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Transnational Rights Enforcement

David Gartner*

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. Many scholars have found that treaty ratification has only a limited impact on state practices when it comes to human rights,² and some scholars have suggested that states that ratify human rights treaties are more likely to violate these

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1. See Tom Ginsburg & Gregory Shaffer, *How Does International Law Work*, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 767 (Peter Cane & Herbert M. Kritzer eds., 2010); Kal Raustiala & Anne-Marie Slaughter, *International Law, International Relations, and Compliance*, in HANDBOOK OF INTERNATIONAL RELATIONS 538, 553 (Walter Carlsnaes, Thomas Risse & Beth A. Simmons eds., 2002); BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 4 (2009); Philip Alston, *Hobbling the Monitors: Should U.N. Human Rights Monitors be Accountable?*, 52 HARV. INT'L L. J. 563, 565 (2011); Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 626 (2004); Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935, 1938 (2002); Laurence R. Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash against Human Rights Regimes*, 102 COLUM. L. REV. 1832, 1844 (2002); Laurence R. Helfer & Anne-Marie Slaughter, *Towards a Theory of Effective 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); Kim Lane Scheppele, *A Realpolitik Defense of Social Rights*, 82 TEX. L. REV. 1921, 1924-25 (2004).

2. TODD LANDMAN, PROTECTING HUMAN RIGHTS: A COMPARATIVE STUDY (2005); Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373, 1386 (2005). See generally Hathaway, *supra* note 1.

rights.³ States have little incentive to coerce other states into enforcing their respective human rights obligations.⁴ 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 catalyzing the enforcement of human rights.

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 identify key 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 transnational rights enforcement as an alternative model for understanding the process of human rights enforcement. Transnational rights enforcement highlights the role of civil society actors and the significance of the strategies and frames adopted by these actors. It identifies several causal mechanisms through which domestic and international civil society actors contribute to human rights enforcement. Transnational rights enforcement reveals how these actors overcome international constraints on domestic enforcement, utilize global frames to leverage domestic commitments, and take advantage of regional norms and regional institutions to foster domestic compliance.

The three leading theories of human rights enforcement emerged from a new wave of quantitative empirical studies in the field of human rights.⁵ The democracy thesis asserts that democratic political structures catalyze states to enforce human rights commitments. Even studies that find treaty ratification has little impact on human rights highlight the fact that fully democratic countries

3. See Hathaway, *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 & Ryan Goodman, *Measuring the Effects of Human Rights Treaties*, 14 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 a not magic moment of acceptance but rather a point in a broader process of incorporation).

4. SIMMONS, MOBILIZING FOR HUMAN RIGHTS, *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.").

5. See *id.*; LANDMAN, *supra* note 2; Hafner-Burton & Tsutsui, *Human Rights in a Globalizing World*, *supra* note 2; Hathaway, *supra* note 1; Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RESOL. 925 (2005).

are more likely to enforce human rights treaties.⁶ Democracies generally keep the promises that they make⁷ and are therefore more likely to enforce their human rights commitments.⁸ In contrast, the worst enforcement of human rights across a range of rights is commonly found in non-democratic regimes.⁹

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 the enforcement of a wide range of human rights.¹⁰

Finally, the INGO thesis argues that human rights enforcement within a state 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.¹¹

Although these theories have identified important variables that appear to affect human rights enforcement, some of this literature has drawn causal inferences from studies that are better at demonstrating recurring associations between different processes than in proving actual causation or revealing the underlying causal mechanisms.¹² Furthermore, given that most of these studies focus on enforcement of civil and political rights, the enforcement of social and economic rights is even less well understood.¹³

To gain better insight into the causal mechanisms involved in human rights enforcement, this article seeks to test these competing theories through

6. Hathaway, *supra* note 1, at 1980.

7. LANDMAN, *supra* note 2.

8. Neumayer, *supra* note 5.

9. Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law To Matter Where Needed Most*, 44 J. PEACE RES. 407, 422-23 (2007).

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

11. Hafner-Burton & Tsutsui, *supra* note 2, at 1386 (the larger number of INGOs operating in a country, the higher the protection of human rights, holding other factors constant); Neumayer, *supra* note 5, at 925 (“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.”).

12. Emilie Hafner-Burton, *International Regimes for Human Rights*, 15 ANN. REV. POL. SCI. 265 (2012).

13. See Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. 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. INT’L L. & POL. 171, 173 (2007). See generally Scheppele, *supra* note 1.

controlled comparisons and qualitative case studies focused on the right to education. Nearly every country in the world has ratified the right to education.¹⁴ It is similar to a wide range of human rights in that it includes immediately binding obligations on state parties regardless of a state's level of economic development. However, it lends itself more easily to clear-cut evaluation of state compliance than many other human rights because of the explicit requirement that primary education be available free to all children.¹⁵

Part I of the article analyzes the requirements of the right to education established by the core conventions of the legal regime of international human rights. Specifically, it highlights free primary education as a key element of the right to education, which states are required to implement regardless of their level of economic development. This section reveals the limits of these three theories of human rights enforcement for 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. These case studies are carefully matched to reveal the operations of different causal mechanisms. Based on interviews in Sub-Saharan Africa and other types of qualitative evidence, this section utilizes the social science methodology of process tracing to “identify the intervening causal process[es]”¹⁶ involved in the enforcement of the right to education. The first case is an “outlier case,”¹⁷ which cannot be easily explained by the existing theories of human rights enforcement. This allows for the identification of potential alternative mechanisms of human rights enforcement. The next four cases are matched pairs, involving “most similar”¹⁸ and “most different”¹⁹ cases. These cases vary in terms of the strength of the values of democracy, domestic constitutional protections of the right to education, and the number of INGOs in each country. These controlled comparisons make it easier to identify the significance of different variables within each case. Finally, Part III highlights transnational rights enforcement as an alternative approach to

14. U.N. Ratification of the Int'l Covenant on Econ. Soc. & Cultural Rights, http://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty (last visited Apr. 1, 2013); U.N. Ratification of the Convention on the Rights of the Child, http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en (last visited Apr. 1, 2013).

15. See U.N. Convention on the Rights of the Child, G.A. Res. 44/25, art. 28(1), U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc A/Res/44/25 (Nov. 20, 1989); Int'l Covenant on Econ. Soc. & Cultural Rights, Art. 13:2, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 3.

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

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

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

19. *Id.* at 34.

understanding human rights enforcement and outlines its significance for catalyzing states to meet their human rights obligations in the twenty-first century.

I.

THE RIGHT TO EDUCATION

The right to education has roots in international conventions dating to the early twentieth century and has now been ratified, in some form, by almost every country in the world.²⁰ 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.²¹ However, the modern right to education was not explicitly articulated in international conventions until shortly after World War II.²² 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.”²³

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.²⁴ 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.²⁵ The Committee on Economic, Social, and Cultural Rights, a body of experts that evaluates compliance with the ICESCR, determined that “indirect costs, such as compulsory levies on parents” are not permissible under the Covenant.²⁶ States parties to the ICESCR are required to adopt a plan within two years to implement free and compulsory primary education within a reasonable number of years.²⁷

20. Int’l Covenant on Econ. Soc. & Cultural Rights, *supra* note 15; Convention on the Rights of the Child, *supra* note 15.

21. 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, 225 (2005).

22. Minzee Kim & Elizabeth Heger Boyle, *Neoliberalism, Transitional Education Norms, and Education Spending in the Developing World, 1983-2004*, 37 LAW & SOC. INQUIRY 367, 369 (2011).

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

24. *Id.*

25. CASS R. SUNSTEIN, *THE SECOND BILL OF RIGHTS; FDR’S UNFINISHED REVOLUTION AND WHY WE NEED IT MORE THAN EVER* 101 (2004).

26. U.N. Comm. Econ. Soc. & Cultural Rights, Gen. Comment No. 11: Plans of Action for Primary Educ., ¶ 7, 20th Sess., U.N. Doc. E/C.12/1999/4, (1999), *available at* [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument).

27. 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, 269 (2012).

The obligations established by the ICESCR are elaborated in General Comment number 13, which reflects the interpretation of the Covenant's requirements by the United Nations Committee on Economic, Social, and Cultural Rights (UNCESCR). The General Comment reiterates the two distinctive features of primary education: that it must be "compulsory" and "available free to all."²⁸ 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."²⁹ The General Comment also 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."³⁰

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, including that "states parties recognize the right of the child to education . . . they shall, in particular: (a) make primary education compulsory and available free for all."³¹ The Convention on the Rights of the Child is currently binding on 193 states.³² 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.³³

The United Nations Educational, Scientific, and Cultural Organization (UNESCO), which serves as the lead United Nations agency on education, has taken an active role in defining the right to education but has not contributed significantly to legal enforcement of the right.³⁴ Former U.N. Special Rapporteur on the right to education, Katarina Tomasevski, recognized 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."³⁵ While the United Nations Human Rights Council established the position of the Special Rapporteur on the

28. U.N. Comm. Econ. Soc. & Cultural Rights, Gen. Comment No. 11, *supra* note 26, ¶ 10.

29. *Id.* ¶ 51.

30. *Id.* ¶ 59.

31. Convention on the Rights of the Child, G.A. Res. 44/25, *supra* note 15.

32. *Id.*

33. U.N. 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>.

34. See generally Klaus Hüfner, *The Human Rights Approach to Education in International Organisations*, 46 EUR. J. EDUC. RES. DEV. & POL'Y 117 (2011).

35. Katarina Tomaševski, *UNESCO's Role in Global Educational Development*, 51 COMP. EDUC. REV. 229, 233-34 (2007).

right to education to investigate the status of the right in member states, there has not been a strong connection between this reporting and the actual resolutions of the Council.³⁶ In 2008, the U.N. General Assembly adopted a resolution giving individuals the right to submit complaints on states' violations of the right to education to the U.N. Committee on Economic, Social, and Cultural Rights.³⁷ However, this optional protocol has not yet been ratified by the ten countries required for it to enter into force.³⁸

While the foregoing analysis highlights the limits of existing international enforcement mechanisms, recent empirical scholarship points to the significance of democratic political structures, strong constitutional protections, and the number of INGOs operating within a given country for human rights enforcement. 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 democratic states 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.³⁹ Some scholars have argued that democracy is the key variable that can explain the shift toward school fee abolition among countries in Sub-Saharan Africa. According to the democracy thesis, "electoral competition resulting from a democratic transition should increase the likelihood of user fee abolitions in Africa."⁴⁰ According to this view, the entire gap in school enrollment between democracies and non-democracies can be explained by controlling for the single variable of school fee abolition.⁴¹

However, a closer examination of the specific cases upon which this conclusion relies suggests that democracy may not be enough to explain school fee abolition.⁴² Of the sixteen countries identified as having abolished school

36. Tomaševski, *Has the Right to Education a Future*, *supra* note 21, at 208.

37. Beth A. Simmons, *Should States Ratify?—Process and Consequences of the Optional Protocol of the ICESCR*, 27 *NORDIC J. HUM. RTS.* 65 (2009).

38. U.N. Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights art. 18, Dec. 10, 2008, *available at* http://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=IV-3-a&chapter=4&lang=en#Participants.

39. *Id.* at 19.

40. Robin Harding & David Stasavage, *What Democracy Does (and Doesn't Do) for Basic Services: School Fees, School Inputs, and African Elections*, at 4 (N.Y. Univ., Working Paper No. 1, 2012).

41. *Id.* at 4.

42. *Id.* at 13, tbl. 1.

fees, more than half do not fit the theory's model of a competitive election generating new human rights commitments from a democratic government. In five of the sixteen cases, the abolition of school fees did not take place following an election. In four other cases, the elected presidents won with at least fifty percent more votes than their opponents, suggesting that the election was not really competitive in practice.⁴³ Additionally, multiple democracies in Sub-Saharan Africa that otherwise fit this profile still have not abolished primary school fees.⁴⁴ And finally, a few African countries have taken steps to abolish fees despite the absence of democracy.⁴⁵

B. *The Constitutional Thesis*

The constitutional thesis articulates a legal mechanism for enforcement of human rights. This theory holds that countries that adopt more explicit constitutional protections of human rights demonstrate more effective enforcement of those rights. Modern constitutions increasingly include explicit references to a right to education, often borrowing directly from the language of international human rights conventions.⁴⁶ In 2001, the U.N. Special Rapporteur on the right to education found explicit guarantees of the right to education in the constitutions of 142 out of 186 countries.⁴⁷ Furthermore, ninety-five of these national constitutions explicitly articulate the government's obligation to provide free education.⁴⁸ In the developing world, 87.7 percent of all national constitutions include a right to education.⁴⁹ Such a right is present in every constitution in Latin America and every constitution in Eastern and Central

43. *Id.*

44. For example, Botswana, South Africa, Mali are each classified as democracies on the Polity IV scale but none of these countries have fully abolished primary school fees. *See* the Polity IV Index, Polity IV Project, SystemicPeace.org (Feb. 15, 2012), <http://www.systemicpeace.org/polity/polity4.htm> (last visited Nov. 12, 2012) (project coding the authority characteristics of states).

45. 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. *See* Polity IV Index, *supra* note 44.

46. *See generally* John Boli-Bennett & John W. Meyer, *The Ideology of Childhood and the State: Rules Distinguishing Children in National Constitutions*, 43 AM. SOC. REV. 797 (1978).

47. Philip Alston & Nehal Bhuta, *Human Rights and Public Goods: Education as a Fundamental Right in India*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 242, 249 (Phillip Alston and Mary Robinson, eds. 2005).

48. VARUN GAURI & DANIEL M. BRINKS, *COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD I* (2010).

49. Courtney Jung & Evan Roseveare, *Economic and Social Rights in Developing Country Constitutions: Preliminary report on the TIESR Dataset 21, ii and 13 (Constitutional ESRs in the Developing World Preliminary Report Draft for Comment, Jan. 26, 2011)*, available at <http://www.tiesr.org/TIESR%20Report%20v%203.1.pdf>.

Europe. In fact, the right to education is absent in only two constitutions in Asia and in only seven constitutions in Sub-Saharan Africa.⁵⁰

However, a recent analysis of education in sixty-eight 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.⁵¹ More explicit constitutional protection did not lead to expanded levels of primary or secondary school enrollment.⁵² 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 national constitutional protections.⁵³

C. *The INGO Thesis*

The INGO thesis suggests that countries with a greater number of international non-governmental organizations are more likely to enforce human rights protections.⁵⁴ 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.⁵⁵ Countries with stronger connections to INGOs are more likely to increase their education spending per child.⁵⁶ 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. Half of the sixteen countries in Sub-Saharan Africa that abolished school fees had a low number of INGOs.⁵⁷ Many of the countries in the region with the highest number of INGOs continue to allow schools to charge primary school fees.⁵⁸

Despite important work highlighting the significance of transnational actors for rights enforcement, there is still only a limited understanding of the causal mechanisms through which INGOs might catalyze rights enforcement.⁵⁹

50. *Id.* at 21.

51. Avi Ben-Bassat & Momi Dahan, *Social Rights in the Constitution and in Practice*, 36 J. COMP. ECON. 103, 116-17 (2008).

52. *Id.*

53. GAURI & BRINKS, *supra* note 48, at 308.

54. Hafner-Burton & Tsutsui, *Human Rights in a Globalizing World*, *supra* note 2, at 1398.

55. Elizabeth Heger Boyle & Minzee Kim, *International Human Rights Law, Global Economic Reforms and Child Survival and Development Rights Outcomes*, 43 L. & SOC. REV. 455, 483 (2009).

56. *Id.* at 478-79.

57. Evan Schofer & Wesley Longhofer, *The Structural Sources of Association*, 117 AM. J. SOC. 539 (2011).

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

59. See MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 4 (1998) (examining the role of “transnational advocacy

Relatively little is known about the ways in which non-state actors translate international obligations into domestic contexts.⁶⁰ Therefore, the INGO thesis, like the democracy thesis and the constitutional thesis, does not reveal the underlying causal mechanisms involved in human rights enforcement and does not seem to offer an adequate explanation for the varying levels of enforcement of the right to education.

II.

SCHOOL FEES AND THE RIGHT TO EDUCATION

This section analyzes five different country case studies on the enforcement of the right to education in order gain insight into the causal mechanisms that drive the enforcement of human rights. In order to control for the impact of ratification, all selected countries have ratified at least one of the major conventions that guarantee free primary education.

The first case study looks at an “outlier case” that is not easily explained by leading theories and can therefore potentially reveal alternative causal mechanisms. Tanzania was not a full-fledged democracy when it abolished school fees and did not have a strong constitutional right to education or an especially large number of INGOs operating within the country.

The next four cases are matched pairs that vary in terms of the strength of the values of the variables that correspond to the current leading explanations. The first pair features the “most different”⁶¹ cases, which are countries that match only in terms of their level of constitutional protection of the right to education, but vary in almost all other key variables. Ghana and Swaziland 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 INGOs. In contrast, Swaziland is a middle-income country that is not democratic and has relatively few INGOs. The second pair of countries is the “most similar”⁶² cases, which are countries that are closely related in terms of

networks”); Koh, *Why do Nations Obey International Law?*, *supra* note 1, at 2656 (“How for example do international human rights ‘issues networks’ and epistemic communities form among international and regional intergovernmental organizations, international and domestic NGOs on human rights, and private foundations? 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 (1996) (identifying the significant role of “nongovernmental organizations” in “transnational legal process”).

60. See 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.”).

61. PRZEWORSKI & TEUNE, *supra* note 18, at 34-39.

62. *Id.* at 32-34.

most 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 INGOs, but these two countries are situated in very different regional contexts with distinct regional institutions and norms.

Country	Tanzania	Ghana	Swaziland	Colombia	Nigeria
Democracy ⁶³	Hybrid Regime	Strong Democracy	Autocracy	Weak Democracy	Weak Democracy
Constitutional Right to Education ⁶⁴	Weak	Strong	Strong	Moderate	Moderate
INGO ⁶⁵	Medium	Medium	Low	High	High

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 countries into the twenty-first century.⁶⁶ 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

63. The democracy categorizations are based upon a combination of the Polity IV Index and the Freedom House Index. Polity IV Index, *supra* note 44; Freedom House Index *available at* <http://www.freedomhouse.org/> (last visited Nov. 12, 2012). Strong democracies are clearly ranked as democracies under Polity IV and rated as fully free by Freedom House. Weak democracies are in the low end of the scale for democracies on Polity IV and rated as partly-free by Freedom House. Hybrid regimes fall well below the level of democracies on Polity IV and are rated as partly-free by Freedom House. Autocracies fall at the very bottom end of the Polity IV ranking and are rated as not free by Freedom House.

64. The Constitutional Right to Education categorization is based upon the level of explicit protection within the constitution of each country. Countries with constitutions that have explicit requirements for the implementation of free primary education are classified as strong, countries with constitutions that include language on free primary education are classified as moderate, and countries with constitutions that have no reference to free primary education are classified as weak.

65. *See* Yearbook of International Organizations, Union of Int'l Ass'ns (1948) (The INGO categorizations are based on the Yearbook of International Organizations catalogue of INGOs operating within a given country. Countries with more than 2,000 INGOs are classified as high, those with less than 1,000 INGOs are classified as low, and countries with between 1,000 and 2,000 INGOs are classified as medium.).

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

for primary education.⁶⁷ Several World Bank papers in the early 1980s recommended expanding school fees as a policy intervention by national governments.⁶⁸ 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.”⁶⁹ In order to secure a loan from the World Bank, Malawi substantially increased primary school fees, and primary enrollment fell across the country.⁷⁰ According to the U.N. 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.”⁷¹ 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.⁷²

By 1990, the World Bank’s \$1.5 billion annual investment made it the largest individual source of external financing for education, yet it still represented just 0.5 percent of total education spending in low-income countries.⁷³ 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.”⁷⁴ As of 2000, seventy-seven of seventy-nine surveyed countries had adopted some form of user fees for primary education.⁷⁵ In the case of thirty-eight percent of these countries, these fees included tuition for attending primary school, while in the other countries these fees took the form of textbook, uniform, or other kinds of fees.⁷⁶ Although several domestic courts in Europe served as important buffers against similar pressure from international financial institutions to cut back on social and economic rights in Europe,⁷⁷ these dynamics were not strong enough in Africa

67. Nancy Alexander, *Paying for Education: How the World Bank and IMF Influence Education in Developing Countries*, 76 PEABODY J. EDUC. 285, 298 (2001).

68. Joshua Rosensweig, *IFIs, Education Financing and Education Policy: Primary Education User Fees in Sub-Saharan Africa*, at 1 (unpublished manuscript) (on file with Univ. of Toronto Faculty of Law) available at http://www.law.utoronto.ca/documents/ihrp/HIV_rosenzweig.doc.

69. Mateen Thobani, *Charging User Fees for Social Services: Education in Malawi*, 28 COMP. EDUC. REV. 402, 417 (1984).

70. Mark Bray, *Is Free Education in the Third World Either Desirable or Possible?*, 2 J. EDUC. POL’Y 122-23 (1987).

71. KATARINA TOMAŠEVSKI, *EDUCATION DENIED: COSTS AND REMEDIES* 3 (2003).

72. Alexander, *supra* note 67, at 285.

73. Joel Samoff, *Institutionalizing International Influence*, 4 SAFUNDE: J. S. AFR. & AM. STUD. 1, 15 (2003).

74. Robert Weissman, *Fees Issue Entangles US Debt Relief Plan*, FIN. TIMES, Oct. 18, 2000.

75. KATTAN & BURNETT, *supra* note 66, at 10.

76. *Id.*

77. Scheppele, *supra* note 1, at 1924-25.

to prevent the introduction of significant cost barriers to primary education. The re-introduction of primary school fees reversed many of the gains in primary school enrollment in Sub-Saharan Africa.⁷⁸ The impact was most profound at the primary level for impoverished students, especially for girls.⁷⁹

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 does 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, the country was governed by a hybrid regime in which multi-party elections were already established, but incumbents faced little real electoral competition. The ruling party in Tanzania has overwhelmingly dominated every election since the transition to multi-party rule based on its superior access to state institutions, resources, and the media, leading some to characterize the dynamic as “hyper-incumbent advantage.”⁸⁰ Tanzania’s constitutional provision regarding education does not explicitly guarantee free primary education. Instead, Article 11 of the Tanzanian Constitution simply states “[t]he government shall endeavor to ensure that there are equal and adequate opportunities to all persons to enable them to acquire education.”⁸¹ 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 began in 1974 and eliminated primary school fees from an earlier era.⁸² 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.”⁸³ The World Bank

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

79. *Id.* at 128.

80. Steven Levitsky & Lucan A. Way, *Why Democracy Needs a Level Playing Field*, 21 J. DEMOCRACY 57, 58 (2010).

81. CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, Apr. 26, 1977, art. 11(3).

82. Joel Samoff, *The Politics of Privatization in Tanzania*, 10 INT’L J. EDUC. DEV. 1, 7 (1990).

83. ROSA ALONSO I TERME, THE ELIMINATION OF USER FEES FOR PRIMARY EDUCATION IN

and the International Monetary Fund supported the re-introduction of school fees in Tanzania.⁸⁴ Although Tanzania reached ninety-eight percent gross primary enrollment in 1980, this figure declined to fifty-seven percent by 2000 after primary school fees had been re-introduced.⁸⁵

Civil society mobilization against the World Bank's support for user fees was critical to successful efforts to once again eliminate primary school fees in Tanzania. The Tanzania Education Network (TEN/MET) was formed in 1999 and included faith-based groups, teacher organizations, and parent organizations. Its membership includes leading INGOs, but only three of these organizations are allowed on the ten-member board at any one time.⁸⁶ One of the earliest members of TEN/MET was Maarifa ni Ufunguo, established in 1998, which used its research capacity to catapult school fees onto the national agenda. In 1999, Maarifa ni Ufunguo examined the impact of primary school fees in Tanzania in some of the most well-off regions of the country. This research on primary school user fees was publicized with the help of TEN/MET, and the results were cited by international groups working to change the World Bank's policy as an example of the negative effects of primary school fees.⁸⁷

In the United States, a civil society coalition convinced key members of Congress to introduce legislation requiring U.S. representatives 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 2000, the House of Representatives passed the amendment, but the U.S. Department of Treasury sought to block its inclusion in the final legislation. In advocating for the World Bank to formally reverse its support for user fees, many INGOs utilized the language of human rights while highlighting the fees' negative impact on educational access. Civil 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.⁸⁸

The ultimately successful legislation required "the United States Executive Director of each international financial institution . . . to oppose any loan, grant,

TANZANIA 2 (World Bank) (drft. n.d.), available at http://siteresources.worldbank.org/INTPRS1/Resources/Attacking-Poverty-Course/Attacking-Poverty-Course/apr03_m4a.pdf.

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

85. TOMAŠEVSKI, EDUCATION DENIED, *supra* note 71, at 27.

86. Karen Mundy et al., *Basic Education, Civil Society Participation and the New Aid Architecture: Lessons from Burkina Faso, Kenya, Mali and Tanzania*, at 10 (Hakielimu, Working Paper), available at http://www.hakielimu.org/publication_details.php?pub=141.

87. TERME, *supra* note 83, at 4.

88. LARRY NOWELS, CONG. RESEARCH SERV., RL 30511, APPROPRIATIONS FOR FY2001: FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS (2000).

strategy or policy of these institutions that would require user fees or service charges on poor people for primary education.”⁸⁹ This transnational civil society coalition also pushed to include the elimination of school fees in Tanzania’s Poverty Reduction Strategy Program with the World Bank.⁹⁰

The World Bank subsequently issued a non-binding statement announcing that the Bank “does not support user fees for primary education.”⁹¹ This reversal by the World Bank is all the more remarkable given some scholars’ findings of strong resistance to human rights approaches within the organizational culture of the Bank.⁹² 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 of school fees. Discussions between Tanzanian President Benjamin Mkapa and the World Bank’s Tanzania country director, Jim Adams, contributed to the inclusion of school fee elimination in the country’s Poverty Reduction Strategy Program (PRSP).⁹³ The government also approached the wider donor community, on whom Tanzania relied for a large percentage of its budget, to find out if it would support the elimination of user fees for primary education.⁹⁴ 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.”⁹⁵ Civil society actors such as TEN/MET remained closely involved in shaping and monitoring the government’s policies abolishing school fees.⁹⁶

Beyond the reversal of the World Bank’s position on primary school fees, the other major international constraint that shifted during this period was the reduction of the country’s external debt owed to international financial institutions. A transnational campaign to significantly reduce the levels of indebtedness of many low-income countries also contributed to overcoming

89. Rosensweig, *supra* note 68, at 5.

90. TERME, *supra* note 83, at 5.

91. KATTAN & BURNETT, *supra* note 66, at 28.

92. 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).

93. See Alf Morten Jerve, *Exploring the Research-Policy Linkage: The Case of Reforms in Financing Primary Education in Tanzania* (Crh. Michelsen Inst., Working Paper No. 14, 2006), available at <http://bora.cmi.no/dspace/handle/10202/53>.

94. TERME, *supra* note 83, at 7.

95. International Monetary Fund/International Development Association, *Review of the Poverty Reduction Strategy Paper (PRSP) Approach: Early Experience with Interim PRSPs and Full PRSPs*, at 9 (Mar. 2002).

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

international constraints to the elimination of primary school fees in Tanzania. The Jubilee 2000 campaign led to significant 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 civil society coalition across G8 countries.⁹⁷ Across twenty-three African countries, HIPC contributed to a reduction in the ratio between debt service and government revenue from 24.2 percent in 1998 to 13.3 percent in 2003.⁹⁸ Additional resources from the expanded HIPC initiative contributed to increased investments in education in many of the Sub-Saharan African nations that subsequently eliminated primary school fees.⁹⁹

After Tanzania abolished primary school fees the country's level of primary school enrollment nearly doubled from 4.4 million in 2000 to 8.3 million in 2007. 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.¹⁰⁰ In addition, the passage rate for primary school exit exams increased from just twenty-two percent in 2000 to more than seventy percent in 2006.¹⁰¹ In order to accomplish these results, Tanzania doubled its per capita education spending between 1999 and 2003.¹⁰² The government introduced capitation grants¹⁰³ through school bank accounts in order to provide replacement financing for textbooks, learning materials, and facility repairs. It also initiated separate development grants for the cost of school buildings and furniture. 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

97. Joshua William Busby, *Bono Made Jesse Helms Cry: Jubilee 2000, Debt Relief, and Moral Action in International Politics*, 51 INT'L STUD. Q. 247, 248 (2007).

98. KEITH HINCHLIFFE, NOTES ON THE IMPACT OF THE HIPC INITIATIVE ON PUBLIC EXPENDITURES IN EDUCATION AND HEALTH IN AFRICAN COUNTRIES 6 (World Bank, Africa Region Human Development Working Paper Series) (June 2004), available at http://siteresources.worldbank.org/INTAFRICA/Resources/HIPC_Impact_04.pdf.

99. See KATARINA TOMAŠEVSKI, SCHOOL FEES AS A HINDRANCE TO UNIVERSALIZING PRIMARY EDUCATION 51-52 (paper commissioned for the *EFA Global Monitoring Report 2003/4: The Leap to Equality*) (2003), available at <http://unesdoc.unesco.org/images/0014/001469/146984e.pdf>.

100. Paul Glewwe & Meng Zhao, *Attaining Universal Primary Completion by 2015: How Much Will it Cost?*, at 36 (Univ. of Minn. Dep't of Applied Econ., Working Paper No. 1, 2005), available at http://faculty.apec.umn.edu/pglewwe/documents/UBASEC6_05.pdf. See generally Vavrus, *supra* note 84.

101. Frances Vavrus & Goodiel Moshi, *The Cost of a "Free" Primary Education in Tanzania*, 2 INT'L CRITICAL CHILDHOOD POL'Y STUD. 31, 34 (2009).

102. Rosa Alonso, Lindsay Judge & Jeni Klugman, *PRSPs and Budgets: A Synthesis of Five Case Studies*, in BUDGET SUPPORT AT MORE EFFECTIVE AID? RECENT EXPERIENCES AND EMERGING LESSONS 155, 179 (Stefan Koeberle, et al. eds., 2002).

103. Capitation grants are resources that are provided to schools on a per pupil basis in order finance core costs of education.

still included primary school fees, amidst weakening international constraints, then-President Mkapa later declared his intentions to eliminate primary school fees.¹⁰⁴

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,"¹⁰⁵ 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.¹⁰⁶ The opposition received just eight percent of the vote in the election that preceded school fee abolition.¹⁰⁷

The Tanzania case also reveals the significance of regional influences and regional diffusion on the enforcement of the right to education. 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.¹⁰⁸ 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. 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.

104. TERME, *supra* note 83, at 6.

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

106. *Dar Es Salaam, A Modest Success Story*, THE 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 populism . . ."), available at <http://www.economist.com/node/397758>.

107. KJELL HAVNEVICK & AIDA C. ISINIKA, TANZANIA IN TRANSITION: FROM NYERERE TO MKAPA 244 (2010).

108. Moses Oketch & Caine Rolleston, *Policies on Free Primary and Secondary Education in East Africa: A Review of the Literature*, 31 REV. RES. EDUC. 131, 132 (2007).

B. Leveraging Constitutional Commitments: Ghana and Swaziland

In Ghana, despite a very explicit constitutional provision specifying the right 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 date back to 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.”¹⁰⁹ Unlike most other constitutions, Article 38(2) of the Ghanaian constitution 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.”¹¹⁰

The Free Compulsory Universal Basic Education Programme (FCUBE) established in 1996 was the Ghanaian government’s initial legislative attempt to implement the constitutional guarantees related to education. At the time FCUBE was fully launched, thirty percent of Ghana’s 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.”¹¹¹ However, in practice, the FCUBE initiative did little to reduce or eliminate school fees. Without the government directing significant additional resources to schools, many schools introduced a variety of new levies.¹¹²

Nearly a decade after the launch of FCUBE, school fees remained prevalent in many parts of Ghana. Borrowing from the strategies that had 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.”¹¹³ The initial success of the pilot program brought renewed pressure from civil society actors

109. CONSTITUTION OF THE REPUBLIC OF GHANA, Apr. 28, 1992, art. 25.

110. *Id.* art. 38(2).

111. Kwame Akyeampong, *Revisiting Free Compulsory Universal Basic Education (FCUBE) in Ghana*, 45 COMP. EDUC. 175, 181 (2009).

112. *Id.* at 176.

113. Birger Fredriksen, *School Grants: One Efficient Instrument to Address Key Barriers to Attaining Education For All*, at 6, Capacity Dev. Workshop, Country Leadership and Implementation for Results in the EFA FTI Partnership (July 16-19, 2007), available at <http://educationfasttrack.org/media/library/schoolgrants.pdf>.

within Ghana for the government to implement a comprehensive approach to guaranteeing the right to primary education.

The influence of domestic civil society actors partly corresponded with their growing transnational links.¹¹⁴ 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.¹¹⁵ In 2005, the coalition developed a formalized decision-making process, established a full-time secretariat, supported in part by an INGO, and became more active working with the national government.¹¹⁶

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 twenty-six percent of school dropouts left because of their inability to pay for the costs of schooling.¹¹⁷ 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.”¹¹⁸ As a result of these pressures, the national government’s pilot program was rapidly scaled up across the country, which contributed to swift progress toward universal primary education. Later in 2005, the Ministry of Education abolished school fees for basic education across the country and introduced a capitation grant for all primary schools.¹¹⁹ The shift led to an expansion of primary enrollment in Ghana by an additional 1.2 million students.¹²⁰

While Swaziland has similar 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 specifically guarantees the right to

114. John Gaventa & Marjorie Mayo, *Spanning Citizenship Spaces Through Transnational Coalitions: The Case of the Global Campaign for Education*, at 3 (Inst. of Dev. Studies, Working Paper No. 327, 2009), available at <http://www.gold.ac.uk/media/spanning-citizenship-spaces.pdf>.

115. Tony Burdon, *Oxfam and Ghana’s National Education Campaign Coalition*, in OWNERSHIP AND PARTNERSHIP: WHAT ROLE FOR CIVIL SOCIETY IN POVERTY REDUCTION?, at 56 (Ian Smillie & Henri-Bernard Solignac Lecomte eds., 2003).

116. Felicitas Van der Plaats, *Civil Society Success in Achieving the Education for All Goals in Ghana* (Sept. 21, 2009) (unpublished M.S. thesis, University of Amsterdam), available at <http://educationanddevelopmentfiles.wordpress.com/2008/04/2009-van-der-plaat.pdf>.

117. *Id.*

118. Jackson C. Rogers, *Coalition Calls on Government to Make Education Really Free*, MODERN GHANA, Apr. 21, 2005, available at <http://www.modernghana.com/news/76269/coalition-calls-on-govt-to-make-education-really-f.html>.

119. See generally Charles Yaw Aheto-Tsegah, Ministry of Educ., *Ghana’s Experience with the Capitation Grant* (2009), available at www.globalpartnership.org/media/library/Ghana_Presentation_Final_II_Aheto.ppt.

120. See generally Papa Owusu Ankomah, *Call for Abolition of Fees*, BRITISH BROAD. CO., July 14, 2006, available at http://news.bbc.co.uk/2/hi/uk_news/education/5181852.stm.

primary education. 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 sixty-nine percent of the population living below the poverty line.¹²¹

The Swazi government sparked a constitutional crisis that led to a mass resignation of judges in the country when it publicly declared that it would ignore orders of the courts.¹²² Subsequently, the monarchy proposed a new constitution that created a Judicial Services Commission and specified that judges could only be removed upon the recommendation of this Commission. Although the King appointed the Commission, this arrangement created some modest level of independence for the judiciary.¹²³

The right to education within the Swazi Constitution is very explicit about the implementation of free primary education. Article 29 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.”¹²⁴ 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.¹²⁵

In response to this statement by the King, 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.¹²⁶ Although the case was originally 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 pay for a study to demonstrate that government resources were available to implement free primary education.¹²⁷ 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, in 2009, the High Court issued a declaratory order that the

121. Lomcebo Dlamini, *‘Interesting Times’ In The Kingdom of Swaziland: The Advent of the New Constitution and the Challenge of Change*, in *OUTSIDE THE BALLOT BOX* 168 (Jeanette Minnie ed., 2006), available at <http://archive.niza.nl/docs/200702131328321333.pdf#page=173>.

122. INTERNATIONAL BAR ASSOCIATION, *LAW, CUSTOM AND POLITICS: CONSTITUTIONAL CRISIS AND THE BREAKDOWN IN THE RULE OF LAW* 21 (2003).

123. See generally Dlamini, *supra* note 121.

124. CONSTITUTION OF THE UNITED KINGDOM OF SWAZILAND, 2005, art. 29(c).

125. *Swaziland: Free Primary Education Declared an Inviolable Right*, Apr. 28, 2009, available at http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205401195_text.

126. *Swaziland Nat’l Ex-Miners Workers Ass’n v. Minister of Educ.*, 335 I.L.R. 9, 27, (Swaz. High Ct. 2009), available at http://www.swazilii.org/files/sz/judgment/high-court/2009/104/SZHC_335_2009.pdf.

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

right to education was an inviolable right and that it was not designed to be subject to progressive realization. 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.”¹²⁸

Following the Court’s ruling, 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.”¹²⁹ 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.¹³⁰ Although the plaintiffs obtained an order from the Court barring all head teachers from turning children away for failing to pay their fees, this order was not enforced or implemented by schools in the country.¹³¹

While the High Court decision created new urgency for achieving universal primary education, it later retreated from its own ruling. Claiming to enforce the initial decision brought before the High Court of Swaziland the following year, the Court ruled that the government did not have to provide free primary education for all children. Instead, the Court concluded that in its earlier decision “this court merely made a declaratory order which was not executory and which did not compel the Respondents to implement the right to Free Primary Education.”¹³² 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.¹³³

128. *Swaziland Nat’l Ex-Miners Workers Ass’n*, No. 335/09, at 27.

129. Mantoe Phakathi, *Swaziland, Free Education? Maybe Next Year*, INTER PRESS SERVICE NEWS AGENCY, Jan. 28, 2009, available at <http://ipsnews.net/africa/nota.asp?idnews=45589>.

130. National Report Submitted in Accordance with Human Rights Council Res. 5/1, U.N.G.A., at 10 (Dec. 12, 2011).

131. JACKSON C. 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 92 (2010), available at http://www.etd.ceu.hu/2010/rogers_jackson.pdf.

132. *Swaziland Nat’l Ex-Miners Workers Ass’n v. Minister of Educ.*, 2168 I.L.R. 9, 12-3, (Swaz. High Ct. 2009), available at http://www.swazilii.org/files/sz/judgment/high-court/2010/258/SZHC_2168_2009.pdf.

133. Grace Nkhoma, *Our Right to Learn: Free Primary Education Campaign in Swaziland*, Open Society Initiative of Southern Africa Annual Report – 2009, 1 (2009), available at http://www.osisa.org/sites/default/files/sup_files/OSISA%20Annual%20Report%202009.pdf.

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

While Ghana demonstrates the potential for 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 significant government action to ensure the availability of free primary education. Without the mobilization of the Ghana National Education Campaign Coalition, it is unlikely that Ghana would have rapidly transitioned from a pilot program to abolishing school fees nationwide. 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.

Despite a very explicit constitutional mandate, it took thirteen years from the ratification of the Ghana's new constitution to the implementation of free primary education. In explaining the shift toward free primary education in Ghana, government officials highlighted the role of civil society pressure and the explicit requirements of the constitution. The former Director General of the Ministry of Education specifically 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.¹³⁴ It remains unclear what the prospects for this shift would have been without robust civil society pressure to abolish school fees by the constitutional deadline of 2005. 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 the right to education. Despite the reluctance of the High Court to enforce its initial ruling, that decision did prompt the government to begin implementing 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

134. Van der Plaats, *supra* note 116, at 73.

Free Primary Education for all.”¹³⁵ Given its lack of effective democratic institutions, Swaziland is an unlikely country to have demonstrated any progress on school fee abolition under the democracy thesis. From this vantage point, the modest progress Swaziland has made in implementing free primary schooling in the early grades could still be viewed as somewhat surprising.

Transnational civil society collaboration clearly contributed to the initially successful litigation efforts in Swaziland, but the nature of that collaboration was actually quite limited. Unlike in Ghana, where a national coalition focused on the right to education included many INGOs that had deep ties to a global campaign, in Swaziland transnational efforts 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 judicial 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 fee issue in the Latin American region. By the twenty-first century, nearly every country in Latin America had eliminated primary school fees except Colombia.¹³⁶ 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.”¹³⁷ The right to education is one of just two rights in the San Salvador Protocol that have explicitly been determined to be justiciable before the Inter-American Court of Human Rights.¹³⁸ 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.¹³⁹ Colombia’s status as a laggard within the

135. ROGERS, *supra* note 131, at 65.

136. KATTAN & BURNETT, *supra* note 66, at 48.

137. Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights art. 12(3)(a), Nov. 14, 1988, O.A.S.T.S. A-52, available at www.oas.org/juridico/english/treaties?a-52.html.

138. IRIS 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/.

139. See generally World Bank, *The Quality of Education in Colombia: An Analysis and Options for a Policy Agenda*, Nov. 4, 2008, available at <http://www->

region in terms of primary education dates back to the nineteenth century.¹⁴⁰ As the country entered the twenty-first century one of the key challenges Colombia faced was the inequitable access to education in poor rural areas.¹⁴¹ Many of the poorer and more isolated regions continued to lag far behind the urban areas in terms of access to education.¹⁴² 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.¹⁴³

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."¹⁴⁴ 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."¹⁴⁵ The Committee further recommended that national legislation be amended to "clearly reflect the right to free primary education."¹⁴⁶ 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 was thirty years overdue in implementing its obligations with respect to free primary education.¹⁴⁷

wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/12/15/000333038_20081215233713/Rendered/PDF/439060ESW0P10610Box334108B01PUBLIC1.pdf.

140. Maria Teresa Ramirez & Irene Salazar, *The Emergence of Education in the Republic of Colombia in the 19th Century: Where Did We Go Wrong?*, 3, Presented at the International Seminar on the Economic History of Colombia in the 19th century, Bogotá, Colombia (Aug. 15-16, 2007), <http://www.international.ucla.edu/economichistory/summerhill/ramirezsalazar.pdf>.

141. Ben Meade & Alec Ian Gershberg, *Overcoming Inequality: Why Governance Matters*, 3 (2008) (Background Paper Commissioned for the EFA Global Monitoring Report 2009), *available at* <http://unesdoc.unesco.org/images/0018/001804/180411e.pdf> [hereinafter Background Paper 2009].

142. *Id.* at 27.

143. Felipe Barrera-Osorio, *The Effects of a Reduction in User Fees on School Enrollment: Evidence From Colombia*, in *GIRLS EDUCATION IN THE 21ST CENTURY* 201, 204 (Mercy Tembon & Lucia Fort eds., World Bank 2008).

144. Committee on Economic, Social, and Cultural Rights, *Concluding Observations from 85th and 86th Meetings*, ¶ 48, E/C.12/1/Add.74 (Nov. 29, 2001) (considering the fourth periodic report of Colombia on the implementation of the International Covenant on Economic, Social and Cultural Rights), *available at* <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/22fa4f8348c81452c1256b44004993e3?OpenDocument>.

145. U.N. Committee on the Rights of the Child: *Concluding Observations, Colombia*, ¶ 76, U.N. Doc. CRC/C/COL/CO/3 (June 8, 2006), *available at* <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/0608d5984fda5338c125788e00459559?OpenDocument>.

146. *Id.* ¶ 77.

147. Dr. Rodrigo Uprimmy Yepes, *El Significado de la Gratuidad del Derecho a la Education*,

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.”¹⁴⁸ The Committee recommended “immediate measures” by the government to ensure all children have access to free primary education.¹⁴⁹ 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.¹⁵⁰ CLADE and the Colombian Coalition for the Right to Education joined with the U.N. Special Rapporteur for the right to education to organize a workshop analyzing innovative strategies for achieving free education in Colombia.¹⁵¹ The critical role of these regional allies was highlighted by the Coordinator of the Colombian Coalition who stated, “the role played by CLADE at regional and international levels through its justiciability initiative has been key, by contributing with the instruments and networking that otherwise would not have been available for the process.”¹⁵²

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 San Salvador Protocol for allowing fees to be charged for primary education.¹⁵³ The report found that only eighteen percent of indigenous children and thirteen percent of Afro-Colombian children actually completed primary school.¹⁵⁴ 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.¹⁵⁵ In 2008, the RFK

DEJUSTICIA (June 2006), available at http://www.dejusticia.org/interna.php?id_tipo_publicacion=2&id_publicacion=179.

148. Committee on Economic, Social, and Cultural Rights, *Concluding Observations from 85th and 86th Meetings*, *supra* note 144, ¶ 29.

149. *Id.* ¶ 19.

150. *CLADE and the Colombian Coalition for the Right to Education Launch the Campaign for Free Education in Colombia*, *Campaña Latinoamerica por el Derecho a la Educacion* (Aug. 30, 2008), available at <http://www.campanaderechoeducacion.org/action.php?i=162>.

151. *Id.*

152. *Schools Must Steer Their Course Towards Achieving Free Education* (July 30, 2010), <http://www.campanaderechoeducacion.org/action.php?i=481>.

153. RFK CENTER: RIGHT TO EDUCATION OF AFRO-DESCENDENT AND INDIGENOUS PEOPLES IN THE AMERICAS 65 (2008) (prepared for a hearing before the Inter-American Commission on Human Rights Mar. 12, 2008).

154. *Id.* at 53.

155. See generally Marselha Goncalves Margerin, *The Right to Education: A Multifaceted Strategy for Litigating before the Inter-American Commission on Human Rights*, 17 HUM. RTS. BRIEF 19 (2010).

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.¹⁵⁶ The same year, the Ombudsman for Human Rights in Colombia found that nearly seventy-five percent 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.¹⁵⁷

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 a 1994 law to allow the imposition of fees on primary education and the government's failure to enforce the right to education. The petition highlighted Colombia's status as the only country in Latin America that allowed for primary school fees in government schools.¹⁵⁸ It argued that Colombia's practice was in clear violation of the country's obligations under the International Covenant on Social, Economic, and Cultural Rights, the San Salvador Protocol, and the Convention on the Rights of the Child.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹ 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"¹⁶² 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.¹⁶³ Finally, it emphasized how much of an outlier Colombia represented in the region, stating that "Colombia

156. RFK CENTER, *supra* note 153.

157. *Id.* at 72-73.

158. Petition, Corte Constitucional [C.C.] [Constitutional Court], *DeJusticia v. Gov't of Colom.*, Octubre de 2009, (No. D-7933) (Colom.) at 4, *available at* <http://www.lawschool.cornell.edu/academics/clinicalprogram/int-human-rights/upload/Demanda-III-28-09-09-FINAL.pdf>.

159. *Id.*

160. *Id.* at 6.

161. Amicus Brief Prepared by the Cornell Int'l Human Rights Clinic et al. as Amici Curiae Supporting Petitioner, Corte Constitucional [C.C.] [Constitutional Court], *DeJusticia v. Gov't of Colom.*, noviembre 2009, (No. D-7933) (Colo.), *available at* <http://www.escri-net.org/sites/default/files/Amicus-Brief-w-Annexes-Report-ENG-FINAL.pdf>.

162. *Id.* at 10.

163. *Id.* at 3-4.

remains the only country in Latin America that explicitly authorizes educational institutions to charge fees, even at the primary level.”¹⁶⁴

The Court ruled that the underlying provisions upon which the government relied to charge school fees could not be applied to the primary school level. 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.¹⁶⁵ The Court cited the San Salvador Protocol for the proposition that primary education must be available to all free of charge.¹⁶⁶

The government of Colombia quickly took action to implement the Court’s decision. The director of the Department of Provision and Equity of the Vice Ministry of Preschool, Basic, and Secondary Education quickly announced “the free education program is already being implemented across the country.”¹⁶⁷ 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.¹⁶⁸ As of January 2012, according to the Minister of Education, the government would no longer permit schools to charge enrollment and service fees.¹⁶⁹

Nigeria and Colombia are similar in terms of the major variables that are the focus of leading explanations of human rights enforcement, but 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, Nigeria has held several competitive multi-party elections, and the country also has a relatively high number of INGOs.¹⁷⁰ Despite having less explicit constitutional protection for the right to education, Nigeria is a party to strong regional treaties that include the right to education.¹⁷¹ However, despite these apparent built-in

164. *Id.* at 10.

165. Corte Constitucional [C.C.] [Constitutional Court], mayo 19, 2010, Sentencia C-376/10, (Colom.), *available at* <http://www.corteconstitucional.gov.co/relatoria/2010/c-376-10.htm>.

166. *Id.*

167. Peter Camacho, *Schools Must Steer Their Course Towards Achieving Free Education*, Colombian Campaign for the Right to Education (2010), *available at* <http://www.campanaderechoeducacion.org/action.php?i=481>.

168. Resolucion por la Gratuidad en Medellin tiene gran valor simbolico para las otras ciudades pequenas, afirma abogado que apoya a la Coalicion Colombiana, Campana Latinoamericana por el Derecho a la Educacion (Dec. 17, 2010), *available at* <http://www.campanaderechoeducacion.org/justiciabilidad/clad.php?catId=1&contId=30&p=1>.

169. *CLADE*, *supra* note 150.

170. *See* Schofer & Longhofer, *supra* note 57.

171. African Charter on Human & Peoples’ Rights (Ratification & Enforcement) Act, Jan. 19, 1981, *available at* <http://www.nigeria->

advantages in terms of human rights enforcement, the Nigerian government has not yet abolished primary school fees.

In Nigeria, the constitution provides the “Government shall, as and when practicable, provide (a) free compulsory and universal primary education.”¹⁷² In 2004, the government of Nigeria enacted the Compulsory and Basic Education Act which, in theory, guarantees the provision of free, compulsory, and universal education at the primary level throughout Nigeria.¹⁷³ The Act provides that at least two percent of the Consolidated Revenue Fund of the federal government should be used to fund basic education.¹⁷⁴ The Nigerian Courts have held that they are precluded by Section 6(6)(c) of the Constitution from enforcing certain provisions of the Act, including economic and social rights.¹⁷⁵ The African Charter on Human and People’s Rights contains strong protection for the right to education. The Charter is considered domestic law in Nigeria, second only to Nigeria’s constitution in its authoritativeness.¹⁷⁶ 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.¹⁷⁷

Given these narrow interpretations by Nigerian Courts, civil society actors within Nigeria have increasingly turned to regional institutions to enforce the right to education. In 2005, the Socio-Economic Rights Accountability Project (SERAP) challenged the failure of the Nigerian government to implement the right to education before the African Commission. SERAP is not an INGO, but it does receive funding from external donors including the Open Society Initiative for West Africa, the MacArthur Foundation, and the National Endowment for Democracy. In *SERAP v. Nigeria*, the Commission rejected the case on the grounds that SERAP had not adequately exhausted its local remedies in Nigerian courts. Although SERAP highlighted the fact that the claim it was bringing would not be justiciable in Nigerian courts, the Commission nonetheless concluded that “[t]he Complainant could have made attempts to utilise the local remedies available instead of making presumptions that this

[law.org/African%20Charter%20on%20Human%20and%20Peoples%27%20Rights.htm](http://www.africancharter.org/African%20Charter%20on%20Human%20and%20Peoples%27%20Rights.htm).

172. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999, (Promulgation) Decree, No. 24 (1999), 17.

173. Socio-Econ. Rights and Accountability Project v. Fed. Republic of Nigeria, No. ECW/CCJ/APP/08/08, at 2, 7-9 (ECOWAS Community Court of Justice 2009), *available at* http://www.escri-net.org/sites/default/files/SERAP_v_Nigeria.pdf.

174. African Charter on Human and Peoples’ Rights Act, *supra* note 171.

175. Archbishop Anthony Olubunmi Okogie v. Att’y-Gen. of Lagos State, [1981] 1 NCLR 218 (Nigeria), *available at* <http://www.r2knigeria.org/PDF/OkogievAGLagosState.pdf>.

176. *See generally* 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 *COURTING SOCIAL JUSTICE*, *supra* note 48.

177. Daniel M. Brinks & Varun Gauri, *A New Policy Landscape: Legalizing Social and Economic Rights*, in *COURTING SOCIAL JUSTICE*, *supra* note 48, at 303, 324.

Complaint would not be heard since Nigerian courts do not generally regard economic and social rights as legally enforceable human rights.”¹⁷⁸

Regional courts within Africa have been more aggressive in interpreting the African Charter’s provisions with respect to the right to 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 1993.¹⁷⁹ In 2004, the Court successfully petitioned the African Commission to widen the Court’s jurisdiction to include suits filed by private parties alleging violations of either ECOWAS treaties or other secondary laws. As a result, unlike in many regional courts, plaintiffs do not have to exhaust their domestic remedies before bringing suit in the ECOWAS Community Court of Justice.¹⁸⁰ 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 v. 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.¹⁸¹ 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 “[i]s a mere directive policy of the government and not a legal entitlement of the citizens.”¹⁸²

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

178. Socio-Econ. Rights and Accountability Project v. Fed. Republic of Nigeria, No. 300/2005, 25 Activity Report of the ACHPR 84, at 96 (African Comm’n on Human and People’s Rights, adopted Jul. 29 2008), available at http://www.achpr.org/files/activity-reports/25/achpr44andeo5_actrep25_2008_eng.pdf.

179. Salomon T. 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, 309 (2007).

180. See generally Karen Alter & Laurence Helfer, *The New Human Rights Court for West Africa: The ECOWAS Community Court of Justice*, Working Paper (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107427.

181. Socio-Econ. Rights and Accountability Project v. Fed. Republic of Nigeria, No. ECW/CCJ/APP/08/08 (ECOWAS Community Court of Justice 2009), available at http://www.escri-net.org/sites/default/files/SERAP_v_Nigeria.pdf.

182. *Id.*

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.”¹⁸³ The Court also reaffirmed its broad view of standing that merely requires a plaintiff establish that “there is a public right which is worthy of protection and which has been allegedly breached.”¹⁸⁴

Article 15(4) of the ECOWAS treaty makes the judgment of the Court binding on member states.¹⁸⁵ In November 2010, the Court ordered the government of Nigeria to replenish the shortfall in education funding required to implement free primary education.¹⁸⁶ 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.”¹⁸⁷ 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-Parliamentary Affairs. Despite this, the government has still 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 only weakly connected to democratization, and in Nigeria democracy was not enough to catalyze school fee abolition. Colombia had a strongly rooted tradition of contested multi-party elections well before the decision by the Constitutional

183. Socio-Econ. Rights and Accountability Project, *supra* note 181 at 3, ¶ 13.

184. *Id.* at 7, ¶ 33.

185. See E.S. Nwauche, *Enforcing ECOWAS Law in West African National Courts*, 55 J. AFR. L. 181, 193-94 (2011).

186. Wahab Abdullah, *Nigeria: ICJ, NGE, NUT, SERAP, Others Insists on Free Education*, ALLAFRICA, Jun. 2, 2011, available at AllAfrica.com.

187. Socio-Econ. Rights and Accountability Project v. Fed. Republic of Nigeria, No. ECW/CCJ/JUD/07/10, ¶ 28 (ECOWAS Community Court of Justice 2010), available at http://www.worldcourts.com/ecowascj/eng/decisions/2010.11.30_SERAP_v_Nigeria.htm.

Court.¹⁸⁸ Furthermore, the commitment to eliminate school fees did not emerge from electoral competition. Meanwhile, Nigeria has not effectively 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 important contribution of international allies. The South-South collaboration in the Colombia case went well beyond financial assistance and extended 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 they were not sufficient to catalyze the implementation of free primary education in either case. 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, 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 INGOs are involved in proceedings, but this limited effect does not counter the high levels of non-compliance.¹⁸⁹ Although the Inter-American system has a longer tradition of engagement with human rights than ECOWAS, the level of compliance by member states is not always better. It is significant that Colombia occupies a region where just about every 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 regional legal norms appear to be important causal factors but not necessarily sufficient, by themselves, to catalyze the enforcement of the right to education.

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

189. 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*, 7 SUR INT'L J. HUM. RTS. 29 (2010).

III. TRANSNATIONAL RIGHTS ENFORCEMENT

As demonstrated in these case studies, neither the democracy thesis, nor the constitutional protection thesis, nor the INGO thesis can adequately explain the abolition of primary school fees and the enforcement of the right to education. Democracy is rarely a sufficient condition for national enforcement of the right to education—even the most explicit constitutional provisions requiring free primary education are not always effective. The number of INGOs operating in a given country cannot also adequately explain the enforcement of the right to education. Transnational rights enforcement offers a better explanatory approach and reveals a series of causal mechanisms through which civil society actors catalyze rights enforcement.

In the cases examined here, electoral competition was not sufficient to explain 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 where 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 creates new opportunities for domestic civil society groups to operate freely, form transnational alliances, and leverage government action.

Similarly, even robust constitutional protections often had only a modest impact in the cases examined and were not a necessary condition for school fee abolition. While highly 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 moved toward free primary education. Strong constitutional protections are most significant when the language on implementation is quite explicit, when strong regional norms reinforce domestic compliance, and when civil society actors have access to forums to enforce these rights.

The INGO thesis fares somewhat better in explaining enforcement of the right to education, although, it too proves inadequate. The INGO thesis seeks to account for the contribution of international civil society actors through a simple quantitative measure of the INGOs operating within each country. Merely counting the number of INGOs would lead one to expect more significant progress on the enforcement of the right to education within the Nigerian case and a less favorable outcome in Tanzania. The cases examined here offer new insight into the causal mechanisms through which INGOs exert influence, a

critical missing dimension of recent research that highlights the significance of these groups.¹⁹⁰

In contrast to these leading theories, transnational rights enforcement highlights the role of mobilization by civil society actors in catalyzing human rights enforcement and emphasizes the significance of the strategies adopted by both domestic and international civil society actors. It identifies at least three different causal mechanisms through which these actors often achieve unexpected success in catalyzing rights enforcement despite limited material resources. First, transnational rights enforcement operates by overcoming international constraints to domestic enforcement. Second, transnational rights enforcement utilizes international norms and global frames to leverage domestic commitments and constitutional protections. Third, transnational rights enforcement reflects the diffusion of regional norms and the leveraging of regional treaty obligations and regional institutions.

Transnational rights enforcement matters because it expands the space within which domestic actors can operate by overcoming international constraints. Without the shift in the World Bank's position on school fees, many of the countries that abolished school fees in Sub-Saharan Africa would have been less likely to do so. 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. Domestic actors are often 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.

Transnational rights enforcement reveals how civil society actors adopt global frames to generate greater leverage for domestic compliance with human rights commitments. Constitutional protections of the right to education generally catalyzed 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.¹⁹¹ 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 enforce rights more effectively.

190. See Hafner-Burton & Tsutsui, *Justice Lost!*, *supra* note 9, at 418; Neumayer, *supra* note 5, at 926.

191. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS*, *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.”).

Transnational rights enforcement reflects the role of civil society actors in utilizing regional norms and institutions to catalyze human rights enforcement. 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. Transnational actors 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 relative weakness of regional norms with respect to the right to education seems to be an important factor contributing to Nigeria's limited enforcement of this right 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,¹⁹² the Rome Statute establishing the International Criminal Court,¹⁹³ as well as treaties protecting children's rights.¹⁹⁴ However, there is still limited understanding of the underlying causal mechanisms which contribute to regional effects.¹⁹⁵

Transnational rights enforcement poses a challenge to the views put forward by a number of scholars who argue that human rights discourse is often externally imposed on developing countries.¹⁹⁶ These scholars have pointed to the problematic framing of Southern victims and Northern saviors.¹⁹⁷ One important facet of this critique is the failure of INGOs to focus on social and economic rights.¹⁹⁸ However, in challenging the World Bank's position 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.¹⁹⁹

In addition, transnational rights enforcement builds on a growing body of scholarship analyzing the complex interaction between the international and domestic realms and the role of norm entrepreneurs in human rights enforcement.²⁰⁰ It offers support for the conclusion that international institutions

192. *See generally id.*

193. *See generally* Heather M. Smith, *The International Criminal Court and Regional Diffusion*, Fifth Pan-European Conference on Int'l Relations (Sept. 9-11, 2004), available at <http://www.humanrights.uconn.edu/documents/papers/HeatherSmith.pdf>.

194. *See generally* SIMMONS, *MOBILIZING FOR HUMAN RIGHTS*, *supra* note 1.

195. *See id.* at 31. *See generally* Goodman & Jinks, *supra* note 1.

196. *See* Makau Mutua, *Savages, Victims and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001).

197. *Id.* at 203.

198. *Id.* at 217.

199. *See generally id.*

200. *See* Peter Gourevitch, *Domestic Politics and International Relations*, in *HANDBOOK OF*

can be a source of opportunity for civil society mobilization, especially when there is openness to participation by INGOs.²⁰¹ While a number of researchers have highlighted the importance of INGOs,²⁰² and others have emphasized the influence of domestic civil society mobilization,²⁰³ the interaction between these sets of actors may be the most significant dimension. Earlier work on rights enforcement found that the level of organization within domestic civil society was a crucial factor in fostering the enforcement of rights,²⁰⁴ but recent research has challenged the idea that rights enforcement requires strong civil society support structures.²⁰⁵ Transnational rights enforcement offers support for the idea that effective rights enforcement generally requires an extensive civil society support structure.

Transnational rights enforcement similarly builds on work demonstrating how global human rights frames are much more successful in leveraging policy change when translated into relevant local contexts.²⁰⁶ While transnational civil society mobilization to expand primary education might have been possible without a well-articulated right to free primary education, that obligation provided a shared language that united disparate groups across national boundaries. The contingency of human rights enforcement depends not only on domestic demands,²⁰⁷ but also on the capacities and frames brought to bear by international actors and the constraints imposed by international institutions.

One of the implications of transnational rights enforcement is that the access of civil society actors to key decision-making institutions proves 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 institutions that allow for greater participation by civil society actors may well prove to be a more effective enforcement mechanism. Greater civil society participation within international and sub-national institutions and stronger regional civil society

INTERNATIONAL RELATIONS 310 (Walter Carlsnaes, Thomas Risse & Beth A. Simmons eds., 2002). See generally KECK AND SIKKINK, *supra* note 59; Koh, *How is International Human Rights Law Enforced?*, *supra* note 1.

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

202. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost!*, *supra* note 9, at 418; Neumayer, *supra* note 5, at 926.

203. SIMMONS, MOBILIZING FOR HUMAN RIGHTS, *supra* note 1, at 373.

204. CHARLES R. EPP, THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE 199 (1998).

205. Raul Sanchez Urribari, *Explaining Changes to Rights Litigation: Testing a Multivariate Model in a Comparative Framework*, at 13 (2011), available at http://people.cas.sc.edu/randazzo/urribari_schorpp_randazzo_songer_2011_jop.pdf.

206. See generally MERRY, *supra* note 60.

207. SIMMONS, MOBILIZING FOR HUMAN RIGHTS, *supra* note 1, at 373.

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 were quite susceptible 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 that are more responsive 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 that 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.²⁰⁸ More inclusive rules for allowing citizen suits could make other national courts more effective instruments of international human rights enforcement. Recent studies have found that supranational courts are also more effective at enforcing rights when individuals are allowed to directly bring suit.²⁰⁹ The European Court of Human Rights adopted rules allowing individual claimants much greater access, and subsequently non-state actors have become leading participants in the enforcement of human rights within Europe through the Court.²¹⁰ The model of expanded litigant access to supranational courts has since become an important feature of a number of courts around the world.²¹¹ Yet, there remains an important divergence across different regions in the level of participation by NGOs in litigation before human rights courts.²¹²

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.²¹³ More participatory institutions are more likely to be

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

209. Helfer, *Overlegalizing Human Rights*, *supra* note 1, at 1907.

210. Rachel A. Cichowski, *Courts, Rights, and Democratic Participation*, 39 COM. POL. STUD. 50-75 (2006).

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

212. Lloyd Hitoshi Mayer, *NGO Standing and Influence in Regional Human Rights Courts and Commissions*, 36 BROOK. J. INT'L L. 911, 936 (2011).

213. See generally David Gartner, *Beyond the Monopoly of States*, 32 U. PA. J. INT'L L. 596 (2010).

responsive to the transmission belt of concerns from transnational civil society. Just as inclusiveness towards states might contribute toward state compliance through acculturation,²¹⁴ inclusiveness towards civil society actors can enhance transnational rights enforcement.

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. The future of this transnational collaboration is likely to increasingly involve South-South regional collaboration, which can be an important catalyst of compliance for regional laggards in human rights protection. Regional human rights bodies that allow greater participation by regional networks of human rights organizations may be well placed to accelerate national compliance with regional human rights obligations.

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 an alternative approach to understanding human rights enforcement that can complement the insights of existing theories.

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 that impede rights enforcement, and by 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 twenty-first century.

Further research is needed to better understand the dynamics of transnational rights enforcement and the breadth of rights for which this model has significant explanatory power. Although the cases selected were carefully chosen in order to control for key variables, the overall sample nonetheless

214. Goodman & Jinks, *supra* note 1, at 144.

remains relatively small. The wider universe of cases of school fee abolition over the last decade offer additional support for the conclusions of the case studies, but future research on human rights enforcement that combines quantitative and qualitative approaches would be extremely valuable.²¹⁵ It is possible that some of the specific causal mechanisms highlighted here, such as the importance of overcoming international constraints, will be less essential to the enforcement of some human rights. However, the influence of transnational civil society mobilization is likely to be significant across a range of different rights. With greater attention to the underlying causal mechanisms, future studies can build on the strong foundation of empirical work on human rights enforcement to generate a richer theoretical understanding of state compliance.

215. See Emilie M. Hafner-Burton & James Ron, *Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes*, 61 *WORLD POL.* 360 (2009).