RISING TO THE POPULIST CHALLENGE

A New Playbook for Human Rights Actors

César Rodríguez-Garavito and Krizna Gomez (eds.)

RISING TO THE POPULIST CHALLENGE

A NEW PLAYBOOK FOR HUMAN RIGHTS ACTORS

César Rodríguez-Garavito and Krizna Gomez (eds.)

Dejusticia
law · justice · society

This document is available at
https://www.dejusticia.org

Contents

ACKNOWLEDGMENTS

strategic partnership we pursue together. We also give special thanks to Ellen White of the Watson Institute for being instrumental in putting together the academic event.

Finally, to the countless human rights defenders and organizations we work with at Dejusticia—from South Africa to Egypt, from Tunisia to Turkey, from India to Mexico, from Hungary to Venezuela, and from Russia to the United States—whose courage, creativity, and resilience inspired this book, we hope that this humble collection will provide some hope for what you bravely face every day.

César Rodríguez-Garavito and Krizna Gomez

Bogotá, April 2018

RESPONDING TO THE POPULIST CHALLENGE: A NEW PLAYBOOK FOR THE HUMAN RIGHTS FIELD

César Rodríguez-Garavito and Krizna Gomez

The proliferation of populist governments and movements creates serious risks and challenges for human rights around the world, from India to Venezuela, from the United States to Turkey, from Hungary to Russia, and from the Philippines to Poland. However, their rise could have an unexpected positive effect: to push the human rights movement to carry out transformations in its architecture and changes in its strategy that were imperative even before the new wave of populist governments, and that are now urgent (Rodríguez-Garavito 2016b).

Before the decline of the global Anglo-American order—reflected in Brexit, the election of Donald Trump, the proliferation of illiberal nationalisms across the world, and the increasing influence of Russia and China—the answers that many analysts and practitioners in the human rights movement offered tended to be grouped into two extremes: skepticism and defensiveness. The skeptics announced the "end-times" of the international project of human rights, based on a view that human rights were imposed by Euro-America. Given this view, the end of Pax Americana would also be the end of the movement (Hopgood 2013; Moyn 2017). The skeptics' view

is thought provoking and inexact in equal parts, as it forgets that this regime was built in part with the ideas and the pressure of states and movements of the global South, from those who created the American Declaration on the Rights and Duties of Man in 1948 to postcolonial nations that pushed for treaties against racial and religious discrimination in the sixties (Jensen 2016; Sikkink 2017).

However, recognizing the history and accomplishments of the movement does not imply that the dominant tactics in human rights, under the Euro-American order, are without serious flaws. Nor does it imply that, with the decline of that global order and the tribulations of liberal democracy, the conventional tactics will be any more sufficient or effective than they have been of late.

In a multipolar world, the old "boomerang" approach (Keck and Sikkink 1998) of appealing to Washington, London, or Geneva so that governments in the North would pressure their global South counterparts to comply with international human rights standards was already losing its effectiveness. With populist leaders stoking nationalism and violating the basic rights of vulnerable groups like religious and racial minorities both in the North and the South, the limited effectiveness and legitimacy of naming and shaming strategies focused on the traditional centers of power have been further eroded.

With populist leaders stoking nationalism and violating the basic rights of vulnerable groups like religious and racial minorities both in the North and the South, the limited effectiveness and legitimacy of naming and shaming strategies focused on the traditional centers of power have been further eroded

Moreover, the proliferation of illiberal democracies puts considerable pressure on the fault lines and blind spots of the contemporary architecture of the human rights field. As several of the contributions in this book illustrate, populist leaders have learned to exploit such weaknesses: the overreliance on international funding; the concentration of agenda-setting power in international non-governmental organizations (INGOs); the difficulties of INGOs in collaborating on a level playing field with global South organizations and in adopting agendas of high priority for global South organizations (such as economic justice and social rights); the insufficient connection among professional non-governmental organizations (NGOs), social movements, and online activists; the inordinate dominance of law-centered discourses and strategies; the insufficient attention to economic inequality; and the difficulties

in developing persuasive human rights narratives that meaningfully engage with the majority of the population (Rodríguez-Garavito 2014).

That is why the second response—the defense and reinforcement of the status quo of the movement—is equally ill-advised to confront what Alston (2017) has rightly called "the populist challenge to human rights." As we will see, the challenge comes in the form of political narratives, legal reforms, and coercive measures aimed at eroding the *legitimacy* and *efficacy* of human rights actors. Starting with Vladimir Putin's measures against NGOs in the mid-2000s, populist governments have learned from each other, to the point that copycat attacks against human rights have spread to countries in different regions. The result is what some have called a "global war against NGOs" (Editorial Board 2015) whose script seems to follow an unwritten playbook of restrictive measures (Rodríguez-Garavito 2016a).

What is needed, therefore, is a new human rights playbook that updates the diagnosis of and the responses to the crackdown against civil society in general and human rights organizations in particular. The purpose of this book is to contribute to the contents of such a playbook, by bringing together and analyzing the repertoire of responses that human rights actors are developing in populist contexts. Written by a group of scholars and advocates, its main audience is the community of human rights actors who are grappling with and resisting the erosion of democracy and rights in those contexts, and who may derive ideas and inspiration from their peers working for a similar cause in equally challenging political settings.

Although we speak of human rights actors in general, many of the populist measures discussed in this volume—for instance, obstacles to legal registration and restrictions on international funding—explicitly target human rights organizations. Thus, this chapter and the subsequent ones give particular attention to attacks against and responses by NGOs. This does not mean that formal organizations should continue to have a dominant role in the movement. As noted, one of the costs of the professionalization of human rights advocacy is the growing disconnect between formal organizations and the myriad other actors who use the language and the values of human rights, or what some less sympathetic observers have called "the NGO-ization of resistance" (Roy 2017). Among the wealth of actors are grassroots groups, online activists, religious organizations, think tanks, artists' collectives,

The challenge comes in the form of political narratives, legal reforms, and coercive measures aimed at eroding the legitimacy and efficacy of human rights actors

scientific associations, film makers, and many other individuals and groups around the world. Oftentimes, their tactics and operational logic differ starkly from those of formal NGOs. As Bennett and Segerberg (2012) have shown, while NGOs tend to operate along the lines of well-established forms of "*collective* action," other actors, especially those from younger generations, resort to individualized, internet-enabled forms of "*connective* action." One of the challenges for formal specialized organizations, therefore, is to find ways to connect and collaborate with these and other actors in the human rights field in order to push back against populist governments and movements.

The goal and the audience of this volume partially diverge from those of most contributions to the growing literature on contemporary threats to civil society. Although we draw on a systematic analysis of that literature, we do not seek to offer a comprehensive account of the causes of such a phenomenon. Moreover, unlike other contributions to this type of strategic reading of the landscape, which tend to focus on actions and responses by Western donors and governments (Carothers and Brechenmacher 2014), we hone in on the actions of national and international human rights organizations, so as to foster mutual learning among them.

Ideally, human rights analysts and practitioners would have addressed the above-mentioned weaknesses of the field and developed a new strategic playbook in times of relative normalcy. Now it must be done in extraordinary times. The reinvigoration of the movement is a middle road between skepticism and defensiveness. This collective volume takes two steps towards clearing this path. First, it seeks to clarify the specific challenges to human rights raised by contemporary populist regimes and movements. What do populist measures against human actors have in common in different countries and regions? In other words, what is the populist playbook against human rights? What is new about it, and what is business as usual? What are the weaknesses of the human rights architecture that such measures tend to exploit?

Ideally, human rights analysts and practitioners would have addressed the above-mentioned weaknesses of the field and developed a new strategic playbook in times of relative normalcy. Now it must be done in extraordinary times

Second, this volume contributes to documenting and learning from the wealth of initiatives that human rights actors have been developing in order to push back against the populist crackdown. After all, times of turmoil are also moments of

creativity. What innovations are human rights actors introducing in their strategies and narratives in order to counter those of populist regimes? Could those responses be transposed from one country to another, just as copycat legislation and policies against human rights have proliferated in different regions of the world? What lessons do those innovations offer for reinvigorating the human rights field at large? In sum, what would a human rights playbook against populism look like?

In order to prepare the analytical and empirical ground for the case studies and commentaries of the following chapters, in this introductory chapter we elaborate on those two goals and sets of questions. First, we make explicit the criteria for the focus countries in the volume by characterizing contemporary populist regimes and their distinct challenges to human rights. Second, we offer a typology of measures against human rights organizations that such regimes have taken in different parts of the world. Finally, we discuss the range of responses and innovations that the subsequent chapters document, and the broader analytical and strategic lessons that can be extracted from them.

While many of the measures against human rights—for example, smear campaigns and arbitrary detentions of activists—are not new, the populist age does raise new challenges

In analyzing the populist crackdown and responses to it, we make three arguments. First, we posit that while many of the measures against human rights—for example, smear campaigns and arbitrary detentions of activists—are not new, the populist age does raise new challenges. The fact that the new attacks are coming from elected governments, as opposed to the dictatorships of the past, creates a tension between rights and democracy—between the liberal and the democratic components of liberal democracy—that raises the stakes and the difficulty of human rights activism. As we will see, such a tension is a defining feature of the populist age, and facilitates the proliferation of constitutional and legislative reforms that, invoking the popular will, impose new, overarching restrictions on civil society and other checks on power.

Second, we argue that populist leaders have learned to exploit the weaknesses of the human rights architecture and strategic repertoire. Precisely because the human rights movement has been impactful, its opponents have learned to respond and to take notes from each other, as the similarities among their tactics bear witness to. Pioneer contributions to the study of the impact of human rights were made in the 1990s and 2000s, when the dissemination of human rights standards around the world suggested that commitment and compliance with human rights was "spiraling

up" (Risse, Ropp, and Sikkink 1999; Ibid 2013). In light of populist pushback, we need to analyze and better understand the backlash. With some notable exceptions (Sikkink 2013), human rights scholars have yet to study the content of regression on commitment and compliance—a "reverse spiral" of sorts that is underway in populist regimes. Although we remain agnostic about the question of whether or not such regression amounts to a global trend of "closing civil society space" (and thus do not use this term in this chapter), we believe that the populist backlash merits serious attention by human rights scholars and activists.

Third, we posit that human rights actors, in turn, must learn from and respond to the populist backlash. Given that populists challenge both the legitimacy and the efficacy of human rights organizations, we contend that ongoing and future responses to populism need to tackle the weaknesses and postponed reforms of the human rights field on both fronts.

THE POPULIST CHALLENGE

Over the last five decades, human rights organizations have developed a standard set of advocacy tools that has relied heavily on naming and shaming governments into compliance with human rights norms. However, the efficacy of traditional strategies is diminishing, as it has rested on international and domestic political conditions that have been rapidly changing. As noted, increasing multipolarity and the rise of populist governments and movements in the United States and Europe mean that the main leverage points of naming and shaming strategies are no longer as willing or as influential—or are downright hostile to human rights (Rodríguez-Garavito 2016).

While the main threats to liberal democracy and human rights around the world used to come from authoritarian regimes, today they tend to come from hybrid regimes that straddle the democracy-autocracy binary

Moreover, while the main threats to liberal democracy and human rights around the world used to come from authoritarian regimes, today they tend to come from hybrid regimes that straddle the democracy-autocracy binary. Twentieth-century liberal democracies used to die a sudden death at the hands of autocratic leaders through a coup. Now, twenty-first century liberal democracies tend to die a gradual death at the hands of elected leaders who slowly but surely chip away at the pillars of liberalism—from civil liberties to independent media to judicial and legislative

checks on the executive—and oftentimes go on to undo the pillars of democracy themselves, such as free, fair, and open elections (Levitsky and Ziblatt 2018). In between liberal democracies and full-blown authoritarian regimes, such hybrids have been variously called "democracies without rights" (Mounk 2018), "illiberal democracies" (Zakaria 1997), "semi-authoritarian regimes" (Carothers and Brechenmacher 2014), "competitive authoritarianisms" (Levitsky and Way 2010), "partially free democracies" (Abramowitz 2018), or simply "populist regimes" (Krastev 2007; Müller 2016).

Although contributors to this volume and the literature at large do not agree on a single term, we prefer to use the populism frame in this chapter and the title of the book for two reasons. First, the term has gained wide currency in public debates and the media in different parts of the world. This makes it well suited to our practical purposes, that is, to offer tools and strategies for human rights actors confronting this type of regimes and discourses. However, the currency of the term has come at the cost of analytical accuracy, as it has been applied to political figures as diverse as Donald Trump, Rafael Correa, Vladimir Putin, Nicolás Maduro, Marine Le Pen, Luiz Inácio Lula da Silva, Beppe Grillo, and Daniel Ortega.

As Hannah Arendt (1958) wrote, political analysis consists, largely, in the ability to draw accurate distinctions. This has been the contribution of a number of recent works that have cogently characterized contemporary populism and its specific challenges to human rights. Analytical clarity is thus the second reason why we adopt this frame.

Müller (2016) has convincingly argued that what contemporary populists share is not a political or economic ideology. They come equally from the right (Modi, Erdoğan, Putin, Trump) and the left (Maduro, Correa, Ortega). What sets them apart is a combination of two traits: anti-elitism and anti-pluralism. All populists are anti-elitists, but not all anti-elitists are populists. In other words, a reaction against the elites is a necessary but not sufficient condition of populism. Populists go further. They make a moral claim as radical as it is exclusionary: that the opposite of the elite is "the real people"—that they, and they alone, represent. Herein lies the intrinsic anti-pluralism of populists: in their worldview, only one part of the population counts as the real, pure people, while the others are seen as the enemies of the people.

Let us look briefly into each of these two traits and the way they clash with human rights values and actors.

Anti-Elitism

As Krastev (2007) puts it, at the heart of populism "is the view that society falls into two homogenous and antagonistic groups: 'the people as such' and 'the corrupt elite.' It proceeds to argue that politics is the expression of the general will of the people and that the social change is possible only via the radical change of the elite."

"The elite" as a category in populist discourse is a hybrid of empirical reality and symbolic construction. Populists shed light on the economic fact of increasing socioeconomic inequality, as well as the political reality of the increasing distance between citizens, on the one hand, and decision-making power circles on the other. Confronted by the outsized influence of moneyed and technocratic elites in contemporary liberal democracies, large disaffected sections of the population have ended up voting for populist leaders, thus unleashing the power of democracy against liberalism (Mounk 2018).

Who exactly constitutes the elite and the people is fluid—it depends on the sociopolitical context and the power play between relevant groups and factions

The elite, however, is not an empirically neat category. Populist success depends on their ability to symbolically enlarge the meaning of "the elite" to include other groups against whom "the real people" should mobilize and vote. Therefore, who exactly constitutes the elite and the people is fluid—it depends on the sociopolitical context and the power play between relevant groups and factions. For instance, in Brexit's Britain, the elite were European Union bureaucrats or London financiers who, in the view of Brexit populists, sold the idea of United Kingdom membership in the EU in order to enrich themselves. The success of a cosmopolitan professional class—the "citizens of nowhere" as Prime Minister Theresa May has derisively called them—was portrayed as being to the detriment of "the people"—specifically the blue collar British left behind by the financialization of the U.K. economy in its integration into the rest of Europe.

Oftentimes, populists lump together the wealthy and the powerful, on the one hand, with disadvantaged groups on the other, into an amalgam as empirically implausible as it is symbolically and politically powerful. Immigrants in the United States and Europe, Romas in Hungary, or Muslims in India have all been labeled as "privileged" despite their subordinate social status. According to populist leaders, these groups have worked against the interests of "the real people"—the *real* white

Americans; the *real* Christian Hungarians; the *real* Hindu Indians—by taking the economic benefits, opportunities, or other entitlements properly belonging to the latter.

Therefore, although the wealthy and the dominant political and professional groups are usually the target of anti-elitism, the precise configuration of the elites in populist discourse varies from country to country (Moffitt 2016). In Turkey, the elite would be the liberal professionals "enabling" the Kurds as a minority group, both groups being opposed to the interests of "the Turkish people." In Rafael Correa's Ecuador, the privately owned media—alongside NGOs and the supposedly Western-controlled social movements—were portrayed as the elite (*New Left Review* 2012). In the Netherlands, Geert Wilders established his Party for Freedom in 2016 with a declaration of independence from "the elite in The Hague," to which he added Muslims and immigrants as "the Other" to the Dutch people (Darroch 2017).

The anti-elitism frame has a direct impact on human rights actors, as we will see in the next section and in the chapters by Edwin Rekosh and by James Ron, José Kaire, Archana Pandya, and Andrea Martínez. Populist leaders have skilfully exploited the professionalization of NGOs and their reliance on foreign funding in order to portray human rights advocates as part of the elite. The frequent claim of foreign-funded organizations as working against the people's interests and the country's national sovereignty falls squarely under this narrative. For instance, in India, the Modi government routinely accuses human rights and environmental activists of working against the national interest of development, which brings connotations of treason (Mohan 2017; Patkar 2014). It has also provided the rationale for legislation and administrative measures that heavily restrict the operation and funding of human rights NGOs, to the point of making it virtually impossible for international philanthropic foundations to continue to provide direct funding to those organizations.

Although Egypt falls squarely into the category of authoritarian regimes (rather than that of populist, illiberal democracies), its government's stigmatization of activists as foreign-influenced elites is very similar to the actions of populist governments from India to Venezuela. In Egypt, an active government campaign in 2011 framed NGOs as "foreign agents" serving hidden agendas, the same term used in Russia. Conspiracy theories described how activists received military training, had ties to the U.S. government and the Central Intelligence Agency, or had weapons in their offices (Abuza, Mansour, and Snegovaya 2015). Television coverage has also leveraged the state-promoted xenophobic mood to claim

The real danger of populism is the decoupling of democracy and liberalism

that NGOs are foreign spies colluding with actors like the Islamic State, Iran, Israel, and the CIA (Project on Middle East Democracy 2018).

Beyond the specific impact on human rights, populist anti-elitism raises a challenge to liberal democracy writ large. Albeit opportunistic and self-interested, populists tap into a clear weakness of contemporary liberal democracies in which economic, political, and professional elites wield disproportionate decision-making power, to the detriment of large (even majority) sectors of the population. Thus, the real danger of populism is the decoupling of democracy and liberalism. As Krastev (2007) has put it, "in the age of populism, the front does not lie between Left and Right, nor between reformers and conservatives. It is more the case that we are witnessing a structural conflict between elites that are becoming increasingly suspicious of democracy, and angry publics that are becoming increasingly anti-liberal." Populists deepen and entrench such a conflict by making an exclusionary moral claim about the corruption of the elite and the purity of the "real people." This is the anti-pluralist element of populism to which we now turn.

Anti-Pluralism

"Chávez is the people" used to be a campaign slogan in Venezuela, a phrase of striking parsimony that captured the identity between a leader and a supposedly uniform and unified people. After Chávez died, the slogan was replaced with an equally concise one: "Let's be like Chávez." In the populist logic, politics is an all-or-nothing game, a conflict between patriots and "enemies of the homeland," as Nicolás Maduro routinely calls his critics.

The categorical and moral nature of this claim distinguishes it from other calls for social inclusion, among them those made by human rights activists advocating against inequality and discrimination. The latter is an effort to include into the polity and decision-making processes sectors of the population who have been traditionally excluded or discriminated against, from the working class to women to sexual and racial minorities. Populists, on the other hand, claim "the people" as the *only* people (Müller 2016, 27). As can be readily seen, this claim leads to the conclusion that only the "real people" deserve full recognition as rights holders. This clashes directly with human rights standards and aspirations asserting the intrinsic dignity of *all* people as rights holders.

As with any regime, populist ones evolve over time. In fact, some movements and governments may begin as anti-elitist but not anti-pluralist, and only later