pulse. The Center brought the know-how, we had comparative experience. We had work on the issue. We had the international framework on the issue of the abortion. We understood and respected out roles and brought the case forward

Monette: Soha, you have used the international system in your advocacy. Can you give us an ex of how you used an African mechanism? Why have all these mechanisms been useful to your work, despite the flaws?

Soha: We have, in the past few years, been filing various cases. Domestic organizations have been exhausted. African commission offers an opportunity to seek redress. As Egypt has not ratified the protocol, African Union is only place to seek redress. There also hadn't been any decision condemning Egypt. Egypt wanted to keep record clean so they went extra mile to ensure we wouldn't bring cases to African Union. We currently have about 5-6 cases, but I want to highlight 2.

On the first one, it is about counter terrorism and death penalty. We were on emergency till May this year. So we set up exceptional courts, and they could give judgment. We want to ensure that the people who were sentenced to death had the decisions reversed. We also wanted strong language on Egypt's exceptional courts

In 2004, there were bombings were in Red Sea area. Three people were convicted, but they were tortured to confession. There was discrepancy in their accounts. In 2006, they were convicted. We rushed to African Commission and requested a stay of execution. The government of Egypt respected it, and in January, we got a positive decision from the AC that the men will be retried. It was a huge success as the first counterterrorism case.

The second case is the practice of religion. The government was building a national database. The software that was developed only had 3 options. There was no other additional option, and there was no other way to reply. When you go to the official, you had no other choice. In this case, the older IDS that has other religion, they came to us, and we ensured, via a campaign, that government would not interfere. There was an ongoing legal battle at the domestic level, and in front of the United Nations. It was to put the heat on, in order to amend this ridiculous policy. In 2008, we succeeded. Mubarak resigned in 2011, and now we are under military rule. A lot of military abuses have gone on. There have been a lot of the domestic measures that we seek. We are seeking with international organizations against the military's test virginity of female protestors. The girls were divided into two groups. The military denied that it even happened.

Monette: The examples are hugely instructive on how to bring it to the different level. What is interesting is that the government complied with the findings of the regional body. And as activists do we pick UN or the regional body? State is involved in the organization, and how the state wants to react to their role. What is the global litigation strategy?

Soha: It takes up a lot of the time, and requires a certain skill set. It has developed over time. I think that is the reason why you use the African system. Very few civil society organizations know that this is an option. We have since work to ensure that the skills we learn in civil society are sent out not only in Egypt but overseas as well.

We rely on communities and networks, which have the relationship with the UN and ensure that we are able to reach the African Commission. We don't have offices in Geneva and New York, and we don't plan to, but the networks we work with have the cases, so we can work towards it.

Monette: Why work at the global and regional matters to you?

Kasha: I come from a country when homosexuality is illegal. As we continue to push this stronghold, we use the international and regional body, which is why we go to the AC and the UN. We communicated with the AC since 2008, but it is not easy. There are 38 countries in Africa where homosexuality illegal. We apply to AC to be an observer, but we have been denied, but only receive 3 lines in reply. The AC says that they have money to ship all the activists to Europe. The majority is listening to us and speaking to us. NGOs start speaking to us and saying that we need to change. It is something to compare to the grassroots.

We have been working with the UN, since 3 years ago. We have a mission; always bring the issue to consulate. We have been accused of committing treason. The civil society and LGBT NGOs were been there, after we issue the statement. Because of the persistence, they say 'we need to see you'. And all of this is because we have been consistent in pushing. And it is through our dialogue with them. We share with them about it. If you want us to stop coming here and to stop shaming you, do something, not blackmail us, or give us death threats. Since we have been back from Geneva, we have had 3 meetings. At one of the offices, we have been trying for the past 9 years. It is working. It is helping us to lobby for the state that we are not able to get. It is the anti homosexuality law of Uganda that get international people to speak out. The voices back home do not have a lot. All the civil society should join, not only the LGBT people. There is a need to also form a community outside the country. Not only within our country, but also around the work.

In 2007, the Uganda was provision to the CEDAW. There is a lot of harassment and welcome by the civil society. It did not go with well with the anti-gay people and religious leaders. But because it is part of CEDAW, and we have reached out to CEDAW, they have recommended us on what to do. We have seen the government. Should the government do not respond to their promise, we can then reach out to the international community. The more we reach out, the more we increase the stakes.

Monette: What has been most helpful to you from the support that you have received from the IO?

Kasha: Frankly I am one of the luckiest. I happen to be privileged from my community, so I talked to my mom who is not. I did not know how to start an NGO; we find the opportunity and other groups. And we went to them and told them we needed help and got them to link us to other organizations. We also reach out to IOs. We also learn from trainings. We tell them to send volunteers to help us with IT and making a database. So we manage to get technical support from a funder. Even financial management, we ask them to send someone to help us write a proposal. They eventually sent people down to teach us to articulate. The funders go the extra mile to teach us to get this fund.

Monette: I am going to open the floor for question. I am looking for Andrew. Why has it been important for your organization?

Andrew: It has been a good fit for Well Spring which has a small staff, and comprise about 30% of my time, so from that perspective easier to work with one system than with many. It is easier to deal with a question because we are all learning. Frankly no one knew about SOGI (Sexual Orientation and Gender Identity) rights because no one was talking in 1990s. The UPR should involve the entire country. Now that we have gotten to this level, so we should sustain it.

Question (Leslie, Well Spring Advisors): I'll be interesting to hear about litigation forwards. We face hard decision about which mechanism to use, and using regional mechanism takes a very long time. Also it has an unpredictable outcome and perhaps implementation on case but unprecedented long term effect. How to weight among the tools, and what would you consider about funders about here?

Question (Muhari): Kasha could you tell us about how to speak civil how to speak to LGBT rights in the human rights discourse. We get the defense that we are talking about human rights first. How to get the civil society to realize that LGBTI rights are human rights? How to deal with sensitive international coming in?

Question (Open Soc): I also have an open question for Kasha. Is that, sometimes as a strategy which you think is important, that local actors are important to frame a policy that is likely going to be popular? Do we run the risk of making human rights less popular in the country?

Monette: Begin with Leslie's question.

Lilian: It is one we grapple with every day. One of the threshold, is how do you make it sustainable? You have a case, a victim, a survivor in front of you and as a representative you have to be as transparent as possible. There is a lot of leg work and homework involved and about how a case is going to go. One aim we understand is the finding of suitable partnerships, organizations that will complement our strategy and certain trajectory that they have stability. They have to be with us in the long run and understand about the survivors. It is also about bringing the case and to build

capacity of what is on the ground, but actually passing on tools to teach on how to identify and to apply to other situations.

Soha: My case is slightly different, as it is the only venue that we can take the individual complaint. Because of the short comings of the AC, we engage with UN and international mechanism. Our advocacy does not necessarily focus on one level. At the same time, with UN mechanism in particular, looking it as a space where we can find standard that benefit us.

Kasha: I wasn't to as much as grassroots activist. I always see it as an option, on the table when there is a case. The issue we have been looking for is funding, because it is difficult to find funders to stand up to say that support them. For us, it is not about the time, but it is about the end result. The lawyers want immediate result. We spent 3 years, looking for a lawyer. But the Well Spring, we said that we are not International NGO bring their agenda to their issue, and the funder have said no, this is what we want to do. We can both achieve what we want. Gather as many people as LGBT activist. But the issue is human rights. Some people don't want to talk about this issue. But the power of networking, and use them to help us to lobby in civil society. We have 15 LGBTQ people in 3 lectures. We use the opportunity to tell people that it is an anti human rights bill, to bring all the people on board. We have penetrate and asserted our selves in the women's right movement. We are women before we are lesbian. I went to a conference, and spoke up. And the power of women's movement has been the power of the LGBT community in Uganda. And this how we brought all the organization together. Advocacy, through using the media. About 38 human rights organizations are being banned. Though not yet, they are causing backlash back home. We are still working on it, journalist sending out the question.

Monette: I think that there are many people with many questions. But we shall move into smaller groups.