

# sur

international journal  
on human rights

7

2007  
Number 7 • Year 4  
English Edition

● **Lucia Nader**

The role of NGOs in the UN Human Rights Council

● **Cecília MacDowell Santos**

Transnational legal activism and the State: reflections on cases against Brazil in the Inter-American Commission on Human Rights

## TRANSITIONAL JUSTICE

● **Tara Urs**

Imagining locally-motivated accountability for mass atrocities: voices from Cambodia

● **Cecily Rose and Francis M. Ssekandi**

The pursuit of transitional justice and African traditional values: a clash of civilizations – The case of Uganda

● **Ramona Vijeyarasa**

Facing Australia's history: truth and reconciliation for the stolen generations

● **Elizabeth Salmón G.**

The long road in the fight against poverty and its promising encounter with human rights

● **Interview with Juan Méndez**

By Glenda Mezarobba



HUMAN RIGHTS  
UNIVERSITY NETWORK **SUR**

A project of Conectas Human Rights

---

SUR - INTERNATIONAL JOURNAL ON HUMAN RIGHTS is a biannual journal published in English, Portuguese and Spanish by Sur - Human Rights University Network. It is available on the Internet at <<http://www.surjournal.org>>

---

**EDITORIAL BOARD**

**Christof Heyns**

University of Pretoria (South Africa)

**Emilio García Méndez**

University of Buenos Aires (Argentina)

**Fifi Benaboud**

North-South Centre of the Council of Europe (Portugal)

**Fiona Macaulay**

Bradford University (United Kingdom)

**Flavia Piovesan**

Pontifical Catholic University of São Paulo (Brazil)

**J. Paul Martin**

Columbia University (United States)

**Kwame Karikari**

University of Ghana (Ghana)

**Mustapha Kamel Al-Sayyed**

Cairo University (Egypt)

**Richard Pierre Claude**

University of Maryland (United States)

**Roberto Garretón**

Former-UN Officer of the High Commissioner for Human Rights (Chile)

---

**EDITORS**

Pedro Paulo Poppovic

Daniela Ikawa

Juana Kweitel

---

**EXECUTIVE COMMITTEE**

Andre Degenszajn

Daniela Ikawa

Juana Kweitel

Laura Mattar

---

**GRAPHIC DESIGN**

Oz Design

---

**EDITING**

Daniela Ikawa

---

**ART EDITING**

Alex Furini

---

**CONTRIBUTORS**

Andrea Pochak, Barney Whiteoak, Catharina Nakashima, Fernanda Fernandes, Helena Olea, Miriam Osuna and Thiago Amparo

---

**CIRCULATION**

Catharina Nakashima

---

**PRINTING**

Pro! Editora Gráfica Ltda.

---

**SUBSCRIPTION AND CONTACT**

Sur – Human Rights University Network  
Rua Pamplona, 1197 - Casa 4 São Paulo/SP - Brasil -  
CEP: 01405-030 Tel.: (5511) 3884-7440 - Fax (5511) 3884-1122  
E-mail: <[surjournal@surjournal.org](mailto:surjournal@surjournal.org)>  
Internet: <<http://www.surjournal.org>>

---

The financial assistance of the Ford Foundation, the United Nations Democracy Fund and the United Nations are gratefully acknowledged.

---

SUR - HUMAN RIGHTS UNIVERSITY NETWORK is a network of academics working together with the mission to strengthen the voice of universities in the South on human rights and social justice, and to create stronger cooperation between them, civil society organizations and the United Nations. Conectas Human Rights, a not-for-profit organization founded in Brazil, is home to Sur. (See website <[www.conectas.org](http://www.conectas.org)> and portal <[www.conectasur.org](http://www.conectasur.org)>. To access the online version of the journal, please go to: <[www.surjournal.org](http://www.surjournal.org)>.)

---

**ADVISORY BOARD**

Alejandro M. Garro  
Columbia University (United States)

Antonio Carlos Gomes da Costa  
Modus Faciendi (Brazil)

Bernardo Sorj  
Federal University of Rio de Janeiro / Edelstein Center (Brazil)

Bertrand Badie  
Sciences-Po (France)

Cosmas Gitta  
UNDP (United States)

Daniel Mato  
Central University of Venezuela (Venezuela)

Eduardo Bustelo Graffigna  
National University of Cuyo (Argentina)

Ellen Chapnick  
Columbia University (United States)

Ernesto Garzon Valdes  
University of Mainz (Germany)

Fateh Azzam  
Regional Representative, Office of the High Commissioner for Human Rights (Lebanon)

Guy Haarscher  
Université Libre de Bruxelles (Belgium)

Jeremy Sarkin  
University of the Western Cape (South Africa)

João Batista Costa Saraiva  
Regional Jurisdiction for Children and Adolescents of Santo Ângelo/RS (Brazil)

Jorge Giannareas  
University of Panama (Panama)

José Reinaldo de Lima Lopes  
University of São Paulo (Brazil)

Juan Amaya Castro  
University for Peace (Costa Rica)

Lucía Dammert  
FLACSO (Chile)

Luigi Ferrajoli  
University of Rome (Italy)

Luiz Eduardo Wanderley  
Pontifical Catholic University of São Paulo (Brazil)

Malak El Chichini Poppovic  
Conectas Human Rights (Brazil)

Maria Filomena Gregori  
University of Campinas (Brazil)

Maria Herminia Tavares Almeida  
University of São Paulo (Brazil)

Mario Gómez Jiménez  
Restrepo Barco Foundation (Colombia)

Miguel Cillero  
University Diego Portales (Chile)

Milena Grillo  
Paniamor Foundation (Costa Rica)

Mudar Kassis  
Birzeit University (Palestine)

Oscar Vilhena Vieira  
Law School of Getúlio Vargas Foundation São Paulo (Brazil)

Paul Chevigny  
New York University (United States)

Philip Alston  
New York University (United States)

Roberto Cuéllar M.  
Inter-American Institute of Human Rights (Costa Rica)

Roger Raupp Rios  
Federal University of Rio Grande do Sul (Brazil)

Shepard Forman  
New York University (United States)

Victor Abramovich  
University of Buenos Aires (UBA)

Victor Topanou  
National University of Benin (Benin)

Vinodh Jaichand  
Irish Centre for Human Rights, National University of Ireland (Ireland)

## PRESENTATION



We have reached issue seven of *Sur – International Journal on Human Rights* with an excellent response from our readers and a new partnership with the International Center for Transitional Justice.

An evaluation of the journal was conducted to gain some feedback for us to improve the quality, to cater more to the interests of our readers and to make it even more accessible and critical. Of the 15% of readers who responded to an online survey, among them professors and human rights activists, 66% considered the journal to be excellent and 34% judged it to be good. The best qualities they identified were: (a) the high standard of the journal; (b) its potential to disseminate information on human rights; and (c) its broad application, both for university and non-university courses. The main challenges, meanwhile, are: (a) to address more specific thematic issues; (b) to publish new authors; and (c) to improve the dissemination of the journal. To meet these challenges, the following steps have already been taken: (a) we shall focus this and future issues on topics specifically related to the Global South, such as transitional justice, access to medicine and freedom of expression; and (b) we have staged launches in human rights centers at universities on different continents. Furthermore, we have plans in 2008 to establish a monitorial system, whereby new authors who have written promising articles will be supervised by more experienced researchers or professors. (For a more detailed account of the evaluation, please see the report at the end of this issue.)

In addition to the evaluation, we have also forged a partnership between Conectas Human Rights, which has published the journal since its first issue, and the International Center for Transitional Justice. This center was set up in 2000 with the mission to promote

justice, peace and reconciliation in societies emerging from repressive regimes or from armed conflicts, as well as to establish democracies where historical or systemic injustices remain unresolved.

The partnership was established so we could focus on a key topic for countries in the southern hemisphere: transitional justice. The balance between peace and justice and between reconciliation and retribution in post-conflict societies, or in cases of historical and persistent injustices, is dealt with by the authors from different geographical perspectives: Australia, Cambodia, Peru and Uganda. The authors, however, raise questions that often transcend these local contexts. By addressing the violated rights of aboriginal children in Australia who were forcibly taken from their families, for example, Ramona Vijayarasa questions whether Truth Commissions can help build more inclusive societies. By analyzing the Extraordinary Chambers in Cambodia, Tara Urs attempts to identify what truth commissions and extraordinary courts can realistically expect to accomplish. She also examines how culturally specific processes can help shape transitional justice and how best to respond to the interests of the victims. Looking at Peru's case, Elizabeth Salmón sheds some light on the links between conflict and poverty, and questions whether transitional justice should have a specific role beyond universalistic public policies. Finally, when addressing the situation in Uganda, Cecily Rose and Francis Ssekandi consider the role of amnesty in the consolidation of peace and question how to implement transitional justice in situations where peace agreements are still being reached.

To round off this subject, the journal is publishing an interview with Juan Méndez, director of the International Center for Transitional Justice.

This edition of the journal also carries an analysis of the recently established structure of the UN Human Rights Council (Lucia Nader) and a study on the influence of the inter-American system and "transnational legal activism" on the protection of human rights in Brazil (Cecília Santos).

We would like to thank the following professors and partners for their contribution to the selection of the articles for this issue: Glenda Mezarobba, Helena Olea, J. Paul Martin, Jeremy Sarkin, Juan Amaya Castro, Juan Carlos Arjona, Kawame Karikari, Maria Herminia Tavares de Almeida, Paula Ligia Martins, Richard Pierre Claude, Thami Ngwenya and Vinodh Jaichand.

Finally, we would like to announce that the next edition of the SUR Journal will be a special issue on access to medicine and human rights, to be published in collaboration with the Brazilian Interdisciplinary AIDS Association (ABIA). The journal will also carry articles on other topics.

The editors.

## CONTENTS

LUCIA NADER	<b>7</b>	The role of NGOs in the UN Human Rights Council
CECÍLIA MACDOWELL SANTOS	<b>29</b>	Transnational legal activism and the State: reflections on cases against Brazil in the Inter-American Commission on Human Rights
<b>Transitional Justice</b>		
TARA URS	<b>61</b>	Imagining locally-motivated accountability for mass atrocities: voices from Cambodia
CECILY ROSE AND FRANCIS M. SSEKANDI	<b>101</b>	The pursuit of transitional justice and African traditional values: a clash of civilizations – The case of Uganda
RAMONA VIJEYARASA	<b>127</b>	Facing Australia’s history: truth and reconciliation for the stolen generations
ELIZABETH SALMÓN G.	<b>151</b>	The long road in the fight against poverty and its promising encounter with human rights
GLEND A MEZAROBBA	<b>167</b>	Interview with Juan Méndez, president of the <i>International Center for Transitional Justice</i> (ICTJ)

## Annex

<b>A1</b>	Annex 1 - Human Rights Centers
<b>A4</b>	Annex 2 - Results of the Evaluation on Reader Profile and the Quality of Sur Journal

## ANNEX 1

### HUMAN RIGHTS CENTERS<sup>1</sup>

From this issue on, Sur Journal will publish key information on university-based human rights centers. Our goal is to disseminate their work and to create opportunities for cooperation between them and our readers.

#### CENTRE FOR HUMAN RIGHTS FACULTY OF LAW, UNIVERSITY OF PRETORIA

Site: [www.chr.up.ac.za](http://www.chr.up.ac.za)  
Contact: [chr@up.ac.za](mailto:chr@up.ac.za)  
Tel: +27-12-420 3810, Fax: +27-12-362 5125

**Teaching:** 2 Masters of Laws on human rights: the LLM in Human Rights and Democratization in Africa; and the LLM in Human Rights and Constitutional Practice; short courses on good governance.

**Research:** Human rights law in Africa

**Journals:** African Human Rights Law Journal, *Africa Human Rights Law Reports*

**Others:** African Human Rights Moot Court Competition

The Centre for Human Rights at the Faculty of Law, University of Pretoria, focuses primarily on human rights law in Africa. Highlights in its history since it was established in 1986 include the involvement of members of the Centre in writing the South African Constitution and Bill of Rights, and its contribution to legal education in human rights on the African continent through its academic programmes and research outputs. The Centre was awarded the 2006 UNESCO Prize for Human Rights Education.

The Centre offers two **Masters of Laws (LLM) Programmes on Human Rights**: the LLM on Human Rights and Democratisation in Africa. This is a unique programme to which 30 outstanding law graduates from all African countries are admitted to study each year. The second programme is the LLM on Human Rights and Constitutional Practice. This LLM aims at providing students with a solid grounding in general human rights law (both international and South African human rights law), with an in-depth focus on the practice of human rights law in South Africa. The Centre for Human Rights also presents a series of **short courses** throughout the year as part of its **Good Governance Programme**.

Aside from its educational purpose, the Centre publishes the **African Human Rights Law Journal** (AHLJ), which is accredited by the International Bibliography of the Social Sciences and contributions are peer-reviewed. The contributions deal with human rights related topics that are relevant to Africa, Africans and scholars of Africa. The AHLJ is published bi-annually - in March and October. The Centre also publishes the annual African Human Rights Law Reports (AHLR), which contain legal decisions of relevance to human

---

1. This document was written by Fred Hasselquiste and Victoria Schulsinger; and it was in part revised and in part translated to English by Barney Whiteoak.

rights law in Africa. These include selected domestic decisions from the whole continent, as well as the decisions of the African Commission on Human and Peoples' Rights and the United Nations treaty bodies, dealing with African countries. The AHRLR are fully indexed, to facilitate access and make research easy. The AHRLR are published in English and French. The Centre for Human Rights organizes the **African Human Rights Moot Court Competition**. This competition is unique in giving the youngest and brightest future African lawyers the opportunity to critically examine the human rights situation on the continent, with a view to improving it through the use of the persuasive tactics of logical legal arguments based on the African Charter on Human and Peoples' Rights. Since its establishment in 1992, the African Human Rights Moot Court Competition has brought together 773 teams from 118 universities representing 45 African countries.

## HUMAN RIGHTS CENTER FACULTY OF LAW, UNIVERSITY OF CHILE

Site: <http://www.derecho.uchile.cl/cdh/>

Contact: [cdh@derecho.uchile.cl](mailto:cdh@derecho.uchile.cl)

Center for Human Rights, Faculty of Law – University of Chile, Avda. Santa Maria N° 076, oficina 506, Providencia, Santiago - Chile

**Teaching:** Postgraduate courses in Human Rights: "Human Rights and Processes of Democratization", "Human Rights and Women: Theory and Practice" and "Transparency, Accountability and the Fight against Corruption".

**Research:** Human Rights and strengthening the Rule of Law; International and regional human rights protection systems; Transition to democracy and overcoming a legacy of human rights violations or war crimes; Women's rights, with special reference to discrimination, violence and sexual and reproductive rights; Public integrity, transparency and the fight against corruption; Quality of the administration of justice.

**Periodicals:** Human Rights Annual

The Human Rights Center, an institute attached to the Faculty of Law of the University of Chile, is committed to academic excellence in training Latin American professionals who work with human rights, to the strengthening of democracy and also to the strategic planning of these issues.

The Center currently plays a regional leadership role in broadening respect for human rights and in consolidating democracy in Latin America, through:

- education and training of excellent quality;
- research and publications;
- development and support of networks of professionals who work with human rights; and
- coordination of strategic activities on a regional level.

The Center's work team is highly specialized and directed by Cecilia Medina and José Zalaquett. The main activity of the Center is the coordination of graduate courses on human rights. Moreover, with the intent of contributing to the implementation, education and dissemination of human rights, the Center has organized a series of research projects, which have been recently published. These publications are available at [www.publicacionescdh.uchile.cl](http://www.publicacionescdh.uchile.cl). Also, since 2005, the Center has published the Annual Report on Human Rights in Chile, available at [www.anuariocdh.uchile.cl](http://www.anuariocdh.uchile.cl).

**NATIONAL ACADEMY OF LEGAL  
EDUCATION AND RESEARCH/NALSAR  
UNIVERSITY OF LAW, HYDERABAD**

Site: <http://www.nalsarlawuniv.ac.in/>

Contact: [registrar@nalsarlawuniv.org](mailto:registrar@nalsarlawuniv.org)

City Office 3-4-761, Barkatpura, Hyderabad – 500 406 A.P - India.

Phone: +91 40 27567955/58 Fax: +91 40 27567310

**Teaching:** Five year B.A, LL.B.(Hons.) Degree Programme, Two year LL.B. Degree, Ph. D. Programme, One year Postgraduate Diplomas in Patents Law, Media Law, Cyber Laws and International Humanitarian Law

**Research:** "Convention on the Rights of the Child – Andhra Pradesh State Report" and "The Andhra Pradesh Child Labour Abolition and Compulsory Education Bill, 2003" among others.

**Main publications:** Periodicals: "NALSAR Law Review"

"IP Law News"

"NALSAR Newsletter

"Green News" – Newsletter

*Books: Cyber Space and the Law – Issues and Challenges, Ghanshyam Singh, Ranbir Singh.*

*Human Rights Education, Law and Society, Ghanshyam Singh, Ranbir Singh.*

NALSAR University of Law in Hyderabad is an institution focusing on the field of legal education and research. The University was established in 1998 and has since then played an important role for setting new standards in legal education, not least in the field of Human Rights. With the outspoken mission of educating capable, competent and humane lawyers, the University is providing India with a new generation of socially engaged lawyers.

Students in the five year B.A, LL.B.(Hons.) Degree Programme finish their law degree with courses in Human Rights, International Humanitarian Law and Refugee Laws.

NALSAR University of Law is the source of numerous projects and publications engaged in the social movement and struggle for Human Rights in India. Examples of this are the **Legal Assistance Programme for Land (LAPL)** which educates law students in collaboration with the Society for the Elimination of Rural Poverty (SERP). **Strengthening Criminal Justice and Human Rights** is a program that included twenty nine intensive workshops where students interacted with Judicial Officers, Disability Rights Activists, Human Rights Activists, Adivasi groups and Senior Journalists, debating issues related to the Criminal Justice System and Human Rights. The **Citizens' Guide on Access to Justice**, a handbook created with the purpose of raising legal awareness among the public, by translating booklets on Human Rights to local Indian languages such as Telugu, Tamil, Kannada and Malayalam, constitutes another way that the University increases citizen access to legal facilities. The "Convention on the Rights of the Child – Andhra Pradesh State Report" and the "The Andhra Pradesh Child Labour Abolition and Compulsory Education Bill, 2003" are examples of legal documents produced by the University.

## PREVIOUS NUMBERS

Previous numbers are available at <[www.surjournal.org](http://www.surjournal.org)>.

---

### SUR 1

---

EMILIO GARCÍA MÉNDEZ

Origin, Concept and Future of Human Rights:  
Reflections for a New Agenda

FLAVIA PIOVESAN

Social, Economic and Cultural Rights and Civil  
and Political Rights

OSCAR VILHENA VIEIRA and A. SCOTT DUPREE

Reflections on Civil Society and Human Rights

JEREMY SARKIN

The Coming of Age of Claims for Reparations for  
Human Rights Abuses Committed in the South

VINODH JAICHAND

Public Interest Litigation Strategies for Advancing  
Human Rights in Domestic Systems of Law

PAUL CHEVIGNY

Repression in the United States after the  
September 11 Attack

SERGIO VIEIRA DE MELLO

Only Member States Can Make the UN WorkFive  
Questions for the Human Rights Field

### SUR 2

---

SALIL SHETTY

Millennium Declaration and Development Goals:  
Opportunities for Human Rights

FATEH AZZAM

Reflections on Human Rights Approaches to  
Implementing the Millennium Development Goals

RICHARD PIERRE CLAUDE

The Right to Education and Human Rights  
Education

JOSÉ REINALDO DE LIMA LOPES

The Right to Recognition for Gays and Lesbians

E.S. NWAUCHE AND J.C. NWOBIKE

Implementing the Right to Development

STEVEN FREELAND

Human Rights, the Environment and Conflict:  
Addressing Crimes against the Environment

FIONA MACAULAY

Civil Society-State Partnerships for the  
Promotion of Citizen Security in Brazil

EDWIN REKOSH

Who Defines the Public Interest?

VÍCTOR E. ABRAMOVICH

Courses of Action in Economic, Social and  
Cultural Rights: Instruments and Allies

### SUR 3

---

CAROLINE DOMMEN

Trade and Human Rights: Towards Coherence

CARLOS M. CORREA

TRIPS Agreement and Access to Drugs in  
Developing Countries

BERNARDO SORJ

Security, Human Security and Latin America

ALBERTO BOVINO

Evidential Issues before the Inter-American  
Court of Human Rights

NICO HORN

Eddie Mabo and Namibia: Land Reform and  
Pre-Colonial Land Rights

NLERUM S. OKOGBULE

Access to Justice and Human Rights Protection  
in Nigeria: Problems and Prospects

MARÍA JOSÉ GUEMBE

Reopening of Trials for Crimes Committed by the  
Argentine Military Dictatorship

JOSÉ RICARDO CUNHA

Human Rights and Justiciability:  
A Survey Conducted in Rio de Janeiro

LOUISE ARBOUR

Plan of Action Submitted by the United Nations  
High Commissioner for Human Rights

### SUR 4

---

FERNANDE RAINE

The measurement challenge in human rights

MARIO MELO

Recent advances in the justiciability of indigenous rights in the Inter American System of Human Rights

ISABELA FIGUEROA

Indigenous peoples versus oil companies: Constitutional control within resistance

ROBERT ARCHER

The strengths of different traditions: What can be gained and what might be lost by combining rights and development?

J. PAUL MARTIN

Development and rights revisited: Lessons from Africa

MICHELLE RATTON SANCHEZ

Brief observations on the mechanisms for NGO participation in the WTO

JUSTICE C. NWOBIKE

Pharmaceutical corporations and access to drugs in developing countries: The way forward

CLÓVIS ROBERTO ZIMMERMANN

Social programs from a human rights perspective: The case of the Lula administration's family grant in Brazil

CHRISTOF HEYNS, DAVID PADILLA and LEO ZWAAK

A schematic comparison of regional human rights systems: An update

BOOK REVIEW

---

## SUR 5

---

CARLOS VILLAN DURAN

Lights and shadows of the new United Nations Human Rights Council

PAULINA VEGA GONZÁLEZ

The role of victims in International Criminal Court proceedings: their rights and the first rulings of the Court

OSWALDO RUIZ CHIRIBOGA

The right to cultural identity of indigenous peoples and national minorities: a look from the Inter-American System

LYDIAH KEMUNTO BOSIRE

Overpromised, underdelivered: transitional justice in Sub-Saharan Africa

DEVIKA PRASAD

Strengthening democratic policing and accountability in the Commonwealth Pacific

IGNACIO CANO

Public security policies in Brazil: attempts to modernize and democratize versus the war on crime

TOM FARER

Toward an effective international legal order: from co-existence to concert?

BOOK REVIEW

---

## SUR 6

---

UPENDRA BAXI

The Rule of Law in India

OSCAR VILHENA VIEIRA

Inequality and the subversion of the Rule of Law

RODRIGO UPRIMNY YEPES

Judicialization of politics in Colombia: cases, merits and risks

LAURA C. PAUTASSI

Is there equality in inequality? Scope and limits of affirmative actions

GERT JONKER AND RIKA SWANZEN

Intermediary services for child witnesses testifying in South African criminal courts

SERGIO BRANCO

Brazilian copyright law and how it restricts the efficiency of the human right to education

THOMAS W. POGGE

Eradicating systemic poverty: brief for a Global Resources Dividend