

TRANSNATIONAL RIGHTS ENFORCEMENT

ABSTRACT

A central debate among international law scholars revolves around the question of how, if at all, international human rights are enforced. Based on recent empirical research, the leading explanations for human rights enforcement are: 1) the democracy thesis; 2) the constitutional thesis; and 3) the international non-governmental organization (INGO) thesis. In order to gain better insight into the causal mechanisms involved and the interplay between these different factors in human rights enforcement, this article tests these competing theories through controlled comparisons and qualitative case studies focused on a single widely ratified right, the right to education. It identifies transnational rights enforcement as an alternative mechanism of human rights enforcement. In this model, transnational civil society actors contribute to human rights enforcement by overcoming international constraints, leveraging domestic commitments, and accelerating compliance with regional norms.

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INTRODUCTION

A major debate among international law scholars revolves around the question of how, if at all, international human rights are enforced.¹ International human rights treaties include few effective enforcement mechanisms. States have little incentive to coerce other states into enforcing their respective human rights obligations.² Yet even as many states remain reluctant to implement human rights obligations, non-state actors are increasingly catalyzing them to do so. Transnational rights enforcement is emerging as a key alternative mechanism for the enforcement human rights.

¹ See Phillip Alston, *Hobbling the Monitors: Should UN Human Rights Monitors Be Accountable?*, 52 HARV. INT'L L. J. 561, 565 (2011); Tom Ginsburg and Gregory Shaffer, *How Does International Law Work: What Empirical Research Shows*, in OXFORD HANDBOOK OF EMPIRICAL LEGAL STUDIES 15 (Peter Crane and Herbert Kritzer, eds. 2010); Ryan Goodman and Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L. J. 621, 626 (2004); Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935, 1938 (2002); Laurence Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*, 102 COLUMBIA L. J. 1832, 1844 (2002); Laurence Helfer and Anne-Marie Slaughter, *Toward a Theory of Supranational Adjudication*, 107 YALE L. J. 273, 281 (1997); Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L. J. 2599(1997); Harold Hongju Koh, *How is International Human Rights Law Enforced?*, 74 IND. L. J. 1397, 1398 (1998); Kal Raustiala and Anne-Marie Slaughter, *International Law, International Relations, and Compliance*, in HANDBOOK OF INTERNATIONAL RELATIONS 553 (T. Risse and B. Simmons, eds. 2002); Kim Lane Scheppele, *A Realpolitik Defense of Social Rights*, 82 TEX. L. REV., 1921, 1924–25 (2004); BETH SIMMONS, *MOBILIZING FOR RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* 4 (2009).

² SIMMONS, *supra* note 1, at 122 (“Foreign governments simply do not have the incentives to expend political, military, and economic resources systematically to enforce human rights treaties around the globe . . . Governments will have especially weak incentives to enforce international human rights agreements involving their important trade partners, allies, or other strategically, politically, or economically important states.”).

Many scholars have found that ratification has only a limited impact on state practice when it comes to human rights.³ Some scholars have even suggested that states which ratify these treaties are actually more likely to violate these rights.⁴ Yet since international human rights treaties are almost never self-enforcing agreements,⁵ ratification might better be viewed as the beginning, rather than the endpoint, of enforcing human rights commitments.⁶ Recent empirical studies have highlighted three leading explanations for why states enforce their human rights obligations: 1) the democracy thesis; 2) the constitutional thesis; and 3) the international non-governmental organization (INGO) thesis.

In order to gain insight into the causal mechanisms involved in human rights enforcement, this article tests these competing theories through controlled comparisons and qualitative case studies focused on a single widely ratified human right, the right to education. Based on an empirical analysis of the enforcement of the right to education, this article identifies significant limitations in the explanatory reach of each of these leading theories. Through qualitative case studies, the article identifies a new

³TODD LANDMAN, *PROTECTING HUMAN RIGHTS: A COMPARATIVE STUDY* (Georgetown University Press, 2005); Emilie Hafner-Burton and Kiyoteru Tsusui, *International Human Rights Law and the Politics of Legitimacy: Repressive States and Human Rights Treaties*, 110 AM. J. SOC. 1373, 1386 (2005); Hathaway, *supra* note 1.

⁴ See Hathaway, *Do Human Rights Treaties Make a Difference?*, *supra* note 1, at 1999 (states ratifying human rights agreements were, on average, more likely to violate rights than other states); *but see* Derek Jinks and Ryan Goodman, *Measuring the Effects of Human Rights Treaties*, 13 EUR. J. INT'L L. 171, 182 (2003) (the incorporation of human rights norms is a process, treaty law plays an important role in this process- ratification is not magic moment of acceptance but rather a point in a broader process of incorporation).

⁵ Robert Keohane, *Reciprocity in International Relations*, 40 INT'L ORGANIZATION 1, 10 (1986).

⁶ Jinks and Goodman, *supra* note 4, at 182 (“broad ratification of human rights treaties plays an important role in the process of building national human rights cultures.”).

theoretical approach, transnational rights enforcement, as a key alternative model for understanding the process of human rights enforcement. This approach highlights the role of transnational civil society actors that catalyze rights enforcement by overcoming international constraints, leveraging domestic commitments, and accelerating compliance with regional norms.

The current leading theories of human rights enforcement emerged from a new wave of quantitative empirical studies in the field of human rights.⁷ The democracy thesis focuses on the role of democratic political structures in catalyzing states to enforce human rights. Even studies which found treaty ratification had little impact on human rights highlighted the fact that fully democratic countries were more likely to enforce human rights treaties.⁸ Democracies generally keep the promises that they make,⁹ and are therefore more likely to enforce their human rights commitments.¹⁰ In contrast, the worst enforcement of human rights across a range of rights is commonly found in non-democratic regimes.¹¹ While the democracy thesis focuses on domestic political structure, the constitutional thesis highlights the role of substantive constitutional commitments in human rights enforcement. Recent scholarship has identified constitutionally based legal mobilization as a key factor in fostering the enforcement of a wide

⁷ See Burton and Tsusui, *supra* note 3; Hathaway, *supra* note 1; LANDMAN, *supra* note 3; SIMMONS, *supra* note 1; Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?* 49 J. OF CONFLICT RESOLUTION 925 (2005).

⁸ Hathaway, *Do Human Rights Treaties Make a Difference?*, *supra* note 1, at 1980.

⁹ LANDMAN, *supra* note 6.

¹⁰ Neumayer, *supra* note 7.

¹¹ Emily Hafner-Burton and Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 J. PEACE RESEARCH 422-423 (2007).

range of human rights.¹² The INGO thesis suggests that human rights enforcement reflects the number of international non-governmental organizations that operate at the national level. Evidence for the INGO thesis can be found in recent scholarship which finds that the number of international non-governmental organizations in a given country contributes to better human rights practices.¹³

Although these approaches have helped to identify important variables that appear to affect human rights enforcement, much of this literature has drawn causal inferences from studies which are better at demonstrating recurring associations between different processes than in proving actual causation or revealing the underlying causal mechanisms.¹⁴ Given the focus of most of these studies on civil and political rights, the often difficult challenge of enforcing social and economic rights is even less well understood.¹⁵

¹² MALCOLM LANGFORD, *SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW* (2008); MARK TUSHNET, *WEAK COURTS, STRONG RIGHTS: JUDICIAL REVIEW AND SOCIAL WELFARE RIGHTS IN COMPARATIVE CONSTITUTIONAL LAW* (2009).

¹³ Emilie Hafner-Burton and Klyoteru Tsusui, *International Human Rights Law and the Politics of Legitimacy: Repressive States and Human Rights Treaties*, 110 AM. J. SOC. 1373, 1386 (2005)(the larger number of international NGOs operating in a country, the higher the protection of human rights, holding other factors constant); Neumayer, *supra* note 7, at 926 (2005)(rarely does human rights treaty ratification have unconditional effects on human rights instead improvement in human rights is more likely the more democratic the country or the more international nongovernmental organizations its citizens participate in).

¹⁴ Emilie Hafner-Burton, *International Regimes for Human Right*, INTERNATIONAL LABORATORY ON INTERNATIONAL LAW AND REGULATION WORKING PAPER 33 (2011).

¹⁵ See Phillip Alston, *Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social, and Cultural Rights*, 9 HUM. RTS. Q. 332, 351 (1987); Tara J. Melish, *Rethinking the 'Less as More' Thesis: Supranational Litigation of Economic, Social and Cultural Rights in the Americas*, 39 N.Y.U. J. INT'L L. & POL'Y 1, 10 (2006); Kim Lane Scheppele, *A Realpolitik Defense of Social Rights*, *supra* note 1.

In order to gain better insight into the causal mechanisms involved in human rights enforcement, this article seeks to test these competing theories through controlled comparisons and qualitative case studies focused on the right to education. The right to education has been ratified by nearly every country in the world. It is similar to a wide range of human rights in that it includes immediately binding obligations on state parties regardless of their level of economic development. The right to education lends itself more easily to clear-cut evaluation of state compliance than many human rights because of the explicit requirement that primary education be available free to all children.

Part I of the article analyzes the requirements of the right to education as established through the core conventions of the legal regime of international human rights. It highlights the significance of free primary education as a key element of that right which states are required to implement regardless of their level of economic development. This section reveals the limits of current approaches to understanding rights enforcement in explaining the abolition of school fees and the implementation of the right to education. Part II examines five case studies involving the right to education and the abolition of school fees which are carefully matched to reveal the operations of different causal mechanisms. Based on field research by the author in Sub-Saharan Africa and other types of qualitative evidence, it utilizes the social science methodology of process tracing to “identify the intervening causal processes”¹⁶ involved in the enforcement of the right to education. The first case is an “outlier case”¹⁷ which cannot be

¹⁶ALEXANDER GEORGE AND ANDREW BENNETT, *CASE STUDIES AND THEORY DEVELOPMENT IN THE SOCIAL SCIENCES* (2005), at 206.

¹⁷ Andrew Bennett, *Case Study Methods: Design, Use and Comparative Advantages*, in *MODELS, NUMBERS, AND CASES: METHODS FOR STUDYING INTERNATIONAL RELATIONS* (Detlef F. Sprinz, et al. eds., University of Michigan Press, 2004).

easily explained by existing theories in order to identify alternative mechanisms of human rights enforcement. The next four cases are matched pairs, involving “most similar”¹⁸ and “most different”¹⁹ cases, which vary in terms of the strength of the values of democracy, domestic constitutional protection of the right to education, and the number of INGOs in each country. In this way, the controlled comparisons can better identify the significance of different variables within each case. Part III introduces a new framework for understanding human rights enforcement, called transnational rights enforcement, and outlines its significance for catalyzing states to meet their human rights obligations in the 21st century. It highlights some of the institutional features of a human rights regime that might enhance the likelihood of effective rights enforcement. The article concludes that a new theory of transnational rights enforcement provides a better understanding of how human rights norms are enforced in practice.

II THE RIGHT TO EDUCATION

The right to education has roots in international conventions dating to the early 20th century and has now been ratified, in some form, by almost every country in the world. The early outlines of the right to education can be found in the conventions of the International Labor Organization with respect to child labor shortly after World War I.²⁰ However, the modern right to education was not explicitly articulated in international conventions

¹⁸ ADAM PRZEWORSKI, *THE LOGIC OF COMPARATIVE SOCIAL INQUIRY* 32 (1970).

¹⁹ *Id.*, at 34.

²⁰ Katarina Tomasevski, *Has the Right to Education a Future Within the United Nations: A Behind the Scenes Account by the Special Rapporteur on the Right to Education*, 5 HUM. RTS L. REV. 205, 206 (2005).

until shortly after World War II.²¹ The right to education was incorporated into the Universal Declaration of Human Rights in 1948, which declared that: “Education shall be free, at least in the elementary and fundamental stages.”²²

An enforceable right to education was included in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which entered into force in 1976, and has been ratified in some form by nearly 160 countries.²³ Article 13 of the ICESCR declares that “primary education shall be compulsory and available for all” and has been ratified by nearly as many countries as its counterpart for civil and political rights.²⁴ The Committee on Economic, Social and Cultural Rights, a body of experts which evaluates compliance with the ICESCR, determined that “indirect costs, such as compulsory levies on parents” are not permissible under the Covenant.²⁵ States parties are required to adopt a plan within two years to implement free and compulsory primary education within a reasonable number of years.²⁶

The obligations established by the International Covenant on Economic, Social and Cultural Rights are elaborated in General Comment number 13, which reflects the interpretation of the United Nations

²¹ Minzee Kim, Elizabeth Heger Boyle, and Kristin Haltinner, *Neoliberalism, Comprehensive Education Norms, and Education Spending in the Developing World, 1983-2004*. L. & SOC. INQUIRY 1, 3 (2011).

²² Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III) U.N. GAOR, 3d Sess. (Resolutions, pt. 1), U.N. DOC. A/810 (1948).

²³ *Id.*

²⁴ CASS SUNSTEIN, *THE SECOND BILL OF RIGHTS* 101 (Basic Books, 2004).

²⁵ U.N. Comm. Econ. Soc. & Cultural Rts., General Comment No.13: *The Right to Education*, 21st Sess., at ¶ 45, U.N. DOC. E/C.12/1999/10 (1999), *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument).

²⁶ Sital Kalantry et al. *Enhancing Enforcement of Economic, Social, & Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR*, 32 HUM. RTS. Q. 253, 267-68 (2010).

Committee on Economic, Social, and Cultural Rights (UNCESCR) of the requirements of the Covenant. The General Comment reiterates the two distinctive features of primary education: that it must be “compulsory” and “available free to all.”²⁷ It particularly highlights the immediate action required in the area of primary education: “The obligation to provide primary education for all is an immediate duty of all States parties.”²⁸ The Article specifies that it would be a violation of that right to fail to introduce “as a matter of priority, primary education which is compulsory and available free to all.”²⁹

The Convention on the Rights of the Child, adopted in 1990, strongly reaffirmed the right to education. The Convention also re-iterates specific obligations with respect to free primary education: “states parties recognize the right of the child to education . . . they shall, in particular: a) make primary education compulsory and available free for all.”³⁰ The Convention on the Rights of the Child is currently binding on 193 states. The Committee on the Rights of the Child, a body of independent experts, is charged with monitoring and enforcing the Convention, including the provisions relating to education. However, the Committee does not have the authority to hear individual complaints about violations of the Convention. Instead, the Committee relies heavily on self-reporting by States about their level of compliance and the factors that might hinder fulfillment of their obligations under the Convention.³¹

The United Nations Educational, Scientific, and Cultural Organization

²⁷U.N. Comm. Econ. Soc. & Cultural Rts, *supra* note 18.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc A/Res/44/25 (1989).

³¹ Committee on the Rights of the Child, *Overview of the Reporting Procedures 2-3 (1994)*, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G94/195/85/PDF/G9419585.pdf?OpenElement>.

(UNESCO), which serves as the lead United Nations agency on education, has taken an active role in giving content to the right to education but has demonstrated little capacity or interest in legally enforcing the underlying right.³² Former UN Special Rapporteur on the right to education, Katarina Tomasevski, argued that: “There are no words such as violation or responsibility in UNESCO-ese. The key word in UNESCO-ese is government leadership and all governments are assumed to be committed to education for all.”³³ UNESCO’s success at convening states to re-assert their commitment to education, in forums such as the Dakar Meeting on Education for All in 2000, has not been matched by similar success in terms in generating compliance with human rights obligations.

The other key body within the United Nations is the UN Human Rights Council, the successor to the UN Commission on Human Rights. Although the Commission established the position of the Special Rapporteur on the right to education to investigate the status of the right in member states, there was rarely a strong connection between this reporting function and the actual resolutions of the Commission.³⁴ In 2008, the UN General Assembly adopted a resolution giving individuals the right to submit complaints of treaty violations by a State party to the UN Committee on Economic, Social, and Cultural Rights.³⁵ However, the protocol has only been ratified by three of the ten countries required for it to enter into force.³⁶

³² Klaus Hufner, *The Human Rights Approach to Education in International Organisations*, 46 EUR. J. EDUC. RES. DEV. & POL’Y 117 (2011).

³³ Katarina Tomasevski, *UNESCO Role in Global Education and Development*, 51 COMP. EDUC. REV. 257, 259 (2007).

³⁴ Katarina Tomaševski, *Has the Right to Education a Future Within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998–2004*, 5 HUM. RTS. L. REV. 205 (2005).

³⁵ Beth Simmons, *Should States Ratify Protocol? Process and Consequences of the Optional Protocol of the ICESCR*, NORWEGIAN JOURNAL OF HUMAN RIGHTS (2009).

³⁶ *Optional Protocol to the ICESCR* available at <http://www.eser->

While the foregoing analysis highlights the limits of ratification alone to contribute to the effective enforcement of the right to education, the impact of ratification is often enhanced within countries that have democratic political structures, strong constitutional protections, or a large number of INGOs operating within the country. The next section examines the significance of the democracy thesis, the constitution thesis, and the INGO thesis for explaining the abolition of primary school fees and the enforcement of the right to education.

A. THE DEMOCRACY THESIS

The democracy thesis holds that states which are democracies are more likely to respect their human rights obligations. The level of democracy in a given country has been tied to levels of primary school enrollment and government expenditure on primary education across a range of countries.³⁷ Scholars have argued that democracy is the key variable that can explain the shift toward school fee abolition among countries in Sub-Saharan Africa. The entire gap in school enrollment between democracies and non-democracies can be explained by controlling for the single variable of school fee abolition.³⁸ According to the democracy thesis, “electoral competition resulting from a democratic transition should increase the likelihood of user fee abolitions in Africa.”³⁹

However, a closer examination of the specific cases upon which this conclusion relies suggests that democracy may not be enough to explain

net.org/workinggroups/workinggroups_show.htm?doc_id=465975.

³⁷ *Id.* at 19.

³⁸ *Id.* at 11.

³⁹ Robin Harding and David Stasavage, *What Democracy Does (and Doesn't) Do for Basic Services: School Fees, School Quality, and African Elections*, at 4.

school fee abolition.⁴⁰ Of the sixteen countries identified as having abolished school fees, more than half do not fit the classic model of a competitive election generating new commitments from a democratic government. In five cases, the abolition of school fees did not take place following an election. In four other cases, the elected President won by a margin of at least 50% more votes than their opponents, suggesting that the election was not really competitive in practice. Quite a number of democracies in Sub-Saharan Africa which otherwise fit this profile still have not abolished primary school fees.⁴¹ A few African countries have taken steps to abolish fees in the absence of democracy.⁴²

B. THE CONSTITUTIONAL THESIS

The constitutional thesis holds that countries which adopt stronger constitutional protections of human rights will demonstrate more effective enforcement of those rights. Modern constitutions increasingly include explicit references to a right to education within their texts, often borrowing directly from the language of international human rights conventions.⁴³ In 2001, the UN Special Rapporteur on the right to education found explicit guarantees of the right to education in the constitutions of 142 out of 186

⁴⁰ *Id.* at 12 tbl. 1.

⁴¹ For example, Botswana, South Africa, Mali, and Nigeria are each classified as democracies on the Polity IV scale but none of these countries have fully abolished primary school fees.

⁴² Neither Cameroon, the Republic of Congo, Rwanda, Tanzania, Togo, or Uganda were classified as democracies on the Polity IV scale when each of these countries implemented primary school-fee abolition. Even autocracies, such as Swaziland, and military governments, such as Nigeria in 1976, have taken some steps to eliminate primary school fees.

⁴³ John Bennett and John W. Meyer, *The Ideology of Childhood: Rules Distinguishing Children in National Constitutions 1870-1970*, 43 AM. SOC. REV. 797, 798 (1978).

countries.⁴⁴ In the developing world, 87.7% of all national constitutions include a right to education.⁴⁵ Such a right is present in every constitution in Latin America and every constitution in East and Central Europe. It is absent in only two constitutions in Asia and in only seven constitutions in Sub-Saharan Africa.⁴⁶ Furthermore, nearly one hundred of these national constitutions explicitly articulate the government's obligation to provide free education.⁴⁷

However, a recent analysis of education in 68 countries found that the inclusion of a right to education in the national constitution seemed to have no positive effect in terms of the enforcement of the right to education.⁴⁸ Higher levels of constitutional commitment did not lead to expanded levels of primary or secondary school enrollment.⁴⁹ Constitutional provisions protecting the right to education are not sufficient in many countries to ensure implementation of the right to primary education for all children. With some important but limited exceptions, the right to education has not yet been widely enforced by national courts relying on constitutional protections.⁵⁰

C. THE INGO THESIS

⁴⁴Philip Alston and Nehal Bhuta, *Human Rights and Public Goods: Education as a Fundamental Right in India*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 13 (P. Alston and M. Robinson, eds. 2005).

⁴⁵COURTNEY JUNG AND EVAN ROSEVEARE, ECONOMIC AND SOCIAL RIGHTS IN DEVELOPING COUNTRY CONSTITUTIONS: PRELIMINARY REPORT ON THE TIESR DATASET 21 (2011), available at <http://www.tiesr.org/TIESR%20Report%20v%203.1.pdf>.

⁴⁶*Id.*

⁴⁷VARUN GAURI AND DANIEL BRINKS, COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD 1 (2010).

⁴⁸Avi Ben-Bassat and Momi Dahan, Social Rights in the Constitution and in Practice, 36 J. OF COMPARATIVE ECONOMICS 103, 116 (2008).

⁴⁹*Id.*

⁵⁰GAURI AND BRINKS, *supra* note 47, at 308.

The INGO thesis suggests that countries with a greater number of international non-governmental organizations are more likely to enforce human rights protections.⁵¹ Recent empirical work highlights a connection between the enforcement of the rights of children and the number of child rights INGOs within a given country.⁵² Countries with stronger connections to international NGOs were more likely to increase their education spending per child.⁵³ However, it is much less clear that the number of INGOs can easily explain shifting levels of enforcement of the right to free primary education. Fully one half of sixteen countries in Sub-Saharan Africa which abolished school fees had a low number of international NGOs in the country.⁵⁴ Many of the countries in the region with the highest number of INGOs continue to allow for schools to charge primary school fees.⁵⁵

Despite important work highlighting the significance of the transnational realm for rights enforcement, there is still only limited understanding of the causal mechanisms through which INGOs might catalyze rights enforcement.⁵⁶ Relatively little is known about the ways in

⁵¹ Emily Hafner-Burton and Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1380-81 (2005).

⁵² Elizabeth Heger Boyle and Minzee Kim, *International Human Rights Law, Global Economic Reforms and Child Survival and Development Rights Outcomes*, 43 L. & SOC. REV. 483 (2009).

⁵³ Elizabeth Heger Boyle and Minzee Kim, *International Human Rights Law, Global Economic Reforms and Child Survival and Development Rights Outcomes*, 43 LAW & SOC'Y REV. 34 (2009).

⁵⁴ Dataset on INGOs from Evan Schofer and Wesley Longhofer, *The Structural Sources of Association*, AM. J. SOC. (2010).

⁵⁵ For example, South Africa and Nigeria have among the highest number of INGOs on the continent but neither have fully abolished primary school fees and nor have other countries with a relatively high number of INGOs, such as Senegal and Ivory Coast.

⁵⁶ See MARGARET KECK AND KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 4 (1998)(examining the role of “transnational advocacy networks”); Koh, *supra* note

which non-state actors translate international obligations into domestic contexts.⁵⁷ In addition, it is not well understood how NGOs act simultaneously as domestic and international actors and what shapes their strategic engagement with domestic and international institutions.⁵⁸

II SCHOOL FEES AND THE RIGHT TO EDUCATION

This section analyzes five different country case studies of the enforcement of the right to education in order gain insight into the causal mechanisms that drive the enforcement of human rights. All of the cases involve countries which have ratified at least one of the major conventions that guarantee free primary education in order to control for the impact of ratification. The first case study looks at an “outlier case”⁵⁹ which is not easily explained by leading explanations and can therefore potentially reveal alternative causal mechanisms. Tanzania was not a full-fledged democracy when it abolished school fees and it did not have a strong constitutional right or an especially large number of INGOs operating within the country.

1, at 2656 (“How for example do international human rights ‘issues networks’ and epistemic communities form . . . How do these networks intersect with the ‘International Human Rights Regime,’ namely, the global system of rules and implementation procedures centered in and around the United Nations;”); Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 206-07 (identifying the significant role of “nongovernmental organizations” in “transnational legal process”).

⁵⁷ SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE 1* (2006) (“Local communities often conceive of social justice in quite different terms from human rights activists. Global human rights reformers, on the other hand, are typically rooted in a transnational legal culture remote from the myriad local social situations in which human rights are violated.”).

⁵⁸ Keck and Sikkink, *Transnational Advocacy Networks in International and Regional Politics*, INT’L SOC. SCI. J. 92 (1999).

⁵⁹ “outlier case”

The next four cases are matched pairs which vary in terms of the strength of the values of the variables that relate to possible explanations. The first two pairs are “most different”⁶⁰ cases which match only in terms of their level of constitutional protection for the right to education but vary on almost all other key variables. Ghana and Swaziland both share extremely explicit constitutional provisions protecting the right to education. However, Ghana is a low-income country with a strong democracy and a high number of international NGOs. In contrast, Swaziland is a middle-income country which is not democratic and has relatively few INGOs. The second pair of countries are “most similar” cases⁶¹ which are closely related in terms of many key variables but vary along one major dimension. Colombia and Nigeria are both classified as middle-income countries, democracies, and fragile states with comparable levels of international NGOs but these two countries occupy very different regional contexts with distinct regional institutions and norms.

Country	Tanzania	Ghana	Swaziland	Colombia	Nigeria
Democracy	Hybrid Regime	Strong Democracy	Autocracy	Weak Democracy	Weak Democracy
Constitutional Right to Education	Weak	Strong	Strong	Moderate	Moderate

⁶⁰ ADAM PRZEWORKSI THE LOGIC OF COMPARATIVE SOCIAL INQUIRY.

⁶¹ *Id.*

INGO	Medium	Medium	Low	High	High
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Despite unambiguous language requiring free primary education within the text of the Universal Declaration of Human Rights, the International Covenant on Social and Economic Rights, the Convention on the Rights of the Child, and many national Constitutions, primary school fees remained a persistent practice in many government schools into the 21st century. Although the United Nations has an explicit mandate with respect to the right to education, the World Bank's policies have often been much more influential in shaping realization of the right to education. Between 1980 and 1995, the World Bank and other leading international financial institutions encouraged countries to introduce user fees into the area of primary education.⁶² Several World Bank papers in the early 1980s recommended expanding school fees as a policy intervention by national governments.⁶³ Mateen Thobani was among the World Bank officers who recommended that Malawi expand its primary school fees, which he argued would "discourage those with a low expectation of gaining significantly from education and . . . will lead to fewer drop-outs."⁶⁴ In order to secure a loan from the World Bank, Malawi substantially increased primary school

⁶² Nancy Alexander, *Paying for Education: How the World Bank and IMF Influence Education in Developing Countries*, 76 PEABODY J. EDUC. 285, 301 (2001).

⁶³ Joshua Rosensweig, *IFIs, Education Financing and Education Policy: Primary Education User Fees in Sub-Saharan Africa*, at 1 available at www.law.utoronto.ca/documents/ihrp/HIVproject_summaries.doc.

⁶⁴ Mateen Thobani, *Charging User Fees for Social Services: Education in Malawi*, COMP. EDUC. REV. 417 (1984).

fees and primary enrollment fell across the country.⁶⁵ According to the UN Special Rapporteur for the right to education, the introduction of school fees in Malawi ruptured the “previous consensus that at least primary education should be free.”⁶⁶ The World Bank’s own analysis concluded that structural adjustment lending, of which user fees were one dimension, had a negative impact on primary education enrollment in the 1980s.⁶⁷

By 1990, the World Bank’s \$1.5 billion annual investment made it the largest individual source of external financing for education but it still represented just .5% of total education spending in low-income countries.⁶⁸ According to the Bank’s own research, “about 40 percent of projects in the Bank’s HNP (health, nutrition, and population) portfolio and nearly 75 percent of projects in sub-Saharan Africa included the establishment or expansion of user fees.”⁶⁹ As of 2000, 77 of 79 surveyed countries had adopted some form of user fees for primary education.⁷⁰ In the case of thirty eight percent of these countries, these fees included tuition fees for attending primary school while in other countries these fees took the form of textbook, uniform, or other kinds of fees.⁷¹ The re-introduction of primary school fees reversed many of the gains in primary school

⁶⁵ Mark Bray, *Is Free Education in the Third World Either Desirable or Possible?*, 2 J. EDUC. POL’Y 123 (1987).

⁶⁶ KATARINA TOMASEVSKI, EDUCATION DENIED: COSTS AND REMEDIES 3 (2003).

⁶⁷ Nancy Alexander, *supra* note 62, at 285.

⁶⁸ Joel Samoff, *Institutionalizing International Influence: The Context for Education Reform in Africa*, SAFUNDI: THE J. OF SOUTH AFRICAN AND AM. STUD., at 76.

⁶⁹ *Fees Issue Entangles US Debt Relief Plan*, FIN. TIMES (October 17, 2000).

⁷⁰ RAJA BENTAOUET KATTAN AND NICHOLAS BURNETT, USER FEES IN PRIMARY EDUCATION 10 (World Bank, 2004) available at http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079993288/EFAcase_userfees.pdf

⁷¹ *Id.*

enrollment in Sub-Saharan Africa.⁷² The impact was most profound at the primary level for impoverished students, especially for girls.⁷³ Although domestic courts in Europe served as important buffers against similar pressure from international financial institutions to cut back on social and economic rights,⁷⁴ these dynamics were not strong enough in Africa to prevent the introduction of significant cost barriers to primary education.

A. OVERCOMING INTERNATIONAL CONSTRAINTS: TANZANIA

Tanzania is an “outlier case” because it does not easily fit with leading explanations for the enforcement of the right to education. The country was not a democracy when it abolished primary school fees and its constitution did not guarantee that the government would provide free primary education. Nonetheless, Tanzania was among the early countries in Sub-Saharan Africa to shift toward fee-free primary education. When primary school fees were eliminated in Tanzania, it was a hybrid regime in which multi-party elections were already established but incumbents faced little real electoral competition. The ruling party in Tanzania overwhelmingly dominated every election since the transition to multi-party rule based its superior access to state institutions, resources, and the media, leading some to characterize the dynamic as “hyper-incumbent advantage.”⁷⁵ Tanzania’s constitutional provision with respect to the right to education does not explicitly guarantee free primary education. Instead, Article 11 of the

⁷² Fernando Reimers, *Education and Structural Adjustment in Latin America and Sub-Saharan Africa*, 14 INT’L J. EDUC. DEV. 119, 123 (1994).

⁷³ *Id.*, at 128.

⁷⁴ Scheppele, *supra* note 1, at 1924–25.

⁷⁵ Steven Levitsky and Lucian Way, *Why Democracy Needs a Level Playing Field*, 21 J. DEMOCRACY 1045.

Tanzanian Constitution simply states that: “The government shall endeavor to ensure that there are equal and adequate opportunities to all persons to enable them to acquire education. . . .”⁷⁶ Given its abolition of school fees despite limited democratization and weak constitutional protection for the right to education, Tanzania is a promising case for exploring alternative explanations for the enforcement of the right to education.

In Tanzania, the universal primary education movement, which began in 1974, eliminated primary school fees in an earlier era.⁷⁷ By the early 1980s, primary schools existed in nearly every village in Tanzania and gross primary enrollment was approaching 100 percent. Subsequently, a major fiscal crisis and external pressure from international financial institutions led to the re-imposition of school fees. As one Tanzanian government official explained: “contributions by local communities to the running of schools were gradually introduced due to declining resources, the national ethos of self-reliance, and the push by international financial institutions towards “cost-sharing.”⁷⁸ The re-introduction of school fees in Tanzania was supported by the World Bank and the International Monetary Fund.⁷⁹ Although Tanzania reached 98 percent gross primary enrollment in 1980, this figure declined to 57 percent after the re-introduction of primary school fees.⁸⁰

Civil society mobilization against the World Bank’s support for user fees was critical to successful national efforts to once again eliminate

⁷⁶CONSTITUTION OF TANZANIA, Article 11:2.

⁷⁷ Joel Samoff, *The Politics of Privatization in Tanzania*, 10 INT’L J. EDUC. DEV. 1, 6 (1990).

⁷⁸ Rosa Alonso Ilerme, *The Elimination of User Fees for Primary Education in Tanzania*, at 2 available at http://siteresources.worldbank.org/INTPRS1/Resources/Attacking-Poverty-Course/Attacking-Poverty-Course/apr03_m4a.pdf.

⁷⁹ Frances Vavrus, *Education and Structural Adjustment Policies in Tanzania*, 75 HARV. EDUC. REV. 174, 182 (2005).

⁸⁰ Tomaševski, *supra* note 34, at 27.

primary school fees in Sub-Saharan Africa. The Tanzania Education Network (TEN/MET) was formed in 1999 and included faith-based groups, teacher organizations, and parent organizations. Its membership includes leading international NGOs but only three of these INGOs are allowed on the ten member board.⁸¹ One of the earliest members of TEN/MET was Maarifa ni Ufunguo, established in 1998, which used its research capacity to catalyze school fees onto the national agenda. In 1999 Maarifa ni Ufunguo examined the impact of primary school fees in Tanzania by focusing on some of the most well-off regions of the country. Its research on primary school user fees was publicized, with the help of TEN/MET, and the results were cited as an example of the negative effects of primary school fees by international groups working to shift the World Bank's policies with respect to user fees.⁸²

A civil society coalition centered in the United States convinced key members of Congress to put forward amendment language requiring the United States representative at the World Bank and the International Monetary Fund to oppose any program that involved user fees for primary education. The coalition ultimately involved more than 100 organizations, including faith groups, environmental groups, and labor unions. In July, the House of Representatives passed the amendment but the United States Department of Treasury sought to block its inclusion in the final legislation. In advocating for the Bank to formally reverse its support for user fees, many international NGOs utilized the language of human rights while highlighting the negative impact of these fees on educational access. Civil

⁸¹ Karen Mundy et al. BASIC EDUCATION, CIVIL SOCIETY PARTICIPATION AND THE NEW AID ARCHITECTURE: LESSONS FROM BURKINA FASO, KENYA, MALI AND TANZANIA, 10 *available at* <http://www.hakielimu.org/hakielimu/documents/document104Basic%20Education.pdf>.

⁸² Ilterme, *supra* note 78, at 5.

society groups highlighted the “catastrophic impact [of fees] on the capacity of the most impoverished people to . . . send their children, especially girls, to school” and urged allies in Congress to maintain the provision.⁸³

The ultimately successful legislation required “the United States Executive Director of each international financial institution . . . to oppose any loan, grant, strategy or policy of these institutions that would require user fees or service charges on poor people for primary education . . .”⁸⁴ The transnational NGO coalition also pushed for the elimination of school fees to be included in Tanzania’s Poverty Reduction Strategy Program with the World Bank.⁸⁵ The World Bank subsequently issued a non-binding statement announcing that the Bank “does not support user fees for primary education.”⁸⁶ The reversal by the World Bank is all the more remarkable given the findings by some scholars of strong resistance within the organizational culture of the Bank to human rights approaches.⁸⁷ The transformation of the World Bank’s policies on user fees in primary education contributed to a wave of national government decisions to abolish primary school fees in many Sub-Saharan African countries.

The shifting support for user fees at the international level opened up important space for the government of Tanzania to change its position on the issue. Discussions between Tanzanian President Benjamin Mkapa and the World Bank’s country director, Jim Adams, contributed to the inclusion of school fee elimination in the country’s Poverty Reduction Strategy

⁸³ *Appropriations for FY2001: Foreign Operations, Export-Financing and Related Programs* (2000).

⁸⁴ Rosensweig, *supra* note 63, at 4.

⁸⁵ Ilterme, *supra* note 78, at 5.

⁸⁶ KATTAN AND BURNETT, *supra* note 70, at 25.

⁸⁷ Galit Sarfaty, *Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank*, 103 AM. J. INT’L L. 647, 662 (2009).

Program (PRSP).⁸⁸ The government also approached the wider donor community, on whom Tanzania relied for a large percentage of its budget, to find out if they would support the elimination of user fees for primary education.⁸⁹ Research on the process of designing PRSP's found "evidence that the active involvement of civil society has influenced PRSP content, particularly in drawing attention to social exclusion, the impoverishing effects of poor governance and specific policy issues such as the elimination of school fees in Tanzania. . ."⁹⁰ Civil society actors, such as TEN/MET, remained closely involved in shaping and monitoring the government's policies abolishing school fees.⁹¹

Beyond the reversal of the World Bank's position on primary school fees, the other major international constraint which shifted during this period was the reduction of the country's external debt to international financial institutions. A transnational campaign to significantly reduce the levels of indebtedness of many low-income countries was another factor in overcoming international constraints to the elimination of primary school fees in Tanzania. The Jubilee 2000 campaign catalyzed deep levels of debt relief through the Heavily Indebted Poor Countries (HIPC) initiative. In some cases, creditor nations made commitments seemingly against their material interests in response to a diverse and broad coalition across G8 countries.⁹² Across twenty three African countries, HIPC contributed to a

⁸⁸ Alf Morten Jerve, *Exploring the Research-Policy Linkage: The Case of Reforms in Financing Primary Education in Tanzania*, CRH. MICHELSEN INSTITUTE WORKING PAPER 10 (2006) available at <http://bora.cmi.no/dspace/handle/10202/53>.

⁸⁹ Ilterme, *supra* note 78, at 7.

⁹⁰ International Monetary Fund/International Development Association, *International Review of the PRSP approach* (2002), at 9.

⁹¹ Jeanette Kuder, *Universal Primary Education in Tanzania: SWAP-ing Quality for Quantity-Again?* 3 GLOBALIZATION, SOCIETIES, & EDUC. 165, 170 (2005).

⁹² Josh Busby, *Bono Made Jesse Helms Cry: International Norms and the*

reduction in the ratio between debt service and government revenue from 24.2% in 1998 to 13.3% in 2003.⁹³ Additional resources from the expanded HIPC initiative contributed to expanded investments in education in many of the Sub-Saharan African nations which subsequently eliminated primary school fees.⁹⁴

After Tanzania abolished primary school fees, its level of primary school enrollment increased dramatically. Between 2000 and 2007, Tanzania's primary enrollment nearly doubled, from 4.4 million to 8.3 million. In addition, the passage rate on primary leaving exams in Tanzania increased from just 22 percent in 2000, to more than 70 percent in 2006.⁹⁵ In order to accomplish these results, Tanzania doubled its per capita education spending between 1999 and 2003.⁹⁶ The Tanzanian government introduced capitation grants through school bank accounts in order to provide replacement financing for textbooks, learning materials, and facility repairs and initiated separate development grants for the cost of school buildings and furniture. Recent scholarship strongly supports the conclusion that the elimination of school fees was the central reason for the rapid increase in primary enrollment in Tanzania.⁹⁷

Jubilee 2000 Campaign, INT'L STUD. Q. 247, 248 (2007).

⁹³Keith Hinchliffe, *Notes on the Impact of the HIPC Initiative on Public Expenditures in Education and Health in African Countries 6*, available at http://siteresources.worldbank.org/INTAFRICA/Resources/HIPC_Impact_04.pdf.

⁹⁴Katarina Tomasevski, SCHOOL FEES AS A HINDRANCE TO UNIVERSALIZING PRIMARY EDUCATION, BACKGROUND STUDY FOR EFA GLOBAL MONITORING REPORT 2003 tbl. 13 available at http://portal.unesco.org/education/fr/files/25755/10739001231School_fees_as_hindrance_to_universalizing_primary_education.doc/School+fees+as+hindrance+to+universalizing+primary+education.doc.

⁹⁵ Frances Vavrus and Goodiel Moshi, *The Cost of a "Free" Primary Education in Tanzania*, INT'L CRITICAL CHILDHOOD POL'Y STUD. 31, 34 (2009).

⁹⁶ Rosa Alonso, *PRSPs and Budgets: A Synthesis of Five Case Studies*, in BUDGET SUPPORT AT MORE EFFECTIVE AID? RECENT EXPERIENCES AND EMERGING LESSONS 179 (S. Koeberle, et. al. 2002), at 25.

⁹⁷ Frances Vavrus, *supra* note 79; Paul Glewwe and Meng Zhao, *Achieving*

The lifting of international constraints opened up critical space for domestic civil society actors and political leaders in countries such as Tanzania to successfully push for the abolition of primary school fees. Although the August 2000 draft of the Tanzanian government's education plan still included primary school fees, amidst weakening international constraints, President Mkapa declared his intentions to eliminate primary school fees.⁹⁸ Tanzania's abolition of primary school fees seems to reflect a turning point in the enforcement of the right to education in Sub-Saharan Africa.

The enforcement of the right to education in Tanzania highlights the role of transnational rights enforcement in overcoming international obstacles by influencing leading international institutions through the reversal of the World Bank's position on school fees and the launch of the HIPC debt relief program. The Tanzania case also suggests the limits of the democracy thesis for explaining the enforcement of the right to education. In Tanzania, often referred to as a "hybrid regime,"⁹⁹ school fee abolition initially preceded multi-party elections by some two decades and subsequently emerged in a country with extremely limited electoral competition. Contemporary news accounts highlighted the ways in which then President Mkapa's campaign reflected a rejection of populist policies because of the near certainty of his re-election.¹⁰⁰ Ultimately, the

Universal Primary Completion by 2015: How Much Will it Cost?, in *EDUCATING ALL CHILDREN: A GLOBAL AGENDA* 36 (J. Cohen, D. Bloom and M. Malin, eds, 2006).

⁹⁸ Ilterme, *supra* note 78, at 6.

⁹⁹ Larry Diamond, *Elections Without a Democracy: Thinking About Hybrid Regimes*, 13 *J. DEMOCRACY* 21, 22 (2002).

¹⁰⁰ *A Modest Success Story*, *ECONOMIST* (Oct 19, 2000) ("It takes unusual confidence to put up taxes on alcohol, tobacco and fuel shortly before an election. But Benjamin Mkapa, Tanzania's president, is quite sure that he will be re-elected on October 29th. . . So he makes no concessions to

opposition received just 8 percent of the vote in the election that preceded school fee abolition.¹⁰¹

The Tanzania case also reveals the significance of regional effects on the enforcement of the right to education as Tanzania's approach quickly became a model for neighboring countries in its region. In the wake of Tanzania's decision to abolish school fees, a number of countries in East Africa quickly followed its approach in eliminating primary school fees.¹⁰² The strongest apparent impact of Tanzania's abolition of school fees was regional, as nearly every neighboring country abolished school fees within just a few years. In 2002, Kenya and Zambia announced the abolition of primary school fees, in 2003 Rwanda followed suit, and in 2005 Burundi and Mozambique also abolished these fees. In less than a decade after the formal reversal of the World Bank's support for primary school fees, the implementation of free primary schooling took hold in countries across Sub-Saharan Africa and marked a major step forward in realizing the right to education. The evidence of regional effects from Tanzania's abolition of school fees strongly suggests that regional variables need to be better incorporated into explanatory models of human rights enforcement as well as the ratification of human rights treaties.

B. LEVERAGING CONSTITUTIONAL COMMITMENTS: GHANA AND SWAZILAND

In Ghana, despite a strong constitutional provision specifying the right

populism. . .”).

¹⁰¹ KJELL HAVNEVICK, *TANZANIA IN TRANSITION: FROM NYERE TO MKAPA*, 244 (2010).

¹⁰² Moses Oketch and Caine Rolleston, *Policies on Free Primary and Secondary Education in East Africa: A Review of the Literature* 31 *REVIEW OF RESEARCH IN EDUCATION*, 131, 132 (2007).

to education and a robust democracy, it took more than a dozen years before the government implemented policies to effectively abolish primary school fees. Calls for free education in Ghana go back as early as 1951 but it was not until 1992 that a new constitution explicitly required the implementation of this aspiration. Like many constitutions around the world, Article 25 of the Ghanaian constitution requires that basic education shall be “free, compulsory, and available to all.”¹⁰³ Unlike nearly any other constitution, Article 38(2) is extremely explicit with regard to implementation and requires that the government “shall within two years after Parliament first meets after the coming into force of this Constitution, draw up a programme for implementation within the following ten years, for the provision of free, compulsory, and universal basic education.”¹⁰⁴

The Free Compulsory Universal Basic Education Programme (FCUBE) in 1996 was the government’s initial legislative effort to implement the constitutional guarantees related to education. When FCUBE was launched fully thirty percent of school age children were not in primary school. The centerpiece of the initiative was the commitment “to make schooling from Basic Stage 1 through 9 free and compulsory for all school-children by the year 2005. . .”¹⁰⁵ However, the FCUBE initiative did little in practice to reduce or eliminate the costs of schooling for households. Without the government directing significant additional resources to schools, many schools introduced a variety of new levies increasing the costs to households.¹⁰⁶

Nearly a decade after the launch of FCUBE, school fees remained prevalent in many parts of Ghana. Borrowing from the strategies that had

¹⁰³ CONSTITUTION OF GHANA, Article 38(2).

¹⁰⁴ *Id.*

¹⁰⁵ Kwame Akyeampong, *Revisiting Free Compulsory University Basic Education (FCUBE) in Ghana*, 45 EDUCATION 181 (May 2009).

¹⁰⁶ *Id.* at 176.

been successfully implemented in East Africa, the national government sought to implement a pilot program to provide capitation grants to local primary schools that did not charge school fees. Beginning in forty districts, the governments introduced these capitation grants amidst “complaints from civil society groups about the country’s inability to fulfill its pledge under the FCUBE to achieve free, compulsory, and universal primary education by 2006.”¹⁰⁷ The initial success of the pilot program brought renewed pressure from civil society actors within Ghana for the government to implement a comprehensive approach to guaranteeing the right to primary education.

The growing influence of domestic civil society actors partly reflected their growing transnational links. The Global Campaign for Education (GCE) was founded in 1999 and helped to catalyze more assertive national coalitions focused on primary education in Ghana and elsewhere.¹⁰⁸ The Ghana National Education Campaign Coalition (GNECC) initially included the Ghana Association of Teachers, the Integrated Social Development Center Ghana, and the Christian Council among other domestic groups. It also included leading INGOs such as Oxfam, Action Aid, and World Vision.¹⁰⁹ In 2005, the coalition developed a formalized decision-making process, established a full-time secretariat, supported in part by an international NGO, and became more active in engaging with the national

¹⁰⁷ Birger Fredriksen, *School Grants: One Efficient Instrument to Address Key Barriers to Attaining Education For All*, available at <http://educationfasttrack.org/media/library/schoolgrants.pdf>.

¹⁰⁸ John Gaventa and Marjorie Mayo, *Spanning Citizenship Spaces Through Transnational Coalitions: The Global Campaign for Education* (IDS Working Papers, 2009), available at http://onlinelibrary.wiley.com/doi/10.1111/j.2040-0209.2009.00327_2.x/abstract.

¹⁰⁹ Tony Burdon: *Oxfam and Ghana’s National Education Campaign Coalition*, in *OWNERSHIP AND PARTNERSHIP: WHAT ROLE FOR CIVIL SOCIETY IN POVERTY REDUCTION?* eds. Ian Smillie and Henri-Bernard Solignac Lecomte (OECD Publications, 2003).

government.¹¹⁰

With support from local and international partners, GNECC launched a campaign for the abolition of school fees in 2005. The group highlighted a national survey showing that 26% of dropouts from school did so because of their inability to pay for the costs of schooling.¹¹¹ Among other actions, the coalition sent a petition to the President of Ghana calling for the “government to make education really free by abolishing all levies, taxes, and barriers to education.”¹¹² As a result of these pressures, the national government’s pilot program was rapidly scaled up across the country which contributed to rapid progress toward universal primary education.¹¹³ In 2005, the Ministry of Education abolished school fees for basic education across the country and introduced a capitation grant for all primary schools.¹¹⁴ The shift led to an expansion of primary enrollment in Ghana by an additional 1.2 million students.¹¹⁵

While Swaziland has a similar level of formal constitutional protection for the right to education as Ghana, it diverges sharply in terms of other key variables such as its level of democracy and the number of INGOs operating in the country. In Swaziland, as in Ghana, the Constitution is quite specific about the guarantee of the right to primary education.

¹¹⁰ Felicitas Van der Plaat, *Civil Society Success in Achieving the Education for All Goals in Ghana* (2009), available at <http://educationanddevelopmentfiles.wordpress.com/2008/04/2009-van-der-plaat.pdf>.

¹¹¹ *Id.*

¹¹² *Coalition Calls on Government to Make Education Really Free*, MODERN GHANA (April 21, 2005), <http://www.modernghana.com/news/76269/coalition-calls-on-govt-to-make-education-really-f.html>.

¹¹³ ABOLISHING SCHOOL FEES IN AFRICA (UNICEF, 2009), at 32.

¹¹⁴ Charles, Yaw Aheto-Tsegah, *Ghana’s Experience with the Capitation Grant*, available at www.globalpartnership.org/media/library/Ghana_Presentation_Final_II_Aheto.ppt.

¹¹⁵ Papa Owusu Ankomah, *Call for Abolition of Fees* (UN Girls Education Initiative) available at http://www.ungei.org/infobycountry/247_885.html.

However, Swaziland is still governed by a monarchy despite the adoption of the Swazi Constitution after a constitutional crisis in 2002. Although classified as a middle income country, Swaziland has a high level of inequality with 69 percent of the population living below the poverty line.¹¹⁶

The Swazi government catalyzed a constitutional crisis after it publicly declared that it would ignore orders of the courts which promoted a mass resignation of judges in the country. Subsequently, the monarchy proposed a new constitution which created a Judicial Services Commission and specified that judges could only be removed upon the recommendation of this Commission. Although the Commission was appointed by the King, this arrangement created some modest level of independence for the judiciary. The right to education within the Swazi Constitution is very explicit about the implementation of free primary education. Article 29.6 of the Constitution provides that all children have the right to free primary education: “every Swazi child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school . . .”¹¹⁷

However, the King of Swaziland gave a speech in early 2009 in which he declared that free primary education was not feasible in the country. Shortly thereafter, the Ex-Miners Workers Association and the Swaziland Council of Churches brought a case seeking the intervention of the recently established High Court regarding the constitutional obligation to make primary education free for all children.¹¹⁸ Although the case was originally

¹¹⁶ Lomcebo Dlamini, *Swaziland: The Advent of the New Constitution and the Challenge of Change*, in *OUTSIDE THE BALLOT BOX* (2006) available at <http://archive.niza.nl/docs/200702131328321333.pdf#page=173>.

¹¹⁷ CONSTITUTION OF SWAZILAND, Article 29(6).

¹¹⁸ Press Release, Southern African Litigation Centre, Swaziland Supreme Court to Hear Free Education Case (May 6, 2010), available at

financed by the Council of Churches, these plaintiffs later received financial support from the Open Society Initiative in Southern Africa to cover litigation expenses and to pay for a study showing that government resources were available to implement free primary education.¹¹⁹ The government argued that it was already covering the cost of school fees for orphan children and that it could comply by progressively realizing the right to education. However, the High Court issued a declaratory order in 2009 that the right to education was an inviolable right and that it was not designed to be subject to progressive realization.¹²⁰ The Court ruled that “every Swazi child of whatever grade attending primary school is entitled to education free of charge, at no cost and no requirement of any contribution of any such child regarding tuition, supply of textbooks, and all inputs that ensure access to education.”¹²¹

After the Court’s decision, the Ministry of Education announced its plan for complying with the decision. The education minister interpreted the ruling as requiring only “a consolidated program aimed at creating an environment characterized by minimum barriers to quality primary education.”¹²² The government’s plan provided for instituting free primary education only in grades one and two starting in 2010 and for the gradual expansion of free primary education. Although the plaintiffs obtained an order from the Court barring all head teachers from turning children away who failed to pay their fees, this order was not enforced or implemented by

www.southernaficalitigationcentre.org/download/5/14.

¹¹⁹ Lisa Steyn, *Setback for Free Education in Swaziland*, MAIL AND GUARDIAN (2010) available at <http://mg.co.za/article/2010-05-31-setback-for-free-education-in-swaziland>.

¹²⁰ Benyan Mezmur, *High Court of Swaziland: Primary Education-For Free or Fee*, in CHILDREN’S RIGHTS IN AFRICA: A LEGAL PERSPECTIVE (Julia Sloth-Nielsen, ed.).

¹²¹ *Id.*

¹²² Swaziland, *Free Education? Maybe Next Year*, available at <http://ipsnews.net/africa/nota.asp?idnews=45589>.

schools in the country.¹²³

While the High Court catalyzed new urgency in achieving universal primary education, it later retreated from its own ruling. In a claim brought before the High Court of Swaziland the following year to enforce the initial decision, the Court ruled that the government did not have to provide free primary education for all children. Instead, the Court declared that the “characterization of the rights of the Swazi child to fee-free education as a fundamental right was overambitious.” In effect, the Court labeled its prior ruling as merely a “declaration” and ruled that free primary education could be implemented with a more gradual approach.¹²⁴

Country	Democracy	Constitution	INGO	Abolition
Ghana	Strong	Strong	High	Yes
Swaziland	Non-Democratic	Strong	Low	No

While Ghana demonstrates the potential of explicit constitutional protection to contribute to the enforcement of the right to education, Swaziland highlights the limits of such protection. Even in Ghana, it took thirteen years between the establishment of a clear constitutional obligation with respect to free primary education and the realization of the right to education. Furthermore, it would have almost certainly taken longer

¹²³ JACKSON ROGERS, A CASE FOR JUDICIAL ENFORCEMENT OF POSITIVE SOCIO-ECONOMIC CONSTITUTIONAL RIGHTS: STRONG-WEAK REVIEW, THE RIGHT TO FREE PRIMARY EDUCATION AND THE HIGH COURT OF SWAZILAND (2010), 92 *available at* http://www.etd.ceu.hu/2010/rogers_jackson.pdf.

¹²⁴ Grace Nkhoma, OUR RIGHT TO LEARN: FREE PRIMARY EDUCATION CAMPAIGN, OSISA ANNUAL REPORT (2009) *available at* http://www.osisa.org/sites/default/files/sup_files/OSISA%20Annual%20Report%202009.pdf.

without transnational civil society mobilization which accelerated the implementation of the capitation grant throughout the country. Finally Ghana, like Tanzania, benefitted from the weakening of international constraints that resulted from the reversal of the World Bank's approach and the HIPC debt relief initiative.

In explaining the shift toward free primary education within Ghana, officials from the government highlighted the role of public pressure and the explicit requirements of the constitution. One former Director General of the Ministry of Education highlighted the role of civil society actors in accelerating the enforcement of the right to education through the emergence of GNECC as an effective coalition.¹²⁵ One former chief director of the Education Ministry highlighted the significance of the explicit constitutional mandate: "FCUBE was started in 1996 and ended in 2005. It was driven by a constitutional mandate . . . successive governments cannot run away from this."¹²⁶ Despite this explicit constitutional mandate, it took thirteen years from the ratification of the Constitution to the implementation of free primary education and it remains unclear what the prospects for this shift would have been without robust civil society pressure to abolish school fees by 2005. Thus, strong constitutional protection did matter in Ghana but it was not itself a sufficient condition for the enforcement of the right to education without transnational civil society mobilization to overcome international constraints and catalyze accelerated domestic action.

In Swaziland, explicit constitutional protection has not been sufficient to generate government compliance with respect to the right to education. Despite the reluctance of the High Court to enforce its initial ruling, that

¹²⁵ Van der Plaat, *supra* note 110, at 73.

¹²⁶ Angela Little, *Access to Basic Education in Ghana: Politics, Policies, and Progress*, at 32, available at www.create-rpc.org/pdf_documents/PTA42.pdf.

decision did catalyze action by the government to begin to implement free primary education. As one Education Ministry official explained: “The civil service does still tend to look at the Constitution as just a piece of paper. But the decision of the High Court created a noticeable change here. There was all of a sudden an urgency to realize Free Primary Education for all.”¹²⁷ Given its lack of effective democratic institutions, Swaziland is an unlikely case to have demonstrated any progress on school fee abolition under the democracy thesis. Therefore, the modest progress that it has made in implementing free primary schooling in the early grades could still be viewed as somewhat surprising from this vantage point.

Transnational civil society collaboration clearly contributed to the initially successful litigation efforts in Swaziland but that nature of that collaboration was actually quite limited. Unlike in Ghana, where a national coalition focused on the right to education included many international NGOs which had deep ties to a global campaign, in Swaziland the transnational links were largely limited to the financing of litigation efforts within the country. Thus, the Swaziland case highlights that external financing alone is unlikely to be sufficient for transnational rights enforcement. It also suggests that transnational civil society mobilization is more likely to be effective in countries with more responsive political institutions and a greater degree of judiciary independence.

C. ENHANCING REGIONAL EFFECTS: COLOMBIA AND NIGERIA

Even as momentum toward abolishing school fees was accelerating in Sub-Saharan Africa, there remained a major hold-out on the issue in the

¹²⁷ Rogers, *supra* note 123, at 65.

Latin American context. Early in the 21st century, nearly every country in Latin America had eliminated primary school fees except for Colombia.¹²⁸ The right to primary education was already quite well established in regional agreements in Latin America. The San Salvador Protocol, signed by Colombia and other countries in the region, requires that primary education “be compulsory and accessible to all without cost.”¹²⁹ The right to education is one of just two rights in the San Salvador Protocol which have explicitly been determined to be justiciable before the Inter-American Court of Human Rights.¹³⁰ While international institutions were an obstacle to eliminating school fees in Tanzania and Sub-Saharan Africa, regional institutions and regional collaboration in Latin America created a foundation for eliminating primary school fees in Colombia.

Rates of primary education completion are lower in Colombia than in most other Latin American countries and the country generally performs poorly on international quality comparisons. Colombia’s status as a laggard within the region in terms of primary education dates back to the 19th century.¹³¹ One of the key challenges as the country entered the 21st century was the inequitable access to education in poor rural areas.¹³² Many

¹²⁸ KATTAN AND BURNETT, *supra* note 70, at 48.

¹²⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (“Protocol of San Salvador”), adopted November 14, 1988, *available at* www.oas.org/juridico/english/treaties/a-52.html.

¹³⁰ I. FIGUEROA-IRIZARRY, REMEDIES WITHOUT RIGHTS? REPARATIONS AND THE DEVELOPMENT OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN THE INTER-AMERICAN SYSTEM 7 (2010) *available at* http://works.bepress.com/iris_figueroa/1/.

¹³¹ MARIA TERESA RAMIREZ AND IRENE SALAZAR, THE EMERGENCE OF EDUCATION IN THE REPUBLIC OF COLOMBIA IN THE 19TH CENTURY: WHERE DID WE GO WRONG?, 3 (2007), *available at* <http://www.international.ucla.edu/economichistory/summerhill/ramirezsalazar.pdf>.

¹³² BEN MEADE AND ALEC IAN GERSHBERG, RESTRUCTURING TOWARD EQUITY: EXAMINING RECENT EFFORTS TO TARGET RESOURCES TO THE POOR IN COLOMBIA 3 (2008), *available at* <http://ddp->

of the poorer and more isolated regions continued to lag far behind the urban areas in terms of access to education.¹³³ The success of Colombia's Gratuidad program, which eliminates primary school fees for low-income children in Bogota, demonstrated the continuing significance of cost barriers in shaping access to education in the Colombia.¹³⁴

For nearly a decade, various international bodies monitoring Colombia's human rights obligations had unsuccessfully called on the government to implement free primary education. In 2001, the Committee on Economic, Cultural, and Social rights concluded that Colombia was not fulfilling its obligation to "secure . . . compulsory primary education free of charge."¹³⁵ In 2006, the Committee on the Rights of the Child found that the government's failure to implement free primary education "created a discriminatory educational system marked by arbitrary fees and social exclusion."¹³⁶ The Committee further recommended that national legislation be amended to "clearly reflect the right to free primary education."¹³⁷ A number of academics within the country, such as Dr. Rodrigo Uprimmy Yepes, similarly argued that Colombia's "obligation based on international norms is very clear" and contended that the country

ext.worldbank.org/EdStats/COLgmrpap08.pdf.

¹³³ *Id.*, at 27.

¹³⁴ Felipe Barrera-Osorio, *The Effects of a Reduction in User Fees on School Enrollment: Evidence From Colombia*, in *GIRLS EDUCATION IN THE 21ST CENTURY* 204 (Tembon and Fort eds., 2008).

¹³⁵ COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, CONCLUDING OBSERVATIONS (2001), *available at* <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/22fa4f8348c81452c1256b44004993e3?OpenDocument>.

¹³⁶ COMMITTEE ON THE RIGHTS OF THE CHILD, *CONCLUDING OBSERVATIONS* (2006), *available at* <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/0608d5984fda5338c125788e00459559?OpenDocument>.

¹³⁷ *Id.*

was 30 years overdue in implementing its obligations with respect to free primary education.¹³⁸

In 2010, the Committee on Economic, Social, and Cultural Rights completed another review of Colombia, and again expressed its concern that “free and compulsory education is not fully ensured, as families continue to pay for the provision of educational services. . . .”¹³⁹ The Committee recommended “immediate measures” by the government to ensure access for all children to free primary education.¹⁴⁰ However, none of these international recommendations directly catalyzed action on the part of the government of Colombia to eliminate primary school fees.

In 2008, a new coalition of Colombian NGOs joined with a regional network in Latin America, the Latin American Campaign for the Right to Education (CLADE), to launch a new campaign for free education in Colombia.¹⁴¹ CLADE and the Colombian Coalition for the Right to Education joined with the United Nations Special Rapporteur for the right to education to organize a workshop analyzing innovative strategies for achieving free education in Colombia.¹⁴² The key role of regional allies was later highlighted by the Coordinator of the Colombian Coalition: “the Role played by CLADE at regional and international levels through its justiciability initiative has been key, by contributing with the instruments

¹³⁸ Dr. Rodrigo Uprimmy Yepes, *El Significado de la Gratuidad del Derecho a la Educación*, DEJUSTICIA (June 2006), available at http://www.dejusticia.org/interna.php?id_tipo_publicacion=2&id_publicacion=179.

¹³⁹ COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *CONCLUDING OBSERVATIONS* (2010), available at <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aa/ac506acb8ac7ab6fc12577300041782a?OpenDocument>.

¹⁴⁰ *Id.*

¹⁴¹ *CLADE and the Colombian Coalition for the Right to Education Launch the Campaign for Free Education in Colombia*, (August, 2008), available at <http://www.campanaderechoeducacion.org/action.php?i=162>.

¹⁴² *CLADE and the Colombian Coalition*, *supra* note 141.

and networking that otherwise would have been available for the process.”¹⁴³

In 2008, the Robert F. Kennedy Human Rights Center (RFK Center) released a report alleging that Colombia was in violation of Article 13 and Article 16 of the Protocol of San Salvador for allowing fees to be charged for primary education. The report found that only 18 percent of indigenous children and 13 percent of Afro-Colombian children actually completed primary school.¹⁴⁴ The Inter American Commission on Human Rights (IACHR) provides a petition mechanism through which individuals can allege violations of human rights that have been codified in regional treaties.¹⁴⁵ In 2008, the RFK Center and its collaborators presented their findings to a session of the IACHR to highlight the lack of availability of free primary education and bring greater regional pressure to bear on Colombia.¹⁴⁶ The same year, the Ombudsman for Human Rights in Colombia found that nearly 75% of municipalities charged fees for educational services and the Colombian Commission of Jurists determined that one of the main reasons that many children left school was the cost of school fees.¹⁴⁷

In 2009, DeJusticia, a group closely aligned with the Colombian Campaign for the Right to Education, filed a petition before the Colombian Constitutional Court challenging the government’s failure to protect the right to primary education. The petition highlighted Colombia’s status as

¹⁴³ *Interview with Illich Ortiz*, Colombian Campaign for Free Education, available at <http://www.campanaderechoeducacion.org/action.php?i=483>.

¹⁴⁴ Robert F. Kennedy Center for Justice and Human Rights, *Right to Education of Afro-Descendent and Indigenous Peoples in the Americas* 63 (2008) available at http://www.rfkcenter.org/files/20090907_rt2ed_ENG.pdf.

¹⁴⁵ Marselha Goncalves Margerin, *The Right to Education: A Multi-Faceted Strategy for Litigating before the Inter-American Commission on Human Rights*, Human Rights Brief 17, no. 4 (2010): 19-24.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 72.

the only country in Latin America which allowed for primary school fees in government schools.¹⁴⁸ It argued that Colombia's practice was in clear violation of its obligations under the International Covenant on Social, Economic, and Cultural Rights, the San Salvador Protocol, and the Convention on the Rights of the Child.¹⁴⁹ The petition pointed to the Constitutional Court's recognition, in prior cases, that the country's international human rights obligations are incorporated into the national constitution.¹⁵⁰

An amicus brief by the Cornell Law School International Human Rights Clinic, the RFK Center, and NOMADESC, cited the fact that every other Latin American country implemented its international legal obligation to guarantee free primary education.¹⁵¹ The amici argued that, under its commitment to international and regional human rights treaties, "Colombia is generally obligated to immediately provide free primary education for all citizens . . ."¹⁵² The brief emphasized the range of regional agreements to which Colombia was a party which guaranteed the right to education, including the San Salvador Protocol, the charter of the Organization of American States, and the American Declaration on the Rights and Duties of Man.¹⁵³ Finally, it emphasized how much of an outlier Colombia represented in the region: "Colombia remains the only country in Latin

¹⁴⁸ *Petition*, at 4 available at http://www.lawschool.cornell.edu/academics/clinicalprogram/int-human-rights/upload/Demanda-III-28-09-09-_FINAL_.pdf.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 6.

¹⁵¹ *Amicus Brief Prepared by the Cornell International Human Rights Clinic, Robert F. Kennedy Center for Justice and Human Rights and Association NOMADESC*, available at <http://www.lawschool.cornell.edu/academics/clinicalprogram/int-human-rights/upload/Colombia-Amicus-Brief-w-Annexes-Report-ENG-FINAL.pdf>.

¹⁵² *Id.*, at 10.

¹⁵³ *Id.* at 3-4.

America that explicitly authorizes educational institutions to charge fees, even at the primary level.”¹⁵⁴

The Court ruled that the underlying law upon which the government relied to charge primary school fees was unenforceable. It recognized that the delegates to the Constitutional Convention of 1991 explicitly allowed for the possibility of charging school fees to those who could afford them but the Court held that it did not apply to primary education. The Court reasoned that because free primary education was an integral part of Colombia’s human rights obligations, under regional and international agreements, the Constitution could not be interpreted to allow the government to charge school fees at the primary level.¹⁵⁵ The Court cited the San Salvador Protocol for the proposition that primary education must be available to all free of charge.¹⁵⁶

The government of Colombia quickly took action to implement the Court’s decision. Subsequently, the director of Department of Provision and Equity of the Vice Ministry of Preschool, Basic and Secondary Education announced that “the free education program is already being implemented across the country.”¹⁵⁷ Before the end of 2010, the Secretary of Education issued a resolution requiring that Medellin, the country’s second largest city, follow Bogota in eliminating the use of primary school fees.¹⁵⁸ As of January 2012, according to the Minister of Education, the

¹⁵⁴ *Id.* at 10.

¹⁵⁵ Colombian Constitutional Court Decision C-376/10, available at <http://www.lawschool.cornell.edu/academics/clinicalprogram/int-human-rights/upload/C-376-10-1-right-to-free-education.pdf>.

¹⁵⁶ *Id.*

¹⁵⁷ Patricia Camacho, quoted in *Schools Must Steer Their Course Towards Achieving Free Education* (2010) available at <http://www.campanaderechoeducacion.org/action.php?i=481>.

¹⁵⁸ Resolucion pro la Gratuidad en Medellin tiene gran valor simbolico para las otras ciudades pequenas, afirma abogado que apoya a la Coalicion Colombiana, (December, 2010) available at

government would no longer permit schools to charge enrollment and service fees.¹⁵⁹

Although Nigeria is closely tied to Colombia in terms of the major variables which are the focus of leading explanations of human rights enforcement, the impact of regional institutions and regional norms proved to be quite different with respect to the right to education. Since its transition to democracy over a decade ago, Nigeria has had several competitive multi-party elections. The country has a relatively high number of INGOs. Despite a relatively weak level of constitutional protection for the right to education, Nigeria is also a party to strong regional treaties which include the right to education. Despite these apparent built-in advantages in terms of human rights enforcement, the Nigerian government has not yet abolished primary school fees.

In Nigeria, the constitution provides that the “Government shall, as when practicable, provide free compulsory and universal primary education.”¹⁶⁰ In 2004, the government of Nigeria enacted the Compulsory Free Universal Basic Education Act which in theory guarantees the provision of free, compulsory and universal education at the primary level throughout Nigeria.¹⁶¹ The Act provides that at least 2 percent of the Consolidated Revenue Fund of the federal government, state and local governments should be used to fund basic education. The Nigerian Courts have held that they are precluded by Section 6(6)(c) of the Constitution from enforcing the provisions of Chapter II, including economic and social

<http://www.campanaderechoeducacion.org/justiciabilidad/clad.php?catId=1&contId=30&p=1>.

¹⁵⁹ CLADE, *supra* note 141.

¹⁶⁰ Constitution of the Federal Republic of Nigeria, (Promulgation) Decree 1999 (No 24 1999).

¹⁶¹ *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*, available at http://www.escrefnet.org/caselaw/caselaw_show.htm?doc_id=1143047.

rights.¹⁶² The African Charter on Human and People's Rights, with its strong protection for the right to education, is domestic law in Nigeria, second only to Nigeria's constitution in its authoritativeness.¹⁶³ Although Nigeria ratified the strong provisions of the African Charter which has no limitations on justiciability, Nigerian courts interpreted the Constitution to make these obligations non-justiciable.¹⁶⁴

The Socio-Economic Rights Accountability Project, based in Nigeria, filed a series of claims regarding the right to education and the government's failure to implement free primary education. SERAP is not an INGO but does receive funding from external donors including the Open Society Initiative for West Africa, the MacArthur Foundation, and the National Endowment for Democracy. In 2005, SERAP challenged the failure of the government of Nigeria to implement the right to education before the African Commission. In *SERAP v Nigeria*, the Commission rejected the case on the grounds that SERAP had not adequately exhausted its local remedies. Although SERAP highlighted the fact that the claim it was bringing would not be justiciable in Nigerian courts, the Commission concluded that "the complainant could have made attempts to utilise the local remedies available instead of making presumptions that this complaint would not be heard since Nigerian courts do not generally regard economic and social rights as legally enforceable human rights . . ."¹⁶⁵

Regional courts within Africa have been more aggressive in interpreting the African Charter's provisions with respect to the right to

¹⁶² *Archbishop Anthony Olunmi Okogie and 6 Others v. Attorney-General of Lagos State* (1981) NIG. CONST. L. REPS.

¹⁶³ Chidi Anselm Odinkalu, *The Impact of Economic and Social Rights in Nigeria: An Assessment of the Legal Framework for Implementing Education and Health as Human Rights*, in GAURI AND BRINKS, *supra* note 47, at 180.

¹⁶⁴ GAURI AND BRINKS, *supra* note 47, at 324.

¹⁶⁵ *African Commission, SERAP v. Nigeria* (Adopted July 29, 2008).

education. In West Africa, the Economic Community of West African States (ECOWAS) is a regional body consisting of fifteen states with the primary mission of promoting regional economic integration. The ECOWAS Community Court of Justice was created by a protocol of member states and formally came into existence in 1993.¹⁶⁶ In 2004, the Court asked the Commission to widen its jurisdiction to include suits filed by private parties alleging violations of either ECOWAS treaties or other secondary laws. Unlike in many courts, these plaintiffs do not have to exhaust their domestic remedies before bringing suit.¹⁶⁷ In recent years, the ECOWAS Community Court of Justice has stepped in where national courts would not with respect to the right to education and other human rights.

In *SERAP vs. Federal Republic of Nigeria and Universal Basic Education Commission*, the plaintiffs challenged the government of Nigeria before the ECOWAS Community Court of Justice for alleged violations of the right to education and other rights under the African Charter on Human and Peoples' Rights.¹⁶⁸ The ECOWAS Community Court of Justice ruled that it had jurisdiction to adjudicate violations of the African Charter on Human and Peoples' Rights for signatory countries within ECOWAS, including Nigeria. The court determined that it had jurisdiction to adjudicate claims related to the right to education and rejected the Nigerian government's assertion that education "is a mere directive policy of the government and not a legal entitlement of the citizens."¹⁶⁹

¹⁶⁶Solomon Ebobrah, *A Rights-Protection Goldmine or a Waiting Volcanic Eruption? Competence of, and Access to, the Human Rights Jurisdiction of the ECOWAS Community Court of Justice*, 7 AFR. HUM. RTS. L. J. 307, 308 (2007).

¹⁶⁷Karen Alter and Laurence Helfer, *The New Human Rights Court for West Africa: The ECOWAS Community Court of Justice*.

¹⁶⁸*Id.*

¹⁶⁹*Id.*

In its decision, the ECOWAS Community Court of Justice asserted its jurisdiction over the right to education and other human rights contained within the African Charter regardless of how the Nigerian government interpreted those obligations: “The Court has jurisdiction over human rights enshrined in the African Charter and the fact that these rights are domesticated in the municipal law of the Federal Republic of Nigeria cannot oust the jurisdiction of the Court.”¹⁷⁰ The Court also reaffirmed its broad view of standing under which it required merely that a plaintiff establish that “there is a public right which is worth of protection and which has been allegedly breached . . .”¹⁷¹

Article 15(4) of the ECOWAS treaty makes the judgment of the Court binding on member states. In November, 2010 the Court ordered the government of Nigeria to replenish the shortfall in funding within the education sector required to implement free primary education.”¹⁷² In enforcing its decision, the ECOWAS Court ruled that Nigeria “should take the necessary steps to provide the money to cover the shortfall to ensure a smooth implementation of the education programme, lest a section of the people should be denied a right to education.”¹⁷³ After the decision, civil society actors issued an open letter to the President of Nigeria calling for full implementation of the ECOWAS judgment and highlighting the country’s international obligations with respect to the right to education. Subsequently, the leader of the Nigerian Senate announced his intention to implement the ruling and referred action to the Senate Committee on Inter-

¹⁷⁰ *Socio-Economic Rights and Accountability Project v. Federal Republic of Nigeria Universal Basic Education Commission*, ECW/CCJ/APP/0808 (2009).

¹⁷¹ *Id.*

¹⁷² *SERAP, Others Insist on Free Education*, available at AllAfrica.com.

¹⁷³ *Socio-Economic Rights and Accountability Project v. Federal Republic of Nigeria and Universal Basic Education Commission*, ECW/CCJ/JUD/07/10 (2010).

Parliamentary Affairs, but the government has not implemented free primary education within the country.

Country	Democracy	Constitution	INGO	Abolition
Colombia	Weak	Moderate	High	Yes
Nigeria	Weak	Moderate	High	No

Neither Colombia nor Nigeria fit neatly within the democratization thesis or the constitutional thesis. In Colombia, school fee abolition was weakly connected to democratization and in Nigeria democracy was not enough to catalyze school fee abolition. Colombia already had a strongly rooted tradition of contested multi-party elections well before the decision by the Constitutional Court.¹⁷⁴ In Colombia, the commitment to eliminate school fees did not emerge from electoral competition. Meanwhile, Nigeria has not yet implemented the right to education despite over a decade of competitive multi-party elections.

Although both Nigeria and Colombia have similar numbers of INGOs, the role of transnational mobilization has been quite different in each country. The absence of significant transnational mobilization in the Nigeria case, beyond external financial assistance for SERAP, also suggests the significance of transnational civil society partnerships for accelerating the implementation of rights enforcement as was the case in Colombia. While financing is clearly a significant enabler of civil society efforts to catalyze enforcement of the right to education it may not be the most

¹⁷⁴ Larry Diamond, *Is the Third Wave Over?* 7 J. DEMOCRACY 20, 33 (1996).

important contribution of international allies. The South-South collaboration in the Colombia case went well beyond financial assistance or even global framing to concrete collaboration to build on the success in neighboring countries and accelerate the implementation of a strong regional norm.

Regional institutions were important actors in both cases but were not powerful enough to catalyze the implementation of free primary education in either case. Regional civil society actors framed Colombia as a regional outlier in terms of the right to education by highlighting its regional human rights obligations. Thus, regional actors and regional norms related to the right to education proved more significant than regional human rights institutions in the Colombia case. In Nigeria, despite strong regional treaty obligations regarding the right to education and increasingly assertive regional institutions in terms of human rights enforcement, the national government has yet to comply with these obligations.

Although the Inter-American Human Rights system has become increasingly active on a range of human-rights questions over the last decade, Colombia has complied with less than one-third of the decisions and recommendations of its bodies. The rate of overall compliance does increase in cases in which international NGOs are involved in proceedings but this limited effect does not counter high levels of non-compliance.¹⁷⁵ Thus, the Inter-American system has a longer tradition than ECOWAS in engagement with human rights but the level of compliance by member states is not always necessarily better.

It is significant that Colombia occupies a region where just about every

¹⁷⁵ Fernando Felipe Basch, *The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance with its Decisions*, SUR JOURNAL-INTERNATIONAL JOURNAL ON HUMAN RIGHTS 29 (2010).

other country has implemented free primary education while Nigeria occupies a region in which slightly over one-third of all countries have implemented free primary education. Thus, empowered regional institutions and strong legal norms appear important causal factors but not necessarily sufficient to catalyze the enforcement of the right to education. In addition, the sharp contrast between the important role of the Constitutional Court in Colombia and the non-justiciability of the right to education in Nigeria highlights the significant interactive effect between regional norms, regional institutions and the role of domestic courts.

III TRANSNATIONAL RIGHTS ENFORCEMENT

A. EXPLAINING RIGHTS ENFORCEMENT

Neither the democracy thesis nor the constitutional protection thesis can adequately explain the enforcement of the right to education. Democracy is rarely a sufficient condition for national enforcement of the right to education and even the most explicit constitutional provisions requiring free primary education are not always sufficient. However, both democracy and constitutional protection of the right to education can nonetheless be factors in human rights enforcement under certain conditions.

In the cases examined here, electoral competition seemed to be less important than it may be in other contexts in explaining the elimination of primary school fees. In Tanzania, limited democratization did not prevent the abolition of school fees and, in Nigeria, democracy was not sufficient to lead to the enforcement of the right to education. In the other cases in which school fees were abolished, competitive elections had existed for some time and did not seem to be a decisive factor. Even in an autocracy, significant steps toward school fee abolition seem to be possible. The most

important contribution of democratization may actually be that it opened up opportunities for domestic civil society groups to operate freely, form transnational alliances, and adopt human rights frames that hold the potential to leverage government action.

The constitutional protection thesis similarly demonstrates only a modest impact in the cases examined. While extremely specific constitutional language on implementing the right to education was a crucial factor in the abolition of school fees in Ghana it was insufficient to catalyze fee abolition in Swaziland. However, countries without clear constitutional provisions requiring free primary education, such as Tanzania and Colombia, nonetheless implemented free primary education.

The INGO thesis fares somewhat better in explaining the enforcement of the right to education. However, the simplified version of this thesis which focuses on a simple count of INGOs within a given country has much more limited explanatory power than a more robust version which would focus on the nature of transnational civil society mobilization in support of the right to education. Merely counting the number of INGOs in each country would have led one to expect more significant progress on the enforcement of the right to education within the Nigerian case and somewhat less favorable outcome in terms of school fee abolition within Tanzania. The cases examined here also offer new insight into the mechanisms through which INGOs exert influence, a critical missing dimension of recent research which highlights the significance of these groups.¹⁷⁶

Overcoming international constraints imposed by international institutions seems to be one of the most significant roles for transnational

¹⁷⁶ See Hafner-Burton and Tsusui, *supra* note 11, at 418; Neumayer, *supra* note 7, at 926.

mobilization. On the other hand, providing financial assistance seems to be insufficient to contribute to meaningful state compliance with respect to the right to education. However, when tangible resources are paired with global frames that can enhance the nature of domestic commitments, transnational mobilization seems to have a greater effect. The frames and strategies that emerge from transnational mobilization appear ultimately to be more significant than the more tangible resources which are easier to quantify. Regional collaboration and transnational mobilization that shift the constraints imposed by international institutions seem to hold much greater promise.

Transnational rights enforcement operates in at least three different ways that contribute to national human rights enforcement. First, transnational rights enforcement operates by overcoming international constraints to domestic enforcement. Without the shift in the World Bank's position on school fees, many of the countries which abolished school fees in Sub-Saharan African would have less likely to do so. Transnational rights enforcement matters because it expands the space within which domestic actors can operate and because it offers global frames which provide additional leverage to domestic civil society actors for national compliance. Domestic actors are often quite limited in their ability to alter these international constraints when acting alone but transnational civil society collaborations can catalyze shifts in the national playing field by altering the positions of international institutions. The shift in the World Bank's formal position opened up significant space for domestic political actors to re-evaluate national implementation of the right to education and successfully press for abolishing these fees in many Sub-Saharan African countries.

Second, transnational rights enforcement operates by utilizing international norms and global frames to leverage domestic commitments and constitutional protections. Both strong and weak constitutional protections of the right to education contributed to the abolition of school fees only when transnational civil society actors framed these protections in the context of international norms. Some scholars have suggested that the true significance of national ratification of human rights treaties is that it provides new frames of reference for domestic actors to mobilize around with respect to human rights.¹⁷⁷ Arguably more important than ratification itself, are the linkages enabled by ratification that allow transnational civil society actors to develop frames that empower domestic actors to more effectively enforce rights.

Finally, transnational rights enforcement acts through the diffusion of regional norms and by leveraging regional treaty obligations and regional institutions. In Colombia, the formation of a national coalition around the right to education was inspired by collaborations with regional allies who had successfully secured the elimination of school fees elsewhere in the region. The central legal arguments put forward before the Constitutional Court of Colombia reflected the advanced stage of regional implementation of the right to education. Transnational actors had successfully highlighted Colombia's outlier status within Latin America and its regional human rights obligations as a strong basis for national compliance. However, in West Africa, the lack of regional adoption seems to be an important factor

¹⁷⁷ SIMMONS, *supra* note 1, at 373 (“Human rights outcomes are highly contingent on the nature of domestic demands, institutions, and capacities. In this highly contingent context, local agents have the motive to use whatever tools may be available and potentially effective to further rights from which they think they may benefit . . . I have emphasized throughout that treaties are not a silver bullet through the heart of the world's dictatorial regimes. Yet, they offer some leverage where repression itself can be contested.”).

contributing to the weak enforcement of the right to education in Nigeria despite increasingly assertive regional institutions.

Regional effects have been previously highlighted as a factor in the ratification of human rights treaties, such as the International Covenant on Civil and Political Rights,¹⁷⁸ the International Criminal Court,¹⁷⁹ as well as treaties protecting children's rights.¹⁸⁰ However, there is still limited understanding of the underlying causal mechanisms which contribute to regional effects.¹⁸¹ In the case of the right to education, peer pressures from neighboring countries were enhanced by transnational civil society mobilization in support of the abolition of school fees across many countries in the region.

Although transnational rights enforcement most strongly reflects the INGO thesis, it also highlights the conditions under which democracy and strong constitutional protections are most likely to be important. Strong constitutional protection matters most when the language on implementation is extremely explicit and when there are strong regional norms which reinforce domestic compliance. In addition, this protection matters more when civil society actors have access to forums, both national and regional, to seek enforcement of human rights. While democracy is neither an essential nor a sufficient condition for the implementation of the right to education, it does appear that strong constitutional protection will matter more within democratic than non-democratic countries. Democratic governments are more likely to face pressure to comply with their own commitments and less likely to intervene to prevent the judiciary from

¹⁷⁸ Simmons, *supra* note 1.

¹⁷⁹ Heather Smith, *The International Criminal Court and Regional Diffusion*, (Fifth Pan European Conference on International Relations, 2004) available at <http://web2.uconn.edu/hri/documents/papers/HeatherSmith.pdf> HEATHER.

¹⁸⁰ Simmons, *supra* note 1.

¹⁸¹ *See Id.*, at 31; Goodman and Jinks, *supra* note 1.

enforcing those obligations.

Understanding the interaction between international and domestic realms remains one of the biggest challenges facing researchers.¹⁸² Recent literature has suggested that international institutions are not only a source of constraints but also a source of opportunities for civil society, which might vary depending on the openness of the institution to participation by international NGOs.¹⁸³ The relative openness of the World Bank to influence by civil society actors based in the United States contributed to the important role for transnational action in challenging international constraints on national enforcement of the right to education.

Despite the centrality of international civil society actors in this account of transnational rights enforcement, it would be a mistake to conclude that meaningful enforcement can be achieved without an empowered and mobilized domestic civil society. In fact, one of the most important contributions of international civil society actors is often to unleash the real and perceived constraints imposed by international institutions and other external actors in a way that empowers domestic civil society. While national courts successfully resisted pressures against social and economic rights from international institutions in Europe,¹⁸⁴ it is much more difficult for courts to assume the same role in many low-income countries which depend heavily on external donor financing. In these contexts, transnational civil society actors may serve a parallel role in

¹⁸² Peter Gourevitch, *Domestic Politics and International Relations*, in HANDBOOK OF INTERNATIONAL RELATIONS 310 (W. Carlsnaes, T Risse, and BA Simmons, eds. 2002).

¹⁸³ Kathryn Sikkink, *Patterns of Dynamic Multi-Level Governance and the Insider-Outsider Coalition*, in TRANSNATIONAL PROTEST AND GLOBAL ACTIVISM 156 (Della Porta and Tarrow, eds. 2005).

¹⁸⁴ Scheppele, *supra* note 1.

defending the priority of social and economic rights against the competing objectives of international institutions.

Global human rights frames are much more successful in leveraging policy change when translated into relevant local contexts.¹⁸⁵ Translators can switch between different frames to connect domestic realities with international legal frameworks.¹⁸⁶ While transnational civil society action to expand primary education might have been possible without a well articulated right to free primary education, that obligation provides a shared language that unites disparate groups across national boundaries. The contingency of human rights enforcement, in the case of the right to education, will depend not only on domestic demands¹⁸⁷ but also on the capacities and frames brought to bear by international civil society actors and the constraints imposed by international institutions. The greater the international constraints on the enforcement of human rights, the more essential will be the role of international civil society actors in re-shaping the domestic opportunity structure. Yet even in contexts in which domestic constraints are more limited, transnational rights enforcement remains an important mechanism for empowering domestic actors and catalyzing national compliance.

Transnational rights enforcement poses a challenge to the views put forward by a number of scholars that human rights discourse is usually externally imposed on developing countries.¹⁸⁸ Scholarly critics of the human rights movement have pointed to the problematic framing of

¹⁸⁵ Merry, *supra* note 57.

¹⁸⁶ *Id.*

¹⁸⁷ SIMMONS, *supra* note 1, at 373.

¹⁸⁸ See Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, HARV. INT'L L. J. (2001); DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* (2005).

Southern victims and Northern saviors¹⁸⁹ and argued that human rights frames reflect an alien ideology in many societies.¹⁹⁰ One important facet of this critique is the failure of international NGOs to focus on social and economic rights.¹⁹¹ Human rights discourse is seen as de-mobilizing advocates¹⁹² and discouraging political engagement among rights holders.¹⁹³

In the case of NGOs using human rights frames to challenge the policies of the World Bank on user fees, civil society actors portrayed the policies of the North as the underlying problem and called for greater freedom of action on the part of national governments in the South. The tradition of free primary education in East Africa in the wake of independence, as well as in national constitutions in Latin America, also argues for skepticism that the right to education is essentially an externally imposed construct.¹⁹⁴ Furthermore, the role of South-South collaboration suggests that transnational rights networks enforcement need not reflect the classic North-South dynamics which critics have importantly highlighted.

B. REALIZING RIGHTS

One of the implications of the model of transnational rights enforcement is that the access of civil society actors to key decision-making institutions proved extremely important. Leading international institutions and national entities are often reluctant enforcers, or even obstacles to the effective enforcement, of human rights obligations. Yet international and domestic

¹⁸⁹ Mutua, *supra* note 179, at 203.

¹⁹⁰ *Id.* at 207.

¹⁹¹ Mutua, *supra* note 179, at 217.

¹⁹² Kennedy, *supra* note 179, at 15.

¹⁹³ *Id.* at 17.

¹⁹⁴ Mutua, *supra* note 179.

institutions which allow for greater participation by civil society actors might well prove to be more effective enforcement mechanisms. Greater civil society participation within international and sub-national institutions and stronger regional civil society collaboration appears to catalyze more effective human rights enforcement in a transnational era.

If the World Bank was not subject to influence from donor country institutions that are quite permeable to civil society engagement, it would have been much less likely to have reversed its formal position on user fees for primary education. Without the access of civil society actors to regional forums and national courts in Colombia, it is again unlikely that the right to education would have been enforced. Among the key normative implications of the foregoing analysis is that institutions which are more permeable to influence by civil society actors are more likely to effectively enforce human rights. More participatory international institutions would be more likely to facilitate transnational rights enforcement.

If the Constitutional Court of Colombia did not have standing rules which allowed citizens to bring suit, the elimination of school fees might never have been taken up by the Court. Citizens in Colombia have standing to challenge alleged violation of their rights in the highest court of the land.¹⁹⁵ More inclusive rules for allowing citizen suits could make other national courts more effective instruments of international human rights enforcement. In Colombia, Article 88 of the Constitution provides that anyone who has a “collective right” can sue to protect that right.¹⁹⁶ By empowering citizens whose rights are threatened to bring suit and allowing

¹⁹⁵ ALBERTO ALESINA, INSTITUTIONAL REFORMS: THE CASE OF COLOMBIA 7 (2005).

¹⁹⁶ JOHN E. BONINE, STANDING TO SUE: THE FIRST STEP IN ACCESS TO JUSTICE 6 (1999), *available at* <http://www.law.uoregon.edu/faculty/jbonine/docs/boninelecture.pdf>.

the Constitutional Court to review any claim in which fundamental rights are threatened, Colombia has created a strikingly participatory mechanism of rights enforcement.¹⁹⁷

Recent studies have also found that supranational courts are also more effective at enforcing rights when individuals are allowed to directly bring suit.¹⁹⁸ The European Court of Human Rights adopted rules allowing individual claimants much greater access to court and subsequently non-state actors have become leading participants in the enforcement of human rights within Europe through the court.¹⁹⁹ The model of expanded access for litigants to supranational courts has since become an important feature of a number of courts around the world.²⁰⁰

The capacity for transnational civil society actors to overcome international constraints on domestic human rights enforcement will often depend on their ability to influence relevant international institutions. While many international institutions remain the exclusive province of states, a new generation of international institutions is increasingly including civil society as participants in formal governance.²⁰¹ More participatory institutions are more likely to be responsive to the transmission belt of concerns from transnational civil society. Just as inclusiveness towards states might contribute toward state compliance through acculturation,²⁰² inclusiveness towards civil society actors can

¹⁹⁷ Miguel Schor, *An Essay on the Emergence of Constitutional Courts: The Cases of Mexico and Colombia*, 16 IND. J. GLOBAL LEGAL STUD. 173, 175 (2009).

¹⁹⁸ Helfer and Slaughter, *supra* note 1, at 1907.

¹⁹⁹ Rachel Cichowski, *Courts, Rights, and Democratic Participation*, 39 COMP. POL. STUD. 50-75 (2006).

²⁰⁰ Karen Alter, *International Enforcement Courts*, American Political Science Association Annual Meeting (2011), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1901128.

²⁰¹ David Gartner, *Beyond the Monopoly of States*, 32 U.P.A. J. INT'L L. 596 (2010).

²⁰² Goodman and Jinks, *supra* note 1, at 144.

enhance transnational rights enforcement. Therefore, one central normative implication of this analysis of rights enforcement is that international institutions which foster broader participation by civil society and other non-state actors ought to be a central feature of human rights enforcement.

More participatory sub-national institutions are also an important part of the success of school fee elimination in East Africa. In a number of countries, including Tanzania, the abolition of school fees was paired with the expansion of national resources directed to school-level bank accounts in order to finance textbooks, supplies, and repairs. For each school, a school-based committee, including parents and community members along with teachers, was charged with oversight of these funds. In Kenya, one visiting United States Treasury official was so impressed by a rural teacher demonstrating how school expenditures were publicly posted, that the official supported substantial financing for Kenya's initiative to eliminate primary school fees.²⁰³

A key dimension of transnational rights enforcement is the dynamic nature of collaborations between international and domestic civil society actors. While a number of researchers have highlighted the importance of INGOs,²⁰⁴ and others have emphasized the influence of domestic civil society mobilization,²⁰⁵ the interaction between these sets of actors may prove to be the most significant dimension. Therefore, a further normative implication of this research is that structures and institutions which support transnational collaboration between civil society actors can be extremely important to human rights enforcement.

While earlier work on rights enforcement found that level of

²⁰³ Author Interview with Jim Adams, Vice President and Head of Network, Operations Policy and Country Services at the World Bank.

²⁰⁴ Hafner-Burton and Tsusui, *supra* note 11, at 418; Neumayer, *supra* note 7, at 926.

²⁰⁵ SIMMONS, *supra* note 1, at 373.

organization within domestic civil society was a crucial factor in fostering the enforcement of rights.²⁰⁶ Recent research has challenged the idea that rights enforcement requires strong civil society support structures.²⁰⁷ However, the cases examined here and the model of transnational rights enforcement offers support for the idea that rights litigation often requires an extensive civil society support structure. While much research in this area has been focused on national level structures, the insight offered by these cases is that a substantial transnational support structure can also be a significant factor in the success of civil society actors in catalyzing rights enforcement.

While the focus of transnational collaboration is often on the development of networks between developing and developed countries, the example of Colombia demonstrates that South-South regional collaboration may prove to be at least as significant in catalyzing compliance by regional laggards in rights enforcement. Financing for international human rights enforcement could include support for civil society monitors and enforcement agents. In order to foster transnational collaboration, and prevent capture by narrow interests, such funding could be conditioned on new global or regional partnerships. Regional human rights bodies could also be well served by similar investments in the development of strong regional networks of human rights organizations which share national models of success and accelerate regional compliance with human rights obligations.

²⁰⁶ CHARLES EPP, *THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* 199 (University of Chicago Press, 1998).

²⁰⁷ Raul Sanchez Urribari, *Explaining Changes to Rights Litigation: Testing a Multivariate Model in a Comparative Framework*, at 13 available at: http://people.cas.sc.edu/randazzo/urribari_schorpp_randazzo_songer_2011_jop.pdf.

CONCLUSION

The gap between the widespread ratification of the right to education and the weak enforcement of this right in many countries around the world highlights the importance of supplemental mechanisms for enforcing human rights. Many robust democracies with competitive multi-party elections still fail to effectively enforce the right to education. Even in countries with strong constitutional text protecting the right to education, governments are often unwilling to comply with specific obligations related to the right to education. Transnational rights enforcement is emerging as a key alternative to traditional mechanisms of human rights enforcement.

Transnational civil society actors contribute to human rights enforcement by overcoming international constraints, leveraging domestic commitments, and accelerating compliance with regional norms. Transnational mobilization increases the likelihood of national implementation of rights obligations by challenging international institutions which impede rights enforcement and enhancing the leverage and influence of domestic civil society actors in moving their own governments toward compliance. Expanding civil participation within international and sub-national institutions and fostering more extensive regional collaboration can enhance transnational rights enforcement in the 21st century.

Further research is needed to better understand the full scope of the model of transnational rights enforcement and help to clarify the breadth of rights for which this model has significant explanatory power. It is possible that some of the specific causal mechanisms highlighted here, such as the importance of overcoming international constraints, will prove to be less

essential to the enforcement of some types of human rights. However, it is likely that many of the mechanisms involved in transnational rights enforcement will be relevant to a wide range of human rights. With greater attention to the underlying causal mechanisms at work, future studies can build on the strong foundation of empirical work on human rights enforcement to generate a richer theoretical understanding of state compliance.