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Human Rights and Development: Putting Power and Politics at the Center

*Gordon Crawford** & *Bård A. Andreassen***

ABSTRACT

Human rights are not primarily technical-legal issues. While much research and debate has revolved around the legal nature of human rights, comparatively little attention has been offered to their political character. Human rights define basic norms, values and interests in human and social life, but they are, at the same time, always secured or denied in political and social contexts of power, and situations of competition over resources. This article reports on a research project that made detailed empirical analyses of how different forms of power constrain human rights activism in six different countries, and examines the construction of countervailing empowerment to challenge such power structures. It argues that more systematic analytical attention should be paid to power and political analysis of human rights in development contexts.

I. INTRODUCTION

For a long time human rights and international development “lived in splendid isolation.”¹ In the mid to late 1990s, however, a convergence of human rights norms and strategic thinking about development occurred, and a human rights-based approach to development emerged in which the objective of development became the realization of human rights.² Often referred to

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1. PETER UVIN, *HUMAN RIGHTS AND DEVELOPMENT* 1 (2004).

2. *Id.* at 122–66; *REINVENTING DEVELOPMENT? TRANSLATING RIGHTS-BASED APPROACHES FROM THEORY INTO PRACTICE* (Paul Gready & Jonathan Ensor eds., 2005).

simply as rights-based approaches, the “rise of rights” within international development has been well documented³ and inclusive of the historical and contextual factors that accounted for the emergence of rights-based development.⁴ By the late 1990s and early 2000s, many international development nongovernmental organizations (NGOs) enthusiastically adopted human rights-based approaches, notably ActionAid, Save the Children, Oxfam, and Care International, as well as by a number of official governmental and intergovernmental development agencies, for instance, UK Department for International Development (DFID), Swedish International Development Agency (SIDA), United Nations Children’s Fund (UNICEF), and the United Nations Development Programme (UNDP).⁵ Local NGOs and social movements also adopted human rights-based approaches.⁶

During the rise of rights in development policy and practice in the early to mid-2000s, the transformative potential of rights-based approaches was noted, especially how they may resonate with transformative versions of participation.⁷ Indeed, a rights-based approach was seen by Andrea Cornwall and Celestine Nyamu-Musembi as “sharpen[ing] the political edges of participation in the wake of the instrumentalism produced by mainstreaming and to make critical linkages between participation, accountability and citizenship.”⁸ Such enthusiasm focused on the agency of rights claimants and on processes of local political action such as grassroots mobilization, collective action, and advocacy, as much as on the outcomes of such agency. Similarly, Paul Gready highlighted the claim that rights-based approaches could potentially “re-politicize development” in the positive sense of re-framing development as entitlement and re-orientating development from “technical solutions to socio-political action,”⁹ while Cornwall and Nyamu-Musembi noted that a

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3. Rosalind Eyben, *The Rise of Rights: Rights-Based Approaches to International Development*. IDS Policy Briefing 17 (2003); MAXINE MOLYNEUX & SIAN LAZAR, *DOING THE RIGHTS THING: RIGHTS-BASED DEVELOPMENT AND LATIN AMERICAN NGOS*, at ch. 1 (2003); see UVIN, *supra* note 1, at 123–28.
 4. Andrea Cornwall & Celestine Nyamu-Musembi, *Why Rights, Why Now? Reflections on the Rise of Rights in International Development Discourse*, 36 *DEVELOPING RIGHTS IDS BULL.* 11–14 (2005); *REINVENTING DEVELOPMENT?*, *supra* note 2, at 14–28; SAMUEL HICKEY & DIANA MITLIN, *RIGHTS-BASED APPROACHES TO DEVELOPMENT: EXPLORING THE POTENTIAL AND PITFALLS* 3–8 (2009).
 5. Andrea Cornwall & Celestine Nyamu-Musembi, *Putting the “Rights-Based Approach” to Development Into Perspective*, 25 *THIRD WORLD Q.* 1415, 1425–30 (2004); Laure-Helene Piron, *Rights-Based Approaches and Bilateral Aid Agencies: More Than a Metaphor?* 36 *DEVELOPING RTS. IDS BULL.* 19 (2005); Mac Darrow & Amparo Tomas, *Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation*. 27 *HUM. RTS. Q.* 471 (2005).
 6. Hannah Miller, *From “Rights-Based” to “Rights-Framed” Approaches: A Social Constructivist View of Human Rights Practice* 14 *INT’L J. HUM. RTS.* 916 (2010).
 7. Sam Hickey & Giles Mohan, *Relocating Participation Within a Radical Politics of Development* 36 *DEV. & CHANGE* 237, 238 (2005); Cornwall & Nyamu-Musembi, *Putting the “Rights-Based Approach,” supra* note 5, at 1424.
 8. See Cornwall & Nyamu-Musembi, *Why Rights, supra* note 4, at 10.
 9. Paul Gready, *Rights-Based Approaches to Development: What is the Value-Added?* 18 *DEV. PRACTICE* 735, 742–43 (2008).

rights-based approach could be a “more progressive, radical even, approach to development,”¹⁰ with the potential to transform power relations.

At times, however, the same authors simultaneously expressed doubts about the extent to which such transformative potential would be realized. Peter Uvin, for instance, questioned whether rights-based approaches would amount to more than rhetorical “fluff” without a “fundamental reshuffling of the cards of power, or a redistribution of resources.”¹¹ Similarly Cornwall and Nyamu-Musembi asked whether rights-based approaches will turn out to “mean anything more than the latest flurry of cosmetic rhetoric with which to sell the same old development.”¹² Such uncertainty was based mainly on whether actors would adopt a more political approach to securing rights, one that contests power inequalities and the unjust distribution of resources.

As we approach two decades from the original rise of a human rights-based approach, and a decade on from many of these initial academic commentaries, this article undertakes an assessment of its relative success and failure as a transformative and rights-based development strategy. It does so through the lens of power and politics, for the following reasons. First, while much literature on human rights-based approaches emphasizes the agency of rights-deprived groups in claiming rights and their empowerment in doing so, the authors contend that there is a relative neglect of those negative power structures, which often act as an obstacle to securing rights. Such structures endow various elite groups in society with the power to resist claims for rights, especially when such claims are perceived as a threat to their interests. In this sense the starting point of this research was influenced by Jethro Pettit and Joanna Wheeler’s critique of rights-based approaches in which the emphasis on empowerment “fails to address the *structural* causes of marginalisation and the power relations that perpetuate those. The assumption is that one sector of society can be empowered without necessarily challenging the power of other sectors.”¹³ Thus, in implementing a rights-based approach, Pettit and Wheeler highlighted “the importance of analysing and confronting deeply embedded power relations and structural barriers on the road to securing rights.”¹⁴

Second, this emphasis on power and the power dynamics between the relatively powerful and powerless underscores the importance of politics to a rights-based approach, as intimated above. It recognizes that struggles for human rights are political struggles and that advocacy for citizens’ rights as

10. See Cornwall & Nyamu-Musembi, *Putting the “Rights-Based Approach,” supra* note 5, at 1418, 1432.

11. Peter Uvin, *From the Right to Development to the Rights-Based Approach: How “Human Rights” Entered Development?*, 17 DEV. PRACTICE 597, 603–04 (2007).

12. See Cornwall & Nyamu-Musembi, *Putting the “Rights-Based Approach,” supra* note 5, at 1434.

13. Jethro Pettit & Joanna Wheeler, *Developing Rights? Relating Discourse to Context and Practice*, 36 DEVELOPING RIGHTS IDS BULL. 1, 6 (2005).

14. *Id.* at 5.

a development strategy is embedded in the particular political environment within which it occurs. The nature of this political context, for example, the level of transparency and accountability of public authorities, is fundamental to the extent to which citizens can freely exercise their civil and political rights and make claims for people-centered development and other forms of rights fulfillment. A rights-based approach, therefore, is not a technical exercise, but one that is replete with politics. A number of key authors also highlight this point. Uvin noted that human rights claims are a “deeply political . . . matter,”¹⁵ and Cornwall and Nyamu-Musembi stated that “[r]ights talk is above all talk of politics.”¹⁶ Laure-Helene Piron emphasized “the political nature of the approach” as a strength, in particular the “social contract’ between the state and citizens empowered to claim their rights.”¹⁷ In the concluding chapter in the Gready and Ensor volume, Olivia Ball emphasized that “[a] rights-based approach is thoroughly ‘political,’”¹⁸ not in a big-P politically partisan sense, but what she calls “small-p, pro-poor political action in defiance of power.”¹⁹

Thus in the literature of the 2000s that discussed rights-based approaches as a potential transformative strategy, the issues of power and politics were viewed as at the crux of its likely success or failure. Mac Darrow and Amparo Tomas²⁰ noted that “human rights-based approaches compel us deeper into analyses of political and social power relationships in the public and private spheres.” Writing in the *IDS Bulletin*, the Sustainable Livelihoods in Southern Africa (SLSA) team asked, “How do politics, power and interests affect the ability of rights claiming in practice in particular settings?”²¹ and suggested that “[i]gnoring power and politics . . . results in sure failure . . . and capture by those with power.”²² In a similar vein, Cornwall and Nyamu-Musembi concluded that “a rights-based approach would mean little if it has no potential to achieve a positive transformation of power relations.”²³ Rights-based development requires a change in power relations because this alters the relative influence of different social groups and interests both within political institutions and society at large. A rights-based approach aims to secure the human rights of rights-deprived groups through, for example,

15. See UVIN, *supra* note 1, at 134.

16. See Cornwall & Nyamu-Musembi, *Putting the “Rights-Based Approach,” supra* note 5, at 1433.

17. See Piron, *supra* note 5, at 25.

18. Olivia Ball, *Conclusion, in REINVENTING DEVELOPMENT?, supra* note 2, at 282.

19. *Id.* at 283.

20. See Darrow & Tomas, *supra* note 5, at 486.

21. Sustainable Livelihoods in Southern Africa (SLSA.) Team, *Rights Talk and Rights Practice: Challenges for Southern Africa* in 34 *IDS BULL.* 97–98 (2003).

22. *Id.* at 110.

23. See Cornwall & Nyamu-Musembi, *Putting the “Rights-Based Approach,” supra* note 5, at 1432.

resource redistribution by means of budget allocations and other political mechanisms, which in turn requires power transformation in order to be able to define the main issues of the political agenda (for instance, labor laws or taxation systems) and to increase the organizational strength and influence of people living in situations of poverty.

Therefore this article contends that understanding the dynamics between power structures and the claiming of human rights is necessary in order to make the human rights-based approach effective in bringing about those changes in policies and in society that it seeks to achieve. Conversely, a lack of such an understanding amongst its advocates could lead to a rights-based approach becoming another failed development strategy. In undertaking an assessment of a human rights-based approach to development, this article explores the degree of critical awareness of structures and relations of coercive power amongst rights-promoting organizations and the extent to which power inequalities have been addressed. To reach this assessment, we pose the following questions:

- In what ways have power relations and structural inequalities constrained struggles for human rights in development contexts?
- In seeking to secure rights, how and to what extent have nongovernmental human rights promoters been able to challenge power structures at both local and national levels?
- To what extent have human rights-promoting organizations successfully transformed power structures and secured rights?

The discussion and assessment below draws on a six-country study to examine the interaction between struggles for human rights by NGOs and the dynamics of power. This is published in full in the edited volume *Human Rights, Power and Civic Action*.²⁴ Small teams of researchers looked at country cases in Africa, including Zimbabwe (Chapter 2), Kenya (Chapter 3), Ghana (Chapter 4), and South Africa (Chapter 5); and in Asia, including China (Chapter 6) and Cambodia (Chapter 7). The authors selected these six country studies to reflect differing political contexts with regard to political regime and degrees of democratization, ranging from relatively democratic to autocratic, and thus different political opportunity structures for citizen action. The authors draw on the synthesis of the country studies in the concluding chapter of the book, while the detailed source materials for all country examples referred to below can be found in the respective country chapters. Distinctively, this article provides a more specific assessment of the relative success or failure of a human rights-based approach to

24. HUMAN RIGHTS, POWER AND CIVIC ACTION: COMPARATIVE ANALYSES OF STRUGGLES FOR RIGHTS IN DEVELOPING COUNTRIES (Bård. A. Andreassen & Gordon Crawford eds., 2013).

development, highlighting the importance of bringing power and politics back into the center of analysis.

The following three sections address the three research questions in turn, with evidence provided from the country case-studies. The conclusion then provides an overall assessment of the relative success or failure of a human rights-based approach to development before offering some final thoughts on the significance of putting politics and power back at the center of analysis if a rights-based approach is to offer a more realistic and effective development approach.

II. POWER CONSTRAINTS ON HUMAN RIGHTS STRUGGLES

Power is a complex and contested concept. Steven Lukes' classic work defines three dimensions of power—visible, hidden and invisible.²⁵ Visible power is where person "A has power over B to the extent that he can get B to do something that B would not otherwise do,"²⁶ and applies to political decision making in which there is an actual, and thus observable, conflict of interests. Lukes refers to situations of differing policy preferences in particular,²⁷ but visible power could also pertain to different social class interests. "Hidden power" extends the scope of power to control over the agenda of political decision making, i.e. the power to determine which issues can be discussed and which are excluded from the agenda as detrimental to the interests of the powerful, referred to as a sphere of non-decision making.²⁸ The third dimension, invisible or internalized power, entailed two significant additions by Lukes. First, power relations are not just about individual acts but also those collective actions associated with social forces. Second, power can operate to shape and control people's desires and beliefs contrary to their interests, for instance, "through the control of information, through the mass media and through processes of socialization."²⁹ In other words, power is exercised invisibly by "influencing, shaping or determining [people's] very wants."³⁰ These different dimensions of "power over" are all forms of negative power, given that they involve authority and coercion.³¹

25. STEVEN LUKES, *POWER: A RADICAL VIEW* 25–29 (2d ed. 2005) (1974).

26. *Id.* at 16.

27. *Id.* at 18.

28. *Id.* at 22.

29. *Id.* at 27.

30. *Id.*

31. *Quoting* AMY ALLEN, *THE POWER OF FEMINIST THEORY: DOMINATION, RESISTANCE, SOLIDARITY* 125 (1999). Lukes later noted that such constraining power "must be a broader concept than domination" *cited in* LUKES, *supra* note 25, at 84), and introduced the notion of "beneficent power" where governments seek to prevent harm, e.g. the wearing of seat belts in cars, an acknowledgement that coercive power can be used at times for positive purposes in the interests of all.

In light of this, in what ways have power relations and structural inequalities constrained struggles for human rights in development contexts? Findings from the country studies confirm expectations that various forms of coercive power represent obstacles to securing rights, and that struggles for human rights are political struggles in which powerful economic and political interests often oppose and resist the claims for rights. Numerous examples of visible, hidden, and invisible manifestations of power in the country studies support these findings. In addition, this article considers whether any—or all—of the three forms of power are more prevalent in authoritarian systems (Zimbabwe, China) than in more liberal and transparent political systems (Ghana, Kenya, and South Africa). This article examines the three dimensions of power in three sub-sections below, while also highlighting the interaction and mutual reinforcement of different forms of power, described as the “nesting” of power.

A. Visible Power

The country studies provide a wide variety of examples in which visible power constrained the struggle for rights. Various actors exercise visible power in all political contexts, although researchers differentiate its operation in situations of democratic and legitimate processes of decision making and in more repressive authoritarian contexts. Economic and social actors exercise visible power, as well as political ones.

In Ghana, although the responsible (female) Minister for Women’s Affairs and some (mainly male) members of parliament vigorously opposed a bill to criminalize domestic violence by exerting their visible power in the legislative process, democratic political processes allowed NGO activists from the Coalition for Domestic Violence Legislation (DVC) to openly, and ultimately successfully, advocate for the bill. Importantly, this example also provides evidence of the nesting of power in hidden and invisible ways: opponents of the bill in parliament introduced hidden delays into the legislative process and invoked traditional patriarchal norms to suggest that the bill was against Ghanaian culture. Thus, an open and democratic political process did not prevent combined forms of power working against the advancement of human rights in the private sphere, with overt opposition by leading politicians nested inside covert political agenda-setting and the invisible, socialized notions of tradition and culture. In an autocratic context like Zimbabwe, the state exerted visible power in more repressive ways against women activists. Here, the police frequently disrupted and obstructed demonstrations organized by Women of Zimbabwe Arise (WOZA), with harassment of these women activists who demanded clean water, access to affordable education, and basic health services.

Visible power was also frequently evident in contexts of land distribution and land policies. In all country studies, irrespective of regime and political context, land issues were highly contentious, but took different forms according to local conditions. In Kenya, land allocation became well known as a source of clientelism and self-enrichment by political and economic elites during the Kenyatta and Moi regimes from the mid 1960s to 2002. The Kenya Land Alliance (KLA) lobbied for a land policy during the last years of the Moi regime, and the regime responded with outright resistance. However, this visible power was nested inside clientelist networks of hidden power among regime supporters who had acquired huge tracts of land through political connections. Consequently, lawyers who took up land cases that challenged powerful landowners often experienced severe harassment.

Corporations also exerted visible power, often in combination with state power, in their opposition to rights-promoting organization activities that highlighted corporate violation of rights. In Ghana, the Wassaa Association of Communities Affected by Mining (WACAM) attempted to defend local communities against the violation of various land and livelihood rights by transnational mining corporations engaging in large-scale surface gold mining. Combined corporate and state power was exercised to protect mining companies through the deployment of both private security and state security forces against local community resistance. This led to a number of well-documented instances in which the military and police violently broke up peaceful protests by community members, resulting in serious injuries and hospitalization. One respondent expressed it thus: the government “has removed its sovereign cap and is now wearing a corporate cap.”³² In China, the NGO MWLARO,³³ working for the rights of migrant workers, aimed at utilizing state power vis-à-vis corporate power, but actually experienced the weakness or the reluctance of the state to limit corporate power. In the early years of economic liberalization, state regulation of the labor market was weak, and corporations often took advantage of this, for instance by reducing or delaying payment of wages. This, however, ignited frequent disputes and altercations on company premises—attacking visible corporate power—which sometimes spilled over into demonstrations outside local government offices to protest against the lack of state support and regulation. When MWLARO intervened and made demands on migrant workers’ behalf, it witnessed visible corporate power as intimidation and harassment of workers. Paradoxically, the weak regulation of the labor market gave visible corporate power greater scope to operate and demonstrated the relative

32. Gordon Crawford & Nana Akua Anyidoho, *Ghana: Struggles for Rights in a Democratizing Context*, in *HUMAN RIGHTS, POWER AND CIVIC ACTION*, *supra* note 24, at 88.

33. The names of the three organizations studied in China have all been changed. Therefore this is not the organization’s real name or acronym.

weakness of state power in relation to corporate power, even in the context of an autocratic party-state.

It emerges from this analysis that the main source of visible power as a constraint on human rights protection and promotion is state power, at times in collusion with corporate power. It is clear that the state exerted visible power in all political contexts, although direct repression is more likely in autocratic contexts like Zimbabwe than in more liberal contexts such as Ghana. The assertion of rights that threaten state interests and those of clientelist groups, for instance land owners, are often subjected to the exertion of visible power, as is the advocacy of rights that threaten corporate interests, for example, in the extractive industries.

B. Hidden Power

Hidden power in the tradition of Lukes extends the scope of power to control over the political decision making agenda.³⁴ It entails pulling strings behind the scenes, with the exertion of power to determine which issues are included in public discourse and in policy-making, and which are excluded. In many regimes the ruling elites exercise hidden power in closed forums, for instance in “kitchen cabinets” beyond public control and accountability. Such lack of transparency also undermines the scope for popular intervention and the voicing of concerns, and the lack of voice becomes particularly problematic when the exertion of hidden power is further used to manipulate politicians and the media. Numerous examples from the country studies reflect this.

The formulation of hidden deals without the knowledge of those concerned was evident in South Africa. Nkuzi Development Association actively participated in land issues, including support for commercial farm workers. Yet Nkuzi’s advocacy for farm workers who had been laid off after protesting for their rights was constrained by the continued existence of the combined hidden power of government officials and white commercial farmers. Whereas Nkuzi had expected that, in a post-apartheid environment, government officials would provide support against the powers of farm employers, instead they experienced that white farm-owners continued to exercise hidden power in order to secure the collusion of officials.

The South African case-study also demonstrated the hidden power of patriarchy within male-dominated political and business environments, with obstacles to gender equality reflected in recruitment policies, career promotion rates, and the manner in which authorities handled sexual harassment cases. The adverse impact of such patriarchal hidden power on struggles for women’s rights and gender equality was illustrated by the high level 2011

34. See LUKES, *supra* note 25, at 25.

appointment of a new Chief Justice in South Africa, an individual who had previously been criticized in the press for “condon[ing] brutal gender-based violence and sexual assault”³⁵ after drastically reducing sentences for men convicted of domestic violence and marital rape. This sent a signal that such crimes and violations of women’s rights are not to be treated as serious issues.

In the repressive political environment of Zimbabwe, overt and covert power were combined in overall political harassment by the state. For instance, members of Women of Zimbabwe Arise (WOZA) were not only subject to visible power through arrest for holding unlawful demonstrations, but then also subjected to beatings and nondiscernible torture like the “air chair” where injuries are hard to verify afterwards as torture. The latter is an example of extreme agenda-setting in the sense that torture is used to silence critics and opponents of the regime; they are physically assaulted, including in hidden ways, for demonstrating publicly against the regime’s violation of civil and political rights.

Hidden power can also take the form of “local protectionism” where local power agents protect their principals. In China, in a case addressed by ZLAS,³⁶ an organization advancing women’s rights, the local authority covered up an incident of sexual assault by concealing information to obstruct a claim for redress through the court system. The case was eventually heard “in camera,” and, in effect, condoned the protection of alleged perpetrators by influential civil servants. Similarly, the NGO MWLARO experienced the hidden power of the Chinese corporate sector when the rights of migrant workers were obstructed through nondisclosure of information about labor contracts.

In Ghana, hidden corporate power was evident when mining companies wielded their ample financial resources to gain the support of various local power-holders, notably local governments and traditional authorities (chiefs). This, in turn, expanded the range of powerful opponents that the Wassa Association of Communities Affected by Mining (WACAM) faced as a small, community-based organization. In such instances, examples of hidden corporate power range from the legal (such as the provision of business contracts and undertaking public relations exercises) to the illegitimate and illegal (for instance, corrupt practices). Mining companies further exercised hidden power by manipulating Ghana’s parliament, though parliamentary members clearly colluded. For example, the parliamentary Select Committee on Environment, Science and Technology expressed its satisfaction with

35. Malcolm Langford, Bill Derman, Tsepho Madlingozi, Khulekani Moyo, Jackie Dugard, Anne Hellum & Shirhami Shirinda, *South Africa: from Struggle to Idealism and Back Again*, in HUMAN RIGHTS, POWER AND CIVIC ACTION, *supra* note 24, at 120 (2013).

36. Lay Lee Tang, *China: NGOs and Human Rights in Action*, in HUMAN RIGHTS, POWER AND CIVIC ACTION, *supra* note 24, at 158. This is not the organization’s real name or acronym.

the environmental stewardship of mining giant AngloGold Ashanti Limited, ostensibly after a fact-finding visit to the area. Yet the Select Committee members did not actually visit the communities affected by mining. Rather, the mining company itself arranged for the Committee to meet selected opinion leaders as community representatives. Further, mining companies invited local MPs to sit on company boards in a clear conflict of interests, undermining MPs' abilities to respond independently to their constituents' concerns. Similarly in Kenya, fisher folk around Lake Naivasha in the Rift Valley suffered from behind-the-scenes lobbying and the use of hidden corporate power by flower farmers and the Riparian Association who wanted to utilize the lake for tourism.

Transparency is a key feature of a human rights-based approach to development. Transparency reflects both intrinsic and instrumental human rights values. Citizens' insight and oversight regarding issues of public concern are important intrinsic values, enabling people to make informed and autonomous choices and live meaningful lives. Transparency is also important in an instrumental way because it facilitates public debate about public concerns and enables people to make informed critiques. Hidden power as non-decision making³⁷ stands at odds with these features of the human rights doctrine, excluding critical issues from being placed on the agenda and publicly discussed. The failure to develop land reforms is a typical example in agrarian societies, as discussed in a number of the country studies. The neglect of the personal security of citizens in informal settlements is a serious urban rights issue, as demonstrated by the case study in the Kenya chapter of the Korogocho informal settlement in Nairobi. In both instances non-decision making is evident through the rights issues being kept off the agenda. Hidden power is harder to confront than visible power precisely because it is hidden and relatively unreachable.

C. Invisible Power

Invisible power is, as the term indicates, even harder to perceive, address, and contest. It manifests itself in attitudes, life views, and behavioral norms that are commonly embedded in societal traditions and customs. Norms and traditions are internalized through socialization and shape the way people behave individually and in social relations. Norms of invisible power may follow secular traditions or be religiously or culturally grounded. They may entail social and cultural practices that involve rights-abusing behavior (e.g. forced marriages, female genital mutilation, and so forth). Invisible power is often viewed as legitimate because it stems from world views embedded

37. See LUKES, *supra* note 25, at 22.

in local ways of organizing social relations. However, from a human rights angle, not all cultural practices are legitimate; they may breach the physical and mental integrity of the individual or fundamental human rights norms of equality and nondiscrimination. Typical examples analyzed in the country cases entailed gender discrimination, particularly violence against women.

The latter was the case in Ghana, as illustrated by the battle over the Domestic Violence Bill from 2003 to 2007. Above, we described the resistance of the responsible Minister as nested power, i.e., the visible power of the Minister nested inside the invisible power of socialized attitudes and behavior. The DVC recognized such invisible power and defined one of its main tasks as public education and awareness-raising in support of the Bill. Kenya provided another example of the power of tradition and culture related to further education for girls in the Borana tribe in the Korogocho settlement of Nairobi where the cultural demand of marriage at the age of sixteen limits girls' education. The Miss Koch Initiative (MKI) has supported girls' right to education and addressed various issues of culture and tradition, for instance, by establishing an education bursary program and by facilitating civic arbitration and dialogue among family members.

Similar to the Ghana and Kenya experiences, the Zimbabwe Women Lawyers Association (ZWLA) experienced invisible power in the private sphere as intersecting with visible and hidden power in the public sphere. In this case study, claims for women's rights were mocked, silenced, and excluded from the political agenda and public discourse, in particular by media loyal to the regime, in both overt and covert ways. Simultaneously social norms of patriarchal domination existed as sources of invisible power in the family and caused further marginalization of women in social and public life. Thus, unequal power relations in the family constituted a central concern for ZWLA in their struggles for women's rights. Similarly in South Africa, the invisible power of patriarchal domination is indicated by the fact that chiefs who exercise visible power are men, almost without exception; patriarchy pervades the institution of chieftaincy.

In the Chinese context, the organizational studies revealed that invisible power is important in "stigmatizing the weak"³⁸ so that they accept subjugation or exploitation. For instance, when rural migrants internalized prejudice against themselves as due to their inferior status, this, in turn, weakened their self-esteem and capability to mobilize against discrimination. Also in China, the visible power of local authority structures, for example village committees, often rests on features of discriminatory traditions and customs. The case study of the PCA,³⁹ an NGO set up to advance participatory governance in urban communities, demonstrated that visible power nests inside invisible

38. See Tang, *supra* note 36, at 167.

39. See *id.* at 178. This is not the organization's real name or acronym.

power structures. PCA's attempts to encourage civic advocacy in order to enhance the state supported objective of participation in local governance (visible power) was undermined by the internalized negative perceptions of participation by the rural migrants themselves (invisible power) and their acceptance of authority structures.

In practice, the invisible power of values, attitudes, and behavior found in various social and cultural practices is commonly not seen as domination. Rather, it is socially experienced as features that shape individual and collective identity. In national constitutions, traditional customary practices can take precedence when coming into conflict with the right to gender equality. Human rights analyses of invisible power, however, demonstrate the negative nature of some customary practices and how they conflict with human rights principles of equality and nondiscrimination. Practices internalized through socialization (often in early childhood) are hard to transform; they are identity and cultural border guards that ensure social stability, at both personal and national levels. The challenge for a human rights-based power analysis is to reveal the discriminatory and repressive features of certain long-standing cultural practices and customs without totally undermining the legitimacy of the culture.

D. Findings on Power Constraints

First, the country studies provided numerous illustrative examples of how different forms of power constrain struggles for human rights, and provided overwhelming confirmation of the article's initial proposition that structures and relations of power constrain human rights advocacy and restrict the securing of rights for poor people in development contexts. Second, in all political contexts—ranging from relatively open and liberal to closed and hegemonic—human rights advocacy was constrained by all three dimensions of power, although visible power was used in more repressive ways in authoritarian contexts. Third, while Lukes' differentiation of these three forms of "power over" facilitated the article's analysis, researchers discovered a more complex picture in which one form of power nests within another form, generally reinforcing each other. Nested power dynamics weaken democratic struggles to secure rights in more sophisticated ways than the mere use of direct pressure to limit rights. However, an open and democratic environment did make it more possible to challenge such instances of nested power dynamics and thus to seek to advance rights.

Thus, we have seen how struggles for human rights have been constrained by structures and relations of power in numerous instances in the country studies. Consequently, in many instances struggles for rights were not successful, at least within the timeframe examined in the study, with

populations remaining deprived of important human rights. Nonetheless, what is significant for this evaluation of a human rights-based approach is the extent to which rights-promoting organizations develop a critical awareness of such structures and relations of coercive power and whether they engage in struggles to challenge power inequalities.

III. CHALLENGING POWER?

This section addresses the second of the three questions posed in the Introduction. First, the authors assess the extent to which rights-promoting organizations display a critical awareness of coercive power relations as a constraint on their human rights advocacy. Then the authors examine how successfully these organizations challenge power structures at local and national levels.

The findings from the country case studies were mostly positive and indicate that rights-promoting organizations often display a significant awareness of power inequalities and of the obstacles to the realization of rights posed by powerful actors. This awareness has been demonstrated by a variety of strategies that organizations adopted as a means to address unequal power relations. Three main strategies include: cooperation and collaboration with public authorities as duty-bearers; confrontation with power-holders such as the state; and alliance building with other nongovernmental actors. These are not watertight compartments, of course, and an organization may adopt a combination of strategies to suit differing circumstances, again indicating a degree of critical self-awareness and reflection on how to address power constraints.

A. Strategies of Cooperation

An awareness of structures and relations of dominant power and their constraining effect on the realization of human rights does not necessarily lead to conflict and contestation with power-holders. On the contrary, one common strategy by which an organization sought to secure rights involved cooperating and collaborating with power-holders, especially with government in its role as duty-bearer. The adoption of this strategy depends on a number of key factors, notably the political context and feasibility of cooperation or contestation, the nature of the particular human right, and the type of organization.

Significantly, organizations sought to cooperate with government in both democratic and autocratic contexts. In differing authoritarian scenarios this could be for fairly pragmatic reasons (Zimbabwe) or because there was

virtually no choice (China), with confrontation not a realistic option. In Zimbabwe, the ZWLA purposely worked with those selected individuals within the ruling party and government agencies, such as the police and judiciary, whom they perceived as relatively sympathetic to their cause, as illustrated by the training work undertaken with governmental agencies to implement the Domestic Violence Act. In China, the overwhelming dominance of the party-state meant that all three organizations had little option but to cooperate with those authorities in order to make some progress in advancing a human rights agenda. Yet such cooperation in China remained problematic and, despite organizations pushing outwards on the boundaries of what was possible, achievements were inevitably limited by what the authorities would allow. For instance, as a promoter of women's rights, ZLAS had an awkward relationship with the official All China Women's Federation (ACWF), which acted as a gatekeeper to the powerful party-state structures. On the one hand, ZLAS's cooperation in collaborative projects with the Women's Federation usually received tacit government approval. On the other hand, the subsidiary relationship of the Women's Federation itself to the party-state was a significant constraint.

In democratic contexts, relatively open and accountable government meant that cooperation with government had a greater potential for success. In such contexts, adopting a cooperation strategy depended on the type of organization and the nature of the human rights work. Generally speaking, professional, legally-oriented organizations were more inclined to work within the system, and advocacy work on rights already established in law were more conducive to collaboration with government. Thus in Kenya, Kituo cha Sheria worked with the Ministry of Justice and Constitutional Affairs in developing paralegal training manuals and with the Ministry of Immigration on refugee law training. In South Africa, the Tshwaranang Legal Advocacy Centre's (TLAC) work on gender-based violence entailed not only numerous submissions to parliamentary committees and government departments on various policy aspects, but it was also invited to assist with drafting legislation on domestic violence and rape protocol. In Ghana, the DVC's campaign for legislation on domestic violence necessitated a degree of cooperation with governmental agencies, for example the Attorney General's office in relation to legislative drafting, and demonstrated the often observed need to combine strategies of cooperation and confrontation, as discussed below.

The strategy of cooperation remained problematic, however, and subject to criticism at times from within human rights movements for being too close to governments that were seen either as violators of rights or unresponsive to rights demands. Interestingly, this critique was particularly evident in China, despite this being an especially difficult context for rights-promoting organizations to operate in a more confrontational manner. For instance, MWLARO, in working to promote the rights of rural migrant workers, chose

to cooperate with state power structures in China, partly as a means to challenge corporate power, its main target. Yet such collaboration also led to criticism of MWLARO from other NGOs for being too close to government. Similarly, PCA was criticized for “doing the work of the government,”⁴⁰ but countered that they were merely working within the parameters of what was possible in encouraging more participatory governance.

B. Strategies of Confrontation

In the face of opposition and resistance to demands for rights, and the exertion of power to deny such demands, organizations often adopted a strategy of confrontation with government and other power-holders. Again the adoption of this strategy depended partly on the nature of the particular human right and the type of organization.

Demonstrations and public protests were the most common methods of expressing demands more forcibly. Here, the nature of the organization was especially relevant. If more legally-oriented organizations have shown more propensity to adopt a strategy of cooperation with power-holders, then more radical and politically-oriented organizations have been more inclined to adopt a strategy of confrontation. One illustration is Abahlali base Mjondolo, the shack dwellers movement in South Africa, who struggle for the socioeconomic rights of those living in informal settlements, especially through public demonstrations and rallies. The relatively democratic context of South Africa, especially with its long history of struggle against Apartheid has, on the one hand, enabled such protests. On the other hand, Abahlali's marches and demonstrations have frequently been declared illegal and subjected to violent responses from the state, indicating the limits to democratic challenges to the ruling ANC party in South Africa. In Zimbabwe, where the political context became increasingly autocratic from 2000 onward, WOZA sustained its organization of public demonstrations and collective actions against the curtailment of civil and political rights and for basic socio-economic rights, despite the violent response from the state. Here WOZA's principled stance of nonviolent direct action was especially important and enhanced the legitimacy of their protests, although it did not prevent the regular arrest, detention, and brutalization of their members. WACAM in Ghana also explicitly adopted the principle of nonviolence in all its public protests against the alleged rights abuses and environmental degradation committed by transnational mining companies. Despite the relatively democratic context, such protests were met at times by violence from both company private security and state security forces, again an indicator

40. See *id.* at 179.

of democratic deficits in Ghana.

However, it was not only the more community-based and militant organizations that engaged in strategies of confrontation. In Kenya, the KLA mobilized affected groups to challenge Nairobi City Council when it wanted to relocate small-scale traders in order to purportedly “decongest” the central business district of the city in 2008. The City Council did not consult the small traders and this led to demonstrations and protests demanding the accountability of public decision-makers to those whose incomes and livelihoods were under threat.

The DVC in Ghana provides an interesting example of the mixing of strategies of cooperation and confrontation. Its successful campaign from 2003 to 2007 to achieve the passage of the Domestic Violence Bill entailed cooperation with identifiable allies in parliament and government while also engaging in a strategy of confrontation with the Bill’s opponents. Described by a DVC member as “a big fight,”⁴¹ DVC’s battle with the Minister of Women and Children, eventually resulted in the replacement of the minister and thus the removal of the major public opponent of the Bill. The DVC ran a very astute campaign, one that involved amassing the support of potential allies within governmental circles while simultaneously countering opponents through a variety of tactics and activities in the public domain.

C. Building Alliances and Networks

When confronted with power inequalities and the obstacles to securing rights posed by power-holders, a third common strategy was the building of alliances and networks amongst rights-promoting organizations in order to enhance their own countervailing power. The Ghana study provided interesting and contrasting examples.

WACAM is a remarkable example of a small, community-based organization that has had significant impact in its struggles against extremely powerful opponents, namely transnational gold mining companies and the government of Ghana. It achieved this partly by successfully fostering important linkages with like-minded organizations nationally and internationally.⁴² The alliances with international NGOs have protected WACAM, to a degree, in its opposition to both wealthy corporations and a government that remains protective of corporate interests, given its reliance on tax revenue.

The campaign for domestic violence legislation illustrated another type

41. Crawford & Anyidoho, *supra* note 24, at 106.

42. Nana Akua Anyidoho & Gordon Crawford, *Leveraging National and Global Links for Local Rights Advocacy: WACAM’s Challenge to the Power of Transnational Gold Mining in Ghana*, 35 *CANADIAN J. DEV. STUD.* 483 (2014).

of successful networking. Several women's rights organizations formed the Coalition for Domestic Violence Legislation (DVC), and the research found that "the strength of the whole was greater than the sum of the parts in bringing about change."⁴³ Interestingly, and unlike WACAM, the Coalition did not seek to strengthen their campaign through external linkages with similar campaigns elsewhere, perhaps confident in its own ability to press for legislative change in Ghana. However, given that the capacity of the DVC faltered after the legislation's introduction, the longer-term effectiveness of such coalitions was questioned in which the primary commitment of member organizations was inevitably to their own programs. It was found that member organizations of the Coalition re-focused on their own core activities after the success of achieving legislative change, but which left many implementation issues unresolved.

Alliances and networks proved their worth in both autocratic and democratic contexts. In China, ZLAS initiated networks of women lawyers and bar associations to encourage more lawyers to take up public interest cases involving women's rights. Similarly, MWLARO facilitated a network of lawyers who took on pro-bono and legal aid cases for migrant workers. In Zimbabwe, the human rights networks and associations in which Zimbabwe Lawyers for Human Rights (ZLHR) and Zimbabwe Women Lawyers Association (ZWLA) participated were critical in lobbying against the 2004 Non-governmental Organisation Bill.⁴⁴ In Kenya, Kituo cha Sheria stated that networking with other organizations provided "strength in numbers" in mobilizing people and raising awareness. Kituo's lobbying for a housing bill is one example of building a coalition with other organizations and political forces to influence the government's position. In a contrasting example from South Africa, however, Abahlali draws attention to a potential disadvantage of participating in broader networks, taking a conscious decision against doing so in order to retain its own independence and autonomy, including in its choice of strategies and actions.

In sum, organizations often displayed considerable awareness of the powerful forces that constrain the realization of human rights and, at times, violate human rights. They also showed tactical ability in their choice of strategic responses to the power constraints encountered. Some adopt a more confrontational strategy, though always remaining nonviolent, while others seek to cooperate with power-holders and thus to persuade government or other authorities to act as rights duty-bearers. In relatively democratic contexts, available strategic choices are more numerous and decisions tend to

43. *Id.*

44. The NGO Bill (2004) required registration of NGOs by a government-controlled Council and prohibited Zimbabwean NGOs from receiving any foreign funding to engage in human rights work, while banning foreign human rights NGOs.

reflect the nature of the organization: community-based and membership-based organizations adopt a confrontational approach more frequently; while the professional NGOs, especially legally-orientated ones, were likely to work within the system and seek to persuade rather than challenge government and other power-holders. The type of rights being advocated for also influenced organizations' decision making on strategy, with women's rights in the legal sphere seemingly less controversial and often enabling a more collaborative relationship with government.

Political context was significant in shaping the opportunities available to nongovernmental actors, yet not always as influential or as determining as anticipated. The case-study of China provided a useful illustrative example. Here a direct challenge to the party-state was clearly not an option, and the authoritarian context did play a major role in limiting what was possible. Yet, the country study also illustrated the innovative ways in which rights-promoting organizations skillfully negotiated with the party-state within the overall authoritarian context. The study organizations capitalized on the official rhetoric about human rights, and thereby pushed the limits of what was possible while showing considerable awareness that to push too far would threaten their own survival.

IV. TRANSFORMING POWER STRUCTURES?

This section focuses on the last question that contributes to the overall assessment of human rights-based approaches: to what extent have human rights-promoting organizations successfully transformed power structures and secured rights, especially for poor and marginalized people?

Before embarking on this analysis, however, some preliminary points are necessary. First, assessing whether transformation occurred must take the timeframe into consideration. In other words, a process of transformation may occur over a fairly long period of time and can only be fully assessed after that time period. It is possible that such a period of time may not have elapsed in cases considered here. Second, it is evident that not all case study organizations sought transformative change, but were reform-oriented and opted to work for more limited change within existing structures. The majority of our case study organizations probably fall into this category, and indicate a self-limitation of a human rights-based approach and undermine its potential as a "more progressive, radical even, approach to development."⁴⁵ Third, it is necessary to differentiate between different forms of transformation, notably political and social. Whereas some organizations may have

45. Cornwall & Nyamu-Musembi, *Putting the "Rights-Based Approach," supra* note 5, at 1418.

accepted the political status quo, especially in more democratic contexts, they may still have sought to transform power relations in social contexts, especially those of invisible power. The DVC in Ghana is a good illustration of this distinction. It did not seek to change structures of political power as such, but did aim at a transformation of cultural values and behavior in line with gender equality and women's right to freedom from violence.

Altering power structures, whether visible, hidden or invisible, is far from straightforward. This is especially so given that those powerful institutions and actors that oppose demands for rights will extend their opposition to any attempt to change the prevailing power inequalities that sustain their interests. Thus, structural changes are often limited and structural constraints continue to prevail, yet organizations can at least learn how to better strategically relate to power structures by increasing their awareness of them. Hence, the authors identified processes in which civic actors engaged in struggles for social change through rights-based activities, and this section explores the nature and significance of changes achieved by the organizations in the country studies in terms of legislation, public policies, institutional structures, and cultural attitudes.

A. Legislative Changes

Our country cases demonstrated a number of positive examples of legislative reforms that contribute to the protection of various human rights, especially in the areas of women's rights and land rights. Regarding women's rights, the success of the DVC in Ghana in achieving its principle goal, the enactment of the Domestic Violence Act in 2007, constituted a significant achievement. Likewise in Zimbabwe, ZWLA lobbied for law reform on domestic violence, working with both government and civil society and, as a result, the Domestic Violence Act was adopted in 2006. In South Africa, the government invited TLAC to draft the rape protocol as part of the Criminal Justice Review process. In China, ZLAS was able to influence discourses on legal reform, with an emerging legal framework on women's rights and freedom from sexual harassment. Organizations working for women's rights are well represented in our case sample and one clear finding is that they are amongst the most successful, especially in terms of achieving legislative change. Explanations of this could be a combination of the determined advocacy of women's organizations, especially those of women lawyers, and that women's rights are less threatening to governments, at least at the legislative level.

Land rights were also asserted in a number of country studies, yet achieving change here has been more difficult. In Kenya, the Kenya Land Alliance (KLA) and Kituo cha Sheria contributed to the drafting process of the new constitution's section on land and land ownership, while in South

Africa, Nkuzi pressurized the government regarding the implementation of the Land Restitution Act and played a role in opposing the Communal Land Rights Act, perceived as contradicting a human rights approach. Otherwise more significant legislative changes were not secured.

Research also indicates failures to achieve legislative change. For instance BelimWusa Development Association (BEWDA) was unsuccessful in its attempt to create a local by-law on violence against women at district level in the Upper East region of Ghana. This was due to the inability to get both the District Assembly and the traditional paramount chief to approve the by-law, a task that itself required a degree of persistence and a level of outlay of human and financial resources that proved very difficult for a small organization to sustain. Even a clear example of success, the DVC in Ghana, contained an inherent warning that struggles for rights always remain ongoing, especially where structural obstacles remain largely intact. It was apparent that the same male-dominated political structures of government and parliament that had delayed the Bill's enactment, especially through hidden and invisible power, continued to impede the implementation of the Act.

B. Public Policy Changes

The difficulty in altering and transforming power structures is also evident where attempting to affect change in public policies. Such difficulty is especially severe in authoritarian contexts in which government is relatively unaccountable and immune to societal pressure, and the research found no evidence of significant impact on public policy in either China or Zimbabwe. In relatively democratic contexts, there is some evidence of policy impact, albeit limited. In Kenya, the KLA was able to influence parliament's decision to order the government to open access routes for local fisher folks to Lake Naivasha and to shape policy on land reform. The Miss Koch Initiative had some influence on land policy, notably through collaboration with the Residents Association in the Korogocho slum. In South Africa, Abhalali had some impact on local government housing policy, in particular the 2009 Memorandum of Understanding in which Durban City Council committed to providing interim services to fourteen informal settlements and a permanent upgrade of five settlements. The study of WACAM in Ghana provided an example where it proved more straightforward to achieve policy change at the regional level in West Africa, with some subsequent impact at the national level. WACAM participated in the Economic Community of West African States (ECOWAS) Task Force which drew up a "Directive on Harmonization of Guiding Principles and Policies on Mining," subsequently adopted by the government of Ghana. However, actual changes in the government's mining policy were less evident and the country study concludes that neither

WACAM nor the wider nongovernmental National Coalition on Mining were able to affect any fundamental change in state policies towards the gold mining industry.⁴⁶ This is perhaps unsurprising given the huge financial interests involved, both in terms of the vast profits made by the transnational mining companies and the tax revenue, albeit limited in comparison, received by the government. Such combined corporate and state power does not bend easily and thus local communities living in poverty continued to suffer the adverse consequences of large-scale surface mining.

C. Institutional Changes

Achieving change in institutional structures towards greater protection or promotion of human rights was again more possible in democratic contexts than in authoritarian ones, albeit in limited instances. In Ghana, the implementation of the Domestic Violence Act entailed the creation of a Domestic Violence Secretariat within the Ministry of Women and Children's Affairs and the formation of a Victims of Domestic Violence Management Board, on which the DVC got representation. However, limited progress in operationalizing these new structures was evident, especially as the Board existed within the same male-dominated institutions of government that resisted the enactment of the Bill, while the Coalition's advocacy efforts proved difficult to sustain. In Kenya, the government invited both MKI and KLA to take part in negotiating the new institutional framework for land policy, and MKI further facilitated and supported the establishment of village oversight committees. A new land policy was an important institutional development at national level, and the oversight committees played an important role at the local level in demanding political accountability for the use of devolved funds.

In more authoritarian contexts, there is little or no evidence of organizations affecting institutional change. A case-in-point is the conclusion of the Zimbabwe study which stated that, "The three organizations' ability to affect the economic structures that enable ZANU PF to control the police, the courts and the military has been limited."⁴⁷

46. Crawford & Anyidoho, *supra* note 24, at 110.

47. Anne Hllum, Bill Derman, Geoff Feltoe, Ellen Sithole, Julie Stewart & Amy Tsanga, *Rights Claiming and Rights Making in Zimbabwe: A Study of Three Human Rights NGOs, in HUMAN RIGHTS, POWER AND CIVIC ACTION*, *supra* note 24, at 48.

D. Cultural Changes

Invisible power inherent in various cultural norms and traditions and internalized through socialization constituted a significant obstacle for many of the organizations studied in this project. The organizations sought to counter this invisible power through awareness raising and working towards changes in social attitudes. Of the four areas of change identified here, affecting such cultural change is probably the most challenging to achieve. Yet, paradoxically, it is perhaps the area where there exists more evidence of success and where the overall political context least affects the prospects for success.

In China, the unfavorable macro-political context did not prevent ZLAS from raising awareness of women's rights in relation to sexual harassment and land rights. In Zimbabwe, processes of change at the level of norms and attitudes occurred in two different ways. First, research found that ZWLA's activities in defense of women's rights in the domestic sphere had weakened the socio-cultural legitimacy of male superiority and privilege embedded in formal and informal customary norms. This was achieved through making "invisible power visible by addressing power relations in the family."⁴⁸ Second, WOZA's civic education program was observed as having changed people's attitudes so that they felt emboldened and prepared to take part in civic actions and demonstrations.

In both Ghana and Kenya the more open political context made little difference to the persistent challenge posed by patriarchal culture and other ingrained social attitudes towards oppressed and vulnerable groups. Yet campaigns by the organizations did achieve some positive changes from a human rights perspective. In Ghana, the DVC's nationwide public education and consultation campaign generated widespread public attention on an issue that previously had not been salient in public discourse, thereby significantly raising public awareness and attitudinal change concerning violence against women. BEWDA worked in an environment where traditional beliefs and practices remained strong, yet sought to change social attitudes in relation to women's rights and the social exclusion of people with disabilities. Such changes are inevitably slow and gradual, but in both of these organizational studies researchers noted a degree of success. In Kenya, all three organizations sought to raise awareness and knowledge about rights issues and thus contributed to cultural change that is more receptive to the protection and promotion of human rights. In particular, Kituo cha Seria raised issues of gender inequality on its own local radio station and addressed the rights of girls and women within the family in an attempt to change local traditions and customs.

48. *Id.* at 46.

Patriarchal culture and its inherent power relations is very difficult to change. Yet these findings do indicate a degree of success of human rights based strategies in this area. Why is this? It could be partly explained by a "selection bias" in selecting organizations working for women's rights in all country case-studies, and thus the likelihood of highlighting some positive examples is increased. Yet the achievements are also explained by the political commitment and determination exhibited by a range of organizations, some more professional and legally-oriented and others more community-based, to contest gender inequalities at all levels and thus to seek cultural transformation through changed norms, attitudes, and behavior.

In sum, this study has highlighted some changes to power structures in ways that reduce power asymmetries that disadvantage poor and relatively marginal people, as well as some progress in securing rights. Nonetheless, there are two major qualifications. First, not all case study organizations sought transformative change, either in political structures or in societal culture, and therefore changes achieved are often limited by the aims and outlook of the organizations themselves. Second, even where sought, social transformation is difficult to realize. Whether the changes outlined here amount to transformative change or not remains an open question, though one that is difficult to answer affirmatively. Organizations have often struggled purposefully and determinedly for social change, and have experienced some success, yet changes have been limited and power imbalances remain, as do the power constraints on rights-based advocacy.

V. CONCLUSION

This discussion began with the premise that academics and practitioners dealing with rights and development issues have tended to overlook the important dimensions of power and politics and how these dimensions affect human rights advocacy. Further, these shortcomings, if not addressed, could lead to the human rights-based approach becoming another failed development strategy. What overall assessment can now be made on the relative success or failure of a rights-based approach, and how can the prospects for realizing human rights and development for poor and marginalized people be enhanced?

The findings from the research strongly affirmed how different forms of coercive power limit and constrain the human rights agency of nongovernmental actors, and thus act as an obstacle to the securing of human rights. The authors also noted, more positively, how many organizations display considerable awareness of such powerful forces. The researchers explored how rights-promoting organizations endeavored to challenge different dimensions and manifestations of power through applying a range of strategies

and tactics. Overall, however, although the organizations experienced some success, the changes are often limited and difficult to describe as transformative, with power imbalances remaining and exerting ongoing constraints on human rights advocacy. Assessing the relative success or failure of a human rights-based approach has therefore led to somewhat equivocal conclusions. On the one hand, the country studies have confirmed the significance of dominant power structures as an impediment to human rights realization and that, as a result, the claims for rights have met with limited success. On the other hand, in their rights advocacy, civil society organizations have often demonstrated persistence and determination in challenging powerful entrenched interests, which cannot simply be dismissed as failure. In responding to such ambivalence, we finish by identifying four conditions by which the success of a rights-based approach could be improved, ones which focus on the significance of putting power and politics at the center of analysis.

The first condition for success is self-reflexivity. The findings indicate the importance of a politically grounded analysis of the obstacles to securing rights, including identification of who opposes rights demands, and what are the embedded structures and processes that deny rights. It is also apparent that such analysis is not only necessary at the level of visible power, but at the more concealed levels of hidden and invisible power. The findings, of course, did indicate that many organizations displayed critical awareness of their position in society and their relationship to power, and that this was crucial for sustaining claims for human rights in the face of powerful opposition. Interestingly, the organizations in China demonstrated a particularly high degree of reflexivity in the manner they shrewdly negotiated with the party-state and its front organizations and navigated the spaces between the national and local power structures. However, such reflexivity was important in all political contexts. In a relatively open and democratic context, the DVC in Ghana displayed a high level of awareness of the obstacles faced from different forms of visible, hidden and invisible power, and this awareness was crucial to the way the organization campaigned simultaneously on a number of fronts. It engaged in a "big fight" with the Minister for Women's Affairs who was the highest-ranking visible opponent of the bill on domestic violence, which led to her removal as a Minister and the eventual success of the bill. The DVC also showed remarkable inventiveness in undertaking a range of public activities aimed at challenging less visible aspects of patriarchal power and changing associated cultural values and attitudes.

A second condition for success is to translate that reflexivity and political analysis into strategic actions that aim to challenge and reduce the influence of such powerful actors and to address power inequalities. This transforms reflection on and awareness of dominant power structures into agency. Findings demonstrate that some organizations displayed considerable agency and tactical ability in their choice of strategic responses to the power constraints

encountered. One key strategic choice entails when to confront and challenge authorities and when to collaborate with power-holders, and with whom. The political context is significant, of course, in shaping the opportunities available, yet it was found that options in authoritarian contexts were not as limited as anticipated. For instance, in China, while a direct challenge to the party-state was clearly not feasible, the rights-promoting organizations skillfully negotiated with the party-state, capitalized on the official rhetoric about human rights, and thereby pushed the limits of what was possible.

In other authoritarian contexts, notably Zimbabwe, civic actors like WOZA bravely challenged government and refused to accept the curtailment of freedoms of assembly and expression. Findings also indicated, less positively perhaps, that some organizations limited their own strategic choices and opted not to address power inequalities. The type of organization is significant here, with professional, legally-orientated NGOs more likely to work within the system and seek to persuade rather than challenge government and other power-holders. While such a legalistic approach undoubtedly has its place and can lead to certain benefits, especially for individuals, it is unlikely to change the balance of power in society, and here arises a reminder of Peter Uvin's statement that a human rights legal approach can be "a safe, legal, technical conduit to avoid the real issues of power and politics."⁴⁹ In contrast, community-based and membership-based organizations have been more disposed to adopt a confrontational and overtly political approach, one that sought to secure rights and transform power relations through social and political struggles. This was evident in the cases of Abahlali, WACAM, WOZA, and KLA in each of the African country studies. Perhaps significantly, the membership of such organizations is mainly comprised of rights-deprived people who have generally demonstrated greater awareness of the need to challenge and contest extant power structures if they are to realize their rights.

A third condition for success is to build up countervailing power, again focusing on the agency of rights-promoting organizations and how they can tackle the demanding task of changing power structures. We were critical at the outset of the empowerment rhetoric's pre-eminence within rights-based approaches, to the relative neglect of coercive power and the constraints on rights-based advocacy. That critique stands. The findings, however, also recognize the importance of positive power and empowerment, especially in the context where rights-promoting organizations purposefully strengthen their own countervailing power in order to challenge entrenched powerful interests. Such positive power is often referred to as "power to," and indeed was recognized by Lukes in the revised edition of his classic work as the

49. See UVIN, *supra* note 1, at 140.

“power to bring about such and such an outcome.”⁵⁰ An effective way of strengthening “power to” was by entering into networks and alliances with other organizations. Here, different spaces for political participation, especially those referred to as popular spaces⁵¹ or claimed or created spaces,⁵² can play a significant role as places where civil society organizations come together more autonomously in processes of social mobilization and alliance formation in order to enhance their own collective powers.

A continuum of such spaces for engagement by civil society actors has been identified, including participation with decision-makers in “invited spaces” and attempts to pry open “closed spaces.”⁵³ Yet to avoid engaging with powerful elite actors on highly unequal terms where officially invited, for instance, it would seem essential for civil society organizations to initially strengthen their own countervailing power in more autonomous spaces. This was highlighted in the country studies where organizations strengthened their capacity and that of human rights movements in created spaces, often prior to public action and possible confrontation with public authorities. In Kenya, KLA created spaces in which it educated local communities on their rights concerning land issues and thus facilitated the subsequent pursuit of such rights, while Miss Koch Initiative used radio (Koch FM) and theatre (Pendo Theatre) to create autonomous spaces in which it raised awareness of girls’ and children’s rights. In South Africa, Abahlali created spaces for democratic participation and collective decision-making within the movement itself, including the establishment of the University of Abahlali baseMjondolo where people collectively share experiences and knowledge, and engage in intellectual work and writing. In Ghana, WACAM countered the huge power asymmetry it faced in relation to transnational mining companies by building national and international alliances with politically like-minded organizations, serving not only to enhance WACAM’s impact but also to provide some protection against possible reprisals from the powerful interests that they opposed.⁵⁴ Such building of countervailing power in created spaces not only increases the ability of rights promoting organizations to engage with powerful actors and institutions in other spaces, but it also serves to enhance the self-esteem and assertiveness of relatively powerless people and thus to contest the invisible power of socialization that can reinforce and maintain structures of social subordination and rights deprivation.

50. See LUKES *supra* note 25, at 72.

51. Andrea Cornwall, *Introduction: New Democratic Spaces? The Politics and Dynamics of Institutionalised Participation*, 35 IDS BULL. 1, 2 (2004).

52. John Gaventa, *Finding the Spaces for Change: A Power Analysis*, 37 IDS BULL. 23, 27 (2006).

53. *Id.* See LUKES *supra* note 25, at 72.

54. Nana Akua Anyidoho & Gordon Crawford, *Leveraging Global Linkages for Local Rights Advocacy: WACAM’s Challenge to the Power of Transnational Gold Mining in Ghana*, 35 CANADIAN J. DEV. STUD. 483 (2014)

The fourth and final condition for success of a rights-based approach to development relates to the overarching argument concerning the importance of putting power and politics back at the center of analysis. We concur with the analysis by Mander that an “understanding of poverty as the outcome of the active denial of people’s rights implies a rejection of understanding development as a neutral process, and instead an acknowledgement of its *political* content.”⁵⁵ We also agree with Gready that “rights activists [need to] take sides and challenge vested interests and asymmetries of power.”⁵⁶ This research confirms the importance of recognizing struggles for rights as power struggles and political struggles. This discussion does not seek to belittle the legal orientation of some organizations examined here, for instance those which focus on defending existing legal rights through judicial processes. Indeed, we would concur with Samuel Hickey and Diana Mitlin that “lawyers and the law can be powerful allies for poor and marginal groups.”⁵⁷ However, this research has also demonstrated that a legalistic approach is not sufficient to secure human rights or to fight for new rights.⁵⁸ Rights-promoting organizations must engage with democratic politics in the sense of mobilizing rights-deprived groups, building alliances between like-minded organizations, holding public protests, and generally advocating for the rights of people living in poverty and of other marginalized groups. This is not politics in a narrow political party and partisan sense. It is political action in the public sphere that contests the active denial of rights by powerful actors and by the economic and social structures that privilege them. Importantly, it is political action underpinned by human rights principles⁵⁹—equality and nondiscrimination, participation and inclusion, accountability, and nonviolence.

The country cases confirm the significance of dominant power as an obstacle to the securing of rights, and thus many claims for rights had limited success. If there is a lack of recognition by rights-promoting organizations of the malevolent role of coercive power, or a lack of conviction to counter it, then a human rights-based approach is likely to be “tamed” and “depoliticized”⁶⁰ and thus doomed not to bring about the changes in policies and in society that it aims to achieve. Nonetheless, this article suggests that, by

55. Harsh Mander, *Rights as Struggle: Towards a More Just and Humane World*, in *REINVENTING DEVELOPMENT?*, *supra* note 2, at 241–42 (emphasis added).

56. See Gready, *supra* note 9, at 743.

57. See HICKEY & MITLIN, *supra* note 4, at 219.

58. Cf. Bård A. Andreassen, *Legal Empowerment of the Poor: Social Prerequisites?*, in *HUMAN RIGHTS IN THE NEW MILLENNIUM: TOWARDS A THEORY OF CHANGE* (Paul Gready & Wouter Vandenhoele eds., 2013).

59. Urban Jonsson, *A Human Rights-Based Approach to Programming*, in *REINVENTING DEVELOPMENT?*, *supra* note 2, at 47.

60. Srilatha Batliwala, *Taking the Power out of Empowerment: An Experiential Account*, 17 *DEV. PRACTICE* 557 (2007).

putting power back at the center of analysis and by recognizing struggles for rights as political struggles, then rights-based approaches can not only secure progress in realizing rights for people living in poverty, but also strive for structural change where the balance of power is tilted away from powerful elites and towards the mass of rights-deprived people.