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Power in Human Rights Advocate and Rightsholder Relationships: Critiques, Reforms, and Challenges

Sarah Knuckey, Benjamin Hoffman, Jeremy Perelman, Gulika Reddy, Alejandra Ancheita, and Meetali Jain[1]

ABSTRACT

Human rights advocacy can construct passive "victims," objectify or displace rightsholders and affected communities, and contribute to their disempowerment. In response to critiques – made by rightsholders, activists, and scholars alike – about the values and effects of such disempowering advocacy models, many advocates are increasingly prioritizing an understanding of these dynamics and reforming practice to better center and support the agency of directly affected individuals and groups. However, the tactics and modalities of these efforts are under-examined in scholarly literature, and many human rights advocates lack access to adequate documentation of tactics and spaces for peer learning. In this article, we seek to contribute to improved practice and to deeper understanding of both the potential and limits of advocates' responses to critiques of how they relate to rightsholders. We examine: first, how common advocacy practices risk rightsholder disempowerment, and second, the many tactics advocates are developing to promote rightsholders at the center of advocacy and as agents of change, and the key challenges faced in seeking to do so. We ground the

analysis in concrete practices, drawn from our experiences as advocates and from a workshop and interviews with other scholars and advocates. We organize our analysis into key moments in the advocacy timeline, from when decisions are made about the issues on which to focus, through to investigations, advocacy, and evaluation. We find that while advocates can engage in disempowering practices at each stage, advocates and rightsholders have at their disposal a wide variety of tools and practices to help redefine the terms of their relationships, in ways that can contribute to restructuring power imbalances. We conclude with recommendations which can further reform the human rights field toward increased support for rightsholder agency and power.

INTRODUCTION

Human rights advocacy can prevent or end abuses of rights, promote accountability and justice, and support the power and agency of rightsholders—individuals or communities whose rights have been violated or are at risk. If not done carefully, however, advocacy can also risk disempowering rightsholders and reinforcing the very power imbalances and inequalities that may underlie human rights abuses.

Human rights advocacy encompasses diverse practices, methods, and roles. Many rightsholders become advocates for themselves, their families, or their affected communities, undertaking organizing, fact-finding, and advocacy to protect their rights.[2] Other advocates may work on behalf of or in partnership with directly affected individuals or communities. Such advocates may work on specific cases or on broader issue-based advocacy, and may work in the community, country, or region where abuses occur, or they may work transnationally, supporting rightsholders from afar.[3]

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2. *See, e.g.*, Mesoamerican Women Human Rights Defenders Initiative, Paving the Road for Freedom & Equality 5 (2014) (defining a human rights defender: "A mother seeking justice for her disappeared daughter. A teacher demanding decent quality education. A macquila worker demanding livable wages. An activist fighting for LGBTI rights. An indigenous leader defending her community against illegal logging and mining. A young woman mobilizing others to decriminalize abortion"); *Our History and Campaigns*, Mathare Social Justice Center, www.matharesocialjustice.org/our-team/ (the Nairobi, Kenya-based center is "an initiative by young members of the community to promote social justice in Mathare"); *About CIW*, Coalition of Immokalee Workers, www.ciw-online.org/about/ [https://perma.cc/WN53-DG75] (the coalition "is a worker-based human rights organization. . . recognized for pioneering the design and development of the Worker-driven Social Responsibility paradigm, a worker-led, market-enforced approach to the protection of human rights in corporate supply chains").

3. *See, e.g.*, Hakijami Economic and Social Rights Center, Strategic Plan 12 (2017-2020) (Hakijami "is a national human rights organization that works with marginalized groups to support them to claim and realize their economic and social rights and improve their livelihoods"); International Service for Human Rights, Strategic Framework (2017-2020) (the NGO is "dedicated to the service of other organizations and individuals working for the promotion and protection of human rights"); *What we do*, Human Rights Law Network, www.hrln.org/who-we-are [https://perma.cc/T57R-HB38] (the India-based NGO provides, e.g., "pro bono legal services to marginalized people"); Fortify Rights, Annual Report (2017) (works "in close collaboration with individuals, communities, and movements pushing for change"); *Who We Are*, Human Rights Watch, www.hrw.org/about-

This paper focuses on the practices of advocates not themselves directly affected by human rights abuse ("outside advocates") in relation to rightsholders or rightsholder-advocates. Some common models of human rights advocacy used by outside advocates can construct passive "victims," objectify or displace rightsholders and affected communities, and contribute to re-victimization or disempowerment. Disempowering models of advocacy are forms of human rights practice in which outside advocates set social justice agendas, decide strategies, and conduct investigations and advocacy with no or limited input or direction from affected rightsholders or rightsholder-advocates. Advocates become constituted as saviors and experts, and rightsholders' own activism or agency is at best ignored and at worst silenced and diminished. Such top-down, rightsholder-disempowering models of advocacy are rejected by many advocates and organizations, and are increasingly critiqued; yet remain commonplace in many sectors of the

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us [https://perma.cc/QDB3-UAJ8] ("We are . . . country experts, lawyers, journalists, and others who work to protect the most at risk"); *Who We Are*, European Center for Constitutional and Human Rights, www.ecchr.eu/en/about-us [https://perma.cc/TN7D-QP64] ("together with affected persons and partners worldwide, ECCHR uses legal means to end impunity"); *Our Work*, International Federation for Human Rights, www.fidh.org/en/about-us/What-is-FIDH/ [https://perma.cc/983R-35LY] ("acts at national, regional and international levels in support of its member and partner organizations to address human rights abuses"); *About us*, Center for Economic and Social Rights, www.cesr.org/about-us [https://perma.cc/UB3D-ELNZ] ("We work with civil society groups around the world to hold governments and other powerful actors answerable for these abuses . . . CESR is proud of the horizontal collaborative relationship it maintains with partners in dozens of countries throughout the world"); *About Us*, Socio-Economic Rights Institute in South Africa, www.seri-sa.org/ [https://perma.cc/K762-B64C] ("We work with communities, social movements, individuals and other non-profit organizations in South Africa and beyond to develop and implement strategies to challenge inequality and realize socio-economic rights"); *About Us*, Project on Organizing, Development, Education and Research in Mexico and Latin America, www.projectpoder.org/ [https://perma.cc/9LVW-EL63] ("PODER, together with civil society groups in Latin America, builds power so that communities and their organizations can become the long-term guarantors of corporate accountability"); Centro Prodh, www.centroprodh.org.mx/centro-prodh/ [https://perma.cc/PK8S-TSL] (noting the organization's use of a Wholistic Defense Methodology that involves interdisciplinary accompaniment to individual and collective victims of human rights violations); *About*, Bureau des Avocats Internationaux (BAI), www.ijdh.org/about/ [https://perma.cc/4UAY-9VTR] (describing "a 'victim centered approach' that combines traditional legal strategies with empowerment of victims' organizations and political advocacy"); *About Us*, Advocates for Community Alternatives, www.advocatesforalternatives.org/about-us/ [https://perma.cc/38QW-G8AZ] ("We are building an ecosystem of lawyers and other experts who collaborate with communities to defend communities' rights . . . We help mobilize communities to define for themselves a vision for the future that is appropriate for them"); *About*, Strategic Advocacy for Human Rights, www.namati.org/network/ organization/strategic-advocacy-for-human-rights/ [https://perma.cc/5UZK-66WB] ("We believe that self-advocacy is essential to pushing for systemic change so we create spaces for local communities to develop and use their own voice and agency"); *Organization and/or project's mission*, This Life Cambodia, www.namati.org/network/justiceprize/ [https://perma.cc/K88H-D8FC] ("Our mission is to listen to, engage with and advocate alongside children, families, and communities as they define and act on their own solutions to complex social challenges"); Koshish Charitable Trust, *Namati Member Spotlight*, Feb. 2016, No. 4, www.namati.org/wp-content/uploads/2015/12/4.-Koshish-Spotlight-Final.pdf [https://perma.cc/XCK3-SVU8] ("Koshish trains community leaders and paralegals as 'vigilance committee' members who also train the rest of the community on their rights . . . the vigilance committees . . . meet every month and operate a complaint-box system so every villager can take up non-delivery of their benefits under the food security laws").

human rights field and can be particularly prevalent among larger, well-resourced, international global north-based NGOs.

The consequences of engaging in such advocacy can be severe. It can weaken rightsholder-led strategies to advance human rights, and undercut the development and power of local, sustainable human rights movements. It can also result in human rights work that does not meet rightsholders' needs or priorities, and may produce backlash and security risks. Disempowering models of advocacy can thus have the unintended consequence of failing to effectively counter or of even entrenching human rights abuses.

In response to critiques – made by rightsholders, activists, and scholars alike – about the values and effects of disempowering advocacy models, more advocates are increasingly prioritizing understanding these dynamics and reforming practice to better center and support the agency of directly affected individuals and groups. They are learning from the many community-based, feminist, global south, and other human rights organizations who have long prioritized rightsholder-centered advocacy. Many outside advocates are increasingly giving close attention to restructuring their relationships in ways that facilitate greater exercise of rightsholder voice and agency. The aim of such reform is to strengthen rightsholder power vis-à-vis not only the advocates with whom the rightsholders work, but also vis-à-vis the broader power structures in society that are often at the root cause of human rights abuses.[4]

These shifts are part of a wider trend in the human rights field, in which more advocates around the world are consciously seeking to practice what we call "critically-responsive human rights advocacy," deliberately adopting methods of work that aim to mitigate or overcome critiques. These efforts signal a potentially important transformation in commonly used human rights methods. However, the tactics and modalities of these efforts are under-examined in scholarship, and advocates often develop their reforms in silos because of a lack of documentation of innovations and inadequate space for peer learning. Many advocates are keen to build more spaces for ongoing critical reflection, debate, and learning, and to develop resources to guide critical advocacy. This article aims to contribute to efforts to build such spaces and resources, as well as to promote field-level reform and further critical practice, scholarship, and pedagogy. We explore and share critically-responsive practices, presenting a wide array of tools from which advocates can draw in shaping the terms and working methods of their collaborations.

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4. *See e.g.*, *Advancing Climate Justice*, MADRE, www.madre.org/programs/advancing-climate-justice [https://perma.cc/32LN-LA3V] (MADRE supports indigenous and rural women to gain "skills and access to participate effectively in climate policy decisions at the local, national and international levels, and succeed in challenging dominant economic models of consumption and extraction."); HAKIJAMI ECONOMIC AND SOCIAL RIGHTS CENTER, STRATEGIC PLAN 15 (2017-2020) (The NGO's mission is to "amplify the voices of vulnerable individuals and groups to effectively and directly participate in advocating for the realization of their economic, social and cultural rights in Kenya and live in dignity.").

We examine, first, the specific ways in which common advocacy practices risk rightsholder objectification and displacement, and second, the concrete tactics deployed to mitigate or counter such harmful effects and to support rightsholder agency, as well as the challenges and trade-offs advocates face as they seek to improve strategies and processes. Our analysis draws upon an extensive review of the critical literature, the co-authors' experiences working as advocates around the world, and a workshop and interviews with other scholars and practitioners. We ground the analysis in concrete practices, organizing the analysis into key moments in the advocacy timeline, from when decisions are made about the issues on which to focus, through to investigations, advocacy, and evaluation.

Part I of this article explains the critique of unequal power in outside advocate-rightsholder relationships and why we focus on this concern. We then show how the critique might manifest at specific moments of practice along the human rights advocacy timeline. Examples of such practices include when outside advocates identify human rights problems without sufficient consideration of rightsholder perspectives; or when advocates decide how to represent the rightsholder in advocacy documents, emphasizing the experience of victimization and de-emphasizing agency; or when advocates fail to ensure that rightsholders are participants in the implementation of human rights strategies, privileging their own voice and vision over that of those most directly affected. We describe how these practices risk undermining rightsholder-centered social change strategies, reinforcing barriers to individual or community empowerment, and potentially limiting the effectiveness and sustainability of human rights advocacy.

Part II examines advocates' tactics for responding to the critique, identifying the goals and values motivating the tactics and how they are implemented at different moments of practice. Often at the insistence of rightsholders, outside human rights advocates are increasingly adopting practices that seek to recognize and support rightsholder or rightsholder-advocate agency, participation, leadership, and power, and to promote accountability and equality in the advocate-rightsholder relationship. Outside advocates can encounter a range of challenges and trade-offs when seeking to implement this more critically-responsive mode of human rights advocacy, including related to advocacy effectiveness, NGO independence, security concerns, time and resource constraints, and division among rightsholders. To deepen and make more concrete rightsholder-centered practices, we describe specific tactics being used by advocates, and discuss how some advocates have sought or may seek to navigate the challenges that emerge. Tactics can include, for example, adopting collaborative strategic planning workshops to support rightsholder leadership in setting agendas, building participatory fact-finding methodologies into human rights investigations, and stepping aside or promoting opportunities for rightsholders to be advocates leading calls for change.

We find that despite the challenges, outside advocates have at their disposal a wide variety of tools and practices to help redefine the terms of their relationships with rightsholders, in ways that can contribute to restructuring power imbalances. We conclude with recommendations to support efforts to further reform the human rights field toward increased support for rightsholder agency and power. We propose further strengthening the advocate-rightsholder relationship through knowledge sharing and joint knowledge production, building processes for dialogue and feedback, creating organizational policies or charters regarding the role of rightsholders, and the development of practical guides to assist outside advocates to improve their capacity to navigate relationships with rightsholders.

I. The critique: human rights advocacy can objectify or displace the voices of rightsholders and contribute to their re-victimization or disempowerment

The human rights field has been subject to numerous critiques of its efficacy and normative foundations, and a significant literature exists critiquing the field's history, values, methods, goals, and effects. Key among these critiques is a concern that outside human rights advocates, who work to promote the rights of other individuals or communities of which they are not a part, can conduct advocacy vis-à-vis directly affected persons (rightsholders[5]) that disempower and construct "victims," instead of agents of change and resistance. In this section, we first examine the critique and explain why we focus on this concern. We then examine the critique as it manifests at distinct moments of human rights practice, showing how a range of disempowering practices can surface across the key points in the advocacy timeline.

A.   The critique

We focus in this article on the significant critique that some common models of human rights advocacy can objectify or displace the voices of rightsholders. In outside advocates' efforts to advance the rights of directly affected individuals and communities, they can cause harm by engaging in practices that re-victimize and disempower. Such critiques are frequently raised by rightsholders and communities resisting the harmful practices of

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5. The term "rightsholder" has developed as an alternative to terms such as "victim" or "beneficiary," and is intended to be a more empowering, agency-promoting term. All people are rightsholders in that we all are entitled to rights, and the term is often used more specifically to refer to individuals or groups whose rights have been violated or are at risk. We use the term expansively, reflective of the diversity of the human rights practice in which we have each been engaged. Rightsholders, of course, can also be "advocates," and often are; indeed, many advocates become advocates because of experience of human rights abuses committed against them individually or their communities. This paper focuses on relationships between advocates not themselves directly affected by the issues around which advocacy is taking place, and rightsholders, who may or may not also be advocates.

outside advocates who purport to work on their behalf. They are also discussed among advocates and within human rights organizations as they critically reflect on their practice, analyzed in academic scholarship, and taught in human rights seminars and clinics.

In the context of the critical scholarship, a key theme is the construction of the "victim" in need of assistance.[6] Makau Mutua, one of the earliest and most prominent academic proponents of this critique, has argued that the human rights movement relies on a savage-victim-savior metaphor, in which "victims" of human rights abuse – with the quintessential victim portrayed as a "powerless, helpless innocent" – are in need of a "savior" or "redeemer" (generally from the United Nations, Western governments, international NGOs, and Western charities).[7] Shakthi Nataraj has observed that the pattern is particularly visible in human rights factfinding, which often constructs the roles of "victim," "culprits," and "fact-finders."[8] Ratna Kapur emphasizes that this notion of the "subject who is thoroughly disempowered and helpless," or the victim who is "infantile and incapable of decision-making," is often "built on racist perceptions and stereotypes."[9] In an oft-cited piece examining numerous human rights critiques, David

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6. *See* e.g. Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L. REV. 201, 203–04 (2001) (arguing that the human rights movement relies on metaphors of "victims" that are "powerless, helpless innocent"); Nandita Sharma, *Anti-Trafficking Rhetoric and the Making of a Global Apartheid*, 17 NWSA J. 88 (2005) (identifying and challenging the narrative of the "passive" trafficking "victim"); Vanessa Pupavac, *Pathologizing Populations and Colonizing Minds: International Psychosocial Programs in Kosovo*, 27 ALTERNATIVES 489, 493, 490–95 (2002) (criticizing the "international psychosocial model" employed by international NGOs humanitarian organizations, which constructs and essentializes war-affected populations as traumatized, dysfunctional, and vulnerable victims "indefinitely dependent on external actors for their psychological survival," while denying the resilience and agency of these populations); Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics* 15 HARV. HUM. RTS. J. 1 (2002) (arguing that "the international women's rights movement has reinforced the image of the woman as a helpless victim subject, primarily through its focus on violence against women"); Rosalind P. Petchesky, *Rights of the Body and Perversions of War: Sexual Rights and Wrongs Ten Years Past Beijing*, 57 INT'L SOC. SCI. J. 301, 308–10 (2005) (criticizing the international women's rights movement and approaches to sexual and bodily rights advocacy that portray women as helpless victims of violence, and thereby reinforce patriarchal and culturally essentialist views of society).

7. Mutua, *supra* note 6, at 203–04, 207–08. *See also* Salil Shetty, Secretary General, Amnesty International, Address at London School of Economics (May 22, 2018) (discussing Makau Mutua's work and arguing that "It is clear that the early symbiotic relationship that I have sketched out between colonialism and human rights still casts a long shadow over current understandings of human rights.")

8. Shakthi Nataraj, *Trans-formations: Projects of Resignification in Tamil Nadu's Transgender Rights Movement,* (2019) (Ph.D. dissertation, University of California, Berkeley) (on file with the UC Berkeley library), at 19, https://escholarship.org/uc/item/6ws8m6pq [https://perma.cc/8XFW-EBV8]

9. *See* Kapur, *supra* note 6, at 1, 10, 18, 36; Ratna Kapur, *Human Rights in the 21st Century: Take a Walk on the Dark Side,* 28 SYDNEY L. REV. 665, 679 (2006). See also LENA KHOR, HUMAN RIGHTS DISCOURSE IN A GLOBAL NETWORK (2013) (critiquing a practice of portraying human rights advocates as "heroic" and rightsholder as "passive" "victims" devoid of agency); Christine Schwöbel-Patel, *Spectacle in International Criminal Law: The Fundraising Image of Victimhood*, 4 LONDON REV. OF INT'L L. 247, 250 (2010) (critiquing the "fundraising image of victimhood" as "stereotyping," and arguing that it "is not only problematic for those who do not fall within the accepted image (because they may struggle for recognition of their victim-status) but also for those who do fall within the accepted image (because this image is dependent on an understanding of victims as lacking agency)").

Kennedy has similarly argued that the field frequently portrays advocates as "heroic," and the victims as "passive" and devoid of agency, with the effect, among others, that "[d]ifferences among 'victims,' the experience of their particularity and the hope for their creative and surprising self-expression, are erased under the power of an internationally sanctified vocabulary for their self-understanding, self-presentation and representation as 'victims' of human rights abuse."[10] Jeena Shah, in a more recent analysis of rebellious lawyering in human rights clinics, further argues that this erasing "render[s] invisible [rightsholder] efforts to resist oppressive structures."[11]

The savior-victim dynamic is often evident in the attitudes and practices of advocates themselves. Advocates have been critiqued for systematically privileging their own view of the human rights problem and how it should best be addressed, taking it upon themselves to unilaterally conduct advocacy, while inadequately considering rightsholder perspectives or the role of rightsholders as agents of social change.[12] Examining the practices of women's human rights advocates, for example, Karen Engle found that "[e]ither the advocates maternalistically try to change [the rightsholder's] mind or they seem to ignore or not believe her desires," and "they do not generally recognize that their own pursuit of women's rights is also marginalizing."[13] César Rodríguez Garavito has highlighted how, confronted with critiques and new challenges, many human rights advocates defend and entrench the hierarchical and "vertical and rigid" nature of

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10. *See* David Kennedy, *International Human Rights Movement: Part of the Problem?*, 15 Harv. Hum. Rts. J. 101, 111–12 (2002).

11. *See* Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 Clinical L. Rev. 775, 791 (2017). Critical approaches are taught in many clinics. *See e.g.*, Global Justice Clinic, New York University School of Law, at www.law.nyu.edu/academics/clinics/globaljustice-jd [https://perma.cc/B6BG-Q38F] (the clinic is "committed to working in a rights-based manner and uses legal empowerment strategies aimed at enhancing the capacity and agency of those most directly impacted by human rights violations"); Human Rights Clinic, Columbia Law School, www.law.columbia.edu/clinics/human-rights-clinic [https://perma.cc/7X85-BV5J] (the clinic is committed to "respect for rightsholder autonomy, voice, and power"); Program of Action for Equality and Social Inclusion, University of the Andes, https://uniandes.edu.co/en/donations/causes/paiis [https://perma.cc/3Y5P-TMU5] (noting the aim to "empower citizens"); Centro de Estudios Legales y Sociales (CELS), Legal Clinic, 8, 79, www.cels.org.ar/common/documentos/Clinica%20Juridica.pdf [https://perma.cc/6NA4-GDCW] (describing a legal clinic created in partnership with the University of Buenos Aires, and noting "the critical analysis of the cases at hand" in order to "transform a practice or situation").

12. *See* Barbora Bukovská, *Perpetrating Good: Unintended Consequences of International Human Rights Advocacy*, 5:9 Sur Int'l J. Hum. Rts. 6, 8, 10, 13 (2008) (argues that the methods of human rights advocates can harm victims by suppressing "their independence, competence, and solidarity," presenting victims as "powerless," and relying on and sustaining existing power imbalances); Gay J. McDougall, *A Decade of NGO Struggle*, 11 (3), 15 Hum. Rts. Brief (2004) (noting that elite human rights NGOs often ignore "the priorities and aspirations of the great mass of sick, impoverished, or marginalized groups in that country"); Meena Jagannath, Nicole Phillips, Heena Shah, *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW J. Int'l Hum. Rts. 7, 8 (2011) (critiquing "a top-down approach, making decisions about people's need without obtaining meaningful input from the communities receiving the aid.").

13. Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female*, 26 New Eng. L. Rev. 1509, 1525 (1992).

parts of the human rights movement.[14] Tshepo Madlingozi, critiquing the practice of transitional justice advocates globally, argues that the practice of speaking "about or for" rightsholders "perpetuates their disempowerment and marginality," producing dependence and reproducing "relations of inferiority and superiority," and a "politics of disempowerment and trusteeship."[15] Eileen Pittaway, Linda Bartolomei, and Richard Hugman have additionally raised concerns that such practice may "promote distrust or rejection of the solutions emerging from the research, . . . may raise expectations for participants that cannot be fulfilled and introduce dangers of 'retraumatization.'"[16] The many manifestations of this critique as they emerge at distinct moments of human rights practice are discussed below in Section I.C.

B. *Why focus on rightsholders disempowerment?*

The concern that advocacy conducted by outside activists can disempower rightsholders is one of numerous critiques of human rights.[17]

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14. César Rodríguez-Garavito, *The Future of Human Rights: From Gatekeeping to Symbiosis*, 20 Sur – Int'l J. on Hum. Rts. 499, 501 (2014).

15. Tshepo Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, 2 J Hum. Rts. Prac. 208, 210, 213 (2010).

16. Eileen Pittaway, Linda Bartolomei, & Richard Hugman, *'Stop Stealing Our Stories': The Ethics of Research with Vulnerable Groups*, 2 J. Hum. Rts. Practice 229, 234–35 (2010).

17. The critical human rights literature is vast. Some of the many pieces include: *e.g.*, Makau Mutua, Human Rights Standards: Hegemony, Law, and Politics (2016); Dustin Sharp, *Human Rights Fact-Finding and the Reproduction of Hierarchies*, *in* The Transformation of Human Rights Fact-Finding (Philip Alston & Sarah Knuckey eds., 2015); Malak El-Chichini Poppovic & Oscar Vilhena Vieira, *Reflections on the International Human Rights Movement In the 21st Century*, 20 Sur – Int'l J. on Hum. Rts. 17 (2014); Mona Younis, *The hazards of international NGOs going local*, Open-GlobalRights (May 22, 2018) www.openglobalrights.org/the-hazards-of-international-ngos-going-local/ [https://perma.cc/84GJ-JSRK]; Rodríguez-Garavito, *supra* note 14; Daniel Bonilla, *Legal Clinics in the Global North and South: Between Equality and Subordination – An Essay*, 16.2 Yale Hum. Rights & Dev. L.J. 1 (2013); Stephen Hopgood, The Endtimes of Human Rights (2013); Pittaway et al., *supra* note 16; Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics* 15 Harv. Hum. Rts. J. 1 (2002); Hilary Charlesworth, *The Hidden Gender of International Law,* 16 Temp. Int'l & Comp. L.J. 93 (2002); Kennedy, *supra* note 10; Mutua, *supra* note 6; Anne Orford, *Contesting Globalization: A Feminist Perspective on the Future of Human Rights,* 8 Transnat'l L. & Contemp. Probs. 171 (1998); Malcom Langford, *Critiques of Human Rights*, 14 Annu. Rev. Law Soc. Sci. 69 (2018); Frédéric Mégret, *Where Does the Critique of International Human Rights Stand? An Exploration in 18 Vignettes* 3–40, in New Approaches to International Law (José María Beneyto & David Kennedy, eds., 2012); Human Rights From a Third World Perspective: Critique, History and International Law (José-Manuel Barreto ed., 2013) ; Elora Halim Chowdhury, Transnational Reversed: Women Organizing against Gendered Violence in Bangladesh (2011); Sara de Jong, Complicit Sisters: Gender and Women's Issues across North-South Divides (2017); Shareen Hertel, Unexpected Power: Conflict and Change Among Transnational Activists (2006); Alejandra Ancheita & Carolijn Terwindt, *Towards Genuine Transnational Collaboration between Human Rights Activists from the Global North and Global South*, 4 Forschungsjournal Soziale Bewegungen 1 (2015); Louis Bickford, *Transnational Advocacy and Human Rights Activism in the Global Middle*, *in* Transnational Advocacy Networks: Twenty Years of Evolving Theory and Practice (Peter Evans & César Rodríguez-Garavito eds., 2018); *Interview with Salil Shetty: Human Rights Organizations Should Have a Closer Pulse to the Ground, or How We Missed the Bus*, Sur – Int'l J. on Hum. Rts. 531–36 (2014); Barbara Klugman, Ravindran Daniel, Denise Dora, Maimouna Jallow & Marcelo Azambuja, *Finding equity: Shifting power structures in human rights*,

Among many other critiques, concern has also been expressed by scholars, activists, and rightsholders that human rights practice risks crowding out more effective or radical approaches to social justice. Some types of human rights work can rely on or further cultural imperialism. Human rights advocacy also can be overly legalistic and formalistic, focus on short-term goals at the expense of structural change, further hierarchical relationships between advocates from the global north and south, or pay inadequate attention to key issues such as climate change and extreme poverty. While emphasizing that focusing on advocate-rightsholder concerns should not displace attention away from these equally important critiques, we focus on the issue in this article for a number of reasons.

First, advocates have been responding, to varying degrees, to the wide range of critiques of human rights practice, including the advocate's role, and the field is undergoing shifts across numerous fronts. Building upon existing scholarship, we sought to examine in detail how advocates are responding to critique in their daily practice, and it would be difficult to do justice to the various critically responsive efforts in a single paper. By narrowing our focus to one concern, in what we see as one part of broader efforts to understand and promote critically-responsive human rights advocacy, we are able to more deeply analyze how advocates are seeking to reform practice.

Second, the outside advocate-rightsholder relationship is central to human rights work. Rightsholders are also often advocates, often becoming so because of harms they or their communities have suffered, and many human rights organizations are rightsholder, worker, or community-led.[18] But it is very common for advocates to work on issues outside their own direct experience, and to advocate for other individuals or communities.[19] Due to its frequency and its risks to rightsholders, this model of advocacy is a primary subject of the critical literature and debate among actors within the field. While the critique manifests differently across context, its focus on power raises an issue of near universal application to the work of all human rights advocates, whether from the global north or south, or from large international organizations or small local groups. The concerns can be particularly salient where the advocate comes from a more privileged group than the rightsholder, such as an advocate from the global north working on issues in the south where legacies of colonization and continuing inequality can create particularly deep power cleavages between advocates and

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OPENGLOBALRIGHTS, Nov. 30, 2017; KRIZNA GOMEZ & THOMAS COOMBES, BE THE NARRATIVE: HOW CHANGING THE NARRATIVE COULD REVOLUTIONIZE WHAT IT MEANS TO DO HUMAN RIGHTS (2019).

18. *See above,* note 2.
19. *See above,* note 3.

rightsholders,[20] or in subnational advocacy where the dominance of national narratives may fail to appreciate localized realities.

Third, top-down advocacy models risk increasing rightsholders' experience of marginalization, and lead to interventions that are unresponsive to rightsholders' needs and priorities. They can risk adopting strategies that produce backlash and negative consequences for rightsholders, including serious security risks, and reinforce structural barriers to the exercise of rightsholder power.[21] Such practices may also have the effect of undermining rightsholder or grassroots-led efforts to achieve social justice. For example, an advocate's intervention may provide a temporary, palliative reprieve from a violation at the expense of the broader structural change around which rightsholders had been mobilizing, or, funders may direct their limited resources to interventions designed and implemented by outside advocates rather than the rightsholders themselves. The critique of top-down advocacy is of critical importance because of its focus on power. Much human rights work is fundamentally about challenging the structural power imbalances—whether rooted in economic, political, social, or cultural systems or relationships—that operate to deprive rightsholders of the agency to affect change in their own lives. The critique calls into question to what extent outside advocates' own actions vis-à-vis rightsholders might *undermine* that very goal by recreating and reinforcing the imbalances of power that the advocates seek to disrupt. Advocacy practices may stunt the exercise of rightsholders' agency in decision-making processes that affect

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20. Collaborations between northern NGOs and a local partner organization may ameliorate some concerns, but have also been heavily critiqued for furthering hierarchical relationships. *See* Ancheita and Terwindt, *supra* note 17 (describing challenges to more egalitarian transnational collaboration); Rodríguez-Garavito, *supra* note 14, at 502 (noting that organizations in the North "receive over 70% of the funds from philanthropic human rights foundations," "have disproportionate power when it comes to setting the international agenda," and "too often they define this agenda based on internal deliberations, rather than through collaborative processes with NGOs of the Global South, social movements, activist networks, and other relevant actors."); Bonilla, *supra* note 17, at 3 (arguing that many collaborations between clinics in the north and south "are guided by unstated background assumptions that do not promote equal relationships"); Maja Daruwala, *One-way Street: Can internationalization ever be South-North?* OPENGLOBALRIGHTS (May 18, 2015) (arguing that north-south relationships can be "humiliating and disempowering for local NGOs"); Meetali Jain and Bonita Meyersfeld, *Lessons From Kiobel v Royal Dutch Petroleum Company: Developing Homegrown Lawyering Strategies around Corporate Accountability* 30 SOUTH AFRICAN J. OF HUM. RTS. 430–57 (2014) (discussing the limits of the Alien Tort Statute and the dependency on global north mechanisms and lawyers for legal remedies of corporate abuse).

21. *See* Gayatri Chakravorty Spivak, *Righting Wrongs*, 103 S. ATL. Q. 523, 542, 548–50 (2004) (arguing against a dominant mode of "subalternist essentialism" by which rightsholders are believed to "never be able to help themselves" and "must always be propped up," which if left unchecked, creates and furthers harm, re-victimization, and disempowerment); Nandita Sharma, *Anti-Trafficking Rhetoric and the Making of a Global Apartheid*, 17 NWSA J. 88, 96 (2005) (critiquing anti-trafficking campaigns and arguing that "conceptualizing the process of clandestine migration as the *cause* of people's exploitation not only denies the agency of women migrants but creates and legitimates punitive state measures aimed at punishing traffickers (and smugglers) rather than assisting migrants in their survival strategies"); Karen Engle, *Feminism and Its Dis(contents): Criminalizing Wartime Rape in Bosnia and Herzegovina*, 99 AM. J. INT'L L. 778, 812 (2005) (arguing that "[p]erpetuating images of women as powerless victims of war might unwittingly function to strip women of many types of power, including the power to resolve or prevent conflict").

them, processes that are fundamentally important to their being able to counter a sense of invisibility and reclaim their dignity, and also to building local capacity and self-reliance to sustainably address future issues or abuses. Human rights practice that fails to empower rightsholders may therefore unwittingly further entrench human rights abuses.

Fourth, this critique is closely connected with other important critiques of human rights, and examining advocates' responses to it, and the challenges they face in doing so, can be helpful in both understanding some of the dynamics at work in those other critiques, and in informing how advocates may approach and respond to them. Many of these critiques are fundamentally about power—who has it and how it is exercised.[22] More equal partnerships with rightsholders, for example, could lead to, or require, greater diversity of advocates' identities in the field,[23] and reduce some of the negative costs of "over-professionalization."[24] Improved responsiveness to rightsholder needs could also lead to more interdisciplinary work, countering critiques of over-legalization or of privileging responses to certain harms that best fit within human rights norms, through adoption of other discourses or non-legal strategies.[25] The centering of rightsholder voices, interests and goals could also help to counter concerns that human rights work can deradicalize by transmuting all grievances into "human rights" claims and stripping social movements of their original goals and aspirations, or that it focuses on short-term harms at the expense of structural change.[26]

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22. *See above,* notes 8–11.

23. For the critique about the lack of diversity within the field, *see, e.g.*, McDougall, *supra* note 12, at 15 (arguing that "More often than not, the leading human rights activists in any country belong to a privileged class or social group"); Makau Mutua, *Human Rights International NGOs: A Critical Evaluation*, in NGOs AND HUMAN RIGHTS: PROMISE AND PERFORMANCE 151, 152–54 (C.E. Welch, Jr., ed., 2001) (describing "leading human rights organizations" as having "arisen in the West . . . with the express intent of promoting certain basic Western liberal values," as "the brainchild of prominent Western civil rights advocates, lawyers, and private citizens" who "have all been white males," and as having boards "dominated by Westerners, Western-trained academics, professionals, and policy-makers, or non-Westerners whose worldview is predominantly Western").

24. For the critique about the "over-professionalization" of the field, *see, e.g.*, Kennedy, *supra* note 10, at 120 (arguing that professionalization "strengthens lawyers at the expense of . . . citizens who might otherwise play a more central role in emancipatory efforts"); Martti Koskenniemi, *Human Rights Mainstreaming as a Strategy for Institutional Power*, 1 (1) HUMANITY 47, 52 (2010) (arguing that human rights advocacy "may highlight the position of lawyers and litigation at the cost of other types of knowledge and practice").

25. For the critique about the over-legalization of the field, *see, e.g.*, Kennedy, *supra* note 10, at 110 (presenting the critique of the human rights movement that its "strong attachment . . . to the legal formalization of rights and the establishment of legal machinery for their implementation makes the achievement of these forms an end in itself"); Amartya Sen, *Human Rights and the Limits of the Law*, 27 CARDOZO L. REV. 2913 (2006) (arguing against a purely legal understanding of human rights).

26. For the critique about deradicalization and "short-termism," *see, e.g.*, Kennedy, *supra* note 10 at 118 (2002) (arguing that "even when successful, [human rights remedies] treat the symptoms rather than the illness, and this allows the illness not only to fester, but to seem like health itself"); UPENDRA BAXI, THE FUTURE OF HUMAN RIGHTS 239 (2d ed. 2006) ("human rights, and social actions movements may ameliorate the harshness of [contemporary economic globalization] but only within the

Finally, rightsholders are pushing advocates to reform how they relate to rightsholders, and many advocates are paying increasing attention to the issue and seeking to reform their practices. Indeed, in our collective experience working in many contexts around the world, we see a notable shift in recent years in attention to the role of rightsholders in advocacy, with the field moving, if slowly in some parts, toward more rightsholder-centered models. While often grounded in very different visions of power, participation, or democracy and a range of theories of change,[27] and while far from dominant across the field, a rich set of practices and reforms has emerged, and ought to be analyzed. In addition, despite the widespread attention the critique has received from human rights advocates around the globe, it remains applicable to much human rights practice, and even significant, genuine efforts to respond to the critique in practice face serious challenges in implementation.

C.   The critique in practice: risks of rightsholder disempowerment across the advocacy timeline

Advocates can engage in practices that risk disempowerment throughout the trajectory of advocacy, from when decisions are made as to the issues on which to focus, through to evaluating advocacy impact. Such practices often have at their root a systematic discounting of rightsholder self-determination and agency to affect change.

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general imperatives of this ideology"); BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE (2017).

27. Rightsholder-centered models may be grounded in different visions of the concept of power. For a radical yet now classical, three-dimensional concept of power, including more and less visible elements of power, *see* STEVEN LUKES, POWER: A RADICAL VIEW (1974). For a recent adaptation of the concept to practitioners' use, *see* SRILATHA BATLIWALA, ALL ABOUT POWER: UNDERSTANDING SOCIAL POWER AND POWER STRUCTURES (2018). The models may also be grounded in different theories of change, and different approaches to the intrinsic or instrumental value of "participation." For one theory of participation, often cited as a foundation of human rights-based approaches to development, *see* AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999). Advocates may have different views about participation's relation to "democracy" as opening political spaces (advocates' groundings in democratic theory may include approaches such as Habermasian deliberative democracy (JURGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION (1984)); Carol Gould's cosmopolitical democracy (CAROL C. GOULD, GLOBALIZING DEMOCRACY AND HUMAN RIGHTS (2004)); Roberto Unger's democratic experimentalism (ROBERTO M. UNGER, DEMOCRACY REALIZED (1998)); Paulo Freire's dialogic action (PAULO FREIRE, PEDAGOGY OF THE OPPRESSED (1970)), or Laclau and Mouffe's radical democracy (ERNESTO LACLAU & CHANTAL MOUFFE, HEGEMONY AND SOCIALIST STRATEGY: TOWARDS A RADICAL DEMOCRATIC POLITICS (1985)). For a much-debated critique of the depoliticizing features of participatory processes in the field of development theory, *see* BILL COOKE & UMA KOTHARI, PARTICIPATION: THE NEW TYRANNY? (2001). For a political economy analysis of "free prior and informed consent" in the development field, *see* Lorenza B. Fontana & Jean Grugel, *The Politics of Indigenous Participation Through "Free Prior Informed Consent": Reflections from the Bolivian Case*, 77 WORLD DEV. 249 (2016). In the human rights field, *see* César Rodríguez-Garavito, *Ethnicity.gov: Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields*, 18 IND. J. GLOBAL LEGAL STUD. 263 (2010).

The critique can manifest at key moments in human rights practice when advocates make decisions as to whether an issue exists and what the nature of the problem is, and which issues to focus on, strategies and tactics to adopt, and recommendations to advance, with minimal inclusion of rightsholder perspectives. When advocates make these decisions, they may consciously or unconsciously privilege their allegiance, or sense of accountability, to donors, their organization's mission or expertise, and/or their individual academic and professional interests, experience, and normative or ideological concerns or biases over rightsholders' conception of the problem, the solution, and the strategies to achieve change.

At one extreme, advocates may sometimes engage in entire lines of work and advocacy, launching investigations and pushing for change that may have real consequence in rightsholders' lives, without any communication with rightsholders at all, except perhaps to interview them to obtain victim testimony. For example, one of the co-authors worked with indigenous communities from Mexico who were advocating against an extractive development project. The indigenous communities discovered that an international NGO had developed an international campaign advocating that the lagoon in the indigenous community's territory become a "natural reserve" requiring governmental environmental protections. However, the indigenous communities were never consulted about this aspect of the advocacy campaign, which risked harm to their local strategy. The international NGO did not take into account that one of the results of including the lagoon in the category of "natural reserve" was that it left the community without the right to use the lagoon for their own subsistence purposes.

Advocates working outside their own country or culture often face particular challenges in their assessment of priority human rights issues, as well as their subsequent framing, because of gaps in their understanding of, or a lack of capacity to effectively learn, local languages and contexts. For example, one of the co-authors had worked with an international NGO that initially failed to understand the serious risks to local LGBTQI+ organizations and rightsholders if an international campaign to visibilize sexual orientation and gender identity (SOGI) discrimination and abuse proceeded.

Yet even where the advocate does communicate with rightsholders and seeks to include them in the decision-making, the means of inclusion can sometimes result more in "tokenism," or a lack of meaningful participation. For example, the advocate may present to rightsholders a pre-formed project, agenda, or proposal for "consultation," leaving little scope for amendment or deep input, or may conduct a "consultation" after a strategy has already been decided or after implementation has begun.

For example, in the realm of human rights education interventions in South Africa, where one of the co-authors has worked, human rights educa-

tion curricula are often developed by consulting in a tokenistic fashion the learners for whom the material is intended, such as by holding a single meeting in a school and polling learners on pre-determined topics. Topics in the education materials are often publicly presented as being the most important issues confronting the specific population concerned, but without having engaged in a meaningful consultation with a range of learners about their own perception of what issues are most important to them. In the area of SOGI rights in India, where another co-author has worked, advocates were criticized for not conducting adequate consultations with the affected communities prior to commencing litigation. They had to conduct more inclusive and robust consultations in the aftermath of concerns being voiced about both inadequate consultations as well as differing priorities within the community, in order to build a broader coalition of support within the LGBTQI+ community for the litigation effort.[28]

Without a participatory diagnostic and prognosis of rightsholder leadership, decision-making mechanisms, and priorities, advocates risk working on issues that are not conceived as problems by the rightsholders or that misunderstand rightsholders' realities. Advocates may also at best fail to take advantage of, and at worst risk undermining, rightsholder-led social change strategies, and risk causing unintended harm or backlash to rightsholders that could have otherwise been avoided through greater rightsholder engagement. For example, one of the co-authors worked on a matter in which a U.S. labor union decided to recreate the same union organizing campaign in the janitorial sector in Mexico City that it had used in the United States. However, the campaign was conducted without adequate understanding of the social and legal contexts, and without effective information provision to workers in the campaign, and employers retaliated against the workers, including through firings. After this outcome, the union decided to close its office in Mexico and leave the campaign incomplete. As a result, workers affected by this campaign feared demanding better working conditions, their right to freedom of association, and a collective bargaining contract was counterproductive and had their mistrust in unions reinforced. ProDESC, a leading Mexican NGO working on economic, social, and cultural rights where one of the co-authors works, conducted interviews with many of these workers, most of whom were older women, and found that many felt used by and disappointed in organizers. These practices not only harm rightsholders in specific situations, but may also adversely impact the future of human rights work in that region as it may result in a trust deficit between rightsholders and human rights advocates.

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28. *See, e.g.*, Uday Singh Rana, *Lawyer at Forefront of Battle of Section 377 Recalls Journey After SC Decriminalises Gay Sex*, NEWS18, (Updated Sept. 6, 2018), www.news18.com/news/india/naz-foundation-lawyer-leading-the-fight-against-section-377-recalls-20-year-long-legal-battle-1869361.html [https://perma.cc/J9V7-X6H7].

Advocates also risk deciding on and pushing recommendations that misunderstand the context, are at odds with rightsholder determinations of their own needs and solutions, and can even be actively harmful. For example, co-authors experienced, in Mexico and Peru, that rightsholders organizing in opposition to the construction of mines had to work hard to discourage outside advocates from calling for any additional process of "dialogue" with the company and government, as the rightsholders saw any such attempt as a threat to their clear and unqualified goal of preventing the mine being further developed in any form. In another case, a co-author observed an international NGO prepare a set of recommendations to the United Nations about the conflict in Yemen, and the recommendations were prepared without consultation with Yemenis. Yemeni rightsholder-advocates had to intervene to explain to the international NGO how their process violated participation values and had also resulted in weak and counterproductive recommendations for peace and justice in Yemen. In the context of Myanmar, another co-author witnessed an international NGO use the example of the Rohingya genocide as a reason to call for the establishment of a European sanctions regime that would impose travel bans and asset freezes on certain military generals in Myanmar. A local group had to educate the international NGO that such a campaign would be pointless in the specific context, where the implicated individuals did not travel to nor hold assets in the West and would likely also divert attention away from other more promising theories of change that local groups had prioritized for collective advocacy.

b. *Communication between advocates and rightsholders*

Once a human rights strategy has been decided, outside advocates may implement their contributions to that strategy with no, or inadequate, communication with rightsholders.

Advocates may engage in communications in an extractive, one-way manner, initiating communications only when they want something from the rightsholder, such as additional information or the contact details of witnesses to a human rights abuse. Advocates may rarely or insufficiently provide updates to rightsholders on the progress of work, or of developments related to their interests. When advocacy materials such as human rights reports or complaints are completed by advocates, they may be distributed in such a way (e.g. through a language or medium) that make them inaccessible to rightsholders, or they may not be shared with rightsholders at all. Especially where there exist technological or geographic barriers to communication initiated by rightsholders, they may feel disconnected from the work of the advocate, without any knowledge as to whether and how the advocate's work is progressing or whether or how information provided by the rightsholder to the advocate was used. This

can make it difficult for rightsholders to monitor and assess the advocacy work and its impact, or to know what actions they should take next.

Advocates may also rely on communication with a single leader of a rightsholder community without ensuring that the broader community is effectively engaged and informed. Communications may be favored with more privileged rightsholders, and advocates may not give adequate consideration to women, youth, or minorities within the rightsholder community. The communication may thus work to reinforce existing power dynamics within a community, or may undermine broader community participation. Communications with specific individuals at the expense of broader communication with rightsholder communities may also damage that leader's social relationships with others in the community. In other instances, advocates may overly rely on certain rightsholders to communicate with others, without taking into account the time and resource burden on the rightsholder in managing community communications.

c. *Fact-finding*

Fact-finding is central to advocacy: advocates monitor or investigate events or conditions to assess whether or what type of advocacy is necessary on an issue and to create an evidence base for effective advocacy. Some of the existing critical literature has explored how advocates may engage in fact-finding in a way that views and creates rightsholders as "victims" from whom to "extract" information.[29] Advocates may not recognize rightsholders as creators of knowledge, agents of change, or as active investigators themselves, but only as sources of data, resulting in a form of "epistemic violence."[30] Advocates may position themselves as the "experts" who discover and analyze information. One manifestation of this in human rights reporting is when organizations report that they "uncovered" violations, without acknowledging the risks, time, and effort rightsholders have undertaken to ensure their information became public. For example, it is particu-

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29. *See* Pittaway et al., *supra* note 16, at 232–36 (arguing that research may objectify rightsholders, deny their agency, result in disempowerment, and promote "distrust" and "rejection of the solutions emerging from the research.").

30. Contribution of Margaret Satterthwaite, Faculty Director and Professor of Clinical Law, Center for Human Rights & Global Justice, New York University School of Law, during "Advancing a Critical Turn in Human Rights" Workshop (Nov. 9, 2018). For a post-colonial articulation of the concept of epistemic violence, *see* GAYATRI CHAKRAVORTY SPIVAK, CAN THE SUBALTERN SPEAK? 76–81 (1988) (discussing epistemic violence in reference to Michel Foucault's analysis of the 'episteme' of Western thought as the anonymous codification and structure which determines knowledge formation of a given era (*see* MICHEL FOUCAULT, MADNESS AND CIVILIZATION: A HISTORY OF INSANITY IN THE AGE OF REASON (1965)), and suggesting that epistemic violence lies in the obstruction and undermining of non-Western methods or approaches to knowledge, which constitute the colonial subject as a heterogeneous 'other' through processes of dismissal, re-writing or deletion of native social and historical consciousness); *see also* Théo Boutruche, *The Relationship between Fact-Finders and Witnesses in Human Rights Fact-Finding, in* THE TRANSFORMATION OF HUMAN RIGHTS FACT-FINDING 141–42 (Philip Alston & Sarah Knuckey eds., 2016) (identifying a "dangerous trend" in human rights work of "relegating victims to the margins as sources of material").

larly common in contexts where an international NGO visits a country experiencing conflict or emergency (e.g., in Myanmar, Somalia, Libya), for the NGO to publicize its work by framing itself as the primary agent of fact-finding, often failing to explain that they relied on rightsholders and local advocates to gather evidence, bring witnesses forward, and facilitate the NGO's visit. A related manifestation often discussed among advocates is the practice of focusing fact-finding on the facts related to rightsholders' suffering or victimization, without sufficiently exploring other aspects of their identities, needs, or their efforts and agency. For instance, in the experience of one of the co-authors working with migrants, many NGOs have principally focused on investigating rights-violating conditions faced by migrants traveling from Central America to the United States, without simultaneously investigating the agency exhibited by the migrants in planning, surviving, and supporting each other in their efforts to seek safety.

Human rights interviewers may also fail to conduct trauma-informed interviewing, thus exposing rightsholders to a risk of re-traumatization.[31] This can occur, for example, where advocates are not trained in trauma-informed fact-finding and ask unnecessarily detailed questions about memories of abuse, fail to monitor the effects of questions on the interviewee or to build in time for breaks, or do not take steps to refer interviewees to psychosocial support. The types of informed consent practices used by some advocates can also be inadequate, and may be too perfunctory or insufficiently tailored to the rightsholders' circumstances to obtain truly informed consent—with advocates more concerned about obtaining "consent" and information and doing so quickly than ensuring that rightsholders fully understand the purpose and eventual use of information. By emphasizing the value, and discounting the potential harms of being interviewed, advocates may increase pressure that rightsholders feel to participate in investigations, obtaining consent when it might otherwise not be given.[32]

Some investigation techniques may be inaccessible to many rightsholders, due to required training or financial resources, potentially alienating rightsholders from the fact-finding process and from data about themselves. This can occur, for example, where investigators use new technologies with-

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31. *See* Pittaway et al., *supra* note 16, at 235; Boutruche, *supra* note 29, at 131 (arguing that advocates, in assessing credibility and reliability of interview testimony, "can cause harm," noting that some techniques, such as repeatedly asking questions, could result in the victim feeling that they are being doubted, "intensifying a feeling of helplessness and vulnerability"); James Dawes, That The World May Know: Bearing Witness to Atrocity 181–84 (2007) (examining the South African Truth and Reconciliation Commission and arguing that the "work of justice can be physically crushing for those it meant to vindicate," as wounds may be re-opened, and rightsholders feel the abuse anew).

32. *See* Vittorio Bufacchi, *Victims, Their Stories, and Our Rights*, 49 Metaphilosophy 3, 6 (2018) ("While the victim may have the right to refuse to share her stories, she may also experience feelings of guilt for not doing her bit for the cause, and therefore not contributing to the fight against human rights violations. By withholding their information, victims may feel that they are being judged, that they are doing something wrong, that their decision not to share their stories is morally reprehensible.").

out explaining or sharing the skills or tools with directly affected populations.

Finally, fact-finding practices may be unaccountable to rightsholders—advocates may never report back to rightsholders the findings or outcomes, or they may report back in language that is not accessible, or may not build in feedback and dialogue processes so that any negative effects are communicated and addressed. This can be distressing for rightsholders and leave them feeling used, can make it difficult for rightsholders to undertake advocacy on the findings, and can undermine future fact-finding efforts by disincentivizing rightsholder participation. For example, during fact-finding conducted by one of the co-authors in India, rightsholders questioned if the fact-finding would result in any real change and expressed frustration with previous advocates who had conducted fact-finding, did not report back, and did not contribute to any change in their circumstances. In another case, a co-author worked with a South African NGO that expressed frustration at the extractive nature of fact-finding often undertaken by northern NGOs, which would often result in knowledge production and retention exclusively within the global north.

d. *Preparing advocacy documents and materials*

After obtaining and analyzing the facts of human rights abuse, outside advocates may decide how to organize and convey that information—in the form of a human rights report, letter, petition, press release, documentary film, website, etc.,—and what narrative to advance in those materials, with little to no rightsholder participation. This is one of the principal areas where advocates might introduce, in the language or images of advocacy materials, the narrative of the "helpless victim" devoid of agency, or the "heroic victim" who valiantly defies all odds. These choices can be encouraged by advocate perceptions of what can drive a general audience to pay attention to an issue, funder interests, what is likely to grab mainstream media attention, and the structure of legal frameworks in which "paradigmatic victims" may achieve easier success.[33]

For instance, sex workers are often depicted as victims of coercion or trafficking without acknowledging the possibility of agency and choice associated with engaging voluntarily in sex work as a form of work.[34] In the experience of one of the co-authors, sex worker communities and movements have resisted simplistic victimizing approaches, since they can result in governments banning sex work and impacting the livelihood of sex workers. They have also shared that this depiction is patronizing and por-

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33. *See e.g.,* Diana Tietjens Meyers, *Two Victims Paradigms and the Problem of "Impure" Victims*, 2 HUMANITY 255 (2011); Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 BOS. UNIV. L. REV. 157 (2007).

34. Alice M. Miller, *Sexuality, Violence Against Women, and Human Rights: Women Make Demands and Ladies Get Protection,* 7 HEALTH & HUM. RTS. J. 16, 36, 40 (2004).

trays them as helpless victims that are unable to exercise agency or choice. Scholar and practitioner Alison Miller has shown in this context how the victim framing "tends to reduce women to suffering bodies in need of protection by the law and the state, rather than as bodies and minds in need not only of protection, but participation and equality."[35] The result is advocacy that can "make it more difficult for the women portrayed as victims of sexual harm to emerge as full citizens in their varied cultural and country contexts," can lead to women's groups focusing on "condemning sexual harm rather than demanding sexual agency," and can "reinforce deeply conservative beliefs about women and sexuality."[36] However, the victim approach has been used by some advocates who have explained to one of the co-authors that they feel compelled to do so because several funding organizations, including US government agencies, deny funding to any efforts that appear to encourage the agency of sex workers.[37]

In another case, a co-author worked with a campaign to defeat a state ballot measure in the United States that would eliminate affirmative action in employment and admissions. The co-author's organization wanted to organize youth to participate in the movement to defeat the ballot initiative, claiming they had been excluded from a political process that potentially impacted on their futures. However, the youth weren't interested in organizing around the ballot measure, as they did not feel it impacted their immediate realities. Instead, they wanted to organize around the racial profiling and police misconduct they routinely experienced, but their agency in determining what issues most impacted them was disregarded.

In an effort to simplify and gain media or public traction, advocates may present rightsholders in ways that are patronizing and dehumanizing, and which may ignore their resilience and creative problem-solving. While advocates may see it as strategically useful to define rightsholders primarily in relation to an act of abuse, the agency and power that rightsholders have and deploy in response to human rights violations is marginalized.[38] Rightsholders have shared with one of the co-authors that this practice makes them feel "used" by advocates to attract attention to the advocate's own work or to get funding. Rightsholders may also be described by advocates in a way that oversimplifies the rightsholder community. For instance, the use of "transgender" as a transnational term by the NGO sector and its funders results in the treatment of South Asian discourses within the community as "merely 'local' expressions" of a supposedly universal global

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35. *Id.* at 27.

36. *Id.* at 40.

37. *See, e.g., Center for Health and Gender Equity, Policy Brief: Implications of U.S. Policy Restrictions for HIV Programs Aimed at Commercial Sex Workers (2008)*; Julie Dworf, *Sex Worker Health and Rights: Where is the Funding?*, Open Society Inst. Sexual Health and Rts. Project (2006).

38. *See supra* note 3.

identity.[39] In the case of India in particular, Shakthi Nataraj has exhorted social scientists and human rights advocates to avoid reproducing a "stock definition" of India's hijra[40] community as the essence of Indian tradition, and instead examine the political process by which different stakeholders, hijra- and non-hijra, rally about that term to demand certain rights.[41]

Rightsholders can also be marginalized from the process of drafting advocacy materials. Advocates may first decide, without rightsholder participation, what form the advocacy material should take. For example, an advocate may decide to draft a long human rights report, in accordance with the general methodology of the advocate's organization, when rightsholders would have otherwise been able to make more use of a short factsheet and press release to advance their priority goals. Outside advocates then may fully take on the responsibility for drafting the advocacy document, and fail to include rightsholders as meaningful participants in decisions as to, for example, what issues or findings to include or prioritize; what framing or messaging to adopt; what specific cases, examples, or individuals to highlight; and what legal conclusions to draw. This lack of rightsholder participation can be compounded at the reviewing stage if advocates prepare materials in forms that are inaccessible to rightsholders, for example due to language or the medium. Even where advocates seek to build in more rightsholder consultation on advocacy materials, that process may be controlled by the advocate, including as to what subset of information is provided for consultation, what questions are raised for rightsholder input, how much time is given for rightsholders to share feedback, and whether or how such feedback is addressed in any final version of the document. In addition, advocates may also maintain control over how authorship of the advocacy materials is presented, controlling how and whether rightsholder work and contributions are acknowledged.

e. *Conducting advocacy*

In the actual process of implementing advocacy tactics, and of engaging in the strategic and tactical assessments that accompany the various stages of advocacy, some outside advocates may privilege their own views and voices over those of affected rightsholders.

Advocates may decide how to conduct advocacy—which messages to deliver, on which targets to focus, where and how to file complaints, which tactics to use, how to sequence tactics, which opportunities to take up, and how to frame issues. Factors driving advocates' ownership of the advocacy can include advocates' perceptions that they have the greater expertise to

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39. *See* Aniruddha Dutta and Raina Roy, *Decolonizing Transgender in India: Some Reflections,* 1 TRANSGENDER STUDIES QUARTERLY 321 (2014).

40. A pan-Indian term referring to a transgendered ritual specialist associated with the worship of the goddess Bahuchara Mata and specific performance traditions in North India.

41. *See supra* note 3, at 2–5.

make strategic advocacy decisions, that consultation or joint decision-making with rightsholders would slow down or "complicate" processes in a way that could undermine advocacy efficiency or effectiveness, that the advocates already understand and are capable of representing the interests of rightsholders without need for further consultation, and the fact that advocates may have greater access (as a result of socio-economic, language, or other privilege) to spaces where international and regional advocacy takes place. For example, in the course of releasing a human rights report, outside advocates may design report launch and advocacy strategies without ensuring the active involvement of rightsholders in all the decisions that go into that strategic planning. This could involve advocates identifying targets to receive the report, arranging in-person advocacy meetings, and drafting talking points and messaging strategy. Such actions may undermine efforts of rightsholders to shape the discourse and process by which their claims should be addressed. Outside advocates may also frame issues and conduct advocacy in a way that is harmful to rightsholders and rightsholder-advocates. For instance, in a region where one of the co-authors works, rightsholder-advocates have shared that outside advocates have used human rights language and framing that puts rightsholder-advocates at risk, since human rights work is under heightened surveillance by the state. They have explained that releasing human rights reports, and engaging with the media and in other forms of public advocacy, without consulting rightsholder-advocates, can also put them at risk.

While not inevitable, there are myriad possible harms to rightsholders when they are not able to exercise their agency to make decisions regarding advocacy. Advocacy that does not consider rightsholder realities and needs, or take advantage of their knowledge of what would be effective at the local level, may lead to strategies that produce no benefits for rightsholders, or could actually even put rightsholders in a worse position than they were before the advocacy was undertaken. Rightsholders may also feel silenced, unable to express their grief, their pain, and to query important stakeholders, when others speak on their behalf or fail altogether to acknowledge their role in an advocacy strategy.

In addition to taking over decisions, a practice that occurs frequently in advocacy is where advocates speak publicly about rightsholder issues or take the lead in public-facing work. In some cases, security or other considerations may limit opportunities for rightsholders to speak out, or a message may be more persuasive when delivered by a certain advocate (these challenges are discussed below in Part II). Advocates may take over media outreach and communication, present and "speak for" rightsholders and their concerns, and "defend" in public and institutional forums—such as UN panels or national human rights commissions—without enabling space for rightsholders to speak directly or for their voice to receive similar attention. For example, one of the co-authors observed as a group of international

NGOs competed to meet with the UN Secretary-General on an ongoing country conflict situation, and made no effort to invite directly affected rightsholders to advocate for themselves. Even when rightsholders are invited to speak, participation can sometimes be shallow and harmful where it is designed primarily by outside advocates to meet the optics of inclusion; tokenization results where rightsholders are not actively included and treated as equal participants. For example, in some situations where rightsholders are supported by advocates to attend advocacy forums, rightsholders may be pressured to deliver specific messages, or their contributions may be limited to presenting a "victim" narrative.

Rightsholders' voices may thus be invisibilized, or misrepresented through the lens of advocates' narratives. Failure to promote the inclusion of rightsholders in advocacy can lead audiences to perceive outside advocates, rather than rightsholders, as the key actors and experts, and can also reinforce hierarchies in skills, where rightsholders lack the opportunities which advocates have to deepen their advocacy skills through practice. Advocates may also be the primary contact with advocacy targets such as government, corporation, or UN representatives, which can limit opportunities for rightsholders to develop their own advocacy networks and future opportunities. By elevating the outside advocate, rather than the rightsholder, as the most central and visible messenger, it entrenches the idea of the advocate as the "savior" vis à vis rightsholders, or as the "expert" who should be listened to by other stakeholders.

f. *Trainings and "Capacity-Building"*

Advocates may make no attempt at all to facilitate the increase of knowledge, skills, and advocacy experience of rightsholders. Instead, while advocates may be able to increase their own capacities through access to trainings or mentoring from others in their organization, they may build in no similar support in human rights projects for strengthening the capacity of rightsholders.

Some advocates and organizations have sought to increase knowledge and skills among rightsholders through trainings and related "capacity-building" efforts.[42] Yet advocate efforts to deepen or transfer skills to rightsholders may fail to build or fortify rightsholder power. Trainings may be limited by being provided only to certain already leading individuals within a com-

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42. *See, for example*: *Capacity Building*, MADRE, www.madre.org/capacity-building [https://perma.cc/PN9Z-6JVB] ("Madre provides training, tools, knowledge, infrastructure and strategic exchange opportunities to build skills and alliances. . . We provide our partners with training and skills-building to effectively meet the self-identified needs of women and communities"); DEJUSTICIA, THIRD GLOBAL INDIGENOUS WORKSHOP (June 5, 2019) ("With training sessions and workshops on strategic litigation, social mobilization, multimedia communication and activism in human rights and the rights of indigenous communities, the workshop seeks to empower indigenous leaders with potent tools for defending their territories and for fighting for the survival of their people."); *Capacity Building*, HAKIJAMI, www.hakijamii.com/?page_id=3033 [https://perma.cc/ZEJ9-KHSY].

munity, and by the failure of advocates to take more steps to overcome structural barriers to participation for other members of the community, such as youth, women, or minorities. Challenges to empowerment can also exist where the need for such trainings, and the subject-matter and methods, are determined largely by the advocate, without sufficient input from rightsholders to ensure that trainings are tailored to the unique context and audience. Trainings conducted in the global south by advocates from the north with inadequate understanding of the local context can be particularly unhelpful or even counterproductive. For instance, trainings on how to use certain fact-finding methodologies and advocacy strategies may not be effective in a political context of closing civil society space and heightened surveillance for human rights work, and if adopted, could visibilize rightsholders' participation in human rights investigations and thus put rightsholders at risk of violent retaliation.

Concerns also arise where advocates design and frame trainings as one-way exchanges from an "expert" advocate to a "victim" in need of "capacity" or "empowerment,"[43] failing to take into account the existing expertise and knowledge of rightsholders, or the need for advocates to learn *from* rightsholders in bilateral exchange. A one-way approach to capacity-building may both rest on and reinforce expert-victim dynamics, can be condescending when it covers material with which rightsholders are already deeply familiar, and may replicate what Paolo Freire refers to as "banking concept of education" in which learners are perceived to be passive containers into which educators must deposit knowledge, undermining critical thinking and knowledge ownership, which in turn can reinforce oppressive structures.[44]

g. *Evaluating advocacy impact*

The evaluation stage holds the potential to be a valuable opportunity for surfacing both potential missteps in the selection and implementation of agendas and strategies, as well as harmful dynamics in the advocate-rightsholder relationship.[45]

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43. *See* Sharp, *supra* note 17, at 69–70 (arguing that much capacity building is marked by "a one-way transmission of expertise from elite to 'local' organizations," that has reinforced the hierarchies they target); Deborah Eade, *Capacity Building: who builds whose capacity?*, 17 Dev. In Prac. 630, 635 (2010) (arguing that a "one-way transfer of resources" can "distort the functioning and dignity of the weaker partner").

44. Paulo Freire, Pedagogy of the Oppressed 58 (1970).

45. On evaluation frameworks and approaches for human rights work, *see generally* Rhonda Schlangen, *Monitoring and Evaluation for Human Rights Organizations: Three Case Studies*, Center for Evaluation Innovation (2014), www.evaluationinnovation.org/wp-content/uploads/2014/01/CEI-HR-Case-Studies.pdf [https://perma.cc/98MY-9SYC]; Emma Naughton & Kevin Kelpin, *When Evaluating Human Rights Progress, Focus Also on the Journey,* OpenDemocracy (June 3, 2015), www.opendemocracy.net/openglobalrights/emma-naughton-kevin-kelpin/when-evaluating-human-rights-progress-focus-also-on-jour [https://perma.cc/5VUX-DW6D]; Sally Engle Merry, The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking (2016); International Council on Human Rights Policy, *No Perfect Measure: Rethinking Evaluation and Assessment*

However, advocates, or their funders, rather than rightsholders, often set the evaluation metrics, processes, and timelines. When evaluating the impact of human rights work, advocates may privilege their own interests, priorities, and benchmarks, or those of their donors, rather than those of rightsholders.[46] The role of rightsholders in evaluating advocacy may be limited or non-existent. As a consequence, issues of principal importance to rightsholders may be excluded from the evaluation process. Indeed, in order to meet expectations of donor agendas and timelines, evaluative processes too often focus primarily on "tangible, easily measurable, short term impacts" instead of impacts that might be of greater priority to rightsholders, are more difficult to measure, only appear over longer periods of time, or touch upon the underlying cause of a problem.[47] As evaluations impact future funding, advocates can be incentivized to underreport problems or weaknesses, including on issues of concern to rightsholders. Evaluative processes can fail to account for any measurement of the *process* of conducting human rights work. For example, how did rightsholders perceive their relationship with advocates? Did advocates grapple with the needs of rightsholders? Did advocates support capacity building in rightsholder communities or building power in social movements? Further, evaluative processes often only occur at the end of a project, which limits their usefulness for mid-course adjustments in response to rightsholder concerns or needs.

II.   Supporting Rightsholder Empowerment: Strategies and Challenges

Many advocates are engaging in genuine efforts to address the risk that human rights advocacy can disempower and victimize rightsholders. In this section, we show how outside advocates are seeking to adopt practices that emphasize rightsholder agency, participation, voice, and empowerment, and to ensure that the advocate-rightsholder relationship is more egalitarian and accountable. Outside advocates and rightsholders are seeking to redefine the terms of their relationships by promoting greater rightsholder involvement or leadership in decision-making about the issues to focus on and strategies to adopt, and their participation in advocacy.

The models of advocacy that seek an alternative to top-down approaches use a variety of names, including rightsholder-centered advocacy, a rights-

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of Human Rights (2012), www.ichrp.org/files/reports/68/181_evaluating_hr_work_report.pdf [https://perma.cc/8J5K-4W92].

46. *See, e.g.*, Paul Gready, *Reasons to Be Cautious about Evidence and Evaluation: Rights-based Approaches to Development and the Emerging Culture of Evaluation* 1 J. Hum. Rts. Pract. 380 (2009); Claire Thomas, *Human Rights Evaluation—Who is it Really For?*, OpenDemocracy (Aug. 31, 2015), www.opendemocracy.net/en/openglobalrights-openpage/human-rights-evaluationwho-is-it-really-for/ [https://perma.cc/8J5K-4W92].

47. *See* Gready, *supra* note 47, at 383.

based approach, collaborative advocacy, and solidarity.[48] Generally, these models are grounded in both consequentialist and deontological reasoning: a commitment to acknowledging, respecting, and being accountable to rightsholder agency and self-determination; ensuring that any intervention supports the growth and/or exercise of rightsholder participation and power; and a view that rightsholder-centered advocacy is a more effective way to advance change.[49] Across all stages of work, human rights practitioners and scholars advocating for reformed approaches also stress the importance of adopting a critical and reflective outlook and deep awareness of power dynamics.[50] This includes developing a rich map of the many interrelated sources and structures of power, privilege, and marginalization that

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48. For examples of these more critically responsive practices discussed in the academic literature, *see* Sarah Jackson, *A Future Vision: Toward Solidarity in Human Rights Activism,* Talk at Columbia Law School (Sept. 19, 2018); César Rodríguez-Garavito, *Should Human Rights Activists Disrupt Human Rights?*, Talk at Columbia Law School (Oct. 20, 2018); Sarah Knuckey & Margaret Satterthwaite, *Should Human Rights Advocacy be Rights-Based?* (forthcoming, on file with authors); Yifat Susskind, *Transnational Collaborations in Feminist and Anti-Colonial Human Rights Advocacy,* Talk at Columbia Law School; International Advocates Code of Ethics (2017), www.accountabilitycounsel.org/wp-content/uploads/2017/08/6.8.16-Code-of-Ethics.pdf; Chris Jochnick, *Challenging Corporate Power Through Human Rights, in* Business and Human Rights: Beyond the End of the Beginning (César Rodríguez-Garavito ed., 2017); Philip Alston & Sarah Knuckey, The Transformation of Human Rights Fact-Finding (2016); Centre for Applied Legal Studies, Community Engagement Policy (Apr. 2014); Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 Clinical L. Rev. 255 (2014); Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 Georgetown J. on Poverty L. and Pol'y 337 (2011); Jagannath et al., *supra* note 12; Margaret L. Satterthwaite & Amanda M. Klasing, *A Rights-Based Approach to Research: Assessing the Right to Water in Haiti, in* Rights-Based Approaches to Public Health 143 (Elvira Beracochea et al. eds., 2011); Stones of Hope: How African Activists Reclaim Human Rights to Challenge Global Poverty (Lucie White & Jeremy Perelman eds., 2011); Lucie White & Jeremy Perelman, *Essay: Can Human Rights Practice Be a Critical Project – A View from the Ground*, 44 Loy. L.A. L. Rev. 157 (2010); Raymond Atuguba, *Human Rights and the Limits of Public Interest Law: Ghana's Reaction to a Messy World Phenomenon*, 13 UCLA L. J. Int'l L. & Foreign Aff. 97 (2008); Dina F. Haynes, *Client-Centered Human Rights Advocacy,* 13 Clinical L. Rev. 379 (2006); Melissa E. Crow, *From Dyad to Triad: Reconceptualizing the Lawyer-Client Relationship for Litigation in Regional Human Rights Commissions*, 26 Mich. J. Int'l L. 1097 (2005). For approaches focused on supporting the agency of rightsholders sometimes draw from or explicitly seek to translate similar reform efforts focused on the lawyer-client relationship. *See, e.g.*, Shah *supra* note 11, at 775 (outlining a model of rebellious lawyering as a means of responding to the critiques of the subordination in advocate-rightsholder relationships); Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 Clinical L. Rev. 255 (2014) (drawing upon the guidance from client-centered-, community-, rebellious-, collaborative-, critical-, poverty-, or third-dimensional lawyering to argue for a model of more collaborative human rights lawyering and advocacy); Dina Francesca Haynes, *Client-Centered Human Rights Advocacy*, 13 Clinical L. Rev. 379 (2006-2007) (applying client-centered lawyering models to human rights advocacy). For early articulations of "collaborative lawyering" *see* Gerald P. Lopez, Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice (1992). *See also* Lucie E. White, *Collaborative Lawyering in the Field - On Mapping the Paths from Rhetoric to Practice. Symposium: The Many Voices of Clinical Legal Education* 1 Clinical L. Rev. 157 (1994).

49. For a range of theoretical approaches on which advocates may or have relied to build their responses, *see supra* note 20.

50. *See e.g.,* Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics,* 28 Yale J. Int'l L. 505, 536–38 (2003); Caroline Bettinger-Lopez, et. al., *supra* note 48, at 380; Tshepo Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, 2 J. Hum. Rts. Prac. 208, 225 (2010) (calling for more "[c]ritical self-reflexivity, and an awareness of the power

influence both the advocate-rightsholder relationship and the realization of human rights more broadly.[51]

Practices which promote more rightsholder participation and empowerment can be understood on a spectrum, ranging from *consultation* with respect to key decisions at a minimum, to greater *participation* in the design and implementation of any human rights intervention, to more robust and egalitarian *collaboration* in the implementation of jointly-agreed upon strategies, to full rightsholder *ownership and leadership* over the strategy adopted with outside advocates playing a support function.[52]

Decisions by outside advocates about how to engage along this spectrum, or whether to maintain more top-down advocacy modes, can be influenced or constrained by many factors. Efforts to implement reformed practices can require careful navigation of challenges and trade-offs, and weighing of the costs and benefits of more participatory advocacy models in specific cases. Key challenges can include perceived independence and credibility, security risks, time and resource constraints, pre-existing power dynamics between advocates and rightsholders, and limited or divided rightsholder organization.

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relations at play"). *See also Diversity, Equity and Inclusion at Amnesty International USA*, AMNESTY INTERNATIONAL, www.amnestyusa.org/diversity-equity-inclusion-aiusa/ [https://perma.cc/2GPC-CFFQ].

51. *See* Caroline Bettinger-Lopez, et al., *supra* note 48, at 392–94; Lucie White & Jeremy Perelman, *supra* note 48, at 57.

52. For examples of these different approaches, *see* Margaret L. Satterthwaite & Amanda M. Klasing, *A Rights-Based Approach to Research: Assessing the Right to Water in Haiti, in* RIGHTS-BASED APPROACHES TO PUBLIC HEALTH 143, 151 (Elvira Beracochea, et al., eds., 2011) (noting that participation requires that "communities be involved in the entire life cycle of a project—from needs assessment to implementation and evaluation"); Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 CLINICAL L. REV. 255, 264–66 (2014) (arguing for an approach that starts with establishing a shared vision of justice, and then designing a collaborative approach to achieving that shared vision involving contributions that draw upon the experience and expertise of both parties in order to achieve joint empowerment); *What We Do to Build Capacity*, MADRE, www.madre.org/capacity-building [https://perma.cc/5WDG-E8QM] ("We accompany our partners in shared human rights advocacy campaigns that promote women's leadership, that generate policy wins and that implement those successes in local communities."); Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775, 794 (2017) (arguing that "[s]upporting local resistance efforts promotes sustainable interventions that minimize the negative consequences of fleeting, 'in and out' consultations and investigations, and permit local actors to speak their own truths in international fora"); *Women's Rights and Climate Activists Launch a Feminist Agenda for a Green New Deal*, MADRE, www.madre.org/press-publications/press-release/women%E2%80%99s-rights-and-climate-activists-launch-feminist-agenda-green [https://perma.cc/8JGZ-5HM5] (noting the importance of leadership "by frontline, impacted communities – especially women of color, Black women, Indigenous women, people with disabilities, LGBTQIAP+ people, people from the Global South, migrant and refugee communities, and youth."). For an example of a "politics-centered" approach to social rights advocacy in South Africa, *see* William Forbath, with assistance from Zackie Achmat, Geoff Budlender & Mark Heywood, *Cultural Transformation, Deep Institutional Reform, and SER practice: South Africa's Treatment Action Campaign, in* STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY, 51–54 (Lucie White & Jeremy Perelman eds., 2011) (in which rather than human rights lawyers and litigation leading social movement strategy, the South African HIV/AIDS *Treatment Action Campaign* led, co-designed, and leveraged litigation and outside advocates for its political purposes).

First, outside advocates may assess that the most effective way to end human rights abuse and to promote rightsholder interests in a particular context is to have a human rights actor perceived as *independent*—by perpetrators, governments, human rights mechanisms—to investigate, make claims, and advocate for rights. This may seem especially valuable where governments have sought to discredit rightsholder groups as biased or not credible, thereby creating a justification for dismissing their allegations and taking no action to improve rights. An "independent" advocate could support the rightsholder claims by providing further evidence of abuse, potentially less likely to be dismissed by governments. Separately, following initial consultation or collaboration, outside advocates and rightsholders may decide together that there is value in certain outside advocates operating independently of rightsholders as a means of division of labor in service of a common goal, particularly where the advocates have specialized or technical expertise and/or access to institutional leverages. Under such circumstances, rightsholder participation in every decision may not be necessary, efficient, or practical.[53]

Second, in some contexts, the rightsholder being seen to take the lead might risk their *security* by exposing their work to advance rights. Frontline defenders are at risk from retaliation by governments and companies around the world, and it can be protective in some circumstances for outside advocates to be the "face" of advocacy efforts. In other cases, similar concerns for security might counsel against, or make impossible, rightsholder leadership and/or frequent contact between advocates and rightsholders.

Third, some strategies to support rightsholder agency may involve a significant *time and resource* commitment by both outside advocates and rightsholders, requiring trade-offs with other goals or work. These trade-offs can be particularly sharp where there is urgency—because of the immediacy of a threatened harm or the emergence of unanticipated advocacy opportunities available to the advocate—or where rightsholders have numerous priorities or responsibilities and where additional advocacy on their part could impose an undue burden. Further, deep advocate-rightsholder partnerships and long-term mutual exchanges can require significant investment, and some practices may be financially unviable or require reallocating limited funds from other priorities.

Fourth, outside advocates may bring a variety of privileges to their engagement and may seek to leverage those privileges to advance human rights, and yet such privileges are often rooted in *structural inequalities* that also influence power dynamics with rightsholders. For example, advocates may come from well-resourced or influential organizations, or may bring privilege on the basis of educational opportunities, race, nationality, language, or socio-economic status. It can be tempting to have advocates lead

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53. Raymond Atuguba, Associate Professor, University of Ghana School of Law, during "Advancing a Critical Turn in Human Rights" Workshop (Nov. 9, 2018).

in decision-making and implementation of advocacy in light of those privileges and the respective challenges often facing rightsholders. Yet overly relying on and not working to counter the effects of such privileges can serve to reinforce structural inequalities and challenge truly joint work and rightsholder-led approaches.

Finally, in work with communities, *limited existing leadership* or organization, or *divisions* among rightsholders, or legacies of marginalization and disempowerment, can pose challenges to implementing agency-supporting strategies. In such cases, significant time and resources might be needed to support rightsholders in their efforts to overcome the barriers that have undermined organization or their power.

Given that the human rights field is a complex, interdependent ecosystem of actors playing various roles and advancing different theories of change,[54] it would be a mistake to assume that any one set of practices related to the advocate-rightsholder relationship should apply evenly to all actors in the field all the time, or should systematically be prioritized over other critically-responsive practices. Indeed, as the above factors indicate, there are a wide range of potential issues that might counsel against strict adherence to a model of advocacy that focuses on advancing rightsholder agency to the exclusion of all other considerations. And efforts to adopt critically-responsive practices emphasizing rightsholder agency and participation should not be so rigid as to become debilitating, or even "depoliticizing,"[55] displacing the focus of advocacy from external to internal power imbalances and crowding out responses aimed at challenging the former. At the same time, concerns for independence, security or time, for example, should not provide discursive cover for the continuation of disempowering advocacy practices. Deviations from practices aimed at supporting rightsholder power should be necessary, intentional, temporary, and in the service of a broader goal, and theory of change, about challenging power imbalances with respect to other actors and underlying structures that are negatively affecting rightsholders.[56] Where possible, decisions to deviate from such tactics should be made by or in dialogue with rightsholders, either through a delegation of responsibilities at the beginning of the relationship, or through case-specific decisions. And structures of accountability should follow such decisions, where the advocate explains to rightsholders the action taken and its rationale, and is able to hear and respond to concerns raised.

In this section, we describe the range of tactics taken by advocates committed to a more critically-responsive practice, how the various challenges

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54. Rodríguez-Garavito, *supra* note 14.

55. For a much-debated critique of the depoliticizing features of participatory processes in the field of development theory, *see* Bill Cooke & Uma Kothari, Participation: The New Tyranny? (2001).

56. Workshop: "Advancing a Critical Turn in Human Rights" (Nov. 9, 2018).

described above can emerge as advocates seek to advance rightsholder-centered advocacy, and some of the ways in which advocates seek to navigate such challenges when they arise.

a.   *Agenda-setting, strategies, and recommendations*

Advocates have adopted a range of practices to promote respect for rightsholder self-determination and perspectives around key decisions as to the subject, goals, strategies, and recommendations of any intervention.

To improve rightsholder participation in agenda-setting, strategy, and recommendations to advance, advocates may choose to make certain initial determinations about the human rights issues or agenda, but before engaging in any work, they consult—to varying degrees—with rightsholders to ascertain their views. The consultation could be, more minimally, seeking the views of rightsholders, which the advocate then considers before the advocate makes key decisions, or could involve the advocate significantly adjusting the agenda, strategy, and recommendations based on rightsholder input.

More participatory methods for decision-making may begin, not with a proposal or agenda from advocates, but with dialogue between rightsholders and advocates about their conceptions of the problem, goals, and possible strategies to achieve those goals, including the pros and cons of different pathways to change.[57] Advocates may frame this is as "rightsholder participation," in the sense that the rightsholder participates in the advocate's project, or this more limited conception of participation may be rejected in favor of full participation or joint decision-making, or of advocates learning

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57. For proponents of this approach, *see, e.g.*, International Advocates Code of Ethics, Principle 2 (2016); Centre for Applied Legal Studies, Community Engagement Policy 21–22 (2014); Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 Clinical L. Rev. 255, 264–66 (2014). For examples of organizations adopting this approach, *see Network Member Spotlight: Proyecto Sucros*, NAMATI, www.namati.org/wp-content/uploads/2015/12/8.-Proyecto-Surcos-Spotlight-Final.pdf [https://perma.cc/MEH9-KMZN] ("one of the first things Surcos had to establish was trust – the community has been subject to several failed interventions and tends to distrust new organizations. Surcos conducted a series of group meetings with the objective of creating awareness about the rights and legal norms that are available to the Guaraní M'bya community . . . The meetings sought to build up the knowledge of participants and create a non-hierarchical, empowering exchange of information, thereby strengthening the confidence and assertiveness of the participants"); *About Migrant Justice*, Justicia Migrante, www.migrantjustice.net/about [https://perma.cc/2SC9-48KB] ("Our mission is to build the voice, capacity, and power of the farmworker community and engage community partners to organize for economic justice and human rights. We gather the farmworker community to discuss and analyze shared problems and to envision collective solutions. Through this ongoing investment in leadership development, members deepen their skills in community education and organizing for long-term systemic change . . . Migrant Justice members organize 3 regional farmworker community assemblies, in the states' largest dairy regions, where farmworkers meet monthly to discuss community problems, identify community needs and involve members in our work. We are led by a Farmworker Coordinating Committee, which meets monthly to develop, implement and evaluate our campaigns and strategies in partnership with staff organizers").

the agenda and strategy *from* rightsholders and learning how that plan can best be supported.[58]

Such early dialogue can help to ensure that rightsholder experiences and priorities form the foundation of any subsequent human rights work. It can also build trust and mutual learning, and support forming strong relationships between advocates and rightsholders. Advocates can also promote complementarity and effective use of the knowledge and skills of each contributor by including in early discussions explicit dialogue about what each partner can bring to the initiative.

A focus on rightsholder participation and empowerment does not necessarily mean that rightsholders are involved in every aspect or stage of the human rights work. Through dialogue between rightsholders and advocates, rightsholders may decide that it is appropriate or helpful to divide responsibilities or for advocates to undertake certain work more independently. Dialogue exploring the potential trade-offs involved in different forms of collaboration may reveal potential benefits for relationships of greater independence or division of labor. However, advocates focused on rightsholder agency may make such decisions collaboratively. And, advocates can subsequently work carefully to understand and represent the "soul and spirit" of the rightsholders' interests, and create structures to enable a "deep interconnectedness" between the various strategies advanced to affect change.[59] This requires time and continued engagement, and may be facilitated by advocates teaming with community organizers and liaison officers who are capable of devoting the necessary resources to such engagement.[60] To reduce any unintended coercion that might emerge from an advocate offering to support work on only a certain issue or strategy, advocates may seek to offer to rightsholders a wider network or coalition of allies to advance particular goals or strategies that are beyond the advocates' own expertise, capacity, or desire to undertake.[61]

As part of efforts to counter any differences in power and privilege between advocates and rightsholders which can undermine rightsholder leadership, advocates may seek to use early dialogue with rightsholders (and

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58. *See, e.g.*, *About Us*, Mining Watch Canada, www.miningwatch.ca/about [https://perma.cc/7SS5-8BKL] ("MiningWatch works in solidarity with Indigenous peoples and non-Indigenous communities . . . MiningWatch explicitly values the experience and knowledge of Indigenous peoples, mining-affected communities, and workers, and bases its work on mutual learning and participatory, deliberative and transformative methodologies."); *From Mob Violence to Child Labor – Bringing Justice to Monrovia's Crowded Townships*, The Accountability Lab, www.namati.org/wp-content/uploads/2016/01/15.-Accountability-Lab-Final.pdf [https://perma.cc/2Q6V-DUMR] ("It is essential to listen carefully and spend significant time in any community before beginning work. This provides the opportunity to truly understand conceptions of justice, build trust and identity key individuals with whom to work."); *see also supra* note 52; *see supra* Section II. Supporting Rightsholder Empowerment: Strategies and Challenges and accompanying text describing spectrum of rightsholder engagement.

59. Interview with Raymond Atuguba (New York City, NY, Nov. 10, 2018).

60. *Id.*

61. *See* Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 Clinical L. Rev. 255, 267–70 (2014).

participation at other events organized by rightsholders, including those unrelated to the human rights concern) explicitly as opportunities for: building trust and deepening relationships between advocates and rightsholders; transparently sharing broader goals and sources of funding; seeking to challenge or address any expectation that the relationship will be extractive or transactional in nature; and ensuring that an appropriate foundation is laid for honest conversation.[62] Groundwork can also be laid in early relationship-building efforts for defining commitments from both sides, including with respect to structures of communication and decision-making, and lead in some cases to the adoption of informal agreements or a formalized memorandum of understanding, with both sides contributing key clauses that can be re-examined, adjusted as necessary, and renewed on a periodic basis. Such conversations can also be used to anticipate in advance the type of allowed circumstances under which an advocate might deviate from general communication or decision-making protocols – for example, to avoid an imminent harm or to take advantage of an urgent opportunity – and how accountability will be ensured.[63] It can be helpful in some contexts for trust building and inclusion for early dialogue to take place within the rightsholders' own communities and spaces. In various contexts, rightsholders have shared with the co-authors that this can demonstrate genuine commitment by advocates, help advocates to better understand the rightsholders' experience and context, and allow conversations to take place in circumstances that are familiar and comfortable for rightsholders.

One of the most obvious challenges to this mode of work, however, is that it takes significant time to build relationships of trust and to hold the detailed conversations necessary to define more egalitarian collaborations.[64] Especially as these conversations can often be particularly productive in person, they can also tax available financial resources where advocates and rightsholders are in different countries or regions. And in light of the urgency of human rights abuse, and the various pressures (from e.g., communities, organizations, funders) that both rightsholders and advocates might feel to get to work immediately and to begin achieving change, advocates and rightsholders alike may be tempted to reach an agreement quickly

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62. *See, e.g.*, *From Mob Violence to Child Labor – Bringing Justice to Monrovia's Crowded Townships*, The Accountability Lab, www.namati.org/wp-content/uploads/2016/01/15.-Accountability-Lab-Final.pdf [https://perma.cc/2Q6V-DUMR] (discussing the importance of dialogue before work begins to build trust).

63. Such structures are not alien to lawyer-client relationships, where retainer agreements specifically identify the limited realms of the lawyer's delegated authority to make decisions on behalf of a client. Similar delegations might be broadly applied to all collaborations between rightsholders and advocates, along with procedures for the advocate to communicate and seek to defend any deviation from an agreed upon delegation of authority.

64. *See, e.g., From Mob Violence, supra* note 62, at 3 ("We spent almost a year in West Point [Liberia] listening and engaging in conversations before beginning any work on the project, and that proved critical over time.").

without surfacing many of the issues that might lead to challenges in the future.

Advocates and rightsholders have navigated this challenge in multiple ways. Some rightsholder communities have adopted protocols and governance structures to deliberately subject decision-making to more detailed processes to ensure that various views and perspectives are surfaced and addressed.[65] Advocates, for their part, have made efforts to build relationship-building into early stage work. This could include incorporating it into funding proposals. Some NGOs have also adopted explicit organizational policies that require detailed engagement with rightsholders before any work can be undertaken.[66] Further, some advocates have endorsed developing their collaborations with rightsholders in an iterative way, with initial work being smaller scale, with the aim of building trust for work on larger projects over time.[67]

Another challenge emerges where rightsholders—often due to systemic abuses including colonization, racism, and sexism—face structural obstacles to accessing the resources and opportunities to build their organizations or technical expertise. This can make it difficult for rightsholders to unilaterally implement the full range of human rights advocacy strategies at the outset of an engagement. In such cases, some advocates engage in a manner that aims to build leadership and governance structures and rightsholder power through organizing and legal empowerment, with rightsholders exercising greater control and leadership over time, and the mode of engagement in the advocate-rightsholder relationship shifting accordingly.[68] Advocates may provide or facilitate technical trainings, support the development of community-based groups, or support rightsholders to apply for grants.[69] Or, advocacy steps, such as filing litigation to stop a company

65. For examples from other research contexts, *see e.g., Memorandum of Understanding Between the First Nations Health Authority and the Canadian Institute for Health Information*, FIRST NATIONS HEALTH AUTHOIRTY & CANADIAN INSTITUTE FOR HEALTH INFORMATION, www.localcontexts.org/project/mou-between-the-gleneg-shire-council-and-the-indigenous-communities/ [https://perma.cc/TR2A-JKYF] (setting out principles including equal partnership, mutual respect, collective impact, and shared learning) ; *Memorandum of Understanding Between the Penobscot Nation and the University of Maine System, University of Maine (Orono)*, PENOBSCOT NATION & UNIVERSITY OF MAINE, www.localcontexts.org/project/mou-between-the-penobscot-nation-and-the-university-of-maine/ [https://perma.cc/YC2C-EL5C] (describing steps to "establish a new ethical, equitable and collaborative relationship in how research is conducted," including by the Penobscot Nation "developing its own institutional review board mechanism").

66. *See, e.g.* CENTRE FOR APPLIED LEGAL STUDIES, COMMUNITY ENGAGEMENT POLICY (2014).

67. *See* Interview with Ignacio Saiz, Executive Director, Center for Economic and Social Rights (New York City, NY, Nov. 10, 2018) (noting that agreeing on a memorandum of understanding with other groups is sometimes the result of years of building relationships).

68. *See* Meena Jagannath et. al, *supra* note 12; William Forbath, with assistance from Zackie Achmat, Geoff Budlender, & Mark Heywood, *Cultural Transformation, Deep Institutional Reform, and ESR Practice: South Africa's Treatment Action Campaign*, *in* STONES OF HOPE (Lucie E. White & Jeremy Perelman eds., 2011) (describing the Treatment Action Campaign's "Treatment Literacy Campaign" in which rightsholders assumed a leading role as drivers of health care reform advocacy).

69. *See e.g., Training*, EARTHRIGHTS INTERNATIONAL, www.earthrights.org/how-we-work/training [https://perma.cc/X272-JR3Z] ("ERI has trained local communities, lawyers, and civil society leaders

from extracting resources from and polluting indigenous lands, even if only temporarily, might also be designed with the further purpose of facilitating time for a community to strengthen its own organizing efforts to carry out other strategies. For example, ProDESC's methodology of integral defense is designed to place the role of advocates and the litigation as a step for the organizing process of communities affected by transnational corporations, advocates help to create time for a deeper strategy designed in collaboration with the rightsholders.[70]

A promising example of how advocates have contributed to supporting rightsholder leadership and governance structures is that of the Mining and Environment Justice Community Organising Network (MEJCON), a network of communities, community-based organizations, and community members who are affected by mining and mining-related activities across South Africa.[71] MEJCON grew out of a collective of NGOs working on mining and environmental issues, whose clients decided to form their own structure that would directly represent the communities affected by mining and environmental violations. Advocates from an NGO partner assisted

who work to defend human rights and the environment, offering courses and workshops on community organizing, campaigning, advocacy and legal issues."); *Grassroots Legal Empowerment*, NAMATI, www.namati.org/what-we-do-/grassroots-legal-empowerment/ [https://perma.cc/E6CC-36QS] ("Namati and our partners train and deploy community paralegals to take on some of the greatest injustices of our times. These paralegals are trained in basic law and in skills like mediation, organizing, education, and advocacy. They form a dynamic, creative frontline that can squeeze justice out of even broken systems. Rather than treating their clients as victims requiring an expert services – "I will solve this problem for you"—community paralegals focus on legal empowerment: "We will solve this together, and when we're done you will be in a stronger position to tackle problems like these in the future."); *Network Member Spotlight: Nepal National Dalit Social Welfare Organization*, NAMATI (June 2016), www.namati.org/wp-content/uploads/2015/12/12.-NNDSWO-Spotlight-Final.pdf [https://perma.cc/ NJA8-HBE7] (the organization works with Dalit families to promote legal empowerment; each group works with a "social mobilizer" (a community member trained to provide advocacy support)); *What We Do,* KARENNI SOCIAL DEVELOPMENT CENTER, www.karennisdc.org/training-human-rights-advocates/ about-us/activities-of-sdc/ [https://perma.cc/2XPD-FW72] (the organization provides "human rights, democracy, law and environment training for youth living in Karenni Refugee Camp #1 on the Thai-Myanmar border."); *From Mob Violence, supra* note 62 at 3 ("we have supported [local groups] to build the systems and teams necessary to operate on a low-cost basis over time – through significant amounts of training, mentoring and support"); *Justice in the Tea Gardens – Battling 'Generational Servitude' in Assam, India,* NAZDEEK, www.namati.org/wp-content/uploads/2016/01/13.-Nazdeek-Final.pdf [https:// perma.cc/2NNK-R2QK] ("'Initially, there was a lack of awareness about laws and policies among the women volunteers . . . Since the majority of the volunteers hailed from tea garden areas [in India], a significant amount of time was spent in building up capacity. . . Through trainings, the women volunteers began seeing entitlements as rights. They then began sharing this information with women in their respective communities to start demanding health benefits and services from state officials and frontline health workers."); *Empowering communities to defend their environmental rights*, CENTER FOR ENVIRONMENTAL RIGHTS (Sept. 10, 2019), www.cer.org.za/news/empowering-communities-to-defend-their-environmental-rights [https://perma.cc/5EFK-24VV]. (describing the organization's "Rights & Remedies: A Course for Activists," which "is designed to empower participants from rural and urban areas who bear the environmental and socio-economic brunt of polluting industries").

70. *See, e.g.*, *¿Quien Somos?*, ProDESC, www.prodesc.org.mx/inicio/quienes-somos [https://perma.cc/ R6DH-WS9W]

71. MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA (MEJCON-SA), www.mejcon.org.za. *See also Community Organization and Support*, CENTER FOR ENVIRONMENTAL RIGHTS, www.cer.org.za.

MEJCON with forming and drafting a constitution.[72] MEJCON has a steering committee and over 300 representatives from communities in the majority of provinces in South Africa. Among its objectives, MEJCON prioritizes the training and capacity-building of community members, and seeks to promote the participation of rightsholders in decisions that affect them.[73]

Recognizing that power dynamics take shape from the very first interactions, some advocates decide not to make the initial contact with rightsholders to propose a collaboration, but instead to act only where rightsholders have conducted their own diagnostic of the situation and sought out assistance from outside advocates.[74] However, other advocates—recognizing that some rightsholders may face barriers in even seeking support because of detention or insecurity, lack of awareness of sources of support, or communication obstacles—seek to reach out to and offer assistance to rightsholders.[75] Some organizations have made it an explicit focus to support community efforts to articulate their own protocols for engaging with external actors in line with community values and human rights and responsibilities, encouraging community ownership over the terms of any collaboration.[76] And many organizations rely on adaptations of participatory action research models to guide their community engagement. These models emphasize collective participation, research, action, and reflection.[77] The participatory action research model involves full and active participation of rightsholders throughout the research process.[78] One of the key com-

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72. Constitution of the Mining and Environmental Justice Community Network of South Africa (as amended in February 2017).

73. *See* Mining and Environment Justice Community Organising Network, www.mejcon .org.za/; *We must be heard, say South Africa's mining affected communities*, Life After Coal, (Nov. 10, 2017), www.lifeaftercoal.org.za/media/news/we-must-be-heard-say-south-africas-mining-affected-com munities.

74. *See, e.g.* Accountability Counsel's Communities Approach, www.accountabilitycounsel.org/ about-us/communities-approach/ ("Accountability Counsel's assistance to communities begins with a request for support from the community itself or a local civil society organization, followed by initial factual research and needs assessment. We do not solicit communities for cases – communities must demonstrate that we are a wanted and trusted partner by reaching out to us."); Network in Solidarity with the People of Guatemala, Guatemala Accompaniment Project (GAP), at www.nisgua .org/gap (international advocates work in solidarity with Guatemalan activists by accompanying them at their request, to deter attacks on human rights defenders).

75. For example, one of the co-authors reached out to rightsholder-advocates in the Central African Republic to offer human rights advocacy support to their ongoing work to fight discrimination, violations of the right to education, and impunity. Dialogue was held over many months to assess whether or how the foreign organization could be of assistance. Similar dialogue was held over a year between one of the co-authors and rightsholders in another conflict-affected region to determine whether any support and what form of support would be helpful. In order to reach out to rightsholders in detention, one of the co-authors regularly visited sex workers in a women's prison in India to discuss how to be of assistance. Based on those conversations, she set up a network of pro bono lawyers to provide free legal assistance.

76. *See, e.g.*, *Community Protocols Program*, Natural Justice, www.community-protocols.org/.

77. Cathy MacDonald, *Understanding Participatory Action Research: A Qualitative Research Methodology Option*, 13 Canadian J. of Action Research, 36 (2012).

78. *Id.* at 39.

ponents of the process is that rightsholders define, analyze, and address the issues they are experiencing themselves.[79] Therefore, any proposed recommendations and solutions are generated by or in close consultation with rightsholders.

Engagement with communities

When engaging specifically with rightsholder *communities*, advocates seeking to implement responsive tactics often encounter additional challenges posed by the multiple, divergent, or varied views within a community, or challenges in how to include people who face marginalization within any given community, often along lines of religion, race, gender, class, or age.[80] Divergent views are often an inherent part of working with any community, and a failure by advocates to identify such views may be a reflection of shallow engagement by the advocate, or the community's lack of trust in the advocate.[81] Further, in the co-authors' experience, advocates may sometimes *contribute to* divisions and conflict within communities by their very presence in those communities and the strategies that they discuss or adopt. For, example, efforts by outside feminist advocates to support local women rightsholders, where carried out without adequate regard for local context, may heighten conflict between men and women in a community or between family members. Similarly, an outside advocate's decision to support the work of one religious group within a community may contribute to inter-religious tensions. Or, a decision taken by an international organization to award one human rights defender in a community with an award may have the effect of isolating that defender and undermining community mobilization and group decision making. Additionally, inviting one rightsholder-advocate to engage in direct advocacy at an international forum could lead to divisions among rightsholder-advocates in their community.

In responding to this challenge, some advocates propose a variety of strategies intended to promote the surfacing of views within a community, participation, and conflict prevention and resolution.

To assess all views, and with cross-cultural competency, advocates should be mindful of power dynamics within communities and competing responsibilities or roles that inhibit full participation of certain subsets of the community.[82] Cognizant of these dynamics, the advocate can engage in

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79. *Id.*

80. The literature on community organizing and lawyering is vast, *see e.g.*, Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law and Organizing* 26 N.Y.U. R. L. & Soc. Change 615 (2001), and it is beyond the scope of this article to fully examine that scholarship. Nonetheless, we aim here to highlight certain salient dynamics of community engagement that frequently emerge in human rights practice, along with some initial discussion of how certain advocates have sought to navigate those dynamics.

81. *See* Atuguba, *supra* note 53.

82. *See* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 Clinical L. Rev. 33 (2001); Legal Resources Centre, Customary Law and the Protection of Community

strategies to mitigate or overcome the obstacles. To ensure that certain community members are not excluded from key discussions, the co-authors and other advocates have, for example, offered food or child-care support (if appropriate in the particular context); organized workshops and other activities during school hours so women can participate; conducted focus groups with members of groups experiencing marginalization; and/or framed activities to ensure it is safe for community members to participate and does not attract undue attention or surveillance.[83]

Advocates may also engage in frank and honest conversations with community leaders, at times seeking to respectfully disrupt identity-based biases and marginalization within community power structures, and at times being prepared to step back if fundamental disagreements cannot be resolved. As one of the co-authors has found, there may also be benefit to bringing in professional community organizers (not necessarily from any particular rightsholder community) as part of an organization's staff to help facilitate conversations at the community level. While the co-authors have sometimes witnessed a positive impact in terms of attitudinal shifts and reduced prejudice by bringing sub-groups within a community together, caution is also necessary in facilitating inter-group contact in the absence of engagement with underlying issues relating to identity and historical inequality. In order to address these concerns, some of the co-authors have first worked with a more homogeneous group and addressed some of these underlying concerns before facilitating inter-group work. This has served as a way to individually reflect on some of the more contentious issues, before collectively working towards shared values and goals.

Several of the co-authors have found that it can be helpful to directly engage with conflict within the community, and work toward the positive transformation of conflict. Conflict within communities often has its root in the very same structural or systemic power imbalances that the advocate is seeking to disrupt, and transforming community conflict can be an explicit part of a broader theory of change.[84] Here, the identities and facilitation skills of the members of the advocate team become particularly important, as diversity in the composition of the team can be strategically leveraged to

RIGHTS TO RESOURCES (2014), www.landportal.org/library/resources/customary-law-and-protection-community-rights-resources.

83. *See also*, Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 CLINICAL L. REV. 255, 276 (2014) ("For example, while one member of the legal team participates in the all-male assembly, another member of the team may assist the women of the community in the preparation of food for the assembly, and in the process, conduct an informal meeting of those women present to cover the same issues being discussed in the assembly.").

84. *See Our Approach*, SERAPAZ, www.serapaz.org.mx/nuestro-enfoque/ (The main methodological approach is Serapaz Positive Conflict Transformation (TPC) and this: It assumes that the conflict is caused by problems arising from social, cultural and economic political structures that create inequality and exclusion. Addresses the roots of the conflict and seeks to transform the energy of confrontation in social and political changes necessary, immediate and background.)

help bridge divides.[85] Depending on the goal and theory of change of the organization, advocates can strategically sequence the issues on which they engage in ways intended to build unity within the community, for example by focusing on issues of shared concern within the community as a first step in a longer-term plan for tackling more divisive issues in the future. Several of the co-authors have found that it may also be useful, and indeed at times necessary, to bring in external mediators to help transform the conflict, with the advocate participating as a party to the conflict.

b. *Communication between advocates and rightsholders*

To promote rightsholder empowerment, advocates have shifted how they conceive of the purpose of communication with rightsholders, and shifted specific communication practices. The purposive shift involves moving away from an extractive model of viewing communication as a way for outside advocates to obtain information from rightsholders, toward viewing communication as a way to continuously build and maintain strong relationships, and to mutually share information that can benefit the rightsholders as much as the advocate.

In practice, this includes attending to the frequency and quality of communications with rightsholders. Advocates have made a point to create open lines of communication with rightsholders that are tailored to the resource and technological realities and limitations of the circumstances. ProDESC, one co-author's organization, makes it an organizational requirement to maintain frequent communication, particularly around developments in litigation strategies. Some of the co-authors rely on regularly scheduled calls to share progress updates and ensure any ongoing work responds to changing circumstances. They also deploy a wide range of communication tools, and use those favored by rightsholders, which may involve shifting from reliance on email toward Whatsapp or other messaging tools, for ready access and frequent contact. Advocates may fund communication tools for rightsholders to enable frequent communication. Where financial obstacles pose barriers to frequent communication, co-authors have made an explicit point of seeking foundation support for this element in particular.

To help mitigate the communications challenges stemming from community divisions or exclusionary leadership structures, co-authors have additionally sought to communicate with multiple rightsholders and leaders within a given affected community to enable multiple entry points for both receiving and conveying information and broader engagement. For example, two of the co-authors ensured that important information was delivered in person to each of the villages and indigenous groups in an area.[86] Accord-

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85. *See* Atuguba, *supra* note 53.
86. *See, e.g.,* Columbia Law School Human Rights Clinic & The Advanced Consortium on Cooperation, Conflict, and Complexity, Red Water: Mining and the Right to Water in

ing to ProDESC's methodology, advocates often request that the rights-holder community designate a committee to liaise with the advocates. Often, this communication is not limited to project updates but is also used as a way to check in on rightsholders who may be facing ongoing challenges.[87]

Where advocates are physically far from rightsholders, advocates have prioritized more frequent travel to affected communities to enable multiple opportunities for communication, and engagement with a broader section of the rightsholder community. Advocates have also supported rightsholders to travel to meet with advocates.[88] Such frequent engagement enables the advocate and the rightsholders to keep each other well-informed of important developments and build strong, long-term relationships that are marked by trust and deep connection.[89] Where possible, organizations might benefit from hiring full-time liaison officers, community organizers, or project managers whose primary responsibility is to maintain a deep connection with rightsholder communities and to ensure that rightsholder perspectives are strongly brought into the advocate's organization.[90]

As part of broader advocacy reform efforts, including the goal of improving communication between advocates and directly affected populations, some large international NGOs are seeking to both improve the diversity of their staff and to decentralize organizational structures so that staff and headquarters are located around the world and closer to the groups with whom they work.[91] Proximity to affected communities can enhance an understanding of the local context, reduce travel costs, improve the ease with

PORGERA, PAPUA NEW GUINEA 23 (2019) ("The Research Team also visited each village multiple times and held 32 large open village meetings to discuss the study, answer questions, explain results, and provide opportunities for information sharing.").

87. *See, e.g.*, Memoria institucional, "Diez años de construir justicia social," 128, Mexico (2017).

88. *See, e.g.,* COLUMBIA LAW SCHOOL HUMAN RIGHTS INSTITUTE, PRACTITIONER IN RESIDENCE PROGRAM (describing the residency of AbdoulAziz Sali, a rightsholder-advocate who directs the Collectif des Étudiants Musulmans Centrafricain.).

89. Interview with César Rodríguez Garavito, Visiting Clinical Professor of Law, NYU Law School (New York City, NY, Nov. 10, 2018).

90. Interview with Raymond Atuguba, *supra* note 59.

91. *See, e.g.,* Salil Setty, *Moving Amnesty Closer to the Ground is Necessary, not Simple,* OPENDEMOCRACY (Jan. 20, 2015), www.opendemocracy.net/en/openglobalrights-openpage/moving-amnesty-closer-to-ground-is-necessary-not-simple/; César Rodríguez-Garavito, *Multiple Boomerangs: New Models of Global Human Rights Advocacy*, OPENDEMOCRACY (Jan. 21, 2015), www.opendemocracy .net/en/openglobalrights-openpage/multiple-boomerangs-new-models-of-global-human-rights-advoc/ (noting the trend of INGOs based in the north "now expanding, creating a direct institutional presence in the global south", but arguing that "ultimate decision-making power is likely to remain concentrated in the (northern) headquarters," and that such organizations "will tend to privilege collaboration within their globally dispersed organizational structure, rather than collaboration with local organizations."); Sharp, *supra* note 17 (arguing for the diversification of NGO composition—including through the decentralization of INGO structure—and advocacy strategies, to achieve a more inclusive and democratic movement); Irungu Houghton, *Five disempowering traits that international NGOs must drop*, OPENDEMOCRACY (Oct 10, 2016), www.opendemocracy.net/en/transformation/five-disempowering-traits-that-international-ngos-must-drop/ (articulating five recommendations for INGOs to reduce power imbalances.).

which outside advocates and rightsholders can have face-to-face communication or in-person visits, facilitate more rapid responses to changing circumstances or needs, and facilitate more inclusive communication practices with the broader rightsholder community. The practice of "localizing" international NGOs however, has been subject to some critique, particularly for the negative impacts that might be experienced by national human rights organizations.[92]

Where advocates working outside their own country or region do not have the resources or capacity for frequent travel or to hire liaison officers, such organizations often turn to collaborations with local partner advocates and organizations.[93] This is a common practice when global north-based NGOs work in the global south. Co-authors have experienced and observed that southern NGOs or advocates, through their local experience and expertise, and their geographic, linguistic, and cultural proximity to rightsholders, are often very well-placed to promote improved communication, and thus greater rightsholder inclusion, participation, and leadership in advocacy strategies. To ensure, however, that northern advocates do not merely reproduce similar power asymmetries in their relationships with southern *advocates*, practitioners have suggested specific practices to build genuine partnerships, engage in reciprocity, implement effective cross-cultural working methods, adopt joint decision-making, and equally distribute responsibilities (as well as funding and recognition of contributions) within these north-south relationships as well.[94] For example, cognizant of the his-

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92. *See, e.g.*, Mona Younis, *The Hazards of International NGOs Going Local*, OPENGLOBALRIGHTS (May 22, 2018), www.openglobalrights.org/the-hazards-of-international-ngos-going-local/ (criticizing the increasing "internationalization" of Northern-based NGOs to the global South, and concluding that "current Northern localization in the South can hinder domestic organizations that are working to build human rights constituencies and movements essential to achieving rights-respecting and accountable governments").

93. *See, e.g.*, *Network Member Spotlight: Nazdeek*, NAMATI (January 2016), www.namati.org/wp-content/uploads/2016/01/13.-Nazdeek-Final.pdf ("Coordinating programs in partnership with a local CBO makes the programs much more sustainable.").

94. *See* Alejandra Ancheita & Carolijn Terwindt, *Towards Genuine Transnational Collaboration between Human Rights Activists from the Global North and Global South*, 4 FORSCHUNGSJOURNAL SOZIALE BEWEGUNGEN 1, 2, 7–10 (2015) (arguing that "to build genuine collaboration, it is necessary to reflect on the perpetuation of colonial attitudes, to construct a common framework despite different cultural understandings, and identify the inequality of those in different positions." Specific techniques suggested include using MOUs, incorporating relationship management into trainings, and the creation of internal dispute mechanisms); Rodríguez-Garavito, *supra* note 91 (describing the practice of the NGO DeJusticia of promoting "collaborative and horizontal research and advocacy, including an annual action-research workshop for young advocates from the global south" in part aimed to build a "transnational community of activists"); *see generally* Fran Quigley, *Growing Political Will From the Grassroots: How Social Movement Principles Can Reverse the Dismal Legacy of Rule of Law Interventions*, 41 COLUM. HUM. RTS. L. REV. 13 (2009) (arguing, with recourse to various examples, grassroots civil society organization are best positioned to mobilize collective action, frame legal reform, and generate political will, and advocates energies are best spent supporting such organizations); *see also* Deborah Eade, *Capacity Building: who builds whose capacity?* 17 DEV. IN PRAC. 630, 634–36 (2010) (arguing for advocates from the North to adopt an attitude of "modesty," and "self-criticism," and seek to build a "shared vision" with local organizations marked by "trust and co-operation," as well as "partnership, reciprocity, shared risk-taking, and interdependence."); Kathleen Kelly Janus & Dee Smythe, *Navigating Culture in the Field:*

torical, geo-political, and economic power differentials, advocates in the north have facilitated educational and training opportunities for southern advocates who were denied such opportunities due to colonial legacies; similarly, southern advocates are often able to conduct educational and training opportunities for northern advocates who are unfamiliar with the local context, laws, power dynamics, and politics.[95] Additional research into practices for improving north-south collaborations is currently being undertaken by several of the co-authors of this article.[96]

Despite the importance of communication, it may be one of the first things an advocate may be tempted to sacrifice in response to the perceived urgency of a particular issue or opportunity, where the advocate believes immediate action is required and there is a lack of time for a full consultation. Under such circumstances, some advocates have argued that deviations from more robust communication should be limited to emergency circumstances where, due to the issue at stake and the power of the opportunity, an immediate intervention holds a real chance of preventing a serious human rights violation.[97] Given the malleability of such a standard, these advocates suggest that ideally it is the rightsholder who decides whether such a deviation should be permitted, either in response to the specific opportunity or through a delegation of authority to the advocate negotiated at the time of initial conversations about the nature of the advocate-rightsholder collaboration.[98] Even in the case of such deviations, however, advocates challenge the assumption that there will ever be *no time* for *any* consultation, and argue that even a "rapid consultation" (especially through digital communication technologies), while certainly not perfect, may still represent a positive and important step.[99] Further, advocates argue for building in structures of accountability in the aftermath of any such deviation, where the advocate reports to rightsholders with transparency what action was taken and why it was taken, and listens to any concerns or objec-

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Cultural Competency Training Lessons from the International Human Rights Clinic, 56 N.Y.L. Sch. L. Rev. 445, 469 (2012) (arguing for "mutually respectful partnerships with local organizations" achieved through "cross-cultural competency."); James J. Silk, *From Empire to Empathy? Clinical Collaborations Between the Global North and the Global South — an essay in conversation with Daniel Bonilla*, 16 Yale Hum. Rts. & Dev. L.J. 41, 44 (2013) (arguing for an "imperative of empathy" to guide South-North clinical collaborations); Meetali Jain & Bonita Meyersfeld, *Lessons From Kiobel v. Royal Dutch Petroleum Company: Developing Homegrown Lawyering Strategies Around Corporate Accountability*, 30 S. Afr. J. Hum. Rts. 430 (2014).

95. *See, e.g.,* Jain & Meyersfeld, *supra* note 94. Bertha Justice Initiative, www.berthafoundation .org/lawyers/#convenings (describing convenings of advocates from both the north and south "to promote comparative learning, exchange and collaboration.").

96. Sarah Knuckey, Anjli Parrin, & Gulika Reddy, *Decolonizing Human Rights Advocacy* (forthcoming, manuscript on file with authors) (analyzing the findings of interviews with advocates around the world and their strategies for promoting equality and transforming power in north-south NGO partnerships).

97. *See* Contribution of Alejandra Ancheita during "Advancing a Critical Turn in Human Rights" Workshop (Nov. 9, 2018).

98. *Id.*

99. "Advancing a Critical Turn in Human Rights," *supra* note 56.

tions raised by the rightsholders.[100] This can help to promote transparency in the steps the advocate has taken, and provides an opportunity for the rightsholders and advocates to redefine protocols of collaboration and advocacy moving forward.

c. *Fact-finding*

To overcome top-down, extractive, and objectifying fact-finding, advocates have adopted a variety of techniques and practices to support rightsholder participation or leadership.[101] Such methods also ensure that rightsholders' expertise about violations, causes of abuse, culture, and context inform investigation processes and outcomes, contributing to accurate and locally-relevant fact-finding and thus more effective advocacy.

As part of a broader advocacy strategy that includes prioritization of rightsholder power, fact-finding would typically follow extensive dialogue between rightsholders and advocates about what kinds of information is needed, for what purpose, and what research methods would be most appropriate in the context.

In circumstances where advocates themselves undertake fact-finder (rather than joint advocate-rightsholder investigations), advocates have worked to promote trust and transparency with rightsholders by fully explaining the purposes of the investigation,[102] the advocate's interest in the issue, information about funders, and how any information the rightsholders share will be used.[103] Advocates have sought to ensure accountability and empowerment by reporting back to rightsholders about the major findings of an investigation. Advocates have also created opportunities for

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100. *See* Atuguba, *supra* note 53; Ancheita, *supra* note 97.

101. *See, generally,* Pittaway et al., *supra* note 16 (advocating for a form of human rights based participatory research termed "reciprocal research" that focused on rightsholder training and rightsholder control of the data collected and its representation); Molly K. Land, *Democratizing Human Rights Fact-Finding, in* THE TRANSFORMATION OF HUMAN RIGHTS FACT-FINDING 399, 409 (Philip Alston and Sarah Knuckey eds., 2016) (arguing that by increasing participation and utilizing broader techniques, factfinding can become a "purposefully collective and collaborative activity that could provide a basis for bottom-up mobilization around human rights issues"); Théo Boutruche, *The Relationship between Fact-Finders and Witnesses in Human Rights Fact-Finding, in* THE TRANSFORMATION OF HUMAN RIGHTS FACT-FINDING 131, 147, 150 (Philip Alston and Sarah Knuckey eds., 2016) (arguing for a "comprehensive application of the 'do no harm' principle" and a "stronger victims-centered approach taking more into consideration victims' view and expectations").

102. *See, e.g.,* COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC & THE ADVANCED CONSORTIUM ON COOPERATION, CONFLICT, AND COMPLEXITY, RED WATER: MINING AND THE RIGHT TO WATER IN PORGERA, Papua New Guinea 23 (2019) (the researchers followed "strict informed consent guidelines in all interviews," including "discussing voluntary participation, potential risks, limitations, and the purpose of the study"); See also, Lawyers for Human Rights Clinic & The African Center for Migration and Society, Queue Here for Corruption 14 ("The field researchers explained the purpose of the research and participants gave their informed consent to participate.")

103. *See, e.g.,* HUMAN RIGHTS WATCH, GROWING UP WITHOUT EDUCATION: BARRIERS TO EDUCATION FOR SYRIAN REFUGEE CHILDREN IN LEBANON (2016) ("Human Rights Watch informed all interviews of the nature and purpose of the research and our intentions to publish a report with the information gathered."), www.hrw.org/report/2016/07/19/growing-without-education/barriers-education-syrian-refugee-children-lebanon.

rightsholders to provide feedback on early drafts of investigation results.[104] Consultation and reporting back also provide an opportunity for advocates and rightsholders to together strategize what to do with the information, and can help promote rightsholder agency by sharing information which they can use to undertake advocacy or to protect themselves from abuse.[105]

Advocates seek to counter extractive methods by ensuring that the contributions of rightsholders are recognized, through appropriate attribution in any work product.[106] Additionally, advocates are taking steps to document and report about both incidents of harm *and* the exercise of agency among the rightsholders, to counter any uniform narrative of victimization.[107]

In more participatory models of fact-finding, advocates may work closely with rightsholders to define methodologies and respective roles with respect to any fact-finding to be undertaken. Advocates and rightsholders have conducted investigations alongside one another, providing important opportunities for mutual learning and exchange.[108] For example, several of the co-authors have worked collaboratively with rightsholders to design survey in-

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104. For example, while conducting research in a conflict-affected region, one of the co-authors shared the analysis and findings of investigation results with rightsholders at different stages of the research process. For instance, when a survey was conducted, the co-author shared the analysis of the survey results, and when focus group discussions were conducted, the co-author shared summaries and reflections from the discussions with rightsholders.

105. *See, e.g.*, COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC & THE ADVANCED CONSORTIUM ON COOPERATION, CONFLICT, AND COMPLEXITY, RED WATER: MINING AND THE RIGHT TO WATER IN PORGERA, PAPUA NEW GUINEA 19 (2019) ("The research team sought to integrate a rights-based approach through each of the components of its methodology including. . . conducting meetings in each community to discuss the study, share knowledge, discuss recommendations and report results back in an accessible way that empowers local civil society.")

106. *See, e.g.*, THE ALABAMA CENTER FOR HUMAN RIGHTS, THE COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC & THE INSTITUTE FOR THE STUDY OF HUMAN RIGHTS AT COLUMBIA UNIVERSITY, FLUSHED AND FORGOTTEN: SANITATION AND WASTEWATER IN RURAL COMMUNITIES IN THE UNITED STATES 2 (2019) (describing the contributions of rightsholders in the acknowledgment section, "We gratefully acknowledge the time and commitment residents in various communities, local advocates, and other experts spent on contributing to and reviewing this report."); *See also If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention*, HUMAN RIGHTS WATCH, 86 (2015) (describing the contributions of rightsholders in the acknowledgement section, "We are deeply grateful to the families who shared with us the painful stories of their search to find their loved ones, as well as to former detainees who recounted their experiences in detention.").

107. *See, e.g., The Courage of Women in Mauritania: Tales of Activism in the Fight Against Sexual Violence*, HUMAN RIGHTS WATCH (2018) ("While researching her report 'They Told Me to Keep Quiet: Obstacles to Justice and Remedy for Sexual Assault Survivors in Mauritania,' Human Rights Watch researcher Candy Ofime not only met sexual violence survivors, but also a rich and vibrant network of people who were pouring their time, energy, and lives into helping women and girls. Here are a few of them."); *If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities*, HUMAN RIGHTS WATCH 86 (2015) (highlighting agency in the acknowledgement section "Despite their deeply traumatic experience, many of them said they spoke to us out of a desire to improve conditions for the thousands who remain in Syria's detention centers, as well as to achieve accountability for the deaths of their friends and loved ones.").

108. *See, e.g., Byen Konte, Mal Kalkile? Human Rights and Environmental Risks of Gold Mining in Haiti*, GLOBAL JUSTICE CLINIC & HAITI JUSTICE INITIATIVE 9–14 (2015). *See also Make it Safe: Canada's Obligation to End the First Nations Water Crisis*, HUMAN RIGHTS WATCH 23–24 (2016) (describing the role of community-based researchers in the investigation, acknowledging the contributions of the Chiefs

struments that are then implemented by rightsholders within their respective communities.[109] Advocates may also offer or facilitate trainings on investigation techniques for rightsholders so that they can conduct additional forms of fact-finding.[110] For example, one of the co-author's organizations worked alongside youth in the Central African Republic who were concerned about violations of the right to education in the context of armed conflict and religious discrimination. The youth activist rightsholders sought to carry out investigations of the right to education; trainings on interviewing, surveys, and research methods were offered to bolster the rightsholders' fact-finding skills. Advocates have also used technology to facilitate participatory processes for collecting data, and to enable evidence-sharing. For example, one of the co-authors worked with an NGO in India that trained women from the community to record the incidence of female feticide with geotags using their phones. Rightsholders may also collect photographic or video evidence, or engage in participatory mapping projects aided by GPS devices to generate essential facts for advocacy.[111]

Additional measures have been taken by advocates with respect to the specific context of conducting interviews with survivors or witnesses of trauma.[112] At the outset, it is important to ensure that all members of the fact-finding team receive appropriate training in trauma-informed interviewing. To avoid any risk of coercion or re-victimization, advocates have worked to develop rigorous informed consent protocols.[113] And to mitigate harm that arises in the course of retelling accounts of human rights abuse, it

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of Ontario in arranging interviews conducted by Human Rights Watch, and the role of the ethics committee of Six Nations of the Grand River Council in setting out interview consent procedures.).

109. For example, one of the co-authors worked with rightsholders in the Central African Republic to co-design a survey intended to capture student experiences of discrimination in education. One of the other co-authors worked with rightsholders in another conflict-affected region to co-design a survey intended to capture students experiences with education.

110. Co-authors have conducted trainings with rightsholders on, for example: survey methodologies, quantitative and qualitative research tools, and interviewing technique.

111. *See* Molly Land, Democratizing Human Rights Fact-Finding *in* THE TRANSFORMATION OF HUMAN RIGHTS FACT-FINDING (Philip Alston & Sarah Knuckey eds., 2016), 402; Interview with Raymond Atuguba, *supra* note 59.

112. On working with survivors and witnesses, *see generally Guidelines for Interviewing Survivors of Trauma and Conducting Research on Sexual Violence*, HUMAN RIGHTS WATCH (2016); Boutruche, *supra* note 101; WORLD HEALTH ORGANIZATION, PSYCHOLOGICAL FIRST AID: GUIDE FOR FIELD WORKERS (2016); OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, COMMISSIONS OF INQUIRY AND FACT-FINDING MISSIONS ON INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW: GUIDANCE AND PRACTICE (2015); ATTORNEYS FOR CHILDREN GUIDE TO INTERVIEWING CLIENTS: INTEGRATING TRAUMA INFORMED CARE AND SOLUTIONS FOCUSED STRATEGIES (2011), www.courts.state.ny.us/ip/cwcip/Publications/attorneyGuide.pdf; OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, ISTANBUL PROTOCOL: MANUAL ON THE EFFECTIVE INVESTIGATION AND DOCUMENTATION OF TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT (2004), www.ohchr.org/Documents/Publications/training8Rev1en.pdf.

113. *See, e.g.,* COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC & THE ADVANCED CONSORTIUM ON COOPERATION, CONFLICT, AND COMPLEXITY, RED WATER: MINING AND THE RIGHT TO WATER IN PORGERA, Papua New Guinea 23 (2019) (describing methodology as following "strict informed consent guidelines in all interviews," including "discussing voluntary participation, potential risks, limitations, and the purpose of the study").

is also often essential for advocates to be able to facilitate access to post-interview psychosocial support, where it is available. Advocates have also made attempts to move beyond preventing re-victimization and a "do no harm" approach, toward creating spaces that are positive, unifying, and restorative. This has included working with creative art therapists to enable expression, or working with trauma therapists to conduct interviews or group discussions to build community and support, and agency around how much information is provided to outside researchers. For instance, while working with children who had experienced neglect or abuse, an NGO that one of the co-authors has advised worked with a therapist who held creative arts therapy sessions with the children. Also, while conducting participatory research on the impact of conflict on education with university level students and faculty living in a conflict-affected region, the team worked with a trauma therapist to conduct trainings for educators on how to create trauma-informed spaces in universities. Where rightsholders already belong to organizations which have developed their own internal healing processes, advocates can learn from them and ask if they can facilitate any complementary support or services.

Challenges, however, arise in seeking to do more participatory and empowering fact-finding. In some cases, there are serious concerns that too close of a relationship between rightsholders and outside advocates might undermine the credibility and weight of the findings of an investigation into abuse. Some advocates, including several of the co-authors, have sought to counter this concern by partnering with rightsholders to "lend" their own credibility to rightsholder claims through jointly-conducted research. Advocates may also defend rightsholders against accusations of bias, seeking to bolster their power by affirming their credibility. Others may try to navigate the challenge at the agenda-setting stage, deciding to investigate issues of priority to rightsholders, but transparently conducting the investigation independently of directly-affected persons.

Another tension that can emerge is when an NGO's timeline for an investigation, which may be influenced by its agreement with a foundation that is funding the research, may not align with the timeline and agenda proposed by rightsholders that the NGO has sought to include in the fact-finding. One of the co-authors, working in Mexico, is navigating this challenge alongside colleagues by sharing all the information with the rightsholders, including timelines, funding sources, and objectives of the research, in order to enable rightsholders to evaluate the strategy and propose solutions to the emerging tensions in the jointly-conducted fact-finding.

d. *Preparing advocacy documents*

In response to critiques about advocates' dominant role in the preparation of advocacy documents and materials, their use of "victim" language

and narratives, and the inaccessibility of such documents for many rights-holders, some advocates seek to privilege rightsholder input, ownership, or voices and render them more visible. Doing so can help to ensure that the language and messaging adopted, and the stories highlighted, are in line with rightsholders' understandings of their own narrative, are useful to rightsholders' advocacy, and that advocacy documents can be integrated in a coherent and comprehensive call for change without undermining any parallel advocacy. Advocates may create consultation processes once the advocacy material has been prepared to facilitate rightsholders' input and approval. Others may facilitate community-based workshops or working groups designed to ensure not only the approval but the co-design of materials by rightsholders and advocates, and engage in more collaborative co-authorship. Some advocates step back and privilege rightsholders' leadership in selecting and designing the materials, with advocates playing a supportive role, perhaps through editing or commenting on materials prepared by rightsholders.[114] These processes, like many of those discussed above, often involve additional time and financial resources to undertake, so the decisions to adopt such practices, and the degree or methods of collaboration, must be agreed upon by rightsholders and advocates in light of an honest discussion of potential tradeoffs and options. However, these discussions about time and finances should be conducted keeping any existing power dynamics between advocates and rightsholders in mind, and advocates should not unintentionally influence or coerce rightsholders to take on a more limited role while preparing advocacy materials.

Regardless of the process of preparation, particular attention is often made in crafting these advocacy documents to avoid language of victimization, and to instead emphasize narratives of resilience and rightsholder agency.[115] Where a narrative of victimhood may help to advance advocacy goals—whether due to the narrow constraints of legal regimes or strategic advocacy considerations—advocates can mitigate disempowerment by fully

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114. *See, e.g.*, Inter-Institutional Platform of Celendín et al, Conga No Va: An Assessment of the Conga Mining Project in Light of World Bank Standards (2015), www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/conganova_english.pdf (report authored by directly affected rightsholders and local social movement organizations with the Columbia Law School Human Rights Clinic offering "technical support" in the report's preparation and legal analysis.).

115. For examples, *see When Hope is Power*, Accountability Counsel (2020) www.accountabilitycounsel.org/wp-content/uploads/2020/01/when-hope-is-power_english.pdf (documenting the fight of the Kolektif Peyizan Viktim Tè Chabè, a collective of Haitian farmers and their families displaced by the Inter-American Development Bank (IADB)-funded Caracol Industrial Park, that led to a historic agreement between the farmers, IADB, and the Haitian government providing support for livelihoods); *Women and Justice*, Bangladesh Legal Aid and Services Trust (2019) www.blast.org.bd/content/publications/WiJ-Envelop- &Card-2019.pdf (postcards commemorating women whose experiences with violence led them to promote justice and accountability); Elizabeth Daube, *Stories of Hope: Reimagining What Women and Girls Can Do in India*, American Jewish World Service (Feb. 13, 2019) www.ajws.org/blog/stories-of-hope-reimagining-what-women-and-girls-can-do-in-india/?gclid=EAIaIQobChMI-qikx7f-5QIV-GaSzCh1x3Q23EAMYASAAEgKGnvD_BwE (stories featuring narratives of resilience and rightsholder agency).

discussing and only pursuing that approach in agreement with rightsholders themselves. In these instances, even if this narrative is deployed as a short-term strategy, advocates should also work to push for systemic shifts to the current constraints of legal regimes and what is seen as effective advocacy, and to find other outlets for demonstrating agency.

In some instances, advocacy materials may benefit from being in the name of outside advocates to ensure perceived independence or greater legitimacy in the eyes of duty bearers or others with influence who denigrate or attack rightsholders.[116] However, even in these instances, it is critical to consult with and report back to rightsholders to ensure that their perspectives and needs have been accurately reflected.

e. *Conducting advocacy*

Advocates can support the agency and voice of rightsholders in the conduct of advocacy by facilitating their direct involvement in presenting concerns or recommendations to regional and international human rights mechanisms, advocacy meetings with government officials, media interviews and related press work, or in protests or other advocacy methods. This can involve advocates recommending rightsholders to forums, financially supporting their travel,[117] and helping rightsholders to understand advocacy targets so that they can best craft their messages.[118]

Rightsholders have often demanded participation in processes or forums that affect them.[119] Strategies for participation are crafted to create spaces

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116. For example, one of the co-authors has been requested by rightsholders and rightsholder-advocates to use the co-author's organization's name on some advocacy documents in a context where there is a legitimate fear of severe backlash, including through unlawful arrests, if public advocacy materials use the names of rightsholders. One of the co-authors has also been contacted by rightsholders seeking an academic partnership to conduct joint advocacy in light of the perception of independence that academic institutions have.

117. Although international NGOs still often dominate advocacy forums, there are many cases of international NGOs facilitating the travel of rightsholders to engage in advocacy. For example, Avaaz supported survivors of disinformation from several countries to meet with social media platforms in Silicon Valley to tell their own stories of being victimized by online disinformation. *See Fake News Victims' Meet With Twitter and Facebook*, WIRED.COM (May 8, 2019), www.wired.com/story/fake-news-victims-meet-twitter-facebook/. US-based organizations have also supported survivors of and witnesses to US drone strikes to testify in the US and speak to US policymakers and journalists: *In Senate Testimony, Yemeni Activist Describes Human Costs of Targeted Killing Program*, ACLUBLOG (Apr. 24, 2013), www.aclu.org/blog/national-security/targeted-killing/senate-testimony-yemeni-activist-describes-human-costs. International and US organizations have supported rightsholders from the Central African Republic to meet directly with the UN Secretary-General.

118. For example, some of the co-authors worked closely with rightsholder-advocates in Papua New Guinea who have been impacted by mining operations to map out and understand the range of advocacy targets who were present at a UN Forum on Business and Human Rights. Together with the rightsholder-advocates, the co-authors prepared talking points for meetings with UN staff, company representatives, academics, and civil society members.

119. *See, e.g., Declaration by the Coalition on the MPRDA – 26 March 2015, Berea, Johannesburg* ("We the mining communities here gathered reiterate our fundamental inalienable human rights . . . affected people must determine their own destinies. For us this means choosing for ourselves both our own developmental paths, and to participate in all decision making. . .We have consistently told all the past rulers, that there can be NOTHING ABOUT US, WITHOUT US." (emphasis in original)).

for rightsholders' voices to be heard, expertise recognized, agency strengthened, to influence decision-making, and to enable direct confrontation and accountability vis-à-vis duty-bearers or perpetrators.[120] In doing so, advocates can also work to challenge savior/victim dynamics. Such approaches recognize both the agency of rightsholders to speak on their own behalf, as well as the strategic value of certain messages being delivered directly by rightsholders. Advocates may strengthen their own efforts in this regard by developing policies to promote rightsholder participation—for example, committing to refuse to speak on behalf of rightsholders, even when invited to do so by authorities and advocacy targets, instead insisting that rightsholders directly participate.

For example, a co-author worked with an NGO that partnered with the widows and mothers of 34 miners murdered by the South African police in the "Marikana Massacre." The women formed their own organization, which the NGO supported in their advocacy. The women instructed the NGO to file a complaint against an investor of the mine, but the mediation processes that followed started to become "empty spaces" for the women to raise issues, and their representative in the mediation was tokenized.[121] The NGO refused to speak on behalf of the women, attempting to center their voices in the meditation, but when that proved futile, the women instructed the NGO to withdraw from the meditation process.

Independence, security, and limited resources can pose challenges in some contexts to rightsholder participation in advocacy. Findings or advocacy messages delivered by an outside actor perceived as "independent" might enable access to a powerful actor or help to persuade an advocacy target to take claims seriously. Indeed, in the co-authors' experience, rightsholders often look to advocates and larger human rights organizations to issue statements or write sign-on letters in support of their advocacy demands. Co-authors have navigated this tension through jointly arriving at the framing of the text of a sign-on letter or an advocacy strategy with rightsholders, where they identify which targets the advocate should approach independently, which ones the rightsholders should approach, and which ones they should approach jointly. Rightsholders and advocates can also use these discussions to reach a shared understanding of messaging and recommendations to advance in such meetings, and to plan for unanticipated and urgent advocacy opportunities that might arise for the advocate. Through these discussions, rightsholders might seek to designate in ad-

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120. *See, e.g.,* MADRE, www.madre.org/capacity-building ("We accompany our partners in shared human rights advocacy campaigns that promote women's leadership, that generate policy wins and that implement those successes in local communities. . . [We know we have succeeded when] Our partners are sought out as legitimate experts, recognized and respected by local, national and international decision-makers").

121. *See Women of Marikana withdraw from dispute resolution process with Lonmin,* CENTRE FOR APPLIED LEGAL STUDIES (Dec. 6, 2016), www.wits.ac.za/news/sources/cals-news/2016/women-of-marikana-withdraw-from-dispute-resolution-process-with-lonmin.html.

vance a realm of authority within which the advocate is permitted to engage in advocacy absent rightsholder participation, with built-in expectations around communication (both before and after) to ensure accountability.

In the experience of one of the co-authors, advocates and rightsholders in Mexico have been able to coordinate an advocacy strategy by dividing responsibilities for approaching advocacy targets. An indigenous community in the south of Mexico demanding respect for their collective rights in face of a business operation, decided to approach the Mexican state to demand a dialogue about their situation. Meanwhile, advocates advising the community approached the corporation involved in the dispute to denounce the lack of due diligence of the corporation from the perspective of an independent party.

Direct participation in advocacy can require rightsholder travel, and can thus require financial resources beyond the reach of many rightsholders. Some advocates navigate this challenge by working with rightsholders to apply for small grants to support travel,[122] building in rightsholder travel into grant proposals, or funding rightsholder travel from existing budgets designed for advocate travel.[123] Visa requirements, which can often discriminate against rightsholders from the global south, can also make travel difficult, costly, or impossible. Where visa restrictions or limited funding makes travel infeasible, advocates and rightsholders have resorted to creative alternatives to ensure that rightsholder voices are included at advocacy moments, such as participating via live video link (where the technology permits), creating short video or audio testimonials, preparing art that can be displayed during the meeting or delivered to key duty-bearers, or preparing testimony in writing for the advocate to read or to be distributed at the meeting.

Concerns for the security of rightsholders can be serious at the advocacy implementation stage, and pushing a rightsholder to the front of a campaign could risk their safety.[124] Where rightsholders wish information to be published, but assess that their own safety would be at risk if they were publicly associated with the work, advocates can support rightsholder

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122. *See, e.g.*, *Urgent Action Fund for Women's Human Rights: Rapid Response Grants*, GLOBAL INNOVATION EXCHANGE, www.globalinnovationexchange.org/funding/urgent-action-fund-for-women-s-human-rights-rapid-response-grants (offering "opportunity grants" for "unexpected moment or opportunity for advocacy or mobilization that may result in advancements for women's and LBTQI's rights").

123. In some cases, as a medium-term strategy, advocates in Mexico working in the field of business and human rights, such as one of the co-authors, build into their budgets funding for the travel expenses of rightsholders in international fora or media campaigns.

124. Frontline defenders are often at risk. *See Focus on Human Rights Defenders under threat & attack*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE (Jan. 2017), www.business-humanrights.org/en/focus-on-human-rights-defenders-under-threat-attack; *Human Rights Defenders Under Threat – A Shrinking Space for Civil Society*, AMNESTY INTERNATIONAL, (May 16, 2017) www.amnesty.org/en/documents/act30/6011/2017/en/; Proceso de Comunidades Negras et al., *Violations of Afro-Colombians' Gender Based Human Rights: A Report for the United Nations Committee On The Elimination of Discrimination Against Women*, 5–8 (2019) www.wola.org/wp-content/uploads/2019/03/Report-english.pdf.

agency by discussing the risks in-depth, and collaborating with them to help maintain their anonymity or to support them to participate in other, less public ways. In some instances, where rightsholders and advocates have conducted investigations and created recommendations together, rightsholders have requested that a publication or videos be released in the name of the advocate's NGO in light of security risks. For example, ProDESC has collaborated with a group of temporary workers that denounce corruption in the process of recruitment for working in the United States with H2A and H2B visas. As most of the workers are subject to retaliation if the employer or the recruiter knows about the workers' collaboration with advocates, the advocacy video was issued under the NGO's name alone.[125] This enabled the project to have the expected impact in improving the hiring and working conditions of the workers the following season, without putting any of the individual workers at risk.

f.   *Trainings and Capacity-Enhancement*

To ensure that rightsholders' skills are deepened in the course of an advocacy initiative, advocates can build into the project opportunities for trainings and other capacity-building. Trainings can help to deepen understanding of law and rights, the larger power dynamics in which a human rights struggle is embedded, available advocacy strategies, accountability mechanisms, and advocacy skills. In doing so, they can contribute to sustainable social movements and the development of rightsholder leadership.[126]

Advocates reconceptualizing trainings away from one-way "expert" to "victim" transfers may begin by viewing them as *mutual learning exchanges*, in recognition of the expertise which both advocates and rightsholders bring,[127] or facilitating trainings where rightsholders have the opportunity to share skills and expertise among each other.[128] This significant shift in framing and purpose facilitates important shifts in how trainings are designed and implemented.

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125. *See, e.g.,* Programa RADAR-ProDESC-YouTube, https://www.youtube.com/watch?v=ymtwp Sygna8.

126. *See* THE ACCOUNTABILITY LAB, *supra* note 62.

127. *See, e.g.*, Eade, *supra* note 43, at 634–36 (arguing for a "shared vision" of capacity building, marked by "trust and co-operation," as well as "partnership, reciprocity, shared risk-taking, and interdependence," with Northern NGOs adopting "a degree of modesty" and practicing "self-awareness" and "self-criticism"); *Mission*, MININGWATCH CANADA, www.miningwatch.ca/about (setting out the importance of mutual learning).

128. *See, e.g.*, *Amazon Indigenous Seminar*, EARTHRIGHTS INTERNATIONAL, www.earthrights.org/ how-we-work/training/legal-training/indigenous-seminar/ ("These seminars aim to create a space for collaboration and co-powered learning. with the goal of supporting a deep network of legal advocates from indigenous communities. . . . Together, they learn and gain skills from each other and other experts in the field. These seminars put legal power back in the hands of those who need it most, as participants exchange knowledge with international and regional experts, connecting the local to the global.").

The curriculum and method for trainings can be set through a collaborative process, in which rightsholders actively participate in defining what modules and pedagogies will be most useful for themselves and for the advocates with whom they work.[129] Participatory workshop design helps to ensure that the training is tailored for the context, overcoming common limitations to externally-designed trainings which can be of limited applicability where outside trainers do not understand the skills needed or the context in which they will be used. Advocates may find it helpful to build training exercises drawing on popular education methodologies that consider rightsholders as subjects of knowledge, and education as a tool for emancipation.[130]

Rightsholders may request training beyond the expertise of human rights advocates. For example, co-authors have been requested to offer modules not only on rights awareness or how to conduct human rights advocacy, but also on communication skills, teaching skills, governance skills, financial literacy, digital security, leadership skills, as well as peer-peer support trainings, so that rightsholders are able to effectively advocate for their rights and support other community members in their advocacy. In preparations for a workshop related to gender-based violence in India in which one co-author was involved, the rightsholders shared that the knowledge of rights in the absence of peer support and the tools to advocate for their rights was inadequate. The rightsholders also shared that an explicit human rights framing for the trainings could result in them experiencing backlash from their husbands or in-laws or being prevented from attending the workshops. Therefore, advocates framed the workshops as leadership and capacity building workshops and combined rights awareness modules with the additional skills requested.

Advocates have also facilitated rightsholder exchanges, in which similarly affected communities of rightsholders come together to share experiences, lessons, and to build strategies. For example, a South African NGO promotes community exchanges between mining-affected communities to

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129. For example, at the request of rightsholder-advocates working to promote non-discrimination and the right to education in the Central African Republic, the Columbia Law School Human Rights Clinic prepared modules on the elements of the human right to education, survey methods, and interviewing skills; the Central African rightsholders prepared modules on the history of the armed conflict in the country, religion and discrimination, and education access and quality. Similarly, at the request of rightsholder-advocates in another conflict-affected region, one of the co-authors conducted a workshop on research methods and participant-rightsholders presented their initial research and research proposals. Additionally, one of the authors facilitated a gender sensitization workshop at the request of rightsholder-advocates who are working towards ensuring the inclusion and participation of all community members, including women, in their work.

130. *See, e.g.,* Ajay Pandey, *Experimenting with Clinical Legal Education to Address the Disconnect Between the Larger Promise of Law and its Grassroots Reality in India*, 26 Md. J. Int'l L. 135 (2011). *See also* popular education workshops put on by Socio-Economic Rights Institute of South Africa, www.seri-sa.org/index.php/archive/archived-popular-education. On the concept of popular education, *see* Paulo Freire, Pedagogy of the Oppressed 58 (1970).

build solidarity and create a collective space for building strategy.[131] In addition, advocates have also worked with rightsholders on legal empowerment, facilitating the training and leadership development of community-based paralegals who can serve as the first port of call to address the legal needs of other rightsholders in the community.[132] Another model that advocates are developing in Mexico aims to increase the collective power of rightsholders, reinforcing the knowledge and skills of community-based human rights defenders who are already organizing in their communities. The Transnational Justice School launched by ProDESC is based in the institutional methodology of integral defense and other tools of popular education and brings together students from communities which are facing violations to their collective rights. This model is also promoting the exchange of strategies among the participants at the same time that they are receiving advice from advocates during the sessions, and is demonstrating the importance of knowledge from rightsholders and shifting perceptions among self-called specialists.[133]

To be effective, trainings often need to be sustained over a long time period, and not be one-off interventions.[134] And, in order to ensure advocacy is not a skill that is limited to only a few leaders within a community, advocates may need to work with diverse members of the community and ensure that trainings include participants who are not directly connected with existing leaders in order to avoid reinforcing structural barriers and systems of oppression within a community.[135]

g. *Evaluating advocacy*

To counter the marginalization of rightsholder interests and priorities in the process of evaluating the impact of advocacy efforts, some advocates have created evaluative criteria that specifically aim to assess whether rightsholders have more agency and power following a human rights initiative.[136]

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131. *See, e.g., Community Learning Exchanges*, Centre for Applied Legal Studies, www.wits.ac.za/cals/our-programmes/environmental-justice/community-learning-exchanges/.

132. *See, e.g., What is a Community Paralegal?*, Namati (2015) www.namati.org/wp-content/uploads/2015/02/What-is-a-Community-Paralegal.pdf. *See also* Laura Goodwin & Vivek Maru, *What Do We Know about Legal Empowerment? Mapping the Evidence*, 9 Hague J. Rule L. 157 (2017) (identifying stronger agency and increased legal knowledge as the most common positive impacts of legal empowerment initiatives).

133. *See, e.g., Transnational Justice School*, ProDESC, www.prodesc.org.mx/index.php/es/.

134. *See e.g.*, Nazdeek, www.namati.org/wp-content/uploads/2016/01/13.-Nazdeek-Final.pdf ("There must be a sustained, continuous program of capacity building that extends far beyond a one or two trainings. The work takes time.").

135. For example, rightsholders and rightsholder-advocates in India have shared that trainings conducted by outside advocates are often conducted for leaders within a rightsholder community and urban, upper class, upper caste rightsholder-advocates, which reinforces structural barriers and systems of oppression.

136. *See, e.g.*, MADRE, *supra* note 120 ("How do we know when we've succeeded in our capacity building? – Our partners are more active, influential and engaged in social movements . . . Our partners

Advocates have also worked to build rightsholder participation into the very process of evaluation itself.[137] At a minimum, this can involve an advocate asking rightsholders for their feedback at the end of an advocacy process. NGOs that one of the co-authors has worked with have also hired external evaluators to conduct evaluations that involve interviewing the staff of the NGO, program partners, rightsholders, and other stakeholders. The evaluators could assure anonymity to interviewees to encourage open responses and the provision of negative feedback. Some advocates may use highly participatory or jointly-owned methods—for example, the rightsholders may lead or co-design with the advocates *how* they will evaluate the work, including what measures or indicators might be used. Rightsholders may also lead community-based evaluation workshops and monitoring processes. This helps engage participants through a focus on their own experiences, and builds relationships among a range of stakeholders by creating space for them to collectively reflect on and learn from their experiences. In the experience of one of the co-authors, NGOs that have used more participatory impact evaluation processes have described them as transformative in developing the capacities of all those involved in the process and creating opportunities for mutual learning between NGOs and rightsholders. According to the NGO, it was an opportunity to strengthen the evaluation skills of rightsholders and NGO staff, and NGO staff benefited from learning if and how their work was effective through the perspectives of rightsholders.

Conclusions and Recommendations

The critique that human rights advocacy conducted by outside advocates can objectify or displace the voices of rightsholders and contribute to their re-victimization or disempowerment has received significant attention in the critical literature and the practices of human rights advocates—and for good reason. The critique highlights one of the key risks inherent in much of human rights practice: if insufficient attention is given to power dynamics in advocate-rightsholder relationships, the interventions of outside advocates may cause harm to rightsholders, reinforcing structures and power dynamics that make it difficult for rightsholders to take control of the forces affecting their lives.

To conduct advocacy in a way that builds the power of rightsholders and that addresses the root causes of continued human rights violations broadly,

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are sought out as legitimate experts, recognized and respected by local, national and international decision-makers").

137. *See, e.g.* Margaret L. Satterthwaite & Amanda M. Klasing, *A Rights-Based Approach to Research: Assessing the Right to Water in Haiti, in* Rights-Based Approaches to Public Health 143, 151 (Elvira Beracochea et al. eds., 2011) (describing the process of building rightsholder participation into project design at every stage, including evaluation).

attention must be given to restructuring the relationship between advocates and rightsholders.

Outside advocates have made advances in practice in better supporting rightsholder participation and power. Yet their tactics have been insufficiently documented and explored—despite the eagerness of many advocates for resources for reflection and reform—and there are still key challenges for more widespread implementation. Existing organizational, as well as incentive and funding, structures in the human rights field can make reforms difficult. For example, north/south governance and operational structures of international human rights organizations may contribute to rightsholder disempowerment at various stages of the advocacy process. And, where rightsholders' are reliant on outside advocates for access to advocacy funding, it can be challenging for rightsholders to insist that advocates reform. Inter-NGO competition for limited funds, and funder priorities or metrics of success, can encourage NGOs to want to take, and report on, their role in the spotlight and to focus less on rightsholder agency.

Yet there is significant interest among many in improving how outside advocates work with rightsholders and to build rightsholder power. We conclude with five concrete recommendations to support ongoing reforms.

First, one key challenge to crafting improved practices is the lack of space for peer-learning and joint knowledge production. Because advocates too infrequently have conversations with rightsholders about these issues, it is hard for advocates to understand how the concerns play out in different contexts and which specific responses are likely to be most helpful. Thus, funders and advocates could support efforts in different regions or sectors to promote dialogue among rightsholders and advocates, including efforts that support rightsholders to share the challenges they face and the practices they would like to see implemented. Structured space for peer-to-peer learning and mentoring could support improved problem identification, the development of reforms, and building capacity within new generations of advocates.

Second, advocates could more systematically build processes for dialogue and feedback with rightsholders into advocacy efforts. To be effective, these processes need to account for and aim to work *with* any power dynamics between advocates and rightsholders, and ensure that mechanisms are created to promote honest feedback, including through anonymous surveys or reviews or participatory evaluation by an external actor.

Third, funders and universities could support advocates and rightsholders to take breaks from their work so that they could reflect and write about their experiences and their practice and share their learnings with others in the field. Relatedly, academics could work with practitioners and rightsholders to encourage more action-oriented research and scholarship and improved dialogue between critique and practice.

Fourth, to encourage reforms at the organizational level, NGOs could create, alongside rightsholders, organizational policies on the role and treatment of rightsholders.[138] Groups of organizations could also come together with rightsholders to draft and promote common principles and standards, to which organizations could publicly commit.[139] Setting values, goals, and practices down in an organizational policy or shared charter can help to ensure coherence, demonstrate commitment, train new advocates, and improve implementation and accountability.

Fifth, to improve the capacity of advocates to support rightsholder power, organizations, scholars, and funders could support the development, publication, and distribution of guides and training materials oriented towards advocates, with practical examples and materials to support practice.

This article has sought to contribute toward broader ongoing reform efforts in the human rights field by sharing knowledge, tactics, and tools which are being used or could be used to improve how advocates engage with rightsholders. While the effectiveness of any tactic depends on the specific context and must be adapted based on rightsholders' needs and views, by presenting a range of tactics for potential use, we aim to support advocates and rightsholders to build more equal and collaborative partnerships. Increased attention by advocates toward supporting rightsholder agency, voice, and power is critical to contributing to effective and sustainable movements able to counter broader power structures and abuses of human rights.

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138. *See, e.g.*, *Community Engagement Policy*, Centre for Applied Legal Studies.

139. *See, e.g.*, International Advocates Code of Ethics (2017), www.accountabilitycounsel .org/wp-content/uploads/2017/08/6.8.16-Code-of-Ethics.pdf.