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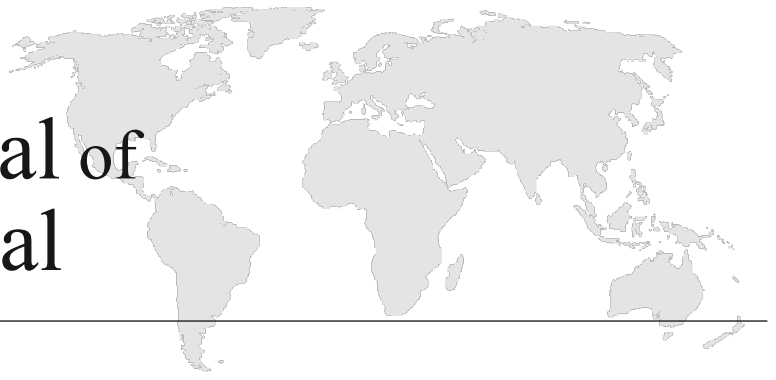
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IN ASSOCIATION WITH THE JACKSON INSTITUTE FOR GLOBAL AFFAIRS

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Volume 16 | 2021

Jackson Institute for
Global Affairs

Social Movements Around the World

8

Global Black Lives Matter: Addressing America's Legacy of Racism Through a New Public Diplomacy

By Nellie Petlick

Yale Jackson graduate student Nellie Petlick explores how the United States could reinvent its public diplomacy strategy to directly address topics of race and racism abroad.



22

The Impact of the Me Too Movement's Journalism

By Merve Hannah O'Keefe

Merve Hannah O'Keefe, a graduate student at Monash University, explains how Me Too reporting has affected journalists covering sexual violence, survivors, and perpetrators.

38

Economics of the Indian Farmers' Movement: A Study of Agrarian Distress and a Vicious Debt Cycle

By Samir Bhatnagar

Samir Bhatnagar argues that concerted efforts from the state are required to expand farmers' access to institutional credit in India.



Rebirthing Activism in Nigeria

By Ehi Agbashi, Nivana Tesfayohannes, Temiloluwa Adeyemi, and Osasenaga Aghayere

Why was #EndSARS a powerful moment in Nigerian history? And what comes next?

58

Marching for Justice: Conflicting Perspectives of Peaceful Assemblies in International Investment Law and International Human Rights Law

By Laura Edwards

Laura Edwards of the University of Pennsylvania draws attention to the rise in investment treaty claims involving protestors, and developments to codify the right to protest in international human rights law.

74

How Beijing Uses Diversionary Nationalism to Manage Social Movements

By Zhenyu Zhang

Zhenyu Zhang, a research assistant at Cornell University, explores how Beijing employs diversionary nationalism as a tactic to distract from possible instability.

88

Banking up the Wrong tree: Have the Climate Protests Against Financial Institutions Missed their Mark?

By Noah Yosif

Noah Yosif, a graduate student at the University of Pennsylvania, argues that climate activists should target central banks, rather than private individual banks.

119

Voices from Afrin: First-hand Accounts of Turkish Crimes Against the Kurds and Policy Proposals from those Affected

By Anoush Baghdassarian and Sherin Zadah

Anoush Baghdassarian, a Juris Doctor candidate at Harvard Law School, and Sherin Zadah, an upcoming graduate student at Columbia University, shed light on crimes

136

Op-Ed: Revisiting Kennan's Questions

by Joseph Gayeski

Joseph Gayeski, Yale Jackson graduate student, explores what contemporary diplomats

140

A Step Forward for Palermo's Trafficking Protocol, This Time Integrating Frontier Technology

By Sophie Zinser and Dr. Hannah Thinyane

Sophie Zinser, a Consultant at Diginex Solutions, and Hannah Thinyane, a Principal Research Fellow at United Nations University Institute in Macau, employ frontier technology to tackle human trafficking.





**BLACK
LIVES
MATTER**

**NO JUSTICE
NO PRISON**

**DEFUND
THE POLICE
REFUND
THE LEAS**

**JUSTICE
FOR SOULS**

**NO J
NO**

Article

Global Black Lives Matter: Addressing America's Legacy of Racism through a New Public Diplomacy

By Nellie Petlick

The United States is facing a global public opinion crisis. The Trump administration eroded America's reputation on the world stage by disregarding the rule of law, disparaging U.S. allies, and fueling American nationalism. A major contributor to our damaged public image, however, predates Donald Trump. America's fraught history of systemic racism, and of police brutality against Black Americans in particular, has been at the forefront of global consciousness since the Black Lives Matter movement coalesced in 2013. Footage of police violence quickly and easily disseminated on social media has shown the world an image of America that does not align with its professed values of freedom, democracy, and equality. The 2020 murder of George Floyd and subsequent crackdown on peaceful protests—in the context of a poorly managed pandemic response—substantially damaged our global reputation further.¹ The U.S. Department of State, the main body responsible for shaping America's message and image abroad, needs to take bold steps to address this issue by strengthening and expanding its public diplomacy efforts. By reinventing its public diplomacy strategy to directly address topics of race and racism abroad, the United States under the Biden administration has a critical opportunity to repair its global public image and reassert itself as a leader on human rights. **Overview of the Problem**

U.S. Global Standing

International public opinion of the United States is currently at a historic low. In 2019, the global approval rating of U.S. leadership was just 33 percent, u-

Photo by Kon Karampelas

nchanged since 2017.² America's approval rating was on par with China's and Russia's, whose ratings in 2019 were 32 percent and 30 percent, respectively—up from 31 percent and 27 percent in 2017.³ This should be a wake-up call for the United States, as it demonstrates decreasing confidence in democracy and

increasing faith in authoritarianism. But some of this decline predates President Trump. Since 2013, the percentage of people in allied countries who believe the United States “respects the personal freedoms of its people” has been steadily falling, with many countries now reporting levels well below 50 percent.⁴ These percentages fell distinctly in 2015, after images and videos were broadcast to the world of the riots and violent state response that occurred after a police officer shot Michael Brown in Ferguson, Missouri in 2014, giving rise to the Movement for Black Lives.⁵ As Steven Cook, a journalist and Middle Eastern scholar, observed,

I am not convinced that America’s dismal image is entirely a reflection of the [Trump] administration. The protests in Ferguson, Missouri, in August 2014 over the killing of Michael Brown seem to have been a turning point. People from all over the world watched some of the worst of America in real time via their social media feeds and good old-fashioned television news. To Arabs and Turks, the tear gas falling on the streets of Ferguson was no different from the tear gas falling on Pearl Roundabout in Bahrain, Mohamed Mahmoud Street in Egypt, or Istiklal Caddesi in Turkey. And a fair number of them were more than willing to take to Twitter to make that point.⁶

Global public opinion of U.S. leadership undoubtedly worsened when these issues again came to the fore following the murder of George Floyd in Minneapolis in the summer of 2020. Floyd’s murder marked a boiling point: it came on the heels of two other highly-publicized murders of unarmed Black Americans, Breonna Taylor and Ahmaud Arbery, signaling that little progress had been made on issues of systemic racism and police brutality since the Movement for Black Lives organized six years ago. All three murders occurred in the midst of the poorly-handled COVID-19 pandemic that disproportionately affected Black Americans.⁷ Though the majority of protests were peaceful, the world watched footage of Floyd’s murder, looting in American cities, the violent crackdown of law enforcement outfitted in military gear, and non-violent protestors tear-gassed to make way for the president’s photo opportunity in front of a church.⁸ The global response to Floyd’s murder was overwhelming. A majority of people in allied countries—including the United Kingdom, Canada, and Ger- _____

many—disapproved of President Trump’s handling of the protests.⁹ Tens of thousands, if not hundreds of thousands, of people around the world marched and protested in dozens of countries, standing in solidarity with Black Americans while also calling attention to their own

The message the world receives matters more than the one we send. We have much work to do on the message the world is receiving from us.

national struggles with racism.¹⁰ While they may have been disapproving of U.S. institutions, many people around the world took inspiration from Americans’ demands for change.

On the other hand, U.S. adversaries took advantage of this opportunity to call attention to America’s hypocrisy. An editorial in China’s People’s Daily newspaper pointed out that the situation in the United States was a “vivid demonstration of American ‘double standards’.... On the one hand, protests over the death of an unarmed African American man in Minneapolis police custody have spread around the U.S.; on the other, the U.S. has threatened to impose economic sanctions on Hong Kong.”¹¹ Likewise, Russian state-sponsored Sputnik News captioned a graphic in one of its articles covering the protests

“America 2020: Where anti-racists are terrorists and racists are president.”¹² Clearly, the mishandling of the response to Floyd’s murder and the continuing problem of police brutality against Black Americans greatly undercuts ideas of U.S. moral superiority. Other nations cannot take the United States seriously in our fight for human rights abroad when there are such grave violations of human rights in our own country. Advocating abroad for American ideals such as freedom, democracy, and equality has little meaning if our actions at home do not match our words. The message the world receives matters more than the one we send.¹³ We have much work to do on the message the world is receiving from us.

Chronic State Department Weaknesses

It will be difficult to improve public opinion of the United States given the current grim status of the U.S. Department of State, the main body responsible for shaping America's message and image abroad. A recent Government Accountability Office (GAO) report revealed that 14 percent of Foreign Service Officer positions abroad have remained vacant for the past ten years, which has increased the workload of other officers, contributing to low morale and high levels of burnout in the department.¹⁴ Not only is there an overall problem of morale and vacancies in the State Department, there is also a particular problem of promotion and retention of Black Foreign Service Officers. GAO recently reported that the percentage of Black officers only increased from 6 to 7 percent between 2002 and 2018.¹⁵ As of late 2019, only 2.9 percent of the Senior Foreign Service was Black.¹⁶ Many former Black diplomats have published accounts of the racism and apathy they experienced while in the Foreign Service, including one who said in a private conversation that one of the reasons he left was the "hostile indifference" with which his white colleagues reacted to domestic issues currently facing Black Americans.¹⁷ It is difficult for the United States to promote diversity abroad in good faith when, at best, its diplomatic corps is not representative of America's diversity, and at worst, creates a hostile environment for non-white officers. The Biden administration has a large task ahead, not only in reinvigorating and diversifying the hollowed-out State Department, but also in repairing the perception of the United States abroad that has been greatly damaged by the documented escalation of police brutality against Black Americans.

Recommendations

The best way to repair America's public image abroad is by strengthening and expanding the State Department's public diplomacy efforts. Although such efforts cannot singlehandedly fix America's public image problem, robust and well-designed public diplomacy is one of the most valuable and cost-effective diplomatic tools that the United States has at its disposal.¹⁸ People-to-people exchanges work: State Department studies routinely show that those who participate in U.S. government exchange programs have much more positive views of America from their firsthand experiences.¹⁹ Given this, the State Department should create a robust strategy to better educate foreign peoples both about Black contributions to American culture and history, and about the current racial justice movement.

This would not be the first time the United States has used public diplomacy to ameliorate public opinion on its handling of racial issues. During the Cold War, the State Department used ‘jazz diplomacy’ to great success to counter Russian anti-American narratives and accusations of hypocrisy. In the 1950s and early 1960s, the State Department recruited jazz ambassadors such as Duke Ellington, Dizzy Gillespie, and Louis Armstrong to share jazz with the world and build relations with emergent Asian and African post-colonial nations in particular. These highly publicized concert tours gave U.S. officials the opportunity to take up a self-aware campaign that contradicted worldwide criticism of U.S. race relations at the height of the

Today the United States has a renewed opportunity to be honest about our legacy of race and racism - and to build off the legacy of jazz diplomacy.

Civil Rights Movement.²⁰ These ambassadors amplified America’s message of social justice and racial equity, while also promoting democratic ideals of market capitalism and free expression through jazz—a uniquely American art form.²¹

While abroad, the jazz ambassadors collaborated with local artists, participated in Voice of America (VOA) programming, and played for foreign dignitaries and diplomats. Their efforts were highly successful in forging relationships and promoting a more positive image of the United States, as “their irreverence, egalitarianism, and creative brilliance as musicians achieved far more in winning friends than any sanctimonious pronouncements of U.S. superiority.”²² In fact, these jazz artists were effective ambassadors because they did not blindly embrace American exceptionalism. For them, “patriotism and the democratic struggle went hand in hand”; they believed American ideals were something to strive for, while also recognizing there was much work to be done.²³

Today the United States has a renewed opportunity to be honest about our legacy of race and racism—and to build off of lessons taught by jazz diplomacy.

Although the efforts of the jazz ambassadors were effective, a blatant incongruity existed in this policy of promoting Black artists abroad while Jim Crow laws were still in place at home. This diplomatic strategy projected an image of America that was much rosier than reality. In this way, despite being immensely successful in promoting the achievements of Black Americans and reaffirming to the world that American ideals were still worth striving for, these tours fell short in that they did not explicitly acknowledge the injustices happening at home. Therefore, public diplomacy today must teach about Black contributions to American history, while also being forthright about our shortcomings and the current reckoning. Celebrating current leaders in the racial justice movement reaffirms that the United States supports those—both at home and abroad—who strive for freedom, democracy, and equality.

Prioritizing Public Diplomacy

The United States is faced with a vital opportunity to boldly reimagine its public diplomacy strategy to address the current public opinion crisis brought on by the continuing problem of police brutality and the protests following George Floyd's murder. One of the most effective ways to restore American integrity and leadership on this matter will be by speaking honestly about issues of race in the United States while encouraging other nations to address their own. The State Department should spearhead this effort by formulating and disseminating a cohesive strategy and set of public diplomacy initiatives to embassies that can be adapted for local contexts, needs, and opportunities. In order to implement such a strategy, however, the first priority of the State Department needs to be increasing the budget for public diplomacy. In FY18, public diplomacy funding constituted only 3.9 percent of the entire State Department budget.²⁴ Considering that people-to-people exchanges are one of the most cost-effective and efficient ways to positively influence foreign people's attitudes about the United States, even a modest increase would greatly expand capacity for exchange programs, institutional partnerships, and cultural programming.

Educational Exchange

There are many initiatives that could be integrated into already-existing educational exchange programs. The Fulbright program would be an apropos choice for this. As foreign Fulbright graduate students are limited in the fields of study they are permitted to pursue in the United States, Fulbright country offices could add degrees focused on race and ethnicity studies or human rights

law as an option. International students could experience firsthand how these topics are studied in U.S. institutions, contribute their own valuable perspectives to the U.S. classroom, and return to their home countries to examine those same topics in their local context with renewed insights and knowledge. Fulbright could do the same in its scholar programs, either by facilitating direct exchanges of scholars who are researching similar topics of race and ethnicity at their respective home institutions, or by establishing partnerships between foreign and domestic university departments with a similar focus. This would not only benefit international scholars by providing them a new perspective in their field, but would also benefit American scholars and departments in deepening their understanding of racial issues with which foreign countries are contending.

In addition to increasing opportunities for international scholars and students in the United States, the State Department should increase funding for racially diverse American students to study abroad. The Gilman International Scholarship Program already works to this end, granting up to \$5,000 to undergraduate students to study internationally who otherwise could not due to financial constraints. Although not strictly so, the majority of Gilman recipients tend to be students of color.²⁵ In FY19, the allotted funds were enough to provide the maximum amount to approximately 2,500 students to study abroad.²⁶ Funding for this program should be expanded. Making this opportunity available to an even greater number of racially diverse students by increasing funding and allocating funds specifically for underrepresented minorities would expose foreign publics to a diversity of American perspectives, fostering a nuanced and holistic understanding of life in the United States.

Cultural Exchange

In addition to educational exchange, it is worth reviving some of the cultural programming that was successful during the jazz diplomacy era. However, unlike during the Cold War, the State Department should explicitly acknowledge through its choice of programming the struggles for racial justice and equity that are taking place in the United States today. Acknowledging our shortfalls will help disarm accusations of hypocrisy from our adversaries; give credence to the efforts of many Americans who are working hard for racial justice and human rights, inspiring others around the world to do the same; and

reaffirm to the world that we are committed to fulfilling the ideals of our nation's founding, something that sets us apart from many other countries around the world.

The first strategy to borrow from the jazz diplomacy era would be a robust series of tours that elevate Black artists and other artists of color who can serve as successful cultural am-

It would be difficult to implement any of this programming if Foreign Services Officers are... hostile to current issues of racial inequity in the United States.

bassadors. The American Music Abroad program already recruits artists to facilitate musical and cultural exchange on behalf of the Bureau of Educational and Cultural Affairs, but additional emphasis could be given to recruiting artists of color.²⁷ Another powerful program would be a State Department-sponsored interna-

tional tour of the musical *Hamilton*. The musical speaks exactly to both the promises and shortfalls of our nation's founding, while centering exclusively artists of color in an art form that is as uniquely American as jazz—hip-hop. As well as performing, the actors could collaborate with local artists working on projects with similar themes and facilitate programming for youth, such as hip-hop writing workshops, rap or spoken-word competitions, or theatre and performing arts workshops. There are countless other theatre artists who center racial justice in their work and could perform abroad and collaborate with local playwrights. U.S. Embassies could use their social media pages to highlight these exchanges and amplify local voices that are working on issues of race and racism, either through performance, academia, art, or grassroots organizing. Featuring such voices in State Department programming would offer legitimacy to those efforts while respecting the local context.

Finally, those embassies that have a strong relationship with their Peace Corps and Fulbright counterparts could work to develop culturally appropriate curriculum for local Peace Corps Volunteers and Fulbright English Teaching

Assistants to use in their classrooms, English clubs, and youth projects. Peace Corps Volunteers in particular are a highly effective medium through which to reach youth in any given country as they can adapt content specifically to their local context, are trusted members of their communities, and often work in rural areas otherwise not reached by U.S. government programming.²⁸ Such educational toolkits could aim to educate youth about Black history in America while opening the door to discussions about local issues of race and ethnicity.

Internal Diversity and Inclusion

It would be difficult to implement any of this programming if Foreign Service Officers themselves are, at best, apathetic to, and at worst, hostile to current issues of racial inequity in the United States. The State Department needs to think carefully about the officers they are recruiting and if necessary, amend their assessment process to ensure they are hiring diplomats who will support a diverse corps that represents America and will work towards global goals of racial justice. Although specific recommendations for internal reform are beyond the scope of this article, the State Department should adopt largescale policies to directly address their problems of retention and promotion of Black and other officers of color. Centering issues of race and racism in their public diplomacy strategy by elevating Black Americans' contributions to American history and racial justice efforts would be a meaningful first step.

Conclusion

The Biden administration will have to repair our significantly damaged global standing. Working with our allies—and adversaries—on common issues will not be possible until the United States can restore global trust in its leadership. If accompanied by substantial change at home, addressing our reputation abroad on issues of racism and police brutality will be a meaningful improvement, though a problem of this scale will require bold and creative solutions. Although America has never fully lived up to its promised ideals, the relentless efforts of so many Americans to continue pursuing them throughout our history is exactly what inspires others around the world in their own pursuit of racial justice and human rights. U.S. leadership has an opportunity to lead global efforts for racial equity, and empower others around the world to speak out—just as American protestors did in the summer of 2020. It is up to America's newest leaders not to let that opportunity go to waste.■

ABOUT THE AUTHOR

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ENDNOTES

1. Zolan Kanno-Youngs and Katie Benner, “Trump Deploys the Full Might of Federal Law Enforcement to Crush Protests,” *The New York Times*, June 2, 2020, sec. U.S., <https://www.nytimes.com/2020/06/02/us/politics/trump-law-enforcement-protests.html>.
2. “Can the U.S. Shake Its Image Problem? Rating World Leaders: 2020,” Gallup, 2020, <https://www.gallup.com/analytics/315803/rating-world-leaders-2020.aspx>.
3. “Can the U.S. Shake Its Image Problem? Rating World Leaders: 2020,” Gallup, 2020, <https://www.gallup.com/analytics/315803/rating-world-leaders-2020.aspx>; “Rating World Leaders: 2018,” Gallup, 2018, 2, <https://www.politico.com/f/?id=00000161-0647-da3c-a371867f6acc0001>.
4. Richard Wike, Janell Fetterolf, and Mara Mordecai, “U.S. Image Plummets Internationally as Most Say Country Has Handled Coronavirus Badly,” Pew Research, September 15, 2020, <https://www.pewresearch.org/global/2020/09/15/us-image-plummets-internationally-as-most-say-country-has-handled-coronavirus-badly/>.
5. The Movement for Black Lives is a coalition of more than 50 groups and organizations that represent the interests of Black communities across the United States, including the Black Lives Matter network. <https://m4bl.org/>.
6. Steven A. Cook, “The Middle East Doesn’t Admire America Anymore,” *Foreign Policy*, February 5, 2019, <https://foreignpolicy.com/2019/02/05/the-middle-east-doesnt-admire-america-anymore/>.

7. “COVID-19 and the Disproportionate Impact on Black Americans,” University of Michigan School of Public Health, July 1, 2020, <https://sph.umich.edu/news/2020posts/covid-19-and-the-disproportionate-impact-on-blackamericans.html>.
8. “Demonstrations & Political Violence in America: New Data for Summer 2020,” ACLED, September 3, 2020, <https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/>.
9. Darrell Bricker, “Global Support for Peaceful Floyd Protests in U.S. with Majority Saying Response Is Appropriate,” Ipsos, June 19, 2020, <https://www.ipsos.com/en-ca/news-polls/Global-Support-For-Peaceful-Floyd-Protests-In-US-With-Majority-Saying-Response-Appropriate>.
10. Damien Cave, Livia Albeck-Ripka, and Iliana Magra, “Huge Crowds Around the Globe March in Solidarity Against Police Brutality,” *The New York Times*, June 6, 2020, sec. World, <https://www.nytimes.com/2020/06/06/world/george-floyd-global-protests.html>.
11. Ken Dilanian, “China, Russia, Iran Using State Media to Attack U.S. over Floyd Death,” NBC News, June 3, 2020, <https://www.nbcnews.com/news/world/china-russia-iran-using-state-media-attack-u-s-over-n1223591>.
12. Ibid.
13. Matthew Wallin, “A New American Message: Fixing the Shortfalls in America’s Message to the World,” American Security Project, 2019, 4, <https://www.jstor.org/stable/resrep19827>.
14. “Department of State: Action Plan Needed to Reduce Persistent Foreign Service Vacancies at Overseas Posts,” United States Government Accountability Office, March 2019, 8, <https://www.gao.gov/assets/gao-19-220.pdf>.
15. Christopher Richardson, “The State Department Was Designed to Keep African-Americans Out,” *The New York Times*, June 23, 2020, sec. Opinion, <https://www.nytimes.com/2020/06/23/opinion/state-department-racism-diversity.html>.

16. Julie Nutter, "The Foreign Service by the Numbers," American Foreign Service Association, January 2020, <http://www.afsa.org/foreign-service-numbers>.
17. Tianna Spears, "I Was a U.S. Diplomat. Customs and Border Protection Only Cared That I Was Black.," *POLITICO*, August 30, 2020, <https://www.politico.com/news/magazine/2020/08/30/black-us-diplomat-customs-border-protection-cbp-detained-harassed-325676>; Charles Ray, "How U.S. Border Agents Mistreat Black American Diplomats," Washington International Diplomatic Academy, June 7, 2020, <https://diplomaticacademy.us/2020/06/07/ray-border-agents-abuse-black-diplomats/>; Lara Jakes, "A Reckoning With Race to Ensure Diversity for America's Face Abroad," *The New York Times*, June 27, 2020, sec. U.S., <https://www.nytimes.com/2020/06/27/us/politics/a-reckoning-with-race-to-ensure-diversity-foramericas-face-abroad.html>.
18. Mel Levine, Rockwell Schnabel, and Jay Wang, "American Public Diplomacy Is Our Country's Best Foreign Policy Tool," *TheHill*, September 19, 2017, <https://thehill.com/opinion/international/351311-american-public-diplomacy-is-our-countrys-best-foreign-policy-tool>.
19. Pamela Hyde Smith, "The Hard Road Back to Soft Power," *Georgetown Journal of International Affairs* 8, no. 1 (2007): 117.
20. James E. Dillard, "All That Jazz: CIA, Voice of America, and Jazz Diplomacy in the Early Cold War Years, 1955-1965," *American Intelligence Journal* 30, no. 2 (2012): 39.
21. *Ibid.*, 41.
22. *Ibid.*, 46.
23. *Ibid.*, 43.
24. "Comprehensive Annual Report on Public Diplomacy & International Broadcasting: Focus on FY 2018 Budget Data," United States Advisory Commission on Public Diplomacy, 2019, 2, <https://www.state.gov/wp-content/uploads/2020/01/2019-ACPD-Annual-Report.pdf>.

25. “U.S. Study Abroad Continues to Increase and Diversify,” *USA StudyAbroad*, November 9, 2018, <https://studyabroad.state.gov/value-studyabroad/highlights-and-activities/us-study-abroad-continues-increase-and-diversify>; Bureau of Educational and Cultural Affairs, “The Benjamin A. Gilman International Scholarship Program,” U.S. Department of State, May 2016, 10, https://eca.state.gov/files/bureau/gilman_infographic_report_-_2016.pdf.
26. “Bureau of Educational and Cultural Affairs Notice of Funding Opportunity: FY 2019 Benjamin A. Gilman International Scholarship Program,” U.S. Department of State, 2019, 5, https://eca.state.gov/files/bureau/fy19_gilman_scholarship_nof.pdf.
27. “American Music Abroad | Administered by American Voices,” <https://americanmusicabroad.org/>.
28. “Peace Corps Works: A Cross-Sectional Analysis of 21 Host Country Impact Studies,” Peace Corps Office of Strategic Information, Research, and Planning, November 2016, 4, https://files.peacecorps.gov/documents/open-government/Peace_Corps_Works_Cross-Sectional_Analysis_of_21_Host_Country_Impact_Studies.pdf.

Article

THE IMPACT OF THE ME TOO MOVEMENT’S JOURNALISM

By Merve Hannah O’Keefe

The Me Too movement is unprecedented in exposing the pervasiveness of sexual violence around the world. The journalism uncovering decades of sexual violence perpetuated by powerful men was central to the movement galvanizing support and participation from millions worldwide. The movement has had massive global reverberations resulting in many changes including legal reform, the empowerment of sexual violence survivors, and a cultural shift in perception of power, gender, and sexual violence.¹ Me Too journalism, in particular, has brought sexual violence perpetrators to justice and given many survivors the strength to speak

up.^{2,3} Some journalistic practices surrounding Me Too, however, have proven detrimental to all parties, including to the movement itself. This article will explore how Me Too reporting has affected journalists covering sexual violence, perpetrators of sexual violence, and sexual violence survivors.

BACKGROUND

In 2006, activist Tarana Burke created a non-profit organization and developed tools and youth training programs to help women of color from low wealth communities who had survived sexual violence.⁴ Her goal was to empower survivors through empathy and facilitate healing through solidarity.⁵ In this endeavor, she called her movement “Me Too.”^{6,7}

The movement gained mass momentum in late 2017, shortly after three journalists published articles exposing Harvey Weinstein’s numerous incidents of sexual violence. Activist and actress Alyssa Milano took to Twitter to “give people a sense of the magnitude of the problem,” asking those who had experienced sexual violence to reply to her tweet with the words “Me Too.”⁸

Within twenty minutes, she received ten thousand replies on Twitter, and within the first twenty-four hours the viral #MeToo hashtag appeared on Facebook twelve million times.^{9,10} The movement grew exponentially, with similar hashtags emerging in twenty-three other languages.¹¹ Me Too was instrumental in the trial and conviction of Harvey Weinstein and other powerful men around the world who had abused their authority.¹² The movement led to these figures “falling rapidly like dominoes.”¹³



Protesters at a 2019 Woman’s March. Photo by Lynn Friedman (CC-BY-NC-ND 2.0)

HOW ME TOO AFFECTED JOURNALISTS COVERING SEXUAL VIOLENCE

The work of journalists Jodi Kantor, Meghan Twohey, and Ronan Farrow was critical in exposing Harvey Weinstein’s sexual violence. Their October 2017 articles in *The New York Times* and *The New Yorker*, respectively, detailed the accounts of dozens of women who were subjected to or could confirm Weinstein’s sexually violent behavior.¹⁴ Their articles are said to have led to the trial and conviction of Weinstein, who was found guilty of felony sex crimes and third-degree rape.¹⁵ Kantor, Twohey, and Farrow’s months of investigative journalism won them the Pulitzer Prize for public service for raising global consciousness “regarding sexual harassment and assault and the dynamics of gender and power.”¹⁶

In August 2017, Farrow had initially taken the story to NBC where he worked, but NBC opted not to publish the groundbreaking report. According to Farrow's book *Catch and Kill: Lies, Spies, and a Conspiracy to Protect Predators*, NBC instead tried to suppress the report because of Weinstein's relationship with four NBC executives and his threats to expose NBC anchor Matt Lauer's alleged sexual violence.¹⁷ Columnist Ben Smith of *The New York Times* argued, in his critique of Farrow's book, that the real reason NBC did not publish Farrow's article was that it fell short of their journalistic standards of proof.¹⁸ Farrow and *New Yorker* editor Michael Luo, however, have denied these claims, stating that they stand by Farrow's reporting.¹⁹ Farrow responded to further controversy writing that his book was "thoroughly reported and fact-checked."²⁰

According to Farrow, Weinstein's efforts to kill the story did not stop with blackmailing NBC executives.²¹ Weinstein hired "an army of spies" to suppress the story by surveilling the women he had sexually abused as well as secondary sources who could confirm the women's allegations and journalists involved with the reporting.²² Weinstein's investigators from two expert intelligence companies also located Farrow's home and followed him with tracking technology. Other journalists received similar treatment: one of Weinstein's spies, for example, posed as a women's rights activist to extract information from Kantor and discredit sources.²³

The Me Too movement revealed how far powerful sexual violence perpetrators and their affiliates can go to kill a story, including engaging in practices directly affecting the lives of survivors trying to come forward and journalists trying to expose their abuse of power. Weinstein's actions were apparently well-known for decades; his active efforts to suppress the exposure of his sexually violent behavior show why sources were hesitant to speak out, and why journalists were unable – or their outlets unwilling – to publish.

HOW ME TOO JOURNALISM AFFECTED THE ALLEGED AND CONVICTED PERPETRATORS OF SEXUAL VIOLENCE

The presumption of innocence is one of the core principles of most legal systems and is considered a fundamental human right by the United Nations.²⁴ When media report on a suspect's wrongdoings before they have been proven in court, the suspect can face consequences like employment termination be-

fore the legal due process has been carried out. Public opinion and, ultimately, the jury in the eventual trial, can be unduly swayed.^{25,26} Therefore, when exposing crime and abuse of power, reputable news outlets generally have a high journalistic standard of proof. They ensure that the accounts of multiple sources and witnesses are included, and that rigorous corroboration and verification are carried out.²⁷ Sexual violence crimes, however, often occur where there are no witnesses, have no visible injuries as evidence, and sometimes no chance of verification and corroboration due to shame associated with victims disclosing their experiences.²⁸ These factors typically prevent sexual violence crimes from having as strong of a foundation of proof to report on as other crimes.

Given the overwhelming evidence of sexual violence's pervasiveness in the wake of the Me Too movement, however, some journalists have prioritized sexual violence victims' experiences, rather than adhering to the same standards of proof as other crimes. This is largely due to the fact that the staggering volume of responses to Me Too has made the prevalence of sexual violence painfully clear: 81 percent of women and 43 percent of men in the United States have reported experiencing some form of sexual violence in their lifetime.²⁹ UN Women indicates that these statistics reach 97 percent for young women in the UK.³⁰ Victims of sexual violence often have more to lose than to gain when coming forward and reporting a case, due to potential backlash and the unfavorable odds of prosecution and conviction. The Rape, Abuse & Incest National Network (RAINN), the largest U.S. anti-sexual violence organization, estimates that out of every 1000 sexual assaults, 995 perpetrators avoid incarceration.³¹

Because justice is not served in court for the vast majority of survivors who report cases, social media and Me Too journalism have served as means to secure accountability outside the legal system.³² But circumventing the legal system carries its own costs. This new avenue of seeking justice has led to the "cancelling" of public figures, in which mass boycotts of figures occur following the broadcasting of their wrongdoings. "Cancellation" without due process can result in innocent people suffering irreparable damage to their reputations. Concerns over this rush to judgement have raised questions about the potentially over-reaching effects of the Me Too movement.³³

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Given the power of the media surrounding these issues, journalistic investigations should be carried out with utmost rigor so as not to wrongly and irrevocably crush someone under the weight of these accusations, nor discredit the movement. With so many allegations being published at

the height of Me Too, however, some media organizations

did not uphold the same standards of evidence as others.

One stark example of this was the November 2017 front-page article in Australia's *Daily Telegraph* accusing actor Geoffrey Rush of sexual misconduct during a 2015 theatre production of *King Lear*. The article compared Rush to Weinstein, but there were clear differences between the reporting on the articles. While Farrow had undertaken ten months of research to gather the facts and had spoken to thirteen first-hand and sixteen secondary sources for his reporting, the *Daily Telegraph* journalist Jonathan Moran had put the story together without even speaking to the victim of the alleged crime, Eryn Jean Norvill, who had not wanted the story to be made public.^{34,35}

As a result of the insufficiently researched and poorly executed report, Rush filed a defamation case against the newspaper where he was awarded 2.9 million Australian dollars (US\$2 million).³⁶ During the ruling, Federal Court Judge Michael Wigney said the reports in *The Daily Telegraph* were "a recklessly irresponsible piece of sensationalist journalism of the worst kind."³⁷

The story was damaging for the alleged perpetrator, the alleged victim, the credibility of journalists, and the credibility of the movement as a whole.

HOW ME TOO JOURNALISM AFFECTED SEXUAL VIOLENCE SURVIVORS

Disregarding the Survivor

The Geoffrey Rush case shows how irresponsible Me Too journalism harmed not only alleged perpetrators, but also survivors of sexual violence. *The Daily Telegraph* published the poorly researched story without the consent of Norvill, who had solely wanted an apology from Rush and not to take legal action.³⁸ As a result of the article, she had to testify in court, not to help the court determine whether Rush was guilty of sexual violence, but whether he had been defamed by the newspaper.³⁹ During the defamation case ruling, Judge Wigney said Norvill's evidence was unreliable and that she was prone to "exaggeration or embellishment."⁴⁰ Journalists and commentators have weighed in on these remarks, arguing that the judge "went too far" and that this "public excoriation" would make it "very difficult" for other survivors to come forward.^{41,42}

Similarities have been drawn between the unethical journalistic practice surrounding this story and the occurrence of sexual violence itself. Feminist commentator Jane Caro explains: "[Norvill] never wanted her complaints to be made public. Her life and experiences have been taken out of her hands and used in ways she did not seek. And she has been blamed. This is all too familiar for women."⁴³

The story forced Norvill into the spotlight and deprived her of autonomy. It compelled her to reluctantly participate in a defamation trial, which she publicly lost and which resulted in harsh remarks dismissing her version of events. It risked discrediting the Me Too movement and led to the likely discouragement of other sexual violence victims from coming forward.⁴⁴

Publication of Backlash and Retaliation

When journalists publish remarks such as those made by Judge Wigney, as well as further backlash and retaliation, other sexual violence victims may be discouraged to come forward.⁴⁵ According to RAINN, 20 percent of sexual

violence victims in the United States do not report the cases for fear of retaliation (defined as any adverse action towards someone for reporting sexual violence including verbal insults and intimidation).⁴⁶ A study of college students found that for women, fear of retaliation was the most important barrier to reporting sexual violence, along with guilt, shame, and embarrassment.⁴⁷ After Dr. Christine Blasey Ford testified at Judge Brett Kavanaugh’s Senate Judiciary hearing for his U.S. Supreme Court nomination, media outlets publicized the retaliation and death threats she faced and amplified then-President Donald Trump’s ridiculing treatment of Ford’s testimony. As Rhiannon Lucy Cosslett wrote in *The Guardian*, “Trump’s mocking performance [acted] as a perfect illustration for why so many women do not report rape and sexual assault in the first place – for fear of such mockery and humiliation.”⁴⁸

Such coverage can also traumatize other survivors. Alison Turkos, a sexual violence survivor, gave her account of the effect the Ford coverage had on her: “For those of us who have experienced this first-hand, and our bodies have literally been crime scenes, the news cycle is daunting and it is horrific....It can be inescapable. It’s impossible and it feels like I’m sometimes drowning in it.”⁴⁹ Trauma resulting from sexual violence can be short-term or lifelong and can extend to secondary victims like family members as well as the direct victims.⁵⁰ The newsworthiness of threats or other retaliation should therefore be carefully weighed against the potential harm caused to readers.⁵¹

The newsworthiness of threats or other retaliation should therefore be carefully weighed against the potential harm caused to readers.

Selective Coverage

The Me Too movement was originally created to help “particularly Black women and girls, and other young women of color from low wealth communities, find pathways to healing.”⁵² There has been

criticism, however, that

the progress yielded by Me Too has been predominantly for white women.⁵³ Research suggests that journalistic coverage is partially responsible for this outcome. Alyssa Evans found that *The New York Times* reported on white survivors of sexual violence significantly more frequently than people of color: 70.3 percent of their reporting was on white survivors followed by 7.1 percent African American, 3.9 percent Middle Eastern, 2.8 percent Latino, and

1.1 percent Asian sexual violence survivors.⁵⁴ This coverage does not align with the frequency of lived experience, given sexual violence “disproportionately impact[s] women of color, immigrant women, LGBTQIA+ women, and disabled women.”⁵⁵ A 2018 study by the National Women’s Law Center study found that Black women experience sexual violence at work at three times the rate of white women.⁵⁶ Lisa Corrigan argues that ableism, heterosexuality, and sexism were also present in Me Too media reporting.⁵⁷ This inequality in media

representation compounds the problem of sexual violence. As sociologist Elizabeth Armstrong and her co-authors describe, “sexual violence... [is] both a cause and a consequence of inequality, not only on the basis of gender, but also along lines of race/ethnicity, class,

It is therefore the responsibility of journalists to make an intentional effort to engage in inclusive coverage to fuel change that serves all survivors.

sexuality, age, ability status, citizenship status, and nationality.”⁵⁸ Furthermore, as much as the Me Too movement provided solidarity for many survivors of sexual violence, media’s portrayal of only certain types of people – such as white, able-bodied, cis-gender females – legitimizes only those sexual violence survivors. Others who fall outside those neat boxes do not feel as though their experiences are being validated and are thus not served by the movement.⁵⁹ It is therefore the responsibility of journalists to make an intentional effort to engage in inclusive coverage to fuel change that serves all survivors. As Burke, founder of the Me Too movement, writes:

What history has shown us time and again is that if marginalized voices – those of people of color, queer people, disabled people, poor people – aren't centered in our movements then they tend to become no more than a footnote. I often say that sexual violence knows no race, class or gender, but the response to it does Ending sexual violence will require every voice from every corner of the world and it will require those whose voices are most often heard to find ways to amplify those voices that often go unheard.⁶⁰

CONCLUSION

Dedicated efforts of journalists abiding by core principals of truth, fairness, and humanity helped spark a movement that yielded justice and change for many. As Me Too revealed both the scale of sexual violence and the challenges of reporting incidents, journalists began to shift away from conventional standards of proof and towards prioritizing survivors. Furthermore, Me Too revealed the lengths to which powerful men abusing their authority will go to prevent the truth from being uncovered, including measures that directly affect the lives of journalists and sexual violence survivors. However, there have been cases of irresponsible and unethical journalism that have negatively affected all parties including the credibility of the movement itself. Finally, some insensitive reporting has discouraged further sexual violence survivors from speaking up, and selective coverage has left some groups largely absent from the movement that was initially intended for them.

The Me Too movement has given numerous survivors the strength to come forward, and has led to considerable legal reform, cultural shifts, and a new journalistic response to sexual violence. Me Too has brought perpetrators to justice and given many survivors a sense of solace in seeing their abusers pay the price for their crimes. However, given the far-reaching impact of the media, it is imperative that journalists report fairly and factually so as not to wrongly “cancel” a figure, respect sexual violence survivors’ privacy and dignity, and conduct reporting that is inclusive of all types of survivors. If journalists are able to do this, the credibility and legacy of Me Too will prevail.■

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ENDNOTES

1. In this article, concepts such as sexual assault, abuse, and harassment are referred to as sexual violence for issues of clarity and consistency. It is important to note that sexual violence does not necessarily involve any physical interaction whatsoever; sexual comments, psychological intimidation, blackmail, and other forms of coercion also constitute sexual violence, as defined by the World Health Organization.
2. The movement at hand is referred to as the Me Too movement as opposed to the #MeToo movement to pay homage to Tarana Burke who first founded the movement over a decade before it became a viral hashtag.
3. In referring to the “person on whom the sexual violence is inflicted,” both terms “sexual violence victim” and “sexual violence survivor” will be used. These terms are seen as synonymous however “sexual violence victim” is used more frequently in the legal context and is used as such in this article, whereas the term “sexual violence survivor” is used where possible to encourage a sense of empowerment. These concepts do not only refer to women and are gender inclusive.
4. Laurie Collier Hillstrom, *The #Metoo Movement* (Santa Barbara: ABCCLIO, 2018), 1-9.
5. Ibid.
6. Leah Fessler, “Tarana Burke, creator of Me Too, believes you don’t have to sacrifice everything for a cause,” *Quartz at Work*, February 6, 2018, <https://qz.com/work/1193569/me-too-movement-creator-tarana-burke-says-youdont-have-to-sacrifice-everything-for-a-cause/>.
7. Sandra E. Garcia, “The Woman Who Created #MeToo Long Before Hashtags,” *The New York Times*, October 20, 2017, <https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html>

8. Hillstrom, *The #MeToo Movement*, 1-9.
9. CJR Columbia Journalism Review, “The Reach of #MeToo.” *Columbia Journalism Review*, 2019, https://www.cjr.org/special_report/reach-of-metoo.php.
10. Hillstrom, *The #MeToo Movement*, 1-9.
11. CJR, “The Reach of #MeToo.”
12. Erin Overbey, “The Reporting that Led to Harvey Weinstein’s Trial and Conviction,” *The New Yorker*, February 24, 2020, <https://www.newyorker.com/books/double-take/the-reporting-that-led-to-harvey-weinsteins-trialand-conviction>.
13. Jack Drescher, “Asses Making Passes: Making Meaning of Unwanted Sexual Advances,” *Contemporary Psychoanalysis* 54, no. 4, 2018, pp. 665-76, <https://doi.org/10.1080/00107530.2018.1522526>.
14. Ronan Farrow, “From aggressive overtures to sexual assault: Harvey Weinstein’s accusers tell their stories,” *The New Yorker*, October 10, 2017, <https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>.
15. Overbey, “The Reporting that Led to Harvey Weinstein’s Trial and Conviction.”
16. The New Yorker, “The New Yorker and the New York Times Win the Pulitzer Prize for Public Service,” *The New Yorker*, April 16, 2018, <https://www.newyorker.com/news/news-desk/the-new-yorker-and-the-new-york-timeswin-the-pulitzer-prize-for-public-service>.
17. Ellen Cranley, “These are the NBC executives who allegedly tried to shut down the Harvey Weinstein story and are still at the company,” *Insider*, November 5, 2019, <https://www.insider.com/nbc-execs-tried-to-shut-downharvey-weinstein-story-2019-11>.
18. Ben Smith, “Is Ronan Farrow Too Good to Be True?” *The New York Times*, May 17, 2020, <https://www.nytimes.com/2020/05/17/business/media/ronan-farrow.html>.

19. Christi Carras, “Ronan Farrow’s critics are circling. Here’s what you should know about his media war,” *Los Angeles Times*, May 20, 2020, <https://www.nytimes.com/2020/05/17/business/media/ronan-farrow.html>.
20. Ibid.
21. Cranley, “These are the NBC executives who allegedly tried to shut down the Harvey Weinstein story and are still at the company.”
22. Ronan Farrow, “Harvey Weinstein’s army of spies,” *The New Yorker*, November 6, 2017, <https://www.newyorker.com/news/news-desk/harveyweinsteins-army-of-spies>.
23. Ibid; Ronan Farrow, “The Black Cube chronicles: The private investigators,” *The New Yorker*, October 7, 2019, <https://www.newyorker.com/news/annals-of-espionage/the-black-cube-chronicles-the-private-investigators>.
24. United Nations General Assembly, *Universal Declaration of Human Rights*, UNGA, 1949, retrieved from <https://www.un.org/sites/un2.un.org/files/udhr.pdf>.
25. Chris Greer and Eugene McLaughlin, “‘Trial by Media’: Policing, the 24-7 News Mediasphere and the ‘politics of Outrage,’” *Theoretical Criminology* 15, no. 1 (2011): 23-46, <https://doi.org/10.1177/1362480610387461>.
26. Simon Statham, *Redefining trial by media: Towards a critical-forensic linguistic interface* (Amsterdam: John Benjamins, 2016), 201-325.
27. Jim Onyango Ongowo, “Ethics of Investigative Journalism,” The University of Leeds, 2011, https://cnmtl.columbia.edu/projects/caseconsortium/casestudies/23/casestudy/files/sunsentinel/coronel_chapter_10_16.pdf.
28. United Nations, “Innovative Procedures: Hearing, protecting and counselling survivors of sexual violence,” United Nations International Residual Mechanism for Criminal Tribunals, <https://www.icty.org/en/features/crimes-sexual-violence/innovative-procedures>; *World Health Organization, Guidelines for medico-legal care of victims of sexual violence* (Geneva: WHO, 2003), 6-16.

29. Stop Street Harassment. *The Facts Behind the #MeToo Movement: A National Study on Sexual Harassment and Assault*. Reston, Virginia, 2018. [https:// stopstreetharassment.org/wp-content/uploads/2018/01/Full-Report-2018National-Study-on-Sexual-Harassment-and-Assault.pdf](https://stopstreetharassment.org/wp-content/uploads/2018/01/Full-Report-2018National-Study-on-Sexual-Harassment-and-Assault.pdf).
30. UN Women, “Prevalence and reporting of sexual harassment in UK public spaces: A report by the APPG for UN Women,” 2021, *APPG for UN Women*, https://www.unwomen.org/site/wp-content/uploads/2021/03/APPG-UN-Women_Sexual-Harassment-Report_2021.pdf; Young women refers to women aged 18 to 24.
31. RAINN Rape, Abuse & Incest National Network, “The Criminal Justice System: Statistics,” 2017, *RAINN*, <https://www.rainn.org/statistics/criminal-justice-system>.
32. Sophie Sills, Chelsea Pickens, Karishma Beach, Lloyd Jones, Octavia Calder-Dawe, Paulette Benton-Greig, and Nicola Gavey, “Rape Culture and Social Media: Young Critics and a Feminist Counterpublic,” *Feminist Media Studies* 16, no. 6 (2016): 935-51. <https://doi.org/10.1080/14680777.2015.1137962>.
33. Jonathan Handel, “‘Did The Law Fail Us?’ A Legal Debate on #Metoo,” *Hollywood Reporter* 424 (2018): 76-79.
34. Farrow, “From aggressive overtures to sexual assault: Harvey Weinstein’s accusers tell their stories.”
35. Eloïse Mignon and Paul Rae, “Masculinity after #MeToo in Mainstream Theatre,” *Performance Research* 24, no. 8 (2019): 106-20, <https://doi.org/10.1080/13528165.2019.1718444>; Georgina Mitchell, “‘I would have been content to receive a simple apology’: Norvill speaks out,” *The Sydney Morning Herald*, April 11, 2019, <https://www.smh.com.au/national/nsw/iwould-have-been-content-to-receive-a-simple-apology-norvill-speaks-out20190411-p51db1.html>.
36. Michael McGowan, “Geoffrey Rush defamation case: newspaper’s appeal ‘weighs heavily’ on actor,” *The Guardian*, May 27, 2019, <https://www.theguardian.com/film/2019/may/27/geoffrey-rush-defamation-case-newspapers-appeal-weighs-heavily-on-actor>; *The Associated Press*,

- “Geoffrey Rush awarded \$2 million in Sydney defamation case,” *ABC News*, May 23, 2019, <https://abcnews.go.com/Entertainment/wireStory/geoffrey-rush-awarded-million-sydney-defamation-case-63222677>.
37. McGowan, “Geoffrey Rush defamation case: newspaper’s appeal ‘weighs heavily’ on actor.”
38. Mitchell, “‘I would have been content to receive a simple apology’: Norvill speaks out.”
39. Alison Croggon, “The Rush trial: A backgrounder,” *Witness Performance*, November 8, 2018, <https://witnessperformance.com/the-rush-trial-a-backgrounder/>.
40. McGowan, “Geoffrey Rush defamation case: newspaper’s appeal ‘weighs heavily’ on actor.”
41. Jamila Rizvi, “The Biggest Loser in the Geoffrey Rush Case,” *Future Women*, 2019, <https://futurewomen.com/culture-2/thelatest/the-biggest-loser-inthe-geoffrey-rush-case/>.
42. Girard Dorney, “Breaking down Geoffrey Rush’s alleged harassment from a workplace perspective,” *HRM Online*, April 18, 2018, <https://www.hrmonline.com.au/sexual-harassment/geoffrey-rushs-harassment-workplace/>; Rizvi, “The Biggest Loser in the Geoffrey Rush Case.”
43. Lara Robertson, “The Geoffrey Rush Case: Feminists Stand with ErynJean Norvill,” *Future Women*, 2019, <https://futurewomen.com/culture-2/thelatest/the-geoffrey-rush-case-feminists-stand-with-eryn-jean-norvill/>.
44. Ibid.
45. Kaelyn Forde, “Why more women don’t report sexual assaults: A survivor speaks out,” *ABC News*, September 27, 2018, <https://abcnews.go.com/US/women-report-sexual-assaults-survivor-speaks/story?id=57985818>.
46. RAINN, “The Criminal Justice System: Statistics.”; Josh B, “What Is Sexual Harassment Retaliation?,” January 28, 2019,

Sexualharassmenttraining.com

<https://www.sexualharassmenttraining.com/blog/detail/18/what-is-sexual-harassment-retaliation#:~:text=When%20an%20employee%20alleges%20sexual,allegation%20is%20known%20as%20retaliation.>

47. Marjorie R Sable, Fran Danis, Denise L Mauzy, and Sarah K Gallagher. "Barriers to Reporting Sexual Assault for Women and Men: Perspectives of College Students," *Journal of American College Health* 55, no. 3 (2006): 15762.
48. Rhiannon Lucy Cosslett, "Trump mocking Christine Blasey Ford shows how women are silenced," *The Guardian*, October 23, 2018, <https://www.theguardian.com/commentisfree/2018/oct/03/trump-mockery-christineblasey-ford-sexual-assault-script-male-dominance>.
49. Forde, "Why more women don't report sexual assaults: A survivor speaks out."
50. Minnesota Coalition Against Sexual Assault, "Reporting on Sexual Violence: A Guide For Journalists," http://www.ndhealth.gov/injury/nd_prevention_tool_kit/docs/2013media_manual.pdf.
51. Madison A Pollino, "(Mis)Representations of Sexual Violence: The Brett Kavanaugh and Christine Blasey Ford Testimonies," *Critical Studies in Media Communication* 37, no. 1 (2020): 71-84, <https://doi.org/10.1080/15295036.2019.1694161>; RAINN, "The Criminal Justice System: Statistics.,"; Jo Healey, *Trauma Reporting*, 1st ed. Milton: Routledge, 2020.
52. Tarana Burke, "Me Too Movement: History & Vision," As of June 6, 2020, <https://metoomvmt.org/about/>.
53. Lisa M Corrigan, "The #MeToo Moment: A Rhetorical Zeitgeist," *Women's Studies in Communication* 42, no. 3 (2019): 264-68, <https://doi.org/10.1080/07491409.2019.1652528>.
54. The racial identity of 14.8 percent of the survivors was not disclosed; Alyssa Evans, "#MeToo: A Study on Sexual Assault as Reported in the New York Times," *Occam's Razor* 8, no. 3 (2018) 11-17.

55. National Organisation for Women (NOW), “Black Women & Sexual Violence,” 2018, <https://now.org/wp-content/uploads/2018/02/Black-Women-and-Sexual-Violence.pdf>.
56. Amanda Rossie, Jasmine Tucker and Kayla Patrick, “Out of the shadows: An Analysis of Sexual Harassment Charges Filed by Working Women,” *National Women’s Law Center*, 2018, <https://nwlc.org/wp-content/uploads/2018/08/SexualHarassmentReport.pdf>.
57. Corrigan, “The #MeToo Moment: A Rhetorical Zeitgeist.”
58. Elizabeth A Armstrong, Miriam Gleckman-Krut, and Lanora Johnson, “Silence, Power, and Inequality: An Intersectional Approach to Sexual Violence,” *Annual Review of Sociology* 44, no. 1 (2018), 11.
59. Tarana Burke, “#MeToo was started for black and brown women and girls. They’re still being ignored,” *Washington Post*, November 9, 2017, <https://www.washingtonpost.com/news/post-nation/wp/2017/11/09/thewaitress-who-works-in-the-diner-needs-to-know-that-the-issue-of-sexualharassment-is-about-her-too/>; Armstrong, Gleckman-Krut, and Johnson, “Silence, Power, and Inequality: An Intersectional Approach to Sexual Violence.,” 99-122; Corrigan, “The #MeToo Moment: A Rhetorical Zeitgeist,”; Kimberle Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,” *Stanford Law Review* 43, no. 6 (1991): 124199, <https://doi.org/10.2307/1229039>.
60. Angela Onwuachi-Willig, “What About #UsToo: The Invisibility of Race in the #MeToo Movement,” *Yale Law Journal Forum* 128 (2018-2019): 105.



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Article

Economics of the Indian Farmers' Movement: A Study of Agrarian Distress and a Vicious Debt Cycle

By Samir Bhatnagar

In September 2020, the Indian government introduced two new acts and one major amending act that sought to increase economic efficiency by liberalizing and deregulating the agriculture sector—creating a legal framework for farmers to sell agricultural produce directly to private buyers outside of government-regulated markets. These new farm laws could make the agriculture sector more efficient and generate aggregate economic benefits; however, individual farmers' incomes might not be similarly benefited. The subsequent Indian farmers' movement was a reaction to these

laws increasing economic efficiency at the expense of economic security of farmers.

This paper explains how the new farm laws reduce the bargaining power of farmers, thereby adversely affecting farmers' ability to earn a livelihood and maintain economic security. Furthermore, to contextualize the current protests, this paper explores the history of agrarian distress fueled by high interest rate credit provided by non-institutional lenders. Finally, it argues that concerted efforts from the state are required to expand access to institutional credit, which will break the vicious debt cycle and preserve the economic security of farmers.

1. Making of the Farmers' Movement

On November 26, 2020, trade unions and farmers' unions across India organized a 24-hour strike in response to the passage of new farm laws. An estimated 250 million people took part in the strike, making it one of the largest protests in recent times.^{1,2} Following the general strike, thousands of farmers marched to the nation's capital, New Delhi. However, upon orders from the Indian government, police stopped farmers from entering into the city by digging trenches and using tear gas and water cannons. In response, the farmers decided to camp indefinitely in temporary townships outside New Delhi. These makeshift camps had enough food, electricity, and other essential amenities to allow the farmers to keep protesting for at least six months.³ Mobilized by viral videos of clashes between the police and farmers on social media platforms, the movement has now spread to the rest of India and among the Indian diaspora throughout the world.⁴ Since its start, at least 248 farmers have died or committed suicide in protest.⁵ In January 2021, the government offered to put the new farm laws on hold for eighteen months; however, the farmers rejected this proposal and instead demanded a complete repeal of the laws.⁶ This deadlock continues after eleven rounds of talks and as of March 2021, the protest is well into its fourth month.^{7,8}

Specifically, the acts in question include:

- **The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020:** This act provides a legal framework for farmers to sell their produce outside of the markets run by the Agricultural Produce Market Committees (APMC) and prohibits state governments from levying any fee on trading produce outside these APMC-regulated markets. The

APMC is a government-regulated marketplace for farmers to sell agricultural produce. The APMCs are established by state governments and allow for agricultural commodity trades to be monitored and regulated to protect farmers from exploitation by large retailers. Prior to the introduction of this act, most states mandated that the first sale of agriculture produce take place in APMC-regulated market yards. APMC is important for farmers, because a minimum support price (MSP) is guaranteed in these market yards. Stable and reliable minimum prices in the APMC protect farmers from excessive price volatility and incentivize them to invest in productivity-boosting inputs such as fertilizers, pesticides, and high-yielding seeds.⁹

- **Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020:** This act provides a legal framework for farmers to enter into contracts with buyers for the sale of future produce at a pre-determined price. This act also specifies a dispute resolution mechanism for farmers.¹⁰
- **Essential Commodities (Amendment) Act, 2020:** This act amends the Essential Commodities Act of 1955 to delist certain commodities (such as cereals, lentils, oilseeds, potatoes, onion, or rice). “Essential commodities” are those for which the union government can control production, supply, distribution, and stock limit. Thus, this amendment reduces the scope of market interventions available to the union government. Commodities deregulated by this act can only be regulated by the union government under “extraordinary circumstances,” such as natural calamities, war, and famine.¹¹

2. Laissez-Unfaire: Economic Efficiency vs. Economic Security Tradeoff

In many ways, these agriculture acts are the continuation of economic liberalization, privatization, and deregulation efforts that began in 1991 and have been carried out by Indian governments since.¹² These laissez-faire economic policies have helped India lift millions out of poverty. The benefits of such policies, however, have primarily accrued to the highly educated, skilled labor sector due to growth in the knowledge-based service sector that puts a premium on skills acquired through tertiary-school education.^{13,14}

The agricultural sector, meanwhile, is notoriously inefficient and misallocates resources. APMC markets, in particular, are supposed to help determine prices of agricultural commodities through auctions. In practice, however, APMC markets are beset with rent-seeking activities due to the presence of multiple intermediaries and the high commissions earned by commission agents, locally known as “arhtiyas.” Many state governments require these agents to procure a license in order to _____

operate in APMC markets. This restrictive regulation has the effect of allowing license holders to extract high rent or commissions.

Moreover, the agricultural produce supply chain has

market imperfections. According to a study conducted by the Ministry of Food Processing Industries in 2015, post-harvest losses were estimated to be about INR 92,651 crore (US\$12.7 billion).¹⁵ These losses were primarily due to a lack of proper storage infrastructure. Consequently, decreased supply resulted in higher food prices for consumers.

These market inefficiencies could potentially be addressed by ending the monopolistic practices of APMC markets and bringing private investments into agricultural production. This possible solution is the core idea behind introducing new farm laws. Such an increase in economic efficiency would come at the expense of farmers’ economic security, due to a decrease in their power to negotiate prices. Three principal factors for these apprehensions are:

- **A. Insufficient legal recourse:** Section 19 of Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020 provides that the highest level of appeal for the farmer against any private buyer is the Appellate Authority, and it also prevents farmers from moving to court for dispute resolution.¹⁶ Section 19 also undermines Article 32 of the Indian Constitution, which guarantees farmers a fundamental right to constitutional remedies. This imbalance of power between farmers and private buyers weakens the position of farmers. Moreover, this act bestows power onto the executive to be judge, jury, and executioner.

Such an increase in economic efficiency would come at the expense of the farmers’ economic security...

- **B. Oligopsony or monopsony:** The creation of a legal framework for contract farming and an alternate channel to trade agricultural produce outside of APMC-regulated markets have created concerns that weakening APMC would eventually lead to a market structure with a few large private buyers. Numerous farmers competing to sell their produce to a few buyers would decisively shift the bargaining power away from farmers. A study conducted by researchers associated with the University of Pennsylvania and the Bill & Melinda Gates Foundation found that prices realized by farmers are driven by a farm's location.¹⁷ Farmers in remote villages, they found, are particularly vulnerable because of high transportation costs and a limited number of buyers, leading to greater monopsony power.
- **C. Fear of large retail buyers driving down prices in absence of MSP:** The MSP is the guaranteed price of the agricultural commodity to be bought from the farmer by the APMC-regulated markets for twenty-three agricultural commodities. MSP is a form of market intervention that protects farmers from price fluctuations. On the one hand, MSP creates economic inefficiency as farmers prefer to grow the twenty-three agricultural commodities covered under the MSP regime rather than the other commodities demanded by consumers because of the protection from excessive price volatility and the opportunity to earn reliable levels of minimum prices. A higher-than-expected harvest can be catastrophic to farmers as agricultural prices plummet. In such scenarios, MSP provides farmers a degree of protection by creating a price floor when the open market leads to a lower price. This also benefits farmers who do not sell their produce in APMC markets, as equilibrium market prices are higher due to the existence of MSP. Moreover, Indian farmers are competing to sell their produce in an international agricultural market that is already heavily subsidized.

The new farm laws do not mention MSP and the government has given verbal assurance to farmers that MSP policy would remain intact. However, farmers fear that weakening APMC is a precursor to the dilution of MSP, given that, as of now, MSP is not codified in any law. Surjit Bhalla, a former member of the Economic Advisory Council to the Prime Minister's Office argued for the abolition of MSP in 2019.¹⁸ Apprehension that large retail buyers could drive down the agricultural commodity prices in the absence of MSP is not an irrational fear and has been seen globally. German farmers protested against new environmental regulations that would increase cost of production while

competing large retailers are driving down prices.¹⁹ French and Irish farmers organized similar protests.²⁰ Spanish farmers protested against low prices, demanding “guarantee retail prices” for agricultural commodities.²¹ Recently, British farmers protested the reduction in milk prices by major milk processor companies.²²

If the Indian government had consulted with all stakeholders, it could have foreseen the decrease in farmers’ bargaining power that would result from the new farm laws’ favoring of large corporate buyers. However, farmers’ representatives were not consulted, nor was a proper debate allowed to take place in parliament, due to the hasty process through which these laws were passed.²³

3. Agrarian Distress and the Vicious Debt Cycle

It is important to take into account that these protests are happening against a backdrop of agrarian distress that has been going on for several years. This begs the question of why Indian farmers are in such a precarious position to begin with.

As of 2019, the agriculture sector accounted for around 16% of Indian GDP and employed more than 42% of the total workforce.^{24,25} The agriculture sector was once considered to be the backbone of the Indian economy, but its contribution to GDP has been declining for years.

It is important to take into account that these protests are happening against a backdrop of agrarian distress that has been going on for several years.

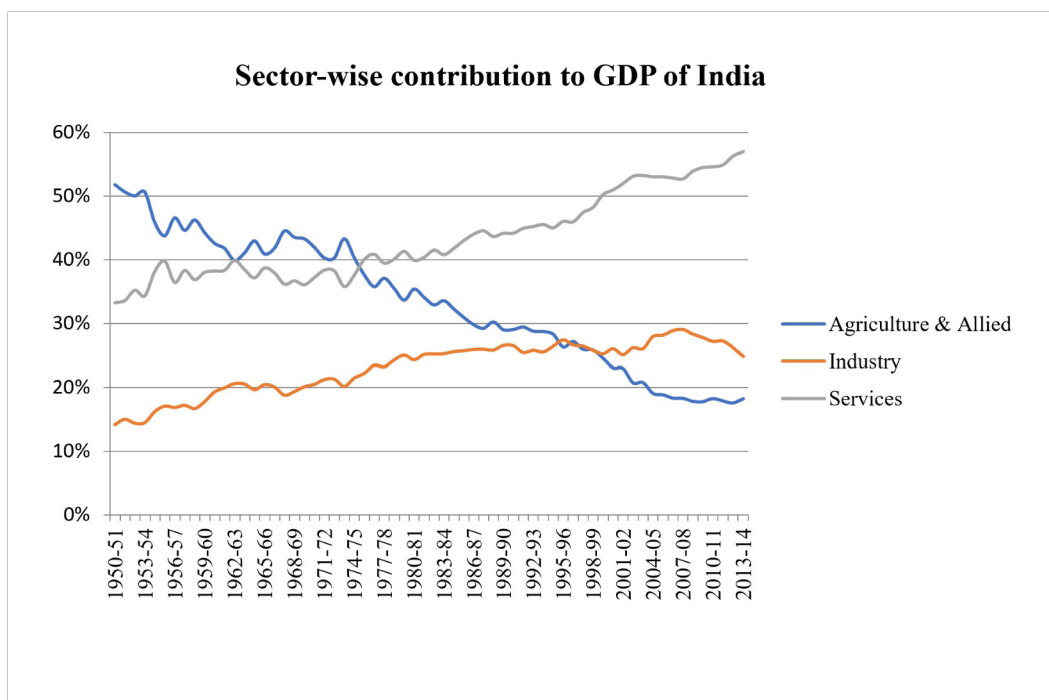


Figure 1: Sector-wise contribution to GDP of India at current prices. (Source: Ministry of Statistics and Programme Implementation)

With this decline, farmers are facing increasing economic hardship. The “Report of the Expert Group on Agricultural Indebtedness,” produced under the chairmanship of Professor R. Radhakrishna, shows the dire economic condition of farmers.²⁶ Radhakrishna highlights the decline in farmers’ living standards as their income has become insufficient to meet even basic consumption requirements. The report details how rising input prices and declining earnings result in the inability of farmers to service debt, which has triggered a wave of suicide. Per the National Crime Records Bureau of India, 333,407 farmers have died by suicide since 1995.²⁷ Indian farmers are stuck in a sector that is increasingly economically unviable with few alternative employment opportunities available.

The Indian agricultural sector is afflicted by many technical issues, such as inadequate irrigation systems leading to crop failures, lack of storage infrastructure resulting in harvest spoilage, and outdated technology causing low productivity. A study performed by economists Balakrishnan, Golait, and Kumar found “a slowing of irrigation expansion since 1991 and a downscaling of production due to farm fragmentation” to be the key drivers of sluggish growth of the agricultural sector since 1991.²⁸ This study points out that access

to institutional credit remains inadequate for the agricultural sector and is a key impediment to the adoption of new technological practices that could improve productivity. Evidence suggests that a 1 percent increase in real agricultural credit results in 0.22 percent increase in agricultural GDP.²⁹ However, of farmers who died by suicide since 1995, 76 percent to 82 percent borrowed from non-institutional lenders who regularly charge interest rates as high as 36 percent.³⁰

In the aftermath of the 1991 Indian economic crisis, economic liberalization was carried out and major state-owned banks were gradually privatized. Based on recommendations from the Narasimhan Committee (the Committee on the Financial System), the banking sector implemented a number of reforms. These reforms increased capital adequacy norms and tightened lending standards. They also made Indian banks stronger, more autonomous, and more market driven. However, newly privatized banks retreated from less-profitable rural agricultural lending. The vacuum created was filled by non-institutional lenders.³¹ The following table reflects this change between 1991 and 2002:

	1991	2002
Institutional Agencies	64.0%	57.1%
Government	5.7%	2.3%
Co-op. Society/bank	18.6%	27.3%
Commercial bank incl. RRBs	29.0%	24.5%
Insurance	0.5%	0.3%
Provident Fund	0.9%	0.3%
Others institutional agencies	9.3%	2.4%
Non-Institutional Agencies	36.0%	42.9%
Landlord	4.0%	1.0%
Agricultural Moneylender	6.3%	10.0%
Professional Moneylender	9.4%	19.6%
Traders and Commission Agents	7.1%	2.6%
Relatives and Friends	6.7%	7.1%
Others	2.5%	2.6%
Total	100.0%	100.0%

Table 1: Break-up of Institutional and Non-Institutional Rural Credit (Source: RBI WPS (DEPR): 05/2013: Persistence of Informal Credit in Rural India: Evidence from ‘All-India Debt and Investment Survey’ and Beyond).³²

The following table demonstrates how the interest rate charged by non-institutional lenders tends to be higher than institutional lenders.

Rate of Interest Class	Institutional	Non-institutional	All
0%	1%	18%	8%
Less than 6%	2%	2%	2%
6% to 10%	4%	1%	3%
10% to 12%	9%	1%	5%
12% to 15%	48%	1%	28%
15% to 20%	34%	3%	21%
20% to 25%	1%	33%	15%
25% to 30%	0%	0%	0%
30% & above	0%	40%	17%
Total	100%	100%	100%

Table 2: Percentage Distribution of Amount of Cash Debt of All Rural Households by Rate of Interest, All India – 2002-03 (Source: NSSO (2005), All India Debt and Investment Survey 2002-03, p. 34).³³

Higher interest rates demanded by non-institutional lenders increases farmers’ debt service burden and the probability of default. Reliance on expensive non-institutional lenders is trapping farmers into unsustainable debt burden. This vicious debt cycle is fueling India’s agrarian distress. Over a long period of time, the agricultural labor force engaged is expected to transition to manufacturing and service sectors. Until then, it is imperative that concerted efforts are made to increase access to institutional credit to keep agriculture an economically viable option for farmers.

4. Potential Political Ramifications

Indian political discourse and electoral politics are usually driven by caste, and these voting blocs tend to choose candidates from their own communities. This could change because of the government’s response to the farmers’ movement.

The government’s heavy-handed crackdown on protests, labelling protestors as “anti-nationals,” appeals to the conservative nationalist base but alienates farmers and creates a trust deficit that will be hard to overcome. Resentment and disenchantment are growing, particularly in the rural north, which relies on the agrarian economy. Additionally, farmers have widespread support from transportation unions that represent over 14 million drivers, and millions more represented by labor and trade unions.^{34,35}

The constitutional validity of the new farm laws is also questionable. The responsibility of agriculture law-making lies not with the federal government but with the state government. The federal government, therefore, is banking on a concurrent law allowing both state government and federal government to legislate on matters of “trade and commerce.” As the new farm laws prohibit state governments from levying any fee on produce trading outside APMC-regulated markets, state governments would lose income.³⁶ Farmers’ unions and multiple states have already announced that they will challenge the federal government’s overreach and the constitutional validity of these new farm laws. The constitutional question could become a protracted tussle between state government and federal government. Regardless of the Supreme Court’s eventual decision, farmers’ unions’ and labor unions’ political clout will increase as farmers coalesce to protect their economic interests. The movement has also created space for cross-caste alliances driven by converging economic interests.

In the last three decades, successive governments have implemented liberalization and privatization policies to move toward a market-led economy with minimal government intervention. This period witnessed the weakening of unions as the private sector became dominant in the economy. However, revival of unions could increasingly make implementation of such market-friendly policies politically untenable. Thus, the outcome of the Indian farmers’ movement remains uncertain; however, it is certain that the impact of this movement will be felt for years to come.

5. Conclusion

Laissez-faire economic policies – liberalization, privatization, and deregulation – have helped India lift millions out of poverty; yet people employed in the agricultural sector have been left behind. Agriculture is increasingly becoming an economically unviable option for many farmers. Hence, some reforms are certainly required. The new farm laws would make the agriculture sector more efficient; however, they will also hurt farmers’ income. Risk mitigating policies are thus required to protect the economic security of farmers and promote job creation to employ displaced farmers and reduce reliance on the agricultural sector for employment. Rent-seeking activities by commissioned agents in APMC markets could be reduced by modifying commission structures to ensure that the commission fee doesn’t amount to more than a few percentage points of the total value of produce. Capping the commission fee would make

APMC markets more efficient without compromising the bargaining power of farmers. Given the ongoing agrarian distress that has been fueled by the high-interest credit provided by non-institutional lenders, there is an urgent need to expand access to institutional credit with reasonable interest rates for farmers. ■

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Disclaimer: The views and opinions expressed in this paper are those of the author and do not reflect the position of any organization the author is associated with.

ENDNOTES

1. Ravi Agrawal, “Why India’s Farmers Are Protesting,” *Foreign Policy*, December 10, 2020, <https://foreignpolicy.com/2020/12/10/india-witnessing-biggest-protests-history-modi-farm-reform/>.
2. Nitish Pahwa, “What’s Driving the Biggest Protest in World History?” *Slate Magazine*, December 9, 2020, <https://slate.com/news-and-politics/2020/12/india-farmer-protests-modi.html>.
3. . “Protest Site Draws ‘Sewa’ — Medicine Stalls, Laundry Service, Temple & Library Come Up,” *The Indian Express*, December 11, 2020, <https://indianexpress.com/article/cities/delhi/protest-site-draws-sewa-medicine-stalls-laundry-service-temple-library-come-up-7100228/>.
4. Mayank Kuma and Manoj Bhardwaj, “Sikh Diaspora Drums up Global Support for Farmers’ Protest in India,” *Reuters*, December 18, 2020, <https://www.reuters.com/article/india-farms-protests-diaspora/sikh-diasporadrums-up-global-support-for-farmers-protest-in-india-idUSKBN28S0Y6>.

5. Parth MN, “100 Days and 248 Deaths Later, Indian Farmers Remain Determined,” *Al Jazeera*, March 5, 2021, <https://www.aljazeera.com/news/2021/3/5/100-days-and-248-deaths-later-indian-farmers-remaindetermined>.
6. Himanshu Shekhar Mishra, “Farmers Reject Government’s Proposal To Pause Farm Laws For 1.5 Years.” NDTV.com, January 21, 2021, <https://www.ndtv.com/india-news/farmers-reject-governments-proposal-to-pausefarm-laws-for-1-5-years-want-full-repeal-2356130#:~:text=Farmers protesting against the controversial,continue with a fresh committee>.
7. Sravasti Dasgupta, “Eleventh Round of Talks between Modi Govt and Farmers Fails, No Date for next Meeting,” *ThePrint*, January 22, 2021, <https://theprint.in/india/eleventh-round-of-talks-between-modi-govt-andfarmers-fails-no-date-for-next-meeting/59052>.
8. Devjyot Abidi and Adnan Ghoshal, “Indian Farmers Squat on Railway Tracks to Mark Four Months of Protests,” *Reuters*, March 26, 2021, <https://www.reuters.com/article/india-farms-protests/indian-farmers-squat-on-railway-tracks-to-mark-four-months-of-protests>.
9. Act No. 21 of 2020.
10. Act No. 20 of 2020.
11. Act No. 22 of 2020.
12. Manmohan Singh, “Review of Budget 1991-92 Speech of Shri Manmohan Singh Minister of Finance,” July 24, 1991, <https://www.indiabudget.gov.in/doc/bspeech/bs199192.pdf>.
13. S. Mahendra Dev, “Economic reforms, poverty and inequality,” Indira Gandhi Institute of Development Research, Mumbai Working Papers 2016, Indira Gandhi Institute of Development Research, Mumbai, India.
14. Yoko Kijima, “Why Did Wage Inequality Increase? Evidence from Urban India 1983–99,” *Journal of Development Economics*, volume 81, no. 1, 97–117, <https://doi.org/10.1016/j.jdeveco.2005.04.008>.
15. Jha SN, Vishwakarma RK, Ahmad T, Rai A and Dixit AK, “Report on assessment of quantitative harvest and post-harvest losses of major crops

and commodities in India,” ICAR-All India Coordinated Research Project on Post-Harvest Technology, ICAR-CIPHET, P.O.-PAU, Ludhiana-141004, 2015.

16. Section 19 of Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 decrees:
“**§19. Bar of jurisdiction of civil court**—No civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any dispute which a Sub-Divisional Authority or the Appellate Authority is empowered by or under this Act to decide and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any rules made thereunder.”
17. Shoumitro Chatterjee, et. al, “A Study of the Agricultural Markets of Bihar, Odisha and Punjab Final Report,” Center for the Advanced Study of India. (University of Pennsylvania: Philadelphia), 2020.
18. “Former EAC-PM Surjit Bhalla Says next Govt Should Abolish MSP in 3 Years, Cut Corporate Tax by 5 per Cent, ETNownews.com, May 20, 2019,” Ficci.in, <http://www.ficci.in/ficci-in-news-page.asp?nid=17362>.
19. Ben Knight, “Explainer: What Are Germany’s Farmers so Angry About?” DW.COM, January 18, 2020, <https://www.dw.com/en/explainer-what-aregermanys-farmers-so-angry-about/a-52054387>.
20. Jane Byrne, “Farmers Show Anger with Protests in Ireland, Germany and France, Feednavigator.com, November 27, 2019, <https://www.feednavigator.com/Article/2019/11/27/Farmers-show-anger-with-EU-wide-protests>.
21. Pauline Bock and Gerard Escaich Folch, “Why Are Spanish Farmers Protesting against Low Prices?” *Euronews*, February 19, 2020, <https://www.euronews.com/2020/02/18/why-are-spanish-farmers-protesting-againstlow-prices>.
22. Claire Marshall, “Dairy Farmers to Protest over Milk Price Cuts,” *BBC News*, October 01, 2014, <https://www.bbc.com/news/science-environment-29448193>.

23. Mayank Bhardwaj and Rajendra Jadhav, “Explainer: Why Many Farmers and Politicians Oppose Modi’s Farm Laws,” *Reuters*, September 21, 2020, <https://www.reuters.com/article/india-farms-idINKCN26C1WG>.
24. “World Development Indicators: The World Bank,” World Development Indicators | The World Bank, <http://wdi.worldbank.org/table/4.2>.
25. International Labour Organization, ILOSTAT Database, “Employment in Agriculture (% of Total Employment) (modeled ILO Estimate) – India,” <https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=IN>.
26. Government of India, “Report of the Expert Group on Agricultural Indebtedness,” Ministry of Finance, Government of India, New Delhi, July 2007.
27. The Wire Staff, “After 3-Year Delay, Government Releases Farmer Suicide Data,” *The Wire*, November 08, 2019, <https://thewire.in/agriculture/farmer-suicides-data>.
28. Pulapre Balakrishnan, Ramesh Golait, and Pankaj Kumar, “Agricultural Growth in India since 1991,” Development Research Group (DRG), Study No-27, Reserve Bank of India, Mumbai.
29. . Duvvuri Subbarao, “Agricultural Credit – Accomplishments and Challenges,” *RBI Monthly Bulletin*, August, 2012, pp. 1413-1422.
30. Balakrishnan, Golait, and Kumar, “Agricultural Growth in India since 1991,” 37.
31. Duv Reddy, “Farmers’ Indebtedness and Agricultural Credit Situation in Andhra Pradesh,” 2015, 10.13140/RG.2.1.1092.1446.
32. This is the most recent data that is publicly available.
33. This is the most recent data that is publicly available.
34. Tribune News Service, “Farmers’ Protest: Transporters Threaten to Halt Operations in North India from Dec 8,” *Tribune India News Service*, December 02, 2020, <https://www.tribuneindia.com/news/nation/farmers->

protest-transporters-threaten-to-halt-operations-in-north-india-fromdec-8-178997.

35. Shemin Joy, “At Least 25 Crore Workers Participated in General Strike; Some States Saw Complete Shutdown: Trade Unions,” *Deccan Herald*, November 26, 2020, <https://www.deccanherald.com/national/at-least-25crore-workers-participated-in-general-strike-some-states-saw-complete-shutdown-trade-unions-920200.html>.
36. Section 7 of The Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.



Protesters at a #EndSARS protest in Lagos, Nigeria. Photo by Kaizenify

Op-Ed

#EndSARS 2020: The Social Movement that is Rebirthing Activism in Nigeria

By Ehi Agbashi, Nirvana Tesfayohannes, Temiloluwa Adeyemi, and Osasenaga Aghayere

Throughout Nigerian history, activism has been a major tool used to eliminate injustice. Although somewhat overlooked by the global community, the rich history of activism in Nigeria has enabled the nation to overcome colonialism, military dictatorship, and

governmental oppression. Anti-colonial leaders such as Funmilayo Kuti and the Women of Aba, who passionately fought against British colonialism, laid the firm foundation that drives the culture of activism in Nigeria.¹ Subsequent key leaders include Fela Kuti, Ken Saro-Wiwa, and Aisha Yusufu, who took the mantle and cemented the legacies of their ancestors by standing up against unjust leadership.²

However, as a result of government incompetence and continued oppression, Nigerians have become less willing to protest. Nigerian artist Fela Kuti captured this feeling in his 1978 song “Shuffering and Shmiling.” He describes a sense of hopelessness and powerlessness manifesting in such a way that Nigerians see no other option but to be content in a dysfunctional society that only works for elites.³ A very real reason why Nigerians did not see protest as a viable expression of their frustration was the fact that, except for a brief return to democratic rule from 1979-1983, the country was under different military regimes from 1966-1999.

Within this context, the 2020 #EndSARS protests are even more remarkable. The hashtag dates back to 2017 and was revived last year after a video surfaced showing a Special Anti-Robbery Squad (SARS) officer shooting and killing a young man. SARS was already infamously known as a rogue police unit that brutalizes, murders, extorts, and sexually harasses Nigerian youths. The video led activists to demand for SARS to be disbanded permanently. The protests began on October 8 and continued through October 21.⁴ Although they started as a demand to abolish SARS, the protests quickly became a transformative demonstration for improved governance.

The Impact of #EndSARS

#EndSARS was a powerful moment in Nigerian history. Twenty-one years after Nigeria restored democracy on paper, those of us who have suffered the brunt of a failed democratic state took it upon ourselves to rectify the injustices that still persist in the nation. Protesters were standing up against an authoritarian Nigerian government disguised as a democracy to advocate for people-centered governance in the nation. Although the government temporarily disbanded SARS (only to reinstate it under a different name), we have yet to see the transformative changes we called for during the protests. #EndSARS galvanized a “Soro Soke” (a Yoruba phrase meaning “speak up loud”) generation unwilling to bow to the vices of incompetent leaders and corrupt politicians. The youth of Nigeria have recognized that they have the right to speak up against a system that isn’t working or meeting their needs and aspirations. Building off momentum from the Youth Initiative for Advocacy Growth and Advancement’s (YIAGA) “Not Too Young to Run” campaign⁵ to encourage more young people to run for political office, the #EndSARS protests ignited a fire

Most of the leaders who addressed the protesters showed a huge disconnect between those in power and the average Nigerian.

for change in every Nigerian who dreams of a thriving nation. These protests activated a new wave of conscious and engaged citizenry demanding accountable leadership.

Further, the #EndSARS movement revealed a failure in leadership. Most of the leaders who addressed the protesters showed a huge disconnect between those in power and the average Nigerian. Leaders

were more focused on trying to end the protests rather than making the necessary changes protesters demanded. Then, on October 20, the government dispatched the Nigerian army and gave orders for them to open fire on protesters at the Lekki Tollgate when protesters refused to back down.⁶ This massacre at Lekki left at least a dozen dead, marring two weeks of peaceful protests.

Where We Go from Here

Nigerians see the 2023 elections as an opportunity to change the course of the nation. With this in mind, grassroots organizations should start working toward ensuring that young people are educated on valuing their vote, running for political office, and fulfilling other civic duties. Grassroots organizations will play an important role in sensitization and mobilization efforts before the 2023 elections. Sensitization and awareness campaigns must extend to marketplaces, villages, and religious institutions; these campaigns should also be tailored to fit each demographic and serve as a learning process for all. Most importantly,

grassroots organizations need to collaborate with *For the global
Black*

each other to expand their *Diaspora, our collective
impact. call for freedom embodied*

#EndSARS and Global Black Liberation *within these
movements will*

continue until our hopes are

The 2020 #EndSARS

protests, the #BlackLives- *fully realized.*

Matter movement, and _____ the global call for Black liberation that triumphed in the summer of 2020 are inextricably linked. Through these social movements for racial and social justice, we understand that the voice of the oppressed can only be silenced for so long. For

Black people everywhere, the endless hope of an inevitable victory over all forms of subjugation keeps us bound in an unwavering community of solidarity. For the global Black Diaspora, our collective call for freedom embodied within these movements will continue until our hopes are fully realized. We can't stop and we won't stop!■

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ENDNOTES

1. Adeola, Aderonke. Awani: A Colonial History of Women, 2018, www.youtube.com/watch?v=LjyfBOxR9Xw&ab_channel=Awanifilm.
2. Cardinal Rex Jim Lawson, "Major Boro," track 12 on *The Classics Vol. 1.*, Permier Records Limited, 1981.
3. Fela Kuti, "Shuffering and Shmiling," track 1 on *Shuffering and Shmiling*, Knitting Factory Records, 1979.
4. SaharaTV, "Falz And Runtown Leads #EndSARS Protest In Lagos," YouTube, October 8, 2020, www.youtube.com/watch?v=KL88zc7XZHM&ab_channel=SaharaTV.

5. Yiaga Africa: Democracy, Government, and Development, 2020, <https://www.yiaga.org/team/>.

6. Burna Boy, “20 10 20 ,” 20 10 20, Spaceship Entertainment Ltd., 2020.

Article

Marching for Justice: Conflicting Perspectives of Peaceful Assemblies in International Investment Law and International Human Rights Law

By Laura Edwards

1. Introduction

We now live in an era of mass protests. From Colombia’s 2019 national strikes, to the Belarus slipper uprising, to police brutality marches across the United States, ordinary citizens are rising up against their governments at an unprecedented rate.¹ In 2019 alone, protests and social uprisings occurred in as many as 114 countries worldwide.² In 2021, with mounting pressure from the COVID-19 pandemic, investment analysts predict protests will swell even further, creating what has been described as a “perfect storm” for companies, insurers, and investors.³

Historically, mass protests have infrequently been the subject of international investment disputes. This, however, appears to be changing, with a number of pending claims before the International Centre for Settlement of Investment Disputes (ICSID) featuring mass protests. They include a claim filed in 2016 by a Canadian mining company against Colombia.⁴ This claim alleges the investors’ operations were negatively impacted by civil strikes and demonstrations by miners in the informal economy, and asserts a host of treaty violations by the Colombian government under the Canada-Colombia Bilateral Investment Treaty (BIT).⁵ More recently, in October 2020, ICSID registered a claim by a gold mining corporation against Peru, claiming Peru failed to provide assistance when its project was halted by large-scale community protests.⁶

Other claimants have threatened investment claims against states. In 2014, a Taiwanese investor threatened treaty claims against Vietnam, alleging the government failed to shield its operations from anti-China protests targeting factories displaying Chinese-language signage.⁷ In 2019, Spanish media also speculated that isolated acts of looting against Vodafone and Foot Locker following otherwise peaceful demonstrations in Barcelona could invoke Spain's obligations to provide full protection and security (FPS) to foreign investors under Spain's BITs.⁸ As Professor Christoph Schreuer explains, the right to FPS requires a host state both to refrain from interfering with an investor's property, and to protect the investors' assets from interference by third parties.⁹

At the same time, while the investor-state dispute system (ISDS) grapples with a rise in these cases, the international human rights community has launched its own response. In July 2020, the United Nations Human Rights Council issued a new general comment on the right to freedom of assembly.¹⁰ Interpreting Article 21 of the International Covenant on Civil and Political Rights, it incorporates prior UN guidelines and provides a "timely articulation of key principles and best practices governing peaceful assembly."¹¹ Amongst its recommendations, UN General Comment No. 37 explicitly requires governments and their police forces exercise a "significant degree of toleration" towards protestors, even when the protestors' actions disrupt business and economic activity.¹²

This paper suggests that recent developments in international human rights law have created an opportune moment for tribunals to reconsider their engagement with the international human rights law regime with respect to claims involving mass demonstrations. Section two of this paper highlights the extent to which international human rights law and international investment law complement or are in tension with one another. Section three examines how investment tribunals have dealt with these tensions, pointing to an overall conflict avoidance pattern. Section four considers the consequences of this conflict avoidance approach and points to signs of a divergence in legal standards. Finally, section five concludes with overall remarks.



2. The Interaction Between International Investment Law and Human Rights

In many respects, international human rights and investment law are complementary regimes. Both systems developed to provide individuals with the

In 2019, Spanish media speculated that isolated acts of looting against Vodaphone and Foot Locker following otherwise peaceful demonstrations in Barcelona could invoke Spain's obligations to provide full protection and security to foreign investors. Photo by Dani Codina (CC BY-SA 2.0)

ability to hold states directly accountable for treaty violations, through specialized dispute resolution mechanisms.¹³ For citizens affected by police action (or inaction) in times of protest, these mechanisms include the Human Rights Committee and the Committee on Economic, Social, and Cultural Rights. For foreign investors, forums such as ICSID may provide recourse for violations of their property rights in times of protest, as highlighted in section

one. As Professor Bruno Simma suggests, what underlies both systems is ultimately the same concern: the need to protect individuals against state power.¹⁴

However, while these systems are broadly compatible with one another, there is also tension between the regimes. This is most apparent in the context of FPS claims brought before investment tribunals. In these cases, investors have typically alleged that the state, by failing to quell the acts of protestors, has violated the investors' right to full protection and security for their investment. By their nature, these claims essentially ask tribunals to consider whether the government should have done more to protect the foreign investors' property from blockades and

demonstrations carried out

by the government's own *It may no longer be possible*

citizens—potentially giving *or desirable for tribunals*
rise to tension between the

economic rights of investors *to ignore the relationship*

and the rights of protestors *between international* to

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The same tension that arises in FPS claims has

also at- *rights law...*

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UN Human Rights Committee in General Comment No. 37. This general comment is the first to provide authoritative guidance to states on the right to freedom of assembly, and has been heralded as a landmark success by civil society groups.^{15,16} Recognizing the inherent conflict between assembly rights and economic rights in situations involving protestors, the guidance emphasizes that “private entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right [to freedom of assembly].”¹⁷ Although the precise legal weight that should be prescribed to general comments is disputed, Simma has recognized that states must, at the very least, consider general comments “in good faith” and suggests that their interpretations could inform tribunals' analysis of clauses in many BITs.^{18,19}

When faced with rising claims before ICSID featuring protests and a new UN general comment providing authoritative guidance on the right to freedom of assembly, it may no longer be possible or desirable for tribunals to ignore the relationship between international investment law and human rights law in this context.

3. Conflict Avoidance: the Treatment of Mass Protests by Arbitral Tribunals in FPS Claims

Historically, mass protests have infrequently been the subject of investment disputes. When they have arisen, these claims involve protesting community members or employees blocking access to an investor's property, such that the property value is effectively diminished. Claims of this nature give rise to a host of treaty claims under BITs. However, claims for the violation of the FPS standard are where the economic rights of foreign investors appear to most frequently conflict with citizen rights to assemble.

3.1 The ELSI Approach and the Historic Treatment of Mass Protests by Investment Tribunals

Before the growth of the modern ISDS system, the ICJ heard two seminal cases involving the mistreatment of foreign economic entities. One of those cases was Case Concerning Elettronica Sicula S.P.A (ELSI) (United States v. Italy), in July 1989. In ELSI, the U.S. government alleged that Italy had breached protection standards in the 1948 Treaty of Friendship, Commerce, and Navigation after the occupation of a U.S. plant by protesting workers led to the plant's requisition by the Italian government.²⁰ In determining that the protection provided by Italy did not fall below the standard of full protection and security required by international law, the Court in ELSI made clear the treaty's "provision of 'constant protection and security' cannot be construed as the giving of a warranty that property shall never in any circumstances be occupied or disturbed."²¹

Since ELSI, tribunals have interpreted the ICJ's judgment as an attempt to set a high bar for investors seeking physical protection and security of their investments from host states. One key example is the 2005 decision in Noble Ventures v Romania.²² In Noble Ventures, a tribunal presided over claims that Romania's police failed to provide full protection and security to a U.S. company during a period of labor unrest on its premises.²³ Affirming the ICJ's

decision in ELSI, the tribunal declined to find a violation of the FPS standard. Instead, it emphasized that such violations are “not easily to be established” and deferred to the state on the appropriate exercise of due diligence.²⁴ Following Noble Ventures, support for the ELSI approach has continued, as seen in awards rendered in *Abengoa v. Mexico* and *Tecmed v. Mexico* amongst others.^{25,26} Notably, in *Tecmed*, a tribunal was tasked to consider whether community protests at a landfill site and subsequent regulatory measures amounted to violations of the Spain-Mexico BIT, including claims of expropriation, and breach of fair and equitable treatment (FET) and FPS standards. With respect to the investor’s FPS claim, the tribunal followed the general approach in ELSI, finding “insufficient evidence” to prove the Mexican authorities “have not reacted reasonably, in accordance with the parameters inherent in a democratic state.”²⁷ Having established that case law from the European

Court of Human Rights was relevant to the claimant’s expropriation claim, the tribunal nevertheless

Now tribunals seem to be approaching FPS claims involving protestors with less automatic deference to

the state, showing greater willingness to analyze policing responses.

avoided dealing with the question of how international human rights law might also apply to the investor’s FPS claim by finding that this claim had not been substantiated.²⁸

3.2. Moving Away From Deference: Charting a Divergence From the ELSI Approach

While the approach in ELSI dominated the early 2000s, there has been a recent shift. Now tribunals seem to be approaching FPS claims involving protestors with less automatic deference to the state, showing greater willingness to analyze policing responses. In doing so, tribunals increase the potential for international investment law to come into conflict with human rights law. One key example is the 2014 award in *Louis Dreyfus Armateurs v. India*.²⁹ In this case, a tribunal formed under the United Nations Commission on International Trade Law Arbitration Rules was called

upon to determine whether India breached obligations under the India-France BIT when the claimant alleged it was unable to continue its project at a port facility in West Bengal due to blockades and protests by several hundred of its workers.³⁰

Although the tribunal determined the claimant's investment fell outside the scope of the treaty's protection, and hence it was not necessary to determine whether India violated the BIT's FPS standard, the tribunal nevertheless made clear that in certain instances arbitrators may be called upon to judge the actions of law enforcement officials. In particular, the tribunal noted that "in appropriate cases" tribunals must wade into the "delicate assessment of ... due diligence" with respect to the proper deployment of law enforcement resources by the state.³¹ The tribunal, while acknowledging these questions were "generally judgment calls, to be made by a State," went to greater lengths to analyze the effectiveness of police responses to the labor demonstrations than the tribunal in *Noble Ventures* did over a decade earlier – even making extensive references to police reports throughout its determinations.³²

Similarly, in the 2016 award in *Copper Mesa Mining Corporation v. Ecuador*, the government of Ecuador's effectiveness at regulating protests was also analyzed in a claim alleging violations of the Canada-Ecuador BIT.³³ Commenting on the effectiveness of the police response, and finding Ecuador to be in violation of FPS, FET, and expropriation guarantees by failing to protect the holders of a mining concession from anti-mining protestors, the tribunal determined that Ecuador's law enforcement officers "should have attempted something to assist Copper Mesa," although what exactly the police could have done was deemed "difficult to say."³⁴ Indicating the tribunal's belief that some use of force should have been deployed, the tribunal remarked, "[p]lainly, the government in Quito could hardly have declared warlea on its own people. Yet, in the tribunal's view, it could not do nothing."³⁵ Again, the tribunal goes further in analyzing the effectiveness of law enforcement's response than the approach in *ELSI*.

Moreover, in the 2018 award in *South American Silver v. Bolivia*, a tribunal examined whether Bolivia's efforts to police community unrest was in violation of the FPS standard in the UK-Bolivia BIT.³⁶ While the majority of the tribunal found no violation of the FPS guarantee, it did not shy away from making substantive remarks about a potential effective police response. In particular, the tribunal noted that "militarization" was "not only ineffective, but ... may

also have fatal consequences” – a perspective that was not without contention.^{37,38} In a separate, dissenting opinion, Professor Francisco Orrego Vicuña remarked that public order was “scarcely and on many occasions insufficiently maintained,” and found the sections of the award rejecting the claimant’s FPS claims to be “questionable.”³⁹

Not all recent tribunals have been willing to comment on the respondent’s exercise of policing powers against protestors. The tribunal in *Bear Creek Mining Corporation v. Peru*, having found that Peru’s actions constituted an unlawful indirect expropriation, declined to determine whether the government had separately violated the treaty’s FPS standard when the claimant’s investment was blockaded by protests from indigenous communities in its 2017 award.^{40,41} Nevertheless, there does appear to be a general trend over time – from awards of the early 2000s, such as in *Tecmed*, *Noble Ventures*, and *Abengoa*, to the present day – of tribunals showing increased willingness to scrutinize the effectiveness of state responses towards protestors and diverge from the standard approach in ELSI. In doing so, the potential for conflict between the investors’ rights to seek protection for their assets and the citizens’ rights to assemble peacefully is at risk of increasing.

4. Mass Protests and Emerging Tensions Between Investment Law and Human Rights law

4.1. Avoiding the Tension: the Risk of Diverging Legal Standards

As highlighted above, the tribunals in *Louis Dreyfus*, *Copper Mesa*, and *South American Silver* all diverted, to some extent, from the approach in ELSI, by taking it upon themselves to scrutinize the adequacy of police responses to protests in FPS claims. In doing so, these tribunals have each made remarks about the legal obligations of states that appear to run contrary to the obligations law enforcement officials are required to adhere to under international human rights law.

In particular, there are two leading soft law instruments: the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Basic Principles), and the *United Nations Guidance on Less-Lethal Weapons in Law Enforcement* (UN Guidance).^{42,43} The Basic Principles were promulgated in 1990 before any of these claims arose, while the UN Guidance more recently came into force in 2020. Both guidelines have subsequently been incorporated

into the new UN General Comment No. 37 on the right to peaceful assembly.⁴⁴ Together, these legal instruments call upon law enforcement to presume assemblies are peaceful.⁴⁵ As the Human Rights Committee has urged, this “presumption of peacefulness” should only be rebutted when violence occurs resulting in “injury, or death, or serious damage to property,” with law enforcement intervening in protests as a matter of last resort.^{46,47}

In contrast, recent tribunals’ decisions have not always recognized this presumption of peacefulness. In *Louis Dreyfus*, for example, having acknowledged protests were largely peaceful, the tribunal nevertheless criticized India for the “limited effectiveness” of its law enforcement response, and questioned whether “police could or should have responded more quickly or in greater force”^{48,49} to the demonstrations. Although the tribunal declined to find a violation of the FPS standard, the tribunal’s reasoning diverges from the Basic Principles, which permit law enforcement to intervene in protests only when there is a serious threat to life or property.⁵⁰

Similarly, in *Copper Mesa*, the legal standard set by the tribunal to justify intervention by law enforcement also appears to conflict with international human rights law. Here, the tribunal conceptualized the issue at stake as whether the government should have “imposed its will on the anti-miners, acting with all the powers and forces available to a sovereign State,” to ensure that the claimant could access their concession.⁵¹ In analyzing Ecuador’s response to anti-mining protests, the tribunal criticized the government for failing to adopt a harsher stance against the protestors and hence “giving legal force” to their physical blockades.⁵² The legal standard adopted by the tribunal in this 2016 award appears to be at odds with the more recent UN Guidance that, to the contrary, obliges law enforcement to adopt the least intrusive measures possible when responding to assemblies. The tribunal’s frank assessment that although the Ecuadorian government “could hardly have declared war on its own people... Yet in the tribunal’s view, it could not do nothing,” conflicts with the prevailing human rights view that law enforcement’s role, first and foremost, is to facilitate protests, not intervene in them.

The emergence of diverging legal standards over protests may damage the international investment regime’s credibility as a forum for arbitrating disputes involving social movements. The award in *Copper Mesa*, for example, has

attracted particular criticism from civil society and the media. According to one NGO report, “[I]n the arbitrators’ upside-down world, apparently the government should have sided with the company against its own citizens during the protest, despite the fact that States are obliged under international law to protect their citizens’ human rights.”⁵³ By pitting the obligations states owe to foreign investors against the obligations they owe to citizens, investment tribunals risk calling into question the capability of ISDS to handle precisely the types of disputes that are increasingly gaining momentum globally.

Moreover, by failing to appreciate that there is often a balancing act for governments between protecting foreign investors’ property rights and promoting local communities’ right to peaceful assembly, tribunals may also risk doing a disservice to investors, by assuming a culture in which investors are not, or should not be, motivated by human rights considerations—an approach that does not reflect modern-day reality.⁵⁴

4.2. Conflict Avoidance and the Absence of a Human Rights Dialogue

Breaking with the standard approach in ELSI, international investment tribunals now seem to show a greater willingness to scrutinize the effectiveness of law enforcement responses to protests. Yet, as section 4.1 has highlighted, there is a notable absence of discussion in these awards about the tensions that exist between the duties of law enforcement officials to provide protection and security to foreign investments and the duty to facilitate protests being carried out by citizens. In doing so, tribunals are at risk of developing their own legal standards on how law enforcement officials should respond to social movements, which risks further increasing the tension between these two legal regimes.

Yet, increasing tension between these two regimes is not an inevitable consequence of diverging from ELSI. Moreover, there may, in appropriate circumstances, be good reasons for tribunals to analyze state policing efforts more carefully, and not simply defer to the state on the effectiveness of its response. However, when tribunals do diverge from ELSI, this essay has demonstrated why it is important to bear in the mind the potential conflicts that can arise between investment treaties and international human rights law, and why, in turn, tribunals should be more willing to recognize the flexibility that they have within Article 42(1) of the ICSID Convention to include international human rights law within the applicable law governing the arbitration.

...there is nevertheless a growing subset of claims before investment tribunals, where investors' economic and property rights may come into conflict with the fundamental assembly rights of citizens and local communities.

Going forward, as Professor Burke-White suggests, investment tribunals could reduce the tensions arising in these cases by engaging in “interpretive dialogue” with the international human rights regime.⁵⁵ This approach would see a more concerted effort by tribunals to analyze whether, and to what extent, the obligations states owe to protestors under international human rights law conflict with treaty obligations owed to investors. As

William Burke-White has explained, it is through interpretive dialogue that tribunals can engage “in a deep investigation of competing (or potentially competing) substantive legal regimes,” with the effect of “avoiding conflict, increasing harmonization, and promoting the unity of international law.”^{56,57} By highlighting the emergence of diverging legal standards, this essay has attempted to make the case for why future harmonization may be so important in this field.

5. Conclusion

This paper has drawn attention to the rise in investment treaty claims before ICSID involving protestors as well as developments to codify the right to protest in international human rights law. International investment law and human rights law largely provide separate avenues for redress for individuals affected by state action (or inaction) towards protests, but there is nevertheless a growing subset of claims before investment tribunals, where investors’

economic and property rights may come into conflict with the fundamental assembly rights of citizens and local communities.

As this paper has charted, to deal with this conflict, tribunals have followed a conflict avoidance strategy. In the early 2000s, arbitrators simply deferred to the state on the effectiveness of its policing actions, following a longstanding approach exemplified by the ICJ's decision in *ELSI*. More recently, tribunals have shown increased willingness to analyze state policing responses; however, they have not been forthcoming in recognizing that these responses necessarily involve a balancing exercise for law enforcement officials between protecting the investors' property rights and securing the fundamental rights of citizens to assemble. In doing so, tribunals are at risk of developing diverging legal standards for the conduct of law enforcement officials in the international investment law regime than those that exist in international human rights law.

Going forward, the tensions that have arisen in these cases may be more effectively addressed by tribunals willing to engage in interpretive dialogue with international human rights standards pertaining to the protestors' rights. With the rise in claims of this nature before ICSID, and the recent codification of the right to freedom of assembly by the Human Rights Committee, it is now an opportune moment for tribunals to disperse the tensions between these complementary, yet occasionally conflicting, regimes. ■

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ENDNOTES

1. Miha Hribernik and Tim Campbell, "Emerging Markets Face Acute Instability as Pandemic Fuels Unrest," *Verisk Maplecroft*, July 16, 2020, 1: [https:// www.maplecroft.com/insights/analysis/emerging-markets-face-](https://www.maplecroft.com/insights/analysis/emerging-markets-face-)

unparalleled-civil-unrest-as-economic-impacts-of-pandemic-unfold--study/.

2. Ibid., 1
3. Ibid., 1.
4. *Gran Colombia Gold Corporation v Guatemala* ICSID Case No. ARB/18/23.
5. *Id.*, Notice of Arbitration, May 25, 2018.
6. Javier Echeverri, “Canadian Miner Makes Good On Earlier Threat to Launch ICSID Arbitration Against Peru,” *IA Reporter*, Oct 29, 2020.
7. Jarrod Hepburn and Lisa Bohmer, “Recent Riots in Catalonia Lead to Speculations as to Possible Claims by Foreign-owned Retail Businesses,” *IA Reporter*, Oct 22, 2019.
8. “Vodafone, MediaMarkt and Foot Locker Ask the Government for Protection From Looting in Catalonia,” *ECD News*, October 22, 2019, <https://www.elconfidencialdigital.com/articulo/dinero/vodafone-mediemarkt-foot-locker-piden-proteccion-gobierno-saqueos-cataluna/20191021193353132830.html>
9. Christoph Scheuer, “Full Protection and Security,” *Journal of International Dispute Settlement*, (2010): 353.
10. UN Human Rights Committee, General Comment No. 37 (CCPR/C/GC/37), July 23, 2020.
11. Elizabeth Andersen and Jaya Khetarpal, “As Protests Surge Globally, the UN Human Rights Committee Provides Timely Guidance,” *ASIL Insights* 24, no. 9, November 16, 2020.
12. UN Human Rights Committee (2020), 8.
13. Eric de Brabandere, *Investment Treaty Arbitration As Public International Law: Procedural Aspects and Implications* (Cambridge University Press, 2014),

14. Bruno Simma, "Foreign Investment Arbitration'," *International and Comparative Law Quarterly* 60 (2017): 576.
15. Priya Pillai, "General Comment No. 37: Translating the "Right to Protest" in Turbulent Times," *Opinio Juris*, August 4, 2020, <http://opiniojuris.org/2020/08/04/general-comment-no-37-translating-the-right-to-protestin-turbulent-times/>.
16. "HR Committee: ARTICLE 19 welcomes General Comment no. 37 on the right of peaceful assembly," *Article 19*, July 31, 2020, <https://www.article19.org/resources/hr-committee-article-19-welcomes-general-commentno-37-on-the-right-of-peaceful-assembly/>.
17. UN Human Rights Committee (2020), 6.
18. Article 19, "HR Committee," 588.
19. Article 19, 588.
20. *Case Concerning Elettronica Sicula S.P.A (ELSI) (United States v. Italy)*, Judgment of 29 July 1989, 15.
21. *ELSI*, 108.
22. *Noble Ventures, Inc. v. Romania*, ICSID Award, Case No. ARB/01/11.
23. *Noble Ventures*, 16.
24. *Ibid.*, 105.
25. *Abengoa S.A. y COFIDES S.A. v. United Mexican States*, ICSID Award, Case No. ARB(AF)/09/2.
26. *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Award, Case No. ARB (AF)/00/2.
27. *Tecmed, S.A. v. The United Mexican States*, 72.
28. *Ibid.*, 47.

29. *Louis Dreyfus Armateurs SAS v. Republic of India*, Award, PCA Case No. 2014-26.
30. *Louis Dreyfus v. India*, 26.
31. *Ibid.*, 156.
32. *Ibid.*, 35.
33. *Copper Mesa Mining Corporation v. Republic of Ecuador*, Award, PCA No. 2012-2.
34. *Copper Mesa v. Ecuador*, 26.
35. *Ibid.*, 27.
36. *South American Silver Limited v. Bolivia*, PCA Case No. 2013-15.
37. *SAS v. Bolivia*, 186.
38. *Ibid.*
39. *Id.*, Dissenting Opinion of Prof. Francisco Orrego Vicuña, 3.
40. *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Award, Case No. ARB/14/21.
41. *Bear Creek Mining v. Peru*, 32.
42. United Nations, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
43. United Nations, “Guidance on Less-Lethal Weapons in Law Enforcement,” Office of the United Nations High Commissioner for Human Rights (OHCHR), 2020.
44. UN Human Rights Committee (2020), 13.
45. *Ibid.*, 3.

46. Ibid.
47. Ibid., 7.
48. *Louis Dreyfus v. India*, 156.
49. Ibid.
50. UN Basic Principles (1990), Principles 9 and 14.
51. *Copper Mesa v. Ecuador*, 26.
52. Ibid.
53. “When Arbitrators Award Mining Corporations’ Human Rights Abuses: Copper Mesa v Ecuador,” *Corporate Europe Observatory*, June 2019, 4, <https://corporateeurope.org/sites/default/files/2019-06/Copper%20Mesa%20vs%20Ecuador.pdf>.
54. John Ruggie, “Stabilization Clauses and Human Rights, a research project conducted for IFC and the United Nations Special Representative of the Secretary-General on Business and Human Rights,” *International Finance Corporation*, May 27, 2009, 8.
55. William Burke-White, “Inter-Relationships between the Investment Law and Other International Legal Regimes,” *E15 Task Force on Investment Policy*, October 2015, 5.
56. Burke-White, “Inter-relationships,” 5.
57. Ibid.

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Article

How Beijing Uses Diversionary Nationalism to Manage Social Movements



By Zhenyu Zhang

Social movements are not widely accepted in authoritarian states like China. Following social unrest in the 1980s, the Chinese government in Beijing spent billions of dollars “buying stability” to tighten its social control.¹ After further unrest in the 1990s, Beijing initiated a patriotic education program aimed at cultivating a generation less influenced by Western ideas and less prone to expressing dissenting opinions of Beijing. A generation of “Little Pink” (小粉红), or “angry young nationalists,” emerged on the internet over the last ten to fifteen years, though whether young people in China are truly becoming more nationalist is debatable.²

At the same time, however, turmoil is rising in Hong Kong, a special administrative region (SAR) of China. Anti-mainland China and anti-Chinese sentiments became increasingly explicit in the 2010s, culminating in two largescale protests: the Umbrella Movement in 2014 and the Anti-Extradition Law Movement in 2019. The state-led, top-down nationalism from Beijing is ineffective in stimulating patriotism toward mainland China among Hong

Kong citizens, especially younger generations. Instead, a peripheral nationalism, wherein Hongkongers are growing increasingly patriotic toward Hong Kong, is growing, with this sentiment materializing in social movements.

Beijing reported on these two social movements very differently. To understand the rationale behind Beijing's different reactions toward these movements, I use a "diversionary nationalism" framework, wherein the government uses nationalism as a tool to divert the public's attention away from crises, such as economic inequality.³ In 2014, Beijing aimed to censor information about the protests and downplay their importance. In 2019, however, the government seemed to react more aggressively, as demonstrated by its willingness to highlight the protests on social media. After briefly outlining Beijing's policy toward Hong Kong, then discussing the two social movements in Hong Kong, I will show how Beijing through its differing reactions applied diversionary nationalism, shifting from silently restricting information, to openly diverting support from the protests and promoting nationalism and patriotism in place of open defiance.

The 2014 and 2019 Social Movements in Hong Kong

After the handover of sovereignty from the United Kingdom to China in 1997, Beijing implemented a nonintervention policy. Beijing governs the Hong Kong Special Administrative Region (HKSAR) through a "one country, two systems" design, which defines how China's socialist system will not be implemented in Hong Kong. This governance system maintains that the HKSAR will retain its way of life and capitalist system for fifty years, meaning that its status would exist until at least 2047. This high degree of autonomy does not include defense and most foreign affairs issues but instead applies to sectors such as finance, trade, and tourism.⁴

After July 1, 2003, however, Beijing's policy changed dramatically into the "New Hong Kong Policy" (新对港政策), mainly due to a large demonstration held in Hong Kong on July 1, 2003 and the failure of the pro-Beijing camp in the later local election.⁵ Approximately 500,000 Hong Kong citizens participated in the 2003 protest, the main objective of which was to oppose Basic Law Article 23, which states that Hongkongers may be punished if they are accused of endangering national security.⁶ Beijing suspended the

introduction of Article 23 after the protest, but directly passed the provision in May 2020.⁷

A short honeymoon between Hong Kong and mainland China lasted from after the protest in 2003 until 2008 when Beijing held the Olympics. Afterwards, however, unpleasant attitudes toward mainland China surged again and led to the large Occupy Central Movement in 2014. This movement's core issue was universal suffrage for the 2017 election of the Chief Executive of Hong Kong. The Standing Committee of the National Congress (NPCSC) announced its decision on how to implement electoral reform in Hong Kong on August 31, 2014 and only provided semi-universal suffrage.⁸ This move defied previous statements from 2007, when the NPCSC had announced that Hong Kong could have universal suffrage in the election. In the 2014 announcement, Beijing said that only two or three candidates with majority support from a special election committee—which was seen as being stacked with pro-Beijing loyalists—would be eligible for election, although every eligible Hong Kong citizen could vote freely for these two or three candidates. The dissatisfaction with these nomination procedures led to the Occupy Central movement. Its slogan, “I want real universal suffrage,” rang from September 26 to December 15, 2014, when police cleared all the protesters at Causeway Bay.⁹

In 2019, the Hong Kong public's opposition also focused on the HKSAR government and its leader, Carrie Lam.¹⁰ Following a dispute over the extradition of a murderer, the HKSAR government proposed an amendment to the Fugitive Offenders Ordinance. Supervised by the Chief Executive, it would create a mechanism for a case-by-case transfer of fugitives. The design proposed by the Hong Kong government, however, also included mainland China and Macau, which provoked concern in Hong Kong that the “one country, two systems” principle would be eroded.¹¹ The unresolved dissatisfaction with the government and the longstanding conflicts between mainland China and Hong Kong further contributed to this enduring social movement. Protesters asked for “five demands, not one less” to be met during the movement. In addition to withdrawal of the extradition law, they demanded universal suffrage, which was the main objective of the 2014 Umbrella Movement.¹² The other three demands were to retract the classification of protests as “riots,” establish an independent commission to investigate the police, and release arrested protestors.¹³ In 2020, especially during the COVID-19 pandemic, Hong Kong's society was still in an unstable situation. The

National Security Law and the subsequent international conflicts between China and other Western countries over the issue cast a shadow on the future of Hong Kong–mainland China relations. Under the National Security Law, it is unlikely that Hong Kong will still be able to benefit from its relatively free environment for speech and expression, not to mention protests or social movements.

Beijing’s Different Reactions: Friction and Framing

Beijing used different tactics to manage these two political movements. In 2014, its core task was preventing further discussion of the issue. Professor Margaret Roberts at the University of California San Diego suggested calling this the “friction” strategy, which prevents the public from obtaining relevant information too easily.¹⁴ This can be contrasted with the “framing” tactic that Beijing used in 2019, which encouraged the public to attribute the causes of the protests to other factors.¹⁵ At the early stages of the 2014 movement, Beijing blocked any news related to the protests and allowed publication of only a few government announcements about the Occupy Central Movement. Moreover, the 2014 movement is what led Beijing to block Instagram, amidst sharing of photos and videos including police firing tear gas at demonstrators.

On the Chinese social media platform Sina Weibo—considered China’s Twitter—on the first day of the Occupy Central Movement, 152 posts were deleted for every 10,000 messages, which was five times the amount of deleted posts from the previous week, suggesting intentional censorship.¹⁶ The Chinese nationalist official newspaper, *The Global Times*, published “a commentary which suggested China’s paramilitary People’s Armed Police was capable of restoring order in Hong Kong;” interestingly, however, the commentary “disappeared from its website on Monday.”¹⁷ Clearly, leaders in Beijing were unwilling to acknowledge the severity of the demonstrations. Accordingly, relevant news could only be published afterward, and as a result, the issue in 2014 did not register many strong opinions on Weibo or WeChat, another popular Chinese social media platform.

In 2019, although Beijing again remained silent after initial protests broke out, it eventually showed its strong opposition to the protest after the HKSAR government announced that it would suspend the extradition bill in June. News related to this issue was frequently repeated in the Chinese media. In fact, in my experience in mainland China, I observed social media posts focused on Hong Kong with claims that demonstrations were violent, that protesters were trying to separate Hong Kong from the country, and that mainlanders were frequently

being attacked. These news reports aroused many anti-Hong Kong sentiments among internet users in China.

*Social media in
China
overemphasized
foreign intervention.*

Moreover, social media in China overemphasized foreign intervention.¹⁸ This approach contained two core ideas. First, the protesters were financed and trained by Western organizers. Second, the United States had no right to comment on the Hong Kong issue, as this was entirely China's domestic issue. The Hong Kong Human Rights and Democracy Act was not acceptable, and the Chinese people were angry about this. It is still unclear whether agencies such as the U.S. Central Intelligence Agency were involved and whether the contradictory ideas of the United States and China regarding the priority of human rights and national sovereignty led to the conflicts.

Methodology

My research focuses on a different question: what benefits does Beijing gain from repeatedly emphasizing “foreign intervention” rather than focusing on other important issues, such as the failure of its Hong Kong policies in the last few years? For the first half of my research, I employed a widely used unsupervised topic modeling tool, the simple Latent Dirichlet Allocation (LDA) model, in a machine learning system to categorize the editorial topics from the government-run publication, People's Daily. For the second half of my research, I conducted a small-scale survey of 160 citizens of mainland

China (located both in China and in the United States) to explore if a “rally around the flag” reaction emerged in the country as a result. Due to the COVID-19 restrictions, I used WeChat groups—the Chinese counterpart of WhatsApp— to disseminate the survey questionnaires (see Appendix for sample survey questions). The participants were sourced from two WeChat groups that actively discuss Chinese political news. One was called “Discussion about news” and the other was called “Cornell Chinese students help each other during the pandemic.” The majority of respondents (86.25 percent) were below the age of 30. For those willing to discuss the results of the survey further, several in-person interviews were conducted at Cornell University, drawing from the WeChat group for Chinese international students. Given the sensitive nature of the subject, these interviews were conducted on an anonymous basis.

Nationalist Sentiments in People’s Daily Editorials

People’s Daily showed an increase in emphasizing “foreign intervention” within narratives of the 2019 protests as compared to the 2014 protests. Of editorials in People’s Daily, which reflect the ideas of top leaders in Beijing, only five directly discuss the issue in 2014, while thirty-four did so in 2019. Using a dataset of all editorials published in People’s Daily mentioning “Hong Kong,” only one topic related to the rule of law in Hong Kong in 2014 emerged (see Figure 1),¹⁹ but three topics (foreign intervention, violence, and Sino-U.S. relations) were identified in 2019 (see Figure 2).²⁰

Topic	Keywords
Universal Suffrage and Rule of Law in HKSAR (99.8% of tokens)	香港(Hong Kong) 法治(Rule of Law) 民主 (Democracy) 发展 (Development) 维护(protect; uphold) 社会(Society) 基本法(Basic Law) 普选(Universal suffrage) 依法(According to the law) 特区政府 (SAR government) 行政长官(Chief Executive) 决定(Decision) 警方 (Police) 稳定(Stability) 全国人大常委会(NPC standing committee) 法律(Law) 民众(Mass) 支持(Support) 违法(illegal) 规定(Regulation)

Figure 1: Identified topics in editorials mentioning “Hong Kong” published in the 2014 issue of People’s Daily.

Topics	Keywords
Foreign Intervention (58.8% of tokens)	香港(Hong Kong) 中国(China) 美国(The U.S.) 人权(Human rights) 暴力(Violence) 民主(Democracy) 美方(The U.S.) 干涉(Intervention) 政客(Politicians) 国际(International) 发展(Development) 内政(Domestic affairs) 破坏(Destroy) 法案(bill) 人民(People) 社会(Society) 严重(Severity) 势力(Power) 暴徒(Riots) 企图(attempt)
Violence, Law, and Order (36.5% of tokens)	香港(Hong Kong) 暴力(Violence) 社会(Society) 一国两制(1C2S) 法治(Rule of Law) 支持(Support) 发展(Development) 特区政府(SAR government) 稳定(Stability) 维护(Maintain) 中央(Central Government) 挑战(Challenge) 坚决(Resolutely) 繁荣 (Prosperity) 经济(Economy) 行政长官(Chief Executive) 国家(Nation) 底线(Baseline) 中央政府(Central Government) 严重(Severity)
Sino-U.S. Relations (3.3% of tokens)	中国(China) 美方(The U.S.) 世界(World) 彭斯(Mike Pence) 合作(Cooperation) 中美关系(Sino-U.S. relations) 美国(The U.S.) 香港(Hong Kong) 南海(South China Sea) 发展(Development) 稳定(Stability) 国家(State) 利益(Interest) 一带(Belt) 中美(Sino-U.S.) 一路(Road) 两国(Two countries) 国际(International) 繁荣(Prosperity) 事实(Fact)

Figure 2: Identified topics in editorials mentioning “Hong Kong” in the 2019 issue of People’s Daily.

The topics from 2019 reflect the nationalist sentiments in Beijing’s censored news report. The emphasis on violence, especially violence toward mainlanders and Mandarin speakers, sparked anger in mainland China. Furthermore, the emphasis on foreign intervention linked the violence toward mainland China to the influence and guidance from countries like the United States and United Kingdom. This logic risks xenophobia toward Westerners, and, in response, arouses nationalist sentiments in mainland China regarding the social movements in Hong Kong.

Diversionsary Nationalism in China

Providing a comprehensive explanation for these different reactions is difficult given the many different hypotheses: the changing domestic situation in China; different government officials dealing with the issues; the development of social media; more hostile Sino-U.S. relations; or whether the unrest in Hong Kong is beyond acceptance for Beijing. Here, however, I focus on the benefits gained by Beijing through these different reactions. I believe that, in 2019,

Beijing sought to redirect attention to hostile Western influence to distract public attention away from other issues, such as an economic downturn. In doing so, Beijing could gain greater support through the “rally around the flag” effect and consequently could take more aggressive foreign policy stances. This strategy is called diversionary nationalism.²¹

This idea of diversionary nationalism was borrowed and refined from the wellknown “diversionary war theory,” which is one of the two main perspectives used for understanding Chinese foreign policy suggested by Professor Andrew Nathan.²² Diversionary war theory suggests that authoritarian leaders use foreign military conflicts to distract public attention away from domestic issues.²³ The traditional argument for going to war is not cost-efficient, especially after the emergence of nuclear weapons. Therefore, statesmen may find that arousing nationalism is an uncostly method that could achieve similar results. In this way, the government can benefit from citizens paying less attention to other sensitive domestic issues and can even further arouse support for the government and its leader.²⁴

It is reasonable to speculate that Beijing employed diversionary behavior in 2019 to distract from possible instability in three important pillars of Beijing’s legitimacy: a growing economy, social stability, and nationalism. Partially due to the trade conflicts with the United States, China’s economic growth dropped to the lowest level since 1992, and its Gross Domestic Product’s growth in 2019 was only 6.11 percent, compared with 7.43 percent in 2014.²⁵ Meanwhile, Beijing also initiated a “crackdown on gang crime” movement in China that started in early 2018. This was a part of the Chinese Communist Party’s (CCP) effort to strengthen its legitimacy.²⁶ However, this campaign against gang crime also put pressure on the local government to maintain social stability. Furthermore, 2019 was the thirtieth anniversary of the Tiananmen Square incident, which is a highly sensitive issue in mainland China. It would be dangerous for Beijing if this infamous incident resonated with the social movements in Hong Kong or stimulated dissatisfaction or protests in mainland China. Therefore, to avoid potential unrest due to other issues and divert public attention away from them, stimulating nationalism is a wise and easy way for Beijing to manipulate public opinion.

If the diversionary nationalism tactic really works, then we may expect a “rally around the flag” sentiment to emerge. Based on social identity theory,

international conflicts lead to a strong feeling of in-group and out-group contrasts, where people are more in favor of in-group members.²⁷ This support of in-group members leads to support for the political leader of this group. For instance, Russian President Vladimir Putin's support rose dramatically after Russia's seizure of Crimea, U.S. President Franklin Roosevelt gained a 12 percent increase in approval after the attack on Pearl Harbor, and U.S. President George W. Bush gained a 39 percent increase after the 9/11 attacks.²⁸ Moreover, conflicts are great opportunities for leaders to prove their leadership power and competence. When leaders display unjustified behavior or fail, it is common for those leaders to revitalize public support through promoting international conflicts.²⁹

The survey results from my 160-person sample indicate that there is a strong nationalist sentiment among young Chinese citizens and that the overemphasis on foreign intervention and violence, which presumably leads to nationalist emotions, does arouse greater support for Beijing and its leaders.

Support for Beijing, which reflects the "rally around the flag effect," also rose after the protests. In total, 87 of the 156 respondents (55.77 percent) claimed rising confidence in the CCP.³⁰ Only 9.62 percent of respondents had less confidence. Notably, 34.62 percent of the respondents felt no different before and after this movement. In terms of support for leaders, four of the respondents did not answer this question due to the potential risks: some of them said, "I have to say yes, right?" This may have resulted in biased answers for these two questions. In total 47.37 percent of the respondents agreed that they have more confidence in their leaders, whereas 13.81 percent disagreed. This is slightly less supportive than the support for the party.

Nationalism and other domestic factors, such as power struggles and interest groups, are regarded as influential in Chinese foreign policy.³¹ As the history of Chinese nationalism suggests, there is a growing, proactive, bottom-up nationalism that requires Beijing to act more aggressively in developing foreign policy. China, self-portrayed as a revitalized superpower after the national humiliation of the last few centuries, is expected to take a strong position internationally. Therefore, some researchers might suggest that Beijing's assertiveness in foreign affairs is driven by domestic nationalist sentiments. That said, the current research suggests that public opinion, in fact, is not taking a dominant position in Beijing's foreign policy. As Jessica Chen

Weiss suggests, “the government has shown its ability and willingness to bear or minimize public opinion costs.”³² In sum, as Andrew Nathan justly summarized, “Nationalism is a tool, rather than a driver, of Chinese foreign policy.”³³ Although we need more research to decide whether diversionary nationalism in China influences Beijing’s foreign policy, this research still suggests that nationalism has been considered with varying importance in Beijing’s domestic policy considerations. ■

ABOUT THE AUTHOR

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ENDNOTES

1. Ching Kwan Lee and Yonghong Zhang, “The Power of Instability: Unraveling the Microfoundations of Bargained Authoritarianism in China,” *American Journal of Sociology* 118, no. 6, 2013, pp. 1475–1508, <https://doi.org/10.1086/670802>.
2. Alastair Iain Johnston, “Is Chinese Nationalism Rising? Evidence from Beijing,” *International Security* 41, no. 3, 2017, pp. 7–43.
3. Frederick Solt, “Diversionary Nationalism: Economic Inequality and the Formation of National Pride,” *The Journal of Politics* 73, no. 3, 2011, pp. 821–30.
4. Brian C. H. Fong, “One Country, Two Nationalisms: Center-Periphery Relations Between Mainland China and Hong Kong, 1997–2016,” *Modern China* 43, no. 5, 2017, 523–556.
5. Jie Cheng, “The Story of a New Policy,” *Hong Kong Basic Law*, 2009, <http://www.hkbasiclaw.com/Hong%20Kong%20Journal/Cheng%20Jie%20article.htm>.

6. Chris Buckley, “China Readies Strict Security Law for Hong Kong,” *The New York Times*, June 19, 2020, <https://www.nytimes.com/2020/06/19/world/asia/hong-kong-china-national-security.html>.
7. “Hong Kong Security Law: What Is It and Is It Worrying?,” *BBC News*, June 30, 2020, <https://www.bbc.com/news/world-asia-china-52765838>
8. Stevens Andrew, “Beijing Says No to Open Elections in Hong Kong,” *CNN*, September 4, 2014, <https://www.cnn.com/2014/08/31/world/asia/hongkong-elections/index.html>; Jermain T. M. Lam, “Political Decay in Hong Kong After the Occupy Central Movement,” *Asian Affairs: An American Review* 42, no. 2, 2015, pp. 99–121.
9. Paul S. N. Lee, Clement Y. K. So, and Louis Leung, “Social Media and Umbrella Movement: Insurgent Public Sphere in Formation,” *Chinese Journal of Communication* 8, no. 4, 2015, pp. 356–375.
10. Tiffany May and Andrew Jacobs, “Carrie Lam Comes Face to Face With Angry Hong Kong Residents at Town Hall,” *The New York Times*, September 26, 2019, <https://www.nytimes.com/2019/09/26/world/asia/carrie-lamhong-kong-protests.html>.
11. Agnes S. Ku, “New Forms of Youth Activism—Hong Kong’s Anti-Extradition Bill Movement in the Local-National-Global Nexus,” *Space and Polity* 24, no. 1, 2020, pp. 111–117.
12. Tsui-kai Wong, “Hong Kong Protests: What Are the ‘Five Demands’? What Do Protesters Want?” *South China Morning Post*, August 20, 2019, <https://www.scmp.com/yp/discover/news/hong-kong/article/3065950/hong-kong-protests-what-are-five-demands-what-do>.
13. Wong, “Hong Kong Protests: What Are the ‘Five Demands’? What Do Protesters Want?”
14. Margaret E. Roberts, *Censored: Distraction and Diversion inside China’s Great Firewall* (Princeton: Princeton University Press, 2018).
15. Ethan C. Busby, Joshua R. Gubler, and Kirk A. Hawkins, “Framing and

Blame Attribution in Populist Rhetoric,” *The Journal of Politics* 81, no. 2, 2019, pp. 616–630.

16. Margaret E. Roberts, *Censored: Distraction and Diversion inside China’s Great Firewall* (Princeton: Princeton University Press, 2018).

17. “Instagram Blocked in China Amid #OccupyCentral Movement,” *NBC News*, September 28, 2014, <https://www.nbcnews.com/storyline/hong-kong-protests/instagram-blocked-china-amid-occupycentral-movement-n213556>.

18. Boehler Patrick, “Record Censorship of China’s Social Media as References to Hong Kong Protests Blocked,” *South China Morning Post*, September 29, 2014, <https://www.scmp.com/news/china-insider/article/1603869/record-censorship-chinas-social-media-references-hong-kong>.

19. The tokens and the percentages reported in the tables measure the proportion of words that were relevant to this topic among the whole dataset that contains all the relevant reporting.

20. LDA topic modeling and its derivatives are widely used in the social sciences. Please refer to Derek Greene and James P. Cross, “Exploring the Political Agenda of the European Parliament Using a Dynamic Topic Modeling Approach,” *Political Analysis* 25, no. 1, 2017, pp. 77–94; Olessia Koltsova and Sergei Koltcov, “Mapping the Public Agenda with Topic Modeling: The Case of the Russian Livejournal,” *Policy & Internet* 5, no. 2, 2013, pp. 207–227; Debabrata Sarddar et al., “Topic Modeling as a Tool to Gauge Political Sentiments from Twitter Feeds,” *International Journal of Natural Computing Research (IJNCR)* 9, no. 2, 2020, pp. 14–35.

21. Frederick Solt, “Diversionary Nationalism: Economic Inequality and the Formation of National Pride,” *The Journal of Politics* 73, no. 3, 2011, pp. 821–30.

22. “GDP Growth (Annual %) - China | Data,” The World Bank, accessed January 26, 2021, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=CN>.

23. Rui Guo, “Taking on the Mob: 79,000 Snared in Crackdown on Organised Crime,” *South China Morning Post*, April 14, 2019, <https://www.scmp.com/news/china/politics/article/3006016/chinas-war-organised-crime-corrupt-officials-sees-79000-people>.
24. Lewis A. Coser, *The Functions of Social Conflict* (New York: Free Press, 1964).
25. Tobias Theiler, “The Microfoundations of Diversionary Conflict,” *Security Studies* 27, no. 2, 2018, pp. 318–43, <https://doi.org/10.1080/09636412.2017.1386941>.
26. Terrence L. Chapman and Dan Reiter, “The United Nations Security Council and the Rally ’Round the Flag Effect,” *Journal of Conflict Resolution* 48, no. 6, December 2004, pp. 886–909, <https://doi.org/10.1177/0022002704269353>.
27. “The U.S. Trade War Slowed China’s 2019 Economic Growth to Its Weakest Pace in Nearly 30 Years,” *Fortune*, January 17, 2020, <https://fortune.com/2020/01/17/china-gdp-growth-2019-weakest-30-years-trade-war/>.
28. Diana Richards et al., “Good Times, Bad Times, and the Diversionary Use of Force: A Tale of Some Not-So-Free Agents,” *The Journal of Conflict Resolution* 37, no. 3, 1993, pp. 504–35.
29. Kenneth Newton, “Trust, Social Capital, Civil Society, and Democracy,” *International Political Science Review / Revue Internationale de Science Politique* 22, no. 2, 2001, p. 201.
30. Four respondents refused to answer several questions since they believe it might be risky.
31. Cameron Thies, “Role Theory and Foreign Policy,” *Oxford Research Encyclopedia of International Studies*, 2010.
32. Jessica Chen Weiss, *Powerful Patriots: Nationalist Protest in China’s Foreign Relations* (New York: Oxford University Press, 2014).

33. Andrew J. Nathan, “Domestic Factors in the Making of Chinese Foreign Policy,” *China Report* 52, no. 3, 2016, pp. 179–91.

APPENDIX

Survey Questions

A: 在发生香港的事件之后，我对中国共产党更加充满信心；在發生香港的事件之後，我對中國共產黨更加充滿信心； After the movement in Hong Kong, I have more confidence in the Chinese Communist Party.

#	Answer	%	Count
1	十分同意; Extremely Agree	26.92 %	42
2	同意; Agree	28.85 %	45
3	中立; Neutral	34.62 %	54
4	不同意; Disagree	4.49%	7
5	十分不同意; Extremely Disagree	5.13%	8
	Total	100%	156

B. 在发生香港的事件之后，我对中国共产党的领导人更加充满信心；在發生香港的事件之後，我對中國共產黨的領導人更加充滿信心； After the movement in Hong Kong, I have more confidence in the leader of Chinese Communist Party.

#	Answer	%	Count
1	十分同意; Extremely Agree	24.34 %	37
2	同意; Agree	23.03 %	35
3	中立; Neutral	38.82 %	59
4	不同意; Disagree	5.92%	9
5	十分不同意; Extremely Disagree	7.89%	12
	Total	100%	152

Extinction Rebellion protestors in New York City's financial district. Photo by Felton Davis.

Article

Banking up The Wrong Tree: Have the Climate Protests Against Financial Institutions Missed their Mark?

By Noah Yosif

Climate activism has historically focused on private industry. Since the early 1990s, most climate-driven campaigns have focused on individual companies, encouraging them to adopt corrective measures



and environmentally-conscious business practices. Recently, this focus has changed. Activists have now found alternative targets in the financial services sector, particularly in global banks with investments in the fossil fuel industry.¹

Environmental leaders now demand these financial institutions require environmentally-conscious business practices from their clients. To date, however, the financial services sector has been largely unresponsive. Recent studies show that many of the world's largest banks have increased their support for companies across the fossil fuel lifecycle, devoted few resources toward sustainable activities, and retained poor internal controls to moderate their relationships with the fossil fuel industry.^{2,3,4}

The divergence between activists' demands and financiers' decisions begs two questions:

1. Are financial institutions capable of exercising discretion against industries that damage the environment?

2. If not, where should climate activists focus their attention instead?

This article answers these questions by evaluating the fundamental assumption of climate activism toward the financial services sector: that banks can adequately circumscribe the behaviors of the fossil fuel industry. If they can, climate activists should continue to focus on pushing for financial institutions as enablers of the fossil fuel industry. If they cannot change corporate behavior, then the assumption is proved faulty, and climate activists should change the focus of their efforts.

The analysis below finds this assumption to be faulty in two steps. First, using the principle of social neutrality, a fundamental principle in banking, this article explains why climate activism has not yet led to significant divestment in fossil fuels from banks. Then, with data from several watchdog organizations, it illustrates how financial regulatory authorities, rather than private banks themselves, may prove more influential over private sector behavior. The data shows that in countries with stronger climate policies, from controls on emissions to incentives for renewable energies, banks generally maintain a smaller portfolio in fossil fuels and other environmentally-damaging industries. Lastly, this analysis also suggests that central bankers, rather than private financiers, may be better worth the activists' attention.

Climate Protests & Bank Behavior

Transnational banks have become a new target for climate activists. Industry groups like BankTrack, Reclaim Finance, and BankFWD, have publicized the ties between fossil fuel producers and the financial services sector.⁵ The Sunrise Movement and the School Strike for Climate Change have organized demonstrations outside banks' offices to draw attention to their contentious investments.^{6,7} From both within and outside the industry, activists are drawing public and regulatory attention to banks' environmentally-damaging clients and practices.

The climate activists' demands broadly challenge the banking principle of social neutrality, a concept that allows banks to serve any legal business that generates investment returns. Historically, financial institutions have relied on this principle to justify controversial, but legal, investments, such as those in firearms manufacturers and private prisons.^{8,9,10} On occasion, however, banks

depart from this principle, particularly in cases where one of the three conditions are met:

1. Unambiguous optics (e.g. banks refusing diamond dealers unable to verify their products are not “blood diamonds”¹¹);
2. Strict regulation (e.g. banks denying services to sanctioned individuals accused of human rights abuses¹²); or
3. Reputational risks that may affect their balance sheet.¹³

By drawing public and regulatory attention to questionable investments, climate activism appears to pressure banks on each of these three points. To date, however, this has not led to significant divestment from fossil fuels or other environmentally-damaging industries. If these three conditions have led banks to sever ties with other problematic clients before, why wouldn't they do the same for fossil fuels? The unfortunate reason is that none of the three conditions are met to a sufficient degree to change bank behavior.

First, fossil fuel companies are much more ingratiated than the firearms industry or private prisons. They retain significant political power, employ thousands, and provide a source of energy on which economies still depend. Though public opinion has begun to turn against the industry, it has not fallen so far as to threaten investment returns. For banks, the optics of their investments are not sufficiently unambiguous.

Second, differences in international climate policies have created a lenient regulatory environment. Financial institutions in less-regulated countries can more easily serve fossil fuel companies than those in countries with mandatory disclosure laws or financial penalties for environmental damages. With discrepancies between countries, regulations are not yet strict enough to elicit behavior changes from global banks.

Third, the number of global financial institutions makes universal behavior change difficult. There are over 240 multinational financial institutions with at least \$100 billion in total assets, plenty for the needs of any of the top twenty fossil fuel producers responsible for one-third of

The assumption that financial services can adequately *circumscribe the behavior of polluting industries is not sound.*

all global carbon emissions.^{14,15,16} Each of these large banks must consider their own unique reputational risks, financial exposures, and regulatory concerns. Where one may decide to divest from fossil fuels, another might be willing to take its place.

This means that climate activism toward financial institutions will not prove effective on its own. The assumption that financial services can adequately circumscribe the behavior of polluting industries is not sound. At present, financial institutions are not capable of exercising discretion against fossil fuel producers, because the fossil fuel industry has not yet met any of the conditions that would incentivize banks to disregard the principles of social neutrality and divest from the fossil fuels.

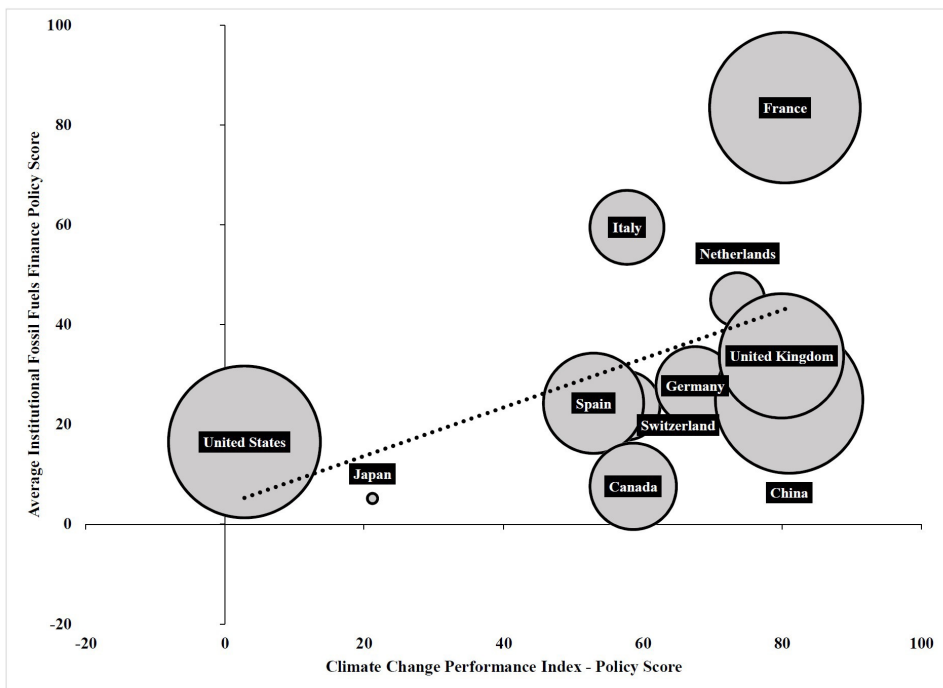
Climate Regulation & Bank Behavior

Climate policy, rather than private financial institutions, may prove a better target for climate activists. Climate policy, defined here as a given government's set of regulations against environmentally-damaging activities, could change banks' views of offending industries. By clarifying the optics of fossil fuel investments, promoting consistency between international regulations, and driving up the reputational risks, policymakers can create an environment where banks may no longer find cover under the principle of social neutrality.

Data from industry watchdogs suggests this process is already under way. In countries with strong climate policies, banks appear to have stronger internal controls governing their relationships with the fossil fuel industry, while those from countries with weak climate policies have poorer controls. Metrics from BankTrack and Germanwatch illustrate this association.^{17,18} BankTrack is a reputed financial services watchdog which publishes annual evaluations of banks' internal controls (based on public statements, disclosures, commitments, and other metrics) pertaining to their service of the fossil fuel industry.

Germanwatch is a nonprofit organization specializing in environmental policy research, best known for producing its annual Climate Change Performance Index which evaluates greenhouse gas emissions, renewable energy adaptation, energy consumption, and climate policy. For either metric, a higher score is considered more desirable. In countries with climate policies scoring above the benchmark of 70 in the Germanwatch climate policy scale, banks score an average of 46.5 in BankTrack’s institutional policy score. Banks from countries with climate policies scoring below 70 have a BankTrack average of just 23 (See Figure 1).

Figure 1: Average Institutional Fossil Fuels Finance Policy Scores to Countries’ Climate Policy Scores

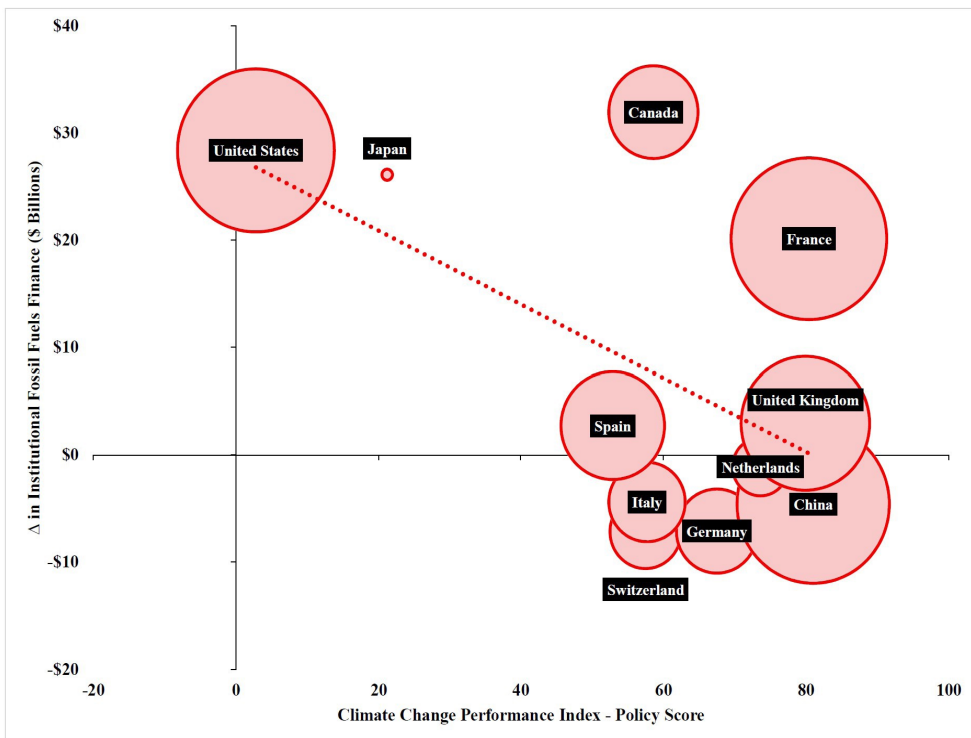


Source: Author’s analysis using data from BankTrack (2020), Germanwatch (2019), and S&P Global Market Intelligence (2021)¹⁹

Higher Germanwatch climate policy scores are also associated with declining investments in the fossil fuel industry. Additional data from the Rainforest Action Network (RAN) provides the total change in investment between 2016 and 2019 for major multilateral banks by country.²⁰ Countries that saw a decrease in their institutions’ fossil fuel holdings posted an average climate

policy score of 67.3, compared to 49.3 among countries that saw a net increase in their institutions' fossil fuel holdings. Financial institutions in the low-ranking countries, such as the United States and Japan, greatly increased their investments in fossil fuels over the period. This trend suggests that climate policies not only encourage banks to improve their internal controls toward fossil fuel companies, but also to divest from them.

Figure 2: Change in Institutional Fossil Fuels Financing to Countries' Climate Policy Scores

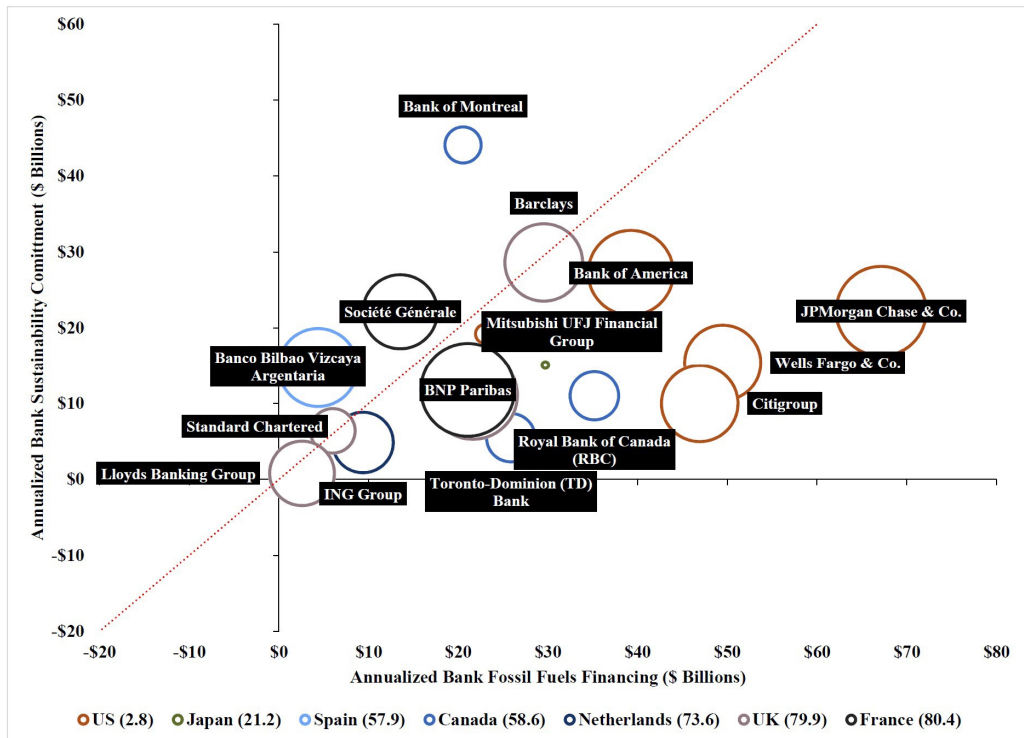


Source: Author's analysis using data from Rainforest Action Network (2020), Germanwatch (2019), and S&P Global Market Intelligence (2021)²¹

Additionally, strong climate policies appear to be associated with greater investment in sustainable activities, and less investment in fossil fuels. In light of increasing scrutiny over their fossil fuels investments, many banks have announced sustainability commitments.²² These commitments vary by country and their individual climate policies. Data from the World Resources Institute, which tracks banks' financing in both fossil fuels and green initiatives, implies

that banks from countries with strong climate policy scores generally have greater sustainability commitments and less investment in fossil fuels.²³ For banks from countries with weak climate policies, the opposite appears true (see Figure 2).

Figure 3: Ratio of Institutional Investments within Fossil Fuels to Sustainable Activities



Not all banks labeled. Source: Author’s analysis using data from World Resources Institute (2019), Germanwatch (2019), and S&P Global Market Intelligence (2021)²⁴

Comparisons of these data from watchdog groups suggest that bank behavior varies according to a country’s climate policy, and banks are not inherently inclined to change their behavior absent of such a policy. Despite pledging large sums of capital toward sustainable activities, most banks devoted a higher share of finances to fossil fuels. This is shown in Figure 3 by the banks’ positions below the red line indicating an equitable allocation of finances between both activities. The banks with the most egregious discrepancies are located in the United States, Canada, and Japan – countries with relatively weak climate

policies as per Figures 1 and 2. This analysis suggests that if these countries had stronger climate policies, these banks would likely have fewer investments in fossil fuels.

Given the small sample size of countries considered here, the possibility of omitted variables, and the descriptive nature of this analysis, this study cannot claim to have established the exact relationship between climate policy and bank behavior. Further testing is needed to establish statistical significance and infer causation. This comparison of watchdog data, however, suggests a valuable hypothesis for climate activists, especially as they expand their focus from private industry. Through sharper optics, greater regulation, and clearer reputational risks, stronger climate policies appear to change bank behavior where it would not otherwise have changed, pushing more banks to reevaluate their services to the fossil fuel industry and depart from the principle of social neutrality.

Central Banks: A More Receptive Ear?

If climate policy appears to be a more effective campaign target than individual companies, which policymakers should the climate activists target? On the specific issue of fossil fuel finance, central banks may prove their best focus. As the primary regulatory authority for all private financial institutions in a given country, central banks constitute a unique opportunity for activists to change the dynamics which enable fossil fuel financing.

Three features of central banks make them worth activists' attention. First, central bankers have an expertise on the banking system that many other policymakers lack. Second, they are a principal architect of national financial policies, often working in tandem with treasury departments and other government agencies. Third, they have a wide purview. The 240 largest financial institutions are accountable to just 15 central bank authorities (if the 11 central banks of the Eurozone mandate are considered together).²⁵ Central bankers may be the most powerful authority in getting financial institutions to reevaluate the social neutrality principle along the green lines.

Indeed, many central banks have already begun to include climate-related priorities in their oversight of private financial institutions (see Figure 4). Some measures, such as incorporating climate risks into stress tests and mandating disclosure of certain climate-related assets, have improved transparency within

the financial services sector. These measures enable regulators to examine bank-specific exposures to the fossil fuel industry.²⁶ Other actions, such as en-

As the primary regulatory authority for all private financial institutions in a given country, central banks constitute a unique opportunity for activists to change the dynamics...

acting subsidies for “green” investments in renewable energy sources and taxes on “brown” investments in non-renewable energy sources, have created meaningful incentives for banks to modify their behavior while maintaining a healthy profit. Some central banks have supplemented these bank-specific

measures with climate-conscious monetary policies toward the economy at-large, such as issuing green bonds and promoting investment within sustainable activities.²⁷ Altogether, central banks not only possess the regulatory authority necessary to change bank behavior, but they also act as the unique monetary policy authorities that could spur systemic, climate-conscious changes to the economy at-large.

Many of these policies are still in their infancy. They will take time to affect the global financial services sector. In the meantime, this is also an opportunity for activists. The recent uptick in global climate activism has accelerated the pace by which central banks include climate-related priorities within their regulatory and policy-making activities. Further activism may prove essential to keeping momentum behind these new central bank policies. Global networks of activists can pressure central banks to match the policies of their peer regulators in other countries, helping to avoid the regulatory discrepancies that banks and fossil fuel producers exploit. Reduced discrepancies would prompt the private banks to view fossil fuel investments as bearing significant reputational risks, eventually leading to divestment. These efforts would be important both to central banks just getting started with climate policies (such as the U.S. Federal Reserve) and those with established, if imperfect, policies (such as Eurozone central banks).

Figure 4: Climate-Related Measures Enacted by Central Banks Around the World

Region →	North America			Europe									Asia & Oceania				
Country & (Reserve Bank) → Measure ↓	Brazil (BCB)	Mexico (BdeM)	United States (Fed)	Eurozone (ECB)	France (BDF)	Germany (BBk)	Greece (TtE)	Ireland (CBI)	Poland (NBP)	Sweden (Riksbank)	United Kingdom (BOE)	China (PBC)	Hong Kong (HKMA)	India (RBI)	Japan (BOJ)	Singapore (MAS)	Australia (RBA)
Assessing climate risk as a financial risk in stress tests.	Green	Yellow	Red	Green	Green	Yellow	Yellow	Green	Green	Yellow	Green	Red	Green	Red	Green	Green	Yellow
Encouraging or mandating climate-related financial disclosures.	Red	Yellow	Red	Green	Green	Yellow	Red	Green	Red	Green	Green	Green	Green	Red	Green	Green	Green
Subsidising green finance and/or discouraging brown investments.	Green	Red	Red	Yellow	Red	Red	Red	Red	Red	Red	Red	Green	Red	Red	Red	Green	Red
Setting standards for green finance/lending that banks must apply.	Green	Red	Red	Green	Green	Green	Red	Red	Yellow	Red	Green	Green	Green	Green	Green	Red	Red
Applying climate considerations to monetary policy.	Red	Red	Yellow	Yellow	Red	Red	Red	Red	Red	Red	Yellow	Green	Red	Red	Red	Red	Red
Applying green principles to own (central bank) portfolio.	Red	Red	Red	Red	Green	Green	Green	Green	Red	Green	Red	Green	Green	Red	Red	Yellow	Red
Measures to manage own carbon footprint beyond investments.	Red	Red	Red	Green	Green	Green	Red	Green	Red	Red	Green	Red	Red	Red	Red	Red	Red
Where also a debt management office, issuing green bonds.	Red	Green	Red	Red	Green	Green	Red	Green	Green	Green	Red	Green	Red	Red	Red	Red	Red
Key	No Measures			Measures Under Consideration			Measures Enacted or Due to Take Effect			Measures Pertaining to Bank Regulation			Measures Pertaining to Monetary Policy				

Source: Author’s analysis using data from Official Monetary and Financial Institutions Forum, Mazars, Thompson Reuters (2020)²⁸

Conclusion

Financial institutions may have proven unresponsive to the demands of climate activists, but their behavior is not inexplicable. Multinational banks themselves are not inclined to divest from fossil fuels due to the principle of social neutrality. While they have divested from controversial clients in the past due to unambiguous optics, strict regulation, and significant reputational risks, none of these conditions are sufficiently met to trigger divestment from the fossil fuel industry. Climate activism may have shifted public opinion, but it has yet to shift boardroom opinion to the degree necessary.

Climate policy, on the other hand, appears more effective in generating behavioral change among the banks. Financial institutions in countries that maintain robust climate policies tend to have stronger internal controls compared to their peers in less-regulated countries. They also tend to devote more resources toward sustainable activities and have lower financial exposures to the fossil fuel industry. This suggests that if climate policy was more consistent between nations, there would be less room in regulations for banks to exploit, and therefore a greater chance of change in banking behavior.

This hypothesis provides activists with a suggested blueprint for future efforts. Climate activists should persuade central banks, the most influential policymakers in the financial sector, to hone the optics of fossil fuel investments, improve regulations for such investments, and make the reputational risk of such investments clear to banks. Many central banks have already begun to implement some of these demands into their regulatory and policymaking activities, and climate activists can help maintain this momentum. Central banks, rather than private banks individually, may very well prove the most effective means for climate activists to achieve their goals.

Climate activists have a long road ahead to realizing a cleaner economy. A better understanding of the target will help them chart their path toward saving the planet more quickly and accurately. ■

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ENDNOTES

1. Lennox Yearwood Jr., and Bill McKibben, “Want to Do Something About Climate Change? Follow the Money,” *The New York Times*, January 11, 2020, <https://www.nytimes.com/2020/01/11/opinion/climate-change-bank-investment.html>. See also Zack Colman, “Climate Groups Turn Up the Heat on Big Banks, Insurers,” *Politico*, January 13, 2020.

<https://www.politico.com/news/2020/01/13/climate-groups-protest-098251>.

2. Kalyeena Makortoff and Patrick Greenfield, “Study: Global Banks ‘Failing Miserably’ on Climate Crisis by Funneling Trillions into Fossil Fuels,” *The Guardian*, March 18, 2020, <https://www.theguardian.com/environment/2020/mar/18/global-banks-climate-crisis-finance-fossil-fuels>.
3. Valerie Volcovici, “World’s Largest Banks Lagging in Sustainable Finance: Report,” *Reuters*, October 3, 2019, <https://www.reuters.com/article/uk-climate-change-banks/worlds-largest-banks-lagging-in-sustainable-finance-report-idUKKBN1WI08O?edition-redirect=uk>.
4. “Banks Warned That Deficient Fossil Fuel Policies Are Accelerating Climate Crisis,” *BankTrack*, December 12, 2019, https://www.banktrack.org/article/banks_warned_that_deficient_fossil_fuel_policies_are_accelerating_climate_crisis.
5. Saijel Kishan, “Fighting Climate Change by Shutting Down the Money Pipeline,” *Bloomberg*, February 4, 2021, <https://www.bloomberg.com/news/articles/2021-02-04/climate-change-environmentalists-target-banks-to-cut-off-fossil-fuel-funding>.
6. Ayse Gursoz, “Arrests Made at Chase Bank as Protests Escalate Against Bank’s Funding Choices,” *Rainforest Action Network*, December 14, 2018, <https://www.ran.org/press-releases/arrests-made-at-chase-bank-as-protestsescalate-against-banks-funding-choices/>.
7. Alex Ruppenthal, “Protesters Disrupt Chase Shareholder Meeting Over Financing of Controversial Pipeline,” *WTTW News*, May 21, 2019, <https://news.wttw.com/2019/05/21/protesters-disrupt-chase-shareholder-meeting-over-financing-controversial-pipeline>.
8. This principle was recently outlined in a letter written by the Bank Policy Institute in response to proposed rule by the Office of the Comptroller of the Currency which would have required large financial institutions to provide “fair access” to clients from controversial industries, such as gun

manufacturers or fossil fuels. The letter explains there is no need for such a requirement because financial institutions are inherently motivated to serve clients of all industry backgrounds, contingent on the financial tradeoffs associated with serving them, which are always evaluated by the bank. See Greg Baer, “Fair Access to Financial Services” (RIN 1557-AFO5, Bank Policy Institute, 2021). <https://bpi.com/wp-content/uploads/2021/01/BPI-Fair-Access-to-Financial-Services-2021.01.04.pdf>.

9. Anthony Noto, “After Swearing off Gun-Manufacturers, Bank of America Backs Remington,” *New York Business Journal*, May 7, 2018, <https://www.bizjournals.com/triad/news/2018/05/07/bank-of-america-backs-remington.html>.
10. Holding Wall Street Accountable, “The Banks Still Financing Private Prisons,” *The Center for Popular Democracy*, May 3, 2019, <https://www.populardemocracy.org/blog/banks-still-financing-private-prisons>.
11. Financial Action Task Force and Egmont Group of Financial Intelligence Units, “Money Laundering and Terrorist Financing Through Trade in Diamonds,” Financial Action Task Force, October 2013, <http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf>.
12. Carlo Edoardo Altamura, “Global Banks and Latin American Dictators, 1974–1982,” *Business History Review* (2020): 1-32.
13. Hollie McKay, “US Banks and Financial Institutions Have Been Slowly Severing Ties With the Gun Industry,” *Fox News*, July 22, 2020, <https://www.foxnews.com/us/us-banks-financial-institutions-severing-ties-gun-industry>. See also Anna Hrushka, “Barclays Drops Private Prisons as More Banks Weigh Reputational Risks,” *Banking Dive, Industry Dive*, August 1, 2019, <https://www.bankingdive.com/news/barclays-drops-private-prisons-asmore-banks-weigh-reputational-risks/560037/>.
14. *Total Assets by Institution and Country*, V1, January 1, 2021, distributed by S&P Global Market Intelligence, accessed on January 15, 2021.
15. Matthew Taylor and Jonathan Watts, “Revealed: The 20 Firms Behind a Third of All Carbon Emissions,” *The Guardian*, October 9, 2019, <https://>

www.theguardian.com/environment/2019/oct/09/revealed-20-firms-thirdcarbon-emissions.

16. Ibid.
17. “Banks and Fossil Fuel Financing,” Banks, Climate and Energy, *BankTrack*, October 30, 2020, https://www.banktrack.org/campaign/banks_and_fossil_fuel_financing#_.
18. Jan Burck et al., “The Climate Change Performance Index 2020: Results,” Germanwatch, December 19, 2019, <https://germanwatch.org/en/17281>.
19. “Banks and Fossil Fuel Financing.”; Burck et al.; *Total Assets by Institution and Country*.
20. Alison Kirsch et al., “Banking on Climate Change: Fossil Fuel Financing Report 2020,” Rainforest Action Network, March 18, 2020, https://www.ran.org/wp-content/uploads/2020/03/Banking_on_Climate_Change__2020_vF.pdf.
21. Ibid.; Burck et al.; *Total Assets by Institution and Country*.
22. Saijel Kishan, “Banks Tout Green Credentials Yet Cling to Fossil-Fuel Clients,” *Bloomberg*. October 3, 2019, <https://www.bloomberg.com/news/articles/2019-10-03/banks-tout-green-credentials-yet-cling-to-fossil-fuelclients>.
23. Ariel Pinchot and Giulia Christianson, “How Are Banks Doing on Sustainable Finance Commitments? Not Good Enough,” *World Resources Institute*, October 11, 2019, <https://www.wri.org/blog/2019/10/how-are-banks-doing-sustainable-finance-commitments-not-good-enough>.
24. Ibid.; Burck et al.; *Total Assets by Institution and Country*.
25. *Total Assets by Institution and Country*.
26. Markus K. Brunnermeier and Jean-Pierre Landau, “Central Banks and Climate Change,” Centre for Economic Policy Research, *VoxEU*, January 15, 2020, <https://voxeu.org/article/central-banks-and-climate-change>.

27. Josh Ryan-Collins and Frank van Lerven, “Central Banks, Climate Change and the Transition to a Low Carbon Economy: A Policy Briefing,” New Economics Foundation, September 7, 2017, https://neweconomics.org/uploads/files/NEF_BRIEFING_CENTRAL-BANKS-CLIMATE_E.pdf.
28. Marc Jones and Dhara Ranasinghe, “Analysis: Central Banks Flexing Their Green Muscle for Climate Fight,” *Reuters*, October 28, 2020, <https://www.reuters.com/article/uk-global-cbanks-green-analysis-idUKKBN27D1YK>.



“Umuganda,” a monthly occurrence in Rwanda during which community members come together to help with work that would not otherwise be manageable for one person or family. Photo by Rwanda Government.

Article

The Dilemma of Affirmative Rehumanization: Words Are Just the Beginning

By Hyppolite Ntigurirwa

Introduction

Scholarship on the causes of group-based conflict tends to focus on dehumanization, which in itself centers on the verbal characterization of “the

other,” but often lacks thorough explanations about the actual dehumanization and violence processes. Moreover, there is little post-conflict scholarship on what is required to rehumanize the victims of radical conflict. This article uses empirical data from post-genocide Rwanda to argue that the aftermath of the genocide against the Tutsi still requires perpetrators and survivors to redefine the other as equals through rehumanization processes to restore their dignity and wholeness. The data shows that words play a vital role in both dehumanization and rehumanization processes, but more importantly, further behaviors and coordinated actions that affirm the intention of each process are also crucial. As such, this article first examines how the names and language citizens used in Rwanda contributed to dehumanization and rehumanization processes. It then analyzes the power of demonstrated mutual actions—such as re-building genocide survivors’ houses together—to affirm these processes before, during, and after the genocide against the Tutsi.

Literature Review

Definitions and Manifestation of Dehumanization

By discriminating and viewing as inferior, a group with power (oppressors) is able to justify their hostile behavior (violence, injustice, massacre) toward another marginalized group (oppressed).¹ Dehumanization denies people their distinctive human attributes, instead equating human beings with animals or inanimate objects — and often with intention for violence.^{2,3,4} In *Dehumanization: An Integrative Review*, Nick Haslam describes two distinctive forms of dehumanization: animalistic and mechanistic. For example, animalistic dehumanization occurred during the Holocaust when Jewish people were equated to “vermin” and “rats.” In the genocide against the Tutsi in Rwanda, Tutsi were equated to *inyenzi* (cockroaches) and *inzoka* (snakes). Thus, animalistic dehumanization occurs when members of the oppressor group denies the members of the oppressed group the uniquely human characteristics (e.g. civility, refinement, logic, moral sensitivity). By contrast, mechanistic dehumanization occurs when the oppressor denies the oppressed group characteristics of human nature, such as cognitive adaptability, warmth, and agency. They are seen as cold, rigid, lacking agency, and equated to machines or objects.⁵ For example, the 17th-century activist and spiritual preacher Morgan Godwin notes that white American colonialists considered the indigenous communities as having some “resemblances of manhood, yet are

indeed no men ... unman'd and unsoul'd...to be ranked among Brute Beasts, and treated accordingly.”^{6,7}

Dehumanization gives a socio-political, false legitimization to the dehumanizers, believing they are “decontaminating” human society. The Hutu majority could slaughter the Tutsi population without regret or empathy since the latter were considered an epidemic or infestation that had to be annihilated. Tutsis’ lives were portrayed in media and in the Rwandan socio-political mainstream as evil; therefore, in the eyes of the oppressing Hutu, the Tutsis became the social nonpersons without the uniquely human traits, making it easier for the Hutu to brutalize them.⁸

Meaning and Foundation of Rehumanization

After dehumanization, reconciliation between survivors and perpetrators may begin by rehabilitating members of both groups’ perceptions toward one another. The rehumanization process requires both groups to acknowledge and understand that they share the same humanness. According to social psychologist Susan Fiske, this includes appreciating each other’s capacity for intent, thoughts, and feelings.⁹ Given that rehumanization has been given little attention by social scientists, this article attempts to explain rehumanization by examining empathy as a means for creating a shared sense of equal humanness between the dehumanizer and the dehumanized. In 1909, psychologist Edward B. Titchener used the word empathy as a translation of the German term *einfihlung* (meaning “feeling into”).¹⁰ Since then, several fields of science have attempted to explain empathy as a social phenomenon. Social psychologists Sara Hodges and Michael Myers explain that empathy involves a person imagining someone else’s experiences as their own without actually experiencing them.¹¹ Psychologist Derick Carpenter places empathy as “a necessary precursor to intimacy, trust, and belonging” that enables people to understand fellow humans’ emotional experience.¹² In the post-dehumanization process, relationships may be restored by the empathetic morality expressed through actions that treat everyone as though they display the same humanness—in other words, rehumanization.

Emotional and Cognitive Empathy: Manifestation of Rehumanization

This article highlights the emotional and cognitive manifestations of empathy in conflicts. Both perspectives reveal the ways humans can relate to one another. Social psychologists _____

Meghan Healey and Murray Grossman explain that cognitive empathy occurs when *through history and memory, to identify others'* individuals place themselves in someone else's position with the intent to better understand their experience.¹³ *emotional state and take*

It is the ability to imagine *actions*.

what it might feel like to experience someone else's emotion. Humans can learn, through history and memory, to identify others' emotional state and take responsible actions.¹⁴ Hodges and Myers further explain emotional empathy in three facets: feeling the same emotion as the "other" person or group, feeling distress in response to the "other's" pain, and feeling compassion toward the "other." They explain that the correlation between emotional empathy and the willingness to help the "other" is positive. Furthermore, it is more likely that this component invites individuals to take action to help the "other" in oppression.¹⁵

Social scientist Mark Davis emphasizes two reasons that empathy might be associated with lower levels of conflicts. First, when both parties in conflicts understand the feeling of the oppressed, the victim's feelings and effects of marginalization evoke the perpetrator's compassion, which might lead to the oppressor ceasing the oppression. Second, in the post-conflict period, instead of revenge, the survivor's compassion toward their oppressor's confession and intent to change leads to a reconciliation.¹⁶ This article emphasizes how expressing empathy and taking action that involve both survivors and perpetrators is crucial to recognizing, through cognitive and emotional components, that neither is less than human.

Methodology

The ethnographic approach for this research was purposefully chosen to describe and analyze the culture and behavior of genocide survivors and perpetrators and to allow the researcher to capture social meaning from their words and shared activities.^{17,18} The study's data collection involved interviews and participant observation of regular members of a well-established association in Rwanda called Ukuri Kuganze (Let the Truth Prevail). The association brings together genocide survivors and convicted perpetrators, and it uses everyday interactions as ways to reconcile, forgive, and reunite to help find common ground for a reconciled society. Group members work to combat the dehumanization and guilt left by the genocide by regaining their shared sense of humanness, dignity, and self-esteem. The researcher used open-ended interview questions to allow participants more space to express thoughts and feelings. In this article, to protect the identities of interview participants, they will be referred to as P1, P2, P3, etc.

Dehumanized Tutsi and Self-Dehumanized Hutu

Survivors and perpetrators were disassociated from their shared humanity in different ways. Dehumanization of the Tutsi started before 1994 and intensified during the genocide.¹⁹ In interviews, participants identified dehumanizing names, such as:

- *Inyenzi*: cockroaches
- *Inzoka*: snakes
- *Igisebe*: wound
- *Umuvumo w'u Rwanda*: the curse of Rwanda
- *Indyarya*: the liars
- *Umwanzi*: enemy
- *Ibyorezo*: disease
- *Abasazi*: the mad
- *Sekibi*: devils²⁰

This terminology, according to a participant (P4), enabled perpetrators to kill Tutsis “without feeling that we [Rwandans] shared same humanness... we killed like dangerous animals.”²¹

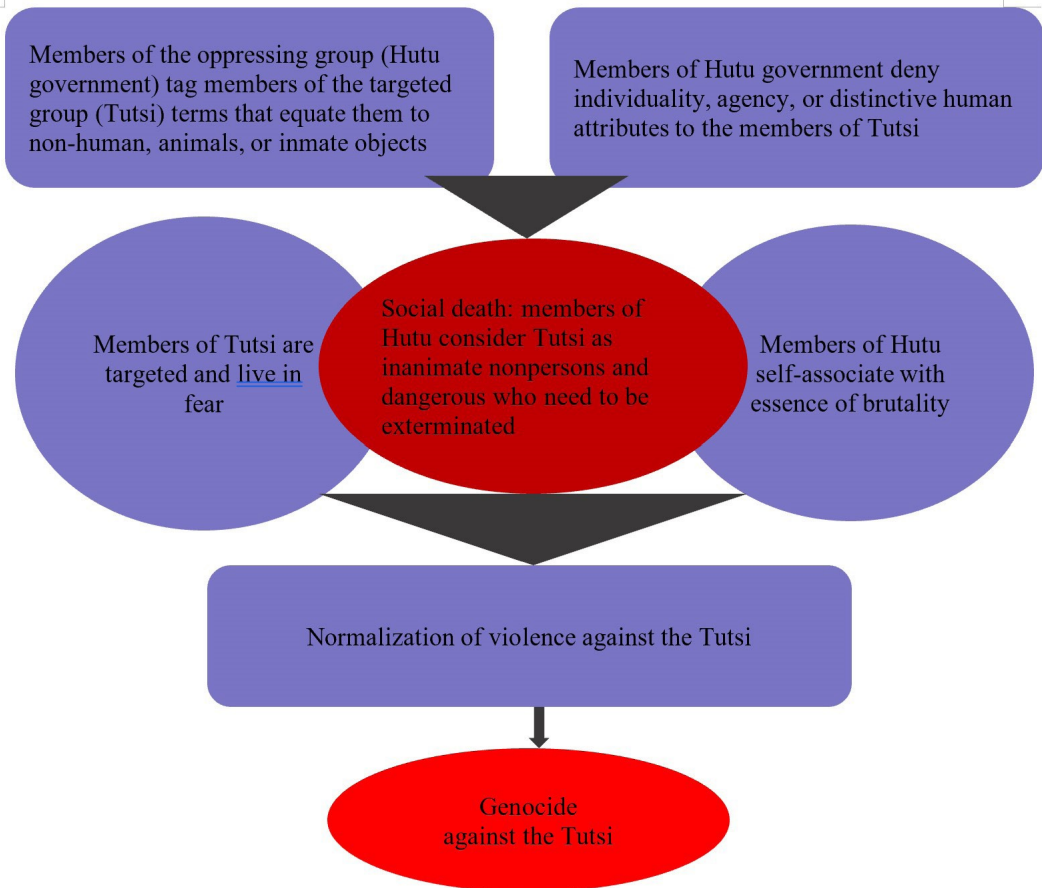
At the same time, convicted perpetrators in the group explained how they had to dehumanize themselves as well. To be able to kill, the perpetrators of the genocide had to self-dehumanize by removing the “uniquely human” traits, equating themselves to dangerous animals, and naming themselves as experts in killing. Examples of these self-imposed names and meanings include:

- *Kikongo*: a very dangerous animal (attributed to those who killed with a high degree of brutality)
- *Kabombo*: a male buffalo (attributed to those who usually showed excitement to kill and usually targeted rich or powerful victims who were leaders)
- *Rurangiza*: the almighty killer who does not leave anyone alive (attributed to those who killed and destroyed the properties of victims with extreme brutality)
- *Ruharwa*: one who can kill a lot of people (attributed to those who spent an inordinate amount of time hunting down and killing a large number of people)
- *Rutamburwa intumbi*: inescapable killer (attributed to those who killed with extreme “rage and ruthlessness”)
- *Ruvusha*: a bleeder (attributed to those who killed their victims quickly)
- *Kimashini*: big machine or robot (attributed to those who killed many people with ruthless, emotionless brutality)
- *Interahamwe*: those who attack together (attributed to those trained to kill).²²

Genocidaires used these to self-associate with the essence of brutal animals and killing machines, while disassociating themselves from a common Rwandan social identity. Thus, perpetrators and survivors could not be understood as one human group. Self-dehumanization is an important part of the process of training for ethnic cleansing and participation in mass violence. A participant (P6) who was trained in a Hutu paramilitary group noted that “our trainers [in killing] used to call some of us these names depending on how aggressive someone was believed to be, so we could start becoming excited to kill.”²³

The diagram below summarizes this dehumanization and self-dehumanization prior to and during the genocide against the Tutsi in Rwanda.

Figure 1: Summary Diagram of (self)-dehumanization prior to and during the genocide against the Tutsi in Rwanda.²⁴



Reconstructing Relationships and Selves

Just as language and terminology are powerful in the dehumanization process, they are also powerful in the rehumanization process. On October 3, 2017, I attended *umuganda*, a monthly occurrence in Rwanda during which community members come together to help with work that would not otherwise be manageable for one person or family.²⁵ In this instance, we were reconstructing a house for a genocide widow in a Murama village in Rwanda’s eastern province. At the beginning of *umuganda*, standing in a semicircle in the banana and cassava fields, the leader addressed the thirty people in attendance as *bavandimwe*, a Kinyarwanda word meaning “brothers and sisters.” The leader

started with a prayer requesting the “Almighty God” to strengthen the journey of *kugarura agaciro ka muntu* (“rebuilding human dignity”) for the “brothers and sisters” lost in the genocide against the Tutsi.

One of the beneficiaries of the houses being built by the association was a woman referred to herein as P1. She was unable to perform physical work due to injuries inflicted by machetes and a club during the genocide. The same attack during which she was injured killed her husband and some of her children. Members of the association call her *shangazi* (“aunt”), a popular word used in Kinyarwanda borrowed from Swahili language. One of her attackers, a man in his late 50s, referred to as P2, was also attending *umuganda*. The man referred to the survivor as *mama* not as *shangazi*.

When the *umuganda* was over, I invited the woman and her attacker for a short conversation. When I asked P1 how she felt when P2 referred to her as *mama*, she said, “As a survivor, I am happy that I now have human value to this extent where the community can come to help me find shelter... There was a time when some of these people could only meet to go and kill, and some of them would run and hide... I can now feel that I am a valued human being.”²⁶

I asked P2 why during *umuganda* he referred to P1 as *mama* and not *shangazi*. He told me that the other group members call her *shangazi* to help her feel that she still has family and to express care for her. However, for himself, “I feel I am obliged to offer more than that, as I am the one who killed some of her children ... I started calling her ‘mama’ after I confessed to her and she forgave me... And that is to make her feel that I owe her human respect like what I owe to my own mother.”²⁷ In the same conversation, P1 referred to the man as “my son, who was trapped in genocide ideology and thought of me and his ‘brothers and sisters’ [P1’s children] not as human as himself ...”²⁸

Rwandans are attempting to rebuild unity and relationships destroyed by the dehumanization phenomena and genocide against the Tutsi. Through renaming, participants have taken on new words to refer to each other as a way of “feeling reconciled as one people and [to] rebuild our relationships lost [in] our conflicted history,” as one participant (P8) argued. Such words mainly include terms showing parent–child and family member relationships. These familial names and words of endearment invoke that these members are people to

cherish, love, and respect—and who belong to the same human society. Examples include:

- *Umubyeyi*: a parent
- *Mama*: mom
- *Papa*: dad
- *Shangazi*: [a Swahili word – usually used in Kinyarwanda] aunt
- *Abavandimwe*: brothers and sisters
- *Imfura*: accountable and honest person
- *Inshuti*: a friend

Other renaming words include metaphors referring to animals, such as *ntama w'Imana* (lamb of God, meaning that person is calm, kind and humble like a sheep) and *inuma* (dove, suggesting that a person is peaceful and friendly). This suggests that words and naming are important to reinstate broken trust between perpetrators and survivors by reattributing the same “human morals and values.”²⁹ This then prepares the ground for relationship reconstruction.

Confession and truth-telling are critical steps in individual and collective rehumanization. Examples of this occurred at a June 2016 reconciliation forum, hosted by an England-based charity called Force for Change (CFOR) in partnership with the Rwanda-based organization Global Ecovillage Rwanda. During the forum, genocide survivors and convicted perpetrators engaged in exercises processing memory, truth, and trauma. Survivors continuously expressed the pain they live with for not knowing the entire truth about their loved ones' deaths in the genocide.

One middle-aged woman survivor (P13) told the story of how she survived an attack of a man (P37), who was present at the forum. She said he was like a “killing machine... I am sure he doesn't honestly know how many Tutsi he killed.”³⁰ Kneeling, P37 said, “I am really asking for forgiveness from you and all [participants].” After several minutes of tears and choked silences, P13 reached out a hand to P37 and told him to stand up. The two stood side by side with their arms across each other's back, facing the other participants. The survivor continued, “I would love to tell [P37] that I forgive him and that I will not think and look at him as a ‘killing machine,’ but rather a fellow human being and brother...”³¹ The perpetrator confessed about an “animal-like act [killing]”

and cried for “forgiveness.”³² This affirmed that he sought to be integrated back into the community as a human, not as a killing machine or animal-like.

Words Are Not Enough

Many of those who dehumanized the Tutsi through words may not necessarily have been the actual killers. However, it seems evident that these words were a crucial entry point to and motivators for killing the Tutsi. Violent words are not the same as violent acts, but they can incite people to commit violence through their ability to provide motive and justification. In other words, acts of violence affirm dehumanizing words. Does this work in the same way when it comes to rehumanization?

On many occasions during this research, survivors spoke about not receiving compensation for their damaged properties. Participant (P5) linked some of this delay to continued dehumanization: “I have so many properties that have to be paid back by the perpetrators. However, it has never been paid, and this is not because the families can’t pay, but because they still consider that they did not damage the property of a human being like them.”³³

Didace Kayinamura, the leader of Ukuri Kuganze, said in an interview that they “do the activities such as building houses for [their] members as not only a way of economically supporting the members but also to show that perpetrators changed for good.”³⁴ P1, a beneficiary of a house that the association members built, said, “I always saw the perpetrators as ‘killing animals’ no matter what nice words they could tell me until at least I saw them participating in the building of this house I live in”³⁵

Beyond positive language and dialogue, empowering survivors and holding perpetrators accountable for their crimes is a crucial step in affirmative rehumanization. As P6 said, allowing a space where survivors and perpetrators can speak about their experiences “opens a room for resilience.” On the other hand, integration and inclusion of the perpetrators in the community’s social life makes “us [perpetrators] feel that we did wrong to the same human being like us.”³⁶

Another participant (P21) highlighted that to feel human again requires initially being told that they are forgiven, but additional acts make them feel integrated into a community:

It took me years to feel I am human again ... after you have killed many people and you are being held accountable, you are ashamed ... you realize that you are probably not a human like others rather a dangerous killer ... and when you confess survivors may say they forgive you but you won't realize that they have considered you as a human again until their acts validate their forgiveness.³⁷

A Kinyarwanda saying states “*Kora Ndebe Iruta Vuga Numve*” (“better someone acts and I see than someone talks and I listen”). Hence, the affirmation for rehumanization occurs when, instead of considering the “other” as a cold, rigid, object, both survivors’ and perpetrators’ acts strongly portray the intent to welcome all Rwandans as equal human beings. Through this ethnographical observation, it is shown that words contribute to the initiation of dehumanization and rehumanization; furthermore, concrete actions from the acts of perpetrators and survivors validate both phenomena.

The government too has recognized the power of language and action as well. The utilization of the so-called ethnic identities on national identity cards was banned after the genocide, and citizens included in the reconciliation courts (were not to be referred to as “Tutsi” or “Hutu.”³⁸ Moreover, laws are in place now that forbid “divisionism,” “furthering genocide ideology,” or “threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness, inciting hatred or taking revenge.”³⁹ This suggests that rehumanization has to be about rebuilding relationships among Rwandans, and language is central to that endeavor. Therefore, calling Rwandans by the so-called ethnic identities (Hutu, Tutsi, and Twa) can be divisive and poses a threat to the collective rehumanization and Rwandan reunification.

The actions of all entities contribute to affirming how words are used in all steps toward both dehumanization and rehumanization. There are records of Tutsi students being denied the access to proceed to higher education that was given to then Hutu students.⁴⁰ This act could be described as one of many affirmations of the dehumanization process that led to the genocide against the Tutsi. In the

aftermath, the government created a genocide survivors' fund to provide support to survivors, including education, shelter, and medical insurance. This revives the feeling of humanness that was lost in the dehumanization process.⁴¹ Other social welfare programs like *mutuelle de santé* (health insurance) are in place for every Rwandan citizen, including the convicted genocidaires. Members of Ukuri Kuganze have expressed how having access to this health insurance program helps them to feel that they are still considered as Rwandan in spite of their crimes.

Conclusion

Through ethnographic data, this paper shows that words and naming are vital for both dehumanization and rehumanization phenomena. In addition to words, just as crucially, actions affirm and validate the dehumanization or rehumanization processes.

Leading up to the Rwandan genocide, words and naming were central to the dehumanization process, with Tutsi being equated to rats and cockroaches. At the same time, naming was used to equate Hutu to killing machines and animals so as to embolden them and quell reluctance leading up to the slaughter. Thus, Tutsi were dehumanized while Hutu perpetrators self-dehumanized.

As a result of this lost sense of humanity, neither group could feel a true sense of dignity or wholeness in the aftermath. Both parties need to have their humanity restored through redefining their relationships and affirming their commitment through action. Reconciliation is only achievable first through mutual recognition of the respective forms of dehumanization that occurred, particularly in regard to naming and discourse. This first step in rehumanization restores human values in both survivors and perpetrators. It is also vital, nevertheless, to solidify the language of reconciliation as rehumanization through shared intentional actions aimed at physically restoring dignity and humanity. These material actions are a demonstration of honest restoration, atonement, and forgiveness. Only then is there hope for a future of reconciliation. ■

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ENDNOTES

1. Albert Bandura, Bill Underwood, and Michael E. Fromson, "Disinhibition of aggression through diffusion of responsibility and dehumanization of victims," *Journal of Research in Personality* 9, pp. 253-269, [https://doi.org/10.1016/0092-6566\(75\)90001-X](https://doi.org/10.1016/0092-6566(75)90001-X).
2. Linda LeMoncheck, *Dehumanizing women: Treating persons as sex objects*. (Totowa, NJ: Rowman & Allanheld, 1985).
3. Daniel Bar-Tal, "Delegitimization: The Extreme Case of Stereotyping," *Stereotyping and Prejudice: Changing Conceptions*, edited by D. Bar-Tal, C. F. Graumann, A. W. Kruglanski, and W. Stroebe. (New York: Springer, 1989).
4. David Livingstone Smith, "Paradoxes of Dehumanization," *Social Theory and Practice* 42, no. 2, 2016, pp. 416-43.
5. Nick Haslam, "Dehumanization: An Integrative Review," *In Personality and Social Psychology* 10, no. 3, 2006, pp. 252-264.
6. Morgan Godwyn, *Negro's and Indians Advocate Suing for Their Admission into the Church or a Persuasive to the Instructing and Baptizing of the Negro's and Indians in our Plantations*. (Whitefish: Kessinger Publishing, 1680).
7. Morgan Godwyn, *A Brief Account of Religion, in the Plantations, with the*

Causes of the Neglect and Decay Thereof in Those Parts.’ Some Proposals Towards Promoting of the Gospel in Our American Plantations. (London: D. F. Brokesby, 1708).

8. Simon, J. D. 2015. “The Politics of Dehumanization: Beyond ‘Inyenzi.’” In *Confronting Genocide in Rwanda: Dehumanization, Denial, and Strategies for Prevention*, edited by J. D. Gasanabo, J. D. Simon and M. Ensign. Bogotá, Columbia: Apidama Ediciones.
9. Susan T. Fiske, “From dehumanization and objectification to rehumanization: neuroimaging studies on the building blocks of empathy.” *Annals of the New York Academy of Sciences* 1167, 2009, pp. 31-4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3777639/>.
10. Karsten Stueber, “Empathy,” *The Stanford Encyclopedia of Philosophy*, 2019, <https://plato.stanford.edu/archives/fall2019/entries/empathy>.
11. Sara D. Hodges and Michael W. Myers, “Empathy,” *Encyclopedia of Social Psychology* edited by Roy F. Baumeister & Kathleen D. Vohs (Thousand Oaks, CA: Sage Publishing, 2007), <http://sk.sagepub.com/reference/socialpsychology/n179.xml>.
12. Derrick Carpenter, “How to Develop Empathy in Your Relationships,” *Verywellmind.com*, February 14, 2020, <https://www.verywellmind.com/how-to-develop-empathy-in-relationships-1717547>.
13. Meghan L. Healey and Murray Grossman, “Cognitive and affective perspective-taking: Evidence for shared and dissociable anatomical substrates,” *Front Neurol* 9, June 2018, pp. 491, <https://pubmed.ncbi.nlm.nih.gov/29988515/>.
14. Ibid.
15. Hodges and Myers, “Empathy.”
16. Mark H. Davis, “Empathy, compassion, and Social Relationships,” *The Oxford Handbook of Compassion Science* edited by Emma M. Seppälä et. al. 2017,

<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780190464684.001.0001/oxfordhb-9780190464684-e-23>.

17. Alan Bryman, *Social Research Methods*, 3rd ed, (New York: Oxford University Press., 2008).

18. John D. Brewer, *Ethnography* (Philadelphia: Open University Press, 2000).

19. Group interview conducted in Bugesera district with the author.

20. Semi-structured group interview in Nyamata, Rwanda with members of Ukuri kuganze Association and the author, August 12, 2017.

21. Ibid.

22. For context, in Rwandan history prior to the genocide, *interahamwe* signified members of Rwandan army units; in the early 1990s, it was associated with the youth militia wing of National Revolutionary Movement for Development (*Mouvement Révolutionnaire National pour le Développement*), an official single party created in 1975, with whose help Habyarimana ruled Rwanda (see Mamdani 2001).

23. Ibid 20.

24. Hyppolite Ntigurirwa, “Summary Diagram of (self)-dehumanization prior to and during the genocide against the Tutsi in Rwanda,” 2021.

25. Organic Law 53/2007 Governing Community Works (November 17, 2007) and Prime Ministerial Order Number 58/03: determining the attributions, organisation, and functioning of community work supervising committees and their relations with other organs (August 24, 2009).

26. Interview in Murama village, Bugesera, Rwanda with members of Ukuri Kuganze and author, October 3, 2017.

27. Ibid.

28. Ibid.

29. Haslam, “Dehumanization: An Integrative Review.”
30. Interview and forum in Kicukiro, Rwanda with author, June 2016.
31. Ibid.
32. Ibid.
33. Interview in Bugesera, Rwanda with P5 and author, August 2019.
34. Interview in Bugesera, Rwanda with Didas Kayinamura and author, October 2019.
35. Field visit Bugesera, Rwanda in a conversation with the author, April 2020.
36. Ibid.
37. Interview in Bugesera, Rwanda with P1 and author, December 2019.
38. Philip Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge: Cambridge University Press, 2010).
39. Government of Rwanda. Law n°18/2008 of 23/07/2008 Relating to the Punishment of the Crime of Genocide Ideology. Kigali: Official Gazette.
40. Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*.
41. Government of Rwanda. N° 69/2008 of 30/12/2008 Law relating to the establishment of the Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994, and determining its organization, powers and functioning.

A demonstration in Afrin, Syria. Photo by Voice of America. Public Domain.



Article

Voices from Afrin: First-hand Accounts of Turkish Crimes Against the Kurds and Policy Proposals From Those Affected

By Anoush Baghdassarian and Sherin Zadah

Introduction

“We weren’t even able to take a spoon...even the doors and windows on our house there is nothing left.”¹

This paper provides a legal overview of Turkey’s 2018 invasion of Afrin and the violations committed by its army and proxy forces. It argues that Turkey committed crimes of arbitrary detention, torture, persecution, sexual violation,

forced displacement, property theft, and extrajudicial killing against the Kurdish population of Afrin. We identify these violations based on the UNHRC-45-31 report (hereafter referred to as the “UN Report”), reports by activists located in Afrin, and interviews conducted by the authors with activists and residents living in, or displaced from, Afrin. The crimes committed against the predominantly Kurdish population in Afrin violate international law and send a dangerous message to Turkey and the international community that its crimes against humanity are permissible. Shedding light on these crimes is especially crucial within the context of Turkey’s increasingly irredentist, interventionist foreign policy. This paper offers policy recommendations that aim to hold Turkish officials and proxies accountable for their ongoing crimes, and to ensure that international responses are informed by what those affected see as the path forward.

Identifying Turkey’s Crimes Against Humanity: The UN Report and Author Interviews

Turkey’s “Operation Olive Branch” initiated its January 2018 invasion of Afrin, a northwestern Syria city with a majority Kurdish population, under the guise of fighting the Kurdistan Worker’s party (PKK).² The Turkish Armed Forces’ statement said that the operation aims to “neutralize the terrorists belonging to PKK/KCK/PYD/YPG”³ and the Islamic State “in the Afrin region in the northwestern part of Syria in order to ensure security and stability in our borders and the region.”⁴ However, at the time of the invasion, there was no known credible Islamic State presence in Afrin.⁵

Although the invasion “officially ended” in March 2018, Turkish-backed forces continue to commit crimes against the Kurdish population in Afrin, which has been deemed by the European Parliament to be an illegal occupation of a sovereign part of Syria. Subsequently, the European Parliament has demanded that Turkey withdraw from Afrin.⁶ The authors interviewed twelve people over the course of six months about what they witnessed during and after the 2018 Turkish invasion. The accounts collected shed light on the extent of Turkish military, political, and economic involvement in Afrin and the nature of the crimes committed.

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The UN Report and the author interviews detail numerous human rights violations that meet international legal standards for war crimes and crimes against humanity.⁷ Article 8 of the Rome Statute details conduct that can constitute a war crime, and while the UN Report discusses these acts in terms of war crimes, it also discusses them in terms of crimes against humanity, which will serve as the legal lens for this piece. Article 7 of the Rome Statute defines crimes against humanity as those crimes “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”⁸ It includes within this definition such crimes as persecution, imprisonment or severe deprivation of liberty, and torture. Its *chapeau* defines the common elements of a crime against humanity: (1) there must be an attack; (2) the attack must be directed against a civilian population; (3) the attack must be widespread or systematic; (4) the conduct of the perpetrator must be part of such an attack; and (5) the perpetrator must have knowledge that, or intend that, his or her conduct is part of such an attack.⁹ The prohibited acts can only be considered a crime against humanity if the common elements in the *chapeau* are met; presuming they are, this piece argues that the substantive elements are also met in Afrin’s context.

While this piece identifies rights violations and claims that they amount to crimes against humanity, the subsequent step is to determine where prosecution might be possible for such crimes. As crimes against humanity are part of customary international law, and constitute *jus cogens* norms, they are accepted as prohibited everywhere, in all circumstances.¹⁰ Accordingly, the focus on crimes against humanity in this paper is not necessarily for an International Criminal Court (ICC) prosecution, but rather, to demonstrate the gravity of the crimes committed by the Syrian National Army (SNA) against the Kurdish civilians of Afrin and urge international institutions to hold Turkey accountable, which begins with the withdrawal of Turkish proxy forces and allowing Kurdish civilians back into Afrin.¹¹

Imprisonment or Other Severe Deprivation of Physical Liberty¹²

The legal requirements to hold someone accountable for severe deprivation of liberty are that the deprivation was arbitrary and grave enough to violate the fundamental rules of international law.¹³ The UN Report details how civilians were forcibly taken from their homes and arbitrarily detained by the SNA to be

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“beaten, tortured, denied food or water, and interrogated about their faith and ethnicity.”¹⁴ The SNA, a Turkish proxy group,¹⁵ would often threaten, ex tort, or detain the civilians who would complain “while others were abducted and forced to pay ransom directly to SNA senior members for their release.”¹⁶

Afrin civilians were interrogated by SNA officials in high schools that were converted into detention centers, Afrin’s central prison, and SNA police headquarters.¹⁷ One detainee reported to UN investigators that in mid-2019 he spent five months detained in the SNA military police headquarters before being transferred to the Afrin central prison and finally released in March 2020.¹⁸ He was “handcuffed and hung from a ceiling. He was then blindfolded and repeatedly beaten with plastic tubes.”¹⁹ Notably, detainees reported that Turkish speaking officials were present at the interrogation showcasing the linkage between Turkey and the proxy forces in Afrin. This UN Report is the first UN documentation that officially stated there was ongoing Turkish involvement in Afrin in the form of proxy militias, gravely abusing human rights.

The authors’ interviews corroborate the UN Report’s findings. Interviewees recounted horrendous treatment in detention facilities at the hands of joint SNA and Turkish police forces.²⁰ The arbitrary arrests along with the inhumane treatment during their deprivation of liberty demonstrate a severe disregard for individual rights.²¹ One elderly female interviewee told the authors how she was forcibly taken from her home to a prison in Kilis, Turkey where she was greeted with “the screams of prisoners that were getting tortured by Turkish soldiers.” Then, she was taken by the SNA back into Syria where she was arbitrarily detained for seventeen days in a prison occupied by the SNA’s Sultan Murad Brigade.

These joint forces arbitrarily arrested each person we interviewed without providing reason other than their perceived and fabricated participation in the PKK. The above quote highlights the partnership between Turkish soldiers and Syrian rebel groups like the SNA and illustrates Turkey’s military presence within Syria. It also identifies the persecution of a peoples on the basis of ethnicity, which is important to meet the persecution element in the Rome Statute. Upon asking what reasons were given for their arrest and detention, interviewees stated consistently that the only clue Turkish officials had to

arbitrarily detain them was knowledge of their Kurdish ethnicity. This *modus operandi* was transparent, demonstrating that Turkish officials and Syrian mercenaries supporting them were primarily focusing on the Kurdish population.²² One interviewee said they detained her “because they said that I was working for the PKK. I told them to look at me. I’m an old woman. How can I be working with the PKK?” Another interviewee supported the idea that Kurds were the sole target group, sharing that he too was stopped and accused of being a part of the PKK, but that, “if they stopped an Arab, they would let them go.” Once arbitrarily detained and denied their liberty, the Kurds who were imprisoned were severely tortured.

Torture²³

Torture has been defined through international criminal law jurisprudence to include: beatings, sexual violence, prolonged denial of sleep, food, hygiene, and medical assistance, and solitary confinement.²⁴ All these acts have happened to Kurdish prisoners in Afrin. Additionally, torture includes mental suffering arising from those same acts, or through intimidation, coercion, threats, humiliation, and degradation.²⁵

Turkish sexual violence against Afrin civilians meets the definition of torture amounting to crimes against humanity.²⁶ At least thirty women had reportedly been raped in just February 2020.²⁷ The UN Report maintains that the “acts of intimidation” from SNA members instilled widespread fear amongst women in Afrin. One of the victims recounted how during interrogation she was threatened with rape and beaten on the head by the SNA in the presence of Turkish officials.²⁸

Sexual violence has also been a tactic to instill fear within male detainees. Former male detainees told the Commission that they were threatened by SNA members to forcibly watch a minor be raped. One reported that a “minor was gang-raped, as the male detainees were beaten and forced to watch in an act that amounts to torture.”²⁹ A few weeks, another minor was gang raped by the SNA in front of the detainees. All these acts constitute the humiliating and degrading treatment of torture, as well as the sexual violence component, and amount to crimes against humanity.

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Turkish authorities kidnapped one of the authors' interviewees from her house in Afrin and took her to a Turkish detention center where she re-

counted her experiences. She described an eleven-year-old girl who tried to strangle herself as she heard her mother's screams from being tortured in a nearby cell. Other methods of torture that she recounted included ripping skin, breaking teeth, cutting hair, and multiple times a day bringing a knife to peoples' throats threatening to slaughter them like animals. Detainees were also starved, including the elderly, women, and children. These reports are corroborated by other interviewees who similarly spent months in Turkish detention centers. Several accounts detailed how the joint officials accused the Kurdish prisoners of being infidels to justify their torture. For example, one interviewee recounts that one man's torture was so extreme, including electrocution, because they accused him of taking a paper from the Quran and of using it to roll a cigarette. One thirteen-year-old boy was kidnapped and detained three times and has recounted that starvation was a consistent element of the inhumane conditions. He recounted, "We would get one potato and a piece of bread once a day and told us that was too much for us and that we were whores and 'hungry Kurds.'"

The authors interviewed two Kurdish men recently detained by Turkish authorities and SNA soldiers. One man, who spent twenty-three days in Turkish custody, detailed the brutal torture he experienced, infamously named "the roasted chicken," which entailed tying his hands to his legs and being hanged from the ceiling. "They kept me like that for an hour or more," he described, "and if you're not answering their questions, they continue torturing you until you're paralyzed. For almost two weeks I couldn't eat because my hands were paralyzed." Guards threatened to rape their families and to take over the city, "telling us, it's not our city anymore."

Our interviews substantiate that the joint Turkish-SNA actions constituted torture against the Kurdish community in Afrin. Our interviews only scratch the surface of the testimonies that exist from those who survived such treatment. As demonstrated, many of these horrendous acts were carried out against the Kurdish population merely for their being Kurdish, and this is a necessary element of meeting the threshold for persecution.

Persecution³⁰

The joint forces also persecuted Kurdish civilians in Afrin. Persecution includes murder, deportation or forcible transfer, cruel and in-

“The goal is to make sure that there is no evidence that Afrin was a Kurdish town at one time.”

humane treatment, and acts against property.³¹ What differentiates persecution from the other underlying crimes is that the victims must have been targeted due to their group identity. In this case, the Kurds were targeted as an ethnic group.

For example, a SNA senior member requested proof of ownership only from Kurdish inhabitants of the building he inspected.³² One Kurdish resident explained he was sent to speak with the Suleiman Shah Brigade and was verbally abused and told “if it were up to me, I would kill every Kurd from 1 to 80 years old.”³³

Turkey also targeted towns in Afrin with historically majority Kurdish villages, such as Komrock village, which now houses multiple Syrian National Army bases.³⁴ Since the invasion, there has been an active campaign of demographic engineering by deporting the indigenous population. Afrin’s Kurdish population has reduced from 97 percent to 35 percent.³⁵ That many victims are imprisoned and tortured by the SNA for their perceived affiliation with the PKK, a group comprised of solely Kurds, constitutes ethnic³⁶ and political discrimination,³⁷ which are both protected categories in the UN’s persecution definition. One interviewee shared, “They did this to us because we were Kurdish. They would call us slurs like ‘you dirty Kurd.’”

Not only is the persecution of Kurds on the basis of their ethnic identity apparent when it comes to the living, but also is demonstrated by a disrespect for the dead. The names on Kurdish graves are often changed, and one narrator felt this was part of a systematic approach to eradicate the Kurdish culture in Afrin: “The goal is to make sure that there is no evidence that Afrin was a Kurdish town at one time.”³⁸

Persecution jurisprudence has included property theft and forced displacement. The UN Report details property theft violations based on investigations that occurred from January 11, 2020 to July 1, 2020.³⁹ It showcased targeted attacks by the SNA to forcibly obtain property from Kurdish residents in Afrin. The UN Report displayed substantial evidence that the SNA brigades participated in systematic property theft and looting targeting civilians “primarily of Kurdish origin.”⁴⁰ This was done through “threats, extortion, murder, abduction, torture and detention.”⁴¹ The Committee noted that in September 2019 members of the SNA’s Division 14, Brigade 142 (the Suleiman Shah Brigade) “had gone door to door instructing Kurdish families with fewer than three members to vacate their houses to accommodate individuals arriving from outside of Afrin.”⁴² These individuals coming from outside of Afrin are presumably Turkish proxy members or Arabs from other cities in Syria. Civilians reported that they were demanded to pay LS 10,000 to LS 25,000, depending on their capacity to pay the extortion fee.⁴³

Reaffirming the violations outlined in the UN Report, one author interviewee declared that “they were driven away from their home by threats of violence and when they returned, they were threatened by the SNA members who were now living inside their home.”⁴⁴ Another interviewee described how Turkish forces stole her house, and she was forced to pay a bribe to leave Afrin: “I wasn’t allowed to stay in my own house because members of Sultan Murad Brigade were occupying it.” She later described how in her village “they burned 7 houses out of 150 houses. And they burned those houses based on the allegations that they were affiliated with the PKK.”

Another interviewee described how forces operating under Turkish military supervision removed an entire neighborhood and confiscated what was left behind. “[E]verything is stolen from my house even the doors and windows. There was nothing left.” Another woman described how the SNA burned her house and 110 of her olive trees and she was left with no economical means to survive, so she fled Afrin and now lives in Aleppo. Other reports based on field visits by the Lekolin Institute list the properties looted by SNA members, and document that Kurdish residents who attempted to return to their homes were turned away by SNA officials.⁴⁵

The targeted destruction of cultural shrines and buildings in Afrin as described in the UN Report is another example of persecution.⁴⁶ Interviewees warned that

Turkish proxy forces are destroying cultural icons and stealing ancient items in Afrin, attempting to eradicate Kurdish culture. The Commission corroborated that repeated patterns of systematic looting and property appropriation were perpetrated by various SNA brigades in the Afrin and Ra's al-Ayn region.⁴⁷ The coordinated lootings of property, destruction of cultural sites, and conversion of property for the SNA's military bases and Islamic schools are all examples of targeted attacks against the Kurds constituting persecution and providing reason for redress and justice for the Kurds of Afrin.

Policy Proposals

*...the aspirations of Afrin's
Kurdish population
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proposals should be
considered.*

The UN Report and author interviews demonstrate that many of the SNA's actions against Afrin's Kurdish populations constitute crimes against humanity. State and nonstate actors often pursue prosecution in these situations through hybrid tribunals, ad-hoc tribunals, regional courts, or

foreign national prosecutions through universal jurisdiction. Perhaps more notable is prosecution through the ICC. Given that Turkey is not a State Party to the Rome Statute, nor would it accept ICC jurisdiction with respect to the crimes in question, the ICC could only obtain jurisdiction over the aforementioned crimes through a United Nations Security Council (UNSC) referral under its Chapter VII powers.⁴⁸ The ICC can only exercise jurisdiction if there is a failure on the part of the national judicial system to act.⁴⁹ It is unlikely that Turkish officials would act to hold themselves accountable, so the ICC could open a preliminary investigation due to Turkey's failure to act. However, achieving a unanimous referral from the five permanent Security Council members with veto power would prove challenging, given their important political relationships with Turkey and aversion to jeopardizing them for a humanitarian cause.⁵⁰ But in the case that the UNSC did refer the case to the ICC and it was determined that the ICC had jurisdiction over it, then a case could be initiated against Turkish individuals responsible for crimes against humanity in Afrin.

While prosecution in an international tribunal represents one type of justice, other forms of justice are worth considering in this instance. For instance, the aspirations of Afrin's Kurdish population remain crucial to understanding what justice efforts and policy proposals should be considered. Many interviewees shared their notions of justice with the authors, guiding the policy prescriptions at hand.

One person hoped the UN would provide a suitable forum to "facilitate a solution. I believe that everyone should go back to their respective towns and that there needs to be a full withdrawal of Turkish forces in Afrin to allow for the rebuilding of Afrin for any lasting resolution." This sentiment was echoed by a number of other interviewees who shared that their desired solution is the immediate withdrawal of Turkish forces from Afrin, which will allow for the return of Kurds who were forced out due to persecution. Similarly, many interviewees wished for more significant international attention on the crimes committed, allowing for appropriate legal action and restoring the rule of law in Afrin, which they now deem a lawless town. Many believe the international community should help because it gave Turkey a green light during Operation Olive Branch to invade Afrin and therefore is accountable for helping repair the city and redress the harms.

Based on insights gleaned from the interviews conducted, the authors see a number of problems to address. If left unchecked, Turkey will continue its aggressive military expansion beyond its borders and pose a threat to international order. Their policies of persecution and demographic engineering are not new, and ongoing impunity only serves to encourage and legitimize their acts. The authors propose that the international community can help end the conflict through both legal and political means.

Legitimate and impartial documentation of this kind can be an important legal strategy, which preserves evidence and builds the record of abuses for litigation in a proper forum down the line.⁵¹ The UN might help facilitate a fact-finding mission, or investigative mechanism, for such documentation, as well as continue generating more reports on the abuses committed.⁵²

An important political avenue rests with the United States and the European Union, which should take stronger roles in combating Turkey's acts of aggressions and illegal invasions. One immediate action these bodies might take is to pass a bill mandating stronger sanctions on Turkey. Economic

sanctions will be effective because they lessen the government's ability to pay the salaries of the Turkish proxy forces that now have de facto control of Afrin.⁵³ Additional sanctions also signal to Turkey that their increasing acts of aggression will not continue with impunity. Additionally, the UN might consider establishing a peacekeeping mission in Afrin to monitor the situation and create an important international presence that will be central to ending Turkey's illegal occupation.⁵⁴ Accordingly, Afrin should be at the forefront of transitional justice efforts in Syria in order to ensure a sustainable solution for a society rooted in law and legitimacy.

Conclusion

This paper has detailed some of the crimes against humanity that Turkey's proxy forces continue to commit against Kurdish civilians in Afrin. The UN Report provides evidence that Turkish backed forces are imprisoning and torturing Kurdish civilians on the basis of being Kurdish, which constitutes persecution. Turkish proxy members use systematic sexual violence and torture in Afrin to force Kurds from their villages and towns. To date, Afrin is now less than 40 percent Kurdish, a dramatic reduction from over 97 percent Kurdish prior to the Turkish intervention in 2018.⁵⁵ If the violence from Turkish proxy forces continues unchecked, the Kurdish population will continue to be driven out until they are eradicated from the region. As echoed by those most affected, to help prevent further violations, the international community must act through political, legal, and humanitarian means. Whether by ridding the region of Turkish militias, helping Kurds return to Afrin, or the UNSC issuing an ICC referral, action is imperative. If the international community does not address the unraveling humanitarian situation in Afrin, the region will further destabilize, presenting immense problems to regional and global security. Without holding Turkey accountable, the international community is condoning their actions and allowing for its crimes against humanity to go unchecked. ■

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ENDNOTES

1. We would like to acknowledge the Lekolin Institute for their integral help in securing interviews and for their tireless documentation of the crimes committed in Afrin. The work they do is critical to raising awareness about the situation there and helping achieve justice for the community. In particular, we extend our gratitude to Dr. Imad Hasan and Dr. Ihsan Efrini.
2. “Turkey Launches ‘Olive Branch Operation’ against ‘PKK Threat in Syria’ - Turkey News.” *Hürriyet Daily News*, January 20, 2018. <https://www.hurriyetdailynews.com/turkey-launches-major-land-operation-into-ypg-militants-in-syrias-afrin-126031>.
3. PKK is the Kurdistan Worker’s Party; KCK is the Kurdistan Communities Union; PYD is the Democratic Union Party; and the YPG is the People’s Protection Unit. These are all either Kurdish militant groups or political parties focused on Kurdish political representation or autonomy.
4. Wladimair Van Wilgenburg, “Turkey Conducts First Airstrikes against Efrin in Syria after Russia Withdraws Troops.” *The Defense Post*, July 4, 2019. <https://www.thedefensepost.com/2018/01/20/turkey-efrin-syria-airstrikes-operation-olive-branch/>. See also: United Nations Security Council, *Letter dated 24 July 2015 from the Chargé d’affaires a.i. of the Permanent Mission of Turkey to the United Nations addressed to the President of the Security Council United Nations*, S/2015/563, 24 July 2015, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3CF6E4FF96FF9%7D/s_2015_563.pdf.
5. Zeina Karam, “AP Fact Check: Shades of Gray in Turkey’s Stated Syria

Goals.” *AP News*. Associated Press, January 25, 2018. <https://apnews.com/article/787a0624296f40b8b936d67d14699cb9>.

6. European Parliament, “Texts Adopted - The Syrian Conflict - 10 Years after the Uprising - Thursday, 11 March 2021”, March 11, 2021, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0088_EN.html.
7. Guénaél Mettraux, *International Crimes and the Ad Hoc Tribunals* (Oxford: Oxford University Press, 2006).
8. Kai Ambos, “Article 25. Individual Criminal Responsibility.” *The Rome Statute of the International Criminal Court*, 2016, 980–1030. <https://doi.org/10.5771/9783845263571-980>.
9. International Human Rights Clinic (IHRC), *Crimes in Burma* (Cambridge: Harvard Law School, 2009) <http://hrp.law.harvard.edu/wp-content/uploads/2009/05/Crimes-in-Burma.pdf>.
10. Crimes against humanity are non-derogable, which means there is no state of emergency or violent conflict that would excuse them, regardless if the crimes are committed by individuals or states.
11. The Syrian National Army (“SNA”) is a non-state armed group composed of the former free Syrian Army fighters and its brigades, including some of those which were classified under U.S. sanctions lists for involvement in international terrorism. The SNA is formed, sponsored, and trained by Turkey. Their uniforms carry the Turkish flag. Their offices have large portraits of President Erdogan of Turkey and the Turkish flag.
12. IHRC, *Crimes in Burma*.
13. *Ibid.* Some examples of international law violations include solitary confinement, lack of accessibility to counsel, and inhumane conditions and treatment.
14. United Nations General Assembly (UNGA) Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/45/31, August 14, 2020. <https://undocs.org/A/HRC/45/31>.

15. “Turkey-Backed SNA Opens 1st Military Post in Syria’s Azaz.” *Daily Sabah*, December 4, 2020. <https://www.dailysabah.com/world/syrian-crisis/turkey-backed-sna-opens-1st-military-post-in-syrias-azaz>.
16. UNGA Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*.
17. Ibid.
18. Ibid.
19. Ibid.
20. Ibid.
21. “International Criminal Tribunal for the Former Yugoslavia (ICTY): Prosecutor V. Krnojelac.” *International Legal Materials* 43, no. 2 (2004): 288–380. doi:10.1017/S0020782900007804. See also: Prosecutor v. Mladen Naletilić and Vinko Martinović, Case No. IT-98-34-T, Judgement (TC), March 31, 2003. <https://www.legal-tools.org/doc/f2cfeb/>.
22. Mercenary is a legal classification which entails a person taking part in hostilities by the desire for private gain. “Amnesty Annual Report Documents Turkish and SNA Crimes in Tel Abyad, Rish Ayno, and Afrin,” *SyriacPress*, February 20, 2020, <https://syriacpress.com/blog/2020/02/20/amnesty-annual-report-documents-turkish-and-sna-crimes-in-tel-abyad-rish-ayno-andafrin/>.
23. Rome Statute of the International Criminal Court, July 17, 1998. <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>.
24. “Art. 7(1)(f) Crime against Humanity of Torture,” Art. 7(1)(f) Torture: Case Matrix Network (n.d.). <https://www.casematrixnetwork.org/cmknknowledgehub/proof-digest/art-7/7-1-f/>.
25. Ibid.
26. See, for example, Prosecutor v. Dragoljub Kunarac et al., Cases No. IT-9623-T and IT-96-23/1-T, Judgement (TC), February 22, 2001, paras. 654656, <https://www.legal-tools.org/doc/fd881d/>; Prosecutor v. Dragan Nikolić, Case No.

- IT-94-2-T, Judgement (TC), December 18, 2003, para. 184, <https://www.legal-tools.org/doc/f8722c/> (amongst many others).
27. UNGA Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*.
28. *Ibid.*, 1.
29. *Ibid.*
30. *Rome Statute*, Article 7(1)(h) and 8(2)(b)(xxii).
31. “Art. 7(1)(f) Crime against Humanity of Torture,” Art. 7(1)(f) Torture: Case Matrix Network.
32. UNGA Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*. 11.
33. *Ibid.*
34. *Ibid.*
35. “Afrin: Kurdish population more than halved since 2018 offensive, says rights group” *Rudaw*, April 20, 2020. <https://www.rudaw.net/english/middleeast/syria/20042020>.
36. The Trial Chamber’s assessed that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. See e.g. *Prosecutor v Milan Martić*, Case No. IT-95-11-T, Judgement (TC), June 12, 2007, <https://www.legal-tools.org/doc/06634c/>.
37. “The Chamber observes that the evidence indicates that the perpetrators killed and forcibly displaced persons primarily belonging to the Kikuyu, Kamba and Kisii communities on the basis that they were perceived as PNU supporters.” See e.g. *Prosecutor v. Vlastimir Dorđević*, Case No. IT-05-87/1-A, Judgement (AC), January 27, 2014, para. 273, <https://www.legal-tools.org/doc/e6fa92/>.
38. Similar comparisons can be drawn from cases at the International Criminal Tribunal for the former Yugoslavia (ICTY), particularly *Krajisnik*, where it was established that the systematic attacks against the Bosnians and Croats were carried out with discriminatory intent and this constituted persecution. See

Prosecutor v. Momćilo Krajišnik, Case No. IT-00-39-T, Judgement (TC), September 27, 2006, paras. 829-831. <http://www.legal-tools.org/doc/62a710/>.

39. UNGA Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*.
40. *Ibid.*, 12.
41. *Ibid.*, 11.
42. *Ibid.*
43. *Ibid.*
44. Interview with former Afrin resident, conducted by the authors, March 2021.
45. Lekolin Center for Legal Studies and Research, *Reports On The Documentation And Monitoring Of Violations In Afrin / Syria* (Chicago: Lekolin Center for Legal Studies and Research, 2020), 2-45.
46. Prosecutor v. Vlastimir Dordevic, 567. The Dordevic case declared the targeted attack against Muslims and Croat cultural sites as a crime against humanity. Though not persecution, there are also cases which discuss the destruction of cultural sites as war crimes under the Rome Statute, see e.g. “Al Mahdi Case: The Prosecutor v. Ahmad Al Faqi Al Mahdi” International Criminal Court (n.d.), <https://www.icc-cpi.int/mali/al-mahdi>.
47. UNGA Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 11.
48. United Nation Charter, Chapter VII. <https://www.un.org/en/about-us/un-charter>.
49. Rome Statute, Article 17.
50. There are numerous examples where the UNSC did not take action or even deliberate on Turkey’s action in Syria. See here for one example: “US, Russia veto UN Security council statement on Turkey’s op in Syria.” *Daily Sabah*, October 10, 2019. <https://www.dailysabah.com/war-on-terror/2019/10/10/un-security-council-fails-to-issue-joint-statement-on-turkeys-op-in-syria>.
51. Whether it be the victims bringing a case against Turkey at the European

Court of Human Rights, another state bringing a claim against Turkey at the ICJ, or any of the different tribunals listed above, there are a number of legal avenues that can be taken advantage of, but only with the requisite documentation.

52. While this piece focused on crimes against humanity, it is important to note that these events could be analyzed under the crime of genocide per the Rome Statute given the ethnic cleansing and deportation of the Kurds, and there are a plethora of war crimes to be documented and analyzed as well, such as the pillaging of Afrin's resources, or the destruction of cultural heritage.
53. See, for example, the sanctions imposed on Russia for its occupation of Crimea. "Ukraine and Russia Sanctions" United States Department of State, (n.d.), <https://www.state.gov/ukraine-and-russia-sanctions/>.
54. European Parliament, "Texts adopted - The Syrian conflict - 10 years after the uprising".
55. "Afrin: Kurdish population more than halved," *Rudaw*.

If we are to learn from Kennan, what questions must foreign policy professionals ask themselves today? And what answers must we seek? Caricature on the cover of *Le Petit Journal* in 1896. {PD-US-expired}}

Op-Ed

Revisiting Kennan's Questions



By Joseph Gayeski

For all his brilliance as an eminent Cold War strategist, George F. Kennan held some disconcerting views. He was skeptical of popular democracy, and once set out to write a book calling for a benevolent dictatorship in the United States.¹ During the anti-war movement of the 1960s, he agreed that students were right to oppose the Vietnam War, but felt they were wrong to depart from American political culture as he understood it.² He was dismissive toward Black activism and, later in life, lamented Hispanic influence in the American southwest.³ Living to the age of 101 after a decades-spanning career, it should not be surprising that Kennan carried opinions that did not age well. But it is hard to examine his comments today without identifying the elitism and racism behind them.

Kennan's prejudices, of course, were not uniquely his. His biographer, the historian John Lewis Gaddis, once suggested that Kennan's views were not uncommon among the day's "enlightened" people.⁴ This may be fair enough, as it is all too easy to criticize thinkers that can no longer defend themselves. Yet Kennan was himself willing to criticize the statesmen of generations past for their own blind spots. In his 1979 book, *The Decline of Bismarck's European Order: Franco-Russian*

Relations, 1875-1890, the diplomat-turned-scholar does not hesitate to charge nineteenth century diplomats with complacency toward the outmoded ideas of their time. The cost of their complacency, Kennan

...it is hard to examine his comments today without identifying the elitism and racism behind them.

warns, was tragedy.

The Decline of Bismarck's European Order is the first volume in Kennan's series on the origins of the First World War, but the book covers none of the events of the early twentieth century. Kennan instead examines a period starting forty years earlier, insisting that the reader understand how the fateful structure of European alliances in 1914 was built upon the fractures of the previous arrangement, masterminded by German Chancellor Otto von Bismarck. The result is an exhaustive tour of a short fifteen-year period, starting with the 1875 Franco-German war scare and ending with Bismarck's retirement. The intricacy of this history is excessive for most readers, but those who persevere are shown a distinct approach to diplomatic history, informed by the author's experience in government. Kennan's attention to administrative errors and nationalist influences is a reminder that diplomacy is not practiced by inhuman nation-states, but between individual leaders—fallible, even if talented.

Kennan's analysis suggests that the leaders of Bismarck's era failed in three particular ways that future strategists must understand if they are to avoid the same mistakes. The first failure was of strategic empathy; if Germany had been able to predict the direction France would take under pressure, the fateful Franco-Russian Alliance might have been avoided. The second was of strategic coherence; if Russian and French leaders were able to deflect the demands of

their respective nationalists, their priorities may not have been distorted. Both of these failures contributed to the onset of World War I, but to Kennan's mind, the third failure was more consequential.

The First World War, in Kennan's view, was the result of a gross failure to understand a changing world. Throughout Europe, Kennan argues, the outmoded idea of warfare as a natural and dignified instrument of policy remained in the minds of statesmen for far too long. They held to militaristic conceptions of honor rendered wholly ob

What features of today's status quo are unsustainable? What predictable consequences are we failing to heed?

ignoring the warnings from the American Civil War and the Crimean War. Kennan laments that the era's statesmen believed war was inevitable, making the purpose of diplomacy not to prevent conflict but to position for it. The

solete by industrial warfare,

isolation of France was not the only feature of their status quo that needed revisiting. Their very ethos of valor was a dangerous antique.

The final lesson is the most interesting coming from Kennan, given his conservative views of American democracy and race relations. Historians are correct to examine the nuances of Kennan's views. Gaddis, for example, notes that the older Kennan was embarrassed by the American dictatorship he theorized as a young foreign service officer.⁵ Gaddis is right to suggest that Kennan's opinions were not the result of any individual bigotry, but rather may have been products of his time. This reading of Kennan, however, sits

uncomfortably with the historian's own warning from *The Decline of Bismarck's European Order*. What, after all, was the ideal of military heroism in the nineteenth century—the ideal to which the era's statesmen negligently subscribed—but a product of its time?

That Kennan might criticize diplomats of past centuries without considering the meaning of his conclusions for his own worldview only demonstrates the difficulty of the self-reflection prompted by his work. *The Decline of Bismarck's European Order* demands that those who work in foreign policy ask several uncomfortable questions of themselves. What features of today's status quo are unsustainable? What predictable consequences are we failing to heed? Do we hold notions or values that leave us naïve to the risks of our rapidly changing technology?

If we are to learn from Kennan, avoiding catastrophe may depend on the truth of our answers. ■

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ENDNOTES

1. John Lewis Gaddis, *George F. Kennan: An American Life* (New York: Penguin Press, 2012), 114-116.
2. Kennan debated with students and academics on this topic in George F. Kennan, *Democracy and the Student Left* (New York: Bantam Books, 1968).
3. For a more incisive look at Kennan's problematic views on race and ethnicity, see Clayton R. Koppes, "Solving for X: Kennan, Containment, and the Color Line," *Pacific Historical Review* 82, no. 1 (February 2013): 95-118.



4. John Lewis Gaddis, interview by Susan Glasser, *After Words*, C-SPAN, February 15, 2012. 36:31- 40:51.

5. Gaddis, *George F. Kennan*, 116-119.

Integrating leaps in technology into the existing multilateral initiatives, local legal policies, and social movements against human trafficking will be the most effective way to address the problem at scale. Photo by Christina Morillo.

Article

A Step Forward for Palermo's Trafficking Protocol, This Time Integrating Frontier Technology

By Sophie Zinser and Dr. Hannah Thinyane

Twenty years ago, the United Nations General Assembly (UNGA) adopted the Palermo Protocols¹ as part of a new UN arm working to stop transnational and organized crime, the UN Convention against Transnational Organized Crime (UNTOC). But since 2000, a new breed of technology tools has emerged to work across borders, cultures, governments, and languages with the goal of keeping people safe. Into 2021 and beyond, governments and companies alike can use frontier technologies – including expert systems and blockchain transactions – as tools for enforcing the Palermo Protocols. Moving forward, integrating leaps in technology into the existing multilateral initiatives, local legal policies, and social movements against human trafficking will be the most effective way to address the problem at scale.

Context: Why Create the Protocols?

Before the year 2000, no international legislation existed to regulate human trafficking. After the fall of the Soviet Union, the 1990s brought the reshaping of countries and societies, making the world ripe for criminals to exploit newly open societies and markets. According to a recent interview with Marjan Wijers² – a researcher on human trafficking who was in the room when the Palermo Protocols were negotiated – this increased interest was partially because victims of trafficking changed from women of color to white women, as Eastern Europeans became the targets of trafficking in Russia. She also argues it was because human trafficking began to serve urgent state interests after the fall of the Berlin Wall. Further, bilateral attempts between the Italian and US governments to stop mob activity in both countries captured media attention across the decade with sagas of theft, corruption, and graft.

In short, as global societies embraced new forms of political and social diversity and progress, transnational policies were needed to quell a growing group of organized criminals. One of the three legal protocols includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. This protocol was revolutionary in that it identified a systemic global problem: human trafficking.³

It is never easy to reach a consensus across 190 nations,⁴ and for that reason alone the Protocol was an exceptional feat of international legislation. But

before taking stock of where they stand now, we must consider their origins. In 2000, Palermo, Sicily was chosen as the site of such an historic document in part because it was the home of anti-mafia prosecutor Giovanni Falcone,⁵ who was also assassinated there by organized criminals in May 1992. He and other Italian, American, and Western legal brains are credited with crafting the legal arguments of the document. Further, the UNTOC itself was formed on the back of the Cold War⁶ during a period in international affairs when a multilateral diplomatic process that excluded Asia had just been used as a strategy for remediating a complicated geopolitical problem.

Historically, the trafficking protocol was hailed as a victory for the global women's rights movement.⁷ Woven into Section 4, Article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons is a stipulation that all signatories to the trafficking protocol must work towards the social advancement of women.⁸ Perhaps it was the heated debate over two years leading up to the document's ratification that eventually made sex trafficking the focus of an entire protocol.⁹ The Human Rights Caucus of the U.S. Senate had argued that sex work is legitimate if consensual, while the Coalition Against Trafficking in Women (CATW) saw any form of prostitution as human trafficking.¹⁰ Eventually, the Protocols signed with the former, criminalizing sex work only if the work is forced.¹¹

20 Years On: Contemporary Critiques of the Protocols

Since their global adoption, significant critiques of the Protocols have emerged that demand further consideration. From its design, the trafficking protocol in particular treats the symptoms of human trafficking after it has already happened, rather than offer a legal framework for approaches to combatting its root causes. That protocol also places an unfair burden on "destination" countries to regulate human trafficking, failing to require either destination or country of origin states to implement measures preventing human trafficking or protecting its victims.¹² Further, it does not consider how factors beyond gender,¹³ such as race and LGBTQI identification, increase an individual's vulnerability to trafficking, or how working conditions may begin as safe but can evolve into exploitative situations over time.¹⁴

Broad wording across the trafficking protocol have led to debates surrounding definitions of phrases such as "human trafficking" and "forced labor."¹⁵ The

former is defined domestically by the U.S. Department of Homeland Security as “the use of force, fraud, or coercion to obtain some type of labor or commercial sex act.”¹⁶ In contrast, the phrase “forced labor” under the International Labor Organization (ILO) definition refers to “work that is performed involuntarily and under the menace of any penalty.”¹⁷ While the definitions overlap, intersect, and at times are used interchangeably, the term human trafficking will be used here as it is critical to the wording of the trafficking protocol.

An enduring critique of the trafficking protocol is its enshrinement of human trafficking as a criminal – rather than human or labor rights – violation. Criminalizing human trafficking turns victims into defendants. It makes positive remediation a matter of winning court cases rather than examining the systemic issues, including social inequality, poverty, racism, sexism, and other forms of discrimination, that perpetuate human trafficking. Lawyers shy away from taking human trafficking cases because evidence can be difficult to procure given the stark power imbalance between the defendant – a victim of human trafficking – and the entity that perpetuated harmful practices. Even when individual cases make it across a lawyer’s desk or even as far as a court system, the probability of positive individual remediation remains woefully low.¹⁸ But if successful legal case results can be aggregated and tracked, posthoc legal analyses could be

publicized giving
multilateral organizations,
governments, companies,
and human and labor rights
organizations a better
understanding of the
ecosystem perpetuating
forced labor.

*The nuanced problem of
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life cycle.*

Working within a criminal definition of human trafficking, aggregating individual information from victims has the potential to improve the chances of positive remediation for defendants. Until now, aggregating the information of trafficked individuals has been impossible. But new technologies such as expert systems and blockchain may make such aggregation possible.

A Case for Frontier Technology to Combat Forced Labor: Expert Systems and Blockchain

The nuanced problem of forced labor demands solutions that intersect across the issue's entire life cycle, including worker recruitment, exploitation identification, and case remediation. A new suite of tools, known as frontier technologies, has the potential to increase transparency throughout each of the aforementioned phases.

This buzzword is often used to describe a wide range of technologies, including cloud computing, artificial intelligence (AI), and the Internet of Things (IoT). Frontier technologies are sometimes naively framed as one-stop-shop solutions to intricate problems. But they alone will not ensure that the trafficking protocol protects victims of forced labor into the next decade. Rather, these tools can provide strong support to sound multilateral institutions, dedicated international lawyers, and advocacy shifts encouraging the global movement to end human trafficking. Two forms of frontier technology are already being used to combat human trafficking on small but scalable projects: expert systems and blockchain.

Expert systems use AI to support the decision-making abilities of non-experts. Built on a knowledge base of expertise contributed by domain experts, these systems support non-experts making an informed decision about a particular problem.¹⁹ Worker voice tools such as Apprise are built on expert systems that have emerged to identify instances of human trafficking.²⁰ Apprise was built as a screening tool to help front-line responders identify cases of exploitative work across a spectrum, ranging from decent work on one end to forced labor on another. These tools offer a pathway for workers to confidentially elevate their concerns to frontline responders. Because of the expert system backend, when a frontline responder uses tools like Apprise to interview a worker, the tool can map a worker's circumstances onto the ILO indicators of human trafficking and shares a detailed vulnerability calculation. This provides a frontline responder with information to inform their next steps.

A concrete first step for the implementation of Apprise could be its systematic uptake by frontline responders. Immigration officers, police officers, NGO outreach teams, or labor inspectors can privately collect and confidentially share details of exploitation patterns from victims. Subsequently, this aggregate interview data from Apprise, collected over time and across contexts, allows a

fuller picture of exploitation. Through a process known in public health as sentinel surveillance,²¹ aggregated data from Apprise can be used to identify geographic or sector specific “hot spots” of exploitation and allow observers to understand macro-level changing practices of exploitation. Apprise therefore gives governments, multilateral institutions, companies, and NGOs a system-level perspective on the problem of human trafficking, rather than a disparate, case-by-case analysis. This big-data perspective on what is happening in real time empowers actors to implement nuanced policy changes towards eradicating human trafficking.

While blockchain was originally designed for financial transactions, stakeholders are exploring the application of blockchain’s distributed ledger system to other contexts. At its core, blockchain acts as a public ledger shared across a network of participants, who can both validate transactions and keep a copy of the ledger itself. Along a blockchain, specific consensus protocols allow individuals to decide who can validate a transaction. They can also create semi-private blockchains, where a limited set of actors see the blockchain’s information. Only select actors can add and verify content. eMin is an example of the use of blockchain for secure worker documentation collection, overcoming issues with missing contracts, or contract substitution in supply chains.²² This system allows factories to verify that their workers are recruited to work for a living wage, and everyone from workers, to government officials, to corporate executives can see when and how workers are paid.

Workers could use semi-private or private blockchains to track contract modifications. However, data-privacy concerns could prevent individuals from uploading their information, even onto this type of data repository. It is important to note that this ledger would only reflect accurate information if all actors from workers to factory owners have the power and technological skills to modify the chain. Without sufficient consideration of workers’ technology access or literacy, blockchain solutions may exclude the voices of exploited individuals. In its worst form, this could further marginalize the individuals that it is designed to support. Further, malevolent actors could enter a semi-private blockchain and validate each other’s false claims, perpetuating and validating organized crime.

Though still in early development, there is great potential for blockchain-related systems to intervene in the early stages of human trafficking, particularly during

the recruitment phase. A first step would be integrating existing successful tools such as eMin into multiple corporations' corporate social responsibility strategies, thereby disrupting the status quo of exploitative recruitment processes.

Often described as an amplifier of intent, technology magnifies the intentions of its users and developers alike.²³ As a double-edged sword, technology is often falsely heralded as a pathway to provide quick-fix solutions to complex

...technology magnifies the intentions of its users and developers alike.

problems. But technology, like any other tool, can be used to impede or facilitate exploitation, fraud, or deception, depending on the intentions of the actors in-

involved. While in the above two examples, expert sys-

tems and blockchain tools can be used to support the fight against human trafficking, they can also be used to perpetuate human trafficking. Criminals already use permutations of frontier technologies, including other AI systems, to compromise business email systems, facilitate identity theft, or initiate phishing attacks.²⁴ Further, the loosely defined phrase 'cybertrafficking' has also been used to describe how traffickers identify and recruit victims of trafficking online and control their victims once trafficked.²⁵

Unlike twenty years ago when the trafficking protocol was first written, big data approaches have emerged to provide a macro-level perspective of potentially trafficked individuals. This gives us the freedom to gather information about how and why people are trafficked and exploited. Numerous corporate case studies show that aggregating more and better employment and payment data while protecting individual workers' privacy can lead to better solutions for complex problems.²⁶ Big data approaches can therefore expose where the root causes of human trafficking lie.

But we are still a long way from making the dreams of better tech when it comes to the trafficking protocol a reality. Rudimentary technology concerns, such as a lack of internet access or availability of technology tools in their native languages, may prevent government actors, companies, and everyday citizens from accessing the tools necessary to enforce the protocol.

But after twenty years and millions of dollars spent annually to combat human trafficking across the world, governments, technologists, and corporations have barely scratched the surface of the problem.²⁷ Frontier technologies can combat the roots of human trafficking through identifying its hotspots, patterns, and factors that exacerbate vulnerabilities beyond gender. Mapping these patterns out on a large-scale over time gives global multilateral institutions and governments sufficient data to craft preventative solutions, with potential to reduce the burden on “destination” countries to regulate human trafficking. While certainly not a one-stop solution, as we enter a new decade in the fight to end human trafficking, frontier technology will play an integral role. Going forward, the role it plays must be better informed than a litany of scattered previous efforts. ■

FURTHER READING

For more detailed analysis, a special issue of the *Journal of Human Trafficking* released on March 28, 2020 looks at several contemporary analyses of the Palermo Protocols’ impact into 2020.²⁸ This series for Open Democracy funded through Humanity United critically engages with the protocols and examines two questions for debates surrounding the protocols’ validity: “What is exploitation?” and “Are we better off on the inside?”²⁹ In addition, this October 2020 report from the Global Initiative Against Transnational and Organized Crime³⁰ reviews the protocols’ progress and setbacks over the past twenty years in an historical context.

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ENDNOTES

1. “Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,” United Nations Human Rights: Office of the High Commissioner, November 15, 2000, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.
2. Marjan Wijers, “How We Got Here: the Story of the Palermo Protocol on Trafficking,” OpenDemocracy, February 11, 2021, www.opendemocracy.net/en/beyond-trafficking-and-slavery/how-we-got-here-story-palermo-protocol-trafficking/.
3. “What Is Forced Labour, Modern Slavery and Human Trafficking,” International Labour Organization, www.ilo.ch/global/topics/forced-labour/definition/lang--en/index.htm.
4. “Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,” United Nations.
5. “Italy Remembers the Life and Death of Anti-Mafia Judge Giovanni Falcone, 27 Years On,” TheLocal.it, May 23, 2019, www.thelocal.it/20190523/italy-remembers-anti-mafia-judge-giovanni-falcone-on-the-anniversary-of-the-capaci-massacre/.
6. Varun VM, “Human Rights-Based Approach to Combat Transnational Crime,” Euclid, 2020, <https://doi.org/10.30709/euclid-2020-012>.
7. Laura L. Shoaps, “Room for improvement: Palermo protocol and the trafficking victims protection act,” *Lewis and Clark Law Review*, volume 13, no. 3, 2013, p. 937–939, <https://law.lclark.edu/live/files/15325-lcb173art6shoaps.pdf>.
8. “Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,” United Nations.

9. Silvia Scarpa, "UN Palermo Trafficking Protocol Eighteen Years On: A Critique," *In The Palgrave International Handbook of Human Trafficking* (Cham: Springer International Publishing, 2019), https://doi.org/10.1007/978-3319-63192-9_38-1.
10. Jo Doezema, "Now you see her, now you don't: Sex workers at the UN trafficking protocol negotiations," *Social & Legal Studies*, volume 14, no. 69, March 11, 2005, <https://doi:10.1177/0964663905049526>.
11. "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children," United Nations.
12. Elzbieta M. Goździak & Kathleen M. Vogel, "Palermo at 20: A Retrospective and Prospective," *Journal of Human Trafficking*, volume 6, no. 2, October 2020, pp. 109-118, <https://doi:10.1080/23322705.2020.1690117>.
13. Elizabeth de Bernardis, "Human Trafficking in the United States: A Perspective on Domestic Legislation at the Federal and State Levels," *Widener J.L. Econ. & Race* 2013-2014, pp. 3-5, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/wijecr5&div=9&id=&page=>.
14. Heidi Box, "Human Trafficking and Minorities: Vulnerability Compounded by Discrimination," *Minorities Digest: Human and Welfare*, 2019, pp. 2829, <https://www.du.edu/korbel/hrhw/researchdigest/minority/Trafficking.pdf>.
15. Christina A Seideman, "The Palermo Protocol: Why It Has Been Ineffective in Reducing Human Sex Trafficking," *Global Tides*, vol. 9, no. 5, 2015, pp. 2-5, <http://digitalcommons.pepperdine.edu/globaltides/vol9/iss1/5>.
16. "Human Trafficking," U.S. Department of Homeland Security, September 22, 2020, www.dhs.gov/archive/topic/human-trafficking.
17. "What Is Forced Labour, Modern Slavery and Human Trafficking," International Labour Organization.
18. Ergon Associates Ltd., "Understanding Remediation A Working Paper for the Project 'New Data to Detect Forced Labour in Agriculture,'" ISEAL Alliance, April 2018,

https://www.isealalliance.org/sites/default/files/resource/2019-02/Forced_Labour_Remediation_Working_Paper_0.pdf.

19. Jerald L. Feinstein, "Introduction to Expert Systems," *Journal of Policy Analysis and Management*, vol. 8, no. 2, 1989, pp. 182–187, www.jstor.org/stable/3323375.
20. Labor Solutions, "Worker Voice: Do You Have the Right Tools and Process in Place?" *Labor Solutions*, March 2, 2021, www.laborsolutions.tech/post/worker-voice-do-you-have-the-right-tools-and-process-in-place.
21. Michael Gallo and Hannah Thinyane, "Sentinel Surveillance and Centring Prevention in Anti-Trafficking Policy and Response," *Journal of Modern Slavery*, vol. 5, no. 1, Jan. 2021, pp. 2–3, <https://slavefreetoday.org/wp-content/uploads/2020/11/Sentinel-Surveillance-and-Centring-Prevention-in-Anti-Trafficking-Policy-and-Response.pdf>.
22. "The Tech," EMin, www.eminproject.com/tech/.
23. Phoebe Ewen, Hannah Thinyane, and Sophie Zinser, "Technology as Amplifier: Giving Workers a Voice in Social-Compliance Audits," *AsiaGlobal Online Journal*, October 29, 2020, www.asiaglobalonline.hku.hk/technology-amplifier-giving-workers-voice-social-compliance-audits.
24. Paul Wright, "The Risk of Cybercrime and Emerging Technologies," KPMG, May 12, 2020, home.kpmg/ae/en/home/insights/2020/05/the-risk-of-cybercrime-and-emerging-technologies.html.
25. V. Greiman and C. Bain, "The Emergence of Cyber Activity as a Gateway to Human Trafficking," *International Journal of Cyber Warfare and Terrorism (IJCWT)*, vol. 12, no. 2, 2020, p.43, <http://blogs.bu.edu/ggreiman/files/2013/10/ICIW2013JournalonInfoWarfareGREIMAN.pdf>.
26. "New Research Suggests Data Transparency Can Have Significant Positive Impact for Brands," *MarTech Series*, September 12, 2019, <https://martechseries.com/analytics/behavioral-marketing/location-data/new-research-suggests-data-transparency-can-significant-positive-impact-brands/>.
27. Matt Dottridge, "Editorial: How is the money to combat human trafficking spent?" *Anti-Trafficking Review*, no. 3, September 2013 p. 70, <https://>

gaatw.org/ATR/AntiTraffickingReview_Issue3.2014.Following_the_Money.pdf.

28. Goździak and Vogel, “Palermo at 20: A Retrospective and Prospective.”

29. Cameron Thibos, “Twenty Years of Trafficking: Taking Stock of the World the Palermo Protocol Built,” OpenDemocracy, November 15, 2020, www.opendemocracy.net/en/beyond-trafficking-and-slavery/twenty-years-trafficking-taking-stock-world-palermo-protocol-built/?fbclid=IwAR1cSEHGpWVj2UjxwCNGxQ0ESYdrvIjrh33YEpbBqpwwcm6Zy1TWnrxrMI2M.

30. Ian Tennant, *The Promise of Palermo: A Political History of the UN*



Convention against Transnational Organized Crime, Global Initiative Against Transnational Organized Crime, October 2020, www.globalinitiative.net/wp-content/uploads/2020/10/The-promise-of-Palermo-GI-TOC-Tennant.pdf.

Secretary of State Mike Pompeo watches as 2018 ‘TIP Report Hero’ Francisca Awah Mbuli discusses the global challenge of human trafficking. Mbuli was one of ten individuals who was recognized for her efforts to fight against human trafficking, at the U.S. Department of State on June 28, 2018. (State Department photo/ Public Domain)