



Rights and social action for risk management

Reflections on local, national and international roles and responses

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Key messages

- Case studies demonstrate a number of ways in which the language and practice of human rights can support better conditions for poor people to manage risks.
- International human rights frameworks can provide a reference point for social movements to leverage demands for public action to reduce exposure to risk (movements for reproductive rights and against domestic violence are two examples).
- At the national level a clear and consistent system of economic, social, civil and political rights is an important enabling condition for individuals to engage in collective action to manage risk. Stable frameworks of rights encourage confidence that social gains from collective action are likely to be durable, and that the process of collective action itself (particularly in the political sphere) will not place actors at risk.

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Summary

Rights are legitimized claims of various kinds, including claims to freedoms, services, and equal treatment. Rights are legitimized by authority and power structures at multiple levels. Risk is defined here as the possibility of loss. The paper (based on work commissioned for the World Development Report 2014) analyzes the ways in which strengthening rights frameworks can be a practical strategy to help poor people manage risk. We examine this through a series of case study examples, all of which involve elements of social mobilization.

A clear and consistent system of social, economic, civil and political rights is an important enabling condition for individuals to invest in collective action to manage risk. The logical thread behind this proposition is that unless individual citizens have confidence that they will retain the benefits of efforts to act collectively, they are much less likely to invest time, energy and resources in doing so. Stable frameworks of social, civil and political rights assure individuals that social gains from collective action are likely to be durable, and that the process of collective action itself (in the political sphere in particular) will not place them at risk.

In turn, social mobilization can act to promote the adoption or strengthening of frameworks for delivering human rights at the international, national or local level. The role of social mobilization in securing rights will in many contexts have a transitory character. Where a system of rights is well-functioning and provides effective access and redress to individuals, it is possible that little collective action will be needed.

Through a set of empirical examples we examine the various links between rights, collective action and risk management. In none of the examples did we see a direct, simple link from rights to collective action. Instead, this relationship seems to be a two-way street, where, under certain conditions, rights encourage collective action and where collective action encourages governments to deliver rights.

Rights encourage collective action in two basic ways depending on whether the rights are human rights with

international sanction, or if the rights are embedded in national or local rights regimes. In the first case, the institutions of the international human rights regime lack the authority of the state to enforce the fulfillment of rights. However, they are able to provide a normative framework for social movements to tap into to leverage their demands and pressure duty-bearers into respecting rights. States can use these frameworks as well to help promote a discursive shift in public opinion in relation to their own objectives.

In the second case, social, civil and political rights at the national and local level increase the incentives for individuals to mobilize to take collective action. This is particularly true for the form of collective action we have termed "social action" – defined as collective action at a broad scale directed towards achieving durable social change through changes in power relations and fundamental social norms. Rights like freedom of association, speech, information and nondiscrimination are important enablers to encourage people to take social action.

Social action also encourages the fulfillment of rights. The empirical cases demonstrate a number of common dynamics that support a positive relationship between the language and practice of human rights and better policies for helping poor people manage risk:

- The presence of leaders within government who adopt a language of rights to create the conditions for social and political change;
- International human rights initiatives that create shared global norms about ways of empowering vulnerable people to reduce their exposure to extreme risk (the examples of movements for reproductive rights and against domestic violence are two examples);
- Political movements, who are seeking electoral gains, promote or adopt rights-based approaches to improve social policies in order to tap into the energy of local level collective action.

Introduction

This paper was commissioned as part of the background analytics of the World Bank's 2014 World Development Report on "Managing Risk for Development." We aim to explore the links between risk management, rights and collective action. Under the right circumstances, collective action has been shown to be an important aspect of risk management (Ashwill and Heltberg, 2013; Ostrom, 2000). How then can the framing of rights within a society contribute to promoting this positive linkage?

In order to explore these links, we examined some of the transmission mechanisms between rights and collective action through empirical case examples. The case examples show that rights can play an important role in encouraging and facilitating collective action and social mobilization. Specifically, we find this happens in two ways. First, social movements can find inspiration and utility in international human rights' frameworks to legitimize their objectives and leverage their demands (often for social, civil and political rights or other state concessions). Second, a clear system of legal or formally recognised rights at the national and local levels is an important enabling condition for individuals to invest in collective action to manage risk. The logical thread behind this proposition is that legal and otherwise recognised rights provide individual citizens with confidence that they will retain the benefits of efforts to act collectively, and are therefore more likely to invest time, energy and resources in doing so.

Alternatively, we find that active social movements can encourage state action to fulfill rights. We also find there are other factors that commonly contribute to the fulfillment of rights. These include: critical events that change the public discourse surrounding rights, the existence of leadership within governments dedicated to the delivery of rights, and the emergence of political movements aligned with rights attainment. We also find that a lack of accountability mechanisms on the part of governments, especially in terms of local enforcement of rights, can prevent the local fulfillment of rights.

We begin the paper by briefly discussing its scope and by defining some key terms. We then look at how international human rights can assist social movements. We go on to examine how legal and otherwise recognized rights, at the national and local levels, contribute to collective action. Conversely, we show how collective action can lead to the attainment of social, civil and political rights. We then bring the paper full circle by looking at how rights and collective action increase the capability of individuals, families and communities to manage risk. To conclude, we argue that collective action for risk management can be supported in a variety of ways by clear rights frameworks.

Methodology and Scope

In order to examine the links between rights, collective action and risk management we rely on a set of empirical examples. These examples focus on the role of the state, which is the formally recognized duty-bearer in relation to international human rights law, and civil society, which is often the rights-holder. Specifically, we identified cases where the state delivers different types of rights to its citizens. These types of rights¹ include (from the most basic to the least basic) the right to free association and speech (Ecuador), to information (Bangladesh), to redress (Zimbabwe), to security from crime and violence (South Korea), to non-discrimination (Brazil affirmative action), to political voice and participation (budgeting in Porto Alegre, Brazil), and to social floors, or a minimum level of social protection (South Africa).

The case examples, which can be found in the Annex to this paper, look at the following themes: (1) How the rights of free association facilitated collective action and how this collective action was successful in attaining social services in Guayaquil, Ecuador (Annex B). (2) How the lack of information concerning land tenure laws led to the failure of these systems and what the role is of civil society in Bangladesh (Annex C). (3) How a lack of local enforcement and redress mechanisms led to the failure, at certain levels, of reforms to women's reproductive health systems in Zimbabwe (Annex D). (4) How social movements contributed to the state's adoption of anti-domestic violence legislation in South Korea (Annex E). (5) What the conditions were that led to the implementation of federal affirmative action and non-discrimination measures in Brazil (Annex F). (6) How local government provided its citizens with the right to participate in budgeting decisions in Porto Alegre, Brazil (Annex G). And (7) how rights were used to inform social protection measures and, specifically, housing policy in post-Apartheid South Africa (Annex H). Additionally, we revisited a comparative study of India's employment guarantees scheme and Chile's health sector reforms (Norton, 2011).

Such a research method, based on empirical examples, means that each case is defined within a specific political and institutional reality, and by the availability of resources to states and their citizens. At the same time, looking at case examples gives us the ability to examine a specific set of questions that most existing research has not yet tried to answer. Generally these questions include: How can rights encourage social action? And, what role does the state play in promoting rights and social action? These two main research questions lead to a subset of questions including: how can human rights frameworks promote collective action to manage risk? How can social movements lead to the fulfillment of rights? What is the state's role in expanding or constraining rights? What are some of the institutional

1 This is not a comprehensive or internationally recognized list of rights.

or political factors that determine the attainment of rights? How can rights-based approaches to risk management improve the accountability of states and citizens in terms of fulfilling their roles as actors in their country's development? It is our hope that the lessons that emerge will provide greater focus for future research concerning the nexus between rights, collective action and risk management.

Unfortunately, there is very little literature that explicitly ties these three themes (rights, risk management and collective action) together in any meaningful way. Within the realm of solely the rights literature, there has been very limited use of quantitative analyses, country aggregation, and cross-country comparisons (Fukuda-Parr, 2010). For this reason, finding quantitative analyses, including macro-level indicators, or qualitative analyses that extend beyond the borders of an individual country has proven difficult. This is another reason we have relied on empirical examples. The limitations of a case study method are that – while adequate to demonstrate the workings of causal relationships under specific conditions – they provide limited guidance as to the general significance of the causal pathways identified in each case.

Defining Rights, Collective Action and Risk

For the purposes of this paper we define rights as legitimate claims that lead to a related obligation or duty (Scruton 1983; Waldron 1991). This is defined by Gewirth (1978) through the formula, “A has a right against B in relation to C.” To put in practical terms, Jane (A) has a right to health care (C) which is provided to her by the government (B). In this case, “Jane” is the *rights-holder* and the government is the *duty-bearer*, the entity responsible for delivering this right. The nature of rights as a claim by an individual or group in relation to another party implies another part of the equation – namely the existence of a structure of authority to validate the claim. These structures of authority can be global, national or local, with each level possessing a differential ability or desire to respect a given right. For example, an international human right may not be respected by a given government and therefore not attained by its citizens. Or, authorities at the local level may not respect an international or national right, and consequently, sub national communities or groups may not attain the benefits of that right. These levels of authority, which validate claims, and the relation of that source of authority with claimants defines specific “rights regimes” of which any number may coexist in one society (e.g. customary law, common law, religious law, etc.). Rights are thus inherently about power relations.

Throughout the paper we use several terms that are similar but not identical in meaning. These terms include collective action, social action, social mobilization, social movements and organizing. Collective action we simply define as the pursuit of a goal or set of goals by more than one person. This can be a formal or an informal action and is slightly different from the more popular definition

of collective action as any action aiming to improve the group's conditions (Wright et al, 1990). We use the more general definition because much debate has occurred over just what it is that motivates this action. This debate goes back as far as Jean-Jacques Rousseau in the *Social Contract* (1762) and Marxist theories on labor unions (1867) to more recent research on public goods by Mancur Olson (1965) and Elinor Olstrom (2000). Social action refers to collective action at a broad scale directed towards achieving durable social change through changes in power relations and fundamental social norms. Social mobilization refers to the process of organizing individuals or groups towards the objective of reaching a political goal. Social movements are what we call these mobilized groups and can include civil society or community-based organizations, or any number of alliances not within the government or directed by international institutions. Organizing is just that, organizing people, for collective action.

We define risk as the possibility of loss. Risk may be imposed by outside forces or be taken voluntarily in the pursuit of opportunities. Most often, the imposed and voluntary aspects of risk are present at the same time. Risk management is the process that involves confronting risks, preparing for them, and coping with their effects. Risk management is an important determinant of a system's exposure and recovery capacity but can also lead to unintended consequences or societal trade-offs (these dynamics and definitions are elaborated by Alwang, et al. (2000) and Heltberg, et al. (2009) and in the 2014 World Development Report (WDR, 2014).

The International Human Rights Regime and Social Action

Social movements have in many cases turned to human rights frameworks as a source of leverage when negotiating with the state for social services or national rights. Or as Merry (2006: 2) wrote, “human rights claims are, ultimately, demands on the state to act or to refrain from acting.” Human rights discussions allow social movements to broaden the terms of their advocacy. For example, Merry and colleagues (2010) demonstrate that social movements can get bogged down in litigating for legal rights in domestic courts and as a result may turn to a human rights perspective, which entails a broader set of options.

International human rights systems often lack the ability to enforce state action. The foundation of the international human rights regime is the UN Charter that promotes respect for human rights and for fundamental freedoms for all without distinction for race, gender, language or religion. The Universal Declaration of Human Rights, adopted as a resolution by the UN General Assembly in 1948, clarified the scope and content of human rights in the UN charter. Supplementing these UN recognized rights are a variety of international conferences and conventions, for example in the case of women's rights,

these include the Cairo International Conference on Population and Development in 1994 and Beijing's Fourth World Conference on Women in 1995. Still, the various conventions on rights and their monitoring bodies do little more than raise awareness, "name and shame," and increase the pressure on duty-bearers to respect rights. Yet, even with these proven shortcomings, internationally legitimized rights can challenge national laws and policies. They bring the weight of moral strength and international law to bear on national or customary law, and have the potential of catalyzing change.

In South Korea during the 1990s, women's groups were pressuring the state to do more to curb domestic violence, which historically was viewed as a private, even trivial matter that should not be the concern of the state (Heo, 2008). Because of this, women's groups knew they would have to frame the conversation in a way that would resonate with the public and gain political support. These groups relied on international human rights frameworks to add legitimacy to their cause. The foundation for these frameworks is set in the Universal Declaration of Human Rights from 1948, which stresses gender equality, and include: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the U.N. General Assembly in 1979 and ratified by the Korean government in 1984; and the United Nations Conference on Human Rights in Vienna (1993), which was ratified in 1995 at the Conference on Women in Beijing and establishes "women's rights as human rights." This clearly places protection from domestic violence within a human rights framework. As a result, in 1997 the Act against Domestic Violence passed into South Korean law.

At around the same time, efforts were being made in Brazil to reduce racial discrimination. However, rather than utilizing international human rights to pressure state action, social movements worked with the government to turn popular opinion in favor of affirmative action measures. In Brazil, beneath the façade of popular notions of racial equality, are gross inequalities. According to a 1999 household survey (Henriques, 2001), blacks (a direct translation of the Portuguese term) make up 69 percent of the "extremely poor" despite being only 45 percent of the total population. Over half of blacks live in households without adequate sanitation compared to only 28 percent of whites. Illiteracy for adult blacks is twice as high as it is for adult whites (20 percent versus 8 percent). And 26 percent of blacks live without running water compared to just 8 percent of whites.

President Cardoso, elected in 1995, knew this all too well. He wrote his doctoral dissertation on racial discrimination and took up its reduction in Brazil as a personal crusade. He aligned himself with like-minded social movements and provided them the space to operate (Htun, 2004). Together they turned to the 2001 World Conference on Racism in Durban, South Africa to raise national awareness. These efforts contributed to the

adoption of several national and local measures including: a national affirmative action program; the introduction of quotas for hiring blacks, women, and handicapped people by three government ministries; the endorsement of racial quotas by the National Human Rights Program; the introduction by the Foreign Ministry of a program to increase the number of black diplomats; and laws passed in three Brazilian states to reserve 40 percent of university admission slots for Afro-Brazilians (Htun, 2004). This quota law was eventually expanded to all public universities in 2012. Other lesser-known policies included social programs that targeted black neighborhoods, preparatory courses for university entrance exams, job training programs, and support for black-owned businesses (Heringer, 2001).

International human rights norms can percolate down to the local level through the adoption of its language by service providers (such as a local government institutions tasked with protecting certain rights - often under the influence of development agencies). This can happen even where national legal frameworks have not fully integrated these norms. Under these conditions change is possible, but the delivery of rights is likely to be inconsistent if effective local level activism is absent. This was highlighted in the example of women's reproductive rights in Zimbabwe. There, the national service provider (the Zimbabwe National Family Planning Council or ZNFPC) was quick to respect the rights and new language concerning women's reproductive health that emerged from the Cairo International Conference on Population and Development in 1994 and Beijing's Fourth World Conference on Women in 1995 (Moser and Norton, 2001). However, in practice, the delivery had the characteristic of "poster rights" – women at clinics could see what the theory was through the materials provided but they did not concretely understand their actual entitlements. Because of this, they were unable to demand service delivery in accordance with the theory of the ZNFPC's charter of client rights.

This led to deficiencies in delivery. For example, in some rural areas traditional understandings of bridewealth (payments made to the family of the bride by the groom) and the conjugal contract meant that marriage essentially bought the groom and his family rights over the bride's sexuality, fertility, and labor. Women were unable to access land in their own right and therefore did not have many opportunities to support themselves outside of marriage. In this context, women's control over the number and timing of children was central to their reproductive rights and their socio-economic well-being. Despite progressive policies, many rural women could not access these services, since local health providers, influenced by these customary norms, often failed to provide them (Ferguson, 1999). The lack of accountability mechanisms, or effective local level advocacy and support, meant that village level officials had a great deal of discretion and, as a consequence, effective access to reproductive services was not consistent. Moser

and Norton (2001) cite the case of reproductive rights in Zimbabwe as an example of where the absence of institutions capable of effective local social action was a barrier to the widespread realization of rights.

Local and National Social, Civil and Political Rights Help Enable Collective Action

A clear and consistent system of social, economic, civil and political rights is an important enabling condition for individuals to invest in collective action to manage risk.² The logical thread behind this proposition is that unless individual citizens have confidence that they will retain the benefits of efforts to act collectively, they are much less likely to invest time, energy and resources in doing so. This is a different kind of “collective action problem” from the standard analysis of the “free rider problem” in relation to collective action to generate public goods (outlined in its classic form by Olson, 1965). It refers to the way in which stable frameworks of social, civil and political rights assure individuals that social gains from collective action are likely to be durable, and that the process of collective action itself (in the political sphere in particular) will not place them at risk.

The proposition is similar to the long-standing argument that a clear system of legal property rights creates the incentives for individuals to invest in the creation of wealth. This happens by guaranteeing secure tenure of assets and allowing people to accumulate against possible predation by others. As a result, this is a significant enabler of economic activity at the societal level (De Soto, 2000). Acemoglu and Robinson (2012) see stable property rights as the foundation of inclusive economic institutions, which encourage participation by the mass of people in economic activities and makes the best use of their talents and skill. The emergence of a clear system of property rights is therefore intimately linked with the development of functional free market economic systems. The proposition we make (that clear civil, political and social rights create the incentive for people to engage in collective action for various purposes – including managing risk) is equally clear at its most basic level though a little more diverse in practice, since it includes a wider range of rights than solely that of property.

At the most basic level, rights (particularly to free association and non-discrimination) encourage collective action by creating incentives and reducing the dangers associated with social mobilization. Mansuri and Rao (2013: 101) argue that, “Citizens (...) make decisions about participation based on the likely success of a specific reform, their beliefs about how sustainable

it is, and the potential for repression and backlash.”³ Acemoglu and Robinson (2006) further argue that social action will not occur unless social movements see the possibility of achieving their favored policies in the face of resistance from other groups. Mansuri and Rao (2013: 111) elaborate to say that, “Widespread participation occurs when a tipping point is reached – when enough people are convinced of the value of participation, when they sense a fundamental change in the nature of politics and power, and when enough people convince enough others to engage, resulting in a participatory cascade.” Baumgartner and Jones (1993) refer to this tipping point as a “punctuated equilibrium,” a term borrowed from biological theory. Legitimized, or recognized, rights can help provide the incentive structure to reach such a point.

The literature highlights at least three ways that rights create these incentives (or reduce the disincentives) to take social action. These include when rights: (1) create a cooperative environment by encouraging confidence that social contracts will be protected, (2) establish a long-term framework for social change to occur, and (3) reduce the risk of elite capture.

Systems of recognized rights can act as the basis of a cooperative social system by protecting certain social contracts and agreements, especially between the citizen and state. Fehr and Gächter (2000: 159) argue that reciprocity “is an important determinant in the enforcement of contracts and social norms and enhances the possibilities of collective action greatly.” Partha (2009: 3301) makes the claim that the cooperative environment necessary for collective action is constructed when individuals “not only promise each other’s cooperation, but also rationally believe that the promises will be kept.” This claim was meant to be understood as applying to horizontal social interactions, but could also logically be applied to the interactions between citizens and the state.

Stable systems of recognized rights establish a long-term and durable framework through which social change can occur. Mansuri and Rao’s (2013) recent work, *Localizing Development*, looks systematically at what conditions are necessary to make collective action and participation effective. They argue:

“Building dams, bridges, and roads, or even schools and clinics, is a much more predictable activity than changing social and political systems. Repairing civil society and political failure requires a shift in the social equilibrium that derives from a change in the nature of social interactions and from modifying norms and local cultures. These much more difficult tasks require a fundamentally different approach to development – one

2 Norton et al (2009) outline the characteristics of a rights regime, which provide for consistency and clarity – including, legal, institutional, instrumental and fiscal dimensions.

3 Simmons (2009) makes a similar argument.

that is flexible, long term, self-critical, and strongly infused with the spirit of learning by doing. (...)
Interventions with long-term horizons – say, an effort to introduce local democracy at the local level that has constitutional sanction – fundamentally improve the incentives of citizens to confront local elites and fight for their interests. Interventions with short-term horizons will incentivize individuals to extract all the rents that they can from the project during its tenure.” (pp. 291 and 40)

In theory, human rights incorporated into national legal frameworks are accessible to all of a nation's citizens equally and without bias, therefore all will benefit from taking social action to claim them. With that said, inequality can reduce the incentive for some to take social action. For example, those who are the most politically connected or in an advantageous social class may “capture” or hoard the benefits attained from social action (Abraham and Platteau, 2004). Under this scenario, the incentive to act collectively for a public good is reduced.⁴ If, however, systems of redress are effective and widely available, then they will enable broader populations to challenge the rationing to elite groups, which may, in practice, occur in service provision, for example (Norton and Elson 2002).

Evidence from the Empirical Examples

In each of the empirical examples, we observe a situation where rights promote an environment in which collective action could take place and flourish. However, not all rights contribute equally to collective action. For example, the right to free association, which allows for individuals to meet in groups, organize and make alliances, without fear of discrimination is a basic requirement in order to act collectively.⁵ This liberty right was present in each of the examples. On the other end of the spectrum, the rights to information in Bangladesh, to participate in public expenditure decisions in Porto Alegre, Brazil or to safe public housing in South Africa are not basic requirements for collective action, but the ability to claim these rights contributes to it nonetheless, as we will see.

In each of the examples, the right to free association and non-discrimination contributed to collective action. For example, in Brazil's affirmative action example and South Korea's movement to eliminate domestic abuse, democratic and anti-discrimination reforms created the space for socially mobilized groups to form. In Brazil, many civil society groups that advocated for racial equality emerged as the state provided space for them in the 2000s, but others were much more long-standing, and

emerged during Brazil's transition to democracy in the mid-1980s (Mitchell, 1985). In either case, it is interesting to note that group mobilization occurred during times when discrimination was being reduced, i.e. through greater representation through democracy and through the government moving towards greater racial equality. International organizations, such as the Ford Foundation, also invested in supporting Brazilian organizations that worked towards eliminating racism (Telles, 2003). Similarly in South Korea, women's rights groups largely emerged during the South Korean women's labor movement of the 1970s, the feminist movement during the military regimes of the 1980s, and the women's movements that grew from the construction of a democratic state in the 1990s (Heo, 2008).

In Bangladesh, greater access to information (facilitated by a rights-oriented civil society group), led to greater and more effective mobilization for legal claims for land rights. Here, there is tremendous confusion surrounding land tenure administration. This confusion stems from Bangladesh's disjointed land settlement policies, their dysfunctional system for land registration and the inefficient management of land records (Sinha and Toufique, 2000). Whether this confusion is the result of intentional planning, a lack of accountability or incompetence, the result is that people lack sufficient information on what legal rights they have and how to make claims for them. This has led to conflict over ownership, appropriation, displacement and illegal occupation.

Nijera Kori (NK) is a Bangladeshi civil society organization that interprets land tenure laws and transmits relevant information in simple terms to the poor. They aim to build the capacity of the poor to collectively mobilize in defense of their rights and hold government accountable. Specifically, in the area of land tenure rights, NK engages in a number of activities. These range from the organization of landless groups to raising the awareness of these groups to their rights and responsibilities. These efforts have netted some positive results. Nijera Kori (2008) estimates that over 800,000 individuals have become aware of their rights and situations because of these programs. In addition, these efforts have strengthened the position of the landless in the Bangladeshi courts, “Of the total 75 cases discharged, verdicts came in favour of the landless organisations in 53 cases, out of which 27 were filed by the landless people themselves. Most importantly, of the 688 cases of legal fights, the landless organisations are running 432 cases themselves.” (Nijera Kori, 2008: 45) Kabeer and others (2007) also find that NK members have increased their

4 Olson (1965) and Mansuri and Rao (2013), besides arguing that equality can encourage collective action, also argue that inequality under certain scenarios can also encourage collective action.

5 The right to form groups, to organize and to assemble together with the aim of addressing issues of common concern is fundamental to all human rights texts and legal provisions. The right to freedom of association and assembly is protected in international and regional human rights treaties. These rights are applicable to any issue. The right has been most defined and elaborated in international labor law given the particular links between these rights and the ability of workers to secure their economic and social status.

capacity in other areas. These include: bargaining with employers and landlords, attaining their entitlements from the state, engaging in collective action to claim land and other rights, and ensuring that key institutions of village governance are responsive to local community interests.

In Porto Alegre, Brazil, the right to participate in public expenditure decisions not only led to widespread participation (including by the poor and other previously excluded individuals) in budgeting decisions, but also contributed to a major political movement based on “participatory democracy.” In Porto Alegre, citizens met in public assemblies at the sub-district levels to set budgeting priorities. The assemblies would select delegates for district forums and elect counselors to the city budget counsel where final budgeting decisions were made. The program was widely regarded as a success and the right to participate in budgeting decisions was eventually scaled up to the entire state of Rio Grande do Sul in 1999. By 2002, nearly 400,000 people in all of the state’s 497 municipalities were participating in mechanisms to decide on public budget expenditures (Schneider and Goldfrank, 2002).

Beyond greater collective action and decision making at the state level, participatory budgeting (PB) also contributed to a national movement spearheaded by former President Luiz Inacio Lula da Silva’s Worker’s Party (PT). According to Schneider and Goldfrank (2002: 9), “The PB seeks to promote a new vision of democracy and development that includes partisan competition, participatory democracy, class struggle, and legitimation.” These goals were very much at the heart of the PT platform and the PB process was largely considered a creation of the PT. By making governance more transparent and responsive to multiple classes of society the PT was able to expand its coalition to include more middle and upper class voters. The PB, therefore, became a political movement spearheaded by the PT, who happily rode its successes to electoral victories at the local, state and national levels. For example, the PT victories in Rio Grande do Sul’s statewide elections in 1998 were driven by the promise to scale-up participatory budgeting to the entire state (Schneider and Goldfrank, 2002). Also, the idea of participatory democracy was a major component of President Lula’s election platform. The PB process was assisted by a coalition of social movements that would galvanize to defend it whenever threatened by political opponents.

In South Africa, the right to a social floor – in this case a minimum standard of safe housing for all citizens – combined with a mechanism for redress if this constitutional right was not fulfilled, contributed to the mobilization of affected groups to make claims for their rights to the courts. During apartheid, access to housing, or lack thereof, was a mechanism of segregation and injustice. Black populations were frequently at risk of being dispossessed of their lands and homes and resettled in all black areas with few services (and of poor quality) and with little access to economic activities. To put it simply,

housing was used as a form of oppression, or punishment, as some would argue (Schneider, et al., 2007). Therefore, after the fall of the apartheid regime when it became time to draft a new constitution, the right to safe housing was included in the bill of rights. It was also codified in the constitution (section 38) that access to the courts was open to all and that anyone regardless of social group or economic status could approach the court if they felt their rights were infringed upon. In South Africa, the courts represent an institutional authority vested with the mandate to make judgments on claims to rights. Occurring simultaneously with these reforms was the emergence of vibrant social activism related to housing in South Africa (Khosa, 2009). As a result, people who did not benefit from this right were able to seek redress before the courts and some well-known cases ruled in favor of excluded groups. These rulings led to revisions to existing housing laws, which made them more robust and inclusive.

However, there were many context specific dynamics at play in each of the cases described above and it is, therefore, hard to determine to what extent rights created the incentives to act collectively. In other words, mobilizing collective action is not merely a technical matter but also depends largely on other factors such as local politics, power dynamics, and the availability of resources. Therefore, it is difficult to disaggregate the delivery of rights into the specific components (such as reducing the capacity for elite capture or creating a cooperative, long-term and durable framework) that encourage social action and change, despite seeing evidence of this.

Collective Action Can Lead to the Fulfillment of Social, Civil and Political Rights

As we have seen, rights can contribute to collective action in a variety of ways, but collective action can also, of course, contribute to the attainment of rights. This is especially true when these movements work together with state partners to achieve formally recognised rights. Scott (1990) says that, “Social movements are chiefly concerned with defending or changing at least some aspect of society and rely on mass mobilization, or the threat of it, as their main political sanction.” This is expanded upon by Stammers (1999) who argues that social movements challenge those with power, like the state, for greater rights. He further makes the case that social movements have been the drivers towards a greater recognition of rights. History is full of examples of this, whether it was Indian liberation from British colonialism or African-Americans achieving greater civil rights during the 1960s in the United States, social movements have been shown to achieve socially desirable outcomes.

It is worth noting that the role of social mobilization in securing rights will in many contexts have a transitory character. Where a system of rights is well-functioning and provides effective access and redress to individuals,

it is possible that little collective action will be needed. In other cases, mobilization will be needed to secure access to community level assets, or to put pressure on authorities to conform to rights-based norms and standards. The dynamics of this mobilization vary a great deal according to context (political, institutional and otherwise) and support from civil society organizations (local, national and global) often plays a very significant part.

While many different levels of institutions, from the global to the local, can be engaged to create a clear and stable framework of rights, the struggle for the fulfillment of rights lies primarily in the relationship between citizen and state. This is the reality even though the international human rights regime has its foundation in the inter-governmental structures put in place at the end of the Second World War.⁶ This derives from the fact that only states formally sign up to the instruments of human rights law.⁷

The nation-state – however imperfect and even contradictory its position may be – is also the most powerful point of articulation for the international human rights regime because it confers authority both upwards (through regional and global inter-governmental agreements) and downwards (for example on customary law systems) (Moser and Norton, 2001). Other prospective duty-bearers of rights like local communities, firms, political parties, NGOs and the other regional organizations of the world do not have the same scope of authority as governments and are less directly bound (as non-signatories) to rights frameworks. International organizations like the United Nations, the World Bank or international human rights conventions have the scope to represent even larger numbers of people than governments, however these organizations must wholly rely on governments to provide the actual rights they “guarantee.” The most significant initiative to extend human rights frameworks to address the private sector is the UNHCR’s Guiding Principles on Business and Human Rights (2011). These principles note that, individually, states are the primary duty-bearers under international law and, collectively, are the trustees of the international human rights regime. By contrast, the business community is deemed to have a “responsibility to respect” human rights. This is a weaker formulation and one that requires triangulation with state institutions to provide “access to effective remedy.”

Given the importance of the role of the state in delivering rights, it is not surprising that it is often the highest levels of government (especially when motivated by strong political projects) that propel legislative victories in favor of rights. In Brazil, for example, antidiscrimination efforts began in full with the election of President Cardoso. It was because this was an issue very important to him that the push for these rights occurred. In South Africa, the right to housing was also a major issue for the new government entrusted with transforming an entire nation from a history of apartheid. In South Korea, once the language of the domestic abuse legislation became more politically acceptable it accrued the necessary political support to pass into law. In India, the employment guarantee movement was driven by the highest levels of the Congress Party – working closely with a broad coalition of social movements and civil society activists. In Ecuador and Brazil, a series of progressive policies, which have underpinned the progressive realization of the right to livelihood, have also emerged from left wing political regimes with both a strong background in social mobilization and broad alliances with social movements.⁸

According to international law, as primary duty-bearers, states can take three actions in regard to rights: they can respect them, protect them and fulfill them. To respect means that states must not actively curtail rights. To protect means the state must protect individuals from the violation of rights. These violations could occur from violence from third parties or from a lack of local enforcement. To fulfill means that states must be proactive in facilitating the enjoyment of rights (UN 2013). Gacitua-Mario and others (2009) map out the conditions that should be met to successfully fulfill a range of social rights.⁹ These include the guaranteed access to quality services, the ability to seek redress if this access is not met, and a process to continuously revise the delivery system if it is not meeting the needs of the rights-holder. They also argue that legal, institutional, instrumental and financial frameworks must be in place and sufficiently robust to guarantee these rights. Taken together, these conditions encompass the technical requirements to create the capacity, accountability and incentive needed for rights-based approaches to be successful in the social policy sphere.

Taking any of these steps can be a burden on state resources, at least in the short-term. For this reason, it is

6 The details of the human rights framework are outlined in two types of text. *International legal obligations* are a subset of international obligations within formal international law, including formal treaties; and *International ethical/political obligations* are a broader set of morally binding obligations derived from non-legal statements, declarations and commitments made at the UN level.

7 In theory the provisions of international law are also applicable to non-state actors.

8 The Brazil and Ecuador experience is explored in Hevia-Pacheco and Vergara-Camus (2013).

9 Gacitua-Mario and others (2009) describe the fulfillment of social rights as “social guarantees.” A social guarantee, in turn, includes five sub-guarantees: (1) guaranteed access to a service, (2) guaranteed quality of a service, (3) financial support to afford a service, (4) a process to continuously revise the mechanisms for service delivery, with the participation by the rights-holder, in order to adapt and improve these services, and (5) a process for the rights-holder to seek redress if the right is not delivered. To enact these sub-guarantees it is essential that four “policy domains” have the capacity to make rights explicit. These domains include legal, institutional, instrumental and financial frameworks. These must be in place and capable of processing and following through with claims.

possible that states only perform some of these potential obligations. A lack of accountability, political incentive or institutional capacity are all factors that may further limit the state's ability to fulfill rights. However, even under the tightest budgets, states can still play a major role in facilitating the delivery of rights. They can do this by promoting specific values and principles or enacting policies or regulatory frameworks that improve access to rights through market mechanisms and civil society or by enabling local action. In addition, they can increase the dialogue with social movements and other subnational groups to promote rights and share the duty-bearer obligations. This means that claims for economic and social rights do not necessarily reflect a commensurate, direct drain on public budgets.

However, such changes are often difficult and opposed by vested interests in the status quo. In fact, in most cases where major legislative change occurs in favor of rights, there is a shift in the popular, public discourse on that issue. For example, in the Brazil example on anti-discrimination, this shift was propelled by the Durban conference against racism, in South Korea it was the Vienna and Beijing conferences, not to mention some high profile cases of spousal abuse that garnered national attention (Htun, 2004), in the Zimbabwe case it was the Cairo conference on reproductive rights, in South Africa it was the political transformation that emerged during the collapse of the apartheid state. Clearly in many of these cases there was a global dimension to the discursive shift, and in many cases that global dimension was linked to human rights processes (such as the Durban, Vienna, Beijing and Cairo conferences). These shifts led to changes in popular opinion and social norms to favor the realization of rights for the relatively powerless. In South Africa, despite the rights to safe housing and legal redress guaranteed in the constitution, problems persisted. Wegerif (2006) estimates that nearly a million black South Africans were forcibly removed from their farms from 1994 to 2004, despite laws that supposedly protect against this sort of resettlement. This type of failure demonstrates there are still gaps in the enforcement and implementation of housing rights. This likely reflects a persisting lack in accountability of local governments tasked with enforcement. One of the ways to counter this local lack of cooperation is to create a discursive shift in norms and popular beliefs.

The importance of both public support for change and political leaders dedicated to reform, means that the combination of the two could create the conditions for major social change in favor of rights. This integration of top-down and bottom-up advocacy has led to the emergence of political movements that have propelled major legislative change. For example, in the highly

successful case of India's Employment Guarantee Scheme in Maharashtra (examined by Joshi and Moore (2000)), there was a complex set of political dynamics playing out at the level of the state over decades, which allowed for reforms to take place. The example of the development of participatory budgeting systems in Brazil, under the sponsorship of Lula's Worker's Party, illustrates some of the same points. The common thread in these examples is a link between a developing political movement – seeking to challenge established interests – and the benefits that movement can gain from creating a framework for politically aligned collective action at the local level. These arguments have been further explored by Norton (2011) who examined the parallels between the politics of employment guarantees in India from 2005 on, and social guarantees in the Chilean Health reforms under the administration of former president Ricardo Lagos (2000-2006), which guarantees universal coverage for a number of common medical conditions. As these examples have shown, social movements and political action can under some circumstances find an effective synergy through the adoption of a rights framework for social policy – allowing the political movement to tap into the energy of local level collective action.¹⁰

Of course, the ultimate success of such political movements is contingent on many things. This includes the right to free association and speech, free access to information, good intentions by the state to deliver without discrimination, the existence of a range of democratic institutions to facilitate poor people's claims and the capacity of the state to respond. Rights-oriented, civil society organizations that assist poor people to mobilize and realize their potential to seek redress (e.g. Nijera Kori) are also an important part of this in many contexts. As we have seen, in practice, this kind of positive accountability dynamic, built on the recognition of rights, generally needs a certain political underpinning in order to move from the margins to center stage. External development actors need to be sensitive to these political contexts and realistic about the fact that even the best designed technical approaches to development, collective action and risk management largely hinge on factors relating to power and national and local politics.

Rights Increase the Capacity to Manage Risk

There are two ways that this mutually reinforcing dynamic of greater rights and collective action can help manage risk. First, it may strengthen development action and improve development outcomes, which improve individuals', families' and communities' ability to manage risk. Second, it increases the accountability of public institutions in relation to supporting its citizens' risk management capacity.

¹⁰ Hevia-Pacheco and Vergara-Camus identify what they call a "trajectory of collaborating with social movements" in order to establish electoral alliances in the Rafael Correa administration in Ecuador and the PT administration in Brazil. In all cases, the political actors concerned were seeking to establish broad-based electoral alliances to pursue broad social justice goals.

Improving Development Outcomes

An extensive debate on the relationship between human rights and development includes a number of positions and formulations. Peter Uvin (2004) outlined four levels of incorporation of human rights concerns into development: rhetorical incorporation; political conditionality; positive support; and a rights-based approach. At a broader level, Sen's formulation of *Development as Freedom* implies that the realization of rights (in a broad sense) is a primary constituent part of what we should understand as "development" (Sen, 1999). Essentially, this position mirrors the strongest of Uvin's options (a rights-based approach) – under this formulation, development becomes defined as the realization of human rights. In recent years, the linkage between rights and development has been strengthened in many developing countries by the adoption of constitutions that commit the government to acting towards the progressive realization of economic and social rights – as well as upholding civil and political rights (An-Na'im 2003).

There are a number of pathways through which the use of human rights norms and standards to strengthen development action can result in (a) the reduced exposure of poor people to different kinds of risk and (b) the stronger capacity of individuals, families and communities to manage risk for themselves. For example, the fulfillment of rights by the state enhances social justice by reducing discrimination and by improving equal access to services and equal protection from the threat of loss. By ensuring these basic levels of protection through rights, the state is increasing the capacity of its citizenry to manage risk. According to Moser and Norton (2001), "Strengthening the human rights content of public policy creates stronger and more equitable public, civil and community institutions, which in turn increases the capacity to prepare for, and cope with, shocks." Furthermore, by facilitating citizen participation in public institutions, the state is improving the capacity for people to take collective action across traditional divisions of gender, class or cultural association. When certain rights are guaranteed to all of a nation's population, the capacity of previously excluded sub-groups to negotiate for risk-reducing measures can be improved.

For example, take the case of Indio Guayas, an urban community in Guayaquil, Ecuador. This community, as described by Moser (2009), moved from a highly insecure squatter settlement thirty years ago to a secure community that effectively exercises a wide range of citizen rights in relation to local government. The rights to free association and political participation have facilitated social mobilization around the provision of social and urban services. As a result, the community was able to negotiate for the delivery of a variety of entitlements and

social and urban services. These services included: water mains, roads, secure land titles, electrical grids, bus routes and better schooling. This mobilization not only achieved access to these services, but the level of services and their sustainability over-time was also better than comparable communities (Moser, 1997). All of these improved development outcomes helped increase the capacity of the community to manage risk.

These rights-based approaches to development showed improvements to development outcomes in the other empirical examples as well. For example, participatory budgeting in Brazil led to more efficient spending in the critical sectors of health and education and planning capacity improved (Schneider and Goldfrank, 2002).¹¹ In South Africa, the fulfillment of housing rights led to dramatic changes in the housing sector. For instance, about 1.4 million subsidized houses have been delivered, and the government has added more than two million more formal housing units – 15 percent of all formal housing units in South Africa (World Bank, 2008: 56-57).

Improving Citizen-State Accountability

Encouraging governments to be responsive to community level needs, and catalyzing social mobilization and collective action seems to be a persistent challenge in risk management. The application of human rights frameworks, in different combinations between global, national and local actors, has shown the ability to improve this. In each of the examples we have seen how the observance, protection or fulfillment of social, civil or political rights has helped create the space for social mobilization and social action.

We have also seen in the case examples how social movements have drawn inspiration and leverage from human rights frameworks to make claims for government action in regard to issues like the prevention of domestic violence, improved women's reproductive health, social service delivery or anti-discrimination. These and other examples have shown that a collective voice and power in numbers can help encourage governments to address the claims of its citizenry.

Conversely, if the state guarantees a particular service as a right and provides the mechanisms for communities to seek redress (through litigation or simply by requesting the service from a state agency accountable for its delivery) the duty for seeking the service provision falls to the citizen as well. Some have argued that rights strengthen the status of citizens from that of beneficiaries of development action to that of a rightful and legitimate claimant (Cornwall, 2000; Gaventa, 2002). We have elaborated on this relationship between states and their citizens, by arguing it has a

11 Education projects completed in 1999 were 83% of those budgeted compared to 63% in 1998, prior to participatory budgeting. Likewise health projects completed in 1999 were 87% of those budgeted compared to 72% in 1998. In terms of planning capacity, participatory budgeting produced a budget that included more accurate estimates of receipts, and the state spent an amount that was closer to planned expenses, as opposed to previous years (Schneider and Goldfrank, 2002).

mutually beneficial nature (Ashwill and Norton, 2011). Therefore, rights-based approaches to risk management have the potential to improve the citizen-state relationship by improving accountability at different levels. We saw an example of this in the South African case of housing, where citizens understood they had the right to safe housing and the mechanisms for legal redress and as a result took action to claim their rights. Conversely, the state benefited by reducing the vulnerability of highly risk prone sub-groups.

The ability for citizens to seek redress in Chile's health system or India's employment guarantee scheme also demonstrates this positive accountability dynamic between citizens and the state. In Chile, a strong grievance redress system was implemented through the Superintendent's Health Office and made available to all Chileans (Norton, 2011). In India, the provisions of the national legislation allow for social movements to pursue claims for unemployment allowance where the state is unable to live up to the stated "guarantee" of providing work within fifteen days of a claim being made.¹² In both cases, the access of claimants to secure and responsive redress mechanisms facilitated their ability to manage risk. In contrast, when rights are communicated without specifying means of redress (as in the Zimbabwe case) the relevance to everyday realities may remain unclear.

Future Research

Many questions and directions for future research have been identified during the course of developing this paper. For example, more aggregate studies on specific themes (e.g. the right to free association, the right to security, the right to social floors, etc.) would benefit the conversation. This is largely because we relied on case examples that take place within specific institutional and political realities. Such aggregate or cross-country research would elevate the analysis beyond local contexts and help to give a broader picture of causal pathways. In addition, the development of a methodology to measure quantitatively the extent to which rights facilitate social action would be valuable. Several quantitative measurements of human rights observance, protection or fulfillment already exist, including the Office of the High Commissioner of Human Rights framework and related indicators (OHCHR, 2012) and the promising Economic and Social Rights Fulfillment Index (proposed by Fukuda-Parr, et al, 2009). Expanding these frameworks or developing others to measure the link between rights and collective action would improve our understanding of the scope of these issues. The case examples themselves would be improved by the greater availability of indicators on the distributional impacts of reforms and the attainment of rights for marginalized groups, but this speaks more generally to the dearth

of quantitative data related to the inequality of rights fulfillment for rights-holders.

Conclusions

Through a set of empirical examples we have examined the various links between rights, collective action and risk management. Now we return to our original research question: do rights encourage collective action? With moderate confidence we suggest that rights do, in fact, encourage collective action, but with the important caveat that this relationship is not uni-directional. In none of the examples did we see a direct, simple link from rights to collective action. Instead, this relationship seems to be a two-way street, where rights encourage collective action and where collective action encourages governments to deliver rights.

Rights encourage social action in two basic ways depending on whether the rights are human rights with international sanction, or if the rights are embedded in national or local rights regimes. In the first case, the institutions of the international human rights regime lack the authority of the state to enforce the fulfillment of rights. However, they are able to provide a normative framework for social movements to tap into to leverage their demands and pressure duty-bearers into respecting rights. States can use these frameworks as well to help promote a discursive shift in public opinion in relation to their own objectives.

In the second case, social, civil and political rights at the national and local level increase the incentives for individuals to mobilize to take collective action. This is particularly true for the form of collective action we have termed "social action" – defined as collective action at a broad scale directed towards achieving durable social change through changes in power relations and fundamental social norms. We saw that liberty rights like the freedom of association, speech, information and nondiscrimination are important prerequisites to encourage people to take social action. We also saw that the right to political participation and social floors increases the incentives for citizens to make claims for these rights.

Social action encourages the fulfillment of rights. As we have seen, the nation-state is the most prominent rights duty-bearer and therefore the most important actor for social movements to work with to attain rights. In the empirical cases we saw that the presence of leaders within government who advocate for rights is an important ingredient to making rights realized. We also saw that changes in public opinion in favor of a given right, often propelled by international human rights movements, can provide the political cover for government officials to promote legislative change in favor of rights. The most likely scenario for achieving rights seems to be when

¹² Nayak (2013 forthcoming) notes that since 2006, there have been at least fifteen instances where civil society groups have claimed unemployment allowance, including two tribal social movements and one collective of dalit agricultural workers.

political advocacy is combined with greater public support to create a political movement towards social change. Such political movements have been shown, under some conditions, to use electoral politics effectively to achieve durable social, cultural and legislative reforms.

Finally, we found that collective action and rights can work together to more effectively manage risk. This can occur both through promoting better general development outcomes, and through promoting local level accountability of public institutions to help citizens manage risk.

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Annex A – Setting up the Empirical Examples

To set up the analysis of the empirical case examples we return to our two original research questions. How do rights encourage social action? And what role does the state play in promoting rights and social action? In asking these questions it is important to be clear that we are talking about rights regimes that have certain normative underpinnings. The most clear of these is the recognition of equality of individuals or groups before the law at some level. In other words, we are assuming that rights apply to all citizens equally. It is also important to understand that the rights in question exist at different levels, but predominantly are located in the legal regimes of the national state (statutory and constitutional) and in the regime of international human rights.

In the following case examples we describe the state delivery of a variety of rights. These range from the most necessary, in terms of promoting collective action and

social action, to those that are deemed progressively less so. Beginning with the most basic and foundational, these include the right: to association, which includes the freedom to organize, make alliances and free speech (Ecuador); to information regarding rights (Bangladesh); to the protection of rights through enforcement at all levels of the state from the national to the local level (Zimbabwe); to security of people and property from crime and violence (South Korea); to non-discrimination by state institutions or other non-state actors (e.g. businesses) operating within the state's jurisdiction (affirmative action in Brazil); to political voice and participation in decision making or policy formulation (budgeting in Porto Alegre, Brazil); and to social floors in health, education, food, livelihoods or housing – as given concrete form (ideally) by guarantees and minimum standards established in legal and policy instruments (South Africa).

Annex B - The Right to Free Association: the Case of Collective Action in Guayaquil, Ecuador

Clear rights of association, which includes the right to organize, speak freely and make alliances, enable social action. This is because efforts to build local institutions for social action are more likely to succeed if individuals feel that their associations will not be broken up by force by rivals or elites who feel threatened - or criminalized by the state. Rights of free association enable people to make claims more effectively through collective action and are, therefore, a foundational stage in the formulation of many other rights. Social capital, made up of bridging and bonding social capital (both made possible by the right to association), is an important component of successful social action. Woolcock and Narayan (2000), argue that social capital enables people to act collectively. This collective action, which often comes in the form of social movements, is certainly a crucial factor in having rights respected, protected and fulfilled.

Take the case of Indio Guayas, an urban community in Guayaquil, Ecuador. This community, as described by Moser (2009), moved from a highly insecure squatter settlement thirty years ago to a secure community that effectively exercises a wide range of citizen rights in relation to local government. The rights to free association and political participation have facilitated social

mobilization around the provision of social and urban services. As a result, the community was able to negotiate for the delivery of a variety of entitlements and social and urban services. These included: water mains, roads, land titles, electrical grids, bus routes and better schooling.

Moser's (2009) analysis, which took place over a 30-year period, also showed that the community's large stock of social capital and the collective power to negotiate for their rights led to higher quality services and greater sustainability over time. Basically, the strong internal cohesion in Indio Guayas meant that they were able to participate and negotiate collectively with a single powerful political voice (strong bonding social capital). And, the alliances that community leaders had with local and national level politicians meant the community also had access to those who could deliver on their demands (strong bridging social capital). To achieve security of livelihood, the agency of women was fundamental in all of these dimensions of social mobilization.

Interestingly, though, the period of vibrant community social capital in Indio Guayas did not last. It was a prerequisite for the community to obtain the conditions for a secure life (particularly in terms of converting squatters' rights into formal tenure rights, on top of obtaining critical

services). Once the job was done, however, the level of investment in social capital markedly declined. According to Moser (2009: 68-69):

“Community social capital was an asset that grew in importance with the mobilization for physical and then social infrastructure; however, it subsequently declined, in

contrast to a trend of increasing household social capital (...) During the 1992-2004 period, the number of people (mainly women) who participated in the community committee declined from 31 percent to 14 percent. Acknowledgement of church membership (...) also declined during the 1992-2004 period from 71 percent to 47 percent.”

Annex C - The Right to Information: The Case of Land Tenure Rights in Bangladesh

Sometimes the lack of information or misinformation over rights can be substantively the same as not providing rights at all. Moser and Norton (2001) argue that access to information is a requirement for citizens to make claims. To highlight the importance of the right to information we examine the case of land tenure rights in Bangladesh.

Here, issues around land rights are complicated. First, the amount of available land in Bangladesh is constantly changing. Between 1984 and 1993, nearly 87,000 hectares of land was lost from erosion while 50,000 hectares were gained from accretion (Sinha and Toufique, 2000). So even maintaining up to date maps of what land exists is difficult. In addition, the poor people who are the most likely to settle in these areas are at greater risk for loss of land. Second, there is tremendous confusion surrounding land tenure administration. This has led to conflict over ownership, appropriation, displacement and illegal occupation.

This confusion comes from Bangladesh's disjointed land settlement policies, their dysfunctional system for land registration and the inefficient management of land records (Sinha and Toufique, 2000). The responsibility of managing land records fall to different areas of government. For example, land rights records are maintained by the Assistant Commissioner of land, registers are kept with the Ministry of Law, and the publication of settlements and operations fall under the Directorate of Land Records and Surveys. In addition, many records were poorly kept, hand written, tampered with or forged. Maps are out of date or incorrectly drawn. Some settlement programs, like the Zonal Settlement operation in 1984 were never completed, or only partially. Delays in record keeping means that records are often obsolete by the time they are published. These are rarely updated. According to Kabeer (2003), “Definitions of who is landless and qualifies for the purposes of settlement of land have undergone many changes over the past decades, breeding further confusion and allowing officials to exercise discretion to the detriment of the poor.”

Whether this confusion is the result of intentional planning, a lack of accountability or incompetence, it highlights the importance of having institutions that can interpret land tenure laws and transmit relevant information in simple terms to the poor. In Bangladesh, Nijera Kori (NK) is such an organization. They aim to build the capacity of the poor to collectively mobilize in defense of their rights and hold government responsible. Kabeer (2003: 41) describes the NK as:

“an organisational manifestation of the rights-based approach to development. It embodies a commitment to transforming the poor from clients to citizens who actively organise in pursuit of their rights and to hold accountable those who are responsible for upholding these rights. It does this by providing information about entitlements and rights, by promoting them in their struggles for justice and protecting them from some of the risks that this entails.”

Specifically, in the area of land tenure rights, NK engages in a number of activities. These range from the organization of landless groups to raising the awareness of these groups to their rights and responsibilities. These efforts have netted some positive results. Nijera Kori (2008) estimates that over 800,000 individuals have become aware of their rights and situations because of these programs. In addition, these efforts have strengthened the position of the landless in the Bangladeshi courts, “Of the total 75 cases discharged, verdicts came in favour of the landless organisations in 53 cases, out of which 27 were filed by the landless people themselves. Most importantly, of the 688 cases of legal fights, the landless organisations are running 432 cases themselves.” (Nijera Kori, 2008: 45) Kabeer and others (2007) also find that NK members have increased their capacity in other areas. These include: bargaining with employers and landlords, attaining their entitlements from the state, engaging in collective action to claim land and other rights, and

ensuring that key institutions of village governance are responsive to local community interests.

Despite these successes many challenges remain. Kabeer and others (2007) show that in many instances NK interventions have indiscernible, immeasurable or ambiguous impacts. Furthermore, land in Bangladesh is

finite and the frontier of unused land was reached many years ago, so any major improvement will start with public policy and its implementation. Therefore, the efforts of local civil society groups are only treating the symptoms of a larger problem related to the government's land policies and administration.

Annex D - The Right to Redress: The Case of Women's Reproductive Health in Zimbabwe

During the 1990s, the provision of services for reproductive health was increasingly framed in terms of "reproductive rights" rather than the traditional framework of "family planning." The purpose of this transition was to see the women of the world gain more control over deciding what was best for their reproductive health. In Zimbabwe, the government's reproductive health service was quick to respect the new language concerning women's reproductive health and rights that emerged from the Cairo International Conference on Population and Development in 1994 and Beijing's Fourth World Conference on Women in 1995 (Moser and Norton, 2001). Some of Cairo's recommendations included: the free and informed choice of family planning methods; safe, affordable and convenient service for the user; privacy and confidentiality; a continuous supply of high-quality contraceptives; and adequate follow up care. Despite the health service's stated agreement with these progressive recommendations they were not translated into broader provisions to support women's claims for access to reproductive health services.

The Zimbabwean National Family Planning Council's policy framework and client's charter reflected these new perspectives. This framework included the following components: Services shall be completely voluntary; no coercion whatsoever shall be used to enforce acceptance of family planning; the choice of family planning method shall be according to the client's preferences, within medically safe parameters; the client shall be treated with dignity and respect; the client shall be afforded privacy; the client's medical records and the data systems shall be kept confidentially; the client shall receive care, regardless of

financial or social status; and the client shall receive high quality services (Moser and Norton, 2001).

Yet, several of these measures run counter to customs of bridewealth and the conjugal contract, which effectively bought the groom and his family rights over the bride's sexuality, fertility and labor. Women were unable to access land in their own right and therefore did not have many opportunities to support themselves outside of marriage. In this context, women's control over the number and timing of children was central to their socio-economic well-being. Anthropological fieldwork in rural areas showed that the quality of reproductive services was a critical element in whether women were able to pursue a successful reproductive strategy. Where the provision of services met the government's service standards, women were able to use contraceptives consistently and without problems. This enabled them to strengthen their claims on the resources of their in-laws. However, when the government's service standards were not met, women received poorer quality services, which put them at risk of prejudicing their life chances. There were, for example, a number of young, single mothers in the village who had conceived before a marriage agreement had been finalized. These women then found themselves struggling to support their offspring without access to land for subsistence crops or other means of earning income.

In this case example, the fulfillment of specified rights was unreliable. The lack of accountability mechanisms meant that there was no way that local women could claim their rights if they were not voluntarily delivered by service providers. This left women very reliant on others (local service providers) to help manage their health risks, leaving them highly vulnerable.

Annex E - The Right to Security from Crime and Violence: The Case of Domestic Violence Legislation in South Korea

One of the primary obligations of any state is to protect its citizens from crime and violence. This protection can come in several forms, including policing, the rule of law (courts) or public policy. The purpose is to guard people from bodily harm or the loss of property. Without the right to this type of protection communities are more likely to be governed by a climate of fear. Such fear reduces the incentive for individuals to leave their home, let alone act collectively. Sometimes, people cannot even stay home to escape the threat of violence. Domestic violence is one of the more difficult forms of violence to protect against since it usually occurs in private and often goes unreported.

There are several internationally recognized human rights in regard to domestic violence. The most important of these are the Universal Declaration of Human Rights from 1948, which stresses gender equality; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the U.N. General Assembly in 1979 and ratified by the Korean government in 1984, which protects women against all forms of discrimination; and the United Nations Conference on Human Rights in Vienna (1993), which was ratified in 1995 at the Conference on Women in Beijing and establishes “women’s rights as human rights.” This clearly places protection from domestic violence within a human rights framework.

How nations choose to enforce such rights differ and entails many factors, including national and local politics, traditional and popular beliefs, and advocacy. Each of these factors was apparent in South Korea during its efforts to protect women from domestic violence.

Women’s rights groups have been active in South Korea throughout modern history. These groups largely emerged during the South Korean women’s labor movement in the 1970s, the feminist movement during the military regimes of the 1980s, and the women’s movements that grew from the construction of a democratic state in the 1990s (Heo, 2008). It was also in the 1990s that these groups became motivated to have national laws passed that would protect women from violence. To do so they had to overcome the popular views of a patriarchal society and the realities of South Korean politics.

In South Korea, domestic violence was largely viewed as a private, even trivial matter that should not be the concern of the state (Heo, 2008). Because of this, women’s groups knew they would have to frame the conversation in a way that would resonate with the public and gain support. To do so they framed the anti-domestic violence movement

as an effort to prevent the break up of families and the resulting social welfare costs, like juvenile delinquency, that would occur, rather than as a domestic issue to protect women from spousal abuse. This message of improving society (not regulating families) was one that most South Koreans, not to mention legislators, could support.

As a result, in 1997 the Act against Domestic Violence passed. Because of the message framing, it also contained some colorfully worded language, for example the objective is “to recover peace and stability for families affected by domestic violence and to nurture healthy families.” This framing of the law, has directly led to the greatest successes and failures of this movement. On the one hand, passage of the act in itself made the movement a success. For the first time, “domestic abuse” was explicitly recognized and banned by law. It required police intervention and criminal proceedings for domestic violence cases. It also led to the creation of a government ministry (The Ministry of Gender Equality and Family (MGEF)) and subsequent state funding. As a consequence, there has been a proliferation of agencies and shelters to serve battered women and their children. According to the MGEF, the number of domestic and sexual violence counseling centers increased from 17 in 1998 to 372 as of December 2006 (Heo, 2008).

At the same time, many, especially those in the South Korean women’s rights movement, see the ultimate implementation of this law as a failure. There are several reasons for this. First, feminists believe the counseling centers represent a conservative approach to the problem of spousal abuse. Rather than specifically supporting abused women, these centers largely focus on preserving the family. This is reflected in the general funding of the MGEF as well. In 2004, funds to support women represented 81 percent of the MGEF’s funding, by 2007 this decreased to 3 percent (though in dollar terms the funding has remained more or less constant). Meanwhile, funds to support children grew to 92 percent of the MGEF’s budget (MGEF, 2013). This reflects the wording of the law “to nurture healthy families” but undercuts the original intent of the women’s rights movement to protect women. In addition, the passage of the act has pushed the issue of domestic violence into the domain of the state and largely neutralized the social movements that initially pushed for the law. Finally, because the purpose of the law is to achieve “peace and stability for families” not women specifically, criminal cases against abusers

have not increased at the levels that one would expect. The interpretation by law enforcement agencies is that

criminalizing abusers would actually threaten the unity and health of the family (Heo, 2008).

Annex F - The Right to Non-Discrimination: The Case of Affirmative Action in Brazil

The right to non-discrimination is an important component for protecting marginal groups from risk. This is especially true for risk associated with organizing, since the right to non-discrimination provides a framework for excluded groups to make claims for fair treatment. The principle of non-discrimination implies that the state has certain duties. These include ensuring that (a) its institutions are not acting in a discriminatory way and (b) it acts to prevent discrimination by non-state actors within its jurisdiction. Individuals that come together to act collectively and advocate for social, civil or political rights represent a sub-group within society that is challenging the status quo in some regard. This can make these groups a target of discriminatory behavior. Therefore, the right to non-discrimination can increase the incentive for marginalized groups to mobilize and likewise can prevent the emergence and persistence of highly risk-prone populations.

Brazil presents an interesting case example of the state working to prevent discrimination. Interesting because since the abolishment of slavery, Brazil has never been known as an outwardly racist or discriminatory society, at least not to the extent of say the United States or South Africa. In fact, Brazil has long prided itself as a “racial democracy,” i.e. a democracy constructed less by races than by a single national group, Brazilian (Sheriff, 2001). However, beneath the façade of racial equality there are gross inequalities.

According to a 1999 household survey (Henriques, 2001), blacks¹³ make up 69 percent of the “extremely poor” despite being only 45 percent of the total population. Over half of blacks live in households without adequate sanitation compared to only 28 percent of whites. Illiteracy for adult blacks is twice as high as it is for adult whites (20 percent versus 8 percent). And 26 percent of blacks live without running water compared to just 8 percent of whites. All of this despite the fact that racism was punishable by law according to the 1967 and 1969 constitutions. The 1988 constitution called racism a crime.

Things began to change in 1995 with the election of Fernando Henrique Cardoso. Interestingly, improved racial inequality was not considered a major issue for Brazilians at the time, but President Cardoso saw discrimination as an issue close to his heart. His doctoral dissertation, his first published book and several of his scholarly articles all touched on race relations (Htun, 2004). Early on in his presidency he created, by decree, the “Interministerial Working Group to Valorize the Black Population.”

By the early 2000s, the Brazilian government renounced its long-standing position of denial and admitted to a prevalent culture of racism within the society and public institutions. They followed this up by enacting a broad set of affirmative actions targeting the black population. These included a national affirmative action program; the introduction of quotas for hiring blacks, women, and handicapped people by three government ministries; the endorsement of racial quotas by the National Human Rights Program; the introduction by the Foreign Ministry of a program to increase the number of black diplomats; and laws passed in three Brazilian states to reserve 40 percent of university admission slots for Afro-Brazilians (Htun, 2004). Other lesser-known policies included social programs that targeted black neighborhoods, preparatory courses for university entrance exams, job training programs, and support for black-owned businesses (Heringer, 2001).

Besides the push for antidiscrimination by the Cardoso administration, there were also a large number of civil society groups advocating for greater racial equality. Some of these emerged as the state provided space for them in the 2000s, but others were much more long-standing, emerging especially during Brazil’s transition to democracy in the mid-1980s (Mitchell, 1985). In either case, it is interesting to note that group mobilization occurred during times when discrimination was being reduced, i.e. through greater representation through democracy and through the government moving towards affirmative action. International organizations, such as the Ford Foundation,

13 According to Htun (2004), “There has been considerable debate about whether ‘black’ should be used as an all-encompassing term for Afro-descendants and/or non-whites/non-Indians/non-Asians in Brazil.” We have used black here instead of afro-Brazilian or other terms because this is the word that the cited sources use.

also invested in supporting Brazilian organizations that worked towards eliminating racism (Telles, 2003).

Many of these efforts were launched in preparation for the World Conference on Racism, held in Durban, South Africa in 2001. This conference was instrumental in opening a new consciousness on race relations and expanding the dialogue on these issues in Brazil (Htun, 2004). This illustrates the profound impact that international human rights processes can have, under the right conditions, at the national and ultimately local level.

It is difficult to measure how much affirmative action policies contributed to greater racial equality in Brazil. On the one hand, racial inequalities persist in Brazil. Critics of these policies point to this and challenge the constitutionality of affirmative action. On the other hand, certain indicators show that inequality is decreasing. For example, a recent study on the impacts of racial quotas on the University of Brasilia, which has been enacting quotas since 2004, show that the percentage of self-identified black students has increased from 15 to 21 percent of the student body (Francis and Tannuri-Pianto, 2012). More general poverty indicators are a bit more ambiguous. Between 1992 and 2005, poverty levels in Brazil have decreased from 36 percent to 23 percent, and this has benefited both races. The number of whites

living in poverty has decreased from 25 to 15 percent, and for blacks from 51 to 33 percent (from 1992 to 2005) (Gradin, 2009). From one perspective, the poverty gap (the percentage difference in poverty levels between blacks and whites) has shrunk, from 26 percentage points in 1992 to 18 percentage points in 2005. From another perspective, the proportional change in poverty rates represents a 40 percent decline for whites and only a 35 percent decline for blacks. There have been similar trends in health and educational gaps (Lima, 2012). But again it is difficult to attribute gains directly to the affirmative action reforms that took place. Other measures to reduce inequality (such as cash transfers and the minimum wage) may have had a material impact.

It should be noted that affirmative action efforts continued into the presidency of Luiz Inacio Lula da Silva as well as that of president Dilma Rousseff. In August of 2012, Brazilian lawmakers passed university quotas that require public universities to reserve half of their admissions spots for the poor, who are predominantly of African descent. One thing that is clear is that these policy changes have sparked a wide and contested debate about race in Brazil and mobilized social activism around these issues (Romero, 2012).

Annex G - The Right to Political Voice and Participation in Decision-Making: The Case of Participatory Budgeting in Porto Alegre, Brazil

As the previous examples have showcased, citizen participation in collective action is an important component in compelling state action in regard to rights or social service delivery. For this reason, we will look at one example where the state actually provides the right to participation in relation to core planning processes for the allocation of local level public resources. For this, we will turn again to Brazil, and specifically the famous case of participatory budgeting in the southern state of Rio Grande do Sul, and its capital, Porto Alegre.

The process of participatory budgeting (PB) began in Porto Alegre in 1989 and is based on the concept of citizens meeting in open forums to decide on how to allocate public funds. The concept emerged from the 1988 national constitution, which stipulates that municipalities

are federal entities that will receive their proportioned share of tax revenues. This evolved into the Law on Fiscal Responsibility, which had the goals of introducing local responsibility over budgets and improving transparency. However, at the local level this was considered an “organic” law (Lei Organica), meaning it was up to local officials to decide how to implement it. In Porto Alegre, officials from the Brazilian Worker’s Party (PT)¹⁴ decided to take the concept of decentralized budgeting to the next level and provide citizens the ability to participate in the decision-making. Since PB was an initiative instituted locally by a political party and not codified in law, it was susceptible to change if the PT were to ever lose its grip of power.

In Porto Alegre, citizens met in public assemblies at the sub-district levels to set budgeting priorities. The

14 Partido dos Trabalhadores (PT)

assemblies would select delegates for district forums and elect counselors to the city budget counsel where final budgeting decisions were made. This form of citizen participation has been considered a great success both in Brazil – it expanded to 180 municipalities as of 2003 (IDB, 2005) and scaled up to the entire state of Rio Grande do Sul starting in 1999¹⁵ – and internationally – it was selected as a “best practice” in city government at the UN Habitat II conference in 1996. Furthermore, under the process of participatory budgeting, spending became more efficient (at least in the critical sectors of health and education) and planning capacity improved (Schneider and Goldfrank, 2002).

Despite these successes, there were several attempts to dismantle the PB system. According to Schneider and Goldfrank (2002: 9), “The PB seeks to promote a new vision of democracy and development that includes partisan competition, participatory democracy, class struggle, and legitimation.” These goals are very much at the heart of the PT platform and the PB process was largely considered a creation of the PT. Rivals of the PT also saw the PB as a political tool. For example, by expanding the

ability of lower income groups to participate in budget decisions, the PT was able to solidify their support. Also, by making governance more transparent and responsive to multiple classes of society the PT was able to expand its coalition to include more middle and upper class voters. The PB, therefore, became a political movement spearheaded by the PT, who happily rode its successes to electoral victories at the local, state and national levels. For example, the PT victories in Rio Grande do Sul’s statewide elections in 1998 were driven by the promise to scale-up participatory budgeting to the entire state (Schneider and Goldfrank, 2002). Also, the idea of participatory democracy was a major component of President Lula’s election platform.

The PB process was assisted by a coalition of social movements that would galvanize to defend it whenever threatened.¹⁶ Naturally this also amounted to a defense of the PT. Eventually, rivals of the PT learned to stop challenging the PB process and actually embrace it. For example, in 2004 the PT finally lost control of Porto Alegre’s mayorship, but the new mayor did not dismantle the process, in fact he defended its merits (Stevens, 2008).

Annex H - Constitutional Rights and Social Floors: The Case of Housing in South Africa

Under a rights-based approach to risk management, providing basic services and opportunity to citizens of a nation helps ensure that most of the population has, at least, a basic level of protection against risks.¹⁷ For example, if an entire population is immunized against measles, then the chance that a measles outbreak will become a crisis is dramatically reduced. The same can be said for any number of basic services, including but not limited to, sanitation, safe housing, health care, education, and even guaranteed employment. It has been well documented that the poorest people are most at risk to suffer during crises (Mearns and Norton, 2010; WDR, 2010; IPCC, 2001; 2007; etc) and least likely to have the capacity and skills to organize collectively (Ashwill and Heltberg, 2013), so for example, an employed population with income is less at risk than

an unemployed population. The same can be said about a healthier or more educated population.

The right to safe housing is an interesting example. The quality, location and legal ownership of a home can all help determine the occupant’s ability to manage risk. For example, a poorly constructed home is more likely to collapse during an earthquake than a well-constructed home. Such differences in quality help explain the massive range of impacts caused by the similarly powerful earthquakes that occurred in Haiti and Chile in 2010. The poorly constructed buildings in Haiti collapsed, while those in Chile largely did not. This was a factor that contributed to the major humanitarian crisis in Haiti (Bajak, 2010). Location is also important, since a home located in a city neighborhood riddled by gang violence is much more at

15 “By 2002, 378,000 people were participating in PB mechanisms in all 497 municipalities in Rio Grande do Sul” (IDS (2002) summary of Schneider and Goldfrank (2002)).

16 For example, in 2000 there was a court injunction against the PB expansion to the state level that challenged the provision that state resources could be used to support the public PB assemblies.

17 For more examples of successful risk management through rights-based approaches to service provision refer to Chile’s health sector reforms and India’s employment guarantee initiatives (Norton, 2011). Also see Gacitua-Mario and others (2009) and their compilation of several case studies from South America and Africa.

risk of experiencing loss associated with violence than homes in safer areas. Location may also be important in determining a family's risk to natural disasters, disease or poor education. Having tenure to a home can be an important factor as well, first because squatters often live in risk-prone areas, but also because having title to your home or land often is a requirement to be eligible for certain social benefits (Moser, et al., 2010).

In South Africa during apartheid, access to housing, or lack thereof, was a primary mechanism of segregation and injustice. Black populations were frequently at risk of being dispossessed of their lands and homes and resettled in all black areas with few services (and of poor quality) and with little access to economic activities. To put it simply, housing was used as a form of oppression, or punishment, as some would argue (Schneider, et al., 2007). Therefore, after the fall of the apartheid regime when it became time to draft a new constitution, housing was included in the bill of rights.

The most important policy change that emerged from the constitution's right to housing came from the "White Paper on Housing."¹⁸ This paper outlined the national framework for housing policy and included four objectives: (1) to provide housing to the homeless and alleviate overcrowding; (2) to improve the quality of housing through the provision of formal top structures (i.e., buildings); (3) to increase the security of tenure and promote ownership; and (4) to develop "sustainable human settlements." Taken together, these four objectives touched on risks associated with access, quality, ownership and location. Additional programs were implemented over the years to further reinforce the transformation of the housing sector, for example the Housing Subsidy Scheme (1995), the "Breaking New Ground" plan¹⁹ (2004) and the Housing Assistance in Emergency Circumstances Programme (2004).

More important than the definition of these new laws and rights was their enforcement. Several major court decisions upheld these policy changes, and reinforced, for example, people's freedom from eviction or displacement. For example, in the *Government of the Republic of South Africa vs. Grootboom* case, a group of squatters were evicted from the private lands they occupied but not provided with adequate temporary housing. The court ruled that policies must be developed to protect these types of people in the future.²⁰ Equally important to these

courts decisions, was that it was well known, and codified in the constitution (section 38) that access to the courts was open to all and that anyone regardless of social group or economic status could approach the court if they felt their rights were infringed upon.²¹ In South Africa, the courts represent an institutional authority vested with the mandate to make judgments on claims to rights.

Occurring simultaneously with these reforms was a vibrant social activism related to housing in South Africa (Khosha, 2009). Some of the better known civil society groups advocating for housing rights included: the Anti-Eviction Campaign; the Landless Movement, which lobbies for fair land redistribution and restitution; the Homeless People's Alliance, which mobilizes the poor against homelessness; and the People's Housing Process, which encourages self-help in building houses.

These policies and court decisions have led to positive developments in the housing sector. According to the World Bank (2008: 56-57):

"As a result of the White Paper, the Comprehensive Plan for the Development of Sustainable Human Settlements, and the Grootboom case, dramatic changes have occurred in South Africa's housing landscape. About 1.4 million subsidized houses have been delivered since the introduction of the Housing Subsidy Scheme in 1994, at the cost of R20 billion (Public Service Commission 2003), and the government has added more than two million housing units to the formal housing in the country, comprising 15 percent of all formal housing units in South Africa."

Despite these gains, there are still widely reported problems with housing in South Africa. According to Chenwi (2006) there are still no housing policies targeting underprivileged groups such as women, people with HIV/AIDS, the elderly, children, and people with disabilities. Wegerif (2006) estimates that nearly a million black South Africans were forcibly removed from their farms from 1994 to 2004, despite laws that supposedly protect against this sort of resettlement. This type of failure demonstrates there are still gaps in the enforcement and implementation of housing rights. This likely reflects a persisting lack in accountability of local governments tasked with enforcement.

18 White Paper on a New Housing Policy and Strategy in South Africa.

19 The Comprehensive Plan for Sustainable Human Settlements of 2004.

20 "Two policies that emerged as a result of the Grootboom decision are the Housing Assistance in Emergency Circumstances Program (2004) adopted as Chapter 12 of the National Housing Code, and the Informal Settlement Upgrading Program adopted as Chapter 13 of the code." (Gacitua-Mario, et al., 2009)

21 Section 38 states that "anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are: (a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name; (c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest; and (e) an association acting in the interest of its members."



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